

Chapter 9

Accommodating Ethical Authority

As we pursue what seems good to us, we are aware, sometimes dimly and sometimes blindingly, sometimes comfortingly and sometimes disturbingly, that rules channel us. We cannot do anything we want. The twin requirements for authority and for conformity to authority permeate our lives and the society within which we find ourselves.

Even those who defiantly reject conventional authority — intellectuals like John Maynard Keynes or drop-outs like Timothy Cleary or revolutionaries like Trotsky — bind themselves with strict rules of their own making and demand conformity from their associates and followers.¹

But authority, whether of external or internal origin, seems to be the antithesis of freedom. The ethical challenge is to harness and design ethical constraints in a way that minimizes coercion, defends freedom and permits social life to flourish.

In the self-aware society, all claims to authority and demands for conformity to rules must be subject to scrutiny, analysis and potential revision. Such reflective awareness, absent in traditional societies, is a defining quality of modern ones, especially those that claim to be ‘free’.

Natural moral institutions evolve spontaneously, but change too slowly to handle the continuing protean flow of complex social issues. In any case, what we must appreciate is how and how far social authority and moral institutions can be self-consciously shaped. Science has no answers, but social science has recognized many of the tools that people have intuitively developed: notions like ideology, social justice, human rights, custom and standards. The substantial elements of such ethical creations, as in natural moral institutions, are ethical rules.

Rule-based entities are the ultimate authorities in any society, forming the basis for its cultural integrity and force. Despite their significance, cultural forces are given far less prominence in the analysis of international affairs than politics, economics or personalities.²

An authority refers to *any entity, abstract or constituted, which has legitimate control over the exercise of power in*

society. Our primary concern is with abstract or ethical authority, that is to say rule-based authority. In Ch.s 7 and 8, we have already noted the way that ethical rules can put bounds on action, attitudes, beliefs, entitlements, functioning, enforcement and the sense of duty. Now the use of rules to define ethical authority can be explored in depth.

Rule-based authority has the virtue of being powerful without having a mind of its own. For practical purposes, power is a property of individuals. So when we take rule-based authority and locate it in positions (Pope, President, Judge) or social bodies (government, tribunals), then powerful individuals are indeed created. I will refer to such entities variously as actual, established, official, constituted, governmental or public authorities. These bodies, the preoccupation of many social scientists, are authorized variously to develop, determine, uphold, monitor or enforce ethical rules. But all actual authorities are subject in the end to pure rule-based authority — ethical entities whose appreciation by academic writers is so often partial, biased or unnecessarily obscure.

The present framework provides a golden opportunity to clarify the nature of fundamental ethical authorities evident and needed in modern complex societies. It will also be possible to understand their link to constituted authorities and other individuals in society (see G-5 & G-6: Ch. 12).

Ultimate Values. To accommodate authority constructively, we must seize every opportunity for design. Designing authority is about embodying ultimate values in social institutions and managing the twin requirements of freedom and compliance. It is not about bolstering society’s governing agencies, still less about using force to determine a particular utopian or doctrinal end-result.

The dominating ethical concern and ultimate value from a communal perspective is usually held to be fairness or justice. In Adam Smith’s phrase, justice is the ‘main pillar that upholds the whole edifice’ of society.³ So, a social vision based on material prosperity is just not enough for people. Social life is unbearable without

a minimum of fairness, just as personal life is intolerable without a minimum of freedom. If a sense of injustice is a component of the pursuit of the good, which is usually the case, then people are disturbed. Life was never meant to be fair, and perfect justice is out of reach. Nevertheless, sooner or later any widely perceived injustice in society presses for correction.

Justice, in short, is an absolute, the pre-eminent social virtue and one of the idealized goals of progressive societies. But other socially oriented ultimate values — liberty especially, but also peace, harmony, fraternity, equality and truth — are not any less important for all that. As noted previously, some minimum amount of actual freedom is absolutely essential if communal life is to be tolerable (cf. L"-4: Ch. 8; G-6: Ch.12).

Freedom within a just society is the pre-eminent aspiration of the enlightened individual. Freedom without enlightenment emerges as unbridled license and becomes the enemy of justice. Positive freedom for individuals is more or less desired by a community according to its dominant ideals and ideology.

The Aims. The purpose of this chapter is to reveal the ideas and axioms, the social processes and relations, that underpin the notion of authority in society. I want to provide a consistent and coherent account of the most important ethical features of social life and define the limit of what is humanly and socially possible. The various forms of ethical authority will be defined and the relation of rules to justice, authority and freedom examined. The chapter does *not* provide model principles or an account of what constitutes a perfectly just society. It only seeks to clarify the tools, mechanisms and principles which define the authority needed to sustain society and foster its ethical development.

Societies have evolved an extraordinarily wide variety of rules, authorities and related ethical arrangements. I will not be reviewing them to see whether history reveals a genuine process of cultural evolution to some ideal higher form — as suggested by thinkers like Comte, Hegel, Marx, Toynbee, and Chardin. I believe there has been progress, but I take diversity for granted as a good thing. My approach remains resolutely one of assisting design within that diversity, not proposing a blue-print.

It is for each society, mainly via its influential civic-minded personalities, to consider its own authorities, to check how its present arrangements operate and to debate how and where improvement might be required and possible. Whether or not societies actually do improve, the continuous search for improvement is inherent in everyone's notion of ethics. In a similar

fashion, it is for each organization, via its members, governing bodies and responsible managers, to consider its internal ethical arrangements. It is for each person to look into themselves and reflect on their own personal development and ethical outlook. Each of us must consider how we might support or modify authoritative rules within our organizations and wider society.

I offer the framework for people to use as they think best. Whether you are naturally rebellious, traditionalist or reflective, I take it for granted that you can only develop or support changes to existing arrangements if they have some measure of consistency with the deep spirit and evolution of your society.

Although both criticism, redesign and change go on all the time in modern society, the very notion of tinkering with ethical rules and confronting authority is anathema or hubris for many. So we need to be clear about what is possible.

The Possibility of Design. Society has an intrinsic order described by systems scientists as self-organizing or autopoietic.⁴ Its rules (best seen as a form of value system: L-6) operate for the most part outside awareness, and are all the more successful for that. Most rules, from shaking hands to the abhorrence of incest have evolved as man and culture evolved. They have emerged spontaneously, persisted through selection, and are the product of experience not science. As Hayek puts it: "our whole civilization rests, and must rest, on our believing much that we cannot know to be true."⁵

Bringing customary rules and forms of authority into awareness permits the dangerous possibility of design. Once this process starts, there is no going back. The limitations of design reflect in large part the state of present society and the limitations of its members. Respect for enlightened convictions about what is right, a mature understanding of social realities and the bounds of knowledge, and the sensitive handling of individuals all play a part in the effectiveness of design. Grandiose conceptions of social destiny, ambitious self-aggrandizement, utopian demands and the glorification of reason all contribute to its disaster.

So, in promoting design, I am not supporting coercive idealized imposition by arrogant know-it-alls. Instead, I am encouraging a reflective mentality applied to the spontaneous order evident in existing society. It will be already evident from the rules (as discussed in Ch. 8) that some seem to lend themselves to creative imposition, others are inherent in the existing order, and still others impose a modification on what is inherent.

I have tried to specify *those assumptions which have evolved culturally as humanity has evolved, and which are reflected in social orders of the widest variety*. All design (I suggest) uses the framework to be offered, either implicitly or explicitly. So the framework exists as an abstract reality for anyone at all to recognize and harness. I will try to expound it as simply, as accurately and as helpfully as I can.

The message here as elsewhere is that there is something to be gained by appreciating the beauty of the framework and the nature of its component parts. On the positive side, controversial and difficult situations can be resolved satisfactorily by intelligently using the framework. On the negative side, severe problems are all too likely sooner or later if the framework's principles are ignored, misunderstood or deliberately violated. Using the types of rule as the basic elements, it is possible to appreciate the emergence of the authoritative arrangements essential for social life. Most, if not all, of these arrangements will be familiar to readers, although their constitution by a pattern of ethical rules may come as a surprise.

Application. My focus throughout is on a sovereign society and its members, because this includes the full panoply of political, organizational and cultural complexities. However, as we saw in Ch. 8, the same notions and similar (but not identical) analyses apply to more restricted communities like a neighbourhood, or secondary communities like those found in a firm, professional association, or church. Greater recognition of the internal community dimension of large organizations is certainly an urgent need for those within them, and would benefit people and communities without as well.

My consultancy studies have involved government, communities and inter-organizational efforts. But the amount of work in this area has been rather limited in comparison to work on values and management within organizations. So these conceptions and the practicalities of their use are less well developed.

INTRODUCING ETHICAL AUTHORITIES

Rules taken on their own are important sources of authority — but insufficient for society. Society requires its ethical rules to inter-connect and inter-relate. If higher levels were not tightly linked to lower levels, authority would be incoherent and the result would be personal confusion and community fragmentation. Connections between the rules are evident everywhere. For example, we noted in passing in Ch. 8

that when a professional association sets a code of ethics (L"-5), it must also indicate the rights and duties (L"-4) of members if a complaint is brought. Affinities between the different sorts of rules have also emerged. It was evident, for example, that the higher-level rules — rights, maxims, laws, absolutes (L"-4 to L"-7) — positively lend themselves to universalization, whereas the lower-level rules do not.

On careful examination, other groupings of rules became evident. Eventually, it became clear that all possible adjacent combinations were relevant to maintaining authority, and indeed essential for appreciating conformity while protecting individuality and freedom. The value of clarifying such a pattern was further supported by the usefulness of an identical analysis of the primary levels of purpose hierarchy, which reveals how values can be (and are) effectively realized in society (see Ch.s 10 and 12).⁶

The seven basic types of ethical rule can be grouped in combinations of adjacent levels in seven different ways: in one's, in two's, in three's and so on. I use a Greek-based terminology for the groupings: monads, dyads, triads, tetrads, pentads, hexads and heptad. Each of these contains a corresponding number of groups: i.e. there must be one heptadic group (of seven levels), two hexadic groups, three pentads, and so on (cf. Master-Figure 18). *Each grouping defines and illuminates a distinct and significant contribution to the requisite and ethical handling of authority in society*. So each has a social function and important practical and personal implications.

Language and System. Because the seven levels of rule form a hierarchy, the seven groupings which structure these rules systematically to form ethical authorities must also constitute a hierarchy. The rules create what I call an *elemental hierarchy* (H³) — and the authorities form what I call a *grouped or structural hierarchy* (sH³). The seven social processes which give rise to the seven groupings in the structural hierarchy start from the 7 elemental rules and reveal 21 additional rule-based authorities. Together, these 28 authorities maintain a society within which individuals can separately and jointly thrive.⁷

In explaining the functions and structures of the various groups and groupings, I have sought to find characteristic labels and adjectival qualifiers that can (a) help fix and remind us of the fundamental nature of the ethical authorities and their social function; and (b) clarify the systemic inter-linkage of all 28 groups.

There is a logical evolution through the groupings starting with the monads and working upwards. This is

shown in Master-Figure 18 whose bold labels are designed to be read downwards column by column and from left to right. The ethical process, labelled at the top, is analysed into authoritative entities (groups) which reveal a type of ethical authority derived from rules, which is labelled at the bottom. This type of authority in turn supports, requires and constrains a higher and more complex ethical process at the top of the next column.

I discovered that the inter-linkage and inter-relations of the groupings and groups is expressed through the build up of internal levels of the groups within each grouping. Each internal level maintains a constant quality depending on its position (cf. Master-Table 20). For example, in any group within any grouping, it is the second (internal) level which has the potential to ensure (and so should be designed to ensure) the social acceptability of the rule-based authority.

Each authority is a complex ethical entity which deserves far longer and more detailed analyses and discussions than I can provide. My scope is limited. I want mainly to offer what seems to be currently lacking, a complete overview. This reveals a marvellous and rather simple system with an intuitive appeal. I also want to clarify the basic nature and function of the various rule-based authorities and their relationships to each other, to ourselves and to the community. Most of what follows is well-established in academic discourse, but some is not. Nevertheless, the various perspectives and arrangements should be immediately recognizable to the reader.

A General Account. The ethical heart of any social order lies in its ability **to judge conduct (G"-5)** so as to determine whether it is right and fair, and then to have these judgements accepted as authoritative by all. This ethical capacity depends on three great and definitive frames of reference found in any society: its custom, its law and its morality. These immediately recognizable and pervasive authorities, which justify and bolster the simpler authorities, do not exist on their own in some arcane philosophical fashion. They are the product of the continuing efforts of actual communities and are experienced as precious possessions.

Communities cannot exist without a sense of wholeness or unity. The practical activities of any community can be seen to be built on an abstract order or system of rules, the ethical order, which provides members with a deeply consistent, coherent and constant authority. People must wholeheartedly and freely **engender the will (G"-7)** to sustain an ethical order despite imperfections in the actual social order. If there is no general will to preserve a community and its ethical order, it soon becomes riven by discord and hatred. Its

institutions are devalued or corrupted. Authority disintegrates at all levels. People become fearful and start fleeing. Brutal in-fighting commences, with social life and property randomly despoiled. Disintegration of this sort has been evident in places as different as Somalia, Yugoslavia, Lebanon and Rwanda in the 1990s. The ethical order may not be ideal. But to be ethical it must aspire to an ideal, and to be socially viable it must be willingly sustained by almost everyone.

The ethical order can only be sustained and utter disaster avoided if everyone in the community **recognizes authority (G"-1)** and is prepared to accept the rules of certain fundamental and inescapable authorities as binding. These primal authorities have already been encountered; they are: ultimate values or God (L"-7), the law (L"-6), the ethical teaching (L"-5), class power (L"-4), each person (L"-3), the community as a whole (L"-2), and community leaders (L"-1). These seven authorities are the foundation on which all other abstract and actual authorities depend. The enlightenment and appropriateness of the rules produced by these primal authorities and their influence, especially on those in government and other established authorities, ultimately determine the ethical condition of any society.

It is evident that the ethical order is not in the hands of a government, but must instead be built up through a complex interaction between individual members of society and the community as a whole using inputs of a wide variety of essential institutions. Nevertheless, government is vital to orchestrate and regulate this process. Between the recognition of primal authorities and the evolution of the great ethical frames of reference lie three increasingly complex ethical processes in which official authorities play a part.

Primal authorities and ethical rules give rise to governmental bodies and established authorities which have one essential rationale: **to maintain the community (G"-2)**. This duty is fundamental because personal existence and even physical survival depends on a viable community. In those areas where the poor decisions of members could lead to the disruption or disintegration of the community, guidance by ethical principles is mandatory. Choices needing guidance deal with essential aspects of communal life like ensuring basic respect, meeting member needs, handling status differentials, and so on. Principles handle conflicts between primal authorities by ensuring that broad acceptability to the community is given paramount importance.

Principles maintain the community, and they must be articulated by responsible individuals who have a deep feeling for them. Once articulated, they become available for general use. But applying principles widely in a

consistent way is liable to push society in a particular direction and potentially supports a particular conception of cultural progress. The second step, therefore, is **to socialize individuals (G"-3)** during such a process so that people know exactly how the ethical order is or should be developing. This depends on positions which people have internalized and see as natural and right. Positions possess the authority to make or resist challenges to the existing order because there is, of course, no right condition for society apart from most people wanting it so. As a result, internalized positions must be affirmed in a dogmatic fashion to be true to oneself and to win over others.

If positions are taken up by people or embedded in society, then conformity to them is expected. Socializing efforts and conformity requirements touch on and potentially violate the identity of people, local communities and organizations, as well as of society itself. It becomes necessary therefore, as a third step, **to protect identities (G"-4)**. Conformity and identity maintenance can be achieved through an entity setting and adhering to its own minimum standards. Once standards are used to appraise and sustain conduct or arrangements above a minimum, conflicting views about what is right are likely to arise between individuals — either in private affairs or between individuals and governmental bodies in public matters. These differences of view may lead to disruptive disputes. Definitive resolution is needed if the society is to cohere and if people are to operate freely and peacefully within it. So judgements which are generally viewed as just are required — and this brings us again to the frames of reference (G"-5).

One final grouping, the hexads, remains to be explained. Between the freely embraced abstract ethical order (G"-7) and the definitive and encompassing frames of reference (G"-5) which judge proper conduct in the actual social order, lies the need **to regulate obedience (G"-6)**. Without use of the ethical disposition to obedience, authoritative judgements might be ignored or challenged. The whole ordered edifice would crumble. Full obedience must be legitimately imposed using one or other of the two types of categorical and inescapable imperative recognized by all — the moral imperative and the pragmatic (or legal) imperative. These are experienced as the most powerful authorities of all.

A Systematic Summary. An ultra-brief systematic summary of the seven groupings and their logical evolution with definitions and keywords now follows. The full picture is represented diagrammatically in Master-Figure 18. The properties of the seven groupings are summarized in Master-Table 19. The linkage

between the different groupings in the structural hierarchy is evidenced by their distinctive internal form, and this is shown in Master-Table 20. Master-Table 27 provides further details of the inter-relation and operation of the structural hierarchy in association with the review of the groupings at the conclusion of the chapter.

G"-1: Recognizing Authority. The 7 monadic groups (1 level per group) *ensure that constraints defined by recognizable authorities can become binding obligations on all.* This grouping reflects the existence of seven types of ethical **rule** which provide for cohesion and order in society. Rules defined by any recognized authority must be *unequivocally respected* whatever the situation. Rules constrain what is permissible in a community. Yet where decisions must be made which might release communal disorder, rules are usually found to contradict or conflict with each other. This rule conflict must be handled ethically: but being ethically correct cannot be separated from being socially acceptable. This requires an authority which incorporates an additional level of rule.

G"-2: Maintaining Community. The 6 dyadic groups (2 levels per group) *ensure that choices affecting the community and its viability can be authoritatively guided.* This grouping reflects the existence of six types of ethical **principle** which provide guidance and help resolve or reconcile disintegrative conflicts. Principles must be *acceptably applied* if members in the community are to tolerate the outcome. The application of principles therefore constrains individuals, as well as having potentially far-reaching consequences for society. So principles need to be devised and applied within a specific orientation to ethical progress. Such ideas about how or whether the community should change depend on authorities which incorporate an additional level of rule.

G"-3: Socializing Individuals. The 5 triadic groups (3 levels per group) *ensure that members can be coherently and authoritatively oriented to ethical challenge and change.* This grouping reflects the existence of five types of ethical **position** which define the nature of the ethical status quo and possible progress. Positions must be *dogmatically affirmed* to capture people's attention and become internalized. Internalized positions enable conformity and so support and constrain social identities. Correspondingly, promoting new and supposedly progressive positions potentially modifies and may harm identities. Preserving and developing a valued identity lies at the core of all ethical endeavours and such a threat cannot be ignored. The ethical requirement to protect identity can be met by authorities incorporating an additional level of rule.

G"-4: Protecting Identity. The 4 tetradic groups (4 levels per group) *ensure that conformity can be sustained above an authoritative self-chosen minimum.* This grouping reflects the existence of four types of ethical **standard** which correspond to identities intrinsic to social life. The standard helps to define and protect these identities. Standards must be *deliberately adopted* if they are to be expressions of identity which are owned and acted upon. The adoption of standards constrains individual conduct. But appraising conduct in terms of self-chosen standards leads to differences of view as to what is right. Where the dispute is significant, society requires a basis for making a definitive judgement which ensures justice is done. This can be provided by authorities which incorporate an additional level of rule.

G"-5: Judging Conduct. The 3 pentadic groups (5 levels per group) *ensure that differing views of right conduct can be definitively resolved by an authoritative judgement.* This grouping reflects the existence of three types of ethical **frame of reference** which are taken as definitive by all. The frames provide three distinct but related approaches to dispensing justice. The frames slowly alter and need to be *virtuously evolved* if they are to be accorded the necessary deference and respect. The evolution is propelled by the effect each has on the other and by judgements made using the frames. The frames of reference both support and constrain the demand for obedience sought by social authorities or powerful individuals. Regulating the requirement for obedience and so controlling the natural disposition to obey (or rebel) can be met by authorities incorporating an additional level of rule.

G"-6: Regulating Obedience. 2 hexadic groups (6 levels per group) *ensure that categorical obedience can persist authoritatively in society through time.* This grouping reflects the existence of two types of ethical **imperative**, one based on laws and deriving from pragmatic social demands and the other emerging from the spirit of duty towards others and the community which lies within each person. Imperatives must be *legitimately imposed* within society to be viewed as categorical. Once they are imposed, obedience to a wide range of rules

can be ensured in an orderly fashion. As a result, the imperative both constrains and supports the will of an individual. What is needed is a common will in all the members of the community to sustain a coherent set of rules which define a good and just society. This can be generated by an authority which incorporates an additional and final level of rule.

G"-7: Engendering Will. 1 heptadic group (7 levels per group) *ensures that each member can be authentic when authorizing and sustaining what everyone deems right.* This grouping reflects the existence of an ethical **order** which is wholeheartedly and *freely embraced*. This is the abstract order providing the underlying authority for whatever the actual social order may be. The ethical order must be both personally valued and communally upheld. Any order depends on people willingly adhering to certain rules, and so it constrains, activates and supports authority. People must recognize certain essential embodiments of authority in any community, the primal authorities. If they do, they will allow themselves to be bound by rules which such authorities generate. We return in this way to the elemental monads (G"-1).

The creation and handling of authority within society and its organizations will now be systematically examined by considering each of the groupings from G"-1 to G"-7. In each case, I will identify the function, manifestations and properties of the authority defined by the grouping. Then the nature of each of the groups (i.e. types of that authority) within the grouping and their interrelations will be explored in turn. Each section will conclude with a brief review together with a Master-matrix summary.

The appropriate starting place for appreciating accommodation to authority is with its most elemental form: simple ethical rules. And the logical starting place is the seven level hierarchy of ethical rules which defines all the elemental forms rule and authority. All more complex types of ethical authority must, by definition, somehow spring from this hierarchy. This hierarchy can now be re-labelled as the monadic grouping (G"-1), and we must now re-consider it.

Master-Figure 18

The framework for accommodating ethical authority.

A diagram of the structural hierarchy formed by systematically defining all combinations of adjacent levels of ethical rule in the elemental hierarchy. The processes above the groupings indicate what must be handled ethically in any society; and the resulting form of authority is described beneath the groupings. See text and Master-Tables 19, 20 and 27 for further details and explanation of the whole framework.

	G"-1 Recognizing Authority	G"-2 Maintaining Community	G"-3 Socializing Individuals	G"-4 Protecting Identity	G"-5 Judging Conduct	G"-6 Regulating Obedience	G"-7 Engendering Will
L"-7	Absolute	Natural Justice Principle	Distributive Justice	Universal Standard	The Morality	Moral Imperative	The Ethical Order
L"-6	Law	Legal Principle	Legal Responsibility	Social Standard	The Law	Pragmatic Imperative	
L"-5	Maxim	Human Right Principle	Cultural Ethic	Individual Standard	The Custom		
L"-4	Right	Ideological Principle	Communal Role	Communal Standard			
L"-3	Tenet	Social Policy Principle	Good Practice				
L"-2	Convention	Civility Principle					
L"-1	Prescription						
	revealing 7 types of binding RULE supporting and constraining Community	revealing 6 types of guiding PRINCIPLE supporting and constraining Individuals	revealing 5 types of internalized POSITION supporting and constraining Identity	revealing 4 types of minimum STANDARD supporting and constraining Conduct	revealing 3 types of definitive FRAMES OF REFERENCE supporting and constraining Obedience	revealing 2 types of categorical IMPERATIVE supporting and constraining Will	revealing 1 type of sustainable ORDER supporting and constraining Authority
Generic Labels: ELEMENTAL DIFFERENTIATION							
SYSTEMATIC DEVELOPMENT							
PROGRESSIVE REALIZATION							
STRUCTURED INTEGRATION							
HOLISTIC UNIFICATION							

Master- Table 19 The groupings of levels of ethical rule generating ethical authority.

Abstract authorities, labelled in the content column, emerge from grouping the seven levels of ethical rules to form a structural hierarchy (Gⁿ-1 to Gⁿ-7). Groups within these groupings define ethical authorities needed in any society. See Master-Table 27 for further properties and relationships of the groupings.

G	Nature	Function in Society	Content (Group Structure)	Characteristic when Ascending the Groups	Implications for Social Design	Some Typical Errors
G ⁿ -1:	Recognizing authority unequivocally	To ensure that constraints defined by recognizable authorities can become binding obligations on all.	Ethical Rules (7 monads)	Groups reflect progressively greater autonomy and weight of ethical responsibility in making choices.	Primal authorities of seven distinct types must be respected by all established authorities.	Confusion about what different types of rule can achieve; an excessive use prescriptions and laws to enable coercion.
G ⁿ -2:	Maintaining community acceptably	To ensure that choices affecting the community and its viability can be authoritatively guided.	Ethical Principles (6 dyads)	Groups reflect progressively greater demands for willing cooperation amongst members of a society.	Government is about using principles. Scholarship to develop and assess ethical principles is needed.	Treating principles as rules and failing to see that principles need to be weighed and balanced against each other.
G ⁿ -3:	Socializing individuals dogmatically	To ensure that members can be coherently and authoritatively oriented to ethical challenge and change.	Ethical Positions (5 triads)	Groups reflect progressively more powerful societal requirements for conformity with ethical rules.	Orchestrated public debate is needed for progress, so freedom of expression and association are essential.	Regarding positions as if they were unitary e.g. only one form of distributive justice, only one valid ethic.
G ⁿ -4:	Protecting identity deliberately	To ensure that conformity can be sustained above an authoritative and self-chosen minimum.	Ethical Standards (4 tetrads)	Groups reflect progressively profounder conceptions of social identity, each of which needs protection.	Progress depends on developing standards, and providing for monitoring and arbitration.	Confusing standards which define an ideal, an actual, a goal, or an expectation with standards which define a minimum and an identity.
G ⁿ -5:	Judging conduct virtuously	To ensure that differing views of right conduct can be definitively resolved by an authoritative judgement.	Ethical Frames of Reference (3 pentads)	Groups reflect a progressive move from respecting the past, through handling the present, to creating a better future.	There are three types of justice and social power. The law mediates between custom and morality.	Over-valuing or under-valuing one of the frames; trying to fuse distinct frames.
G ⁿ -6:	Regulating obedience legitimately	To ensure that categorical obedience can persist authoritatively in society through time.	Ethical Imperatives (2 hexads)	Groups reflect a shift from pragmatic and temporal considerations to spiritual and eternal considerations.	The ultimate personal and social sources of obedience are absolutes and laws respectively.	Attempting to unify temporal and spiritual powers in one authority to avoid intrinsic tensions; over-personalizing societal authority.
G ⁿ -7:	Engendering will freely	To ensure that each member can be authentic when authorizing and sustaining what everyone deems right.	Ethical Order (1 heptad)	The group of all levels reflects the sustenance of a social order which unifies all inner-personal and outer-social obligations.	The need for all to create a society in which what each member ought to do is what each wants to do.	Denying the need for communal restraints on individuality; denying the need to maximize personal autonomy.

Master-Table 20

Qualities of internal levels in each of the groupings of ethical rules.

These properties apply to each of the groups within a particular grouping. The Table shows how each grouping builds on the previous one. Note that the highest level (in shaded bold) gives the grouping its characteristic quality. In the formulae on both sides, 1 L refers to the first level in a group or grouping, 2 L to the second level &c. See text for further explanation and examples.

7°L	G"-1 Authority requires 7 types of RULE to be respected	G"-2 Community requires 6 types of PRINCIPLE to be applied	G"-3 Individuals require 5 types of POSITION to be affirmed	G"-4 Identity requires 4 types of STANDARD to be adopted	G"-5 Conduct requires 3 types of FRAME OF REFERENCE to be evolved	G"-6 Obedience requires 2 types of IMPERATIVE to be imposed	G"-7 Will requires 1 type of ORDER to be embraced	7°L 6°L 5°L 4°L 3°L 2°L 1°L
	Unequivocally	Acceptably Unequivocally	Dogmatically Acceptably Unequivocally	Deliberately Dogmatically Acceptably Unequivocally	Virtuously Deliberately Dogmatically Acceptably Unequivocally	Legitimately Virtuously Deliberately Dogmatically Acceptably Unequivocally	Freely Legitimately Virtuously Deliberately Dogmatically Acceptably Unequivocally	

DEFINITIONS:

- Unequivocally** : In terms of what is clearly recognized as an obligation by all concerned.
- Acceptably** : In terms of what is expected and allowed by most in the community.
- Dogmatically** : In terms of what is to be believed without further proof or doubt.
- Deliberately** : In terms of what is self-consciously owned, claimed and conformed to.
- Virtuously** : In terms of what is required by ideals of virtue and justice.
- Legitimately** : In terms of what is formally specified and enforced.
- Freely** : In terms of what is necessary, desired, right and good for oneself and all.

G"-1: BINDING RULES

Nature. In understanding society's ethical authorities, we must start somewhere. The obvious place is a conception of a person as an autonomous social being who accepts the need for an authoritative rule-based ethical order in his or her society. This acceptance has at least three bases: a *firm pragmatic basis* — order and authority are essential to ensure personal survival and control by rules must be generally fairer, safer and more peaceful than control by particular people; an *unavoidable altruistic basis* — order and authority are essential to pursue the common good and rules can be devised with the common good in mind; and an *unequivocal philosophical basis* — freedom requires bounds if it is to exist at all and these bounds must be authorized to have any validity in society.

People supporting the ethical order in society are committed to ethical conduct because the order involves recognizing obligations. These obligations limit freedom to enable freedom. They seek to prevent chaos and conflict which would make life intolerable. When we exercise our freedom within an order which we create and sustain, then we are being ethical — at least in the view of our community. But if there is to be such an order, it must be imbued with authority. Recognizing social authority is therefore the essential starting point for any design of, that is to say any intervention in, the existing order of society.

To appreciate the nature of authority in society, it is necessary to start with **rules** because they are the elemental ethical device embodying social authority. Rules reflect the existence of certain easily recognized and inescapable authorities. I call them *primal* because they are inherent in social existence.

Rules are not new to us. In choosing with the good of the group in mind, we found that choices involved setting and adhering to rules (Ch. 6). In exploring society's natural moral institutions, we found that rules were their essential common characteristic (Ch. 7). To work with rules requires clarity about precisely what sorts of rules may be defined. Systematic inquiry along these lines has revealed seven distinct varieties of rule in a seven-level hierarchy (Ch. 8).

Clear specification of obligations in society depends on recognition of these various types of rule and of the different authorities dealing with them. Put another way, any particular obligation or sense that a limitation is for the good of a community becomes explicit and generally usable only when it is fixed as a rule.

Although rules at each level are dependent on those at higher and lower levels for their full realization and integration in social life, the levels may be considered

and used separately. This is the approach characteristic of this first grouping. Any type of rule is binding on people if set and endorsed by an appropriate authority. This means that rules are specified so as to be *unequivocally respected*. This in turn demands precision in definition of rules.

One might say a rule should be strictly followed or adhered to, but this might communicate the misleading implication that the rule indicates what to do. Or it encourages the mistaken notion that prescriptions, often in the form of laws, are the ideal type of rule. As we have seen already (in Ch.s 4, 6 & 8), rules are values or obligations which constrain rather than determine action, and certainly never decide outcomes or results. (Let me remind you why: decision and action flow primarily from facts and objectives, with a dash of habit and convenience. The determinants of results are even more complicated — certainly far beyond the control of rules.) So '*respect for constraints*' captures the ethical requirement better. Even a person who breaks or does not follow a rule can be said to respect it if he is aware of a transgression or accepts judgement in its terms.

The nature of the elemental rules is that they embody primal authorities. These permit rule generation and application by established authorities. To challenge the rule is to challenge the authority; respecting the rule means recognizing the authority that created the rule; and recognizing the authority means adhering to its rules. Effective development and use of the more complex rule-based authorities depend on the use of the elemental rules and eventually appeal to primal authorities.

So rules and authority are almost synonymous in practice: it is meaningless to speak of a rule, unless there is genuine authority behind it; and the substance of any authority is found in the rules it supports. Rules fit the definition of an authority; and two of the primal authorities, the ethical teaching and the law, are essentially constituted by rules. The *function* of a rule is to ensure that constraints defined by recognizable authorities (abstract or actual) can become binding obligations on all.

In summary: starting from the conception of a person as an autonomous social being who accepts the need for authority to maintain a rule-ordered community for the common good, we are inexorably led to recognize the seven level hierarchy of rules which implicitly or explicitly underpins authority in all societies.

Because each level is considered here as a group, there are seven monadic groups which correspond to the seven levels and have the same labels. As described earlier, the rules needed to operate a social order are:

Figure 9.1: The monadic grouping forming binding rules.

Seven types of ethical rule which must be unequivocally respected if authority is to be recognized.

Authority in an Ethical Order			G"-1 ⁷ ← Absolutes
			G"-1 ⁶ ← Laws
			G"-1 ⁵ ← Maxims
			G"-1 ⁴ ← Rights
			G"-1 ³ ← Tenets
	G"-1 ² ← Conventions		
	G"-1 ¹ ← Prescriptions		

prescriptions (G"-1¹); conventions (G"-1²); tenets (G"-1³); rights (G"-1⁴); maxims (G"-1⁵); laws (G"-1⁶); and absolutes (G"-1⁷). The pattern is diagrammed in Figure 9.1. The different properties of the various groups are summarized in Master-Table 21.

Properties

The present task is to do little more than recapitulate the levels of rule, but this time from the perspective of the essential authority in society. We must examine the capacity of people to recognize an unequivocal obligation to follow that authority (i.e. to be ethical), and the effect on personal freedom.

Most of the properties of rules have already been considered with examples, and repetition is unnecessary. The reader can (re-)read the second half of Ch. 7 for details of rules in the spontaneously evolved moral institutions, especially methods for obtaining compliance with these. All of Ch. 8 is relevant: it contains details of the function and application of the rules, differences and difficulties in changing rules, particular advantages of each type of rule, common criticisms, and a note on the related ethical disposition. Here, I will restrict myself to bringing together the general qualities of rules, because these are relevant to the creation of the more complex forms of authority in subsequent sections.

In examining and comparing these rules now, I will first clarify the focus of *constraint* of each type of rule i.e. exactly how it binds people; and explain *to whom it applies* in the community. Then I can identify the *primal*

authority on which everyone and all established social authorities depend when working with rules of that type.

It will become evident as the analysis progresses that established authorities like the government, church, press or courts, characteristically deal with rules at several or all levels simultaneously. As noted earlier, a wide variety of established authorities are usually associated with rule development. It is common to find different authorities working on related aspects of a particular issue in the social order including; investigating whether rules are required, designing new rules, setting the new rules, monitoring established rules, and judging rule breaches. In some cases, more than one authority may contribute to a particular aspect. All such instituted authorities emerge from, recognize and appeal to the primal social authorities.

I will review and highlight essential differences in the way *compliance* to each type of rule is handled. According to the nature of the rule and the authority, the *quality of adherence* varies in practice. This is because formulating some types of rule is certain and incontestable, while formulating others is uncertain and contestable. Rules put an obligation on people to operate strictly within their bounds. Any ethical problem can be addressed using rules and authorities within each or all of the seven groups. Ascending the hierarchy, each group becomes progressively more complex, constrains *personal freedom* less, and correspondingly imposes a greater *weight of ethical responsibility*.

I will illustrate the various rules and authorities using the single example of bribery. Bribery is defined as the

offering, giving or accepting of something to influence the performance of a task for which the proper motive ought to be a conscientious sense of duty. Bribery is an ideal example because bribes benefit the individuals involved at the expense of certain others and the community as a whole. Once bribery becomes established in a society, it feeds on itself and drives out integrity. The crucial defence lies in rules which are willingly observed.

The Seven Rules (Again)

Prescriptions (G"-1¹) are those rules which *constrain* people to perform or not to perform specific actions. As a result, prescriptions determine behaviour but not outcomes or consequences (although it is assumed that these will be beneficial in general or in the long run). Prescribed actions are performed in the context of particular roles: either rather general roles like citizen or consumer, or very specific roles like midwife or insurance salesman. So prescriptions *apply to* community elements: members of the community acting in particular roles. *Adherence* can be certain and incontestable because prescriptions enable very precise specification and assignment. Prescriptions recognize the *primal authority* of informal and formal community leadership. If the prescription becomes part of everyday social life, then *compliance* can be ensured through direct social control using an impersonal command (e.g. a 'no smoking' notice). As a consequence, *personal freedom* may be severely restricted. Given the precision, concreteness and force of prescriptions, the *weight of ethical responsibility* is at an absolute minimum.

Prescriptions can be used to counter bribery. Social leaders and opinion-formers should repeatedly speak out against bribery with very specific statements about exactly what people must and must not do ('never offer a gift to your examiner'). Rules can be introduced in firms and government departments which specify precisely what action must be taken when a gift is offered or a bribe is demanded. Gifts must be defined precisely to prevent confusion with bribes. Prescriptions may be particularly needed to guide staff seeking to win contracts in countries where key officials suggest that gifts are part of normal business practice. (Because there are no second-class cultures, bribery as defined is wrong everywhere.)

Conventions (G"-1²) are those rules which *constrain* people to hold and act on certain attitudes. As a consequence, behaviour is constrained but not determined. Conventions emerge from and *apply to* the diffuse mass of members who form the mainstream of a community. So they tend to evolve with the community and its widely shared values. The community as a whole

is the *primal authority*. Attitudes enable a degree of discretion in conduct and this element of discretion means that the basis of *compliance* must be social pressure as expressed through public opinion. Conventions often do not get put down in writing because everyone knows what they are. *Adherence* is uncertain and often contested, partly because of their unwritten, fuzzy, evolving and discretionary qualities, and also because of challenging minority viewpoints. The discretionary quality means that the *personal freedom* allowed by conventions is somewhat greater than that permitted by prescriptions. The *weight of ethical responsibility* is still rather low, however, because use of the rules and acceptance of their implications are shared diffusely with many others.

Conventions can be used to counter bribery. The essential requirement is that the community as a whole develops an attitude opposed to bribes. This in turn depends on the predominant values in the community. People who claim to speak for the majority, like most politicians, exemplify adherence to conventions. So their attitude to bribery is a barometer of public opinion. Constructive conventions, the sense that 'no-one here does it', are most effective. Corrupt conventions, the sense that 'everyone does it', feel like permission or justification for bribery. Corruption in Italian public life is a current example: many business people are confused by changes in the direction of propriety; if bribes to get government contracts are to cease, they wonder how they are expected to do business. Exactly what counts as bribery may remain fuzzy, but conventions can make it clear enough that certain payments or gifts are acceptable while others are improper and excessive.

Tenets (G"-1³) are those rules which *constrain* people in their beliefs. Tenets *apply to* people who are willing members of enduring associations within the community. The decision to join and remain a member of any association is essentially each person's. So the person or rather the conscience of the person is now the *primal authority*. *Compliance* is a social requirement, but it is experienced as an internal matter and it is dependent on inner convictions. This direct personal control over tenets means that *adherence* (or non-adherence) to them can be certain and incontestable. Tenets express beliefs which are developed partly through socialization and partly through reflection, so the *weight of ethical responsibility* felt by a person is now decisively increased. Using tenets is not completely straightforward because they become complicated by the influence of related beliefs, worries, feelings and personal goals, some of which will be unconscious. Nevertheless greater *personal freedom* is available: tenets can help a person reject conventions and oppose public opinion, for example.

Tenets can be used to counter bribery. Tenets about bribery are dependent on people being convinced that bribery is wrong, that the impartial performance of duty will lead to getting the best results in the end, that buying an unfair advantage brings the firm, department or government into disrepute, and so on. Such tenets must be inculcated during upbringing if they are to tap into a person's capacity for self-disapproval and guilt. Societies where it is customary for parents to bribe their children to behave will find that its adults confuse friendly inducements and bribery. Tenets opposing bribery must be given importance in groups of various sorts, and especially in educational settings. Universities, business schools and civil service colleges need courses in ethics in which tenets rejecting bribery are unambiguously affirmed rather than used for superficial intellectual debate. Firms also need to incorporate a ban on bribery in their credo, induct staff into those tenets, and select (or dismiss) staff according to whether they genuinely respect them. Each society needs people committed to the eradication of bribery and corruption in public life to serve on investigating, regulatory and judicial authorities.

Rights (G"-1⁴) are those rules which *constrain* people in their entitlements. Rights are a property of social classes in the community, and so they *apply* to each person in so far as they fit a certain category. Exactly what is due to and from a particular class of person is in the end determined by the power of that class, which is recognizable as the *primal authority*. Each member of the class contributes to its power. Disadvantaged classes do not lack rights: it is just that few of them are positive (e.g. privileges) and many are negative (e.g. liabilities). Classes of people are not inherently organized. So *compliance* with non-legal or customary rights depends on each class member feeling an internal pressure for adherence based on self-interest. Organizations may form to assert and protect the special interests of the class. People in any class may wish to reject their disabilities or liabilities and seek to challenge the privileges and powers applicable to other classes as unfair or harmful. This contest about the rule affects *adherence* and creates uncertainty.

The *weight of ethical responsibility* on each person is now heavier because everyone belongs to a unique set of classes and has a distinctive pattern of rights and duties. However, the assertion of these is made complex by the context of power relations and differential rights (privileges, immunities, liabilities &c) within which such assertion occurs. An essential duty, for example, is to respect the rights of others. Nevertheless, because the exercise of rights and duties (unlike tenets) is under the direct conscious control of each person, *personal freedom* is enhanced.

Rights can be used to counter bribery. Integrity and honesty can lead to privileges being assigned; and, conversely, once a person has been found engaging in bribery, it could remain a permanent social liability. Many countries, by contrast, treat episodes of corruption by their politicians and officials in a cavalier way, and allow them virtual immunity to investigation and/or prosecution. Everyone should have the right and duty to reject and expose corruption. Where staff are poorly paid, bribes may be the only way to supplement income. So customary rights to a sufficient income for officials enhance the fight against bribery.

Maxims (G"-1⁵) are those rules which *constrain* people in their social functioning. Maxims are the rules that, if followed, benefit the individual through benefiting communal relationships and the community as a whole. Being discretionary and wholly good, they only *apply* to those who regard themselves as part of a moral community. Societies have a variety of moral communities within them, each of which appeals to the *primal authority* of an ethical teaching or code of ethics based on it. Each person has control over *compliance*, but this control is buttressed by moral exhortations from others in the relevant community. So there is social pressure for personal control. Because maxims are so obviously good and right, *adherence* is certain and incontestable. *Personal freedom* is again decisively increased. As a result, the use of maxims is often referred to as self-regulation. The *weight of ethical responsibility* is now heavy because breaching a maxim may be personally advantageous, at least in the short term.

Maxims must be used to counter bribery because bribery involves deception, dishonesty, theft and injustice. Those who wish to be regarded as exercising moral leadership, especially church leaders, should strive to engender a responsible community spirit and crusade against bribery. Despite the temporary material benefit for those involved, bribery interferes with good relationships, brings authority into disrepute, and so damages social functioning over the long term. Hence the need for a moral community. Before de-regulation in the 1980's, financiers in London were few and operated like a club with strict rules based on trust: that is to say, a moral community existed. Growth meant that business interactions became diffuse and anonymous. As a result, doing what the law allowed (or had difficulty enforcing) took over from acting with propriety — and scandals proliferated. Maxims foster integrity and honesty and condemn bribery, but what constitutes bribery is left open to interpretation in each situation. For example, managerial agreements with the print workers in the UK newspaper industry in the 1970's were often in effect bribes to keep the presses

rolling.

Laws (G"-1⁶) are those rules which *constrain* people to accept the formal enforcement of certain rules (and the lack of official compulsion for others). Laws *apply to* officially defined members of a community with specified boundaries. Laws resolve conflicts and disputes between members about which existing informal rules count and how. Laws also define new rules which are to be taken as just and right for all future cases. Laws here refer to universal restraining rules of conduct for individuals, whether these be persons, organizations or government — not to those statutes which define necessary executive work of government. Although laws emerge in the courts and via government legislation, the *primal authority* is *the law* itself, which includes previous laws and other lower level rules (see G"-5²).

Laws are instruments of social control which exist to ensure that informal social control is not inappropriate, absent, incoherent, anarchic or violent. In other words, *compliance* is based on accepting the social control of social control. It manifests at the extreme as physical coercion which is officially sanctioned and communally accepted. *Adherence* to laws is usually uncertain and contestable, because they are so complicated by nature, open to differing interpretations, and capable of revision. Although it seems as if laws reduce freedom through their dependence on force, laws (like maxims) provide for the maximum *personal freedom*. This is because the law is supposed to apply equally to all, entitling and encouraging individuals to pursue their own goals while ensuring for themselves that their conduct is lawful at all times. Correspondingly, the *weight of ethical responsibility* to respect the law and not to abuse that freedom of action increases. If communally necessary non-legal rules are regularly violated, then more dependence is placed on laws even if laws cannot properly substitute for them. In the extreme version of social engineering, laws prescribe objectives and decisions which are far better left to the judgement of people in the situation. The net effect then is that laws reduce personal freedom and remove ethical responsibility.⁸

Laws can be used to reduce bribery. Government itself, for example, could be designed to prevent the party in power from bribing the electorate or special interests in order to gain re-election. Similarly, when self-regulation in financial centres fails, it can be effectively bolstered or replaced in part by legal controls. Laws may specifically proscribe bribery in a variety of forms and impose stiff penalties on offenders. Many societies have such laws in relation to permanent public officials like politicians, civil servants, judges and

police, and laws which regulate temporary public duties like jury service. Governments can also create special agencies with legal duties and powers to ferret out bribery and corruption in public life.

Absolutes (G"-1⁷) are those rules which *constrain* people both in their sense of freedom by evoking duty and in their sense of duty by evoking freedom. Absolutes seek to ensure that each person abides by the spirit of duty, and they potentially *apply to* all people in all communities at all times. Absolutes can provide this coverage because they are so abstract and contentless. The absolute rule of beneficence — ‘choose the lesser of two evils’ — is a typical example. Ultimate values, often referred to as God, are the *primal authority* for these rules. Each person gains access to the authority via transpersonal being, that is to say from the deepest sense of self. This deep non-social self is used to control the social self. So *compliance* is based on the personal control of personal control and manifests paradoxically as free will. *Adherence* can be certain and incontestable because the rules are so all-embracing and always applicable. Attention to the spirit of duty in the midst of the complexity of daily life brings to the fore the complexity of ethical choice. Attention to absolutes may require a person to put even laws and maxims to one side. So, although freedom is constrained, *personal freedom* is now at the absolute maximum and the *weight of ethical responsibility* is correspondingly at its heaviest.

Absolutes can be used to reduce bribery, even though they are too abstract to refer to bribery specifically. Bribery corrupts the performance of duty (by definition), so it is easily recognizable as contrary to the spirit of duty and the freedom to use or accept bribes is not one to be fostered. Paradoxically, in accord with the free-will inherent in absolutes plus the absolute of beneficence, a bribe may occasionally be right or at the least the lesser of two evils.

REVIEWING THE RULES

We started from the assumption that a society requires its members to be ethical. We postulated that being ethical in any particular society means having obligations consistent with its ethical order. We took it for granted that these obligations cannot be developed and maintained without some conception of authority. We concluded that social obligations entail *unequivocal respect* for rules irrespective of expedient or beneficial reasons for ignoring them. These now familiar rules are: absolutes, laws, maxims, rights, tenets, conventions and prescriptions.

Rules are a form of authority, and they demand recognition of certain and unavoidable primal authorities. The primal authorities underpinning the types of rule vary in their power. However, all rules must in the end be acceptable and must be generally respected and used by most people within a community. So conventions, reflected in public attitudes and opinions, appear to provide the pragmatic grounding for ethical conduct, and show primacy over other rules in practice. “All human affairs,” asserted Hume “are entirely governed by opinion.”⁹ The existence of conventions inhibiting bribery, for example, does far more to encourage businesses, schools, associations, and even families to reject bribery than any amount of ponderous laws unsupported by public opinion.

The power of conventions is easily understood. It arises from the primal authority of the community in general ($G''-1^2$): community is the very foundation of all social life and its mainstream or majority is the dominant force in society. Interestingly, the hierarchy of primal authorities is clearly not a simple expression of their increasing power in worldly terms. In a more enlightened future, it might well reveal decreasing social power in line with the observation in Ch. 8 that the possibility for coercion diminishes as the rules are ascended. At present, communal leaders ($G''-1^1$) who gain positions of power in government, can of course use laws ($G''-1^6$) to dominate and tyrannize — and even get the law to appear to support them.

Note that government, though it appeals to all primal authorities, is not itself a primal authority. So the interpretation of parliamentary sovereignty to mean that a government has unlimited powers to do whatever it wishes appears to be deeply misguided.

Once a government is established, then class ($G''-1^4$) is where power emerges most obviously in society. Here power is no longer an auxiliary of authority but the very essence of authority itself. A particular class may bend the law in its favour, provide the community with its leaders, dominate the majority of the community, harness the ethical teaching, select ultimate values, and penetrate minds. The resulting concrete injustice is probably why sociologists exhibit such a preoccupation with class power. Economists too are con-

cerned with class power, especially the fact that, with the connivance of government, non-organizable classes (like tax-payers or consumers or the elderly) are sacrificed and exploited by organizable classes (like labour unions, professional associations or big business).¹⁰

Because rules embody power and authority, their use generates conflict. Conflicts between rules at the same level can be problematic and stressful for the primal authorities. Consider, for example, claims of different classes or personal struggles to reconcile maxims of loyalty and fairness. However, conflicts between rules at different levels activate clashes between different primal authorities and may cause far more severe difficulties in deciding within a community. Consider, for example, current discrepancies between male-dominated conventions, personal beliefs, feminist claims and impersonal laws in regard to promoting women to top jobs. By moving beyond the monadic rules and primal authorities, it becomes possible to define ethical authorities to handle such inter-level conflicts which might otherwise harm everyone. The first of these concerns the impact of applying rules to community matters.

Transition. Clarity about the different types of rule and recognition of the associated forms of primal authority provide the basis for defining and defending an ethical order in society. The order governs everyday community life and gives people boundaries within which they can experience freedom.

Rules taken separately may make communal life possible, but they do not maintain the community. Nor are rules oriented specifically to dealing with situations where the community might be threatened by the freedom of its own members. Only by giving pre-eminence to communal authority and by emphasizing the general acceptability of rules to most members can such threats be defused. Ideally, any communal authority should be infused with a spirit of fraternity and justice.

So the next step in formalizing ethical authority is to recognize abstract (rule-based) authorities and actual (official) authorities which exist to maintain the viability of the community. Grouping adjacent rules in dyads (pairs) meets this need.

Master-Table 21 **Properties of the seven types of binding rule in society.**

Respect for rules is based on recognizing the primal authorities in community life. All actual or instituted social authorities appeal to these. Rules must be unequivocally respected but each provides for a different degree of freedom in practice. See text for further details and explanation and cf. Master-Tables 16 & 17. Note that Master-Table 17 provides details of the function and application of rules, differences in changing rules, their particular advantages, common criticisms, and the related ethical disposition.

Monad (Level)	Type of Rule and Focus	To Whom the Rule Applies	Primal Authority	Basis of Compliance	Quality of Adherence	Personal Freedom & Weight of Responsibility
1 (L ⁿ -1)	Prescription constrains actions.	Members as elements of a community.	Community leaders	Social control via impersonal command	Certain-incontestable (because capable of precise specification and assignation).	Absolute minimum (because constraints are precisely specified).
2 (L ⁿ -2)	Convention constrains attitudes.	Members diffusely in the mainstream of a community.	Community as a whole	Social pressure via public opinion	Uncertain-incontestable (because partial, fuzzy and evolving).	Minimum (because responsibility is shared with others).
3 (L ⁿ -3)	Tenet constrains beliefs.	Members of associations within a community.	Each persons conscience	Personal control via inner conviction	Certain-incontestable (because based directly on inner experiences).	Moderate (because internally controlled but partly unconscious).
4 (L ⁿ -4)	Right constrains entitlements.	Members of social classes in a community.	Class power	Personal pressure via special interest	Uncertain-incontestable (because members challenge explicit rules).	Near maximum (because under direct conscious personal control).
5 (L ⁿ -5)	Maxim constrains functioning.	Members of a moral community.	An ethical teaching	Social pressure for personal control via moral exhortation	Certain-incontestable (because so obviously good and right).	Maximum (because rule-breaking may be personally advantageous).
6 (L ⁿ -6)	Law constrains enforcement.	Members of an officially bounded community.	The law	Social control of social control via legalized coercion	Uncertain-incontestable (because open to interpretation and revision).	Maximum* (because of freedom under the law).
7 (L ⁿ -7)	Absolute constrains freedom and duty.	Members of all communities at all times.	Ultimate values	Personal control of personal control via free will	Certain-incontestable (because so abstract and all-embracing).	Absolute maximum (because the meaning and use must be left up to each person).

*Laws may reduce freedom if they are used where other types of rule are required, if society is treated as an organization, or if the legal system does not operate by consent.

G"-2: GUIDING PRINCIPLES

Nature. Society is more than its members taken individually, and even more than the community on which it is built. As well as being a community sustained by social values, a society must be taken to include various enduring and essential institutions, including its government, and must embody ultimate values (cf. Ch. 5). Still, the notion of a community (or networks of closely related communities) remains the foundation of any society. Once the importance of communities and communal life is recognized, then the authority of elemental rules alone and the freedom they enable appear insufficient.

Community life is complex and ever-changing. It is dominated by irrational pressures, conflicting views and practical constraints of many sorts. As a result, the preservation of social cooperation is a continuing challenge. Meeting it requires something more flexible and less binding than rules. In particular, some authoritative ethical guide is needed for decisions on matters which, if misjudged, could lead to members turning against their own community. The variety of decision situations of this sort is great.

The following example should illustrate how unequivocal rules are inherently incapable of guiding such choices. It is obvious that a community should not coerce its members too much or it will lose their allegiance. So people need to know the logic being used in handling any situation which invites the use of coercion to protect the common good — say, a march by a widely-detested political group. Conventions may push for one choice, maxims might push for another choice, and asserting rights will create further conflict. In one community the final choice might be to ban the march, while in another it might be to permit it.

If decisions in such cases are not to be purely reflex, pragmatic, whimsical or otherwise non-authoritative, then they must be made in a way that builds on ethical rules. Above all, they must be perceived as just by most in the community. Note that justice refers here to a communal sense of fairness or fair play rather than to personal conduct under the law.¹¹ Put another way, official authorities responsible for the decision, and others involved in the debate, need to appeal to some sort of coherent ethical authority to guide debate and to help them reach a defensible decision which is communally acceptable. Getting it wrong could generate an evanescent commotion or even precipitate widespread riots.

What meets this need for authoritative guidance are enduring and respected ethical **principles** which can be selected and *applied according to their relevance*, and

which can be *weighed against each other* in coming to a choice. Principles (sometimes called standards or policies) clearly set bounds to choice, are more dynamic and adaptable than rules, and enable the exercise of authority rather than the experience of freedom. The term ‘principle’ fits here in accord with the notion that they are higher order and less strict than rules.¹² When a person uses principles to guide a choice, ethical discretion is being exercised on behalf of the community. It follows that any principle must be acknowledged and allowed by the community mainstream. So active guiding principles have a dual nature: on the one hand, they must be applied in a socially acceptable way if they are to work; and on the other hand, they are an ethical obligation which, like rules, must be unequivocally respected by all whenever they are relevant.

Grouping adjacent levels on the simplest basis generates six overlapping hierarchical groups, each of which is a dyad. These dyads are represented diagrammatically in Figure 9.2. Analysis has revealed that they are the basis for the construction of principles. The principles can be *applied acceptably* because they emerge from or imply rules backed by primal authorities at the higher level; and they ought to be *unequivocally respected* because they emerge from or imply rules backed by primal authorities at the lower level. The *function* of all the ethical principles is to ensure that choices affecting the community and its viability can be authoritatively guided.

It follows that principles demand the establishment of social authorities which are assigned responsibility for selecting and using them. Principles themselves carry intrinsic authority derived from their component rules, but the responsibility for applying them requires additional communally-accorded authority.

Types. There are six dyads and therefore six distinct types of guiding principle in society. In ascending order, the types of ethical principle are: *civility principles* (G"-2¹); *social policy principles* (G"-2²); *ideological principles* (G"-2³); *human right principles* (G"-2⁴); *legal principles* (G"-2⁵); and *natural justice principles* (G"-2⁶).

Each type of principle embodies authority and is absolutely essential in a large complex society because each makes a particular contribution to ensuring social cooperation, which in turn maintains a viable community. Civility principles are a mechanism for communal living and provide the basis for peaceful coexistence. Without civility, people tend to avoid each other as much as possible, and then communal living becomes a poor thing indeed. Social policy principles are oriented to personal needs and so tap into the rationale for people forming communities and participating

Figure 9.2: The dyadic grouping forming guiding principles.

Six types of ethical principle which must be acceptably applied if the community is to be maintained.

L"-7 Absolutes			G"-2 ⁶	
L"-6 Laws			G"-2 ⁵	← Natural Justice Principles
L"-5 Maxims			G"-2 ⁴	← Legal Principles
L"-4 Rights			G"-2 ³	← Human Right Principles
L"-3 Tenets			G"-2 ²	← Ideological Principles
L"-2 Conventions	G"-2 ¹		← Social Policy Principles	
L"-1 Prescriptions	← Civility Principles			

actively in community life. Ideological principles are needed to enable the community to grapple with its inherent injustices, recognize where power lies, and modify its social structure accordingly. Human right principles deal with the unavoidable need for communities to control and constrain their members, while upholding their members equally unsuppressible need to assert their autonomy. Legal principles are required to maintain confidence in the legal system which is essential to deal authoritatively with internal disputes and destructive forces in society. Finally, natural justice principles are needed to promote fairness generally, and to foster laws which minimize injustice. If successful, this maintains a good communal spirit and ensures lower level principles are imbued with fairness.

The six types of principle are applied to six qualitatively different types of community issue. Ascending the hierarchy, the dyads cover progressively more general aspects of community life where facts and concrete goals are insufficient or unavailable to guide choice, and where explicit and impersonal ethical guidance is mandatory. The higher the principle (i.e. dyadic group), the greater the need for willing cooperation from people. In each type of principle, focus on the lower level clarifies the sort of constraint or demand required by the principle, while focus on the higher level clarifies the social acceptability of the principle when applied.

The distinctive properties of the various principles are laid out in Master-Table 22. Before proceeding, a brief summary of the principles is provided here includ-

ing: the function of the principles, the contexts requiring guidance, the composition of the principle, and where responsibility for selecting and applying principles lies.

G"-2¹: Civility principles shape behaviour so that due respect for other community members is always manifest. They are required to guide choices when handling the informal aspects of interpersonal interaction. Civility principles must be applied using conventions (L"-2) which are socially acceptable, and expressed in behavioural prescriptions (L"-1) which should be unequivocally respected. Their relevance and applicability is determined by the person at the moment of interaction.

G"-2²: Social policy principles shape attitudes and organisations so that members' needs are met by society. They are required to guide choices about how interactions and institutions may respond to personal and communal needs. The principles may apply to interactions between people, or between people and organisations, or between individuals and government. Social policy principles must be applied using tenets (L"-3) which are socially acceptable, and expressed in conventions (L"-2) which should be unequivocally respected. Their relevance and applicability is determined by governments faced with social pressures to recognize certain needs.

G"-2³: Ideological principles shape social institutions so that fair entitlements of classes of members are met. They are required to guide choices

whenever the status or power of a class or category of individual is likely to be affected. Ideological principles must be applied using rights (L"-4) which are socially acceptable, and expressed in tenets (L"-3) which should be unequivocally respected. Their relevance and applicability is influenced by political movements and determined by political parties which seek to reshape society.

G"-2⁴: Human rights principles shape social constraints on members so as to protect their freedom as individuals. They are required to guide choices whenever the pursuit of collective goals constrains individuals or whenever individual actions are likely to harm the community. Human right principles must be applied using maxims (L"-5) which are socially acceptable, and expressed in rights (L"-4) which should be unequivocally respected. Their relevance and applicability is determined by legislators, regulatory authorities and jurists in their various deliberations.

G"-2⁵: Legal principles shape legal decisions so as to protect social institutions on which the community depends. They are required to guide choices in handling disputes within courts of justice. Legal principles must be applied using laws (L"-6) which are socially acceptable, and expressed in maxims (L"5) which should be unequivocally respected. Their relevance and applicability is argued by lawyers prior to and during a court case, while the presiding judge or judges make the final determination in the court.

G"-2⁶: Natural justice principles shape the expression of fair play in society. They are required to guide choices in the creation and use of social arrangements including other ethical principles. Natural justice principles are especially involved when rules are in flux and communal cooperation is most needed. To be recognized in society, natural justice principles must be applied using absolutes (L"-7) which are socially acceptable, and expressed in laws (L"-6) which should be unequivocally respected. Each of the social authorities already mentioned feels an involvement in determining their relevance and applicability: i.e. each person, the government, political parties, legislators and jurists.

Properties. Before indicating the categories to be used for describing each of the types of principle, it is important to reiterate that principles, as defined here, clearly differ from rules in many ways. Above all, their authority is guiding not binding — discretionary not unequivocal. The right to vote, for example, is or can be a rule because it is unequivocal (or can be easily made unequivocal through specifying age and other criteria). Any elemental rule applies under all circumstances.

The right (more correctly: human right principle) of free speech, by contrast, can only be discretionary. For example, it usually does not apply to shouting "Fire!" in a crowded cinema, or to revealing business confidences, or to inciting racial hatred. In the nature of things, it is impossible to remove discretion from principles by listing all the possible exclusions or indications beforehand.

So principles point in a particular direction but do not necessitate a particular decision. They are somewhat confusing in their abstract form and only come alive in a particular situation demanding choice. That is when they can be perceived to involve two adjacent types of rule. Principles exist as a multiplicity, and do not form a complete logical system or code. Principles emerge in part from the interaction of primal authorities, and their implications may shift and change relatively easily. They may be controversial as stated, and are frequently intensely controversial in their application. So they depend on the existence of social bodies, often called 'authorities', with assigned powers and duties, again confusingly called 'authority', to act. Although principles must be precisely recognized and given due weight in the situation, whether or not a principle is relevant and should be applied is rarely unequivocal. The weighing up of relevant principles against each other and in the light of the situation generates another potential source of dispute. With all their difficulties, the use of principles of some sort, like government itself, is essential, not optional.

We can now turn to each of the types of principle and describe them in more detail with examples. The description in each case has two parts. In the first part, I will consider the nature of the principle: its specific *function*, its general contribution to maintaining *community viability*, when it must be applied *to guide choice*, its *construction* by rules, and where *authority and responsibility* for selecting and using the principle lies in society. In the second part, I will compare how occasional *misjudgements* in the application of principles are handled, the results of *persistent neglect* or failure to accept and use given principles, and the implication of *deliberate contravention* of recognized ethical principles. Finally a note on the *limitations* of each principle in maintaining the community will serve as a link to the next higher type.

G"-2¹: Civility Principles

Nature. Principles of civility are about being sensitive, considerate and courteous during interaction. All behaviour during an interpersonal interaction should be ethically governed because it says something about the relationship to the other person.¹³ The

function of a civility principle is to shape behaviour so that due respect to other community members is always manifest during social contact. A salesman dealing with a client, for example, should 'stand or sit at a proper distance', 'express gratitude for cooperation' and 'adapt to client idiosyncrasies'.

Civility demands a certain behaviour irrespective of what one's feelings or duties might be towards the other in the situation. In other words, it requires each person to be thoughtful and to exert self-command. Interactions vary according to the amount of prescription and formality possible. Compare, for example, an annual general meeting, the purchase of goods in a store, an arrest by a policeman, a game of tennis, and an appraisal by a superior. In all cases, there is an informal non-specified component of interaction. In this informal area, appearance, gestures, speech, touch and timing are all relevant to the expression of respect.

Self-command in everyday social relations is the foundation of any social order that considers itself civilized or ethical. No community can develop satisfactorily unless its members are determined to treat each other with a minimum of civility. Principles of civility do not create a community, but they are essential for *community viability* because adherence to them provides the basis, climate or medium through which all social transactions occur and on which all communal life depends. Civility principles are needed to *guide choices* to handle the informal or non-purposive part of interpersonal interactions in a myriad of different situations. The application of principles of civility results in good manners and permits peaceful co-existence despite differences in rank, ability, beliefs, interests or class.

Popular morality and formal etiquette are oriented to certain specific and recurrent situations, and neither can guide the handling of the informal and variable aspects of every sort of particular interpersonal interaction that may occur. Civility principles draw on these moral institutions, but each person has the *authority and responsibility* to select and apply the principles. Like all principles, these must be applied in an acceptable way and then unequivocally respected. Civility principles are *constructed* to ensure that behavioural prescriptions (L"-1) in particular situations accord with accepted conventions (L"-2). It follows that what is considered good manners varies between communities, and even amongst sub-communities within a society.

Talking: It is civil to speak at a reasonable speed and sufficiently loud. But exactly what speed and what loudness indicates respect for the other party cannot be pre-specified. Discretion must be exercised in the particular situation. Furthermore in respect of speaking, there are

many other principles of civility which should be borne in mind: one should speak simply, one should speak politely, one should speak clearly, one should speak to suit the audience. Which of these principles are relevant, and which of those are most important, will vary according to many factors. These include the audience (e.g. is the listener hard of hearing, or mentally-handicapped, or a foreigner); the relationship (e.g. is the listener a senior, an intimate, or a colleague); the subject matter (e.g. is it simple, abstruse, or essential); the urgency of the situation (e.g. is the matter routine, special, or an emergency); the context (e.g. what are the acoustic features of the room, how many are being addressed); and the speaker (e.g. his or her natural voice, age, health). The person in the situation automatically has the social authority to decide how to speak, but is expected to decide in a responsible fashion.

Ex. 9.1

Once civility principles have been applied to a particular situation and a course of behaviour chosen, then that should be strictly followed. In other words, an application of principles of civility leads to an obligation to behave in a particular way in a particular situation.

Between strangers, acquaintances and friends the need for manners despite provocation is easily recognised. Difficulties arise more commonly between family members where familiarity breeds contempt; and between compulsory but unequal relationships (e.g. at work) where power tempts its abuse. At times of civil distress or disorder and in phases of community development when injustices and discontent come to the surface, maintenance of civility is of particular significance.

Dysfunction. A single *misjudgement* in regard to civility is hardly a catastrophe. Being rude, abrupt or late is usually due to self-preoccupation or failure of self-command which is based on tiredness, anxiety, disappointment, anger or personal stress. Breaches also occur when we are abroad or in unfamiliar surroundings. The occasional error is naturally handled via an apology and easily forgiven. A *persistent neglect* of civility is more serious. When uncivil behaviour is repetitive, a breakdown of the relationship is likely at a personal level and sometimes on a social level. For example, a person may not only dislike their current manager because of uncivil behaviour, but may come to distrust all managers or reject a career as a manager.

Far more dangerous is the *direct contravention* of the ethical teaching or deliberate neglect of principles of civility on a systematic basis. When unsatisfactory principles like 'turning up late', 'being uncooperative wherever possible', 'paying no attention', and 'maintaining a threatening posture' become established, community breakdown threatens. Incivility feeds on itself and potentially invites the release of even more

insulting behaviour. The process leads eventually to vituperative abuse and flagrant humiliation, and easily escalates to physical violence. For example: protesters who express grievances against the government by swearing and spitting at police, hurling excrement at them and routinely insulting them as pigs are going too far. Such behaviour is demoralizing and provocative. If it spreads and continues unchecked, policemen are likely to respond negatively. Police hostility to popular demonstrations and maltreatment of suspected offenders, if not already present, will be fostered. A vicious cycle is then set up which undermines the maintenance of law and order.

Wherever there is a power imbalance, maintenance of civility is of the utmost significance. Escalating incivility occurs commonly within households, between children, between children and parents, and between husband and wife as power disparities are used to relieve emotional distress. In organisations, civility amongst staff should be a prime requirement of ethical policies. Shouting at subordinates or the use of threatening and abusive language should be prohibited.

Civility can only be overturned with support of the wider community. Hong Kong police searching for weapons supposedly held by Vietnamese refugees (the boat people) beat them and forced them to squat for hours in their own urine and faeces. Such humiliating treatment was said to have been sanctioned by attitudes to the refugees held by the Hong Kong community. Incivility does not need to reach such gross abuse to be humiliating. A writer jailed for two months, described the way prisoners are treated as parcels, kept waiting with no explanation, grunted at, and generally dehumanised. Again public opinion condones this, apparently unaware that such handling of people cannot possibly foster the cooperation from them that society needs. Instead it brutalizes them, breeds the potential for explosions of violence within prisons, and leads to recidivism.¹⁴

As these examples illustrate, people who can legitimately coerce others (police, military, prison staff &c) have a particular need for self-discipline because they deal with people who are not only unwilling or unable to respect authority but who are also devalued by the community.

Limitations. Civility is about being respectful toward another in accord with certain principles. Civility is designed to apply to strangers and others with whom contact is transient. It does not provide for that depth of sensitivity which is essential for union. Yet without civility there can be no union. Nor are civility principles enough to cohere a community, because they do not address personal or social needs in any depth. In

the area of personal need, a different and higher form of principle based on tenets must be developed, promoted and applied.

G"-2²: Social Policy Principles

Nature. The notion that their needs will be met is the underlying rationale for people to participate properly in any community. So *community viability* depends on a continuing common effort to support and realize efforts to meet needs. Social policy principles are required *to guide choices* in situations or interactions where decisions must be made about how members' personal and communal needs are to be met. Social policy principles are typically used to deal with matters like housing, education, health, welfare, consumer protection, and policing. The *function* of the principles is to shape the attitudes of people and the policies of organizations so that members' needs are met.

In the simplest terms, social policy principles are designed to ensure that people are looked after in the right way. The relationship between people and organisations or institutions within a society is governed by social values. Seeing values affirmed and feeling looked after in the right way fosters attachment and preserves the community. Conversely, communal denial of needs and neglect of member well-being generates alienation. Nevertheless, this type of principle does not necessarily imply government intervention or provision. A social policy principle may specify that people should look after themselves as much as possible to meet needs for independence and self-reliance.

Not surprisingly, dealing with recognized needs is problematic and controversial. Their handling changes as the community develops greater understanding of the realities and as it becomes more enlightened. As usual, conflicting principles must be recognized and each given due weight in particular situations.

Contraceptive Use by Adolescents: The principles of social policy that govern the provision of contraceptives might include: parental wishes and guidance should be recognized as valuable; access to a doctor or impartial confidante should be available; education about contraception should be provided in schools but not on television; contraceptives should be freely available in chemists; children should be progressively given their independence. Whether or not a particular 15 year old girl obtains contraceptives would depend on the sensitive application of such principles by parents, doctors, pharmacists, school teachers and others. Ex. 9.2

The *construction* of any social policy principle depends on the identification of relevant tenets (L"-3) together with the determination of needed conventions (L"-2). It is self-evident that social policy principles can

only be used if they are widely acceptable. Once accepted, they need to be unequivocally respected, and then they imply an obligation to hold certain attitudes. Whereas civility principles are experienced in a relatively depersonalized way, social policy principles with their implied or explicit tenets require a degree of personal engagement. This root in tenets makes it natural for associations to campaign for particular principles, or for new groups to form in order to promote and disseminate particular principles.

Many interested bodies develop or promote social policy principles and stimulate public debate. However managing the relation between the community and each person is a specific *responsibility* of government. So government has the *authority* to develop social policy and raise finance in support of its principles.

Principles of social policy are to be found in public pronouncements by ministers or key politicians, in parliamentary proceedings, in circulars and guidelines produced by civil servants, in recommendations of commissions of inquiry, in other official reports, and in consultative documents produced by the government for the public and professionals.

Care for the Disabled: For over 20 years, the UK Government has promoted social policies for care of the mentally handicapped and other disabled individuals. The principles include: 'independent living should be maximized', 'more say and control over their own lives should be allowed' and 'variety of choice should be provided'. There have been inquiries, circulars, reports, legislation, initiatives, and numerous pronouncements. Over this period, relevant activities and services have slowly been scrutinized in health and social care in the public sector and the voluntary sector in the light of these principles. Many changes have been brought about. Although much remains to be done, many of the social policies have been successful in that the principles have become conventional wisdom.

Ex. 9.3¹⁵

Governments need to use their authority to establish the relevance and weight of the various principles within initiatives known as social policies. In recent times, this authority has led to governments becoming extensively engaged in service provision, and even monopolizing that provision. But the duty to provide services is not a logical consequence of the responsibility to develop principles to shape the meeting of needs, or of the authority to raise money to enable needs to be met. (Government provision is actually a choice affecting the community which flows from the application of certain ideological principles.)

Social policy principles should provide an ethical rationale and moral force for social policies. For example, the social policy 'to provide more technical and

vocational education', might depend on principles like 'employee education should never cease', 'everybody should be acquainted with modern technology', 'a successful economy needs an educated work-force' and so on. As is characteristic of principles, controversy is likely over their relevance and significance.

Social policy principles are normally developed on the basis of views held by key people in the area, tenets current in the public at large, and knowledge acquired via scientific research. It may even be that tenets accepted by the community are not scientifically defensible. Then the government finds itself in a cleft stick: either attacked by the community for not listening and being taken over by experts, or attacked by the professionals for acting irrationally and causing harm rather than benefit.

Governments may be more or less explicit about the principles which underpin their social policies. If a government sets priorities and strategic objectives without being explicit about its guiding principles, then it is acting too much like a chief executive. The duty of government should be to elicit values, to foster debate, to encourage ethical reflection and to develop popular support for principles — not to find ways to spend taxpayers' money.

The community is not a giant organization to be managed by government. Governments in thrall to the managerial delusion tend to reduce freedom and to produce inefficient and ineffective bureaucracies. Their social policy principles always seem to lead to complex legislation and central provision. But social policies do not always need legislation, and even if they do, a social policy must be seen to be more than law if it is to work. The use of legislation depends upon the nature of the issue, the amount of expenditure, existing statutory arrangements affecting progress, and other factors which make the establishment of a formal obligation and compulsion essential. The social policy principle itself is always (and by definition) distinct from this legislation and apart from the government bureaucracy. The principle needs to be held widely and respected freely within the community.

The guiding principles implicit in policy choices may become apparent through academic study. Such inquiry forms part of the subject matter of University disciplines like social or public policy, policy analysis, social planning, social or public administration, and government studies. Not surprisingly, academics often come into conflict with governments.

Governmental responsibility means that the courts frequently become involved in matters where social policy principles are relevant. Experts argue about

whether or not courts or judges should establish or promote social policy, rather than sticking to the law, precedent and legal principles. However, the fact that judges follow explicit or implicit principles of social policy and articulate these in the process of reaching judgements is undeniable. The UK Law Lords, for example, had no difficulty articulating (and disagreeing about) the principles to be followed by doctors when providing contraceptive advice to under-age girls (cf. Ex. 9.2).¹⁶

Dysfunction. Social policies may be *misjudged* or misconceived. Errors in the key principles frequently relate to a failure to recognize society's perception of what is socially good. The UK Labour Government's support for secondary picketing and the closed shop ultimately led to its defeat in 1979 because they did not meet social needs or foster social cooperation. These social policies were viewed as manifestly unjust by many people, and they were replaced in the Labour manifesto for the 1992 election.

The unpalatable fact is that societies are so complex that it is far easier to intervene badly than to intervene well. As a result, the key principles of a social policy may not be fully accepted or understood by the government itself, even after legislation. Blockage occurs when proposals are complex, when public opposition or ignorance is great, when economic pressures build up, or when powerful groups bring pressure to bear. In the case of the disabled (Ex. 9.3), major parts of the Disabled Person (Services, Consultation and Representation) Act (1986) had not been implemented by Order of Parliament at the time of writing — probably because the principles have not been fully accepted and because unsympathetic attitudes exist within the service-providing agencies.

Persistent neglect of social policy principles occurs in governments which are excessively reactive and pragmatic. Political decisions are then determined by pressure groups, influence peddlers, vote-catching, expediency, budgetary constraints and so on. Federal Government in the US is judged by many to be ineffective for just this reason. People expect so much of governments, often encouraged by politicians seeking their support. But it is doubtful whether their expectations are realistic. Lacking the discipline of the market, governments do whatever they do inefficiently, ineffectively, and all too often, corruptly. Having a weak grip on the concept of private property, government officials (both elected and appointed) tend to view the resources of every person as potentially theirs. They cannot resist plundering this commons on behalf of themselves or special interests rather than on behalf of the community as a whole. Big bad government seems

like the biggest single reason for economic and social disarray in both developed and developing nations.

An even more serious situation exists when social policies are pursued with principles which *deliberately contravene* ethical teachings and are self-evidently harmful to individuals. Such principles threaten communal life and the social order.

The Romanian Vampire: The principles underlying the social policies pursued by the Ceaucescu regime in Romania appear grotesque and bizarre. As part of the drive for industrial growth, the President sited toxic chemical plants in the centre of populated areas. Factories also mutilated and polluted the countryside. To modernise Romania, he destroyed villages and village institutions without replacing them with modern facilities. Social and welfare policies resulted in amenities that were limited and primitive. His procreation programme forced women to bear children, created ill-health in women and children, and led to such a degree of infanticide that a count of infant deaths was no longer kept. Large orphanages to rear neglected and abandoned children were left to operate under brutal conditions. The eventual consequence was communal violence, the overthrow of the regime, and modification of the social order.

Ex. 9.4

Limitations. The principles of any social policy deal with social needs and guide a general response to meeting these without modifying the status of any person or group. But the very nature of the social structure with its embedded injustice interferes with certain classes of people getting their needs met effectively or at all. Thoughtful people are liable to conclude that some change in the social structure is an ethical requirement. Well-recognized needs are social values, and the idea of meeting them in the community is taken for granted — even if the ways and priorities for meeting them are debatable. By contrast altering the social structure is never taken for granted, and making such choices generates the most intense controversy. It demands a different sort of principle in which rights and class power are taken into account.

G¹-2³: Ideological Principles

Nature. Specialization and differentiation are needed in all communities and this lack of homogeneity leads to those status differences defined by the social structure. *Community viability* depends on the stability and justice of that moral institution. Any necessary alterations to the structure must be widely acceptable and engender wide cooperation well beyond the favoured classes. Otherwise civil disorder and repressive control will be unleashed.

Ideological principles are required *to guide choices*

affecting the positioning of any class or category of individual in the social structure. The application of ideological principles either confirms and bolsters existing arrangements or leads to structural changes in society. For example, women in the 19th century lacked numerous rights and duties now regarded as customary. Change only occurred once a sense of entitlement built up, tenets about the capabilities and roles of women altered, and demonstrations took place. Once the right to vote was secured, a crucial lever on power was obtained. The status of women improved, the structure of society was decisively altered, and the potential for further peaceful change was secured.

The social structure never provides a definitive guide to its own modification or reconstruction, so without ideological principles deliberate major societal change cannot be sensibly pursued. The *function* of ideological principles is to shape social institutions so that fair entitlements of classes of members in the community are met.

An ideological principle is *constructed* with rights (L"-4) and tenets (L"-3). This accords with textbook definitions of ideology which usually go something like: 'a set of beliefs about the conduct of life and the organisation of society'.¹⁷

Ideological principles are inherently class-oriented because they include rights and duties. (Remember that the classes referred to here are not restricted to socio-economic categories based largely on education and earnings which are beloved of sociologists and social statisticians.) If an ideological principle is to be used, the rights it enshrines must be acceptable in the community generally. However, acceptability does not mean whole-hearted agreement. Disagreement is the norm because of the implications of assigning rights.

For example, for some decades socialist principles like 'the collective must take responsibility for ensuring that individuals get what they need' have been paramount in the UK and elsewhere. By contrast the New Right movement is guided by principles like 'free market forces must be left to determine the shape that society takes in the economic sphere'. This generates tenets like: 'there is no legitimate role for collective decision-making beyond the need to prevent absolute poverty'. In the third world, principles of collective responsibility have been generally supported, partly to buttress undemocratic regimes. But an about face is now evident: "Freedom to participate in the market according to one's talents and preferences is the best vehicle for the productive use of human capabilities" claims a recent UN Report.¹⁸

When any principle is used to aid a decision about,

say welfare provision or commercial development, particular tenets are harnessed or generated. As a result, ideological principles enable the formation of associations of committed people e.g. in think tanks. Certain tenets, like 'key industries require state intervention', or 'most government services should be privatized', get unequivocal respect within that association. If the principle becomes widely used, then the tenet becomes part of communal ideals.

The explanation and popularization of ideological principles are a matter for political movements. Ideological principles are articulated by the movement's ideologues and intellectuals, and adopted by political organizations and campaigning groups. The general public may be uninterested in ideological debate, but everyone is concerned about their own social status. So the affirmation of ideological principles is an essential part of electioneering.

Changing society in accord with ideological principles is sanctioned and partly implemented by a government. However, the *authority and responsibility* for proclaiming and applying the ideological stance to particular social problems lies with political parties and their leaders.

When an ideological principle does not align with an existing political party, a new party may form as in the case of the Green Parties (Ex. 9.6). Alternatively, independent candidates may campaign at elections to pressure the existing parties to accept a new principle as was the case in the women's suffrage movement (Ex. 9.5). So the consequences of ideology are evident in election manifestos and other unofficial policy documents long before they affect government. On the basis of elections, governments claim a mandate to take a particular ideological slant in their decision-making.

The Womens Suffrage Movement: Political tracts about the fair social entitlements of women were published by Mary Wollstonecraft and by John Stuart Mill. As the suffragette movement gathered pace in the UK in the second half of the 19th century, numerous organisations formed. These came together in 1897 within a National Union of Women's Suffrage Societies. Emmeline Pankhurst founded and led the Women's Social and Political Union which escalated the struggle and became identified with the ideological principle that women and men were socially equal. The first enfranchisement Act in 1918 did not fully implement the principle in so far as voting was restricted to married women, women householders and women University graduates over 30 years. Suffrage equality was achieved by a subsequent Act in 1928. However, full social equality has still not been achieved in the UK and the ideological principle of equality between the sexes still guides modern feminist movements and has an impact on election manifestos. Ex. 9.5¹⁹

Ideological principles are concerned with the distribution of power and hence affect, directly or indirectly, the distribution of resources within society. They touch on such matters as: the relation between the individual and the collective, economic transactions amongst members of society, development of ideas and their systematic use in social design, the relation of the community to its physical environment, the relation of the community to other communities, conceptions as to the structure of society, and conceptions as to human nature. A coherent set of ideological principles covering these subjects together with certain values and assumptions comprises an ideology.

Like other types of principle, ideological principles are multiple and only guide rather than bind. Critics usually take this to mean inconsistency. Party ideologues and activists see it as betrayal. For example, although the Thatcher Conservative Government campaigned through the 1980's on an ideological platform of private enterprise, free markets and fair competition, in practice things looked different. For example, some monopolies like electricity and bus transport were broken up, but others like telecommunications and gas were retained; private funding was needed for the second Severn bridge but public finance was available for the Manchester Metrolink. Justification of these decisions was offered in terms of other principles like the maintenance of international competitiveness and meeting social needs, and by appealing to practical considerations like feasibility and cost.

Various ideological principles may be relevant when a current social arrangement needs altering. The dispute between parties holding different ideologies is liable to be so heated and personally felt that rational discussion is unlikely to be possible or desired. Even within a political party, controversy about the significance of different principles may be extremely intense, and factions then form behind each of the opposing positions.

Environment and Society: Awareness that the environment is being damaged by humanity is increasing. Societies themselves are now suffering as a consequence, and this means that their functioning must change. The Green movement is an expression of this development. It has generated a number of ideological principles including the notion that 'economic growth should be halted'. Because the underlying tenets are debatable and such dramatic alterations in the structure of society would result, no existing political party is willing to adopt it. As a result, the movement has produced its own political parties and numerous other campaigning organisations. Existing political parties are coming to terms with the problem by determining how their own ideological principles should guide their approach to the environmental crisis. In the US, the free-market ideology has led to a trial of the use of pollu-

tion permits (and a market in these) to bring pollution under control.

Ex. 9.6

Dysfunction. The *persistent neglect* of ideological principles in society means that the community has no way of enabling structural change or orienting itself ethically to emerging shifts in power relationships. Ideological principles convert a personal sense of entitlement into a social reality. Without them, systematic debate about possible developments is weak and governments lack a mandate to act decisively on many issues. The end of ideology has an attractive rhetorical ring to it, but as one class-based principle loses acceptability or relevance another emerges into the limelight.²⁰ In the UK at present, for example, the relatively depressed status of some classes (e.g. Muslims, women, the unemployed) poses a threat to the community and demands urgent attention.

The righting of felt injustice within any social structure is likely to create, at least for a time, new injustices. An occasional *misjudgement* in the application of an ideological principle can worsen injustice. Privatization of a public service without effective regulation may convert an inefficient but fair state monopoly into a private monopoly demanding higher prices, giving poor service for certain classes of consumer, and taking large salary increases for its top managers. In time and with determination, such things can be put right.

However, where an ideological principle is unfounded or erroneous, great harm can result. For example, the ideological principle of 'centralized planning and orchestration of activities' assigned rights and duties to bureaucrats and political appointees who, however brilliant, could not possibly develop and pursue the comprehensive rational control of society that the tenets demanded. In communist countries where centralisation of power and authority became firmly entrenched, the effect was to impede and undermine local management, to demand inappropriate or unrealistic production targets and to foster corruption. The rights and class implications of such principles mean that it is difficult to rectify errors without social upheaval. In Russia, today, many in the classes which benefited from the previous state of affairs are sincerely or selfishly reluctant to alter their ways and hand over their powers.

Far more serious damage to a society occurs when ideological principles are pursued which *directly contravene* ethical teachings and harm members of society. In Hitler's Reich, the ideological principle of Aryan superiority led first to discrimination against Jews and other minority groups, then to the horrendous holocaust, and ultimately to the devastation of Germany itself.

Limitations. Ideological principles are about maintaining or changing the way that society is structured. This means that they depend upon acceptance of a particular distribution of rights and that they focus on specific categories of people. Although they help individual people, the principles are based in rights and tenets which are group-based. So they do not provide any guidance on how the individuality and personal preferences of people can be protected. Neither all women, nor all Jews, nor all unskilled labourers, nor all criminals are the same. As a result, efforts to bring about social change and supposed progress in accord with ideology have all too often violated individuality.

A comparatively recent and profound idea in human history is that each person has certain rights which, once determined, cannot be tampered with by ideological initiatives. Such rights would be inalienable: that is to say, intrinsic to being a person and so neither capable of being given or taken away. To appreciate such a meta-ideological notion, it is necessary to move up to the next type of principle.

G²⁴: Human Right Principles

Nature. No community can persist unless it exerts a degree of control over its members' diverse and sometimes destructive inclinations. But, as we have discovered, communal life is built on a certain minimum of autonomy. So *community viability* depends on exerting that control in an acceptable fashion. Principles are required to *guide choices* whenever autonomy is potentially infringed. In practice, this covers two sorts of situation: those in which social activities designed to benefit the community do so by constraining or interfering with individual activities, and those in which individual activities seem likely to harm the community.

Human right principles are based on rights which must be widely accepted. As a result, they are often referred to simply and somewhat misleadingly as human rights. Such labelling contributes to the muddle which surrounds the notion of rights. (It may be helpful at this point to recall again those distinctions discussed in Ch. 8, and to list them together with additional terms covering ideas yet to be explained: see Table 9.1).

We need human right principles because any person is absolutely dependent upon his or her community. Everyone is in danger of being unnecessarily constrained, unfairly treated, excessively interfered with, or even directly harmed by decisions which aim to advance the objectives or well-being of the community. The *function* of human right principles is to shape societal constraints on members so as to protect their freedom as individuals. The well-being of the com-

munity remains important, but certain decisions affecting people, ostensibly to support the community, are recognized here as ethically problematic.²¹ If people are interfered with excessively, they will start openly challenging established authorities. Such uprisings and civil commotions weaken the community and should be avoided if possible.

In democracies, human right principles are typically formulated to try to prevent or at least minimize the tyranny of the majority. They seek to reduce a government's encroachments on personal freedoms. Diffuse encroachment is all too likely because much government action reflects a tyranny of a minority (i.e. an elite or well-organized lobby) on the majority.

Human right principles promote the obligation to maintain certain freedoms like the right to life; freedom from torture or degrading punishment; the right to security of person; freedom of worship, thought and belief; freedom of expression; the right of peaceful assembly; and the right to be accorded agreed human rights irrespective of sex, race, colour, language, religion, political opinion, ethnic origin, social status or property. It is unusual, but fully consonant with the present approach, to include inalienable duties of each person e.g. the duty of care to fellows, the duty to support one's family, the duty of social cooperation, the duty to participate at least minimally in political life.

A human right principle is *constructed* using maxims (L⁵-5) and rights (L⁴-4). Maxims enable its application to be acceptable and the result is a right which should be unequivocally respected. The human right principle of freedom of expression, for example, does not indicate in itself how photocopying should be handled in a society. Photocopying was strictly controlled in the former USSR in accord with somewhat perverse maxims of secrecy and control. Incorporating the maxim of *glasnost* (openness) led to citizens being accorded the right to purchase and use photocopiers for their own use.

Human right principles aid a government in framing laws, developing policies, and judging entitlements in special cases. They also serve as a guide for each person when judging whether or not they are free to do something, and whether or not a collective power is infringing on a freedom.

Only by applying human right principles can one ensure that rights are assigned in accord with maxims which are socially accepted. It follows that the use of such principles is affected by the quality of the ethical teaching current in society and the degree of personal freedom built into the social structure by the rulers of society. Human right principles differ sharply from membership rights in that the social structure exists

Table 9.1: Definitions of different forms of right. Subscripts indicate the level position within the group i.e. a rule which is a right is at the 3rd level in 'the law' and at the 4th level in 'the custom' (cf. Master-Fig. 18). This phenomenon partly explains the diverse qualities of rights. Note that 'human right' and 'universal right' are often used in speech and writing as synonyms for 'human right principle'.

Label	Definition	Formula
Right	A rule which states what is due to or from someone in a social setting. It may take the form of a claim or no claim, an immunity or disability, a liberty (privilege) or duty, a power or liability.	L"-4
Membership right	A right which defines the social structure and indicates what is, as a matter of fact, due to and from all members of a particular community.	L"-4
Fundamental right	A membership right which, it is claimed, is or ought to be held in common by all (or all citizens) within a particular society.	L"-4
Customary right	A right which exists by virtue of its acceptance within a community over a prolonged period of time.	G"-5 ¹ ₄
Legal right	A right which is embodied in the law.	G"-5 ² ₃
Moral right	A right judged to be fair according to a particular ethical doctrine — which only has weight if it is accepted as part of the morality of the society.	G"-5 ³ ₂
Civil right	A moral right which applies to political aspects of citizenship i.e. relating to equality, justice, liberty &c.	G"-5 ³ ₂
Universal right	A right affirmed to be applicable to all across all societies whether or not it is legalized or available in fact; and typically used as part of a standard against which a society's membership rights are assessed.	G"-4 ⁴ ₁
Human right principle	A principle guiding collective choices which potentially constrain personal freedom.	G"-2 ⁴
Human right	A right which is in accord with a human right principle or emerges from its application.	G"-2 ⁴ ₁
Ideological right	A right which is defined to affirm or alter the status of a class within the community.	G"-2 ³ ₂
Collective (or peoples) rights	Customary rights usually affirmed in opposition to universal rights or to avoid recognizing relevant human right principles.	
Natural right	A right held to exist by virtue of the nature of man. A philosophical term referring to certain moral rights and human right principles.	
Divine right	An authority or power derived directly from God and which, accordingly, can over-ride all temporal authorities.	

whether or not membership rights are articulated. By contrast, human right principles only exist if they are explicitly formulated. When applied, the principle may suggest a new right which conflicts with customary membership rights.

Much misunderstanding comes from the attempt to apply human right principles as if they were strict rules. Human right principles, like the freedoms of speech and association, are only for guidance and to foster cooperation. They seek to reduce social control, but they are not themselves rights and cannot determine collective choices to resolve complicated and sensitive problems. The French Declaration of the Rights of Man, the forerunner of modern declarations, noted that human rights can be overridden for reasons of public utility, public necessity or to maintain public order. A person may appeal to a particular principle to justify an action, but whether on balance it does so is always debatable. For example, few would now take it for granted that the principle of freedom of worship justifies rituals like suttee in which a widow is immolated with her husband's corpse.

It seems self-evident that freedom of expression should not lead to rights to incite hatred systematically, to breach confidences, to vilify and libel publicly, to preach sedition, or to threaten the life of someone. This is because in each case a maxim (buttressed often by law) makes the application of the principle unacceptable. But it is never clear where to draw the line for free expression in many circumstances: e.g. producing obscene material, proclaiming extreme political views, releasing information about secret governmental activities. The fact that human right principles are not binding rules, as noted in the French Declaration, has been documented repeatedly in modern times (cf. Ex. 9.7).

Freedom of Expression: The European Convention on Human Rights (1950) stated that 'everyone has the right to freedom of expression' (Sect. 1, Art. 10). This right is however immediately qualified by such 'formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.' Ex. 9.7²²

The distinction between who draws up the principles and where responsibility lies for deciding their relevance and significance was noted in earlier principles. Here the difference is even sharper. The principles are generated by enlightened citizens, campaigning groups and inter-governmental bodies influenced by political

theories of various sorts. *Responsibility and authority* for judging relevance and significance in particular situations, however, lies in the hands of legislators at the time of framing legislation; with jurists when challenges are presented or heard in court; and with the relevant regulatory authorities or tribunals in non-legal challenges.

Without some conception of human right principles, a person would be at the mercy of those holding power in the state — which was uniformly the case in the past, and still is the case in many countries. Human right principles are not themselves laws. Nevertheless, to ensure that the governing regime with its awesome power to coerce on behalf of the community does recognize that each person is unique and autonomous, legislation which recognizes human right principles is commonly sought. The result may be incorporated in a Bill of Rights.

Constitutions and Rights: Every state has a constitution in the sense that there must be a framework of rules which indicates how its government is to operate. But these may pay greater or lesser attention to issues of human rights. Placing human rights at the centre of the constitution of the state is relatively recent in human history. In the UK, guidance on human rights is to be found in famous enactments like the Magna Carta (1215), as well as in modern statutes and in judgements of the courts. Human right principles appear in the formal constitution of the USA. Such constitutions are most common in countries where there is a sharp break with the past and a major alteration in the instruments of government. Indeed, when England was under Cromwell and without a monarch in the 17th century, there was a Bill of Rights (1688). Campaigns for a written constitution in the UK are gathering force, and a proposed Bill of Rights has been drafted. Ex. 9.8²³

Human right principles, when established in a society, are claimed to replace the sovereignty of the state (i.e. the government) by sovereignty of the people (i.e. the citizenry). This depends on the existence of a moral community whose majority (and therefore whose government) is unwilling to exert its inclination to coercion and tyranny. This is difficult in the extreme. Such a community tends to control itself by giving power to judicial and quasi-judicial bodies. A court of human rights or judicial commission or regulatory tribunal of some sort is needed to decide whether a government's acts or an organization's practices unjustly and unacceptably infringe a human right principle. In the US, the supreme court has precisely this responsibility.

If sovereignty of the people is to lead to a better society, two things are required: first, people must know about human right principles and current rights; and second, people must have confidence that the

judiciary will defend the individual against established authorities.

Dysfunction. Even governments which are systematically guided by human right principles may make a *misjudgement* and fail to apply these at times. When this occurs by oversight, rectification is easy. However, *persistent neglect* of given principles is always tempting for an elected government to avoid political embarrassment or to expedite its ideologically-favoured drive. In the absence of a tradition of respect for the individual and some judicial backing for human right principles, people cannot easily get redress for such violations.

The situation is different when principles of human right are regarded as irrelevant because of cultural traditions or the power of degraded religions. Then the organs of government may persistently oppress people in a locally acceptable fashion. If recognized human right principles are *directly contravened* because the regime views them as an obstacle to be overcome, then oppression may be intense, intrusive and sadistic. The justification usually offered is that the poverty or political problems of the country do not allow for the 'luxury' of human rights. Whatever the explanation, this attitude means that those who are brutal reach power, and they retain power by behaving ever more brutally. Authoritarian government may be benevolent and economically beneficial at times, but if it is not then protest and change is rather difficult. In modern tyrannies, government officials loot the treasury, a secret police flourishes, torture and imprisonment without trial are routine, and terror is an instrument of policy. Reports by Amnesty International reveal that such regimes are still numerous.²⁴

Limitations. The use of human right principles, as with all other principles, potentially generates conflict and controversy. But, unlike the previous principles, severe disputes lend themselves to resolution in the courts. The courts are recognized as the ultimate arbiter here as in many matters and they must operate and be seen to operate in a fair way. However, human right principles do not deal with the operation of the courts themselves, and provide no guide to legal processes. So principles with a different character are needed.

G"-2⁵: Legal Principles

Nature. The legal system with its capacity for instigating rule enforcement is essential to the maintenance of stability and order in society. The guardian of the legal system is the courts of justice. *Community viability* depends on people having confidence in the courts and the legal system. Apparent misuse of the courts by

judges with idiosyncratic views or by governments seeking to control the courts for their own purposes causes a public outcry. So principles are required *to guide choices* in deciding and handling disputes in the courts. These legal principles are not laws but they are part of the law as long as they are applied in an acceptable way.

The *function* of a legal principle is to shape a legal decision so as to protect social institutions on which the community and its members depend. Legal principles are therefore a major feature in the argument and reasoning associated with judicial decisions of any complexity. In any particular case, relevant existing legal principles must be recognized, applied and weighed against each other, and new principles created if necessary.

Legal principles are concerned with the common good, like the laws (L"-6) and maxims (L"-5) with which they are *constructed*. Legal principles must be accepted as part of the law within the court system. This means that they must be consonant with sound reason, judicial authority, the nature of relevant institutions within society, and any written constitution. Although ethical teachings are not geared to legal contests and court processes, legal principles must also embody maxims which ought to be unequivocally respected in the case under consideration. In the USA, for example, authors are generally held responsible for textual errors or omissions which cause harm. This principle is based on the maxim that 'a free society requires a free flow of ideas': the flow of ideas is the social institution referred to in the functional definition above. Assigning legal liability to publishers might interfere with this flow.

The *authority and responsibility* for establishing and for selecting and using legal principles rests with lawyers and judges. They do so in the context of the need to present or to resolve a case that is brought to the courts. Even in a court action where there is a law in the form of a carefully worked out statute, uncertainty may exist in the wording or in its relation to the circumstances of the particular case. Over the years, a variety of legal principles have been found to be potentially relevant to interpreting statutes (see Ex. 9.9). As with principles already examined, different legal principles point in different directions and never necessitate a particular decision about the statute.

Interpreting Statutes: It is generally agreed that judges must follow statutes, neither restricting nor extending them. However, often the situation is complex and a variety of legal principles for interpretation have been developed. These include: the context rule, the intention rule, the mischief rule, the literal rule, and the golden rule. The con-

text rule holds that words in the Act get their meaning from the context and the application of common sense. The intention rule holds that words must be construed in the light of the general purpose of the Act. The mischief rule holds that the Act should be construed in the light of the mischief that the Act was intended to remedy. The literal rule holds that words must be taken exactly as they stand, even if it is evident that had Parliament foreseen the situation the words would have been modified. The golden rule holds that statutes should be construed so as to avoid an absurdity. It is a misnomer to call these guides 'rules', because it is self-evident that none are fully binding and that several may be applied to a particular case. (Note that the avoidance of outrageous injustice is not a legal principle.)

Ex. 9.9

Legal principles, like human right principles, help make the whole of society a moral community, and so they are of greater consequence than the results of a particular judgement. For example, a legal principle may provide guidance as to whether or not a particular sort of case should be brought in the future, and how it might be handled. Once a legal principle has been articulated and established, there is an obligation to pay attention to it in the adjudication of subsequent cases.

Challenging a Minister: The UK Education Reform Act (1988) permitted schools to opt out of local authority control following approval by the Minister. A school in Bath sought and won this approval. The local authority, Avon County Council, opposed it on the grounds that education in Bath would suffer and sought judicial review. The judge quashed the Minister's decision on the basis of the principle that the welfare of the whole county needed consideration. The Minister reconsidered and came to the same decision. The Council again applied for review and was heard by the Court of Appeal and lost. The principle that emerged was that 'an application for judicial review is not the appropriate means by which a local authority should seek to ventilate or pursue its differences of opinion with a Minister'. Such a principle does not block Avon or other Councils taking similar cases to court in future, but would be a factor in deciding whether they do so.

Ex. 9.10²⁵

Legal principles ensure that coherent rationales are available as a guide to potential litigants. Although it is desirable that legal principles should themselves be guided by principles of natural justice (to be described in the next dyad), their primary concern is with ensuring that courts operate for the common good. As a result, legal principles affecting the outcome of any dispute vary between particular societies. To return to a previous example: in the UK textual errors or omissions which cause harm are generally the responsibility of the publisher, not the author as in the USA. (Because we are dealing with principles and not rules, liability might be assigned on occasion to the author in the UK, and to the publisher in the USA.)

Laws typically include general words to describe actions like: reasonable, fair, unjust, excessive, significant, negligent. They are placed there deliberately to recognize self-regulation through the use of maxims by individuals, and to allow the exercise of discretion by the courts. This discretion demands the creation and use of legal principles which lie beyond the specified law.

Liability for Inaccuracies in Books: The tort of negligence establishes that a person is liable for damage resulting from their negligence where they ought reasonably to have assumed that carelessness would be likely to cause damage to another. As part of the interpretation of 'reasonably', UK courts apply the principle of proximity. This principle states that a duty of care requires a degree of proximity between the giver and receiver. It follows that the more a book encourages readers to rely on it, the more likely it is that liability will arise. A 'how-to' book would be more likely to do this than a purely informative one or a novel. A further principle that has been established is that mis-statements potentially causing physical harm are more serious than those causing financial loss.

Ex. 9.11²⁶

As well as guiding decisions in particular cases, legal principles focus on contextual matters like the operation of the courts e.g. the legal standing of individuals in respect of bringing cases; the activity of sentencing e.g. how to decide severity; the use of precedents e.g. how to regard decisions of different types of courts and tribunals, or whether or not to restrict the validity of an earlier decision; and handling conflicts of laws e.g. matters of jurisdiction, the effects of foreign judgements and choice of laws. Some legal principles are based on notions which are evidently false but which must be taken as true for the court system and society to operate properly. For example, the legal principle that ignorance is no defence is based on the fiction that everyone knows the law. If ignorance were allowed as a defence, it would positively encourage people to pay no attention to the law and fly in the face of the maxim that one should respect the law. Another fiction-based principle states that a person must be considered to intend the consequences of his actions.

Dysfunction. When there is an unfortunate *misjudgement* and a necessary legal principle has been overlooked, there needs to be the possibility of an appeal to a higher court which allows rectification.

If there is *persistent neglect* of legal principles, if they are *deliberately contravened*, or if principles which do not conform to widely accepted maxims are instituted, then the courts are not functioning ethically. Abandonment of the balanced application of legal principles is more likely to occur in authoritarian or theocratic

regimes; or occasionally where democratic demagoguery holds sway. In these circumstances, courts are seen as instruments of public policy, to be run directly by the government rather than to operate independently according to the law. At the extreme, courts are expected to deliver predetermined verdicts.

To restate an essential ethical design point: government must not see itself running the community as if it is a giant organization. If it does so, the good of the whole community will be regarded as more significant than the good of any individual within it. The essential nature of law is then violated and freedom is eroded. In organizations — the Roman Catholic Church would be a prime example — freedom cannot be the over-riding concern and formal regulations (i.e. laws internal to the organisation) are made to give way to organisational goals and values whenever necessary.²⁷ In a community, by contrast, the good of the whole is a function of each person's voluntary participation.

Limitations. The notion that principles should be just has been taken for granted until now. Civility principles should express fair treatment. Social policy principles and ideological principles should be fair and create a society which feels fair. Human right principles are driven and sustained by the idea they are fair, and legal principles are developed with justice in mind.

But justice in each of these types of principle has been ancillary or contextual. To be sure, proponents of any principle claim it embodies fairness, but acceptability takes precedence when defining and using them. Legal principles, for example, cannot be solely tested against the abstract notion of justice because they are as much or more concerned with maintaining the abstract formalism and coherence of law and the customs of society as with the substance of the specific case.

Fairness must become central somewhere, however, because it is the ultimate criterion of general acceptability in society. A communal sense of fairness is vital for social cooperation. The final and highest dyad contains principles which seek to embody fairness and embed it in the community.

G"-2⁶: Natural Justice Principles

Nature. The most lofty and general consideration in maintaining any community is developing a spirit of fairness within it. People will tolerate a great deal of hardship if they feel that things are fair. Hardship may even enhance the community spirit by enabling the sinking of differences: but only as long as decisions of all sorts are made in a fair way. Without a sense of fairness, good relationships among people are stunted and the support of individuals for their community is under-

mined and put at risk. *Community viability* depends therefore on consistently and persistently seeking to play fair and minimize injustice.

Decisions where fairness is controversial are never straightforward, so principles are needed as a guide. Natural justice principles, as these may be called, express an intuitive notion of fair play and are required to *guide choices* about the use of any social arrangement. Among the most important of these arrangements are the various other ethical principles.

The *function* of a natural justice principle is to shape the expression of fair play in society. So natural justice principles potentially override all others. They are commonly articulated at times of communal change, especially when a major alteration in existing principles feels necessary.

These principles are *constructed* by absolutes (L"-7) and laws (L"-6).²⁸ To be active in society, natural justice principles must emerge from absolutes which are widely accepted. All these absolutes can be traced back to the over-riding communal absolute: be fair. Fair play is more important for communal life than prosperity. Wealthy Lebanon, for example, was susceptible to devastation because it was built on an unfair sharing of power and influence between Maronite Christians and Muslims.

If any natural justice principle is to be unequivocally respected, it must be recognizable in society's laws. The talion principle, for example, states that criminals should receive the harm they inflicted as a punishment ('an eye for an eye, a tooth for a tooth'). This seems to derive from a cross-cultural absolute found in all communities that 'wrongs should be avenged' or 'wrongs must be righted', and it requires respect for laws which provide for a tit-for-tat penalty. However crude the talion principle seems, the Twelve Tables seems to have established that it puts a limit to the exercise of vengeance. Another principle based on the same absolute requires that the 'punishment must fit the crime'. This has led to laws which punish thieves by having their hands chopped off; and to laws requiring offenders to directly repay their victims or do reparative work for the community.

Judicial Review: An oft-repeated natural justice principle states that 'courts should uphold the weakness of the citizen against the power of the state'. The absolute here is: 'be fair' and the laws which have resulted are many. There are now UK laws allowing citizens or organizations to question governmental action through judicial review in a variety of contexts: immigration, housing, social security, prisons, health, education, planning, legal aid, and even commercial matters. In these cases, judges do not assess the wisdom or justice of the governmental

decision, nor its political appropriateness, but rather focus on whether authorities have used their position to exceed their lawful powers.

Ex. 9.12

Although natural justice principles must be evident in laws for the community to benefit, they can be applied in more self-contained settings. For example, they may be used to determine regulations which prevent victimization in organizations; and individuals can use them in deciding regulations for their households.

Although principles of natural justice are ideals which seem to be widely applicable, they are so general that they allow individuals and societies to use them very differently. For example, a key principle of natural justice proposed by Aristotle is proportionality i.e. 'equal and relevant aspects of a situation should be treated equally, and inequalities should be recognized in a way proportionate to their inequality'. However, exactly which aspects are relevant and what constitutes due proportion is debatable. Proportionality supports legal principles like 'the penalty should fit the crime', ideological principles like 'to each according to his abilities/deserts/needs', social policy principles like 'target health care to the sickest', and civility principles like 'first come first served'. These lower level principles are not endorsed in all societies, and even where they are there is much variation in their application.

The *authority and responsibility* for applying natural justice principles clearly lies with each person and all government and judicial institutions, and by extension with any social body working for a fairer society. Government debates on laws in the realm of natural justice often do not split along political party lines.

The use of principles of natural justice enables judges in progressive societies which lack a written constitution to bring positive law into harmony with higher ethical notions and to escape from the strait-jacket of precedents. Principles of natural justice allow political parties a chance to escape from the prison of their own ideologies. They also help reform-centred organizations rethink how people's needs should be met. They can even be used to influence the way people and businesses treat each other when they differ.

As before, the principles of natural justice are but a guide and do not determine a precise outcome. For example, if a minor misdeed had horrendous consequences the principle that wrongs should be punished and the principle of proportionality would need to be balanced against each other. Efforts to rehabilitate offenders and reduce the punitive element of sentences usually get nowhere because they are based in maxims to be benevolent and show mercy. These have little

force if society values a natural justice principle that calls for punishment and retribution.

Principles of all other types are ultimately justified by natural justice principles and these become the basis for promulgating and buttressing them by laws. For example, rape does not accord with principles of civility because the victim is not being respected; but it's proscription under the law is at least in part because it violates principles of natural justice like 'the strong should not take undue advantage of the weak'. It is similarly possible to appreciate the recourse to legislation in relation to social policy principles. Ideological principles, invariably pursued in terms of natural justice, are virtually impossible to implement without legislation to establish the new rights and duties. Human right principles, also argued in terms of natural justice, create a positive pressure for law-making. For example, if it is accepted that representative government cannot work fairly without agreed freedoms for individuals, then demands to establish these in a legally binding form follow.

Given that natural justice in a society must be realized in laws, the courts and legislature are of great significance. Here is where principles of natural justice must be most assiduously applied. Law must be clarified so that disagreements between individuals and between the individual and the government (as representative of the community) as to the rights and wrongs of any matter are resolved.

In a properly working democracy, the legislature and judiciary are publicly exposed and are liable to come under severe criticism when injustice appears to have triumphed. To deal with this, a key element of natural justice is the principle of reconsideration. This allows any case to be re-examined in a superior context: the upper house or a higher court. Like all applications of principles, the outcome is uncertain. The higher court may or may not allow an appeal and, when it does, the result may be surprising. In parliament, the upper house may reject a bill and this rejection may be accepted or over-ridden by the lower house.

Dysfunction. If there is a one-off *misjudgement* and a principle of natural justice is not applied when necessary, voices are raised in discontent so that the decision can be reversed.

If there is a *persistent neglect* of natural justice, then bitterness develops in the community. Justice is so abstract that this is always a possibility. Even though principles of natural justice apply to the courts and bolster their operation, justice cannot be guaranteed even there. For example, it is a principle that courts will not lend themselves to enforcing an unjust advantage

— but courts do at times (rightly or wrongly) enforce an unjust advantage. Another principle is that courts will not be used as an instrument of injustice — but, again, adherence to the law via the courts does at times generate blatant injustice. Finally, although courts should uphold the weakness of the individual against the power of the state, courts frequently appear to act as instruments of the state rather than as defenders of citizens. If principles of natural justice seem to be repeatedly violated in the courts, the judiciary comes to be regarded as a bastion of the status quo, responding to established powers and dispensing privilege.

Where there is a *deliberate contravention* of natural justice and a systematic refusal to apply agreed principles, then injustice on a far more serious scale results. Stalin's courts were qualitatively different from anything in a democracy in that they systematically accommodated lying, false charges and forced confessions before delivering inhumane sentences. These show trials reflected a flouting of natural justice consistent with what occurred throughout the USSR at that time in many other settings.

Closure. Natural justice principles are the highest and most abstract form of guiding principle because they demand the non-specific application of fairness or fair-play in all decisions affecting the community. There seems to be nothing more profound for maintaining community life, and no more abstract or more general form of ethical principle to ensure general cooperation from community members. The dyadic grouping is now intuitively, as well as logically, complete.

REVIEWING THE PRINCIPLES

Six types of ethical principle have now been identified. Each gives rise to ethical authorities and related entities including the creation of official authorities. Each is essential to the maintenance of a community, and therefore intrinsic to each person's social existence.

Civility principles are the basis of civility. Social policy principles are the rationale for social policies. Ideological principles are the core of ideologies. Human right principles lead to the defence of inalienable personal freedoms and duties. Legal principles ensure acceptability of the legal process and court outcomes. And natural justice principles promote fair play throughout society.

Each type of principle and its users look to higher principles for guidance. Civility principles are concerned with the impersonal and equalizing operation of respect without which communal life would be brutish. The responsibility for civilized behaviour rests with

each person. But each person has needs which must be met if civility is to be maintained, and each looks to the community for guidance on meeting these needs. Governments emerge to handle needs and do so by articulating social policy principles on behalf of the community. When doing so, governments are likely to affirm or alter the status of particular classes, and so they need ideological principles to guide them.

Political parties are built on ideological principles and come to represent certain classes. These principles are needed by government so that class power can be legitimate. In this way, grievances can be dealt with rather than being left to boil over in civil unrest. Political parties are partial and potentially threaten the community with their demands, so impartial jurists, regulatory authorities and legislators are needed to work with human right principles and ensure that particular individuals or minorities are not discriminated against. Any dispute, especially over the use of principles, may end up in the courts. So lawyers and judges must develop and apply legal principles to ensure that the courts operate acceptably.

The wheel comes full circle with natural justice principles which once again depend for their sustenance on each member of the community and all social bodies, especially established authorities.

Reinforcement between Principles. We have seen over and over again that principles of the same type regularly come into conflict. However, principles of different types may, and sometimes must, reinforce each other. Because principles overlap at five levels, L"-2 through to L"-6, adjacent principles have one type of rule in common (cf. Fig. 9.2). This is why principles can reinforce each other and tend to be effective in a community to the degree that they do so. (Exactly the same applies to the various established authorities who select and use the principles.)

Social policy principles can only lead to changes in attitudes if they accord with civility principles which govern respect for persons. Similarly, when social policies run counter to convention, civility becomes difficult to maintain. For example, UK government policies for the care of long-stay mentally handicapped and mentally ill patients in large hospitals allowed for dilapidation of buildings, poor food, poor hygiene and low pay for staff. Such treatment contravened current conventions. Not surprisingly, a break-down in civility frequently developed in the hospitals with patients being neglected and even physically abused.²⁹

Ideological principles and social policy principles are similarly linked through tenets. Ideological principles can only be translated into principles of social policy if

the community mainstream endorses certain tenets. When government policies are ideologically driven by the party in power and lack a basis in dominant tenets within society, then controversy erupts and implementation is weakened. Because politicians rather than political parties form governments, ideology is usually tempered in practice — but not always: see Ex. 9.13 — and social policies are restricted to areas where common tenets already exist or can be easily developed.

Education: A recent principle of UK educational policy was that secondary schools should be ‘comprehensive’ and have a full cross-section of abilities. This was based on the ideological principle that certain students and particular schools should not be allowed to develop special (i.e. unfair) advantages. From this perspective, private schooling was particularly unfair. The consequences of the social policy were that students with particular abilities or difficulties were not effectively supported, and many state schools could not adapt to their neighbourhoods. Ordinary people believed that meeting children’s needs and adapting to localities were important. As a result, state schools came in for much criticism, parents began manipulating the system to get their children into the better comprehensive schools, and private schooling was increasingly supported in direct opposition to the government’s ideological principles.

Ex. 9.13

Human right principles and ideological principles are linked through existing and potential rights. Human rights as expressed in many international conventions are violated regularly in many countries because rights implied by the specified principles are not congruent with either the social structure or the rights which determine the ideological principles pursued within the particular countries. In a similar way, legal principles and human rights are linked through maxims; and natural justice principles and legal principles are linked through laws.

Implications for Government. We have already noted that a number of principles commonly apply in any situation, that acceptability is the dominant criterion, and that there must be a sensitive weighing and balancing of principles before choice. This means that principles introduce a degree of dynamism, debate and adaptability in managing communal life, a flexibility which is absent in the rules which are fixed and unequivocal in their implications.

The discretion available in the use of principles, however exquisitely considered, generates the potential and likelihood of challenge which in itself could disrupt the community. Where responsibility and authority is assigned for using principles is therefore a matter of the utmost significance. The analysis revealed that, except for the extreme groups, civility and natural justice prin-

ciples, authority lies with those in or close to government: politicians, the civil service, political parties, legislators, jurists.

But civility and natural justice are not the exception they seem: civility is about governing one’s own impulses and wishes — self-government in the most basic sense; and natural justice is the spirit that makes government tolerable and which everyone expects should infuse government. Without civility and fair-play, government is not welcome and barely possible. When threats, abuse and other manifestations of disregard and disrespect for fellows permeate a community, its foundations are being eroded. When the search for fairness in government policy is forgotten, the logic of government is lost.

This creates an image of a society in which each person must show self-command and yet is dependent on bodies and people who do not always seem to deserve it. Human right principles typify this dilemma: to the man in the street neither parliament nor the judiciary are very accessible or sympathetic when his freedoms are infringed by an organization or a social policy. Having a vote never feels much of a remedy. In any case, most people are far more concerned with the concrete outcome for themselves than with the intricacies of social policy, ideology, human rights and the law. It seems that principles affect people and demand a lot of them, while being abstract, intangible and out of their control.

So the question must be asked: what controls the quality of principles used by governmental authorities?

The Role of Scholarship. Any critical analysis of the principles regulating community life must reside both within and alongside the community. Academic disciplines have this quality. So universities and other inquiry-based bodies like independent think-tanks provide the only effective check on the nature, quality and effects of ethical principles. Dedicated scholarship can assist in developing principles, and can assess their use in practice.

Whenever principles are fundamentally challenged, they are found to depend on rules and other principles, and eventually on an image of the culture and the place of individuals and institutions within society. These conceptions are explored, tested and buttressed by facts and theories. The need for principles has therefore generated speculation and systematic inquiry in a way that rules have not. Few people study desirable maxims, but many study legal principles and human rights, both of which depend on maxims.

In the case of civility, the cultural conception of a person and psychological theories of feeling and inter-

personal experience will underpin (or challenge) principles and their use. For example, unless it is understood that mentally handicapped individuals tend to approach very closely when speaking, people are likely to see them as ill-mannered and treat them in a disrespectful way.

Social policies are underpinned by theories which specify how individuals and organisations ought to relate to each other, and how organisations can be operated. In the health care field, for example, the general desire for good health must be translated into health care policies whose principles recognize and handle problems such as the near-infinite demand for health care and weaknesses in the organizational control of health professionals. Social policy is usually studied from within a discipline entitled social (or public) administration, or as part of government studies or sociology.

Ideological principles depend upon theories of the operation of society, particularly economic considerations which are currently seen as the source of social power and status. The ideological principles generated by recent right-wing thinkers, for example, are based on theoretical assumptions that society has inherent tendencies towards order and justice, and that the entrepreneur is the key figure in ensuring for all the gains to be had from economic growth. Economists, sociologists and others interested in social theory generate and examine evidence for such ideas and try to determine the value of particular forms of social structure or institution like public sector agencies and commercial regulations. The difficulty is that these disciplines are themselves ideologically committed. Research suggests that as students progress through economics they become increasingly puzzled by the notion of fairness; and sociology students are trained to give primacy to social life and all too easily lose sight of the meaning and significance of personal freedom.³⁰

Human right principles develop according to the cultural conception of the proper relation of individuals to society. This is the concern of political theory. Although human rights are associated with political models produced by theorists like Locke, Paine and Tocqueville, there are many models of democracy, each with its own set of principles. Held, for example, has distinguished: classical (Athenian) democracy, protective democracy, developmental democracy, direct democracy, competitive elitist democracy, pluralist democracy and participatory democracy.³¹

In the case of legal principles, jurisprudence examines such matters as what the law and legal process is or should be, and the place of the judiciary in society.

The underpinning notions of natural justice are to be found in theories of natural law — of which there are a considerable variety based in philosophy, religion and legal studies. Natural law postulates that principles or laws exist which are valid independently of any positive law and which legitimate the binding force of positive law. Despite modern reactions against this ancient idea, such theoretical work persists and is influential.³²

Scholars and investigators in the various disciplines develop theories related to principles, conduct empirical studies of their use, and disseminate their findings to influence society. The better ones become advisors to governments, and sit on or chair official advisory committees. The best seek to re-design government and its institutions entirely.

Transition. The use of ethical principles is important if communities are to be maintained through social cooperation. Because support from members lies at the heart of cooperation and community viability, acceptability emerges as the essential criterion — even in relation to justice. The idea that what is currently acceptable should be a guide to what is ethical or just appalls moral reformers and ethical philosophers. Recall their attitude to conventionalist choice (L"-2: Ch. 6).

The aspiration for a truly just society is probably present in everyone. But the very notion of an enlightened society often seems utopian and its pursuit appears disruptive. In this regard, principles have a major limitation in that they are taken as given. They do generate change and the potential for progress if used consistently, but they do not primarily act as authoritative vehicles for change. They hardly touch on the way people think and act to promote ethical progress (or to maintain the status quo).

If communal life is to be ethically designed, then the focus on community maintenance and the criterion of what is expected and allowed by most in the community must be superseded. Social acceptability may be necessary, but it is just not enough.

To bring aspirations for virtue and justice down to earth and to order people's efforts in this regard, some conception of progress towards an enlightened and sustainable ethical order is needed. Any such ideas of progress cannot be purely communal but must find roots and resonances within each person — and this means grounding them in a more complex ethical authority which harnesses personal belief.

On close scrutiny, it is evident that principles are always generated and applied from a particular position which is taken for granted or dogmatically affirmed by whomever is authorized to do so. Movement of society

from one position to another reflects evolution of the culture. Neither culture nor society is an agent and government has no such power. Cultural evolution means that individual members of society are somehow

authorized to affirm or alter the rules governing their own social life. In this sense, they are free and equal. To begin to understand the role of the individual, we must now turn to consider the triads.

**Master-
Table 22**

Properties of the six types of guiding principle in society.

Ethical principles, which are needed to maintain a community, are dyadic authorities formed by conjoining two adjacent types of rule. A variety of ethical principles must be applied when making choices which might affect community security and cohesion (i.e. viability). Note that a wide variety of bodies may develop or promote principles of various sorts. See text for details and explanation.

Dyad No. (Levels)	Type of Principle	Function	Contribution to Community Viability	Type of Decision Requiring Ethical Guidance	Authority and Responsibility for Selection & Use	Theory/Discipline for Development & Analysis
1 (L's 1 & 2)	Civility principle	To shape behaviour so that due respect for community members is always manifest.	Provides the basic mechanism for communal coexistence.	Handling informal aspects of inter-personal interactions.	Each person.	Social psychology
2 (L's 2 & 3)	Social policy principle	To shape attitudes and organisations so that members' needs are met in society.	Bolsters the rationale for member participation in a community.	Handling interactions mediating personal needs.	Government.	Public administration Policy analysis
3 (L's 3 & 4)	Ideological principle	To shape social institutions so that fair entitlements of classes of members are met.	Assists re-structuring of the community when required.	Whenever the status or power of a class of individual is affected.	Political parties.	Economics Sociology Social theory
4 (L's 4 & 5)	Human right principle	To shape social constraints on members so as to protect their freedom as individuals.	Minimizes coercive control of community members.	Collective action seeking to benefit all or prevent harm by individuals.	Legislators, jurists, regulatory authorities, courts of human rights.	Political theory
5 (L's 5 & 6)	Legal principle	To shape legal decisions so as to protect social institutions on which the community depends.	Maintains confidence in the legal system.	Disputes within courts of justice.	Judges, lawyers.	Jurisprudence
6 (L's 6 & 7)	Natural justice principle	To shape the expression of fair play in society.	Maintains community spirit by minimizing feelings of injustice.	Creation and use of any social arrangement.	All members of society, and especially official authorities.	Natural law theories

G"-3: INTERNALIZED POSITIONS

Nature. A striking feature of society is the stress that is placed both on the need for stability and conformity in ethical matters and also on the need for alteration and progress to a more enlightened state. It is evident that mechanisms are needed to orient people to accept and follow — or to reject and oppose — the rules and principles which society uses to govern ethical choices in particular situations. Such an ethical authority must be of a sort which a person internalizes so that necessary conformity is defined from within. I call this authority an ethical **position**. A new position may be devised or taken up by a rebellious spirit to promote a conception of ethical progress. Of course, some will view such so-called progressive ideas or the emerging results as a regress or as harmful — and sometimes they are. But our concern is with the underlying ethical mechanism, not the content or its effects.

Ethical positions fulfil an orienting, equalizing and potentially liberating role in any society. For example, passing a law is a major exercise in social change. But the law will be unsuccessful unless people or rather each person is socialized to obey laws in general and prepared to obey that law in particular. Similarly, change in the social order can start from just one person who (correctly or incorrectly) feels and believes deeply that its rules are wrong or unfair and has the power to influence others to think likewise.

To put this observation more generally, ethical rules and principles need to be part of some larger person-centred and rule-based authority — called here a position — which fosters their recognition, bolsters their operation, and channels their influence as society evolves.

A person cannot hold just any position at all. One's conscience, rationality and the cultural context prevent this. For a position to be usable in a society, it must be capable of being internalized by members of that society through socialization processes. New positions, once fully internalized by reformers, enable them to orient their thinking and organize their activities. Crusading and campaigning bodies work hard to get others to believe the new ideas so that eventually the position is institutionalized within society. Active promotion, debate and explanation of the position induce natural processes of imitation, reflection and identification in the wider public. When institutionalisation is complete and formalized by various sorts of governmental and legal creations, the internalized position is taken for granted and seems to be a self-evident part of the culture.

Widely internalized and institutionalized positions can be confidently asserted and promulgated by

individuals. Conformity to an established position is continually reinforced by teaching, example and social pressure. Conformity is also opposed and undermined by dissenters and their polemics.

The term 'position' conveys a sense of stability, coherence and system. Such solidity is necessary in a dynamic society. People need to be able to hold a position or vantage point with conviction and to know that it is an authority recognized by others. Such a position steers their functioning in society. It helps them approach decisions and fosters developments in the right way. It also enables leaders and thinkers to organize and institutionalize change.

Ethical positions are evidently more complex and personally involving than rules (monads) or principles (dyads). They too call for *unequivocal respect* and *social acceptability*, but still more is needed. If internalization is genuine and if others are to be influenced, then the position must be capable of being *dogmatically affirmed* in public. The possibility of dogmatic affirmation is provided by adding a third level of rule.

The *function* of any position is to ensure that community members can be coherently and authoritatively oriented to ethical challenge and change. This confirms that ethical progress depends on individuals: until people can re-socialize themselves, society's values and institutions will not be modified.

The significance of dogmatic affirmation becomes apparent when rules or principles of any sort are being challenged or need to be changed. This happens when circumstances combine with powerful new ideas. One cannot fail to be struck by the dogmatism of reformers and the equally intense dogmatism of those who defend the status quo. The clash of apparently irresistible forces for change against apparently irremovable traditions generates controversy and all too often abuse, rage and violence.

Academics describe their colleagues' views of rights and justice as barbarous, ignorant and superstitious: 'akin to believing in witches' is the currently favoured epithet. Affirming freedom of speech on racial issues generates disruptive jeering abuse and brawling. Demonstrations for peace lead to rioting, looting and vandalism. Angry abortion protesters asserting the sacredness of life cause deaths. The intensity of feeling in all these cases does not come from following rules or principles but from the ethical position which has been internalized and become part of the person's identity.

Types. Each type of position emerges from grouping three adjacent levels of rule to form a triad. The triadic structure provides positions with a degree of wholeness, solidity and structure. This is what allows them to

be used to order cultural change, described by those in favour as progress and by those against as degeneration.

In all, there are five overlapping hierarchical triads corresponding to five different types of internalized ethical position. The five types of position used to orient members of society are *good practice* (G"-3¹); *communal role* (G"-3²); *cultural ethic* (G"-3³); societal or *legal responsibility* (G"-3⁴); and social or *distributive justice* (G"-3⁵). The five triadic positions are represented diagrammatically in Figure 9.3.

Any position can be explicated by specifying rules at the three levels which constitute it, and it is then defended vigorously in terms of these constituting rules. In each type of position, the bottom level provides the practical basis of the position: it is where *respect must be unequivocal* and where conformity is most evident. The top level is what must be *dogmatically affirmed* to create the socio-emotional pressure, sense of freedom and inner inclination for conformity. The middle level links the top and bottom levels by ensuring *social acceptability* of the position when it is applied in the community.

Each triad defines a distinct focus where socialization is required, conformity expected and cultural progress desired. As the triads are ascended, there is a progression in concern from orienting people to meeting each other's needs to orienting them to meeting society's needs for freedom and justice. The lower triads are close to defining practical living whereas the upper triads resemble a theory of society. Each triad implies those above and below it. For maximum ethical impact

in any area, the five triads should reinforce each other, so that ultimately conceptions of distributive justice are expressed in the definition of good practices and come alive in activities.

The five triads reflect progressively more significant authorities and compelling ethical conceptions for which individual conformity is demanded and on which ethical progress depends. As with rules and principles, there are a multiplicity of positions. But, unlike principles which are disconnected, positions either appear to be single or, when multiple, reveal some linkage and inter-connection. The degree of order increases as the triads are ascended.

The main properties of the various types of position are laid out in matrix form in Master-Table 23. Before describing each position in detail with examples, the five types are now summarized very briefly. The features covered include: a statement of the function, the social expression and focus for conformity, the effect on freedom, the constituting levels, and the relationship between different positions.

G"-3¹: A **good practice** is required to orient individuals to acting in a way which meets the needs of others in specific contexts. The focus for conformity is the expression of social values, often documented as a code of good practice which precisely defines what constitutes proper behaviour. This could be experienced as reducing freedom, but, because social values are freely held and equated with personal needs and motivations, it expresses freedom. Any good practice is affirmed

Figure 9.3: The triadic grouping forming internalized positions.

Five types of ethical position which must be dogmatically affirmed if individuals are to be socialized.

L"-7 Absolutes				
L"-6 Laws			G"-3 ⁵	
L"-5 Maxims			G"-3 ⁴	← Distributive Justice
L"-4 Rights			G"-3 ³	← Legal Responsibility
L"-3 Tenets			G"-3 ²	← Cultural Ethic
L"-2 Conventions	G"-3 ¹			← Communal Role
L"-1 Prescriptions				← Good Practice

dogmatically using tenets (L"-3). It must be based in prescriptions (L"-1) to be unequivocally respected; and it should be applied through acceptable conventions (L"-2). Good practices tend to be naturally discrete and disconnected because they deal with a wide variety of distinct social needs. But the same needs emerge in different contexts and so practices in these various contexts show logical similarities.

G"-3²: A **communal role** is required to orient individuals to relating to others in a way that expresses and affirms mutual rights and duties. The focus for conformity is social relationships which maintain the social structure. So roles enable the exercise of freedom. A communal role is affirmed dogmatically using rights and duties (L"-4). It must be based in unequivocally respected conventions (L"-2); and it should be applied through acceptable tenets (L"-3). Communal roles are multiple and distinct, and yet they must be connected for the social structure to be sustained.

G"-3³: A **cultural ethic** is required to orient individuals to participating in society in a way that demonstrates virtue. The focus for conformity is a personal outlook, which (in social terms) is a *Zeitgeist* or spirit of the age. This spirit defines the nature of freedom in that society. An ethic is affirmed dogmatically using maxims (L"-5). It must be based in unequivocally respected tenets (L"-3); and it should be applied through acceptable rights and duties (L"-4). A variety of cultural ethics are always in use or on offer. These ethics have diffuse boundaries and are loosely inter-related, sometimes by being opposites.

G"-3⁴: A **legal responsibility** is required to orient individuals to fulfilling their legal obligations to others and to the community as a whole. The focus for conformity is social institutions emerging from laws or other governmental sanction. So this position safeguards the exercise of freedom. Legal responsibility is affirmed dogmatically using laws (L"-6). It must be based in unequivocally respected rights and duties (L"-4); and it should be applied through acceptable maxims (L"-5). Legal responsibilities are more tightly inter-connected and inter-penetrating because they reflect the necessary coherence of laws.

G"-3⁵: A **distributive justice**, often called social justice, is required to orient individuals to supporting the ethical order and tolerating inequalities in the actual order. The focus for conformity is a cultural conception of a fair way to protect and handle social (or collective) goods and bads. Its aim is to enhance the freedom of each and all. Distributive justice is affirmed dogmatically using absolutes (L"-7). It must be based in unequivocally respected maxims (L"-5); and it should

be applied through acceptable laws (L"-6). Distributive justice deals with allocation, competition and adjudication in relation to social (i.e. collective) goods and bads. (It has nothing whatsoever to do with whether individuals follow or break rules of just conduct.) Although there need to be multiple distributive justices appropriate to different forms of social good, a dogmatic absolute leads to a tendency for their unification.

Properties. Each type of position will now be taken in turn and compared in terms of their characteristic properties (*italicized here and subsequently put in italics or bold*). The *function*, *expression*, *triadic constitution*, and the effect of the *multiplicity* of positions will be clarified first with illustrative examples.

People come to affirm positions of each of the five types simply through being members of a society. They become most acutely aware of these positions if they witness the emergence of new institutions and personally experience a mixture of outer and inner pressures for cultural change.

Cultural change (i.e. new ethical rules and ethical authorities) is rarely easy or smooth because it has to use dogmatic assertion to convince people and to overcome community inertia and antagonism. This dogmatism cannot rest on science but emerges from the cultural tradition itself: one aspect of that tradition being used to modify another aspect. Something will be said about how *conformity* is experienced, the relation of the position to *freedom*, and how *progress* occurs through the internalization and institutionalization of new positions.

Sometimes one position is dominant in society, sometimes several competing and possibly conflicting positions run in parallel. The wish to close the debate or force the pace by using the law is common amongst reformers. So the *relation of laws* to the various positions which do not include laws will be examined. Progress depends on *agents of change* who develop and affirm different positions from those accepted and expected in society. Such people are either seen positively as actual or potential culture heroes, or are viewed negatively as damaging agitators to be rejected or severely controlled, or both — think of Joan of Arc burnt at the stake, or Solzhenitsyn reviled and exiled, or George Bernard Shaw rejected and ignored for years.

Finally, a note on the *limitation* of each position in regard to ethical progress will serve as a link to the next higher position.

G"-3¹: Good Practice

Nature. Meeting needs is the essential rationale for community life and a driving force in every individual. Efforts at improvement that do not tap into recognized

needs and established values at some point will not be respected and can never be accepted. So any progress which claims to be ethical must orient people to perform habitual activities in a way which realizes social values. Such practices are naturally described as good.

In normal circumstances, there is a continuing pressure to meet needs in the best and fairest way. This is often experienced as a sense that current practices are already good and do in fact express what is right. But, of course, in all domains there are possibilities and opportunities to do better. In regard to the social order, this means installing rules which are more tuned to people's needs. Any one who thinks like this endeavours to re-orient people by re-defining the rules governing common social practices. Much handling of people is mediated within or via organizations, and so many new guides to practice must be introduced by managers.

Good practice (L"-1/2/3) overlaps both the informal aspects of interpersonal interaction (civility L"-1/2) and need-oriented aspects (social policy L"-2/3). The *function* of a good practice is to orient individuals to acting in a way which meets the needs of others in specific contexts.

A good practice not only prescribes specific activities which are invariably expected in a particular situation, but also provides rules governing the how and why of these activities. Obviously there are a *multiplicity* of good practices related to the wide variety of needs to be met. Most of these have nothing to do with each other. There is a natural relation, however, between different practices meeting the same or similar need in different contexts. Security practices, for example, will vary in banks, hospitals, cinemas, department stores and prisons; but the rules underpinning them will have much in common.

The rules of good practices find their expression in the formulation of a code. Codes of good practice (or 'best practice') inherently seek to control behaviour and might therefore seem to be restrictive. However, if the tenets are internalized, then this seems perfectly proper in relation to others, and unproblematic in regard to oneself. For oneself, adhering to the code is an expression of *freedom*, the freedom which comes from having personal beliefs align with social needs, that is to say from knowing that one's own tenets are shared social values.

A code of good practice must be differentiated from a code of practice. A code of practice lists a set of prescribed actions (L"-1) to be followed precisely irrespective of personal views. Codes of good practice, by contrast, define and promote social values and are part of an attempt to convince people about what is

right. The code of practice is typically produced and ratified by organizations who feel bound by it. The code of good practice is typically produced by a campaigning group or an umbrella organization trying to raise standards. So it must feel good and right to everyone involved. It is usually acknowledged by affected organizations to be an aspiration rather than a compulsion or contracted commitment. A code of good practice may lead to the formulation of a code of practice.

Constitution. Good practices, on close examination, can be seen to consist of tenets (L"-3), conventions (L"-2) and prescriptions (L"-1). They are controlled and driven by tenets which are dogmatically affirmed. Acceptable conventions which support and embody the tenets in particular decision-contexts develop and bolster behavioural prescriptions which determine exactly what is to be done. These prescriptions call for unequivocal respect. Rights (L"-4) and still higher level rules may support or oppose a good practice, but they are not needed to define one.

Keeping Children in Hospital: In the first half of this century, it was believed that separation of children from parents had no ill-effects. The research and theories, principally of John Bowlby, led to the tenet that children are harmed by separation from their home and families. As a consequence, social practices in hospital care have changed radically. In accord with the present tenet, the convention is to avoid in-patient treatment and to shorten admissions wherever possible. Numerous prescriptions are followed by staff if admission is essential: e.g. children must be allowed to bring in their own toys, books and bedding; arrangements must be devised so that parents can stay and sleep on the ward; each child's emotional state should be formally and regularly assessed by nurses; professionals who can assist emotional adaptation in case of distress — play leaders, child psychologists, child psychotherapists, art or music therapists, occupational therapists — should be available. This change in the way children are treated is not just a matter for staff. Parents are also expected to alter the handling of their child in accord with new conventions, including: talking about the admission beforehand, visiting regularly or staying in with the child, and providing special attention afterwards.

Ex. 9.14³³

Good practices are far more significant than prescriptive protocols because they depend on personal engagement. The good practice rules, unlike the protocol, cannot be properly performed unless certain tenets are held by the individual and certain conventions are widely appreciated. This is why their introduction often requires public campaigns, educational events, and persuasion verging on brainwashing (cf. the introduction of normalization to care of the mentally handicapped in Ex. 8.8).

Tenets supporting a practice must be altered before new conventions and prescriptions can develop and be followed. Dissent and disagreement are at their most intense when new tenets are being directly introduced. In relation to children in hospital, Ex 9.14, people's views were modified by the films made by the Robertsons which showed the intense distress and emotional decompensation of young children separated from their parents. Even after tenets change, the alteration of conventions and prescriptions may still be hindered by inertia and practical obstacles. Children are still not treated as they should be in many hospitals even when those responsible verbally support the appropriate tenets.

It is perhaps worth noting that although tenets within a good practice may have a direct link to the output of formal research, those with a scientific bent usually claim that tenets within a position are too extreme. Bowlby's work, for example, has been criticized on this account. The point here is that the type of qualified belief generated by academic research is quite different from the unambiguous tenet required to get ordinary people to alter their behaviour.

Dogmatic affirmation must be kept simple, especially in community schemes. For example, police wish to reduce suburban crime by prescribing a range of activities for neighbours, including: keeping an eye on the street, speaking to loitering strangers, and calling the police if anything suspicious occurs. It is difficult to get people to do this unless these practices can be organized in a scheme (called in the UK a Neighbourhood Watch Scheme) bolstered by explicit tenets about policing (e.g. 'crime prevention is everybody's business'), and building on conventions of neighbourliness.

Once something is established and internalized as part of good practice, it has the advantage of being uncontroversial and straightforward. Without the order and control provided by good practices, people would be endlessly disagreeing or unable to pursue a particular ethical course for reasons of cost or convenience (cf. Ex. 9.15).

Designing Road Crossings: Councils have been concerned with the safety of road-crossings, but existing rules previously led them to take account of able-bodied adults only. Current good practice demands that they take account of children, the deaf, the blind, the elderly, and the physically disabled. So crossings are now beginning to be designed with sounds, ramps, bright markings, visual aids, safety islands and other features. All these practices mean additional expense. Once accepted as routine, such safety practices can be budgeted for without justification being demanded on each occasion by the public or by opposition councillors.

Ex. 9.15

Conformity and Progress. Good practices ground progress in the unavoidable reality of everyday community life and the needs of ordinary people. So they demand the most overt degree of conformity. If the tenets are held, then affirmation of the practice is easy. In many cases, of course, people are not fully aware of the tenets on which they base their attitudes and activities. Because good practices define concrete activities to meet real and recognized needs based on a theory (the tenet), they lend themselves to rational inquiry. For example, children used to be seen as little adults and were treated accordingly. As an understanding about their special needs developed, changes in social practice emerged in many areas including their education, employment and discipline, as well as in health care (cf. Ex. 9.14).

Within any particular guide to practice, prescriptions may be modified to adapt the conventions to changing circumstances and minor changes in understanding. Slow and minor changes in beliefs may be accommodated by alterations in social practices without too much difficulty. But social reform is periodically necessary, and this means the wholesale alteration of certain practices or the introduction of rules governing quite new practices. This can only be accomplished with difficulty. Most of the individuals affected show active or passive resistance to new good practice because they do not understand, accept or believe the new tenets.

Codes of good practice are often developed by external pressure groups. When such a code is adopted by an organization, pressure on staff to alter their beliefs and attitudes increases. Codes of this sort are seen more often in the public sector, (e.g. taxation authorities, welfare bureaucracies) than in businesses where customers can usually reject firms that fail to meet their needs.

The attempt to make people change rapidly is common, but rarely successful. In research on equal opportunities carried out in local government, we found that codes of practice and good practice could be rapidly introduced to support equal opportunities, but that these were blatantly ignored, subtly misinterpreted or skilfully worked around for years.

Good practices take time to develop and a long time to become fully internalized. It is usually possible to avoid going along with new conceptions of good practice even if they are held to be obligatory by recognized authorities. *Using the law* is not a shortcut here. Although laws may be passed to hasten the adoption of certain prescriptions (e.g. regulating the building of road crossings), it is not possible to determine, monitor and enforce new good practices in every context where they might be beneficial. All activity is need-based

activity and there is a real danger of over-regulation. In any case, whether the new rules are indeed good and right is often viewed as matter for debate (cf. Ex.s 9.14 and 9.16).

A Long-standing Practice: The relation between men and women in society is undergoing change. The dominance of men has been embedded in social practices of all sorts and is evident within language, in both its grammatical prescriptions (e.g. the male pronoun should be used to refer to both sexes) and its vocabulary (e.g. many social roles, like spokesman, are given names which seem to suggest that they are to be held by men). Feminists argue that the structure of our language embodies the structure of patriarchal oppression and beliefs about the relation between men and women. Speaking and writing pervade the social fabric and rules governing their practice are difficult to alter. Better practices to replace the current pronoun prescription include using the nondescript plural (as in 'A reader who finds their sensitivities affected...'), and using neologisms like 's/he'. However, as this book illustrates, the new prescriptions have not yet achieved general social acceptability. Consolidation of change in language practices will depend on acceptance of the tenets that women have indeed been and are still being unjustly oppressed and that grammar either contributes to this or might alleviate it. Only then can new and acceptable conventions and prescriptions be created.

Ex. 9.16³⁴

Agents of Change. People who not only take up and promote new tenets, but also articulate the conventions and prescriptions that follow from them are innovators. Frequently criticized, they must defend and argue their beliefs vigorously and work out the rules of new practices in achievable detail. Some years ago anyone who did not allow people to smoke in his home would be regarded as a non-conformist who flouted the rules of good hospitality. As the harm from smoking and passive smoking became progressively recognized, early prohibitors of smoking were recognized as people ahead of their time.

Anyone who does not participate in practices where conformity would be contributory to their own and others' well-being (e.g. in the Neighbourhood Watch Scheme mentioned earlier) may be within their rights but they are considered obstructive and difficult. An individual who seeks to benefit personally from non-conformity is viewed with distaste and dislike. For example, a businessman who regularly alters the terms of a deal just a few minutes before signing, having created an expectation that the deal was acceptable, breaks with conventional business practice. Such sharp practices, even if legal, are built around anti-social tenets and generate hostility.

Limitation. Good practices are focused on social values and meeting needs of others in particular con-

texts. But they give no indication of what claims any individual can make to get their own needs met. Nor do they provide an orientation to duties or to the operation of the social structure. All social life takes place within social relationships defined by that structure, so orientation here is essential for everyone. It can be provided by moving up to the second triad.

G"-3²: Communal Role

Nature. Whatever place a person may occupy in society, some orientation as to what that means is needed. Otherwise a person cannot function effectively and cannot support the community in a coherent and consistent way. This type of position is called by sociologists, the 'social role'.³⁵ I am referring to it here as a communal role to clarify that the position reflects an active interplay between the individual in the role (who must be socialized) and other people in the community (who must permit and informally enforce the role). No matter whether the role is described in terms of age, sex, family, history, occupation, socio-economic status, or ethnic origin, society requires certain personal qualities and modes of behaviour. To become truly a part of society, a person must observe, imitate, learn, engage in trial and error, and accept indoctrination in numerous roles.

There is of course a *multiplicity* of communal roles in any community. Although these are distinct, they reveal connections and must appropriately support each other and demonstrate their common origin in the one society. Roles are, par excellence, the connecting device in a community, because they define and maintain the social structure and determine how any one person may approach another person in an acceptable way.

The *function* of a role is to orient individuals to relating to others in a way that expresses their mutual rights and duties. Knowledge of a selection of roles that someone inhabits — a mother, who is 35 years old, lives and works in Oxford as a dentist, helps local charities, is a tennis player and classical music lover, and regularly votes Labour — tells a great deal about them to another member of society. Similarly, performing any social task, say organising the school fair, would be nearly impossible to do properly if a whole variety of conventions, tenets and rights associated with the role of organizer were not readily available and easily adopted.

Any communal role finds its *expression* in social relationships and activity within those relationships. Description of a particular role never prescribes exact behaviours. Roles set a general direction and rule out

certain actions, but within that boundary behaviour is discretionary. In other words, roles demand conformity to certain patterns of behaviour, but do not specify the behaviour itself, habitual or otherwise.

Fathers and Politicians: To know someone is a father is to know that he ought to discipline his children. But no specification of precisely how, how often or when the child is to be disciplined is defined by the role. Similarly to be a politician means to contest elections, but exactly how campaigns are to be mounted is not specified. In these and other cases, needed specifications are best provided by good practices. Whereas the role of father or politician will be similar across a society, practices may differ greatly in various communities within it. There may be certain specific things expected of a father by moral teachings (e.g. kindness), but these do not define the role. The law may constrain what a politician may do (e.g. in raising funds for a campaign), but again this does not define the role.

Ex. 9.17

Communal roles are the vehicles for the exercise of *freedom* in society. The degree of freedom which can be exercised will, of course, vary with the culture.

Constitution. When the expectations which make up viable communal roles are examined in detail, it is clear that they consist of rights/duties (L"-4) which are dogmatically affirmed, tenets (L"-3) which are regarded in society as acceptable, and conventions (L"-2) which must be unequivocally respected. As illustrated in Ex. 9.17, prescriptions (L"-1) are too restrictive and specific to determine a communal role; while maxims (L"-5) and higher level rules orient performance within a role but are too general to be involved in defining a role.

Communal roles may well flow from one's work. In addition, communal roles are to be found in organizations alongside formal work roles based on performance of activities (cf. G-2³: Ch.10). The communal roles define what is sometimes referred to as the informal system in the organization. Unless there is an awareness of these informal roles, relationships go wrong and work may not get done. Certain non-specifiable roles are particularly significant: especially the champion. Champions assume rights or duties to lead and achieve. They can energize new ideas at work because they genuinely hold the relevant tenets. But they can only achieve through cooperation in accord with organizational conventions. If the organization has rigid bureaucratic structures which neglect the community dimension, essential informal roles are inhibited, conventions prevent cooperation and change is difficult.

Conformity and Progress. Whether we know it or not, we must present ourselves in particular ways,

not wholly of our own choosing, in order to relate to other people. We generally fall in with these roles naturally. Once operative, they feel appropriate and congenial, almost as if we had not only chosen them but created them.³⁶ But a role (like a practice) may seem ethically unsatisfactory when judged from a higher perspective. When this is the case, say a priest engaged in a commercial transaction, the role feels unnatural and uncomfortable. We avoid such roles if at all possible.

As a person's life develops, new roles must be regularly adopted. Their internalization demands active socialization. So, when a new communal role is being adopted, a period of adaptation and habituation is required. We get used to it and allow ourselves to be re-oriented by it. The transitional period during role entry is marked by confusion and uncertainty. Eventually the person learns how to operate the new role in an acceptable way, and then unquestioningly affirms the new rights and fulfils the new duties. Changes in communal roles give an impetus to changes in practices which are not necessarily desirable. The progressive emancipation of women in the US, for example, has been associated with serious female crime, previously almost non-existent, developing a pattern resembling that of the men.

Social progress involves the introduction of new roles or the alteration of existing roles. This occurs through the development of new rights or duties: but these are part of the social structure, one of the essential stabilizing moral institutions of society. So progress depends on communal change as well as personal re-socialization.

A communal role may be more easily introduced or altered in principle than in reality. It may be a considerable time before tenets and conventions come into line with the proposed rights and duties to create a coherent position. Because a change in rights means a change in the structure of society, and because roles are rooted in conventions and cannot be pinned down to prescribed behaviours, communal roles are probably even more stable and stabilizing than good practices. This conservative quality of roles impedes social policy initiatives, especially those driven by ideological principles. Pronouncements wash over most people who continue to relate to each other in the same way as before and doing more or less what they have always done. Although adopting new attitudes and beliefs does not feel altogether natural, the social structure does slowly evolve. New roles emerge or are created and old ones disappear, especially as positions at the higher levels change.

Changing a Role:

1. The role of a teacher changes if teachers are given a new duty to assess children for sexual abuse. The teacher's duty is supported if there are acceptable tenets

e.g. children express themselves truthfully at school during lessons; no-one else outside the family has as good an opportunity to understand the child. If applying tenets of this sort to the problem of child sexual abuse is not accepted, then it is unlikely that the right will be granted. In order to handle sexual abuse of children effectively, conventions need to develop governing the relationship of teachers with parents, with social workers and with doctors. Without unequivocal change here, the new role will not be sustainable. Certain rules of good practice will also emerge of course, but these are part of dealing with the problem and not part of the communal role itself.

2. The role of a policeman changes if a new right to carry guns at all times is assigned. The policeman's right could be supported by the tenet that guns prevent crime and protect the police. Again, if a contrary tenet is generally accepted — that guns encourage more violence and lead to more dead police — then the right will be withheld. Conventions governing the relationship of a policeman to members of the general public, criminals and the court system would alter if guns were issued routinely.

3. The role of a wife changes if she is given the same right to a divorce as a husband. The wife's right to divorce needs to be supported by tenets like: 'women's right to equality with men applies to marriage arrangements'. If, as is the case in many non-European countries, such tenets are not held or other tenets dominate, then the right will be withheld. The right of divorce for women, when followed through to a redefinition of role, leads to changed conventions in respect of such matters as parenting, sexual activity, domestic violence, abortion, crime, and sport.

Ex. 9.18

Laws may affect roles or define duties in a new role e.g. that of an ombudsman or an accounting officer in local government. But laws pay little or no attention to socialization. In practice, the person who fills the legalized role can only do so because of tenets and conventions that make it congenial for him and tolerable to others. In short, the law may provide the potential for a communal role, but no more. Even the rights and duties in the role will extend somewhat beyond the legal definition because the incumbent will feel compelled during the exercise of the role to take popular expectations into account.

Agents of Change. An individual who unilaterally takes up a new or idiosyncratic role, or who alters an existing role dramatically, is unwelcome in society. Such a person is an iconoclast: at best regarded as eccentric or idiosyncratic. An idiosyncratic operator may be an agent of change, breaking existing rules and serving as the harbinger of a new role. In his early career, Rupert Murdoch was regarded as a strange businessman. 'Picking up companies while hopping around the world like a demented kangaroo' was how one colleague described him in a television interview. However, as his financial and organizational success

grew and as the cultural ethic changed to favour enterprise, he came to be viewed not as an iconoclast but as an entrepreneur acting effectively in role.

If the preferred role of a person is viewed negatively, say that of a drug addict or vagrant, then the person is labelled as a deviant. Parsons defined deviance as 'a motivated tendency for an actor to behave in contravention of one or more institutionalised normative patterns', refusing (much like society itself) to distinguish beneficial and harmful deviants.³⁷ Deviance leads to a person being disliked and even ostracised. So deviants often keep together and form their own sub-culture. The law is remarkably unsuccessful in suppressing deviance. Again, deviant roles can over time become viewed as accepted positions as in the case of working wives and homosexual soldiers.

Limitation. Neither good practices nor communal roles give individuals a broad perspective on themselves or on the preservation or development of their cultural authorities. A wider orienting position is needed to help each person appreciate the limits of freedom and authority. Any sustained influence on others or large-scale attempt to reshape society must take such things into account. Such a position helps determine what sorts of roles and practices are required; and it indicates what is generally expected of people. This orientation can be provided by the next higher triad.

G"-3³: Cultural Ethic

Nature. Culture is the value-based unifying force in society emerging in its artefacts, institutions and historical events. At its core, lies a specification of how authority and freedom are to be handled. Cohesion in society depends on people sharing, implicitly in the main, an understanding of the nature of *freedom* and authority. This understanding or outlook governs the way they think of themselves, what virtues they expect to find in others, and how they participate properly in general.

Such a personal outlook is the *expression* of an orienting position known as an ethic. The reader will immediately think of the work ethic or the welfare ethic or Weber's Protestant ethic.³⁸ An ethic is sometimes expressed as an 'ism': e.g. paternalism, Puritanism, voluntarism. A cultural ethic expresses a moral order within society, and is akin to a spirit of the age (or *Zeitgeist*).

It takes years, even decades, to develop an ethic, but then the ethic stamps its nature on the period. The chivalric ethic, for example, is synonymous with the age of chivalry and virtues like courage, fidelity, spirituality and love. The ethic may be personified or epitomized by

a modal personality type: e.g. organisation man, homo psychologicus. Sometimes an ethic is referred to as a mentality: e.g. the 'concentration camp mentality' (see Ex. 6.26). The *function* of any ethic is to orient individuals to participating in society in a way which demonstrates virtue.

Psychological Man and the Therapeutic Ethic: The psychologizers of the human condition, epitomized by Freud, aimed to liberate man from the chains of social control, but unwittingly failed to recognize cultural control. Freud, almost inadvertently, evangelized a new ethic — one which Rieff called the 'therapeutic ethic' and personified as 'psychological man'. Psychological man explores his innermost self. All authority other than his own experiences and feelings is suspect. Culture becomes therapy. Release of feelings rather than their suppression is called for. Self-fulfilment is healing, and work is about personal creativity. Above all, psychological man does not moralize, and does not search for the right moral doctrine.

Ex. 9.19³⁹

Every culture requires that the moral demands upon people are organised into ethics that are intelligible, dependable and socially desirable. Society provides for a *multiplicity* of ethics to exist in an evolving and loose inter-relation with each other e.g. the philanthropic ethic and the voluntarist ethic have aspects in common. Some ethics grow out of others e.g. entrepreneurialism is an offshoot of individualism. Ethics invite the definition of an opposite which then define each other dialectically e.g. authoritarianism and libertarianism present opposed sets of rules for a good society.

Constitution. An ethic permeates the relevant society. It may be coterminous with it or may spread more widely. When an ethic like the therapeutic (Ex. 9.19) is examined, its constituent elements are found to be maxims (L"-5) to be affirmed dogmatically ('do not moralize'; 'help others by developing your inner potential'), rights (L"-4) to be applied in an acceptable way ('each person has a right/duty to follow his or her own intuitions') and tenets (L"-3) which must be unequivocally respected ('self-fulfilment is healing'; 'work is about personal growth'). Although the ethic is eventually expressed in terms of new or changed communal roles and codes of good practice, lower level rules are irrelevant to its definition. Higher level rules and positions are purely contextual.

The ethic of individualism, as captured so elegantly by Locke, is built on a tenet that 'men are by nature free, equal and independent', the right that 'one should not be subjected to the political power of another without his own consent', and the maxim that 'no one ought to harm another in his life, health, liberty or possessions'. This ethic has become progressively endorsed

and internalized within many societies in the centuries since it was propounded. It is relatively easy for Western readers to affirm and respect the ethic. The main factor affecting the speed of its influence has been the communal acceptance of the rights within it.

Entrepreneurialism or Intrapreneurialism: A recent text for businessmen endorses the entrepreneurial ethic and inspirationally revises it in the context of recent social and technological changes. The authors claim that: success depends more on people than on money; that work should be fun and should be related to other parts of one's life; that self-management should be the norm because people want to commit themselves and shoulder responsibility; that managers should be coaches and mentors not authoritarian bosses; that success depends on the vision of individuals. The entrepreneurial mentality involves: self-direction and self-discipline, self-nurturing and self-belief, an action orientation, emotional mental and physical stamina, and risk-taking. (Remember that this is not a description of a person! It is a mixture of maxims (virtues), rights and tenets which govern the required outlook.) Because most people work in companies and the ethic should apply to them too, the authors invented the notion of intrapreneurship by which they mean application of the ethic within organisations.

Ex. 9.20⁴⁰

Conformity and Progress. Conformity reaches its deepest expression here because the dogmatic affirmation of maxims, that most virtuous of rules, taken together with strict respect for tenets, that most passionate of rules, demands and creates an intense identification. An ethic sinks so deeply into the self as to become identified with it. Without conscious recognition, there is no meaning in saying that an ethic is held. This expression of the ethic within personal identity means that, on the one hand, it is deeply resistant to change and that, on the other hand, it drives all progress.

The nature of an ethic reveals that personal change must precede communal or societal change. In the cases of psychological man (Ex. 9.19) and entrepreneurialism (Ex. 9.20), the emergence of the new ethic demanded personal change as the vehicle of social progress. The identity dimension of an ethic spreads to society and becomes expressed in the notion that it is the spirit of the age. As a consequence, the ethic lends itself to use by individuals to alter the culture of their society through altering other individuals — an escalating process, once it gets going.

Holders of a particular ethic find no difficulty in rejecting a new competing ethic. However, they may not be able to stop the emergence of new ideas in society and cannot prevent uncommitted individuals from embracing the new ethic once it gets a foothold. The picture that emerges is that of a battle between the

‘old guard’ and the ‘young Turks’. Progress here is measured in generations, as the saying goes: while there’s death there’s hope.

A new ethic emerges in an unplanned way as the result of a variety of economic, political and other social forces. The ethic of individualism developed with the Renaissance in the 15th and 16th centuries, and slowly supplanted medieval ethical legalism in which life and society were governed by obligations placed on people by God. The new ethic led to profound changes in every aspect of society, changes which are still being worked out at different rates in different societies. Table 9.2 illustrates how in the area of doctor-patient relationships, individualism has evolved into an ethic of self-sufficiency in the USA, whereas paternalism persists in the UK.

The change in an ethic may be slow and subtle. The ethic of Puritanism in England began in the early years of the reign of Elizabeth I and was central to the civil war in which Cromwell’s puritan forces were the victors. The puritan age ended with the restoration of the Stuarts in 1660, but not before English puritans settled the New World. The ethic of Puritanism developed its own distinctive qualities in America before being replaced as the culture evolved.

Changing The Work Ethic: With the emergence of psychological man in the 20th century, there have been alterations in many notions of work taken for granted by the 19th century work ethic. The older ethic, sometimes called Victorian or Protestant, was characterised by maxims fostering thrift, industry, order and honesty. These are still valid, but they are not given the same weight now as maxims of leadership, courage, and effectiveness.

(The entrepreneurial ethic reflects a modernizing of the work ethic in line with these new maxims.) Rights included the right to work and the right to organise people into organisations. These still exist but the right not to work and the right to work parttime are now prevalent. The core duty in the work ethic of service to God and society is replaced by the core duty to develop oneself and so support the firm and society. Tenets in the work ethic which focused on God and the importance of virtue have been affected by modern tenets that money determines social status and personal worth. **Ex. 9.21**

Laws may bolster an existing ethic or promote a new ethic, but an ethic is not defined by them. A new ethic can develop in direct contradiction to existing laws, because it is focused on the dogmatic assertion of a new, and supposedly more enlightened, maxim. For example, the introduction of capitalism via laws covering banking, property, contract, and employment followed the unification of East and West Germany. But laws alone do not and cannot inculcate an individualist-entrepreneurial ethic characterized by initiative, self-assertion, and self-responsibility.

Agents of Change. An ethic naturally lends itself to personification. Those who develop and transmit the ethic become the cultural elite. The therapeutic ethic is personified in Freud, Adler and others, and transmitted by professional psychoanalysts and psychotherapists. The entrepreneurial ethic is personified in people like Henry Ford and John Rockefeller, and transmitted by recognizably successful businessmen like John Harvey-Jones, Lee Iacocca and Rupert Murdoch. The scientific ethic is personified by Galileo, Copernicus and Newton and transmitted by scientists the world over.

Table 9.2: Differences between societies. The law may establish what a patient’s rights are and what a doctor’s legal obligations should be, but the ethic remains important in orienting doctors in their professional work with patients so that the law feels right to them. Note that holders of each ethic recognize values defined in the other, but manage to subsume them without altering their position.

Triad Structure	Ethic of Self-sufficiency (USA)	Paternalist Ethic (UK)
<i>L⁵-5: Maxims</i>	People should be responsible independent agents. Professionals should foster these virtues in their clients.	Patients should respect professional judgement. Professionals should consider the best interests of their clients.
<i>L⁴-4: Rights</i>	Patients have rights to all the information on themselves and their condition. Doctors have a duty to inform them.	Patients have rights to inquire into their condition. Doctors have a duty to modify or withhold information to protect them.
<i>L³-3: Tenets</i>	Patients are responsible adults and do not need doctors to protect them from the truth.	People are vulnerable and need to be protected. Many cannot understand or accept their illness and its treatment.

The culture hero often commences as an outsider. To be an outsider is to refuse to live by the rules of the prevailing ethic, but still to insist on participating in society. Society is both fascinated by the outsider and suspicious of the new outlook. Because an ethic is based in maxims and tenets it has a virtuous, dynamic and even inspirational quality which is attractive and yet dangerous. The outsider operates in society in parallel to the existing ethic. Others may gather around the hero or embrace the ethic after the hero's death, and slowly the new ethic may gain ground.

A person whose outlook is based on alien maxims and incorporates unacceptable rights is unlikely to find soul-mates or followers who will adopt the tenets. The role is no longer that of an outsider but an outcast. An outcast tends to go into exile or withdraws from social life.

Limitation. An ethic is slowly assimilated by people until it becomes taken for granted in society and defines its culture. To this point, no type of position has involved legal enforcement. Although each type of position seeks to orient people, none can ensure that each person contributes in a fair way. To meet such a need, a higher type of position which involves laws must be considered.

G³-3⁴: Legal Responsibility

Nature. Laws have the particular function of defining what rules are to be officially enforced within society for the common good. But neither laws nor law enforcement can be taken for granted, because adherence to laws depends on an ethical position in which respecting and keeping the law is an accepted maxim.

Each individual wants other individuals to keep the law, and must recognize that this depends on (customary) duties to keep the law and ensure the law is kept by others. Temporarily ignoring a law or its breach for personal gain or convenience is usually less harmful in regard to that particular act than in regard to the message about law-keeping it sends to oneself and others.

The *function* of legal responsibility is to orient individuals to fulfilling their legal obligations to others and to the community as a whole. These legal obligations, unlike earlier types of position, are fully societal in nature in the sense that each applies forcefully to all. Keeping the law, irrespective of immediate personal gain or loss may be described as the individual's minimal or most basic responsibility to society. Paradoxically, each person's exercise of *freedom* depends on the communal trust and peaceful coexistence that is consequent on everyone internalizing legal responsibility.

Legal responsibility finds its *expression* as institutions formally sanctioned by government: including laws, official regulations and regulatory authorities. The *multiplicity* of legal responsibilities tend to be strongly inter-connected because they stem from the necessary formalism and coherence of laws and legislation.

Constitution. Legal responsibilities are related to the duties which were discussed in association with rights (Ch. 8). The minimum duties in any society were then noted to be tolerance of others in exercising their established rights, and positively avoiding violation of established rights of others. Other basic rights included the duty to obey the law, and the right to assume others will do so likewise. So the constitution of legal responsibilities involves laws (L⁶-6) which are dogmatically affirmed, and rights and duties (L⁴-4) that are unequivocally respected. In addition, the acceptable application of legal responsibility depends on maxims (L⁵-5). Tenets and lower level rules are not directly implicated in the specification of legal responsibility; and absolutes are too abstract to be useful.

Legal responsibility converts laws and legislation into living social institutions.⁴¹ For example, laws which prohibit discrimination against women at work depend on the wide acceptance of a maxim 'to treat women fairly'. So, in business, people have an unequivocal duty to accord women rights to being appointed and promoted on their merits — whatever people may believe or customarily do. The maxim puts social pressure and virtue into the law. When the maxim is not applicable — in this case, say, in relation to heavy manual labour, or not acceptable, say in ancient British universities — then people do not affirm the legal responsibility.

Distinguishing Social Responsibility. Social responsibility is a far wider notion than legal responsibility. Social responsibility is probably best used to refer to a crucial property of human social existence (cf. L^{VI}: Ch. 7). Social existence is defined by responsible participation in society. In other words, any member of society does and should *feel* responsible for much more than is enforced by law. People have many deep responsibilities — to God and nature, to one's fellow man, to relatives, to one's associations and country, and so on.

Social responsibility has relatively recently come to be used in another way, as the name for an ethic which can act as a countervailing orientation to individualism or libertarianism. A better term for this ethic might be humanitarian, philanthropic, voluntarist or communitarian. By contrast, some promoters of the ethic of social responsibility seem to dislike laws and have an unrequitable romantic longing for a society based on

altruism in which income tax could be voluntary and rule enforcement unnecessary.

When a commercial firm breaks the law (e.g. by illegally polluting the rivers because the fines are trivial and the benefits great), those in charge know it is not respecting its legal responsibility. The same firm may give to charity and support communities where it operates, and say it does so on the basis of its social responsibility. This has nothing to do with the legal responsibility of the firm as an individual in society. The criminal drug barons in Columbia also won much popular support through providing financial aid to local communities. It would be less confusing to say that community support and similar public relations activities are in accord with a philanthropic ethic. What needs emphasis is that no amount of philanthropy (a choice by the firm which lacks formal communal accountability) can substitute for fulfilling legal responsibilities.

Conformity and Progress. Legal responsibilities define those rights and duties which are currently mandatory in society. Any social reform eventually involves the use of laws because only through laws can a position be formally institutionalized. In this position, internalization within society complements internalization within the person. Conformity here is at its most self-conscious: active steps are necessary to become aware of what one's legal responsibilities are. Any complex society which aspires to be just operates by the rule of law, and the state pursues infractions using force if necessary. However, this is not equivalent to enforcing progress. Laws should only be passed if they are likely to be adhered to. It is more accurate to say that legal responsibilities consolidate the progress generated via the evolution and assimilation of an ethic into the culture.

Any significant progress alters the rights and duties of individuals, changes which inherently generate disputes and disagreements. Where laws and (customary) rights do not hang together well because the maxims are broadly unacceptable, then laws do little. Not only do the hoped-for improvements not materialize, but the importance of legal responsibility is weakened and the legal system itself is brought into disrepute. The laws may not be bad, they may just be ahead of their time. To look at laws apart from the legal responsibilities which they create is equivalent to ignoring what the community expects and is prepared to tolerate.

Competitive Tendering: Laws were introduced in the 1980's to promote the contracting out of public sector services to the private sector in the UK. These laws altered the rights of firms and the duties of public sector employees. The widely accepted maxims behind the laws emphasized the search for efficiency and economy.

However, in the early stages, private enterprise was undeveloped in some parts of the country. New firms there were inexperienced and counted on re-employing ex-public sector workers at lower levels of pay and benefits. To award contracts in these circumstances would have breached maxims. So both local government politicians and apolitical public sector managers become ambivalent about their legal responsibility. They either delayed competitive tendering or arranged for few contracts to be won by the private sector.

Ex. 9.22

Use of the Law. Over-hasty use of the law is not wise. The law is the official expression of the common good, so legal responsibility, in effect, orients each person and organization to put the common good before self-interest. Long ago Aquinas stated that the common good is better than the good of one person. Montesquieu, too, concluded that democracy demanded that people be virtuous and place public interest above private interest. Herbert Spencer concluded that democratic law-making was the highest form of government, but added somewhat pessimistically that "because of this it requires the highest type of human nature — a type nowhere at present existing". Putting the common good before our own unique good is what we do whenever we self-consciously follow the law. It is not quite so difficult as these philosophers make it sound.⁴²

Hostage-taking: Kidnapping and holding hostages is illegal. Whenever a government has to deal with terrorists who use hostages to gain concessions, they must weigh up what is in the interest of the kidnapped individual against the common interest. Laws demand that a government should uphold the law and pursue those who break laws. Acceding to the terrorists' demands would encourage further hostage-taking and contravene the generally accepted maxim that rewarding crime is harmful. Above all, terrorists do not have assigned rights to act as they do. In dogmatically refusing to give in to demands, the government is acting in accord with its legal responsibility. Relatives of the hostages naturally find such an analysis painful and depressing. Governments may ignore their responsibility on pragmatic or ethical grounds, but they usually try to keep such illegal deals secret.

Ex. 9.23

Where authoritarian or totalitarian governments are in power, legal responsibility is likely to be poorly internalized. Laws then do not aim at justice but at pursuing the goals of the leadership. Such laws are not passed with consent, so their hold over the populace is weakened. In brutal regimes, many laws do not accord with accepted maxims, so the rights and duties which are demanded are not willingly accorded. In the absence of legal responsibility, the only recourse of such governments is to emphasize the duty of obedience and back this with ruthless monitoring, enforcement, punishment and terror.

Organizations have powers to restrict certain freedoms possible and necessary in a community, as long as the law is not breached. The equivalent of legal responsibility inside an organization is the responsibility to observe its (private) regulations. In principle, a governing body can make obedience mandatory no matter how disagreeable the regulation, but in practice it is unwise to attempt to over-ride maxims accepted by staff and in the wider community.

Agents of Change. In modern democratic society, the government knows that its laws must have the broad consent of the people. So legal responsibility can operate relatively unhindered. Resistance to an existing or new law may be based on a conviction that the law is unjust, which is to say that the maxims on which it depends are not acceptable in the community. Any single person can responsibly reach this conclusion, because all are equal when it comes to assessing social values. In this case, the individual is called a conscientious objector. Conscientious objection is not a matter of personal gain but of asserting a social point of view, and the conscientious objector is seen as campaigning for a change in the law (and sometimes a change in policy too). American conscientious objectors to the draft, for example, played a role in ending the Vietnam war. Similarly, a recent flat rate UK tax known as the community charge was withdrawn following the proliferation of conscientious objectors.

If the law is not obeyed for purely personal reasons — to avoid loss or to ensure gain — the person is an outlaw. Not to act in accord with one's legal responsibilities is to allow others to look after the common good. Most people who evade taxes, for example, still avail themselves of all that is provided by those moneys: from the defence of the realm to cleaner streets. Taking without giving is to be a free-rider. Society's response to free-riding is to increase penalties and to spend more on enforcement. This represents a waste of public resource and does not undo the harm to the communal spirit caused by free-riding.

Limitation. Legal responsibility orients people to follow laws. On its own, it fails to orient individuals to devise laws which deservedly command obedience and respect. Without this orientation, people become confused about what laws are trying to do. All types of position so far considered take for granted that society is oriented to justice. Children are taught to accept the main positions in their society and to obey rather than question the law. But if legal responsibility and other positions are to be unquestioningly accepted, then it must be because of a different and higher perspective — a perspective which enhances freedom and promises

people a fair share of social goods. This takes us to the final and potentially most contentious position which explicitly embodies and affirms a conception of fairness: distributive justice.

G"-3⁵: Distributive Justice

Nature. Each individual is concerned to act freely and to suffer as little restraint or coercion as possible. Each is also deeply concerned about whether the actual condition in which they find themselves is intrinsically fair. So socialization into what is right in these regards is essential.

Freedom in society rests on the possibility of possessing or accessing goods, especially land, which can be used largely as the person wishes.⁴³ Without the opportunity to acquire and keep assets, there is unlikely to be that minimum protection from arbitrary interference by others which is required for communal life to be tolerable (cf. L"-IV: Ch. 7). But certain goods are of particular significance to society because they are social or collective in nature. These include the resources which define society (e.g. its territory, opportunities to act), or which are part of communal living (e.g. amenities like sewers, protection against epidemics), or which cannot easily be owned or used by one individual without affecting others (e.g. parking on public roads, disposing waste into the atmosphere).

What counts as a social or collective good and how collective goods like (say) clean air or free schooling or health care or rivers (or collective bads like pollution or conscription or taxation) are shared out is naturally a pre-occupation of everyone. Arrangements are required which are widely believed to be fair. Individuals only accept their situation and support their society willingly if they accept that the rules used for dealing with social goods and bads are just.

Whenever these collective goods are allocated, or competed for, or wherever adjudications affect the distribution of goods, fairness is felt to be essential. The position which orients people to the proper handling of social goods and bads is distributive justice — often called social justice. Distributive justice has its subdivisions: allocative justice deals with direct provision of a resource; competitive justice deals with regulating markets which produce and deal in resource; and adjudicative justice deals with the workings of courts and tribunals e.g. for compensation claims.

Distributive justice reflects the most enlightened conception of resource-linked fairness that is available in a particular society. Its *expression* is as a cultural conception of a fair way to protect and handle collective goods. Fair shares in the use of common resources or

socially-created goods aim to enhance the *freedom* of each and all. Whatever rules are chosen, however, individual differences will emerge in the actual distribution of intangible goods and tangible assets. So the *function* of distributive justice is to orient individuals towards supporting the ethical order and tolerating inevitable inequalities in the actual order.

Like rules, principles and other positions, distributive justice is not about producing a particular end result. Nor does it imply active re-distribution of wealth. People may view the principles for handling any particular social good as fair or unfair — or they may wait till they see the end result before expressing their view. Philosophers preach the former stance, ordinary people tend to adopt the latter. Because of the contention that invariably emerges — even if only the disadvantaged protest — arrangements demanded by distributive justice require government legislation and enforcement.

Considerations of distributive justice are unavoidable when common resources become scarce. Whenever a valuable but limited resource is freely available, it will be destroyed if social processes are left to run unhindered. The incentive for each to use the communal resource, slowly but surely destroying it, is irresistible — this is the tragedy of the commons.⁴⁴ Overgrazing land and desertification, over-fishing the seas, polluting the rivers, fouling the air, overcrowded streets, destruction of rain-forests, over-population, tourist devastation of beauty spots — in all cases the individual's benefit from using the resource is great. Should anyone voluntarily refrain out of concern for the common good, then someone else will take advantage of the resource. In the end, all race to plunder the resource before it is utterly consumed or destroyed — and hasten that day. Because this would be a social tragedy, people take recourse in legal regulation — despite the suffering caused to particular individuals and even though no form of regulation is perfectly just or un-animously agreed.

The tragedy of the commons not only compels people to choose between regulatory approaches like rationing, queuing, pricing, and official control, but also evokes the need for a conception of distributive justice to orient the application of these methods.

Although equality is a preoccupation and guiding beacon in regard to the determination of distributive justice, it should be obvious that no criterion or approach could ever produce an absolutely equal result or indeed any other predetermined outcome. If that were really desired, continuous Stalinist-type control of society would be necessary and freedom would largely disappear. So distributive justice is not equivalent to a

concrete plan for distribution. Much of what is claimed in the name of social justice is actually unjust and anti-social because it is not based in maxims and aimed at the common good, but derives from the power that a class (or special interest) has to press its claims successfully.

It should be immediately evident that clumsy efforts in handling distributive justice may limit freedom, and may disturb the proper workings of a market or judicial system.⁴⁵ Markets are a social good, because they are usable by all. So legal protection of markets (e.g. prevention of private and public monopolies, laws enforcing contracts) is actually part of distributive justice. Intervention in markets, by contrast, is rarely beneficial to all. The pressure group which benefits (the farmers, a business sector, a trade union &c) is rarely concerned with justice, even if it claims, sometimes with cultural support, that serving its interest is equivalent to serving the common good.

Note that a spontaneously emerging market which deals so well with individual goods is the inverse of the spontaneous use of the commons which is the reservoir of collective goods. The spontaneous market order produces obvious temporary harm to certain individuals, but leads to indiscriminate and diffuse benefits to all in the long run. Spontaneous use of resource in the commons produces obvious temporary benefits to certain individuals, but leads to indiscriminate diffuse harm to all in the long run. Regulation is difficult and spontaneity easy, so a pragmatic approach to justice and freedom requires markets to be created and commons to be prevented wherever possible. Where markets are natural, they need preserving; and where commons are unavoidable, they need protection.

Constitution. The definition of distributive justice depends on the top three levels of rule. Distributive justice springs from an absolute (L"-7) which is affirmed dogmatically. The currently prevalent use of 'equality of treatment' as an absolute is natural because all members of a community are inherently equal as members. Of course, any community is characterized in its actuality — possessions, status, opportunity, knowledge, health, skills &c — by inequalities between individuals. These inequalities vary over time according to circumstances, personal effort, luck and (in modern times) governmental intervention. This is the nature of communal life (cf. Master-Table 3: Ch. 5).

If any absolute, even 'to treat all equally', is to be usable, it has to be grounded in maxims (L"-5) which support the functioning of society and which can and will be unequivocally respected. The position must then become embedded and used in society via laws (L"-6) which are widely accepted. Such laws are usually

designed by legislators, rather than developed by judges, because they are about managing resources and developing agencies to oversee their handling (cf. Ex. 9.24).

Distributive justice gets converted into legal responsibilities and influences lower level rules, but rights, tenets, conventions and prescriptions are not required to define it.

Establishment of the Welfare State: The establishment of the welfare state in the UK after World War II represented a cultural development of great magnitude. It was driven by a desire for distributive justice in relation to the welfare of the mass of the population. Fairness was rooted in the absolute of equality. On the basis of maxims like 'care for those in need', 'support the unemployed', 'treat the sick', 'relieve poverty', an enormous variety of laws were passed. These laws were clearly generally acceptable to society because they were supported over decades by both political parties. These laws provided social security, redistributed income, and created welfare organisations of all sorts. The welfare state also forwarded a socialist ideology of government provision, state ownership of key industries and efforts at concrete equality — things which contributed to the country's economic decline. **Ex. 9.24**

The crucial issue is how the absolute of equality can be converted into practical maxims. Should criteria of need, merit, or desert be used? Should justice be based on the conception advocated by Rawls: choose the maximin (or minimax) option with the 'most favourable/worst possible' outcome or (to express it more simply) improve the position of the least well off? Should it be a purely procedural matter as suggested by Nozick: entitling people to what they have acquired fairly i.e. by inheritance and earning mainly? Should it aim to minimize envy — in which case, a person is unfairly disadvantaged if he prefers to have what another person has? Or does this pander to an anti-social passion? Should justice do no more than protect against severe deprivation via an assured minimum or safety net as argued by Hayek?⁴⁶

There are always a number of imperfect possibilities for realizing distributive justice (cf. Ex. 9.25). Nevertheless, considerable effort seems to have gone into determining a single correct conception of distributive justice. Such searching for *the* form of distributive justice suggests the existence of only one rather than a multiplicity of positions. The use of distributive justice to generate a fair apportionment of social goods (and bads) in one domain is naturally used as an argument for the same in another domain. But even if one version is dominant in society, and even if the trend towards unification is strong, (stemming as it does from the absolute), distributive justice for free schooling, say, is unlikely to be precisely the same as distributive justice

for ensuring military service, for minimizing pollution, or for improving the health of the population. Different positions in each of these areas may compete for dominance according to which maxims are favoured.

Distributive Justice in Health Care: Several bases for distributive justice have been suggested to govern distribution of resources to promote health in society. (1) Nozick's entitlement. Strictly applied, this would mean that inherited illness is a disadvantage requiring no social compensation, and it would prohibit government spending to aid the uneducated to use health services. This position leads to a distribution that is highly unfavourable to the poor, the sick and the unfortunate. (2) Equality. This might be construed in several ways: as equality of welfare — ensuring people are equally well treated or equally healthy; or as equality of resource use — ensuring people receive equal amounts of resources to support their health; or as equality of basic capabilities — ensuring that health care leads to people being equally able to use and benefit from health care services. All types produce different results and all are problematic because health itself is non-distributable and the relation between resources devoted to health care and health outcomes is complex and uncertain. (3) Hayek's decent minimum, also known as the safety-net approach. By making only the minimum acceptable standard of care generally available, private health care is fostered for those who can afford more than minimum. In practice, what constitutes a minimum is likely to be decided by the availability of finance. (4) Rawlsian maximin i.e. improve the position of the least well off. This conception ignores the consequences of the individual's own decisions in worsening their health. Those who spend on their health are likely to have to support those who do not. **Ex. 9.25**

Economists struggle with the notion of justice. Those who seek the greatest good for the greatest number or want to maximize the benefit to the community as a whole on a case by case basis are in effect denying that distributive justice is an issue. By emphasizing community needs or empirical outcomes, they deny the importance of general rules to orient individuals in deciding what to do for themselves, and they assign zero value to what any one person is due in a just society.⁴⁷ Some argue that the controversy about whether any intervention accords with distributive justice is a reason for allowing unfettered market operation. But markets are a collective good and they can be regulated more or less fairly. So decisions about distributive justice cannot be simply circumvented by the use of markets.

Conformity and Progress. Conformity with regard to any distributive justice position is either a deeply buried cultural assumption widely taken for granted or the most problematic position of all. Once the issue of distributive justice is opened up, dispute and debate rage. The sensitive nature of distributive justice

lies in its embodiment of expectation and hope in the face of communal forces and resources. The most difficult periods for a society are those transitions when no clear position on distributive justice has been established. Maxims, it will be recalled, serve to maintain consensus on the proper functioning of a society, so alterations in distributive justice lead to a sense of social breakdown or collapse.

Czechoslovakia: The upheavals in Eastern Europe reflect the collapse of an ethical order. The whole political system, a basic common good, needed rethinking. The presence of Vaclav Havel as the President in Czechoslovakia has meant that there has been a clear articulation of what distributive justice in the realm of government is about. According to Havel, the absolutes are the need to defend the truth, and the freedom for its expression. In support of these, he calls for a new constitution for the state which is acceptable to the people. The biggest task in the realization of this conception is to find new maxims which will serve as strict rules for social life in the future. He suggests: each man should be responsible for the conduct of society, government should rule by consent, and honourable conduct should be the norm. **Ex. 9.26**⁴⁸

The linkage of distributive justice with lower level positions in a particular domain generates an internally enforced system which holds sway in society. Altering distributive justice is therefore the target of many social reformers. Although the anticipated long-run improvement in freedom and fairness may be great, reforming proposals face the problem that the immediate result for some in society may be undesirable. As in health care (Ex. 9.25), different incompatible accounts of distributive justice can usually be developed — and none results in a perfect outcome. As emphasized earlier, seeking a perfect or utopian outcome curtails freedom greatly and may produce severe experiences of unfairness.

Serious complaints about distributive justice (excluding misunderstandings of its limitations) generally reflect a lack of respect for one or more of the three relevant primal authorities. The loss of any spiritual or religious drive in society and neglect of its ethical teaching allows excessive materialism and a self-interested focus on rights which interferes with the sense of duty and tolerance of suffering on which distributive justice depends. If government is corrupt or dictatorial, then the law and the ethical teaching tend to be ignored and distributive justice remains undeveloped.

If a distributive justice position cannot be dogmatically affirmed in society, there is likely to be considerable disruption. Pressure to ignore or avoid legal responsibilities will grow. An anti-social ethic is likely to develop. Roles like that of the black marketeer develop, and corrupt practices flourish. The government deceives its people, other states, and itself. Soviet

society and the communist states in Eastern Europe were characterised by distributive injustices in a variety of areas, and showed all these characteristics in pronounced form.

If the relevant maxims are disputed, then there may be irreconcilable conflicts about what constitutes distributive justice. For example, if essential maxims like ‘to foster independence and initiative’ and ‘to protect the weak’ are articulated polemically, then it could be difficult to reach a consensus on what constitutes fair income security arrangements.

Agents of Change. The radical is the person who challenges the status quo as fundamentally as possible. The way to do this in society is to introduce a new absolute and challenge the distributive justice positions in many or all parts of society. Most people view radicals and their ideas as a source of danger. As George Bernard Shaw found, reformers have difficulty getting their ideas published. Of course, what is radical in one society may well be orthodoxy in another. So the danger has little to do with the content of the ideas, and much to do with the existing positions in society and the upheaval that introducing any new form of distributive justice entails.

Radical ideas in a new distributive justice position must stand the test of time so that people may become progressively won over. This may take a long time. Mahatma Gandhi’s view half-a-century ago that the caste system in India was profoundly unjust has not led to the social reforms he envisaged. Recent attempts to move in that direction by giving more lower caste Indians places in the civil service have led to riots.

In progressive societies, radicals tend to be contained within academic institutions and are allowed to express their views (to each other mainly). In repressive societies, radicals are censored and persecuted wherever they are.

Dissidents and revolutionaries usually include radicals and others who call for immediate change in society. They regard the promotion of new conceptions as insufficient and feel only a limited obligation to the existing pattern of society. Because of society’s perceived gross injustice, they feel free to attack it indirectly or directly. Unlike outlaws, dissidents typically refuse to recognize the validity of the courts which try them.

Limitation. Any position on distributive justice must come to terms with the inherent injustice in any social structure, in any spontaneously evolving order, and indeed in life itself. As Ecclesiastes observed: “the race is not to the swift, nor the battle to the strong,

neither yet bread to the wise, nor yet riches to men of understanding, nor yet favour to men of skill — but time and chance happeneth to them all”.⁴⁹ Failure to bear reality means that the normal run of disappointments, accidents and chance events are treated as unfair and deserving of collective handouts and government intervention.

The consequences of such an attitude are serious but take time to emerge. People slowly become discouraged from tolerating suffering and cease striving to improve their own lot. They fail to recognize their own contribution to problems confronting them. They are rewarded for dependency and encouraged to feel entitled to being bailed out of difficulties. The resultant subsidies and intervention will itself become a collective good subject to the tragedy of the commons and to the distorting power of special interest groups. The end result must be a diminution of freedom, a disruption of mutual adaptation and adjustment, inefficient markets, progressive economic impoverishment, corrupt elites and an increasingly coercive government.

Closure. Distributive justice positions encapsulate the most powerful means of orienting or re-orienting individuals and through them the community mainstream and societal institutions. There is no more influential way to engage a person in society than through a focus on enhancing freedom, affirming equality, and ensuring access to resources. So there are no further triads to consider. The positions are now intuitively and logically complete.

REVIEWING THE POSITIONS

We have now considered the various types of internalizable ethical positions: distributive justices, legal responsibilities, cultural ethics, communal roles and good practices.

Unlike ethical principles which were oriented to community maintenance and are largely in the hands of those in or close to government, the positions are a matter for each individual and may be used by any of them on their community.

Positions provide the pressure and backing for the operation of rules and principles. In a well-ordered society, we may assume that the functioning of a government is an expression of the ethical positions of its citizens. When governments are authoritarian or oppressive, there is a tendency for more liberal outsiders to view this as against the wishes of the people — but, in the long run at least, people probably do get the government they desire and expect. Freedom, with its uncertainty and openness, is frightening.

When society is stable, ethical positions may be taken for granted and their scrutiny left to thinkers and academics. But when an established order is challenged, positions are proclaimed and examined, challenged and defended.

Practical Implications. From the numerous examples, it is clear that no one person ever sets or establishes a position. Nor are positions simply created and available to be adopted as a matter of rational decision or by government fiat. The positions emerge and evolve in the interplay of argument and action generated by a multitude of forces and agencies constantly at work in society: unattached free thinkers, politicians and journalists, as well as members of campaigning groups, universities, trade unions, churches and other bodies generate a multitude of conflicting possibilities.

It is in the nature of positions that their satisfactory definition could never be determined by a government or judiciary acting independently no matter how just and benevolent its members might be. Nor could a needed position ever be determined from religious or philosophical writings, however wise and inspired. In other words, it is no longer possible to design or establish a particular official authority to handle a position. Responsibility for positions must be assigned to everyone. This is the basis of both individual freedom and social conformity. Socialization by positions is directed to oneself as much as to other individuals; and by using the positions each person can affect wider society and its institutions. For this ethical authority, equality is the safeguard and open debate is the method.

Ethical positions are where freedom, justice, conformity and official authority have to meet and find a compromise that recognizes them all. The lowest two positions, good practices and communal roles, are most evident to individuals because they must be deliberately and personally used and lived. The highest two positions, legal responsibilities and distributive justice, seem more distant and communal in nature and most individuals experience them as a poorly understood context within which they function. The cultural ethic seems to be a pivotal and dynamic type of position which lends itself to use by individuals to thrive in society and to alter other individuals and other positions.

Because accommodation to authority seems to demand so much conformity from people, it is worth reviewing here the implications of the various types of position for individual freedom. Good practices express freedom because they are not operative unless people are won over. Communal roles are the vehicle for peo-

ple to exercise what freedom the culture, laws and other social institutions allow. The cultural ethic defines the nature and importance of freedom in social life. Legal responsibility seeks to protect the exercise of freedom and to enforce the culturally accepted view of freedom. Distributive justice seeks to enhance the freedom of each and all by ensuring that social goods are not destroyed or unfairly monopolized.

People hold positions dogmatically and, being socialized into them, they cannot readily give them up even if they want to. If progress is desired, public debate and widespread instruction, persuasion and exhortation is essential. So the main practical implication of positions is that they require people to explore their own ethical orientations and the operation of their society. It follows that the evolution and replacement of positions depends heavily on freedom of association and freedom of expression and communication. Publication and distribution of pamphlets, books, periodicals and newspapers must be open to all. Meetings, lectures and discussion groups must be allowed to proceed unimpeded. Without such things, awareness of existing positions and debate about alternatives is difficult if not impossible. This developing awareness is not to be reduced to politics. It defines the process of cultural evolution and modulation of ethical authority — within which politics is but one dimension.

Precisely here lies the intensity of feeling about freedom of the press. The press is not merely about keeping a democratic society free, a task it shares with the judiciary, the legislature, the government executive and the citizenry in general. It is about enabling society to discover and define itself, something which government is less concerned about. In a society aiming to maximize individual freedom and to progress to greater enlightenment — which is surely the fullest meaning of the phrase ‘a free society’ — press freedom is particularly important. The media inform, aid and shape public debate and must track new positions so as to foster or to resist them. Newspapers and television news generally contain far more opinion than facts, and all newsworthy facts are naturally reported from the perspective of particular ethical positions. A healthy and responsible media helps people know what their positions are, and ensures they are aware of existing and emerging positions.

A press that engages in libel, that suppresses important information, or that prints lies bolsters the case for press controls. Paradoxically, irresponsibility of this sort appears to be more of a problem in those countries with heavy press censorship. It is a truism that present-day governments find themselves at loggerheads with the press and critical of investigative television. Those

in government come to believe (mistakenly) that their role is to decide and implement what is good for society: an executive or organizational conception with only very limited validity or likelihood of success. Whereas their deeper role is to be guided by the citizenry and to protect and foster the freedoms which enable a society to be as good as the individuals within it can be: a viable custodial conception.⁵⁰

Ethical Progress. Each position at one level influences the positions at the other levels. Together positions in the five groups interlock as a conservative force keeping society unchanged in the face of pressures to alter. Should ethical progress be desired in some particular dimension, then positions need to alter at all levels. This can take decades.

Fundamental change in the institutions of society is justified by conceptions of distributive justice and driven by cultural forces. Such change is consolidated by legal responsibility which ensures enforcement. Both of these positions depend on the emergence of a new cultural ethic which can serve as the personal source of power for the cultural forces behind change. Roles stabilize any change and reflect changes in community life. Finally, good practices, which depend on rational inquiry, can ground ethical change in specific activities. Campaigners for improvement who neglect any of the various positions find themselves blocked (cf. Ex. 9.27).

Citizen Advocacy: Advocacy has emerged recently as a way to aid people who are stigmatized and marginalized unfairly and who lack the ability to stand up for themselves. Distributive justice often allows for discrimination against many people who have learning difficulties, are mentally ill, or are old and infirm. This is evident from laws which do not take account of the way that such problems prevent people from living as full and equal citizens. Those with learning difficulties, for example, cannot argue their case in everyday situations and so do not receive their rights. As a new distributive justice position has developed, laws have been passed to ensure that disabled people will be represented in some way. In the UK, the Disabled Persons (Services, Consultation and Representation) Act (1986) has created legal responsibilities for public agencies providing services, and also for people who take on the role of advocate. Few advocates will come forward, however, until an advocacy ethic is established. Advocacy is a complex process, but its essence is a one-to-one partnership between a mature lay person and a disadvantaged person. It involves befriending and providing practical assistance. The cultural ethic which supports advocacy is voluntarist, communalist and rights-oriented. For advocacy to be realized, communal role changes are required including a new civic role of the lay advocate, new professional roles to organize advocacy schemes, and changes to the roles of others with whom the disadvan-

tagged person must interact. Disabled persons and their parents must also be socialized into new roles. Finally, new good practices for handling those with disability must be instituted in a wide variety of contexts if their needs are to be met.

Ex. 9.27⁵¹

The introduction of citizen or lay advocacy illustrates the interlocking of the different positions (Ex. 9.27). From the complete system of five triads, as shown in Figure 9.3, it is clear that tenets, rights and maxims are central to any ethical reform because these three rule types simultaneously affect three positions each. This pattern also re-emphasizes the core authority of the cultural ethic. Establishing a new ethic is pivotal for social reformers because it stimulates alterations in higher level positions to consolidate and justify reform, and it generates new roles and practices necessary for its fulfilment.

Tenets have the most force for ordinary people. They can be dogmatically affirmed to support new good practices, be applied acceptably within new communal roles, and be unequivocally respected in support of the new cultural ethic. In the advocacy example, those leading the introduction of advocacy passionately affirm a variety of tenets about which people are unfairly stigmatized and how they should be helped; those in the new roles must accept and use these tenets if they are to function appropriately; and those engaged in new social practices must explain them in terms of the tenets which are taken to be unarguable. Rights and maxims in the ethic have greater force for those who are or feel responsible for society, because these inter-link with the definition of legal responsibilities and distributive justice.

When the various sorts of positions are not supportive of each other, then conflict results. For example, if the prevalent cultural ethic runs counter to legal responsibility, then illegal activity is widespread. Equal opportunities legislation, for instance, has not been complied with for many years, even in law firms.

People in Glass Houses: The distributive justice of equal opportunities aligns with legal responsibility in the UK. However, lower level positions often conflict. A large firm of management consultants and accountants (who have

probably advised many firms about compliance with equal opportunities legislation and human resource development) recently lost a court case brought by a female employee who had been passed over for partnership. Out of several hundred partners in the firm, only a handful were women. In this case, the business ethic ran counter to the legal responsibility. For example, tenets like 'women cannot take the pressures', or 'women become too tied to their home and family', or 'women lack the toughness to clinch business deals' are probably prevalent amongst the partners. Similarly, roles and practices in the business world are based in conventions and prescriptions about how and where work is done and deals are struck which often implicitly or explicitly exclude women.

Ex. 9.28

Transition. Positions tend to be developed within associations of people inclined towards them. They are debated and discussed in public fora in order to orient people in a way that is believed to be ethical. But whether or not that position (or any other position) truly constitutes progress towards enlightenment is not yet determinable. The best that can be sought is consistency between the positions. The next two groupings (i.e. types of authority) provide a basis for ethically appraising positions and their effects: the first on an individual and assertive basis and the second on a communal and definitive basis.

Genuine conformity with a position, as opposed to playing speculatively with ideas or expediently and temporarily adapting to external expectations, must be deeply consolidated within a person, organization or institution. In other words, positions seek to become part of social identities. But identity is not so readily adapted or altered. As we established earlier, the protection of an existing identity is an ethical imperative.

So conformity is first of all appraised in terms of individual identity rather than the other way around. Existing social entities with an identity — like actual communities, individual people, organizations, official authorities, and sovereign societies — must make an identity-based self-conscious appraisal of existing or new positions and ethical aspects of their conduct. This can be ensured by a more complex authority consisting of four adjacent levels of rule.

**Master-
Table 23**

Properties of the five types of internalized position in society.

Ethical positions, which are needed to socialize individuals, are triadic authorities formed by conjoining three adjacent types of rule. Positions express and reflect culture and enable ethical change. Note that both freedom and conformity are essential and valued in all societies. Ethical change is viewed as progress towards enlightenment by those advocating it. See text for details and explanation.

Triad No. (Levels)	Type of Position	Function	Expression	Nature of Multiplicity	Ethical Change	Relation to Freedom	Conformity For (or Against)	Change Agents (Devalued)
1 (L's 1-3)	Good practice	To orient individuals to acting in a way which meets the needs of others in specific contexts.	Codes of good practice which define, promote and concretize social values.	Disconnected, with areas of connection.	Depends on rational inquiry, and grounds all ethical change.	Expresses freedom.	Overt and easy (or resisted)	Innovator (Non-conformist)
2 (L's 2-4)	Communal role	To orient individuals to relating to others in a way that affirms mutual rights and duties.	Social relationships which maintain the social structure.	Distinct and connected.	Depends on communal change, and stabilizes ethical change.	Enables the exercise of freedom.	Feels natural (or unnatural)	Iconoclast (Deviant)
3 (L's 3-5)	Cultural ethic	To orient individuals to participating in society in a way that demonstrates virtue.	Personal outlooks or spirit of the age.	Overlapping or dialectically inter-connected.	Depends on personal change, and drives all ethical change.	Defines the nature of freedom.	Leads to personal identification (or deep rejection)	Outsider (Outcast)
4 (L's 4-6)	Legal responsibility	To orient individuals to fulfilling their legal obligations to others and to the community.	Social institutions emerging from laws and government sanction.	Strongly inter-connected.	Depends on legal enforcement, and consolidates ethical change.	Protects the exercise of freedom.	Self-conscious (or imposed from without)	Conscientious objector (Outlaw)
5 (L's 5-7)	Distributive justice	To orient individuals to supporting the ethical order and tolerating actual inequalities.	A cultural conception of a fair way to deal with collective goods and bads.	Tends to unification.	Depends on cultural forces, and justifies ethical change.	Enhances freedom of each and all.	Assumed automatically (or profoundly problematic)	Radical (Dissident)

G"-4: MINIMUM STANDARDS

Nature. Social conduct and social arrangements are everywhere appraised in ethical terms in order to promote conformity to what is viewed as right and fair. The first and freest form of appraisal is that performed by oneself upon oneself using one's own rules as criteria. Ethical criteria which we recognize as our own ethical authorities are called our ethical **standards**.

Such standards form an authoritative backdrop for all that we do. They are values and obligations which express our identity. We automatically use standards to appraise the rightness of any conduct or arrangement because they ensure we conform to our own expectations. Ethical standards may be used reflexively to assess the rules, principles and positions previously described: especially positions, because the pressure for identification and conformity so characteristic of positions can challenge, even threaten, identity.

Rules need to be *unequivocally respected* in order to demonstrate recognition of authority. Principles need to be *acceptably applied* as well if the community is to be maintained. Positions need to be unequivocally respected, acceptably applied, and *dogmatically affirmed* to socialize individuals. Standards clearly need these three qualities together with the fourth quality of being *deliberately adopted* and owned. Without this fourth quality, standards would not be a self-conscious expression of (social) identity and could not be an authority protecting that identity.

This additional requirement of deliberate adoption and ownership is made possible by including a fourth hierarchical level to create a tetradic grouping. So a standard, like identity itself, encompasses and incorporates internalized positions. Grouping the seven levels in fours generates four over-lapping tetrads, as represented diagrammatically in Figure 9.4.

People mean different things by the term 'standards'. The word may be used to indicate: a conventional norm (L"-2), a set of social controls or bureaucratic rules (cf. the regulatory codes in G"-1), a principle (G"-2), an unattainable ideal (G-3⁵), and a desirable and achievable level of quality (L-2). The essential qualifier in regard to self-defined ethical appraisal is the definition of a minimum. So we may say that the *function* of any standard is to ensure that conformity can be sustained above an authoritative self-chosen minimum.

The importance of focusing on a minimum cannot be over-emphasized. The reason is as follows. The application of ethical standards in society always highlights differences: for example between different areas of functioning (like health or education), between differ-

ent bodies or groups within society (like businesses or social classes), and between different communities within or across societies. Once differences emerge, pressures for consistency, constancy and congruence tend to develop; and then an urge develops to abolish differences because they seem unfair. The result is a potential for the unthinking pursuit of uniformity — which is nothing less than the destruction of distinct identities. However worthy, we must restrain the urge to improve society wherever the quality of functioning seems less than perfect. The nature of averages and statistical variation means that all cannot be brought up to the standard of the best whatever is done. More seriously, this mentality places no value on diversity and raises the spectre of domineering and intrusive over-control. Given that society is built on the responsible exercise of freedom, such a state of affairs is hardly desirable. The way out of this difficulty is to recognize that ethical standards always need to refer to a minimum expectation. Even so, variation in this minimum remains an issue.

In our field research within organizations and government and in reviews of the literature, we routinely find that the significance of identity is poorly appreciated. The idea that attention should be paid to the minimum or that standards should define a minimum is often contentious. As a result, raising standards, which everybody wants, becomes a confusing business. Raising standards sometimes means bringing actual performance up to a minimum and so implies that present performance is scandalous and corrective action is urgent. Sometimes raising standards means raising the minimum itself — which is always desirable but may be rather difficult given that it is equivalent to an identity change. The point is that conformity to a self-chosen minimum is a restriction on freedom which feels natural and essential. By contrast, conformity to an imposed minimum feels alien, unreal, impossible and even undesirable.

If raising standards in an area means no more than raising the quality of something which is already well above the minimum, then this is a matter of setting strategic objectives (L-2). Once standards are above the minimum, the judgement is no longer one of ethical appraisal in the present sense, but a proposal for assigning greater priority (L-3 value). In such cases, valid arguments for improving quality in other areas instead can be readily produced.

Hospital Waiting Lists: In the UK recently, NHS managers were told by politicians that the state of hospital waiting lists was intolerable. Millions of pounds were allocated to remove the problem. However, managers had difficulty in appreciating what was required because waiting lists

Figure 9.4: The tetradic grouping forming minimum standards.

Four types of ethical standard which must be deliberately adopted if social identity is to be protected.

L"-7 Absolutes					
L"-6 Laws			G"-4 ⁴		
L"-5 Maxims					
L"-4 Rights	G"-4 ¹	G"-4 ²			← Universal Standards
L"-3 Tenets					← Societal Standards
L"-2 Conventions				← Individual Standards	
L"-1 Prescriptions				← Communal Standards	

were the method of rationing. Reducing a waiting list encourages more referrals in the same way that a drop in price encourages more sales. Close scrutiny revealed that there were two separate management requirements: 1) Stopping politically-embarrassing breaches of minimum communal standards like people waiting years for treatment, or having their admission for surgery cancelled very many times. Such injustices are recognized by all and immediate rapid improvement is desirable and possible, especially with extra money. 2) Improving the quality of waiting list management by introducing list validation, appointment systems, better scheduling, effective bed management, etc. These changes are new and challenging strategic objectives which compete with others for priority and do not respond so easily to injections of finance. **Ex. 9.29**

Being self-chosen, minimum and identity-defining, the violation of standards is experienced as shattering and inexcusable. Others view breaches as intolerable, disgraceful or scandalous. The resulting moral outrage and indignation activate the inner urge to conform. It follows that attempts to prevent exposure and scandal are common. Where scandalous conduct is known to exist, or where it is long-standing and does not generate shame, it is necessary to assume that the minimum standard is lower than that being claimed.

An identity is a whole. So only a single breach of the minimum tarnishes the reputation of a social body. This is why it is often said that a society should be judged by how it treats its most disadvantaged and vulnerable members. Similarly, no matter how great a person's achievements, a single abuse of trust is devastating. The

conviction and imprisonment of a successful entrepreneur, say, for engaging in illegal share-support operations brands him forever, despite a lifetime of hard work, support for good causes and generous charitable donations.

Types. Minimum standards are developed and defined through a logically organised arrangement of rules at each of four adjacent levels. The different groupings refer to different types of standard as follows: G"-4¹ — social or group or *communal standards*; G"-4² — personal or organizational or *individual standards*; G"-4³ — system, institutional, legal or *societal standards*; G"-4⁴ — common or *universal standards*. The organized quality and self-consciousness inherent in a standard lead some authors to refer to it as a morality.⁵²

All standards provide authoritative baselines below which a social identity is being violated, and so all generate strong urges for conformity. This conformity protects social life in its various manifestations. The four tetrads reveal four ethical authorities which are expressions of social being: the identity of a community (defined by its interacting members), of an individual (developed intuitively by each person and explicitly by constituted organizations), of a society (defined by its formal institutions and laws), and of humanity (as aspired to by existing sovereign societies). It is evident that, ascending the tetrads, there is a progressively more profound conception of what is involved in social identity.

Analysis of the internal structure of the tetrads reveals that in each case rules at the fourth and highest level ensure that the standard is *deliberately adopted* and owned. This makes conformity natural. Rules at the third level enable the standard to be *dogmatically affirmed*. This makes conformity credible. Rules at the second level ensure that *application* of the standard is *acceptable*. This makes conformity socially possible. Rules at the lowest level, the most concrete expression of the standard, ensure it is *unequivocally respected*. This makes conformity an observable reality.

Before providing a detailed account of each standard with examples, the four types will be listed and described in terms of their function, the focus of conformity and appraisal, their inner structure, the standard-setting authority, and their link to the law. The main properties of the ethical standards are summarized in Master-Table 24.

G"-4¹: Communal standards are required to protect a community's evolving and undefined identity. The focus for conformity is on activity in public. Communal standards are deliberately adopted to accord with rights and duties (L"-4) customary within the community. They are dogmatically affirmed in accord with tenets (L"-3), acceptably applied through conventions (L"-2), and unequivocally respected in the form of behavioural prescriptions (L"-1). The standard-setting authority is any particular community within society. So communal standards are variable and independent of the law. If communal standards permit violation of the law, law enforcement may be difficult or impossible.

G"-4²: Individual standards are required to protect the individual's self-defined identity. The focus for conformity is on functioning internal to the individual. The standard-setting authority is the individual: a person or an organization. Individual standards are deliberately adopted to accord with maxims (L"-5). They are dogmatically affirmed through the exercise of customary rights and duties (L"-4), acceptably applied via tenets (L"-3), and unequivocally respected in the form of conventions (L"-2). Individual standards are also independent of the law. A notable feature of individual standards is that they may easily be more enlightened than the law. If they are not, enforcement of the law on individuals is relatively straightforward.

G"-4³: Societal standards are required to protect an officially enacted identity. The focus for conformity is on formally enacted institutions within a sovereign society. The standard-setting authority is the government of society via its main organs: legislature, judiciary, executive. Societal standards are deliberately

adopted to accord with laws (L"-6). They are dogmatically affirmed in accord with maxims (L"-5), acceptably applied through customary rights and duties (L"-4), and unequivocally respected via tenets (L"-3). Societal standards are typically embodied in laws and, even where they are not, the judicial system may be used to appraise conformity with them.

G"-4⁴: Universal standards are required to protect an internationally agreed conception of human identity in society. All societies must be able to identify with this conception if it is to be objectively universal. So the standard-setting authority is a multi-national governmental body, like the United Nations and its commissions. The focus for conformity is on individual rights and duties towards the community. Universal standards will only be deliberately adopted if they accord with absolutes (L"-7). To be dogmatically affirmed, they are expressed as laws (L"-6). Maxims (L"-5) should ensure that they are applied acceptably. Finally, they require unequivocal respect to be accorded to certain rights and duties (L"-4) so that they become customary. It is expected that agreed universal standards should produce changes in existing laws of sovereign societies.

Properties. Standards assume the capability to be ethical in the sense of self-consciously owning rules rather than simply respecting or following them. Internalized positions generated conformity based on quasi-automatic expectations of oneself and others. They were taken up via socialization and not necessarily fully and deliberately owned. Standards, by contrast, are used to strive positively to ensure that rules are part of the self — the public self, the private self, the law-abiding self, or the universal self. So the focus shifts again: from enabling freedom back to enabling restraint.

In examining the four types of minimum standard in detail, I will explore their *function* in relation to a social identity, and clarify in each case the *focus for conformity* and appraisal. I will explain their *composition* by rules and consider the implications of *variations* in standards. Each has a *standard-setting authority* which develops and modifies the standard. Once standards are set, there must be mechanisms or bodies engaged in *monitoring* conformity to the standard. The monitor must be appropriately empowered and freely able to use the standards. Should the monitor find a breach of standards, then immediate remedial action is expected. Because there may be a dispute about whether the standard has actually been breached or not, some form of *judging* or arbitration is potentially required. Finally the *limitation* inherent in each type of standard is noted as a way of moving to the next higher type.

G⁴-4¹: Communal standards

Nature. Communal standards are to be found, naturally enough, within groups and communities of all sizes helping to control the public activities of their members. Conformity with communal expectations is essential if member interactions are to be comfortable and smooth. The *standard-setting authority* is the community itself: which may comprise all in society, or be only a limited part like a neighbourhood or town, or a group of people forced together, say in an organization or on a holiday tour.

Being a member of an informal or temporary group is the simplest and most basic expression of social existence. The standards requiring conformity develop informally within any group in order to protect the self-respect and self-image of people as equal members of that group. However the group is not organized enough to define its own nature formally. The *function* of a communal standard, we may say, is to protect an evolving and undefined community identity.

The community's members may find themselves in a variety of settings: at work, at a parents-and-teachers association meeting, in a football crowd, at a political rally, shopping in a centre or dining in a restaurant. Within all these settings the person is engaging in public activity and the individual's identity must be submerged within the group to some degree. Being a part of the group is more fundamental than expressing individuality within it (cf. duality in social being, L¹-VI: Ch. 7). When a person feels defined by the group, communal standards become apparent. The *focus for conformity* is the activity released or permitted in the presence of other group members.

Writers like LeBon, Tarde and Fournial wrote at the turn of the century about the populace as 'the masses' which were to be feared and needed to be tamed. They used animal metaphors, like the herd instinct, which emphasized the reduction of individual responsibility and the upsurge of impulsiveness and irrationality in crowds.⁵³ In so far as there is a group mind (as they thought), then it operates in terms of the communal standard. For example, when a political rally or a football crowd breaks up into looting and brawling many people find themselves constrained to act in ways which are foreign to their usual selves. Police in such settings, acting on behalf of the community, often accept behaviour which would be regarded as intolerable and illegal if it occurred elsewhere.

Irrational and violent crowds lead us to think of the communal standard as set below the individual's standard. However, a communal standard may operate above the standard of certain individuals and can pre-

vent odd or disruptive behaviour. For example, depending largely on teacher and parental attitudes, bullying in school playgrounds may either be accepted or rejected by children. The efficacy of group therapy also depends heavily on the pressures of communal standards fostered by the therapist and aimed at overcoming idiosyncratically destructive or bizarre behaviours of each patient.⁵⁴

Composition and Variation. Although minimum standards on many matters may be independent of the law and pay scant regard for maxims, they do depend on customary rights. Rights (L¹-4) enable people to choose their communal standards deliberately and to stand by these standards. For example, people operate with and apply hygiene and safety standards independently of any laws. People running a school fete would be unaware of most legal requirements for hygiene and safety. Hygiene standards in such cases are based on an informal sense of a duty to do things in a way that most people think of as clean and healthy. Safety standards are similarly based on the informal duty to be careful. Such standards (unlike legal requirements) are typically not written down, and what is and what is not above the minimum varies over time because communal tenets (L¹-3) vary with moods and fashions. A scare about beef or eggs (despite lack of any evidence or official health warnings or laws about the food) may mean that nothing containing these ingredients can be served while the scare is at its height.

Because communal standards are not written down and evolve or alter with beliefs, it usually becomes evident that they have been breached only after the event, possibly after a scandal has broken. Recently, in response to criticism of kitchen hygiene, a hospital catering officer told the press that cockroaches boiled in soup were not a health hazard. He was surprised at the furore that broke out. But community tenets, not scientific facts, are what counts, and these lead to the dogmatic response that cockroach soup is beyond the pale — however germ-free. Conventions (L¹-2) held by the community render the standards acceptable. Meeting the standards depends ultimately on strictly following certain prescriptions (L¹-1): in the hygiene example, washing hands, eating off clean plates and so on.

Hospital Vampires: In a large hospital, a visiting dignitary was disturbed by pictures of vampires. These were sited at the entrance to the pathology laboratory where blood was regularly taken from patients for tests. He felt that the patients' right to sensitive handling was being infringed, and asserted that such black humour was not acceptable. Note that no law or hospital regulation had been broken, no patient had complained, and no manager had previously remarked on the pictures. No governor or board,

prior to this event, could have been expected to foresee the need to prohibit such pictures. The hospital manager had the offending pictures removed immediately.

Ex. 9.30

Tenets and conventions can vary greatly within a society according to the particular community, so there may be a wide variation in communal standards within any complex society. Territorially-based communities find that their standards emerge in local government politics which, in democracies at least, cannot help but express a sense of the community identity.

Cooperating with the Police: In some parts of London (UK), non-cooperation with police is a communal standard. This is possible because citizens can accord themselves the right not to cooperate positively with police. Members of these communities strongly believe that the police offer them persecution rather than protection. It is often the norm to steal and take prohibited drugs; and such conventions mean that non-cooperation is socially acceptable. Activities like running a neighbourhood watch scheme would be anathema, while other activities like lying to the police to protect a friend or relative would be unequivocally demanded. In such communities, the local council supports monitoring of the police. In other local communities, by contrast, positive cooperation is the standard. Existing conventions support policing, and beliefs exist which inspire confidence in the police. Not joining in a neighbourhood watch scheme or misinforming the police would be regarded as failing in one's social duty. In both cases, the standards enable conformity within the local community and are congruent with a variety of standards in other areas of the social life of that community.

Ex. 9.31

If communal divisions within a territory exist along ethnic, class, linguistic or religious lines, then there is a communal identity problem and clarity about communal standards may be unachievable. The political process which depends on this root identity cannot easily be harnessed in such situations. Rights or duties which are not enjoined by law may be disputed. Discrepant tenets may generate blasts and counter-blasts of dogmatism. Conflicting conventions make application of any single standard unacceptable. Inevitably, prescriptions for activity in public will differ, and the perception of a breakdown in morality is all too likely. The conflict will be reflected within representative bodies like local government, and whatever prevails will tend to be determined, somewhat tyrannically, by the stronger faction.

Keeping Above the Minimum. It seems that communal standards are the most difficult to ascertain and manage. As described above, they evolve informally and are recognized and *monitored* by those with a feel for communal expectations. Reporters are closely in touch

with communal standards and use the press, radio and television to announce and denounce activities of individuals and associations within the community which do not conform. Any member of the community may attempt to exert control over another member by appeal to standards. People may complain informally or admonish another directly. They may criticize in public via a letter to a newspaper, a phone call to a radio station, or a comment at an open meeting. There is usually a reluctance to single out individuals by name, and a preference to refer to 'undesirable elements' or 'certain people' who are not behaving properly. But, in some situations, falling below the communal standard can lead to expulsion or ostracism.

To change the communal standard is more difficult. Concerned citizens need to organise themselves into a pressure group. If the issue is genuinely a communal concern, then willing workers and donated funds are easily obtained and many can participate. Through such voluntary effort, a community can apply pressure and alter itself. Where the deviant individual is a firm, then the community, individual people or other firms, can go further and exert considerable pressure, as long as they operate within the law (cf. Ex. 9.32).

Boycotts: Many companies in the USA are feeling the effects of consumer boycotts which are based on the application of communal standards of morality. Even if companies are operating perfectly legally, it is within the rights of individuals and pressure groups to expose certain facts and encourage people to boycott companies. PETA (People for the Ethical Treatment of Animals) advertises details of companies that experiment on animals, and has been picking off companies one by one: first Avon, then Revlon, then L'Oreal gave way. The scandal of dolphins dying in nets set to catch tuna led to pressure being brought to bear on Star-Kist, Chicken of the Sea, and Bumble Bee (brands which accounted for 70% of sales) and subsequently only 'dolphin-safe' tuna was sold. Friends of Animals used a shaming approach to shoppers by plastering New York with posters saying 'Get a feel for fur. Slam your fingers in a car door.' The fur industry reeled. The Council on Economic Priorities not only gives Corporate Conscience Awards, but also 'dishonourable mentions' — doing so at a dinner organised for 400 business leaders in a top hotel.

Ex. 9.32

Limitation. Communal standards suffice to determine a minimum for public activity, and can foster conformity in regard to externally observable behaviour. But what looks good on the surface may not actually be good. So checks and controls on activities are not equivalent to checks and controls on the spirit imbuing that activity. Also, we observe in everyday life and business practice, that the communal standard ('what everybody does') is too often not just unenlightened but downright damaging. Lofty aspirations are regarded

as an internal, private or domestic matter for each person or organization. To deal with such inner functioning, it is necessary to invoke a higher type of minimum.

G⁴-4²: Individual Standards

Nature. Anything which is private to a person or to an organisation must be appraised by reference to a minimum standard which is more sophisticated than that used by a community. Individual standards must lock into a chosen social identity of a particular individual. A person's self-respect and the respect received from others is determined largely by the minimum standards to which he is determined to operate in the various aspects of his life whether or not others notice. The *focus for conformity*, therefore, is the individual's internal functioning. The *function* of individual standards is to protect the self-defined identity of the individual. The standard expresses the individual's core self-images and ensures maintenance of self-respect and pride.

However much we may be admired for our particular strengths and achievements, we always assess ourselves in terms of the whole of our life and self. Weaknesses and faults that we ourselves tolerate (and may try to hide or refuse to recognize) determine who we are and we conform to them as much as to our strengths. Note that the conscience alone, the primal authority for tenets, is essential but insufficient. In choosing and using a standard, a person takes into account other primal authorities — especially the community mainstream. So the *standard-setting authority* is each individual as a whole — individual again referring to a person or an organization.

Little is said about the self-respect of organisations, but consider being the managing director or Chairman of the Board in the following examples taken from actual situations. Yours is a tobacco firm: should it follow its competitors and sell cheap high tar cancer-producing cigarettes to third world countries where people smoke to kill their hunger? Yours is a pharmaceutical firm: should it follow its competitors and export drugs banned after testing in some countries to other countries where there are no tests and no ban? Yours is a holding company: should it carry losses of one of its machine tool firms so as to bankrupt its main competitors? Yours is a publishing firm: should it follow its competitors and actively exploit its authors? Your is a public service agency: should it act like other similar public service agencies and manage its overspend by delaying payments to creditors? In all these cases, your organization may well choose to act in a harmful way (like similar organizations) and you may be socially and legally entitled to do so — in other words, minimum

communal and minimal societal standards are not being violated. The issue here is determining the minimum standard which should be upheld by the organization itself, independent of laws or what everyone else does.

This individual standard helps to control inner functioning which is beyond the reach of informal or formal social controls. It is concerned with elements of the self about which the individual is the unique and sole monitor and arbiter. In a person, standards may, for example, be used to control thoughts and feelings judged ethically undesirable. Within an organisation, they may control a myriad of activities which are invisible to outsiders. For instance, few if any consumers can ever know that the manufacture of a new product involves polluting the environment or exploiting certain groups of staff.

Composition and Variation. The standard springs from a maxim (L⁵-5) which is deliberately chosen. The standard is dogmatically affirmed in terms of the individual's rights and duties (L⁴-4), and is acceptably applied in accord with tenets (L³-3) held by the individual. The standard is realized by unequivocal respect for certain conventions (L²-2). The different use of the various rules is illustrated in Ex. 9.33.

The Thrift Collapse: Banking was deregulated in the US in the early 1980s, while at the same time the Federal Government provided guarantees for depositors. In other words, if banks thrived they kept the gains, and if they failed the government (i.e. the tax-payer) suffered, not their depositors or themselves. Given the business maxim 'to pursue profit and avoid risk' and the rights conferred by deregulation, managers in hundreds of thrifts (savings and loans organisations) starting making unsound investments, which eventually led to a debt of over \$150 billion. The standards that led to these losses depended on widely accepted business tenets that making lots of money is what it is all about, and that the consequences for society of individual actions are somebody else's problem. Business conventions demanded that advantage should be taken of the government. Relatively few thrifts were run fraudulently: it is estimated that only 10-20% of the irrecoverable debt was dishonestly or illegally produced.

Ex. 9.33

Individual standards may lead to action either in support of communal standards or in opposition to them. Children in playgrounds may be torn between whether to join in with mayhem which they are aware is unacceptable to their parents and teachers and even to themselves, or to remonstrate and refuse to participate, and so risk taunting or even ostracism from their playmates. Variation is natural in the case of individual standards and this may produce distress and conflict. Tenets make the standard generally acceptable and simultaneously allow the individual to assert that

society is wrong.

West Indian Discipline: In the late 1960's, West Indian families in London came into conflict with teachers and social workers because of the adoption of different standards of discipline for children. Parents brought up in the Caribbean believed that physical punishment was the right way to discipline children and help them grow up to be good citizens. Like all parents, they expected teachers to support their socializing efforts. By contrast, English professionals affirmed opposing tenets like 'hitting children is wrong' and 'physical punishment causes adolescent rebellion'. The conventional way to discipline was through deprivation of social contact. Professionals dogmatically affirmed duties which were alien to the troubled families, like: be consistent, explain rules, adapt to the child.

Ex. 9.34

Individual standards are developed both informally and formally. An organisation, for example, may explicitly make ethical policy statements which set out minimum standards to govern relations with clients or suppliers, while its chief executive may simultaneously hold and foster certain related values and attitudes without formally enacting them.

There is an unavoidable and necessary variation in individual standards. People differ in the tenets they hold (cf. Ex. 9.34), and so do organizations. Such differences express and enable individuality within the community and are a basis for associations and alliances. The reverse process also occurs: the closer that people or organizations are linked, the more do they exert ethical pressure on each other and, over time, gravitate to functioning with similar minimum standards.

Keeping Above the Minimum. Conformity here barely feels like control, more like being ourselves. With organizations, it may be more difficult to create that feeling as distinct from the communal standard. The persistent maintenance of high individual standards is recognized as integrity. We may repudiate any other type of standard, but repudiation of our own self-chosen minimum is an act of self-betrayal. Individual standards protect against either excessively high or excessively low standards set by the community or in law. Even if a person bows to communal pressures, their own standards may be preserved because individual standards are expressed by an attitude (conventions) rather than by behaviours (prescriptions).

Although many personal standards emerge from a quasi-automatic disposition, self-conscious explication and ownership is needed. For standards to be used in daily living, activities must be *monitored* by a process of self-reflection, self-review and self-criticism. Comments and criticism from others may stimulate and assist that process, but each person must, in the end, be

their own *judge*.

In firms, the board of directors is the judging body which is obliged to consider the organisation as a whole and to review its values and activities within the wider social context. The governing body supported by the top executive needs to monitor minimum standards in all areas of operation. In determining and enforcing their own standards, firms are invariably preoccupied by communal standards both in the sense of what the public will tolerate and as defined by the visible activities of other similar organizations. How attentive any firm (or person) is to legal responsibilities and societal standards will itself be a manifestation of its individual standard.

Communities of firms within a particular industry (tourism, construction &c.) and occupational groups (surveying, plumbing &c.) are preoccupied with their members' individual standards. Members of such communities freely comment on each other's practices or policies if they fall below a minimum. The industry involved may set up its own independent (non-statutory) regulatory authority which can propose and apply standards to particular cases (e.g. the UK's Advertising Standards Authority). However, the offending individual or firm or association may disagree with the standard or with the judgement being made, and there is no possibility of more formal arbitration as long as the law is not breached. Such self-regulatory authorities mostly deliver a reprimand. When membership applies, penalties or expulsion of the member may occur. The member may choose to resign to avoid such action and then little can be done.

Limitation. Individual standards provide the potential for a higher minimum than communal standards due to their basis in maxims rather than in customary rights and duties. But individuals are not compelled in any way to adjust their own standards. Nor need these standards be oriented to society's well-being or to its cultural traditions. However new formal institutions — laws, policies, commissions and so on — must be so designed. Whenever a new enactment is proposed, it is necessary to see whether it conforms with related existing societal institutions. To ensure that this is the case, it is necessary to recognize a higher type of standard.

G"-4³: Societal Standards

Nature. Beyond whatever a particular individual believes or a local community finds acceptable is the issue of what society as a whole has a right to expect of all within it. This general approach to minimum standards — the defined standards of a society — is

expressed in enacted institutions and is forcibly upheld by special bodies. Established formal institutions, in effect, express standards, conformity to which feels essential. Anyone who is identified with a society must accept the application of such standards by those in positions of authority. The *function* of the societal standard, therefore, is to protect an officially enacted identity.

In a particular society, should we expect to find: the mentally ill locked away or wandering unattended in the streets? women ending unwanted pregnancies? safe house-building? attempts to rehabilitate offenders? easy access to government officials? care for elderly infirm people? thriving arts in local communities? fair financial markets? recognition of individual differences? citizens informed about government activities? incentives for philanthropy? The answers to these and similar questions are to be found by examining laws, statutory bodies, regulatory instruments, and government policies. All such institutions have been formally enacted and must be emphatically promulgated. The *standard-setting authority* here is the government of society — its legislature, judiciary and executive. So societal standards are often termed legal or institutional standards.

The *focus for conformity* for government is the existing formal institutions of society. New rules seek to be in line with or better than what previously existed within and through these institutions.

Saudi Arabian Standards: In the Kingdom of Saudi Arabia at the time of writing, Islamic (sharia) law prevails and other legislation is by royal decree. All political parties and trade unions are banned. The death penalty by sword or stoning applies to a wide variety of crimes including apostasy, robbery with violence, corruption, and sexual crimes. Flogging and amputation are regularly used as punishments. Imprisonment may occur without the person being charged, relatives being notified or appeal being allowed. Royal pardons may be granted. All these arrangements are extremely difficult to change. Westerners may find Saudi punishments objectionable, but it should be noted that similar punishments were standard in England in the 18th century and earlier. What would now be regarded as minor offences were then punished by cutting off the tongue or hand, or by deportation to penal colonies, or even by hanging. Societal standards have changed over time so that such punishments seem incredible and barbaric to the Westernized reader.

Ex. 9.35

Whether or not the people agree with institutions enacted by their government, and whether or not the institutions operate as they should in theory, their formal establishment sets a baseline. Societal standards with their backing by laws are the natural focus for

reformers who wish to alter the essence of their society. Public debate based upon ethical considerations is more evident here than in either of the previous two types of standard.

The societal baseline can be legitimately used by people to determine their relations with others, by managers in firms and public agencies to guide their decision-making and review their operation, by politicians who wish to propose changes, by the press and general public as a basis for criticism of particular activities. Existing minimum standards are also used to guide judgements in the courts.

Constitution and Variation. Societal standards are based in laws (L"-6), which are deliberately chosen. The standard is dogmatically affirmed by appeal to society's maxims (L"-5). The standard is acceptably applied in accord with rights and duties (L"-4) conferred on individuals. Finally the standard is realized by unequivocal respect for certain tenets (L"-3). In Ex. 9.35, the tenets of Islam are the underpinning forces.

Statutory regulatory authorities are the standard-using bodies which take over when self-regulatory authorities fail to keep the individual standards of firms or professionals in a particular sector above society's minimum. Authorities and public tribunals are particularly required when the laws are commonly ignored. Anti-discrimination legislation, for example, is frequently ignored. So regulatory authorities are set up to proclaim relevant maxims dogmatically and take offending firms to court.

The drive for coherence and congruence, almost uniformity, among institutions within each society is strong. For example, primary education is usually a governmental concern and it is typically felt unacceptable for attainment to vary too much from one part of the country to another. Similarly, it is felt that handling of complaints about the activities of different public authorities — whether police, health, social security, education etc. — should use a similar minimum standard. For example, instituting an ombudsman or independent complaints commission in one public service establishes an expectation that it might well be required for other public services.

Variations in societal standards across societies are marked and to be expected given their foundation in tenets. Political, democratic and judicial standards in Japan, for example, are markedly dissimilar to analogous institutions in the US, even though the US imposed new arrangements during its post-war occupation.

Keeping Above the Minimum. Without conformity to its own cultural standards, a society would be eroded by unthinking communal pressures and disintegrated by individual differences. Societal standards require a formal and public *monitoring* process. In public agencies, the governing body may carry this responsibility. Otherwise independent regulatory authorities created by statute are used. In the UK, there is the Monopolies and Merger Commission for standards of competition, the Building Society Commission for standards to be met in savings and home loan organizations, and the Charity Commission for standards to be met by charitable bodies. There are also various Inspectorates and Commissions for schools, prisons, hospitals and social services. As you would expect, the effectiveness of such bodies varies.⁵⁵

The point is that all recognize that communal standards are insufficient and that organizations cannot be left wholly uncontrolled to define what is right in all areas. Conformity to some official policies, regulations and laws are required. Genuine conformity means respecting the tenets underpinning such institutions. Given the nature of tenets, this may be difficult. Official authorities, like the anti-discrimination bodies mentioned above, may then be expected to be the public vehicle for installing values as well as for assessing conformity to minimum standards in particular situations.

New Standards of Community Care: For many years, the impoverished old and infirm in the UK have often been left to fend for themselves. Those who need help all too easily get lost between welfare agencies, each of which sees them as a financial burden. In recent years, the government has decided that this situation is intolerable, and a new arrangement is currently being instituted. In other words, a new minimum societal standard is in the process of being set through legislation and social policies. In the future, a care manager will be provided for each person who needs one. This manager will be responsible for purchasing and coordinating a full range of services to meet the client's needs. Monitoring will be provided by other staff in the relevant agencies. In due course, it is likely that the communal standard, will be opened to official scrutiny by judges, senior professionals and others of the great and the good as independent representatives of society's identity. If the present inadequacy of services and the failure of coordination continues, they will be authorized to label that communal standard as officially intolerable.

Ex. 9.36

Judging whether or not there has been an infringement of societal standards is a judicial or quasi-judicial matter. Judicial review mentioned earlier is a way of checking that ministerial and administrative decisions do not infringe on the minimum standards guaranteed by enactments. Judges are frequently called upon to

determine societal standards — even if these are not embodied in the law. In hard cases there is no alternative. Dworkin notes that the judge's "personal convictions...become the most reliable guide [available] to institutional morality".⁵⁶ Formal public inquiries are used when an actual scandal exists, or is suspected, as in the case of maltreatment within mental handicap hospitals or a public transport disaster, or corruption in the civil service. Such inquiries are typically chaired by a lawyer or judge. Regulatory authorities in the form of tribunals are used when there is a flow of issues or complaints in regard to the application of societal standards e.g. mental health review boards dealing with appeals against compulsory detention, taxation review tribunals dealing with challenges to tax assessments, a tribunal council dealing with the functioning of all statute-backed public tribunals.

Limitation. Societal standards operate within societies and are backed by laws, but it is necessary to go further and consider how societies should appraise their own and each other's standards. This takes us to the highest type of self-chosen minimum standard and the most general conception of social identity — that which can be common to all societies.

G"-4⁴: Universal Standards

Nature. One of the driving forces of ethical inquiry has been the hope to develop universally applicable ethical rules and conceptions of a just society. In the realm of minimum standards at least, there has been considerable achievement in the past fifty years; and an extensive range of standards has now been set and ratified. Because minimum standards define a baseline identity, an agreed sameness, for the world community of nations, they must be the foundation for a stable international order. Rights/duties are the lowest level in this fourth tetrad and therefore, as in the other types of standard, the focus of any self-assessment. This has been recognized by the UN which has sponsored numerous standard-defining conventions and institutions which attempt to ensure that certain rights are similar within all societies.

Universal standards declare a conception of man as a social being, which, it is hoped, all societies can freely own and to which all governments and citizenries can work. The *function* of the universal standard is to protect an internationally agreed conception of human identity in a society. Ideally, it should be the most profound notion of social existence conceivable. But the standard can do no more than reflect mankind's current image of itself. The conception is the best that societies are capable of agreeing on at any moment in

time. Present day universal standards now take for granted that each person has a unique value and distinct rights and duties based on an identity shared with all other human beings. (There seems to be less public awareness about intrinsic human duties.)

The *standard-setting authority* can only be some form of international and quasi-governmental body. Universal standards are developed in a formal and diplomatic fashion by bodies which have multi-national governmental representation. Ideally all nations would participate. A new standard is promulgated in a pronouncement which is called a convention, declaration or charter and to which countries become signatories. Unanimity rather than majority voting is of the essence. Universal standards must be infused by a visionary spirit because they recognize or reveal that no society or its government is as free and just as it might be.

Recent decades have seen a proliferation of conventions and declarations in the area of human rights. Some rights have been held to be universal, when simple observation would suggest that they are skewed to beliefs and ideals within the cultures of those devising them. For example the UN's Universal Declaration of Human Rights (1948) proposed such things as the right to holidays with pay, the right to social security, and the right to equal access to public services.⁵⁷ Such notions may fit one society admirably without necessarily being seen as a useful or beneficial guide in another.

In the case of religious tolerance, it is easy to see why ratification of a convention has been withheld (see Ex. 9.37). In many societies, human identity has a religious component and mention of atheism in the proposed Draft is dehumanizing. For secular states, equally concerned about humanity, insistence on religious belief reflects the enslavement of man by delusion and the abdication of personal autonomy and responsibility.

Composition and Variation. A universal standard can be deliberately chosen by many and potentially all nations because it is rooted in absolutes (L"-7) which are sufficiently abstract and general to allow widespread assent. The dogmatic affirmation of the standard only becomes possible when it is incorporated in laws (L"-6) — either international law accepted as binding within a society and used in its courts of justice, or societal laws passed to accord with the standard. The acceptable application of the standard depends on maxims which define proper functioning in any community (L"-5). Meeting the standard depends on unequivocal respect for certain rights and duties (L"-4). By excluding tenets, universal standards enable diversity and reduce the spectre of over-control of the individual.

Religious Tolerance: The UN's 1967 Draft Convention on the Elimination of All Forms of Religious Intolerance has never been adopted, although the Human Rights Commission has been working slowly on it. The preamble to the Draft suggests that the absolute is to respect the dignity and equality of all people. It is noted that religious intolerance has caused great suffering. A maxim is proposed: 'governments, organizations and private persons should strive to promote through education and by other means, understanding, tolerance and respect in matters relating to freedom of religion and belief.' Theistic, non-theistic, and atheistic beliefs are covered. The body of the document consists of rights and duties. Rights include freedoms to adhere or not to adhere to a religion, to manifest religion alone or with others in public or in private, and to express opinions on questions of religion or belief; and there is also the freedom from any compulsion to take a religious oath. Rights to do things — like worship, assemble, teach, learn, disseminate ideas, train, observe rituals, do good works, make pilgrimages, and to organize — are specified. Parents and guardians are assigned duties to inculcate tolerance and avoid discrimination. The Draft also insists on the duties of governments to institute 'immediate and effective measures, particularly in the fields of teaching, education, culture and information' to combat prejudice. Governments are commanded to see to 'the enactment or abrogation of laws or regulations' so as to prevent harmful discrimination, and to use 'national tribunals and other State institutions' to this end. Ex. 9.37⁵⁸

Variation is impossible, because there is only one set of governments and there can be only one universal standard in any social domain. Marked similarities between universal standards across the various domains should also be noticeable. Where there is dispute (as in the case of religious tolerance), it must simply be accepted that no universal standard exists. Disputes over such fundamentals do not increase the likelihood of war and other human horrors, they simply reveal the way that moral justification for such things is attempted.

Keeping Above the Minimum. Any universal standard is a lever for ethical improvement. That lever will be far stronger if representatives of all governments have worked on and ratified the declaration. But even non-signatory governments may find themselves effectively criticized on the basis of a widely endorsed standard.

The worst offenders ignore criticism, deny the validity of international law, or lie about violations. Attempts to apply or monitor declarations are viewed as unwarranted interference in domestic matters. Sovereignty is held to be paramount. An offending society can be invaded, (as occurred in Uganda in response to the atrocities under Amin) or occupied to help (as in Bosnia and Somalia in response to civil war)

but the grounds are usually humanitarian (the relief of starvation, medical care &c.) or security (controlling refugees, prevention of anarchy &c.) not the enforcement of minimum standards. The needed laws, maxims and rights are intrinsic to society and cannot be imposed by outsiders however desirable or necessary.

Some argue that there are over-riding needs for economic development as well as 'people's rights' or 'cultural rights' which entitle leaders to ignore proposed standards for the protection of individuals. Universal standards, it is claimed would result in the destruction of their traditions and social structure, or give an advantage to already developed countries which can afford them. For example the subjugation of certain classes, like women or ethnic minorities, characterizes certain societies and the effect of giving each person due recognition would indeed be extremely disruptive.

Subjugation must be rejected, but in such societies the scale of change should be soberly appreciated. The avoidance of bloodshed and discord requires a sensible time-scale of change. The issue is not whether conformity to universal standards can be immediately achieved, but whether society's elites recognize the existence of such breaches and whether the society as a whole is striving to modify itself. If not, accepting the universal standard is a diplomatic token rather than a meaningful act. Shortly before its break-up, the USSR acknowledged the numerous long-standing rights violations within its borders. This contributed to the disintegration of the empire. It will be many years before all citizens of the former Soviet Republics reap the full results of this initial commitment to a baseline of universal standards.

The need for universal standards is promoted by campaigning bodies, and then used by them in *monitoring*. Amnesty International, for example, monitors infringements of political rights. It investigates practices and the laws used to sanction these. *Judging* of adherence to universal standards requires special international courts or judicial commissions of inquiry. For example, the European Court of Human Rights was set up by the European Convention of Human Rights for just this purpose. Multi-national tribunals have been proposed for war crimes or crimes against humanity.

Closure. The *limitation* of truly universal standards is the requirement for unanimity amongst governments. This depends on the will of those governments, the culture of human societies, and the evolution of human reflective awareness. It is surely possible in theory, for example, to reach unanimity on a religious tolerance convention (Ex. 9.37). But this would require a better general appreciation of things like: the role of

organized religion in society, the existence of spirituality beyond the bounds of existing faiths, the desirability of peaceful coexistence, and an understanding of human autonomy and creativity as the basis for both atheism and theism.

With universal standards chosen by all countries, the limits of self-determination and self-induced conformity have been reached. There is no further or higher social identity to protect. There can be no stronger actual authority to invoke than an amalgam of disparate governments. So the tetrads are intuitively and logically complete.

REVIEWING THE STANDARDS

We have now considered the four types of minimum standard: the informal communal standard, the private individual standard, the formal societal standard, and the multi-nationally ratified universal standard. These minimum standards are the bases that are used in many public debates for promoting conformity and for appraising whether a particular choice or act is or is not tolerable.

The standards in different realms of social identity dealing with the same or similar issues may be rather different; and they certainly have different consequences. In the one society, for example, the communal standard may hold that hitting children is good for them ('spare the rod and spoil the child') and expect corporal punishment in schools; the personal standard of a teacher may abjure violence of any sort and prohibit hitting children; yet a societal standard may permit physical punishment in schools; and a universal standard dealing with offenders might prohibit degrading physical punishments for children or adults.

Practical Implications. A better world depends on enlightened standards which are self-chosen. In a modern democracy, the pivotal type of standard is that of a person. Individual people are the members of informal communities, the agents in all organizations. Individual people constitute the citizenries which have the potential to regulate governing regimes. And individual people hold political, official and judicial positions in government. Unfortunately, a person involved in proposing universal standards on behalf of a government is subject to severe depersonalizing forces. Still, the notion that everything depends on each person recognizing their unique contribution to creating a better world remains of great significance.

It would follow that if each person's capacity or responsibility to set their own ethical standards (i.e. create an ethical authority of their own) is downgraded,

then the ethical life of society and mankind suffers. Churches have often in practice hampered social development by arrogating supreme infallible authority and expecting people to abdicate their responsibility for standards. Where individual standards are minimized and the church installs elevated institutional standards (like a male priesthood bound to celibacy), communal standards are likely to suffer a compensatory degradation (like priestly misconduct with female parishioners, molestation of choir boys &c).

Self-awareness, self-reflection and fearless self-criticism are needed if minimum standards are to be a genuine self-conscious choice. At present, a better understanding of the monitoring and judging of minimum standards is required, especially within firms and public agencies. The various confusions about standards referred to earlier need to be disentangled. In particular, urgent rectification of breaches in minimum standards must not be confused with ever-desirable improvements in quality. Nor should breaches be reflexly dealt with by imposing bureaucratic regulations: no amount of prescriptions can compensate for inappropriate conventions or erroneous tenets.

The various types of standards can and should reinforce each other in many matters. However discrepancies between standards set at the four levels are common. Judges regularly find that the minimum standards enshrined in society's institutions conflict with popular sentiments; and public sector welfare agencies regularly suffer from discrepancies (cf. Ex. 9.38). The attempt to align minimum standards in order to avoid disputes is difficult. But people do prefer their public activity to be congruent with their individual standards, and do seek a local community or employer which allows this if they can.

Hospitals Again: UK hospitals are under the control of a Secretary of State and are expected to enshrine societal standards. For instance, policy statements indicate that gross waste is intolerable and waiting time in a clinic should not be excessive. The individual (personal) standard of a particular staff member dealing with clinics may differ from the individual (organizational) standard of the hospital which includes a variety of clinics under different pressures. When managers and doctors set up multiple simultaneous clinic appointments to avoid overt waste of staff time, patients may be kept waiting for a very long time. Whatever the result, because public hospitals are taken for granted by many, communal standards lead people to miss appointments without notifying the clinic and they also become tolerant of lengthy waiting times.

Ex. 9.38

A standard mainly affects other standards of the same type. Organizations, like people certainly influence each other with their standards, and so do societies.

Some influence of a standard on adjacent types is also apparent. Thus a person's individual standards may lead him to attempt to influence communal and societal standards, and vice versa. Societal standards and universal standards are expected to have a reciprocal influence.

When one person, firm or society appears to act according to two different standards, the accusation of double standards is made. In ethical or religious enterprises, double standards are especially scandalous and bring the particular person or organization into long-lasting discredit. Most of us, only too aware of our own defects, get secret pleasure at the exposure of the television evangelist who preaches the sanctity of marriage but lives in adultery; and express shock at revelations that an organization which campaigns for the physically handicapped has been neglecting and exploiting those handicapped people in its own employ.

Nevertheless, seeming hypocrisy may be perfectly understandable and even positively required. When a finance minister of the highest personal integrity deceives the legislature about an impending devaluation of the currency, he is protecting his country as required by his social role. He is certainly operating well above the current minimum (communal) standard expected of politicians. Anyone who finds this repugnant should not pursue a political career.

Social Diversity and Rights. In comparing the different types of minimum standard, the particular significance of rights emerges. Rights are the only type of ethical rule which is included within all tetrads (see Figure 9.4). Rights therefore provide for the possibility of integration across the four types of minimum standard.

On the one hand, rights are the lowest level of ethical rule which can be reasonably defined and developed across societies. On the other hand rights are rules that are inherent in the structure and definition of any community. Rights also need to be developed and owned by individuals and governments. Ideally, coherence and the desire to see any local community as part of the human race demand that certain local rights and duties should be in accord with universal rights and duties. As long as universal rights are a *minimum* standard, a maximum of diversity amongst local communities is possible.

Tenets play a part in three standards — communal, individual, societal — but not universal standards because a variety of cultural and religious dogmas is central to the preservation of diversity. Laws only play a part in universal and societal standards and need to be designed to protect the diversity of individuals within society and of societies within humanity. Conventions

and maxims appear crucial to individual diversity. They ensure that when a person is forced to act in accord with communal or societal standards, awareness of any violation of personal standards may be maintained.

Burning the Flag: Burning the flag outrages popular sentiment in the USA. It violates communal standards, and often individual standards too. However, it is not a crime and does not breach societal and universal standards. Public indignation at flag-burning has led to calls for it to be made illegal, but the Supreme Court rejected a Federal law to this effect as unconstitutional. A proposal to amend the constitution was also rejected. Burning the flag is a paradoxical act akin to appealing to the right of free speech to campaign for a law to ban free speech. To ban flag burning would be to undermine what the flag represents and would be self-defeating for society as a whole. When Republicans accuse Democrats of 'refusing to protect the flag', they play on the ease with which the symbolic and physical references of the word 'flag' are muddled by people.

Ex. 9.39

Transition. Minimum standards are about self-definition of an ethical identity and require recognition of the ethical authority inherent in human identity. Reaching a balance between the demands of diversity and uniformity, between the aspirations of liberty and the requirements of restraint may be problematic, but it is a matter for each community, each person, each society. In other words, self-induced conformity to the

authoritative identity defined by standards reflects a notion of an authority which is internal and subjective. Standards do not enable a definitive and widely accepted decision about whether conduct in accord with an existing standard is good and right.

We regularly find ourselves appalled by anti-social communal standards, perverse individual standards, hypocritical societal standards, and diplomatically-fudged universal standards. To judge standards in this way is to imply the existence of higher authorities which serve as an all-embracing frame of reference. Society clearly needs such frames. They must be relatively independent of government if they are to judge government. Yet government must secure their existence and guard their operation.

Any enduring overall frame of reference needs to be both more self-evidently virtuous and more complete and general than a minimum standard. The frame itself would have to be an authority which is freely available to everyone in the community. It should lead to an unambiguous determination of what is right and wrong when people disagree and yet be capable of development as society evolves. These requirements can be met by incorporating a further level of rule and forming pentadic groups.

Master-Table 24

Properties of the four types of minimum standard in society.

Ethical standards, which are needed to protect identity, are tetradic authorities formed by conjoining four adjacent types of rule. Standards must be owned if they are to enable self-appraisal and self-control. See text for details and explanation.

Tetrad No. (Levels)	Type of Standard	Function	Focus of Conformity	Standard-setting Authority	How Standards Are Set	How Standards are Monitored	Who Judges Breaches
1 (L's 1-4)	Communal standard	To protect an evolving undefined community identity.	Individual activity in public.	The community.	Informally.	Media investigation, public complaints, informal criticism.	Any member of the community.
2 (L's 2-5)	Individual standard	To protect an individual's self-defined identity.	The individual's internal functioning (expressed explicitly or implicitly in actions).	Each person or organization.	Privately by deliberate choice.	Internal criticism and review, often in response to external comment.	The individual: i.e. governing body in an organisation.
3 (L's 3-6)	Societal standard	To protect a society's officially enacted identity.	Formal institutions e.g. laws, regulations, government policies, public agencies &c.	Governing organs of a society.	Formal enactments like laws and statutory instruments.	Statutory agencies and regulatory authorities.	Courts and tribunals within a society.
4 (L's 4-7)	Universal standard	To protect an internationally agreed conception of human identity in society.	Individual rights and duties in a sovereign society.	Multi-national governmental bodies (e.g. UNO).	Unanimously adopted formal declarations to be ratified in law by national governments.	Campaigning bodies, world press, parliamentary fact-finding visits.	International judicial tribunals commissions and courts.

G"-5: DEFINITIVE FRAMES OF REFERENCE

We may be free to choose. We may be free to define ourselves. We may even be free to break rules. But we are not free to make what we do right in the eyes of others.

To know or define or adopt a standard, for example, is one thing: to judge that conduct in accord with the standard is right is something else again. Such judgements are of far greater significance in social life. Recall that the essential feature of minimum standards is that they are an authoritative appraisal by a social entity for its own purposes and in its own terms. So minimum standards cannot deal with differences of view generated by different standards (whether of the one type or of different types).

Freedom of Information: The societal standard in the UK in respect of freedom of information is one of general secrecy. At the time of writing, the public is prohibited from knowing the length of queues in post offices, or whether there is an interconnecting doorway between No. 10 and No. 11 Downing Street. In all there are over 90 statutes in which disclosure of information is an offence. So the standard is clear and any new Act of Parliament, whether regulating fisheries or the nuclear power industry, would be expected to keep much information secret in conformity with the standard. A judgement can be made as to whether or not using this standard is right and fair, and people may well disagree about this.

Ex. 9.40⁵⁹

Society can only operate sensibly on the basis that people are free to conduct themselves as they wish as long as what they do is right and fair. Determining whether conduct is right and fair can now, at last, be considered.

People in a society may and will disagree about what is just either because each holds different standards or because it is to the advantage of each to do so. So judgements about just conduct are required which will be taken as an authoritative expression by all. If a judgement is to be delivered so that the difference of opinion is resolved one way or the other, everyone must agree to be ruled by and within ethical **frames of reference**. So: the *function* of a frame of reference is to ensure that differing views about right conduct can be definitively resolved by an authoritative judgement.

Whenever someone claims with confidence that some action or rule is right they are making an ethical judgement which assumes a particular frame of reference. If society lacked such frames and could not deliver authoritative judgements, it would become riven by factions and be ungovernable. It follows that

frames of reference must have existed long before being identified as such, and must have always exerted a strong hold on the moral imagination.

For the frame to be agreed, it must be obviously or inherently virtuous, and must enable the dispensing of justice. Note that justice can be applied to the pursuit of any activity whatsoever. So the frames of reference are essentially purposeless and permit people to function as they choose — so long as their conduct is just.

It is the frame of reference with its notions of virtue and justice which gives judgement in its terms ethical weight. The judgement will only be authoritative if it is made by someone empowered to do so within the frame. Note that the person is acting as a vehicle for the frame and judgement here differs from that in the case of standards in being more impersonal, impartial and generally applicable. If there is no frame of reference, or if the frame is viewed as lacking in virtue, or if an unauthorized person uses the frame, then the judgement will be considered flawed or invalid, and differences of view will not be definitively resolved.

The additional element of *virtue* — tangentially relevant in previous groupings but absolutely required for delivering definitive judgements — is provided by adding a fifth consecutive level of rule to form pentadic groupings.

Types. There are three pentads which constitute the three great definitive frames of reference in any society. In ascending order, these frames are: *the custom* ($G''-5^1$), *the law* ($G''-5^2$), and *the morality* ($G''-5^3$). These pentads are represented diagrammatically in Figure 9.5.

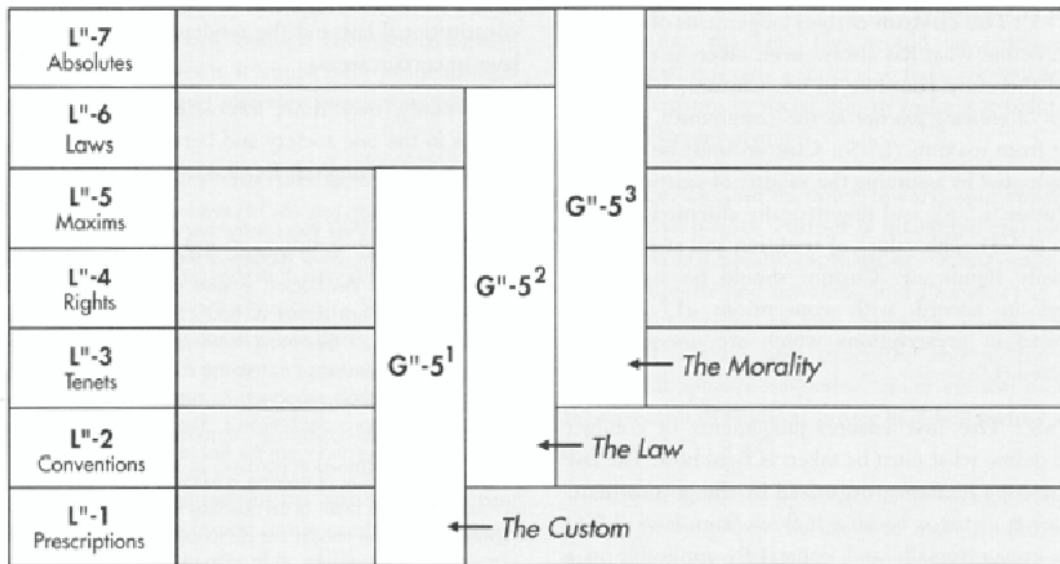
The social experience, it must be re-emphasized, is of the judgement being delivered by the frame i.e. the frame possesses the necessary authority and wisdom. Of course, people must make judgements, but they do so as servants of the frame. They are seen as wise in so far as they comprehend the frame and seek earnestly to refine and clarify its nature.

So judgements are not external to the frames but actively constitute them. What judgement the custom, the law or the morality requires in a particular type of situation often cannot be precisely determined other than by going through a social process of judgement in a particular and typical case — known in the law as a test case. As thoughtful judgements using a frame are made, the frame evolves and becomes better understood.

Judgements within a frame are subject to many influences: the five prime influences being rules at each of the five constituting levels. In line with the analyses at lower levels, we may say that frames of reference must

Figure 9.5: The pentadic grouping forming definitive frames of reference.

Three types of ethical frame of reference which must be virtuously evolved if conduct is to be judged in society.



be unequivocally respected, acceptably applied, dogmatically affirmed, and deliberately adopted, as well as being virtuously evolved.

The custom, the law and the morality of a society all govern and authorize judgements about what is virtuous and just within it. They are abstract orders of authority which are products of tradition, expressions of culture and affirmations of hope. They are not subject to wholesale redesign or individual control, and their inner coherence prevents rules being thoughtlessly added because they are momentarily convenient or apparently more enlightened. The authority and certainty of the frames makes them an umbrella of freedom for individuals in the culture.

These three great systems of rules apply to everyone, and nothing exists in society which is untouched by them. In moving up the pentads there is a natural progression in temporal orientation. The custom is oriented to the way things have been from time immemorial, so to speak. The law must define the world as it should be immediately. The morality is future-oriented and seeks to create the world as it ought to be. This ordering reflects the intuitive feeling that morality has a natural pre-eminence over law, as law has over custom.

Discrimination Again: For many years, sex and skin-colour discrimination was both customary and legal in the West. Then application of the morality of Western humanism (emerging from individualism and the Judeo-Christian faith) led to a judgement that people should not be treated

in such a way in a just society. In response to this pressure, the law is slowly changing. Courts now rule that discrimination on grounds of sex and colour is unlawful — yet discrimination persists. Although the law is upheld when cases are brought, people, including lawyers and police, ignore the law. For example, it is reported that legal firms have unwritten policies not to appoint women partners, and refuse to take account of needs associated with pregnancy and child-care. They see the judgement as to the rights and wrongs of a particular act of discrimination in terms of the custom, and custom allows things that the law forbids. In other industries, publishing, for example, the custom is not so discriminatory and women have rather easily risen to the top. Only when custom everywhere prohibits sex and colour discrimination, will it finally cease. **Ex. 9.41**⁶⁰

New rules are called for within each frame as circumstances change. These rules become incorporated in the frame and reinforce it. Nevertheless all frames of reference are conservative. They are deeply embedded aspects of the wisdom of the culture and contribute to the cohesion, stability and continuity of the ethical order. Without continuity, custom has no meaning, the law would be inoperable, and a morality could not take hold in people's imagination and identity. We find ourselves surrendering to these charismatic institutions with their awesome capacity to create and impose order. Each becomes a revered tradition heavily invested with value, emotion, and even fear.

The properties of the frames are summarized in Master-Table 25. As an introductory overview, a brief definition of each of the frames of reference is provided

now, together with the significance of the particular rules in each pentad. As in previous groupings, each pentad has a common inner structure, summarized here and elaborated in what follows.

G"-5¹: The custom enables judgements of conduct which define what has always been taken as right and should therefore continue to be. Custom, which is a matter of *evolving practice* in the community, gains its virtue from maxims (L"-5). Custom must be deliberately adopted by assuming the validity of existing rights and duties (L"-4), and dogmatically affirmed through tenets (L"-3). The values of tradition and stability are especially significant. Custom should be acceptably applied in accord with conventions (L"-2), and grounded in prescriptions which are unequivocally respected (L"-1).

G"-5²: The law enables judgements of conduct which define what must be taken as right now. The law is an *evolving institution* organized by the government. The law is virtuous because it flows from laws (L"-6) which are universally and impartially applicable in a society. The law needs to be deliberately adopted on the basis of existing maxims (L"-5); and dogmatically affirmed in terms of rights and duties (L"-4). The duty to obey the law and freedom under the law are especially significant. The law should be acceptably applied in accord with tenets (L"-3), and grounded in conventions which are unequivocally respected (L"-2).

G"-5³: The morality enables judgements of conduct which define what ought to be taken as right now and always. Morality is an *evolving conception* guarded by organized religion or religion-substitutes. The morality is virtuous because it flows from absolutes (L"-7). It needs to be deliberately adopted by society through laws (L"-6), and is dogmatically affirmed via maxims (L"-5). Maxims which foster altruism and communal responsibility are especially significant. The morality should be acceptably applied in accord with rights and duties (L"-4), and grounded in tenets which are unequivocally respected (L"-3).

The three frames seek to reflect a greater unity: the ethical order of society. It seems as if there should be only one of each type of frame of reference in a society. But this is rarely the case in practice: the law strives hard to be a unity, but the custom and morality are rarely fully unified. The custom differs amongst territorial communities, while the morality is deeply affected by religious differences. Ethnic sub-groups, even those following the mainstream religion, may yet have distinct customs and morality. Historical and territorial factors may even lead to the law being distinct. In a small country like the UK, the replace-

ment of the Scottish and English Parliament by the British Parliament still left Scots law as quite distinct from English law. Both co-exist satisfactorily although national law-making is centralized. In the USA, the law differs from state to state within an umbrella of federal constitutional law and the tendency to adopt uniform laws in certain areas.

Certainly, over time, interactions between similar frames in the one society and between the three types of frame are strong (cf. Ex. 9.41, 9.42).

Slavery: For 2000 years anti-slavery ideas had no effect on Western law. Most readers, if they had lived in classical Athens or the Roman empire or medieval Europe, would have kept slaves or had contact with slaves or been a slave. They would have judged this to be fair according to custom: i.e. maxims made it virtuous; rights allowed it; beliefs supported it; conventions assumed it; and prescriptions dealt with it. The unimportant sect of Quakers in England were the first to recognize and insist on the immorality of treating a fellow human being as a chattel. On the basis of an absolute rule to love others, the maxim that one should not do to others what one would not do to oneself, the right of each to compassion and care from others, and tenets which emphasized the equality of all in the sight of God, the law stood out as deeply unsatisfactory. In 1761, Quakers repudiated society's laws and deliberately made it a law amongst themselves to have no connection with the slave trade. Slowly the ethical validity of their judgement became more widely appreciated. And then over a few years in the late 18th century, three judicial decisions overturned the law in England. Although legal rights and duties changed almost overnight, custom took longer to alter. In the USA, a civil war had to be fought. Custom still allows slavery to persist in many parts of the world, but the law rarely supports it and now moralities everywhere unequivocally judge the practice to be wrong. **Ex. 9.42**

Properties. The three frames of reference will now be taken in turn. The *function*, significance and *advantages* of each will be clarified. The differences in *origin* and *development* of the frames and their *institutionalization* in social life will be briefly examined. The characteristic appearance and processes of *justice* when judging with the various frames will be noted. Finally the *limitations* of each will provide a logic for moving to a higher type.

G"-5¹: The Custom

Nature. Custom builds on rules inherent in the usual past handling of situations. Its *function* is to enable judgements of conduct which define what has always been taken as right and should therefore continue to be. The custom is based in long-standing social habits and is always spoken of as ancient or existing 'from time immemorial' — although even in olden times this

meant only 30-40 years, approximately one generation.⁶¹ Custom serves as a frame of reference which is immediately accessible to all and can be unreflectively viewed as correct or as part of the nature of things. Judgements are continually made in its terms by everyone about every aspect of conduct. The value of custom as a common frame lies in its rapid and routine facilitation of cooperation and effective interaction within a community.

The custom operates with rules from L"-1 to L"-5, and ignores or rejects laws (L"-6) and absolutes (L"-7). 'The custom' should not be confused with 'a custom'. A custom is a general term which may refer to etiquette (L"-1) or to common prescriptions (L"-1), or to conventions (L"-2), or to civility principles (G"-2¹), or to good practices (G"-3¹), or to communal standards (G"-4¹). These examples of custom reflect its root in practice and performance. Conduct in accord with these particular sorts of custom is usually judged to be right because they are part of *the* custom. Restricting custom to rules at the lowest levels would fail to recognize the importance of rights in making custom available to all and the role of maxims in making custom virtuous.

Tippling: Extra payments for services may be conventional, but this alone does not make the practice of tipping right or the particular tip fair. The judgement that a tip is fair depends on an accepted right for the service-giver to the receipt of a tip, and a duty on the receiver either to offer a tip or to consider tipping. For tipping to be virtuous, there also needs to be a maxim aiding social functioning e.g. 'good service deserves a special reward'. Where a prohibition on tipping is the custom, this is based on duties for the cost of service to be included in the price and use of a different maxim e.g. 'virtue is its own reward'. The complete routinization of tipping — 10% on the bill and money not going to the staff involved — removes the element of ethical judgement while retaining its form.

Ex. 9.43

Origin. There is nothing in everyday life to which the judgement of custom cannot be applied. The operation of the family, of buying and selling, of private property, of democracy would all be impossible in the absence of custom. Custom regulates society and its institutions. In doing so, custom promotes uniformity, ignores the individual, and is ultra-conservative.

Why is custom accepted? The reason is that custom, like it or not, is an unavoidable part of social life. All social groups develop habitual ways of going about things. Custom is simply this social habit made conscious in the form of rules. It follows that its temporal orientation is to the past. Once social habit becomes conscious, its value for the community can be recognized.

The *advantage* of custom is that it is uncontroversial, practical and straightforward. Without custom, habit and past experience would be irrelevant. People would regularly disagree about trivial or basic matters. Every new situation would have to be evaluated and determined using the law. This would be arduous and impractical. It is only a short step from recognizing the value of custom in social life, to making it obligatory, and even to sanctifying it.

Justice. Despite its down-to-earth and apparently unreflective quality, custom is intangible and elusive. Custom is not usually captured in writing, except by anthropologists and novelists, and its quality is situational and fuzzy. At one moment custom seems objective, certain and concrete; and at the next moment it appears subjective, uncertain and no more than a matter of opinion. Justice based on it also has this quality (cf. Ex. 9.44).

Custom is created by the social group as a whole, so anyone in the group can use it to make a valid judgement about something. Disagreement between people about such judgements is likely, but disputes can be definitively resolved by appeal to custom. Procedure is important in judgements under custom. For example, customary justice might insist that women shall not be permitted to give evidence. In modern societies, custom demands that claims should be presented clearly, that all involved should have access, that proceedings should be unambiguous, and that coercion or threat should be proscribed. Tribunals, adjudicating bodies of experts and laymen, may be used to provide some assurance of whatever procedure custom deems just.

Judgement on the basis of custom tends to generate a result, often a compromise, that satisfies all involved. It is also expedient in that it allows for such things as saving face and saving time. The aim is to reach a judgement which works in the immediate circumstances with the people involved. This may require a conciliatory attitude to feelings and personalities.

Popular sympathies, personality factors, political considerations and doctrinal beliefs are all allowed in making judgements according to custom. The urge is to get to an immediately satisfying result. In modern times, this often means getting to the truth. In other words, the substance of the judgement is more significant than the process. (So technical texts describe justice as substantive rather than formal.) Negotiation, arbitration and mediation are typical ways of resolving a dispute using custom.

Road Repair: A farmer owns a lane which is used by several householders. At law the farmer is responsible for keeping the lane in good repair, but when and how lane

upkeep should be performed is not specified. Slowly the lane falls into disrepair. The householders could take the farmer to court but this would be expensive and uncertain. It might antagonize the farmer and generate long-lasting friction, whatever the outcome. Even if the case is won by the householders, the farmer might delay repair or make unsatisfactory or inconvenient repairs. Custom allows the farmer and the house owners to get together, to agree on a schedule for upkeep of the lane, to decide a share out of the costs that everyone is prepared to go along with according to criteria that are sensible locally and mutually understood. The end result is that the lane gets repaired far more rapidly, and justice of some sort is done.

Ex. 9.44

The need for people to deal with governments and organizations by way of custom has led to the establishment of official tribunals (e.g. in the UK: for disputes about rent, social security benefits, taxation, or dismissal from work). Tribunals can operate locally, speedily and cheaply and use simple informal procedures. Appeal to the law is excluded or restricted, but some supervision is needed to ensure that official tribunals do not act monstrously, beyond their remit, or illegally. A lawyer may sit in the chair, but judgements are based on applying experience, expertise and discretion. Proceedings tend to be inquisitorial or investigative in accord with the drive for substantive justice.

The cost and complexity of legal settlements have led to extra-legal but perfectly satisfactory arbitration, mediation and conciliation services (currently called ‘alternative dispute resolution’). These are useful for organizations as well as persons. Pendulum arbitration, for example, is an effective way to settle disputes between union and employer over the justice of a pay deal. The procedure in this case involves both parties agreeing that there will be no conciliation or mediation between the two claims: the arbitrator simply picks one or the other as the fairest deal all things considered and then both parties accept that judgement without further ado.

At its best, custom allows judgements that feel fair, look fair, cost very little, and are readily available. It requires, of course, that both parties must be prepared in advance to agree to the decision and settlement determined by the adjudicator. If the complainant is unreasonably demanding or the defendant excessively unyielding then procedure breaks down and justice will not be done. At the least, legal proceedings must be commenced. Alternatively, the complainant is liable to attack the defendant in frustration. Because the defendant has not accepted the complaint, he will not be disposed to accept the attack. At the worst, therefore, custom leads to vindictive retaliation and lynch or mob law. For example, the talion law — ‘an eye for an eye

and a tooth for a tooth’ — is usually recognized by custom. This may be harmless in the playground and even useful in minor disputes, but in wider society it brings with it the danger of lengthy vendettas and blood feuds. Cultures do try to develop ritual devices for ending feuds, but ultimately only law can terminate them.

Forty-Seven Ronin: A breach of etiquette in Japan in April 1701 led to Asano, Lord of Ako, to be taunted by Kira, a palace official. Finally Asano attacked Kira with a dagger and the Shogun ordered Asano to commit suicide the same day. Asano did so. When his retainers in Ako, the ronin, heard of this, they nurtured their revenge until Kira became unsuspecting. On the night of January 30, 1703, 47 ronin attacked Kira’s mansion, forced their way in, killed Kira and offered his head at Asano’s grave. The shogun was sympathetic to the samurai virtues of pride and loyalty manifested in this act, but decided that they could not be allowed to take the law into their own hands. They were accordingly ordered to disembowel themselves on March 30, 1703. Innumerable poems, essays and plays have been written in Japan about this event.

Ex. 9.45

Development. Custom develops spontaneously in any continuing community of people, and becomes permanent as it forms. It cannot be replaced in whole or part by fiat. Revolutions may lead to a wholesale change in the law: as occurred in France in 1789. A new leader may introduce a radically new religion: as Akhenaten did in ancient Egypt. But custom, as both those cases demonstrated, remains solid and reasserts itself. Custom seeks and finds continuity, no matter how dramatic the surface alteration. Japan, economically and politically devastated by its military defeat in 1945 and subject to a foreign restructuring of the essential elements of its society — government, land-ownership, commerce, management — nevertheless reasserted many of its old customs in ways adapted to the new conditions and challenges.

The aim of the leaders and thinkers in any society must be for custom to express the highest aspirations (as articulated in the morality and the law). However, the transformation of custom in that direction is always slow. Custom does not alter itself by a stroke of legislation or scintillating moral exhortation. Because the inner structure of existing custom is complex and coherent, the past has a tenacious hold. Once a new virtuous maxim is established, rights must change, tenets need altering, conventions have to modify and prescriptions need to be redefined. If this process solidifies, the custom is altered.

Romanian Elections: Democratic customs did not exist in Romania prior to communism. So, after the revolution in 1989, although there was much dogmatic talk about

democracy and liberalism, there were no old habits and ideas which people could easily return to and re-adopt. Few people respected the necessary tenets. Civic rights were not accorded on the basis of equality and did not preclude violence. Politics in the past had been a matter of clustering around different persuasive personalities, not about a conflict between ideas and values. Prescriptions to govern campaigning and voting were not developed. People were therefore confused and at a loss to know what to do. Customs, like intimidation and government by personality, returned. In the first election, Iliescu, a former member of the disgraced Ceausescu regime, received 85% of the popular vote, far more than any leader in a democracy would ever receive. **Ex. 9.46**

Institutionalization. Custom is embodied in the people. The judgement of custom is described as the voice of the people: ‘the people have spoken’. The epitome of the people’s voice is the chief. The chief usually has a council of elders representing the wisdom (i.e. opinions) of the people and listens to their views. The modern chief is usually called the prime minister or premier and is elected by the people directly or via elected representatives. Advice is provided by a council, cabinet or parliament.

Limitation. The social life of many primitive societies is regulated by custom alone. But custom is insufficient in a complex society for a variety of reasons already mentioned. The most important general criticism of custom is that it ignores the individual and fails to control determined individuals. The administration of justice, for example, is insufficiently developed to prevent blood feuds.

Individual freedom is heavily constrained by custom, because, according to custom, when an individual must make a judgement as to what is right, he is expected to do so in accord with what the community thinks is right. However, people are different, physically socially and mentally, and custom does not fully take this into account. Deviation from custom may also be generated by new circumstances to which custom does not completely apply, and which each person will interpret differently. As communities become larger and more complex, custom cannot develop and diffuse sufficiently rapidly and certainly. Above all, people engage in purposive endeavours which clash with custom. For these reasons — individual differences, social change, community complexity, and purposive endeavour — people are liable, eventually, to break with custom.

Certain customs might be observed for ages without any question of their being challenged. But most customs do eventually become modified or regularly broken. It then becomes necessary to determine which customary rules should not be changed and which are,

in fact, dispensable. This requires development of the law.

G"-5²: The Law

Nature. The law is a frame of reference whose *function* is to enable judgements of conduct which define what must be taken as right now. The law’s judgements are carefully preserved and themselves become part of the law. A judgement under the law is only valid if it is reached in a recognized court of justice.

Leading jurists recognize that the law is far more than laws (L"-6) or legislation. Goitein defines the law as ‘the sum of all the influences that determine decisions in courts of justice’. Ideally, says Pound, ‘the trained intuition of the judge continuously leads him to right results for which he is puzzled to give unimpeachable legal reasons’. ‘The life of the law has not been logic but experience’ emphasizes Holmes. Such comments make it evident that many elements of custom enter into the law.⁶²

Not only laws, but also the social background of judges and the prejudices of a jury affect decisions. For example: judges will determine whether a government has acted reasonably, doing so either in a flexible or strict way depending on the policy and the practical implications of the judgement. Similarly, judges freely apply their own views of family life in judging marital disputes. They may refer openly to societal conventions or the moral code e.g. sadistic sexual acts between consenting men involving somewhat bizarre but not excessively harmful or life-endangering behaviours led to a court conviction in 1990 in the UK on the basis of public unacceptability.

Because the law allows judges to reflect contemporary attitudes and common sense in response to the presenting problem and because juries could not possibly be expected to do anything else, nobody can confidently predict what will be the outcome of any particular civil action or criminal prosecution.

The lowest level of custom, prescription, is excluded from the law. Following a customary prescription is never a legal defence because the law takes precedence over custom in respect of whether a behaviour is right or not. Customary prescriptions may be assigned the force of law if they are not contrary to the law — but then such legal customs are really laws. Courts may instruct a particular individual to act or to refrain from acting in a particular way like reporting daily to the police or not visiting a spouse: but such prescriptions are person-specific instructions and not laws or part of the law to be obeyed by all. The law also excludes absolutes because of their all-embracing nature and

abstraction. In all, therefore, the law encompasses rules from L"-2 to L"-6.

The importance and essential *advantage* of the law lies in its role in preventing undue devaluation, deprivation or inhibition of individuals by society (or powers within it) while still protecting and promoting the common good. It exists in part to protect individuals from particular conceptions that some may hold about what is good. (The most dangerous social body in this regard is the government in power.) Because of the intrinsic rightness and universality of the law, some laws (G"-1⁶) legal principles (G"-2⁵), legal responsibilities (G"-3⁴), and legal standards (G"-4³) have stood essentially unchanged for hundreds even thousands of years.

Laws suggest but never determine how a particular case will be judged — if they did there would be no need for the courts. Like custom, the law values stability and predictability. However, the law differs from custom in many ways. Above all, it opposes arbitrariness and expediency. The law must form an internally consistent whole so far as is possible, and it must evolve coherently with each judgement. This means it must be written and recorded. The law strives to be as clear, precise and objective as possible. The law is a mechanism: and this means that it must be devised so as to be workable.

Capital Punishment: It is very likely that a referendum in the UK at the time of writing would endorse capital punishment. However, regular votes in parliament reject it. This is not simply because of a moral doctrine demanding respect for life: some members of parliament who oppose capital punishment regularly vote in favour of abortion. The opposition occurs on grounds that are purely in the domain of the law. For instance, slight doubts may lead to inappropriate acquittal in order to avoid the punishment. Mistaken judgements could never be undone. Another concern is that virtually all cases would go on appeal to the highest court in the land. Individuals in the USA have been in jail pending a final decision for up to 20 years. This leads to the legal process becoming a penalty in itself rather than providing a resolution.

Ex. 9.47

The law is tangible and objective. It is regularly described from two perspectives. On the one hand it is the cement of society (in which case custom would be the building materials to hand). On the other hand it is the medium of change (in which case morality is the blue-print). Although the law focuses on the present rather than the past, it is almost as intensely conservative as custom. However, the law (unlike custom) may change with bewildering rapidity if circumstances demand this. Then something that is right suddenly becomes wrong — or vice versa.

More on Slavery: Based on many centuries of established practice, the Attorney General and the Solicitor General concluded in 1729 that 'a slave coming from the West Indies to Great Britain doth not become free'. The churches at that time were not supporting the anti-slavery movement either, and Lord Dartmouth stated on behalf of the British government that he would do nothing to check a trade so beneficial to his country as the slave trade. By 1772, although legal opinion still held that slave-holding was a well-recognized custom, it had become uncertain as to whether it was one which should be endorsed by law. A test case was brought. Lord Mansfield delayed judgement hoping it might be settled out of court (i.e. by custom), but the law needed clarifying. As a result, the first anti-slavery judgement was passed, and others soon followed. By 1788, church leaders were opposing slavery, and the City too petitioned against it. The Universities also took up the issue. In 1807, a Bill for the Abolition of the Slave Trade was passed. Other bills followed and in 1832 parliament bought out all slave owners within the empire.

Ex. 9.48

A striking feature of the history of the law is the outbursts of great legal activity that shake society to the core followed by periods of orderly development of which the community at large remains unaware. The Twelve Tables of Roman Law which protected the Roman plebeians from patrician domination were developed in such a phase.

Origin. Why do people accept the law? Not because of custom: custom does not require laws. Nor because of force: international law, for example, cannot be easily enforced. Nor because it is a practical and logical necessity: many aspects of the law are irrational and emotional. And it is not enough to say that obedience to the law is part of the law itself. Accepting the law goes along with positively wanting to belong to a community which seeks to enhance freedom by self-consciously clarifying what is right for each and all.

The law has a deep and mysterious appeal. To understand it, we must recognize that the earliest form of the law was an ordeal. And the ordeal, whatever its external details, is a symbolic death and rebirth for the person.

Varieties of Ordeal: The commonest ordeal was the ordeal by water. Sometimes innocence was proved by floating, sometimes by sinking. In ordeal by fire, or its variants using boiling liquids or hot iron, guilt or innocence is determined by the amount of injury caused or the way that injury is manifested. For example, in West Africa, someone accused of theft or adultery used to plunge his arm in cold water and then into boiling oil, with scalding being a proof of guilt. In ordeal by poison, the accused is tested by drinking or eating a potion often containing ingredients like blood, milk, or sea water as well as a toxin. The Greeks used ordeal by lot. A similar sort of Hindu ordeal asked the accused to remove a ring from a pot in which there was a live cobra. Ordeal by

balance is also a Hindu notion. Ordeal by combat was introduced into England by the Normans. The oath was an ordeal by incantation which risked divine intervention, and this eventually replaced other forms of ordeal.

Ex. 9.49

The ordeal was not simply an activity that had to be endured by an individual, it was a complex religious rite of importance for the whole society. The ordeal required complicated preliminary arrangements to ensure purification and acceptability to the God(s), and was carried out in a precisely prescribed ritual fashion. A court trial still has many of the features of the early ordeal including: the use of the oath, the formality of the procedure, the ritual dress and language, the lack of concern with substantive justice, the black-and-white nature of the judgement, the support of the whole community, the apparently disproportionate time and exceptional expense. Psychologically, an action at court is an ordeal: once the action is over the parties and the community generally feel a sense of relief or release whatever the result.

Acceptance of the ordeal was necessary if one was to participate in society. The ordeal, being part of the religious basis of society, was a matter of social identity which could not be questioned. As the law differentiated and became established, it retained its sacrosanct quality. Judgement under the law remains a profound symbolic event. In modern times, the law continues to ritualize and resolve the primal tension between individual autonomy and the common good on behalf of all. As media coverage and crowds outside courts attest, people with no direct personal involvement in a case may still experience the court process and judgement as an intense cathartic experience. The significance of the law as a frame of reference for everyday life, distant as most of us may feel from it, cannot be over-estimated.

Justice. Because legal justice is driven by laws, its administration is in the hands of the government. Although legal justice may be achieved legislatively (e.g. the Greek trials before popular assemblies, the English Parliament in impeachments), this tends to be expensive, unequal, uncertain and prejudiced. Legal justice may be achieved executively (e.g. by inspectors, commissions or Ministers), but this tends to be expedient, arbitrary and politically biased. Finally and characteristically, legal justice may be achieved judicially using a separate forum with people chosen for their training, knowledge, impartiality, dedication and permanence — the judiciary. In 13th century England, legal professionals handled actions involving the common law even though it was based almost entirely on general and local custom.⁶³

Justice generated by a judiciary is, above all, procedural and formal. The judiciary embodies the law and so values predictability, consistency and uniformity in handling individual people and situations. Justice in this sense is repugnant to authoritarian powers, whether religious or despotic, because it diminishes the dependency of people on the grace and favour of those in power. Pope Innocent III, a legal authority and one of the greatest medieval popes, is said to have described the Magna Carta as 'impious, abominable and illicit'. The law is also intensely disliked by populist democrats because it places too much control in the hands of the judiciary, and because it supports individualism at the expense of community goals.

In other words, all law is judge-made (or court-made) law, even though its sources vary and include legislation, precedent, social policy, expert knowledge, ratified international conventions, custom and natural justice. The time has come to recognize more openly that judges do not merely follow or apply the law — they elicit, discover or create it. They do not (or at least should not) do so at whim or for their personal benefit, but must use their perception of social realities to benefit everyone. Social realities and the judicial perception of these realities can, with some difficulty, be shaped by ordinary people and influenced by governments.

Legal justice is characteristically pursued by adversarial or accusatorial proceedings which depend upon the initiative of an individual — a private person, firm or government — to bring an action which must be defended before an impartial judge or jury.⁶⁴ The process is characterized by representation and advocacy.

The essence of a legal judgement, now as in earlier times, is that it deliberately simplifies a complicated ethical situation and brings a painful social conflict to a definitive conclusion. The primacy of reason and fact in coming to a judgement under the law must be recognized as a relatively recent innovation. Evidence in earlier times was evaluated according to the prestige and number of persons testifying, and the most reliable and valid evidence was taken to be a confession extracted by torture. Today the rules of evidence are complex and legal logic is still not the natural logic of everyday life. If ordinary logic and facts were all that counted, then open-and-shut cases where guilt is admitted would not have to come before the courts at all — and vast amounts of time and money could be saved.

Development. Laws probably originated initially by reflecting on existing custom and morality, and emerged to compensate for their limitations. Around

450 BC in Rome, the Twelve Tables (so called because they were inscribed on bronze tablets) were the codification of ancient customary law and are the origin of Roman law. Now, as then, it makes more sense to view the law as emerging from what is deeply felt to be right, rather than the reverse. However, Roman law was imposed by many European rulers on their subjects with scant concern for custom or regard for the intense distress and confusion caused.

The possibility of law is based on the human capacity to formalise and generalise and on the existence of writing. These fundamentals allow laws to be promulgated and systematically modified. Printing enables wide dissemination of law reports: so it is a further necessity for full consistency and coherent development of the law in a large country. The formal requirements of consistency and coherence, so essential for law-making and legal judgement, are difficult to meet. This means that, although the law as a whole must take custom and popular feelings into account, the law cannot be left to the populace. Athenian democracy never developed a legal system as such for just this reason.

Two high points in the evolution of law are commonly identified. The first was around 2000BC when Hammurabi gathered together principles and procedures of the law developed still earlier by Sumerian and Semitic judges. His code consisted of 282 sections. It took the legal function away from priests and set up a system of judges under the King. It proscribed blood feuds or private retribution, and covered family, property, commerce, agriculture, and professional responsibilities. The code recognized the mental element in wrongdoing and was severe on carelessness or negligence. It was promulgated for use by courts throughout the empire and enabled Hammurabi to install an efficient government in Babylon with a far-reaching political and intellectual sway.⁶⁵

The second high point was the achievement of Roman law which included the discovery, systematization and analysis of the rules of positive law. Roman law, which originated with the Twelve Tables spread to Asia and Africa and was paramount in Europe for 1000 years. It was progressively applied and developed through interpretations which extended limited and altered it until the system collapsed in the Dark Ages. As already noted, most of the legal systems in Western Europe are still indebted to Roman Law in their structure, form and content.⁶⁶

There is a great deal of implicit wisdom in the law. As with the custom, it is not at all clear why it works and why it fails at times. No one whose concern is justice seeks to alter the law in any fundamental way, because that would be to reject the wisdom of hundreds of

generations and would create destabilizing doubt and uncertainty. Judicial exposition can deal with most cases by arguing from precedent. But circumstances do arise which demand new laws. Legislation is required, for example, when it becomes clear that precedent affirms injustices in the social structure so that judgements embed these in the law.

The massive and perhaps impossible task of introducing a new legal frame of reference occurs occasionally: e.g. when the administration of India was taken over by the English in the 18th century; and when new states are created. The law must now be overhauled in Eastern European countries after decades of totalitarian communist rule. What is required is not simply a new comprehensive set of laws of contract and property (which is difficult enough), but new maxims, new rights, new beliefs and new conventions. For example, the maxim that privacy and secrets are anti-social must go, a workable set of property rights needs to be developed, tenets like 'the collective invariably overrides the individual' must be replaced, and conventions of incorruptibility have to be developed. Such things take many years to solidify in a culture.

Institutionalization. The law may be organized by government — the parliament, the judiciary and the executive — but it is epitomized in the judge. Because politicians are self-interested and subject to populist pressures, tyrannical or inappropriate use of the law is all too likely. Some law will always be made by the legislature, but, once made, the law is best given over to a judiciary dedicated to its preservation and sanctity. Increased control of the legislature is possible by constructing laws that cannot easily be altered by a simple parliamentary majority; or by using two chambers with the upper chamber dedicated to the law and justice, and the lower dedicated to the organization and administration of government.⁶⁷ In any case, judges do need to be protected from the wrath of elected politicians, and lifetime appointments are commonly used to provide personal security.

Limitation. The law depends, above all, on the respect accorded to it. So cavalier alterations must be kept to a minimum. To emphasise their importance, laws used to be passed repeatedly. The Magna Carta, for example, was reconfirmed 37 times between the reigns of Henry III and Henry VI. To overcome such repetition and to provide for certainty, consistency and rationality, the doctrine of precedence became central in the law, especially so over the last 300 years. The highest courts in the land, whose decisions must be followed by lower courts, ought to be particularly concerned to be bound by their own previous decisions. Each new issue for judgement must be re-conceptualized in the light of

existing legal thinking. The principle of precedent, although a bulwark of the law, is a valuing of the past in the present. The law is not expected to foresee future needs or to deal with new circumstances in which existing precedents are inapplicable.

The critical legal studies movement seems to go too far in holding that the law is not distinctly identifiable. But their assertion that the law depends on current conventions is accurate and poses a serious problem.⁶⁸ It must be recognized that the law cannot in itself deal with oppression or genuine injustice if these are socially entrenched. The unalterable fact is that the law can neither judge whether the law as it presently stands is just, nor ensure that it is just. Such tasks depend on the use of the morality as a distinct and higher frame of reference.

G"-5³: The Morality

Nature. The morality is a frame of reference whose *function* is to enable judgements of conduct which define what ought to be taken as right now and always. Judgement here is based on an ideal of virtuous conduct in a just society. The morality is an ideal with explicit transcendental qualities. It is grounded in beliefs which are usually described as sacrosanct or sacred, and are explicitly or implicitly part of the religious framework of a society.

From a societal perspective, the importance of the morality in use is that it energizes and directs efforts to recast and improve the law and to reform custom. Conventions and prescriptions which are focused on popular activities and communal pressures should have no part to play in this. Absolutes (L"-7) are the driving force, and unequivocally respected tenets (L"-3) are the foundation. The morality typically underpins and suggests principles of natural justice (G"-2⁶), conceptions of distributive justice (G"-3⁵), and universal standards (G"-4⁴).

Although any morality belongs to a society, it only functions if it is a frame of reference within each person. It reflects all the influences that determine judgements in one's heart of hearts, so it can be used personally or in small moral communities.

Whereas the custom is unavoidably fuzzy and communal and whereas the law must be objective and institutional, a morality must be subjective, symbolic and personal. This morality lies at the core of social being and meets the deep craving of each person for something to believe in and live for within their society.

A society functions most smoothly, when it is permeated by a single moral doctrine. This doctrine is not just another value system but the value system which all

value systems in the society should recognize as supreme. The rules within it are the chief moral values defining the morality. Where multiple moral doctrines coexist in a society (as with multiple customs), then any issue may generate a number of different valid yet painfully conflicting judgements about its rights and wrongs.

The orientation of morality is to the future, often the long-term future. This provides the perspective from which it is possible to view the evolution of individual identity and societal identity. The morality is symbolic and aspirational. It does not let itself be compromised by practicalities of the moment. For any person adhering to the morality, it is immediately appropriate and applicable in their own life.

Pornography and Censorship: The morality of the West would lead to the judgement that producing pornography is wrong because it degrades people and devalues relationships, and that censorship is wrong because it deprives people of autonomy and responsibility for their own choices. The world envisaged by that morality is one in which there is no censorship by the community, and yet no one produces pornography, gains profit from pornography, or is gratified by pornography. At the present time, it seems that we need to decide whether particular forms of pornography should be tolerated or censored. But this is evidently a practical matter, not a doctrinal matter and best suited to the custom or the law. The morality floats above practicalities, drawing people's attention to the fact that the choice involves two wrongs. The morality permits and encourages each person to avoid pornography and to refrain from censorship-like activities, whatever the customary or legal position might be and whatever others might do. **Ex. 9.50**

The *advantage* of the morality is that it provides a clarity of vision about right and wrong that is so often absent or obscured in the other frames. Such potential wisdom concerning what is best for everyone and society invites the danger of wanting arrogantly to impose judgements on others. However, it is typically the custom, not the morality, which endorses abusive or terrorizing conduct in pursuit of what is right.

In the past, and still in traditional societies, the morality is that of the local religion and it is incorporated automatically through socialization. If the religion asserts, for example, that suicide or consulting astrologers or masturbation or lending money is wrong, then people judge such conduct to be morally wrong in every case. Judgements using such moral doctrines do not feel like an imposition, but rather the expression of truth.

In societies lacking a unifying religion, there is a profusion of personal doctrines linked to predominant ethical teachings. These moralities may incorporate

similar tenets ('the sanctity of life', 'the dignity of the person'), but they rest on distinctive rights which may not be widely respected or generally accepted. In areas like abortion and euthanasia, differing moral rules have led to bitter condemnation of others. Each camp demands laws to overcome opponents and their beliefs. This is perfectly natural but inappropriate in a society espousing pluralism. The push for deliberate adoption of laws is correct because L"-6 is the fourth internal level of any morality. But a morality demands that people should make these laws *for themselves* to apply within their own moral communities — like the Jews do in regard to the *Halakhah*. Living fully according to the morality demands more than acceptance of the law and few can manage it. It is often said that great men have higher obligations than others. The conduct of sages in Buddhism and Judaism, for example, is judged by more morally demanding rules than that of ordinary people.

Origin. If we ask why a morality is accepted, the reply is that it concretizes the moral imagination which is intrinsic to our existence as human beings. The morality is oriented to an undefined enlightened future in which good people thrive in a just society. The hope for such a future originates and flourishes in the moral imagination. Anyone can reflect on the ethical quality of custom and of existing political and institutional structures, although few seem to do so in any systematic way.

Slavery was originally permitted under the American Constitution. How could those great men who framed the Constitution fail to see that a person should never be treated as a chattel? The subjection of women in Europe is now being questioned in the West. But how did it go unchallenged for so long? The answer must be that people are blind to injustices that are part of custom. To become aware means to abstract oneself fully from the community as it is at present and to enter an imaginary ideal world. In this process, the intractable and insuperable difficulties of realizing such a world, given the present state of things, must be put to one aside.

In a practical and materialist society in which the imagination is not properly valued, ethical judgements about, say, the coexistence of great wealth and great poverty, or the consumption of meat, or the availability of sexual partners for hire do not appear very sensible. Such things appear as uncontrollable phenomena. They are the way things are: custom allows them; the law regulates them. What more need be said? To say more by using the moral imagination requires faith and hope. Whether one should go further and act to alter society in terms of the morality is a matter of ethical choice. Recall that the cardinal virtues need activation during

choice: so prudence may limit action considerably and wisdom may suggest that the harms consequent on imposing moral judgements at a particular historical moment will outweigh moral gains. Prohibition of alcohol in the USA in the 1920's, for example, was a spectacular failure.

Nevertheless, the morality evolves as a coherent entity within which fundamental questions about society can be asked and answered. To repeat: the answer does not itself determine what is to be done, but simply indicates whether what is done is right or wrong, and why (in terms of that framework).

Justice. Using this highest frame of reference, judgement may be passed on any matter and on judgements already made under the law or in accord with custom. Because of its transcendental origin, moral judgement draws primarily on the intuition rather than the intellect or the emotion. Justice under this frame of reference is solomonic and ideal; and the procedure is revelatory and moving rather than inquisitorial or accusatorial. The term, solomonic, comes from the legendary wisdom of King Solomon (cf. Ex. 9.51).

Solomonic Justice: Two women who were prostitutes came to King Solomon in dispute over a baby. Both shared a house and had given birth to babies three days apart. One baby died and an argument arose over whose baby the live one was. The king said: "Fetch me a sword." They brought in a sword and the king gave the order: "Cut the living child in two and give half to one and half to the other." At this the woman who was the mother of the living child, moved with love for her child, protested and said the other could have the child. The other mother said "Let neither of us have it: cut it in two." On this basis, King Solomon gave the first woman the child and announced that she was the true mother. 'When Israel heard the judgement which the king had given, they all stood in awe of him; for they saw that he had the wisdom of God within him to administer justice.'

Ex. 9.51⁶⁹

Solomonic justice is educative and inspiring. It refuses to be bound simply by what is customary or lawful. Custom-based justice is mundane and prudential, and legal justice is narrow and technical, but solomonic justice expresses wisdom and illumination. Plato's philosopher-kings were expected to function in this way. Many parables in Eastern and Western religious folklore reveal a sage or holy man using morality as the frame of reference for judgements, ignoring legality or traditions and penetrating to the essence of the offence and the character of the defendants. Such judgements are seen to be touched by divine grace, or to emerge perfectly as by supernatural intervention. In other words, solomonic justice emphasizes the fallibility of human institutions and knowledge.

Judgement under morality is dogmatic in nature. So only certain people can make such judgements publicly and be obeyed. A moral system is charismatic and its rules and judgements require articulating by a master, either a sage, saint, prophet or holy person. Charismatic authority is associated with exceptional powers not available to ordinary people. These powers are thought to originate in the divine. (Charisma means favoured by God, or touched by God's grace.) A master is a potential spiritual leader, set slightly apart from ordinary people, tolerant of custom and not enslaved by the law.

The loss of spirituality in society leads to a loss of the importance of masters, a weakening of the sense of identity in society, and an increasing struggle to maintain unity in the presence of diversity.

Development. The development of morality as a frame of reference is inseparable from the evolution of consciousness and the pursuit of the good. Until very recently, this was inconceivable without an awareness of the divine. As repeatedly noted (especially in L'-VII: Ch. 7), the sense of the sacred and divine is part of the structure of human consciousness and society. Although modern society appears to be characterised by de-sacralisation (called secularisation), this can be interpreted as a new and more self-aware phase of spiritual and ethical growth.

For any morality to be widely adopted, it must generate hope, faith and trust. Because the morality must embody hope for a better future, a new version often emerges when society is in despair. The morality then offers a new way to be and to live. The creation and introduction of a genuinely new morality reflects the beginning of a new era in any society. Because it is not tied to practicalities it provides scope for development and diversity in its expression. The morality becomes attenuated or modified in practice by the constraints of the law and the custom (cf. Ex. 9.52).

The Evolution of Buddhism: When Buddha visited his disciples after enlightenment he said to them: 'I am the Saint, the Perfect One, the Fully Enlightened. Give ear, O monks: the Way is found. Hear me.' His gospel of Dhamma was a morality for ordinary men and women. The Four Noble Truths stated the basic tenets that had to be strictly held: that all life is suffering, that suffering derives from desire, that suffering ceases if desire is extirpated, and that desire can be extirpated by following the eight-fold path. The eight-fold path stated a number of self-evidently virtuous absolutes (see L'-VII: Ch. 7). The dogmatically affirmed maxims were prohibitions against killing, stealing, sexual impropriety, lying, and alcohol use. The morality became widely available when it was deliberately chosen by converted kings who introduced laws making Buddhism the official religion. Buddhism has undergone many schisms, but two main forms emerged

after a few centuries: the Theravada form of Hinayana Buddhism, which is the strictly orthodox Doctrine of the Elders, and Mahayana Buddhism which advocated accommodation to local practices and beliefs. However, even Theravada Buddhism contains ideas and beliefs that did not originate with Buddha. Furthermore, it is evident that Burmese, Thai and Sinhalese versions of Theravada are distinct doctrinal entities. **Ex. 9.52**

Institutionalization. The roots of any morality are invariably found to lie in organized religions or quasi-religious philosophies like humanism. Although any new morality contains long-standing rules, the message has a revolutionary force because of the discrepancy between moral values and the way people actually live. The tenets grounding the morality commonly foster belief in the leaders of the originating religion. Whether or not such persons have charismatic authority is determined by followers and disciples who respond to the message. The main problem for any society is to keep alive the spirit of the morality and the sense of charisma generated by the spiritual founder.

To deal with this problem, societies have often used the monarch to represent their morality. In the ancient Egyptian civilization, the Pharaoh was the God-King, and the notion of the divinity of the monarch has persisted in many places through the centuries. Emperor Hirohito of Japan only acknowledged publicly that he was not a god under pressure after his country's defeat in World War II. In many countries, like England and Japan, the monarch remains head of the established Church. In some cases, as in Tibet's Dalai Lama, the same person is both spiritual and political leader.

The monarch or spiritual leader rules by the grace of God and is invested with charisma. The unique position of the monarch above the law is encapsulated by the notion of divine right or, in modern times, the royal prerogative which says in essence that 'the King can do no wrong'.

A spiritual head of state is needed to epitomize the morality for all in society. This means remaining above practicalities, politics and legal formalities. Such a role makes for a powerful force for unity within a society, one not provided by many modern elected heads of state who become politically embroiled.

Closure. The *limitation* of morality is to be found in its impracticality in an all too imperfect world. Correspondingly, the danger of a morality is its capacity to activate extremist utopianism. However, what seems radical and impractical for the whole community may be self-evident and possible for enlightened small groups. Their commitment to living their morality encourages or foreshadows change in the wider com-

munity: witness the role of the Quakers in slavery (Ex. 9.42).

It is evident that the morality must be the ultimate frame of reference for judging conduct in society. Logically there is no higher pentad. So this grouping is complete.

REVIEWING THE FRAMES OF REFERENCE

The three great frames of reference invoked as authorities during ethical debate have now been defined and elaborated: the custom, the law, the morality. They can be seen to parallel Weber's three bases for legitimate authority: traditional, rational, and charismatic.⁷⁰ Weber saw the charismatic as the source of human freedom and creativity, and the other authorities as attempts to establish and routinize the charismatic contribution. He emphasized the anti-economic nature of the charismatic leader, and we have noted that morality naturally fails to deal with the economic and other practical consequences of judgements made in its terms.

The frames of reference reflect three great systems or orders of authority in society. The custom concerns the activity order and focuses on performance and practice. This is the realm of the people who are the source of economic and physical power. The law concerns the institutional order and focuses on the structuring or channelling of activities. This is the realm of government which is the source of political or coercive power. The morality concerns the symbolic order and focuses on the meaning of activities, especially their rightness and goodness. This is the realm of the monarch or other spiritual leader and is the source of what might be called integrative or humanistic power.

Practical Implications. There seems to be confusion about the different spheres of influence of each of the three frames of reference, and their distinctive nature and importance. Although any matter may be judged using any of the three frames of references, the maxim to 'render unto Caesar that which is Caesar's and render unto God that which is God's' holds. So we may speak of a customary right, a legal right, and a moral right; or of a customary wage, a legal wage, and a fair wage. Correspondingly a customary duty may be judged illegal or immoral; a legal duty may be judged immoral or alien; and a moral duty may be judged illegal or alien. Where something is not established in custom or law but is deemed to be right or fair, then it is commonly qualified as moral, just or natural e.g. a moral obligation, a just cause, a natural right.

Matters of social fact, like prices, are first of all based on custom. If doubt exists as to the propriety of a social fact, courts of justice may decide or legislation may be introduced and a legal fact is then created.

A Fair Price: Modern complaints about 'the immorality of exorbitant profits' derive from the moral reprehensibility of greed and the notion of a fair price. However, there are three distinct ways in which the price of goods or services may be set and judged as fair. The market price is a judgement which is reached under custom. It is determined spontaneously through a process of competition. The fixed price is a judgement which derives from the law, and aims to regulate production and costs to balance the benefit for the producers with the needs of the wider community. Such price control is developed by calculation and enforced by officials. The just price is a judgement of fairness which derives from application of morality. This price, defunct since medieval times, determines what is sinful. Its nature is disputed. One view is that it was determined by whether or not it would maintain the craftsmen in their current social status. Another view is that it dealt with imperfect competition and other dark age inefficiencies and aimed to compensate sellers for extra unavoidable costs. Note that a price developed by preventing competition or by deception is judged unfair within all three frameworks.

Ex. 9.53

The embedding of justice in society within the frames of reference has been described in detail. Because the term, justice, is used in so many ways, a summary overview is provided in Table 9.3.

The power of the three frames of reference and the passions they engender have sometimes been forgotten when distinct cultural groups must be assimilated within a single society. Respect for the law has to be insisted upon, but this is difficult when the endorsement of custom and morality cannot be obtained. The result is that there will be profound disagreements between groups about what is right. The law will be defied and attempts will be made by minority cultures to modify the law. The Salman Rushdie case in the UK showed all these phenomena: incitement and threats to murder, which are against the law, were allowed by custom because of their religious origins; and attempts followed to make the law of blasphemy apply to all religions (not just Christianity) as a matter of fairness.

Linking the Frames. Custom maintains that 'what is' is what is good. Morality promotes what is good in theory, which may differ greatly from what is customary. The law protects the individual from particular conceptions of what is good. Some integration of these three frames of reference is possible, based on the extensive overlapping of levels. The law has a mediating role in so far as it is expected to adapt to custom, and also a custodial role in so far as it aims to shackle custom

Table 9.3: Uses of the term 'Justice'. Justice means broadly 'to each his due'.

Term	Classification and Formula	Meaning
Justice	= ultimate value (L-7) linked to the ethical frames of reference (G ⁿ -5)	= a goal of all humanity intrinsic to social life
Justice	= the virtue at L ¹ -6	= fairness in a person
Natural justice	= the principle at G ⁿ -2 ⁶	= fair play in decisions
Distributive justice	= the position at G ⁿ -3 ⁵	= fair shares of social goods
Substantive justice	= requirement of custom: G ⁿ -5 ¹	= fair acceptable resolution
Formal justice	= nature of the law: G ⁿ -5 ²	= fair judging procedure
Solomonic justice	= use of the morality: G ⁿ -5 ³	= the right judgement
Divine justice	= an occurrence beyond rules	= the right end result

to morality.

The custom and the law share four levels of rule, so they are likely to affect each other greatly. At times, accepted conventions (within the custom and the law) may over-ride existing laws (only in the law) e.g. when French jurors acquit a husband charged with murder of his wife's lover caught in the act; or when an English judge insists smacking a child is 'traditional wisdom' despite the law. The law may need to deal definitively with conflicts within custom, or to consolidate ethical gains emerging in custom.

The morality and the law are also linked. Morality presses for changes in laws so that its judgements can be widely applied, as was evident in the case of slavery (Ex.s 9.42, 9.48). The custom and the morality show the greatest potential for conflicting and competing tenets, rights and maxims. If the morality is to gain hold, its tenets may need modification in the light of tenets dogmatically affirmed by custom. This characterizes the spread of all religions (cf. the development and adaptation of Buddhism in Asia: Ex. 9.52).

The morality and the custom overlap in three levels (maxims, rights, tenets) and may directly influence each other through popular movements. These social endeavours are based on ideals and ideologies built around these sorts of rules. In this way the morality may permeate the custom, leaving the law to catch up.

Sometimes it becomes difficult to disentangle what belongs to morality and what to law or custom. The controversy over the ordination of women in the Christian church is an expression of this problem. If laws in society open up roles for women, then it is

natural that any institution resisting this is challenged. If Christian morality indicates that it is wrong for women to be ordained, then the Church is unwise to deviate from this in the absence of a new prophet — whatever the law. If custom rather than morality determines the ordination of women, then the Church should consider altering customary tenets and rights to accord with its members feelings of justice.

Academics have sometimes tried to reduce the law to custom. The *Volksgeist* (folk spirit) was once held as the only legitimate source of law. But this theory seems flawed. The law regularly rules on new social and commercial matters where there is no habitual practice or popular expectation; and jurists regularly look to foreign law and legal necessity when reaching decisions. Whereas all understand the custom, even intelligent lay people cannot understand the law. The opposite trend, with both academic and popular support, has been to view the law as an expression of morality. The notion that the law is based on innate notions of justice or divine will appeals to a religious community. In earliest times, the administration of justice was indeed a priestly function carried out on behalf of the city-state's God; and modern Muslim extremists, who shout that they want the rule of God over people not the rule of people over people, manifest the same view. The present analysis proposes that the law is something *sui generis*, even though it draws heavily on both custom and morality.

The present analysis indicates that all three frames are essential and must be viewed independently if society is to work satisfactorily. The neglect of traditions and the past is no less a defect than a failure to

proclaim moral values and to maintain the possibility of a better future. The law, in its own way, is as noble as the morality: but it is no substitute for morality. Nor is morality capable of becoming law or custom. The attempt to fuse these distinct frames is dangerous. It has led, for example, to the present perversions and misunderstandings of Islam. The core doctrine of peace, tolerance and compassion is being presented as a justification for customs and laws of the most intolerant and violent sort.

Transition. Definitive frames of reference are now established and authoritative judgement about what conduct is right is at last possible. Although such judgements do tend to activate obedience, they exist principally to enable and enhance freedom. So the disposition to obey is constrained and limited. However, the social requirement for obedience still remains.

The ultimate subordination and elevation of both

obligation and freedom have not yet been considered. The six- and seven-level groupings provide the potential for all that has been described so far to be energized and integrated within society. This depends on the interaction of will (freedom) and obedience (restraint).

The first requirement is that judgements using the frames of reference should be obeyed in practice. So self-restraint once again comes to the fore. If obedience is not forthcoming, then the ethical authority of custom, law or morality is absent or meaningless. The frame will then fail to protect society from violence and disintegration generated by unlicensed freedom.

Obedience to obligations can be released safely and ensured authoritatively by a yet more comprehensive rule-based authority with an additional level dedicated specifically to this task: the categorical imperative.

Master-Table 25

Properties of the three types of definitive frame of reference in society.

Ethical frames of reference, which are needed to judge whether conduct is just, are pentadic authorities formed by conjoining five adjacent types of rule. See text for details and explanation.

	1 (L's 1-5)	2 (L's 2-6)	3 (L's 3-7)
Pentad No. (Levels)	The Custom	The Law	The Morality
Types of Frame of Reference			
Function	To enable judgements of conduct which define what has always been taken as right.	To enable judgements of conduct which define what must now be taken as right.	To enable judgements of conduct which define what ought to be taken as right.
Time Perspective	Past	Present	Future
Social Reality	Practical & communal	Institutional & societal	Aspirational & theoretical
Generator	Popular sympathies & emotions	Legal reasoning & the intellect	Moral imagination & intuitions
Primal Authority	Community as a whole	The law itself	Ethical teaching/ultimate values
Justice	Substantive	Formal	Solomonic
Judging Body	Adjudicator(s) forming a Tribunal	Judge(s) in a Court of Justice	Sage in a sacralized setting
Judicial Style	Pragmatic & prudential	Procedural & technical	Dogmatic & educational
Proceedings	Inquisitorial – investigative	Accusatorial – adversarial	Revelatory – experiential
Methods	Negotiation & mediation	Representation & advocacy	Inspiration & illumination
Focus	Situational & fuzzy	Objective & comprehensive	Subjective & symbolic
Control	Outer & informal	Outer & formal	Inner/outer & informal/formal
Authority	Traditional	Rational	Religious
Freedom	Restricts	Protects	Defines
Type of Power	Economic & physical	Political & coercive	Integrative & humanistic
Social Form	The People	The Government	The Official Religion
Societal Epitome	Chief/Prime Minister	Judge	Spiritual Head of State/Monarch
Main Advantage	Practicality	Values individuals	Provides hope for a better world
Main Limitation	Ignores the individual	Bound by precedent	Imprecision
Main Danger	Mob law or blood feuds	Expensive, lengthy, incomprehensible cases	Extremist utopianism

G"-6: CATEGORICAL IMPERATIVES

Nature. So far we have repeatedly used words like ‘should’ and ‘must’ to describe the handling of rules and ethical authorities without worrying too much about how people let themselves be persuaded to introduce and accept obligations. The source of this pressure for obedience can be readily identified in an ethical predisposition associated particularly with laws and the governance of society (cf. Master-Figure 16). If society is to function ethically, then this disposition must be harnessed, and those who seek to use it must be regulated.

Obedience is a powerful force. The famous experiments of Milgram revealed that authority, even informal authority, releases obedience irrespective of the moral or legal significance of the instructions.⁷¹ The person obeying authority does not see himself as responsible but rather as an agent executing the wishes of another. This is a dangerous state of affairs. Society needs the release of obedience to be carefully controlled and legitimately regulated. So obedience must be primarily owed to vital rules and authorities based in rules and never to individuals who assume or are assigned the mantle of authority.

The definitive frames of reference, for example, which are the systems sustaining ethical conduct must be energized and legitimated by something beyond them, something which is itself not a matter of judgement but which can be self-imposed and imposed on others in a way that brooks no objection.

A rule with such force may be called an ethical **imperative**. We know it biblically in the form of commandments like: ‘Thou shalt honour thy father and thy mother’; and ‘Thou shalt not commit adultery’; or everyday exhortations like ‘Be kind’ and ‘Don’t be envious’. The imperative is categorical and tolerates no opposition. It assumes and seeks to compel obedience without more ado. The authority here is supreme, possibly divine. Rejection of such imperatives (or ‘forgetting’ them or thinking they do not apply) puts us beyond the pale: this is why Milgram’s findings, replicated many times, are so horrifying.

Obedience to ideas, which is what rules are after all, does not seem to be as natural to most as obedience to another person. The way we are socialized in our lengthy childhood probably determines this tendency. But people come and go and people may change their minds under pressure. Categorical imperatives are a far more satisfactory controller. The *function* of an imperative, it seems, is to ensure that categorical obedience can persist authoritatively in society through time. Utterly impersonal, they not only regulate our obedi-

ence but also ensure that ethical concerns are coherently handled.

Imperatives are generated by adding a sixth adjacent level to form a hexadic grouping. The result is two heavily overlapping hexads which correspond to two types of ethical imperative.⁷² The sixth level enables the imperative to be *legitimately imposed*. All previous qualities are still needed: so imperatives must undergo *virtuous evolution*, gain *deliberate adoption*, receive *dogmatic affirmation*, be applied in a *socially acceptable* way, and be accorded *unequivocal respect* — in each case via rules at the respective level.

Types. The two forms of imperative required by society are: the *pragmatic imperative* (G"-6¹) and the *moral imperative* (G"-6²). The function in each case is to harness obedience and regulate the activation of obedience. Each imperative links into a distinct type of obedience and draws on a different source of legitimacy. Ascending, the groups reflect a shift *from* temporal obedience with legitimation by governments and their citizens on legal, communal and pragmatic grounds *to* spiritual obedience with legitimation by an indefinable transcendental source recognized as deeply personal and religious in nature. The hexads are represented diagrammatically in Figure 9.6.

Imperatives are expressed in deceptively simple language. What exactly does ‘be honest’ or ‘be gentle’ entail? The present analysis suggests that the way forward is to consider who or what the imperative seeks to regulate. Is the concern with regulating the rulers of society and the operation of governing institutions? Or is it with regulating people, equals who see themselves as part of a moral community?

The two types of imperative as found in all societies can now be defined and described with an easy example.

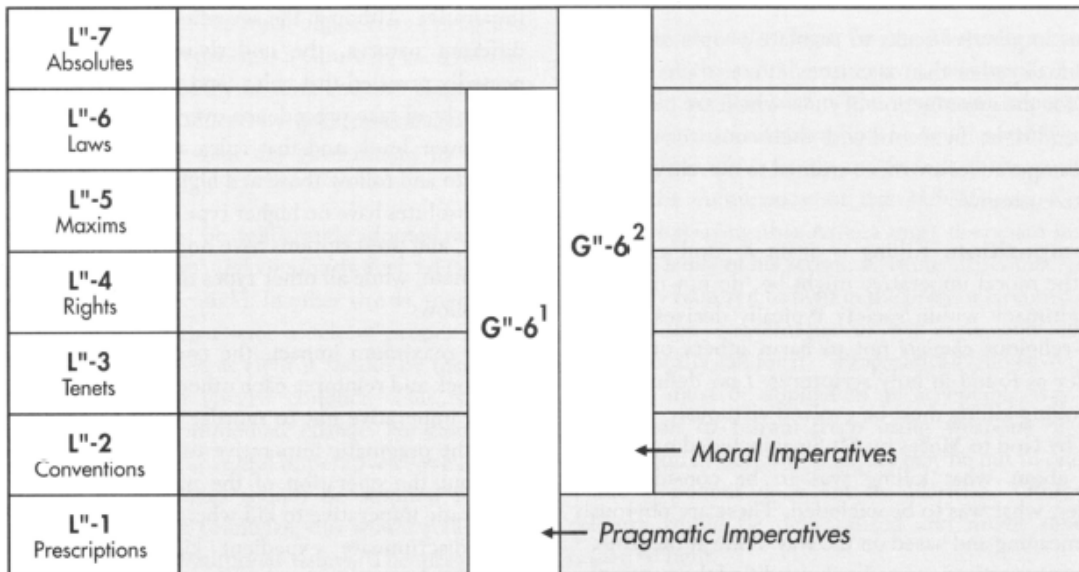
G"-6¹: Pragmatic Imperatives

Nature. Pragmatic imperatives are required to ensure control of society in mundane terms. Their *function* is to regulate demands for obedience generated by the rulers of society. There are two types of ruler in any society: the government and the citizenry (cf. G-6: Ch. 12), and both experience the pressure of pragmatic imperatives.

This imperative seeks to ensure that rulers or their representatives do introduce those rules necessary for the running of society — but only in accord with the imperative. If introduced legitimately, the imperative is a justification for enforcing obedience in practice. The pragmatic imperative encompasses both the custom and the law, the frames of most concern to rulers.

Figure 9.6: The hexadic grouping forming categorical imperatives.

Two types of ethical imperative which must be legitimately imposed if obedience is to be regulated.



Most societies, while recognizing the precious nature of human life, have regarded things like ritual suicide, infanticide, euthanasia, abortion, capital punishment, and killing enemies during warfare as necessary for their well-being. So the killing of people is a good example: the pragmatic imperative being ‘kill when necessary’. It is easy to see that an imperative like this imposes itself on any citizenry and government whatever society’s underlying religion or morality and however opposed any particular member of society may be to killing humans. The rulers of society are able to apply and enforce the imperative through its constituent rules.

Composition. The ‘kill when necessary’ imperative requires that laws regulating killing should be legitimated e.g. by passage through parliament. Laws are the source of imposition, but they must be passed in the spirit of the imperative. This spirit is made clear by other types of rule. *Maxims* must evolve indicating what killing is necessary (i.e. good) and what killing is unnecessary (i.e. bad). This enables war or legally controlled euthanasia, say, to be viewed as virtuous. *Rights and duties* in regard to necessary killing need to be deliberately chosen e.g. who can kill and how must be determined by custom as well as in law. *Tenets* endorsing the necessity of killing must be dogmatically affirmed. *Conventions* about killing, e.g. when police deal with armed criminals, should be applied acceptably; and *prescriptions*, say about the mechanics of capital punishment, should be unequivocally respected.

In other words, the pragmatic imperative ‘to kill when necessary’ is only effectively integrated and obeyed in society if it is dealt with at all six levels. These rules, ultimately sanctioned by laws, must become part of everyone’s life whether they like them or not. Precisely what rules meet that imperative is a matter for the government and for all citizens.

Legislators might seem to have the supreme authority. However, in a free society, legislators should respond to the views of the citizenry in regard to the over-riding pragmatic imperatives; and citizens must accept the responsibilities which accompany this system. The alternative is a tyrannical and absolutist regime which can make laws at whim i.e. regardless of pragmatic imperatives, procedure, lower level rules and primal authorities.

Limitation. But what ensures that people take government and pragmatic imperatives seriously? The personal and communal responsibility for government and much else needs to be imposed and regulated by a higher moral imperative.

Gⁿ-6²: Moral Imperatives

Nature. Moral imperatives are required to ensure control of society in spiritual terms. Their *function* is to regulate demands for obedience generated by each person on behalf of their community, or by a group on behalf of each member. The moral imperative is personal and religious in nature, and the community is

experienced as a moral community rather than as a political society. Implicit within any moral imperative is obedience to a higher spiritual or transpersonal authority, whether labelled Reason, God, or the True Self.

This imperative seeks to regulate people as private individuals rather than as citizens. It constrains them to press for the introduction of rules which are inherently good and right. In accord with their constituent levels, moral imperatives are more attuned to morality and law than to custom.

Composition. Killing is again a good example: here the moral imperative might be 'do not murder'. Its legitimacy within society typically derives from a quasi-religious *absolute* not to harm others or not to murder as found in holy scriptures. *Laws* defining and controlling killing must be evolved virtuously. The law given by God to Moses on Mt Sinai included numerous rules about what killing was to be considered as murder, what was to be excluded. These are obviously well-meaning and based on the way of life at the time.⁷³ Progressive religionaries slowly modified these over the centuries since. *Maxims* which relate to murder should be chosen deliberately. The maxim to forgive others, for example, can be viewed as part of the imperative because it prevents the escalation of hostility and violence which often precedes murder. *Rights and duties* of all in relation to murder, like the right to self-defence with a duty to use minimal force, should be affirmed dogmatically. *Tenets* in the imperative need to be applied in an acceptable way, which respects society and its culture e.g. life is sacred. Finally, *conventions* are need to ensure that any killing is not murder because it is carried out with the right attitude e.g. a depersonalization of those involved in killing. Such conventions should be unequivocally respected. Only if rules of all the above sorts prevail, will murder be distinguishable from lawful killing in both theory and practice.

Behind the moral imperative stands the compelling power of the imagination and cosmic forces, and the ineradicable idea of divine retribution. In the bible, there are numerous accounts of God punishing wrong doers, even destroying entire cities for their wickedness. Jesus, too, was not averse to threats like the withdrawal of the Kingdom of God.⁷⁴ In the Hindu view, the iron law of karma is the enforcer. The modern New Age version is that the nature of reality is such that those who are wicked and unjust sow the seeds of their own destruction.

Closure. If the nature of things (God) stands implicitly or explicitly behind the moral imperative, there can be no higher, fairer or more impersonal determinant of obedience.

Applying Imperatives

Proper Interaction. If ethical living is to thrive in society, there needs to be a pre-eminence of the moral imperative and an adaptation to it by the pragmatic imperative. Although the seven levels of rule have very different natures, the underlying hierarchy has repeatedly revealed that rules (and their derivatives) at a higher level take precedence over and legitimate those at a lower level; and that rules at a lower level must adapt to and follow those at a higher level. It is evident that absolutes have no higher type of rule to adapt to or follow, and prescriptions have no lower type of rule to legitimate and follow.

For maximum impact, the two imperatives should interlock and reinforce each other. In our example, the moral imperative not to murder must be harmonized with the pragmatic imperative to kill when necessary. Without the operation of the moral imperative, the pragmatic imperative to kill when necessary could lead to indiscriminate expedient killing, which would endanger everyone in the community. Without the operation of the pragmatic imperative, the moral imperative to prohibit murder would tend to expand to include all killing and a society would be at the mercy of extremist and anti-social forces within and aggressors from without. This would certainly be harmful. With the two imperatives in harness, society can operate ethically in the world as it is.

People feel they have little choice but to face social reality and to adhere in the main to pragmatic imperatives. However, they generally experience themselves as having the choice about whether or not they follow the moral imperative. This choice is evident when we consider the two different approaches to the same type of rule where the two types of imperative overlap i.e. from L"-2 to L"-6. Rules at these levels are part of both imperatives but our relation to them in everyday living is handled differently according to the perspective provided by each imperative. It is worth examining each level in turn using the standard qualifying phrases (as summarized and laid out in Master-Table 20).

Certain *laws* must be virtuously evolved by society (as part of the moral imperative) and legitimately introduced into society (as part of the pragmatic imperative). The necessity for virtue was recognized by early legal thinkers who captured it in the notion that: *an unjust law is not a law*. Nevertheless there is no simple social mechanism to specify that a law is unjust. Each community must decide for themselves using the frames of reference. So long as the law is passed legitimately, the pragmatic imperative demands that even unjust laws need to be obeyed. The necessity for

imposition is captured by legal positivists with their notion that all law is, can be, and ought to be the invention or construction of legislators.⁷⁵ In the general public too, there is an endless battle between those who opt for strict obedience to laws ('conservatives') and others who see the need to resist unjust laws ('progressives'). This conflict represents a failure by each side to recognize the dual quality of laws and the distinction between what is introduced by government and what well-meaning people want the government to introduce.

Certain *maxims* must be deliberately adopted (as part of the moral imperative) and virtuously evolved (as part of the pragmatic imperative). In other words, the moral imperative proposes that once a rule of proper social functioning is perceived as right it should be taken up directly and used to govern conduct. This is why reformers often seek immediate change. For example, one might argue that the moral imperative requires that the torture of prisoners should be stopped immediately. But, in certain countries, this would go against cultural beliefs and traditional habits. The pragmatic imperative, by contrast, suggests that piecemeal evolutionary change with a slow lifting of repression and maltreatment is all that is sensible and indeed possible.

Certain *rights and duties* must be dogmatically affirmed (as part of the moral imperative), and be deliberately adopted (as part of the pragmatic imperative). In other words, proclaiming and asserting deeply held views of proper rights and duties is a moral obligation on each person, whereas the actual assignment of rights and duties is what counts socially. This means that even if unfair arrangements are pragmatically maintained, protest is appropriate. Many whites in South Africa viewed apartheid as serving both moral and pragmatic imperatives and have been resisting its dismantling. Others, however, pragmatically adopted apartheid-based rights and duties without affirming their justice or opposing their removal.

Certain *tenets* must be applied in an acceptable way (as part of the moral imperative), and be dogmatically affirmed (as part of the pragmatic imperative). In other words, the pragmatic imperative simply calls for certain beliefs to be proclaimed and asserted without proof and says little about their use. By contrast, the moral imperative demands that the way tenets are applied must be acceptable to the person and the social group. For example, tenets about minimizing suffering have been used by animal rights activists to justify terrorizing scientists and indiscriminate bombing in the UK and elsewhere. Such activity does not apply the tenets acceptably: terror and violence violate categorical moral and pragmatic imperatives. By contrast, some

academics have obeyed both imperatives in the right way. They have been equally dogmatic about the need for an end to 'species-ism', but they have applied this tenet acceptably by developing guidelines for using animals in medical research.

Certain *conventions* must be unequivocally respected (as part of the moral imperative), and applied in an acceptable way (as part of the pragmatic imperative). When Arjuna asks Krishna how he could possibly justify the slaughter of his family and friends in the great war that is the culmination of the *Mahabharata*, Krishna answers by saying that Arjuna must dissociate himself from the fruits of his action. Krishna insists that Arjuna is morally required to fight in the present circumstances because the conventions of his caste and culture unequivocally call for it.⁷⁶ Pragmatically, however, conventions must be applied in an acceptable way. The convention to refrain from using weapons of mass destruction in war, for example, may be put to one side if the opponent does not do likewise. Otherwise, soldiers would be demoralized and might rebel or refuse to fight.

The very highest and very lowest levels of rule have always been distinctive. As top of the moral imperative, absolutes (L"-7) stand sublime, self-sufficient, applicable universally, and legitimating all from outside the realm of temporal authority or consequences — as deontologists have always claimed. Let justice prevail even if the world perish (*fiat justitia pereat mundus*). At the base of the pragmatic imperative, the prescriptions (L"-1) specifying actions are unambiguous and practical.

Practical Implications. Imperatives define the ultimate sources of authority, legitimate imposition and obedience. Purposes can be personalized, that is to say personally created and owned and realized. But imperatives are essentially impersonal. The wide dispersion of power and responsibility in the requisite design and control of social life has been a feature of the analysis so far. But all these authorities, even government itself, must be regulated by imperatives.

Imperatives, which depend on rules of six types operating in concert, emerge as the prime regulators of social life. The sad fact is that societies are not ruled well. The reasons must in part stem from a widespread tendency for people to ignore the moral imperative and fail to discipline themselves; and in part from the tendency for citizenries to neglect the pragmatic imperative and fail or be unable to discipline their governments.

Recognition of the need for moral imperatives often sits uneasily alongside the modern scientific and secular

ethic with its belief in scepticism and with its deep distrust of certainties. Recognition of the need for pragmatic imperatives often sits uneasily alongside the certainties of religious dogmatists.

The moral imperative being about imposing absolutes tempts people to articulate rules at lower levels as if they were absolutes and to imagine that they should be imposed (rather than evolved or self-chosen). The tenet that life is sacred, for example, is perfectly compatible with both the moral imperative proscribing murder and the pragmatic imperative requiring necessary killing. Elevating it to an absolute would make the pragmatic imperative untenable. In other words, many perfectly acceptable dogmatic tenets or useful and virtuous maxims make for intolerable and socially unworkable absolutes.

A tension exists between the two imperatives, with each having a claim to primacy. Each imperative has had its own heavyweight intellectual defenders. Hegel, for example, believed in freedom and the spirit but defended the pragmatic imperative. He argued the case for obedience to those kinship, economic, political and other social relations in which the individual finds himself. Except when society is collapsing, the man who sets up the judgement of his own consciousness against the demands made by law and the traditions of society is to be condemned. Legal positivists argue more simply and pragmatically that agreement about what is legal is easier to reach than agreement about what is right.

By contrast, the supremacy of the moral imperative was defended by Confucius, a teacher usually associated with respect for social authority. He argued that society often contains inferior men and weak rulers, and counselled that the superior man, the sage, must be primarily concerned with what is virtuous and just. While mores must not be opposed, judgements about them must be made; and withdrawal from society rather than participation is sometimes required. Confucius went so far as to think that society might be ruled principally by virtue and example rather than with laws.

Most modern politicians, while concerned to seem pure and on the side of justice, are wary of entering moral minefields. They usually find it easier to leave moral disputation and guidance to others, especially the churches. Churches do defend moral imperatives and argue that what is right and just must not be compromised. The result can be a drift towards what might be called ecclesiastical absolutism.

The Roman Catholic Church: Societies need an order based on absolutes, and the significance of the Roman Catholic Church is profound in regard to this need. The

Catholic Church tries to exist as a separate moral community. Its proclamations are presented as absolute and infallible. The Church is nowhere established in the sense of being identified with the state, or being part of the state. Identification with the state politicizes the church — witness Islam in certain Muslim countries. Being part of the state compromises the church — witness the Church of England in the United Kingdom. Instead, the Catholic Church sets itself up as an independent countervailing force. It has always negotiated on equal terms with governments, the results being embodied in concordats between a State and the Pope as head of the church. These concordats reflect the perennial conflict between spiritual and temporal powers. **Ex. 9.54**⁷⁷

To strengthen control over social behaviour, attempts are regularly made to claim that the pragmatic and moral imperatives are one. The attempt to make secular law equivalent to theological law seems to exemplify this. The consequence is to centralize cultural and societal authority and responsibility and to suppress political activity and individual responsibility.

Moral and pragmatic imperatives can be obeyed with minimal coercion when they support each other. Stresses develop when they do not. Attempted enforcement of laws against people's will then follows, ultimately using the instrument of terror. Organized religions have regularly used terror (eternal damnation, the fires of hell &c) and violence (wars, persecution, genocide &c) to instil doctrines which run counter to communal requirements. Although churches have declined in secular influence, the use of terror and violence on behalf of absolutes has not. The battles over abortion and euthanasia in the USA have been compared, probably correctly, with the religious wars between Catholics and Protestants in the 17th century.⁷⁸

Transition. Imperatives provide the necessary legitimate authority to enforce obedience in a community and to ensure that demands for obedience are coherent and not abused. In this way, they permit the rules of ethical living to become integrated and established within society. But problems still remain. Above all there is the tension between spiritual-personal and temporal-political requirements. This potential disharmony between the imperatives can only be overcome by linking absolutes and prescriptions, the levels at which there is a failure of identity between the two hexads.

There is also the difficulty with the notion of obedience. Obedience has a passive quality and seems to imply that ethical life can be arranged irrespective of the person's will. In fact, obedience both activates the will (to obey) and constrains the will (to do whatever one wants). Because imperatives are imposed by oneself or others or God, they are experienced as a disturbance

of autonomy, whereas we intuitively feel that ethical conduct ought to be a fully active, wholehearted and autonomous concern. These various difficulties are

finally resolved by the authority defined in the last grouping, the heptad, to which we now turn.

Master-Table 26 Properties of the two types of categorical imperative in society.

Ethical imperatives, which are needed to regulate obedience, are hexadic authorities formed by conjoining six adjacent types of rule. See text for details and explanation.

Hexad No. (Levels)	1 (L's 1-6)	2 (L's 2-7)
Types of Imperative <i>Example</i>	Pragmatic Imperative e.g. kill when necessary!	Moral Imperative e.g. do not murder!
Function	To regulate demands for obedience generated by the rulers of a society.	To regulate demands for obedience generated by a person as part of a group.
Object of Control	Rulers, the citizenry and the government, and through them, society.	Each person and through them the community and thence the rulers.
Concern	Maintaining a political society.	Maintaining a moral community.
Legitimation	By laws: as formally introduced within a recognized legislature.	By absolutes: commandments defined in holy scriptures or in imaginative awareness.
Source of Authority	Human beings have a practical need for rules given their temporality and frailty.	Human beings have a spiritual and religious need for rules.
Ideological Base	Legal positivism.	Ecclesiastical absolutism.
Danger	Unprincipled laws and activities by governments.	Elevating rules better categorized as lower level types to the status of laws or absolutes.

G"-7: A SUSTAINABLE ORDER

We have considered what rules and authorities must be obeyed. We have not yet considered what rules and authority are positively willed by members individually and collectively. This totality corresponds to the ethical **order** of a society. The order of society is the final and over-arching authority to which everyone must accommodate. All the various ethical authorities so far considered are found within any society and help to constitute and sustain its order. But the order itself must be recognized as an authority which is a distinct totality and unity with its own quality and properties. The order can be defined by the single heptad, as diagrammatically represented in Fig. 9.7.

G"-7¹: The Ethical Order

Nature. An order which is sustainable is the ultimate challenge of ethical design. Societies have manifested a variety of orders whose distinguishing features invite use in labelling. An order, such as that found in Tibet prior to the Chinese invasion might be described as apolitical and compassionate; an authoritarian-ecclesiastical order exists in Iran at the time of writing; a liberal-democratic-capitalist order exists in most Western nations. But all Western nations are not identical and so these epithets conceal more than they reveal. The particular rules within the order are what give it substance.

For an order to be sustainable, its rules must possess a degree of justice which encourages people to organize

their conduct and support their institutions in its light. It is a tautology to say that only sustainable orders persist, but necessary given the arrogance of social engineers. Utopian communities self-consciously designed to embody justice, for example, have rarely been sustained longer than the generation which created them.⁷⁹

In reality, a successful order emerges in a process of trial and error, and reflects an interaction between human frailty, lived experience and thoughtful reflection in a complex socio-physical environment.⁸⁰

The *function* of an ethical order is to ensure that each member can be authentic when authorizing and sustaining what everyone deems to be right. The order depends on the community, its government and each person. People are expected to embrace the order irrespective of their concrete situation and make its rules their moral values. The order defines constraints which make ethical living possible while attempting to bring these constraints within the sphere of personal autonomy. The absolutes provide for maximum freedom — but allow no escape from an awareness of right and wrong. The prescriptions provide for maximum constraint — although, paradoxically, there is a sense of freedom in strictly adhering to socially endorsed rituals.

The social order is a term which can misleadingly refer to both the concrete and abstract states of affairs in a society. These must be distinguished. The *concrete social order* is an order of actions and actualities, a factual state of affairs no less. The *abstract social order*, the ethical

Figure 9.7: The heptadic grouping forming a sustainable order.

One type of ethical order which must be freely embraced if will is to be engendered.

L"-7 Absolutes		G"-7 ¹	
L"-6 Laws			
L"-5 Maxims			
L"-4 Rights			
L"-3 Tenets			
L"-2 Conventions			
L"-1 Prescriptions			← The Ethical Order

order, is a unified and unifying set of rules, a theoretical state of affairs, a web of expectations, predispositions and obligations, which underpin and sustain the concrete order. The concrete order is made up of actual people, families, communities, firms, associations, public institutions, political parties and so on with different degrees of wealth and influence, all interacting using a net of common values and distinctive purposes. The abstract order is made up of rules, principles, positions, standards, frames of reference and imperatives, many of which operate without being articulated.

The abstract order is not designed to deal with particular people or situations and it cannot determine the specifics of the concrete order. It is rather the essential stabilizing and governing context for an ethically controlled society. In such a society, the pursuit of purposes by particular individuals in particular situations leads to unpredictable results.

The ethical order makes freedom, in the sense of the pursuit of purposes, possible. It is precisely because rules do not specify results in actual situations that people can agree on them and can be determined to sustain them. If expedience and personal gain is put in the balance with rules of the order, then the former, being immediately and concretely beneficial, always win. If this persists and is widespread, the order is eventually destroyed — and so is the society. Rules are always beneficial only in the long run and on the whole.

Legitimism. In this final perspective, all seven levels are indivisible and form one single group. Such a group is intuitively and logically evident. The seven levels were, after all, derived from a single approach to ethical choice — legitimacy (L'-6); and rules at each level are implied by and imply rules at the other levels.

The tension identified in the legitimist approach lay between the need and obligation to foster personal autonomy and the need and obligation to serve the common good (cf. L'-6: Ch. 6). The ethical order must resolve this duality. The inherent tensions in legitimism and between the two types of imperative are only resolved if ethical rules and arrangements of all types are *embraced freely* and wholeheartedly by each member of society. This is the additional notion that defines a sustainable ethical order and it can only be provided by absolutes, the seventh level. Only absolutes can feel entirely natural to all at all times.

The more that coercion or brain-washing is required to maintain the order, the less satisfactory the society. This is because good conduct generated by coercion or automatic obedience is ethically inferior to that generated and willed freely. Although the heptad defines an ethical order, its adoption means that it simultaneously

defines a personal code. In other words, the order unifies a community through the individual wills of its members, and provides a definition of what it is to be a good member.

Constitution. The order is based on people *freely embracing* society's absolutes (L"-7), typically as expounded in the principal religions. The order requires that people should value laws and *legitimately impose* them on the community (L"-6). The order must also *evolve virtuously* in accord with certain maxims (L"-5), and should identify key rights and duties (L"-4) to be self-consciously and *deliberately adopted*. The order depends on communal tenets (L"-3) being *dogmatically affirmed*, and certain conventions (L"-2) being *applied in an acceptable way*. Finally people must accord *unequivocal respect* to a range of prescriptions (L"-1).

The order is a unifying force in society, because the order, being a unity, ensures that social life and self-expression in the social sphere has a deep coherence. As a result there are natural links across the levels (see Ex. 9.55 and Ch. 14).

Dignity: If the order upholds dignity, then each person willingly recognizes their duty in this regard. Absolutes (L"-7) call for each and all to respect others and make it natural to pass and obey laws (L"-6) such as those on privacy and to block laws which cause humiliation. The order also contains maxims (L"-5"), which prevent exploitation of people and needless harm to their sensitivities; and charters which establish rights (L"-4) related to dignity e.g. to warnings about dismissal from work, or informed consent for operations. For all the above to be possible, the order must be expressed by people affirming tenets (L"-3) about the importance of dignity, and ensuring that things like deliberate embarrassment of others is prevented by conventions (L"-2). All will adhere strictly to ritual prescriptions (L"-1), like bowing or handshaking, which signify respect. Should the social order fail at any one of the seven levels, then it is not coherent and dignity will not be fully realized.

Property: The fair handling of property is essential in any order. This needs to start from an absolute (L"-7) which underpins the significance of property e.g. 'respect for autonomy'. Laws (L"-6) must support the absolute e.g. by indicating whether the order allows adults or children to be treated as property. Similarly, lending and selling must be legally regulated. Maxims (L"-5) which guide virtuous conduct are necessary: e.g. it should be clear that one should not steal even in situations where the law does not apply or where detection is unlikely. The order must generate rights and duties (L"-4) which harmonize with the above rules: e.g. ensuring that people repair or replace anything unfairly damaged. Tenets (L"-3), like the idea that stealing is wrong or that sharing is necessary, must be inculcated. Conventions (L"-2) about property, e.g. when lending or donating goods, must be widely acceptable. Finally, the order requires unequivocal respect based on

unambiguous prescriptions (L⁻¹) which buttress the above e.g. indelibly labelling goods to minimize the likelihood of loss or theft.

Ex. 9.55

People must abide by the entire order and not simply adhere to rules at one level while neglecting or rejecting those at another. Societies have evolved to the point at which they aspire to manage the ethical order self-consciously. But they have not yet properly mastered the tools for doing so systematically and sensibly. Children are taught the chemical elements but not the ethical elements.

Social life suffers because the ethical order has been viewed as pre-ordained or inevitable rather than as a product of human beings. To live ethically is to accept the responsibility to live and work within an actual order: acting in harmony with the ethical order while simultaneously striving to elucidate and enlighten that order — with all the compromises and imperfections that these endeavours entail.

Improving an Ethical Order: A British journalist used the metaphor of a virus affecting UK society to describe weaknesses in the UK order. She affirms, for example, that it assigns too many family duties to government, it includes maxims which minimize self-reliance, it has laws which centralize power and weaken the citizenry, it affirms tenets which weaken open debate, it includes conventions which breed inter-group hostility, and it uses prescriptions for matters best left to personal judgement. A sense of despair permeated the article. Because the various dysfunctional rules hang together, they mutually reinforce and sustain society. To live in the UK involves both respecting such rules and rebelling against them. They cannot be dismantled singly, nor can they be replaced as a whole. The journalist can only assert that something is wrong, link with like-minded people, and demonstrate her convictions in her everyday sphere of action. Change in the order depends on the creation and adoption of an alternative ethic.

Ex. 9.56⁸¹

The Will. A sustainable order is based on absolutes. Their generality and abstraction provide the possibility for the order to be right for each person and therefore for the community. To live ethically by one's own lights and simultaneously to perform one's social duty emerges as a person's highest hope. Indeed, the ethical order must embody hope to be sustainable.

Social existence demands that one positively will oneself to embrace the ethical order, despite imperfections in the concrete order. The psychopath is viewed as a danger because he is incapable of understanding the way others are swayed by ethical considerations and is insensitive to their values and to social needs. Less dramatic willed deviations from the ethical order occur if people are ignorant of what is socially required, or if they suffer mental illness of physical or

psychological origins. Ethical participation in society is fostered by taking counsel, engaging in regular self-examination, and developing self-command.

Many theologians, philosophers and thinkers have concluded that communal restraints on individuality are needed. They have observed that society requires that the good that is particular and private be subordinated to the good that is common and shareable. Kant noted that subordination should be autonomous and voluntary. However, such autonomous subordination is only fully achieved by the existence of an ethical order which is perceived to be essentially just. This willing subordination is not to a person but to rules. It is a matter of consciously recognizing the ethical challenge of social existence. To embrace the social order with full awareness means recognizing the natural moral institutions and developing one's social identity. The creation of an order which people regard as sufficiently just to make it their own is the crowning ethical achievement of any society.

Its opposite is the society created in George Orwell's imagination in which conditioning replaces autonomy and conformity substitutes for freedom. Such a society runs on lies and war rather than truth and peace.

The essence of utopian communities, as Kanter concludes from her survey, is that they are places where 'what people want to do is the same as what they have to do'.⁸² Right conduct therefore demands either that one finds such a community, or that one modifies one's wants to suit the community within which one finds oneself. In practice, the difference between these options is not great. Both seem difficult in the extreme. An order requires each individual to support it, and yet no individual can change it fundamentally.

Many people feel that to adapt to present-day social realities is difficult, and that the self-command required for virtuous functioning in an imperfect and unjust society is impractical — if not foolish or intolerable. A slide into sharp practices, beggar-my-neighbour attitudes, and small-scale corruption is then all too easy.

Alternatively, utopian communities are imagined to provide a more congenial context with greater freedom of action. The reverse is the case. Those utopian communities which Kanter judged successful, at least in terms of their capacity to survive and the enthusiasm of the members to belong, turn out to require what to an outsider seems to be enormous self-discipline and severe restraints on individuality. Her survey of 19th century utopian enterprises found that success depended upon personal sacrifice and investment, renunciation of intimate relationships, self-exposure, ideological conversion, sharing of property and work,

and exclusion from wider society.

To recognize one's own will and harness it to ethical purposes demands self-discipline. So it is not surprising that modern anarchic communes which value freedom without self-discipline collapse rapidly. Put simply, freedom like justice depends on eternal vigilance and effort. Some rules are freely obeyed out of habit or because they are so obviously called for in the situation. The crucial rules, however, are those which it is in the interest of each to disregard, while being in the interest of all others to adhere to. Will is not a matter of recognizing desire or purpose, but rather sticking to principles when expedience and self-interest tempt one to depart from them. Will, we may say, is the capacity to resist temptation.⁸³

Conclusion. The order activates and engenders lower level ethical authorities so as to ensure the sustenance of society. At the same time it constrains established authorities to devising or evoking specific rules which are inherent or obviously compatible with the existing order. In this way continuity and coherence at

a deep level is preserved despite major changes in the concrete order. This preservation and careful evolution of identity lies at the heart of all ethical endeavours. The recognition of authority operating within the constraints of an existing ethical order takes us back to the monads (G"-1).

The more people willingly embrace the order, the more they can support each other, work for its improvement, and strengthen and integrate their society. The sharing of moral values allows for enormous variability in the conception of the ends to which such conduct is oriented. Right conduct is compatible with a wide diversity of political, economic, personal and organizational values and objectives in society. The whole issue of how to realize values, moral and otherwise, is its own separate subject and one which will be examined in the remaining chapters. Before doing this we need to look back over our odyssey through the seven groupings to overview the entire pattern and understand their relationships a little better.

REVIEWING ETHICAL AUTHORITIES

The present analysis proposes that society's deep design, its abstract order, is made up of ethical rules. These rules are the building blocks of a necessary panoply of ethical authorities. By combining the seven types of rules logically, a comprehensive and elegant pattern of these authorities has been revealed.

Social life at its roots is inherently ethical, that is to say built up out of obligations designed to protect individuals and human identity. Authority comes into play to protect the order of communities within which people must live. Individuals need to accommodate to this order and its authority. What we have found is that there is common sense and simple logic behind rule-based authorities and that, at a deep level, they are all related.

The account reveals that responsibility for ethical authority, far from being a preserve of government or clerics, is (or should be) widely diffused throughout any society. Sometimes the authority may be implicit, only existing as a regular and expected pattern of thought and behaviour. In such cases, design is not so much about introducing something new but about adapting or making known unrecognized rules.

The ethical authorities ensure that rules taken singly (or the primal authorities) do not generate excessive conflicts or acrimony which might disintegrate the community (G"-2), which might disorient people (G"-3), which might disrupt voluntary conformity (G"-4), which might foster unjust conduct (G"-5), which might interfere with obedience (G"-6), or which might weaken the will to participate (G"-7).

The practical implications of each of the various types of ethical authority have already been examined. Using the framework can help to minimize simplistic or biased analyses which limit, oppress and distort human and social potential. Authority is difficult enough to handle without confusion about what is entailed.⁸⁴

In reviewing ethical authority, I will (a) recall its hierarchical nature and examine this further in terms of freedom and conformity; (b) highlight the difficult issue of sub-cultural authority in nation-states; and (c) return to the significance of ultimate values for society. A summary of the main ideas in this review is provided in Master-Table 27.

Authority as a Hierarchy

The seven types of rule form an elemental hierarchy and the seven types of authority, the groupings of rules, also form a hierarchy. Each type of authority in the structural hierarchy emerges systematically and pro-

gressively from the preceding one. This is evident from the consistency in internal structure of the ethical authorities (see Master-Table 20).

As noted in the introductory section, there is a natural progression from one grouping of rules to the next: the notion of authority requires rules which support and constrain communities which require principles which support and constrain individuals who require positions which support and constrain identities which require... and so on until we reach the order which supports and constrains the notion of authority so returning us to the starting point.

The conceptual evolution of ethical authorities can also be presented in a reverse order. It is worth repeating the essence of each level and their contents here as a reminder. Then we can look at the hierarchical relations more deeply. We start with.....

- the ethical order** (G"-7) which ensures that each member can be authentic when authorizing and sustaining what everyone deems right. It is the basis of a deep harmony in society. However, the order is mysterious while people require clarity; and the order should be liberating but authority requires obedience. Such requirements are met by.....

- ethical imperatives** (G"-6) which ensure that categorical obedience can persist authoritatively in society through time. Imperatives, whether moral or pragmatic, are statements of moral truth. Because they emerge respectively from God and from the practical requirements of sovereignty, they exert powerful control. But they are universal and sometimes contradictory, so they cannot enable judgements of the rights and wrongs of conduct in actual situations. This is met by.....

- ethical frames of reference** (G"-5) which ensure that differing views of right conduct can be definitively resolved by an authoritative judgement. Custom, law and morality each provide an awesome and complex authority within which disputes can be publicly resolved. But these frames cannot be used continually to monitor on-going functioning or be adapted to particular individuals. For this we need.....

- ethical standards** (G"-4) which ensure that conformity can be sustained above an authoritative and self-chosen minimum. Standards are deliberately designed to protect identity: the public, the private, the societal and the universal self. They are conditioned by the status quo, so they cannot provide authority for changes to authority. Like the frames of reference, they respond to ethical pressures in society. These pressures are organized by.....

- ethical positions** (G"-3) which ensure that members can be coherently and authoritatively

oriented to ethical challenge and change. Positions stabilize authorities at other levels or re-design them. Positions — good practices, communal roles, cultural ethics, legal responsibilities, distributive justices — tell people how society should function and how they should function within it. But they cannot help decide how immediate community issues of need, power or fair play should be handled. An authority which can direct the response to social turmoil is needed. This is provided by.....

•**ethical principles** (G"-2) which ensure that choices affecting a community and its continuing viability can be authoritatively guided. The different types are: civility principles, social policy principles, ideological principles, human right principles, legal principles, natural justice principles. These principles are evoked and used by community leaders and communal bodies like legislatures, the courts, regulatory agencies and political parties. Principles protect the community but they are not unequivocal. Governments, in particular, are liable to over-reach their assigned authority. So there is a need for.....

•**ethical rules** (G"-1) which ensure that constraints defined by recognizable authorities can become binding obligations on all. These are the sources of ethical power in society and there is no further transition to a more fundamental authority. Rules depend on respect for the primal authorities in social life. The lower four primal authorities, like the corresponding rules, are tangible and personally inescapable: community leaders (prescriptions), the general community (conventions), one's conscience (tenets) and powerful social classes (rights). The upper three are abstract and so need greater appreciation and commitment: ethical teachings (maxims), the law (laws) and ultimate values (absolutes). The proper and thoughtful handling of rules and response to primal authorities gives substance to the notion of ethical responsibility.

Freedom and Conformity. Society needs its members both to have freedom and also to respect authority. People must conform and yet they must do so willingly. The various rule derivatives relate differently to the notion of authority, and have different effects on conformity and freedom.

The upper two groupings contain the sense of authority and the lower two groupings contain its manifestation. The order embodies the spirit of authority which must be freely embraced if authority is to function effectively in the real world. This spirit reveals itself in its most concrete form via the primal authorities and their characterizing rules. The imperatives carry the force of authority needed to maintain

obedience in the community. The principles are applied by official or established bodies, like government, which most people identify with the power of authority.

The frames of reference are impersonal systems of authority which protect a community and all its members, while minimum standards embody the realization of authority within communities, individuals and nations of the world. Positions, finally, are pivotal in permitting the solidification or modification of authority by individual belief.

By considering the effect of the various groupings on conformity, we become aware of an oscillation between restraint and freedom. The odd levels assume and foster freedom, and the even levels assume and require restraint.

In the order (G"-7), conformity is positively desired by each and all and so freedom is enabled. Imperatives (G"-6) assume, demand and exalt conformity and so call for restraint. The frames of reference (G"-5) judge conduct and can decide that conformity is wrong: so they enable freedom. Standards (G"-4) are used to appraise self-defined conformity and so call for restraint. Positions (G"-3) require conformity to be debated and defended and so enable freedom. Principles (G"-2) determine conformity and call for restraint. Rules (G"-1) set inescapable bounds to conformity and so provide again for freedom within and through them.

It is in tyrannical societies that we witness the disabling of freedom and the replacement of justice by conformity. Tyrants centralize and personalize societal power, demand absolute compliance with their wishes, and mock the notion of a just social order. Tyrannical regimes prevent open debate, muzzle the press, proscribe political parties, close universities, control the judiciary, destroy families, indoctrinate and terrorize the populace, abolish or control the churches, and kill off popular leaders and the intelligentsia.

Enlightened Authority. Our concern is to envisage a more beneficent process. The framework has revealed how and why (in theory) the seven groupings must emerge in all societies.

It is intuitively obvious that any notion of society must start from a conception of a coherent and sustainable ethical order (G"-7). The social order embodies and implies ethical institutions of all sorts. However, at its base is the requirement for people to embrace ethical obligations and social responsibility willingly and to recognize the existence of binding rules as defined by distinct recognizable authorities (G"-1). Between the unifying ethical order and the seven discrete levels of binding rules lie a variety of complex

ethical authorities. Rules are insufficiently flexible to maintain a community, so principles must be developed and applied in a way that is socially acceptable (G"-2). To ensure that rules and principles can be affirmed or changed, positions which orient people as individuals must be devised and dogmatically affirmed (G"-3). To assess rules, principles and positions and to protect the social identities defined by these authorities, minimum standards must be deliberately chosen (G"-4). Disagreements about what is right are inevitable. So the frames of reference must be virtuously evolved to enable recognizably just and definitive judgements to be made about any conduct causing a dispute (G"-5). Finally, everything, even the originating conception of a sustainable order, must be controlled by imperatives which are legitimately imposed and obediently followed (G"-6).

We may describe this hierarchy in another way: by emphasizing the key social entities and the possibility of progress.

Again we start with the order which determines the kind of society which people willingly fashion and sustain. The current ethical order is real, and it is on this that the moral imagination must operate and from which hope must be drawn. Here is where ethical design starts, not in the philosopher's study. The order interacts with ethical forces defined by imperatives which lie within each person and are tended by political institutions. These two highest levels generate the potential for an enlightened society. However enlightenment can only be realized through minimum standards deliberately and self-consciously chosen by individuals, whether as a community member, a private person, an organization, a government official or a sovereign society. Here is where diversity and variation must be tolerated and protected. Individual conduct is itself dependent on the frames of reference which provide an evolving all-embracing ethical context. Here is where such freedoms as society permits can be defended and determined. In other words, a just society emerges through an evolution of custom, law and morality in the light of community and member standards. These systems of authority enable the improper exercise of power, even by a government, to be judged and (if possible) reversed.

Changes in the frames of reference depend on cultural development. This focuses attention on the different positions as these emerge in spontaneous and orchestrated public debates and acts of personal rebellion. Whether change is occurring or not, the community must be maintained and regulated through the use of principles. The authorities here are all aspects of government (including 'self'-government in the lowest

and highest groups). The support for government is to be found in various primal authorities which define ethical rules. It is striking how varied are the primal authorities. They include social leaders, the community mainstream, each person's conscience, class power, the ethical teaching, the law, and ultimate values (or God). These primal authorities, the inescapable givens of ethical life, determine the limits of what anyone can achieve.

In other words, the social order provides for a will-driven and legitimate imposition of rules. It grows through virtuous evolution but depends on personal ownership. Although it calls for deep personal conviction, it is built on social acceptability. At base, it is constituted by certain rules which are strictly binding. The ethical order persists because it protects the community while defending individuality. It recognizes and manages freedom and diversity, enabling complicated interactions amongst numerous social forces.

The upper three levels of authority seem more massive and stable — the 'real' authorities — while the lower four levels seem more flexible and contingent. After all, we can make a rule but we cannot make the custom. (A similar pattern was noted in the primary hierarchy of purpose and in the approaches to ethical choice.) Although all authorities are modifiable, all are highly resistant to modification not least because the higher authorities reinforce and depend upon lower authorities (and vice versa). But there is, at least in recent times, a continuing pressure to modify authorities which is often stimulated by sub-cultural diversity.

Integrating Subcultures

Respecting and supporting authority lies at the heart of the maintenance of order in society. It is therefore highly desirable that authorities reinforce each other. Sub-cultures in a nation-state pose a major problem because (by definition) their members wish and are pressed to adhere to their own ethical authorities as well as those in wider society. The concern of any person not to have their interests and identity swallowed up by society's needs and values, is here expressed as the concern of a sub-culture not to be dominated by national authorities. Some form of non-repressive integration is clearly requisite.

Sub-cultures may be based in ethnic, racial, religious, linguistic, historical, geographical or even ideological differences. Whatever their origins, they bring or create their own natural moral institutions with which sub-cultural members strongly identify. Their members may speak, marry, work, play, celebrate, worship and provide charity almost wholly amongst themselves. Sometimes it seems as if they seek to be a nation within

a nation. But sub-culture members are still individuals and citizens who, like any other, must pay taxes and submit to the law of the land.

The consequences of failure to resolve sub-cultural differences seem more commonly to generate horrific strife rather than calm assimilation or peaceful secession. When things go wrong, sub-cultural members come to believe that they are victims of injustice and that their identity is not being taken seriously despite all the reassurances to the contrary. At the same time, the majority in society and their representatives come to think that the sub-culture members are exploitative, excessively self-centred, neglectful of wider responsibilities, or even actively subversive.

Problems of discord and turmoil associated with schismatic sub-cultural authority are becoming increasingly common. Although we cannot examine the principles of sub-cultural integration here, it is worthwhile distinguishing sub-cultural and national influences in authority definition and operation. As in the case of rules, at some levels the ethical authority inherently demands a fusion of the sub-cultural and the national, and at other levels discrete and countervailing authorities are essential. In all cases, mutual reinforcement between national and sub-cultural authorities is ethically desirable.

A viable *order* (G"-7) must recognize the multi-cultural nature of society. I presume it is self-evident that distinct orders cannot coexist in society. Utopian communities that view society as contaminating and seek to create their own order are under continual stress. Either they merge back into society and lose their distinctiveness over time; or wider society turns against them and destroys them. On a larger scale, fundamental conflicts about the very nature of authority in society lead to bloody civil war or genocide.

By contrast, distinctive categorical *imperatives* (G"-6) and recognizably separate *frames of reference* (G"-5) are perfectly possible and indeed unavoidable. On the one hand, society needs its own imperatives, typically emerging from a religious tradition, which the government can legalize; and on the other hand, sub-cultures are virtually defined by their sectional imperatives even though they have no legal powers to enforce these. Sub-cultures cannot easily be made to be different than they are, though their leaders can strive for greater or lesser assimilation. So mutual reinforcement between national and sub-cultural imperatives is highly desirable. In the same way, for society to cohere at all, there must be some common frame of reference in the law and in certain basics of morality and custom. Yet sub-cultural differences in all frames of reference are to be expected and, as far as possible, to be welcomed. Again reinforc-

ing links between the various sub-cultural frames and between these and the national frames are beneficial.

Standards (G"-4) demand a fusion of sub-cultural and wider societal perspectives. In the case of communal and individual standards, those generated within sub-cultural enclaves are simply some among the myriad within society. As defined, there can be no overarching distinctive 'national individual standard' or 'national communal standard'. By contrast, everyone whatever their sub-cultural origin must expect to be judged by universal and societal standards. To ensure voluntary adoption, the multi-national multi-cultural bodies which define universal standards strive for unanimity. In a similar way, sub-cultures should help create societal standards through representatives and in other ways.

Positions (G"-3) are internalized, and so they may be widely held in society across sub-cultural or sectional boundaries. Even well-established popular positions are interpreted, articulated and defended in slightly different ways by each person, and sub-cultural identity will play an important part in this process. So privately-held positions are really distinct entities. Public debate involves the articulation of such personal positions: because only passionate proponents have any influence. Such argument and debate affects the evolution of popular positions: that is to say, the positions generally held in society.

The nature of *principles* (G"-2) are that they apply to the nation as a whole if they exist at all. Ethical principles can only function if they are popularly accepted as valid, even when they are sectional and exclusive. An ideological principle only held by one political party, for example, is still an ideological principle given validity in society. The same phenomenon is evident in authoritative bodies established to use principles like the judiciary or legislature. These must act for the whole and on behalf of the whole and yet their members generally emerge from a particular background and represent a particular way of thinking. Often sub-cultural representation is low and much effort is needed to remedy such a situation.

Rules (G"-1) are inherently a collective or public phenomenon. If they were not general and concerned for the common good, then they would not meet the legitimist criterion for being ethical and the group could not expect compliance with them. However, binding rules are also personal and experiential, and therefore sectional. If they are not oriented to enabling and respecting individual autonomy, including the autonomy of sub-cultural members without necessarily singling them out, then, again, they do not meet the legitimist criterion for being ethical. People, as individuals, will not feel obliged by them.

In the review of rules (in Ch. 8), there was a detailed analysis of the way that the individual and social dimensions affect rule development and use. This made it clear that the various types of rule vary greatly in the balance they strike (also cf. Master-Table 21). That account revealed that there is room for members of sub-cultures to adhere to their own regulations (within the law), to manifest specific virtues (springing from their morality) and to retain their personal beliefs (as a matter of conscience).

Ultimate Values and Authority

Societies are built on values. The political processes which shape the operation of any society are value-based and the ethical processes which shape its enduring culture and deep structure are rule-based.

Values culminate in ultimate values, and the fundamental requirement of societal design, identified at the commencement of the chapter, is the embodiment of ultimate values in institutions and their use and activation by ethical authorities. It is possible to see necessary correspondences between certain ultimate values and the ethical authorities. Ultimate values do not lend themselves to being tied down, so the links here are suggestive rather than definitive.

Rules (G"-1) reflect the eternal search for **peace**. Only if all in a society accept the primal authorities and the notion of obligations binding on all can there be any relief from strife and a tolerable social existence. Primal authorities need, above all, to keep the vision of peace alive.

Principles (G"-2), which aid the operation of established authorities in maintaining the community, assume the eternal search for **fraternity**. Things like civility and fair-play have no meaning without a sense of fraternity; and social cooperation is its practical expression.

Positions (G"-3), which enable public debate and structure modifications to authority, depend on an eternal search for **equality**. It is never clear who will arise from amongst the community with new and inspiring conceptions of what is right and good for each and all. Change has not occurred until virtually everyone embraces and affirms the new position.

Standards (G"-4), being self-chosen and enabling variation and diversity, assume the eternal value of **liberty**. Standards assume and demand, among other things, a definition and defence of individuality. Individuality is a freely determined expression of identity which develops both the social group and the members (cf. L'-V: Ch. 7).

Frames of reference (G"-5), which provide a context for judging conduct, reflect the eternal search for **justice**. These frames are used whenever individual is pitted against individual, or individual against the government. Without frames imbued with justice, society would collapse.

Imperatives (G"-6) which drive people to obey an abstract and impersonal requirement reflect the eternal search for **truth**. Recognition of the deep social and psychological truth of imperatives is the force which supports the ethical order and all rules and hence human existence. Confusion between ethical truth, the truth we live by, and empirical truth, the hard realities, has bedevilled church, science and modern society.

Finally, the ethical order (G"-7) with its requirement for consistency, coherence, cooperation, consensus, and willingness reflects the eternal search for **harmony**. It will be recalled that harmony was identified as essential for the application and release of all ultimate values in social groups (L-7: Ch. 5).

Transition. Ultimate values are the basis of society, the supreme primal authority and the conduit for spiritual forces to reconcile and inspire individuals. Ultimate values enable the tolerance of suffering, reduce the intensity of conflict, bolster morality, and enhance societal cohesion.

An ultimate value within people drives action to realize itself in the actual social order. Given the will to exercise freedom, anyone can do something of value, at least in principle. In practice it may seem difficult.

We now understand the way personal and organizational action is constrained by rules and authority. It is time, therefore, to return to the realization of values. We must tackle the practical issues in doing something worthwhile. We are ready to examine how people can convert values of any sort into tangible reality. ❁

Master-Table 27 Properties revealing the coherence of the hierarchy of ethical authority.

See Master-Tables 18 & 19 and text for further details and explanation.

G	Ethical Authority and Function	Ultimate Value Link	The Process of Ethical Design	Key Social Entities	Evolution of Authority	Conformity & its Effect	Unity and Multiplicity
7"	The Order ensures that each member can be authentic when authorizing and sustaining what everyone deems right.	Harmony	<i>Moral imagination:</i> the starting point and hope for a better world.	The person and the actual social order.	Spirit of authority	Desired so enables freedom	Unity.
6"	Imperatives ensures that categorical obedience can persist authoritatively in society through time.	Truth	<i>Ethical force:</i> what makes social life possible and worthwhile.	Ultimate values (God) and the sovereign society.	Force of authority	Demanded so requires restraint	Unity expressed as a duality.
5"	Frames of Reference ensures that differing views of right conduct can be definitively resolved by an authoritative judgement.	Justice	<i>Ethical context:</i> the evolving all-embracing context for personal conduct.	Communities; The government; Natural moral institutions.	Systems of authority	Judged so enables freedom	Three unities seeking a greater unity.
4"	Standards ensures that conformity can be sustained above an authoritative and self-chosen minimum.	Liberty	<i>Ethical being:</i> self-consciously seeking ethical individuality and tolerating diversity.	Communities; each person and organization; the government; multi-national governmental bodies.	Realizing authority	Self-appraised so requires restraint	Multiple discrete connected unities.
3"	Positions ensures that members can be coherently and authoritatively oriented to ethical challenge and change.	Equality	<i>Open debate:</i> the mechanism of ethical stability and progress.	The media, campaigning and reforming bodies of many types; innovators, iconoclasts, outsiders, conscientious objectors, radicals.	Modifying authority	Debated so enables freedom	Connected multiplicity.
2"	Principles ensures that choices affecting the community and its viability can be authoritatively guided.	Fraternity	<i>Community governance:</i> what can and should be ethically designed.	Each person, the government, political parties, legislators, jurists, regulatory authorities — plus academic inquirers.	Establishing authority	Determined so requires restraint	Disconnected multiplicity.
1"	Rules ensures that constraints defined by recognizable authorities can become binding obligations on all.	Peace	<i>Primal authorities:</i> the means and limits of ethical design.	Communal leaders, community mainstream, consciences, class power, ethical teachings, the law, ultimate values.	Recognizing authority	Bounded so enables freedom	Multiplicity organizable in discrete areas.

NOTES

1. John Maynard Keynes claimed that he repudiated customary morals, conventions and traditional wisdom, and yet wrote that ‘the right to judge every individual case on its merits... was an important part of our faith, violently and aggressively held.’ (From: *Two Memoirs*. London: Rupert Hart-Davis, 1949, p.97, my italics.) Timothy Cleary was the 1960’s Harvard University lecturer who advised America’s youth to ‘tune in, turn on, and drop out’ preferably with the help of LSD. (Cleary, T. *The Politics of Ecstasy*. New York: College Notes & Texts Inc., 1968). Trotsky helped Lenin organize the Bolshevik revolution of 1917 but was later expelled from the Communist Party (Trotsky, L. (1937) *My Life: An Attempt at an Autobiography*. Harmondsworth: Penguin, 1979).
2. The appreciation of cultural forces emanating from rule-based authority is a new challenge, one which has been given an impetus in the last quarter of this century by improved global communications, concern for sub-cultural diversity in many Western countries, the emerging power of Asian nations, and a widespread upsurge of religious fundamentalism. See, for example: Mazrui, A. A. *Cultural Forces in World Politics*. London: J. Currey, 1990.
3. Smith, A. *The Theory of Moral Sentiments* (1759 1st edition; 1853 New Edition), Indianapolis: Liberty Classics, 1969, p.125.
4. See explanations of autopoiesis and self-organization in the systems literature e.g. Ch. 3.13 in: Rodrigues-Delgado, R. & Banathy, B.H. (eds.) *International Systems Science Handbook*. Madrid: Systemic Publications, 1993.
5. Social orders and man’s capacity to operate within a social order evolved in a largely unconscious fashion. See, for example: Farb, P. *Man’s Rise to Civilization*. New York: Secker & Warburg, 1968. F.A. Hayek surveys this field as part of his condemnation of the elevation of reason to the sole arbiter in social design. The text quotation comes from: *Rules and Order*. London: Routledge & Kegan Paul, 1973, Ch. 1: Reason and Evolution, p. 12. Karl Popper emphasizes that society is an ‘abstract order’ i.e. a set of linked rules (*The Open Society and Its Enemies*. London: Routledge & Kegan Paul, 1945). The framework provided here defines the inherent assumptions which any particular ‘abstract order’ uses. Note that I refer to the abstract (rule-based) order of society as its ethical order. The concrete visible order of society is about actual activities and the actual distribution of prestige and wealth. The ethical order puts limits on what may result, but it is not possible to predict or produce a particular actual order using the abstract ethical order.
6. I felt encouraged to undertake the daunting task of identifying the various combinations, together with their relations and functions, by the success of a similar analysis of the management of executive work within organizations. See: Kinston, W. & Rowbottom, R. A new model of managing based on levels of work. *Journal of Applied Systems Analysis*, 17: 89-113, 1990. The formulations in that paper have been revised and updated by subsequent research and consultancy testing. They are essential to appreciating participation within organizations.
7. I must introduce here the notation to be used throughout: Each *grouping* is identified using the prefix G"- (G stands for the grouping, " indicates the tertiary hierarchy). The numerals indicate the number of adjacent levels being grouped. So G"-3 refers to all groups of 3 adjacent levels in the tertiary hierarchy. Superscripts will be used to indicate a particular *group* within the grouping, such groups being numbered in ascending order. For example G"-4³ refers to the third group of four levels: i.e. the tetradic group which includes L"-3 through L"-6. The inner structures of each of the groups within a particular grouping have a characteristic pattern such that any particular inner level (the third, say) within each group in a grouping (the pentads, say) has a basic similarity (see Master-Table 20). It follows that the notation lends itself to further elaboration: G"-5²₃ can be used to refer to the third (inner) level of the second pentad of the tertiary hierarchy. In this context, G"-5¹₃, G"-5²₃ and G"-5³₃ show an important similarity, even though they refer to L"-4, L"-5, L"-6 rules respectively; as does the third level in any group in different groupings e.g. G"-3³₃, G"-4⁴₃, G"-6²₃. This interesting and important phenomenon, important both practically and theoretically, will be explained as we go; but the more complex notation will be generally avoided.
8. Law and freedom are inseparable in the classic and liberal tradition starting with the ancient Greeks and up to philosophers like Locke, Hume and Kant. Laws unavoidably and desirably infringe freedom in the more modern utilitarian, contractualist, socialist and legal positivist traditions. The former consider laws to be primarily or almost solely to do with just conduct and unconcerned with what actual situations eventuate, whereas the latter consider laws also to be used for shaping society in order to produce a particular pre-ordained just or beneficial outcome. Laws which are little more than organizational objectives and instructions reduce freedom and relate to government in its executive ruler mode (cf. G-6¹: Ch. 12). Also see: Note 22 in Ch. 8.
9. Hume, D. *Essays*. In *Works III*, p.125.
10. For an extreme sociological view, see: Poulantzas, N. *Political Power and Social Classes*. London: New Left Books, 1973. A less extreme view is provided in: Dahrendorf, R. *Class and Class Conflict in Industrial Society*. London: Routledge, 1959. For a typical economics view, see: Olson Jr., M. *The Logic of Collective Action*. New York: Harvard University Press, 1933.
11. See, for example, L. von Mises: “The ultimate yardstick of justice is conduciveness to the preservation of social co-operation.” (*Theory and History*. Yale: Yale University Press, 1957, p.54)
12. This distinction between rules and principles has been noted by others. See, for example: Milne, A.J.M. *Human Rights and Human Diversity*. London: Macmillan, 1986; and Walker, D. M. *The Oxford Companion to Law*. Oxford: Clarendon Press, 1980. The notion of a rule or principle is used outside the sphere of ethics and value — something which is true of positions, standards, frames of reference, imperatives and orders. For example: law-like regularities in science and non-ethical rules for action are often called principles.
13. See: Watzlawick, P., Beavin, J.H., & Jackson, D.D. *Pragmatics of Human Communication: A Study of Interactional Patterns, Pathologies and Paradoxes*. New York: W.W. Norton, 1967.
14. The two examples in this paragraph are based on newspaper

- reports. Helm, S. & Hamlin, K. UN reports police brutality against HK boat people. *The Independent*. 15th May 1990; and Taylor, M. Humiliation from the sweat box to Wormwood Scrubs. *The Independent*. 18th May 1990.
15. DHSS & Welsh Office, Great Britain. *Better Services for the Mentally Handicapped*. London: HMSO Cmnd 4683, 1971.
 16. The role of the judiciary in regard to social policy is discussed in: Dworkin, R. *Taking Rights Seriously*. London: Duckworth, 1977. The Law Lords views were expressed in the Gillick case, which is discussed in: Lee, S. *Law and Morals: Warnock, Gillick and Beyond*. London: Oxford University Press, 1986.
 17. The definition is from: Corbett, P. *Ideologies*. London: Hutchinson, 1965. Useful reviews and discussions of ideology are provided in: MacIntyre, A. *Against the Self-Images of the Age*. London: Duckworth, 1971; and McLellan, D. *Ideology*. Milton Keynes: Open University Press, 1986.
 18. A clear and useful account of the recent battles between apologists for left-wing and right-wing ideologies is to be found in: Bosanquet, N. *After the New Right*. Aldershot: Dartmouth, 1983. The UN Report is: United Nations Development Programme. *Human Development Report, 1990*. New York: Oxford University Press, 1990.
 19. Wollstonecraft, M. (1792) *Vindication of the Rights of Women*. Harmondsworth: Penguin, 1982. Mill, J.S. (1869) *The Subjection of Women*. (ed. S. Mansfield) Arlington Heights, IL: AHM Publishing, 1980.
 20. The idea that class-based ideas might not play a significant part in politics recurs. See: Bell, D. *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties*. New York: Free Press, 1960. For a more recent re-working of a related notion, see: Fukuyama, F. *The Last Man and The End of History*. London: Hamish Hamilton, 1992.
 21. It follows that 'group rights', 'collective rights' or 'people's rights' are distinct from human right principles. The pursuit of group-defined rights (e.g. women's rights, Muslim rights) is an ideological effort to alter membership rights (i.e. the social structure) in accord with certain ideological principles. Protecting personal freedoms in general, however much asserted, is subsidiary. On the international scene, emphasis on people's rights typically comes down to leaders of a society or tribe wanting freedom (power) to restrict the freedom of individual members of their own society or tribe.
 22. *The European Convention on Human Rights and its Five Protocols (1950)*. In: Brownlie, I. (ed.) *Basic Documents on Human Rights*. 2nd Ed. Oxford: Clarendon Press, 1981, pp.242-265.
 23. The legal situation in the UK is described in: Munro, C. *Studies in Constitutional Law*. London: Butterworths, 1987. The proposed bill is: Lester A. et al. *A British Bill of Rights. Constitution Paper No. 1*. London: Institute for Public Policy Research, 1990.
 24. See: Amnesty's International Secretariat Annual Reports which review regimes world-wide. Specific reports on particular themes or regimes are also produced.
 25. Information and quotation extracted from Regina v Secretary of State for Education and Science, Ex parte Avon County Council, as reported in: *The Independent*, 15 March 1990 and 25 May 1990.
 26. Liability for Inaccuracies and Mis-Statements in Books. *The Author*, C1 (1): 19, Spring 1990.
 27. Would-be social engineers regularly forget or perhaps conveniently blur the distinction between governing a community and running an organization (or government department). The differences between communities and organizations have been emphasized by many leading thinkers. See, for example: Weber, M. *Max Weber on Law and Economy in Society*. 2nd Ed. (Transl. E. Shils & M. Rheinstein) Cambridge, Mass: Harvard University Press, 1954; and Hayek, F.A. *Law, Legislation and Liberty. A New Statement of the Liberal Principles of Justice and Political Economy*. 3 Vols. London: Routledge & Kegan Paul, 1973, 1977, 1979. Also cf. Note [8].
 28. 'Natural justice principle' is also used in the legal literature as a label for unequivocal maxims which define communal virtue and proper functioning e.g. no man should be condemned unheard; no man should be a judge in his own cause (to avoid conflicts of interest). Cf. Walker, D.M. op. cit. [12], p.867.
 29. See the accounts in: Martin, J.P. *Hospitals in Trouble*. Oxford: Basil Blackwell, 1984.
 30. A review of studies of the attitudes to fairness of economic undergraduates and graduates is provided in: Frank, R., Gilovich, T. & Regan D. Does studying economics inhibit cooperation? *Journal of Economic Perspectives*, Spring, 1993. The love-affair between sociology and Marxism, now dented by the collapse of communism, revealed how personal freedom and initiative was minimized by academics in their efforts to focus on society and the collective good.
 31. Held, D. *Models of Democracy*. Oxford: Basil Blackwell, 1987. The classic texts noted in the text include: Locke, J. (1690). *Two Treatises on Civil Government*. Cambridge: Cambridge University Press, 1963; Paine, T. *Political Writings* (Ed. B. Kuklick). Cambridge: Cambridge University Press, 1989; Tocqueville, A. de *Democracy in America*. (ed. P. Bradley) New York: Vintage, 1948.
 32. Aristotle believed that natural law had authority everywhere and was discoverable by the use of reason. Christian leaders like Augustine and Aquinas used natural law as the bridge between divine law and the state. Following the Renaissance, natural law was resurrected in a new form by philosophers like Hobbes and Locke. Hume and many others rejected natural law. Nevertheless, it returned and is now part of legal studies. It has been used in recent times to assist with the development of international law. Walker describes it as an 'immortal' idea (op.cit. [12], p.871). Also see: J. Stone. *Human Law and Human Justice*. Stanford: Stanford University Press, 1968.
 33. Bowlby, J. *Attachment and Loss*. 3 Vols. Harmondsworth: Penguin, 1991.
 34. The feminist case is put in: Penelope, J. *Speaking Freely: Unlearning the Lies of the Fathers' Tongues*. New York: Pergamon, 1990.
 35. Dahrendorf, R. Homo Sociologicus: On the history, significance and limits of the category of social role. In: *Essays in the Theory of Society*, London: Routledge Kegan Paul, 1968.
 36. It is clearer that roles in organizations are both an organizational creation and an individual property. See: Ch.

- 2 of Jaques, E. *A General Theory of Bureaucracy*. London: Heinemann, 1976. (But note that these roles are endeavour-driven rather than belief-driven: cf. Ch. 10.) In society, the situation is less clear. The extreme sociological position gives almost no choice to the individual. See, for example: Durkheim, E. *The Rules of Sociological Method*. 8th Ed. (Transl. S.A. Solovay & J.H. Mueller; ed. G.E.G. Catlin) New York: The Free Press, 1966. Durkheim writes: "The principle of rebellion is the same as that of conformity. It is the true nature of society that is...conformed to when [traditional] morality is flouted." and: "A revolt of the individual against the collective...[is a revolt of]...the collective itself, but more and better aware of itself." (From: *Sociology and Philosophy*. (Transl. D.F. Pocock) New York: Free Press, 1974, p.65-66.) Durkheim is describing ordinary or mundane rebellion which uses existing freedoms. Heroic or inspired rebellion differs in that it reflects an irruption of the transpersonal and higher morality. The collective naturally tries to harness such rebels, especially via religion. If it cannot do so, it has no compunction about destroying the rebel socially or physically. The transpersonal rebel who wishes to generate immediate tangible benefit accepts the need to work within current institutions and mores, using but not surrendering to them.
37. Parsons, T. *The Social System*. Glencoe, Ill.: The Free Press, 1951, p.250.
38. Weber, M. *The Protestant Ethic and the Spirit of Capitalism*. (ed. A. Giddens) London: Allen and Unwin, 1976.
39. Phillip Rieff's main books about the emergence of 'psychological man'. are: *Freud: The Mind of the Moralizer*. London: Victor Gollancz, 1960; and *The Triumph of the Therapeutic: Uses of Faith after Freud*. London: Chatto & Windus, 1966.
40. The inspirational text is: Naisbitt, J & Aburdene, P. *Reinventing the Corporation*. London: Macdonald, 1986; Pinchot, G. *Intrapreneuring: Why You Don't Have to Leave the Corporation to Become an Entrepreneur*. New York: Harper and Row, 1986.
41. A social institution may be defined as those aspects of interactions within society which endure beyond changes in individual participation. Defined in this way, it includes such things as language as well as long-standing organisations, public bodies, rules of all sorts, and patterns of family living. To institutionalize a rule involves making it a part of actual social interaction, not simply formulating it and deciding it. Here the focus is on making laws real rather than words on pieces of paper, and ensuring that legal rights become part of custom and practice.
42. For Aquinas, see: McInerney, R. *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*. Washington DC: The Catholic University of America Press, 1982. For: Montesquieu (1748) *The Spirit of Laws*, see the recent translation by A.M. Cohler, B.C. Miller & H.S. Stone (London: Cambridge University Press, 1989). The quotation by H. Spencer is from his *Essays: The Americans* (1891) as included in: *The Oxford Dictionary of Quotations*. 2nd Ed. London: Oxford University Press, 1953.
43. Hobbes, Montesquieu, Bentham, Hume, Smith and many modern philosophers, jurists and economists have emphasized the link between property (especially land) and freedom. In their view, the basis of an ordered society rests on adequate laws of property, its transfer, and the enforcement of contracts freely entered.
44. Hardin, G. The tragedy of the commons. *Science*, **162**: 1243-1248, 1968.
45. F. A. Hayek has been scathing about the concept of social or distributive justice. He claims that social justice is: 'a phrase [that] mean[s] nothing at all and that to employ it [is] either thoughtless or fraudulent' (op.cit. [27] Ch.s 8, 9; quote taken from Preface: p.xvi). The present aim is not to determine how to achieve social justice nor even to examine appropriate or inappropriate expectations of social justice which were Hayek's concerns, but rather to clarify that the concept can quite easily be given a useful meaning in the scheme of things. If properly employed, the term contributes to a thoughtful and constructive debate about collective goods where tragedy or monopoly is inevitable and where a conventional market cannot be left to develop spontaneously. (Of course, distributive justice has nothing to do with whether a person's conduct has been lawful.) Distributive justice is not being used here, as socialists seek to do and Hayek feared, to imply that any actual distribution of wealth or goods that emerges is or is not just. The suggestion that all men have an equal share or equal claim to everything which is good or desired is, if not ridiculous, hardly conducive to either personal freedom or collective well-being. Nor does distributive justice (as a triad of rules) seek to define a final state of society to be striven for by government as authoritarians and utopians wish. Instead distributive justice is used here to clarify *how the necessary distribution of goods which are unavoidably collective in nature and whose use is essential to freedom should be approached* by each and all and endorsed by government. The point is that unless distributive justice is adequately handled, people will not tolerate their government and will progressively destroy their own resources. For further discussions on social justice, see: Brandt, R. (ed.) *Social Justice*. Englewood Cliffs, NJ: Prentice-Hall, 1962.
46. Even if the average economist rejects or is puzzled by justice and equality, leading economists are pre-occupied with these issues. See: Sen, A. *Commodities and Capabilities*. Amsterdam: North Holland, 1985; and Sen, A. 'Justice' In: Eatwell, J., Milgate, M. & Newman, P. (eds.) *The New Palgrave: A Dictionary of Economics*. London: Macmillan, 1987. Relatively recent influential philosophical contributions to the debate include: Rawls, J. *A Theory of Justice* Oxford: Oxford University Press, 1972; Nozick, R. *Anarchy, State and Utopia*. New York: Basic Books, 1974; and Hayek, F.A. *The Constitution of Liberty*. London: Routledge Kegan Paul, 1960.
47. In the case of health care (Ex. 9.25), this utilitarian-style approach would suggest that poorer uneducated people who respond less well to treatment should get worse health care than richer better educated people. The QALY (Quality Adjusted Life Years) is a simple utilitarian tool promoted enthusiastically by UK economists for use by policy-makers in deciding who should receive health-care paid for out of taxation. (QALYs are described in: Gudex, C. & Kind, P. *The QALY Toolkit*. Discussion Paper No. 38, Centre for Health Economics, University of York, 1988.) Aside from various practical and methodological problems, the QALY approach implicitly favours younger rather than older patients, women rather than men, white rather than black patients,

- and upper social class rather than lower social class patients. For a theoretical critique, see: Carr-Hill, R. Assumptions of the QALY Procedure. *Social Science & Medicine*, 29: 469-477, 1987.
48. Havel, V. *Living in Truth*. (ed. J. Vladislav) London: Faber and Faber, 1987.
 49. Ecclesiastes. 9:11. *The New English Bible with Apocrypha*. London: Oxford and Cambridge University Presses, 1970.
 50. The idea that government might run society as an organization seems to have emerged with the technology of control and the growth and power of organizations. Even social scientists who should know better are prone to speak of the need for 'society to act' with the implication that politicians are in charge. I have emphasized repeatedly that the government is a cluster of special organizations, but a community is not an organization, nor is society (the community plus its private and public bodies). Ethical positions, outspoken people and open debate are the pivotal tools in reshaping society, not governments. Cf. Note [27]. The relation of the government to the citizenry is discussed further in G-6: Ch. 12.
 51. See: Wolfensberger, W. & Zauha, H. (eds.) *Citizen Advocacy and Protective Services for the Impaired and Handicapped*. Toronto: National Institute on Mental Retardation, 1973. For citizen advocacy in the UK context, see: Butler, K., Carr, S. & Sullivan, F. *Citizen Advocacy: A Powerful Partnership*. London: National Citizen Advocacy, 1988.
 52. For example: R. Dworkin refers to societal standards as 'institutional morality' (op.cit. [16]); and A.J.M. Milne calls universal standards a 'common morality' (op.cit. [12]).
 53. Le Bon, G. (1895) *Psychologie des Foules*. Transl. as: *The Crowd: A Study of the Popular Mind*. London: Ernest Benn, 1896; Freud, S. (1921) *Group Psychology and the Analysis of the Ego*. Standard Edition, Vol.18: 69-143, London: Hogarth Press and the Institute of Psychoanalysis, 1955. Two recent summaries of this area of theorizing are: Moscovici, S. *The Age of the Crowd: A Historical Treatise on Mass Psychology*. (Transl. J.C. Whitehouse) New York: Cambridge University Press, 1985; and Ginneken, J. van. *Crowds, Psychology and Politics: 1871-1899*. London: Cambridge University Press, 1992.
 54. Yalom, I. *The Theory and Practice of Group Psychotherapy*. 3rd Ed. New York: Basic Books, 1985.
 55. Klein, R. *Inspecting the Inspectorates*. York: Joseph Rowntree Memorial Trust, 1990.
 56. Dworkin, R. op.cit. [16], p.128.
 57. The *Universal Declaration of Human Rights 1948* can be found in: Brownlie, I. op.cit. [22] pp.21-27.
 58. The *Draft Convention on the Elimination of all Forms of Religious Intolerance, 1967* can be found in: Brownlie, I. op.cit. [22]. pp.111-115.
 59. See: Northmore, D. *Freedom of Information Handbook*. London: Bloomsbury Publishing, 1990. The illustrations of secrecy are taken from the Introduction.
 60. The reference to legal firms is taken from a personal account: Garlick, H. Mothers, lawyers and jugglers. *The Independent*, 23 Nov 1990, p.19.
 61. Hogue, A.R. *Origins of the Common Law*. Indiana: Liberty Press, 1966, p.194.
 62. Goitein, H. (1924). *Primitive Ordeal and Modern Law*. London: Rothman, 1980; Pound, R. The theory of judicial decision. *Harvard Law Review*, ix: p.53, 1936; Holmes Jr., O.W. *Common Law*. New York: Harvard University Press, 1963, p.7.
 63. For the evolution of laws from custom in the UK, see: Hogue, A.R. op.cit. [61].
 64. Inquisitorial proceedings which expect the judge to investigate are common in Europe. But this generates a conflict of interest and interferes with impartiality. The European Court, for example, makes its judgements on what is right for Europe and this encourages it to look to the future and help shape that future, rather than judging conduct impartially. Some UK court proceedings are inquisitorial e.g. admiralty courts which can apportion part of the blame to each party in a ship collision. Where the legal tradition is inquisitorial in nature, there is less emphasis on precedent or the binding power of higher courts. But focusing on the facts (what happened) or goals (what do we want) rather than the principles (what is right) actually increases ethical uncertainty, fosters bureaucratic intervention and enhances governmental power.
 65. Kramer, S.N. *History Begins at Sumer*. Philadelphia: University of Pennsylvania Press, 1981.
 66. See: Jolowicz, H.F. *Roman Foundations of Modern Law*. London: Greenwood Press, 1978.
 67. The bicameral arrangement has been proposed by F.A. Hayek. *The Political Order of A Free People*. Vol.3 of *Law, Legislation and Liberty*. op. cit. [27].
 68. For an account of this new movement, see: Altman, A. *Critical Legal Studies: A Liberal Critique*. Princeton: Princeton University Press, 1990.
 69. 1 Kings 3. *The New English Bible*. op.cit. [49]. It has been suggested that this story is a metaphor for the political division of Israel.
 70. Weber, M. *Theory of Social and Economic Organization*. (Transl. A.R. Henderson & T. Parsons) New York: Macmillan, 1947.
 71. Milgram, S. *Obedience to Authority*. New York: Harper Colophon, 1974.
 72. The two imperatives probably link to the distinction recognized by jurists and academics between those legal rules procedurally enforced by government, and those more or less widely accepted moral rules emerging from philosophy and theology. See, for example: Hart, H.L.A. *Law, Liberty and Morality*. London: Oxford University Press, 1963; and Fuller, L.L. *The Morality of Law*. Yale: Yale University Press, 1964. The present approach sees the sharp distinction of law and morality but also recognizes much more commonality and perceives a unity underlying these imperatives.
 73. The Ten Commandments are to be found in Exodus 20. More laws follow in Exodus 21 which includes the famous talion statement. Many of these demand the death penalty. Further detailed laws are to be found in Leviticus. See: *The New English Bible* op.cit [49].
 74. For example: Matthew 21. *The New English Bible*. op.cit. [49].
 75. Hobbes saw laws in this way. Bentham too regarded judge-made, common or unwritten law as 'imaginary, fictitious, spurious'. Marx and Engels viewed laws as a means of dom-

- inance rather than a way to justice. Under the influence of socialism and utilitarianism, laws have become widely used for social engineering in this century. Positive law focuses on command, sanction, obedience, duty and sovereignty and is viewed as apart from ethics. Austin, for example, defined law as the command of a superior who had power to impose a sanction on one who did not comply (*Lectures on Jurisprudence*. London, 1879). Positivism is a widely accepted approach to law, especially in the UK and USA. The leading theorist is Kelsen who seeks to free the idea of law from all taint of external or social influences. (See: *General Theory of Law and State*. New York: Russell, 1961; *The Pure Theory of Law*. Berkeley: University of California Press, 1967; *What is Justice?* Berkeley: University of California Press, 1957.) The present approach recognizes many of the elements of legal positivism, but puts them together in an utterly different way. Pure legal positivism invites exaltation of the pragmatic imperative (G"-6¹) over the moral imperative, and exaltation of the government as ruler (G-6¹) over the citizenry. Whatever erudition supports it, this extreme view seems wrong-headed and socially undesirable. The present approach also emphasizes that governments are at a deep level controlled by pragmatic imperatives even if superficially they appear to be in control of them.
76. *Bhagavad Gita*. (Transl. J. Mascaro) Harmondsworth: Penguin, 1962.
 77. The unique position of the Catholic Church and the confusion of modern societies have led some philosophers to advocate assigning it supremacy over us all. See, for example: McIntyre, A. *Whose Justice? Which Rationality?* London: Duckworth, 1988.
 78. Dworkin, R. *Life's Dominion: An Argument about Abortion and Euthanasia*. London: Harper Collins, 1993.
 79. See the discussion of utopian communities in Ch. 5; and the findings of R.M. Kanter: *Commitment and Community: Communes and Utopias in Sociological Perspective*. Cambridge, MA: Harvard University Press, 1972.
 80. At the time of writing, Barbara Amiel provides a regular column in the Sunday Times in which she expresses these sentiments.
 81. Hayek (e.g. p.4 Bk. II op. cit. [27]) emphasizes that the order is largely unconscious and implicit, preserved in dispositions and predispositions. My emphasis throughout is on what is involved in making rules explicit, together with the potential benefits and hazards in such an endeavour.
 82. Kanter, R.M. op. cit. [79] p.1.
 83. By contrast, much legal and political thinking starting with Aristotle tends to equate willing with forceful wishing or wanting. The general will of Jean-Jaques Rousseau, for example, derives essentially from the wishes of the majority. (*The Social Contract*. (Transl. D. Cress) Indianapolis: Hackett, 1987). My proposal that the citizenry must consider itself as ruling the government, to be explained in more detail in Ch. 12 (G-6), aligns with Rousseau's ideas. My notion of a personal and communal will is closer to Durkheim's appreciation that the individual inevitably feels freely compelled (apart from any wishes) to express the collectivity while the collectivity reveals its moral obligations through the individual's exercise of freedom.
 84. Our research projects recently engaged with confusion around citizenship. John Major, as Prime Minister produced a Citizen's Charter in which being a citizen was portrayed as equivalent to being a consumer of public services. (UK Prime Minister. *The Citizen's Charter: Raising the Standard*. Cmnd. 1599, London: HMSO, 1991.) The Speaker of the Houses of Parliament set up a commission to examine citizenship, but his report turned out to be devoted to promoting an ethic of voluntarism. (*Encouraging Citizenship: Report of the Commission on Citizenship*. London: HMSO, 1990.) The recently established Citizenship Foundation is unconcerned with voluntarism or public services but rather with legal rights. (The Foundation's ideas are available in: *Citizenship. Journal of the Citizenship Foundation*. London.) Charter 88, a crusading body seeking constitutional reform in the UK, see citizenship as a civic ideal. Other perspectives could easily be found. None is wrong but all are one-sided.

