



Wert, Rechtheit and Gut.

Adolf Reinach's Contribution to Early
Phenomenological Ethics

by

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*Dedicated to the memory of Dr Thomas A. F. Kelly,
who taught me what philosophy is and why it is so very important.*

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PREFACE

This thesis contains references from sources in both English and German. Where titles or quotations from German texts are given in English, the translation is my own unless otherwise indicated. I have also quoted from existing translations of Reinach's works where it is possible and appropriate to do so.

The thesis also contains quotations of passages from the works translated in the appendices. These are referenced to the relevant page and paragraph of the source text in volume I of Reinach's *Sämtliche Werke* (S.W.). These page numbers are reproduced in line with the text of the translations in the appendix indicated.

Some passages quoted from the *Sämtliche Werke* contain notes inserted by the editors. Likewise, some quotations from existing translations contain notes inserted by the translator. For clarity, these notes have been left in the original square brackets, i.e. [], while my own editorial notes are indicated with braces, i.e. {}. Italic text in quotations from appendices (II) and (IV) does not indicate emphasis, but instead distinguishes between the transcripts used to reconstruct the texts in *Sämtliche Werke*. The precise meanings of these typefaces and other formatting details in the translations can be found in appendix (I).

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ABBREVIATIONS

- S.W. *Sämtliche Werke*, a collection of Reinach's published and posthumous works edited by Barry Smith and Karl Schuhmann that appeared in 1989. Unless otherwise specified, this refers to volume I, 'Die Werke'.
- Grundbegriffe* Reinach's 1906 paper 'Die Grundbegriffe der Ethik'.
- Überlegung* Reinach's 1912/13 article 'Die Überlegung: ihre ethische und rechtliche Bedeutung'.
- Grundzüge* 'Grundzüge der Ethik', an extract from Reinach's 1913 lecture course 'Einleitung in die Philosophie'.
- Grundlagen* Reinach's 1913 monograph 'Die apriorischen Grundlagen des bürgerlichen Rechtes'.

INTRODUCTION

*Whether there is objective knowledge of values is perhaps the most important [question] in the world.*¹

From the beginning to the end of Adolf Reinach's philosophical career, the subject of ethics was a recurring theme in his thought. Yet, in his lifetime, Reinach never published a treatise solely on ethics at all; his published discussions of ethical questions all appeared in works primarily relating to the philosophy of law, and his lengthiest reflection on ethics formed part of a lecture course that he never prepared for publication. This does not mean that Reinach's writing on ethics was minor or unimportant, but, for many years after his death, his works were scattered and inaccessible, with some of the most substantial parts surviving only as transcripts recorded by Reinach's students during his lectures. Today, although Reinach's extant comments on ethics exist together in a published form, they are far from the most famous part of his body of work and are in fact somewhat overlooked.

My thesis is that Reinach made significant contributions in his writings to early phenomenological ethics. 'Early phenomenological ethics' here refers to a philosophical tradition of ethics that prevailed among the realist phenomenologists of the Munich and Göttingen circles in the early twentieth century, and one that is still relevant today. In the chapters that follow, we will explore the nature of Reinach's contributions in this field. Although Reinach was a pioneer in phenomenological value-theory, a common theme in early phenomenological approaches to ethics, his work goes much further, as

¹ Adolf Reinach, *Sämtliche Werke*, ed. by Karl Schuhmann and Barry Smith (Munich: Philosophia Verlag, 1989), vol. 1, p. 505, paragraph 1; translated in Appendix (IV) to this thesis.

Reinach attempts to address a wide range of problems. In doing so, he identifies three separate concepts in ethics: the concept of moral values (*sittliche Werte*), the concept of moral rightness (*sittliche Rechtheit*) and the concept of goods (*Güter*). Each of these concepts is apportioned its own ethical sphere, and each is capable of accounting for questions in ethics that the others cannot. In this way he reconciles non-formal values with formal duties, and these in turn with the hierarchical concerns of the good human life. He also explores contrasting ethical assessments, the nature of willing and motivation, the problem of freedom, and the boundaries between ethics and the philosophy of law. We will also show that Reinach's work had a traceable influence in the development of phenomenological ethics by Dietrich von Hildebrand and Edith Stein, and that he at least anticipated (if not influenced) some of the ideas put forward by the most famous phenomenological ethicist of his lifetime, Max Scheler.

Yet, to borrow a distinction used by Reinach, there is a difference between the *goal* of an undertaking, that which one sets out to do, and the *purpose* for which one pursues that goal. While my goal with this thesis is to show Adolf Reinach's contribution to the field of early phenomenological ethics, the purpose of doing so is a little broader: to make Reinach's work on ethics more accessible for future study. It is in light of this purpose, as well as in support of our interpretation of the relevant texts, that an appendix is included with this thesis containing translations of three pieces of writing by Reinach, which — as we will see in chapter one — are directly relevant to the present investigation.

SECTION ONE
REINACH'S LIFE AND LEGACY

As far back as our knowledge of his life goes,² Adolf Reinach was a man of diverse interests. The oldest of three siblings,³ he was born in Mainz in 1883, though his name is much more closely associated with Munich (where he carried out his undergraduate studies) and Göttingen. He belonged to 'a distinguished Jewish family ranking side by side with the patricians of Mainz';⁴ his father Wilhelm was a factory owner.⁵ He first came into contact with the world of philosophy through reading the works of Plato at grammar school, and developed an immediate attachment to the discipline that was to become the focus of his career; but this was no foregone conclusion. In his first year and a half at the University of Munich in 1901, 'he attended courses in a range of subjects, including political economy, art history and law'.⁶ The law, his brother Heinrich's chosen profession, was Reinach's other great passion, and remained a theme intertwined with his philosophy for the rest of his life. He also possessed a strong early interest in psychology, which likewise informed his choices of subject matter within philosophy and ultimately his move towards phenomenology.

Reinach's philosophical studies began in Munich under Theodor Lipps. He joined the *Akademische Verein für Psychologie* (Academic Society for Psychology), a

² Karl Schuhmann and Barry Smith, writing in 1987, commented on a general lack of biographical work on Reinach: 'The few existing published biographies of Reinach are, if not unreliable (Oesterreicher 1952), then at best very succinct (Avé-Lallemant 1975, 172-74, Crosby 1983, XI-X)'. Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', in Kevin Mulligan, ed., *Speech Act and Sachverhalt: Reinach and the Foundations of Realist Phenomenology* (Boston: Martinus Nijhoff, 1987), p. 1. Schuhmann and Smith later added another introduction to Reinach's life, in German, to the second volume of the S.W.

³ Reinach's younger brother Heinrich took up a legal career. He later served as Adolf's commanding officer during the First World War. Their sister, Pauline, entered a Benedictine convent in Belgium in 1924, wherein she remained until her death in 1977. See, Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 2.

⁴ John M. Oesterreicher, *Walls are Crumbling: Seven Jewish Philosophers Discover Christ* (New York: Devin-Adair, 1952), p. 101.

⁵ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 2.

⁶ *Ibid.*, p. 3.

weekly discussion group for Lipps's students to discuss psychology and philosophy,⁷ coming into contact with several other philosophers who would later join the phenomenological movement, most notably Johannes Daubert. At this early stage, Reinach reached the conclusion that he 'lack[ed] true sympathy and enthusiasm for the subject-matter' of psychology.⁸ At this point, it seems that Reinach's interest in the law took precedence over his other pursuits.

In 1904, at age 20, Reinach earned his doctorate in philosophy under Lipps.⁹ By the end of that year, he had read Husserl's *Logische Untersuchungen* twice over. Though many found the work difficult to understand, the ideas presented within it appear to have struck a chord with Reinach, and the experience convinced him to alter his plans for future study.¹⁰ The next year, he joined several other Munich philosophers in their 'invasion' of Göttingen.¹¹ His initial stay was enjoyable but short-lived; though he wanted to continue to study under Husserl, with whom he had already founded a personal friendship, he felt it necessary to first complete his degree in the law. He returned to the University of Munich for two semesters, before moving on to Tübingen in the winter of 1906. It was here that he first met Anna Stettenheimer, a physicist from Stuttgart studying for her doctorate, who would later become his wife.

In 1909, with his legal studies behind him, Reinach completed a philosophical work entitled 'Wesen und Systematik des Urteils' ('The Nature and Systematic Theory

⁷ Schuhmann and Smith, *Einleitung: Adolf Reinach*, S.W., p. 613.

⁸ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 4.

⁹ His doctoral thesis, *Über den Ursachenbegriff im geltenden Strafrecht* (*On the Concept of Cause in the Present Criminal Law*), was published posthumously.

¹⁰ Husserl later wrote that 'Reinach belonged to the very first philosophers who fully understood the distinct character of the new phenomenological method' (Husserl, in 'Reinach as a Philosophical Personality', ed. by John F. Crosby, *Aletheia* 3 (1983), p. xi).

¹¹ Three other students from Munich, including Johannes Daubert, made this move around the same time as Reinach; Moritz Geiger, Theodor Conrad, Dietrich von Hildebrand and Hedwig Conrad-Martius followed in later years. (Herbert Spiegelberg, *The Phenomenological Movement: A Historical Introduction*, 3rd edn (The Hague: Martinus Nijhoff, 1982), p. 169)

of Judgement')¹² for a competition in Munich. When the competition was cancelled, Reinach began investigating the possibility of submitting it as a habilitation thesis. Lipps, however, had become ill and was not able to participate in this process. As a result, Reinach returned to Göttingen to attempt habilitation there, submitting 'Wesen und Systematik des Urteils' as his thesis. His application was accepted and in June of that year he completed the additional requirements to be admitted to the position of Husserl's *Privatdozent*.

By 1913, when Edith Stein arrived in Göttingen, Reinach was already well established in his new position, being described as 'Husserl's right hand'.¹³ In 1910, Max Scheler, who was previously acquainted with Husserl and who believed the two shared an 'intellectual bond' that was 'extraordinarily fruitful',¹⁴ began to make appearances in Göttingen; 'he made but little personal contact with Husserl, but all the more with his students'.¹⁵ He and Reinach, among others, worked side by side at this time on Husserl's *Jahrbuch für Philosophie und phänomenologische Forschung*.

In September 1912, Adolf Reinach and Anna Stettenheimer, now a doctor of physics, were married. Their life together was, however, to be short. 'Like almost all German intellectuals of the time, Reinach was carried away by the enthusiasm which broke out after the declaration of war between Germany and the allied powers'.¹⁶ In August 1914, mere days after the declaration of war, Reinach volunteered for military service and was transferred to France in short order. He was assigned to a reserve artillery regiment, in which he served under the immediate command of his younger

¹² For reasons unknown, plans to publish this work did not go ahead, and it was thought for many years to have been lost altogether (Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 15). At their time of writing, no surviving copies were known to exist, but a partial text was eventually recovered and published in the S.W.

¹³ Edith Stein, *Life in a Jewish Family*, trans. by Josephine Koeppel (Washington DC: ICS Publications, 1986), p. 247.

¹⁴ Spiegelberg, *The Phenomenological Movement*, p. 269.

¹⁵ Ibid.

¹⁶ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 29.

brother Heinrich. He was decorated for his service, receiving the Iron Cross after a fierce engagement in 1915. He described the experience of fighting as ‘often terrible’, and yet regarded his military service as ‘the proudest time of my life’.¹⁷ His experiences catalysed the development of his religious views; in 1915, he wrote to Anna and to von Hildebrand to tell them about ‘a change to the very roots of [his] being’.¹⁸ While at the front he wrote his only surviving notes on the philosophy of religion. He also became intrigued by the idea of premonitions and the implications that they would hold for phenomenology if they could be proven to exist. At the same time, he began to express doubts in his correspondence that he would live to see the end of the war.¹⁹

While Reinach was on leave in 1916, he and Anna were formally baptised into the Protestant Church. He returned to the front, and was killed in action on November 16, 1917, aged 34. He was survived by his wife Anna, his brother Heinrich and his sister Pauline.²⁰

Although he published very little in his lifetime,²¹ Reinach’s lasting legacy was assured by his role in teaching the students of the Göttingen phenomenological circle. Roman Ingarden called him ‘the very heart of our collective efforts, the active spirit opening up new aspects and paths of investigation in a creative attitude which never rested’.²² Von Hildebrand wrote that ‘from 1910 on, [Reinach] was my only teacher’,²³ praising his influence over and above that of Scheler. In her autobiography, Edith Stein recalls, ‘[t]he hours spent in [Reinach’s] beautiful study were the happiest of all my time in Göttingen. We [students] were unanimous in the opinion that, when it came to

¹⁷ Ibid., p. 31.

¹⁸ Oesterreicher, *Walls are Crumbling*, p. 122.

¹⁹ Schuhmann and Smith, ‘Adolf Reinach: An Intellectual Biography’, p. 30.

²⁰ Anna Reinach lived on in Germany until 1942, when she was forced to flee the country to avoid being arrested by the Nazi regime. She returned to Germany in 1950, where she died in 1953.

²¹ A detailed chronology of Reinach’s publications and *Nachlass* can be found in chapter one.

²² Ibid., p. 19.

²³ Taken from an introduction written for (but not published in) the compilation of Reinach’s *Gesammelte Schriften* in 1921. Published in ‘Reinach as a Philosophical Personality’, trans. by John F. Crosby, *Aletheia* 3 (1983), p. xx.

method, we learned more here than anywhere else'.²⁴ Reinach himself found this work exhausting, but rewarding.²⁵ In Stein's words, '[a]ll these brilliant achievements were the result of unspeakable care and trouble'.²⁶ Spiegelberg concludes that 'it was [Reinach's] death in action in 1917 rather than Husserl's going to Freiburg which cut short [the promise] of the Göttingen phenomenological circle'.²⁷

SECTION TWO ETHICS IN REINACH'S PHILOSOPHY

In chapter one, we will identify the parts of Reinach's surviving body of works that we consider to be dealing with ethics, in order to use them as key primary sources. Naturally, this requires us to make a judgement as to what 'ethics' means, so that these works can be distinguished from the rest of Reinach's writings. This does not mean that Reinach's works on subjects that we consider not to belong to ethics are irrelevant; they provide, rather, important context for our investigation. An understanding of Reinach's phenomenological method, the descriptive investigation of ethics, his theory of judgement and the *Sachverhalt* and his work on social acts are each necessary to appreciate Reinach's work on ethics, but in light of our present focus on ethics we will not explore these topics at length. As we review Reinach's primary works in chapter one, we will note key points for later reference in our discussions.

Reinach subscribed to a form of early, realist phenomenology inspired (in his case) by the philosophies of Theodor Lipps, Johannes Daubert, Alexander Pfänder and Edmund Husserl. We will discuss early phenomenology in detail in chapter two, but for the purposes of context it is important to note that all of Reinach's philosophical

²⁴ Stein, *Life in a Jewish Family*, p. 274.

²⁵ Oesterreicher, *Walls are Crumbling*, p. 101.

²⁶ Stein, *Life in a Jewish Family*, p. 274.

²⁷ Spiegelberg, *The Phenomenological Movement*, p. 192.

projects, including his ethics, aspire to the description of essences given in experience. When Reinach sets out to investigate what he sees as the questions of ethics, he is not aiming to produce a concise and self-contained ethical calculus or a set of imperatives; his project is to describe the ethical as completely and as faithfully as possible, with nothing left out for the sake of neatness.

We base our understanding of ethics here broadly on the sense in which Reinach also used it, to describe a field within philosophy that is concerned with universal, *a priori* normative questions ('What ought I to do?', 'What ought to be?'), and their answers. Even here, though, our language is ambiguous without clarification. The issue of translating the original German-language terms of Reinach's philosophy into English only adds to the difficulties we must overcome.

Reinach does not draw any kind of clear distinction between the meanings of the words 'ethics' (*Ethik*) and 'morals' (*Sitten*), or between 'ethical' (*ethisch*) and 'moral' (*sittlich*). He is consistent in referring to the field or exercise of studying ethics and morals as 'ethics,' and to this field belongs the study of moral values (*sittliche Werte*). Although Reinach also sometimes refers to ethical values (*ethische Werte*) with apparently the exact same meaning as moral values, it would be accurate to express the distinction as follows: Reinach is interested in the *study of ethics*, which is *concerned with the moral*. But what Reinach calls the 'concept of the moral',²⁸ moral value, does not satisfy all of the questions of ethics. Specifically, it satisfies the question 'what is good?' but not the question 'what ought to be?' This latter question requires a second basic concept in ethics, that of moral rightness, to be satisfied. Reinach also refers to a third basic concept, that of goods (*Güter*). We will discuss in detail what these three concepts and their respective spheres (*Sphären*) mean in chapter three; for now it is

²⁸ S.W. p. 335, paragraph 3; Appendix (II).

sufficient to be clear that as far as Reinach is concerned, they are necessary — and at least provisionally sufficient — to describe the essence of the ethical, the ‘things themselves’ of ethics, in the way called for by his phenomenological method.

Reinach associates ethics directly with normative statements, with the concept of ‘ought’ (*Sollen*). He does not consider psychological egoism and hedonism to be compatible with ‘ethics in the customary sense’,²⁹ because those theories consider human action to be necessarily governed by selfish or hedonistic desires; they do not allow any claims about what ought to be. Ethics, then, is normative by definition.

However, concern with the concept of ought is not exclusive to ethics either. Legal enactments also take the form ‘ought’ and express norms, prescriptions and prohibitions for human action; yet Reinach separates the ethical from the legal as distinct areas of investigation.³⁰ Ethics, then, is more specifically concerned with oughts that are absolute or universal, deriving from formal moral laws and their relationship to non-formal values. Ethical norms are *a priori* and categorical, while legal norms are *a posteriori* and hypothetical; in other words, ethics is the same for everyone, while each positive law is unique and specific to a certain jurisdiction. Finally, the positive law is purely formal, while ethics is also concerned with non-formal values that are all that can convey the moral good in concrete situations. The positive law recognises goods in the sense of Reinach’s third concept of ethics, but without the objectively ranked importance that Reinach attributes to them within that ethical sphere.

Likewise, Reinach’s work on ethics must be briefly distinguished from his theory of the social acts. Although the theory of social acts deals with the concepts of promises and obligations, it does so from the point of view of fact, not that of normativity. There is certainly a relationship between the essential obligation to fulfil a

²⁹ S.W. p. 487, paragraph 2; Appendix (IV).

³⁰ For example, in ‘Die Überlegung: ihre ethische und rechtliche Bedeutung’, Reinach considers the significance of reflection in ethical and legal contexts under separate headings.

promise and the moral obligation to do so, but these obligations are not identical and it is crucially important not to conflate them. The social acts as a whole are ‘non-ethical categories’,³¹ and although they have a certain relationship with ethics, they do not belong to ethics. We will discuss this relationship further in chapter three.

SECTION THREE

THE SIGNIFICANCE OF THE CONCEPT OF ‘CONTRIBUTION’

We have emphasised that our goal in this investigation is to identify Reinach’s *contribution* to early phenomenological ethics. In the chapters that follow we will discuss what we mean by several of these key terms. Yet the task itself might seem strangely specific; why be concerned with Reinach’s ‘contribution’ at all, rather than simply with Reinach’s ‘ethics’?

The core reason for this is that Reinach did not produce an ethics, not in the sense of a complete or systematic theory. It would be misleading to describe what we are investigating in those terms. Given Reinach’s body of surviving works, the question of what he contributed in the development of a phenomenological ethics is a more productive one. But the idea of a contribution also has a particular importance in the context of the early phenomenological movement. There was a shared attitude characteristic of the Göttingen and Munich phenomenologists towards scholarship and the purpose of their work that shifted emphasis away from the achievements of the individual. In the words of Herbert Spiegelberg:

The shortness of his life was not the only reason for the torso of Reinach’s philosophy. Like all the other early phenomenologists he firmly believed in philosophy as a cooperative scientific enterprise to which each researcher would have to contribute patiently and unhurriedly, much in the way as it is the case in the sciences. There could be no such thing as a one-man system.³²

³¹ Armin Burkhardt, ‘Verpflichtung und Verbindlichkeit. Ethische Aspekte in der Rechtsphilosophie Adolf Reinachs’, in Mulligan, ed., *Speech Act and Sachverhalt*, p. 156.

³² Spiegelberg, *The Phenomenological Movement*, pp. 192-3.

We see this attitude reflected especially in the case of Johannes Daubert, a hugely influential figure in the formation of the Munich and Göttingen circles of the phenomenologists who yet ‘did not publish a single word during his time with either [the Munich or Göttingen] circle,’³³ and in the works of Edith Stein, whose work often covered gaps in the phenomenological investigations made by her colleagues.³⁴ The early phenomenologists were making what they saw as a rigorous, scientific analysis of real objects given in phenomena, so the discussions and conclusions of any one member of the movement were open to usage — and correction — by all others. In such an environment, a phenomenologist could focus not on rushing towards the final completion of an over-arching theory, but on the careful and complete investigation of one problem at a time.

This suggests that Reinach’s writings on ethics were not necessarily intended as the beginnings of an ethical theory, or even the groundwork or foundation for one. Each question Reinach raised and addressed in his works was an addition to the body of phenomenological philosophy, a contribution towards the development of a project that was bigger than any one thinker. The fact, therefore, that Reinach produced only a contribution and not a full ethics is not in any way a mark of failure on his part.

³³ Kimberly Baltzer-Jaray, *Doorway to the World of Essences: Adolf Reinach* (Saarbrücken: Verlag Dr. Müller, 2009), pp. 119-120. In a footnote, Jaray gives another explanation for this phenomenon, one also applicable to Reinach:

‘The reason Daubert never published a word, why his manuscripts for both *Festschrift* and *Jahrbuch* were never completed, can be ascertained from letters between Husserl and Daubert. Daubert, like Reinach, was a perfectionist where his work was concerned and overly self-critical. Smid calls Daubert “phenomenology’s Socrates,” since he stimulated the work of other students, but never formulated a corpus of published work himself’. Ibid., p. 120, n. 46.

³⁴ In editing Husserl’s manuscripts for the second and third volumes of *Ideen*, Stein saw Husserl ‘struggle with issues she thought she had resolved, without his being willing to revisit her contribution’. Mette Lebeck, ‘Why Do We need the Philosophy of Edith Stein?’, in *Communio*, vol. xxxviii, no. 4 (Winter 2011), p. 695.

SECTION FOUR

METHODOLOGY

The question at hand — expressed in its simplest form as, ‘What was Adolf Reinach’s contribution to early phenomenological ethics?’ — is not one that can be answered simply or briefly. For our conclusions on this question to be comprehensible and supportable, we must first consider carefully what the question itself means. We must answer the questions that this main question raises in turn: Which of Reinach’s works have to do with ethics? What is the context in which we intend to consider his work as a contribution? What, in fact, do we mean when we refer to a contribution? These questions, in turn, generate questions of their own, and it is around this growing list of questions that the course of this investigation can be formed.

The answering of these many questions requires a careful reading and interpretation of the primary source material that makes up Reinach’s work on ethics. In the face of the comparative lack of secondary literature dealing with the present subject, the importance of this study of the primary sources is greater still. Detailed interpretation of primary texts is also essential to the process of translation, in order to faithfully reproduce the sense and meaning of the original German text in English. There is, therefore, a reciprocal relationship between the process of translation and the process of investigating Reinach’s works on ethics. Critical discussion of Reinach’s work in its philosophical context leads to a deeper understanding of his arguments and conclusions, which in turn serves the refinement of the translation, allowing the translation to support the argument of the thesis.

Not every primary source used in this investigation could be translated for this purpose, however. First, only those most relevant — those that deal directly with ethics, even if ethics is not the primary subject investigated — were considered here. Of the

texts that met this criterion, one (Reinach's monograph 'Die apriorischen Grundlagen des bürgerlichen Rechtes') already exists in an English-language translation, of such quality that it would accomplish little to present an alternative translation. This does not mean that this source was exempted from the process of interpretation found above; on the contrary, comparison of this and other existing translations with the original German texts, and the translators' own notes on terminology and rendering of terms, have all been helpful in the interpretation of the other texts and the refinement of their respective translations.

The process of establishing the context or background for assessing Reinach's contributions to early phenomenological ethics depends upon both textual evidence on one hand, and historical and biographical evidence on the other. To draw a connection between two texts requires that something of one text be recognisable in the other, but as the early phenomenologists were not in the habit of making direct textual references, we must often rely on biographical sources and personal correspondence simply to tell us which works a particular philosopher had read. Despite their overall lack of philosophical content, these sources thus provide important context for our investigation.

SECTION FIVE

STRUCTURE

This thesis is presented in four chapters. Together, these chapters lay out the content, context, nature and extent of Reinach's contribution to early phenomenological ethics. The chapters are followed by appendices containing translations from Reinach's work.

Chapter one is a review of primary and secondary literature to show where the central question of the thesis stands, both in the nature and extent of the relevant

primary source material and in the body of existing scholarship. The first section of the chapter lays out many of the important sources involved in investigating Reinach's contribution, showing how these particular works fit into the timeline of Reinach's surviving writings. The second and third sections identify secondary sources that are important for understanding Reinach's work and situating it historically, with particular attention paid to those that address Reinach's work on ethics.

Chapter two discusses the context of Reinach's contribution by identifying and profiling key figures who influenced the development of Reinach's ethics, or that of early phenomenological ethics generally. This also involves a discussion of where 'early phenomenology' originated and what it is understood to mean. The ideas introduced in this chapter are helpful in understanding Reinach's works on ethics, and so have been placed before the discussion of those works. However, the content of this chapter is most important for the later assessment of Reinach's contribution; it serves to establish what Reinach was contributing to with his writings.

Chapter three presents an in-depth critical discussion of Reinach's work on ethics, showing in detail what is to be found in the primary sources identified in chapter one. This chapter lays out the content of Reinach's contribution to early phenomenological ethics, and analyses the positions taken by Reinach in relation to ethics. Of particular significance is Reinach's division of ethics, as noted above, into three separate spheres (*Sphären*),³⁵ correlating to three separate basic concepts in ethics: the concept of moral value, the concept of moral rightness, and the concept of goods.

Finally, chapter four explores the key issue of contribution by discussing three main themes: the originality of Reinach's work on ethics, the distinctness of his work from that of his key contemporaries, and his demonstrable influence on other members

³⁵ S.W. p. 492, paragraph 4; Appendix (IV).

of the phenomenological movement in their discussions of ethics. This chapter draws on the conclusions of all of the previous chapters in order to establish the ways in which Reinach's work on ethics can be considered a contribution, both within its specific context and generally.

Appendix (I) consists of a preface to the translations in the other appendices, including a glossary of key translated terms. The remaining three appendices each consist of a translated text by Reinach: 'Grundbegriffe der Ethik' (1906) in appendix (II), 'Die Überlegung: ihre ethische und rechtliche Bedeutung' (1912/13) in appendix (III), and an extract from Reinach's 'Einleitung in die Philosophie' lecture course (1913), entitled 'Grundzüge der Ethik', in appendix (IV). Each text is presented with the original German text and the English translation in parallel columns.

CHAPTER I

PRIMARY SOURCES AND A REVIEW OF LITERATURE ON REINACH'S PHILOSOPHY

This chapter discusses the primary and secondary sources for this thesis. It is divided into four sections, covering Reinach's primary works as well as secondary literature on his philosophy and other sources relevant to this investigation.

The aim of the first section is twofold: (1) to delimit which texts will be understood as Reinach's work on ethics when analysing his contribution to early phenomenological ethics; and (2) to situate those texts both historically and philosophically within the body of Reinach's known works.

Section two gives more detailed discussion on our four primary sources for Reinach's work on ethics: (1) 'Grundbegriffe der Ethik', (2) 'Die Überlegung: ihre ethische und rechtliche Bedeutung', (3) 'Grundzüge der Ethik', and (4) 'Die apriorischen Grundlagen des bürgerlichen Rechtes'.

Section three presents some of the sources, in particular biographical works, editions and translations of Reinach's work, used in accessing and translating Reinach's philosophy.

The final section of this chapter looks at the present state of the question on Reinach's contribution to early phenomenological ethics, in the form of secondary literature. Although our emphasis will thus be on works that discuss Reinach's contribution to ethics, critical studies of Reinach's work in general are also vital to fully understanding Reinach's philosophy, and will be discussed here as well insofar as they are of relevance to our topic.

SECTION ONE
TIMELINE OF REINACH'S KNOWN WORKS

Reinach's surviving body of work was produced between 1904, when he completed his doctoral thesis, and 1917, the year of his sudden death in World War I. Four of these surviving texts, and at least one that has been lost, deal with the subject of ethics.¹ The four surviving texts are of most relevance to the present investigation, and will be discussed in more detail in the subsequent section, but it is of importance to understand first how these writings fit into the context of Reinach's work as a whole.

Reinach published only a few articles in journals during his lifetime. He never published a book, and the majority of his published articles are quite short. Reconstructions of lectures and papers he delivered make up a sizeable and very significant part of his surviving body of work. Though there are a few recurring themes in Reinach's philosophy, his works overall cover a wide range of topics, from the law and ethics to logic and numerology. The philosophy of law is the most prominent theme among Reinach's publications, but it does not dominate his body of work.

1.1.1 1904–1905

Reinach's earliest surviving publication, completed in 1904 at the University of Munich and published in 1905, was his doctoral thesis, *Über den Ursachenbegriff im geltenden Strafrecht* (*On the Concept of Cause in the Present Criminal Law*).² In the thesis, Reinach examines the relationship between psychology and criminal law, and the presuppositions that the law makes about the psychology of motivation. Written under

¹ 'The *Probeverlesung* [Reinach] delivered during the habilitation process in 1909 was devoted to the theme "Probleme und Methoden der Ethik" – the problems and methods of ethics. (Unfortunately, this text is no longer extant.)' James DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', in *Phenomenological Approaches to Moral Philosophy: A Handbook*, ed. by John J. Drummond and Lester Embree (Dordrecht: Kluwer Academic Publishers, 2002), p. 328.

² S.W., pp. 1-43.

the supervision of Theodor Lipps, this thesis is not typical of Reinach's later phenomenological work, but his early comments here with regard to the assessment of a criminal suspect's character are of interest for this investigation, as this is a theme that would also appear in his subsequent works on ethics.

1.1.2 1906–1909

Reinach published nothing between the years 1906 and 1909. He wrote, however, three short articles during this period that have survived to the present day. The first of these articles, and the first key source for this investigation, is the paper he delivered to the *Akademischer Verein für Psychologie* on July 6, 1906.³ The paper's original title, if any, is not known, and Reinach's own notes for it have not survived, but two of the society members present took extensive notes, from which the paper was reconstructed and ultimately published under the title of 'Die Grundbegriffe der Ethik' ('The Basic Concepts of Ethics').⁴ In the paper, Reinach discusses the question of whether an ethics can be based wholly on the concept of moral value, and concludes that it cannot. Ethics is broader than questions about value, he argues, just as value theory is broader than questions about ethics. It thus follows that ethics cannot be limited to just an ethics of values. Because it deals directly with a central issue for phenomenological ethics, this text will be considered a key source when investigating Reinach's contribution to early phenomenological ethics, and will be discussed in greater detail below.

The next article to survive from this period is 'Über impersonale Urteile' ('Concerning Impersonal Judgements'),⁵ in which Reinach explores the relationship

³ 'The Academic Society for Psychology,' founded by Theodor Lipps for his students in Munich.

⁴ S.W., pp. 335-37. Previously published with some additional background material in *Speech Act and Sachverhalt: Reinach and the Foundations of Realist Phenomenology*, ed. by Kevin Mulligan (Dordrecht: Martinus Nijhoff, 1987), pp. 275-89.

⁵ S.W., pp. 347-50. Never published in Reinach's lifetime, it appeared in *Gesammelte Schriften* (1921),

between sensory perceptions and the judging or recognising of states of affairs. The sensory perception of warmth is related to but distinct from the judgement that an object is warm. This distinction between the grasping of objects (sensorily or otherwise) and the judging of states of affairs is central to Reinach's distinction between moral value and moral rightness, as we shall see in chapter three.

Lastly, in 1909, after the conclusion of his legal studies, Reinach completed 'Wesen und Systematik des Urteils' ('The Essence and Systematic Theory of Judgement'), which he submitted for his successful habilitation in Göttingen. Only a small part of the text survives today, and was printed in the *Sämtlich Werke*.⁶

1.1.3 1910–1911

The remainder of Reinach's surviving body of work dates from after his habilitation and his acceptance into the position of *Privatdozent* at Göttingen. His next surviving article is an obituary he wrote for *Welt und Wissen. Hannoversche Blätter für Kunst, Literatur und Leben* on the death of the American philosopher William James (1842-1910).⁷

In 1911, Reinach published an article on 'Die obersten Regeln der Vernunftschlüsse bei Kant' ('The Supreme Rules of Rational Inference According to Kant')⁸ in issue 16 of the journal *Kant-Studien*. This was followed by another article on Kant, 'Kants Auffassung des Humeschen Problems' ('Kant's Interpretation of Hume's

pp. 117-20.

⁶ S.W., pp. 339-46.

⁷ S.W., pp. 45-50. Reinach and James had never met, and as Smith notes, 'why the essay on James appeared at all and how it should have been commissioned, written and accepted in such a short time remains unexplained.' Barry Smith, Foreword to his translation of the text in *Speech Act and Sachverhalt*, p. 291. Smith suggests that Reinach had likely given lectures on James's philosophy (*ibid.*, n. 1). Certainly the phenomenologists were familiar with pragmatism; Lyotard lists it among the philosophical traditions to which phenomenology is opposed. Jean-François Lyotard, *Phenomenology*, trans. by Brian Beakley (Albany: State University of New York Press, 1991), pp. 31-32.

⁸ S.W., pp. 51-65. First published in *Kant-Studien*, 16 (1911), pp. 214-33. The English title is that used in the translation by James M. DuBois (see below, n. 107).

Problem’).⁹ The same year, Reinach wrote his ‘first systematic-phenomenological essay’,¹⁰ entitled ‘Zur Theorie des negativen Urteils’ (‘A Contribution Toward the Theory of the Negative Judgement’).¹¹ In this article Reinach further discusses judgements and states of affairs, and argues that there are not only acts of positive judgement (for example, the affirmation of a statement, or the conviction that a state of affairs obtains), but also negative judgements. According to Reinach, the judgement that a contingent statement is not true, or that a described state of affairs does not obtain, should be recognised as an act of negative judgement in its own right and not simply as a refusal to make a positive judgement.

Parts of several of Reinach’s lecture courses from this period have also survived. Although Reinach’s own notes for these lectures are lost, some of his students — notably Margarete Ortmann and Winthrop Bell — took extensive notes that have allowed the content of these lectures to be reconstructed. Reinach’s course on Kant from the winter semester of 1910-1911 was transcribed by Ortmann, and later reconstructed under the title ‘Notwendigkeit und Allgemeinheit im Sachverhalt’ (‘Necessity and Generality in the State of Affairs’).¹² In the surviving text, Reinach discusses the difference between necessary and contingent or accidental truth in states of affairs. He concludes that the necessity or contingency of a state of affairs is part of the essence of that state of affairs, and also disagrees with Kant that being necessary or universal is a required characteristic of the *a priori*. As we will see in chapter two, the understanding

⁹ S.W., pp. 67-93. First published in *Zeitschrift für Philosophie und philosophische Kritik*, 141 (1911), pp. 176-209. The English title is that used in the translation by J. N. Mohanty (see below, n. 103).

¹⁰ As described by Husserl. See Crosby, ‘Reinach as a Philosophical Personality’, in *Aletheia*, 3 (1983), p. xii.

¹¹ S.W., pp. 95-140. First published in Alexander Pfänder’s collection *Münchener philosophische Abhandlungen; Theodor Lipps zu seinem sechzigsten Geburtstag gewidmet von seinem früheren Schülern* (Leipzig: Johann Ambrosius Barth, 1911), pp. 196-254. The English title is that used in the translation by Don Ferrari (see below, n. 104).

¹² S.W., pp. 351-54.

of the *a priori* and Reinach's support of a non-formal or material *a priori* is key to Reinach's disagreement with Kant's philosophy in general.

Part of a second course on the freedom of the will and responsibility, which Reinach delivered in the summer semester of 1911 and again in the winter semester of 1911-1912, has survived in notes by both Bell and Ortmann, and was reconstructed with the title 'Nichtsoziale und soziale Akte' ('Non-Social and Social Acts').¹³ In this early discussion of the theory of social acts that Reinach would publish in its more complete form in 1913 (see below, section 1.1.4.), he discusses the recurring themes of promising and obligation. The brief transcript does not touch on the subject of ethics, and Reinach does not distinguish between the different kinds of obligation as seen in *Grundlagen*; as *Grundlagen* represents the more mature and developed expression of Reinach's social act theory, this early discussion is not of importance for us. A series of lectures from Summer 1910 on 'Platons Philosophie' ('Plato's Philosophy') also survives in the form of notes taken by Alexandre Koyré.¹⁴

1.1.4 1912–1913

The years 1912 and 1913 mark the period in which Reinach produced the three works (two published articles and one lecture course) that form the most important sources of this investigation. In 1912 he published the first part of 'Die Überlegung: ihre ethische und rechtliche Bedeutung' ('Reflection: Its Ethical and Legal Significance'),¹⁵ with the second part arriving in 1913. This article was Reinach's response to a debate in legal circles concerning the legal definition of murder, which at the time stated only that a

¹³ S.W., pp. 355-60.

¹⁴ These did not appear in the S.W., but were published later in an Appendix to Josef Seifert, *Ritornare a Platone: La Fenomenologia Realista come Riforma Critica della Dottrina Platonica delle Idee* (Milan, 2000), pp. 181-241.

¹⁵ S.W., pp. 279-311. First published in two parts in *Zeitschrift für Philosophie und philosophische Kritik*. The first part appeared in vol. 148 (1912), 181-96, and the second in vol. 149 (1913), 30-58.

murder was a killing carried out with reflection or premeditation (*Überlegung*). Reinach was of the opinion that the law needed reform, and in the course of arguing the point in this article he closely examines the phenomenon of reflection in intellectual, ethical and legal contexts, showing the ambiguous and unreliable significance of reflection. The middle section of the text also discusses value theory and the ethics of values. Thus, though its central question belongs to the philosophy of law rather than to ethics, this article will be considered another key source of this investigation, and will be further discussed below.

In 1913 Reinach published ‘Die apriorischen Grundlagen des bürgerlichen Rechtes’ (‘The Apriori Foundations of the Civil Law’).¹⁶ This article, too, is primarily concerned with legal philosophy, as its central questions have to do with the essential foundations of positive law. The text, nonetheless, includes numerous references to ethics and the relationship between ethics and the law, which are at least of interest from the point of view of discussing Reinach’s contributions to meta-ethics, if not also to ethics. This article will also be considered a key source for this investigation. As it has already been translated into English, and has been commented on more extensively than the other key sources of the investigation in secondary literature,¹⁷ no translation of this article is included in the appendix below. The text will be further discussed below.

In 1912 and 1913, Reinach took part in discussions at two colloquia that were also attended by Winthrop Bell, whose notes from the proceedings have survived. The first transcript appears under the heading ‘Die Vieldeutigkeit des Wesensbegriffs’ (‘The Ambiguity of the Concept of Essence’),¹⁸ in which Reinach distinguishes between ‘how’-essences and ‘what’-essences. A ‘what’-essence has a role in determining what a

¹⁶ S.W., pp. 141-278. Originally published in *Jahrbuch für Philosophie und phänomenologische Forschung*, issue 1 (1913), pp. 685-847. The English title is that used in the translation by John F. Crosby (see below, n. 105).

¹⁷ For examples of these discussions in secondary literature, see below, section 1.4.1.

¹⁸ S.W., pp. 361-64.

thing is. If one thinks of a brown table, the status of the table as a table is a ‘what’-characteristic: if it were removed, the table would no longer be a table. Removing the brownness of the table, on the other hand, would not change what it is, only ‘how’ it is. Brownness is thus only a ‘how’-characteristic (*Wiebeschaffenheit*) of the brown table, but it is part of the ‘what’-essence of different shades of brown themselves. This offers an insight into what Reinach means by ‘essence’, and the manner in which essences interrelate. The second set of notes is given the title ‘Über Dingfarbe und Dingfärbung’ (‘Concerning the Colours and Colouration of Things’),¹⁹ and discusses our experiences of colours and of how light and colour interact.

In the summer semester of 1913, Reinach delivered a lecture course entitled ‘Einleitung in die Philosophie’ (‘Introduction to Philosophy’). Winthrop Bell and Margaret Ortman attended the course and took extensive notes, from which the lecture course was eventually reconstructed.²⁰ The transcribed text of this course is the longest single work in the *Sämtliche Werke*, and is divided into two major sections: (1) ‘Die philosophische Problematik: Ausgewählte Hauptprobleme der Philosophie’, and (2) ‘Hauptfragen der Logik und Ethik’. Of particular importance for us here is the second chapter of the second section, and the final part of the lectures that has survived: ‘Grundzüge der Ethik,’²¹ Reinach’s longest and most comprehensive discussion of ethics known today. Perhaps even more so than the others mentioned here, this is a key source for this investigation and will be further discussed below.

In the winter semester of 1913-1914, Reinach taught on the subject of numerology, and notes taken from these lessons by Winthrop Bell and Edith Stein have survived. They have been reconstructed under the title ‘Zum Begriff der Zahl’ (‘Toward

¹⁹ S.W., pp. 365-68.

²⁰ S.W., pp. 369-513.

²¹ S.W., pp. 485-513.

the Concept of Number’).²² Here Reinach discusses how numbers come to be understood and whether our knowledge of them depends on experience. This text contains references to Husserl’s *Philosophy of Arithmetic*, as well as to the work of the neo-Kantian philosopher Paul Natorp (1854-1924), who was soon to feature again in Reinach’s writings.

1.1.5 1914–1917

In 1914, Reinach published a quite lengthy and detailed review of Natorp’s *Allgemeine Psychologie nach kritischer Methode* (1912).²³ The same year, Reinach was given the opportunity to deliver a paper in the University of Marburg, where Natorp taught. In this paper, Reinach attempts to make his phenomenological approach and viewpoint understandable to his neo-Kantian audience. In doing so, he discusses many themes from elsewhere in his philosophy, including experiences, essences, judgements, logic and numerology. This is the closest thing to an explanation by Reinach of what he takes the method and purpose of phenomenology to be. The paper was later to be published under the title ‘Über Phänomenologie’ (‘Concerning Phenomenology’),²⁴ and later still as ‘Was ist Phänomenologie?’ (‘What is Phenomenology?’).²⁵

Late in 1914, Reinach joined the German army and left to fight in the First World War. At the time he was working on an article entitled ‘Über das Wesen der Bewegung’ (‘Concerning the Essence of Movement’).²⁶ Reinach did not complete the article before he left for the war, but it was edited for publication by Edith Stein and appeared posthumously in the first compilation of his works, *Gesammelte Schriften*. In

²² S.W., pp. 515-29.

²³ S.W., pp. 313-31. First published in *Göttingischen gelehrten Anzeigen*, issue 4 (1914), pp. 193-214.

²⁴ S.W., pp. 531-50. First published in *Gesammelte Schriften*, pp. 379-405. The English title is that used in the translation by Dallas Willard (see below, n. 99).

²⁵ Adolf Reinach, ‘Was ist Phänomenologie?’, ed. with a foreword by Hedwig Conrad-Martius (Munich: Kösel, 1951). The English title is that used in the translation by Derek Kelly (see below, n. 99).

²⁶ S.W., pp. 551-88. First published in *Gesammelte Schriften*, pp. 406-61.

this article, Reinach argues that the fact that we can intuitively visualise a phenomenon — such as motion — gives absolute evidence for its possibility. This reflects Reinach’s general position on essences given in experience; seeing one moving object does not prove that this particular object exists, but that real movement is possible in principle.

During the war, Reinach continued to take notes towards future works. Fragments of two texts have survived: ‘Zur Phänomenologie der Ahnungen’ (‘On the Phenomenology of Premonitions’),²⁷ and a fragment of a treatise on the philosophy of religion.²⁸ These are brief and very much incomplete, providing only a glimpse into Reinach’s thought during what were to be his final years. The turn towards the philosophy of religion reflects Reinach’s conversion to Christianity, which he underwent along with his wife in 1916.

SECTION TWO

SELECTED SOURCES FOR REINACH’S WORK ON ETHICS

In the course of the above section, we identified four texts for further discussion as sources for Reinach’s ethics. In this section we will discuss each of those texts in turn, with particular attention to the ethics-related content of each. Of these four texts, one (‘Die apriorischen Grundlagen des bürgerlichen Rechtes’) exists in English translation. The remaining three appear in translation in the appendices in the appendix, thus making Reinach’s entire body of work on ethics available in an English-language form.

²⁷ S.W., pp. 589-92.

²⁸ S.W., pp. 605-11. The English titles are those used in the translation by Lucinda Brettler (see below, n. 102).

In 1906, Reinach was invited by his close friend Theodor Conrad, then chairman of the *Akademischer Verein für Psychologie*, to give a paper at one of the society's meetings. Reinach at the time was in the midst of his legal studies, but ultimately, on the 6th of July, he presented this paper on 'the basic concepts of ethics'.³⁰ Reinach laid out the main point of the paper in a letter to Husserl, (with whom he had at this point already formed a personal friendship), to show that in addition to moral values, which are borne by objects, there is also a separate concept of moral rightness, which pertains to states of affairs (*Sachverhalte*). Reinach is said to have planned a second lecture to follow from this one, but if it ever took place, no copies have survived.³¹

This short article on ethics is one of Reinach's earliest surviving works, and shows the influences of both Theodor Lipps (under whom Reinach had only recently completed his doctorate, and whose view on ethical correctness Reinach here criticises) and Edmund Husserl (whose *Logical Investigations* Reinach had read in the previous years). Specifically, Reinach seems to be taking the terminology of the state of affairs (*Sachverhalt*) from Husserl here,³² although he also encountered this term in his studies of law.³³

Reinach begins the paper with a discussion of values. 'Value' is to be understood here not as a matter of subjective preference, but as an objective predicate, a

²⁹ The translation of this text can be found in Appendix (II).

³⁰ Daubert labelled the text as 'Vortrag von Dr. Reinach über Grundfragen der Ethik', a title reminiscent of Theodor Lipps' *Ethischen Grundfragen*. Since the text itself refers to '*Grundbegriffe*' (basic concepts) rather than '*Grundfragen*' (basic questions), the editors of the S.W. chose the title above, taken from Pfänder's transcript.

³¹ *Sämtliche Werke*, vol. 2., p. 708.

³² See, for example, Husserl, *Logical Investigations*, I, §63.

³³ In a letter to Theodor Conrad in October 1906, some months after he delivered this paper, Reinach asks Conrad if he is familiar with the role of the *Sachverhalt* in the German civil code, and offers to reproduce the relevant paragraphs for Conrad to look at, as Reinach 'know[s] them all off by heart.' (Schuhmann and Smith, *Reinach: An Intellectual Biography*, p. 10.)

property of objects (*Gegenstände*) grasped in experience.³⁴ Reinach describes several different kinds of values, including both moral and non-moral values. At this early stage, he concludes that only a negative definition of moral values (i.e. what they are not) is possible.³⁵ Moral value is value, just as beauty is value, but moral value is not the same as beauty. ‘Customarily, *morally valuable* would be equated with good; disvaluable with evil or bad’.³⁶ To say that other values are ‘good’ is to equivocate with the morally good.³⁷ As a value, moral value is a predicate of objects, but Reinach does not here seek to precisely identify the bearers of moral value.³⁸

Reinach then questions whether moral value can be the only basic concept of ethics. He argues that it cannot. Ethics goes beyond the confines of the world of values to enter the world of being. States of affairs, which are not objects and cannot be the bearers of values, can still have ethical significance. Rather than being termed morally valuable or morally disvaluable, they can be morally right or morally wrong. This concept of moral rightness (*sittliche Rechtheit*) is entirely distinct from the concept of moral value. The being happy of a morally good man is not morally valuable, nor is the being happy of a morally evil man morally disvaluable, but they are morally right and morally wrong, respectively.

³⁴ This is what is indicated by a ‘realist’ theory of values: one that holds that value is a real and inherent quality of certain objects independently of any act of valuation.

³⁵ Reinach never spelled out the precise difference between moral and non-moral value. This may be because he saw the difference as simply undefinable; ‘moral value’ is ‘moral goodness in itself’, and we know the difference between this and other kinds of goodness only by experiencing it. Much later, in his lecture *Über Phänomenologie*, Reinach speaks critically of ‘hopeless efforts to define something by means of that which it is not’, indicating that negative determinations are certainly not satisfactory for his phenomenological approach. ‘Concerning Phenomenology’, trans. by Willard; S.W. p. 535.

³⁶ S.W. p. 335, paragraph 2; Appendix (II). The ‘good’ referred to here by Reinach is different from his concept of goods, which he introduces in *Grundzüge*. ‘Good’ (as an adjective) and ‘goodness’ refer to the quality of something being good, whereas ‘a good’ (as a noun) refers to a kind of intangible possession (such as life or happiness).

³⁷ This equivocation is what G.E. Moore calls the ‘naturalistic fallacy’, although the mistake is not specifically naturalistic; a better description is the ‘definist fallacy’, as suggested by William Frankena. See Frankena, ‘The Naturalistic Fallacy’, *Mind*, Vol. 48, No. 192 (Oct. 1939), 464-477.

³⁸ The bearer (*Träger*) of a value is the object (*Gegenstand*) that bears or possesses that value. When one appreciates the wisdom of another human being, that human being is the bearer of the value of wisdom. When one sees a beautiful landscape, the landscape is the bearer of the value of beauty. Reinach later identified acts, persons and personal qualities as the bearers of moral values.

The term ‘morally right’ would also be used in normal speech to indicate that an action was ‘right’, or that a person ‘did the right thing’. Reinach distinguishes this from the rightness of a state of affairs, but also shows that it is possible to connect the two. An action is right insofar as it aims towards the realisation of a morally right state of affairs. ‘Right’ (*recht*) is also not to be confused with ‘correct’ (*richtig*) in the sense that an act of judgement can be correct. Correctness has to do with what is; rightness has to do with what ought to be.

Reinach accuses Lipps of conflating moral value with moral rightness. For Lipps, an action that arises from a valuable disposition is morally correct (or right).³⁹ This takes away rightness from states of affairs in themselves; in this sense, a state of affairs could only be right because it was brought into being by a right action. In turn, a state of affairs will only be right if it is one that a morally perfect person could will to be. For Reinach, this relationship requires clarification. The moral value of an act of willing⁴⁰ is dependent on the moral rightness of the state of affairs that is willed.

Reinach now expands on the relationship between the valuable and the right. Reinach here refers to ‘mediating statements’; earlier he indicated that rightness was a kind of ‘in order.’ In other words, there are rules which allow us to determine the rightness of a state of affairs.⁴¹ Four examples of these statements are: it is right that a morally valuable object exists; it is right that a morally disvaluable object does not exist; it is wrong that a morally disvaluable object exists; it is wrong that a morally valuable object does not exist. Reinach refers to a two-directional relationship here where value translates to rightness and vice-versa.

³⁹ At several points within *Grundbegriffe* the word ‘correct’ (*richtig*) appears where it seems very likely that Reinach meant ‘right’ (*recht*). Since the text has survived only in the form of transcripts, it is possible this was due to misunderstanding by the listeners rather than inconsistency in Reinach’s usage. These misunderstandings may have been fuelled by the fact that Lipps uses the term ‘morally correct’; ‘*Das sittlich Richtige*’ is the title of the fifth chapter in *Die Ethischen Grundfragen*.

⁴⁰ As opposed to an action; the value of an action is rooted in its essence.

⁴¹ Later in *Grundzüge*, Reinach designates this as the function of a formal moral law such as Kant’s.

Reinach here makes a distinction between ‘rightness’ and ‘ought-to-be.’ ‘It is right that a valuable object exists’ and ‘a valuable object ought to exist’ are equivalent statements, but their meaning is not identical. Reinach does not go further into this here, and never refers back to the distinction in later works.

Reinach concludes the paper with an acknowledgement that he has not fully explored this issue yet. The meanings of ‘moral value’ and ‘morally right’ have not been satisfactorily explained, nor has the way in which values ‘correspond’ to objects. He wishes only to conclude that one cannot ignore the sphere of rightness, or explain it away⁴² in terms of value. The investigation of ethics must take this second sphere into account in its own right.

1.2.2 ‘DIE ÜBERLEGUNG: IHRE ETHISCHE UND RECHTLICHE BEDEUTUNG’⁴³

Reinach wrote this article in anticipation of a reform of the criminal law in Germany,⁴⁴ in which the legal definition of the distinction between murder and manslaughter was a matter of some debate.⁴⁵ Reinach himself was of the view that the existing definition (in which murder was defined as killing carried out ‘with reflection’ (or premeditation) and bore a compulsory death sentence, while manslaughter was defined as killing carried out ‘without reflection’ and could be punished with a minimum of six months’ imprisonment) was inadequate, pointing to both the vague legal definition of what ‘reflection’ meant and the unreliability of the criterion, even if properly defined.⁴⁶

⁴² At least in later works (particularly *Über Phänomenologie*), Reinach regards it as a pervasive and very damaging tendency in psychological investigations to ‘interpret away’ (*wegdeuten*) one phenomenon by reducing it to another. At the same time, he warns against the opposite tendency (treating as essentially different things that are essentially the same), though he does not give examples of this.

⁴³ The translation of this text can be found in Appendix (III).

⁴⁴ S.W., p. 311, paragraph 1; Appendix (III).

⁴⁵ S.W., p. 309, paragraph 1; Appendix (III). ‘Murder’ here is not to be confused with homicide, which refers to any killing of one person by another. Both murder and manslaughter are, by definition, unjust or criminal homicide.

⁴⁶ The law in force in 1912, which dated back to the unification of Germany, was as briefly worded as

To support his argument for legal reform, Reinach engages in an investigation of ‘reflection’ (*Überlegung*), which he understands as a process of extended questioning undergone when one is uncertain about a question.⁴⁷ The first section of the article investigates both the nature of the experience of reflection in general and intellectual reflection (reflection on the being or non-being of a state of affairs being the prime example) in particular.

Reflection is not an act in Reinach’s technical sense of that word,⁴⁸ but a process, an attitude into which the subject enters. Entering into reflection constitutes a break in the normal flow of experiences; more often than not, we judge states of affairs or resolve to carry out projects without this kind of extended inner questioning. All reflection is based on an inner indecision over a question, the topic or theme of the reflection. Reflection properly ends in the taking of a position on that question — an intellectual conviction or a volitional resolve⁴⁹ — but it can end in failure in this regard. Intellectual reflection can also end in a range of partial fulfilments when the subject is not fully convinced of his or her position: one can suspect that something is true without

Reinach suggests. In full, it read: ‘Whoever intentionally kills a person, if he carried the killing out with reflection, will be punished with death for murder’. Thomas Fuchs (ed.), *Strafgesetzbuch für das Deutsche Reich vom 15. Mai 1871, Historisch-synoptische Edition* (Mannheim, 2010), p. 968.

⁴⁷ This is not equivalent to the use of ‘reflection’ (*Reflexion*) by Husserl in the *Logical Investigations*. In Husserl’s terms, reflection ‘implies that what we reflect upon, the phenomenological experience, is rendered objective to us (is inwardly perceived by us), and that the properties to be generalized are really given in this objective content’. Husserl, *Logical Investigations*, trans. by J. N. Findlay (London: Routledge and K. Paul, 1970). Sixth investigation, §44, p. 783.

⁴⁸ For Reinach, ‘an act in the genuine sense’ is ‘an inner activity of the subject’ that is ‘temporally punctual’, as opposed to having ‘any temporal duration’. S.W. p. 282, paragraph 3; Appendix (III). Not all phenomenologists share this understanding. An act for Husserl, for example, can be ‘a psychological process, a mental occurrence, an episode of consciousness, or indeed some ideal part of a conscious experience’. Dermot Moran and Joseph Cohen, *The Husserl Dictionary* (London/New York: Continuum Philosophical Dictionaries, 2012), p. 27.

⁴⁹ The taking of an intellectual position often (though not always) means an act of judgement. Although Reinach does not directly reference his own work, this investigation is therefore linked to his earlier work on judgement and states of affairs, most notably in *Zur Theorie des negativen Urteils*. A practical position-taking involves the forming or grasping of a volitional resolve. Reinach had not discussed volitional resolves in detail previous to this, but there are references in Husserl’s work to ‘voluntary decisions’ and ‘voluntary intentions’. Husserl, *Logical Investigations*, fifth investigation, chapter 2, §11, p. 555.

a decisive judgement that it is true, or doubt that it is true without a decisive (negative) judgement that it is not true, all with varying degrees of certainty.

The second section of the article examines reflection's ethical significance, and discusses volitional reflection (reflection on whether to carry out a project, a thought-of action). This section, with its extensive comments on moral value and the nature of moral decision-making, is naturally the most important for our present investigation. Reinach centres his argument on addressing four different assessments that are customarily applied to the presence or absence of reflection in the making of a decision, that is to say, assessments that, at first glance, appear to contradict one another. A good action may be considered less praiseworthy if the agent carried it out without a moment's thought beforehand, but we would also consider it less praiseworthy if the agent stood by and reflected for a long time on whether to act. And although we would criticise a person for carrying out an important action without reflection, an evil action carried out with reflection, or premeditation, is considered much worse than one carried out without reflection, as seen with the harsher punishment for premeditated killing.

Reinach does not mean to show that these assessments are actually contradictory, however. Nor do they indicate that the moral value-character of reflection is variable or relative. 'The ethically reflective human being as such represents an ethical value, if a modest one'.⁵⁰ Rather, Reinach shows that a moral assessment can take into account more than just the essential moral value or disvalue of an action. We see this in how we assess a mundane, everyday action being performed in a reckless manner. 'If the thought of driving on the open road at extraordinary speed contains in and of itself no disvalue, or even a value-importance, it yet possesses, "in view of" or

⁵⁰ S.W. p. 302, paragraph 3; Appendix (III).

“in consideration of” the fact that human lives are endangered, a negative value-character.’⁵¹

In the same way, the different ways in which reflection affects the moral assessment of an action are based not on the action itself, nor on reflection as such, but on what the whole decision to act indicates about the character of the agent. There are differences in the sensitivity of different persons to values, and in how persons react to the feeling of values; and these reflect on the character of the person. Sensitivity to and respect for moral value are themselves moral values; the lack of these is morally disvaluable.⁵² Because reflecting on an action can potentially increase one’s awareness of the action’s moral value or disvalue (and because reflection itself is morally valuable), it is always best to reflect before acting; but a person who needs to reflect for a long time before performing a good action shows a low sensitivity for value, as a keenly-felt moral value should strongly motivate action. Similarly, a person who performs an evil action after reflection shows a lower sensitivity to or respect for value. Thus, in both these latter cases, there is some basis for assessing the person’s character less favourably. Reinach, nevertheless, stresses that these relations are far from necessary; for the purposes of most assessments, reflection ‘possesses a merely symbolic character.’⁵³ The presence or absence of reflection in different cases cannot be considered a completely reliable method of assessing a person’s character.

Building on this conclusion, Reinach turns to examine the significance of reflection for the criminal law. Here a third form of reflection comes into focus:

⁵¹ S.W. p. 293, paragraph 1; Appendix (III). The ‘value-modification’ referred to here by Reinach raises difficulties for his ethics that we will discuss in chapter three.

⁵² ‘The feeling of an ethical value and the capacity for the feeling of ethical values in general are themselves ethical values’. Correspondingly, ‘the incapacity to feel an ethical value is itself an ethical disvalue, and equally or even more so, is practical deviation from the feeling of a disvalue’. (S.W. pp. 300-01; Appendix (III).

⁵³ S.W. p. 300, paragraph 1; Appendix (III). Reinach adds, ‘There are necessary and universally-existent symbolic relationships. Those which we have just discussed certainly do not belong among them.’ (Ibid., paragraph 2)

practical-intellectual reflection (premeditation on what means to use in achieving an end that one has already resolved to bring about). This is a kind of intellectual reflection, but concerns a hypothetical course of action rather than a question of fact or being. Reinach cites Richard Katzenstein as an example of a jurist who argued that the test to identify murder should be premeditation of this kind, not volitional reflection.⁵⁴ That is, to have committed murder, a killer must have considered how to commit the crime, not whether to. Katzenstein had argued that ‘the most reproachable criminal’ would never stop to reflect volitionally; if only volitional reflection were considered in the definition of murder, then the law would show leniency to ‘murdering thugs’ who never stop to question whether what they are doing is right.⁵⁵ Reinach counters that it is no better to focus entirely on practical-intellectual reflection. In certain circumstances, an opportunistic killer might have no need to reflect on his or her method of killing. Reinach gives the example of a man out hunting, who already has a gun in his hand. If this man sees another man and decides to shoot him, there is no need for the killer to consider his method, since the means to success is already clear.⁵⁶ It makes no sense for the law to be lenient in such a case. So, neither volitional nor practical-intellectual reflection is guaranteed to be a factor in the most ruthless of homicides.⁵⁷

Reinach contrasts the ethical significance of reflection with its significance in the criminal law. In ethics, he had concluded that reflection can have a symbolic significance that is still worth paying attention to, because it indicates a receptivity or

⁵⁴ S.W. p. 309, paragraph 1; Appendix (III).

⁵⁵ Ibid.

⁵⁶ S.W. pp. 305-06; Appendix (III).

⁵⁷ Reinach considers volitional reflection to be the better measure, if either is to be used at all. This it not because of the ethical significance of that type of reflection; in fact, the legal assessment here ‘proceeds in the opposite direction’. It is perfectly adequate for the criminal law if a person refrains from breaking the law purely because of the threat of punishment, not because he or she knew that it was morally wrong. But because reflecting on an action also brings the possibility of punishment into focus, the decision to break the law with reflection symbolises a lack of concern with the authority of the law and with being punished, a particularly dangerous disposition from a legal point of view. S.W. p. 308, paragraph 1; Appendix (III).

unreceptivity to value on the part of the agent. But the criminal law is not at all concerned with the moral goodness or badness of the character, with whether or not the agent is sensitive to values or respects values. ‘The “antisocial” disposition does not coincide with the unethical, not even in the sense that it forms a small section of it.’⁵⁸ A person with a completely immoral character can act fully within the law out of self-interest, while a person who is scrupulously moral can break the law precisely because of his or her moral commitments; the law is only interested in punishing the latter of the two. Thus, the law needs its own set of reasons for applying the same assessments about reflection as are customary in ethics, and Reinach finds these lacking. A lack of reflection might symbolise a state of ‘emotional turmoil’,⁵⁹ implying diminished responsibility, which would support a reduced sentence. Reinach reasons, however, that if the agent’s emotional state is what is important, then that is what the law should refer to, not reflection. It is possible both to act swiftly and without deliberation while in a calm and collected state, and to think over a course of action while consumed with emotion. Reinach concludes that to define murder within the law simply as reflected-upon killing is unsuitable, especially when it leads to such a sharp increase in severity of punishment, from imprisonment to death.

The discussions of values, value-experiences and moral assessments in *Überlegung* are all of importance to investigating his ethics. In particular, Reinach’s contrasting of value against personal interest, under the influence of von Hildebrand, is a significant addition to the structure of his ethics.

1.2.3 ‘GRUNDZÜGE DER ETHIK’⁶⁰

⁵⁸ S.W. p. 308, paragraph 1; Appendix (III).

⁵⁹ S.W. p. 311, paragraph 1; Appendix (III).

⁶⁰ The translation of this text can be found in Appendix (IV).

This set of lectures represents Reinach's longest single surviving work on ethics; however, it was never intended for publication. The text that survives was reconstructed by the editors of the *Sämtliche Werke* from transcripts taken by two of Reinach's students, Winthrop Bell and Margarete Ortman.

Based on a reading of the section headings, 'Grundzüge der Ethik'⁶¹ would appear to be a historical lecture course describing different prevailing theories of ethics: hedonism and egoism, utilitarianism, and Kantian deontology.⁶² However, the text itself is much more than this. Beginning by laying out a basic structure in the form of three spheres, Reinach here lays out the groundwork for his phenomenological theory of ethics, and defends it by showing how it can succeed where the prevalent theories of ethics fail.

In the first section, 'The Problem of Value', Reinach revisits his discussion of the basic concepts of ethics from *Grundbegriffe*. To the two concepts he had previously discussed, moral values and moral rightness, Reinach here adds a third: the concept of goods. Drawn from Reinach's experience with the law, the sphere of goods refers to things that can be possessed, pursued, and taken away from a person, even though they are intangible: life, happiness, the right to one's property. These are all distinct from the person himself or herself, and they are not values, although some may be bearers of values. Goods and values each form their own respective order of precedence or 'hierarchy', indicating that some of each are more important than others.⁶³ Reinach associates each of his three basic concepts of ethics with its own sphere of ethics: the

⁶¹ 'Grundzüge' translates as 'basic features', 'essential features' or just 'essentials'.

⁶² The modern revival of interest in Aristotelian virtue ethics would not take place until some years later. Aristotelian themes in early phenomenological value ethics will be discussed in chapter two.

⁶³ S.W. p. 485, paragraph 3 and p. 486, paragraph 3; Appendix (IV). The word used by Reinach is *Rangordnung*, literally an order of ranks. Although often translated as a 'hierarchy', this word is not meant in the sense of an order of holiness but simply as an order of precedence: 'A body of persons or things ranked in grades, orders, or classes, one above another'. ('hierarchy, n.', *OED Online*. December 2012 (Oxford University Press) <<http://www.oed.com/view/Entry/86792>> [accessed 16 February 2013])

sphere of moral values, the sphere of moral rightness, and the sphere of goods. In each sphere, 'the problems of ethics [can be] very differently formulated'.⁶⁴

The second section of the lectures discusses hedonistic, eudaimonistic and utilitarian theories of ethics. These fall under the heading of ethics of purpose, theories which attempt to put forward a single goal or purpose as the correct (or necessary) end of human action. It is based on the achievement of this prescribed purpose that all actions are to be assessed. According to the theory of psychological egoism, no human action is possible other than that which serves the perceived self-interest of the agent. Reinach counters that this is not addressing the questions of ethics at all. Even if the theory were true, 'we could *still* say: all people until now have been egoists, but they ought not to be so!'⁶⁵ Reinach also denies that it is possible to reduce all of willing to the pursuit of pleasure. Willing, he argues, involves three components: a motive, a purpose, and a source. The purpose is that which the agent plans to bring about, but although this can be something that I expect will give me pleasure, the purpose itself is often still more than that. The motive is some fact in the past or present that causes me to want to achieve the purpose; this cannot simply be pleasure or the desire for pleasure either. The source is an emotion that impels me to act; this can be pleasure, but an action *out of* pleasure is not an action *for the sake of* pleasure. So even if one seeks pleasure in one's actions, the process of actually willing something cannot simply be reduced to the seeking of pleasure.

In eudaimonistic and utilitarian ethics, which identify pleasure or happiness as that which is good and ought to be pursued or maximised, Reinach finds a different set of flaws. These ethical theories attempt to explain the three concepts of value, rightness and goods in terms of a single good; for example, pleasure. Reinach argues that, first of

⁶⁴ S.W. p. 486, paragraph 4; Appendix (IV).

⁶⁵ S.W. p. 487, paragraph 3; Appendix (IV).

all, pleasure cannot take over the role of moral value; moral value means goodness in itself, unaltered by circumstances. For the utilitarians, nothing has value except inasmuch as it produces a maximum of possible pleasure and a minimum of pain or displeasure. Nor is anything morally right or wrong in and of itself, only in the sense that a maximum of pleasure and a minimum of pain are thereby realised. 'In utilitarianism, there would be nothing so wrong that it could not be made right by its possible consequences.'⁶⁶ Reinach acknowledges that pleasure and happiness are goods, and that they do have significance in ethics.⁶⁷ But even if happiness were the highest good of all, this would not be enough to base all of ethics on happiness.

Reinach now moves on to the third section of the lectures, discussing Kantian ethics. Reinach acknowledges that Kant was correct to reject both emotion-based and empirical ethics, but he denies that his own theory of values is either of these things. Rather, he argues that Kant had an overly limited view of the *a priori*, which caused him to limit his ethics to purely formal laws. Reinach allows that there is a formal component to ethics, as embodied in his own concept of moral rightness: for a state of affairs to be morally right means that it essentially conforms to a formal moral principle. But the non-formal sphere of values is equally important, if not more important, in fact, for making concrete decisions in real circumstances, where purely formal rules simply do not suffice.

To highlight his disagreements with Kant, Reinach ascribes three characteristics to Kant's ethics: (1) voluntarism (in that it concerns itself solely with assessing the will, as distinct from the character of the person); (2) formalism (in that it relies on a purely formal moral law and assesses all actions based on their compliance with that law); and (3) rigorism (in that it demands that actions not only conform with, but arise from

⁶⁶ S.W. p. 494, paragraph 4; Appendix (IV).

⁶⁷ S.W. p. 497, paragraph 1; Appendix (IV).

respect for the moral law). Reinach is critical of all three of these characteristics. Voluntarism, he argues, limits the domain of ethics too much, ‘crippling and diminishing’ it.⁶⁸ A voluntaristic ethics is unable to assess the character of a person, or the rightness of a state of affairs. Pure formalism, meanwhile, makes it impossible for Kant’s ethics to be directly applied to any real, practical choice. Reinach agrees with Kant that there is a role in ethics for a formal moral law, but he argues that it cannot take over the role of non-formal ethics as well.⁶⁹ And finally, Kant’s rigorism leads to a condemnation of any action that is carried out from a personal inclination (or merely in accord with one’s moral duty) rather than from a sense of duty and regard for moral principles. Kant calls for impartial reflection on all actions and a denial of all personal preference in one’s decisions. But Reinach contends that inclinations cannot always be bad – an inclination towards that which is morally valuable, the good in itself, is evidence of a good moral character, not of any kind of flaw.⁷⁰ On all three of these grounds, then, Reinach finds Kant’s ethics flawed.

Though the start of a new section is not indicated, the focus of Reinach’s discussion now shifts somewhat away from Kant, towards wider questions about responsibility and the freedom of the will. Reinach argues that the entire debate of determinism and indeterminism — whether one’s actions are freely chosen or determined by causal factors — is not altogether relevant for ethics; what is of importance is that the agent’s actions are his or her own, authored by the individual *Ich*, or ‘I’. There are also cases where a person is forced into action by a phenomenal necessitation, that is, something that is experienced as compelling the person to act although they are not physically forced into doing so.

⁶⁸ S.W. p. 502, paragraph 5; Appendix (IV).

⁶⁹ S.W. p. 503, paragraph 4; Appendix (IV).

⁷⁰ S.W. p. 506, paragraph 5; Appendix (IV).

Here, Reinach references an idea originally put forward by Alexander Pfänder: the distinction between willing and striving or conation (*Streben*).⁷¹ Strivings are impulses that have nothing to do with the will, but can impel us to act; for example, fear at a peal of thunder can cause a person to jump. These kinds of actions are no more ‘determined’ than actions that are rationally willed, but they are ‘unfree’. They do not reflect the character of the agent in quite the same way that free actions do. This is reflected in the idea that a person’s responsibility for an action can be diminished in situations of stress. Given this focus on phenomenal rather than causal freedom, Reinach concludes that ‘[the] problem of freedom [is] thus ultimately also [a] problem for phenomenology.’⁷²

From the very structure of ethics itself, to the nature of moral decision-making and motivation, and to the significance of one’s free autonomy in ethics, *Grundzüge* covers a great deal of ground. It is a key part, if not in fact the most important part, of Reinach’s extant work on ethics.

1.2.4 ‘DIE APRIORISCHEN GRUNDLAGEN DES BÜRGERLICHEN RECHTES’

No work of Reinach’s has received greater scholarly attention than this monograph, his longest single publication during his lifetime. Reinach is best known as a jurist and a philosopher of law, and *Grundlagen* was, in Lucinda Brettler’s words, his ‘magnum opus’ in that field.⁷³ John F. Crosby has called *Grundlagen* ‘one of the purest, most perfect pieces of phenomenological analysis which has ever been carried out.’⁷⁴ Though the article’s central question belongs to the philosophy of law, it also has a broader

⁷¹ S.W. pp. 508-09, paragraph 2; Appendix (IV).

⁷² S.W. p. 513, paragraph 1; Appendix (IV).

⁷³ Lucinda Brettler, *The Phenomenology of Adolf Reinach: Chapters in the Theory of Knowledge and Legal Philosophy* (McGill University, 1973), p. ii.

⁷⁴ John F. Crosby, ‘Adolf Reinach’s Discovery of the Social Acts’, *Aletheia*, 3 (1983), 143-194 (p. 144).

significance. Edith Stein acknowledges the influence of *Grundlagen* on her *Untersuchung über den Staat*, in which she draws on the significance of Reinach's *a priori* sphere of law for political philosophy.⁷⁵ Reinach's discussion of social acts, the distinction between duties and obligations and the very nature of the formal, atemporal relations and temporal objects that make up the essential foundations of law stretches into other philosophical fields, including (crucially for the present investigation) the field of ethics.

In the central argument of *Grundlagen*, Reinach challenges the theory of legal positivism, which holds that laws and legal concepts are purely artificial constructs, with no reality outside of a positive legal code. Reinach argues that all positive law is essentially founded on concepts that have their own validity prior to, and independently of, any positing or enactment. These essential foundations do not constitute a 'natural law,' nor are they to be confused with the formal moral laws of ethics. Above all, there is no ideal or perfect legal code that all makers of positive laws should strive to emulate. The essential foundations of law are no more than foundations, and cannot dictate a complete positive law.

Grundlagen is made up of three chapters, each divided into three sections. No one of these chapters or sections is devoted to the discussion of ethics. Rather, in discussing the law and the essential relations among legal entities, Reinach often provides a comparison with ethics. It is primarily the sphere of moral rightness that enters into his discussions in this work; value is referenced only occasionally, and even in Reinach's example of why a promise to commit an evil act is not morally binding, the word 'value' does not appear at all.⁷⁶

⁷⁵ The influence of Reinach and *Grundlagen* on Stein's philosophy will be discussed in chapter four.

⁷⁶ For Reinach's discussion of this example, see 'The Apriori Foundations of the Civil Law', trans. by John F. Crosby, p. 45.

In chapter one, Reinach introduces his theory of social acts. A social act is delimited as being an act that is ‘according to its essence in need of being heard (*vernehmungsbedürftig*)’.⁷⁷ That is, a social act must be addressed to and understood by another person in order to be effective. The efficacy of a social act means that there is some real consequence of its being carried out; in the case of a promise, the ‘prototype and model of a social act’,⁷⁸ this means the appearance of an obligation on the part of the one who makes the promise, and the appearance of a claim on the part of the one to whom the promise is made. This kind of obligation does not represent a moral, a legal or even a traditional or conventional norm; it does not contain, in itself, any kind of ‘ought’. It is simply a matter of fact, part of the meaning of the promise. If I make a promise, it is presupposed thereby that I inwardly undertake to fulfil my promise, and accept the corresponding essential obligation. If I do not really mean to do this, then the promise is not really a promise; this is a ‘pseudo-performance (*Schein-Vollzug*)’⁷⁹ of the act of promising, a lying promise.

Reinach describes obligations and claims as ‘temporal objects’ (*zeitliche Gegenstände*), ‘of a special kind of which one has not yet taken notice’.⁸⁰ They are not, in other words, easily classified. Claims and obligations are not physical things, because they have no physical form. Even a signed contract is not a physical extension of the essential obligation relating to it. But claims and obligations are not ideal objects either, because they have a temporal existence; they come into being and cease to be in accordance with specific social acts. Nor are they psychic objects, because they continue to persist even if nobody is thinking about them, or if the social act that brought them about is forgotten by all concerned. James M. DuBois seems to be correct

⁷⁷ Ibid., p. 19.

⁷⁸ Armin Burkhardt, ‘Verpflichtung und Verbindlichkeit. Ethische Aspekte in der Rechtsphilosophie Adolf Reinachs,’ in *Speech Act and Sachverhalt*, p. 239.

⁷⁹ ‘Apriori Foundations’, trans. by Crosby, p. 22.

⁸⁰ Ibid., p. 9.

when he concludes that Reinach here demonstrates ‘a new category of real being which is occupied by claims and obligations, those peculiar legal entities which we might call “Reinachian objects”’.⁸¹

In explaining his use of ‘obligation’ here, Reinach distinguishes it from two other senses of obligation: legal obligation and moral obligation.⁸² Certain social acts result in a kind of essential obligation, which can imply a legal obligation, or a moral obligation, or both; but essential obligation, legal obligation and moral obligation are always to be understood as distinct from one another. Again, we turn to the case of promising to clarify these distinctions.

When I make a promise, then I have an essential obligation to carry it out; the social act of promising presupposes my intent to follow through with the promise, and the effective performance of the promise *means* that I accept this obligation. Since I live in a society of laws, it may also be that making a promise places me under a legal obligation to carry it out. This depends on the precise positive law to which I am answerable. A positive law is imaginable which would consider every promise binding, as is one that would consider no promise binding (though whether either of these legal codes could function in practice is another matter). In practice, most positive legal codes will strike a middle ground; for example, by prescribing an official procedure for

⁸¹ DuBois, *Judgment and Sachverhalt*, p. 143. It is also possible to imagine that claims and obligations specifically could be understood as states of affairs (‘the being obligated of person A to perform a certain action for person B’). There are two problems with this interpretation. First, technically speaking, Reinach uses the word object (*Gegenstand*) to describe what a claim or obligation is. For Reinach, *Gegenstand* and *Sachverhalt* seem to be mutually exclusive categories (for discussion of this distinction in Reinach’s philosophy, see chapter three, section 3.2.3). Second, claims and obligations are not the only kinds of legal entities referred to by Reinach. Another is the legal enactment, which is not so easily expressed as a relation between persons. The only object to which a legal enactment relates is the state that enacted it, and the state itself may well be classified as a legal entity. A legal enactment also has as its content something that *ought to be*, albeit conditionally, whereas a state of affairs represents what *is*. These difficulties are sufficient to support the interpretation of legal entities as temporal objects of a distinctive and possibly unique kind, just as Reinach describes them.

⁸² The language used here is somewhat more ambiguous than Reinach’s own. Reinach terms both the *a priori* essential obligation and the legal obligation as *Verbindlichkeiten*, while the moral kind of obligation is represented by *Verpflichtung*. Both translate into English as ‘obligation’, with *Verpflichtung* also suggesting ‘duty’. As duty (*Pflicht*) has another meaning in *Grundlagen*, I have diverged from Crosby’s chosen translation by translating ‘*Verpflichtung*’ with ‘moral obligation’.

making a legally binding promise, and by positing that a promise to break the law is null and void. But even if the positive law strikes down a promise as illegal and releases the promisor from his or her obligation, the essential obligation to fulfil the promise remains unchanged, as the positive law cannot change the essential meaning of what it is to promise.

Separate from both the legal and essential obligation to fulfil a promise is the moral obligation to do so. This is in accordance with a general, formal moral law; one *ought* to keep one's promises. Like the essential obligation, the moral obligation does not depend on any positive law and cannot be ended by any third party. Nor is it dependent on the content of the promise. This leads to a situation that at first seems very strange: the general moral obligation to carry out a promise applies even if the content of the promise is immoral. This is because the principle that one ought to keep one's promises is formal and universal; 'the immorality of the content is irrelevant'.⁸³ But Reinach is quick to clarify:

Of course it is not irrelevant in *every* respect – we just mean that it is here of the greatest importance to keep distinct the various levels [of obligation]. If the content of the obligation is not morally right, then the duty not to realize it, is grounded in this wrongness – and not in the *obligation as such*.⁸⁴

From this we see that one moral obligation can carry more weight than another; for example, the moral obligation not to commit murder outweighs the moral obligation to fulfil every promise. The balance of moral obligations gives rise to one's moral duty (*Pflicht*), that which one has the highest moral obligation to do — that which, ultimately, one ought to do. Reinach's approach here appears to be intended to avoid any kind of relativism, whether legal or moral; the lesser obligations do not lose any of

⁸³ 'Apriori Foundations', trans. by Crosby, p. 45.

⁸⁴ Ibid. There is another important case to consider here, that where a change of circumstances alters the moral responsibility of a promisor to fulfil his or her promise. As we will see below, Reinach has been criticised by Armin Burkhardt regarding situations of this kind. We will discuss Burkhardt's criticism in chapter three, section 3.2.2.5.

their own significance, but are merely outweighed by greater obligations. Although Reinach does not discuss this balance in terms of moral values, we might infer that the greater obligation is identified by the higher moral value of its content. It is therefore possible that Reinach is here dancing around the issue of a principle of utility without wanting to admit to one; i.e., that the highest obligation is distinguished by the fact that it realises a maximum of moral value and a minimum of moral disvalue when compared with all other possible courses of action.

The latter two chapters of *Grundlagen* introduce less material of importance to Reinach's work on ethics, but some points are worth noting. In examining the nature of legal enactments, Reinach discusses the workings of normative statements about what ought to be. It is only meaningful to say 'this ought to be' about something that could either be or not be. To say 'two times two ought to equal five' is clearly nonsense, because two times two can never equal five. But 'two times two ought to equal four' is just as meaningless, because two times two can never fail to equal four.⁸⁵ Statements about 'ought', then, and by extension all moral rightness and wrongness, have to do with possibilities, not impossibilities or necessities. This will be important to note as we critique Reinach's theory of the personal character in chapter three.

Reinach also gives some intimations as to the nature of the formal moral law here, as he contrasts the moral law with positive legal codes. The act of positing or enacting is a social act, in which a person — vested with the necessary authority through other, prior social acts — declares that a set of other persons ought or ought not to act in a certain way. Thus, anyone from the head of a household to a feudal monarch to the legislative body of a democratic state can posit that 'no person ought to steal', and have this enactment be effective among those who answer to the relevant authority. In

⁸⁵ See 'Apriori Foundations', p. 104.

the efficacy of an act of enacting, an entity comes into being in the form of a legal principle, or simply an ‘ought’ (*Sollen*). The formal moral law is made up of oughts in the same way as a positive law is. The difference is in their source and their applicability. While positive laws must be posited or enacted, the formal moral law is ‘independent of positing acts of any kind’, and while a positive law is ‘valid only for the persons for whom the enacting act is efficacious’, the formal moral law ‘is valid under all circumstances’.⁸⁶

Taken together with his discussion of moral rightness and the formal moral law in *Grundzüge*, Reinach’s comments on ethics in *Grundlagen* provide a valuable insight into the structure of his ethics. Most of all, Reinach’s comments in *Grundlagen* provide our only clear picture of how Reinach understands the concepts of obligation and duty, and how he relates them to action. We will refer back to *Grundlagen* particularly for insight into Reinach’s theory of moral rightness and its role in his ethics.

SECTION THREE

EDITIONS, BIOGRAPHICAL SOURCES AND TRANSLATIONS

This section of the chapter looks at several important sources for the present investigation that do not fit into the categories of primary or secondary literature. The first subsection deals with compiled editions of Reinach’s work, of which two exist. These compilations are indispensable in gaining access to Reinach’s philosophy, as most of his publications otherwise only appeared in journals; without these compilations, Reinach’s *Nachlass* would be confined to manuscript notes in the Bavarian State Library.⁸⁷ However, even these compilations exist in only a few libraries

⁸⁶ ‘Apriori Foundations’, trans. by Crosby, p. 109.

⁸⁷ Reinach’s archival material is stored at the Bavarian State Library (*Bayerische Staatsbibliothek*) in Munich under the sigil ANA 379. The content of this archive is documented in Eberhard Avé-Lallement, *Die Nachlässe der Münchener Phänomenologen in der Bayerischen Staatsbibliothek*

worldwide. The second subsection discusses biographical works, which are helpful in placing Reinach's works in their proper context. The third subsection deals with the existing English-language translations of Reinach's works, which are valuable as introductions to those works and in maintaining translation conventions with regard to Reinach's terminology.

1.3.1 COMPILED EDITIONS OF REINACH'S WORK

Reinach's various published writings (see above) were re-issued in a collected edition, entitled *Gesammelte Schriften*, in 1921,⁸⁸ along with some previously unpublished material. Following the discovery of new unpublished material, an updated critical edition was later published in 1989 under the title *Sämtliche Werke*.⁸⁹

Both of these compilations represent more than just collections of Reinach's publications. They also include parts of Reinach's *Nachlass*, based on manuscripts and notes that were never published in Reinach's lifetime, painstakingly reconstructed by the editors of the compilations (Edith Stein in the case of *Gesammelte Schriften*, Karl Schuhmann and Barry Smith in the case of *Sämtliche Werke*). *Sämtliche Werke* also contains detailed information on the history, sources and composition of each of Reinach's works.

In the interests of consistency, this thesis will use the *Sämtliche Werke* as its chief source and reference for Reinach's primary works, on the basis of it being the more complete collection of Reinach's works. There are variations between the two

(Wiesbaden: Otto Harrassowitz, 1975), pp. 171-80.

⁸⁸ *Gesammelte Schriften* (Halle: Niemeyer, 1921). The compilation was edited by Reinach's former students, primarily by Edith Stein, with an introduction written by Hedwig Conrad-Martius.

⁸⁹ *Sämtliche Werke. Textkritische Ausgabe in 2 Bänden*, edited by Karl Schuhmann and Barry Smith (Munich: Philosophia Verlag, 1989). The introduction was written by Eberhard Avé-Lallement.

volumes' presentations of Reinach's *Nachlass*. Where such variations appear in the primary source texts referenced, they will be noted accordingly.

1.3.2 BIOGRAPHICAL SOURCES

There is currently no entirely comprehensive biography of Reinach. He was the subject of a chapter in John Oesterreicher's biographical compilation, *Walls are Crumbling: Seven Jewish Philosophers Discover Christ*.⁹⁰ A section in Herbert Spiegelberg's *The Phenomenological Movement: A Historical Introduction* (the first edition of which was published in 1960) was given over to Reinach's life and work. Very brief biographical sketches of Reinach also appear in Eberhard Avé-Lallement's catalogue of the legacies of the Munich phenomenologists in the Bavarian State Library,⁹¹ and in the foreword to John F. Crosby's translation of *Die Apriorischen Grundlagen des bürgerlichen Rechtes*.⁹² In the same journal issue, Crosby also included a collection of translated remarks on Reinach from his contemporaries, including Edmund Husserl, Edith Stein, Dietrich von Hildebrand and Hedwig Conrad-Martius.⁹³

In 1987, Karl Schuhmann and Barry Smith (who were then in the process of editing the 1989 *Sämtliche Werke*) published a short but detailed intellectual biography of Reinach.⁹⁴ In doing so they commented that all previous biographies had been either 'very succinct'⁹⁵ or (in Oesterreicher's case) 'unreliable.'⁹⁶ Their own biography gives a detailed account of Reinach's academic career; detail on his personal life is relatively

⁹⁰ Oesterreicher, *Walls are Crumbling: Seven Jewish Philosophers Discover Christ* (New York: Devin-Adair, 1952), pp. 87-118.

⁹¹ Avé-Lallement, *Die Nachlässe der Münchener Phänomenologen in der Bayerischen Staatsbibliothek* (Wiesbaden: Harrassowitz, 1975), pp. 172-74.

⁹² John F. Crosby, 'A Brief Biography of Reinach,' in *Aletheia* 3 (1983), pp. ix-x.

⁹³ 'Reinach as a Philosophical Personality,' in *Aletheia* 3 (1983), xi-xxxi.

⁹⁴ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography,' in *Speech Act and Sachverhalt*, ed. by Kevin Mulligan, pp. 3-27.

⁹⁵ *Ibid.*, p. 3.

⁹⁶ *Ibid.*

light. In 1993, Schuhmann also wrote a chapter discussing the personal and philosophical relationship between Reinach and Edith Stein, granting an insight into Reinach's role as a teacher in Göttingen.⁹⁷

1.3.3 ENGLISH-LANGUAGE TRANSLATIONS⁹⁸

The first English-language translations of Reinach's work were two separate translations of Reinach's lecture 'Über Phänomenologie,'⁹⁹ based on the republication of that lecture (under the title 'Was ist Phänomenologie?') in 1951.¹⁰⁰ This is the only one of Reinach's works for which two different English translations currently exist.¹⁰¹

Lucinda Brettler's thesis *The Phenomenology of Adolf Reinach: Chapters in the Theory of Knowledge and Legal Philosophy* contained translations of the two fragments (see Primary Sources 1914-17, above) from Reinach's final years.¹⁰² Reinach's article 'Kants Auffassung des Humeschen Problems' was translated in 1976 by J. N. Mohanty.¹⁰³ 'Zur Theorie des negativen Urteils' was translated in 1981 by Don

⁹⁷ Karl Schuhmann, 'Edith Stein und Adolf Reinach,' in *Studien zur Philosophie von Edith Stein*, ed. by Reto Luzius Fetz (Freiburg: Alber, 1993), pp. 53-88.

⁹⁸ The translations listed here are valuable resources for the English language reading of Reinach's work. At the same time, they do not and cannot serve as authoritative sources for this investigation.

⁹⁹ *What is Phenomenology?*, trans. by Derek Kelly, in *The Philosophical Forum*, vol. 1, no. 2 (1968), 234-256; and *Concerning Phenomenology*, trans. by Dallas Willard, in *The Personalist*, vol. 50, no. 2 (1969), 194-221.

¹⁰⁰ Willard's translation was revised in light of the publication of the *Sämtliche Werke*, and was re-issued online at <<http://www.dwillard.org/articles/artview.asp?artID=21>>.

¹⁰¹ Lucinda Brettler reviewed these translations comparatively in her thesis *The Phenomenology of Adolf Reinach*. Brettler accuses Kelly of 'complete alteration of the meaning of the text at point after point' and 'total misreading of the German text,' and concludes that this translation 'should not have been published.' By contrast, 'the translation entitled "Concerning Phenomenology", by Dallas Willard, is quite good in all respects.' Brettler, *The Phenomenology of Adolf Reinach*, pp. 240-41. Following Brettler's judgement of these serious flaws in Kelly's translation, as well as the fact that Willard's translation has been updated since Brettler's time of writing on the basis of newly-emerged works from Reinach's *Nachlass*, this investigation will consider Willard's translation to be the more useful reference of the two (though as previously noted, the German original shall be considered the definitive version throughout).

¹⁰² 'On the Phenomenology of Premonitions' and 'Fragment of a Treatise on the Philosophy of Religion,' trans. by Lucinda Brettler, in Brettler, *The Phenomenology of Adolf Reinach*, pp. 242-44 and 248-49 respectively.

¹⁰³ 'Kant's Interpretation of Hume's Problem,' trans. by Mohanty, in *Southwestern Journal of Philosophy* 7 (1976), 161-88.

Ferrari.¹⁰⁴ ‘Die Apriorischen Grundlagen des bürgerlichen Rechtes’ was translated in 1983 by John F. Crosby, together with a brief biographical sketch, detailed annotations and extended critical commentary.¹⁰⁵ In 1987, Barry Smith published a translation of Reinach’s obituary work, ‘William James und der Pragmatismus’.¹⁰⁶ In 1993, James DuBois published a translation of ‘Die obersten Regeln der Vernunftschlüsse bei Kant’.¹⁰⁷

SECTION FOUR SECONDARY LITERATURE

This part of the chapter will discuss secondary material written about Reinach and his work, with particular attention to literature that deals specifically with Reinach’s work on ethics. The discussion will be divided into two sections. The first section covers critical studies of Reinach’s philosophy that do not deal directly with his ethics. The second section discusses in detail the few existing works that deal specifically with Reinach’s ethics.

1.4.1 CRITICAL STUDIES

Friedrich Bassenge was one of the first philosophers to critically examine Reinach’s work, in the first section of his 1930 dissertation *Das Versprechen*. Bassenge examines Reinach’s work on the act of promising in the first part of the dissertation, ‘the phenomenology of promising.’ While Bassenge begins by expressing agreement with

¹⁰⁴ ‘A contribution toward the theory of the negative judgement’, trans. by Don Ferrari, *Aletheia* 2 (1981), 15-64.

¹⁰⁵ ‘The Apriori Foundations of the Civil Law’, trans. by Crosby, in *Aletheia* 3 (1983), 1-142. The additional historical and critical material is listed in the appropriate sections elsewhere in this chapter.

¹⁰⁶ ‘William James and Pragmatism,’ trans. by Barry Smith, in *Speech Act and Sachverhalt*, ed. by Kevin Mulligan, pp. 291-98.

¹⁰⁷ ‘The Supreme Rules of Rational Inference According to Kant,’ trans. by James M. DuBois, in *Aletheia* 6 (1994), 81-97.

Reinach that a promise is not just a statement of intent,¹⁰⁸ he argues that Reinach does not actually provide a definition of what the promise is.¹⁰⁹ Bassenge's conclusion is that the essence of the social act of promising is the making of an assurance (*Vertrauenserregung*) to another person.¹¹⁰

In 1973, Lucinda Brettler became one of the pioneers in the English-language study of Reinach with her thesis, *The Phenomenology of Adolf Reinach: Chapters in the Theory of Knowledge and Legal Philosophy*, the stated purpose of which was to analyse and evaluate Reinach's philosophy as a whole.¹¹¹ The thesis, which Barry Smith has called 'an extremely useful synoptic treatment,'¹¹² covers a wide range of themes in Reinach's philosophy, including his work on judgements and states of affairs, philosophy of law, and ethics. Brettler's comments on Reinach's ethics will be discussed separately below.

Speech Act and Sachverhalt: Reinach and the Foundations of Realist Phenomenology, a collection of studies of Reinach's philosophy in English and German edited by Kevin Mulligan, was published in 1987, shortly before the publication of the *Sämtliche Werke*. The chapters of this book cover a wide range of subjects within Reinach's philosophy, of which a few are particularly relevant to this investigation. The first four chapters all deal with Reinach's theory of social acts, particularly the key theme of promising, which relates (if indirectly) with Reinach's discussions of moral

¹⁰⁸ 'Promising is an entirely unique social act. I consider this position of Reinach's [sic] to be unassailable. It cannot be doubted that the mere announcement of an intent on one hand, and a promise on another, are two different things.' Bassenge, *Das Versprechen. Ein Beitrag zur Philosophie des Sittlichkeit und des Rechts* (Leipzig, 1930), p. 9.

¹⁰⁹ *Ibid.*, p. 10. 'What description does Reinach offer to replace the foregoing [the statement of intent]? It seems to me one must answer: none.' Bassenge seems to have overlooked a crucial aspect of Reinach's descriptive phenomenology, namely that one cannot do justice to an essence by defining it in terms of other essences.

¹¹⁰ *Ibid.*, p. 14. 'To promise an action to someone means to deliberately bring him or her to the point of trusting (*vertrauen*) in that action.'

¹¹¹ 'The thesis expounds, analyzes, and evaluates Adolf Reinach's philosophical work and his role in the development of early phenomenology. Reinach's ontological and epistemological assumptions are clarified through an analysis of his theories of states of affairs, intentionality and judgments.' Brettler, *The Phenomenology of Adolf Reinach*, abstract.

¹¹² Smith, *Adolf Reinach: An Annotated Bibliography*, p. 306.

obligation and duty. The chapters by Wolfgang Künne and Barry Smith both deal with of states of affairs, a key part of Reinach's phenomenology with a bearing on his theory of moral rightness. Most importantly for this investigation, Armin Burkhardt's chapter, 'Verpflichtung und Verbindlichkeit. Ethische Aspekte in der Rechtsphilosophie Adolf Reinachs',¹¹³ focuses on the discussions of ethics presented in *Grundlagen*; as such, this chapter will be given further discussion below. The book also includes some valuable additional material including an intellectual biography of Reinach¹¹⁴ and a translation of Reinach's obituary of William James,¹¹⁵ as well as an extensive bibliography.

In 1992, Wojciech Zelaniec published an article entitled 'Fathers, Kings and Promises: Husserl and Reinach on the a priori.'¹¹⁶ The central theme of the paper is an apparent disagreement between Husserl and Reinach on the definition of the synthetic *a priori*, but the discussion also has significant implications for both philosophers' writings on social experience. Ultimately however, in relation to both Husserl's and Reinach's positions, it is 'inconclusive.'¹¹⁷

James M. DuBois delivered a paper on Reinach's phenomenological realism and theory of the *a priori*, with specific reference to his work on the ontology of numbers, at the 15th annual Wittgenstein symposium in 1993.¹¹⁸ Subsequently, he included an introduction to Reinach's 'The Supreme Rules of Rational Inference According to Kant' with his translation of that text in 1994.¹¹⁹ His book *Judgment and Sachverhalt: An Introduction to Adolf Reinach's Phenomenological Realism* deals with a variety of themes in Reinach's philosophy, including some that are generally overlooked such as

¹¹³ *Speech Act and Sachverhalt*, pp. 155-74.

¹¹⁴ By Barry Smith and Karl Schuhmann; see under Biographical Works, above.

¹¹⁵ Translated by Barry Smith; see under English-Language Translations, above.

¹¹⁶ In *Husserl Studies*, 9 (1992), pp. 142-77.

¹¹⁷ *Ibid.*, p. 171.

¹¹⁸ James M. DuBois, *The Ontology of Number: Adolf Reinach's Phenomenological Realism*, in *Philosophy of Mathematics: Proceedings of the 15th International Wittgenstein Symposium* (Vienna: Hölder-Pichler-Tempsky, 1993), pp. 351-60.

¹¹⁹ James M. DuBois, 'An Introduction to Adolf Reinach's "The Supreme Rules of Rational Inference According to Kant"', *Aletheia*, 6 (1994), pp. 70-80.

numerology. In this book, DuBois proposed the term ‘Reinachian object’ to refer to those objects, neither physical nor truly ideal, that are pointed to in *Grundlagen* in the form of claims, obligations, laws and more.¹²⁰

Even in the light of all of these publications, when Kimberly Jaray completed her doctoral thesis *Adolf Reinach’s Contribution to the Early Phenomenological Movement* in 2007, she asserted that the attention given to Reinach’s philosophy to date had been inadequate, and that aspects of it had been misinterpreted. In the thesis, she accuses ‘more than one recent commentator’ of misrepresenting Reinach’s philosophy as Platonistic,¹²¹ a view that she also attacks in a more recent article.¹²² Jaray published this thesis in book form in 2009, under the title *Doorway to the World of Essences: Adolf Reinach*.¹²³ Jaray also discusses Reinach’s theory of states of affairs in *Reinach and Bolzano: Towards a Theory of Pure Logic*.¹²⁴ Here, she compares Reinach’s phenomenology, and that of the early Husserl, with the thought of the Austrian school to which Bernard Bolzano belonged.

In addition to these general examinations of Reinach’s philosophy, there have been articles more focused on specific areas of Reinach’s philosophy. In 1983, alongside the first English-language translation of Reinach’s ‘Apriori Foundations of the Civil Law,’ John F. Crosby explored the significance of Reinach’s positing of a theory of social acts years before speech act theory in its present form was founded.¹²⁵

¹²⁰ James M. DuBois, *Judgement and Sachverhalt: An Introduction to Adolf Reinach’s Phenomenological Realism* (Dordrecht: Kluwer Academic Publishers, 1995), pp. 141-43.

¹²¹ Kimberly Jaray, *Adolf Reinach’s Contribution to the Early Phenomenological Movement*, (doctoral thesis, Wilfrid Laurier University, Canada, 2007), p. 138.

¹²² Kimberly Baltzer-Jaray, *Adolf Reinach is Not a Platonist*, in *Symposium: Canadian Journal of Continental Philosophy* 13.1 (April 2009), pp. 100-12.

¹²³ Kimberly Jaray, *Doorway to The World of Essences: Adolf Reinach* (Saarbrücken: VDM Verlag Dr. Müller, 2009).

¹²⁴ Kimberly Jaray, *Reinach and Bolzano: Towards a Theory of Pure Logic*, in *Symposium: Canadian Journal of Continental Philosophy* 10.2 (October 2006), pp. 473-91.

¹²⁵ *Aletheia*, 3 (1983), 143-94.

In 1997, Nebojsa Kujundzic published an article entitled ‘Reinach, Material Necessity and Free Variation,’¹²⁶ dealing with the finer points of Reinach’s theory of essences.

Reinach’s philosophy has seen some comparison with the work of other thinkers of his time. In 1997, Lars Lundsten completed his doctoral thesis in which he discusses Reinach’s theory of social acts alongside J. L. Austin’s work on speech acts.¹²⁷ Beate Beckmann examined themes relating to the philosophy of religion in Reinach’s work alongside that of Edith Stein in 2003.¹²⁸ Alessandro Salice’s thesis *Urteile und Sachverhalte*, published in 2009, compares Reinach’s theory of judgement with that of the Austrian philosopher Alexius Meinong, a former student of Brentano.¹²⁹

1.4.2 WORKS DEALING WITH REINACH’S ETHICS¹³⁰

Most of the attention in the above secondary works, including Jaray’s, is given to Reinach’s realism, his work on judgements and states of affairs, or his philosophy of law and particularly his theory of the social acts. Whether these subjects have been covered satisfactorily is beyond the scope of this research. What is significant for this investigation is what the secondary literature has had to say about Reinach’s ethics.

It is not entirely surprising that little attention has historically been given to Reinach’s work on ethics. Only two of the four articles identified above as key primary sources were published in Reinach’s lifetime; the other two existed only as handwritten

¹²⁶ *Dialogue*, 36 (1997), 721-39.

¹²⁷ Lundsten, *Communication as Experience: A Reinachian Enquiry* (dissertation, University of Helsinki, 1997).

¹²⁸ Beckmann, *Phänomenologie des religiösen Erlebnisses: religionsphilosophische Überlegungen im Anschluss an Adolf Reinach und Edith Stein* (Würzburg: Königshausen & Neumann, 2003).

¹²⁹ Salice, *Urteile und Sachverhalte. Ein Vergleich zwischen Alexius Meinong und Adolf Reinach* (Munich: Philosophia Verlag, 2009).

¹³⁰ Reinach’s works on ethics are also referenced by Kevin Mulligan in his article ‘On Being Struck by Value’ (2008) <<http://www.unige.ch/lettres/philo/enseignants/km/doc/ValueStruck.pdf>> [accessed 10/05/2012]. However, for the most part Mulligan simply uses Reinach as an example of a value-realist alongside Scheler and von Hildebrand, and does not discuss the specific details of Reinach’s ethics.

transcripts until 1989. Nevertheless, studies were made of the work on ethics found in *Grundlagen* and *Die Überlegung* during this time.

1.4.2.1 THE PHENOMENOLOGY OF ADOLF REINACH

Lucinda Brettler discusses Reinach's ethics in two sections of her thesis, both times in conjunction with discussions of his legal philosophy. This level of attention seems quite appropriate in context, as the scope of the thesis does not allow for detailed discussion of every aspect of Reinach's philosophy. Further, at the time when Brettler wrote her thesis, many of Reinach's writings had yet to be rediscovered and were believed lost,¹³¹ and she did not have access to all of Reinach's writings on ethics. Her main listed sources on this subject are *Die Überlegung* and a partial version of *Grundzüge der Ethik* from Margarete Ortmann's shorter transcript.

Brettler summarises Reinach's main arguments and conclusions in *Die Überlegung* on the significance of reflection and its role in ethics and the law. She concludes that Reinach is correct in pointing out the ambiguity of the significance of reflection, but takes issue with Reinach's view that a person's character can be judged positively or negatively based on their ability to feel value. She suggests that there are 'quagmires into which use of the criterion of "ability to feel value" may lead legal philosophy,'¹³² such as imposing a death penalty for repeat offenders as 'defective social material,' or subjecting prisoners to 'psychological torture' in the pursuit of some form of rehabilitation. In relation to Reinach's theory of moral value, Brettler suggests 'we may infer that Reinach would have agreed that nothing *more* can be demanded of a

¹³¹ Brettler describes Reinach's *Nachlass* as consisting of 'only notes and short essays from the World War 1 period.' (Brettler, *The Phenomenology of Adolf Reinach*, p. vi) For more on how Reinach's other unpublished writings were recovered, see Avé-Lallement's preface to the S.W., pp. XI – XIII.

¹³² Brettler, *The Phenomenology of Adolf Reinach*, p. 138

person than that they use whatever degree of ability to feel value that they have,'¹³³ but adds that 'this is not clear.'¹³⁴ This is a significant charge against Reinach's value-ethics; *Die Überlegung* places great emphasis on precisely this kind of assessment of an agent's character, and the role of persons as the bearers of moral values is also referenced elsewhere in his work. We will examine Brettler's criticism more closely in chapter three.

Regarding Reinach's first two spheres of ethics, those of moral value and moral rightness, Brettler states that Reinach's concept of morally right states of affairs would require 'a more thorough theoretical development [...] to be made useful'.¹³⁵ She does not qualify her position on this point to any great degree. In chapter three we will discuss just how important Reinach's theory of moral rightness is to his work on ethics, and in chapter four we will assess it as a contribution to early phenomenological ethics.

1.4.2.2 'VERPFLICHTUNG UND VERBINDLICHKEIT. ETHISCHE ASPEKTE IN DER RECHTSPHILOSOPHIE ADOLF REINACHS'¹³⁶

Like Brettler's thesis, Armin Burkhardt's chapter in *Speech Act and Sachverhalt* is limited to drawing upon sections on ethics in Reinach's works on the philosophy of law and the transcripts of *Grundbegriffe*. Nevertheless, it quite accurately covers the key ethical themes within 'Apriori Foundations of the Civil Law.' First, Burkhardt explores Reinach's theory of social acts and shows how Reinach forms a non-ethical, or amoral, theory of claims and obligations. For Reinach a promise creates a claim and an obligation because it is part of the meaning of a promise that it does so, not because it is morally good to fulfil promises (although the latter is still true).

¹³³ Ibid. Brettler's emphasis.

¹³⁴ Ibid.

¹³⁵ Ibid., p. 207.

¹³⁶ In *Speech Act and Sachverhalt*, ed. by Mulligan, pp. 155-74.

As the title of the chapter implies, Burkhardt discusses the difference between moral obligations (*Verpflichtungen*) and legal obligations (*Verbindlichkeiten*), and shows how moral obligations relate to Reinach's sphere of moral rightness as laid out in *Grundbegriffe der Ethik*. He also highlights the difference between the moral and 'a priori-legal' spheres, using Reinach's own example of promising to carry out an evil action. Next, Burkhardt discusses the distinction between the *a priori* sphere of law and the positive law. He shows how the positive law includes ought-statements, or simply oughts, and how these legal oughts differ from moral oughts. A positive legal ought states what a person ought or ought not to do if they are answerable to that positive law, but it can make no claim on people who are outside the appropriate jurisdiction. A moral ought states what a person ought to do regardless of time or place.

Burkhardt concludes with some critical remarks on the ethical aspects of Reinach's legal philosophy. He argues that Reinach goes too far in stating that a promise and the moral obligation to carry it out continue to apply until the promise is fulfilled, no matter the circumstances or how they change – a promise to pay a friend a visit, or go for a stroll with him, must be qualitatively different from promises involving matters of life and death. He praises Reinach for identifying the social act of promising precisely with the expression of the promise, but argues that Reinach's understanding of social acts as *a priori* is problematic; "*a priori*" [here] can always only mean: *a priori* under the presupposition of the existence of human beings'.¹³⁷ Burkhardt's comments and criticisms are quite relevant to our discussion of Reinach's sphere of moral rightness and we will return to them in more detail in chapter three.

¹³⁷ Burkhardt, 'Verpflichtung und Verbindlichkeit', in *Speech Act and Sachverhalt*, p. 173.

James Dubois' chapter on Reinach in *Phenomenological Approaches to Moral Philosophy*¹³⁹ is one of the most comprehensive discussions of Reinach's ethics, taking into account the full extent of Reinach's work as published in the *Sämtliche Werke*. However, it does not give as much attention to Reinach's unpublished works dedicated to ethics, as to his published works which discuss ethics in a secondary capacity.

DuBois begins the chapter with a brief sketch of Reinach's life and work, and a short introduction to his realist phenomenology, before starting discussion of his ethics. He very briefly examines the posthumous works, *Die Grundbegriffe der Ethik* and *Grundzüge der Ethik*, discussing Reinach's distinction between value and rightness and his criticisms of Kant in *Grundzüge*. DuBois argues that Reinach's concept of moral rightness is incomplete, and does not constitute an 'actual contribution to practical philosophy'.¹⁴⁰ We will discuss the importance of Reinach's concept of rightness to establishing a role for duty in ethics in chapter three. DuBois also finds that Reinach's 'foundational convictions regarding the possibility of a "material ethic of value" wholly overlapped with Scheler's'.¹⁴¹ However, Reinach's belief in the need for a formal sphere within ethics, distinct from the non-formal or material sphere of values, is one of the key disagreements between Reinach and Scheler that we will discuss in chapter four.

DuBois next moves on to discuss Reinach's value theory as it appears in *Die Überlegung*, which he classifies as a contribution to 'moral psychology.' He follows Reinach's examination of the symbolic relationship between reflection and value, and

¹³⁸ In *Phenomenological Approaches to Moral Philosophy*, ed. by Drummond and Embree, pp. 327-346.

¹³⁹ This book deserves particular mention here for its value as a starting point in any investigation of phenomenological ethics. While the remit of each chapter is only to provide an introduction to one particular thinker, the book's scope is comprehensive, covering the history of phenomenological ethics from the earliest stages to the turn of the millennium.

¹⁴⁰ DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', p. 332.

¹⁴¹ Ibid. Scheler's ethics will be discussed in chapter two, and will be compared with Reinach's in chapter four.

finds the most interesting point from a philosophical point of view to be that the worst possible criminal — the one who lacks even enough moral sensitivity to pause for reflection — might be spared punishment on precisely that basis.¹⁴² DuBois then discusses elements relating to ethics in Reinach's legal philosophy, examining Reinach's social act theory and his work on the nature of enactments and ought-statements.

DuBois concludes that 'Reinach's contributions to ethics per se are rather meager,'¹⁴³ but that his work on meta-ethical questions and the philosophy of law is significant. He critiques Reinach's theory of the *a priori* sphere or foundation of law, first by arguing that Reinach goes too far in his 'amoral approach to legal institutions.'¹⁴⁴ 'If the essence of ownership is necessary, unchanging, and highly intelligible,' DuBois argues, 'then we should be able to consider this essence and then answer very basic questions about the origination of the relationship of owning.'¹⁴⁵ But it is nearly impossible to resolve questions of original ownership without having recourse to moral considerations of rightness and justice, which Reinach separates from these legal concerns. Further, Reinach's concept of essential property rights makes no exception for cases where property ought not to be recognised. Finally, DuBois questions whether Reinach's *a priori* sphere of law is in fact as self-evident as Reinach claims.

DuBois' study provides an insightful examination of the meta-ethical implications of Reinach's philosophy of law, and some discussion of his value theory. However, DuBois' account here skips over some of Reinach's most distinctive contributions to ethics proper, and overstates somewhat the similarity between

¹⁴² DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', pp. 336-37.

¹⁴³ Ibid., p. 340.

¹⁴⁴ Ibid., p. 341.

¹⁴⁵ Ibid., p. 342.

Reinach's ethics and Scheler's. We will address these points in more detail in chapter four.

SECTION FIVE CONCLUDING REMARKS

In this chapter we have explored and discussed the primary sources that this investigation has to draw upon, and the secondary literature surrounding our central question. We have seen the chronology and, briefly, the content of Reinach's body of surviving work, identified the works that are of particular importance for this investigation, and seen how these works fit into the wider context of Reinach's writings. We have noted that most of the attention given to Reinach's philosophy in secondary literature focuses on his legal philosophy, his theory of social acts, and his work on judgements and states of affairs. All of these are very important parts of Reinach's philosophy, and represent significant contributions on his part to the early phenomenological movement. In later chapters we will see how these distinct components of Reinach's philosophy relate to his work on ethics.

With regard to Reinach's ethics, we have also seen some of the key questions and criticisms that have been raised by previous commentators on the subject. Some of these criticisms will prove to be entirely valid; others, however, can only be properly addressed when we discuss Reinach's ethics in detail in chapters three and four.

Before proceeding to do so, however, we must consider the context in which Reinach's work on ethics is to be interpreted and assessed as a contribution. To do so, we must discuss the other philosophers who influenced the development of Reinach's ethics and that of early phenomenological ethics generally. This discussion will, therefore, be the subject of the next chapter.

CHAPTER II

THE PHILOSOPHICAL BACKGROUND TO REINACH'S ETHICS

Reinach's work on ethics can be properly located as a contribution to early phenomenology. This requires that we understand what we mean by 'phenomenology' and 'early phenomenological ethics'. Yet Reinach's work on ethics is both broader than the phenomenological school of philosophy, regardless of how one characterises that school. Reinach's work shows influences as far back as Plato and including — on various subjects — Hume,¹ Kant² and Nietzsche.³ Thus the discussion in this chapter cannot be restricted by the characterisation of phenomenology; rather, Reinach's contribution to early phenomenological ethics must be understood in relation to this broader philosophical background to his thought.

The aim of this chapter is to provide a background and a context in which to understand Reinach's contribution to early phenomenological ethics. It is divided into three main sections. The first section addresses the question of what 'early phenomenology' means. It is partly on the basis of the characterisation presented here that the second and third sections are divided. The second section will discuss philosophical influences on the development of Reinach's ethics, and of early phenomenological ethics more generally, that pre-date phenomenology as characterised here. The third section will begin by discussing what 'early phenomenological ethics' means, before profiling those early phenomenologists whose work influenced Reinach's ethics.

¹ Most notably in his 1911 article 'Kants Auffassung des Humeschen Problems' (see Chapter 1).

² As seen in Chapter 1, many of Reinach's surviving works deal with Kant; no other philosopher's name appears more frequently in Reinach's writings. Several notable examples date from 1911 alone, including the aforementioned 'Kants Auffassung des Humeschen Problems', 'Die obersten Regeln der Vernunftschlüsse bei Kant' and the lecture course published as 'Notwendigkeit und Allgemeinheit im Sachverhalt'. A large section of *Grundzüge* (beginning on S.W. p. 497; Appendix (IV)) is given over to Reinach's critique of Kantian ethics, which we will discuss below.

³ See S.W. pp. 490-91, 511, 512; Appendix (IV).

Each of the chosen philosophers will be profiled below on an individual basis, examining their work on ethics (if any) and the nature of their contact with or influence on Reinach. This is done for two reasons: for the purposes of comparison, when showing where Reinach seems to have received ideas from other philosophers, and for the purposes of contrast, where Reinach's ideas appear to be unique or original. It is beyond the remit of this chapter (and of this thesis as a whole) to provide an independent treatment and critical discussion of the philosophies of any of these thinkers, rather their ideas are selected and presented here to serve as necessary background or for comparative purposes to Reinach's philosophy.

SECTION ONE

WHAT IS 'EARLY PHENOMENOLOGY'?

There have been many attempts to define the term 'phenomenology', from the simple and concise to the lengthy, complex and qualified. Examining the word itself, Dermot Moran points out that '*phenomenology* means literally the *science of phenomena*, the science which studies appearances, and specifically the *structure* of appearing'.⁴ In more detailed terms, he states elsewhere that 'phenomenology is best understood as a radical, anti-traditional style of philosophising, which emphasises the attempt to get to the truth of matters, to describe *phenomena*, in the broadest sense as whatever appears in the manner in which it appears'.⁵ Robert Sokolowski calls it 'the science that studies truth [...] the art and science of evidencing evidence'.⁶ Jean-François Lyotard finds it useful to define phenomenology in terms of what it opposes as much as by what it is: 'it

⁴ Dermot Moran, 'Introduction', *The Phenomenology Reader*, ed. by Dermot Moran and Timothy Mooney (London: Routledge, 2002), p. 4.

⁵ Dermot Moran, *Introduction to Phenomenology* (London: Routledge, 2000), p. 4.

⁶ Sokolowski, *Introduction to Phenomenology* (Cambridge: Cambridge University Press, 2000), p. 185. Earlier in the same work he writes, 'Phenomenology is reason's self-discovery in the presence of intelligible objects'. (Ibid., p. 4)

is *against* psychologism, *against* pragmatism, against an entire period of occidental thought [...]. It began, and remained, a meditation on knowledge, and its famous “putting in parentheses” consists above all in dismissing a culture and a history, in tracing all knowledge back to a radical non-knowledge’.⁷ Herbert Spiegelberg spends the final chapter of his history of *The Phenomenological Movement* discussing the ‘essentials of the method’⁸ in an attempt to fully describe what phenomenology is, in retrospect of the history of phenomenological thought as discussed in the rest of the book.⁹ However, he cautions about the difficulties of defining phenomenology, as ‘the underlying assumption of a unified philosophy subscribed to by all so-called phenomenologists is an illusion’.¹⁰ There are, in fact, several senses of ‘phenomenology’, of which ‘early phenomenology’ (which is what concerns us here) denotes only a part.¹¹

Yet no question can be answered without an understanding of its key terms. Recognising there are several kinds of phenomenology (e.g, descriptive-psychological phenomenology, existential phenomenology, hermeneutic phenomenology, pure transcendental-idealist phenomenology, dialogical phenomenology) does not change the

⁷ Lyotard, *Phenomenology*, trans. by Brian Beakley, pp. 31-32.

⁸ Spiegelberg, *The Phenomenological Movement*, pp. 677-717.

⁹ In brief, Spiegelberg offers two criteria to delimit the phenomenological movement for the purposes of his book:

‘(1) Explicit or implicit adoption by the would-be phenomenologist of [...] two methods:

(a) Direct intuition (in a sense still to be clarified) as the source and final test of all knowledge, to be formulated as faithfully as possible in verbal descriptions;

(b) insight into essential structures as a genuine possibility and a need of philosophical knowledge.

(2) Conscious adherence, however qualified, to the movement as such in full awareness of these methodological principles. Short of such an expression, a thinker may well be thought of as “really” belonging to the movement, but it would be unfair to read him into it as an actual member’. (Ibid., pp. 5-6)

¹⁰ Spiegelberg, *The Phenomenological Movement*, p. xxvii.

¹¹ Since several versions of ‘phenomenology’ were developed in the first half of the twentieth century, and some of those versions directly opposed Husserl’s idea of phenomenology, it is not that surprising that the question ‘what is phenomenology?’ was still being raised some fifty years after Husserl had launched his idea of phenomenology with his *Logical Investigations* in 1900–01. Cf., Pierre Thévenaz, ‘Qu’est-ce que la phénoménologie?’, *Revue de Théologie et de Philosophie*, 1952, 9–30; in Pierre Thévenaz, *What is Phenomenology? and Other Essays*, trans. by James M. Edie (London: Quadrangle, 1962).

fact that we must know what we mean when we refer to ‘early phenomenology’. Even if we cannot hope to provide a definition that is either concise or precise, a discussion and a characterisation of what is meant by ‘early phenomenology’ are necessary before we go any further.

2.1.1 ORIGINS OF EARLY PHENOMENOLOGY

Interpreted broadly as a way of doing philosophy, phenomenology does not have a defined starting point. ‘Phenomenology has been practiced in various guises for centuries’,¹² and Socrates¹³ and Aristotle¹⁴ have been cited as examples of philosophers employing a phenomenological approach long before it was given that name. In order to understand what phenomenology is, we must narrow our focus somewhat to concentrate on those philosophers who attached the word ‘phenomenology’ to this way of doing philosophy.

It seems appropriate to begin looking for an understanding of what phenomenology is with the man often regarded as the founder of the phenomenological movement.¹⁵ Certainly, the role of Edmund Husserl in the development of phenomenology cannot be overlooked, and many of the early phenomenologists

¹² Smith, David Woodruff, ‘Phenomenology’, *The Stanford Encyclopedia of Philosophy (Fall 2011 Edition)*, ed. by Edward N. Zalta
<<http://plato.stanford.edu/archives/fall2011/entries/phenomenology/>> [accessed 31 October 2012].

¹³ ‘Socrates has often been called — by Michael Landmann, for instance — a proto-phenomenologist, precisely because he spends so much time on unravelling the contradictions and misconceptions which frequently result from not returning to the proper understanding of what *things themselves* are’. Josef Seifert, *Back to Things Themselves: A Phenomenological Foundation for Classical Realism* (Boston: Routledge and K. Paul, 1987), p. 14.

¹⁴ John J. Drummond refers to Aristotle as ‘the first phenomenologist of moral experience’. J. J. Drummond, ‘Aristotelianism and Phenomenology’, in *Phenomenological Approaches to Moral Philosophy*, ed. by Drummond and Lester Embree (Dordrecht: Kluwer Academic Publishers, 2002), p. 15.

¹⁵ Even this designation is disputed. Karl Schuhmann and Barry Smith, for example, ‘have no hesitation in calling [Johannes Daubert] — and not Husserl — the true architect of the phenomenological movement’. Schuhmann and Smith, ‘Johannes Daubert vs. Husserl’s Ideas I’, in *Review of Metaphysics* 39 (1985), p. 763. We must also take into account the involvement of Franz Brentano, who, as we shall see, had a key influence on the development of Husserl’s phenomenology.

considered themselves, at least at first, to be following Husserl. The extent to which this was actually true is a subject of great controversy.¹⁶ However, it is useful to set out with an understanding of what phenomenology originally meant to Husserl.

Phenomenology as initially understood by Edmund Husserl in the First Edition of the *Logical Investigations* meant *descriptive psychology*, and had its origins in the project of Brentano. From Brentano, Husserl took over the conviction that philosophy is a rigorous science, as well as the view that philosophy consists in *description* and not causal explanation.¹⁷

Although Brentano inspired Husserl's identification of philosophy as a rigorous science, it is important to note that 'from the very start the conception of scientific method had a rather different ring for Husserl than for Brentano'.¹⁸ Whereas Brentano had in mind 'the inductive natural sciences',¹⁹ Husserl, a mathematician by training, considered the natural sciences 'philosophically naive'.²⁰ As time passed, Husserl's concern with achieving a sufficient level of rigour would be part of what motivated him to further develop his understanding of phenomenology, towards his transcendental idealism.

Husserl's transcendental turn 'was alleged to be a repudiation of the earlier realism'²¹ of his thought. There is much dispute over how this change in Husserl's viewpoint should be understood,²² but nevertheless, realism was very important to Husserl's students:

¹⁶ Husserl's students from his time in Freiburg, for example, 'adhered precisely to the late Husserl and reproached the earlier students for not having understood the real intention of the master'. Theodore de Boer, 'The Meaning of Husserl's Idealism in the Light of his Development', trans. by H. Pietersma, *Analecta Husserliana*, 2 (1972), p. 322.

¹⁷ Moran, *Introduction to Phenomenology*, p. 7.

¹⁸ Spiegelberg, *The Phenomenological Movement*, p. 72.

¹⁹ Ibid. This, however, is true only of Brentano's understanding of 'genetic psychology', the natural scientific component of empirical psychology. For 'descriptive psychology', Brentano proposed a method that, as Moran notes, is not causal, but involves a direct (non-hypothetical), intuitive (non-theoretical) *a priori* examination of 'pure' psychical-phenomena. See, Franz Brentano, *Descriptive Psychology*, trans. and ed. by Benito Müller (London: Routledge, 1995), p.8. Where Husserl differs from Brentano, methodologically, is that Husserl advances a descriptive-*eidetic* method for Brentano's new science of descriptive psychology. See, Spiegelberg and de Boer.

²⁰ David Bell, *Husserl* (London: Routledge, 1990), p. 158.

²¹ De Boer, 'The Meaning of Husserl's Idealism', p. 322.

²² De Boer, for example, takes the view that while Husserl was at one time a realist, 'the realism of the *Logical Investigations* is a presupposition which must be surrendered if the theme of intentionality is to be fully carried through'. Ibid., p. 327.

This [realist] conception of the nature and goal of phenomenology allowed Reinach and other phenomenologists a manner in which to analyze experience with its essential connections without either falling prey to psychologism or resorting to Platonism: phenomenology for them was truly a realist alternative.²³

Husserl's perceived departure from this early conception of phenomenology did not mean that phenomenology of that kind ceased to exist. Many who belonged to the Göttingen and Munich circles of phenomenologists — in large part having been influenced by Husserl's work as well as by the teaching of Theodor Lipps²⁴ — stood by an early, realist phenomenology and rejected Husserl's new transcendental approach. Reinach, for instance, 'remained a realist untouched by any transcendentalising tendency'.²⁵ The kind of phenomenology to which these philosophers held can be identified as 'early phenomenology',²⁶ 'classic phenomenology',²⁷ realist phenomenology or Munich and Göttingen phenomenology.

Since his work is the focus of our investigation, let us now turn to Reinach himself. Described by Hedwig Conrad-Martius as '*the phenomenologist par excellence*',²⁸ Reinach was a vital influence on the development of the Göttingen phenomenological circle.²⁹ Here, though, our expectation of finding a simple definition is at its lowest yet. Reinach does not deal in concise definitions; a definition alone, he contends, 'cannot bring the fact itself (*der Sache selbst*) a hair closer to us'.³⁰ But this very opposition to simple definitions tells us something about phenomenology for Reinach: phenomenology is concerned with seeing (*erschauen*) and making evident

²³ Jaray, 'Reinach and Bolzano', p. 473. Thévenaz calls this a 'realism of ideal essences', 'Qu'est ce que la phénoménologie?', p. 13, p. 21.

²⁴ On Lipps' relationship to the phenomenological movement, see his profile below, section 2.2.4.1.

²⁵ Salice, *Urteile und Sachverhalte*, p. 20.

²⁶ The term used by the North American Society for Early Phenomenology (NASEP).

²⁷ Peter H. Spader, *Scheler's Ethical Personalism: Its Logic, Development and Promise* (New York: Fordham University Press, 2002), p. 9.

²⁸ John F. Crosby, 'Adolf Reinach's Discovery of the Social Acts', p. 143.

²⁹ Even Husserl is said to have credited Reinach with helping him to understand his own work. "It was really Reinach who introduced me to my *Logical Investigations*, and in an excellent way", Husserl once said lightly and yet in earnest'. Oesterreicher, *Walls are Crumbling*, p. 100.

³⁰ Reinach, 'Concerning Phenomenology', trans. by Willard; S.W. p. 532. We would generally translate '*der Sache selbst*' as 'the thing itself'; what is meant is the essence that one is aiming to describe.

essences given in experience that cannot be simply defined. Reinach's opposition to simple definitions is not a sign of defeatism, but merely the beginning of a more conscientious approach to problems. Thus, in his Marburg lecture *Über Phänomenologie*, Reinach states his intention as follows:

I have not set myself the task of telling you what Phenomenology is. Rather, I would like to try to *think* with you in the phenomenological manner. To talk about phenomenology is the most useless thing in the world so long as that is lacking which alone can give any talk concrete fullness and intuitiveness: the phenomenological *way of seeing* and the phenomenological *attitude*. For the essential point is this, that phenomenology is not a matter of a system of philosophical propositions and truths — a system of propositions in which all who call themselves 'Phenomenologists' must believe, and which I could here prove to you — but rather it is a method of philosophizing which is required by the problems of philosophy.³¹

Reinach here indicates that phenomenology is not a set of philosophical answers, but a way of approaching philosophical questions enabling 'concrete fullness and intuitiveness' in talking about such problems. Thus phenomenology, for Reinach, is a means to achieve philosophical knowledge, not an end to be pursued in itself. Reinach places descriptive psychology among the sciences, while clearly distinguishing it, as Brentano initially did in his lectures on *Descriptive Psychology* at Vienna University (1887–1891), from 'genetic psychology', which is 'a science of empirical laws'.³²

Like Husserl before him, Reinach indicates phenomenology to be concerned specifically with eidetic knowledge, knowledge about the essential characters and characteristics, or simply the *essences* of things. This is far from a simple task; far, indeed, from a matter of simply providing definitions. 'If we wish to mark out the class of judgments which are propositions (*Urteilssätze*), for example, as the class which consists of all of those propositions that are either true or false, then the essence of the proposition and of the judgmental proposition — that which it is, its "whatness" (*Was*)

³¹ Ibid.; S.W. p. 531. Reinach's emphasis.

³² Ibid.; S.W. p. 533.

— has come no closer to us thereby’.³³ There is a significant distance between simply intending or grasping something on the one hand, and understanding its essence on the other; this distance is by no means an easy one to overcome. Rather than even try, sciences whose task it is to directly intuit essences ‘have avoided that task up to now’.³⁴ Phenomenology as a method aims to succeed where other sciences have so far failed; it seeks to intuit ‘apriori knowledge’,³⁵ in the form of essences, despite the difficulties that are known to accompany such a task.

As previously noted, one of the characteristics of early phenomenology — Reinach’s phenomenology included — is a commitment to realism. Lucinda Brettler indicates that this position needs to be clarified: ‘Reinach was a realist. This characterisation alone, however, is also misleading’.³⁶ As a phenomenologist, Reinach is concerned with what is given in experience. There is no presupposition that any specific perception proves that something real is being seen. But specific experiences can still be analysed, and insights drawn from them. ‘The fact that we can intuitively visualise motion’, for example, ‘gives us absolute evidence of its existential possibility’.³⁷ This does not mean that Reinach denies any significance to the ideal. ‘For Reinach objectivity [...] includes both ideal and real existents. By attributing to both kinds of existents a status independent of consciousness, Reinach avoids idealism and scepticism’.³⁸

So far, then, phenomenology appears to us as a philosophical method or approach, intended to be rigorous and in some sense scientific, based on a faithful description of appearances, in the manner in which they appear, that aims at intuitive

³³ Ibid.; S.W. p. 532.

³⁴ Ibid.; S.W. p. 533.

³⁵ ‘Concerning Phenomenology’, trans. by Willard, *passim*.

³⁶ Brettler, *The Phenomenology of Adolf Reinach: Chapters in the Theory of Knowledge and Legal Philosophy* (doctoral thesis; McGill University, 1973), p. 76.

³⁷ Ibid., pp. 89-90.

³⁸ Ibid., p. 78. Hence, Reinach subscribes to a ‘realism of ideal essences’ as referred to above, n. 23.

insight into essential, *a priori* truth about real and ideal things in themselves.³⁹ However, not all of these characteristics are universal to all understandings of phenomenology. Husserl's departure from his realist roots, above all, would change everything for his early realist philosophers.

2.1.2 HUSSERL'S TRANSCENDENTAL TURN AND LATER PHENOMENOLOGY

Between the publication of his *Logical Investigations* (1900–1901) and that of his *Ideas I* (1913), Husserl's understanding of phenomenology was perceived to undergo radical changes. The nature of and reasons for these changes are, to say the least, controversial. There is not even universal agreement on whether Husserl's actual project changed at all, although there was certainly a process of development in his phenomenological method. It is clear, nonetheless, that during this time Husserl came to be divided from some — indeed most, if not all — of his early students and colleagues over the question of what 'phenomenology' meant.⁴⁰ No precise dates can be placed on the change within Husserl's thought, but 'in 1907 [Husserl] delivered a series of five lectures which, for

³⁹ See, Husserl, *Ideas I*, §66 Faithful Expressions of Clear Data. Unambiguous Terms, and §75 Phenomenology as a Descriptive Eidetic Doctrine of Pure Mental Processes.

⁴⁰ Of the controversies dividing the early and later phenomenologists, one in particular is worth noting here. 'In retrospect Husserl made Reinach responsible for a kind of Platonism among phenomenologists which had distorted the picture of true phenomenology'. Spiegelberg, p. 192. This allegation of Platonism against Reinach is a contentious issue in itself. Certainly, Reinach's initial interest in philosophy was inspired by Plato, but it is not accurate to describe his phenomenology as outright Platonistic. Kimberly Baltzer-Jaray identifies three charges in particular that have been used to suggest that Reinach's theory of states of affairs is Platonistic. The first, that Reinach believes in states of affairs subsisting 'independent of any judgment or cognition on our part', is true; in other words, Reinach believes that there are such things as true facts. The second point is that Reinachian states of affairs 'constitute a special "realm"' (a word with 'blatant Platonistic connotations') separate from the world of objects. This is simply not borne out in Reinach's use of language; 'Reinach never uses the word "realm" (*Gebiet*) when describing states of affairs', and there is no indication that states of affairs exist in a world separate from the world of objects, although states of affairs are not objects themselves. The third allegation is 'that states of affairs have an eternal or immutable existence in contrast to temporal objects'. This is not accurate either, since for Reinach the existence of an object is a state of affairs. If objects are temporal, it is not possible that states of affairs are atemporal. See, Baltzer-Jaray, *Doorway to the World of Essences*, pp. 91-101.

the first time, made public the fact that his philosophy had taken a “transcendental turn” away from naturalism’.⁴¹

Husserl’s transcendental turn was only the beginning of a major shift in phenomenological thought; or, perhaps better said, it was just one step in his development of phenomenology, a process that was already underway and one that would continue. Later philosophers who took their cues — at least to some extent — from Husserlian phenomenology would diverge still more radically from the method as understood by the Göttingen and Munich phenomenologists. Although Martin Heidegger is one of the most prominent names to be associated with phenomenology, the meaning that he gave to phenomenology was simply not recognisable as such to Husserl’s earlier (or later) students.⁴² The informal and comparatively short-lived Bergzabern circle of phenomenologists gathered largely in opposition to these transformations in phenomenological thought, rallying around Reinach’s writings as representing, in their minds, the original and true meaning of phenomenology.⁴³ Edith Stein, who went on to become a member of the Bergzabern circle after leaving her position as Husserl’s assistant, described Husserl’s transcendental approach ‘as a return to Kantianism, as an abandonment of that very move towards the object in which one saw Husserl’s greatest merit, and of that ontology that signifies the discovery of the

⁴¹ Bell, *Husserl*, p. 153. Husserl himself dates his conversion to transcendental phenomenology around this time (1907–1908), after he undertook in his seminars an eidetic comparative analysis of the mode of ‘being as thing’ (*Sein als Ding*) given to outer perception and the mode of ‘being as (conscious) experience’ (*Sein als Erlebnis*) given to inner perception. See, de Boer, *The Development of Husserl’s Thought*, pp. 322-23.

⁴² Shortly after Reinach’s death in 1917, Husserl gave Heidegger access to some of Reinach’s material (prepared by Edith Stein, Husserl’s assistant at that time) in June 1918. See, Theodore Kisiel, *The Genesis of Heidegger’s ‘Being and Time’* (Berkeley: University of California Press, 1993), p. 75. The nature and extent of influence of Reinach on Heidegger’s thinking, however, is outside the scope and parameters of our study.

⁴³ On this stage in the history of realist phenomenology, see Joachim Feldes, ‘A Yet Hidden Story — Edith Stein and the Bergzabern Circle’ in *Intersubjectivity, Humanity, Being. Edith Stein’s Phenomenology and Christian Philosophy*, ed. by Haydn Gurmin and Mette Lebeck (Traugot-Bautz, libri nigri, forthcoming).

essential structure of the objective world'.⁴⁴ As far as Husserl was concerned, however, his transcendental turn was precisely what was needed to truly follow through his phenomenological project, a goal that could not be achieved until he had refuted the natural attitude.

The precise differences between the early and later approaches to phenomenology are a matter of considerable debate. Josef Seifert, for example, asserts that throughout his phenomenological project, Husserl remains concerned with 'getting at the essences of things. First, eidetic analysis of essences, then genetic phenomenology uncovering the constitution and origin of essences, is his goal'.⁴⁵ While Husserl does indeed continue to discuss essences in *Ideas I* and beyond, the degree to which eidetic analysis is an important or interesting component of transcendental phenomenology has been disputed by some commentators. David Michael Levin argues that 'the kind of evidence Husserl ascribes to essences (or to their correlative eidetic insights) is not demonstrably possible',⁴⁶ and that 'the *Wesensschau*, in sum, tends to ensnare us in the labyrinths of a mischievous visualism'.⁴⁷ Dan Zahavi, on the other hand, questions even the significance of essences as a concern for Husserl, pointing out that 'this interest in essential structures is so widespread and common in the history of philosophy that it is nonsensical to take it as a defining feature of phenomenology'.⁴⁸ Certainly, essence has not always been the focus for those investigating Husserl's phenomenology, as Jan Patočka commented:

⁴⁴ Edith Stein, 'Über die weltanschauliche Bedeutung der Phänomenologie' (1932) in *Welt und Person. Beitrag zum christlichen Wahrheitsstreben* (Louvain/Freiburg: Nauwelaerts, Herder, 1962), p. 11.

⁴⁵ Seifert, *Back to Things Themselves*, p. 140.

⁴⁶ David Michael Levin, 'Husserlian Essences Reconsidered', in David Carr and Edward S. Casey, eds., *Explorations in Phenomenology: Papers of the Society for Phenomenology and Existential Philosophy* (The Hague: Martinus Nijhoff, 1973), p. 171.

⁴⁷ *Ibid.*, p. 173.

⁴⁸ Dan Zahavi, *Husserl's Phenomenology* (Stanford University Press, 2003), p. 37. There are, however, different meanings to the concept of 'essence' in the history of thought, but a phenomenology that did not focus on 'essential structures' of our experience would be, nonetheless, nonsense for Husserl (as he eventually thought of Heidegger's (controversial) development of his own idea of 'phenomenology').

For many years analysts and commentators on Husserlian thought concentrated on the transcendental basis of knowledge and on the constitution of being (*l'être*) in transcendental consciousness. During the existential vogue, one rapidly passed over the doctrine, expressed in the Logical Investigations and developed systematically in the first chapter of *Ideas*, in the *Formal and Transcendental Logic* and in the *Experience and Judgement*, of an eidetic intuition as a major process yielding general theses which are independent of empiricism.⁴⁹

The full range of controversies and interpretations that exist in relation to Husserl's transcendental turn is beyond the scope of our present investigation. Most of the approaches we have not covered derive to at least some extent from the work of Husserl or that of Heidegger, but each also has its own unique characteristics.⁵⁰ For our current purposes it is sufficient to clearly distinguish between early phenomenology (which is what we aim to characterise) and other forms of phenomenology. Whether one approach or another is 'right' does not have a bearing on the central question of this thesis. What we can conclude, nonetheless, is that Reinach subscribes to some version of realism in relation to the existence of essences or essential features of our experiences which he wishes to examine in his work in philosophy and phenomenology.

2.1.3 CHARACTERISTICS OF EARLY PHENOMENOLOGY

From the above, we have enough information to lay out a characterisation of early phenomenology. This still does not mean that every early phenomenologist understood the method or its goals in exactly the same way. However, there is enough common ground for us to propose the following set of characteristics:

⁴⁹ Jan Patočka, 'The Husserlian Doctrine of Eidetic Intuition and Its Recent Critics', trans. by F. Elliston and P. McCormick, in Elliston and McCormick, eds., *Husserl: Expositions and Appraisals* (Notre Dame: University of Notre Dame Press, 1977), p. 150.

⁵⁰ Heidegger's interpretation of phenomenology is sufficiently different from Husserl's, and sufficiently influential, 'that Husserl could *not be regarded today*, either philosophically or historically, as the *only* founder of twentieth-century phenomenology'. Cyril McDonnell, 'Brentano's Reevaluation of the Scholastic Concept of Intentionality into a Root-Concept of Descriptive Psychology', *Yearbook of the Irish Philosophical Society* (2006), 124–171, (p. 171).

1. Identification with a version of phenomenology as a philosophical approach.⁵¹
2. Description of phenomena, rather than explanation, as the goal of philosophy.
3. Intuition based on experience as a means to philosophical insight.
4. The distinction of a real world, external to the experiencing subject, from the subject's experiences as such.
5. Concern with accessing *a priori* eidetic knowledge about the 'things themselves'.

While there is much more to phenomenology than this, for the purposes of our investigation, this set of characteristics is sufficient to delineate a field of 'early phenomenology' within which Reinach's work on ethics can be understood as a contribution.

SECTION TWO EARLY INFLUENCES

The period of early phenomenology to which Reinach belongs, in both a historical and a philosophical sense, pre-dates the modern revival of virtue ethics, such as, exemplified, for instance, by Elizabeth Anscombe's essay *Modern Moral Philosophy*.⁵² There is, nevertheless, a strong case for regarding Aristotle as part of the background to early phenomenology, and thus to the associated approaches to ethics.

⁵¹ We do not mean here that the characterisation of early phenomenology is recursive or redundant (that 'phenomenology' should be part of the definition of phenomenology). Rather, for the purposes of our characterisation, it will be required that the early phenomenologist use that term to describe his or her own way of doing philosophy.

⁵² First published in *Philosophy* 33 (1958), pp. 1-19.

Brentano was well versed in Aristotle's philosophy, and wrote several books (including his first two published works) on Aristotle.⁵³ With regard to philosophical method, John J. Drummond has gone so far as to give the title of 'the first phenomenologist of moral experience' to Aristotle.⁵⁴ Likewise, John F. Crosby has likened Scheler's and von Hildebrand's value-theories in particular to virtue ethics.⁵⁵ Scheler, however, would not have agreed with this likening of his ethics with Aristotle's, as he considered Aristotelian ethics to be an *ethics of goods and purposes*, and so, fundamentally incompatible with a non-formal ethics of values.⁵⁶ Certainly, there are points of distinction between value ethics and virtue ethics, which we will discuss below as we examine the relationship between the two approaches.

⁵³ Brentano's first book was *Von der mannigfachen Bedeutung des Seienden nach Aristoteles* (Freiburg: Herder, 1862) and his second, his 1866 habilitation thesis was on *Die Psychologie des Aristoteles, insbesondere seine Lehre vom nous poietikos* (Mainz, 1867). Brentano turns away from this approach to psychology in his next published work in 1874, his *Psychologie vom empirischen Standpunkt* (Leipzig, 1874), wherein he now maintains that the science of psychology is founded in the 'inner perception of our own psychical phenomena', rather than as the science of the soul of living beings (animals, plants, human beings). Cf., Brentano, *Psychology from an Empirical Standpoint*, Book I Psychology As A Science, Chapter 2 'Psychological Method with Special Reference to its Experiential Basis' (§ 2 'Über die Methode der Psychologie, insbesondere die Erfahrung, welche für sie die Grundlage bildet'), trans. by Antos. C. Rancurello, D. B. Terrell & Linda L. McAlister (London: Routledge & Kegan Paul, 1973; Routledge, 1995), pp. 40–44. Brentano, therefore, switches to and subscribes to a Cartesian-Lockean-Humean view of psychology in his idea of a new descriptive psychology, a position that Husserl also later advanced in his work in phenomenology.

⁵⁴ John J. Drummond, 'Aristotelianism and Phenomenology', in *Phenomenological Approaches to Moral Philosophy*, ed. by Drummond and Lester Embree (Dordrecht: Kluwer Academic Publishers, 2002), p. 15.

⁵⁵ John F. Crosby, 'Dietrich von Hildebrand: Master of Phenomenological Value-Ethics', in *Phenomenological Approaches to Moral Philosophy*, p. 494.

⁵⁶ 'Aristotle's ethics is in essence an ethics of "goods" and "objective purposes," one that I reject [...] It is only *after* the collapse of ethics of goods and purposes, with their self-reliant "absolute" world of goods, that "non-formal value-ethics" *could* come into being'. (*Formalism in Ethics and Non-Formal Ethics of Values*, trans. by Manfred S. Frings and Roger L. Funk (Evanston: Northwestern University Press, 1973), 5th ed., p. xxviii) 'Goods' for Scheler are the objects that bear values; unlike values themselves, goods come into being, cease to be and change in value, and are thus not a suitable basis for ethics in the way that values, with their unchanging hierarchy, are. See below, section 2.3.4.4.

2.2.1.2 ARISTOTELIAN ETHICS

Aristotle's *Nicomachean Ethics* is divided into ten books;⁵⁷ the topic of books two to four is 'virtue or excellence of character'.⁵⁸ Aristotle takes on board the shared idea in Greek philosophy that the highest good is happiness,⁵⁹ and identifies the happy life, the life lived well, with the virtuous life, that is, one guided by virtue or excellence.⁶⁰ 'Neither by nature, then, nor contrary to nature do the virtues arise in us; rather we are adapted by nature to receive them, and are made perfect by habit'.⁶¹ Habit (*ethos*, to which Aristotle traces the very origin of the word *ethike*,⁶² ethics) has a very important role here; developing a virtuous character through habit and training is the first step towards becoming a good person and living a good, happy life. As examples of virtues identified by Aristotle, Crisp lists 'courage, temperance, generosity, magnificence, greatness of soul, even temper, friendliness, truthfulness, wit, justice and friendship'.⁶³

Aristotle indicates that virtue represents moderation between extremes. 'Excess and defect are characteristic of vice, and the mean of virtue'.⁶⁴ Perfection in virtue means striking a precise balance. Perfect generosity, for example, would mean giving exactly the right amount to the right people, no more and no less. This is part of the reason why experience and habituation are so important in learning to be virtuous; only through experience can one really learn to strike the right balance between excess and

⁵⁷ Of these ten books, 'three – books v–vii – are shared with the *Eudemian Ethics*, and usually thought to belong to that earlier work'. (Roger Crisp, introduction to Aristotle, *Nicomachean Ethics* (Cambridge University Press, 2000), p. vii)

⁵⁸ Christopher Charles Whiston Taylor, introduction to Aristotle, *Nicomachean Ethics* (Cary, NC: Oxford University Press, 2006), p. xi.

⁵⁹ Aristotle, *Nicomachean Ethics*, trans. by W. D. Ross, in *Aristotle's Ethics*, ed. by Mark Warnock (London: Faber and Faber, 1973) I 1095a16-20. 'Verbally there is very general agreement; for both the general run of men and people of superior refinement say that [the highest of all goods] is happiness, and identify living well and doing well with being happy'.

⁶⁰ *Ibid.*, I 1098a 17-19. 'Human good turns out to be activity of soul in accordance with virtue, and if there are more than one virtue, in accordance with the best and most complete'.

⁶¹ *Ibid.*, II 1103a 23-25.

⁶² *Ibid.*, II 1103a 17-18.

⁶³ Roger Crisp, introduction to *Nicomachean Ethics* (1961), p. xviii

⁶⁴ *Nicomachean Ethics*, trans. by Ross, II 1106b 32-33.

deficit. To properly recognise virtues and virtuous action calls for *phronesis*, practical wisdom or simply prudence. As it is possible to recognise greater practical wisdom and virtue in others than one possesses personally, certain individuals come to be recognised by others as possessing wisdom in matters of good, and ‘it is to [these] that one will entrust such matters’.⁶⁵ A person of recognised practical wisdom is referred to as a *phronimos*.

Since ‘there is a necessary connection between thinking something and doing it’,⁶⁶ possession of practical wisdom and thus knowledge of what is good will naturally lead to good action. ‘Practical wisdom issues commands, since its aim is what ought to be done or not to be done’.⁶⁷ However, Aristotle indicates that this is not a matter of total necessity; a person can believe one thing to be best, and yet do something else. Aristotle discusses behaviour of this kind under the term *akrasia* (‘incontinence’).⁶⁸

In discussing the relationship between Aristotelian ethics and modern virtue ethics, C. C. W. Taylor puts forward four aspects that are ‘central to the theory [of virtue ethics] and broadly Aristotelian in inspiration’. These are ‘(i) the primacy of character’, whereby ethical evaluations focus on the character of the agent more than on his or her actions; ‘(ii) the primacy of habituation’, whereby the development of the character through some kind of habituation is emphasised; ‘(iii) the centrality of moral sensibility [or] practical intelligence’, whereby an important role is given to some sense, faculty or other property of the human being that allows him or her to intuitively recognise the good; and ‘(iv) the centrality of well-being’, whereby the theory emphasises the importance of happiness or flourishing through the life well-lived.⁶⁹

⁶⁵ Ibid., VI 1141a 26-27.

⁶⁶ Ackrill, *Aristotle's Ethics*, p. 31.

⁶⁷ *Nicomachean Ethics*, trans. by Ross, VI 1143a 8-10.

⁶⁸ Ackrill, *Aristotle's Ethics*, p. 31.

⁶⁹ Taylor, introduction to the *Nicomachean Ethics*, pp. xvi-xvii.

We see aspects (i) and (iii) as particularly prominent in phenomenological value theory. The person or personal character is an important bearer of values for Reinach and for Scheler,⁷⁰ and most phenomenological value theorists hold that the feeling of values involves a ‘receptivity to value’,⁷¹ ‘emotional intelligence’,⁷² or other intuitive sense of what is valuable. In Reinach’s view, sensitivity or receptivity to moral value is, in itself, a moral value. Aspect (ii) is at least hinted at by Reinach,⁷³ but generally speaking is not prominently featured in value ethics. Aspect (iv) is suggested by Reinach’s discussion of the sphere of goods (see chapter three), and is also explored by Stein when she discusses the role of values in the development or growth of communities and individuals (see chapter four).

There is much clearer evidence of an Aristotelian influence in the early development of Dietrich von Hildebrand’s ethics. In his 1922 work *Sittlichkeit und ethische Werterkenntnis*,⁷⁴ von Hildebrand uses the term ‘virtue’ (Tugend) alongside the more usual ‘value’, and the very first page contains a citation from the *Nicomachean Ethics*.⁷⁵ Direct evidence of this influence is not so visible in von Hildebrand’s later, major work, *Christian Ethics*.

⁷⁰ In particular, Scheler identifies the ‘moral tenor’ or ‘disposition’ (*Gesinnung*) of the person as a bearer of values. ‘Without a good moral tenor there is no good deed’. (Scheler, *Formalism*, p. 114)

⁷¹ S.W. p. 307, paragraph 3; Appendix (III).

⁷² Mette Lebeck, ‘Stein’s Phenomenological Value Theory’, in *Yearbook of the Irish Philosophical Society* (2010), p. 146.

⁷³ In *Grundzüge*, Reinach refers to an ‘objective attitude’ of concern with values which a person can be led into, for example, through the appreciation of art. S.W. p. 491, paragraph 1; Appendix (IV). Reinach’s exact meaning is not entirely clear, but it seems that it is at least somewhat possible to habituate oneself in the objective attitude. We will discuss this issue further in chapter three, section 3.2.1.6.

⁷⁴ Written on the occasion of Husserl’s birthday and published in volume 5 of the *Jahrbuch*, pp. 463-602.

⁷⁵ The reference is to book VI, chapter 13, 1144b 25-30, where Aristotle discusses why virtue is distinct from mere accordance with right reason.

Despite the similarities noted above, it is quite difficult to establish a direct influence of Aristotle's ethics on Reinach's. Reinach does not refer back to Aristotle in his ethics the way he does to most of the other philosophers discussed in this chapter. Reinach does discuss the 'pious dream [of the] ancient Greeks'⁷⁶ that happiness and goodness are necessarily linked, a theme present in Aristotle's ethics, but even here Reinach does not refer to Aristotle by name. Reinach does briefly reference Aristotle's philosophy in some of his works (for example, in 'The Supreme Rules of Rational Inference According to Kant'⁷⁷), but we do not have the same historical evidence for Reinach taking an interest in Aristotle as we do for his interest in Plato.

Reinach's value ethics resembles an ethics of virtues in the same way that Scheler's or von Hildebrand's does. Most of all in his investigation of the ethical significance of reflection in *Die Überlegung*, Reinach emphasises the assessment of the person (more precisely, the personal structure) as a bearer of values. He does not refer to these values of the personal character by the word 'virtue' (*Tugend*), but the role moral values play in his ethics — in that values of the personal character are evidenced in one's actions, and in that those values will lead a person to prefer actions that are valuable — resembles that of virtues in Aristotelian ethics. Receptivity or sensitivity to value, and love or respect of value, are both moral values of the personal character and are reflected in the I's reaching of resolutions to act.⁷⁸ However, there are noteworthy differences here as well. Aristotle considers practical wisdom to be an intellectual virtue, rather than a moral virtue or virtue of character,⁷⁹ whereas Reinach is clear that

⁷⁶ S.W. p. 496, paragraph 5; Appendix (IV).

⁷⁷ See 'The Supreme Rules of Rational Inference According to Kant', trans. by James M. DuBois, p. 96; S.W. p. 65.

⁷⁸ See S.W. p. 299, paragraph 2, and p. 301, paragraph 2; Appendix (III).

⁷⁹ Aristotle, *Nicomachean Ethics*, II 1103a 6-8. As translated by Ross: 'We say that some of the virtues are intellectual and others moral, philosophic wisdom and understanding and practical wisdom being

receptivity to value is itself a moral value. Reinach also does not distinguish between moral value of the kind borne by persons and that borne by actions, describing actions as inherently possessing certain characters of moral value.⁸⁰

As we discuss Reinach's ethics in the next chapter, these themes will be highlighted further. We must accept the caveat, however, that there is no definitive evidence of how extensively Reinach read Aristotle himself. An unknown amount of Aristotelian influence on Reinach may instead have come to him second-hand through other philosophers, and we cannot tell whether or not Reinach was fully aware of its origin.

2.2.2 KANTIAN PHILOSOPHY

Immanuel Kant (1724-1804) is, without doubt, one of the most important figures in the history of philosophy, especially in a German context. His moral philosophy, laid out across three books, *Groundwork of the Metaphysic of Morals* (1785), *Critique of Practical Reason* (1788), and *Metaphysics of Morals* (1797), is just part of his wide-ranging body of philosophical work. By the time of the early phenomenologists, neo-Kantianism was a dominant school of philosophical thought in Germany. For better or for worse, Kant was an inescapable part of the philosophical environment in which phenomenology arose, and it is not surprising that — as we will see below — Kant is the single philosopher most often discussed in Reinach's extant writings.

intellectual, liberality and temperance moral'. Roger Crisp instead translates the latter kind of virtues as 'virtues of character'.

⁸⁰ 'Value- and disvalue-character pertain to the project by virtue of its composition'. S.W. p. 292, paragraph 1; Appendix (III).

2.2.2.1 KANTIAN PHILOSOPHY AND PHENOMENOLOGY

Naturally, Kant never commented on phenomenology; he died fifty-five years before Husserl was born. The phenomenologists, on the other hand, had plentiful opportunity and cause to comment on Kant's philosophy, and the early phenomenologists in particular found much to agree and disagree with in his work.

Kant's philosophy is associated with — indeed, 'inseparable from'⁸¹ — a form of 'transcendental idealism' to which the early, realist phenomenologists were opposed. The ideal, for Kant, means that which is dependent on, or internal to the mind; broadly, all that is subjective. The real, by contrast, is all that is external to the mind or independent from it. In the empirical sphere, the 'real' refers to the 'objective aspects of human experience';⁸² in other words, the objects that we see, hear and touch. Kant does not want to deny that these objects exist in the empirical sphere. But it is the transcendental sphere, the necessary conditions that make experience (including sensible experience) possible, not the empirical one that is of central importance for philosophical reflection. At the transcendental level, the ideal (that which belongs to and is interior to the mind) 'is used to characterise the universal, necessary, and, therefore, a priori conditions of human knowledge'.⁸³ Space and time belong to the transcendently ideal because without them, experience would not be possible; they are *a priori* necessities for our experience of the world. Space and time are not objects of experience, therefore, because they are conditions of experience. They are mental forms of intuition. On the other hand, within the transcendental sphere, the real is a much more limited category. If our knowledge of something real depends in any way upon experience, then we know it only empirically as real, not transcendently. On the

⁸¹ Henry E. Allison, *Kant's Transcendental Idealism: An Interpretation and Defense* (Yale University Press, 1983), p. 3.

⁸² *Ibid.*, p. 7.

⁸³ *Ibid.*, p. 7.

transcendental level, reality (still indicating independence of or externality to the mind) ‘means independence of sensibility and its conditions. A transcendently real object is thus, by definition, a nonsensible object or noumenon’.⁸⁴ Again, Kant does not mean to specifically deny that there is anything transcendently real; he simply considers this ‘thing in itself’ to be beyond the reach of philosophical reason, it cannot be *known*. Thus Kant’s notion of ‘the thing in-self’ denotes, essentially, a limit concept of our knowledge. For Kant, that which we can really know, *a priori*, is tightly restricted.⁸⁵

Kant’s limitation of the *a priori* was opposed by the early, realist phenomenologists of Munich and Göttingen. What they understood by the slogan ‘back to the things themselves’ was a return to these *noúmena* that Kant considered to be beyond philosophical knowledge. As Josef Seifert puts it:

Phenomenological realism [...] holds that ‘things in themselves’ are truly what Kant calls them: *noúmena*, that is, knowable and intelligible objects of human knowledge, instead of unknowable X’s as Kant believed them to be (thereby belying the very meaning of the term ‘*noúmenon*’ which means ‘the intelligible’, that which is understandable or understood).⁸⁶

Yet it is not so clear that Husserl’s own phenomenological project was ever incompatible with neo-Kantianism, and transcendental idealism would ultimately be a hallmark of Husserl’s phenomenology as it matured. The extent to which Husserl’s transcendental turn was inspired by Kant is unknown, but Husserl did show a ‘sudden and intense interest in Kantian thought’ prior to that turn.⁸⁷ Edith Stein, for one, saw Husserl’s adoption of a transcendental idealist position as ‘a return to Kantianism’.⁸⁸

⁸⁴ Ibid., p. 7.

⁸⁵ ‘It has been customary to say, even of much knowledge that is derived from empirical sources, that we have it or are capable of having it *a priori*, meaning that we do not derive it immediately from experience, but from a universal rule — a rule which is itself, however, borrowed from experience. Thus we would say of a man who undermined the foundations of his house, that he might have known *a priori* that it would fall, that he need not have waited for the experience of its actual falling. But still he could not know this completely *a priori*. For first he had to learn through experience that bodies are heavy, and therefore fall when their supports are withdrawn’. Kant, *Critique of Pure Reason*, trans. by Norman Kemp Smith (London: Macmillan, 1992), p. 43.

⁸⁶ Seifert, *Back to Things in Themselves*, p. 2.

⁸⁷ Bell, *Husserl*, p. 153. Nowhere, however, is Husserl closer, philosophically speaking, to Kant than at

Whatever their disagreements, not all phenomenologists were entirely dismissive of Kant or his philosophy. Scheler in particular had a great deal of respect for Kant, as we shall see in our profile on Scheler, below. Reinach described Kant's insights into ethics as a 'deep enrichment of the world of human thought, however one might assess it'.⁸⁹ However much their opinions on Kant and Kantianism differed, it is no accident that every phenomenologist had such an opinion; Kant had a very important presence in the philosophical environment in which phenomenology developed.

2.2.2.2 KANT'S ETHICS

Despite the 'deep rift'⁹⁰ that separates it from the realist phenomenological approaches to ethics which chiefly concern us here, Kant's ethics had a demonstrable influence on the development of Reinach's philosophy. Thus, it is appropriate — especially given some of our later comments in discussing Scheler — to discuss Kantian ethical theory. Many phenomenologists reacted against Kant and were critical of his philosophy in general, and this is no less true when it comes to his ethics, as we shall see below and in subsequent sections.

Kantian ethics centres on the concept of duty. According to Kant, there is a pure, formal, *a priori* moral law; it is the duty of all rational beings to act in accordance with this law, but more than that, to be moral, one must act out of a sense of this duty. Thus, Kantian ethics exclusively assesses the will, based not only on whether it obeys the law,

the time of his writing of the *Logical Investigations*, for, in that work Husserl subscribes to the *dual* experiences of a valid normative logical consciousness as such as well as the experiences of natural-factual consciousness as such, though the latter is not a concern in his eidetic descriptions of *valid* logical experiences. He, nevertheless, subscribes to Kant's two domain theory of consciousness, normative and factual consciousness, characteristic of human beings.

⁸⁸ Stein, 'Über die weltanschauliche Bedeutung der Phänomenologie', p. 11. Husserl, however, never began his philosophizing outside of Kant's perspective. See, previous note.

⁸⁹ S.W. p. 500, paragraph 4; Appendix (IV).

⁹⁰ Steven Galt Crowell, 'Kantianism and Phenomenology', in *Phenomenological Approaches to Moral Philosophy*, p. 48.

but also the reasons why it does so. ‘Action from “good will”, according to Kant, is always good and can never be bad, and is therefore “good without qualification” or “unreservedly good”.’⁹¹ Thus,

An action does not derive its moral value from the results it succeeds in bringing about, but from ‘the maxim’, as Kant calls it, that is, from the type of willed action intended by the agent. Kant therefore believes that morally good actions [...] are actions carried out ‘from duty’. Such actions, he says, have an inner worth.⁹²

The moral law ‘is a supreme principle of morality which informs all the particular moral rules but does not itself refer to any specific types of action’.⁹³ According to Kant, these specific types of actions (such as theft and murder) are based on empirical concepts that have no place in the *a priori* moral law. Kant provides three formulations of this moral law, not separate laws, but different ways of understanding the same central law:

1. ‘Act only on that maxim through which you can at the same time will that it should become a universal law’;⁹⁴
2. ‘So act that you treat humanity in your own person and in the person of everyone else always at the same time as an end and never merely as a means’;⁹⁵
and
3. ‘So act as if [you] were through [your] maxim always a legislating member in the universal Kingdom of Ends’.⁹⁶

These three formulations are as close as Kant comes to presenting the categorical imperative in a concrete form. Specific actions, specific goods of any kind, do not play a

⁹¹ H.B. Acton, *Kant's Moral Philosophy* (London: Macmillan, 1970), p. 12. Kant explains the sense in which the good will is good without qualification as follows: ‘A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself and, regarded for itself, is to be valued incomparably higher than all that could merely be brought about by it in favor of some inclination and indeed, if you will, of the sum of all inclinations’. Kant, *Groundwork of the Metaphysics of Morals*, trans. by Mary Gregor (Cambridge University Press, 1998), p. 8.

⁹² Acton, *Kant's Moral Philosophy*, p. 12.

⁹³ *Ibid.*, p. 20.

⁹⁴ *Ibid.*, p. 21.

⁹⁵ *Ibid.*, p. 35.

⁹⁶ *Ibid.*

role here, except inasmuch as they can be determined by the categorical imperative. Thus conformity with and respect for the categorical imperative as a formal principle is the duty of the will. ‘Respect’ (*Achtung*) or ‘reverence’ has a particular significance here, ‘quite different from the feeling someone has when he contemplates an individual who is beautiful, clever, powerful or successful. He can admire such people, but admiration is not “awareness of a rule that abolishes my self-love” as reverence for the moral law does’.⁹⁷

That beauty and intelligence would generally be considered values (but not moral values) in phenomenological value-theory helps to highlight how Kantian ethics and realist value-ethics are radically opposed to one another. In Kant’s view, the kind of appreciation that comes from what a phenomenologist would call experiences of value-feeling is simply of a lesser order than appreciation of the pure goodness of the moral law. His arguments did not go unanswered. Many phenomenologists of ethics directly addressed their disagreements with Kant in their writings. We will see some of Reinach’s criticisms of Kant below; criticisms by other phenomenologists discussed here will be covered in their respective sections.

2.2.2.3 KANT AND REINACH

In his surviving philosophical writings, Reinach engaged directly with Kant more than with any other past philosopher. In general, Reinach is highly critical of Kant’s philosophy, but not dismissive of his insights. What he chiefly takes issue with is Kant’s position on the *a priori*. He accepts that empirical data is, by definition, not *a priori* knowledge, but contends that ‘[Kant] had confused “non-formal” with “empirical” [and] “*a priori*” with “formal.” [...] The placement of empirical and formal as opposites,

⁹⁷ Ibid., p. 14.

however, is not justified'.⁹⁸ This contention is central to Reinach's entire commitment to eidetic analysis:

(T)he restrictiveness with which Kant conceived of the apriori could not but become disastrous for subsequent philosophy. In truth, the realm of the apriori is incalculably large. Whatever objects we know, they all have their "what," their "essence"; and of all essences there hold essence-laws {*Wesensgesetze*}.⁹⁹

On this basis, Reinach (like Scheler¹⁰⁰) argues for the possibility of a non-formal *a priori* foundation for ethics, in that although we grasp values in experience, the values themselves have *a priori* status and cannot be dismissed as empirical data. Thus, even though it is true that the bearers of value in the world constantly change, and we only know which objects bear value as we experience that value, our *a priori* knowledge of the world of values is a sound basis for ethics. The focus for Reinach and his fellow phenomenologists of values is not, therefore, on individual experiences of value, but on the essence of the valuable and of our experiences of it.

In the next chapter, we will discuss the formal moral law that is part of Reinach's own ethics. For now we will only note that for all the ways he criticises Kant, Reinach never casts doubt on the idea that the moral oughts and imperatives of this law can be known the same way Kant's categorical imperative is to be known: through reason. This is ultimately an area of ambiguity in Reinach's ethics, as he never explains how the formal moral law is to become known. If the formal moral law is recognised by acts of cognition of the same kind in which values are grasped, then Reinach is close to positing value-sensitivity as a general practical wisdom or *phronesis*. However, it is also possible that Reinach saw the moral law as something deducible by reason, requiring no special sensitivity or receptivity; a position closer to Kant's. Reinach's claim that at

⁹⁸ Ibid.

⁹⁹ 'Concerning Phenomenology', trans. by Willard; S.W. p. 546.

¹⁰⁰ 'Contrary to Kant, we recognise an *emotive apriorism* as a definite necessity, and we demand a new division of the false unity of apriorism and rationalism that hitherto has existed'. Scheler, *Formalism*, p. 65.

least some of the principles of the formal moral law are ‘self-evident’¹⁰¹ lends weight to the latter interpretation over the former.

2.2.3 FRANZ BRENTANO

If Edmund Husserl was the father of phenomenology, then Franz Brentano (1838-1917) might be called its grandfather; however, he ‘stayed demonstratively aloof’ from the phenomenological movement.¹⁰² Brentano lectured at the University of Vienna between the years 1874 and 1895, where his students included Husserl (1884–1886) and later Sigmund Freud. Husserl later wrote that when it came to choosing ‘between staying in mathematics and devoting my life to philosophy, Brentano’s lectures [on descriptive psychology] were the deciding factor’.¹⁰³

Brentano practised philosophy in a place and time dominated overwhelmingly by neo-Kantianism, which he viewed as a stifling dogma and the final, catastrophic phase in a historical cycle within philosophy. This cycle had begun with Plato and the golden age of thought that his work inspired; from there, it followed a steady decline to the time of Kant himself, and the neo-Kantian school represented its lowest point.¹⁰⁴ Ultimately, however, with his insistence on a descriptive *a priori* method of enquiry in philosophy (descriptive psychology), ‘Brentano became part of a back-to-Kant

¹⁰¹ S.W. p. 503, paragraph 3; Appendix (IV).

¹⁰² Spiegelberg, *The Phenomenological Movement*, p. 20.

¹⁰³ Husserl, ‘Reminiscences of Franz Brentano’, trans. by Linda L. McAllister and Margarte Schättle, in *The Philosophy of Brentano*, ed. by McAllister (London: Duckworth, 1976), p. 47.

¹⁰⁴ Brentano’s historical cycle had four phases. It began with a period of ‘ascending development’ characterised by a ‘lively and pure theoretical interest’ and a ‘method that is essentially appropriate to nature.’ This led into a decline as pragmatic motives began to dilute the purity of the investigative endeavour, followed by a ‘time of predominating scepticism’ which paralysed philosophy altogether, before finally, in a backlash against scepticism, and ‘with pathologically intensified enthusiasm, people start once more to form philosophical dogmas.’ (Mezei and Smith, *The Four Phases of Philosophy*, pp. 85-86) Brentano considered neo-Kantianism to exemplify this disastrous final phase. (Ibid., p. 99)

movement — despite his critique of Kant’s idealism, with which the decay of modern philosophy begins’.¹⁰⁵

2.2.3.1 BRENTANO AND PHENOMENOLOGY

Brentano’s lectures on descriptive psychology, delivered in Vienna between 1887 and 1891, had an important role in inspiring Husserl’s phenomenology.¹⁰⁶ Brentano’s rediscovery and development of the Scholastic theory of intentionality was a vital inspiration to Husserl.¹⁰⁷ But as we saw in section one of this chapter, there was more to Brentano’s influence than this. Brentano’s method of descriptive psychology inspired the phenomenological method of describing *things themselves* as they are given in experience. Brentano also inspired Husserl’s aspirations toward establishing philosophy as a rigorous science, his opposition to logical psychologism, and in many aspects of his descriptive-psychological approach generally. More than this, Brentano ‘gave [Husserl] the problems with which he was to concern himself throughout his entire career and which drove him to ever more radical solutions’.¹⁰⁸

The fact that Brentano never identified himself with the phenomenological movement does not mean that his philosophical position was all that far apart from Husserl’s at certain times. Brentano (like Karl Stumpf, a pupil of Brentano from his earlier Würzburg period and another important influence on Husserl) ‘could hardly have

¹⁰⁵ Theodore de Boer, *The Development of Husserl’s Thought*, trans. by Theodore Plantinga (The Hague: Martinus Nijhoff, 1978), p. 107.

¹⁰⁶ Husserl did not personally attend Brentano’s lectures on descriptive psychology, as he had left Vienna before Brentano first delivered them, but instead read a transcript of the lectures after the fact. (See McDonnell, ‘Brentano and Intentionality’, p. 125)

¹⁰⁷ ‘Throughout his career in philosophy, Husserl reiterated the point that he began his philosophical path of thinking in phenomenology and phenomenological research in the aftermath of Brentano’s re-introduction of the Scholastic concept of intentionality, and his transformation of it into a root-concept of descriptive psychology’. McDonnell, ‘Brentano and Intentionality’, pp. 124-25.

¹⁰⁸ De Boer, *The Development of Husserl’s Thought*, p. xx.

been expected to join a movement started by one of their students'.¹⁰⁹ This point is all the more significant in Brentano's case, as Stumpf and Husserl each independently state in reminiscences of Brentano that, though he was 'against the development of a school',¹¹⁰ he was prone to be quite critical of his own students if their philosophical development seemed to diverge significantly from his own.¹¹¹ For his own part, Husserl's 'sustained critique of Brentano',¹¹² in particular his allegations of logical psychologism in spite of Brentano's vocal rejection of that position, inevitably contributed to whatever ill-feeling existed between Brentano and Husserl.

The greatest philosophical difference between Brentano and the early phenomenologists lies in Brentano's rejection of eidetic analysis, for, 'according to Brentano [...] there *are* no essences'.¹¹³ There is also an important difference in the degree to which Brentano was committed to a phenomenology-like method. In his *Psychology from an Empirical Standpoint* (1874), Brentano's descriptive psychology 'had only a subordinate function: it served as a preliminary for genetic psychology'.¹¹⁴

¹⁰⁹ Spiegelberg, *The Phenomenological Movement*, p. 6.

¹¹⁰ Carl Stumpf, 'Reminiscences of Franz Brentano', trans. by Linda L. McAllister and Margarte Schättle, in *The Philosophy of Brentano*, ed. by McAllister (London: Duckworth, 1976), p. 44.

¹¹¹ Stumpf writes: 'If he encountered basic intuitions in his students' publications which were considerably different from his own, and which were not thoroughly justified and defended on the spot, he was inclined to consider them at first as unmotivated, arbitrary statements, even though they may have been subject to several years' thorough study [...] Occasional ill-feelings were unavoidable in the face of this, just as has happened between other teachers and students'. Ibid. Husserl corroborates this: 'I knew how much it agitated [Brentano] when people went their own way, even if they used his ideas as a starting point. He could often be unjust in such situations; this is what happened to me, and it was painful'. Husserl, 'Reminiscences of Franz Brentano', p. 53.

¹¹² Dermot Moran, 'Husserl's Critique of Brentano in the Logical Investigations,' *Manuscripto*, vol. xxiii, no. 2 (2000), p. 166.

¹¹³ Roderick M. Chisholm, 'Brentano's Descriptive Psychology', in *The Philosophy of Brentano*, p. 98. Cf. Brentano, *Psychology from an Empirical Standpoint*, 'Appendix (1911), Supplementary Remarks, IX 'On Genuine and Fictitious Objects', pp. 291–301. Brentano believed that universal *a priori* judgements, e.g. Colour implies extension, could be re-interpreted, without loss of meanings, as negative existential judgments: 'there are no coloured things that are not extended'. Thus he can retain his Aristotelian presupposition that only individual things exist at the basis of perception for *a priori* judgements, and see Husserl's assertion of the existence of 'general objects' or 'essences', such as 'colour in general', as platonic fictive entities. Husserl's point that something general is also posited in such judgements, and that the judgements is about 'colour' itself, as a general object, and not a judgement that can be reduced to empirical judgments about existing coloured things (that, in principle, are open to correction).

¹¹⁴ Theodor de Boer, 'The Descriptive Method of Franz Brentano: Its Two Functions and Their Significance for Phenomenology', trans. by Linda L. McAlister and Margarete Schättle, in *The*

Genetic or explanatory psychology ‘had to take place according to the method of the natural sciences’;¹¹⁵ no descriptive method could be substituted for that. However, his view and function of descriptive psychology changed over time; ‘by 1889 [descriptive psychology] had acquired an autonomous position which is connected with its new function: establishing the foundations for the normative sciences’.¹¹⁶ Ethics, logic and aesthetics are included among these, as Brentano considered all three to be normative disciplines concerned with the correctness of judgment that could be defended (and could only be defended) through *a priori* judgements, not empirical matters of fact. An immoral practice (for example, that of slavery in Europe during the colonial era) cannot be defended by a matter of fact (in this case, the role played by slaves in developing and supporting many colonial economies).

2.2.3.2 BRENTANO’S ETHICS

Today, Brentano is known ‘above all [as] Husserl’s teacher’ and as a far-reaching influence on the development of phenomenology.¹¹⁷ This was not always where his fame lay, however, for, ‘Brentano’s reputation in Austria in the first decades of [the twentieth] century, outside the narrow circle of philosophers and theoretical psychologists, was principally as an ethicist’.¹¹⁸ Brentano had in fact been a Catholic priest for some years (between 1864 and 1873), but experienced difficulties over his religious vocation in the 1870s, particularly over the doctrine of Papal infallibility. He ultimately resigned from the priesthood prior to taking up his post at the University of

Philosophy of Brentano, ed. by Linda L. McAlister (London: Duckworth, 1976), p. 101.

¹¹⁵ *Ibid.*, p. 102.

¹¹⁶ *Ibid.*, p. 106.

¹¹⁷ Balasz M. Mezei and Barry Smith, *The Four Phases of Philosophy* (Amsterdam: Editions Rodopi, 1998), p. 1.

¹¹⁸ Barry Smith, ‘Kafka and Brentano: A Study in Descriptive Psychology’, in *Structure and Gestalt: Philosophy and Literature in Austria-Hungary and her Successor States*, ed. by Barry Smith (Amsterdam: Benjamins, 1981), p. 129.

Vienna in 1874. Perhaps not coincidentally, Brentano's work on ethics from after this period lacks the religious elements to be found in the work of Scheler and von Hildebrand.

Brentano first identifies the task of ethics with a descriptive method in his 1889 lecture 'Vom Ursprung Sittlicher Erkenntnis',¹¹⁹ in which he attempts to establish a basic theory of ethics, making the ethical relatable to pure experience. In this work, Brentano forms a direct association between the goodness of a thing or action and the experience of love. 'His main proposition is that what we know, when we know that a thing is good in itself, is that the feeling of *love towards* that thing (or *pleasure in* that thing) is "right" (*richtig*). Similarly, that a thing is bad, is merely another way of saying that *hatred* of that thing would be "right".¹²⁰ However, Brentano 'denied that phenomena of love and hate alone could provide a criterion of ethical correctness'.¹²¹ Something was needed that was given with absolute evidence; such absolutely evident givenness equates to objectivity, or as near to it as matters for the purposes of descriptive psychology.¹²²

Further developing this line of thought in *Descriptive Psychology*, Brentano examines acts of judgement and of emotion side by side. Both acts of judgement and of emotion are divided into being either positive or negative. A positive act of judgement affirms something; a positive act of emotion represents a positive or favourable attitude (a 'pro-attitude', such as love).¹²³ A negative act of judgement denies something; a negative act of emotion rejects, hates or vilifies. But distinct from the positivity or negativity of an act of judgement is its correctness, for, a judgement can be correct or

¹¹⁹ Translated by R. M. Chisholm and Elizabeth H. Schneewind as *The Origin of Our Knowledge of Right and Wrong* (London: Routledge and K. Paul, 1969).

¹²⁰ G. E. Moore, review of *The Origin of the Knowledge of Right and Wrong*, in *International Journal of Ethics*, Vol. 14, No. 1 (Oct 1903), p. 115.

¹²¹ Mezei and Smith, *Kafka and Brentano*, p. 130.

¹²² *Ibid.*, p. 131.

¹²³ Wilhelm Baumgartner, 'Franz Brentano: The Foundation of Value Theory and Ethics', in *Phenomenological Approaches to Moral Philosophy*, p. 132.

incorrect, depending on whether it corresponds with evidence. So too, Brentano concludes, with emotions, that it is one thing to love an intentional (intended) object of that act of love, but ‘love is correctly characterized if we *notice* that this intention itself is worthy of love (and an incorrect love lacks these characteristics)’.¹²⁴ So there are correct and incorrect emotional reactions, just as there are correct and incorrect judgements.

From here, Brentano puts forward a set of principles on which a morally correct course of action can be chosen. The principle of summation of good indicates that some goods and evils are greater and lesser than others, and that a greater, more certain or longer-lasting good is to be preferred over a lesser, less certain or shorter-lasting one (and conversely, a lesser, less certain or shorter-lasting evil is to be preferred over a greater, more certain or longer-lasting one).¹²⁵ The principle of *bonum progressionis* states an order of preference for pleasure and displeasure in the good and bad; it is better to take pleasure in the good than to take pleasure in the bad, and better to take displeasure in the bad than displeasure in the good; but it is also better to take pleasure in the good than displeasure in the bad.

This system of theoretical preferences forms the basis for a practical ethics of choices and preference. The correct moral choice consists in choosing the most preferable action that is possible. Both of these criteria are important because the choice must be made on the basis of preference for the good it represents, yet it must also

¹²⁴ Ibid.

¹²⁵ As fully expanded by Baumgartner: ‘that a sum of goods is to be preferred to a partial good, and conversely, that a partial bad is to be preferred to a sum of bads; the good that lasts longer than a good that is otherwise the same is to be preferred; the summation of mental states is to be preferred to a single one; some good known to be real is to be preferred to a probable or presumed one; and the more probable good is to be preferred to a good that is otherwise the same, but less probable’. Ibid., pp. 133-34.

involve a resolution to carry out an action one can indeed perform. Concisely, Brentano's imperative is to 'choose the best that is obtainable'.¹²⁶

More broadly, Brentano's conception of the moral life involves maximising one's usefulness to as many others as possible. The reminiscence of this 'usefulness' to a principle of utility is not accidental; in *The Foundation and Construction of Ethics*, Brentano states:

We have established a supreme moral precept [...] that can be regarded neither as altruistic nor as egoistic, neither as hedonistic nor as ascetic. If anyone wants to call it a utilitarian principle, he is free to do so. To make oneself as useful as possible to as many beings as possible *is* to strive for the best end attainable.¹²⁷

However, utility here does not mean maximising pleasure or happiness as such. Only appropriate pleasure, pleasure as a correct emotional reaction, has ethical importance for Brentano.

Even though Brentano does not refer to values in his ethics, his development of the concept of correct and incorrect emotional acts, and in particular the linking of this correctness to experiential evidence, are clearly reminiscent of a realist theory of values. In particular, the idea that certain objects of experience are correctly loved aligns with later phenomenological views on the feeling of value in relation to objects that bear it. More broadly, realist value theory owes a great deal to Brentano's theory of intentionality, as Reinach himself acknowledged.¹²⁸

¹²⁶ Ibid., p. 135. Behind this is Brentano's 'realistic' view that one cannot have a moral duty to bring about something that is unobtainable or that cannot be done.

¹²⁷ Brentano, *The Foundation and Construction of Ethics*, trans. by Elizabeth H. Schneewind (London: Routledge and K. Paul, 1973), p. 204.

¹²⁸ S.W. p. 504, paragraph 2; Appendix (IV).

2.2.3.3 BRENTANO AND REINACH

Reinach met Brentano in person at least once, during a visit to Florence with Dietrich von Hildebrand in 1911.¹²⁹ Reinach references Brentano's philosophy in *Grundzüge*,¹³⁰ though without naming any particular works as sources, providing documentary evidence that he was familiar with Brentano's philosophy. That he would have been is almost inevitable; at the very least, he would have encountered Brentano's ideas through their influence on Husserl, and thus on the development of phenomenology as a whole. Thus, whether directly or indirectly, Reinach's value-theory — specifically, his position that we attain knowledge about good and evil through intentional experiences of objective reality which he published in his *On the Origin of our Knowledge of Right and Wrong* in 1889 — owes a debt to Brentano's ethics.

2.2.4 THEODOR LIPPS

Theodor Lipps (1851-1914) was a highly influential philosopher and psychologist. Teaching philosophy at the Ludwig Maximilian University of Munich, he was the founder of the *Akademische Verein für Psychologie* (Academic Society for Psychology), to which Reinach and the other Munich phenomenologists initially belonged. However, Lipps is best remembered today as a psychologist, principally for his pioneering work on sympathy and the subconscious.¹³¹ Like Brentano, Lipps also taught Sigmund Freud. Unlike Brentano, Lipps was one of the most prominent early supporters of the theory of the unconscious mind, which Brentano rejected.¹³²

¹²⁹ Alice von Hildebrand, *The Soul of a Lion: Dietrich von Hildebrand: A Biography* (San Francisco: Ignatius Press, 2000), p. 112.

¹³⁰ See S.W. p. 503, paragraph 3, and 504, paragraph 2; Appendix (IV).

¹³¹ For a concise account of Lipps' work from the perspective of psychology, see Montag, Gallinat and Heinz, 'Theodor Lipps and the Concept of Empathy: 1851-1914', in *The American Journal of Psychiatry*, vol. 165, no. 10 (October 2008).

¹³² Brentano follows Locke's view that whatever is in consciousness must be conscious. Thus he sets

2.2.4.1 LIPPS AND PHENOMENOLOGY

Lipps did not identify with phenomenology as such, but his later philosophy was somewhat influenced by Husserl's. He developed a 'psychological technique for painstaking yet flexible descriptions of subjective phenomena' that had a lasting influence on the Munich phenomenologists.¹³³ Lipps was criticised by Husserl in the *Prolegomena to the Logical Investigations* for his psychologism.¹³⁴ Lipps did not react negatively to this criticism, however; on the contrary, after the *Logical Investigations* was published he 'began to send students to Husserl'.¹³⁵ Lipps also pioneered the important notion of *das Ich*, the I, 'conscious life prior to numerical differentiation into individuals pursuing individual conscious lives'.¹³⁶

Lipps's students included Pfänder, Daubert, Reinach, Theodor Conrad and Moritz Geiger, who took part in the Munich invasion of Göttingen, and who joined the phenomenological movement already equipped with Lipps's descriptive technique. While the Munich and Göttingen phenomenologists, his own students included, rejected Lipps' psychologistic views, his influence on them endured.

2.2.4.2 LIPPS'S ETHICS

Lipps's main work on ethics is a collection of lectures published together in 1899 as *Die Ethischen Grundfragen: Zehn Vorträge*. Each deals with a different topic within ethics: egoism and altruism, motivation, eudaimonism and utilitarianism, autonomy and

aside the 'hypothesis' of the unconscious in any treatment of consciousness as such in the elaboration of his idea of descriptive psychology in his 1874 study of *Psychology from an Empirical Standpoint*.

¹³³ Spiegelberg, *The Phenomenological Movement*, p. 197.

¹³⁴ Dermot Moran, *Edmund Husserl: Founder of Phenomenology* (Cambridge Malden: MA Polity Press, 2005), p. 23.

¹³⁵ Ibid.

¹³⁶ Marianne Sawicki, *Body, Text and Science: The Literacy of Investigative Practices and the Phenomenology of Edith Stein* (Dordrecht: Kluwer Academic Publishers, 1997), p. 12.

heteronomy, duty and inclination, moral norms, purposes, social organisms, the freedom of the will, and responsibility and punishment. As he covers each of these topics in existing ethical or legal theory, Lipps builds up his own theories on ethics and on correct motivation.

Lipps refers to values (*Werte*) in his ethics, but here, ‘value’ does not connote an objective hierarchy of good and bad. For Lipps, a human being’s value-judgements are not graspings of outward reality, but are inner responses shaped by prevalent morality and tradition.¹³⁷ Thus, each individual human being has his or her own perspective when it comes to values. In a certain sense, Lipps’s value theory is psychological rather than realist, as it focuses on values as inner responses of the individual subject rather than as objectively given phenomena.

Lipps’s ethics, like Kant’s, is voluntaristic; that is, it is primarily concerned with the assessment of the will, and not of actions, persons or personal qualities as such. Unlike Kant, however, Lipps does not call for the will to act out of duty to universal laws. Rather, Lipps’s chief concern is a kind of authenticity: all willing ought to be motivated by acknowledgement of one’s own striving or conation (*Streben*), distinct from either egoism or altruism.¹³⁸ This, therefore, stresses being motivated by the feeling of one’s own value (*Eigenwertgefühl*).

Lipps’s term for this particular motivational attitude is ‘self-respect’ (*Selbstachtung*).¹³⁹ This attitude means that one must not only begin by respecting oneself, but also act in such a way so as not to lose that self-respect.¹⁴⁰ In this attitude it

¹³⁷ ‘Morals, traditions, ethical judgements and prejudices prevalent in my environment [...] can all determine me in my ethical valuations’. Theodor Lipps, *Die Ethischen Grundfragen*, p. 22.

¹³⁸ Lipps spends much of the *erster Vortrag* carefully describing egoism and altruism, attempting to give them firm definitions that comply with customary usage. Egoism is motivated entirely by good or pleasure for oneself, altruism by good for others. Lipps argues that any further extension of these terms that might cause them to overlap with his basic motive of ethics would be artificial and contrary to their use in everyday language.

¹³⁹ Lipps, *Die Ethischen Grundfragen*, p. 29.

¹⁴⁰ *Ibid.*, p. 30.

is still possible to seek out goals that seem egoistic. But whereas the egoist cares only about goods and pleasures for himself or herself, regardless of where they come from, the self-respecting individual is not satisfied to receive these things through the efforts of others or by accident, without working for them. To receive goods and pleasures that one has not earned does not bring to the subject ‘the delightful sense of power (*Kraftbewußtsein*), the entirely unique, liberating and extending feeling of can-do, the energy or strength of *my will*’.¹⁴¹ Happiness, then, stems not from succeeding in realising the goals of actions, but from the actions themselves inasmuch as they are expressions of one’s own will.

There is such thing as a valuing of objects for Lipps, as seen when one takes enjoyment in seeing something appealing. The enjoyment in these cases ‘relates not to the object, but to my [inner] activity, or to me’.¹⁴² The fact that an object has the potential to inspire such a response, however, is a function of that object. ‘The objective value of a thing is its possibility — which resides entirely in the thing — for engendering a feeling of value’.¹⁴³ Thus, the object does not truly have value in itself, but the qualities of that object that inspire a value response in a person are inherent in the object.

For Lipps, the basic motive of self-respect is always good in itself. Evil arises from failure to properly respect one’s own strivings and values, and to seek this feeling of satisfaction in the execution of one’s own will. Virtue is something defined by what one is or does, and not by what one is not or by what one does not do. ‘Virtue is competence, inner life-power [...]. The criminal can be more virtuous than dozens of “virtuous” human beings [... who] do no evil, harm nobody, and through their actions

¹⁴¹ Ibid., my emphasis.

¹⁴² Ibid., p. 35.

¹⁴³ Ibid., p. 123.

do not disturb the peace of individuals or the community'.¹⁴⁴ As a general moral principle, Lipps proposes: 'At all times, conduct yourself inwardly in such a way that in respect of your inward behaviour you can always remain true to yourself'.¹⁴⁵ This is far from being a simple doctrine of selfishness or self-interest because certain ethical norms are supported by the need to be true to oneself. For example, to lie to another person or to act otherwise in a deceitful or treacherous manner means to misrepresent oneself and contradict one's own true values.

For Lipps, the identification of the positive with goodness is universal. 'Evil is, in itself, a negative. It is the non-being of the good. Everything positive is good'.¹⁴⁶ Something is always to be preferred over nothing, which Lipps gives as a reason why the death penalty is morally unjustified: 'even the worst human being is still morally more than the nothing with which the death penalty would replace him or her'.¹⁴⁷

2.2.4.3 LIPPS AND REINACH

Despite not being identified as a phenomenologist himself, Lipps had a very significant influence on the Göttingen (and, of course, especially the Munich) phenomenologists. It was his students who made up the Munich 'invasion' of Göttingen in 1905, and several, including Reinach, would go on to become established members of the Göttingen circle. Despite having turned away from Lipps, Reinach and the other Munich phenomenologists had their understanding of phenomenology somewhat influenced by Lipps's thought.¹⁴⁸

¹⁴⁴ Ibid., p. 133.

¹⁴⁵ Ibid., p. 134.

¹⁴⁶ Ibid., p. 301.

¹⁴⁷ Ibid.

¹⁴⁸ Reinach and Lipps also seem to have remained on good terms despite Reinach's turn away from Lipps. Reinach's first application for habilitation was in Munich under Lipps; only when this failed to take place did he begin his successful application in Göttingen.

Reinach's careful distinguishing of the moral attitude from both egoism and altruism closely resembles Lipps' discussion in the *erster Vortrag*. However, Reinach criticises Lipps for his voluntaristic ethics, just as he does Kant, considering it an unjustified reduction in the scope of ethics. Reinach also criticises Lipps for his identification of all positive motivation with goodness, and evil with a lack or absence. Reinach argues that a sadistically cruel human being takes active pleasure in the suffering of others, which by Lipps' account would make him morally better than another person who simply lacks sympathy (*Mitgefühl*) for the suffering of others.¹⁴⁹ Interestingly, the influence of Lipps on Reinach is also visible in a stylistic sense. The structure of the early sections of Reinach's *Grundzüge* resembles that of Lipps' *Ethischen Grundfragen* and Reinach even uses some of the same hypothetical scenarios as Lipps to highlight his points.

SECTION THREE THE PHENOMENOLOGICAL MOVEMENT

Earlier in this chapter, we discussed the meaning of phenomenology and what distinguishes 'early phenomenology' from later approaches. The division between early and later phenomenological ethics can be made along similar lines. Early phenomenological ethics was characterised by its realist view of the experience of *values*. As a term, value (*Wert*) 'invaded philosophical discussions at the turn of the 19th and 20th centuries',¹⁵⁰ and was reasonably well-established by the time of the phenomenologists. As we saw in the previous section, value has a role in Lipps's ethics. What distinguishes Lipps' value theory from that of the early phenomenologists is the

¹⁴⁹ See S.W. p. 503, paragraph 1; Appendix (IV).

¹⁵⁰ Jürgen Gebhardt, 'Die Werte; Zum Ursprung eines Schlüsselbegriffs der politisch-sozialen Sprache der Gegenwart in der deutschen Philosophie des späten 19. Jahrhunderts', in *Anados: Festschrift für Helmut Kuhn*, ed. by Rupert Hofmann, Jörg Jantzen and Henning Ottmann (Weinheim: VCH, Acta Humaniora, 1989), p. 35 (quoting Helmut Kuhn).

realism of the latter with regard to values and their hierarchy. For Lipps, there are no universally correct value responses, only responses that are correct for the individual person. In realist phenomenological value theory, there is some kind of objective hierarchy of values, although the details of this vary among phenomenologists.

2.3.1 EARLY PHENOMENOLOGICAL ETHICS

Broadly speaking, realist phenomenological approaches to value-theory share two key views: firstly, that value is something that is discovered in the subject's experiences, and has some level of objective reality *before, during* and *after* the experiencing of it; secondly, that values are experienced in an act entirely separate from the perceiving of the object that bears the value. This experiencing of value is described as a grasping (*erfassen*) or perception (*wahrnehmen*), and often as a kind of feeling (*fühlen*), all indicating that something outside the subject, but also distinct from the intended object, is grasped. The feeling of a value is often considered distinct from a feeling in the sense of an emotional state, such as pleasure.¹⁵¹ Reinach, for example, indicates that emotions lack the character of a grasping of something outside the subject, but may be a reaction to such a grasping, including the grasping of a value.¹⁵²

Husserl moved away somewhat from this value realism as part of his general move toward transcendental idealism, but he did not by any means abandon value theory completely; he simply 'reject[ed] the kind of realism in which values are directly

¹⁵¹ However, 'according to many philosophies and psychologies of the emotions appraisals, evaluations, assessments, valuing and impressions of value and importance are essential to our emotional lives. And according to many philosophies value is to be understood in terms of emotions'. Thus it is 'surprising', as Kevin Mulligan remarks, that the philosophies of value and of emotion pay so little direct attention to one another. Kevin Mulligan, 'Emotions and Values', in *Oxford Companion to the Philosophy of Emotions*, ed. by P. Goldie (Oxford University Press, 2010), p. 475.

¹⁵² S.W. p. 493, paragraph 1; Appendix (IV). Even the latter situation of emotions being inspired by values is not reliable as 'all kinds of different emotions can build themselves on [the] feeling of value. [Even] opposite emotions can arise from the same value (viewing the work of one's enemy!)'.

given independently of the objects that instantiate them'.¹⁵³ Even beyond this, however, there were already some notable differences in how the early phenomenologists understood values and their role in ethics. For this reason a single discussion of the role of values in phenomenological ethics is not sufficient here; for those phenomenologists profiled below who developed a theory of values, the details of his or her value theory will be explored. In particular, not all of the early phenomenologists of ethics agreed on how values and value experience translate into knowledge of good and evil, or otherwise form the basis for an ethics.

2.3.2 THE MUNICH CIRCLE

During and after his time as a student in Munich, Reinach had close contact with the philosophers who made up the *Akademische Verein für Psychologie* and later the Munich circle of phenomenologists. As their influence was significant in the early development of Reinach's phenomenology (and some of their work is relevant in the discussion of themes that touch on Reinach's ethics, particularly when it comes to the will and motivation), some discussion of them is appropriate here. It was Husserl's *Logical Investigations* that inspired Reinach's move away from his Lippsonian roots and towards Husserl's phenomenology, but it was the members of the Munich circle who introduced Reinach to the *Logical Investigations* in the first place, and even before that to some phenomenological themes in their own work. Two leading members of the *Verein*, Johannes Daubert and Alexander Pfänder, were particularly influential on Reinach's development during this time.¹⁵⁴

¹⁵³ John J. Drummond, introduction to *Phenomenological Approaches to Moral Philosophy*, p. 9.

¹⁵⁴ Pfänder and Daubert were also responsible for transcribing and preserving Reinach's earliest extant work on ethics, later published as *Grundbegriffe der Ethik*.

2.3.2.1 JOHANNES DAUBERT

Daubert (1877-1947) was one of Reinach's fellow students in Munich, and the one who drew Reinach's attention to the *Logical Investigations*; he and Reinach went on to introduce Husserl's work to others.¹⁵⁵ Daubert was one of the leading lights of the Munich circle as a whole, and his pioneering work would influence the direction that Reinach took with his phenomenology.

It was [...] Johannes Daubert who was intellectually the most important figure among the Munich phenomenologists, and it was Daubert who was to be of most significance for Reinach's later philosophical development. Already in this period Daubert was working on just those topics — positive and negative judgements, impersonalia, dispositions, *Sachverhalt* and *Gegenstand* — which were later to play a central role in Reinach's work.¹⁵⁶

Daubert's importance to the early phenomenological movement is largely obscured by the fact that he 'never published a line'.¹⁵⁷ His only surviving work was in the form of manuscripts, released only after his death and written in his personal shorthand. As is so often the case in the tight-knit relationships of the early phenomenologists, Daubert's philosophical influence on his fellows is very difficult to trace, but his significance cannot afford to be overlooked. Along with Pfänder, he 'primarily led' the *Akademische Verein für Psychologie*.¹⁵⁸

Daubert's doctoral dissertation dealt with 'existential judgments' and states of affairs, establishing the tone of his work before he encountered Husserl's phenomenology; its content 'renders Daubert's immediate interest in the *Logical Investigations* less than two years later completely understandable'.¹⁵⁹ Daubert shared

¹⁵⁵ Brettler, *The Phenomenology of Adolf Reinach*, p. 2.

¹⁵⁶ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 4.

¹⁵⁷ Karl Schuhmann and Barry Smith, 'Johannes Daubert vs. Husserl's Ideas I', in *Review of Metaphysics* 39 (1985), p. 763. The authors nonetheless 'have no hesitation in calling him — and not Husserl — the true architect of the phenomenological movement'.

¹⁵⁸ Brettler, *The Phenomenology of Adolf Reinach*, p. 1.

¹⁵⁹ Baltzer-Jaray, *Doorway to the World of Essences*, p. 119.

the classic view of phenomenology as the eidetic description of phenomena as they are experienced. He also shared the realist standpoint of the other early phenomenologists.

Daubert's objective inclinations are evident when he describes the object as the 'a priori bearer or substrate of determinations.' [...] 'The unity and essence of an object are independent of consciousness. The unity of object indicates an object in "absolute signification".'¹⁶⁰

Although we cannot show any direct influence from Daubert on Reinach's ethics, Daubert's work on states of affairs and judgements helped to form Reinach's understanding of those topics, which in turn informed his work on ethics; Reinach's identification of moral rightness as a predicate of states of affairs was his first contribution to ethics. Daubert's philosophy forms an important part of Reinach's philosophical background without having a direct bearing on our assessment of Reinach's contribution to early phenomenological ethics.

2.3.2.2 ALEXANDER PFÄNDER

Pfänder (1870-1941) was a founding figure in the Munich circle of phenomenologists, and although he and Husserl had little direct contact, Husserl regarded Pfänder as 'the "most solid" thinker of the Munich group'.¹⁶¹ Nevertheless, 'Pfänder, along with the other members of the Munich group, stood fundamentally in the realist tradition and tried to utilize the phenomenological approach for buttressing the realistic position'.¹⁶² As with Daubert, Pfänder was an influence on Reinach before the latter ever encountered Husserl's philosophy; and, as with Daubert, this influence is made difficult to trace by the close-knit nature of the *Verein*. However, there are some clearly

¹⁶⁰ Ibid., p. 122.

¹⁶¹ Herbert Spiegelberg, foreword to Alexander Pfänder, *Phenomenology of Willing and Motivation*, trans. by Spiegelberg (Northwestern University Press, 1967), p. xix.

¹⁶² Ibid.

identifiable areas where Pfänder's work on willing and motivation influenced Reinach's.

Pfänder developed the distinction between acts of willing and striving, which Reinach, among others, adopted. Strivings are impulses or inclinations that accost the I and can lead it into action without an act of willing. Strivings are positive or negative in nature (towards or against something), but they are not the same as value-experiences; they originate from the I. If a sudden noise causes me to jump, I am the source of that action, but I do not will it. Equally, an action can be willed without any striving towards it being experienced, as when a decision is made purely on the basis of calm reflection. Reinach also makes use of Pfänder's term project (*Projekt*) for describing 'the proposed behaviour of the self' that forms part of the act of willing,¹⁶³ and his identification of a motivational impulse as a 'demand' (*Forderung*).¹⁶⁴ Reinach refers to these ideas in his works on ethics, and they form part of how he proposes to assess decisions from an ethical standpoint.

2.3.3 EDMUND HUSSERL

Edmund Husserl (1859-1938) has a strong claim to be considered the founder of the phenomenological movement. He was 'the master' to the Göttingen students. Although a student of Brentano, Husserl 'distanced himself step by step' from the Brentano school of Austrian philosophy, 'not only in the details, but ultimately in his entire attitude'.¹⁶⁵ The impact of the publication of his *Logical Investigations* at the dawn of the twentieth century is well testified to in the history of early phenomenology (see section one, above); for Husserl himself, it saw him move from his position as

¹⁶³ Pfänder, *Phenomenology of Willing and Motivation*, p. 22.

¹⁶⁴ *Ibid.*, p. 28.

¹⁶⁵ Salice, *Urteile und Sachverhalte*, pp. 17-18.

Privatdozent at Martin Luther University in Halle to a professorship in Göttingen. Originally a mathematician who also studied astronomy and psychology, Husserl ‘always remained something of a natural scientist even when he turned to philosophy’.¹⁶⁶

2.3.3.1 HUSSERL’S ETHICS

Husserl is not well known for his work on ethics; he published nothing on the subject during his lifetime. He did, however, give several lecture courses on ethics at different times, and while it is not clear whether Reinach attended these specific lectures (the earliest took place in 1902, before Husserl and Reinach first met), it is highly likely that Husserl’s ideas on ethics would have become known to Reinach during their years in Göttingen. Some manuscript notes from these lectures have survived amongst Husserl’s considerable *Nachlass*.¹⁶⁷

In the *Logical Investigations*, Edmund Husserl makes a brief discussion of the phenomena of ‘values’ and ‘disvalues’, linking those terms with the phenomenological experiences of intentional preference.¹⁶⁸ He only began to build on this concept in his subsequent lectures in Göttingen. Here, Husserl discusses the divide between ethics based on feelings (for example, that of Francis Hutcheson) and ethics based on reason (for example, that of Immanuel Kant). Husserl does not fully agree with either of these

¹⁶⁶ R. Sokolowski, *Introduction to Phenomenology* (Cambridge University Press, 2000), p. 212. Thus Husserl never rejected the method of the natural sciences, in the way that Dilthey did, but he did reject the ability of natural science to explain human consciousness and the very existence of the world that they assumed to simply there, present (*vorhanden*), whether attention is directed towards it, or not, as fostered by the thesis of the natural attitude.

¹⁶⁷ See Husserl, *Vorlesungen über Ethik und Wertlehre*, ed. by Ullrich Melle (Dordrecht: Kluwer Academic Publishers, 1988). This volume covers three major groupings of lectures (one set from 1908/9, one from 1911 and one from 1914) as well as some more fragmentary material.

¹⁶⁸ Husserl, *Logical Investigations*, trans. by J.N. Findlay (London: Routledge and K. Paul, 1970), Prolegomena, chapter 2, §14, p. 84. ‘Each normative proposition presupposes a certain sort of valuation or approval through which the concept of a “good” or “bad” (a value or disvalue) arises in connection with a certain class of objects: in conformity with this, objects divide into good and bad ones’.

traditions. 'He sides with rationalist ethics in denouncing the subjectivism and relativism of the ethics of feeling, but he agrees with the ethics of feeling that axiology and ethics are ultimately grounded in acts of feeling and willing'.¹⁶⁹

Husserl instead argues that rationality, objectivity and truth can also pertain to emotional and volitional acts, acts of feeling and of willing. Thus, there must also be an analogue in the world of emotional reactions to the formal laws of reason that obtain in the intellectual sphere. The search for a suitable analogue of this kind 'dominates Husserl's early ethics'.¹⁷⁰ He did not, however, develop a practical theory of ethics at this time, or later.¹⁷¹ Values in a broadly realist sense continue to have an important role in ethics for Husserl during this time; in a 1914 lecture, he argues for the 'strict and actual objectivity of the validity of the axiological sphere',¹⁷² adding, 'The being taken of something as a value [*für-Wert-gehalten-Werden*] persuades us of the objective being of a value: the being, objective in the narrow sense, of a positive or negative value, or the objective non-being of a value'.¹⁷³

In the post-war years, Husserl's approach to ethics shifted somewhat. He came to emphasise the importance of the phenomenon of love in ethics over any kind of formal or categorical moral law, and social or community ethics over the ethics of individuals. Husserl now distinguishes objective values, which are the more classical phenomenological values, part of the content grasped or received in intentional experience, from values of love, which are not originally instantiated in an object, but are given to it by the subject's act of love. 'This love is something active', and 'involves

¹⁶⁹ Ullrich Melle, 'Edmund Husserl: From Reason to Love', in *Phenomenological Approaches to Moral Philosophy*, p. 231.

¹⁷⁰ Ibid.

¹⁷¹ Ibid., p. 236.

¹⁷² Husserl, *Vorlesungen Über Ethik und Wertlehre*, p. 88.

¹⁷³ Ibid.

an element of choice'.¹⁷⁴ It is the latter values, the values of love, that take absolute precedence for Husserl, completely displacing the objective values. Values of love do not naturally form a hierarchy. 'There is no rational preference of one value for the other; there is only the tragic sacrifice of one absolute value for another equally absolute value'.¹⁷⁵

This approach does not, of course, make it easy to establish what an individual ought to do in a specific situation. In fact 'Husserl acknowledged the irrationality of the absolute ought if it is looked at in isolation. The absolute ought of the individual person has its rational meaning only in a theological context'.¹⁷⁶ Ethics as such for Husserl is now concerned primarily with communities, to determine which forms of community are preferable over others.¹⁷⁷ The reference to theology is also significant, however. Faith in God gives new meaning to the notion of an absolute ought for the individual and allows reason and love to be balanced. In Melle's words, 'Only through faith in God can we overcome any apparent contradiction between the rule of reason and the rule of love'.¹⁷⁸

2.3.3.2 HUSSERL AND REINACH

Husserl and Reinach met during Reinach's first visit to Göttingen in 1905, and by the following year, they were corresponding by letter. Husserl's *Logical Investigations* —

¹⁷⁴ Melle, 'Edmund Husserl', p. 244.

¹⁷⁵ Ibid., p. 245.

¹⁷⁶ Ibid.

¹⁷⁷ Husserl distinguishes three types of community in particular: (1) 'The community of love [...] where the aims and strivings of each member are part of the aims and strivings of every other member'; (2) 'The community of accumulative production [...] where the work of each member increases a common stock'; and (3) a community characterised by 'a consciously formed common will', and which is effectively a 'personality of a higher order [...] more than the sum of the individual members of the community'. (Ibid., p. 246)

¹⁷⁸ Ibid., p. 247.

parts of which Reinach had read twice before their first meeting¹⁷⁹ — had a huge impact on Reinach and inspired his move towards phenomenology. Husserl later credited Reinach with being one of ‘the very first philosophers who fully understood the distinct character of the new phenomenological method and who was able to see its philosophical significance’,¹⁸⁰ and with assisting his own understanding of the *Logical Investigations*.¹⁸¹ Philosophically, however, Reinach and Husserl would soon begin to grow apart. By the time Reinach completed his habilitation in Göttingen, Husserl had already delivered the lectures that made clear the transcendental turn in his thought.¹⁸²

Although Reinach had already been introduced to the terminology of values by Lipps, the use of ‘value’ in Reinach’s writings on ethics denotes a real quality that is more likely to have been inspired by Husserl’s influence. However, as early as 1906, Reinach was already making his own contributions to a phenomenological theory of ethics. The bulk of Husserl’s distinctive work on ethics, as outlined above, dates from the post-war years, too late to have influenced Reinach’s work. Husserl does not seem to have adopted any of Reinach’s original ideas in these later works, either. Husserl’s move away from value-realism and towards his emphasis on love put ever greater distance between his ethics and Reinach’s; even though values remained important for Husserl, his understanding of the term ended up being quite different from Reinach’s.

2.3.4 MAX SCHELER

Max Scheler (1874-1928) is one of the first names many would associate with the field of early phenomenological ethics. Though he earned his doctorate in the strongly neo-

¹⁷⁹ Schuhmann and Smith, ‘Adolf Reinach: An Intellectual Biography’ in *Speech Act and Sachverhalt*, p. 8.

¹⁸⁰ Husserl, quoted in ‘Reinach as a Philosophical Personality’, trans. by John F. Crosby, *Aletheia*, 3 (1983), p. xii.

¹⁸¹ Oesterreicher, *Walls are Crumbling*, p. 100.

¹⁸² Bell, *Husserl*, p. 153.

Kantian environment of the University of Jena and was an admirer of Kant's work, his rise to prominence came after he embraced a realist phenomenology that both reflected and would come to influence the Munich and Göttingen phenomenologists. Scheler was not, however, a follower of Husserl; 'a close look at [*Formalism and The Nature of Sympathy*] reveals that Max Scheler's concept of the function, purpose and significance of phenomenology [...] is at bottom different from Husserl's'.¹⁸³ This gap would only grow wider as Husserl began his move toward transcendental phenomenology, while Scheler persisted with his realist approach.¹⁸⁴

Scheler's academic career was badly affected by his turbulent personal life. Two public scandals saw him lose first his position at Jena, then at Munich, after which he spent time in Göttingen as a private scholar unattached to the university. At this time, Scheler 'made but little professional contact with Husserl, but all the more with [Husserl's] students',¹⁸⁵ many of whom attended Scheler's private lectures.¹⁸⁶ During the war, Scheler's public reputation was restored somewhat by his political writings, and in 1919 he was able to secure a teaching position at the University of Cologne. In 1928 he was also offered a position at Frankfurt University, but he died on the eve of taking it up.

¹⁸³ Manfred S. Frings, foreword to *Max Scheler (1974-1928) Centennial Essays*, ed. by Frings (The Hague: Martinus Nijhoff, 1974), p. vii.

¹⁸⁴ Around 1913, Scheler wrote an essay (which was not published in his lifetime) on 'Phenomenology and the Theory of Cognition'. Scheler identifies phenomenology as an 'attitude' and a 'procedure of seeing' that makes possible insight into a realm of facts that are otherwise hidden. See, Scheler, trans. by Spader, in *Scheler's Ethical Personalism*, pp. 52-53. The language here is similar to that used by Reinach in his 1914 lecture 'Über Phänomenologie'. Scheler calls phenomenology a kind of empiricism, but identifies the key distinction in that the sense empiricist seeks to fulfil an explanatory role instead of simply describing what is given. By means of his phenomenological attitude, Scheler believes it is possible to have 'immediate intuition of the essences of non-formal (material) values'. Spader, *Scheler's Ethical Personalism*, p. 78.

¹⁸⁵ Spiegelberg, *The Phenomenological Movement*, p. 269.

¹⁸⁶ This included Edith Stein, who recorded her impressions of Scheler from these meetings in her autobiography. See, Stein, *Life in a Jewish Family*, pp. 258-60. Stein notes that 'the young phenomenologists were greatly influenced by Scheler; some, like Hildebrand and Clemens, depended more on him than on Husserl'. (p. 258)

Scheler was one of the most influential figures of the early phenomenological movement. ‘Jean-Paul Sartre, Maurice Merleau-Ponty, Gabriel Marcel, Martin Buber, Nicolai Hartmann, Roman Ingarden, Hans-Georg Gadamer, Alfred Schutz, Karol Wojtyla, and many other philosophers of international reputation have acknowledged their debt to him’.¹⁸⁷ In later years during his lifetime, Scheler’s influence on ethics was somewhat overshadowed and diminished by Heidegger’s ‘repudiation of all philosophies of value’.¹⁸⁸ However, Heidegger was not dismissive of Scheler and his thought. ‘By the many testimonies of his contemporaries throughout Europe (such as [Nicolai] Berdyaev, [Martin] Heidegger, [José] Ortega y Gasset), [Scheler was] often referred to as the most brilliant mind of his time’.¹⁸⁹

2.3.4.1 SCHELER’S ETHICS: CHRISTIAN VALUES AND ETHICAL PERSONALISM

By contrast with Husserl, ethics was one of the main preoccupations of Scheler’s philosophy. Though Scheler’s relationship with his Christian faith and the Catholic Church was as volatile as the rest of his personal life, one of his first works on ethics (written in 1912) was a defence of Christian values against an attack by Nietzsche,¹⁹⁰ and Christian themes are prevalent in his philosophy as a whole.

Scheler’s major work on ethics, *Der Formalismus in der Ethik und die materiale Wertethik*,¹⁹¹ is, in large part, given over to disputing Kant’s rejection of non-formal ethics, and it has been suggested that Scheler’s ethics as a whole is best understood in

¹⁸⁷ Philip Blosser, ‘Max Scheler: A Sketch of his Moral Philosophy’ in *Phenomenological Approaches to Moral Philosophy*, p. 392.

¹⁸⁸ Ibid.

¹⁸⁹ Manfred S. Frings, foreword to *Max Scheler (1874-1928) Centennial Essays*, ed. by Frings (The Hague: Martinus Nijhoff, 1974), p. ix.

¹⁹⁰ Scheler’s *Ressentiment* was published in 1912 and revised in 1915. This work will be discussed briefly below, as Scheler’s early work in it on love and *ressentiment* is relevant for his subsequent value-ethics.

¹⁹¹ Translated as *Formalism in Ethics and Non-Formal Ethics of Values* by Manfred S. Frings and Roger L. Funk. Henceforth *Formalism*.

the context of this conflict with Kant's ethics.¹⁹² Scheler was an admirer of Kant, and 'was most appreciative of what Kant had accomplished in showing the inadequacy of all prior attempts at non-formal ethics'.¹⁹³ Scheler also rejected all post-Kantian approaches to non-formal ethics, which he felt 'provide only the background against which the greatness, strength and terseness of Kant's work stands out all the more'.¹⁹⁴ However, Scheler also believed that a non-formal ethics was still possible and that Kant's formal ethical approach was 'blind'.¹⁹⁵ Scheler's goal was to provide the foundation for a new, non-formal Christian ethics.

2.3.4.2 SCHELER AND *RESSENTIMENT*

In his 1912 article on *Ressentiment*, Scheler responds to an accusation made by Nietzsche that all ethics arise from the effects of *ressentiment*, the denial of true values by those who lack value themselves.¹⁹⁶ Nietzsche had argued that Christian values were the product of a 'slave morality'; unlike a noble morality that affirms and celebrates the self, this slave morality simply reacts with hostility against everything outside the self. Inoffensiveness, cowardice and powerlessness are made from weaknesses into virtues as an act of revenge by those who themselves are weak, while true strengths and virtues are devalued and regarded negatively.

¹⁹² Blosser, *Max Scheler*, p. 397.

¹⁹³ Spader, *Scheler's Ethical Personalism*, p. 41.

¹⁹⁴ *Ibid.*, p. 42.

¹⁹⁵ *Formalism*, p. 206. It is important to note that unlike some others, Scheler is not attacking Kant's ethics 'simply as a totally "empty" formalism. [...] Scheler's criticism of Kant's formalism is not so much that it is simply empty but rather that it is inadequate'. (Spader, *Scheler's Ethical Personalism*, pp. 33-34)

¹⁹⁶ *Ressentiment*, a French term, was used untranslated by both Nietzsche and Scheler. It does not translate any more easily English than German, as the 'false friend' resentment does not match the original meaning. *Ressentiment* refers to a particular kind of antipathy towards another person, in which a subject reacts negatively against another person's genuinely positive value. 'Essentially, *ressentiment* is a *re*-feeling of a specific clash with someone else's value-qualities'. (Manfred S. Frings, foreword to *Max Scheler: Centennial Essays*, p. 82).

Scheler agrees with Nietzsche that *ressentiment* played a role in some sets of values, especially the *bourgeois* values he believed to have taken over from Christian values long before his time, but he holds up Christian values as being specifically free of such a basis. According to Scheler, what Nietzsche misunderstood in Christian values is the ‘reversal in the movement of love’ to be found there.¹⁹⁷ In classical thought, love was understood as a striving or aspiration from the lesser to the greater; Christian love, though, is embodied in ‘that the nobler stoops to the vulgar, the healthy to the sick, the rich to the poor, the handsome to the ugly, the good and saintly to the bad and common, the Messiah to the sinners and publicans’.¹⁹⁸ In this self-renunciation, the lowering of oneself in service to others, the Christian does not lose his or her own nobility, but instead moves closer to God. This, then, is no result of *ressentiment* or of a refusal to better oneself, but an attempt precisely to better oneself through these humbling actions.

‘Modern humanitarian love’ — in which Scheler includes Bentham’s utilitarianism — is a different case. It is not an affirmation of any positive value, but a protest ‘against ruling minorities that are known to be in the possession of positive values’.¹⁹⁹ This is indeed a result of *ressentiment* and is the kind of corrupt ethics that Scheler, in his revival of Christian values, seeks to overturn.

2.3.4.3 THE AXIOMS OF SCHELER’S ETHICS

Early in *Formalism*, Scheler identifies three sets of axioms that he believes all non-formal ethics of values, his own included, must presuppose. The first set in particular is worth reproducing here for later comparison:

¹⁹⁷ Max Scheler, *Ressentiment*, trans. by Louis A. Coser (Holdheim: Schocken Books, 1972), p. 31.

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*, p. 55.

I.

- a. The existence of a positive value is itself a positive value.
- b. The non-existence of a positive value is itself a negative value.
- c. The existence of a negative value is itself a negative value.
- a. The non-existence of a negative value is itself a positive value.

II.

- a. Good is the value that is attached to the realization of a positive value in the sphere of willing.
- b. Evil is the value that is attached to the realization of a negative value in the sphere of willing.
- c. Good is the value that is attached to the realization of a higher (or the highest) value in the sphere of willing.
- d. Evil is the value that is attached to the realization of a lower (or the lowest) value in the sphere of willing.

III. The criterion 'good' ('evil') in this sphere consists of the agreement (disagreement) of a value intended in the realization with the value of preference, or in its disagreement (agreement) with the value placed after.²⁰⁰

2.3.4.4 SCHELER'S VALUE THEORY

Key to Scheler's disagreement with Kant is his stance on values and their objectivity. Kant had argued that goods — what Scheler would call the bearers of values — are not fixed or eternal; those things that are goods change as they themselves are created, altered, and destroyed. A material ethics of goods, then, would have no fixed, objective basis. Scheler responds that although the bearers of values change, the values

²⁰⁰ *Formalism*, pp. 26-27.

themselves ‘do not change with changing objects [...]’. The value of friendship remains a value, no matter if my friend turns out to be a rascal’.²⁰¹ Thus, although an ethics of goods is not viable, an ethics of values is. Scheler also rejects Kant’s view that goodness is bound up with the good will and action from duty. One’s sense of duty, he suggests, can just as well be seen as a ‘coercive inclination’ as it can as evidence of a good moral character.²⁰²

For Scheler, value has a broad meaning, encompassing both that which is preferable for the individual person and that which is good in itself. There are four main types of values, which ultimately form a hierarchy.²⁰³ From lowest to highest, the order runs: sensory values (from the agreeable to the disagreeable); vital values (from the noble to the vulgar); spiritual (*geistig*) or cultural²⁰⁴ values (from the beautiful to the ugly, and from the right to the wrong); and religious values (from the holy to the unholy).²⁰⁵ The moral values of ‘good’ and ‘evil’ belong to their own category, and are not originally borne by anyone or anything other than God. Values of all kinds are experienced in ‘cognitive (or intentional)’ acts of feeling (or ‘affective perception’).²⁰⁶

Where his axioms refer to the ‘existence’ of values, Scheler means the instantiation of a value in an object that bears it. ‘Like colors, [values] actually exist only when realised in actually existing “bearers”’.²⁰⁷ An object that is a bearer of value is designated as a ‘good’. In experience, though, ‘a value precedes its object; it is the first “messenger” of its particular nature’.²⁰⁸ In other words, we grasp the value and its object separately, and we often grasp the value first, so we may feel that a thing is

²⁰¹ Roger L. Funk, ‘Thought, Value and Action’, in *Max Scheler: Centennial Essays*, p. 45.

²⁰² *Formalism*, p. 190.

²⁰³ In this case, a hierarchy is certainly what is meant, as Scheler does identify the highest values as the values of the holy.

²⁰⁴ This translation is used by Philip Blosser in *Phenomenological Approaches to Moral Philosophy*, p. 400.

²⁰⁵ *Formalism*, pp. 105-09.

²⁰⁶ Funk, ‘Thought, Value and Action’, p. 45.

²⁰⁷ Blosser, *Max Scheler*, p. 399.

²⁰⁸ *Formalism*, p. 18.

beautiful or ugly without at first knowing why. Not all objects can be bearers of all values. The moral values, good and evil, ‘*are values of the person*’.²⁰⁹ Moral value can also be borne by virtues and vices (as distinct from the persons who possess those virtues and vices; and by acts and actions (or deeds)).²¹⁰

As with most early phenomenological value-theorists, Scheler’s theory includes an objective value hierarchy, and so, refers to ‘an original table of values which is a priori yet nonetheless non-formal’.²¹¹ A recurring problem for realist theories of value-experience is that they consider values to be objective, and usually to form a fixed hierarchy, yet it is clear that not everyone has the same experiences of values or their ordering. How can we account for ‘blindness’ to value, or worse, for persons who seem to experience values in a different hierarchy from that of others?

Scheler’s answer to this is to relate value-feeling with acts of love and hate. This is not directly related to the idea of correct and incorrect experiences of love, as in Brentano’s theory; rather, it has to do with how these acts of love and hate affect our act of value-feeling. When we experience values, we recognise their relation to other values of which we are aware, but not their absolute position in the hierarchy. This is why Scheler states that the moral good attaches to realising the highest value ‘with respect to the measure of cognition of that being which realizes it’.²¹² Acts of love are what allow us to more broadly experience the world of values and better recognise the highest values. ‘Love opens us to more and more of the hierarchy of values and allows us to become more and more fulfilled as persons’.²¹³

²⁰⁹ Ibid., p. 25.

²¹⁰ Ibid., pp. 28-29.

²¹¹ Funk, ‘Thought, Value and Action’, p. 45.

²¹² *Formalism*, p. 25.

²¹³ Spader, *Scheler’s Ethical Personalism*, p. 95.

Acts of hate have the converse effect. ‘When we hate, what we can feel of the “objective” hierarchy of values is diminished’.²¹⁴ Even in this situation, Scheler does not feel that we become fully detached from real values. ‘Hate [...] is by no means an utter repudiation of the whole realm of values generally; it involves, rather, a *positive* preoccupation with lower possibilities of value’.²¹⁵ Our awareness of values can in fact also become distorted, so that we do not recognise the correct hierarchy even among the values we do experience. This, however, is the effect of *ressentiment*, not of hate.²¹⁶

2.3.4.5 SCHELER’S THEORY OF THE PERSON

Scheler designates his ethics as an ‘ethical personalism’, emphasising the role of the person within it. His definition of a ‘person’, however, is unique among the early phenomenologists. For Scheler a ‘person’ is a unity of experiences; not the experiences themselves, but also not anything that can exist separately from those experiences. As Spader puts it, ‘(In Scheler’s view, the person is not something separate from the acts — the person is *in* the acts’.²¹⁷ Scheler emphasises that the person, for him, is not an object, and nor are its acts, even though both persons and acts are the bearers of values, and the person is in turn the bearer of valuable or disvaluable virtues or vices. We do not grasp the values and disvalues of a person or act through the intentional grasping of the person as such, but that person’s actions carry — in addition to their own value-character — ‘a *symbolic* value for the moral tenor’, or disposition (*Gesinnung*), of the person.²¹⁸

²¹⁴ *Ibid.*, p. 96.

²¹⁵ Scheler, *The Nature of Sympathy*, trans. by Peter Heath (London: Routledge and Keegan Paul, 1954), p. 153.

²¹⁶ *Ressentiment* ‘produces a transvaluation of values, a distortion of the hierarchy of values, on the level of their givenness’. This is still not a blindness to value as such; ‘we “see” the higher values, but can no longer “see” their proper height’. (Spader, *Scheler’s Ethical Personalism*, p. 99)

²¹⁷ Spader, *Scheler’s Ethical Personalism*, p. 104.

²¹⁸ *Formalism*, p. 119.

A key element of Scheler's ethics is his concept of role models (*Vorbilder*), model persons who can inspire others to be good. A person who finds himself or herself unable to choose the correct course of action can take guidance from the example of a saint or other model person. Scheler saw this theory of model persons as an essential part of his ethics, but he never developed it completely.²¹⁹

2.3.4.6 SCHELER ON GOOD AND EVIL

Although actions can be bearers of moral values, and good and evil are identified as values, Scheler's criterion of good or evil in human action is actually the realisation of non-moral values. In a slightly different phrasing of what he would include among his axioms, Scheler writes: 'The value "good" — in an absolute sense — is the value that appears, by way of essential necessity, on the *act of realizing* the value which (with respect to the measure of cognition of that being which realizes it) is the highest'.²²⁰ In other words, moral goodness means acting in a way that is consistent with the correct hierarchy of values. "Good" in itself never consists in a conceptually definable property of man'.²²¹

As noted above, Scheler indicates that an action or deed carries both a symbolic value, in that it reflects the character of the subject, and its own inherent value. Thus, he makes a distinction between wanting or even choosing to carry out a valuable action, and actually carrying out that action. For Scheler, a person who is disabled and unable to act on his or her value-feelings will always have a lower moral standing than a person who is both willing and able to act.

The paralysed person is, of course, not at all subject to moral reproach. But neither is he subject to any part of the moral praise that belongs to the rescuer.

²¹⁹ Spader, *Scheler's Ethical Personalism*, p. 26.

²²⁰ *Formalism*, p. 25.

²²¹ *Ibid.*, p. 14.

Any opinion that would refute the above view and regard the moral tenor as the only bearer of moral value must be reduced to the resentment of ‘disabled’ people.²²²

The only exception that might apply is if the disabled person tries, despite his or disability, to act, even if he or she is prevented from succeeding by the resistance caused by the disability. This is because the value associated with the rescuer’s action is not contingent on success, but is borne by the attempt, even if it fails.²²³

2.3.4.7 RELIGION AND SCHELER’S ETHICS

As Francis Dunlop notes, ‘There is a surprising amount of talk about God, as *summum bonum* and supreme “person”, in Formalism. Both Scheler’s ethics and his idea of the person seem to require the existence of an absolute being’.²²⁴ Towards the end of *Formalism*, Scheler acknowledges this, concluding that ‘the natural continuation of our investigations requires a theory of God and also an investigation into the types of acts in which the essence of God comes to the fore (theory of religion)’.²²⁵ Scheler had introduced *Formalism* only as a foundation for an ethics,²²⁶ a project he felt it was impossible to complete without further establishing work.

Scheler revised *Ressentiment* in 1915 and *Formalism* in 1916, but he made no further attempt to build on the foundation that *Formalism* was intended to provide for his ethical personalism. His writings during the war were more political in character; later, he wrote on the philosophy of religion. Scheler’s relationship with the Catholic church also became less stable during this time, and shortly before his death the focus of

²²² Ibid., p. 119.

²²³ Ibid.

²²⁴ Francis Dunlop, *Scheler* (London: The Claridge Press, 1991), p. 29.

²²⁵ *Formalism*, p. 594.

²²⁶ The very first sentence of Scheler’s introductory remarks in *Formalism* refers to a ‘major work planned for the near future’ in which Scheler would ‘attempt to develop a non-formal ethics of values on the broadest possible basis of phenomenological experience’. (*Formalism*, p. 5) However, he never produced such a work.

his religious philosophy took a sharp turn away from theism, in favour of a form of pantheism which surprised many of his contemporaries. According to Spader, '(C)ritics were not only surprised by the change; all too many of them abandoned any attempt to understand the change as rooted in philosophical difficulties, opting instead to see it as reflective of personal instability'.²²⁷

Scheler had acknowledged the need for a theory of religion in *Formalism* to complete his ethics, and Spader argues that it was difficulties in creating a theory of religion that would fit this task that inspired Scheler's radical shift (his position on pantheism apparently reversing completely, from rejection to acceptance, in less than two years).²²⁸ However, Scheler died before he could put his new theory of religion to use in further developing his ethics.

2.3.4.8 SCHELER AND REINACH

Scheler at one time held a post at Reinach's *alma mater*, the University of Munich, and later held lectures privately at Göttingen during Reinach's time there. It is not clear quite how much contact the two had personally, but Reinach does cite some of Scheler's work, providing evidence of his familiarity with it.²²⁹ Reinach's first surviving work on ethics and moral values, *Grundbegriffe*, dates from 1906, the year before Scheler took up his position in Munich. After spending time in Tübingen and Göttingen, Reinach finally came into 'close contact'²³⁰ with Scheler in 1908, when Reinach temporarily returned to Munich before beginning the habilitation process in Göttingen. The two would meet again in Göttingen after Scheler's move there in 1910. Reinach and Scheler

²²⁷ Spader, *Scheler's Ethical Personalism*, p. 176.

²²⁸ *Ibid.*, p. 181-2.

²²⁹ Reinach specifically references Scheler on the subjects of egoism (see S.W. p. 489, paragraph 3) and *ressentiment* (S.W., p. 491, paragraph 1; Appendix IV).

²³⁰ Schuhmann and Smith, 'Adolf Reinach: An Intellectual Biography', p. 14.

(among others) collaborated in the publication of Husserl's *Jahrbuch*, the inaugural issue of which featured Reinach's monograph *Grundlagen* and the first part of Scheler's *Formalism*, as well as the first book of Husserl's *Ideas*.

The greatest of difficulties accompanies any attempt to trace Scheler's influence on Reinach, or indeed Reinach's influence on Scheler. The two demonstrate very similar understandings of values and of the nature of value-experience; they share the view that values are real, form an objective order of precedence, and are grasped in a unique kind of intentional cognitive act. Where they differ, in their respective value theories, is chiefly on the role of values in ethics; as early as his 1906 paper *Grundbegriffe*, Reinach considered values alone to be insufficient for founding an ethics. The significance of this disagreement will be highlighted as we discuss Reinach's value theory in chapter three. In general, given their limited early contact with one another, mere similarities between Reinach's and Scheler's ethics do not conclusively prove the influence of either on the other. We will discuss the relationship between Reinach's and Scheler's ethics in greater detail in chapter four.

2.3.5 DIETRICH VON HILDEBRAND

Dietrich von Hildebrand (1889-1977) has received many accolades for his work on ethics, including that of 'master of phenomenological value-ethics'.²³¹ As a fellow student of Reinach's at Munich, he took part in the 1905 invasion of Göttingen, and though he was never a full-time student at Göttingen, he later wrote that 'from 1910 on, [Reinach] was my only teacher'.²³² Reinach and von Hildebrand shared a personal friendship, and the religious conversion of von Hildebrand and his first wife had a role

²³¹ Subtitle of a chapter on von Hildebrand's ethics by John F. Crosby in *Phenomenological Approaches to Moral Philosophy*, pp. 475-96.

²³² Von Hildebrand, quoted in 'Reinach as a Philosophical Personality', trans. by Crosby, p. xx.

in inspiring the Reinachs themselves to convert. Likewise, von Hildebrand was also a close friend of Scheler's for many years, and his philosophical development was influenced by Scheler.

However, von Hildebrand would truly make his name not for his phenomenology, but for his contributions to Christian ethics. After his conversion from Protestantism to Catholicism in 1914, Christianity and Christian values became central to his philosophy, while Scheler's break with the church became a source of friction between the two. In the inter-war years von Hildebrand also became known as an outspoken opponent of Nazism, and was ultimately forced to flee Germany when Hitler came to power; he was tried and sentenced to death in his absence. He lived the rest of his life in New York, where he taught at the Jesuit-run Fordham University until 1960.

2.3.5.1 VON HILDEBRAND'S ETHICS

Dietrich von Hildebrand's first published work was his *Die Idee der sittlichen Handlung*,²³³ an expanded form of his doctoral thesis, which he had completed in 1913. His aim in this work was to dispute Kantian voluntarism — the view that only the will can, without reduction or limitation, be designated as morally good — with a general account of moral values and their bearers. Value — encompassing here 'the beauty of a picture or the goodness of a human being'²³⁴ — is described by von Hildebrand as 'a qualitative *something* attached to the object, and which I can come to know in a particular way to be a quality of the object'.²³⁵ He identifies actions²³⁶ and persons²³⁷ as the bearers of states of affairs, but he also discusses values in relation to states of

²³³ Originally published in Husserl's *Jahrbuch*, vol. 3 (1916), pp. 126-251. Republished in *Die Idee der sittlichen Handlung; Sittlichkeit und ethische Werterkenntnis* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1969), with commentary by Karla Mertens.

²³⁴ Von Hildebrand, *Die Idee der sittlichen Handlung; Sittlichkeit und ethische Werterkenntnis*, p. 76.

²³⁵ *Ibid.*

²³⁶ *Ibid.*, p. 2.

²³⁷ *Ibid.*, p. 3.

affairs.²³⁸ He argues that a fact, such as the non-existence of a good, can ‘stand as an evil before us’,²³⁹ but notes that ‘we do better to say that the existing state of affairs is valuable, rather than that it is the bearer of a value’.²⁴⁰ In general, von Hildebrand’s value-ethics at this point in his development had a great deal in common with both Reinach’s and Scheler’s.

Von Hildebrand’s ethics underwent a marked development over the years that followed, catalysed by his religious conversion in 1916. His 1922 *Sittlichkeit und ethische Werterkenntnis* shows signs of Aristotelian influence, adding the term ‘virtue’ (*Tugend*) to his lexicon. It was in 1952, roughly in the middle of his philosophical career, that von Hildebrand published *Christian Ethics* (later republished simply as *Ethics*), which is considered his major work in moral philosophy,²⁴¹ indeed his ‘magisterial work’.²⁴² His ethics here remains focused on the basic concept of value, but, further developing the distinction between ‘value’ and ‘personal interest’ that had influenced Reinach, von Hildebrand here places values in the wider category of ‘importance’.

Importance is that which has the power to motivate us, to attract or repulse us. It is meant quite generally, but not everything is of possible importance in this sense. The significance of this concept and the degree to which it is intuitive is quite elegantly shown by von Hildebrand:

Were we to ask a despairing man the reason for his sorrow, and were he to answer, ‘Because two and two are four,’ or, ‘Because the sum of the angles in a triangle is equal to two right angles,’ we would obviously reject these facts as explanations for his sorrow. We would suppose either that he is putting us off

²³⁸ Ibid., pp. 69-74. Von Hildebrand’s attribution of value to certain states of affairs is a key point of difference from Reinach, who argues that ‘*only objects can be morally valuable, never states of affairs*’. S.W. p. 336, paragraph 2; Appendix (II). We will discuss this disagreement further in chapter four.

²³⁹ Von Hildebrand, *Die Idee der sittlichen Handlung; Sittlichkeit und ethische Werterkenntnis*, p. 69.

²⁴⁰ Ibid., pp. 70-71.

²⁴¹ Crosby, ‘Dietrich von Hildebrand’, in *Phenomenological Approaches to Moral Philosophy*, p. 477.

²⁴² Karla Mertens, commentary to von Hildebrand, *Die Idee der sittlichen Handlung; Sittlichkeit und ethische Werterkenntnis*, p. 269.

for some reason, in refusing to tell us the true object of his sorrow, or else that he superstitiously connects these facts with some evil.²⁴³

Importance is ‘this property of a being which enables it to motivate our will or to engender an affective response in us’.²⁴⁴ There is both positive importance (the ‘good’, *bonum*, in the broadest sense) and negative importance (the ‘bad’, *malum*, again in an entirely general sense), and the two are distinct opposites; negative importance is not just a lack or absence of positive importance, but is something that is in itself bad.

Von Hildebrand identifies three key subcategories of importance: ‘The merely subjectively satisfying, the objective good for the person, and the value’.²⁴⁵ Thus, he distinguishes the motivating importance behind simple self-indulgence, rational self-interest, and moral action, respectively. The merely subjectively satisfying and the objectively good for me are always relative, dependent on personal circumstances. What sets values apart from the first two categories of importance is that they are not good ‘for me’ or for anyone in particular, but good in themselves; they are good ‘independently of any motivation’.²⁴⁶ Thus, value is exclusively a category of things that are important as such. Something that is valuable may also be subjectively satisfying (as when a painting is pleasant to look at, or a person is ‘a pleasure to be around’), but they are never *merely* subjectively satisfying; they can be appreciated on a higher level than their pleasantness.

Von Hildebrand identifies three bearers of moral values and disvalues: actions, inner responses and fundamental attitudes. The latter are the most important of the three, and can be directly identified with virtues and vices. Thus, the character of the human person is a primary focus of moral assessment. Crosby concludes that in light of

²⁴³ Dietrich von Hildebrand, *Ethics*, p. 23.

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*, p. 80.

²⁴⁶ *Ibid.*, p. 43. Von Hildebrand criticises Scheler for failing to make this distinction between value and everything that is not good in itself.

von Hildebrand's ethics, 'we do not have to wait until the end of the 20th century in order to find virtue ethics after Kant'.²⁴⁷ Persons also have an intrinsic ontological value as embodiments of the *imago dei*; life, dignity and other intangible properties of the person also bear an inalienable ontological value as such.²⁴⁸ It is the 'basic human vocation'²⁴⁹ to possess a morally valuable character, but not every value can be possessed by every person, as some are subject to a mutual 'polarity'. Some of these polarities are hostile (as good and evil are), but others are complementary (in the way that male and female are).²⁵⁰ For example, von Hildebrand suggests, 'One and the same person cannot at once be endowed with an overwhelmingly powerful vitality and with an ethereal delicacy'.²⁵¹

Von Hildebrand's understanding of moral values is closely bound up with his Christian philosophy. Good itself is identical with God, who embodies absolute ontological perfection. Those who lack moral value can attain it through Christian faith, and nobody can be perfectly moral without 'being transformed into Christ'.²⁵² Interestingly, von Hildebrand holds that he does not consider God's reality to be a postulate that must be believed to support his ethical theory, 'as Kant did'.²⁵³ Rather, 'morally relevant values are an objective hint at God's existence'.²⁵⁴ 'For our knowledge of moral values, of the moral obligation, of the natural moral law', he continues, 'the knowledge of God is not required. But objectively these data presuppose God'.²⁵⁵

²⁴⁷ John F. Crosby, 'Dietrich von Hildebrand', p. 494.

²⁴⁸ Ibid., p. 135.

²⁴⁹ Ibid., p. 173.

²⁵⁰ Ibid., p. 143.

²⁵¹ Ibid., p. 141.

²⁵² Ibid., p. 178.

²⁵³ Ibid., p. 456.

²⁵⁴ Ibid.

²⁵⁵ Ibid., p. 457.

Much as Reinach had been in his early life, Dietrich von Hildebrand was inspired by Plato's dialogues to take up philosophy, and just as Reinach had, he went on to study philosophy at the University of Munich, beginning in 1906. Here, in 1907, he and Reinach met for the first time.²⁵⁶ It was also during this time in Munich that von Hildebrand first met Max Scheler, who had secured a teaching position there. In 1909, inspired by Husserl's *Logical Investigations*, von Hildebrand transferred to Göttingen for the summer semester, and returned again in 1910. During that year he attended Reinach's lectures along with Alexander Koyré, Roman Ingarden and Hedwig Conrad-Martius. Although he then left to carry out his doctoral research in Vienna (his thesis, on *The Nature of Moral Action*, marked his first step toward the serious development of his ethics) he acknowledged both Scheler and Reinach as ongoing influences on his work.

The fact that Reinach was von Hildebrand's teacher in Göttingen does not mean that von Hildebrand did not also influence Reinach. In *Die Überlegung*, Reinach credits his use of the distinction between value and personal interest to von Hildebrand's then unfinished doctoral thesis.²⁵⁷ The details of Reinach's influence on von Hildebrand are much more difficult to tease out. Only by first examining the differences between Reinach's and Scheler's ethics can we attempt to identify their differing influences on von Hildebrand's. We will return to this subject in chapter four.

²⁵⁶ Reinach had by then completed his doctorate in philosophy and was completing his studies in the law. He left Munich to continue these studies in Tübingen later that same year.

²⁵⁷ S.W. p. 298; Appendix (III), n. 21*.

SECTION FOUR

CONCLUDING REMARKS

In this chapter we have examined the background to Reinach's ethics and the context in which his ethics will be considered as a contribution. None of the profiles in this chapter are to be understood as exhaustive or comprehensive critical discussions of the respective philosophers or schools. It is sufficient to have a basis for understanding how Reinach's work on ethics fits into his historical and philosophical environment. With this done, we are in a better position to discuss Reinach's ethics, which will be the subject of the next chapter.

Phenomenological ethics was quite a diverse field even in its early stages. The extent to which the pioneers of this field shared basic terminology somewhat obscures the extent to which they disagreed on the meanings of those terms, on methodology, and on the practice of ethics. Similarly, the close personal associations between many of the early phenomenologists, and the scarcity of direct textual references in their respective works, makes it difficult to establish with certainty who influenced whom and at what times. The profiles above will serve to provide a basis for comparison as we discuss Reinach's ethics, in view of which the originality of his work can be considered. It remains clear that there are distinct similarities between Reinach's approach to ethics and those of his contemporaries; this is particularly true in the case of Scheler, whose ethics will be directly compared with Reinach's in chapter four.

CHAPTER III

REINACH'S ETHICS — CRITICAL DISCUSSION

The four extant works by Reinach that deal with ethics — one paper, one transcript from a lecture course, and two separately published articles — do not form a cohesive, linear exposition of Reinach's views on ethics, nor were they originally meant to. Two were never intended for publication at all and each of the other two has, as its central topic, a question of legal philosophy, rather than one of ethics. We cannot, therefore, simply follow the order in which Reinach himself presented his ideas and expect that the result will be a clear account of a theory of ethics. Rather, we must take elements from all of these four works together in order to construct a complete picture of the phenomenological ethics contained in them.

Reinach shares much of his value theory with the other early phenomenologists of values, and values have a key role in his ethics, but his work on ethics is not exclusively concerned with values, nor does he propose a theory of ethics that is non-formal in its entirety.¹ Reinach regards moral values as only one of three basic concepts with which ethics is concerned, and in terms of which questions relevant to ethics can be asked. The significance of these three concepts and their differing roles in ethics will form a major subject of discussion in this chapter.

Reinach's reasoning for distinguishing these concepts is rooted in his phenomenological viewpoint.² One of Reinach's chief concerns in his philosophy is to provide descriptive accounts of essences, as accurately as possible. Every experience and every object of experience has an essence which is uniquely and irreducibly its

¹ 'Non-formal' here translates the German '*material*', as it appears in the title of Scheler's *Der Formalismus in der Ethik und die materiale Wertethik*. This translation is used because the more literal English translation, 'material', is not obviously opposite to 'formal', which this usage is intended to be.

² We will more closely examine the characterisation of Reinach's ethics as phenomenological in chapter four.

own. It is not possible from Reinach's perspective to attempt to 'build up' an essence out of preconceived ideas. That which is truly essential to each experience can be found only through the phenomenological study of that experience. Nor is it sufficient to attempt to explain or categorise one essence as another essence, to say that 'X is a kind of Y'.³ The reduction of one act to another act (categorising the social act of forgiving as an act of judgement, for example) does not do justice to either act. Each essence must be approached on its own, studied in itself, and allowed to stand independently. The study of essences, not the study of facts, is the concern of Reinach's phenomenology.⁴

Accordingly, Reinach's ambition in approaching ethics is to explore the whole realm of ethical experience, to account for at least the possibility of every question and every aspect of the ethical, leaving nothing out. He opposes attempts by other ethicists to limit the domain of ethics — the voluntarism of Kant and Lipps, limiting the good to the will alone; the consequentialism of the utilitarians, limiting the good to the outcomes of actions. For Reinach, such limitations represent 'an enormous reduction of the province of ethics'.⁵ A complete account of ethics must have no such artificial limitations, allowing for the ethical significance of persons, of actions, of states of affairs (as motives and as consequences), of the intangible products of actions, of decision-making (not just acts of will in themselves, but the entire process of motivation, decision-making and resolving). For this ambitious task, Reinach finds the basic concept of moral value to be necessary, but also insufficient.⁶ Two further basic

³ '[Phenomenology] has nothing to do with explanation of existences and the reduction of them to other existences. When it forgets that, there arise those reduction attempts which are in truth an impoverishment and falsification of consciousness'. Reinach, 'Concerning Phenomenology', trans. by Willard; S.W. p. 534.

⁴ 'It is precisely with *facts* that descriptive psychology has nothing to do {...} It intends to bring to ultimate, intuitive givenness the "whatness" [*Was*] of the Experience, from which, in itself, we are so remote. It intends to determine this "whatness" as it is in itself; and to distinguish and mark it off from other "whatnesses"'. Ibid., pp. 534-535.

⁵ S.W. p. 500, paragraph 5; Appendix (IV).

⁶ 'Can all statements of ethics be put in the form: "this is morally valuable"? No. *There is an array of questions that are designated as moral questions, {but} that would not be determined by that.* Ethics

concepts, namely, the concept of moral rightness and the concept of goods, are also necessary to fully account for all questions that belong to ethics, making a total of three concepts.

The first section of this chapter discusses the meaning of ‘ethics’ (*Ethik*) as Reinach understands it and the basic structure of his ethical theory. Section two explores the three concepts of ethics proposed by Reinach and the ‘spheres of ethics’ that relate to these, examining in turn the significance of each and its unique role in ethics. Section three looks at Reinach’s work on motivation and willing, the process of moral decision-making, and autonomy, all of which are important in the ethical assessment of persons and their actions. The final section critically analyses Reinach’s work on ethics as a whole, based on the understanding of it established in the preceding sections.

SECTION ONE

THE FOUNDATIONS OF REINACH’S ETHICS

Although Reinach never published a work fully dedicated to ethics, it would be incorrect to assume that he did not regard ethics as a significant area of interest within philosophy. Of Reinach’s full body of surviving work, discussions of ethics make up only a small part, and a significant portion of those discussions takes place within works on the philosophy of law. However, these latter comments are by no means cursory or mere distractions from the main subject of the articles. A full third of the text of *Die Überlegung* discusses ethics, equal in length to the section discussing legal philosophy and indeed overlapping into that section. A much smaller proportion of *Grundlagen* touches on ethical themes, but Reinach’s comments there still go beyond what is

does not only have to do with the question of what is morally valuable’. S.W. p. 335, paragraph 3; Appendix (II).

necessary to clarify the difference between his positions on ethics and the law. *Grundzüge der Ethik*, the section of Reinach's 1913 lecture course that deals with ethics, represents only one part of that lecture course, but is still of quite substantial length. Reinach chose to dedicate both his 1906 paper to the *Akademische Verein für Psychologie (Die Grundbegriffe der Ethik)* and his 1909 *Probeverlesung* during the habilitation process at Göttingen (which has not survived) to the discussion of ethics. We may recall that in *Grundzüge*, Reinach suggests that the question of whether there is such thing as objective knowledge or recognition of values is 'perhaps the most important question in the world'.⁷

3.1.1 THE MEANING OF ETHICS

Reinach does not provide a concise definition of 'ethics' (*Ethik*) in his work, nor does he explicitly distinguish the meanings of the words 'ethical' (*ethisch*) and 'moral' (*sittlich*). By his usage, 'ethics' refers to a field or area of study, to which the 'concept of the moral' belongs.⁸ As much as anything else, Reinach defines ethics by what it is not; he begins by contrasting an ethical viewpoint with a psychological one.⁹ The point of view of ethics is different from, and indeed incompatible with, 'the descriptive relationships of acts' as investigated in empirical psychology.¹⁰ For the purposes of a descriptive-psychological investigation, it is correct to view the experiences of loving and hating as similar, since both represent an attitude or disposition towards something; loving and forgiving are unlike, since forgiving is an act, and loving is not. From an

⁷ S.W., p. 505, paragraph 2; Appendix (IV).

⁸ S.W. p. 335, paragraph 3; Appendix (II).

⁹ The use of 'psychology' and 'psychologism' as terms by the phenomenologists is always an area of ambiguity; de Boer identifies six different senses in which 'psychologism' can be used (De Boer, *The Development of Husserl's Thought*, pp. 116-17). Of these six, what Reinach is here referring to is closest to de Boer's fourth sense: 'when genetic psychology is regarded as the fundamental discipline and basis for the normative sciences' (Ibid., p. 116).

¹⁰ S.W. p. 485, paragraph 1; Appendix (IV).

ethicist's perspective, though, these groupings do not make sense. Ethically speaking, loving something and hating it are opposites; loving and forgiving are 'very closely related'.¹¹ Similarly, whereas psychology is concerned only with how things are, ethics seeks to answer questions of ought (*sollen*): What ought I to do? What way ought things to be? What kind of person ought I to become? Reinach points to theories about how persons *are* or about how they *must* act, such as psychological egoism, as precisely missing the point of ethics. Even if it were true that all persons act in an egoistic manner, 'we could *still* say: all people until now have been egoists, but they ought not to be so!'¹² For Reinach, a theory of ethics needs to account for our knowledge of the ethical (of the kinds of persons we ought to strive to become; of the actions we ought to perform; of the way things ought to be), and for our autonomous motivation in living according to these moral concepts.

Reinach's thesis is that there are *a priori* moral truths, truths about what ought to be that are objective, knowable and capable of being realised. These *a priori* truths encompass both the formal *a priori* of Kant's ethics, and a non-formal *a priori* as also advocated by Scheler. That is to say, there is a formal moral law, but there are also immediate and intentional experiences of real ethical phenomena, and these are interconnected and interrelated within and between three separate spheres or domains of ethics.

In Reinach's own view, the philosophy of positive or state law is distinct from ethics. In *Überlegung*, for example, Reinach dedicates different sections of the treatise to the ethical significance and the legal significance of reflection or premeditation,

¹¹ Ibid.

¹² S.W., p. 487, paragraph 3; Appendix (IV).

while in *Grundlagen*, he distinguishes not only between ethical and legal obligations, but also a third category, which we have called ‘essential’ obligations.¹³

3.1.2 THE OBJECTIVE ATTITUDE

Since Reinach’s ethics is meant to be founded in *a priori*, objective truths, the first thing called for by his theory is an attitude that reflects this. In his discussions of egoism and altruism in *Grundzüge*, Reinach characterises egoism as an attitude that ignores all objective concerns, and instead assigns everything an importance relative to the individual I of the egoistic human being. In this case, that which is good *for me* is preferred, and that which is bad for me is avoided, regardless of whether it is good or bad *in itself*.¹⁴ On the other hand, altruism — understood as egoism’s opposite — is an attitude in which the good *for others* is preferred, likewise ignoring essential value or disvalue. Thus, regardless of whether altruism is morally preferable to egoism, neither of these is an *objective* attitude. Neither is concerned with what is good *in itself*. For the egoist, that which is objectively bad can still be preferred if it is good *for me*. For the altruist, that which is objectively good can fail to be preferred if it is not good *for others*. These attitudes both fail to recognise moral truth.¹⁵

¹³ Despite his work both on ethics and on the philosophy of law, there is a significant gap in Reinach’s philosophy when it comes to exploring the relationship between positive law and *a priori* right. As Seifert comments, ‘Reinach’s reflections on the *general relationship* between apriori and positive law represent not only the most underdeveloped part of Reinach’s work but [...] many statements of Reinach on this extremely important issue deviate from what the careful reader of the preceding masterful chapters is led to expect’. Thus, we are left to question whether Reinach’s comments on this subject ‘are sufficient or even correct’. Seifert, ‘Is Reinach’s “*apriorische Rechtslehre*” More Important for Positive Law than Reinach Himself Thinks?’, p. 200. We will discuss this issue in more detail in chapter four, section 4.2.7.

¹⁴ Reinach sees the egoistic attitude as the origin of the phenomenon of *ressentiment*. *Ressentiment* is viewed here not as the incorrect ranking of values due to a distorted perspective, but as a ‘dislocation of the I’ that outright ignores values in themselves. S.W. p. 490-91; Appendix (IV).

¹⁵ This section of the text closely resembles the *erster Vortrag* of Lipps’ *Die Ethischen Grundfragen*. Lipps carefully distinguishes the egoistic and altruistic attitudes (which he defines slightly differently from Reinach) from the attitude of self-respect which is the foundation of morally good action for him. The key difference is that for Lipps, no objective moral truths exist outside the subject.

Reinach calls instead for an objective attitude,¹⁶ one that is concerned at all times and in all circumstances with the objective, absolute, *a priori* truths of ethics. Reinach aims to investigate the nature of these truths, how they become known, and how they can be acted upon. Ultimately, Reinach has no intention of providing his reader with a list of good actions, or any concrete rules to follow in any specific situations. To discuss specific experiences of value would run counter to his phenomenological method. It is not the *specifics*, the *facts* of ethical truth that he wishes to investigate, but their *possibility*, the *essence* of the experiences in which they are given. Reinach can say ‘murder is morally evil’ for the sake of an argument or an example, because murder, by definition, is understood to mean an unjust killing, but it is up to the individual in a real situation to feel the moral disvalue of the murder and refrain from it on that basis. Were Reinach to attempt to provide even general rules for action, the non-formal aspirations of his ethics would be undermined. The non-formal aspect of Reinach’s ethics requires that individual persons feel and respond to values in concrete situations, rather than follow general imperatives. Acting morally, in other words, is more than following a moral rule, it is acting out of conviction that one is following a moral principle.

3.1.3 OBJECT AND OBJECTIVITY

Throughout this chapter we refer to the status of *objects* regarded as the bearers of values, and the *objectivity* of values (and of formal moral principles, among other things), all of which are the concerns of the objective attitude as discussed above. It is of importance that we clarify the meanings of these terms here, as it is not always

¹⁶ Translating ‘*sachliche Einstellung*’ and ‘*sachliches Gerichtetsein*’ (S.W. p. 490, paragraph 3; Appendix (IV)), or ‘*objektive Einstellung*’ (S.W. p. 491, paragraph 1; Appendix (IV)). This refers to being concerned with and directed by objective facts rather than by relative or subjective concerns. See the following section for discussion clarifying the senses of ‘objective’ and ‘object’ in this chapter.

possible to translate into English the precise words used in the original German text. In brief, ‘object’ here translates ‘*Gegenstand*’¹⁷ and sometimes ‘*Objekt*’¹⁸ while ‘objectivity’ most often translates ‘*Sachlichkeit*’¹⁹ and ‘*Objektivität*’,²⁰ but also ‘*Gegenständlichkeit*’.²¹

Object (generally speaking, *Gegenstand*) here refers to an object of intentionality, the referent of an experience; the intended object of the experience. This is not synonymous with ‘object’, in normal English usage, in the sense of a tangible thing (*Ding*). An action or an experience itself, for instance, can be an object of experience, as can a trait of character, possibly even a person as a whole; thus, not all objects that are given to our experiences (for reflection) are physical things or things grasped perceptually. All of these are capable of existing or not existing. Their possibility of existence is primarily what distinguishes them from a different kind of entity with an important role in Reinach’s phenomenology: the state of affairs (*Sachverhalt*). States of affairs do not exist, but rather *subsist*, or obtain. They are the ‘essential connections’ between things and properties.²² We do not perceive or grasp states of affairs; rather, we judge them to be or not to be. When I see a blue car, *the car* and the state of affairs *the being-blue of the car* (the *fact* that it is blue) are to be distinguished from one another. I grasp the car through an act of perception (*Wahrnehmung*) and in doing so find evidence to judge that the car is blue. There are important differences, therefore, between this act of judging and an intentional act of perceiving. If someone tells me that a car I have never seen before is blue, I can judge the car to be blue without seeing it. I have not grasped the car itself in any act. Equally, I

¹⁷ S.W. p. 486, paragraph 3; Appendix (IV).

¹⁸ S.W. p. 489, paragraph 2; Appendix (IV).

¹⁹ S.W. p. 491, paragraph 2; Appendix (IV).

²⁰ S.W. p. 504, paragraph 2; Appendix (IV).

²¹ S.W. p. 485, paragraph 2; Appendix (IV).

²² Baltzer-Jaray, *Doorway to the World of Essences*, p. 69.

may see a car through a tinted pane of glass, and though I see it as blue, I suspect the blueness to be an illusion; I can then judge that the car is not in fact blue, or withhold judgement until I have better evidence on which to judge.

In *Grundbegriffe*, Reinach states that ‘object and state of affairs are different’,²³ and he reaffirms this in *Grundzüge*, when he states that ‘persons, characteristics and suchlike are morally valuable: *not* states of affairs, but *objects*’.²⁴ The latter statement indicates that ‘object’ and ‘state of affairs’ are not only distinct terms, but are also, in fact, mutually exclusive of one another.²⁵

To establish that states of affairs are not objects, in the sense that Reinach generally uses for ‘object’, requires some further clarification. The broadest sense in which Reinach, like Husserl, uses the word *Gegenstand* is by placing it in direct opposition to content (*Inhalt*). ‘Thus if “content” is said to be all that belongs to the “I” as a function, state-of-being, act, or subjective experience (i.e., all that can be executed by and in the “I”), then “object” can be said simply to be all that is foreign to the “I”, transcendent to the consciousness’.²⁶ In other words, ‘object’ in this particular sense indicates all that is objective. In this regard, what is given to perceptual consciousness as an object must be sharply distinguished from what exists in consciousness, the experiencing or living through (*Erleben*) of the experience.²⁷ In this sense a state of

²³ S.W. p. 336, paragraph 2; Appendix (II).

²⁴ S.W. p. 486, paragraph 3; Appendix (IV). My emphasis.

²⁵ It appears from this that states of affairs are never the intentional objects of experiences. Even in acts of judgement, the object and its properties are what is actually intended and judged — the car is judged to be blue, and blueness is judged to be a property of the car. However, the state of affairs ‘the being-blue of the car’ is an ‘entity’ of a certain kind, and obtains or subsists independently of whether anyone is conscious of it.

²⁶ Brentler, *The Phenomenology of Adolf Reinach*, p. 98.

²⁷ The object-content distinction was developed by Alexius Meinong, a student of Brentano. As Passmore recounts, ‘Meinong came to distinguish sharply between content and object with the help of the Polish philosopher, [Kazimierz] Twardowski, who in his *Towards a Theory of the Content and Object of Presentations* (1894) had distinguished three distinct elements in a “psychical phenomenon” — the mental act, its content, and its object. The effect of identifying content and object, Meinong considers, is to make it appear that what is *before* the mind (the object) is somehow a part (the content) of the apprehension of it’. John Passmore, *A Hundred Years of Philosophy* (Harmondsworth: Penguin, 1978), pp. 180-81. That Brentano had failed to distinguish between object and content in this

affairs, being effectively a true fact, is an ‘object’, or perhaps better put, an objectivity. The sense in which states of affairs are not objects is precisely in that they do not exist as any identifiable transcendent object given to perceptual awareness or in any such manner.²⁸

Values too, then, are objects of a kind: they exist in some sense and are intended in acts of value-feeling. States of affairs are no such objects, and the ‘rightness’ of a state of affairs is not an object either; rightness is the quality of conformance with a formal moral law, with what ought to be. “It is right” [is] like “it is in order”.²⁹ Whether, however, a state of affairs really is or obtains is objective (*sachlich*), as is the rightness, wrongness or moral indifference of that state of affairs. What is important for us to emphasise is that the objective attitude (*objektive Einstellung*) is not concerned only with objects (*Gegenstände*), but with all that is objective and this includes states of affairs.

These are the senses in which we will use the terms ‘object’ and ‘objective’ in this chapter and beyond. While the meaning of ‘object’ is largely technical, it is of the highest importance for Reinach that his ethics is concerned with truths that are objective in this precise sense.

way was one of Husserl’s main criticisms of Brentano’s descriptive-psychological view that what is given to consciousness must be in consciousness. Here Reinach follows Husserl in distinguishing the objectifying function of perception, the transcendent object of perception, from sensation. Whether this transcendent object of perception is identifiable as a ‘real object’ having extra-mental existence in any realist sense, of course, is not part of the phenomenological description of the transcendent object given to perceptual awareness. Thus Husserl can abstract from questions pertaining to the real existence of the intended object *qua* intended object in his descriptions of that object in his *Logical Investigations*, without losing any descriptive content of that object.

²⁸ Another way to look at this is to say that while only a finite number of objects might exist in the world, states of affairs are not limited in the same way. Any postulated connection between any objects and any properties is a viable and potentially true state of affairs. Thus Reinach’s theory requires, as DuBois puts it, the acceptance of ‘not simply “arbitrarily many”, but of *infinitely* many positive and negative states of affairs which obtain, as well as infinitely many contradictorily opposed states of affairs which do not obtain’. DuBois, *Judgment and Sachverhalt*, p. 27.

²⁹ S.W. p. 336, paragraph 2; Appendix (II).

SECTION TWO
THE THREE SPHERES OF ETHICS

As we saw in chapter two, moral values are a recurring theme in early phenomenological ethics, and they have a central role in Reinach's theory as well. In Reinach's terms, 'morally good' and 'morally valuable' have the same meaning; moral value equals moral goodness. In *Grundbegriffe*, he refers to the concept of moral value as, more succinctly, 'the concept of the moral'.³⁰ In the same article, however, he argues that ethics is about more than moral values, and that the concept of moral value alone is not sufficient to be able to understand and answer all questions of ethics. Not everything in our experience is or could be seen as the bearer of a moral value-character — states of affairs, for example, cannot bear value or disvalue at all,³¹ and yet there are meaningful ethical questions that can be asked about them.

If I wish to say it is a good thing to help the poor, I can do so in terms of value; value attaches to the action of helping the poor and to the generosity of character that motivates that action. But if I wish to say it is bad or wrong that the poor are suffering in the first place, then the situation becomes more difficult. If states of affairs cannot be bearers of values, I cannot describe the state of affairs 'that the poor suffer' as disvaluable. The best I can do is to say it is disvaluable to ignore suffering, or to promote it. Yet we have a sense that the state of affairs should not be, the poor *ought not* to be suffering, and we want to be able to express this. If we cannot do so in terms of value, then value is an insufficient concept to address all ethical questions.

For Reinach, this problem shows the necessity of recognising a second basic concept in ethics, which can be referred to in answering questions about whether states of affairs ought to be. Ultimately, he establishes a total of three such basic concepts: the

³⁰ S.W., p. 335, paragraph 3; Appendix (II).

³¹ 'Only objects can be morally valuable, never states of affairs'. S.W. p. 336, paragraph 2; Appendix (II).

concept of moral values (*sittliche Werte*), the concept of moral rightness (*sittliche Rechtheit*), and the concept of goods (*Güter*).³²

These three concepts all form part of an interconnected system of ethics, but they are not directly interchangeable with one another. ‘Valuable’ and ‘right’ do not mean the same thing and cannot be equated with or reduced to one another. To emphasise the distinctness of these concepts, Reinach describes each of these concepts as belonging to a different ‘sphere’ or domain of ethics: the sphere of values, the sphere of rightness and the sphere of goods, respectively.³³ The three spheres together make up the world of ethics, each playing a role in how we experience and understand the ethical, and allowing us to ask and answer ethically-relevant questions that the other spheres cannot account for alone.

We will discuss each of these three spheres in turn and show why it is necessary for Reinach to include them — and to distinguish them — in his ethics. The diagram on the following page briefly shows how the realm of ethics is divided up into the three spheres.

³² It is worth noting that Reinach’s understanding of ‘goods’ is entirely different from Scheler’s usage of the term as ‘things of value [*Wertdinge*]’ (*Formalism*, p. 9).

³³ S.W. p. 486, paragraph 4; Appendix (IV).

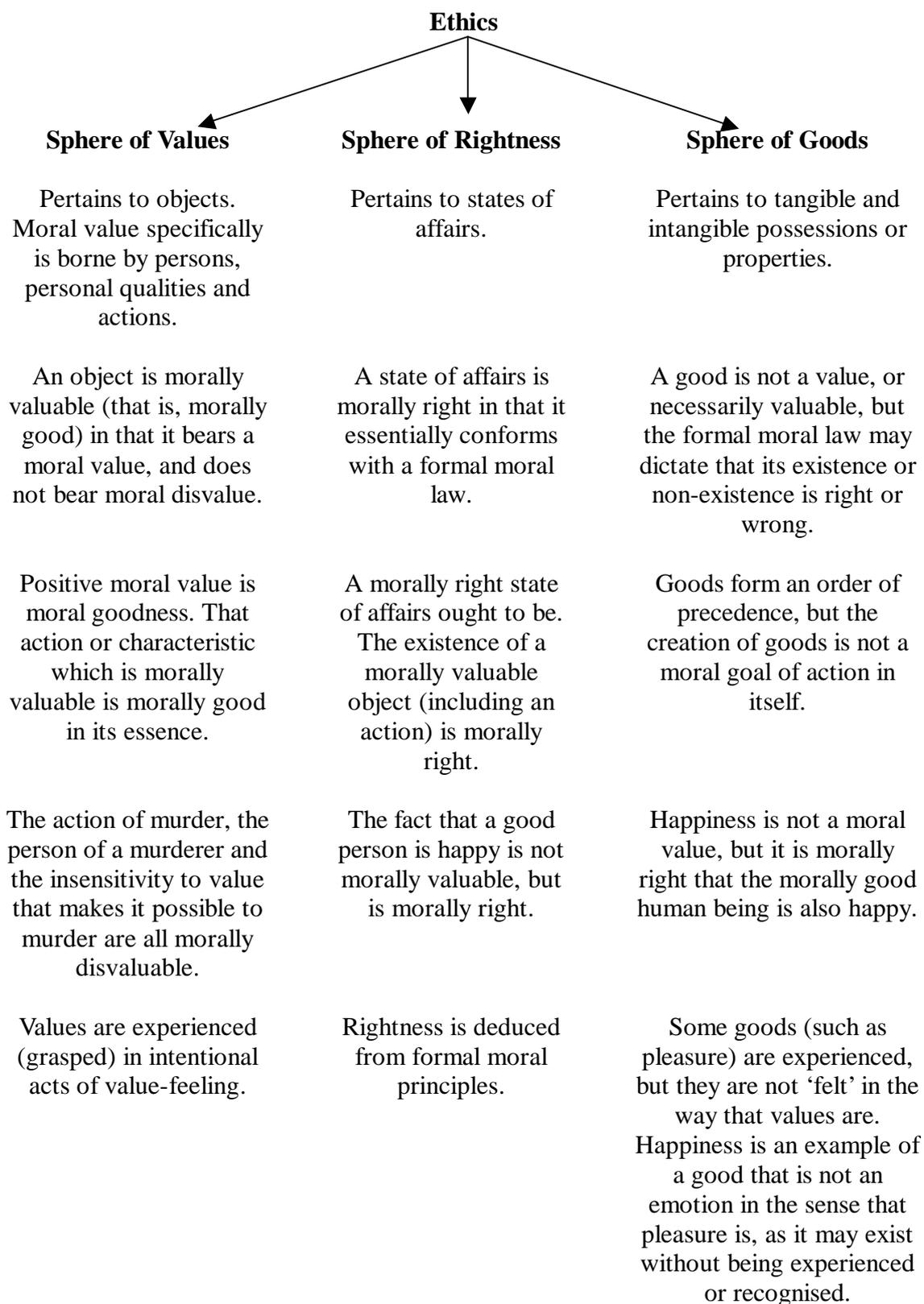


Fig. 1: *The Three Spheres of Ethics*

Based on this overview, we see that each sphere accounts for a different set of questions in ethical discussion. The concept of moral values allows us to discuss and assess the moral status of actions, persons and the qualities of the characters of persons. The concept of moral rightness allows us to discuss and assess the moral status of being, of facts or states of affairs that obtain in the world. The concept of goods allow us to discuss tangible and intangible possessions and properties that can be morally deserved or undeserved, without necessarily being morally valuable or disvaluable in themselves. It is this diversity that creates the primary need for the three spheres and for keeping them separate from one another; values, rightness and goods cannot be equated, cannot account for one another in a satisfactory way, and above all should not be confused with one another.

3.2.1 THE SPHERE OF VALUES: MORALITY IN CHARACTER AND ACTION

As seen in chapter two, a theory of values is a common component in early approaches to phenomenological ethics. Reinach's ethics is no exception. He shares the understanding of value as something real or objective, instantiated in objects and experienced intentionally through a unique act of grasping of feeling, to be seen in other early phenomenological theories of ethics, and particularly exemplified in Scheler's. While the characteristics that set Reinach's core value-theory apart from those of his contemporaries are few and subtle, his understanding of the role of values in ethics, and the implications of that understanding for his wider ethical theory, are, nonetheless, quite unique. We will begin discussing Reinach's theory of value from its first principles.

3.2.1.1 THE MEANING OF VALUE

In Reinach's terms, a value (or disvalue) is an inwardly grasped characteristic of an intended object (*Gegenstand*) that causes it, in itself, to be attractive (or repulsive) to the subject. Any definition beyond this is extremely difficult; Reinach does not even attempt to simply define what a value is. His aim is to describe values, and the manner in which they are experienced, in their respective essences. Value or disvalue is always experienced in relation to a grasped object, its bearer (*Träger*). The value itself is also the object of a separate act of grasping.³⁴ Values, however, form an order of precedence (*Rangordnung*) or of hierarchy distinguishing the higher from the lower, or greater and lesser values, a distinction broadly of better, equal and worse. This order of precedence does not depend on the real existence of any values to remain constant, suggesting that each value has a separate, possibly ideal existence as well. 'It makes no difference at all whether there is anything in the world to which moral value belongs';³⁵ moral value remains morally valuable even if it is not realised in any object.³⁶

Anything that represents goodness, excellence or preferability *in itself* in an object that bears it is a value. Moral goodness, as we will discuss below, is just one of these; beauty and wisdom are other examples given.³⁷ That which is good only in a qualified sense — good *for me*, or good *for a specific purpose* — is not a value or a valuable object.³⁸ Reinach is also at pains to point out that 'goodness' in the various

³⁴ S.W. p. 295, paragraph 2; Appendix (III). 'Even the one least versed in the phenomenological analysis must recognise that he grasps the activity of a subject in a very different way to how he grasps the value or disvalue of said activity; that the latter case is a matter of grasping by feeling'.

³⁵ S.W. p. 335, paragraph 2; Appendix (II).

³⁶ Here we see a key difference between the values of objects as interpreted by Reinach and by Lipps. For Lipps, an object has value inasmuch as it has the possibility of engendering a value response in a person. For Reinach, value is a real and *a priori* quality of objects that is independent not only of any human experience, but also of its instantiation in the world. '*The value of {...} money declines if its being put to use [becomes] impossible; [on the other hand], the value of goodness never declines*'. S.W. p. 493, paragraph 2; Appendix (IV).

³⁷ S.W. p. 485, paragraph 2; Appendix (III).

³⁸ This can be compared to the distinction between a hypothetical and a categorical imperative in Kantian ethics: that which I ought to do to achieve a specific purpose or at a specific place and time,

senses used here must not be confused with moral goodness. We describe a beautiful painting as a good painting, or advice that evinces wisdom as good advice, ‘but these are just equivocations with moral good or bad’.³⁹ Moral value is not otherwise defined; it is moral goodness, in and of itself.

The opposite of a value — a quality that represents badness or inferiority *in itself* — is termed a disvalue (*Unwert*). Reinach generally refers to disvalue as a lower value or a lack of value, not as an outright negative or opposite to value. ‘[The] essence of the Devil’, he comments in *Grundzüge*, ‘[consists precisely] in that he hates the good, and does not love it’.⁴⁰ The greatest evil, then, is purely negative, concerned with diminishing or destroying value, not with creating anything that is opposite to value. Lack of sensitivity to value and lack of love for value are both moral disvalues of the personal character. No reference is ever made in Reinach’s writings to a love of disvalue or the disvaluable.

3.2.1.2 THE EXPERIENCING OF VALUES

A value is grasped in an intentional act: a unique cognitive act of feeling (*fühlen*). This feeling is not to be confused with the ‘feeling’ or emotion (*Gefühl*) of love or hate that may be associated with feeling a value or disvalue. As noted previously, the grasping of a value through feeling is an act in Reinach’s phenomenological sense — a single, temporally punctual experience — and is an intentional experience *of* an object. An emotion, on the other hand, is a state with a temporal duration, and is executed entirely within the subject; it is not an experience *of* anything in an intentional sense. An emotion can arise in response to the feeling of a value or disvalue; ‘it may be, for

as against that which I ought to do absolutely and regardless of circumstances.

³⁹ S.W. p. 335, paragraph 2; Appendix (II).

⁴⁰ S.W. p. 506, paragraph 4; Appendix (IV).

example, that joy relates to the value of a thing',⁴¹ while grasping a disvalue might evoke disgust. However, these relationships are not by any means necessary, and the act of feeling the value is always distinct from any emotional reaction. 'All kinds of different emotions can build themselves on [the] feeling of value.'⁴² A person may feel a value yet not experience any emotional state corresponding to that feeling, or even have a negative emotional reaction to a positive value. DuBois is correct when he suggests that the 'feeling' by means of which we experience value should 'be accepted as a technical term: rather than thinking of a perception charged with affectivity, one should simply accept that this is the word used to denote the way that the person apprehends values'.⁴³

Though values exist independently of when and by whom they are experienced, not every person is equally sensitive or receptive to value. 'The feeling of an ethical value and the capacity for the feeling of ethical values in general are themselves ethical values. Their value increases with the growing fineness of the feeling'.⁴⁴ Correspondingly, a lack of sensitivity to moral value is less valuable. Love or regard for value is likewise valuable in itself. Thus, 'a person's character or the essence of their personality is documented in their ability to feel value and in the feeling-states grounded in this value feeling'.⁴⁵

3.2.1.3 VALUE AND DEMAND

Just as the feeling of a value is distinct from the emotional (*gefühlsmäßig*) reaction one has to that value, both of these in turn are distinct from the fact that values are, by

⁴¹ S.W. p. 295, paragraph 2; Appendix (III).

⁴² S.W. p. 493, paragraph 1; Appendix (IV).

⁴³ DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', p. 334.

⁴⁴ S.W. p. 300, paragraph 3; Appendix (III).

⁴⁵ Brettler, *The Phenomenology of Adolf Reinach*, p. 137.

definition, capable of motivating us.⁴⁶ It is part of the meaning of a ‘value’ that we are attracted to it, and motivated to pursue it; it is part of the meaning of a ‘disvalue’ that we are repulsed by it, and motivated to deny it. The feeling or grasping of a value is classified as a motivational or emotive (*emotional*) experience. But what is the extent of this? Is it possible, for example, to feel a value but to deny its motivational influence?

Here Reinach considers the Platonic idea that it is impossible to know the good, and yet do otherwise. This, he concludes, is somewhat true, if one correctly interprets what it means to ‘know’. It is possible to ‘know’ what is good and still choose evil, but in this case, ‘knowing’ what is good indicates only a cold, incomplete knowledge that a value exists. The full experiencing of a value includes the experiencing of its emotive power; the more strongly one feels the value, the more one is motivated by it. At the ideal, perhaps impossible extreme, one experiences the value truly and completely, and in this case it may well be impossible to deny its motivational power. Reinach thus gives a qualified agreement to the Platonic principle: if one knows what is good in this true and complete sense of knowledge, it may be impossible to refuse it.

The motivational power of a felt value or disvalue is accompanied by the experience of a ‘demand’ (*Forderung*) to realise that value or as a ‘prohibition’ (*Verbot*) against realising that disvalue.⁴⁷ In both cases the intensity of the experience correlates with the intensity of the feeling of value or disvalue. It is always, it seems, possible to defy a demand or prohibition and act against it, to be disobedient, but to do so, one must

⁴⁶ ‘There are things without rational motivatedness ([for example, an] experience that [gives] sensory pleasure from the good taste of a meal). There, value has no place’. S.W. p. 504, paragraph 2; Appendix (IV).

⁴⁷ Demands and prohibitions are experienced in acts of ‘*Vernehmen*’, literally ‘hearing’, although this does not suggest that the demand is really heard as a sound is. See S.W. p. 291, paragraph 3; Appendix (III). Reinach also uses *vernehmen* in *Grundlagen* to describe the way in which we ‘hear’ the social acts of others. John F. Crosby comments, ‘We use the term “hear” in a broad sense which enables us to speak of the commanded person hearing the command even when his ears are in no way involved, as when he apprehends the command by reading something. [...] neither German nor English has any natural and unambiguous word for expressing the highly meaningful concept of a receptive act which refers to an act of another person addressed to the subject’. Crosby, ‘Apriori Foundations’, p. 49.

overcome this influence. When a person engages in volitional reflection, bewildered over whether or not to carry out a project, what that person seeks, through reflection, is a demand to carry out the project or a prohibition against doing so.⁴⁸

3.2.1.4 MORAL VALUES AND THEIR BEARERS

The ‘world of values’ has an extremely complex and nuanced structure.⁴⁹ Values have a system of relation to one another that is more complex than ‘higher’ and ‘lower’ values. Reinach also divides values based on modality, height and magnitude,⁵⁰ though he never fully explains the meanings of these terms. Among the many distinctions that exist is the differentiation between moral values and non-moral values. Beauty, utility, pleasantness and wisdom are all indicated to be values at different points within Reinach’s work. All of these are ‘good’, but goodness in this sense is not to be confused with moral goodness; likewise, these values are not moral values. Moral value is that which is morally good in itself, *sui generis*, and we know it only by experiencing it.

Though the full nature of the order of precedence of values is not made clear, some values are certainly greater, more preferable, than others. This is experienced simply as a more intense feeling of the value, a stronger feeling of preference; we do not see the precise relation between the two values, but rather feel a greater motivation to pursue one than the other. The motivation manifests in the ‘demand’ or ‘prohibition’ mentioned above, which is ‘heard’ by the person in an act separate from the grasping of the value.

⁴⁸ ‘In the practical questioning stance, we are opened to the demands that we hope to sense on the basis of the diverse reflective activity regarding the project. The sensing of the demands {in volitional reflection} stands in analogy with the insight into the being of the state of affairs {in intellectual reflection}’. S.W. p. 294, paragraph 2; Appendix (III).

⁴⁹ S.W., p. 486, paragraph 1; Appendix (IV).

⁵⁰ S.W., p. 485, paragraph 2; Appendix (IV).

Values are not experienced independently in the world, but are always associated with bearers — things that we grasp in acts of perception, and in connection with which we feel the value.⁵¹ Different kinds of values are borne by different things; a landscape can be the bearer of the value of beauty, but not of the value of wisdom. As the bearers of moral values specifically, Reinach identifies four categories of things: persons, personal qualities, acts and actions. Certain actions bear values by their essence; thus ‘value- and disvalue-character pertain to [a] project by virtue of its composition’.⁵²

3.2.1.5 THE ROLE OF VALUES IN ETHICS

As actions are the bearers of moral value-characters, values are key to how morally good actions can be chosen: we can feel the moral value of a thought-of action⁵³ and immediately know that it would be morally good to carry it out, or feel its moral disvalue and immediately know that to carry it out would be evil. But the role of values in Reinach’s ethics goes beyond this preferring of actions. Indeed, as we shall soon see, Reinach indicates that the values of actions are of secondary importance to the values of persons.

In Kantian ethics, moral goodness belongs to the will, in its freedom to act out of respect for practical reason. The willing of an action is good if that action is in accordance with the formal moral law, the categorical imperative, and if the action is willed out of respect for that law. It is thus self-imposed. In utilitarian ethics, moral goodness belongs to the purpose or end of an action, or to its consequences. An action

⁵¹ Reinach does not state that values can never exist independently of bearers, but the values that he discusses (such as wisdom, beauty, receptivity to value and moral goodness) are qualities rather than things. It is hard to imagine beauty existing without being a quality of an object, and hard to say how we would recognise disembodied beauty of this kind.

⁵² S.W. p. 292, paragraph 1; Appendix (III).

⁵³ Or, to be more accurate to Reinach’s terminology, a project. The project considered is not the same as the action performed. See below, section 3.3.2.

that has as its purpose the promotion of pleasure or happiness, over the alternative that promotes pain and displeasure, is good. It is impossible to be a good person in either Kantian or utilitarian ethics except in the sense of being a person who wills or performs good actions. The sole criterion of goodness in each of these theories is something that cannot be possessed by persons, at least not directly; it is something that lies by definition outside them. For Kant, human beings have moral dignity and are to be appreciated and respected as the members of the ‘universal kingdom of ends’. Goodness of character, however, is not assessed in terms of personal qualities, but only in terms of the will.⁵⁴

Reinach agrees that ‘there is in fact a formal ethics’,⁵⁵ and that happiness is a good. Yet he disagrees with Kant that an action is morally good only if it is chosen out of respect for the formal moral law. On the contrary, for a person to be motivated by a rational sense of duty rather than a personal preference for the morally valuable suggests, in Reinach’s estimation, that that person lacks a proper appreciation of genuinely good; that he or she lacks, in fact, a sensitivity to moral value and respect for moral value. Reinach also disagrees that ethics can have its basis in the ends of actions, or in their possible or actual consequences. Every action has an essence, and rooted in that essence is a definite value-character. Some actions are morally valuable in themselves, others are morally disvaluable, and this essential or inherent value does not change under any circumstances.⁵⁶ However, when it comes to what is morally good, Reinach’s emphasis is not really on the goodness or the willing of specific actions at all. Instead, Reinach’s position is closer to an agent-based theory of ethics, such as Aristotle’s.

⁵⁴ More specifically, Kant holds that only the will can be good unreservedly and without qualification.

⁵⁵ S.W. p. 503, paragraph 3; Appendix (IV).

⁵⁶ Reinach, however, suggests that it is possible for a project’s value-character to be modified in view of its circumstances or consequences. See below, section 3.3.3.

In Aristotelian ethics, actions themselves are not the primary focus in moral assessment; the emphasis, rather, is on the character of the agent. A person who possesses and recognises the correct virtues and acts consistently with those virtues is a good person; that a good person performs good actions follows naturally. Reinach's position is similar, but not identical to this. For Reinach, actions do have their own, essential moral value-characters, and a person who scrupulously performs the most morally valuable actions at all times realises a maximum of moral value or goodness. This, nevertheless, is not the requirement to be a good person. A person who always performs morally valuable actions is still not morally perfect if he or she does not possess a certain sensitivity to value and a respect for moral value. This sensitivity and this respect are, themselves, moral values of the personal character.⁵⁷ No number of good actions, then, can make a person 'good' except perhaps by habituation and the development of values in that person's character.⁵⁸ Reinach paraphrases Martin Luther with the statement: '[The] person must [already] be good, before [the] good action'.⁵⁹

In summary, then, moral values account for perhaps the most fundamental questions in Reinach's ethics: those of *how persons ought to be* and of *what kinds of actions persons ought to perform*. Any question of whether an action ought to be carried out, or not, is, first of all, a question of whether that action is morally valuable in itself, morally disvaluable in itself, or neither. No other factors (and other factors do apply to a moral decision, as we will see in later sections) can make the action of murder morally

⁵⁷ Reinach contrasts this ethical point of view with that of the criminal law. The law distinguishes only between (legal) guilt and innocence, between those who break the law and those who do not. Whether a person refrains from breaking the law out of respect for the law and a sense of civic duty, or out of fear of the punishment he or she would receive, makes no difference from a legal perspective; the person is correctly safe from reproach or punishment in all these cases. Morally speaking, however, a person who refrains from an evil action only out of fear of punishment has a lower moral standing than one who refrains because he or she finds the evil action repugnant. See S.W. p. 308, paragraph 1; Appendix (III).

⁵⁸ Reinach does not make it entirely clear how moral development of this kind takes place. See below, section 3.2.1.6.

⁵⁹ S.W., p. 501, paragraph 1; Appendix (IV). The reference appears to be to Luther's article *Von der Freiheit eines Christenmenschen* (1520).

good, because murder is morally disvaluable in itself;⁶⁰ and above all other concerns, every person is called on to be good, not only in his or her actions, but *as* a person.

Having seen what role values are to play in Reinach's ethics, however, we must also be aware of the limits of that role, of what values cannot do. Values cannot help us to resolve questions about morality in being, about the ethical status of facts, or of anything else that is not properly designated as a bearer of values. Nor can the concept of value help us to understand how that which is not a value, or morally valuable, can yet be correctly deserved in a moral sense. Only a method of preferring actions and of assessing persons is provided in this sphere, which is not enough to satisfy the questions of ethics. The concept of moral value alone does not allow us to say what a person's moral duty is;⁶¹ it offers only a means of preferring one action over another that does not necessarily get to the heart of what one absolutely *ought* to do. The sphere of values is only the first of three, which each have their role to play.

3.2.1.6 CRITIQUE

In *The Phenomenology of Adolf Reinach*, Brettler criticises Reinach for his argument that the ability to feel value is necessary to act morally. 'We may infer that Reinach would have agreed that nothing *more* can be demanded of a person than that they use whatever degree of ability to feel value that they have', she writes, but 'this is not clear'.⁶² At face value, it seems unfair that a person should be required to do more than his or her best, more than is in his or her power, to act in a morally good manner.

In fact, it seems clear that Reinach does indeed suggest that more can be asked of a person than this. A person who lacks sensitivity to value is not only likely to do

⁶⁰ Reinach never gives a definition of murder that he himself is happy with. However, it is reasonable to suggest that murder — as opposed to the more general term of homicide — is by its nature morally bad. All murder is homicide, but not all homicide is necessarily murder.

⁶¹ Moral duty instead hinges upon the sphere of moral rightness, which we will discuss in section 3.2.2.

⁶² Brettler, *The Phenomenology of Adolf Reinach*, p. 138.

things that are morally bad, but is also a morally bad person in himself or herself. As we have noted, Reinach's emphasis when it comes to the role of values in ethics is on the assessment of the personal character. A person who fails to recognise values correctly faces reproach for that failure only indirectly; what is fundamental is that the failure indicates a flaw in the person's character, a way in which that person ought to be better. This, as we will see below,⁶³ is the reason why an evil action performed after a pause for reflection is judged more harshly than one hastily performed: 'the incapacity to feel an ethical value is itself an ethical disvalue'.⁶⁴ As long as it is possible for a person to improve himself or herself, to increase the moral values of his or her personal character and correspondingly decrease the disvalues, then Reinach is not making an unfair demand of the person with low value-sensitivity; he is simply making a demand more in line with an Aristotelian understanding of ethics. It is not that a person ought to *act* in the best way that he or she can act, but that that person should *be* the best person that he or she can be and can become.

So, while in fact Brettler's concern here is warranted, it does not create an immediate problem for Reinach's ethics as presented. This clarification, nonetheless, does point us to a deeper problem with Reinach's ethics of personal values: that of personal moral development.

Reinach makes it clear that not all persons have the same level of sensitivity to value: there are 'different talents among human beings in the grasping of these distinctions of value'.⁶⁵ Moreover, 'the feeling of an ethical value and the capacity for the feeling of ethical values in general are themselves ethical values. Their value increases with the growing fineness of the feeling'.⁶⁶ What Reinach does not make clear

⁶³ See section 3.3.6.

⁶⁴ S.W. p. 301, paragraph 2; Appendix (III).

⁶⁵ S.W. p. 485, paragraph 1; Appendix (IV).

⁶⁶ S.W. p. 300, paragraph 3; Appendix (III).

is what, if anything, determines an individual person's 'fineness of feeling' or sensitivity to value, or how that sensitivity can change. In other words, if a person possesses a low sensitivity to value and is to that extent a morally bad person, it is not at all clear how that person can increase his or her fineness of feeling or sensitivity and improve morally. Nor does Reinach explain how any other value of the personal character, moral or otherwise, can be obtained, or how a disvalue of the personal character can be removed.

This is not just a question of the apparent fairness or justness of the situation. Reinach insightfully shows us that 'ought' applies only to contingent states, to that which can be one way or another.⁶⁷ 'Ought' necessarily implies 'can'. He also indicates that the existence of a value is morally right and that that which is morally right ought to be. If a person's low value-sensitivity, however, is in some way determined and fixed, and unable to be changed, if that person cannot ever possess a higher sensitivity to value, then that person's being unreceptive to value is not contingent, and is thus not wrong. It is not meaningful to say 'he ought to be more sensitive to value' if that is impossible. Likewise, it is not clear whether 'cases of actual *inability* to feel value'⁶⁸ are possible for Reinach, and if so, how they should be assessed. A person completely unable to feel value is completely unable to do good for good reasons (to be 'good before the good action'). Thus we cannot say that he or she *ought* to do good for good reasons; it is not only unlikely in this case, but impossible.

Reinach provides only a partial solution to this problem. He makes reference to a "redemption" *of the I* through art or suchlike, [generally through] anything that would lead it on to the objective attitude'.⁶⁹ Creating or viewing art is presented here as a means to refine one's appreciation of it. This suggests that paying close attention to

⁶⁷ 'Apriori Foundations', trans. by Crosby, pp. 108-9.

⁶⁸ Brettler, *The Phenomenology of Adolf Reinach*, p. 137, n. 1.

⁶⁹ S.W. p. 491, paragraph 1; Appendix (IV).

values in general can lead a person to the correct attitude for recognising moral values. Nevertheless, Reinach does not explicitly clarify whether this means that the person's sensitivity to value can increase in this way, or not. If so, then there is a role in a Reinachian ethics for moral habituation, as there is in Aristotelian ethics; habitually doing good will promote those values of the personal character that are necessary to be a good person. Since Reinach does not make this clear, it is impossible to be certain how he would resolve these difficulties.

Within the first of his three spheres of ethics, Reinach answers perhaps the most immediate questions of ethics: How do I know what kinds of actions I ought to perform? How do I know what kind of person I ought to be? Once a person has entered into the objective attitude and has begun to appreciate the good in itself, the answer comes naturally; one's own feelings of value are the basis on which to prefer one thing over another, and feelings of moral value are the basis to prefer actions or traits of character. But Reinach still has a long way to go to chart out the entire realm of ethics, as not every question in ethics can be answered in terms of value. We will discuss the significance of Reinach's unique contributions to the field of value-ethics in the next chapter.

3.2.2 THE SPHERE OF RIGHTNESS: MORALITY IN THE WORLD OF BEING AND THE FORMAL MORAL LAW

The state of affairs (*Sachverhalt*)⁷⁰ has an important role in Reinach's phenomenology. Expressed formally, a state of affairs takes the form 'the being A of B' (*a-Sein des Bs*), where A is a state or characteristic and B is an object. If I say 'the sky is blue', I express the state of affairs 'the being blue of the sky' as an assertion.⁷¹ Another person to whom I express this statement can then understand the meant state of affairs, and take an intellectual position toward it. This intellectual position can be belief that the state of affairs indeed obtains (agreement that the sky is blue), but equally it can be disbelief of the state of affairs, doubt, suspicion, or indifference. One's taking of a position may or may not be aided by visual evidence (looking out the window to confirm that the sky is blue) or reflection (trying to recall whether the sky was blue when last seen).

As taking a position of belief involves judging that the statement is true, that the meant state of affairs obtains, it is also referred to simply as an act of judgement (*Urteil*); taking a position of disbelief is an act of negative judgement, while other positions (doubt, suspicion and indifference) represent an incomplete judgement or a failure to judge. All of these judgements are about whether the state of affairs *is*, *subsists* or *obtains*; whether the statement 'the sky is blue' is true. States of affairs never *exist*; they are not objects. The existence of an object is itself a state of affairs; the being of a state of affairs is not itself a state of affairs.

As states of affairs are not objects, do not exist as such, and are never intentionally grasped (but deduced and judged to be), they cannot be the bearers of value. 'So in ethics', Reinach concludes, 'one cannot get by with just the concept of the

⁷⁰ In common usage, a *Sachverhalt* is simply a fact, or 'the facts of the matter'. Here it is used as a technical term.

⁷¹ Although we often assert states of affairs in this way, a state of affairs is not the same thing as an assertion, as DuBois makes clear: 'The question, *is the chair wet?*, and the assertion, *the chair is wet*, refer to the same state of affairs, but it is only in the latter case that the state of affairs is *posited* or *asserted*'. DuBois, *Judgment and Sachverhalt*, p. 9.

morally valuable'.⁷² The inability of the concept of moral value to satisfy questions about the moral status of states of affairs, of facts, necessitates Reinach's second basic concept of ethics, the concept of moral rightness. A state of affairs cannot be 'valuable' or 'disvaluable', but it can be 'morally right' or 'morally wrong'.⁷³ The concept of rightness allows us to ascribe a moral character to a state of affairs, to ask and answer morally relevant questions about facts of being.

An obvious question is, why do we need a separate concept to ask and answer questions of this kind? Why can we not simply describe 'moral rightness' as a kind of value, and states of affairs as bearers of that kind of value? The answer is that to do so is not consistent with what a value is or with how it is experienced. When a person sees a beautiful landscape, he or she is immediately struck by it; we can call a *vista* of this kind 'stunning' or 'arresting' for exactly this reason, as it overtakes the viewer and almost forces him or her to look closely at it. Long before every detail has been taken in, before we necessarily know exactly what we are seeing, this feeling has already taken hold. On meeting another person, we can be immediately attracted to or repelled by that person before we can really say what it is about that person that so impresses or disgusts us. It is difficult to avoid feeling a value, to keep from being overtaken by it.

A state of affairs is never experienced in the way that we grasp an object. Learning of a state of affairs — hearing the news of some terribly unjust event — can provoke an emotional reaction, but this is always a reaction; value-feeling is an intentional act of grasping, not a reaction. A state of affairs is never grasped; rather, one judges that it obtains or does not obtain on the basis of evidence. A single point of information, a single fact, can change whether I believe in a state of affairs, or not. One

⁷² S.W. p. 336, paragraph 4; Appendix (II).

⁷³ Right (*recht*) is to be distinguished from correct (*richtig*). In ordinary usage one might refer to a judgement about a state of affairs as being right, but what is meant here is that the judgement is correct, that it reflects reality. Rightness in the sense used here is specifically a quality of states of affairs, not of judgements about them.

can refuse to believe in a state of affairs, explicitly or implicitly, regardless of the evidence for its being; we never have this chance when it comes to values. I grasp, or perceive, an object, and before I can judge whether or not it really exists (a state of affairs), I also grasp its value.

3.2.2.1 THE MEANING OF MORAL RIGHTNESS AND THE FORMAL MORAL LAW

It is important to note that although a state of affairs can be morally right, ‘the being morally right of a state of affairs’ is not a valid state of affairs. States of affairs are facts about objects, not about other states of affairs. Rightness is a property of a state of affairs: a state of affairs can be morally right, morally wrong, or neither. To say that a state of affairs is morally right is equivalent to saying that, morally speaking, it ought to be or obtain; ‘if certain further conditions are fulfilled, *I ought to do {or realise} it*’.⁷⁴ Ethically speaking, the being of a morally right state of affairs is better than its non-being, and the non-being of a morally wrong state of affairs is better than its being — not in the sense that it is more valuable, or that it is a good, but directly in that it ought to be. None of this is applicable to non-moral states of affairs, e.g., ‘orange lies between yellow and red’, or ‘it is raining’.

‘Ought’ is an important concept in Reinach’s philosophy of ethics and of law. Any legal enactment contains either an is-statement or an ought-statement. An example of the former is a legal definition, such as that of the age of majority, when a person is no longer by the law as a minor. Such statements are true for the purposes of that legal code. Legal ought-statements, on the other hand, state that a specific action is required, permitted or prohibited of some or all persons. To put it another way, they state that certain things ought to be done, or ought not to be done, or ought not not-to-be done.

⁷⁴ ‘Apriori Foundations’, trans. by Crosby, p. 105.

Such a law might be worded as an is-statement ('all citizens at the age of eighteen shall serve one year of military service'), but this is really an ought-statement, an imperative, not an is-statement. It is possible that a citizen will break the law and avoid military service. Ought-statements that are part of a positive legal code are 'valid for a certain group of persons',⁷⁵ namely those who live subject to that lawmaker's authority, during a finite period of time after the law is brought into force and before it is repealed.

However, it is also possible to conceive of ought-statements that are not bound to any specific place or time and that possess universal applicability. These are the expressions of a formal moral law (*Sittengesetz*). The formal moral law represents that which is morally right, that which ought to be, in an absolute and universal sense.⁷⁶ The moral rightness, wrongness or indifference of a state of affairs is determined by whether that state of affairs essentially conforms with a formal moral law. Reinach presents four key examples of principles of the formal moral law: (i) It is right that any morally valuable object exists; (ii) It is right that any morally disvaluable object does not exist; (iii) It is wrong that any morally disvaluable object exists; (iv) It is wrong that any morally valuable object does not exist.⁷⁷ These principles link the spheres of values and rightness. A valuable object is never 'right', but its existence is right. A state of affairs is never 'valuable', but its rightness may depend on a value being realised in it.

In customary usage, we might also refer to an action as being morally right. Reinach attaches two specific meanings to this expression at different points. An action cannot be morally right in itself, as that is a property of states of affairs, but an action can have as its goal or purpose the realisation of a state of affairs that is morally right. In

⁷⁵ 'Apriori Foundations', trans. by Crosby, p. 109.

⁷⁶ S.W. p. 502, paragraph 2; Appendix (IV). 'Moral rightness is an attribute of essence: *that which is right, is right as such, on the basis of its essence*; circumstances make no difference [there]. What is right can [thus] be expressed as conformance to a general law'.

⁷⁷ S.W., p. 337, paragraph 2; Appendix (II). We will discuss the distinction between these statements and the equivalent axioms put forward by Scheler in chapter four, section 4.2.3.

this case, the action can be called morally right by association, but it is not in and of itself; ‘it is right insofar as that which is wanted is right, but not in itself. [So] the willing inherits from that which is willed’.⁷⁸ Later, however, in *Grundlagen*, Reinach points to an alternative meaning. Actions can be the bearers of values, and, to the extent that actions can be said to exist,⁷⁹ the existence of an action is a state of affairs. Accordingly, that existence can be morally right or morally wrong if the action itself is the bearer of a moral value-character. Thus, as Burkhardt puts it, the spheres of value and rightness ‘are embedded in one another: the morally valuable object is a component of a state of affairs, while the right state of affairs is the goal, result or content of an act, which itself — in Reinach’s sense — is an object’.⁸⁰

Only a contingent state of affairs, one that can either be or not be, can be morally right or wrong. This is because an ought-statement is only meaningful if it refers to a contingent truth. It is meaningless to say ‘two plus two ought to equal five’ because two plus two can never equal five. However, it is equally meaningless to say ‘two plus two ought to equal four’ because two plus two can never fail to equal four. So the statement ‘only good persons ought to be happy’ (‘it is right that only good persons are happy’) is directly incompatible with the ‘pious dream of the ancient Greeks’⁸¹ that good persons are *necessarily* happy or that happiness is only possible for those who are good.

Because moral rightness is linked to compliance with a formal moral law — whether the state of affairs in question ought to be — it lacks the ‘extensive nuancing’ of the sphere of values.⁸² Values are ranked in relation to one another and vary in numerous ways, as discussed above. Moral rightness lacks this diversity. A state of

⁷⁸ S.W., p. 336, paragraph 3; Appendix (II).

⁷⁹ ‘Every moral obligation {...} presupposes that the existence of a person’s *action*, which forms the content of his duty, is either morally right or right in virtue of the rightness of other related states of affairs’. Reinach, ‘Apriori Foundations’, trans. by Crosby, pp. 13-14.

⁸⁰ Burkhardt, ‘Verpflichtung und Verbindlichkeit’, p. 161.

⁸¹ S.W. p. 496, paragraph 5; Appendix (IV).

⁸² S.W. p. 486, paragraph 1; Appendix (IV).

affairs that essentially complies with a formal moral law is right, and ought to be; a state of affairs that essentially violates a formal moral law is wrong, and ought not to be. All other states of affairs are neither morally right, nor morally wrong; from a moral standpoint they are neutral or indifferent. If two states of affairs are morally right, neither can be more or less right than the other, and thus there is no system of preferences within the sphere of rightness aside from the preferability of rightness over non-rightness or wrongness. To achieve any kind of ordered ranking of states of affairs in their rightness requires us to refer back to the sphere of values, and to the moral value that is realised in each state of affairs.

3.2.2.2 THE ROLE OF THE SPHERE OF RIGHTNESS IN ETHICS

We have established what the Reinachian distinction between values and rightness is and what it amounts to, but the need for that distinction, for these two separate concepts in ethics, must be examined. ‘Valuable’ means ‘good’ and ‘morally valuable’ means ‘morally good’, so we already have a basis for discussion of moral goodness and evil. Under what circumstances would we need to talk about rightness or wrongness, where value and disvalue would not suffice?

To return to an example we mentioned previously, let us imagine that two men are convicted of the same crime in the same penal system, and sent to prison for the same term. One of these men is guilty of the crime he committed; the other is innocent. We want to be able to say, at least, that the fact that the guilty man is imprisoned is preferable to the fact that the innocent man is imprisoned.⁸³ Yet we cannot say ‘it is

⁸³ Reinach refers to the punishment of the guilty as intrinsically, morally right on more than one occasion. However, he is not able to show precisely why it is *morally* right to punish the guilty (as opposed to being justified under positive law or even *a priori* right relations). We will see below (section 3.3.2.4) why Reinach’s position here is so problematic. Where we refer to this formal moral principle in this chapter, it functions only as an example that has a direct basis in Reinach’s writings.

morally valuable that the guilty man is imprisoned’, or ‘it is morally disvaluable that the innocent man is imprisoned’.⁸⁴ Every value needs a bearer, and in this case there is nothing to bear the moral value or moral disvalue, unless we designate states of affairs as the bearers of values. Reinach rejects this as a possibility. As we saw in our previous discussion of the technical sense of ‘object’, states of affairs do not exist, but obtain, and are not grasped in intentional acts of perception. ‘The sky is blue’ is a state of affairs, but I can only judge it to either obtain or not obtain based on available evidence and on my other beliefs. If that state of affairs does indeed obtain, then my judgement is correct, but I still have not grasped the state of affairs in a perceptual act. Only the object (the sky) exists and can be grasped intentionally. If on viewing the blue sky I grasp an aesthetic value in relation to it (that is to say, if I find it to have beauty), then that value is borne by the sky, not by the fact that it is blue or even by its characteristic of blueness. Likewise, generosity is a value of the personal character, and is borne by the generous person, not by the fact that the person is generous. In our present case, where a man is imprisoned for a crime he committed, *‘one says: [the punishment is] morally right, but not: morally valuable’*.⁸⁵

With only moral value as a basic concept of the ethical, therefore, we cannot talk about the moral preferability of states of affairs. We can look for ways around this. If the innocent man in our example was imprisoned by a corrupt court, out of malice, we can say that the actions of the judge were morally disvaluable. But this disvalue would be equally present if the guilty man were imprisoned by an equally corrupt court. Besides, it is also possible that no such corruption took place; the court’s decision could

⁸⁴ A utilitarian might argue that the fact that the guilty person is in prison acts as a deterrent value to others and thus this is at least part of its value and moral justification, but the perceived valuableness of the deterrent effect would apply equally to whether the person is guilty or innocent. Thus the utilitarian cannot account for the moral preferability of the guilty over the innocent person being imprisoned.

⁸⁵ S.W. p. 336, paragraph 1; Appendix (II).

have been an honest mistake. We can at best say here that someone was negligent, that some piece of evidence was overlooked or that a witness was mistaken in testifying; again, the very same mistakes may also have taken place in the trial of the guilty man. In the final analysis, the best we can ever say is that the actions that led to the innocent man's imprisonment were morally disvaluable, and that the action of setting him free would be morally valuable. We cannot say anything in terms of value about the fact of the man's being imprisoned.

The concept of rightness allows us to say: it is right that a guilty man is imprisoned for his crime, it is wrong that an innocent man is imprisoned for a crime he did not commit. This precise example presupposes that, under the formal moral law, a human being who is guilty of a crime ought to be punished, and a human being ought not to be punished for a crime of which he or she is innocent. Such specific principles are all debatable individually, but the essential point here is the possibility of such principles, of an absolute moral 'ought'. This is of high importance for normative ethics, as we will now see.

3.2.2.3 MORAL OBLIGATION AND DUTY

The more direct importance of the sphere of rightness for Reinach's ethics is the role it plays in determining moral duties. Rightness is the concept that allows us to say 'ought' or 'should' (*Sollen*). In itself, the knowledge that an action is morally valuable indicates that that action is to be preferred over a less valuable action or a disvaluable one, but it does not tell us that it is one's duty to carry out the action, that one ought to do so. Several possible actions at once can be morally valuable, though to greater or lesser degrees. Reinach bridges this gap between non-formal preference and an absolute 'ought' by introducing a concept of absolute moral duty into the framework of his

ethics. Statements in the form of ‘this ought to be’ or ‘I ought to do this’ belong to both formal ethics and to legal philosophy. The difference between a legal ought and a moral ought is that moral oughts bind all persons in all circumstances, while legal oughts bind only those persons who are subject to the particular legislating authority that enacted them.⁸⁶

We saw in chapter one that Reinach distinguishes three types of obligation, which we called *essential* obligations, *legal* obligations and *moral* obligations. Essential obligations arise from the essences of social acts; it is in the essence of a promise that it places me under an obligation to fulfil that promise. To fail to meet this obligation is to act inconsistently with the meaning of a promise. Legal obligations arise from the positive law. Certain enactments of law posit something that ought to be (in a strictly non-moral sense), and any human being who is subject to that law is obligated to act accordingly. If I fail to meet my legal obligations, by doing something the law posits I ought not to, such as commit theft, then I break the law and am treated as a criminal. Moral obligations arise from the formal moral law, and apply independently of any prior act of positing, or any jurisdiction. Moral obligations reflect how one ought to act in an absolute sense. When we say that a person is morally obligated to fulfil a promise, ‘the *moral* [obligation] mentioned here arises only because the [essential] obligation already obtains’.⁸⁷ Legal and essential obligations are meaningful in their own separate spheres, but they are ‘non-ethical categories’.⁸⁸

Moral obligations (*Verpflichtungen*), in turn, are to be distinguished from one’s moral duty (*Pflicht*). Moral obligations are not all equal; some carry more weight than others and should be preferred over others. The moral obligation to fulfil a promise is

⁸⁶ Again, this calls to mind the distinction between categorical imperatives and hypothetical imperatives. The legal ought is hypothetical, something one ought to do if one lives under a particular legal system. The moral ought is categorical, something that ought to be wherever and whenever it is possible.

⁸⁷ Brettler, *The Phenomenology of Adolf Reinach*, p. 159.

⁸⁸ Burkhardt, ‘*Verpflichtung und Verbindlichkeit*’, p. 156.

lesser than the moral obligation to refrain from murder. One's highest moral obligation, at any given moment, represents one's moral duty, that which one actually ought to do in practical terms. One's moral duty is always to meet a moral obligation, but not every moral obligation can equal one's duty at the same time.⁸⁹

Reinach does not immediately make it clear how one knows which moral obligation is greater than the others. Given his comments elsewhere, it seems likely that this is where formal ethics can no longer help, and non-formal ethics is once again required. Formal ethics tells us as a general principle that promises ought to be kept, but this formal rule alone cannot tell a person in a concrete situation whether he or she should keep a specific promise. This is Reinach's chief criticism of Kant's pure formalism: Kant attempts to draw from the general to the specific, deriving all individual moral actions from formal principles. '[The] difficulty [lies in] deriving individual actions from [the] mere formal law';⁹⁰ Reinach points to the infamous 'lie under specific circumstances',⁹¹ where the categorical imperative appears to prevent me from deceiving one person even to save another's life. Here, then, Reinach's expectation would be that the action that realises the highest moral value takes precedence and becomes the individual's moral duty. Formally speaking, a greater moral value ought to be realised before a lesser one.

As moral obligations are linked to the formal moral law, a moral obligation can arise in a situation that has very little to do with values.⁹² Morally speaking, one ought

⁸⁹ In English we reflect this idea in ordinary speech when we say that a person has 'done the right thing'. This means the same as 'he did what he ought to have done' or simply 'he did his (moral) duty'. The equality in meaning between 'he did the right thing' (or 'he did what was right') and 'he did what he ought to have done' precisely matches the equivalence between 'rightness' and 'ought'.

⁹⁰ S.W. p. 501, paragraph 5; Appendix (IV).

⁹¹ Ibid.

⁹² In *Grundlagen*, Reinach states that 'an action in accordance with moral obligation necessarily represents a moral value'. (S.W. p. 190) This can be interpreted in one of two ways: (i) that any action that one can be morally obligated to carry out must necessarily be morally valuable; or (ii) that the completion of a moral obligation necessarily realises a moral value. Both can in fact be true; if (i) is true, then (ii) follows from that.

to fulfil one's promises. 'The [essential] *obligation* to fulfil [a promise] which exists over and against the promisee is in addition to the [moral obligation], or better, it forms the basis and presupposition of that [moral obligation]'.⁹³ Because this is a matter of a formal ought, the moral obligation remains unchanged regardless of whether the action through which the promise is to be fulfilled is morally valuable in itself, morally indifferent in terms of value, or even morally disvaluable. Here, the obligation and the content of the promise must be kept separate. If a person 'mindlessly promises to murder a fellow man',⁹⁴ that person still faces a moral obligation to fulfil that promise. But it does not then become that person's moral duty to commit murder. A second moral obligation comes into play here, one which has nothing to do with the fact that a promise was made, and everything to do with the content of that promise: the morally disvaluable action of murder. The obligation to refrain from murder outweighs the obligation to fulfil the promise, and the person's moral duty is thus to break the promise. The essential obligation — that which is undertaken in the social act of promising — does not go away, but this is a non-ethical, amoral obligation. It remains because to say 'I promise' and not to carry out the promise creates an inconsistency with the meaning of the social act.

3.2.2.4 CRITIQUE: THE INACCESSIBILITY OF THE FORMAL MORAL LAW

Whereas Reinach discusses in detail how we experience values and thus how the moral value of an action or characteristic can be known, he provides no such explanation in the case of the formal moral law. Rightness is determined by this formal law; a state of affairs is right if it is in essential compliance with a formal, universal ought-to-be.

⁹³ 'Apriori Foundations', trans. by Crosby, p. 45; S.W. p. 186. Crosby's translation is slightly modified here to be consistent with our present usage of 'moral obligation' and 'duty'.

⁹⁴ Ibid.

‘What is right can [thus] be expressed as conformance to a general law’.⁹⁵ But how do we know what ought to be, formally and universally? The formal moral law is not written down anywhere, nor do we experience it in acts of value-feeling. Even the claim that ‘the existence of every moral value is morally right’, from which we might deduce further truths about the formal moral law, is itself presented only as ‘self-evident’.⁹⁶ How can we understand the concept the rightness or use it in our moral decisions and assessments, if all our knowledge about the content of that law is in the form of assumptions or presuppositions? Can we even have confidence that the existence of a moral value is morally right and ought to be, and that this is not a baseless presupposition?

Below are three possible answers to the problem of how the moral law is known. More than one may be true at once, and to differing degrees.

i) *The principles of the formal moral law are self-evident.*

Based on certain premises — (1) that the morally valuable is the morally good in itself, (2) that there is a certain order of precedence of moral values, (3) that values and disvalues can exist, (4) that the existence of something that is morally good is necessarily preferable to its non-existence, (5) that the existence of a value is incompatible with the existence of its opposite disvalue, and finally (6) that certain facts are morally right, which is equivalent with saying that they ought to be — it seems to follow, as self-evident, that the existence of any moral value is morally right, that the non-existence of any moral disvalue is morally wrong, and so on. Likewise, if we accept that a person has a moral obligation to realise any moral value that it is within her power to realise, and yet realising one moral value may exclude the possibility of realising a

⁹⁵ S.W. p. 502, paragraph 2; Appendix (IV).

⁹⁶ S.W. p. 503, paragraph 3; Appendix (IV).

different moral value, it follows as self-evident from these same premises that that a person ought to realise the highest moral value possible at any given time.

Thus, some basic principles of the formal moral law can be affirmed simply on the basis of premises of these kinds, and it is possible that others can as well. But can more concrete cases referred to by Reinach — such as the ‘intrinsic rightness of punishment’⁹⁷ — be equally self-evident? This can be argued either way. Punishing as a concept might be said to have its roots in an *a priori* social act of sanctioning or disciplining (the way a parent might do to a child for breaking an established rule),⁹⁸ or to be an *a posteriori* concept that can only make sense once a person has experienced wrongdoing by another. After all, many of the punishments used in society — including the death penalty mentioned by Reinach in *Überlegung* — are incomparable with anything a parent would use against a child, and the act of disciplining a child would not usually be thought of as satisfying the cause of justice. Moreover, ‘punishment’ as a concept is linked to the concept of ‘wrongdoing’ (no action taken against another person can essentially be a punishment if that person has done nothing to deserve it), but it is possible to deny that there is any self-evident rightness to purely retributive punishment; that is, to punishing wrongdoing for the sake of punishment.⁹⁹

ii) *Rightness can be felt in cognitive acts without prior knowledge of the formal moral law.*

It is consistent with normal experience that we may learn of a state of affairs (a fact) and immediately feel that it is wrong, that it ought not to be. Even though wrongness is not disvalue, is it possible that this ‘feeling’ of the wrongness of a state of affairs is

⁹⁷ S.W. p. 495, paragraph 1; Appendix (IV).

⁹⁸ This in itself presupposes that all social acts are *a priori*, unless another argument can be put forward to show why the act of sanctioning or disciplining (which is certainly a social act, being necessarily addressed to another person and in need of being ‘heard’) is itself *a priori*.

⁹⁹ See, for example, Cyril McDonnell, ‘Why Punish the Guilty? Towards a Philosophical Analysis of the State’s Justification of Punishment’, in *Maynooth Philosophical Papers*, 5 (2008), ed. by Simon Nolan (Maynooth: Department of Philosophy, National University of Ireland, Maynooth, 2009), pp. 21-34.

equivalent to the grasping of a disvalue; that as I judge a state of affairs to be or not to be, its essential wrongness becomes known to me in a separate act. In other words, then, when in the objective attitude, we simply feel certain states of affairs to be right. This easily applies to the case of punishment, at the very least in the sense that it is morally wrong if an innocent person is punished for a crime. On learning that such a state of affairs subsists, one has a sense that this ought not to be. In the English language, the expressions ‘it does not sit right with me’ or ‘it seems only right’ evoke this sense that rightness is something felt, just as value is. If receptivity to value is a something for which different persons possess ‘different talents’,¹⁰⁰ and if a high receptivity to value is itself a moral value, then the same could be true of receptivity to, or appreciation of, moral rightness. In this case, the formal moral law comes to be known by derivation from that which is morally right.

For all that Reinach differentiates between moral value and moral rightness as separate spheres of ethics, he does not directly deny this possibility. It diminishes the meaningfulness of his distinction somewhat, though without destroying it altogether. Valuability refers to the instantiation of a positive quality in an object (*Gegenstand*); rightness refers to the compliance of a state of affairs with a principle of formal moral law and lacks the ‘extensive nuancing’¹⁰¹ found among values. We need only look back to the basic principles that Reinach presents as self-evident to see that certain states of affairs are morally right because they include the existence of a moral value, and the existence of a moral value as such is morally right; this marks the distinction quite well. As long as we accept that there can be truth and falsity, true feeling and deception, in this sphere as well as in the sphere of values, the idea that the objective attitude includes attention to feelings of what is right and wrong *a priori* seems a defensible one.

¹⁰⁰ S.W. p. 485, paragraph 1; Appendix (IV).

¹⁰¹ .W. p. 486, paragraph 1; Appendix (IV).

iii) *The principles of the formal moral law are deducible by practical wisdom or reason.*

If, or where, the formal moral law is neither self-evident nor accessible through an act of feeling, it may be that it is possible for it to come to be known through rational deduction, by means of practical reason or prudence. We highlighted in chapter two how, in Kantian ethics, reason is able to provide us with formal maxims or imperatives for moral behaviour, and how, in Aristotelian ethics, practical wisdom or prudence allows a person to recognise virtue or excellence, the way things ought to be. Reinach does not discuss this kind of reason or wisdom, but he identifies wisdom as such as a (non-moral) value, just as appreciation of the morally good (the morally valuable) is a moral value of the personal character.¹⁰² Thus, a kind of practical wisdom, a rational understanding of the moral law and its principles, would then be itself a moral value of the personal character. This would be consistent with the phenomenological distinction — absent in Kantian philosophy — between a formal and a material *a priori*, with the moral law belonging to the formal *a priori*.

Reinach would certainly agree with the first of our possible answers, at least to some extent; those principles of the formal moral law that he writes about, he presents as self-evident. He might well deny our second answer on the basis that rightness is not something that can be intentionally grasped; but we can still have a sense that something is morally ‘in order’¹⁰³ even if this sense is not of the same kind as the feeling of a value. The second and third answers are potentially linked, as a form of practical wisdom or reason could be both what allows us to ‘feel’ that a state of affairs is right or wrong and what makes it possible to reason out truths about the formal moral

¹⁰² Reinach lists wisdom among the non-moral values in *Grundzüge*. S.W. p. 485, paragraph 2; Appendix (IV).

¹⁰³ S.W. p. 336, paragraph 2; Appendix (II).

law.¹⁰⁴ In the final analysis, we can only conclude that these answers are fitting to the question and are compatible with Reinach's wider views, but we cannot say definitively which, if any, he would agree with. Without a clear answer, though, Reinach's attributing of specific principles to the formal moral law that are not self-evident (such as that retributive punishment is morally right) remains unsupportable.

3.2.2.5 BURKHARDT'S CRITICISM

Burkhardt, in his article 'Verpflichtung und Verbindlichkeit. Ethische Aspekte in der Rechtsphilosophie Adolf Reinachs', criticises Reinach's theory of obligations for its failure to distinguish between 'levels' of obligation and for going too far in holding that it is right that every obligation is fulfilled. According to Burkhardt, '(T)he *degree* of the obligation undertaken is dependent on the importance of the content of the promise for the promise-holder'.¹⁰⁵ Yet Reinach's maxim that every promise ought to be fulfilled — that it is right that a promise is fulfilled — does not recognise this difference of degree.

As Burkhardt elaborates:

This problem naturally does not arise with Reinach's generic examples ('the promise to visit someone or to go walking with someone'), but is clear when it comes to a promise given to a dying man who wants to see to it that his family is looked after when he is dead, or when statesmen vow to their citizens that they will never be the first to use nuclear weapons.¹⁰⁶

Breaking one of these latter promises is surely a transgression of a completely different kind from breaking one of the former.

Morally speaking, there can be no doubt that Burkhardt is correct. Legally speaking, this depends on the individual code of laws. Some legal systems may consider the promise to the dying man to be a verbal contract while others would require a

¹⁰⁴ It is precisely for this reason that Thomas Aquinas considered 'prudence' to be both a moral and an intellectual virtue.

¹⁰⁵ Burkhardt, 'Verpflichtung und Verbindlichkeit', p. 171.

¹⁰⁶ Ibid.

written document before the promise can be enforced; a government's pledge concerning the use of nuclear weapons might be enshrined in law or in the national constitution. But essentially, the difference that Burkhardt expects is simply not recognised in Reinach's theory. Everyday promises and promises of an ethical higher order are all still promises; as social acts they have the same efficacy.

But if a promise is a promise, by its essence, how can we account for the moral difference between breaking a promise to visit a friend and breaking a promise not to instigate global nuclear war? To do this, we must distinguish several different cases of how a promise can be broken.¹⁰⁷

i) *A person makes a promise and chooses not to keep it.*

The classic and simplest case of breaking a promise is a clear violation of the meaning of a promise, and of the moral obligation to fulfil a promise. The decision to break a promise without any good reason could also evidence any of a number of flaws of character (laziness, fickleness, spite, or a simple callous disregard for the person to whom the promise was made), but no one of these is necessarily a factor, so we cannot make the reproach that attaches to failing to keep a promise dependent on them. As a formal moral principle, a person ought to fulfil their promises, so the promisor in this case has not done what he or she ought to do.

ii) *A person makes a promise idly, knowing that he or she will be unable to fulfil it.*¹⁰⁸

This is an example of a 'pseudo-performance'¹⁰⁹ (*Schein-vollzug*) of promising, where no intention to fulfil the promised action accompanies the spoken words. This case is

¹⁰⁷ We must not forget that although the law cannot dismiss an essential obligation arising from a promise, the promisee can, through the social act of waiving. Thus, if circumstances (and particularly, a change in those circumstances) make it unreasonable for the promisor to be bound to his or her promise, then the promisee, who possesses the claim against that promisor, might be morally obligated to waive that claim.

¹⁰⁸ For example, I take payment from a person for a rare artwork and promise to deliver it to that person, even though I do not own or possess the artwork; I cannot physically give it to anyone, nor would it be mine to give if I could, and I know this at the time that I make the promise.

more problematic within the sphere of moral rightness, because we cannot say at all that the person ought to carry out the promise — it is impossible, and we can never say that something impossible ought to be. Reinach considers it unclear ‘whether claim and obligation proceed from this pseudo-promise just as from an authentic one’, ultimately leaving the question unresolved.¹¹⁰ We might perhaps say that since the promise was not meant, no obligation ever arose, but that a moral reproach is deserved for idle promising, or any pseudo-performance of a social act with intent to deceive.

iii) *A person makes a promise in earnest, but is unexpectedly unable to carry it out.*¹¹¹

Again, this scenario creates difficulties in applying a moral obligation to promising. It can only be my obligation to carry out an action if, at some point, the possibility of performing that action is before me as possible. If a person never has this opportunity to fulfil my promise, then he or she never breaks it, even if he or she also never keeps it. A person might feel bound to apologise for failing to keep the promise in some cases, but we cannot find that the person has evidenced any disvalue of character or done anything wrong. One ought to keep one’s promises, but this ‘ought’ only makes sense when keeping the promise and breaking it are both possibilities.

iv) *A person makes a promise in earnest, but chooses another action over fulfilling the promise.*

This is the truly problematic case for ethics, one that falls between the first and third cases. Here, keeping the promise is in fact possible, and the promisor may want to keep it — another, more pressing action is simply given precedence, often due to a change in circumstances. We would judge each instance of this case on its own merits. If a man breaks a promise to meet with a friend in order to protect his family from harm, then

¹⁰⁹ ‘Apriori Foundations’, trans. by Crosby, p. 22

¹¹⁰ *Ibid.*, p. 28

¹¹¹ For example, I promise to meet my friend in Munich on a given day, but on the day that I am due to travel, weather conditions close the airport from which I am leaving, making my planned travel impossible. I can make alternative arrangements to travel, but I cannot arrive on the agreed date.

nobody would disagree that he has chosen a higher obligation over a lesser. If a man breaks a promise to drive his sick neighbour to hospital for an appointment because he chooses that exact time to repay a trifling loan, we might feel that he has shown a poor sense of priority; he has failed to recognise the higher obligation, the action in which the greater moral value is realised, or he has simply disregarded that obligation. There are, of course, much less clear-cut cases. A doctor making a house call to a sick patient encounters a wounded man on the road, and must choose between staying to help or going on to meet his appointment; in each case risking the health of one person or the other. The medical concept of triage deals with cases of this kind, where a doctor — who is under oath to provide medical assistance to those who need it — must prioritise between two or more patients according to their respective needs. Morally speaking, an agent can only follow his or her sense of which is the right thing to do — which is felt as possessing or realising the greatest moral value.

Considering these four cases as distinct from one another, we see that the moral reproach due to a person for breaking a promise only applies without exception in the first case. In the second case, a different reproach attaches to making a false or lying promise. In the fourth case, whether a person deserves to be reproached depends on the reason why he or she did not fulfil the promise, and the degree of reproach likewise depends on a weighing-up of the obligation fulfilled against the one broken.

In the first and fourth cases, then, the problem that Burkhardt refers to is clear. One act of promise-breaking is worse than another because the obligations entered into were of different levels. In the fourth case, we cannot weigh up whether a person's action was right or wrong at all without differentiating between levels of obligation. Since differentiating between higher and lower ethical levels is not possible in formal ethics (and thus in the sphere of moral rightness), this problem would have to be

resolved by reference to non-formal values, the order of precedence among which is sufficiently nuanced to distinguish between different cases of promising and promise-breaking. In arriving at the decision of whether or not to act, a good person following the objective attitude would consider the moral value of action versus not acting. In Reinach's example of a man promising to commit murder, a morally aware person will feel that breaking the promise realises the greater value, and refrain from acting. In this case, to break the promise is the man's duty and to keep the promise would be evil. Here, Burkhardt is incorrect to say that the degree of ethical obligation depends on the importance of the promise to the promise-bearer. Only the moral value realised in acting or not acting, respectively, has a bearing on whether the promisor ought to act. The fact that a non-ethical obligation remains — the simple fact of having promised — does not change and cannot change.

We have seen that the sphere of rightness as it stands raises questions for Reinach's ethics that are not fully addressed in his work. We have shown that, at least, these questions can be answered, even though we cannot definitively say how Reinach would have answered them. Despite these problems remaining open, the sphere of rightness still plays an important role in Reinach's ethics and has important potential for the development of phenomenological ethics.¹¹² We will further discuss the significance of this distinctive aspect of Reinach's works on ethics as a contribution to his field in the next chapter.

¹¹² Based on these conclusions, we find that Brettler and DuBois are incorrect to regard Reinach's work on the sphere of rightness as being not sufficiently developed to be useful (Brettler, *The Phenomenology of Adolf Reinach*, p. 207) or to constitute an 'actual contribution to practical philosophy' (DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', p. 332).

3.2.3 THE SPHERE OF GOODS: MORALITY IN ENTITLEMENTS AND POSSESSIONS

Reinach's third sphere of ethics is the least developed of the three, mentioned explicitly only in *Grundzüge* and never discussed as extensively as the other two spheres. Even its basic concept — a 'good' (*ein Gut*)¹¹³ — is not in any way clearly defined. A good is something temporal, but not necessarily tangible,¹¹⁴ possessing a finite duration of existence, that can be possessed by a human being, and that is capable of being promoted or diminished by human action. 'Life', 'property',¹¹⁵ 'health' and 'happiness'¹¹⁶ are all examples of goods. Reinach notes that in law, one can talk about 'loss of life', 'theft of property', 'promotion of happiness'; but life, property or happiness is not the same as a person or human being. Something else is being referred to in these cases, and as with obligations and claims, the fact that a good can be given or taken proves that it is not nothing.

There are several ambiguities about precisely what Reinach means by a 'good'. It is possible that goods can be categorised as Reinachian objects, along with obligations and claims; or, perhaps, that all Reinachian objects are goods and *vice versa*. If it can be a principle of the formal moral law that 'every promise ought to be kept', that is, that 'every essential obligation arising from an act of promising ought to be met', then the essential obligation here seems to take on the role of a good. It is not nothing, it persists for a certain length of time, and it is something distinct from the person of either the promisor or the promisee. A person's life can be considered to belong to the category of 'object' (*Gegenstand*): it can be lost, saved, preserved, or taken, and whether a person possesses life in the literal sense is an objective (*sachlich*)

¹¹³ S.W. p. 486, paragraph 3; Appendix (IV).

¹¹⁴ Of the goods named by Reinach, only 'property' seems to refer to a physical, tangible object, and even this is debatable. Intellectual property, for example, is by definition not a physical thing. If one considers the actual good here to be *access* to one's property or *control* over one's property (both of which are distinct from the property in its physical form) then perhaps all goods are intangible.

¹¹⁵ S.W. p. 486, paragraph 3; Appendix (IV).

¹¹⁶ S.W. p. 497, paragraph 1; Appendix (IV).

matter, not one that depends on any one observation or experience. The designation of happiness as an object is less clear-cut; it is not certain that the question, ‘Are you happy?’ has an objective or factual answer. We will discuss the significance of happiness in the sphere of goods below.

Finally, goods are themselves not necessarily ‘good’ in the moral sense; the existence of a good is not necessarily to be ethically preferred over its non-existence. Reinach proposes as a principle of the formal moral law that ‘the happiness of the moral human being is right; that is, it is right that the moral human being is happy’.¹¹⁷ And yet this does not depend on the existence of happiness in itself being preferable to its non-existence. A person who is morally good deserves to be happy; a person who is morally evil does not deserve to be happy, so an absence of happiness for the morally evil person would be preferable to him or her being happy. The ‘quality of goodness that happiness possesses is not to be confused with moral value’.¹¹⁸ If happiness were morally valuable, the realisation of happiness would always realise moral value. Thus Reinach’s view on goods is in disagreement with both Aristotle and Kant, for both of whom happiness forms at least part of the highest good for human beings.

In *Die Überlegung*, Reinach at one point uses the term *Strafzübel*, the ‘evil of punishment’.¹¹⁹ The passage in which this word appears is not a discussion of goods as such, and in fact precedes Reinach’s identification of this sphere, but it may still be relevant here to consider an ‘evil’ as the opposite of a ‘good’. Punishment is of course not necessarily ‘evil’ in the sense that the action of punishing someone is essentially morally disvaluable; but to receive punishment is always undesirable. Referring back to our comments on the sphere of moral rightness, then, we may have here a more precise

¹¹⁷ S.W. p. 486, paragraph 2; Appendix (IV).

¹¹⁸ S.W. p. 496, paragraph 4; Appendix (IV).

¹¹⁹ S.W. p. 308, paragraph 1; Appendix (III).

way of saying ‘It is morally wrong that an innocent person is punished’, namely: ‘It is morally wrong that any innocent person suffers the evil of punishment’, just as ‘it is morally right that the morally good person is happy’.

3.2.3.1 THE ROLE OF THE SPHERE OF GOODS IN ETHICS

Reinach does not make it entirely clear what role goods are to have in his practical ethics. Certain principles of the formal moral law, for example, that ‘it is right that the moral human being is happy’, depend on the acceptance of the sphere of goods; as a principle, the example given presupposes that happiness has a certain ethical significance. So even though a concept of goods is not necessary for the formal moral law to be envisaged, an entire range of formal moral principles referring to ‘life’, ‘health’ and ‘happiness’ depends on precisely such a concept. At the same time, since goods are not morally valuable in themselves, the formal moral law is necessary to make goods relevant in our moral decisions. I cannot say, ‘the action was morally good because it created happiness’, as the utilitarian interpretation would hold, but I can say, ‘the action was morally right in its purpose because it created happiness for a person who ought to be happy’. This is one way that a criterion of natural justice could potentially be understood in Reinach’s ethics, although in Reinach’s terms, ‘justice’ would then be simply another way to say ‘rightness’, or a specific sub-category of rightness dealing with goods and what persons are entitled to.¹²⁰

¹²⁰ Reinach does not develop a concept of justice (*Gerechtigkeit*) in either his ethics or his legal philosophy. In *Überlegung* he describes one outcome of the law on murder as an ‘obvious injustice’ (S.W. p. 310, paragraph 2; Appendix (III)); he also makes scattered references to ‘justice’ in *Grundzüge*, using it in much the same way as ‘morally right’. For example, ‘it is only just if the good are happy’; S.W. p. 486, paragraph 2; Appendix (IV). Neither concept of justice is developed beyond these individual references. See below, chapter four, section 4.2.7. Justice, as an abstract noun, can refer to a just state of affairs (*iusitia*) or to that which, through law (*ius*), brings about a just state of affairs. Not all laws, however, are morally just laws. Thus issues concerning the relation between law and morality in terms of ‘justice’ will reflect issues concerning the distinction between moral and non-moral states of affairs with which Reinach’s theory is well-equipped to tackle, even if he does not

There are indications that Reinach intended for the sphere of goods to have a greater role than this; that, more than being just things to be deserved or undeserved under the formal moral law, they are also of importance to ethics in themselves. The first thing Reinach tells us about goods is that they form an order of precedence (*Rangordnung*).¹²¹ Later, he states that happiness is ‘a great good’.¹²² This notion that goods that are not equal in their status, that some are more important than others under the objective attitude, implies a deeper role in ethics that is, ultimately, not explained. We will discuss one possible such role below.

Based on the above discussion, Reinach’s reasoning for introducing the concept of goods into his ethics, and for distinguishing them from the other basic concepts of ethics, is apparent, though this concept as presented does not appear to stand on the same level as do the concepts of moral value and moral rightness.

3.2.3.2 THE POTENTIAL OF THE SPHERE OF GOODS

As we noted above, Reinach refers to an order of precedence among goods without indicating what this means for ethics. We will here present one possible way of developing the role of Reinach’s sphere of goods by exploring the significance of the order of goods.

do so himself. There is also at least one other sense in which a concept of justice could be understood within Reinach’s philosophy, namely the relationship between positive law and the *a priori* sphere of right. This forms part of Stein’s concept of justice; see chapter four, section 4.3.2.6. A just law would then be one that is well supported by the *a priori* foundations of positive law. Given that there are thus at least four different senses in which a concept of justice could be made a part of Reinach’s philosophy (namely, justice as a quality of states of affairs, justice as a quality of laws that bring about just states of affairs, justice as the requital of desert and justice as a quality of laws that are well-founded in an *a priori* sense), given that no one of these can be clearly identified as Reinach’s own concept of justice, and given that two of the four could not be explored without first treating of Reinach’s philosophy of law in detail, the question of justice in Reinach’s philosophy is a matter for a separate investigation.

¹²¹ S.W. p. 486, paragraph 3; Appendix (IV). Reinach uses the same word to describe the ordered ranks of values. See, for example, S.W. p. 485, paragraph 3; Appendix (IV).

¹²² S.W. p. 496, paragraph 4; Appendix (IV).

The only good that Reinach explicitly places above any other is happiness. Happiness has an important role in many branches of ethics, particularly in Aristotelian and utilitarian approaches. Aristotle begins from the idea that happiness is the highest good and that excellence of character is the route to achieve happiness.¹²³ Reinach states that happiness is not the highest good, though he does not indicate what is; perhaps life is a higher good than happiness.¹²⁴ Reinach also denies that only the good are happy: '[there obtains] here no relationship of being, as so many have proposed'.¹²⁵ But is he correct by his own understanding, and could the good of happiness have a larger role to play in ethics than he thinks?

First, we must establish what happiness is. Reinach quite perceptively indicates that happiness is not an emotion or feeling-state (*Gefühl*). Like emotions, happiness is a state of being, but it is not simply something one feels, like pleasure, anger, or even joy.

*Happiness and unhappiness [reside] in a completely different layer {of the I} to joy. Happiness and unhappiness are not experiences like moods; happiness [can be] present before [it is] grasped {...} Happiness relates to the entire sphere of existence.*¹²⁶

If happiness is not an experience, then what kind of state is it? Reinach does not say. What we can say for sure at this point is that it requires more than the presence of pleasure or the absence of pain. A happy person has a good existence in ways that are not expressed in terms of emotion. At the same time, we would suggest that a person cannot be both happy and miserable. Even though happiness does not necessarily imply pleasure or cheerfulness, a person who feels bad about his or her life is presumably not happy. After all, a good life encompassing the entire sphere of existence suggests

¹²³ See above, chapter two, section 2.2.1.2.

¹²⁴ Certainly, Reinach states, 'even [the] unhappiest' life remains a good in itself. S.W. p. 497, paragraph 1; Appendix (IV).

¹²⁵ S.W. p. 486, paragraph 2; Appendix (IV).

¹²⁶ S.W. p. 496, paragraph 3; Appendix (IV).

freedom from great misery and hardship. Happiness can be present before it is grasped, but it is something that can be grasped once it is present.

Happiness, then, overall, is a good state of existence that can be appreciated by the happy person. What is a good state of existence? We have three ways to measure this: in terms of value, in terms of rightness, and in terms of goods. Since happiness is a state pertaining to the entire sphere of existence, we would suggest that all of these criteria must be met. A person who is happy has more value than disvalue in his or her life; more rightness than wrongness; more goods than evils.¹²⁷

We still do not feel that a person of good character will necessarily possess an ideal state of being; that such a person will always be happy. In fact, it seems it might be even harder for a person who is sensitive to value, and who loves value, to be happy, because that person will be all the more acutely aware of each disvalue in his or her world, whereas a person who lacks those traits will be content to overlook those disvalues. Being contented, nonetheless, is not the same as being happy, either. Reinach does state that '[A] perfectly immoral human being cannot be perfectly happy [because it is an] *essential impossibility that happiness [should be] united with ethical disvalue*'.¹²⁸ A 'perfectly immoral' person, however, is an extreme case, and to be 'perfectly happy' is, one would think, a rare thing for any person. We can go further than this.

Reinach states that '*Happiness is [a] great good, even if not the greatest. But [the] quality of goodness that happiness possesses is not to be confused with moral value*'.¹²⁹ Happiness is good, then, but not morally good; this is not problematic, as the same is also true of many values (such as beauty and wisdom). Now, a person who lacks receptivity to value will not appreciate the good and right things that are all

¹²⁷ This is reminiscent of the view of happiness as a state of blessedness (*beatitudo*).

¹²⁸ S.W. p. 496, paragraph 5; Appendix (IV).

¹²⁹ *Ibid.*, paragraph 4.

around him or her. A person, in other words, who wants for nothing and is surrounded by art and all the finest things in life may take pleasure in all these things, but that is not the same as appreciating their value in themselves. Likewise, a person who is receptive to value but does not love it, who even hates it, will not appreciate that which is truly good. Bearing this in mind, could either of these persons — the kinds of persons Reinach considers to be morally bad — ever truly be happy? A person might think he or she is happy, but if happiness is something that can be present before it is grasped, then it is possible to be deceived over whether one is truly happy, just as it is possible to be deceived over values and personal interest. ‘In cheerfulness we may find a hint toward happiness, but [it is] never infallible. *Deception [remains] possible.* {There is} no univocal connection, *no univocal relationship* here’.¹³⁰ However much good a morally insensitive person has in his or her life, he or she cannot appreciate that good, and such a person will never be satisfied with those things that he or she has. Such a person can sincerely seek happiness, but that search is self-defeating since the person will not appreciate or be content with true happiness.

On the other hand, the person of good moral character, who appreciates that which is truly good in life — the valuable, the right, goods in their proper precedence — could never be content with just an existence of constant pleasure and freedom from any wants, if it meant being surrounded with disvalue and moral wrongness, or the loss of goods that stand higher than pleasure. Such a person need not live a life of pleasure at all to achieve happiness, as long as — in the entire sphere of his or her existence — there is more value than disvalue, more rightness than wrongness. And such a person can truly be happy, because unlike the morally insensitive person, the morally good

¹³⁰ Ibid., paragraph 3.

person will truly appreciate the happy state of his or her sphere of existence, and will not constantly yearn for more.

We would not go as far as Aristotle in saying that the attainment of happiness is the ultimate end of ethics. According to Reinach, happiness is not even the greatest good within the sphere of goods, and it literally does not compare with the separate concepts of moral value and moral rightness, which it is right and good to pursue for their own sake. But the attainment of this great good is surely *one* end to which a good person, a person who embraces the objective attitude, can turn. After all, 'it is right that the moral human being is happy'.¹³¹

By following this line of interpretation, we see that the sphere of goods and the order of precedence among goods can play a much deeper role in ethics than those laid out for them by Reinach. More than just something to be aspired to, moral goodness becomes its own reward, as a happy existence is possible only for someone who truly appreciates value and the morally right.

SECTION THREE

THE MECHANICS OF REINACH'S ETHICS: MOTIVATION, REFLECTION AND FREEDOM

Reinach acknowledges the problem of freedom or autonomy as an important one for ethics. He does not, however, see this problem in terms of the dichotomy between determinism and indeterminism — whether human actions are truly free and undetermined by causality, or are causally determined in the same way that events in the physical world are. Freely-willed acts are phenomenally authored by the I;¹³² from

¹³¹ S.W. p. 486, paragraph 2; Appendix (IV).

¹³² '[To the] essential uniqueness of the process of will [belongs the] phenomenal I-authorship of all genuine acts of willing. Phenomenally speaking [the] grasping of a resolution {to act} goes out from the I spontaneously. {...} Only where [the] I emerges as the spontaneous author {of the act} does [the] problem of freedom of the will arise. {...} Phenomenal I-authorship delimits the realm of

Reinach's perspective, this is where they originate and they cannot be traced back further. But Reinach also finds that the question of whether or not actions are *causally* free is much less relevant for ethics than the question of whether actions are *phenomenally* free. Phenomenally free actions are simply those freely chosen by the I, without any form of necessity or compulsion forcing them to be carried out.

Coupled with this concept of phenomenal freedom is the concept of the personal structure, sometimes simply called the 'personality' (*Persönlichkeit*),¹³³ of the I. The personal structure is not easily defined; it can be seen as a set of characteristics or traits, including the values and disvalues of the person, that inform the decisions of each individual human being. Sensitivity to value and respect for value are both traits of the personal structure; a person whose personal structure possesses these valuable traits will evidence them in his or her actions.

3.3.1 AUTONOMY AND THE PERSONAL STRUCTURE

An action is truly free, and is of greatest significance for ethical assessment, if it arises entirely from the person of the acting subject and is a direct indication of something about that subject's personal structure. Many kinds of actions do not fit this description. If a person jumps in response to a sudden, unexpected sound, like a thunderclap, that action is not freely taken. It arises not from any kind of rational motivation, but from what Reinach calls striving or conation (*Streben*).¹³⁴ These inclinations, non-rational by definition, can take many forms. We can consciously will that toward which we have no inclination; equally, our inclinations can get the better of us, causing us to act without thinking. Such striving-driven actions are still authored by the I, but in this case, it is

freedom'. S.W. pp. 508-9; Appendix (IV)

¹³³ S.W. p. 295, paragraph 2; Appendix (III).

¹³⁴ Reinach seems to have received this distinction from Pfänder's *Phänomenologie des Willens*, first published in 1900. See Pfänder, *Phenomenology of Willing and Motivation*, pp. 16-19.

‘the will-less prey of strivings’;¹³⁵ the personal structure of the I is not expressed in these actions. Thus, ‘[the] *boundary of the problem of freedom [runs] between striving and willing*. Strivings [are] viewed by all as univocally determined’.¹³⁶ Reinach emphasises that this concept of phenomenal freedom is not limited only to acts of willing; there are also free acts in which nothing is willed or realised. ‘Turning {one’s attention} towards something, affirming, judging, forgiving and so on [are also] all voluntary acts in which [the] I emerges as phenomenal author.’¹³⁷

Reinach holds that while human actions can be ‘forced’, they are certainly not forced in the sense that one object is forced to move when struck by another. A human action is forced, if one is coerced into carrying it out, i.e. if one does not want to act but, for any reason, one feels that one has no choice. The choice to not act or refrain is always, in fact, present, and cannot be taken away. ‘Phenomenal necessity’ does not mean that the action is really inevitable in an absolute sense, only that the subject feels a compulsion to carry it out. Phenomenologically, such acts are and unfold from a kind of self-imposed coercion. Phenomenally unfree actions, nonetheless, are still spontaneously authored by the I, but a sense of necessitation takes the place of free motivation.¹³⁸ ‘Where *I-spontaneity is not [present] at all, freedom [and] unfreedom have no place*.’¹³⁹

An action that is phenomenally unfree, that a subject is forced to carry out or that is otherwise not a reflection of that subject’s personal structure, can still be morally valuable or morally disvaluable in itself, but it does not reflect on that person’s character in quite the same way that it would if it were phenomenally free. It would,

¹³⁵ S.W. p. 509, paragraph 2; Appendix (IV).

¹³⁶ Ibid., paragraph 3.

¹³⁷ Ibid.

¹³⁸ For example, ‘[the] case where the relatives of a man being executed are compelled to come and watch. *Here, unfreedom [reigns], despite I-spontaneity on the basis of an inwardly experienced necessity from without*’. S.W. p. 510, paragraph 3; Appendix (IV).

¹³⁹ S.W. p. 510, paragraph 3; Appendix (IV).

after all, be paradoxical to attempt to judge a person's character based on actions that are 'out of character'. Cases where something is indicated about the personal structure are the ones that are relevant and interesting for ethics.

3.3.2 ACTION VERSUS PROJECT

We have seen that Reinach identifies actions among the bearers of moral values; the moral value of an action is the first determinant of whether that action ought to be carried out.¹⁴⁰ However, values are experienced in acts of feeling and grasped in relation to objects, and when deciding whether or not to carry out an action — the critical moment of moral choice, which truly reflects on the character of the person — the action does not yet exist. It is not before the subject, as something that he or she can intentionally grasp or perceive. Values are only ever experienced in connection with intended objects, yet the moral value or disvalue of the action being considered does not yet have a concrete bearer. This is especially significant since the subject is not even necessarily anticipating something that will exist. If the subject, on reflection, chooses not to act, the action is never carried out, its value is never realised. Even if the subject does resolve to carry out the action, this does not guarantee that that action will actually take place, at the time or in the way that was expected, or in fact at all.

Reinach here uses a distinction between an action (*Handlung*) and a project (*Projekt*), the latter a term introduced by Pfänder.¹⁴¹ The action is what one actually performs; the project is what one resolves to carry out. As such, when one reflects on whether to act, and in doing so identifies the sense of a moral value or disvalue, what

¹⁴⁰ As noted above, Reinach views actions as objects that can exist. As an object that bears moral value ought to exist, the performance of any morally valuable action is morally right.

¹⁴¹ Pfänder's comments on the concept of the project are brief, but match Reinach's usage of the term. Pfänder describes a project as a 'certain future behaviour' that 'the ego proposes to itself'. Pfänder, *Phenomenology of Willing and Motivation*, p. 22.

one feels is the value-character of the project, not of the action that the project may be realised as. The project exists only as an idea, but nonetheless it has all the existence at the moment of decision that it will ever have. It may be that one fails to carry out the project and neither the resolved-upon action nor its moral value is ever realised. However, something is still indicated about the character of the agent. If a man who is out hunting shoots and kills another person by accident, then he is at worst negligent and guilty of manslaughter, but he is not a murderer, as he at no point resolved to kill another human being. If on the other hand the hunter resolves to commit murder, but does not carry it out, then his lack of sensitivity to the moral disvalue of his project, or disregard for that same moral disvalue, is documented in the act of resolving.

Reinach does not make it clear whether projects themselves are genuine bearers of value. They are not among the bearers of moral value specifically identified by him. One can imagine saying ‘the very idea of it repelled me’, suggesting that the project, even as a mere idea that may never be put into practice, can evoke a value-response. Reinach’s statement that ‘value- and disvalue-character pertain to [a] project by virtue of its composition’¹⁴² could be read as meaning either that the project itself is valuable because of the actions proposed in it, or that the project reflects those values without being itself valuable, in the same way that an act of willing can ‘inherit’ moral rightness from the fact that the willed state of affairs is right.¹⁴³

3.3.3 CONSEQUENCES AND VALUE-MODIFICATION

The fact that we resolve to carry out projects rather than actions has further implications. If I consider the project of taking a drive in my car, that project has in itself an indifferent value-character; that is, it is neither morally valuable nor morally

¹⁴² S.W. p. 292, paragraph 1; Appendix (III).

¹⁴³ S.W., p. 336, paragraph 4; Appendix (II).

disvaluable. We can, for the sake of argument, call the action of driving a car value-indifferent. Suppose, then, that I resolve to drive as fast as possible for my own enjoyment, or because I am in a hurry. The action of driving my car remains the same, and the project of doing so continues to have a morally indifferent value-character. But now, my actions are liable to put my own life and the lives of others in serious danger. Can this really still be morally indifferent?

To resolve this, Reinach proposes in *Überlegung* that the likely consequences — the danger of causing harm — modify the value-character of the project. An action can be assessed not only in terms of its own value, but also “in view of” or “in consideration of” certain known circumstances and possible consequences.¹⁴⁴ In Reinach’s example of driving a car too fast, the likely consequences cause an otherwise morally indifferent act to become morally bad. The value-character of the action carried out remains unchanged — it is part of the action’s essence — but in resolving to carry out the project, the subject accepts its secondary consequences along with those that are willed purposefully. A person who resolves to drive at ‘extraordinary speed’ resolves to perform a value-neutral action, but also to endanger the lives of others, a decision which reflects badly that person’s character. We would usually say simply that the person is driving ‘too fast’ or ‘excessively fast’; the dangers associated with the action are the reason we consider it excessive.

However, Reinach’s position in *Überlegung* seems to be contradicted by his arguments in *Grundzüge*, where he criticises utilitarianism for concerning itself ‘with superficial details, [with the] accidental consequences of acts’.¹⁴⁵ ‘In utilitarianism, there would be nothing so wrong that it could not be made right by its possible

¹⁴⁴ S.W. p. 293, paragraph 1; Appendix (III).

¹⁴⁵ S.W. p. 494, paragraph 2; Appendix (IV).

consequences'.¹⁴⁶ This implies that there are certain things that Reinach would not want to be justified or made right because of possible consequences. How can it be that 'there is a value-modification of a thing through its associations with others, but there is no being-modification by any kind of "in view of",'¹⁴⁷ if in fact values have real, objective existence — if the existence of a value can *be*, as a right state of affairs?

It is possible that these two arguments do not contradict each other, if we understand Reinach to be referring to a symbolic value-modification in *Überlegung*, and not to an actual change in the value of the action. That is, the value of the action itself — driving a car — remains value-neutral, but the decision to drive too fast suggests something about the character of the agent. Any decision that senselessly places other people in danger could be seen as symbolising recklessness on the part of the agent, modifying how we assess the moral value of the decision without altering the essential value-character of the action itself. We will discuss Reinach's theory of symbolic relations of value in more detail below.¹⁴⁸

3.3.4 MORAL VALUE AND PERSONAL INTEREST

The demand or prohibition experienced on the feeling of a value is not the only kind of motivational force that can affect our decisions. Reinach also points to a concept whose development he owes to an early work by Dietrich von Hildebrand: that of personal interest.¹⁴⁹ Where value is the importance or motivational power of an object in itself, personal interest refers to that which is of importance or has motivational power purely *for me*. Reinach is quick to emphasise that this is not a matter of 'objective and

¹⁴⁶ Ibid., paragraph 4.

¹⁴⁷ S.W. p. 293, paragraph 2; Appendix (III).

¹⁴⁸ See section 3.3.6.

¹⁴⁹ See chapter two, section 2.3.5.2.

subjective value'.¹⁵⁰ For a start, personal interest is not value at all, and cannot be equated with it. The essence of value is not shared by personal interest. Besides this, to designate personal interest as subjective as against the objectivity of values is misleading. There is both truth and falsity, correct recognition and deception, when it comes to personal interest, as indeed there is with value. 'There is a true interest for me just as much as there is a true value of the thing in itself'.¹⁵¹ A person can be deluded into thinking that an action is in his or her own best interest when it is in fact harmful to him or her.

Personal interest is not felt in the way that values are, and a felt value cannot be weighed up against a sense of one's interest, like for like. Personal interest carries no moral weight and can never take precedence over moral value in moral terms; moral value takes 'total ethical priority' here.¹⁵² It is not morally bad to act in one's own interest, but this is true only as long as doing so does not mean acting in a way that is morally disvaluable.

Although value and personal interest can never be compared or weighed up with one another, both have a motivational influence on the subject. 'If I recognise that a project is of interest for me, then in this case I hear from the outset the "demand," or here, to put it better, the "invitation," to realise it'.¹⁵³ Just as the felt moral value of a thought-of project lends intensity to a demand to carry that project out, so the intensity of this invitation (*Aufforderung*) depends on the degree of personal interest.

Reinach, nonetheless, indicates that when moral value and personal interest conflict, a weighing-up takes place 'in an entirely unique way between utterly different things. What here makes a preference possible is its own problem, not to be discussed

¹⁵⁰ S.W. p. 297, paragraph 2; Appendix (III).

¹⁵¹ Ibid.

¹⁵² S.W. p. 298, paragraph 1; Appendix (III).

¹⁵³ Ibid., paragraph 2.

here'.¹⁵⁴ It is not altogether clear why this should be; if the demand of value and the invitation of interest are motivational experiences of the same kind, then they can indeed be weighed up against one another, like for like. Thus it is possible, even in the face of a strongly-experienced prohibition against carrying out a morally disvaluable project, for that prohibition to be overwhelmed by the even stronger invitation to carry out the project for one's own personal interest. As respect for moral value is itself a moral value, to uphold moral value above personal interest is a sign of a morally valuable character.

3.3.5 THE STRUCTURE OF WILLING

The question 'Why did you do that?' can really be interpreted as three questions, and can be answered in three different ways. If I am asked 'Why did you help your friend to paint his wall?', I can answer meaningfully by saying '*because* he is my friend', '*in order to* help him', or '*out of* gratitude to him for helping me before'. Each of these gives different information and answers one of three different questions. Corresponding with these different questions and answers, Reinach distinguishes from each other the motive (*Motiv*), source (*Quelle*) and purpose (*Zweck*) of an act of willing.¹⁵⁵ The purpose, that which is willed, and which one means to bring about, is further to be distinguished from the goal (*Ziel*) of the action. In the scenario of helping my friend to paint his wall, the painting of the wall is the goal; to help my friend is the purpose. The motive is a present or past state of affairs, the being (or non-being) of which creates the environment in which the purpose is wanted; that *because of which* the action is resolved. That my friend needs help is a suitable motive for the above scenario; if I am helping a stranger, on the other hand, the fact of a religious precept could be my motive.

¹⁵⁴ Ibid., paragraph 3.

¹⁵⁵ S.W. p. 487, paragraph 4; Appendix (IV).

Finally, the source of the action is that *out of which* the action is resolved. If I apologise to another person, I do so out of guilt or remorse; if I am coerced into a course of action, I perform the action out of fear or concern. In summary: “for what” (“*in order to*”) indicates purpose, “because” indicates motive, “out of” indicates source’.¹⁵⁶

We noted earlier that one of the ways in which an action can be called morally right is if it aims toward the realisation of a morally right state of affairs; that is, if that right state of affairs is willed by the agent. We can now see more clearly how the concept of moral rightness allows us to assess willing more deeply. The motive of an action can be the subsistence of a state of affairs that is morally right or wrong. If the motive is a morally wrong state of affairs, then the source of the willing can then be outrage over that state of affairs. The purpose of an action can, similarly, be the realisation of a state of affairs that is morally right. These can be true without the action that follows being morally valuable in itself. For example, the fact that an innocent human being is unjustly imprisoned (the being imprisoned unjustly of an innocent human being) is morally wrong. Another person might come to realise that the innocent prisoner was wrongfully convicted, and begin the procedure to overturn that conviction. The overturning of a conviction is perhaps not a morally valuable act in itself, but when we examine the motive, source and purpose of the second person’s action in doing so, we recognise them as a credit to his or her character. The motive is that the innocent man is imprisoned, which is morally wrong; outrage over this moral wrongness forms the source of the willing, which indicates the person’s respect for moral rightness, which is a morally valuable trait. The purpose, too, is to put an end to a morally wrong state of affairs. The action, then, is a right one by virtue of its purpose: *‘the willing inherits from that which is willed’*.¹⁵⁷ Even though the action may not be morally

¹⁵⁶ Ibid.

¹⁵⁷ S.W. p. 336, paragraph 3; Appendix (II).

valuable in its own essence, it nonetheless demonstrates a moral value of the agent's character.

As noted above, not every action is aimed at the realisation of a specific state of affairs; 'we also detect an ethical character in experiences of a non-willing nature'.¹⁵⁸ The act of forgiving another person of their wrongdoing stands out particularly as an act that is usually praised; '[but] *could one consider it an act of willing?*'¹⁵⁹ In the case of non-willing actions, the motive, source, purpose and goal may be absent; Reinach does not make this entirely clear. If one is asked, 'why did you forgive that person?', one could still answer meaningfully with the expressions 'because' or 'out of'. But if the action had a purpose or goal, if it was done *in order to* achieve some result, then it may be inconsistent with the meaning of forgiving as such.

3.3.6 THE ETHICAL SIGNIFICANCE OF REFLECTION

The process of resolving to carry out a project can be a matter of a single, punctual act; indeed, this is almost always the case. We do not usually stop to ask ourselves, 'ought I to do that?' These immediate decisions can still be motivated by values, both moral and non-moral. They can still be phenomenally free acts authored by the individual I. Such acts of deciding guide a person in their daily routine; one might only pause to think once or twice, about how to dress or what to eat, in the midst of a continuous flow of actions. Equally, one judges states of affairs to obtain or not obtain in swift, punctual acts of judgement based on perceptions: 'the sky is blue' or 'the bus is late'.

The exception to this typical process of swift decision-making is when a subject pauses, questioning whether to carry out the action, or not. This questioning attitude of the subject precedes the process of reflection (*Überlegung*), which 'makes a sharp

¹⁵⁸ S.W. p. 500, paragraph 5; Appendix (IV).

¹⁵⁹ Ibid.

incision into the continuous flow of our experiences'.¹⁶⁰ Reinach distinguishes three types of reflection: intellectual (*intellektuelle*) reflection, volitional (*voluntative*) reflection, and practical or practical-intellectual (*praktisch-intellektuelle*) reflection. Intellectual reflection is the questioning of an intellectual position — whether a proposed state of affairs obtains, or does not obtain. In intellectual reflection, one weighs up evidence or searches one's memory; ideally, the subject's own personal inclinations or attitudes do not interfere. Volitional reflection is the questioning of *whether* to carry out a thought-of project, or not. It involves the weighing up of motivational forces and the attempt to analyse one's own motivations. In this case, the influence of one's own inclinations and attitudes, the participation of the personal structure in the decision, cannot be avoided; 'the construal of a subject who prepares his or her acts of willing reflectively without any {personal} participation is not possible'.¹⁶¹ The third type of reflection, practical-intellectual reflection, is the questioning of *how* to go about realising an intended purpose. Here, one weighs up advantages and disadvantages, favourable and unfavourable consequences of various orders, that arise from different modifications of the project. Thus, it is, properly speaking, 'a case of *intellectual* reflection' which has practical implications.¹⁶² Both volitional and practical-intellectual reflection can precede the act of resolving to carry out a project; equally, the former can lead to the project being abandoned, and the latter to it taking a very different form.

Whether an action is reflected on or not does not change the value-character of the action. The value-character of an action is essential to that action. It does not even change the value-character of a project, which can be modified in light of its consequences. Nor does it change the value-character of reflection itself; 'reflection [is]

¹⁶⁰ S.W. p. 279, paragraph 1; Appendix (III).

¹⁶¹ S.W. p. 290, paragraph 2; Appendix (III).

¹⁶² S.W. p. 304, paragraph 1; Appendix (III).

always [a] positive value'.¹⁶³ Yet Reinach points to four assessments of reflection that seem to contradict one another:

(i) The praiseworthy action is considered less praiseworthy if it occurs 'without any reflection.' (ii) But then it is also considered less praiseworthy if, conversely, the acting subject undertook it 'only after a long period of reflection.' (iii) We take it as reproachable in a human being if he or she performs an important action without 'reflecting for even a moment on the matter.' (iv) But conversely, we assess a reprehensible action much more harshly if it happened 'with reflection.'¹⁶⁴

In each of these cases, the presence or absence of reflection changes our moral assessment of the action, but the change is not all in one direction. In cases (i) and (iii), reflection seems to represent a positive value which is lacking (we ask 'did he even he think about what he was doing?'). In cases (ii) and (iv), however, reflection seems to represent a disvalue which worsens the action. This seems self-contradictory, as something that is valued in one case should be valued in the others as well.

Reinach concludes, nevertheless, that these four assessments do not actually contradict one another. The assessments differ not because the value of reflection is different in each case, but because of what the presence or absence of reflection *symbolises* about the person of the agent. In volitional reflection, the value-character of a reflected-on project is highlighted. A person who reflects on whether to carry out a project has a better chance of fully appreciating its value-character than one who does not. In case (i) above, then, the person receives less praise because he or she may not have fully appreciated the moral value-character of the action; he or she may have been motivated equally by personal interest or have overlooked the possible consequences of the action. Thus, in this instance the lack of reflection symbolises the possibility of ignorance or of recklessness. In case (ii), on the other hand, a lengthy process of reflection suggests that the agent could not quickly and clearly recognise the value of

¹⁶³ S.W. p. 501, paragraph 3; Appendix (IV).

¹⁶⁴ S.W. p. 279, paragraph 1; Appendix (III).

the action; thus, ‘it is assumed that long reflection can be required only by one who lacks ability to feel value, possesses an insensitive personality, or places his subjective interests above concern with values’.¹⁶⁵ In case (iv), the agent has performed an evil action even after reflecting on it; here, it seems that the agent has either completely failed to recognise the moral disvalue of the action, or has recognised it but ignored it. Again, this symbolises either a lack of sensitivity to moral disvalue or a total disregard for it, both of which are morally disvaluable.

Case (iii) is slightly different from the others; it is ‘the first and only case in which reflection does not show itself as a value-neutral indicator of very different kinds of valuable realities’.¹⁶⁶ Although reflection in itself is not morally valuable, a person who is habitually reflective indicates a moral value of his or her own character, ‘if a modest one’.¹⁶⁷ In other words: it is not morally valuable to reflect, but it *is* a moral value of the person to be reflective. Thus in case (iii), the person’s unthinking action indicates a failure to be the kind of person he or she ought to be, one who always stops to think before making important decisions.

We can now see more clearly the possible parallel between the value-symbolism suggested by Reinach in connection with reflection, and the value-modification that applies to an innocuous action when it places the lives of others in danger. If we see another person driving at what seems to be excessive speed, that action might suggest a recklessness of character that we would reproach. From another point of view, the driver’s extraordinary speed might be the result not of mere recklessness — for example, if a doctor were rushing to attend a patient who will not live long without treatment.

¹⁶⁵ Brettler, *The Phenomenology of Adolf Reinach*, p. 135.

¹⁶⁶ S.W. p. 302, paragraph 3; Appendix (III).

¹⁶⁷ Ibid.

The diagram on the next page summarises the conclusions on willing and reflection discussed above, based on an example used by Reinach in *Die Überlegung* of a ‘typical murder’.¹⁶⁸ A man is out hunting when he catches sight of his mortal enemy passing by; he reflects on what to do, then shoots and kills his victim. The action of unjust killing is morally disvaluable in itself, but it is the process of decision-making and the traits of character that are thus highlighted that make the crime seem especially reprehensible. Here we see how the motive, source and purpose of the action are distinguished and how reflection on the action affects our moral assessment of the agent. Any pause for reflection draws the project into deeper consideration, but it is volitional reflection in particular, the question ‘should I do this?’, that is expected to bring the disvalue of the thought-of action into focus, and thus that most clearly symbolises a moral disvalue in the character of the killer.

¹⁶⁸ S.W. p. 305, paragraph 2; Appendix (III).

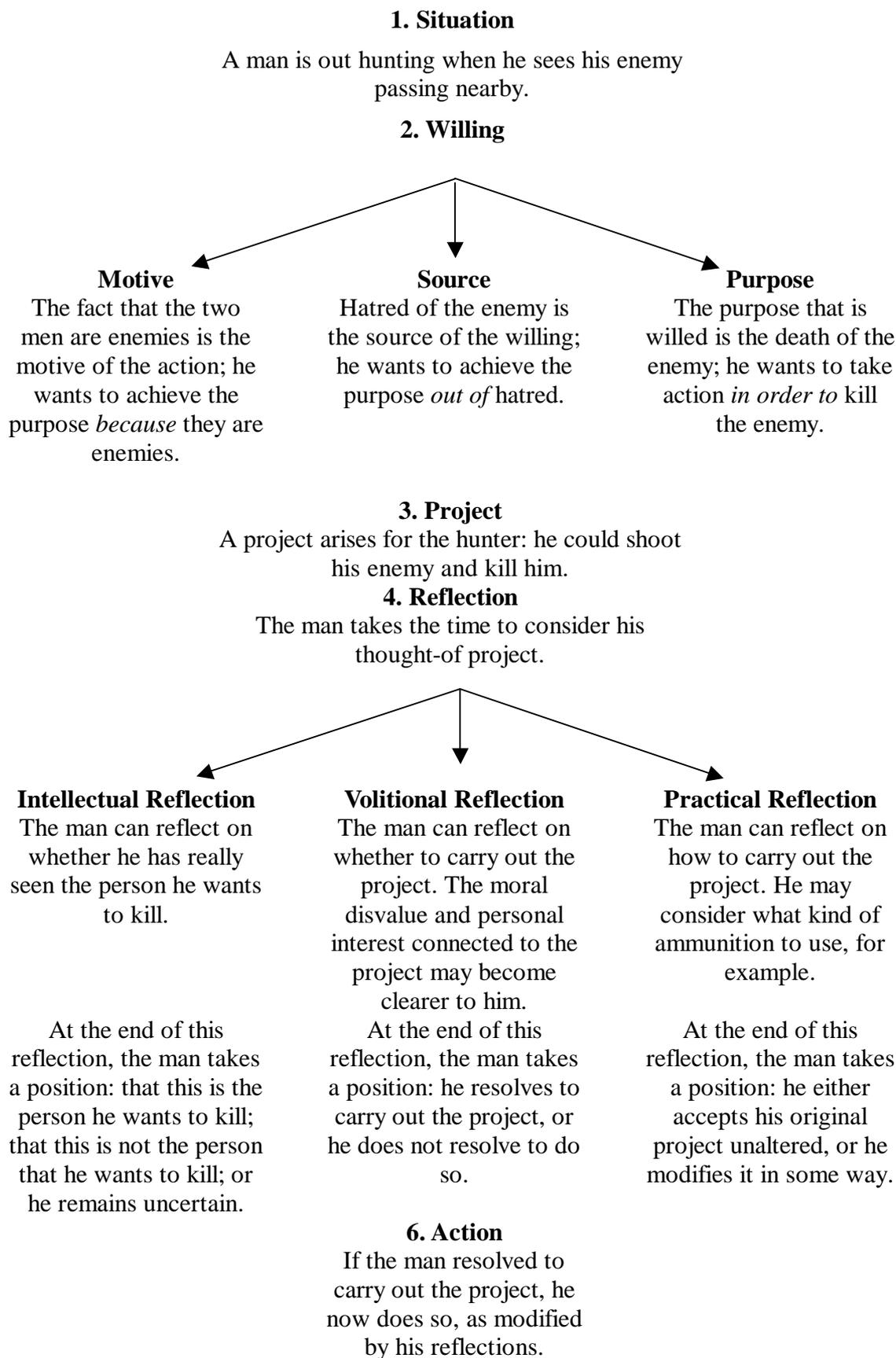


Fig. 2: Anatomy of a Moral Decision

SECTION FOUR
ANALYSING REINACH'S WORK ON ETHICS

We can summarise Reinach's conclusions on ethics, as discussed above, as follows.

1. Ethics must have both formal and non-formal components.

The non-formal sphere of ethics can tell me which value is preferable to another, but not whether either value ought to be realised. The formal sphere of ethics can tell me what ought to be, but it cannot give me any concrete method of preferring. Only together can these two spheres — the formal sphere of moral rightness and the non-formal sphere of moral values — tell me what I ought to do in a real situation.

2. Ethics must assess not only actions, but also persons and states of affairs.

Reinach states that 'since Kant, ethics has sadly been limited to the doctrine of good actions'.¹⁶⁹ This makes it impossible to be a good person or to judge that a state of affairs ought or ought not to be. Traits of the personal structure of the I can be morally good or bad, and states of affairs can essentially comply with or violate the formal moral law.

3. Moral values are real and form an objective order of precedence.

That which a human being experiences through value-feeling, the value, is good in itself, and that which is experienced as morally valuable, the moral value, is morally good in itself. The objective validity of these experiences is presupposed in our natural way of reacting to them and of living in the world. The fact that we can disagree and argue over values does not disprove this; rather, it shows how strongly we feel that our own experiences of value are correct.

¹⁶⁹ S.W. p. 501, paragraph 1; Appendix (IV).

4. The character of a person is indicated in his or her actions.

Actions have moral characters of their own — they can be morally valuable or disvaluable, and their carrying-out can be morally right or wrong. That a person carries out a morally valuable action suggests something about that person's character, as does the fact that a different person carries out a morally disvaluable action. Equally, a person whose action realises a morally right or morally wrong state of affairs reveals something about his or her character; as too does whether a person reflects on his or her action and whether that person then carries out the action with reflection.

5. Goodness of character is the primary concern of ethics.

A good person is one who is sensitive to moral value and respects moral value. Such a person performs morally good actions as direct expressions of his or her character. No number of good actions, on the other hand, can make a person good. A person who lacks sensitivity to moral value cannot be expected to always act in a manner that is morally good. Such a person, nonetheless, can be expected to be a better person and to show a greater appreciation for the morally valuable.

The guiding imperative of Reinach's ethics can thus be expressed as: 'Become the best person you can be'. With goodness of character comes sensitivity to moral values, the ability to correctly recognise one's moral duty and thus to act morally; but these are secondary to being of good character. It is in this sense most of all that Reinach's ethics resembles Aristotle's. Although there is a formal moral law for Reinach, the actions we perform in concrete situations cannot be 'derived from general laws'.¹⁷⁰ A morally perfect person — one who possesses absolute sensitivity to and love of value — would not need to reflect on his or her actions to act in a manner that is morally good (though a reflective character is especially valuable, even so). Actions do

¹⁷⁰ S.W. p. 501, paragraph 7; Appendix (IV).

not make a person good (at least not directly);¹⁷¹ rather, it is in a good person's character to choose good actions and reject evil ones. For a person who is not morally perfect, however — which may indeed mean all persons actually living, since moral perfection is purely a moral ideal concept here — it is possible to fail to recognise moral value, to be deceived about it, or equally to feel a moral value but yet to disregard it. For these persons, taking an objective attitude towards the good and reflecting before acting help them to correctly differentiate feelings of value, and the demands or prohibitions associated with those feelings, from personal interest and other motivational factors.¹⁷²

Reinach's work on ethics is incomplete. Several areas within it, as we have highlighted above, are underdeveloped or unclear. Though we cannot say that Reinach was unaware of these problems, or even that he did not attempt to resolve them in work that has not survived, we can say that any such resolution is not a part of Reinach's surviving body of work. Even so, none of these are fundamental flaws with Reinach's theory as such. We will now discuss some of these areas of underdevelopment in Reinach's wider theory.

3.4.1 THE QUESTION OF OBJECTIVITY

Like Scheler, Reinach challenges Kant's assertion that any non-formal ethics is necessarily based on empirical, rather than on *a priori* data. If Kant is correct, then any non-formal ethics is purely subjective, unable to make any objective claims. Reinach

¹⁷¹ As noted above, one interpretation of Reinach's comments on the objective attitude is that habitually good action leads to the moral development of a person's character.

¹⁷² Reinach acknowledges that it is extremely difficult to say for precisely how long a person should reflect on an important action before carrying it out. Since volitional reflection includes consideration of increasingly remote consequences, it 'leads down a path without a visible end'. S.W. p. 294, paragraph 1; Appendix (III). It is also possible that a person does not need to reflect at all in order to grasp all the relevant information before acting, and if it is presupposed that reflection is always necessary, then this person would be 'groundlessly denied praise'. S.W. p. 300, paragraph 2; Appendix (III). Thus, any assessment based on the symbolic significance of reflection can be 'quite superficial' and even 'absolutely faulty' in certain cases. S.W. p. 303, paragraph 2; Appendix (III).

agrees with Kant that ‘*empirical ethics* [is a] *nonsense*’,¹⁷³ but not that empirical and formal are strict opposites, or that *a priori* necessarily means formal. In contrast with the formal *a priori*, he places values within a ‘non-formal *a priori*’ (*materiale Apriori*).¹⁷⁴ Since ‘*ethics does not have to do with [the] consciousness of values, but with [the] values {themselves}*’,¹⁷⁵ it is based not on experiences — as an empirical ethics would be — but on the idea that those experiences can correspond with real values. Reinach’s intention is not at all to argue for the validity of any *specific* moral values or for the reality of any specific value-experiences. Only the *possibility* of existent moral values and of objective value-experiences concerns his phenomenological approach.

In defending this line of argument, Reinach turns to the nature of value-experiences themselves. Our feeling of values is just as immediate as the perception of the exterior world; we experience values in relation to objects and our value-feelings show, for the most part, great consistency. Moreover, ‘[our] entire natural way of reacting, *our attitude towards the world* {...} presupposes the objective subsistence of values *and disvalues* in [the] world’.¹⁷⁶ Reinach states that we can be deceived about values, but ‘[the] *dependability of value-feeling in general is not to be doubted on this basis*’.¹⁷⁷ That same dependability is actually presupposed whenever persons disagree about questions of value — so significant are value-feelings to us that we trust in them without necessarily being able to explain why. In Reinach’s realist phenomenology, ‘It

¹⁷³ S.W. p. 503, paragraph 4; Appendix (IV).

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ S.W. p. 504, paragraph 2; Appendix (IV). Kevin Mulligan highlights the extent to which we presuppose the reality of our value experiences in the following way. ‘If nihilism about values (sometimes called “axiological nihilism”) is correct, then there are no tragedies, no murders, no sacrifices, no injustice, no costs, no goods, no evils, no vices, no ugly films, no mediocrity, no heroes, no geniuses, no saints and no heroic deeds. “And a good thing too,” say some. But of course they should not say this if axiological nihilism is correct. For then nothing is a good thing’. Kevin Mulligan, ‘Values’, in *The Routledge Companion to Metaphysics*, ed. by Robin le Poidevin, Peter Simons, Andrew McGonigal and Ross P. Cameron (London: Routledge, 2009), p. 401.

¹⁷⁷ S.W. p. 505, paragraph 1; Appendix (IV).

is senseless to cast into doubt the possibility of something which in its being (if not also in a real existence) is evidently given to us'.¹⁷⁸

Ultimately, Reinach is here approaching the limits of what his method will allow him to say. That objective value-experiences are possible does not necessarily mean that anyone has ever truly felt a real value. Similarly, no specific expression of the formal moral law can be defended beyond the point that formal moral oughts *are* possible; if an ought is an object that can exist, as argued in his theory of essential legal foundations in *Grundlagen*, then it is also possible for oughts to exist without being posited, even if it is not known whether any specific ought exists or whether those oughts are known to any human being. To appeal to any kind of authority, to any specific experience, would go against Reinach's fundamental phenomenological approach, and he wisely refrains from doing so. As a consequence, his ethics cannot be defended further than that the requirements for its validity are possible, and that its principles follow from the acceptance of that validity. From Reinach's phenomenological perspective, nothing more than this is possible or necessary to found his ethics.

3.4.2 THE QUESTION OF FALLIBILITY

If the concerns raised about the objectivity of ethical experiences and the development of the personal character (see section 3.2.1.6, above) can be resolved, another question still remains. Reinach's theory holds that values are objective and there can be correct value-experiences, but that it is also possible to be deceived about values. How can even a person of high sensitivity to value trust entirely in his or her intuitive sense of the moral? Such a person may be highly likely to correctly recognise values, but he or she is

¹⁷⁸ S.W. p. 287, paragraph 2; Appendix (III). Reinach's examples are the searching of one's memory or the phenomenon of movement — arguments can be made that either of these is impossible, yet their possibility is reinforced by everyday experience. The same can be said of values.

still potentially fallible, and indeed it would be hard to see as morally perfect a person who believes he or she is infallible. Both Aristotle¹⁷⁹ and Scheler¹⁸⁰ include in their ethics references to the idea of moral exemplars or role models. By following the example of these individuals, one can be sure of living a good life. Not only does Reinach not discuss this idea at all, it is possibly incompatible with his position that the sensitivity to moral value is itself a moral value and is part of being a good person. Anyone who does not recognise the moral good for himself or herself may still perform good actions by emulating others, but actions will not make him or her a truly good person.

For Reinach, volitional reflection seems to take the place of any external guide in action. Infallibility may never be possible, but in that case a person who never makes a mistake about value, who is morally perfect, is also impossible. As we can only ever say 'B ought to be A' if it is possible that B could be A, we can only say a person ought to be morally infallible if it is possible to be morally infallible. Failing that, we can only ask each person to be the best person that he or she can become. A person who always adopts an objective attitude towards the good, who reflects appropriately on his or her actions — attempting to separate out the emotive influence of personal interest, to understand fully his or her own inclinations and to see how the likely consequences of the project may affect its value-character — can still make mistakes. But mistakes do not detract from the character of a person who is conscientious, scrupulous and reflective about doing what is good wherever possible. To accept fallibility as a part of human nature — even the nature of the most morally exemplary person — is perhaps the best and only answer here. Development in a moral view point presupposes that one recognises previously held wrong moral judgements, e.g., burning witches is not the

¹⁷⁹ In the form of the *phronimos* or person of recognised practical wisdom.

¹⁸⁰ In the form of the *Vorbild* or model person.

right thing to do, or having slaves is not morally acceptable. Moral fallibility is thus not an obstacle to moral development, or an argument that ‘all is permitted’.

SECTION FIVE CONCLUDING REMARKS

In this chapter, we have discussed the content of Reinach’s work on ethics: the structure of that ethics and the reason for that structure, its principles, and some of its flaws and shortcomings. We have not at all exhausted the potential for discussion of Reinach’s ethics. We have not attempted to defend it as a system of ethics, nor to condemn it. It is not the viability of Reinach’s ethics *as* an ethics that concerns us in the present investigation, but its originality and significance as a contribution within the wider context of phenomenological ethics outlined in chapter two. Accordingly, now that we have examined both the context and the content of Reinach’s ethics, we are in a position to assess that contribution in the next chapter.

CHAPTER IV

ASSESSING REINACH'S CONTRIBUTION

In the preceding chapters, we have noted that Reinach's work on ethics is an incomplete project, and so, in this regard his contribution does not stand as a complete theory of ethics. We have also seen that, in many ways, Reinach's ethics closely resembles other phenomenological approaches to ethics developed both prior to his and concurrently with it. Yet none of this means that Reinach did not make significant contributions to the field of early phenomenological ethics. Reinach's prominent position in the early phenomenological movement makes it all the more important that his contribution is recognised and assessed as such. In this chapter, we discuss the nature and extent of that contribution in detail, and show that Reinach's work on ethics includes original contributions towards addressing the problem of normativity in phenomenological ethics, to realist value-theory, to meta-ethics, and to surveying the boundaries of ethical concern.

This chapter is divided into four sections. The first section establishes the basis on which we assess Reinach's work as a contribution and examines some of the key terms and ideas which we shall use in this discussion. The second and third sections assess Reinach's work as we have analysed it from the two points of view established in section one: that of originality, and that of demonstrable influence. The final section looks at Reinach's work on ethics as a contribution to ethics generally, and its potential to hold up as the basis for a completed ethical theory.

SECTION ONE
PREPARING FOR THE ASSESSMENT

In chapter three, we examined Reinach's ethics from a critical standpoint. Here, the focus of our discussion is somewhat different. Finding that Reinach's work on ethics is extensive, intuitive or compelling does not suffice to prove that it represents a valuable contribution in a particular context; conversely, had we found Reinach's work on ethics to be limited, unconvincing and fundamentally flawed, that would not suffice either to prove that Reinach made no significant contribution at all to the development of early phenomenological ethics. To assess Reinach's work on ethics as a contribution, we must examine it under a different set of criteria.

4.1.1 THE MEANING OF A CONTRIBUTION

Our primary concerns in this chapter are twofold: the *originality* of Reinach's work on ethics, and the evidence of his *influence* on contemporaneous and subsequent work in the field of early phenomenological ethics. Even the comparative merits and shortcomings of Reinach's ethics, when compared to other approaches to ethics, are not of concern here. Thus, whether Reinach's work on ethics is superior or inferior to Scheler's, to von Hildebrand's, or to any other philosopher's, is not relevant. When and where comparisons must be made here between Reinach's work and that of others, it is for the purpose of identifying the two factors listed above: the distinctive and original characteristics of Reinach's ethics, and his influence on other philosophers in this field.

4.1.2 ETHICS AND META-ETHICS

In ‘Adolf Reinach: Metaethics and the Philosophy of Law’, DuBois concludes that ‘Reinach’s contributions to ethics *per se* are rather meagre’, but that ‘his contributions to ethical metatheory and to the philosophy of law are significant’.¹ This is partly because DuBois does not consider Reinach’s work on the theory of moral rightness to constitute a significant contribution in itself, a position that we dispute based on our analysis of that theory in chapter three.² Nevertheless, DuBois is quite correct to state that Reinach did significant work in the areas of meta-ethics and the philosophy of law.³ To clarify this point requires that we explore the somewhat fluid distinction between meta-ethics and ‘ethics *per se*’.⁴

Meta-ethics has been described as ‘the attempt to understand the metaphysical, epistemological, semantic, and psychological, presuppositions and commitments of moral thought, talk, and practice’.⁵ It thus encompasses a ‘consistently abstract’⁶ and broad range of questions and problems that relate to ethics, but not to the formation of

¹ DuBois, *Adolf Reinach: Metaethics and the Philosophy of Law*, p. 340.

² ‘[Reinach] never managed to spell out how one determines what is morally right, nor what role goods play in such deliberations, nor again how these are related to the moral values of the person. This is why it is most accurate to say that his actual contributions to practical philosophy are limited to the spheres of metaethics and the philosophy of law’. (Ibid., p. 332) In this DuBois suggests that if Reinach had developed these spheres sufficiently to be useful — which we contend Reinach in fact did — then that would represent a contribution to ethics as such. Since Reinach tells us (i) that moral rightness is determined by conformance with a formal moral law (e.g., that any value ought to exist), (ii) that goods form a ranked order of precedence and are deserved by certain persons (‘that a good person is happy is morally right’), and (iii) that the performance of any action that it is one’s duty to perform, that one ought to perform under the formal moral law, is morally valuable, we have a clear basis on which to understand how moral rightness is determined, at least one role for goods and an interrelation between both and the moral values of the person. A person who undertakes to make another person happy wills a morally right state of affairs inasmuch as the latter person is moral, and thus demonstrates a morally valuable character.

³ Reinach’s original contributions to the philosophy of law are widely acknowledged; because of this and the fact that they do not properly belong to his ethics, they will not be discussed here. Reinach’s work on distinguishing the concerns of ethics from those of the positive law is a contribution to meta-ethics, and will be discussed below (see section 4.2.7).

⁴ It should not be taken from this discussion that meta-ethics is in some way not philosophically important or interesting. In order to give due consideration to DuBois’s conclusions, however, we must arrive at a working understanding of what meta-ethics means.

⁵ Geoff Sayre-McCord, ‘Metaethics’, in *The Stanford Encyclopedia of Philosophy (Spring 2012 Edition)*, ed. by Edward N. Zalta <<http://plato.stanford.edu/archives/spr2012/entries/metaethics/>> [accessed 30 May 2012].

⁶ Ibid.

normative guides for action; the distinction between ethics and meta-ethics 'is apt to blur, in that different views about the structure of ethics usually have implications for first-order decision making'.⁷

In its broadest sense, meta-ethics could be said to cover all ethics that is not about establishing particular ethical norms. Certainly, Reinach offers few of these; as we noted in chapter three, the sole moral imperative arising from Reinach's theory is to become the best person you can be, and even this is not spelled out by Reinach in so many words. This lack of specific moral imperatives is a common feature of virtue ethics and ethics of values; such theories often depend on discussions of moral facts and of how they can become known and be acted upon, much more than on the positing of normative rules for action. A common belief among the proponents of these non-formal ethical theories is that formal, general imperatives are of little or no practical use in guiding individual actions, and here, too, Reinach would agree. It is not the purpose of Reinach's ethics to present norms in the form 'never steal', 'never kill', 'always tell the truth', and so on.

If meta-ethics is to encompass any discussion of the ethical that does not involve prescribing specific moral norms for action, then Reinach's work on ethics is indeed overwhelmingly meta-ethical. Yet Reinach's ethics is intended to have a normative function, to point to moral obligations and duties. This, as we will discuss in more detail below, is part of the function of the sphere of moral rightness. 'The existence of that which is morally valuable is morally right and ought to be' is a rule that only makes sense in light of the sphere of moral rightness, and it is only in this sphere that a person

⁷ 'Metaethics', *The Oxford Dictionary of Philosophy*, ed. by Simon Blackburn (Oxford University Press, 2008)
<<http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t98.e2002>> [accessed 17 May 2012].

can be morally obligated, subject to a clear moral ‘you ought’. For Reinach, just as much as for Kant, ‘action in accordance with duty is as such required’.⁸

What DuBois points to particularly as Reinach’s contribution to meta-ethics is Reinach’s investigation of the ethical assessment of reflection or deliberation in *Überlegung*, and indeed, one area with which meta-ethics is concerned is the analysis of moral assessments. Reinach’s explorations of the connections between value and motivation can also be seen as meta-ethical in character. Although Reinach emphasises the separateness of ethical concerns from legal ones, his comments on the relationship between ethics and the law and indeed the differences between legal and ethical assessments are significant in a meta-ethical context. We will discuss the status of Reinach’s work on meta-ethics as a contribution below.⁹

As ambiguous as the boundaries of meta-ethics are, however, we can certainly say that meta-ethics ends where normative ethics begins, and Reinach’s introduction of the sphere of rightness is precisely what is necessary for him to extend a non-formal ethics of values into the normative sphere. In contrast with DuBois’ conclusion, then, we maintain that at least one major area of Reinach’s work is not a contribution to meta-ethics, but to normative ethics: namely his theory of moral rightness. If nothing else, Reinach provides a possible way to say what a person’s duty is, what he or she ought to do, even if he believes that no strictly formal rule can be used to determine this in specific cases.

⁸ ‘Apriori Foundations’, trans. by Crosby, p. 52.

⁹ See section 4.2.5.

4.1.3 REINACH'S ETHICS AS A PHENOMENOLOGICAL ETHICS

We have set out in this investigation to assess Reinach's contribution to the field of phenomenological ethics. An important question to answer would, therefore, be: is Reinach's work on ethics phenomenological? And what makes it so?

We reflected on the meaning of 'phenomenology' in chapter two and arrived at a characterisation of early phenomenology.¹⁰ Based on that characterisation, the chief test for the present question concerns not Reinach's conclusions, but the method he used in the development of his ethics. We must, therefore, examine here whether Reinach is in fact applying his phenomenological method in his works on ethics.

To be phenomenological, Reinach's work on ethics must attempt to describe what appears in experience, the phenomena as they appear. In his particular interpretation of phenomenology, it must attempt to describe essences, i.e., the formal and non-formal *a priori* truths underlying our experience of the ethical. Reinach meets this requirement in his work on ethics; he is investigating and describing the essences of values, oughts and goods. That means that he is attempting to show *what* these things are and in what kinds of experience (where appropriate) and *the way* they are grasped. Reinach does not want to show or stipulate *which* values, oughts and goods are real; that is for individuals to discover through experience and the objective attitude. Nor does he want to show *why*. Any attempt by Reinach to explain why moral value is good would go against his own phenomenological method (as well as falling victim to the 'definist fallacy'¹¹). Reinach's phenomenological project is to show the possibility of real

¹⁰ See chapter two, section one. To recap, we characterised early phenomenology by: (1) identification with a version of phenomenology as a philosophical approach; (2) description of phenomena, rather than explanation, as the goal of philosophy; (3) intuition based on experience as a means to philosophical insight; (4) the distinction of a real world, external to the experiencing subject, from the subject's experiences as such; and (5) concern with accessing *a priori* eidetic knowledge about the 'things themselves'.

¹¹ William K. Frankena describes the definist fallacy as 'the generic fallacy that underlies the naturalistic fallacy', the latter having been named by G. E. Moore (Frankena, 'The Naturalistic Fallacy', p. 471).

experiences concerning objective values, the possibility of universally applicable moral oughts, the possibility of assessing certain things as goods and ordering those things in a hierarchy; to point to the essences of these spheres. In this, we have seen that he is successful. Of course he has not thereby shown that any specific value is real, or proven that any one value holds any specific place in the hierarchy of values. For him to attempt to do so would be to break with his own phenomenological method. Nor would it be appropriate to his method to attempt to explain *why* values occupy the hierarchy that they do. A description of what values are and how they are experienced does not include any causal explanation of what makes values valuable.

Reinach's ambition to be comprehensive in his analysis of ethics also leads back to his phenomenological principles. If Reinach is to produce a phenomenological account of ethics by his own understanding, he must attempt to describe the ethical, in its essence or essences, completely and faithfully. To leave anything out — to have a set of ethical questions to which his ethics cannot determine answers — would make his description incomplete. Instead, Reinach intends to account for all questions of ethics, and the structure of his theory reflects this goal. Even if not all of the three spheres of ethics are equally important in moral assessments or practical decision-making, none of the three can be left out or reduced to one of the others.

SECTION TWO

THE ORIGINALITY OF REINACH'S WORK

Reinach wrote and presented his first surviving work on ethics — his 'Vortrag über die Grundbegriffe der Ethik' — in 1906, the year after his first meeting with Husserl in Göttingen. This made him one of the earliest phenomenologists of ethics, though

The fallacy is committed when one attempts to define or explain the good, and consists of forgetting that 'goodness is what it is and not another thing' (ibid., p. 472).

certainly not the first; we saw in chapter two that early phenomenological ethics had already begun to develop at that point. Reinach's remaining works on ethics date from 1912-1913, by which time there had been yet further developments in the field of early phenomenological ethics, including those made by Scheler, who would publish the first part of *Formalism* in 1913.

It is not certain that Reinach was any more influenced by Scheler than Scheler was by Reinach. While it is true that Reinach's works contain more references to Scheler than *vice versa*, several of these references serve to contrast Reinach's position with Scheler's rather than indicating agreement. Neither Reinach nor Scheler was truly 'first' in terms of their respective developments of phenomenological ethics; up as far as 1914 they worked in parallel, albeit with Scheler producing the larger and more focused body of work directly focused on ethical questions.

What this means is that when it comes to identifying Reinach's original contribution to early phenomenological ethics, we cannot rely on establishing whether Reinach was the first to put forward any of the ideas he held in common with Scheler. On balance, he almost certainly was not. As we saw in chapter two, the concept of value in ethics was well established long before Reinach first used it, and the broad strokes of phenomenological value theory in general were present in Brentano's writings (on *The Origins of our Knowledge of Right and Wrong* (1889)) before Reinach ever wrote about values. However, there are ideas — albeit mostly ones that are not directly value-related — that were largely unique to Reinach's ethics at his time of writing. These clearly original ideas will be the main focus of this section. First, though, we must consider the structural differences between Reinach's ethics and Scheler's. These differences are of importance not only in themselves but also for understanding the significance of some of the unique aspects of Reinach's ethics that we will subsequently discuss.

4.2.1 REINACH AND SCHELER: COMPARATIVE DISCUSSION

We discussed the relationship between Reinach and Scheler briefly in chapter two. Now we can begin to examine the similarities and differences between their respective theories of ethics in more detail. A cursory examination of Reinach's work on ethics shows many themes common to the wider field of early phenomenological ethics. Reinach's value theory has some subtle distinctive characteristics, but is otherwise very similar to other theories of his lifetime, Scheler's in particular. It is these subtle distinctive characteristics that we will now attempt to highlight by contrasting them with Scheler's perspective. This will help us when we must gauge the originality of Reinach's work on ethics below. Scheler was one of the most active and prolific phenomenologists of ethics in Reinach's lifetime, publishing *Ressentiment, Zur Phänomenologie und Theorie der Sympathiegefühle und von Liebe und Hass* and the first volume of *Formalism* prior to the outbreak of the First World War.

Though neither one of them ever provides a clear definition of what a value is, Scheler and Reinach are principally in agreement on the properties or qualities that characterise a value. Values exist inasmuch as they are borne by objects, and the bearers of moral values specifically are the same for Scheler as for Reinach: acts, actions, and personal qualities. Values are grasped apart from their bearers, in distinct acts of feeling. Scheler indicates that the grasping of an object's value can come before the object itself is truly grasped. 'A value precedes its object; it is the "first messenger" of its particular nature. An object may be vague and unclear while its value is already distinct and clear'.¹² Reinach does not explicitly agree with Scheler on this point, but it would not be inconsistent with his theory to do so; for him, too, the value is grasped in an entirely

¹² Scheler, *Formalism*, p. 18.

separate act from the perception of its bearer,¹³ and in experience we often find ourselves drawn to look more closely at something by an immediate sense of appreciation, or repelled by it with an immediate sense of discomfort.

Where Reinach's and Scheler's theories of value differ very significantly is in the precise role of moral values in action. For Reinach, moral value naturally belongs to certain actions and personal qualities; those actions and qualities are good *as such* (while those that bear moral disvalue are bad *as such*). The *as such* is of importance. For Scheler, on the other hand, moral value — goodness as such — is not an inherent quality of anything other than God. 'Goodness belongs to God's essence [...] "good" in itself never consists in a conceptually definable property of man'.¹⁴ Human beings do not choose to perform actions that bear moral value; even 'the realization of a certain formal value is itself never good or evil'.¹⁵ Instead, as noted in the axioms put forward by Scheler early in *Formalism*, moral goodness attaches to the act of realising the highest value possible in the hierarchy of values.¹⁶ Realising each possible non-moral value accordingly realises a degree of moral value corresponding with this order of preference: the closer the realised value is to the highest value possible, the greater the moral value that is realised in turn.

Another important point of distinction is the role of love in Scheler's value theory. Reinach never refers to love as more than a possible reaction to a particular experience; he writes of the love of value, but love here is the response to the value being felt. Love of value is a moral value of the personal structure, distinct from

¹³ 'It must be clear to everyone that a landscape itself is grasped apart from its beauty. The landscape is perceived, the beauty felt'. S.W. p. 295, paragraph 2; Appendix (III).

¹⁴ *Formalism*, p. 14.

¹⁵ *Ibid.*, p. 25.

¹⁶ Scheler, *Formalism*, p. 26. For the relevant passages, see above, chapter 2, section 2.3.4.3. We will also briefly outline some of these axioms below, in section 4.2.3.

sensitivity to value; disregard for felt value is a moral disvalue, as distinct from insensitivity to value. Scheler gives a much more important role to love:

In love and hate our spirit does much more than ‘respond’ to already felt and perhaps preferred values. Love and hate are acts in which the value-realm accessible to the feeling of a {human} being (the value-realm with which preferring is also connected) is either *extended* or *narrowed*.¹⁷

Love broadens the subject’s awareness of the world of values, allowing the subject to correctly recognise the objective hierarchy of values. Hate narrows this awareness, and the condition of *ressentiment* distorts it altogether. Thus, for Scheler, a person can grasp a value *as* a value, but assign it the wrong place in the hierarchy of values; this leads to wrong action. Only by embracing love can a person’s character or moral tenor improve.¹⁸ Reinach’s view is different; a person can completely fail to recognise a value, and can perform evil actions ‘without even faintly recognising a character of disvalue in them’.¹⁹ Reinach never suggests that a person has a direct awareness of the respective positions of values within their objective hierarchy; when two values are felt, one may be felt as higher or as greater than the other, but that is all. It is possible that this is simply unclear; although Reinach discusses a hierarchy of values, his is much less developed than Scheler’s, with many of the terms he uses (*‘modalities, heights, magnitudes and characters of value’*)²⁰ remaining unexplained in any surviving work.

The difference between these viewpoints can be seen in how Reinach and Scheler account for the phenomenon of *ressentiment*. For Scheler, just as love increases one’s awareness of the correct hierarchy of values, feelings of *ressentiment* distort that same awareness. A person affected by *ressentiment* feels the same values as anyone else, but orders them incorrectly, devaluing certain values. Reinach takes a different

¹⁷ Scheler, *Formalism*, p. 261.

¹⁸ ‘An *alteration* of the moral tenor (different from a mere change in it) comes about primarily through the alteration of the direction of love in coloving with the love of the exemplar’. Scheler, *Formalism*, p. 581.

¹⁹ S.W. p. 296; Appendix (III). This is an extreme and presumably rare case of obliviousness to values.

²⁰ S.W. p. 485; Appendix (IV).

view, for, in his estimation, a person affected by *ressentiment* does not recognise values at all, as he or she is not in the objective attitude but the egoistic one. For Reinach, *ressentiment* does not cause but is caused by a particular attitude of egoism, in which the subject is not concerned with objective values, with the good in itself, but with the relative importance of everything ‘for me’.²¹ Thus, whereas in Scheler’s view, the emotion of *ressentiment* leads to a distortion of value-experience, which itself leads to egoism, Reinach’s interpretation is the opposite; an egoistic, subjective attitude leads to the placement of oneself and one’s own interests above all objective values, which leads to the experience of *ressentiment* when value and personal interest clash.

Scheler and Reinach both place great emphasis on the role of the person in ethics. Whether they in fact mean the same thing by ‘person’ is unclear, as Reinach never defines the person; however, it seems that their understandings of the term are in fact different. Scheler clearly defines the person as a unity of acts or experiences. For both, the person is a key bearer of values, but Reinach’s references to a ‘personal structure’²² suggest a different view of what the person represents, since Scheler’s person is specifically lacking in structure. For Scheler, the person cannot be abstracted from experiences at all. Nevertheless, he agrees with Reinach that there is such a thing as a ‘basic moral tenor’²³ or disposition (*Gesinnung*) of the person, which for Scheler is the bearer of values, and that ‘without a good moral tenor there is no good deed’.²⁴

Ultimately, all we have seen here is that neither Reinach nor Scheler can easily be credited with any specific influence over the other’s value-theory. To the extent that they were in contact and collaborated, a mutual influence is very likely, but not possible

²¹ ‘The deepest root of *ressentiment* is [this] promotion of the I: in the recognition of foreign value, it would feel itself diminished’. S.W. p. 491, paragraph 1; Appendix (IV). In this sense, Reinach’s position is closer to that of his former teacher Lipps’s ethics than to that of Scheler’s. The idea that the attitude of egoism is incompatible with being genuinely motivated by values comes directly from Lipps’s *Ethischen Grundfragen*.

²² For example, S.W. p. 500, paragraph 5; Appendix (IV).

²³ Scheler, *Formalism*, p. 111.

²⁴ *Ibid.*, p. 114.

to prove on any particular point. Reinach's key contributions in ethics lie principally outside the area of value theory, or at least at its boundaries, as we will now see.

4.2.2 VALUES AND THEIR ROLE IN ETHICS

Reinach's earliest surviving discussion of values in ethics was in the 1906 paper *Grundbegriffe*, in which he also proposed the concept of moral rightness. The concept of values in ethics was already familiar to his audience at the *Akademische Verein für Psychologie*; it had appeared in the work of their teacher Theodor Lipps, albeit with a somewhat different meaning from the one given to it by Reinach, and had a longer history still in both psychology and philosophy. Reinach here distinguishes moral values from values of other kinds, and although he refrains in this early work from identifying the precise bearers of moral values (he would later identify them as persons, personal characteristics and acts²⁵) he clearly indicates values as having bearers, in relation to which they are grasped. His value theory is further developed in *Überlegung* and in *Grundzüge*, into the form we discussed in chapter three. Yet we must acknowledge that the theories of values put forward by Scheler, von Hildebrand and others are in many ways more detailed and better articulated than Reinach's; Reinach never fully explains how the order of precedence or hierarchy among values is structured, nor does he properly account for the way in which human persons develop and deepen their awareness of values. That Reinach's points are not always clear and well articulated is perhaps partly a result of his writings having survived in the form of transcripts.

The clearest point of originality in Reinach's theory of value-ethics, then, is not to do with values themselves, but with their role in his ethics; or, more accurately stated,

²⁵ S.W. p. 485, paragraph 2; Appendix (IV).

with the limits of that role. Reinach discusses what values can do, but also what they cannot do, and why a purely non-formal ethics of values is as incomplete as a purely formal ethics of imperatives. As we saw above, Reinach's descriptive phenomenological methodology requires him to try and capture all of ethics in his analysis. Thus Reinach contributes to the theory of values by showing the dependence of a non-formal ethics of values on formal principles to be comprehensive.

4.2.3 THE SPHERE OF RIGHTNESS AND THE FORMAL MORAL LAW

We saw in chapter two that early phenomenological ethics often involves an emphasis on non-formal values. Some early phenomenologists — most notably Scheler²⁶ — took up value-based ethics in direct opposition to Kant's purely formal approach to ethics. Reinach is not an exception, in that he is harshly critical of Kant's ethics and in that he considers a theory of non-formal values to be a key part of his ethics. What makes Reinach unusual is that he does not entirely reject formal ethics in favour of the non-formal sphere of values. For Reinach, a non-formal ethics of values is not able to stand on its own; there are questions in ethics that cannot be resolved in terms of value. We saw in chapter three how Reinach addresses this problem with his concept of moral rightness, by taking ethics '*into [the] world of being*'.²⁷

This deceptively simple concept allows Reinach's phenomenological ethics to deal with important subjects that it otherwise could not: morality in states of affairs, and moral duties. We can see the importance of doing so by contrasting Reinach's approach here with Scheler's. We saw in chapter two that Scheler presents a series of axioms that he considers to be necessary presuppositions for all non-formal ethics. The first four are:

²⁶ See above, chapter two, section 2.3.4.1.

²⁷ S.W. p. 486, paragraph 1; Appendix (IV).

1. The existence of a positive value is itself a positive value.
2. The non-existence of a positive value is itself a negative value.
3. The existence of a negative value is itself a negative value.
4. The non-existence of a negative value is itself a positive value.²⁸

These closely resemble the four statements of the formal moral law presented by Reinach in *Grundbegriffe*, seven years before *Formalism* was published:

1. It is right that every morally valuable object exists.
2. It is right that a morally disvaluable object does not exist.
3. It is wrong that a morally disvaluable object exists.
4. It is wrong that a morally valuable object does not exist.²⁹

The claims being made by Scheler and by Reinach here are broadly equivalent. That something that is valuable exists is preferable to its non-existence; that something that is disvaluable does not exist is preferable to its existence; and conversely in each case. Scheler's formulation simply uses the concept of value to represent both 'good' and 'preferable' here. But it still takes a formal moral principle or similar, additional presupposition to say that moral value *ought* to be realised, that a person is under a moral obligation to *realise it*. Reinach builds the concept of ought into the formal moral law. Reinach's formal moral 'oughts' do not tell us specifically what we ought to do or not do; rather, they tell us what ought to be, which states of affairs ought to obtain. The four principles listed above tell us that every value ought to exist, which leads, in a roundabout way, to a moral duty: the recognition that a value could be realised leads to the recognition that it ought to be realised, and thus to the recognition that we ought to realise it.

²⁸ Scheler, *Formalism*, p. 26.

²⁹ S.W., p. 337; Appendix, p. 11.

Thus, as we noted previously, Reinach sees the concept of rightness as necessary for ethics to have the normative function that both seek. Scheler ‘clearly embraces the concerns of a normative ethics’,³⁰ but whether or not he can provide a basis for normative statements is a ‘question that haunts Scheler’s ethics’.³¹ Reinach agrees with Scheler that a theory that is unconcerned with what ought to be, that cannot guide persons in how they ought to act, ‘cannot be [an] ethics in the customary sense at all’.³² So although their meanings seem similar, the difference between Reinach’s and Scheler’s axioms here is much more than simple semantics. Scheler’s ethics provides only a criterion of goodness. Reinach is proposing an answer to the problem of normativity that is not open to a purely non-formal ethics of values.³³

4.2.4 THE SPHERE OF GOODS

Reinach also distinguishes a third sphere of ethics in *Grundzüge*, intended to account for the place of life, health, pleasure, happiness and other intangible factors in ethics. Again, the importance of this original concept is best highlighted by comparing it with Scheler’s handling of the same issue. Scheler establishes as the lowest level of the hierarchy of values the values of the pleasant and unpleasant. Pleasure is by definition pleasant and thus can be identified as valuable (though not as morally valuable). Reinach cannot agree, because for him, a value must be good in itself. The pleasant or unpleasant is always pleasant or unpleasant for someone in particular; pleasure, most of all, is the pleasure of one person. Thus, there arises the need for a separate concept of a

³⁰ Blosser, *Max Scheler*, p. 405.

³¹ Ibid.

³² S.W. p. 487, paragraph 2; Appendix (IV).

³³ It is on this basis that we find that Reinach’s contribution is not limited to meta-ethics; his concept of rightness and the associated moral obligations and duties are components of a normative moral theory.

‘good’ in a different sense from a value or something that is valuable (or at least, which is a good for a reason other than because it is valuable).

Because goods are a separate concept from the concepts of value and rightness, Reinach appoints them to their own sphere of ethics. Since this sphere is underdeveloped and its role in an actual ethics is not clear, we must conclude that it is not as significant a contribution to the field as the sphere of rightness is. Although we saw in chapter three that there is definite potential to the sphere of goods in an ethical theory, that potential is only partially realised in Reinach’s own works. Crucially, we do not know what exactly a good is; if goods are to have a direct role in ethics, it would seem necessary that we better understand what they are.

What we do know from Reinach’s writings is that the possession of certain goods by certain persons is right. Without goods, then, there is a clear gap in Reinach’s ethics, as principles in the form ‘the happiness of the moral human being is right’³⁴ only make sense if happiness can be established as something that is objectively important for a particular person for a reason other than being valuable. It is not much of an embellishment of Reinach’s theory to suggest how further principles of this kind might be established: when we speak of a human being’s ‘right to life’, or of a person ‘deserving of praise’, the ‘life’ and ‘praise’ here function as goods. The sphere of goods is an important component of Reinach’s approach to ethics, and thus warrants further development.

4.2.5 META-ETHICS

As noted above, Reinach’s work spans the rather ambiguous boundary between ethics and meta-ethics. Leaving this question aside, we can still without doubt assign two

³⁴ S.W. p. 486, paragraph 2; Appendix (IV).

particular areas of Reinach's work to the field of meta-ethics: his study of the ethical significance of reflection in *Überlegung*, and that of freedom and responsibility in *Grundzüge*. While *Überlegung* contains significant parts of Reinach's work on values and how they are experienced, Reinach's main focus in the second part of *Überlegung* is on the discussion and reconciliation of different moral assessments of reflection and attempts to understand them, which is principally a question that belongs to meta-ethics. Of all the content of *Überlegung*, it is these meta-ethical conclusions that represent the most significant contribution. Both Brettler³⁵ and DuBois³⁶ give credit to Reinach for showing the ambiguous and unreliable nature of assessments based on the sheer presence or absence of 'reflection' as a factor in decision-making.

Many early phenomenologists have a concept of phenomenological reflection (*Reflexion*) that is central to their work,³⁷ but Reinach's eidetic analysis of reflection, in the sense of consideration or deliberation, is largely unique. Indeed, it perhaps took a slightly unconventional viewpoint to see that there was a problem worth discussing; Reinach was not inspired, first and foremost, by the intellectual or ethical spheres in which he discusses reflection, but by a question of legal philosophy. The criminal law of Reinach's day employed 'reflection' as a legal term without proper attention to what that word means. By discussing the experience of reflection in full, 'Reinach succeeded in portraying the ambiguity of "reflection" which renders it an unsuitable criterion for

³⁵ Brettler, *The Phenomenology of Adolf Reinach*, p. 137.

³⁶ DuBois, 'Adolf Reinach: Metaethics and the Philosophy of Law', pp. 336-37. It is worth noting that the point that DuBois finds 'perhaps most interesting [...] from a philosophical point of view', that the definition of murder solely on the basis of reflection has the potential to spare criminals with 'a fundamental disregard for all values' (ibid.), is not an entirely original idea of Reinach's. Reinach's quotation from Katzenstein (S.W. p. 309, paragraph 1; Appendix (III)) suggests that this was already an active concern among jurists at the time when Reinach wrote his article.

³⁷ In Husserlian terminology, as expressed by Moran and Cohen, 'reflection occurs when any conscious act turns back on itself and becomes conscious of itself, e.g., when I become aware that I am looking closely at something'. Moran and Cohen, *The Husserl Dictionary*, p. 276. Thus when Reinach investigates the experience of reflection, he is in a sense reflecting on reflection. Husserl, however, does distinguish between straightforward 'natural reflection' and 'phenomenological reflection'. The latter involves bringing experiences themselves into the open for reflection, and thus is an unnatural act of reflection in many respects.

determining the punishment to be allotted to the person who has caused another's death'.³⁸ While it is important to be aware that this was the main purpose of the text, this does not undermine the significance of Reinach's ethical or meta-ethical work in this text.

Reinach's furthest-reaching contribution to meta-ethics, then, is his theory of symbolic ethical relevance. This is how he accounts for the seemingly contradictory ethical assessments of volitional reflection, and his comments open up a wide range of possibilities for considering cases where circumstances and likely consequences seem to alter the value-character of an action. These symbolic relations cannot be translated into absolute formal or non-formal ethical norms, because the symbolic relations involved are not a matter of necessity, but are only interpretations of ambiguous data.³⁹ Thus the symbolic relationships we see and anticipate in connection with values belong among the presuppositions of moral thought, within the territory of meta-ethics.

Reinach's work on freedom and responsibility is also notable in that he argues that the entire debate of determinism versus indeterminism — usually considered to be the central problem of freedom — is not, in itself, relevant for ethics. Rather, Reinach considers the more important issue to be phenomenal freedom, the degree to which the action reflects the character of the agent and his or her personal values. 'The fact that acts are carried out by the I could not be changed by any possible determinedness through circumstances'.⁴⁰ Again, this does not have a direct bearing on a normative ethics, but is of relevance when discussing how we make ethical assessments. While Reinach's work here is clearly influenced by Pfänder's work on striving or conation

³⁸ Brettler, *Adolf Reinach*, p. 137.

³⁹ Reinach states that 'there are necessary and universally-existent symbolic relationships'. The relationships underlying the ethical assessments of reflection simply 'do not belong among them'. S.W. p. 300, paragraph 2; Appendix (III).

⁴⁰ S.W. p. 510, paragraph 2; Appendix (IV).

(*Streben*),⁴¹ and while the view that a person's actions are indicative of the values of his or her character is common in early phenomenology, Reinach's decision to turn away from the issue of determinism and indeterminism and frame the problem of freedom in entirely different terms is worthy of note. Since a meaningful sense of freedom is a necessary presupposition of a normative ethics — there can be no 'ought' without the possibility that something can either be or not be which, in turn, presupposes that one is free to do or not to do what ought to be done and what ought to be — this contribution, too, is to be considered part of meta-ethics.

4.2.6 THE THEORY OF SOCIAL ACTS

Though originally proposed as part of his legal philosophy in defence of the existence of an *a priori* or essential sphere of law, Reinach's theory of social acts has definite implications for ethics. We would consider it a significant oversight if a theory of ethics were unable to account for the moral significance surrounding acts such as promising and forgiving. Yet even the fact that we identify such ethical significance with these seemingly simple, everyday acts points to the importance of Reinach's insight in showing that certain social acts have particular unique qualities.

In the case of the promise, for example, Reinach is at pains to show that it is not simply 'an expression of intention or of will'.⁴² When looked at from an ethical point of view it is strange that he would even need to say this; who would ever say that a mere statement of intent carries the same weight, ethically speaking, as a promise? At the same time, Reinach is also careful to distinguish the essential obligation that arises from every promise, as a product of that promise's efficacy as a social act, from a moral obligation. These distinctions reflect the complex nature of how we assess morality in

⁴¹ See chapter two, section 2.3.2.2, and chapter three, section 3.3.1.

⁴² 'Apriori Foundations', trans. by Crosby, p. 26.

relation to promising; we believe at one and the same time that it is morally right to keep one's promises and that it is morally wrong to make false promises, yet there are also many cases where we would consider a person morally obligated to break a promise, if the content of that promise is itself immoral. To do justice to the ethics of promising and promise-keeping requires this careful investigation of what a promise is, in its essence and in its efficacy.

The act of forgiving is a slightly different case; it involves no obligation or claim for any involved party. In fact, the ethics of forgiving is a problematic issue. Forgiving is generally considered a good act, yet we would not normally say that one person is morally obligated to forgive another who has wronged him or her. Unless we are to say that everyone ought to forgive every wrong done to him or her, we cannot ascribe a moral value to forgiving as such. Instead, we might consider the act of forgiving to have a symbolic value, in that it represents a particularly generous or forbearing disposition. But even for this symbolic value to make sense, we must accept that forgiving is a unique social act with its own particular meaning, which can be performed genuinely or pseudo-performed. It is not a 'judgment that the wrong done is, after all, not so serious, or really is no wrong at all',⁴³ nor is it a 'cessation of anger { ... } a mere forgetting or disappearing'.⁴⁴ None of these acts or processes could possibly carry the ethical significance ascribed to the act of forgiving someone. Thus the very recognition of social acts as unique acts of a unique kind, with important implications for human interaction, is part of Reinach's contribution to ethics.

⁴³ S.W. p. 535; *Über Phänomenologie*.

⁴⁴ Ibid.

4.2.7 THE CONCERNS OF ETHICS AND THOSE OF THE PHILOSOPHY OF LAW

In assessing Reinach's work on ethics, it is important to remember that Reinach draws a clear distinction between ethics and the philosophy of law. Reinach is best remembered today for his work on the philosophy of law, and his contributions in that field are widely acknowledged, though they do not directly concern us here. As one of the first phenomenologists to turn his attention to the philosophy of law, however, Reinach is also unusual in describing the differences and boundaries between the philosophy of law and ethics. As we noted in chapter three, Reinach's project is ultimately to describe the entire realm of ethical experience. This must include charting out the boundaries and limits of ethics, showing where the realm of the ethical overlaps with the realm of law and how the two are separate while still being related. Reinach highlights the dangers of failing to do this in his discussion of utilitarian ethics. The utilitarians sought to reform the law along the lines of their ethics. According to a utilitarian viewpoint,

punishment [is seen] only as education in relation to a purpose to be achieved, rather than as a separate purpose {in itself}. [In this, the] intrinsic rightness of punishment in itself goes unrecognised. Strictly speaking, punishment [is then] only wanted for [its] consequences, which can also be achieved in other ways. Medical treatment could just as well take [its] place.⁴⁵

In her dissertation, Lucinda Brettler discusses Reinach's view that sensitivity to value is itself a moral value, and that a person must possess that sensitivity in order to be morally good. As we saw in chapter one, Brettler expresses concern about the 'quagmires into which use of the criterion of "ability to feel value" may lead legal

⁴⁵ S.W. p. 495, paragraph 1; Appendix (IV). Reinach is correct to argue that reform and deterrence that justifies the infliction of punishment, from a utilitarian point of view, may be achieved by means other than punishment (and achieved better), hence the justification of the necessity of punishment, from a utilitarian-consequentialist point of view, is suspect. This, nevertheless, still leaves open to moral evaluation the question of the intrinsic rightness of punishment itself (as retribution). Reinach is correct to note that what needs to be addressed in the issue of the morality of punishment is the fact that punishment *is* retribution, not its educational or deterrent or reformative value, as utilitarians hold, but whether the deliberate infliction of an evil on someone who (at least allegedly) committed a crime, by a publicly acceptable authority, is itself a right or wrong thing to do, is the moral question.

philosophy'.⁴⁶ While Brettler is correct that the use of such a criterion in the criminal law would lead to an array of problems, Reinach never meant to apply the criteria of ethics to the philosophy of law or *vice versa*. Rather, Reinach's point *against utilitarian justifications of punishment* is that the intrinsic rightness of punishment itself is not a moral basis for their theory, but the educational or reformatory or deterrent benefits that (allegedly) accrue from the infliction of punishment on the prisoner (and others). If, however, such benefits or consequences are achievable *via* non-punitive means, such as, mandatory psychological-reformatory-medical treatment of prisoners, then utilitarians would have no argument against such practices in law. At any rate, this is why the division between the second and third parts of *Die Überlegung* in itself exists: Reinach wishes to show that an assessment that makes sense in ethical terms does not necessarily hold the same validity in legal philosophy.

In *Die Überlegung*, Reinach examines the ethical significance of reflection, and finds that it has some symbolic meaning; an evil act carried out with reflection indicates an especially immoral disposition. But he points out that there is an important difference between this immoral or unethical disposition and an 'antisocial' one. The law is not concerned, essentially, with punishing evil in a moral sense. Whether one understands the purpose of punishment to be retribution, rehabilitation or deterrence, the surrounding law is concerned only with crimes that are actually committed, not with the reasons why a person commits or does not commit a crime. Ethically speaking, a person who refrains from committing an evil action only out of fear of being punished indicates at best an amoral character (which is morally disvaluable, because to be amoral requires a lack of respect for moral value). A person who commits a good action despite a

⁴⁶ Brettler, *The Phenomenology of Adolf Reinach*, p. 138. Notably, in light of the preceding quotation from Reinach, one of Brettler's concerns is that too great an emphasis on the moral dispositions or characters of persons will lead to excessive attempts to rehabilitate criminals, amounting to 'psychological torture'. (Ibid.)

threatened punishment indicates no certain moral disvalue, and indeed may indicate an especially high regard for value, to choose a good action over his or her self-interest. In the criminal law, these judgements are reversed. The law does not care why a person refrains from a crime, as long as he or she does refrain; and ‘unreceptivity to the evil of punishment’ belongs to the anti-social disposition that is most dangerous in the eyes of the law.⁴⁷ ‘It is not at all an ethical *minimum* that the criminal law calls for, but something that lies beyond all ethical positives’.⁴⁸ This is part of the reason why Reinach argues that the criterion of reflection is inadequate for its legal purpose in distinguishing murder from manslaughter; however valid the symbolic moral assessments of it may be, the law is not essentially concerned with them. Receptivity to and respect for value have no place as criteria in the criminal law.⁴⁹ Establishing whether the person on trial was morally right or wrong to steal the loaf of bread to feed her starving child is not a function of the criminal law, but ascertaining whether the person did, or did not, steal the bread, and that this breaks a law, is.

There is a question as to whether Reinach in fact understates the importance of the relationship between positive law and the *a priori* sphere. Reinach ‘claims that the name “natural law” would poorly describe what he has investigated’ in *Grundlagen*.⁵⁰ The *a priori* relations on which legal concepts are founded are presented by Reinach as ‘simply laws of being, laws about what it is to be a promise or an obligation’.⁵¹ Indeed,

⁴⁷ S.W. p. 109.

⁴⁸ Ibid.

⁴⁹ This does not mean that Reinach in any way exempts lawmakers or the state from moral duties; those apply universally. He writes in *Grundlagen* that it is ‘quite understandable’ if the civil law prescribes that ‘a legal transaction which offends against morals is void’ (‘Apriori Foundations’, trans. by Crosby, pp. 45-46). However, Reinach does not explore in any detail this particular notion of ‘justice’, here meaning the degree to which the positive law is correct from an ethical standpoint. This could simply be because it was not relevant to his discussions in *Grundlagen*; in *Überlegung* he argues at somewhat greater length on whether a particular definition of murder is ‘suitable’ (*tauglich*) for use in the criminal law. As we will see below, there are still questions as to whether Reinach fully thought through the relationship between the positive law and the *a priori* sphere of right. Certainly, Reinach’s discussion of this relationship in *Grundlagen* is far from comprehensive.

⁵⁰ DuBois, ‘Adolf Reinach’, p. 340.

⁵¹ Ibid.

Reinach's comments in *Grundlagen* 'assert an absolute sovereignty and freedom of positive law in relation to prepositive apriori law'.⁵² Yet, amid these assertions, Reinach does not examine the state's authority to enact laws in the first place, which must be rooted, if anywhere, in an *a priori* right. The state's laws may posit which crimes will be punishable, and in what way, but 'the foundations of the authority of the state to punish at all' must exist first.⁵³ If Reinach had followed this logical extension of his own *a priori* theory of right, he might have arrived at something closer to Edith Stein's theory of the pure law, and thus by extension a fully-developed concept of justice.⁵⁴ In any case, Reinach's work on this subject helps not only to delineate the separate domains of ethics and the philosophy of law, but can also show the importance of a normative foundation for the existence of positive law, particularly when it comes to criminal law.

SECTION THREE THE INFLUENCE OF REINACH'S ETHICS

The second criterion we established for our assessment of Reinach's contribution, after originality, is its influence on the development of phenomenological ethics. The influence of Reinach on the development of phenomenology in general is well documented, but evidence is sparse of any of the original ideas outlined above — even those for which he is well known, such as his theory of social acts — being adopted by others in the field at the time.⁵⁵ In this section we will discuss evidence that Reinach's

⁵² Josef Seifert, 'Is Reinach's "*apriorische Rechtslehre*" more important for positive law than Reinach himself thinks?', *Aletheia*, 3 (1983), p. 201. Seifert notes that Reinach does not assert that the positive law has this same independence 'in reference to values and ethical considerations'.

⁵³ *Ibid.*, p. 216.

⁵⁴ See below, section 4.3.2.4.

⁵⁵ Reinach's theory of social acts has since become more widely acknowledged; see Crosby, 'Adolf Reinach's Discovery of the Social Acts', and Lundsten, *Communication as Experience*, both of which investigate Reinach's social act theory alongside the speech act theory of Austin and Searle.

work influenced the development of phenomenological ethics. Dietrich von Hildebrand and Edith Stein are the two foremost examples of early phenomenologists who were influenced by Reinach's method and who went on to discuss themes of ethics in their work, so it is with them that we will look for this evidence first and foremost.

4.3.1 DIETRICH VON HILDEBRAND

We discussed the ethics of Dietrich von Hildebrand in chapter two, alongside Reinach's other influences and contemporaries. Comparing that sketch with Reinach's ethics as laid out in chapter three, we can see definite similarities in how the two approach value-ethics and in their conclusions. This is not surprising given the degree to which they shared the same phenomenological methodology. Hildebrand himself wrote that 'from 1910 on, [Reinach] was my only teacher',⁵⁶ though he also 'acknowledged receiving immeasurably much for his moral philosophy from his fifteen-year association with Scheler'.⁵⁷ It is this connection of von Hildebrand's ethics with both Reinach's and Scheler's that makes it difficult for us to establish how Reinach's value-theory influenced von Hildebrand's. The task is made still more difficult by the fact that, as we saw in chapter two, Reinach acknowledges some influence of von Hildebrand's ethics on his own. We must examine the points of similarity and difference in detail to discover where Reinach's work on values might have influenced von Hildebrand's.

One important similarity between Reinach's and von Hildebrand's respective value theories is the view that goodness or preferability *for me* is not value — value is to be understood as goodness *in itself*.⁵⁸ Reinach first states this view in relation to

⁵⁶ 'Reinach as a Philosophical Personality', trans. by John F. Crosby, in *Aletheia* 3 (1983), p. xx.

⁵⁷ Crosby, *Dietrich von Hildebrand*, p. 475.

⁵⁸ This contrasts with Scheler's view, for example, that the sensorily agreeable and disagreeable are values, distinct from the spiritual or cultural value of aesthetic beauty (Scheler, *Formalism*, pp. 105-109). Agreeable or disagreeable is always *for me* or *for someone*, not *in itself*. These are not values in the sense used by Reinach. In *Überlegung*, Reinach designates 'pleasantness' (*Annehmlichkeit*) as a

moral values in *Grundbegriffe*: ‘useful and morally valuable are equivocations, because [one can ask]: “useful for what?”. “Morally valuable for what?”, [conversely,] is meaningless’.⁵⁹ The morally valuable is valuable in itself, not for someone or something. Reinach later indicates that this is true of all values.⁶⁰ Von Hildebrand takes a similar view in his *Christian Ethics* when he distinguishes ‘the merely subjectively satisfying, the objective good for the person, and the value’.⁶¹ However, noted previously, Reinach credits von Hildebrand with developing the distinction between value and personal interest; thus, this similarity does not necessarily prove Reinach’s influence on von Hildebrand, but may in fact also be the other way around.

Apart from the similarities in their respective theories of values, though, there is another significant point of similarity between Reinach’s and von Hildebrand’s ethics; moreover, one that is distinctive to Reinach’s work. In *Die Idee der Sittlichen Handlung*, von Hildebrand discusses the ethical significance of states of affairs. He agrees with Reinach that states of affairs can indeed have this significance. ‘When we regret having been prevented from completing an appealing project, the fact that this same good does not exist stands before us as an evil’.⁶² At its basic level, he does not consider this to require a separate concept from moral value, as Reinach does. ‘Not only a noble human being is a bearer of certain values, such as the noble and the good, but

basis of personal interest. S.W. p. 298, paragraph 2; Appendix (III). Von Hildebrand’s inclusion of the word ‘merely’ in ‘the merely subjectively satisfying’ is helpful for clarifying this. Aesthetic values can be ‘agreeable’ or ‘pleasant’, but they are never *merely* agreeable or pleasant. The merely agreeable is what Reinach does not consider to be a value, and what Scheler consigns to the lowest point on the hierarchy of values.

⁵⁹ S.W. p. 335, paragraph 2; Appendix (II).

⁶⁰ In *Grundzüge*, for example, Reinach writes: ‘[The] phenomenon that forms the basis of egoism is [an] attitude which cannot see anything in the world except through its relationship to the I. *Egoism* [is this] *dislocation of one’s own I and [the] orientation of all things toward one’s own I*. Everything becomes greater-than, pleasant for, and suchlike. *[The] height of a human being [is then] always “bigger than me.”* No pure viewings of facts [are] possible here’. S.W. p. 489, paragraph 2; Appendix (IV). Thus, any relation to the individual I is incompatible with the objective grasping of anything real, such as a value.

⁶¹ Von Hildebrand, *Ethics*, p. 80.

⁶² Von Hildebrand, *Die Idee der Sittlichen Handlung; Sittlichkeit und ethische Werterkenntnis* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1969), p. 69.

also the state of affairs that this human being exists [...] is, in a certain way, valuable'.⁶³ However, he argues for a certain precision in terminology here. 'It is better to say that the existing state of affairs is valuable, rather than that it is a bearer of value'.⁶⁴ Like Reinach, he relates the valuability of states of affairs to the concept of rightness (*Rechttheit*) and to the idea that the state of affairs "ought to be so".⁶⁵ The values borne by states of affairs are different from those borne by persons, acts and objects. A state of affairs cannot be noble or beautiful, but equally, a person cannot be 'tragic', or 'pleasant' (*erfreulich*) in the sense that a state of affairs can be (when one hears welcome news, for example).⁶⁶ For Reinach, on the other hand, to find something 'pleasant' is an emotional reaction, rather than the feeling of a value, and so the fact that such a reaction is possible in connection with a state of affairs does not indicate that the state of affairs is valuable. It might speak well of a person's character that he or she finds a right state of affairs pleasant, but the state of affairs is not pleasant in itself. Whether being tragic is a characteristic of the state of affairs in itself is less clear. Primarily, to find something tragic is also an emotional reaction, and is not necessarily an assessment that it is *morally* wrong. However, none of that proves that tragedy is not a kind of value or disvalue, even if an aesthetic rather than a moral one.

It is particularly notable that von Hildebrand is hesitant to describe the state of affairs as a bearer of value, even if it is valuable. This suggests that although von Hildebrand disagrees with Reinach's introduction of a separate concept of rightness, he does agree with Reinach that states of affairs are not appropriate bearers of value. Von Hildebrand's decision not to distinguish value and rightness in absolute terms is perhaps

⁶³ Ibid.

⁶⁴ Ibid., p. 71.

⁶⁵ Ibid.

⁶⁶ Ibid.

due to an unwillingness (like Scheler's) to embrace a formal moral law, distinct from non-formal values, as the basis on which the concept of rightness would be established.

Thus, although von Hildebrand did not strictly embrace Reinach's concept of moral rightness, he recognised both the need for a way to assess the ethical bearing of states of affairs, and some of the difficulties in applying the concept of value to states of affairs. In other words, he agreed with the broad concerns laid out by Reinach in *Grundbegriffe*. This strongly suggests an influence, though it is hard to prove one; while von Hildebrand specifically credits Reinach with important work on the theory of knowledge that he uses in *Die Idee der sittlichen Handlung*,⁶⁷ he makes no reference to Reinach's theory of moral rightness. This is understandable, as none of Reinach's writings on moral rightness had appeared in print by 1916, when von Hildebrand published the work in question. Von Hildebrand would have been familiar with Reinach's ideas from lectures and personal exchanges, with no printed source from which to quote.

4.3.2 EDITH STEIN

Edith Stein (1891-1942) was one of Reinach's most prominent students in Göttingen, and became the chief editor of the 1921 edition of his collected works, the *Gesammelte Schriften*, for which she also completed his posthumous article *Über das Wesen der Bewegung*. Her own early, phenomenological philosophy touched on a wide range of subjects, from the phenomenon of empathy to the nature of the state, community, education and social justice.

There is no particular evidence of Stein having influenced Reinach's ethics, such as exists in von Hildebrand's case. Stein, on the other hand, freely acknowledges

⁶⁷ Ibid.; see footnote 1 on p. 19 and on p. 69.

Reinach's profound influence on her work, and this provides us with an essential source of evidence for Reinach's legacy in early phenomenological ethics.

While what Spiegelberg calls Stein's 'phenomenological dowry'⁶⁸ remains important throughout her work, other influences are to be recognised in her later writings:

During the years from 1922 to 1931, when [Stein] was teaching at St. Magdalena's [...] her association with Catholic scholars [...] and her study of the works of Thomas Aquinas marked a change in the scholarly dimensions of her thought. In this period, Stein extended her phenomenological problematic to metaphysical questions, which Husserl had considered off-limits for his 'rigorous science'.⁶⁹

These influences are most pronounced in her posthumous work *Endliches und ewiges Sein*, but are also present earlier in her attempted habilitation thesis 'Potenz und Akt' (1931) and her lectures on *Der Aufbau der menschlichen Person* (1932).

As had been the case with Reinach, Stein's philosophical career was tragically cut short, in her case by imprisonment and death at the hands of the Nazi regime.⁷⁰ Unlike Reinach, Stein's contributions to phenomenology were not widely recognised during her lifetime.⁷¹

4.3.2.1 STEIN AND ETHICS

Although Stein 'did not leave a treatise on ethics per se',⁷² her works of philosophical anthropology — discussing the person, empathy, community and the state — have significant implications for ethics. Stein was not, of course, the first phenomenologist to

⁶⁸ Spiegelberg, *The Phenomenological Movement*, p. 238.

⁶⁹ Mary Catharine Baseheart, *Person in the World: Introduction to the Philosophy of Edith Stein* (Dordrecht: Kluwer Academic Publishers, 1997), p. 23.

⁷⁰ Forty-five years after her death, Stein was acknowledged as a martyr by the Catholic Church, and she was canonised as Saint Teresia Benedicta of the Cross in 1998.

⁷¹ As Stein edited Husserl's manuscripts for *Ideas II* and *III*, she was forced to watch Husserl 'struggle with issues she thought she had resolved, without his being willing to revisit her contribution'. Lebeck, 'Why Do We Need the Phenomenology of Edith Stein?', p. 695.

⁷² Kathleen M. Haney and Johanna Valiquette, *Edith Stein: Woman as Ethical Type*, in *Phenomenological Approaches to Moral Philosophy*, pp. 460.

examine questions about empathy, but her work on the topic in her dissertation is original and strikingly perceptive. Stein also went further than theoretical discussion of ethics with her attempts at practical reform; she saw the German education system as deeply flawed.⁷³ In particular, she drew attention to the problems faced by women within the German educational system of her day.

4.3.2.2 STEIN'S VALUE THEORY

Values play an important role in Stein's phenomenology, as they do for most early phenomenologists. Her precise interest in and interpretation of value theory, however, is quite unique. 'Stein's phenomenological value theory [...] stands in many ways between Scheler's theory, stressing the *a priori* of the values and of the hierarchy they form and Husserl's, which is interested in describing the act of valuation and sees values as founded on things'.⁷⁴ Unlike Scheler and Reinach, who describe the grasping of value simply as a cognitive act of feeling, Stein has a much more complex understanding of how we come to recognise values, in which feeling is only the 'most important' means to gain insight into values.⁷⁵ Stein also saw her work on empathy as a way to repair flaws in Husserl's phenomenological approach to these problems; Husserl, however, does not seem to have acknowledged (or perhaps understood) her contribution.

For Stein, values '*are their motivating power* of which we always have expandable experience'.⁷⁶ We are always constituting objects as valuable; indeed, 'all

⁷³ Mary Catharine Baseheart, *Person in the World* (Dordrecht: Kluwer Academic Publishers, 1997), p. 78. In Baseheart's words the system was sufficiently flawed to be in need of 'complete demolition and reconstruction from the ground up'.

⁷⁴ Mette Lebech, 'Stein's Phenomenological Value Theory', in *Yearbook of the Irish Philosophical Society* (2010), p. 139.

⁷⁵ *Ibid.*, p. 142. The ability to calculate the motivational power of a value or values requires "emotional intelligence" (p. 146).

⁷⁶ *Ibid.*, p. 148.

objects are values, and thus every act of object-constitution must register within the constituting I [*sic*] as an inclination toward or against the object'.⁷⁷ But our constituting, in itself, is motivated: 'we interpret reality or objectivity, and our motivation in doing so is reflected in what we see'.⁷⁸ Being motivated is not an act; it precedes the act it motivates, and reflecting on one's own motivations thus forms a hermeneutic process of recursive interpretation. We seek not only to understand which values motivate us, but what motivates us to constitute these values in the way that we do.

Although values are constituted as such by the I, they are also objective. This is where empathy takes up such a central role in value theory. 'It is only by means of empathy that values can be seen as objective, i.e., as something that also exists for others as motivators'.⁷⁹ Values are still intentionally grasped for Stein; for example, 'in the act of loving, one experiences a grasping or intending of the value of a person'.⁸⁰ For Stein, as for most phenomenologists of ethics, there is both sense and nonsense in the world of values. 'If someone is "overcome" by the loss of his wealth { ... } he feels "irrational." He inverts the value hierarchy or loses sensitive insight into higher values altogether'.⁸¹ The references to a hierarchy and to higher values indicate (as does the pure law, referenced below) that Stein considers values to have real and objective status, though this is not emphasised by to the same extent as by Reinach or Scheler. For Stein, 'our reasons for evaluating certain values as highest can amount to social conformism, choice and experiences of the values themselves'.⁸² But there is still a character of objectivity to values and their hierarchy. 'The grasping of the objective world of values

⁷⁷ Marianne Sawicki, *Body, Text and Science* (Dordrecht: Kluwer Academic Publishers, 1997), p. 227. In his works, Reinach never refers to the constituting role of the I, which is very important in both Stein's and Husserl's later phenomenology.

⁷⁸ Lebech, 'Stein's Phenomenological Value Theory', p. 141.

⁷⁹ Ibid.

⁸⁰ Baseheart, *Person in the World*, p. 40.

⁸¹ Stein, *On the Problem of Empathy*, trans. by Waltraut Stein, p. 101.

⁸² Lebech, 'Stein's Phenomenological Value Theory', p. 148.

(*objektiven Wertewelt*) occurs {...} when the value as such is recognised intellectually as an object (*Objekt*). At this point, the value-hierarchy comes to light'.⁸³

Rather than stress direct value-intuition and the 'sensitivity to value' or 'love' so important in Reinach's or Scheler's ethics respectively, Stein turns to empathy as the key means by which we develop our awareness of values. Empathy allows the subject to gain an insight into another person's character, to recognise the values that motivate that person. 'I experience {a person's} every act as proceeding from a will and this, in turn, from a feeling. Simultaneously with this, I am given a level of his person and a range of values in principle experienceable by him'.⁸⁴ Accordingly, in empathising with others, we can come to recognise values that we have never appreciated before. In this way, we grow as persons in our knowledge of the value-world.

Stein further develops her value theory in *Philosophy of Psychology and the Humanities*.⁸⁵ In addition to the manner in which values are experienced and their role in motivating attitudes or dispositions, she here discusses the constitution of values. 'The value-free world of mere things', she writes, 'is an abstraction that's suggested to us by the fact that we aren't equally persuaded by all the intentions that can arise on the basis of available material'.⁸⁶ We never experience such a world without values because every object that we constitute, we constitute in terms of value, implicitly or explicitly appreciating its importance in one way or another.

⁸³ Bernhard Augustin, 'Ethische Elemente in der Anthropologie Edith Steins', in *Die unbekannte Edith Stein: Phänomenologie und Sozialphilosophie*, ed. by Beate Beckmann-Zöller and Hanna-Barbara Gerl-Falkovitz (Frankfurt: Peter Lang, 2006), pp. 193-199 (p. 197). Trans. by Mette Lebech.

⁸⁴ Stein, *On the Problem of Empathy*, trans. by W. Stein, p. 101.

⁸⁵ Originally written as two articles, 'Psychische Kausalität' and 'Individuum und Gemeinschaft', published together as *Beiträge zur philosophischen Begründung der Psychologie und der Geisteswissenschaften in Jahrbuch für Philosophie und phänomenologische Forschung*, 5 (1922), 1-283.

⁸⁶ Stein, *Philosophy of Psychology and the Humanities*, trans. by Baseheart and Sawicki, p. 160.

4.3.2.3 COMMUNITY ETHICS

In accordance with her phenomenology of empathy, Stein takes a rather different approach to ethics from that followed by Reinach or Scheler. Since empathy with other persons is key to how we develop our own awareness of values, shared values and the empathic process of discovering other persons' values become key to ethics. 'Every person requires other persons in order to be able to unfold herself and her personality'.⁸⁷ This goes beyond one-to-one empathising as Stein develops her phenomenology of the community. 'As the goal of ethics, [Stein] proposed a perfected humanity, one that respects and integrates the value of each of its members.'⁸⁸ A community has a shared current of life that flows through all its members, influencing them even if they are not aware of being influenced; thus, a perfected community would be an entirely positive influence on the persons who make it up. Many factors can influence how a community develops, but, as Baseheart writes:

Even more important [than inanimate factors such as weather and landscape] for the development of community is the value-world in which it lives: the esthetic values of its environs; the ethical values which have been received in its morals; the religious values in its religions; the personal values encountered in the great figures of its past or those whose bearer is the community itself. All these values are motives, direction-giving factors for the behaviour of the community.⁸⁹

It is, therefore, easy to understand why Stein made efforts to promote political and social reform, and why she went on to closely examine the essence of the state — and even the essential purpose for the state's existence. The proper development of community and society is important, perhaps even necessary, for the proper development of individual persons.

⁸⁷ Augustin, 'Ethische Elemente in der Anthropologie Edith Steins', p. 197. Trans. by Lebech.

⁸⁸ Haney and Valiquette, *Edith Stein*, p. 452.

⁸⁹ Baseheart, *Person in the World*, p. 61.

Of greatest importance in the present investigation, as we will see below, is Stein's post-war treatise *An Investigation Concerning the State*. Stein here discusses whether or not the state is essentially a bearer of value. She concludes that it is not — states are not valuable or disvaluable in themselves — but the freedom from danger granted by the state is key to proper ethical development. 'Persons develop toward morality through awakening to freedom, through training in receptivity to values of all kinds, and through progressive use of freedom to realize values'.⁹⁰

In addition to discussions of values, Stein here introduces the concept of a '*reines Recht*', 'pure law' or 'pure right'. It is based on this idea of pure law, she suggests, that some laws are considered to be too deeply rooted in tradition to be altered or overturned today. 'It's absurd to suppose that the fact of [a law] having been made long ago should require unalterability';⁹¹ rather, the idea instead originates from the belief 'that what is right (in a material sense) always holds steady'⁹² and does not change, so a law that was just (*gerecht*) at the time of its enactment long ago is no less just today.⁹³

⁹⁰ Marianne Sawicki, *The Humane Community: Husserl versus Stein*, in *Husserl and Stein*, ed. by Feist and Sweet, p. 144.

⁹¹ Stein, *An Investigation Concerning the State*, trans. by Sawicki, p. 83.

⁹² *Ibid.*

⁹³ In the present day, this kind of appeal to long-standing tradition often relates to a national constitution (for example, the continuance of any constitutional monarchy past the point where the monarch no longer plays a real role in government), or to religious beliefs (for example, in the presently very live debate about same-sex marriage). Stein's argument does not mean that all of these appeals to tradition are just, but that the *idea* that certain traditions should be indefinitely maintained is based on the idea of natural justice. Stein herself lived in a time of transition when the rights of women in Germany were still severely curtailed by tradition, and she was an active proponent of reform.

4.3.2.5 STEIN AND REINACH

Stein's autobiography⁹⁴ is among the chief historical sources on phenomenology in Göttingen, including on Reinach and his relationship with the Göttingen students. Stein arrived in Göttingen in 1913, in the latter half of Reinach's time there as Husserl's teaching assistant. Reinach left for the war less than two years after Stein's arrival in Göttingen, but he left a lasting impression on her from the beginning. Her experiences of Reinach, both personally and as a teacher, are described in highly complimentary terms, from her first meeting with him⁹⁵ to his encouragement of her doctoral research.⁹⁶ Stein attended Reinach's 1913 lecture course *Einleitung in die Philosophie*⁹⁷ and his exercises for advanced students, which took place at his home. Of the latter Stein wrote, 'The hours spent in [Reinach's] beautiful study were the happiest of all my time in Göttingen. We [students] were probably unanimous in the opinion that, when it came to method, we learned more here than anywhere else.'⁹⁸

The influence of Reinach's methodology on Stein is highlighted by her membership, after the war and Reinach's death, in the Bergzabern circle. Based at the farm owned by Theodor Conrad and Hedwig Conrad-Martius at Bad Bergzabern, this group of phenomenologists included Jean Hering, Alexandre Koyré, Hans Lipps, Alfred von Sybel, as well as Stein herself, who underwent her baptism into the Catholic Church during this time.⁹⁹ The members of the Bergzabern circle found that the changing views of the Master, Husserl, had placed a considerable distance between his

⁹⁴ Published in a single volume as Edith Stein, *Aus dem Leben einer jüdischen Familie und weitere autobiographische Beiträge* (Freiburg; Basel; Vienna: Herder, 2007). For an English translation, see Stein, *Life in a Jewish Family*, trans. by Josephine Koeppel (Washington DC: ICS Publications, 1986).

⁹⁵ Stein, *Life in a Jewish Family*, trans. by Koeppel, pp. 247-249.

⁹⁶ *Ibid.*, pp. 281-284.

⁹⁷ Of which *Grundzüge der Ethik* is part.

⁹⁸ Stein, *Life in a Jewish Family*, trans. by Koeppel, p. 274.

⁹⁹ Joachim Feldes has written a detailed account of Stein's time at Bad Bergzabern, to appear in the proceedings of the IASPES Inaugural Conference, *Intersubjectivity, Humanity, Being. Edith Stein's Phenomenology and Christian Philosophy*, ed. by Haydn Gurmin and Mette Lebech (Traugot-Bautz, libri nigri, forthcoming). Feldes shows that Bergzabern was not merely a transition between stages in Stein's life, but a stage in its own right.

transcendental idealist form of phenomenology and their realist one; they identified Reinach as their model for the type of phenomenology to which they wanted to remain true.¹⁰⁰

4.3.2.6 THE INFLUENCE OF REINACH'S ETHICS ON STEIN'S PHILOSOPHY

As in the other cases discussed so far, it is very difficult to prove that Stein's work on value theory was influenced directly by Reinach's. Reinach's and Stein's respective theories of value share no particular characteristics that are not also shared by others. Indeed, the theory of values in Stein's dissertation shows a greater level of attention than Reinach's to the development of personal values, and to how we recognise not only the values of another person's character but the values *experienceable* by that person as well. Stein's work provides possible solutions to several of the unanswered questions surrounding Reinach's ethics, for example, by accounting for how a person can come to recognise new and higher values than was possible for him or her before.

The most obvious evidence that Stein was influenced by Reinach's work on ethics relates to the sphere of moral rightness. In her treatise *Eine Untersuchung über den Staat (An Investigation Concerning the State)*, Stein refers to a concept of moral rightness identical with Reinach's.¹⁰¹ She writes: 'There is ethical significance to what we designate as "*morally right*.'" This is a predicate of certain states of affairs. "That the

¹⁰⁰ The issue is complicated further by Husserl's relationship with Heidegger, whose version of phenomenology was particularly distant from that recognised by the Bergabern circle. Husserl, too, would later come to see Heidegger's phenomenology as incompatible with his own, but his initial support of Heidegger perhaps put a greater distance between him and the Bergabern phenomenologists than would otherwise have existed.

¹⁰¹ Unlike in her comments about the pure law, Stein does not cite this concept of rightness as coming from Reinach's philosophy. As in the case of von Hildebrand, this may be in part because Reinach's theory of rightness had not appeared in a printed form that Stein could reference directly.

needy are helped,” or “that X.Y. has declined to take part in a vile deed” — this is right’.¹⁰² Thus, in relation to the existence of the state, she asks:

*Is there any value to the state as such, that is, to the ontic fabric [of the state]? If that question can be answered affirmatively, then it is right *a priori* for there to be states in the world (or, of course, *wrong a priori* if the value that attaches to the state as such is a negative one).*¹⁰³

Stein’s use of the term ‘morally right’ (*sittlich recht*) here precisely matches Reinach’s understanding of it: rightness is a predicate of states of affairs that, at least in some cases, relates to the realisation of value in that state of affairs.

Stein also credits Reinach with having originated the theory of what she calls *reines Recht* (the pure law or pure right). Stein introduces her writings on the pure law as ‘merely implications’¹⁰⁴ of Reinach’s work; this is an understatement of her own contribution here, as the pure law is conceptually distinct from anything appearing in Reinach’s work. The idea of the pure law relates both to Reinach’s theory of the *a priori* foundations of law — the essences of the social acts and the Reinachian objects that provide a basis for positive law — and to his formal moral law (*Sittengesetz*), the criterion of moral rightness. That is, while Stein connects the pure law with the essential structure of acts such as promising, she also states that ‘The idea of pure law is not yet separated from the idea of morality, and apart from the latter is falsely interpreted’.¹⁰⁵ Stein does not explicitly connect the pure law with moral rightness (*sittliche Rechtheit*), but with justice (*Gerechtigkeit*). ‘The *idea of justice* is related to the pure law. Where the pure law is in force, there “justice reigns.”’¹⁰⁶ The ideal situation in terms of justice is when ‘the pure law materially implemented is discovered and becomes articulated,

¹⁰² Stein, *An Investigation Concerning the State*, trans. by Sawicki, p. 155.

¹⁰³ *Ibid.*, p. 148.

¹⁰⁴ *Ibid.*, p. 38.

¹⁰⁵ *Ibid.*, p. 83.

¹⁰⁶ *Ibid.*, p. 151.

and in regard to it there is only the one task: to cherish it'.¹⁰⁷ While Reinach does not discuss justice in relation to the law and emphasises that law-making bodies are in no way bound to put the essential law into force, it is entirely in keeping with the concept of moral rightness that a positive law could be considered to be just because it is in agreement with the formal moral law.

We can see, therefore, that Stein makes use of a concept of moral rightness and of a formal moral law in her ethics, even if her terminology is slightly different to Reinach's. Stein develops the relationship of justice between the formal moral law (the pure law in her terminology) and the positive law in ways that Reinach does not; Reinach's emphasis is generally on distinguishing the realms of law and ethics, and a discussion of justice in Stein's sense would have been a significant deviation from the topic of any of his surviving works. Given that Stein explicitly links her work on the pure law to Reinach's legal philosophy, given the close similarities between Reinach's and Stein's respective uses of the concept of moral rightness, and taking into account the short-lived but significant personal and academic contact that they had with one another, we conclude that Reinach's work on ethics directly influenced Stein's. Reinach's legacy in the field of ethics, however limited, is nonetheless real.

4.3.3 THE WIDER FIELD OF PHENOMENOLOGICAL ETHICS

We can find little evidence of Reinach's ethics having influenced the development of phenomenological ethics beyond the narrow confines of the early movement, and his Göttingen students in particular. His name appears frequently in connection with the phenomenology of the promise and other social acts, if only in acknowledgement of his pioneering work on that subject. Likewise, discussions of the phenomenology of law

¹⁰⁷ Ibid., p. 84.

will often acknowledge Reinach's work in that field. However, Reinach's name is not one of those immediately associated with the early development of phenomenological ethics, nor is there any evidence that the distinctive traits of Reinach's ethics, as they are outlined in this chapter, have been adopted to any significant degree in the wider field of ethics or value theory.¹⁰⁸ In these terms, the influence of Reinach's ethics has simply not been extensive in terms of either time or geography.

There are many possible explanations for this lack of impact. Reinach's philosophy as a whole is relatively obscure, enough so that the entire field of speech act theory surrounding Austin and Searle developed completely independently of Reinach's influence. Until 1989, Reinach's works on ethics were particularly inaccessible; prior to that, Reinach's ideas in *Grundzüge* had never seen print, and only those few individuals who had both attended Reinach's lectures and read his articles would have been familiar with his full work on ethics. Further complicating the issue is the incompleteness of Reinach's ethics, as his surviving body of work on the subject is still undeniably an incomplete project, not a fully finished ethics. No single article fully reflects the depth and extent of Reinach's work in this area. The gradual rediscovery of Reinach's surviving posthumous works and their publication in the *Sämtliche Werke* provided, for the first time since 1922, new opportunities for the study of Reinach's ethics.

Value ethics in general also waned in popularity in the post-war years, and as such, Reinach's ethics was pushed yet further into the background. This was in large part due to the rising influence of Heidegger:

¹⁰⁸ Reinach's comments on value-theory have been recognised and cited, for example, by Kevin Mulligan, in his detailed paper 'On Being Struck by Value'. However, the distinctive and original aspects of Reinach's work on ethics that we have identified above do not play a role here. Other contemporary philosophers investigating phenomenological value theory include Roberta De Monticelli. See, 'The Feeling of Values: For a Phenomenological Theory of Affectivity', in Sebastiano Bagnara and Gillian Crampton Smith, eds., *Theories and Practice in Interaction Design* (Mahwah, NJ: LEA, 2006), pp. 57-76.

Probably no other single factor has been more corrosive of value-based ethical theories than the pervasive impression that Heidegger's profound ontological preoccupations, together with his negative remarks about Scheler, Lotze, and Rickert, have somehow discredited the entire enterprise of value theory.¹⁰⁹

Thus, Scheler, despite his prominence in Germany at the end of the war and even up to his death, was ultimately to become 'one of the "great unknowns" of modern philosophy'.¹¹⁰ Scheler's influence after his death 'has always been "inspirational", scattered and personal, rather than institutional'.¹¹¹ The same appears to be true of Reinach; general attention to Reinach's already obscure work on ethics was bound to be sparse. There has, however, been a gradual revival of scholarly interest in phenomenological ethics in recent years. The handbook edited by John J. Drummond on *Phenomenological Approaches to Moral Philosophy* is one sign of this; another is the founding of societies to study of the work of early phenomenologists. Some of these societies focus on individual philosophers, including Scheler,¹¹² von Hildebrand¹¹³ and Stein;¹¹⁴ others, such as the North American Society for Early Phenomenology¹¹⁵ and the *Forum Münchener Phänomenologie International*,¹¹⁶ are dedicated to the wider field of early phenomenological thought.

The twentieth century saw the rise of modern virtue-ethics, independent of phenomenological value-ethics but sharing many parallels with it. Thus, approaches to ethics based on practical wisdom or intuition and emphasising the importance of moral

¹⁰⁹ Blosser, *Max Scheler*, p. 403.

¹¹⁰ Dunlop, *Thinkers of our Time: Scheler*, p. 6. Dunlop noted in 1991 that his was 'the first book entirely devoted to Scheler to be published in the United Kingdom'.

¹¹¹ *Ibid.*, p. 16.

¹¹² The International Max Scheler Society (*Internationale Max-Scheler-Gesellschaft*) was founded in 1993 at the University of Cologne. It has held conferences on a biannual basis since then, the most recent at the time of writing having been held at the University of Erfurt in June 2011.

¹¹³ The Dietrich von Hildebrand Legacy Project was founded in 2004 and, at the time of writing, has commissioned translations into English of works by von Hildebrand including *Die Idee der sittlichen Handlung* (1916) and *Sittlichkeit und ethische Werterkenntnis* (1922).

¹¹⁴ The International Association for the Study of the Philosophy of Edith Stein held its inaugural conference at the National University of Ireland, Maynooth in June 2011 and included papers on Stein's studies of empathy and the state.

¹¹⁵ Founded in 2010, NASEP held its first official conference in Toronto in 2012.

¹¹⁶ Despite its name, the FMPI also encompasses Göttingen phenomenology in its area of study.

qualities of character have more philosophical currency than they did in the past. To the extent that the credibility of virtue- and value-based ethics has been restored, it is especially important now to recognise the contributions of pioneers in that field, including Reinach.

SECTION FOUR TOWARDS ASSESSING REINACH'S CONTRIBUTION TO ETHICS IN GENERAL

The goal of this investigation has been to answer the question: what was Adolf Reinach's contribution to early phenomenological ethics? In these four chapters, we have discussed all of the necessary information to be able to answer this question fully. As noted in the previous chapter, we have not exhaustively discussed Reinach's ethics; nor have we, in this chapter, established the full significance of Reinach's contribution to ethics in a context any wider than that of early phenomenology. The importance of Reinach's ethics as such, the viability of his ethics *as* an ethics, we have so far left completely aside. Here, we will discuss Reinach's work on ethics as a contribution beyond the field of early phenomenology.

The scope of this discussion is, of course, limited by the available material for assessment. Reinach did not produce a complete theory of ethics; he wrote only about what he described as the basic questions or foundations of ethics. He asked and attempted to answer many questions in relation to ethics, but a set of plausible answers to ethical questions does not, in itself, constitute a theory of ethics. Moreover, we saw in chapter three that Reinach's works leave many questions unanswered, although answers to those questions are certainly possible. Since we cannot assess an ethics that does not fully exist, we will instead discuss the potential of the theory Reinach began to form.

Reinach's surviving works will be understood here as a foundation for a possible Reinachian ethics.

In chapter three, we summarised Reinach's conclusions with regard to ethics in the following points:

- 1) Ethics requires both a formal and a non-formal dimension.
- 2) Ethics must assess not only actions, but also persons and states of affairs.
- 3) Moral values are real and form an objective hierarchy.
- 4) The character of a person is indicated in his or her actions.
- 5) Goodness of character is the primary concern of ethics.

Reinach has established a basis for assessing actions, persons and states of affairs from a moral perspective: actions and persons can be assessed by reference to non-formal values, while states of affairs are assessed under the formal moral law. Value of the personal character is the most important consideration; the goal of each human being is to be a good person, by acting in such a way as to embody moral values. These include the key values of receptivity to value and love of value, which in turn lead the good person to perform good actions precisely because they are good. As the existence of every moral value is right under the formal moral law, a person who does good and becomes good thereby realises that which ought to be; such a person fulfils his or her moral duty.

Thus we understand Reinach's answers to the basic questions of ethics. We must now assess those answers as the foundation of a potential ethics.

4.4.1 CRITERIA FOR ASSESSMENT OF AN ETHICS

Assuming that Reinach is correct, that values are real and objective, that moral value is the same as moral goodness, and that there is a formal ethics under which the existence

of a moral value is morally right, can a Reinachian ethics satisfy the requirements to function as a moral theory? There is no single, universally accepted set of criteria for the assessment of an ethical theory; yet we must have some standard here against which we can hold up a Reinachian ethics. Mark Timmons, in *Conduct and Character: Readings in Moral Theory*, presents a set of criteria for the assessment of a moral theory, according to which we will structure this assessment.

1. Consistency: 'A moral theory should be consistent in that its principles, together with relevant factual information, yield consistent moral verdicts about the morality of actions, persons, and other items of moral evaluation'.¹¹⁷

Reinach predicts consistency as a product of a value-based ethics. Value is goodness in itself, and values form a fixed hierarchy; they do not change over time or based on circumstances. Those things that bear value do so objectively, independently of whether those values are grasped, or by whom. Thus, if two persons approach the same ethical question with an objective attitude and a sufficient sense of what is valuable, both are predicted to arrive at the same answer concerning what ought to be done or how something ought to be assessed.

2. Determinacy: 'A moral theory should feature principles that, together with relevant factual information, yield determinate moral verdicts about the morality of actions, persons, and other items of moral evaluation in a wide range of cases'.¹¹⁸

Again, Reinach's understanding of what moral value is leads to a univocal determination of the good and the bad in each case. The verdicts of 'valuable' and 'disvaluable', 'right' and 'wrong', can indeed be challenged, but there is only one correct answer; where two people disagree on the moral good or the morally right, one of them is in error. Of course, it is possible to be honestly mistaken, and one would need to be aware that one's own sense of what is good is always fallible.

¹¹⁷ Mark Timmons, *Conduct and Character: Readings in Moral Theory*, 4th edn (Toronto: Wadsworth, 2003), pp. 9-10.

¹¹⁸ *Ibid.*, p. 10.

3. Applicability: *'The principles of a moral theory should be applicable in the sense that they specify relevant information about actions and other items of evaluation that human beings can typically obtain and use to arrive at moral verdicts on the basis of those principles'*.¹¹⁹

It is ambiguous whether or not a Reinachian ethics satisfies this criterion. The core principle of a value ethics — *act to realise moral value* — is applicable in theory to every possible situation, and yet it is not actually useful in arriving at moral verdicts; as we saw above in our discussion of the situation of the moral dilemma, it does not help to arrive at judgements in cases where the agent feels unsure about what to do. As we did above, we conclude here that Reinachian ethics has the potential to satisfy applicability, but that that potential is unfulfilled in its present form.

4. Internal support: *'A moral theory whose principles, together with relevant factual information, imply our considered moral beliefs receives support — internal support — from those beliefs'*.¹²⁰

This is perhaps the strongest point to a value-based ethics: values are synonymous with our moral beliefs. No ethics could be more consistent with our considered moral beliefs because those beliefs are how a value ethics asks us to decide on actions.

5. External support: *'The fact that the principles of a moral theory are supported by well-established nonmoral beliefs and assumptions (especially those from areas of nonmoral inquiry) is some evidence in favour of the theory'*.¹²¹

Value ethics is supported externally by the broader phenomenological theory of values, which is concerned not only with moral facts, but with motivation and preference in a very wide sense. Likewise, Reinach's sphere of moral rightness is supported externally by his work on the *a priori* sphere of right and the essences of 'ought', the social acts, and obligation as such.

¹¹⁹ Ibid., p. 11.

¹²⁰ Ibid., p. 12.

¹²¹ Ibid.

6. Explanatory power: 'A moral theory should feature principles that explain why actions, persons, and other items of evaluation are right or wrong, good or bad'.¹²²

Reinach is able to explain why certain actions and personal qualities are assessed as good (because they are morally valuable) and why certain states of affairs are assessed as morally right (because they are in accordance with the formal moral law). He is less able, or willing, to explain why the morally valuable is morally good, beyond the position that the morally valuable *is* the morally good. We are reminded once again here of Moore and Frankena's naturalistic or definist fallacy, and of Reinach's distaste with the practice of defining or explaining something as other than what it is. Reinach cannot quite meet Timmons' requirement here, but perhaps it is better that he does not try.

To satisfy all of Timmons' criteria for assessment at a basic level, then, a Reinachian ethics would need to have three things added to it that are not found in Reinach's works. First, it would need a full and complete explanation of the hierarchy of values and the methods of preference between values; second, connected with the first, a full and complete explanation of how the formal moral law is to be known. Both of these would relate to the criterion of applicability, to make it clear how Reinach's system of assessments is to work in all real-world situations. Thirdly, the theory would also need to provide an answer to the question 'why are values good?' other than, 'because it is in their essence to be good', or in other words, 'because they are'. We suggest that this third point, though certainly worthy of note, is not one that Reinachian ethics can or should attempt to answer. That moral value is good(ness) in itself, *sui generis*, is simply an essential truth that can be explained no more easily than why $1+1=2$, or why the ratio of the circumference of a circle to its diameter is an irrational number.

¹²² Ibid., p. 13.

We can conclude, then, that Reinach's work points to an ethics with the potential to pass Timmons' criteria. Structurally, and assuming the acceptance of some of its basic principles, it has the characteristics of a functioning ethics. But there are other, more specific challenges that we may consider; first and foremost, whether in fact the basic assertions and principles that we have so far presupposed are supportable.

4.4.2 QUESTIONS FACING A REINACHIAN ETHICS

The first question of ethics could be said to be: what is good? Against what standard shall good and bad be measured? Reinach answers that value is good, and that good and bad will be measured against a standard of value and disvalue. In this, he makes the same claim as any other value-realist, but that alone does not prove that his answer is a credible one. Can we in fact believe Reinach when he says that this is how we shall decide good and bad?

4.4.2.1 DOES REINACH PLAUSIBLY ANSWER THE QUESTIONS OF ETHICS?

On the surface, Reinach's ethics of values, like almost all ethics of values, is plausible more or less by definition. As Reinach shows, we presuppose the reality of our value-experiences at all times; we can almost not fail to believe that they are correct. Even when we question our value-feelings (which is only wise, since they are fallible), something motivates us to question: the assessment, perhaps, that knowing the truth is better than not knowing it. Can we, though, rationally accept that our intuitive grasping of which things are good and which are bad can be the basis for an ethics? It seems we can. Timmons's fourth standard for assessment of a moral theory, as noted above, is

based on whether the theory's principles '*imply our considered moral beliefs*',¹²³ and much of the debate around different moral philosophies involves appeals to pre-existing moral beliefs of various kinds. Reinach, like other value-theorists and like ethical intuitionists before and after him, gets to the root of this — our intuition is in fact the only guide we trust, and must trust, to tell us what is good and what is bad. Whatever flaws can be found in it, Reinach's answer to the first question of ethics — what is good? — is by definition plausible, because we already believe it instinctively in our everyday lives.

Reinach, nonetheless, is not content to answer only this question. He poses another ('What is morally right?'), and attempts to answer it as well. Reinach suggests that there are formal moral 'oughts', and that a state of affairs is morally right if it essentially conforms to one of these oughts. Again, superficially, this is certainly plausible. We can accept the idea of principles that we follow, and we can imagine a set of such principles that was not enacted by any temporal authority. However, as we saw in chapter three, Reinach does not tell us in any certain terms how we know what this formal moral law is; thus, his answer is incomplete. It is theoretically plausible, but does not address the question in practical terms.

4.4.2.2 DOES A REINACHIAN ETHICS PROVIDE A BASIS FOR MAKING NORMATIVE STATEMENTS?

Normativity can be a problem for non-formal approaches to ethics, because the universal statement 'X ought to be' is formal in structure, even if X is a non-formal value. Thus it is difficult for an ethics of values to make any normative statements about what persons ought to do. Reinach's solution to the problem of normativity can be summed up in four points:

¹²³ Timmons, *Conduct and Character*, p. 12.

- 1) Certain types of actions are, by their essence, bearers of moral value (that is, good in themselves).
- 2) The existence of something that is good in itself is, by a self-evident formal principle, morally right (that is, it ought to be).
- 3) Therefore, an action that bears moral value ought to be realised (while an action that bears moral disvalue ought not to be realised).
- 4) When it is possible for a person to realise an action that is morally valuable, that person ought to do so.

Reinach has again here invoked the formal moral law, but this time he invites less difficulty than he does above. We know that Reinach considered some principles of the formal moral law to be self-evident, chief among them the principle that *the existence of a moral value is morally right (and thus ought to be)*. We do not, therefore have any ambiguity as to how we are to know that this principle holds true. We either agree with Reinach that it is self-evident, or we do not. If we accept that moral value is morally good in itself, and that there is a formal ethics, it does follow that the existence of a moral value is right according to the formal moral law.

4.4.2.3 DOES A REINACHIAN ETHICS PROVIDE A MEANS OF RESOLVING MORAL DILEMMAS?

The concept of a hierarchy of values carries with it the implication that some values can be (and rightly are) preferred over others. This is a straightforward basis for the resolving of moral dilemmas: when two moral values can be realised, the greater one is to be preferred over the other. Reinach unifies this simple principle with his answer to the problem of normativity when he makes the distinction between a moral obligation (*Verpflichtung*) and a person's moral duty (*Pflicht*). Just as the higher of two values in the value-hierarchy is to be preferred over the lower one, the moral obligation to realise

a higher value outweighs the obligation to realise a lower one, and the greater of the two obligations becomes the person's duty, that which he or she ought to do.

However, this only answers half of the question, that of whether a correct answer exists to the moral dilemma. The task of finding that answer still falls to the subject and to his or her own feelings of value. Since formal moral rules cannot help with specific decisions in concrete situations, an ethical theory can only ever offer very general guidance. As we noted in chapter three, the issue of fallibility in value-feeling is one of the potential problems facing Reinach's ethics. Acceptance of his theory may mean acceptance that the correct solution to a moral dilemma is out of reach. A human being can pause, reflect, focus on grasping the moral value to be realised in each project, consider possible consequences and their bearing on the choice — a process that 'ideally thought of', can 'go on forever'.¹²⁴ But no amount of reflection is guaranteed to resolve the dilemma. If, after lengthy consideration, two or more projects still seem to be equally ethically demanded, then the subject may have no choice but to conclude that they are, in fact, equally ethically demanded.

4.4.2.4 IS A REINACHIAN ETHICS CAPABLE OF ACCOUNTING FOR ETHICAL DISPUTES?

Connected to the issue of resolving moral dilemmas is the meta-ethical challenge faced by any theory of ethics when it comes to differing ethical points of view. In a pluralist society (i.e., one where persons with differing ethical views must co-exist), it is important to be able to mediate between opposed viewpoints. Since Reinach posits that values are real and their hierarchy is objective, it is not possible for two different opinions on what is good to both be correct; this is further highlighted by Reinach's position that, under the formal moral law, moral values ought to exist and persons out to

¹²⁴ S.W. p. 293, paragraph 2; Appendix (III).

act in order to realise them, even if the persons in question do not recognise those values.

There are two points in Reinach's work on ethics that are worth noting here. The first is that although values are real and their hierarchy is objective, the objective attitude — the attitude of practical reason in which one is concerned with values — includes the acceptance that one's own value-judgements may be incorrect. Moral values are open to discovery. A person faced with an opposing ethical point of view would at least have to reflect on whether his or her viewpoint is in fact correct. Thus, a meaningful discussion of ethical questions is certainly possible between two persons in the objective attitude; although each believes that there is only one correct answer, each must also be open to correction of his or her own position.

The second, and perhaps more meaningful point to consider is Reinach's discussion on values of the personal character and symbolic relationships of value. If two persons disagree on whether an action is valuable, their disagreement may not be rooted in the action itself, but in what the action symbolises about the character of the agent. Disagreements over whether an action is good may not focus on the action itself, but on whether that action symbolises a value (such as courage) on the part of the agent. Few if any people would disagree that courage is a valuable trait (or simply, a value) of the person. What we mean by an 'act of courage' or of bravery is an action that symbolises the courage of a person's character; but those actions can take many different forms. One might think of the character of Atticus Finch in Harper Lee's novel *To Kill a Mockingbird*. Atticus's children see him take a rifle from the county sheriff to shoot a rabid dog, and are impressed by his display of a courage they never knew he possessed. But the novel shows Atticus to display his courage in another, more profound way in his decision to provide a strong legal defence of Tom Robinson, a

black man, despite the public scorn that this attracts to him and his family. In point of fact, Atticus's actions in the courtroom are relatively mundane; he simply does his job by defending Tom Robinson. However, Atticus hopes for his children, and others — and the author expects her reader — to recognise the latter action as displaying greater courage.¹²⁵ So, a new avenue for moral debate is opened up by the analysis not of the value-content of specific actions, but of the values symbolised in actions, which may lead closer to an ethical common ground.

4.4.2.5 WHAT DO REINACH'S COMMENTS ON ETHICS HAVE TO OFFER THE WIDER FIELD?

Despite the obscurity and the relative shortness of Reinach's discussions of ethics, he makes a number of points that deserve to be recognised and further discussed, even outside of an attempt to construct a Reinachian ethics. Any moral philosopher who advocates a purely non-formal ethics of values or virtues would do well to consider Reinach's arguments that such an ethics either cannot account for '*an array of questions that are designated as moral questions*',¹²⁶ or risks distorting the sense in which 'value' is meant. Anyone promoting a voluntaristic ethics, or any other approach that isolates a single object of moral assessment, might consider whether in doing so they carry out '*an enormous reduction of the province of ethics*',¹²⁷ excluding the assessment of the character of the person — and thus the potential to become and be a morally good person. Reinach's detailed discussions of the different kinds of obligation and of the experience of reflection are both (at least) 'significant [...] contributions to ethical

¹²⁵ This depends on the point of view that all courage is qualitatively, essentially, the same value; that the physical courage needed to face a physical challenge is not an entirely different value to the moral or spiritual courage needed to face a challenge of a very different kind. We cannot explore this question in full here, but in brief, if physical courage and spiritual courage are to be seen as separate *kinds* of courage, they nevertheless share that common essence — courage.

¹²⁶ S.W. p. 335, paragraph 3; Appendix (II).

¹²⁷ S.W. p. 500, paragraph 5; Appendix (IV).

metatheory',¹²⁸ however one addresses the questions of normative ethics; and his work on the theory of social acts, though not unique today, stands as a landmark in the history of philosophical anthropology and the philosophy of communication.

SECTION FIVE

CONCLUDING REMARKS

In this chapter, we have seen that Reinach made contributions to the development of early phenomenological ethics that are highly distinctive, even unique. We have seen that some of these ideas demonstrably influenced his students, while other ideas did not have the same impact. We have seen that Reinach's writings about ethics have at least the potential to serve as the foundation of a compelling ethical theory; and we have seen that the comments made about ethics by Reinach raise questions and challenges that deserve at least to be noticed by the wider field of ethics. By the standards we set at the beginning of the chapter — originality and influence — Reinach's contribution to the development of early phenomenological ethics is clear, and we have begun to see his work as a contribution in a much wider sense as well.

¹²⁸ DuBois, 'Adolf Reinach', p. 340.

CONCLUSION

In the preceding four chapters, we have discussed the question, ‘What was Adolf Reinach’s contribution to the development of early phenomenological ethics?’ Such a question could not have a concise answer; nor could it be properly answered without the proper preliminary discussions. We have seen what Reinach wrote about ethics, examined the context in which he wrote it, and concluded that there is significant evidence of Reinach’s contribution in two senses: original work, with important implications for phenomenological ethics, and direct influence on at least two of the important figures of the early phenomenological movement. The conclusion to these discussions is also the conclusion to the question, but it is the beginning of the discussion of Reinach’s work on ethics.

In discussing these topics, we have faced the many difficulties that arise from interpreting an incomplete body of work. *Überlegung* and *Grundlagen* were completed and published, but do not primarily address ethics; *Grundbegriffe* and *Grundzüge* are focused on the problems of ethics, but survive only as transcripts. Yet it would be entirely wrong to dismiss Reinach’s discussions of ethics as asides or afterthoughts. Reinach, after all, attached a high importance to ethics and its problems, perhaps the greatest importance of all, as noted in the introduction to our study.

We also established in the introduction that the purpose (as opposed to the goal) of this investigation has been to make Reinach’s work on ethics more accessible to scholarship. To this end, we have sought to win recognition for Reinach’s work and to show some of the key points that bear further discussion — the good and the bad, since it is clear that there is much work to do before a Reinachian ethics could be called complete. We do not intend to make an apology, in any sense of that word, for Reinach’s work. It stands as it is, and deserves to be recognised simply for what it is.

Reinach's work on value theory was pioneering, though its influence is hard to measure. Although Reinach took up the term 'values' from both Lipps and Husserl, value realism of the kind espoused by the realist phenomenologists was still very much in its infancy when Reinach first addressed it in his 1906 paper, and the development of Reinach's particular theory of values ran parallel with that of Scheler, and later that of von Hildebrand, until 1913. Like his fellow value-realists, Reinach believed that non-formal values represent the best way to approach the problem of moral goodness, but he went further by discussing the limitations of values as a part of ethics, and by raising questions in ethics that could not be resolved in terms of value.

In the context of phenomenological ethics, Reinach's approach to the problem of normativity is perhaps his most important contribution. Reinach was not alone in his belief that a theory must be able to make normative claims — 'you ought to do this,' 'this ought to be', 'you ought not to have done that' — in order to be a true ethics, and not merely a set of factual observations or statements that are reducible to want-statements or factual-psychological-interest statements. To say 'persons grasp certain objects as bearers of values' and 'those objects that are valuable are essentially preferable to those that are less valuable' does not deductively show that 'persons ought to realise values.' In Aristotelian ethics, the missing link is provided by a highest good — the call for agents to act virtuously is here a hypothetical imperative, the best course of action *if* one wishes to live a good, happy life. Reinach wants his ethics to have the weight of a categorical imperative, and so, he roots his normative claims in an absolute, formal moral law, just as Kant did his own ethics.

Many of the finer details of the ethics discussed by Reinach are vague, or in need of further development: the problem of how one develops a better appreciation of value, the problem of how circumstances and likely consequences modify the essential

value character of an action, the problem of how the formal moral law becomes known to us. Yet others stand, even outside the field of Reinach's own ethics, as important insights. Reinach's study of the role of symbolism in moral assessments explains the different (and superficially contradictory) ways in which we assess reflection on an action. He sees the need to recognise the goods represented by happiness, life and health while still distinguishing them from values. He explores the relationship between the positive law and the essential truths in which its operating principles are founded, and in the process producing a detailed theory of obligation and right.

The members of the early phenomenological movement identified with the collaborative nature of work in the natural sciences, each researcher contributing data towards the general advancement of knowledge. And Husserl, with his conviction that a community of scholars could conduct eidetic analysis of specific domains of experiences and further the advancement of 'phenomenology', is equally taken up and incorporated by Reinach. Within this mindset, Reinach's work on ethics — though incomplete and somewhat sporadic — deserves to be recognised. Even if his ideas had only a limited influence on phenomenological ethics going forward, that influence in itself speaks for the value of his contribution. Ultimately we must remind ourselves that although Reinach did not produce a complete ethics, his efforts in this field do not represent a failure on that account. Reinach did exactly what he set out to do: to add in whatever way he could to a project that he knew would be ongoing, that was not his work alone but the work of philosophy and philosophers in general. In chapter four we repeatedly referred to a 'Reinachian ethics', indicating a theory of ethics inspired by and based upon Reinach's writings on the subject; but the expression could also be read as meaning an ethics belonging to or specific to Reinach. Reinach's goal was not to build his own one-man system of ethics but to contribute to phenomenological ethics.

This dream of a shared, collaborative phenomenological project of ethics was not truly realised in Reinach's lifetime, nor in the post-war years before phenomenological value-ethics declined in influence. Scheler, von Hildebrand and others each set out to form their own theory of ethics, their conclusions diverging as their methodologies became more distinct. The possibilities of future investigation into the possibilities of phenomenological ethics have in no way diminished today, however; on the contrary, developments in ethical thought generally and modern virtue-ethics in particular have the potential to enrich a modern approach to an ethics of values. This only serves to highlight the importance of recognising what early phenomenologists, including Reinach, contributed to the development of ethical theory.

The particular attitude of the early phenomenologists toward scholarship has also made the goal of identifying Reinach's influence on his contemporaries somewhat more difficult. It was part of the culture in Göttingen that members of the phenomenological movement did not extensively reference or cite each other's work, or indeed make much use of citations at all; this is visible in Reinach's works as much as anywhere. Further, taking into account the differences in how different phenomenologists understood the phenomenological method — from the subtle to the radical — the process of tracing lines of influence among phenomenologists becomes quite limited in its scope. Yet we have been fortunate to find some direct evidence of Reinach's influence, particularly in the case of Stein, who was in many ways more willing than many of her colleagues to acknowledge openly her debts to the work of others. Ultimately, the best evidence for Reinach's influence and importance in the early phenomenological movement is biographical and historical — resting in the personal testimonies of those who knew him — rather than academic in nature, and is thus not

specific to any particular philosophical field, but points to the quite generally inspirational quality of Reinach's teaching and his friendship.

We must also accept that the passage of years, the loss of manuscripts, and the fragmentation of phenomenology — the latter leading to a corresponding and reasonable fragmentation in scholarship concerning phenomenology — have placed barriers in the way of fully appreciating the contribution of any early phenomenologist to any of their shared projects. In light of this we are reminded not to lose sight of the purpose for which the goal of this investigation was pursued: to make Reinach's work on ethics more accessible to contemporary study, particularly in the English-speaking world. It is to be hoped that in the future, scholarship will further explore and evaluate Reinach's work on ethics in itself, and fully recognise what Reinach's work has to add to the project of phenomenological ethics in the present day.

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This bibliography is divided into three main sections. Section (A) contains primary works by Adolf Reinach, and is subdivided under the headings of (A1) collected works, (A2) individual works with existing English translations, (A3) works translated in appendices II-IV, and (A4) other works. Section (B) contains primary sources by other philosophers. Section (C) contains secondary literature cited or consulted in the completion of this project. Each section is ordered alphabetically.

SECTION (A)

WORKS OF ADOLF REINACH

(A1) COLLECTED WORKS

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SECTION (B)

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APPENDIX (I)

PREFACE TO THE TRANSLATIONS

The German texts translated in Appendices (II), (III) and (IV) are taken from the 1989 compilation *Sämtliche Werke*. They have been arranged in chronological order according to when they were first delivered or published. Details of how these works fit into the chronology of Reinach's philosophical writings can be found in chapter one of the thesis.

The translated texts are here presented in parallel format, with the German in the left-hand column and the English to the right. The German text is provided for the use of readers familiar with the language, as the understanding of the text is greatly aided by access to the exact wording and context. The glossary below contains details of key terms and how they have been translated here.

Since *Grundbegriffe*, Appendix (II), and *Grundzüge*, Appendix (IV), are already the product of extensive editing, the English text below contains two types of editorial notes. Notes by the editors of the *Sämtliche Werke* appear, as they did in that edition, in square brackets, i.e. [...], while my own in-text notes appear in braces, i.e. {...}. In order to be consistent, this usage is preserved in *Überlegung*, Appendix (III).

The text of *Grundbegriffe* was reconstructed by the editors of the *Sämtliche Werke* from notes transcribed by Alexander Pfänder and Johannes Daubert. Sections taken from Daubert's text or which are identical between the two are represented in normal typeface, while those that appear only in Pfänder's text are shown in italics. Similarly, the text of *Grundzüge* was reconstructed from a set of notes transcribed by Winthrop Bell and one by Margarete Ortmann. As Bell's notes are considerably longer than Ortmann's, material present in Bell's transcript or in both appears in the text in normal typeface, while material drawn only from Ortmann's appears in italics. For

Überlegung, this distinction is unnecessary; italic text instead indicates words emphasised by Reinach in the German text by the use of letter spacing.

In order to preserve the flow of the dual-text translation, any additional editorial notes not included in line with the text will appear as endnotes. Reinach's own notes, which appear as footnotes in the original text of *Überlegung*, are included with the endnotes in Appendix (II) and are marked with an asterisk (i.e. as 1*, etc.). The structure of paragraphs in the original text is preserved in the English translation; some additional line spacing is used to keep the start of each paragraph parallel in both columns. These additional line breaks do not indicate the start of a new paragraph, which is always marked with the indentation of the first line. Numbers in braces (e.g. {335}) indicate the pagination of the text in *Sämtliche Werke*.

GLOSSARY OF TERMS

<i>Original German</i>	<i>Translated As</i>	<i>Notes</i>
Akt	Act	A single, temporally punctual experience. The judgement that a state of affairs obtains, the perceiving of an object and the feeling of a value are all acts.
(sich) aufbauen	to form (-self)	Reinach uses this expression to refer to the way in which emotional states (<i>Gefühle</i>) arise in response to certain intentional experiences. The verb is used reflexively, indicating that the emotional states are not formed or constructed by the subject, but rather form themselves. This appears to be distinct from Husserl's technical sense of 'construction'.
Einstellung	Attitude	<i>Einstellung</i> and <i>Haltung</i> both denote a kind of 'attitude'.
Erfassung/erfassen	Grasping	Denotes grasping an object in an act of perception or value-feeling.
emotional	emotive	Not to be confused with <i>gefühlsmäßig</i> (see below), the emotive life refers to being motivated by values.

Ethik/ethisch	Ethics/ethical	<p>‘Ethik’ is translated here as ‘ethics,’ in contrast with ‘Sitten’ (which is translated here with ‘morals’).</p> <p>Reinach does not give clearly distinct meanings to ethics and morality. In general, he uses <i>Ethik</i> to refer to the philosophical field rather than <i>Sittlichkeit</i> or <i>Moral</i>, and refers to ‘<i>sittliche Werte</i>’ and ‘<i>sittlich recht</i>’ (‘moral values’ and ‘morally right’) more often than ‘<i>ethische Werte</i>’ and ‘<i>ethisch recht</i>’.</p>
Forderung/Verbot	Demand/Prohibition	The ‘demand’ to carry out a project or the ‘prohibition’ against doing so is experienced (though not literally heard) on experiencing that project’s character of moral value or disvalue.
fühlen	to feel	<i>Fühlen</i> (used mainly in the context of value-feeling or value-grasping) is an intentional act of the subject, to be distinguished from emotions or feeling-states (see below).
Geist/geistig	Spirit/spiritual	Also translates as ‘mind’ and ‘mental,’ but the connotation of ‘spirit’ is inherent in the German term.
Gefühl/ gefühlsmäßig	Emotion/ emotional	<p>A condition or state of the subject. Unlike the act of feeling (see above), an emotion has a duration in time and is not intentional or objective in character. An emotion can be the <i>source</i> of an action, but it is not a motive.</p> <p>Note that ‘<i>das Gefühlte</i>’ refers to something that is felt, not to an emotion; see <i>fühlen</i>.</p>
Gegenstand	Object	Generally denotes the object of intentionality; contrast with the content of an experience.
Haltung	Attitude	
Mensch/menschlich	Human being/human	‘ <i>Mensch</i> ’ corresponds to the traditional usage of ‘man’ and ‘mankind’ in English to refer to a human being or humanity respectively in a gender-neutral sense. As <i>Mensch</i> is masculine in German, it is represented in the text as a ‘he’; however, the term as used here does not refer to a specifically male or female human being.
Moral/moralisch	Morality/moral	Reinach rarely uses these terms himself. In most cases, ‘moral’ is used to translate

		<i>'sittlich'</i> .
Motiv	motive	A state of affairs that motivates me to will something to be. One of the three components of willing (see also <i>Quelle</i> and <i>Zweck</i>).
Person	Person	As with <i>Mensch</i> , the phenomenological person has no connotation of gender but in this case is linguistically feminine. The associated pronouns have been translated as female.
psychisch	psychical	
Quelle	source	That which gives a motive its motivational power; that <i>out of</i> which I will something to be. One of the three components of willing (see also <i>Motive</i> and <i>Zweck</i>).
Rangordnung	hierarchy	Here, 'hierarchy' is used to mean a ranked order of precedence, not an order of authority or of holiness.
Recht	Law <i>or</i> Right	The distinction between the two meanings of the noun <i>Recht</i> is context-based. This is not to be confused with Reinach's use of the adjective form of recht for 'right'.
(sittlich) recht/Rechtheit/ unrecht/Unrechtheit	(morally) right/ rightness/ wrong/ wrongness	Moral rightness or wrongness belongs to a state of affairs by virtue of its essence and conformance with formal ethical principles.
richtig/Richtigkeit	correct/Correctness	To be contrasted with <i>recht/Rechtheit</i> . Correctness applies to intellectual positions. Properly speaking there is no such thing as 'moral correctness' according to Reinach's own distinction, but that expression does appear, perhaps due to transcriber's error, in <i>Grundbegriffe</i> .
Sache	Thing	The meaning of ' <i>Sache</i> ' varies depending on context. It has three main meanings here: 1) A thing, or a material object. ' <i>Die Sachen selbst</i> ' are 'the things themselves' to which phenomenology was considered by Husserl to be a return. 2) A fact (also 'Tatsache'). 3) Matter, especially in the sense of 'the matter at hand.'
sachlich/ Sachlichkeit	objective/ Objectivity	This indicates a relation to <i>Sachen</i> , i.e., facts or real things. <i>Obiectiv</i> also

		translates as ‘objective’, <i>Objectivismus</i> as ‘objectivism.’
Sachverhalt	State of affairs	A common phenomenological term, but with a particular significance in Reinach’s philosophy. A state of affairs takes the form ‘the being <i>a</i> of <i>B</i> ’ (which can include the existence of an object).
Seele/ seelisch	Soul/ of the soul	The German word <i>seelisch</i> (‘soulish’) has no direct English equivalent.
Sitten/Sittlichkeit/ sittlich	Morals/Morality/ moral	See <i>Ethik</i> .
Stellungnahme	position-taking	At the end of intellectual reflection, the subject arrives at an intellectual ‘position’ on the theme of the reflection. The <i>Stellungnahme</i> refers to the taking of this position or stance.
Überlegung	Reflection	A durational process of consideration or deliberation. Reinach identifies three particular kinds: <i>Intellektuelle</i> (Intellectual), where the subject considers the truth of a state of affairs; <i>Voluntative</i> (Volitional), where the subject considers whether to carry out a project of action; <i>Praktisch-intellektuelle</i> (Practical-intellectual), where the subject considers how best to achieve the purpose of a project. (This is a kind of intellectual reflection.)
Verbot	Prohibition	See <i>Forderung</i> .
Vergegenwärtigung	Presentation	To be distinguished from ‘presentation’. This indicates that something is made present (<i>gegenwärtig</i>) to the mind.
Verhalten	Behaviour	Unlike an ‘attitude’ or ‘intellectual position’, which are inner responses or ways of responding, ‘ <i>Verhalten</i> ’ refers to the way in which one behaves or comports oneself, in both an inner sense (e.g. reflective behaviour) and an outer one (e.g., behaviour <i>based on</i> reflection).
Vorsatz	Resolution	A resolve or intent to do something (to carry out a specific thought-of project).
Vorstellung	Presentation	Refers to the way in which I present an object to myself; the <i>idea</i> of an object as formed in my mind.

Wert/Unwert	Value/Disvalue	For Reinach a value is objective (that is, carried by an object and intentionally grasped), and is to be contrasted with personal interest. Reinach distinguishes <i>moral</i> value (<i>sittliche Wert</i>) from other kinds of value, such as beauty (aesthetic value), vitality and wisdom. Any intended object can be a bearer (<i>Träger</i>) of value, but moral values are specifically borne by persons, personal qualities, acts and actions.
wollen/Wollen	to will/will(ing)	' <i>Das Wollen</i> ' can refer to 'the will' or to an individual act of willing. The emphasis is that something is willed; there are non-willing acts.
Ziel	Goal	To be distinguished from <i>Zweck</i> , below. If I paint a wall in order to help a friend, the completed painting of the wall is my goal.
Zweck	Purpose	To be distinguished from <i>Ziel</i> , above. If I paint a wall in order to help a friend, the helping of a friend is my purpose. One of the three components of willing (see also <i>Motiv</i> and <i>Quelle</i>).

APPENDIX (II)

VORTRAG ÜBER 'GRUNDBEGRIFFE DER ETHIK'

Written and delivered to the *Akademischen Verein für Psychologie*, Munich, in 1906.

First published in *Sämtliche Werke*, pp. 335-337.

DIE GRUNDBEGRIFFE DER ETHIK

THE BASIC CONCEPTS OF ETHICS

{335}[Wir wollen] vom landläufigen Begriff der Ethik ausgehen. [Die] gemeinsame Frage der verschiedenen ethischen Systeme [lautet]: »Was ist sittlich?« oder »Was ist sittlich wertvoll?« [Dabei steht] nicht im Subjekt ein Gegenstandsbegriff, dessen Prädikate nun gesucht würden (wie in der Psychologie). Die Ethik sucht die Gegenstände ihrer Prädikate. [Die] Frage ist, welchen Gegenständen der Begriff des Sittlichen zukomme. Die Bestimmungen der Gegenstände mögen verschieden sein (*dies letztere [wird] nicht hier in Betracht gezogen*), aber alle sind sittlich wertvoll,¹ und dadurch beziehen sich die Sätze der Ethik auf sittliche Gegenstände und sittliche Werte.

{335}[We wish] to take our point of departure in the commonly used concept of ethics. [The] question shared by the different ethical systems [goes]: 'What is moral?' or 'what is morally valuable?' What is at issue [here] is not the concept of an object whose predicate would now be looked for (as in psychology). Ethics seeks the objects of its predicates. [The] question is which objects correspond to the concept of the moral. The determinations of the objects may be different (*these latter will not be considered here*), but all are morally valuable, and thus ethical statements relate to moral objects and moral values.

An der Spitze [steht] also ein Gegenstandsprädikat. »Das Sittliche« ist der Grundbegriff der Ethik. Es gibt der Ethik Einheit. Völlige Aufhellung dieses

So at the forefront [stands] a predicate of an object. 'The moral' is the fundamental concept of ethics. It gives ethics its unity. Complete clarification of

Prädikates [ist] erst das Ziel. Vorläufige Bestimmung des sittlich Wertvollen: Gewöhnlich wird sittlich wertvoll gleich gut gesetzt, unwert gleich böse oder schlecht. Was ist »sittlich gut« und »sittlich böse«? Geschichten sind gut oder schlecht, ebenso Gemälde. Aber dieses sind nur Äquivokationen zu sittlich gut oder schlecht. Wert können auch praktische Gegenstände haben. Aber nützlich und sittlich wertvoll sind Äquivokationen, denn [man kann fragen]: »nützlich wozu?«. »Sittlich wertvoll wozu?« hat [dagegen] keinen Sinn. Negative Bestimmung des sittlich Guten: nicht nützlich, nicht gleich ästhetisch wertvoll, nicht gleich angenehm usw. All dieses ist in anderem Sinn wertvoll als das Ethische. Positiv [ist] nur ein Hinweis auf das Gemeinte möglich. Weitere Begründungen [sind] unnütz. Es ist ganz einerlei, ob es in der Welt etwas gibt, dem sittlicher Wert zukommt.

Genügt der Begriff des Sittlichen,² um das Gebiet der Ethik abzugrenzen? Lassen sich alle Sätze der Ethik auf die Form bringen: »Dieses ist sittlich wertvoll?«? Nein. Es gibt eine Reihe von Fragen, die als sittliche Fragen bezeichnet werden, die nicht dadurch bestimmt werden. Die Ethik hat es nicht nur mit der Frage zu tun, was sittlich wertvoll ist, sondern³ [wichtig ist] noch

this predicate [is] initially the goal. Preliminary determination of the morally valuable: customarily, morally valuable would be equated with good; disvaluable with evil or bad. What is 'morally good' and 'morally evil'? Stories are good or bad, likewise paintings. But these are just equivocations with the morally good or bad. Value can also be had by practical objects. But useful and morally valuable are equivocations, because [one can ask]: 'useful for what?'. 'Morally valuable for what?', [conversely,] is meaningless. Negative determination of the moral good: not useful, not exactly like aesthetically valuable, not exactly like pleasant, etc. All of these are valuable in a sense different to that of the ethical. Positively, only a reference to what [is] meant is possible. Further justifications [are] of no use. It makes no difference at all whether there is anything in the world to which moral value belongs.

Does the concept of the moral suffice to delimit the domain of ethics? Can all statements of ethics be put in the form: 'This is morally valuable'? No. There is an array of questions that are designated as moral questions, {but} that would not be determined by that. Ethics does not only have to do with the question of what is morally valuable; another basic concept of ethics [is

ein anderer ethischer Grundbegriff: sittlich recht und sittlich unrecht.

Bestimmung von sittlich recht und sittlich unrecht: Beide Prädikate sind nicht äquivalent den Prädikaten wertvoll und unwert. *Man versteht unter »sittlich« etwas anderes. Z. B. daß sittlich Unwertes nicht existiert, ist sittlich recht {336} bzw. unrecht, aber nicht wertvoll. Beispiele hierzu aus dem Zivilrecht und dem Strafrecht. Juristische⁴ Fragen (Verpflichtung zum Schadenersatz) können zu der Frage führen: Ist der Satz richtig? Schadenersatz ist doch nicht sittlich wertvoll. Ebenso kann nicht gefragt werden: Ob es wertvoll [ist], daß die Strafe der Vergebung diene. Dennoch sind es ethische Sätze. Man sagt: [Die Strafe ist] sittlich recht, aber nicht: sittlich wertvoll. Wertvoll und recht gelten als Prädikate von Verschiedenem. Ist beides [tatsächlich] verschieden?*

Mut, Tatkraft sind sittlich wertvoll, Neid ist unwert. »Daß der Unsittliche unglücklich ist, ist sittlich wertvoll«? Das geht nicht. Daß der Unsittliche glücklich ist, ist [nicht] unwert, sondern nicht recht. Wert und Unwert [sind] etwas anderes als Richtigkeit und Unrichtigkeit. Mut, Energie und Tatkraft sind alle nicht sittlich recht, sondern sittlich wertvoll.

important]: morally right and morally wrong.

Determination of the morally right and morally wrong: these two predicates are not equivalent to the predicates of valuable and disvaluable. *One understands something different by 'moral' in this case. For example, for a moral disvalue not to exist is morally right {336} as opposed to wrong, but not valuable. Examples of this from the civil law and criminal law. Juridical questions (obligation⁵ to compensate) can lead to the question: is the statement correct? Compensation is not morally valuable. In the same way it cannot be asked whether it [is] valuable that the punishment serves forgiveness. Nevertheless, they are ethical statements. One says: [the punishment is] morally right, but not: morally valuable. Valuable and right function as predicates for different things. Are they both [in fact] different?*

Courage and vitality⁷ are morally valuable, envy is disvaluable. 'That the immoral one is unhappy, is morally valuable?' That does not work. That the immoral one is happy is not of disvalue, it is not right. Value and disvalue [are] something different from rightness and wrongness. Neither courage nor energy nor vitality is morally right, but morally valuable. That must be founded in the

Das muß im Gemeinsamen, in der Gegenstandsform begründet sein. »Es ist recht« [ist] gleich »es ist in Ordnung«. Wertvoll sind Gegenstände. Dagegen sind Sachverhalte das, was sittlich richtig oder unrichtig ist.⁶ Gegenstand und Sachverhalt sind verschieden (wie, das kümmert uns [hier] nicht). A und B sind wertvoll oder unwert. Daß A b ist, ist recht oder nicht recht. Aber es ist nicht wertvoll bzw. unwert. Nur Gegenstände können sittlich wertvoll sein, niemals Sachverhalte. Nur Sachverhalte können sittlich richtig sein, niemals Gegenstände.

Einwände: Scheinbare Ausnahme hier ist, daß wir ein Handeln oder Wollen auch »sittlich recht«⁹ nennen. Aber hier ist das Gewollte selbst gemeint. Aber freilich [wird] das Wollen selbst »sittlich richtig« genannt. Dann [hat] »sittlich richtig« einen anderen Sinn. Ein Wollen ist nicht an sich richtig, so wie es etwa lustbetont ist. Es ist recht, sofern das, was gewollt ist, recht ist, aber nicht an sich. [Also] übertragen vom Gewollten auf das Wollen. Dieses [liegt am] Doppelsinn von Worten wie Handlung usw.: einmal [meint es] das Handeln und dann das, worauf sich das Handeln bezieht. Logisch richtig ist das Urteil, nie der Sachverhalt (= richtig). Ethisch richtig ist der Sachverhalt, niemals das Urteil (= recht). So werden allgemein Bewußtseinsakte als

general, in the objective form. 'It is right' [is] like 'it is in order'. It is objects that are valuable. States of affairs, on the other hand, are what is morally right or wrong. Object and state of affairs are different (exactly how does not concern us [here]). A and B are valuable or disvaluable. That A is b is right or not right. But it is not valuable or disvaluable respectively. Only objects can be morally valuable, never states of affairs. Only states of affairs can be morally correct,⁸ never objects.

Objections: an apparent exception here is that we also refer to actions or willings as 'morally right'. But here, that which is willed is what is meant. But really, the willing itself [is] called 'morally correct'. Here 'morally correct' [has] another meaning. A willing is not correct in itself, in the way it can be tinged with pleasure. It is right insofar as that which is willed is right, but not in itself. [So] the willing inherits from that which is willed. This [results from] the double sense of words like action etc.: firstly [it means] the acting, and then that to which the acting relates. A judgement is logically correct, but never a state of affairs (=correct). A state of affairs is ethically correct, but never a judgement (=right). Thus acts of consciousness are

recht bezeichnet, wo eigentlich nur der bewußte Sachverhalt recht ist.

Damit [ist] der Unterschied zwischen sittlich wertvoll und sittlich recht geklärt. Also in der Ethik kommt man mit dem Begriff des sittlich Wertvollen nicht aus, es muß der des sittlich Rechten hinzugenommen werden.

Anknüpfend an Lipps' »Grundfragen«: Die Verbindung dieser beiden ethischen Grundbegriffe bei Lipps. Eine Handlung ist sittlich richtig, wenn sie aus wertvoller Gesinnung entspringt.¹⁰ Dieses [ist] doppeldeutig:

1. Nicht an sich kommt dem Sachverhalte Richtigkeit zu, sondern nur in Hinblick auf den wertvollen notwendigen Ursprung.

2. Nur der Sachverhalt ist sittlich recht, den ein sittlich vollkommener Mensch mit Notwendigkeit will. Aber in der sittlichen Vollkommenheit liegt schon der rechte Sachverhalt vorausgesetzt. Daher sagt dieser Satz nichts Neues. Sittliche Vollkommenheit wird hier gefaßt als Inbegriff aller möglichen sittlichen Werte. Wenn ein Sachverhalt richtig ist, so ist das {337} Wollen, was auf seine Richtigkeit gerichtet ist, wertvoll. Dem auf eine Handlung um ihrer Richtigkeit [willen] gerichteten Wollen sprechen wir Wert zu. *Um der sittlichen Rechtheit des*

in general designated as right, even if it is really only the state of affairs of which one is conscious that is right.

Thereby the difference between morally valuable and morally right [is] clarified. So in ethics, one cannot get by with just the concept of the morally valuable; {the concept of} moral rightness must be added to it.

Continuing from Lipps' 'Basic Questions'¹¹: The combining of this pair of ethical concepts {the valuable and the right} by Lipps. An action is morally correct if it arises from a valuable disposition. This [is] ambiguous:

1. Correctness does not pertain to the state of affairs in itself, but only in view of its valuable necessary origin.

2. Only that state of affairs is morally right which a perfectly moral human being necessarily wants. But in moral perfection, the right state of affairs is already presupposed. Therefore, this statement says nothing new. Moral perfection is here grasped as the quintessence of all possible moral values. If a state of affairs is correct, then the {337} willing that is directed toward that correctness is valuable. We ascribe value to the willing of an action which brings about something that is [willed] because of its correctness. *One calls the willing*

gewollten Sachverhaltes willen nennt man das Wollen sittlich wertvoll. Unwert ist eine Handlung oder Gesinnung, welche auf Handlungen um ihrer Unrichtigkeit willen gerichtet ist. »Wenn ein Sachverhalt *recht*¹² ist, so muß ihn ein sittlich vollkommener Mensch mit Notwendigkeit¹³ wollen«, weil er sonst nicht sittlich vollkommen wäre.¹⁴

Zusammenhang zwischen sittlich recht und sittlich wertvoll: Es gibt vermittelnde Sätze zwischen Wert und Rechtheit. *Vom Gegenstand [werden diese Prädikate] auf den Sachverhalt, von dem Sachverhalt auf einen Gegenstand übertragen.* »[Der] Wert eines Gegenstandes >bedeutet< das Recht seiner Existenz«: Das ist nur *uneigentlich*, aber es bedeutet nicht das eine das andere. *Wohl aber:* »Mit dem Wert eines Gegenstandes ist notwendig verknüpft die Rechtheit seiner Existenz«, *scheint sinnvoll.* Wenn man sagt: »Es ist recht, daß dieser Gegenstand existiert, denn er ist sittlich wertvoll«, *und:* »Weil der Gegenstand wertvoll ist, [ist seine Existenz recht«, so ist] darin ein *Obersatz* vorausgesetzt: »Es ist recht, daß jeder *sittlich* wertvolle Gegenstand existiert«. Ferner [gelten die Sätze: »Es ist recht, daß ein unsittlicher Gegenstand nicht existiert«;] »Es ist *unrecht*, daß ein *unsittlicher* Gegenstand existiert«; »Es ist

morally valuable because of the moral rightness of the willed state of affairs. That action or disposition is disvaluable which is oriented toward an action because of its incorrectness. 'If a state of affairs is *right*, a perfectly morally human being must necessarily want it,' *because if he did not he would not be perfectly moral.*

Connection between morally right and morally valuable: There are mediating statements between value and rightness. *From the object [these predicates are] transferred to the state of affairs, from the state of affairs they are transferred to an object.* '[The] value of an object "means" the rightness of its existence': That is only *inexact*, but one does not mean the other. *However,* 'with the value of an object the rightness of its existence is necessarily linked' *appears to make sense.* If one says: 'It is right that this object exists, because it is morally valuable', *and:* 'Because the object is valuable, [its existence is right]', *so] an overarching statement [is] presupposed:* 'It is right that every *morally* valuable object exists'. Further, [the statements apply: 'It is right that an immoral object does not exist';] 'it is wrong that an *immoral* object exists'; 'it is wrong that a moral object, which is valuable, does not exist'. *So four statements.*

unrecht, daß ein *sittlicher* Gegenstand, der wertvoll ist, nicht existiert«. Also vier Sätze.

Dafür [sagt man auch]: Ein unwerter Gegenstand »soll« nicht existieren, ein werter »soll« existieren. *Rechttheit ist [aber] nicht Sollen. Zwar [sind beide] äquivalent, aber wie? Hier [sei] vom Sollen abgesehen.*

Die vier Sätze [sind] noch nicht ohne weiteres evident. Vorfragen: Was heißt *sittlich wertvoll*, was heißt das »zukommen«, das »*sittlich wertvoll*«? Ebenso [das] »*sittlich recht*«? Damit [würde] auch aufgeklärt, warum *sittlich wertvoll und sittlich recht* so oft verwechselt werden. In gewisser Weise setzt die Frage nach dem *sittlichen Rechttheit der Existenz eines Gegenstandes* die Frage nach dem *sittlichen Wert* voraus. Aber die Sätze führen nicht auf die Frage nach dem Wertvollen zurück.

Therefore [one also says]: A disvaluable object 'should' not exist, a valued one 'should' exist. *Rightness, [though,] is not ought-to-be. It is true that [the two are] equivalent, but how? Here, the ought will be left aside.*

The four statements [are] still not readily evident. Preliminary questions: what does *morally valuable* mean, what do the 'correspondence', the 'morally valuable' mean? Likewise [the] 'morally right'? This would also clarify why *morally valuable and morally right* are so often confused. In a certain sense the question of the moral rightness of the existence of an object presupposes the question of its moral value. But the statements do not lead back to the question of the valuable.

¹ Daubert's version. In Pfänder's text, the words '...*Gegenstände mögen verschieden sein {...} aber alle sind sittlich wertvoll*' are replaced with '*Verschiedenheit der Bestimmung der Gegenstände, die sittlich wertvoll sind*'.

² In Daubert's text, simply '*Genügt dies...*'

³ In Daubert's text this is followed by the words '*auch mit der...*'

⁴ Editors' version. In Pfänder's text, '*Z.B. juristische...*'

⁵ Here, '*Verpflichtung*'. Reinach later made a distinction between '*Verpflichtung*' (moral obligation) and '*Verbindlichkeit*' (legal obligation) in *Grundlagen*.

⁶ In Daubert's text, simply '*Richtig sind Sachverhalte*'.

⁷ '*Tatkraft*' is very difficult to translate in this context. It refers literally to vitality, energy or drive. Determination or zeal might also be indicated here.

⁸ Reinach distinguishes '*recht*' (right) and '*richtig*' (correct) in the next paragraph. There may have been some confusion of the terms by Daubert and Pfänder.

⁹ Daubert's version. In Pfänder's text, '*sittlich richtig*'.

¹⁰¹⁰ In Daubert's text, '*fließt*'.

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- ¹¹ Referring to Lipps, *Die ethischen Grundfragen. Zehn Vorträge*.
- ¹² Pfänder's version. In Daubert's text, 'richtig'.
- ¹³ Daubert's version. In Pfänder's text, 'mit *notwendigkeit*' is simply '*notwendig*'.
- ¹⁴ Pfänder notes here: '*Ist nun das "Wollen" oder der "Wille" oder die "Persönlichkeit" sittlich wertvoll? Das im zweiten Vortrag.*' ('Is it the "volition" or the "will" or the "personality" that is morally valuable? This in the second lecture.') No such follow-up lecture has survived, but Reinach answers this question in later works; he concludes that the personality is the only one of these three that is a bearer of moral values.

APPENDIX (III)

‘DIE ÜBERLEGUNG: IHRE ETHISCHE UND RECHTLICHE BEDEUTUNG’

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DIE ÜBERLEGUNG:

IHRE ETHISCHE UND
RECHTLICHE BEDEUTUNG

{279}Als eine eigenartige innere Haltung des Subjektes, die einen scharfen Einschnitt macht in den kontinuierlichen Abfluß unserer Erlebnisse, beansprucht die Überlegung eine genauere Analyse. Durch die Rolle, welche sie innerhalb der ethischen und rechtlichen Bewertung spielt, macht sie eine solche Analyse besonders dringlich. Merkwürdige Antinomien scheinen hier zu bestehen. Die verdienstvolle Handlung gilt als minder verdienstlich, wenn sie »ohne jede Überlegung« geschehen ist.

Sie gilt aber auch dann als minder

REFLECTION:

ITS ETHICAL AND
LEGAL SIGNIFICANCE

{279}As a distinctive inner attitude of the subject that makes a sharp incision into the continuous flow of our experiences, reflection deserves a more precise analysis. Such an analysis is made especially important by the role which it plays in ethical and legal assessments. Peculiar antinomies seem to obtain here. The praiseworthy action is considered less praiseworthy if it occurs ‘without any reflection’.

But then it is also considered less

verdienstlich, wenn umgekehrt das handelnde Subjekt sie »erst auf Grund einer langen Überlegung« vollzog. Wir machen es einem Menschen zum Vorwurf, wenn er eine wichtige Handlung begeht, ohne »sich die Sache auch nur einen Augenblick lang zu überlegen«. Wir beurteilen aber umgekehrt eine verwerfliche Handlung um vieles härter, wenn sie »mit Überlegung« geschah. In schroffster Weise kommt dieser letzte Gesichtspunkt in unserem Strafgesetzbuch zur Geltung. Die Tötung eines Menschen, die ohne Überlegung geschieht, wird mit Zuchthaus nicht unter fünf Jahren, beim Vorliegen mildernder Umstände mit Gefängnis nicht unter sechs Monaten bestraft (StGB §§ 212, 213). Die Tötung eines Menschen, die mit Überlegung ausgeführt ist, wird unter allen Umständen mit dem Tode bestraft (StGB § 211). Sechs Monate Gefängnis und der Tod: ein ungeheurer Unterschied, für den die Überlegung allein ausschlaggebend ist, dieselbe Überlegung, die wir an sich doch schätzen und von den Menschen verlangen. Alle diese entgegengesetzten Beurteilungen werden von uns im täglichen Leben mit großer Sicherheit vollzogen, aber praiseworthy if, conversely, the acting subject undertook it 'only after'¹ a long period of reflection'. We reproach a human being if he or she performs an important action without 'reflecting for even a moment on the matter'. But conversely, we assess a reprehensible action much more harshly if it happened 'with reflection'. This last viewpoint is illustrated in a pronounced sense in our Criminal Code. The killing of a human being which occurred without reflection is punished with imprisonment for not less than five years; with the presentation of mitigating circumstances, for not less than six months (Criminal Code articles 212, 213). The killing of a human being which is carried out with reflection is punished under all circumstances with death (Criminal Code article 211). Six months' imprisonment versus death: a tremendous difference, for which reflection alone is responsible, the same reflection which we yet esteem and expect from people.² All of these juxtaposed assessments are made by us in everyday life with great certainty, but never understood in full clarity. The contradictions pointed out here are generally explained as merely apparent. But one does not thereby

keineswegs in voller Klarheit verstanden. Die aufgezeigten Widersprüche wird jeder für nur scheinbare erklären. Aber eine wirkliche Einsicht in die hier obwaltenden Verhältnisse besitzt man damit nicht. Hierzu bedarf es in erster Linie einer phänomenologischen Analyse des Momentes, von dem wir so oft reden, dessen Vorhandensein in uns wir mit so großer Sicherheit feststellen, und das wir doch so wenig kennen: der Überlegung.

Phänomenologisch soll die Analyse sein. Das bedeutet hier, daß wir nicht geläufige Begriffe heranschleppen dürfen, Vorstellung, Denken, Fühlen, Wollen usf., um daraus die Überlegung »aufzubauen«, wobei mit absoluter Sicherheit das ihr Wesentliche verloren gehen würde, daß wir vielmehr uns bemühen {280} müssen, in das Phänomen selbst uns hineinzusetzen, um getreu das wiederzugeben, was wir da lebendig zu schauen vermögen. Nur soweit soll diese Analyse hier geführt werden, als es notwendig ist, um die ethische und strafrechtliche Bedeutung der Überlegung aufzuklären.

I.

possess an actual insight into the relationships that prevail here. For this is primarily required a phenomenological analysis of the factor of which we so often speak, whose presence in ourselves we diagnose with such great certainty, and which we yet know so badly: reflection.

The analysis shall be phenomenological. That means, here, that we may not haul along customary concepts like presentation, thinking, feeling, willing and suchlike, out of which to 'build up' reflection, whereby with absolute certainty that which is essential to it would be lost. We must rather make a great effort {280} to get inside the phenomenon itself, in order to faithfully reproduce what we are able to see there 'live'. We shall pursue this analysis here only so far as is necessary in order to clarify the meaning of reflection for ethics and the criminal law.

I.

Wir suchen die Überlegung zuerst in der intellektuellen Sphäre auf. Versetzen wir uns in einen kontinuierlichen, rasch abfließenden Denkverlauf hinein, denken wir etwa an den Vortragenden, der sein fertiges Wissen, Satz auf Satz, Gedanken auf Gedanken seinen Hörern darlegt. Hier können wir das reinste Beispiel des überlegungsfreien Denkens finden. Lassen wir nun aber plötzlich eine Überlegung eintreten, so wird das in jedem Falle eine Stockung bedeuten. Folgten sich vorher Behauptung auf Behauptung, intellektuelle Stellungnahme auf intellektuelle Stellungnahme, so ist dieser Fluß jetzt durchbrochen: die nächste Stellungnahme ist aufgehoben. Aber es handelt sich um eine Stockung ganz eigener Art. Auch ein plötzlicher Lärm mag eine Stockung verursachen. Aber der Lärm reißt den Denkenden aus dem Denkverlauf heraus, die Überlegung zieht ihn besonders tief hinein. Sie hält die Stellungnahme auf, aber sie bereitet sie gleichzeitig vor.

Die Überlegung ist ein teleologischer Prozeß. Das heißt, daß ihre Stadien sich nicht selbst genügen, in der Weise wie etwa in einem Panorama Bild auf Bild an uns vorüberzieht. Eher werden wir an eine

We shall first investigate reflection in the intellectual sphere. Let us imagine a continuous, fast-flowing process of thought; {let us imagine} a lecturer, perhaps, who lays out his completed knowledge before his listeners, statement by statement, thought by thought. Here we may find the purest example of reflection-free thought. But should we now suddenly allow a reflection to enter in, that would certainly constitute a *halting*. Where previously, assertion followed on from assertion, forming of intellectual position followed on from a previous position, this flow is now broken: the next position-taking is suspended. But this halting is of a quite distinctive kind. A sudden noise may also cause a halt. But the noise tears the thinker away from the process of thought; reflection pulls him especially deep within it. It postpones the taking of the position, but at the same time it prepares it.

Reflection is a teleological process. That means that its stages are not self-sufficient, in the sense that in a panorama, for example, picture after picture passes before us. We would sooner think of a melody, in which

Melodie denken, bei der jeder Ton das Ganze vorbereitet. Aber auch hier ist die Analogie ungenau. Sowenig der einzelne Ton Selbstzweck ist, so erhält er doch im Ganzen der Melodie seine Stelle und Mitwirkung. Das erste Stadium einer Überlegung aber ist in keinem Ganzen aufgehoben. Seine einzige Funktion ist es, das letzte Stadium zu ermöglichen. Dieses letzte Stadium aber, auf welches die Überlegung hinzielt, ist allemal eine Stellungnahme des Subjektes. Auch innerhalb der intellektuellen Sphäre, auf die wir uns jetzt beschränken, kann diese Stellungnahme mannigfach abgestuft sein. Es gibt in erster Linie die auf einsichtiger Erkenntnis beruhende Überzeugung: sie gibt der Überlegung die eigentliche Erfüllung. Daneben können aber auch in unvollkommenerer Weise — als Ersatzerfüllungen gleichsam — auftreten die Vermutung, die kritische Indifferenz, der Zweifel. Innerhalb des Zweifels und der Vermutung sind noch beliebig viele Abstufungen möglich. Aber stets sind es notwendig Stellungnahmen, auf welche die Überlegung abzielt. Endet sie mit dem Mangel oder mit der Enthaltung von jeglicher Stellungnahme, mit einem absoluten »ich weiß nicht«, dann hat every tone prepares the whole. But here too, the analogy is not exact. As little as the individual tone is an end in itself, it nevertheless holds its place in and contribution to the whole of the melody. The first stage in a reflection, however, is contained in no whole. Its sole function is to make possible the last stage. This last stage, however, towards which the reflection is aimed, is always a position-taking by the subject. Even within the intellectual sphere, to which we currently limit ourselves, this position-taking can be many-layered. There is in the first place the conviction brought about by insightful cognition: this gives the reflection its genuine fulfilment. Besides that, though, suspicion, critical indifference and doubt can also, in an imperfect way, enter in — as substitute fulfilments, so to speak. Within doubt and suspicion, any number of gradations are still possible. But it is always necessarily position-takings towards which reflection aims. Should it {reflection} end with the lack of or with the abstention from taking any position, with an absolute 'I don't know,' then it has failed in its immanent purpose; then the process has failed.

sie ihr immanentes Ziel verfehlt, dann ist der Prozeß gescheitert.

Jede intellektuelle Stellungnahme ist notwendig Stellungnahme zu etwas. Sie bezieht sich, spezieller gesprochen, notwendig auf einen Sachverhalt. Auch der Überlegung ist die Intentionalität wesentlich. Es kann keine Überlegung geben, die nicht Überlegung über etwas wäre, die nicht ihr »Thema« hätte. Das Thema der Überlegung muß natürlich in naher Beziehung stehen zu dem intentionalen Korrelat der Stellungnahme, auf welche sie abzielt. Im einfachsten Falle sind beide identisch. In anderen Fällen sind mehrere einander widerstrebende Sachverhalte Thema der Überlegung. Dann kann sich eine positive Stellungnahme nur auf einen dieser Sachverhalte beziehen; sie wird aber zugleich eine entsprechende negative Stellungnahme zu dem widerstrebenden Sachverhalte in sich schließen. Auch der Fall kommt häufig vor, daß das Thema der Überlegung zunächst noch mehr oder minder unbestimmt ist und erst allmählich diejenige Spezialisierung erfährt, auf die sich die endgültige Stellungnahme bezieht. Eine Differenzierung der einzelnen Fälle ist hier in weitem

Every intellectual position-taking is necessarily a taking of a position towards something. It directs itself, more specifically, necessarily towards a state of affairs. Also to reflection is intentionality essential. There can exist no reflection which is not reflection concerning something, which does not have its 'theme'. The theme of the reflection must naturally stand in a close relationship to the intentional correlate of the position-taking towards which it aims. In the simplest cases, both are identical. In other cases, several opposing states of affairs are the theme of the reflection. Then a positive position-taking can only direct itself towards one of these states of affairs; at the same time, though, a corresponding negative position-taking towards the opposing states of affairs is contained within it. The case also commonly comes about where the theme of the reflection is initially still more or less nonspecific and then, gradually, undergoes the specialisation towards which the final position-taking relates. A differentiation of the individual cases here is possible to a large extent. We shall concentrate on the first and

Umfange möglich. Wir halten uns an den ersten und einfachsten Fall.

Innerhalb der Überlegung können wir viele Stadien herausheben, und diese Stadien charakterisieren sich als ein bestimmtes inneres Verhalten des Ich. Durch sie alle hindurch aber zieht sich eine Identität, eine bestimmte »Einstellung« oder »Haltung« des Ich, die sie zu einer teleologischen Einheit gestaltet, und aus der alles überlegende Tun entfließt, jene Haltung, in die das Subjekt sich konzentriert, wenn es überlegen will, und die es ängstlich vor jeder Störung und Ablenkung zu schützen sucht. Ihre Eigentümlichkeit wird uns besonders klar bewußt, wenn wir bemerken, daß sie eingenommen wird oder eingenommen werden kann, bevor noch ein inneres Tun des Ich beginnt, daß sie dann dieses innere Tun begleitet und erst durch die endgültige Stellungnahme ihre Auflösung und Erfüllung findet. Wir werden diese Haltung des Subjekts am besten als Fragehaltung bezeichnen. Sie bedeutet etwas Letztes und nicht weiter Zurückführbares, etwas, dessen Definition nicht nur unmöglich ist, sondern auch zwecklos wäre. Es kann sich nur darum handeln, es dem näherzubringen, der sehen will und zu sehen versteht.

simplest case.

We can distinguish many different stages within reflection, and these stages can be characterised as a specific inner behaviour of the I. But throughout them all there is indicated an identity, a specific 'attitude'³ of the I, which melds them into a teleological unity, and out of which all reflective activity flows, every attitude in which the subject concentrates himself when he wants to reflect, and which he anxiously seeks to protect from any interruption or distraction. We become especially clearly aware of {this attitude's} peculiarity when we take note of the fact that it is taken up, or can be taken up, before an inner activity of the I has yet begun — that it then accompanies this inner activity and only finds its solution and fulfilment through the final taking of a position. We designate this attitude of the subject best as a questioning attitude. It means something final which cannot be traced further back; something of which definition is not only impossible, but would also be pointless. It can only be a matter of bringing it closer to the one who wants to see and who understands how to see.

Einer Sache gegenüber, die mir vorgetragen wird, oder die ich mir selbst vorlege, kann ich mich verschieden benehmen. Ich kann sie glauben, an ihr zweifeln, sie für möglich halten; ich kann auf jede Stellungnahme ausdrücklich verzichten, ich kann auch noch weniger tun als dies: ich kann mich ihr innerlich verschließen, sie einfach abweisen. Das alles sind wohlgeschiedene Verhaltensweisen des Subjekts; die fragende ist noch nicht darunter. Viel näher liegt die Vermengung mit ihr, wenn wir an den Zustand der inneren Fassungslosigkeit einer Sache gegenüber denken. Dieser Zustand bedeutet nicht, daß ich an der Sache zweifle, denn ich nehme in ihm überhaupt keine kritische Stellung. Er bedeutet auch nicht, daß ich sie einfach abweise, mich ihr verschließe oder gar ausdrücklich auf eine Stellungnahme verzichte. Ich vollziehe überhaupt keinen Akt, sondern bin der Sache in absoluter Passivität preisgegeben.

Jede solche Fassungslosigkeit schließt eine *Ungewißheit* in sich über den betreffenden gedanklichen Inhalt. Man hüte sich davor, diese Ungewißheit zu verwechseln mit dem Zweifel oder einer anderen Stellungnahme. Ein Zweifel kann ja

If a fact is presented to me, or if I present one before myself, I can behave towards it in different ways. I can believe it, doubt it, take it as possible; I can expressly abstain from taking any position; I can also do still less than this: I can close myself to it inwardly, simply reject it. All of those are well-distinguished manners of behaviour of the subject; the questioning {one} is still not counted among them. Much closer to being mixed up with it is the condition of inner bewilderment concerning a fact. This condition does not mean that I doubt the fact, because I take no critical stance towards it at all. It also does not mean that I simply reject it, close myself off to it or equally expressly abstain from taking a position. I perform no act at all, but am exposed to the matter in absolute passivity.

Every such bewilderment contains in itself an *uncertainty* regarding the cognitive content which it concerns. One should guard oneself against confusing this uncertainty with doubt or another position-taking. A doubt can indeed be just as certain as a

ebenso gewiß sein wie eine Überzeugung und eine Überzeugung ebenso ungewiß wie ein Zweifel. Die Ungewißheit ist ein eigenartiges Moment, das {282} sowohl als Färbung von Stellungnahmen auftreten kann wie auch als selbständige, vor aller, auch vor der zweifelnden Stellungnahme liegende Einstellung des Subjektes. Auch sie ist nicht fragende Einstellung, aber sie *kann* zu ihr führen und *muß* zugrunde liegen, wo immer ein solches Fragen vorliegt. Dem Range nach steht die fragende Einstellung höher als die Ungewißheit und tiefer als jede Stellungnahme. Sie wurzelt in der Ungewißheit und hat die immanente Tendenz, zu einer Stellungnahme zu führen. Sieht man das klar, so ist es nicht mehr möglich, sie zu verwechseln mit der stellungnehmenden Vermutung oder dem stellungnehmenden Zweifel, in die sie evtl. einmündet, mit der Ungewißheit, aus der sie entspringt, oder mit der Fassungslosigkeit, die in ihr bereits überwunden ist. Sie bildet den genauen Gegensatz zu den Fällen, in denen sich das Subjekt dem Problem gegenüber verschließt; denn ihr ist die Tendenz wesentlich, zu einer »Einsicht« zu gelangen. In dieser Einsicht, welche als Überlegungs- conviction and a conviction just as uncertain as a doubt. Uncertainty is a unique factor, which {282} can appear as a colouration of a position-taking just as well as independently, before everything, also before the attitude of the subject to the *doubted* position-taking. This too is not a questioning attitude, but it *can* lead to such and *must* be the reason whenever such questioning exists. On a scale, the questioning attitude stands higher than uncertainty and lower than any position-taking. The questioning attitude is rooted in uncertainty and has the immanent tendency to lead to the taking of a position. If one sees this clearly, it is no longer possible to confuse the questioning attitude with the position of suspicion or doubt into which it may flow, with the uncertainty from which it originates, or with the bewilderment which is, in it, already overcome. It forms the exact opposite to the cases in which the subject closes himself off from the problem; because it has the essential tendency to reach for an 'insight'. In this insight (which as the destination-point of reflection possesses a distinctive descriptive character), and in the conviction which is founded in it, it {the questioning attitude} finds its total fulfilment.

Zielpunkt einen eigenen deskriptiven Charakter trägt, und in der Überzeugung, die in ihr gründet, findet sie ihre totale Erfüllung. Auch Vermutungen, sogar Zweifel können ihr Antwort geben, ohne doch ganz das zu leisten, was sie verlangt. Wo aber überhaupt keine Stellungnahme sie abzuschließen vermag, da ist sie ins Dasein getreten, ohne ihr natürliches Ziel auch nur unvollkommen zu erreichen. Mag sie dann eintrocknen oder in einem eigenen Akte aufgehoben werden — das ihr natürliche Ende hat sie nicht gefunden.

Es hat nicht großen Zweck, hier noch nach umschreibenden Ausdrücken zu suchen, wo wir mit dem Worte Frageeinstellung das Wesentliche am besten treffen. Es ist die Haltung des Subjektes einem Probleme gegenüber, die man in Worte etwa so zu übersetzen vermag: ist A wirklich b, oder: ist A b oder c usw. In dieser Haltung »öffnet« sich gleichsam das Subjekt: es ist in Bereitschaft, die Antwort zu hören, d. h. die Einsicht in die Sachlage zu empfangen. Je nach dem Umfang des Fragethemas dehnt sich diese Bereitschaft auf ein engeres oder weiteres Feld möglicher Antworten aus, um dann in einer einzigen Antwort ihre Erfüllung zu

Suspitions and even doubt can answer it {the questioning attitude} without, however, quite achieving what it demands. But where no position-taking at all is able to conclude it, then it has come into existence without reaching its natural goal even imperfectly. Whether it then dries up or is annulled in a special act, it has not found its natural end.

There is no real point here in still seeking out descriptive expressions, when we capture the essential point best with the word 'questioning attitude'. It is the attitude of the subject towards a problem which one could perhaps translate into words as: is A really b, or: is A b or c, etc. In this attitude the subject at the same time 'opens' himself: he is ready to hear the answer, that is, to receive insight into the facts of the matter. Indeed, in accordance with the breadth of the theme of the question, this readiness stretches itself to cover a narrower or wider field of possible answers, in order then to find its fulfilment in a particular answer.

finden.

Wir haben von einer »Übersetzung« der Frageeinstellung in Worte gesprochen. Auch diese Formulierungen, falls sie sinnvoll vollzogen werden, werden als ein »Fragen« betrachtet. Man kann von Akten des Fragens reden, deren Umkleidung hier die Worte sind, ähnlich wie es Akte des Behauptens in Worten gibt. Aber man darf diese wortumkleideten Frageakte nicht verwechseln mit der Frageeinstellung, aus der sie entspringen, und der sie in bestimmtem Sinne Ausdruck verleihen. Zwei Punkte mögen genügen, um die Scheidung zu befestigen. Eine Frageeinstellung ist möglich, ohne eine ausdrückliche Frage nach sich zu ziehen. Und: das ausdrückliche Fragen ist ein *Akt* im echten Sinne, ein inneres *Tun* des Subjektes, aber keine innere *Einstellung* des Subjektes wie die Fragehaltung. Darum auch ist jene zeitlich punktuell, während diese einer beliebigen zeitlichen Dauer fähig ist. Die Fragehaltung ist das Grundphänomen: von ihr hätte eine Phänomenologie der Frage ihren Ausgang zu nehmen.

{283} Fragehaltung ist nicht überlegendes Tun. Es braucht nicht einmal notwendig ein solches Tun aus

We have spoken of a 'translation' of the questioning attitude into words. These formulations, too, should they be performed sensibly, would have to be regarded as a 'questioning'. One can speak of acts of questioning, whose clothing the words here are, similarly with how there exist acts of assertion in words.⁴ But one ought not to confuse these word-clothed acts of questioning with the questioning attitude in which they originate, and to which in a specific sense they lend expression. Two points may suffice to reinforce this difference. A questioning attitude is possible without drawing with it any expressed question. And: the expressed questioning is an *act* in the genuine sense, an inner *doing* of the subject, but not an inner *attitude* of the subject like the questioning attitude. Furthermore, the former is temporally punctual, while the latter lends itself to any temporal duration. The questioning attitude is the founding phenomenon: from it, a phenomenology of the question would have to start.

{283} The questioning attitude is not a reflective activity. It is not even necessary for such an activity to

ihr zu entspringen. Denken wir an den Zuhörer, vor den der Redner zunächst sein Problem hinstellt, um ihn in die Fragehaltung zu versetzen. Er ist nun innerlich »geöffnet«, der Einsicht gewärtig, die er empfangen wird. Von einem eignen Tun braucht hier keine Rede zu sein. Schritt für Schritt, so wie der Redner sie vorträgt, strömen ihm die Erkenntnisse zu. Keine von ihnen bietet sich ihm als Selbstzweck dar; alle sind sie für ihn nur Stadien zu der Endeinsicht in das aufgeworfene Problem. Es ist ein teleologischer Prozeß des Verstehens, der sich da vollzieht; das, was dem Ganzen die zielstrebige Einheit gibt, ist die Fragehaltung des Subjektes mit ihrer dauernden Bereitschaft, die endgültige Antwort zu hören. Ein solcher Vortrag gleicht einer Bergbesteigung, die uns zu einem Aussichtspunkte führen soll, und bei der ein jeder Schritt nur als Mittel zur Erreichung des Zieles gilt, im Gegensatz zu Spaziergängen, bei denen jedes Stadium als solches schon genossen wird. Von einer Überlegung ist in unserem Falle noch nichts zu finden, solange kein eignes inneres Tun des Subjektes vorliegt. Freilich ist das nicht der ideale Zuhörer, der sich mit dem bloßen Zuströmen der Einsichten begnügt, und es ist, besonders vom

originate from it. Let us think of the listener before whom the speaker initially sets out his problem in order to bring him into the questioning attitude. He is now inwardly 'opened,' awaiting the insight which he will receive. Of an activity pertaining to him {the listener}, we need not speak here. Step by step, as the speaker lays them out, recognition streams to him {the listener}. None of them offers itself to him as an end in itself; all are, for him, merely stages towards the final insight into the problem that was thrown up. It is a teleological process of understanding that takes place here; that which gives the whole its goal-conscious unity is the questioning attitude of the subject with its persistent readiness to hear the concluding answer. Such a lecture resembles the climbing of a mountain, which should lead us to a viewing point and in which every step functions only as a means to reaching that goal, in contrast with strolling, in which every stage as such already is enjoyed. There is still nothing of a reflection to be found in our current case, as long as no actual inner doing of the subject is present. In fact, it is not the ideal listener who is satisfied with the plain streaming to him of the insights, and

didaktischen Standpunkte aus, auch nicht der beste Redner, der ein solches Verhalten begünstigt. Nicht nur die Fragehaltung soll der Hörer einnehmen und sich in ihr der Lösung entgegenöffnen; er soll auch mittun, »selbst überlegen«. Und hier nun stoßen wir zum ersten Male auf das überlegende Verhalten selbst. Abgeschieden von der Frageeinstellung und doch auf ihr beruhend und sich aus ihr entwickelnd. Sehen wir von den Komplikationen unseres Beispiels ab und suchen wir die Überlegung im einsamen Denken zu erfassen.

Wir betrachten den einfachsten Fall: Ein einzelner Satz, ein Axiom etwa, sei Thema der Überlegung. Es werde gehört und verstanden.^{5*} Ungewißheit in bezug auf seinen Inhalt möge sich einstellen, eine fragende Einstellung mag daraus erwachsen und eben damit eine Tendenz des Subjektes auf vollgültige Einsicht. Wie kann diese Tendenz ihre Erfüllung finden, wenn das Subjekt ohne Einwirkung von außen in sich selbst eingeschlossen ist? Sicherlich nur durch ein überlegendes Verhalten des Subjekts. In diesem einfachsten Falle müssen wir finden, was wir suchen. Gerade durch seine Einfachheit ist dieser Fall besonders schwierig. Man kann sich

equally it is not the best speaker, especially from a didactic standpoint, who encourages such a behaviour. The hearer should not only adopt the questioning attitude and open himself towards the solution; he should also collaborate, 'reflect himself'. And here, now, we strike for the first time upon the reflective behaviour itself. Distinct from the questioning attitude and yet based on it and developing from it. Let us ignore the complications of our example and seek to grasp reflection in {the activity of} thinking on one's own.

We look at the simplest case: an individual statement, perhaps an axiom, is the theme of the reflection. It is heard and understood.^{6*} Uncertainty in relation to its content may present itself, a questioning attitude may grow from that and likewise a tendency of the subject towards a complete insight. How can this tendency of the subject find its fulfilment if the subject is locked into himself without input from outside? Certainly only through a reflective behaviour of the subject. In this simplest case we must find what we seek. {But}, precisely because of its simplicity, this case is especially difficult. One cannot here help oneself through any sort of 'associations of

hier nicht helfen durch allerlei »Ideenassoziationen«, man kann nicht hinweisen auf ein Tun des Ich, das nach Gründen und Gesichtspunkten hinauslangt, all das wird gegenstandslos, wo es sich um eine unmittelbare Einsicht in ein gedanklich bereits Vorhandenes handelt. Der gedankliche Stoff wird durch die Überlegung in keiner Weise vermehrt. Wenn es aber so ist, so erhebt sich die Frage, was dann eine Überlegung hier überhaupt zuwege bringen kann. Man ist gezwungen, auf feinere Nuancen zu achten, die man sonst {284} allzuleicht übersieht, und die man doch nicht übersehen darf, da in ihnen schon ein überlegendes Verhalten des Subjektes in Erscheinung tritt.

Man wird vor allen Dingen bemerken, daß nicht jedes beliebige »Dasein« eines Gedankens die Einsicht in seinen Inhalt gestattet. Beim Verstehen eines Satzes »empfangen« ich zwar den Satzgedanken, aber ich lebe in ihm, der gedankliche Inhalt stellt sich mir nicht dar. Auch Ungewißheit oder Zweifel können sich bezüglich seiner einstellen, ohne daß das Gedachte mir dadurch präsent zu werden brauchte. Die Intentionalität dieser Erlebnisse, ihre notwendige Beziehung auf den gedanklichen

ideas,' one cannot point to a doing of the I which reaches out beyond itself towards reasons and viewpoints; all of that becomes invalid if it depends on an immediate insight into something that already exists cognitively. The cognitive matter is in no sense increased by reflection. But if this is so, it raises the question of what reflection can achieve here at all. One is forced to pay attention to finer nuances, which one otherwise {284} all too easily overlooks, and yet which one ought not to overlook, as it is already in these that a reflective behaviour of the subject appears.

One notices first of all that not every 'existence' of a thought permits the insight into its content. With the understanding of a statement I indeed 'receive' the thought of the statement; but I live in it, the cognitive content does not present itself to me. Uncertainty or doubt, too, can establish themselves regarding that {content}, without that which I think about thereby needing to become present for me. The intentionality of these experiences, their necessary relation to the thought content, will not be

Inhalt, wird niemand bestreiten. Aber durchaus irrig ist es, als Grundlage eines jeden intentionalen Erlebnisses stets eine »Vorstellung«, ein »Erscheinen« des intentionalen Inhaltes zu postulieren. Oder will man das wirklich in allen Fällen finden, in denen ein Zuhörer den komplizierten und rasch aufeinander folgenden Entwicklungen eines Redners verstehend und glaubend folgt? Auch in der Frageeinstellung braucht das Subjekt sein Verhältnis zu dem in Frage gestellten Inhalt nicht zu ändern; es hat den Gedanken, und es stellt das Gedachte in Frage, ohne daß es ihm in einer Vorstellung »gegenwärtig« zu sein, »vorzuschweben« brauchte. Die Überlegung dagegen treibt aus diesem Verhältnis heraus. Sie zielt ja ab auf eine Einsicht in den Gedankeninhalt; eine solche Einsicht ist aber nicht möglich, solange wir, glaubend oder nichtglaubend, in den zugeführten Gedanken leben. Sie setzt voraus, daß der Inhalt dem Subjekte mehr oder minder deutlich gegenwärtig ist, daß er ihm zur Gegebenheit kommt. In der Art und Weise freilich, wie diese Gegebenheit erzielt werden kann, bestehen mannigfache Unterschiede.

Es gibt Fälle, in denen schon während des Verstehens eines

disputed by anyone. But it is downright erroneous to always postulate a 'presentation,' an 'appearing' of the intentional content as the basis of every intentional experience. Or does one really find this in all cases where a listener comprehendingly and believingly follows a speaker's complicated and rapidly sequenced elaborations? In the questioning attitude, too, the subject does not need to alter his relationship to the content in question; he has the thoughts, and he puts that which is thought of in question, without it needing to be 'present' for him in a presentation. Reflection, on the other hand, drives one out of this situation.⁷ It aims at an insight into the cognitive content; but such an insight is not possible as long as we, believingly or not, live in the led-to thoughts. It assumes that the content is more or less clearly present for the subject, that it comes to givenness for him. There are many different ways in which this givenness is aimed for, of course.

There are cases in which even during the understanding of a

Satzgedankens der ausgesagte Inhalt uns vorschwebt. Es sagt jemand: draußen ist blauer Himmel und die Sonne scheint; und sofort steht das entsprechende Bild mir vor Augen, in ihm ist mir der als bestehend ausgesagte Sachverhalt gegenwärtig. Es wäre fehlerhaft, das eigentliche Satzverständnis in dies Bild oder in sein Erfassen verlegen zu wollen. Denn beides kann fehlen oder verschwinden, ohne doch das Satzverständnis aufzuheben, ja sogar ohne es notwendig zu tangieren. Nehmen wir an, es sei zunächst nichts anderes da als das unanschauliche und präsenzlose Satzverständnis, so ist es in Fällen von der Art des eben erwähnten sehr leicht, eine Präsenz des Ausgesagten zu erlangen. Es bedarf dazu keines phänomenologisch aufweisbaren Tuns; ein fast unmerklicher Impuls genügt, um den betreffenden Sachverhalt in der Stellung vor sich zu haben, welche die Überlegung erfordert. Freilich können wir die Überlegung selbst an diesem Beispiel nicht studieren. Sie hat hier keine Stelle, da auch die genaueste Vergegenwärtigung eines derartigen Sachverhaltes keine Einsicht in ihn zu gewähren vermag. Hier ist vielmehr erforderlich und hier genügt zugleich ein Blick in die Welt da draußen, um statement-thought, we have the expressed content in mind. Someone says: outside the sky is blue and the sun is shining, and with that the corresponding picture stands before my eyes; in this, the expressed state of affairs is present for me as obtaining. It would be erroneous to want to lay the actual understanding of the statement in this picture or its grasping. Because both can be absent or disappear without the understanding of the statement being lost, indeed, without necessarily affecting it. If we were to accept that there was initially nothing else there but the non-visual, non-presented understanding of the statement, then in the sort of cases just mentioned it will be very easy to achieve a presence of what is expressed. No phenomenologically demonstrable doing is needed for this; an almost unnoticeable impulse suffices to have the relevant state of affairs which reflection requires in the position before oneself. But we cannot study reflection itself with this example. It has no place here, as even the most precise presentation of a state of affairs of that kind yields no insight into it. Here, a glance into the outside world is necessary and at the same time sufficient to convince us of the being

uns von dem Sein des betr. Sachverhaltes zu überzeugen. Ein Blick in die Welt da draußen ist aber nichts, was in die Einheit des Überlegungsprozesses eingehen könnte. Niemals kann das überlegende Tun in einem solchen {285} Hinsehen auf ein Existierendes bestehen. Ein anderes Beispiel vermag uns hier weiterzuführen.

Ich höre den Satz »Orange liegt zwischen Gelb und Rot«, und ich verstehe diesen Satz. Ich kann ihn verstehen, ohne daß der gemeinte Sachverhalt mir in irgendeiner Weise vorschwebt. Das Verständnis kann durchaus unanschaulich sein, und auch da, wo allerlei Bilder und Schemata auftauchen, darf dieses Fluktuieren nicht verwechselt werden mit dem anschaulichen Dastehen des Sachverhaltes. Aber auch hier genügt eine unmerkliche und unsagbare Einstellung des Subjektes, um dies letztere Ziel zu erreichen. Man sieht sofort, daß diese Einstellung notwendig erfolgen muß immer da, wo ich mich nicht mit dem leeren Satzverständnis begnüge, sondern das Ausgesagte in Überlegung ziehe. Vor mir schwebt nun etwa eine rote und eine gelbe Fläche und zwischen beiden eine orangegefärbte. In diesem Bilde erfasse

of the regarded state of affairs. But a glance into the outside world is not something that can enter into the unity of the reflective process. The reflective doing can never consist in such {285} an outward looking at an existent. A different example can lead us further here.

I hear the statement 'orange lies between yellow and red,' and I understand this statement. I can understand it without the meant state of affairs in any sense being held in my mind. The understanding can be thoroughly non-visual; and also, where all kinds of pictures and schemata emerge, these fluctuations should not be confused with the visual presence of the state of affairs. But here too an ordinary and inexpressible attitude of the subject suffices to reach this last goal. One sees immediately that this attitude must always necessarily follow where I do not content myself with the empty understanding of the statement, but draw what is expressed into reflection. Now perhaps something like a red and a yellow surface hover in my mind and between the two an orange-coloured one. In this picture I do not directly grasp the meant state of affairs.

ich den gemeinten Sachverhalt nicht direkt. Der unmittelbar zugehörige Sachverhalt würde ja den Ausdruck finden: diese orangegefärbte Fläche da liegt räumlich zwischen der gelb- und rotgefärbten. In unserem Beispiele aber handelt es sich um die reinen Farbenqualitäten schlechthin und um die eigenartigen Beziehungen, in denen solche Qualitäten in der Farbenskala zueinander stehen. Das Bild dient mir nur als Unterlage, auf Grund deren ich den ausgesagten Sachverhalt erfasse. In den einzelnen vorschwebenden Farbenflächen erfasse ich die Qualitäten, während mir die räumliche Ordnung zugleich jene ganz andersartige Qualitätenordnung repräsentiert. Zur Einsicht in den erst verstandenen Gedankeninhalt genügt also keineswegs jene Einstellung, durch die das Bild sich uns gibt. Der weitere Gang der Überlegung kann etwa so verlaufen, daß das Subjekt, unter Vernachlässigung der Form der Farbenflächen, ihrer Ausdehnung u. dgl., sich in die Qualitäten selbst hineinversetzt, und daß es zugleich die Qualität Orange in einem Akte synthetischer Apperzeption in Beziehung setzt zu den Qualitäten Gelb und Rot. Nun erst, wenn es das tut, leuchtet es ihm auf: Orange liegt in der

The immediately corresponding state of affairs would indeed find expression: this orange-coloured surface lies there in the space between the yellow- and red- coloured ones. In our example, though, what is important are the pure colour-qualities in themselves and the unique relations in which such qualities stand to one another in the scale of colours. The picture offers me only an underlay on the basis of which I grasp the expressed state of affairs. In the particular represented coloured surfaces I grasp the qualities, while the spatial ordering simultaneously represent an entirely different sort of scale of qualities. So, for the insight into the understood cognitive content, the attitude through which the picture gives itself to us does not suffice at all. The following course of the reflection can perhaps run in such a way that the subject, disregarding the form of the coloured surfaces, their extension and suchlike, concentrates on the qualities themselves, and at the same time places the quality orange in relation to the qualities yellow and red in an act of synthetic apperception. At last, if he does this, the penny drops: orange lies in fact between red and yellow; now awakes simultaneously within him the

Tat zwischen Rot und Gelb, nun erst erwächst ihm zugleich die Überzeugung von diesem Sachverhalt.

Die Überlegung hat damit ihr Ziel gefunden. So kurz dieser Prozeß auch ist, es *ist* doch ein Prozeß, der ein ganz bestimmtes Verhalten des Subjektes in sich schließt. Wir haben die Einstellung, die Bilder erscheinen läßt, wir haben das Erfassen der Farbenqualitäten als solcher, das sicher mehr ist als ein bloßes Hinstarren auf die Farben, das vielmehr ein Herausheben und Heranziehen der Qualitäten und ein Sichversenken in sie bedeutet. Und wir haben schließlich den zusammenfassenden Akt, welcher die Qualitäten in bestimmter Hinsicht zueinander in Beziehung setzt, wodurch erst das zunächst gedanklich bloß Gemeinte wirklich einleuchtet und einsichtig wird. Die Fragehaltung des Subjektes hat dies ganze Verhalten durchzogen und ihm zur Grundlage gedient. Leuchtet der Sachverhalt ein, so ist die ihr immanente Tendenz erfüllt, die Antwort ist erfolgt. Damit geht die Fragehaltung über in die aus der Erkenntnis entspringende Überzeugung des Subjektes.

{286}In der Änderung der Stellung zum Gedanken, speziell in der Vergegenwärtigung des gedanklichen

conviction of this state of affairs.

The reflection has thereby found its goal. As short as this process is, it *is* still a process, which contains in it a very specific behaviour of the subject. We have the attitude that allows the pictures to appear; we have the grasping of the colour-qualities as such, which is certainly more than a plain staring at the colours; which rather means an underlining and drawing out of the qualities, an immersion in them. And finally we have the together-grasping act which places the qualities in relation to each other in a specific sense, whereby that which was originally merely cognitively meant becomes understood and the object of insight. The questioning attitude of the subject has permeated this entire behaviour and served as a foundation for it. If the state of affairs is understood, then its immanent tendency is fulfilled; the answer is reached. Thereby the questioning attitude transfers into the conviction of the subject originating from the recognition.

{286}The reflective doing of the I thus exhausts itself in the changing of attitude to the thought,

Inhaltes, erschöpft sich also hier das überlegende Tun des Ich. Keine Rede von einem Hinausgreifen nach Hinsichten und Gründen, keine Herbeischaffung von neuem Material, nichts als die Umbiegung vom bloßen Verständnis zum Sehen und Einsehen.

Daß die Vergegenwärtigung des Inhaltes verschiedenerlei Stadien in sich schließt, haben wir gesehen. Immerhin hat es sich in unserem Beispiele noch um einen ziemlich primitiven Fall gehandelt. Man stelle einen anderen Satz daneben: Jede Veränderung setzt ein vorausgehendes Geschehen voraus, mit dem sie notwendig verknüpft ist. Man überlege sich diesen Satz, d. h. man versuche, sich von seinem bloßen Verständnis zu einer Vergegenwärtigung und evtl. Einsicht in seinen Inhalt durchzuringen, und man wird sehen, welche mannigfachen und schwierigen Aufgaben hierbei erwachsen.^{8*} Wie schwer ist es zunächst schon, das, was Veränderung besagt, adäquat zu erfassen. Wir gehen darauf nicht weiter ein. Schließlich genügt ja die einfache Reflexion auf das, was wir soeben tun, um unsere These recht eindringlich zu machen. Wir überlegen vom Beginne dieser Ausführungen an, was wohl Überlegung ist. Verstanden wurde

especially in the presentation of the cognitive content. No talk of a reaching beyond for intentions and reasons, no bringing in of new material, nothing but the turning from mere understanding to seeing and insight.

We have seen that the presentation of the content runs through different stages. So far our examples have still always been based on a fairly primitive case. Let us add another statement to that: every change assumes a previous occurrence with which it is necessarily tied. Let us reflect on this statement, that is, let us try to go from one's simple understanding to a presentation and perhaps an insight into its content, and we will come to see just how many and difficult tasks grow out of this.^{9*} How difficult it is right away to grasp adequately what change means. We will not go further into this. In the end, the simple reflection¹⁰ on that which we are doing suffices to make our thesis convincing. We reflect, from the beginning of this undertaking, on what reflection is. The expression was immediately understood. Here too the task of reflection consists in providing the subject with a new attitude towards the thought-of content: reflectively we

dieser Ausdruck sofort. Auch hier besteht die Aufgabe der Überlegung darin, dem Subjekte zu dem gedachten Inhalte eine neue Stellung zu verschaffen: Überlegend vergegenwärtigen wir uns das überlegende Verhalten selbst. Es wird hier deutlich, wie verschieden sich im einzelnen die Vergegenwärtigung gestalten kann. Etwas ganz anderes ist das Erfassen des Wesens an sinnlich anschaulichen Bildern als das Sichhineinleben in Haltungen und Einstellungen und Akte des Subjektes. Wir können das nicht im einzelnen verfolgen. Wir stellen als ersten Typus der Überlegung das Verhalten des in Fragehaltung befindlichen Subjektes fest, welches vom bloßen Verständnis oder Aufblitzen eines Gedankens durch Vergegenwärtigung des Inhaltes zur Einsicht und Überzeugung führt.

Daß die Winkelsumme im Dreieck = 2 Rechten ist, oder daß ein Freund mich besuchen wird, kann ich mir mit absoluter Klarheit vorstellig machen, ohne daß mir eine Einsicht oder Stellungnahme erwächst. Hier muß die Überlegung sich anderer Mittel bedienen. Hier erst kommen die Gesichtspunkte in Betracht, durch die man fälschlicherweise das Wesen der Überlegung schlechthin zu bestimmen

make present to ourselves the reflective behaviour itself. Here it becomes clear how differently the presentation can manifest itself in individual instances. The grasping of the essence by means of sensorily visible pictures is something very different from the empathising of attitudes and acts of the subject. We cannot pursue this in detail. We place as the first type of reflection the inner behaviour of the subject who is in the questioning attitude, leading from sheer understanding or the sudden appearing of a thought, through presentation of the content, to insight and conviction.

That the sum of the angles in a triangle equals two right angles, or that my friend will come to visit me, I can present to myself with absolute clarity without an insight or position-taking developing for me. Here, reflection must work with different means. Here at last those viewpoints through which one falsely seeks to determine the nature of reflection as such become relevant: increase of material,

sucht: Vermehrung des Materials, Ideenassoziationen, Suchen nach Gründen und Gegengründen. Durch das Erreichen eines bestimmten Endpunktes (der Stellungnahme) von einem bestimmten Anfangspunkte aus (der Fragehaltung), der zugleich der leitende und Einheit schaffende Gesichtspunkt ist, wird das Wesen der Überlegung als solcher charakterisiert. Die Art des Weges und der Mittel dazu vermag nur verschiedene *Typen* zu konstruieren. So ist es lediglich ein neuer Überlegungstypus, auf den wir nun hinweisen möchten. Mit den Haltungen und {287} Tätigkeiten des Subjekts, die sich hier entwickeln, befassen sich zahlreiche Arbeiten zur Psychologie des Denkens. Es sei uns gestattet, lediglich einige Hauptpunkte herauszuheben.

Wenn ich mich frage, ob mein Freund wohl kommen wird, so werden keine anschaulichen Bilder mir den Sachverhalt repräsentieren; und wenn sie es doch tun, so stehen sie nicht im Dienst der Überlegung als solcher. Hier muß wirklich das gedankliche Material vermehrt werden, es bedarf der Gesichtspunkte und Gründe. Wie bei den anschaulichen Bildern bestehen auch hier verschiedene Möglichkeiten. Wie bei dem Verständnis von Sätzen

associations of ideas, seeking for reasons for and against. The nature of reflection as such is characterised by the reaching of a definite endpoint (the taking of a position) from a definite starting-point (the questioning attitude), which is at the same time the leading and unifying viewpoint. The kind of way and means used permits the construal only of different *types*. So it is simply a new type of reflection to which we would now like to refer.¹¹ Numerous works of the psychology of thought occupy themselves with the attitudes and {287} activities of the subject which develop here. For us it is only appropriate to raise some key points.

If I ask myself whether my friend will indeed come to visit, no visual pictures represent the state of affairs to me; and if in fact they do, they do not serve reflection as such. Here, the cognitive material really must be increased; there is a need for viewpoints and reasons. As with the visual pictures, there are different possibilities here. Just like how, with the understanding of statements, visual pictures can fall into place without

anschauliche Bilder sich ohne jedes Zutun des Subjektes einstellen können, so auch Gründe und Gegengründe. Ich erwäge das Kommen des Freundes, und es fällt mir ein, daß er es mir versprochen hat. Dieses »Ein-Fallen« bezeichnet aufs glücklichste die absolute Passivität des Subjektes. So braucht es nun natürlich nicht zu sein. Wie es eine Einstellung auf Anschauung gibt, so gibt es auch eine Einstellung auf Gründe. Ich verstehe den Satz, nehme wieder eine solche Richtung ein, die jeder kennt und die man nicht weiter bezeichnen kann, und nun strömen mir Gründe und Gegengründe zu, ohne ein weiteres Zutun von meiner Seite. Bedeutsamer erscheint ein dritter Fall. Auch hier läßt die Anschauung eine Anknüpfung zu. Es gibt Fälle, in denen Anschauung weder von selbst zufließt noch durch einfache Einstellung gewonnen werden kann. Ich versuche, einen Menschen im Bilde vorzustellen, den ich einmal flüchtig gesehen habe; es gelingt nicht sofort. Nun beginnt ein — phänomenal aufweisbares — Suchen nach dem Bilde. Es wird im allgemeinen kein Suchen ins Blaue hinein sein, sondern ein Suchen auf bestimmtem Wege.

Vielleicht stelle ich mir den Ort anschaulich vor, an dem ich den

anything being done by the subject, so too can reasons for and against. I consider the coming of my friend, and it occurs to me that he has promised me that he will come. This 'occurring-to' indicates quite well the absolute passivity of the subject.¹² But, of course, it does not need to be this way. As there is an attitude directed towards contemplation, so is there an attitude towards reasons. I understand the statement and once again take such a direction, which everyone knows and that one cannot define further, and now there stream to me substantiating and opposing reasons, without anything further needing to be done from my side. A third case appears still more significant. Here too, visualisation allows for a continuation. There are cases in which visualisation neither comes to me by itself, nor can be achieved through a simple attitude. I attempt to picture someone who I once fleetingly saw; I do not succeed right away. Now begins a — phenomenally demonstrable — search for the picture. It is, in general, not a blind search, but a search along a definite path.

Perhaps I visualise the place where I saw the individual, or some kind of

Menschen gesehen habe, oder irgendeine Einzelheit von ihm, die mir zurückgeblieben ist, und suche von da aus zu dem Gesamtbild zu gelangen. Ein solches Suchen erscheint uns in der Sphäre der Anschauung als ungewöhnlich; bei Gründen und Gegen Gründen dagegen ist es das übliche. Es ist ja bekannt genug: Wenn wir das Sein eines Sachverhaltes erwägen, so »suchen« wir nach Gründen, wir suchen nach Tatsachen, die sich für oder gegen das Sein des betreffenden Sachverhaltes geltend machen. Das Seltsame eines solchen Suchens wurde früh bemerkt. Was soll es eigentlich? Ist das Gesuchte nicht bekannt, so ist ein Suchen nicht möglich; ist es bekannt, dann ist ein Suchen überflüssig. Es steht mit diesem Einwand gegen die Möglichkeit eines Suchens wie mit denen gegen die Möglichkeit einer Bewegung. Sinnlos ist es, die Möglichkeit von etwas in Zweifel zu stellen, welches uns in seinem Sein (wenn auch nicht in einer realen Existenz) evident gegeben ist, so wie das Erlebnis des Suchens oder wie etwa das Überholtwerden eines sich bewegendes Gegenstandes durch einen zweiten. Problem kann es nur sein, das in solcher Weise unbezweifelbar unique feature of him which has stuck in my memory, and seek from there on out to achieve the complete picture. Such a search seems to us to be unusual in the sphere of contemplation; with reasons for and against, on the other hand, it is the norm. Indeed, it is well enough known: if we consider the being of a state of affairs, we 'seek' after reasons, we seek after facts, which count for or against the being of a certain state of affairs. The strangeness of such a search was noted early. What does it actually achieve? If that which is sought is not familiar, then a search is not possible; if it is familiar, then a search is superfluous. This objection against the possibility of a search is like that against the possibility of movement. It is senseless to cast into doubt the possibility of something which in its being (if not also in a real existence) is evidently given to us, like the experience of the search or like the being overtaken of one moving object by another. The problem can only be to *understand* that which is undoubtably given in such a way. In the cases of searching which challenge us here, these difficulties are not too great. Nothing concretely definite is sought — as, for example, with the attempt to recall a name.

Gegebene *zu verstehen*. In den Fällen des Suchens, die uns hier angehen, sind dabei die Schwierigkeiten nicht allzu groß. Nicht konkret Bestimmtes wird ja gesucht — so wie etwa bei dem Sichbesinnen auf einen Namen.

Das Suchen erstreckt sich vielmehr auf alles {288} schlechthin, was in Betracht kommen kann für das Sein des Sachverhaltes. Ob dasjenige, auf das wir in dem Suchen und durch das Suchen stoßen, zu dem Bereiche dessen gehört, wonach wir suchen, ob wir in ihm etwas gefunden haben, muß sich dadurch ausweisen, daß es beiträgt zur Begründung oder Widerlegung des Sachverhaltes. Auch dieses Suchen nun pflegt kein Hinaustasten ins Ungewisse zu sein. Wir verfahren auch hier nach bestimmten Hinsichten und Richtlinien. Wir können uns auf nähere Analysen nicht einlassen, nur das eine wollen wir abschließend bemerken: In Ideenassoziationen läßt sich auch dieser zweite Typus der Überlegung keinesfalls auflösen. Das »Spiel der Assoziationen« wird ja durch jedes aktive Eingreifen des Subjektes unterbrochen. Aber über diese Selbstverständlichkeit hinaus müssen wir betonen: In dem Maße als sich der Mensch den Assoziationen überläßt, nimmt die Überlegung bei ihm ab. Das

The search, rather, extends itself to everything {288} that might be relevant to the question of the being of the state of affairs. Whether that which we come upon in and through the search belongs to the domain of that which we are searching after; whether, with it, we have found something, must show itself from the fact that it helps to support or to contradict the state of affairs. This search does not need to be any kind of fumbling into the unknown either. Here too, we proceed according to definite intentions¹³ and guidelines. We cannot allow ourselves a closer analysis; we only want to note one thing in closing: this second type of reflection cannot either be resolved into associations of ideas in any way. The 'play of associations' indeed is interrupted by every active intervention of the subject. But apart from this self-evident truth, we must say: inasmuch as the human being gives himself over to the associations, reflection diminishes. The absolutely association-conformant 'thinking' is an absolutely

absolut assoziationsgemäße »Denken« reflection-less thinking.
ist ein absolut überlegungsloses
Denken.

Nehmen wir nun an, Let us now take it that
begründende Gedanken haben sich substantiating thoughts have turned up.
gefunden. Dann scheinen in der Then primarily, three possibilities seem
Hauptsache drei Möglichkeiten zu to obtain. Either the subject takes them
bestehen. Entweder das Subjekt nimmt as secure without further ado. Then
sie ohne weiteres als feststehend an. they function in the reflection as
Dann fungieren sie in der Überlegung newly-won points of support.¹⁴ Or the
als neugewonnene Stützpunkte. Oder subject is uncertain about them. Then
das Subjekt ist ihnen gegenüber the questioning attitude will include
ungewiß. Dann wird sich die fragende them. They too would then be called
Einstellung nunmehr auf sie into question; not really for their own
mitbeziehen. Auch sie werden dann in sakes, but because of the contribution
Frage gezogen; freilich nicht ihrer that they might make possible to the
selbst wegen, sondern um des theme that is really in question. This is
Beitrages willen, den sie für das a distinctive relationship, for which we
eigentlich in Frage stehende Thema zu find an analogy within willing in the
leisten vermögen. Es ist das ein form of the means, which too is not
eigentümliches Verhältnis, für das wir wanted for itself, but for the
eine Analogie finden innerhalb des contribution it makes to the actually
Wollens bei dem Mittel, das auch nicht willed purpose. Now it may be that the
seiner selbst wegen gewollt ist, state of affairs mediately placed into
sondern um seines Beitragtes willen zu question is self-evident. Then we are
dem eigentlich gewollten Zweck. Es back to our first type of reflection. Or
kann nun sein, daß der mittelbar in alternatively we are again referred back
Frage gestellte Sachverhalt in sich to our reasons, must 'search' here as
selbst einsichtig ist. Dann sind wir well, and so it can continue. Thus
wieder bei unserem ersten originate the extraordinarily
Überlegungstypus angelangt. Oder complicated processes of reflection
aber wir werden auch hier auf Gründe which we especially know within the
zurückgewiesen, müssen auch hier sciences, and in which we are driven

»suchen«, und so kann es weitergehen. Es entstehen so jene außerordentlich komplizierten Überlegungsprozesse, die wir besonders innerhalb der Wissenschaften kennen, und in denen wir vom Thema aus immer weiter und weiter zu den Gründen und Gründen der Gründe zurückgetrieben werden.

Auch dann noch wird das ganze Tun des Subjektes durchzogen von der einen dem Hauptthema geltenden Fragehaltung. Freilich kann diese inaktuell werden, so z. B. wenn mitüberlegte Nebenthemen die ganze Aufmerksamkeit auf sich konzentrieren; aber auch dann noch, auch als inaktuelle Fragehaltung wird sie den Gang der Überlegung regulieren, ganz ähnlich wie ein inaktuelles Wollen die Abfolge der realisierenden Handlungen. Es kann freilich auch vorkommen, daß die Fragehaltung absolut entschwindet und wirkungslos wird. Ein mittelbar überlegtes Nebenthema kann dann zum Hauptthema werden, das ursprüngliche Hauptthema ist entfallen. Sache der intellektuellen Disziplin ist es, das zu vermeiden. In anderen Fällen ist eine Fragehaltung zwar noch vorhanden, aber sie ist unbestimmt geworden, sie hat {289} ihren Zielpunkt, das Thema verloren. Das sind die Fälle, in denen

on from the theme further and further back to the reasons, and the reasons for the reasons.

Then too the entire activity of the subject is driven by the questioning attitude defined by the main theme. This {questioning attitude defined by the main theme} may of course become irrelevant, when for example subordinate themes reflected upon concentrate the entire attention on themselves; but then, too, it regulates the path of the reflection as an inactual questioning attitude, very similarly to how a non-actual willing regulates the sequence of realised actions. It can actually also come about that the questioning attitude completely vanishes and becomes ineffective. A mediately reflected-upon subordinate theme can then become the main theme; the original main theme has slipped away. It is a matter of intellectual discipline to {be able to} avoid this. In other cases, a questioning attitude is indeed still present, but it has become nonspecific, it has {289} lost its endpoint, its theme. Those are the

wir uns mitten im überlegenden Verhalten plötzlich fragen, was wir denn eigentlich wissen wollten.

Die auftauchenden und aufgefundenen Begründungsgedanken müssen sich als begründend bzw. widerlegend geltend machen, wenn sie sich innerhalb der Überlegung irgendwie als nützlich erweisen sollen. Auch das kann in verschiedener Weise geschehen. Ein Gedanke taucht auf und wird sofort geglaubt; nun kann uns auf Grund seiner der andere in Frage gestellte Sachverhalt einleuchten. Man darf dabei nicht von einem Schließen im phänomenalen Sinne reden. Nur eine logisierende Psychologie kann die sogenannten Schlüsse des täglichen Lebens als ein ausdrückliches Schließen und damit als ein bestimmtes Tun des Subjektes interpretieren. Zweifellos gibt es ein solches Schließen; es wird besonders häufig sein, wenn das Subjekt wissenschaftlich überlegt, und vor allen Dingen, wenn es wissenschaftlich formuliert. Indem hier das Subjekt einen auftauchenden und von ihm geglaubten Gedankeninhalt festhält, und indem es gleichzeitig einen zweiten, sonst zumeist unterschlagenen Inhalt in bestimmter Weise mit dem

cases in which, in the middle of the reflective behaviour, we suddenly ask ourselves what it was we actually wanted to know.

The substantiating thoughts that have emerged or been discovered must present themselves as either supporting or contradicting if they are to prove themselves useful in any way within the reflection. That too can occur in different ways. A thought emerges and is just as quickly believed; now, because of it, the other questioned state of affairs can become clear to us. One ought not speak here of a concluding in the phenomenal sense. Only a logicising¹⁵ psychology can interpret the so-called conclusions of everyday life as expressed conclusions and thus as a specific activity of the subject. There is of course such a concluding; it comes about especially often if the subject reflects scientifically, and above all if he formulates scientifically. In that the subject here holds onto an emerged (and for him, believed) cognitive insight, and in that he at the same time takes in a second, if otherwise mostly misappropriated, content in a certain way together with the first, now the states of affairs resulting from both appear to him in full clarity. It is noteworthy for us that

ersten ineinsnimmt, erschaut es nunmehr in voller Klarheit den aus beiden resultierenden Sachverhalt. Bemerkenswert für uns ist, daß auch bei diesem phänomenal wahrhaften Schließen eine Vergegenwärtigung der in Betracht kommenden Sachverhalte, ein Sichversenken in ihre zugehörigen Gegenstände durchaus überflüssig ist. Das ist ja gerade das Wesentliche an Schlüssen, daß es bei ihnen nicht auf das eine solche Versenkung zulassende und evtl. fordernde Material ankommt, sondern auf ganz bestimmte kategoriale Formen.

Von den entscheidenden Gründen müssen wir unterscheiden die bekräftigenden Instanzen, die sich zwar geltend machen für das Sein eines Sachverhaltes, ohne ihn jedoch eigentlich und restlos zu begründen. Am bekanntesten sind sie uns aus Überlegungen des täglichen Lebens. Manches kann dafür sprechen, daß mein Freund mich besuchen wird, anderes spricht dagegen. Hier ist ein Abwägen erforderlich, ein bestimmter Akt synthetischer Apperzeption, der das Für und Wider zusammenfaßt und seinem Gewichte nach miteinander vergleicht. Geht ein solches Abwägen, das wahrhaft widersprechende Instanzen zu berücksichtigen hat, in

even with this phenomally true concluding, a presentation of the state of affairs in question, an immersing oneself in the objects that belong to it, is thoroughly superfluous. That is in fact precisely the essential point when it comes to conclusions: that they do not have to do with any such material that permits and supports exploration, but with fully determined categorial forms.

We must distinguish decisive reasons from reinforcing instances, which indeed validate the being of a state of affairs, but without establishing it specifically and totally. They {the reinforcing facts} are the best known to us from the reflections of everyday life. Much can speak for {the fact} that my friend will come to visit, other {facts} speak against it. Here, a weighing-up is required, a definite act of synthetic apperception which brings the 'for' and 'against' together and compares their respective importance. If such a weighing up enters into the reflective behaviour that has truly contradictory instances to take into account, then the concluding position-taking can never

das überlegende Verhalten ein, so kann die abschließende Stellungnahme niemals eine Überzeugung sein, sondern sie wird je nach den Gewichtsverhältnissen Vermutung, kritische Indifferenz oder Zweifel sein. Die Fragehaltung kann hier nur eine partielle Erfüllung erfahren.

Wir haben mit alledem nur einige wenige Linien innerhalb der intellektuellen Überlegung herausgehoben; wir haben dabei das ausgewählt, was geeignet erscheint, ihre Eigentümlichkeit gegenüber der voluntativen Überlegung heraustreten zu lassen. Unter diesem Gesichtspunkte mag noch eine Bemerkung hinzugefügt sein. Wenn wir auch bisher einen rein intellektuellen Prozeß besprochen haben, so vollzieht sich dieser doch in einem Subjekte, welches auch anderer Erlebnisse fähig ist. Das Thema der Überlegung »interessiert« das {290} Subjekt, es erlebt in bezug auf das Sein des Sachverhaltes ein Streben und Widerstreben, Neigung und Abneigung, Hoffnung und Furcht usw. So irrelevant nun auch diese Anteilnahme des Subjektes für das Sein des Sachverhaltes ist, so zweifellos ist es doch andererseits, daß in der psychologischen Realität

be a conviction; it becomes, according to the balance of weights, suspicion, critical indifference or doubt. The questioning attitude can here only achieve a partial fulfilment.

We have, in all of this, only picked out a few individual strands within intellectual reflection; we have chosen here that which really appears to let us draw out its distinctiveness when compared with volitional reflection. From this point of view another may be added. If we have thus far described a purely intellectual process, this process nevertheless runs its course in a subject which is also capable of other experiences. The theme of the reflection 'interests' the {290} subject; he experiences, in relation to the being of the state of affairs, a striving for and against, an inclination towards and against, hope and fear, and so forth. Now as irrelevant as this participation of the subject is for the being of the state of affairs, it is yet equally doubtless on the other hand that in psychological reality, relations exist between it and the intellectual position-taking. It is essential to intellectual reflection to

Beziehungen stattfinden zwischen ihr und der intellektuellen Stellungnahme. Der intellektuellen Überlegung ist wesentlich, solche illegitimen Beeinflussungen auszuschalten. Indem sich die Fragehaltung auf das Sein des Sachverhaltes richtet und sich, wie wir sagten, der Einsicht gleichsam entgegenöffnet, soll eben alles Sichtreibenlassen von Emotionen jeglicher Art vermieden werden. Wohl kann man sagen, daß die Überlegung als solche häufig geeignet ist, solche Emotionen zu verstärken oder sogar wachzurufen. Es kann erst die Vergegenwärtigung einer Sache ihre Furchtbarkeit dem Subjekt enthüllen oder doch besonders deutlich machen. Aber nicht das Vorhandsein, sondern die unbefugte Einwirkung der persönlichen Anteilnahme bedeutet eine logische Gefahr. Und gerade dieser Einwirkung stellt sich die intellektuelle Überlegung als solche entgegen.

Es handelt sich hier um rein empirische Verhältnisse. So häufig auch die Überlegung im menschlichen Bewußtsein mit emotionalen Erlebnissen verknüpft sein mag, so ist hier doch diese Verknüpfung niemals wesentlich. Wir können uns ein Subjekt konstruieren, das in vollkommener

exclude such illegitimate influences. In that the questioning attitude orients itself on the being of the state of affairs and, as we said, opens itself at the same time to the insight, one should avoid allowing oneself to be moved at all by any kind of emotion.¹⁶ One can well say that reflection itself is often suitable to strengthen such emotion, or, indeed, to awaken them. In the presentation of a thing, {reflection} can unveil {the thing's} fearfulness for the subject, or at least make it especially clear. But it is not the presence, but the inappropriate influence of personal participation that represents a logical hazard. And precisely this influence is counterposed by intellectual reflection as such.

This is a matter of purely empirical relations. However often reflection can be tied up with emotive experiences in human consciousness, this binding is never essential. We can construe a subject who reflects intellectually in a perfect way without needing to think that this subject has

Weise intellektuell überlegt, ohne daß wir in dies Subjekt die Fähigkeit emotionaler Anteilnahme hineinzudenken brauchen. Und gerade hier liegt der wesentlichste Punkt, der die Überlegung innerhalb des Wollens von der intellektuellen Überlegung trennt. Die Konstruktion eines Subjektes, das ohne jede Anteilnahme seine Willensakte überlegend vorbereitet, ist nicht möglich.

II.

Äußerlich betrachtet bietet uns die voluntative Überlegung den ganz ähnlichen Aspekt eines teleologischen Prozesses wie die intellektuelle. Freilich steht hier eine andere Stellungnahme als Zielpunkt in Frage: Nicht ein Sein wird geglaubt, vermutet und bezweifelt, sondern es wird ein Vorsatz gefaßt, genauer, es setzt sich das Subjekt ein eigenes Tun vor. Nach zwei Richtungen wird dieser Unterschied bedeutsam. Einmal gibt es hier nicht die Differenzierungen der Stellungnahme, welche in der Sphäre des Intellektuellen von der Überzeugung zum Zweifel führen, und die uns den Begriff einer partiellen Erfüllung der Überlegung aufgenötigt haben. Es gibt hier nur eine totale Erfüllung, welche das Fassen eines

the capability for emotive participation. And precisely here lies the essential point which divides reflection within willing from intellectual reflection. The construal of a subject who prepares his acts of willing reflectively without any {personal} participation is not possible.

II.

Volitional reflection, superficially regarded, offers us the very similar aspect of a teleological process to that of the intellectual. Of course, a different position-taking stands here as the endpoint in question: A state of being does not come to be believed, suspected and doubted. Rather, a resolve is reached; more precisely, the subject resolves himself to a specific activity. This difference is significant in two ways. First, there is not the differentiation of position-taking here, which in the sphere of the intellectual ranges from conviction to doubt, and which made necessary for us the concept of a partial fulfilment of reflection. Here, there is only a total fulfilment, which has the making of a positive or negative resolution as its

positiven oder negativen Vorsatzes zur Folge hat, oder ein totales Scheitern, bei dem es eben nicht zu einem solchen Akte kommt. Sodann bedeutet die Verschiedenheit des intentionalen Korrelates der Stellungnahme — ein eignes Tun des Subjektes, das vorgesetzt wird, statt eines Sachverhaltes, der geglaubt oder vermutet oder bezweifelt wird — auch eine Verschiedenheit des Themas der Überlegung. Wir haben auch hier den einfachsten Fall, in dem Korrelat und Thema zusammenfallen. Wir haben einen charakteristischen {291} zweiten Fall, in dem zwei widerstreitende Projekte in Frage stehen. Die Stellungnahme, welche den Endpunkt einer solchen Überlegung bildet, ist auch hier, genauso wie in der Sphäre des Intellektuellen, eigenartig charakterisiert: sie ist gleichsam doppelseitig, insofern sie nicht nur das eine Tun vorsetzt, sondern gleichzeitig damit das zweite widerstreitende Tun abweist. Negative und positive Vorsatzfassung bilden hier eine eigenartige Einheit, innerhalb deren der positive Teil dominierend den negativen in sich einschließt. Man redet hier von einem Wahlakte. Man darf aber weder die intellektuelle noch die voluntative Wahl konfundieren consequence, or a total failure, by which it arrives precisely at no such act. Furthermore, the difference in the intentional correlates of the position-taking — an individual activity of the subject that comes to be resolved upon, instead of a state of affairs that comes to be believed or suspected or doubted — also signifies the difference in the theme of reflection. Here too we have the simplest case, in which the correlate and the theme coincide. We have a characteristic {291} second case in which two contradictory projects are in question. The position-taking which forms the endpoint of such a reflection is here just as distinctively characterised as in the sphere of the intellectual: it is at the same time double-sided, in that not only is one activity resolved upon, but simultaneously with that, the second, contradictory activity is rejected. Negative and positive resolve-reaching here form a unique unity, within which the positive part dominates the negative enclosed in it. One speaks here of an act of choosing. But one ought not to confound the intellectual and volitional choice, or place them in exclusive association with reflection as such. That there is reflection that does not end in an act of choosing is self-

oder in ausnahmslose Verbindung setzen mit der Überlegung als solcher. Daß es Überlegung gibt, die nicht in einem Wahlakte endigt, ist selbstverständlich. Aber auch davon, daß ein Wählen möglich ist ohne Überlegung, kann man sich unschwer überzeugen, wenn man sich die Fälle vergegenwärtigt, in denen das Subjekt sich zwischen zwei auftauchenden gedanklichen Inhalten oder Projekten ohne Zögern entscheidet. Als dritten Fall bezeichnen wir auch bei der voluntativen Überlegung die Unbestimmtheit des Themas, das erst in der Überlegung und durch sie diejenige Spezialisierung erfährt, deren die endgültige Stellungnahme bedarf.

Wir heben auch bei der voluntativen Überlegung die auf das Projekt gerichtete Fragehaltung des Subjektes als die Grundlage und den Durchgangspunkt des überlegenden Verhaltens heraus. Wir scheiden auch hier von ihr die Ungewißheit, die ihr notwendig zugrunde liegt, aber auch dasein kann, ohne sie aus sich heraus erwachsen zu lassen, und die innere Fassungslosigkeit, die *Projekten* gegenüber besonders häufig ist und die, falls sie überhaupt vorlag, in der Fragehaltung bereits überwunden ist. Auch hier »öffnet sich« das Subjekt in

evident. But further to that, choosing is possible without reflection; of this, one can be convinced without difficulty if one brings to mind the cases in which the subject decides between two emerging cognitive contents or projects without hesitation. We designate as a third case, also within volitional reflection the indeterminacy of theme, which only in and through reflection undergoes the process of specialisation which the final position-taking requires.

With volitional reflection we again highlight the project-oriented questioning attitude as the underlay and the connecting point of the reflective behaviour. We also distinguish it here from the uncertainty which is necessarily the reason for it, but which can also exist without {reflection} arising, and the inner bewilderment which is especially common in regard to *projects* and which, if it was ever present, is overcome in the questioning attitude. Here too the subject 'opens himself' in the questioning attitude, but that to

der fragenden Einstellung, aber dasjenige, dem es sich entgegenöffnet, ist nicht die Einsicht in ein So- oder So-Sein, auf Grund deren dann die Fragehaltung überginge in eine Überzeugung, sondern es ist die Einsicht in ein Tunsollen, das Vernehmen der »Forderung« eines eignen Verhaltens, auf Grund dessen dann die Fragehaltung übergeht in die Vorsetzung eben dieses Verhaltens. Mit diesen Verschiedenheiten des Endpunktes und des Themas der Überlegung ist natürlich auch der Weg verschieden: das überlegende Verhalten selbst.

Wir orientieren uns wiederum zuerst an dem einfachen Falle, in dem das Thema der Überlegung und das intentionale Korrelat der Stellungnahme zusammenfallen, und in dem ferner eine unmittelbare Evidenz möglich ist. Ein Projekt wird dem Subjekt vorgeschlagen, oder es steigt auch ohne Einwirkung von außen in ihm auf. Dann lebt das Subjekt zunächst in dem Projektgedanken, es lebt, ohne sich sofort zu entscheiden, in dem Gedanken, es könne dieses tun. Ungewißheit mag sich nun einstellen und eine Fragehaltung aus ihr erwachsen. Eine gewisse Absetzung des Subjektes von dem

which he opens himself is not the insight into the being of this or that, on the basis of which the questioning attitude is converted into a conviction; rather, it is the insight into an ought-to-do, the hearing of the 'demand' for a specific behaviour, on the basis of which the questioning attitude is then converted into the resolution towards this very behaviour. With these differences of the endpoint and theme of reflection, the way, the reflective behaviour itself, is naturally also different.

We orient ourselves once again first on the simple case, in which the theme of the reflection and the intentional correlate of the position-taking coincide, and in which, further, an immediate evidence is possible. A project comes before the subject, or it arises for him without outside input. Then the subject lives to start with in thoughts about the project; he lives, without yet having decided, in the thought that he could do this. Uncertainty may now emerge and a questioning attitude may arise from that. A certain distancing of the subject in regard to the thought of the project can be given with this, but there is still

Projektgedanken kann damit gegeben sein, aber von einer Vergegenwärtigung des Projektes ist damit noch keine Rede. Nicht das Sein oder Nichtsein eines Sachverhaltes soll hier erschaut werden, sondern es soll die Realisierungsforderung oder das Realisierungsverbot vernommen werden, die ausgehen von einem Projekte. Solche Forderungen oder Verbote gründen nicht in der konstitutiven Beschaffenheit des Projektes als solchen, sondern sie gründen in seinem Wert oder Unwert. Wert- und Unwertcharakter freilich haften ihrerseits wieder an dem Projekt vermöge seiner Beschaffenheit. Eben damit aber ist gesagt, daß eine Vergegenwärtigung des Projektes für die praktische Überlegung nur insoweit in Betracht kommt, als sie erforderlich ist, um die Wert- und Unwertcharaktere an ihm klar zu erfassen. Werden sie erfaßt, so stellen sich eben damit jene ganz eigentümlichen, auf die Realisation der Projekte bezüglichen Erlebnisse ein, die wir als Forderungs- und Verbotserlebnisse bezeichnet haben.

Schon in diesem einfachsten Falle kann von einer Stoffvermehrung die Rede sein. Ein Projektgedanke kann auftauchen, ohne daß die ihm

no sense of a presentation of the project here. It is not the being or non-being of a state of affairs that should be contemplated here, but rather the demand for or prohibition against realisation, which arises from a project, that should be {292} sensed. Such demands or prohibitions are based not in the constitutive composition of the project as such, but in its value or disvalue. Of course the value- and disvalue-character pertain to the project by virtue of its composition. With this it is said that a presentation of the project is relevant for practical reflection only insofar as it is necessary to grasp the value- and disvalue-characters pertaining to it clearly. If they are grasped, then those special experiences related to the realisation of the project, which we have designated as demanding and forbidding experiences, arise.

Already in this simplest case we can talk of an increase of material. The thought of a project can arise without the attached value-character

anhaftenden Wertcharaktere irgendwie miterfaßt würden. Dann ist es Aufgabe des überlegenden Verhaltens, solche Charaktere an dem Projekte aufzusuchen, um von da aus zu dem erstrebten Vernehmen der Forderungen und Verbote zu gelangen. In anderen Fällen taucht das Projekt von vornherein mit einem Wertcharakter behaftet im Subjekt auf. Eine »gute oder schlechte« Tat fällt mir ein; in solchen Fällen machen sich die Charaktere, so wenig auch die Rede davon sein kann, daß sie dabei adäquat erfaßt werden, schon im Auftauchen des Projektes phänomenal geltend. Das überlegende Verhalten kann hier die Aufgabe haben, zunächst zu einer klaren Einsicht in diese Wertverhältnisse zu gelangen; es wird auch hier das Projekt sich vergegenwärtigen, um an ihm den Wertcharakter — diesmal nicht aufzusuchen, sondern bestätigt zu finden. Von einem Mehr an Materie kann hier nicht mehr die Rede sein.

Das absolute Unerfaßtsein der Wertcharaktere und ihr absolut klares Gegebensein bilden zwei Grenzpunkte, innerhalb deren mancherlei Abstufungen möglich sind. Ist mit dem Projekte sein Wertcharakter nicht sofort aufgetaucht, so kann schon eine

being in any way grasped along with it. Then the task of the reflective behaviour is to seek out such characters in the project, in order to achieve the hearing of the sought-after demands and prohibitions. In other cases, the project arises in the subject with a value-character attached from the outset. A 'good or bad' action occurs to me; in such cases, the characters, as little as it can be said that they are herewith adequately grasped, are in the emergence of the project already phenomenally valid. The reflective behaviour can here have the assignment of first achieving a clearer insight into these value-relationships; here too the project is presentiated — this time, not in order to seek out the value-character, but to find confirmation of it. Here, we can no longer speak of an increase of material.

Complete unawareness of the value-character and its absolutely clear givenness form two extremes, between which several gradations are possible. If the project's value character has not emerged at the same time as the project itself, then a specific attitude of the

bestimmte Einstellung des Subjektes darauf genügen, um ihn auftauchen zu lassen, ähnlich wie in einer entsprechend modifizierten Einstellung nach unseren früheren Ausführungen anschauliche Bilder oder Seinsgründe oder -instanzen auftauchen können. Ein weiterer Schritt ist das anschauliche Erfassen der Wertcharaktere an dem vergegenwärtigten Projekt; hier nun gibt es eine kontinuierliche Abstufung von geringerer Deutlichkeit und Klarheit des Wertes bis zu der idealen Grenze der absolut deutlichen und klaren Selbstgegebenheit. Diese Grenze wird sehr selten erreicht; sie braucht auch nicht erreicht zu werden, wenn es sich nur darum handelt, die Realisierungsgebote und -verbote zu vernehmen. Ein solches Vernehmen kann schon stattfinden, wenn die Charaktere bloß aufgetaucht sind. Freilich gibt es auch bei ihm größere und geringere Bestimmtheit, die sich nach den Gegebenheitsstufen der Wertcharaktere reguliert.

Dieser erste Typus der praktischen Überlegung ist ziemlich selten, wie es auch der erste Typus der intellektuellen Überlegung war. Es kann ja sein, und wird sehr häufig so sein, daß das Projekt an sich jenseits von Wert und Unwert steht, {293} daß

subject can suffice to allow it to emerge, similarly to how with an appropriately modified attitude according to our remarks earlier,¹⁷ visual pictures or reasons or instances of being can arise. A further step is the vivid grasping of the value-character of a presentiated project; here now there is a continuum ranging from lower distinctness and clarity of the value to the ideal level of absolutely distinct and clear self-giveness. This boundary is very seldom reached; and it does not need to be reached if it is only a matter of sensing the commands and prohibitions for realisation. Such a hearing can already take place if the characters have barely emerged. With it, too, there are greater and lesser degrees of definiteness, which depend on the degree of givenness of the value-characters.

This first type of practical reflection is rather rare, as was too the first type of intellectual reflection. It can indeed be the case, and very often is so, that the project in itself lies beyond value and disvalue, {293} that it is only in view of its factual

es erst im Hinblick auf seine sachliche Umgebung solche Charaktere gewinnt; oder es kann sein, daß die dem Projekte an und für sich anhaftende Wertigkeit modifiziert wird durch eben diese sachliche Umgebung. Dem, was wir jetzt sachliche Umgebung nennen, entsprach bei der intellektuellen Überlegung der Umkreis von Tatsachen, welche für das Sein des in Frage gestellten Sachverhaltes sich bekräftigend oder widerlegend geltend machen. Hier verstehen wir darunter den Umkreis aller Tatsachen, welche dem Projekte Wertigkeit erst verleihen oder eine bereits vorhandene Wertigkeit erhöhen und vermindern, welche in diesem Sinne also ebenfalls »für oder gegen das Projekt sprechen«.

Ein solcher eigenartiger Einfluß wird vor allem von solchen Tatsachen ausgehen, die dem Tun selbst ihr Dasein verdanken, von den »Konsequenzen« des Tuns im weitesten Sinne. Wenn der Gedanke, mit äußerster Schnelligkeit die Landstraße zu befahren, an und für sich keinen Unwert, viel eher ein Wertmoment enthält, so bekommt er doch »in Hinblick« oder »mit Rücksicht« darauf, daß Menschenleben gefährdet sind, einen negativen Wertcharakter.

circumstances that it acquires such characters; or it can be that the valuability attached to the project in and of itself is modified by these same factual circumstances. That which we now call factual circumstances correspond with the circle of facts which, within intellectual reflection, affirm themselves as supporting or contradicting the being of the state of affairs in question. Here, we understand as within that circle all facts which originally lend valuability to the project, or increase or decrease an already-present valuability, which in this sense also just as well 'speak for or against the project'.

Such a unique influence originates above all else from those facts which owe their existence to the action itself, from the 'consequences' of the action in the broadest sense. If the thought of driving on the open road at extraordinary speed contains in and of itself no disvalue, or even a value-importance, it yet possesses, 'in view of' or 'in consideration of' the fact that human lives are endangered, a negative value-character.

Es bedarf hier keines weiteren Eingehens auf die weitgehenden Differenzierungsmöglichkeiten innerhalb dieser Verhältnisse. Das für uns Wesentliche ist, daß hier der Blick auf das Projekt selbst nicht genügt, sondern daß auch alle weiteren in Betracht kommenden Umstände herangezogen werden müssen. Es kommen dabei die verschiedenen Fälle, Einstellungen und Verhaltensweisen des Subjektes vor, welche wir bei der intellektuellen Überlegung bereits erörtert haben. Durch ganz bestimmte Tätigkeiten kann das Subjekt von der FrageEinstellung aus zu der Wertigkeit des Projektes in Hinsicht auf die ganze sachliche Umwelt und damit zu dem Vernehmen der Realisierungsforderung gelangen. So sehr nun unser zweiter Typus der voluntativen Überlegung dem zweiten Typus der intellektuellen ähnelt, so dürfen wir doch einen fundamentalen Unterschied nicht übersehen: Der erste Typ der intellektuellen Überlegung leistet da, wo er überhaupt eine Stelle hat, alles, was Überlegung überhaupt zu leisten vermag. Dagegen kann der erste Typ der praktischen Überlegung durch den zweiten stets eine Korrektur erfahren. Ein Sachverhalt, der in seinem Sein wirklich evident erschaut ist, kann

There is no need here to go further into the extensive possibilities of differentiation within these relationships. What is essential for us is that here, looking at the project itself does not suffice; rather, all further relevant circumstances must be considered as well. Thus the different cases, attitudes and forms of relation of the subject which we have already discussed with intellectual reflection are relevant. The subject can reach out from the questioning attitude, through quite specific activities, to the valuability of the project in view of the entire factual environment, and thereby arrive at the hearing of the demands for realisation. As much as our second type of volitional reflection now resembles our second type of intellectual {reflection}, we must nevertheless not overlook a fundamental difference: where it has a place at all, the first type of intellectual reflection achieves all that reflection is able to achieve. In contrast, the first type of practical reflection can always experience a correction by the second type. A state of affairs which in its being is really evidently seen cannot be affected in this being by any reasons in the world. A project, on the other hand, that in and of itself is recognised as valuable with

durch keine Gründe der Welt in diesem Sein tangiert werden. Ein Projekt dagegen, das als an und für sich wertvoll mit Evidenz erkannt ist, kann in Hinsicht auf seine schlimmen Konsequenzen als Unwert erscheinen. Es gibt eine Wertmodifikation einer Sache durch ihren Zusammenhang mit anderen; es gibt aber keine Seinsmodifikation in irgendeiner »Hinsicht«. So werden wir bei der praktischen Überlegung stark betonen müssen, daß nur der zweite Typus zu zuverlässigen Resultaten führen kann.

Eine praktische Überlegung muß stets weiter greifen, als die intellektuelle unter bestimmten Bedingungen zu greifen braucht. Eine ideal gedachte praktische Überlegung wird streng genommen ins Unendliche gehen müssen. Während die intellektuelle Überlegung an unmittelbaren Wahrnehmungen oder in sich evidenten Axiomen sehr bald einen Endpunkt und eine feste Stütze gewinnen kann, wird die praktische Überlegung, insofern die möglichen {294} Konsequenzen des Projektes unendlich weit in die Zukunft hineinreichen können, auf einen Weg ohne absehbares Ende geführt. Die geringe menschliche Fähigkeit, die Zusammenhänge hier vorauszusehen,

evidence, can in view of its terrible consequences appear as disvaluable. There is a value-modification of a thing through its associations with others, but there is no being-modification by any kind of 'in view of'. Thus we must strongly stress concerning practical reflection that only the second type can lead to reliable results.

A practical reflection must always reach further than the intellectual {reflection} needs to under specific conditions. An ideally thought-of practical reflection would, strictly speaking, go on forever. While intellectual reflection can, with immediate perceptions or with axioms that are evident in themselves, very soon attain an endpoint and a secure foundation, practical reflection, insofar as the possible {294} consequences of the project could stretch endlessly far into the future, leads down a path without a visible end. The limited human capability of foreseeing these relationships will *de facto* soon enough cut off the reflection, but it is not a matter of a true end of the reflection

wird freilich de facto die Überlegung bald abschneiden; aber nicht um ein sachliches Ende der Überlegung handelt es sich hier, sondern um eine Unvollkommenheit, die oft schmerzlich genug empfunden wird.

In der praktischen Fragehaltung sind wir den Forderungen entgegentreffend, die wir auf Grund des vielgestaltigen überlegenden Verhaltens von dem Projekte her zu vernehmen hoffen. Das Vernehmen der Forderungen steht in Analogie zu der Einsicht in das Sein von Sachverhalten. Und wie sich auf dieser Einsicht eine Überzeugung gründet und die Fragehaltung ablöst, so geht bei der voluntativen Überlegung auf Grund des Vernehmens der Realisierungsforderung die Fragehaltung in ein Vorsatzfassen über. Da in der Überlegung das Subjekt sich den Sachen selbst entgegentreffend, in der Tendenz, seine Stellungnahme nach der Antwort einzurichten, die es von dort her erfährt, bedeutet es allemal eine Durchbrechung ihres wesenhaften Sinnes, wenn die praktische Stellungnahme nicht dieser Antwort entsprechend erfolgt oder gar ihr entgegengerichtet. De facto ist eine solche Abweichung sicherlich möglich. Es bestehen hier freilich

here; rather of an imperfectness that is often felt as rather painful.

In the practical questioning attitude, we are opened to the demands that we hope to sense on the basis of the diverse reflective behaviour regarding the project. The hearing of the demands stands in analogy with the insight into the being of the state of affairs. And as we base a conviction on this insight and step down from the questioning attitude, so with volitional reflection, by reason of the hearing of the demand for realisation, the questioning attitude is converted into the reaching of a resolve. When in reflection the subject opens himself to the things themselves, in the tendency of orienting his position-taking according to the answer that he experiences from there, it always signifies a collapse of its essential meaning if the practical position-taking does not follow from this answer or for that matter runs against it. *De facto*, such a deviation is certainly possible. There exist here characteristic differences between practical position-taking, resolve-reaching (which is an

charakteristische Unterschiede inner *performing*, an inner doing of the
zwischen der praktischen subject, an *act* in the precise sense of
Stellungnahme, dem Vorsatzfassen, the word) and intellectual position-
welches ein inneres *Vollziehen*, ein takings, which, like conviction or
inneres Tun des Subjektes ist, ein *Akt* suspicion, are certainly no doing, but
im prägnanten Sinne des Wortes, und rather a condition which *develops* in
den intellektuellen Stellungnahmen, the subject but is not *performed* by
welche, wie die Überzeugung oder die him. Where a clear and distinct
Vermutung, sicherlich kein Tun sind, recognition of being emerges as the
sondern eine Zuständigkeit, welche endpoint of reflection, the conviction is
in dem Subjekte *erwächst*, aber nicht surely necessarily grounded in it.
von ihm *vollzogen* wird. Wo ein klares
und deutliches Seinserkennen als
Endpunkt der Überlegung auftritt,
gründet die Überzeugung sicherlich
notwendig in ihm.

Nur bei unklaren, verschwommenen Only with unclear, hazy recognition
Erkenntnissen könnte man vielleicht can one perhaps feel doubt regarding a
Zweifel über einen notwendigen necessary association or at least speak
Zusammenhang hegen oder wenigstens of a possible repression of the
von einer möglichen Zurückdrängung established conviction by the subject.
der aufsteigenden Überzeugung durch On the other hand, with an unclear
das Subjekt reden. Dagegen gibt es bei hearing of the demands for realisation
einem unklaren Vernehmen von there are certainly cases in which the
Realisierungsforderungen ganz subject thereby does not react with the
sicherlich Fälle, in denen das Subjekt reaching of a resolve. One may indeed
darauf nicht mit einer Vorsatzfassung have grasped what one has to do, but in
reagiert. Es hat zwar erfaßt, was es zu spite of that one does not do it. In this
tun hat, aber es tut es trotzdem nicht. In 'in spite of,' a phenomenally
diesem »trotzdem« ist auf einen experienced opposition is indicated
phänomenal erfahrenen Widerstand which sets itself up towards refraining
hingewiesen, welcher sich dem from the reaching of resolve. This
Unterlassen der Vorsatzfassung opposition becomes correspondingly

entgegenstellt. Dieser Widerstand wird umso stärker sein, je deutlicher die Realisierungsforderung vernommen wird. Es fragt sich, ob auch dann, wenn der Wert eines Projektes in absoluter Klarheit und Deutlichkeit erfaßt ist, und wenn infolgedessen auch die Forderung uns mit absoluter Bestimmtheit entgegentönt, eine Vorsatzunterlassung möglich ist. Es ist das alte sokratische Problem: ob man das Gute kennen und es doch unterlassen kann, ein Problem, das, wenn man nur den Begriff des Kennens in nicht allzu oberflächlicher Weise auffaßt, viel bedeutsamer und viel schwieriger ist, als man gewöhnlich zu meinen scheint. Wir sind geneigt, die Frage auch für den Fall der absoluten Evidenz zu bejahen, ohne {295} uns hier in eine nähere Untersuchung einlassen zu können. Nur ein kleines Stück weit haben wir jetzt den Weg zu gehen, den auch eine solche Untersuchung einschlagen müßte.

Wir berühren die Frage, in welcher Weise Wert- und Unwertcharaktere eigentlich vom Subjekte erfaßt werden. Werte werden nicht sinnlich wahrgenommen wie Dinge, nicht gesehen und gehört wie Farben und Töne, nicht gedacht wie Zahlen, sondern sie werden *gefühl*.

stronger the more distinctly the demand for realisation is heard. The question is whether, if the value of a project is grasped in absolute clarity and distinctness, and if following that the demand too expresses itself to us with absolutely definiteness, it is then still possible to refrain from the reaching of a resolve. It is the old Socratic problem: whether one can know the good and yet refrain from it, a problem that, if one only takes the concept of knowing in not too superficial a sense, becomes much more meaningful and much more difficult than one generally seems to believe. We are inclined, to answer the question affirmatively also for the case of absolute evidence, without {295} being able here to engage in a closer investigation. We only need to go a little bit along this way, where such an investigation also would have to go.

We touch on the question of in what manner value- and disvalue-characters actually are grasped by the subject. Values are not sensorily perceived like things, not seen and heard like colours and sounds, not thought like numbers; rather, they are *felt*. This feeling should not be

Dieses Fühlen darf man nicht verwechseln mit den Gefühlen, d. h. mit bestimmten Zuständlichkeiten des Ich, wie Freude oder Traurigkeit. Ein solches Gefühl ist in sich abgeschlossen: es mag eine intentionale Beziehung haben auf etwas Gegenständliches, es mag sich z. B. die in Freude beziehen auf den Wert einer Sache, aber sie ist selbstverständlich nicht das Erfassen dieses Wertes selbst, nicht das Fühlen des Wertes. Indem wir uns vergegenwärtigen, wie in dem »Fühlen« eines Wertes die »Gefühle« der Freude oder Begeisterung gründen oder aber auch nicht gründen können, wird uns der Unterschied zwischen erfassendem Fühlen und zuständlichem Gefühl am besten klar.

Im Ästhetischen drängt sich der eigenartige Charakter des Werterfassens besonders lebhaft auf. Jedem muß es deutlich werden, daß eine Landschaft selbst anders erfaßt wird als ihre Schönheit. Die Landschaft wird wahrgenommen, die Schönheit gefühlt (ohne daß man freilich dieses Fühlen der Schönheit in ein »Schönheitsgefühl« umdeuten darf). Aber auch moralische Wertcharaktere, die Güte und Vornehmheit einer Handlung oder ihre

confused with emotions, that is, with specific states of the I, like joy or sadness. Such an emotion is self-contained: it may have an intentional relation to something objective (it may be, for example, that joy relates to the value of a thing), but it is self-evidently not the grasping of the value itself, the feeling of the value. The difference between the feeling which is a grasping of value of and the feelings that are conditions or states becomes clearest if we presentiate to ourselves how the 'emotion' of joy or enthusiasm could either be grounded in the 'feeling' of a value or not.

In aesthetics the unique character of value-grasping shows itself especially powerfully. It must be clear to everyone that a landscape itself is grasped apart from its beauty. The landscape is perceived, the beauty felt (one should not, of course, reinterpret this feeling of beauty as an 'emotion of beauty'). But moral value-characters too, the goodness and nobility of an action or its baseness, its badness and maliciousness — all well-distinguished value-characters — come to be sensed

Gemeinheit, ihre Schlechtigkeit und Niederträchtigkeit — alles wohlgeschiedene Wertcharaktere —, kommen in einem Fühlen zur Erscheinung. Auch der in phänomenologischer Analyse Ungeübteste muß einsehen, daß er das Verhalten eines Subjektes in ganz anderer Weise erfaßt wie den Wert oder Unwert dieses Verhaltens, daß es sich hier um ein fühlendes Erfassen handelt. Man sollte nicht vorschnell von der »Subjektivität« eines solchen Fühlens reden (wobei sehr wahrscheinlich der Gedanke an echte Gefühlszustände verwirrend hineinspielen wird). Das fühlende Erfassen läßt vielmehr, wie andere erfassende Akte auch, mannigfache Abstufungen der Klarheit und Deutlichkeit zu bis zur absoluten unbezweifelbaren Selbstgegebenheit.

Wenn ich mich in ein Erlebnis reinen Neides hineinversetze und den Unwert dieses Neides fühle, so kann mir dieser Unwert mit einer Evidenz gegeben sein, die der Evidenz von Wahrgenommenem oder Gedachtem in keiner Weise nachsteht. Im übrigen werden wir die prinzipielle Verschiedenheit des Fühlens von jedem anderen Erfassen nicht übersehen, sondern gerade in unserem Zusammenhänge hier besonders

in a feeling. Even the one least versed in the phenomenological analysis must recognise that he grasps the behaviour of a subject in a very different way to how he grasps the value or disvalue of said behaviour; that the latter case is a matter of grasping by feeling. One should not be too quick to speak of the 'subjectivity' of such a feeling (whereby quite probably the thought of what are actually emotion-states may confuse the matter). The grasping by feeling permits, moreover, like other grasping acts, manifold gradations of clarity and distinctness up to absolute, indubitable self-giveness.

If I place myself in the experience of pure envy and feel the disvalue of this envy, this disvalue can be given to me with an evidence which in no sense is inferior to the evidence of things perceived or thought. Besides, we will not overlook the principal difference between feeling and all other grasping, which must, in our connection here, be especially emphatically underlined. Perceiving and thinking are peripheral experiences; they belong neither to the

nachdrücklich betonen müssen. Das Wahrnehmen und auch das Denken sind periphere Erlebnisse, sie gehören weder zu der Charakterstruktur der erlebenden Persönlichkeit, noch stehen sie zu dieser Struktur in irgendwelcher Beziehung. Bei dem Fühlen scheint es anders zu sein. Auch die einzelnen Fühlenserlebnisse machen gewiß die charakterliche Struktur der Person nicht aus, aber sie stehen mit ihr in einem eigenartigen Zusammenhange: in ihnen prägt sich die Person aus, kommt die Persönlichkeit zum Ausdruck. Es sind sehr {296} einfache Verhältnisse, an die ich mich dabei halte. Das Wahrnehmen eines Hauses, das Sehen von Farben und Hören von Tönen, aber auch das Denken von Zahlen oder Begriffen, das Erkennen logischer oder mathematischer Wahrheiten steht außerhalb jeden Zusammenhanges mit dem Charakter der erlebenden Person. Sie sind peripher, sozusagen außerpersönlich.

Man wird freilich auch beim mathematischen Erkennen von dem persönlichen Scharfsinn sprechen, der sich darin dokumentiert. Aber ganz abgesehen davon, daß der Scharfsinn nicht zu dem Charakter des Menschen gehört, von dem allein hier die Rede ist, zeigt ein etwas weniger flüchtiges

character-structure of the experiencing personality, nor do they stand in any kind of relation to this structure. With feeling, it appears to be different. Individual feeling-experiences certainly do not make out the characteristic structure of the person either, but they stand in a unique connection with it: in them, the person manifests itself, the personality comes to expression. It is with very {296} simple relations that I am concerned here. The perceiving of a house, the seeing of colours and hearing of tones, but also the thinking of numbers or concepts, the recognition of logical or mathematical truths, all stand outside any connection with the character of the experiencing person. They are peripheral, extra-personal so to speak.

With regard to mathematical cognition, one would also speak of the personal astuteness that documents itself therein. But quite apart from the fact that the astuteness does not belong to the character of the human being (which alone is being discussed here), a somewhat less fleeting examination

Hinsehen auf die Sachlage, daß ein solcher Scharfsinn sich in der Art und Weise dokumentiert, wie ein Subjekt zum Erkennen *gelangt*, nicht aber in dem Resultate der scharfsinnigen Betätigung, in dem Erkennen selbst. In dem Wertfühlen aber dokumentiert sich ein Stück des persönlichen Charakters direkt und unmittelbar, ethische »Feinfühligkeit« und »Grobfühligkeit«, unzählige Stufen von der feinsten und zartesten Empfänglichkeit des Menschen, der die ethischen Werte überall und in ihren feinsten Nuancen herausfühlt, bis zum absoluten ethischen Stumpfsinn, der die gemeinste und niederträchtigste Handlung hinnimmt oder selbst vollzieht, ohne von diesem Unwertcharakter auch nur das leiseste zu ahnen.

Von hier aus werden wir sofort noch einen Schritt weitergehen. Nicht nur im Fühlen der Werte dokumentiert sich die Eigenart des Charakters, sondern auch in den Gefühlen, welche in diesem Fühlen gründen. Hier zeigt sich deutlich, wie notwendig jene Unterscheidung war. Die Gemeinheit einer Handlung kann von zwei Menschen in derselben Deutlichkeit gefühlt werden, die zuständige gefühlsmäßige Reaktion aber kann eine

of the set of facts shows that such astuteness documents itself in the manner and way in which a subject *attains* cognition, not in the result of the astute-minded activity, in the cognition itself. In value-feeling, though, a piece of the personal character documents itself directly and immediately, ethical 'sensitivity' and 'insensitivity,' innumerable degrees from the finest and most delicate human receptivity, which senses ethical values everywhere and in their finest nuances, to absolute ethical obliviousness, which when faced with the most base and depraved of actions, accepts them or just performs them, without even faintly recognising a character of disvalue in them.

From here on we shall immediately take a step further. It is not only in the feeling of value that the distinctiveness of the character documents itself, but also in the emotions which are grounded in this feeling. Here it is clearly indicated how crucial such a differentiation was. The baseness of an action can be felt by two human beings with the same distinctness, yet the accompanying emotional reaction can be thoroughly

durchaus verschiedene sein. Es gibt eine innere Hingabe, eine Liebe zu dem gefühlten Wert, es gibt eine innere Gleichgültigkeit gegen ihn, es gibt ein Sichihmverschließen, es mag sogar eine innere Abwendung von ihm, ein »Hassen« des Wertes geben. In alledem kommt natürlich die Persönlichkeit charakteristisch zum Ausdruck: ihre reine Hingabe an die Welt der Werte, ihre ethische Indifferenz, das Böse oder gar Teufliche ihrer Natur. Wenn in solcher Weise die Persönlichkeit im Fühlen von Werten und in der Reaktion auf das Gefühlte zur Geltung kommt, so kommt sie es eben damit auch in der Überlegung, insofern in ihr abgezielt ist auf eine Erfassung der Wertigkeit von Projekten.^{18*}

Wir sahen, wie ein Projekt auftauchen kann, ohne seinen Wertcharakter mitzubringen, wie in der Fragehaltung dann das Subjekt den Wert dieses Projektes in Hinsicht auf die sachliche Umgebung und deren event.{uellen} Wert möglichst klar zu erfassen sucht, um dadurch die Realisierungsforderung zu vernehmen. Wir sehen jetzt, daß dieses Erfassen ein Fühlen ist, und daß sich {297} somit im überlegenden Verhalten der Charakter der Person entfaltet und dokumentiert. Nicht im Aufsuchen der Konsequenzen

different. There is an inner surrender, a love of the felt value; there is an inner indifference towards it; there is a closing of the self to it; also possible is an inner turning away from it, a 'hating' of the value. In all of these the personality naturally finds characteristic expression: its pure surrender to the world of values, its ethical indifference, the evil or even diabolicalness of its nature. If in such a sense the personality shows itself in the feeling of values and in the reaction to what is felt, then it is equally so in reflection, insofar as the grasping of the valuability of projects is aimed for in it.^{19*}

We saw how a project can emerge without bringing its value-character with it, how in the questioning attitude the subject then seeks to grasp the value of this project in view of its factual circumstances and their possible value as clearly as possible, in order thereby to hear the demand for realisation. We see now that this grasping is a feeling, and that {297} thus, in reflective behaviour, the character of the person exposes and documents itself. The nature of the person breaks through not in the

und sachlichen Umstände, welches sich prinzipiell von dem Verhalten innerhalb der intellektuellen Überlegung nicht unterscheidet, sondern in dem Fühlen von Werten, ihrem Abwägen und Vorziehen und schließlich auch in der Reaktion auf das Gefühlte selbst kommt das Wesen der Person zum Durchbruch. Das, was bei der intellektuellen Überlegung unwesentlich ist und nur schaden kann, die innere Anteilnahme des Subjektes, erweist sich hier als wesentlich und unentbehrlich. Werterfassung und Wertabwägung ist erforderlich, um zu einem deutlichen Vernehmen der Realisierungsforderungen und -verbote zu gelangen. Und je nachdem das Subjekt auf die gefühlten Werte und Wertverhältnisse innerlich reagiert, wird es seine Stellung den Forderungen und Verboten gemäß nehmen. Auch hier freilich gibt es die Möglichkeit eines illegitimen Einflusses emotionaler Erlebnisse. Wo z. B. eine Neigung oder ein Streben oder ein Wunsch vorhanden ist, ein Projekt zu realisieren, besteht oft zugleich eine Tendenz, an den Wert dieses Projektes zu glauben. Umgekehrt sehen wir mitunter bei Menschen, deren ethischer Argwohn gegen sich selbst krankhaft gesteigert ist, eine Tendenz, das für

seeking out of consequences and factual circumstances, which do not differentiate principally from the behaviour within intellectual reflection, but in the feeling of values, their weighing-up and preferment, and finally also in the reaction to what is felt, the nature of the person breaks through. The inner participation of the subject, which in intellectual reflection is inessential and can only cause harm, shows itself here as essential and indispensable. The grasping and weighing up of values is necessary to achieve a clear hearing of the demands and prohibitions of realisation. And in correspondence with how he inwardly reacts to the felt values and value-relationships, the subject comes to take his stance towards those demands and prohibitions. Here, too, there is actually the possibility of an illegitimate influence from emotive experience. Where, for example, an inclination, a striving or a wish to realise a project is present, there is often simultaneously the tendency to believe in the value of this project. Conversely, we sometimes see with human beings whose ethical suspicions are pathologically intensified against themselves a tendency to consider bad that to which they themselves have an inclination.

schlecht zu halten, auf das sich die eigene Neigung richtet. Auch hier werden wir sagen, daß es der Überlegung als solcher, mit ihrer sich dem Projekte und seinem Werte öffnenden Fragehaltung, wesentlich ist, die *unbefugte* Einwirkung solcher Momente auszuschalten. Was schließlich die gefühlsmäßigen Reaktionen anbetrifft, die sich auf dem für die voluntative Überlegung wesentlichen Fühlen aufbauen, so sind sie sicherlich nicht unentbehrlich; aber ihre Einwirkung auf das Vorsatzfassen des Subjektes kann nur förderlich sein, solange es solche Reaktionen sind, welche zu dem gefühlten Werte in bestimmtem Sinne wesensgesetzlich »passen«, so wie die Liebe zum Wert und der Haß zum Unwert. Nur wenn andere Reaktionen als die zugehörigen sich geltend machen, liegt die Gefahr vor, daß das Subjekt eine andere Stellung einnimmt als die durch die gefühlte Wertigkeit des Projektes ihm vorgeschriebene.

Würden wir bei den bisherigen Ausführungen stehenbleiben, so würde uns der Vorwurf einer falschen Ethisierung des Psychischen mit vollem Rechte treffen. So ist es ja *de facto* gewiß nicht, daß jedermann in allen Fällen in seinen praktischen

And here we would say that reflection as such, which opens its questioning attitude to the project and its value, is essential to shutting out the *unauthorised* input of such factors. Finally, as far as these emotional reactions are concerned which form themselves from those feelings that are essential for volitional reflection, {the former} are certainly not indispensable; but their input towards the reaching of a resolve by the subject can only be beneficial so long as they are such reactions as 'suit' the felt value in a specific sense according to a law of essence, such as the love of value and the hatred of disvalue. Only if other reactions than the aforementioned make themselves felt does the danger arise that the subject takes on a different position to that prescribed through the felt valuability of the project.

If we were to stand by the undertakings made thus far, we would quite rightly meet with the accusation of a false ethicising of the psychical. It is *de facto* certainly not the case that everyone in all cases is, in his practical deliberations, directed towards the

Erwägungen eingestellt ist auf das im bisherigen Sinne Wertvolle und Rechte. Manche Menschen mögen diese Einstellung überhaupt nicht kennen. Neben dem Wertvollen an sich gibt es das, was von Interesse ist für mich. Der Satz, daß alle Menschen von Natur aus das Gute erstreben, ist nur dann aufrechtzuerhalten, wenn er das Gute, welches einer Sache selbst anhaftet, und das Gute für den jeweilig Handelnden gleichermaßen umfaßt. Man redet hier von objektivem und subjektivem Wert und sucht den Gegensatz des ethisch Wahren und ethisch Falschen daran zu orientieren. Aber diese Orientierung ist durchaus mißverständlich, streng genommen sogar durchaus falsch. Wahrheit und Falschheit gibt es in den beiden Sphären, die wir hier zu unterscheiden haben. Ich kann {298} mich über den Wert einer Sache genausogut täuschen wie über das Interesse einer Sache für mich. Und es gibt ein wahrhaftes Interesse für mich genausogut wie einen wahrhaften Wert der Sache an sich. Jene Verwechslung gründet offenbar darin, daß man der Wertsphäre den unbedingten ethischen Vorzug vor der Interessensphäre zuspricht — eine These, die uns hier nichts angeht, die aber jedenfalls von der vorhergehenden

valuable and the right in the sense intended.²¹ Many human beings may not know this attitude at all. Besides the valuable in itself, there is that which is of interest for me. The statement that all human beings by nature strive for the good is only to be taken as correct if it embraces in equal measure the good which a thing itself possesses and the good for the particular one who acts. One speaks here of objective and subjective value and seeks to orient the opposite of the ethically true and the ethically false upon this. But this orientation is based entirely on a misunderstanding; strictly speaking in fact, {it} is entirely false. Truth and falsity exist in both of the spheres which we must distinguish here. I can {298} deceive myself concerning the value of a thing just as much as concerning the interest of a thing for me. And there is a true interest for me just as much as there is a true value of the thing in itself. Such confusion is obviously based in the fact that one ascribes total ethical priority to the sphere of values over the sphere of interests — a thesis that does not concern us here, but which in any case is to be distinguished from the above with all sharpness.^{22*}

mit aller Schärfe zu unterscheiden ist.^{20*}

Die Frage »soll ich das tun«, die dem auftauchenden Projekt gegenüber sich einstellen kann, darf also nicht in einem einseitig ethischen, sondern muß in einem Sinne genommen werden, der auch diese Fälle mitumfaßt, und der dem täglichen Sprachgebrauch auch durchaus geläufig ist. Das Projekt kann einfach auftauchen, und ich kann es nun daraufhin ansehen, ob es Interesse für mich hat; oder es kann sich schon im Auftauchen kundgeben als von Interesse für mich, und ich kann es nun daraufhin ansehen, ob es ein solches Interesse für mich wirklich besitzt. Je nachdem das Interesse in der Nützlichkeit, Annehmlichkeit, Förderlichkeit oder dergleichen basiert, wird es von uns in verschiedener Weise erfaßt. Wir gehen darauf nicht weiter ein. Erkenne ich, daß das Projekt von Interesse für mich ist, so vernehme ich auch in diesem Falle von ihm ausgehend die »Forderung«, oder hier besser die »Aufforderung«, es zu realisieren. Es kommen nun alle früher angedeuteten Gesichtspunkte analog in Betracht. Eine eingehende Überlegung darf sich nicht darauf beschränken, das Projekt selbst auf sein Interesse hin zu

The question 'should I do that' which can come up with regard to the emergent project ought not, therefore, to be taken entirely in an ethical sense, but must be taken in a sense that includes these cases as well, something which is also entirely conversant with everyday linguistic usage. The project can simply emerge, and I can now explore whether it has interest for me; or it can announce itself to me in its very emergence as of interest for me, and I can now explore whether it really possesses such an interest for me. Depending on whether the interest is based on usefulness, pleasantness, beneficialness or the like, we grasp it in a different way. We will not go further into this. If I recognise that a project is of interest for me, then in this case I hear from the outset the 'demand,' or here, to put it better, the 'invitation,' to realise it. Now all previously outlined viewpoints come analogously into view. A thorough reflection ought not to limit itself to merely testing the project itself with regard to interest; it must also seek out all connected circumstances and take them into account. We can refrain here from drawing out the different main features

prüfen, sie muß auch alle zugehörigen Umstände aufsuchen und in Betracht ziehen. Wir können darauf verzichten, die verschiedenen Grundlinien hier noch einmal zu ziehen. Natürlich besteht auch hier die Möglichkeit, daß das Subjekt aus der Bahn der Überlegung herausspringt, daß es sich der vernommenen Aufforderung zum Trotz und wider sein wahres Interesse entscheidet.

Die beiden Sphären, die wir besonders behandelt haben, stehen nicht durchaus konkurrenzlos einander gegenüber. Die Fragehaltung der Überlegung braucht sich von vornherein weder einseitig auf den Wert des Projektes noch auf sein Interesse für mich zu richten, sondern kann ganz allgemein auf das »Tunsollen« gehen. Ein Unwert des Projektes an sich kann dann gleichzeitig zur Erfassung kommen mit einer großen Nützlichkeit für das Subjekt. Auch hier wird »abgewogen« werden müssen, allerdings nicht zwischen solchem, das ein Mehr und Minder innerhalb der gleichen Sphäre darstellt, sondern in ganz eigentümlicher Weise zwischen durchaus verschieden Geartetem. Was dabei ein Vorziehen ermöglicht, ist ein eigenes, hier nicht zu erörterndes

again. Naturally, the possibility also exists here that the subject leaps out from the path of reflection, that he chooses despite the sensed invitation, and against his true interest.

The two spheres of which we have treated particularly do not face each other entirely without competing. For a start, the questioning attitude of reflection does not need to be one-sidedly directed either at the value of the project nor at its interest for me; rather, it can quite generally concern the 'ought-to-do'. A disvalue of the project in itself can then come to be grasped simultaneously with a great usefulness for the subject. Here too there must be a weighing up; not, however, between such things as constitute a greater and a lesser within the same sphere, but in an entirely unique way between utterly different things. What here makes a preference possible is its own problem, not to be discussed here. *That* it is possible {to prefer} cannot in fact at all be disputed.

Problem. *Daß* es möglich ist, kann den Tatsachen gegenüber auf keinen Fall bestritten werden.

Die erhebliche und notwendige Mitwirkung von Erlebnissen, in denen der persönliche Charakter zum Ausdruck kommt, besteht in der Sphäre des subjektiven Interesses nicht minder als in der Sphäre der ethischen Werte. Während der persönliche Charakter bei den Werten an sich bloß den erkennenden Zugang ermöglicht, hat er für die Sphäre des subjektiven Interesses vielfach sogar konstitutive Bedeutung. Er kann einem Projekte wahrhaftes Interesse verleihen, wo für andersgeartete Menschen Gleichgültigkeit oder sogar negatives Interesse vorhanden ist. Es bedarf hier keiner weiteren Ausführungen: In dem, was dem Subjekte als von persönlichem Interesse erscheint, in dem was als zugehöriger Umstand oder als Konsequenz dies Interesse vermehrt oder vermindert oder aufhebt, in der Art wie verschiedene und widerstreitende Interessen abgewogen und einander vorgezogen werden, kommt in außerordentlichem Maße der Persönlichkeitscharakter zur Geltung. So haben wir denn ganz allgemein gezeigt, wie in der praktischen

The considerable and necessary collaboration of experiences in which the personal character finds expression exists in the sphere of subjective interest no less than in the sphere of ethical value. While with values in themselves the personal character simply permits access to their recognition as such, for the sphere of subjective interest it has a many-sided, in fact constitutive, significance. It can award a project genuine interest where, for different human beings, indifference or even negative interest exist. There is no need here for any further explanation: the character of the personality is revealed to an extraordinary degree {in three things: firstly} in that which appears to the subject to be of personal interest; {secondly} in that which, as its circumstance or as its consequence, increases or diminishes or removes this interest; and {thirdly} in the form in which different and opposing interests are weighed up and preferred to one another. Thus we have in quite general terms indicated how in practical reflection, as opposed to the intellectual, the personality unfolds

Überlegung, im Gegensatz zu der intellektuellen, die Persönlichkeit sich entfaltet, wie ihre verschiedenen Seiten geweckt werden und sich zur Geltung bringen, und wie der Ausgang der praktischen Überlegung abhängig ist von der Struktur des persönlichen Charakters. Von hier aus nun muß es möglich sein, die eigentümlichen Bewertungen des mit Überlegung gefaßten Willensvorsatzes zu verstehen.

1. Eine verdienstvolle Handlung sinkt für uns an Wert, weil sie nicht mit Überlegung geschehen war. Sicher ist, daß die geringere Bewertung hier nicht der Überlegung an sich gilt. Die Überlegung als solche stellt niemals einen Unwert dar. Sie muß also hier als Anzeichen fungieren für eine anderweitige Verschiedenartigkeit der mit und ohne Überlegung begangenen verdienstvollen Handlung. Das Verdienst einer Handlung kann nun darin gesehen werden, daß sie begangen, und darin, daß sie nicht unterlassen worden ist.

Wir rechnen es dem Täter positiv an, daß er den Wert der Tat gefühlt hat, und daß er aus diesem Fühlen heraus und aus Liebe zu dem Wert den Vorsatz gefaßt hat. Dabei ist freilich ein

itself, how its different aspects are awakened and displayed, and how the result of practical reflection is dependent on the structure of the personal character. From here, it must now be possible to understand the characteristic valuations of the resolutions of willing grasped as a result of reflection.

1. A praiseworthy action declines for us in value if it occurred without reflection. It is certain that the lower valuation here does not concern the reflection itself. Reflection as such never displays a disvalue. Here then it must function as an indication of another difference in kind between the action as undertaken with and without reflection. The merit of an action can now be seen in that it was undertaken and in that it was not neglected.

We judge it positively of the agent that he has felt the value of the action and that he, out of this feeling and out of love for the value, reached this resolve. Thereby, a law is assumed, which by

gesetzmäßiger Zusammenhang reason of its 'self-evidence' remains
 vorausgesetzt, der seiner mostly unheeded, yet which is no less
 »Selbstverständlichkeit« wegen important for ethics than the (often just
 meistens unbeachtet bleibt, der aber für as self-evident) mathematical axioms
 die Ethik nicht minder wichtig ist als are for mathematics: the feeling of an
 die oft ebenso selbstverständlichen ethical value and the love of such a
 mathematischen Axiome für die value are themselves in turn ethical
 Mathematik: Das Fühlen eines values. It is this relationship that gives
 ethischen Wertes und die Liebe zu the resolve of a valuable project a
 einem solchen Werte sind selbst distinct value. We can further
 wiederum ethische Werte. Erst dieser positively assess that agent who,
 Zusammenhang verhilft dem Vorsetzen despite the personal unwantedness of
 eines wertvollen Projektes zu einem the action, its danger {for him} for
 eigenen Werte. Wir können es dem example, has not neglected to reach the
 Täter ferner positiv zurechnen, daß ihn resolve.^{25*} We know now that in
 die persönliche Unerwünschtheit der reflection the subject seeks to grasp the
 Handlung, die Gefahr z. B., die sie ihm value of the project, that he further
 zu bringen droht, nicht davon questions the consequences of the
 abgehalten hat, den Vorsatz zu project, its value and its interest. We
 fassen.^{23*} Wir wissen nun, daß in der know, further, that in reflection-less
 Überlegung das Subjekt den Wert des experience a project very often
 Projektes zu erfassen sucht, daß es emerges without a value-character
 ferner in ihr nach den Konsequenzen emerging along with it, or without
 des Projektes, ihrem Werte und ihrem {300} it being vividly felt, and that the
 Interesse fragt. Wir wissen weiter, daß consequences of the project with their
 im überlegungsfreien Erleben sehr positive or negative interest {for the
 häufig ein Projekt auftaucht, ohne daß subject} do not have to come forth
 ein Wertcharakter mit auftaucht, oder either. So it is to be understood that
 ohne daß er {300} doch lebendig reflection-less willing can be
 gefühlt wird, und daß die considered without value compared to
 Konsequenzen des Projektes mit ihrem the reflective {willing}, insofar as one
 positiven oder negativen Interesse sich glimpses behind this the genuinely
 ebensowenig einzustellen brauchen. So praiseworthy feeling of the value and

ist es zu verstehen, daß dem überlegungslosen Wollen im Gegensatz zum überlegten der Wert abgesprochen werden kann, insofern man hinter diesem das eigentlich verdienstvolle Fühlen des Wertes und Sichhinwegsetzen über das persönliche Interesse erblickt, während jenes, ohne ein lebendiges Werterfassen und ohne ein Wissen um die gefährlichen Konsequenzen, jeglichen Wertes bar ist. Der Überlegung kommt somit in der Tat bloß ein Symbolcharakter zu. Das findet seine Bestätigung darin, daß bei einer Gleichsetzung der symbolisierten Verhältnisse jene verschiedene Beurteilung verschwindet, sich sogar eventuell in ihr Gegenteil verschiebt.^{24*}

Es gibt notwendige und unter allen Umständen bestehende Symbolverhältnisse. Zu ihnen gehört das eben Erörterte sicherlich nicht. Nach zwei Richtungen hin können Abweichungen eintreten. Es ist sehr wohl möglich, daß auch in der Überlegung der Wert nicht gefühlt wird und die gefährlichen Konsequenzen nicht erfaßt werden. Eine Überlegung kann ja mehr oder weniger durchgeführt, mehr oder weniger eindringlich sein. Umgekehrt ist es möglich daß auch ohne Überlegung der

the overcoming of personal interest, while {the willing} that lacks a vivid grasping of value and without a knowledge of the dangerous consequences is devoid of any such value. Reflection, then, thus in fact possesses a merely symbolic character. This finds its confirmation in that with an equalisation of the symbolised relationships, the different assessment disappears, {and} indeed perhaps changes into its opposite.^{26*}

There are necessary and universally-existent symbolic relationships. Those which we have just discussed certainly do not belong among them. Deviations can occur in two directions. It is quite possible that the value is not even felt in reflection, and that the dangerous consequences are not grasped. A reflection can indeed be more or less followed through, more or less insightful. Conversely, it is possible that even without reflection, the value is felt and the dangerous consequences clearly seen. That

Wert gefühlt und die gefährlichen Konsequenzen klar gesehen sind. Daß die Überlegung auf ein solches Fühlen und Sehen hin tendiert, besagt ja nicht, daß diese ohne sie nicht eintreten können. Vertraut man den Symbolverhältnissen ohne weitere Prüfung, so wird die Handlung im ersten Falle ohne Grund geschätzt, während ihr im zweiten Falle das Lob grundlos versagt wird. So haben wir hier einen Fall, wo eine ethische Beurteilung nicht auf die Sache selbst geht, sondern sich auf Voraussetzungen stützt, welche in der Praxis des gewöhnlichen Lebens oft genug ungeprüft und meist sogar unbemerkt gemacht zu werden pflegen, und die erst die nähere Analyse als nicht unbedingt zuverlässig herausstellen kann.

2. Eine verdienstvolle Handlung wird geringer geschätzt, weil sie einer langen Überlegung bedurfte. Wir können diesen Fall nun ohne weiteres verstehen. Das Fühlen eines ethischen Wertes und die Fühlfähigkeit für ethische Werte überhaupt sind selbst ethische Werte. Ihr Wert steigt mit der wachsenden Feinheit des Fühlens. Wer zu seiner verdienstvollen Handlung erst einer langen Überlegung bedurfte, dokumentiert eben darin eine

reflection tends towards such a feeling and seeing does not mean that these cannot appear without it. If one trusts in the symbolic relationship without further examination, then the action would in the first case be praised without reason, and in the second case be groundlessly denied praise. We have here a case where an ethical assessment does not depend on the things themselves, but on assumptions which in the practice of ordinary life one often enough does not take care to examine or take note of, and which a closer analysis can expose as not absolutely dependable.

2. A praiseworthy action attains a lower estimation because it required a long reflection. We can now understand this case right away. The feeling of an ethical value and the capacity for the feeling of ethical values in general are themselves ethical values. Their value increases with the growing fineness of the feeling. He who requires a long reflection before his praiseworthy actions thereby documents a lower capacity for the

geringere Fähigkeit des Wertfühlers als derjenige, dem sich ohne lange Überlegung, dem sich vielleicht ohne jede Überlegung der Wert sofort offenbart. Und ebenso steht der, welcher sich dem negativen Interesse des Projektes und seiner Konsequenzen entgegen sofort im Sinne seines Wertes entscheidet, höher als wer dazu erst eines überlegenden Abwägens bedarf. Wieder fungiert die Überlegung als Symbol. Sehr interessant ist, daß sie uns hier Entgegengesetztes symbolisiert als vorhin. Während im vorigen Fall das Fehlen der Überlegung das Fehlen eines Wertfühlers anzeigen {301} sollte, wird ihr hier umgekehrt ein besonders feines Wertfühlen zugrunde gelegt. Die Unzuverlässigkeit einer solchen Deutung bedarf keiner weiteren Darlegung.

3. Eine verwerfliche Handlung wächst an ethischem Unwert, wenn sie mit Überlegung vollzogen wird. Auch hier liegen gewisse ethische Axiome zugrunde: Die Unfähigkeit, einen ethischen Wert zu fühlen, ist selbst ein ethischer Unwert, und ebenso oder in noch höherem Grade ist es das praktische Abweichen vom Fühlen eines Unwertes. Wir müssen hier die verschiedenen Gesichtspunkte

feeling of value than one to whom the value is just as obvious without a long reflection, perhaps without reflection at all. And equally, one who decides in light of the project's value, despite its negative interest and its consequences, stands higher than one who first requires a reflective weighing-up. Again, reflection functions as a symbol. It is very interesting that here it symbolises the opposite to what it did before. While in the preceding case, the absence of reflection should have indicated {301} the absence of a value-feeling, here, conversely, an especially fine value-feeling is deemed to lie at the basis. The unreliability of such an assessment requires no further demonstration.

3. A reprehensible action increases in ethical disvalue if it was performed with reflection. Here too, certain ethical axioms are the reason: the incapacity to feel an ethical value is itself an ethical disvalue, and equally or even more so, is practical deviation from the feeling of a disvalue. We must here distinguish especially carefully the different viewpoints. We know that a human being can feel the disvalue of a

besonders sorgfältig trennen. Wir wissen, daß ein Mensch den Unwert eines Projektes fühlen und es sich doch vorsetzen kann. Wenn ein Mensch so handelt, so ist es um vieles schlimmer, als wenn er den Unwert überhaupt nicht kennt oder nur von ihm weiß, ohne ihn fühlend zu erfassen. Insofern nun in der Überlegung der Unwert eines Projektes erfaßt zu werden pflegt, gilt die mit Überlegung begangene Tat als besonders schlimm. Auch hier haben wir den Symbolcharakter der Überlegung. Wieder aber werden wir betonen müssen, daß diese Symbolbeziehung keine notwendige ist. Auch ohne Überlegung kann der Unwert eines Tuns in aller Klarheit und Deutlichkeit uns gegenübertreten; und umgekehrt braucht es der Überlegung nicht zu gelingen, diesen Unwert zu erfassen. Dann wird in dem ersten Fall die Verwerfung grundlos gemildert, im zweiten grundlos verschärft.

Aber der zweite Fall ist damit noch nicht erledigt. In bezug auf ihn müssen wir unsern letzten Satz sogar teilweise korrigieren. Nehmen wir an, es sei in der Überlegung der Unwert eines Tuns nicht gefühlt worden, wird es da wirklich so ganz unberechtigt sein, diesen Fall schärfer zu beurteilen, als wenn das Erfassen im

project and yet resolve {to do} it. If a human being acts thus, then it is much worse than if he does not recognise the disvalue at all, or only knows of it, without grasping it in feeling. Now insofar as the disvalue of a project tends to become grasped in reflection, the action done with reflection counts as especially bad. Here, too, we have the symbolic character of reflection. Again, though, we must emphasise that this symbolic relationship is not a necessary one. Even without reflection, the disvalue of an action can appear to us with all clarity and distinctness; and conversely, reflection does not necessarily succeed in grasping this disvalue. Then, in the first case the reproach would be groundlessly softened; in the second, groundlessly harshened.

But the second case is thereby not yet exhausted. In relation to it we must even partially correct our last statement. Let us take it that the disvalue of a doing should not become felt in reflection; would it really then be so utterly unjustified to assess this case more harshly than if the grasping failed to transpire in *non*-reflective

überlegungsfreien Wollen ausgeblieben ist? Eine solche schärfere Beurteilung darf sich natürlich nicht auf das Vorsatzfassen entgegen dem besseren Fühlen gründen; das ist ja der Annahme nach hier nicht vorhanden. Wohl aber kommt ein ganz neuer Gesichtspunkt in Betracht. Nicht nur das dem Fühlen entgegengerichtete Wollen, sondern auch das Fehlen eines Wert- oder Unwertfühlers stellt einen, wenn auch anders gearteten Unwert dar. Im Nichtfühlen des Unwertes eines gedachten Projektes zeigt sich ein solcher Mangel überhaupt. Aber im Nichtfühlen innerhalb eines überlegenden Verhaltens offenbart er sich in noch höherem Maße. Unsere Analyse hat ja gezeigt, wie sich hier das Subjekt dem Projekte und seiner Wertigkeit fragend öffnet. Hier wo die Einstellung für ein Wertfühlen die möglichst günstige ist, gibt sich im Nichtfühlen ein größerer Mangel kund als da, wo etwa ein Subjekt ohne jede Überlegung von Vorsatz zu Vorsatz eilt. Man darf nicht einwenden, daß dasselbe Subjekt auch in der Überlegung vielleicht von dem Unwerte nichts gefühlt hätte. Nicht darum handelt es sich ja, welche Persönlichkeitsstruktur das Subjekt im ganzen besitzt, sondern welche Teile willing? Such a harsher assessment ought not, naturally, to be based in the reaching of a resolve against better feelings; by the terms here, that is not the case. Rather, an entirely new viewpoint comes into the question. Not just willing that is oriented counter to feelings, but also the absence of a feeling of value or disvalue, displays a disvalue, if of a different kind. Such a lack reveals itself in the non-feeling of the disvalue of a thought-of project. But it makes itself obvious to an even higher degree in feeling not occurring within a reflective behaviour. Our analysis has indeed indicated how the subject here opens himself questioningly to the project and its valuability. Here, where the preparedness for a value-feeling is most favourable, non-feeling expresses a greater lack than if the subject, say, hurries without reflection from resolve to resolve. One ought not to object that the same subject, in reflecting, might perhaps still not have felt the disvalue. The crucial point here is not what personality-structure the subject as a whole possesses, but of which parts of {the structure} unfold themselves in his actions and accordingly are valued positively or negatively. And here it may be said that in fact, in non-

von ihr in seinem Tun sich entfalten und demgemäß positiv oder negativ bewertet werden. Und hier läßt sich in der Tat sagen, daß in dem mit Überlegung verbundenen Nichtfühlen sich ein größerer Mangel offenbart als in dem überlegungsfreien. Es handelt sich hier offenbar um eine immer bestehende {302} Beziehung zwischen Überlegung und Persönlichkeitsmanko, insoweit das überlegende Tun eine auf die Wertigkeit des Projektes gerichtete fragende Einstellung impliziert. Im übrigen muß man hier eine Reihe verschiedener Möglichkeiten auseinanderhalten.

Den einen Grenzpunkt bildet unsere auf den Wert selbst gehende Überlegung; eine günstigere Einstellung ist nicht denkbar. Um eine Analogie aus der Sphäre der sinnlichen Wahrnehmung zu nehmen: es ist, wie wenn ich meine Blicke auf ein Ding der Außenwelt richte, um seine Ähnlichkeit mit anderen zu erfassen. Daneben tritt die auf das persönliche Interesse gehende Einstellung, die zwar eben damit nach etwas anderem fragt, aber die doch dadurch, daß sie überhaupt das Projekt ins Auge faßt, eine günstigere Bedingung für die Werterfassung schaffen kann. So wird auch, wenn ich meine Blicke auf ein

feeling coupled with reflection, a greater lack makes itself obvious than {in non-feeling} without reflection. Here this is obviously a matter of a persistent {302} relationship between reflection and a deficiency in personality, insofar as the reflective action implies a questioning attitude directed at the valuability of the project. Furthermore, one must here distinguish a series of different possibilities.

{1} Our reflection on the value itself constitutes a high point; a more suitable attitude is not thinkable. To take an analogy from the sphere of sensory perception: it is as if I turn my gaze towards a thing in the outside world in order to grasp its similarities with other things. {2} Next to this lies the attitude based on personal interest, which in fact asks after something different, but which, in that it takes the project into view to begin with, may still create a more suitable condition for the grasping of value. So too, if I turn my gaze towards a thing in order to estimate its size, its similarity with a second will occur to me more easily

Ding richte, um seine Größe abzuschätzen, mir seine Ähnlichkeit mit einem zweiten leichter auffallen, als wenn ich anderem zugewendet bin.^{27*} Ungünstiger liegt in dieser Hinsicht der Fall der Überlegungslosigkeit, wo keinerlei fragende Einstellung auf das Projekt geht, wo wir, im Bilde gesprochen, das Ding ergreifen, ohne es zu betrachten. Und schließlich unterscheiden wir davon den ungünstigsten Fall: Das Subjekt ist von einem Affekte erfüllt, der es auf die Realisierung des Projektes hintreibt. Hier fehlt nicht nur, wie bei der Überlegungslosigkeit, jede Bedingung, die das Erfassen der Wertigkeit begünstigen könnte, sondern es ist sogar ein Moment vorhanden, welches ein solches Auftauchen zu hindern geeignet ist.

Es ist, wie wenn ein Mensch in wilder Gier ein Ding ergreift — was wird ihm da die Ähnlichkeit mit anderen Dingen bedeuten? So ist also die schärfere Beurteilung der überlegten schlimmen Handlung und ihre mögliche Abstufung in den verschiedenen Fällen ganz allgemein verständlich geworden.

4. Der Täter einer verwerflichen Handlung wird härter beurteilt, weil er ohne Überlegung vorgegangen ist. Er hat seine

than if {my attention} is turned towards something else.^{28*} {3} Still lower lies the case of reflectionlessness, where no kind of questioning attitude concerns the project, where we, to speak illustratively, grab the thing without looking at it. {4} And finally we distinguish from that the most unsuitable case: the subject is filled with an affect which drives him to the realisation of the project. Here, not only is (as in reflectionlessness) any condition absent that could be suitable for the grasping of the valuability, but equally a factor is present which is liable to hinder such an emergence.

It is as if somebody in wild greed grabs a thing — what then would its similarity with another thing mean to him? Thus the harsher assessment of the reflected-on bad action and its possible gradations in different cases has been made understandable in quite general terms.

4. The doer of a reprehensible action is more harshly assessed because he carried it out without reflection. He has 'not even

Handlungsweise »nicht einmal überlegt«. Hier haben wir den ersten und einzigen Fall, in dem die Überlegung nicht als wertneutrales Zeichen für ganz andersartige wertbehaftete Realitäten gilt, sondern in dem sie selbst und der ihr zugrunde liegende Habitus des Subjekts Gegenstand der Bewertung ist. Wir verlangen vom Menschen, daß »er sich überlegt, was er tut«, daß er die Konsequenzen seines Projektes und ihren Einfluß auf dessen Wert oder Unwert ins Auge faßt, und daß er insbesondere sein Interesse für das, was sein soll, in der Frage nach dem Werte des Projektes zum Ausdruck bringt. Der ethisch überlegende Mensch als solcher repräsentiert einen, wenn auch bescheidenen ethischen Wert. Ein Widerspruch dieser Bewertung mit der scheinbar widersprechenden des vorhergehenden Falles liegt also in Wahrheit nicht vor. Daß er überlegend den Wert oder Unwert seines Projektes erwogen hat, werden wir auch dem Verbrecher zugute halten. Nur kann dieser Wert verschwinden hinter dem größeren Unwerte eines die Werte nicht fühlenden {303} oder sich über die gefühlten Werte hinwegsetzenden Verhaltens, welches uns das

considered' his manner of action. Here we have the first and only case in which reflection does not show itself as a value-neutral indicator of very different kinds of valuable realities, but in which it itself and the habit of the subject which founds it is the object of the assessment. We want of the human being that 'he reflects on what he does,' that he takes into consideration the consequences of his project and their influence on the value or disvalue, and that he in particular brings to expression his personal interest in in the result into the question of the value of the project. The ethically reflective human being as such represents an ethical value, if a modest one. A contradiction of this assessment with the apparent contradicting elements of the foregoing case thus does not really occur. We would also regard it as good of the criminal that he has considered reflectively the value or disvalue of his project. This value can however be eclipsed by²⁹ the greater disvalue of a non-feeling behaviour {303} or one that turns against those values which the existence of any reflection indicates to us.

Vorhandensein jener Überlegung anzeigt.

Die scheinbaren Antinomien sind damit zur Auflösung gelangt. Die ausschlaggebenden Gesichtspunkte sind dabei die: daß in der voluntativen Überlegung — im Gegensatz zu der theoretischen — die Persönlichkeit selbst zur Geltung kommt, und daß dabei die Überlegung — als Symbol für ihre Vorzüge und Mängel — ein Anhaltspunkt werden kann für ihre günstigere oder ungünstigere Beurteilung. Das Wesentliche unseres Ergebnisses ist, daß eine nur auf dem Moment der Überlegung basierende ethische Beurteilung ganz äußerlich bleiben muß, wenn sie den bloßen Symbolcharakter der Überlegung vergißt; und daß sie absolut fehlerhaft werden kann, insofern jenes Symbolverhältnis nicht in allen Fällen zu bestehen braucht.

Es bleibt uns nun noch übrig, dieses Ergebnis auf das strafrechtliche Überlegungsproblem anzuwenden.

III.

Von der strafrechtlichen Bedeutung der Überlegung haben wir bereits gesprochen. Ihr liegt offensichtlich der dritte der von uns dargelegten Sätze

The apparent contradictions are thus given a solution. The decisive viewpoints for this are: that in volitional reflection (as against the theoretical) the personality itself is displayed, and that reflection (as a symbol for its good and bad traits) can thereby become a clue for its more or less favourable assessment. The essential point of our finding is that an ethical assessment based purely on the factor of reflection must remain quite superficial if it forgets the merely symbolic character of reflection; and that it can become absolutely faulty insofar as this relationship of symbolism need not exist in all cases.

It now only remains for us to apply this finding to the problem of reflection in the criminal law.

III.

We have already spoken of the meaning of reflection in criminal law. The third of the statements we have presented is obviously the basis for it.³⁰

zugrunde. Daß der strafrechtliche Überlegungsbegriff mit dem von uns entwickelten genau übereinstimmt, ist natürlich nicht von vornherein ausgemacht. Weder braucht unter Überlegung das verstanden zu sein, was wir als *voluntative* Überlegung analysiert haben, noch braucht der Begriff so weit gefaßt zu sein, wie es unter psychologischen Gesichtspunkten notwendig ist: daß nämlich jedes Verhalten des Ich, welches zur Beantwortung der inneren Frage nach einem Sein oder Seinsollen zu dienen bestimmt ist, bereits als Überlegung gilt. Es entspricht dem gewöhnlichen Sprachgebrauch und könnte unter juristischem Gesichtspunkte als zweckmäßig erscheinen, nur bei besonders prominenten inneren Verhaltensweisen des Ich — etwa bei einem Suchen nach Gründen und Gegenständen oder Motiven und Gegenmotiven, oder nur bei einer gewissen zeitlichen Dauer des überlegenden Tuns — von einer Überlegung zu reden. Was nun nach positivem Rechte unter Überlegung zu verstehen ist, ist ein Problem der positiven Strafrechtswissenschaft, mit welchem wir uns hier nicht zu befassen haben. Soweit aber in der Diskussion

That the concept of reflection in criminal law agrees exactly with the one developed by us is naturally not to be taken for granted. There is no need either for what is understood as reflection to be that which we have analysed as *volitional* reflection, nor for the concept to be so wide as is necessary from a psychological perspective: that in fact every behaviour of the I which serves the answering of an inner question about a being or an ought already qualifies as reflection. It corresponds to customary linguistic usage and could from a juristic perspective appear as useful to speak of a reflection only in relation to especially prominent ways of inner behaviour of the I — as with a seeking after reasons for and against or motives for and against, or only in relation to a certain temporal duration of the reflective doing. What is now to be understood by reflection under positive law is a problem for the science of positive criminal law, with which we do not have to concern ourselves here. Insofar, however, as viewpoints of a generally psychological or ethical nature come into the matter, we want to explore them. Our earlier analyses will thereby become completed and brought further. Perhaps we can hope thereby to

darüber Gesichtspunkte allgemein psychologischer oder ethischer Natur in Betracht kommen, wollen wir darauf eingehen. Unsere früheren Analysen werden dadurch ergänzt und weitergeführt werden. Vielleicht dürfen wir hoffen, dabei auch dem Strafrechtler in einem oder dem andern Punkte einen klärenden Beitrag zu liefern.

Es wäre ein positives Recht denkbar, in welchem jede Tötung, welche mit (voluntativer) Überlegung begangen ist, als Mord qualifiziert und dem Totschlag als einer ohne solche Überlegung begangenen Tötung gegenübergestellt wäre. Nach unseren bisherigen Analysen wäre eine solche Bestimmung leicht verständlich: Wer einen verbrecherischen Vorsatz faßt trotz Erwägung des Tunsollens, {304} dokumentiert eben damit eine besonders üble Gesinnung. Unser positives Strafrecht nun läßt eine solche Interpretation nicht ohne weiteres zu, ja es scheint sie sogar zu verbieten. Zweierlei kommt dabei vor allem in Betracht: Es ist von Überlegung *schlechthin* die Rede, nicht etwa speziell von voluntativer Überlegung in unserem Sinne. Und ferner wird ausdrücklich betont, daß die Tötung mit Überlegung *ausgeführt*

also deliver a clarifying contribution to the criminal jurist, on one point or another.

A positive law would be thinkable in which every killing committed with (volitional) reflection qualifies as murder, and {in which} manslaughter was contrasted with it as a killing committed without such reflection.³¹ By our analyses made thus far, such a determination would be easily understandable: whoever reaches a criminal resolve despite consideration of the ought-to-do {304} documents in that an especially evil disposition. Our positive criminal law now does not, however, straightforwardly allow such an interpretation; indeed, it seems to forbid it. Two things above all are important here: It is a question of reflection *in general*, not specifically of volitional reflection in our sense. And further, it is expressly stated that the killing must be *carried out* with reflection if it is to be treated as a murder. So it is not the reaching of the

sein muß, wenn es sich um einen Mord handeln soll. Nicht die Vorsatzfassung also, sondern die zeitlich vielleicht weit abliegende Ausführung des Vorsatzes scheint hier durch Überlegung vorbereitet oder von Überlegung begleitet sein zu sollen. Wo Vorsatz und Ausführung zeitlich auseinanderfallen, hätte dann die Überlegung ihren Ort im zweiten Stadium. Ist es aber so — und manche Strafrechtler vertreten diese Ansicht —, dann erscheint es uns nicht als möglich, diese Überlegung als voluntative anzusetzen. Worauf sollte sie sich auch beziehen?

Der Vorsatz ist ja bereits gefaßt. Eine Überlegung, welche sich auf das »Ob« der Tat richtet, und die als solche in einer neuen Vorsatzfassung ausmünden müßte, kann demnach nicht in Betracht kommen. Es bleibt als Thema der Überlegung nur noch das »Wie«. Die Überlegung geht nicht darauf aus, *welches* Projekt oder *ob* ein Projekt zu realisieren ist, sondern auf welche Weise ein schon vorgeseztes Projekt am geeignetsten realisiert werden kann. Es handelt sich dabei offenbar um eine *intellektuelle* Überlegung in unserm früheren Sinne. Insofern es sich dabei spezieller darum handelt, die Mittel zu erwägen, welche einen erstrebten

resolve, but the (perhaps quite temporally separate) carrying out of the resolve that appears to be what should be prepared or accompanied by reflection. Where resolve and carrying-out occur temporally separately, the reflection would then have its place in the second stage. But if it is so — and many criminal jurists uphold this view — then it does not appear to us as possible to interpret this reflection as volitional. What, after all, should it aim itself towards?

The resolve has already been reached. A reflection which orients itself after the 'whether' of the act, and which as such must lead to a new resolve-forming, cannot therefore come into the question. There remains for the theme of the reflection only the 'how'. The reflection does not concern *which* project to realise or *whether* to realise it, but in which way an already resolved-upon project can be most suitably realised. It seems here to be a case of *intellectual* reflection in our earlier sense. Insofar as it specifically concerns consideration of the means which is most suited to bringing about a strived-for consequence, we could

Erfolg am sichersten herbeizuführen
geeignet sind, können wir von einer
praktisch intellektuellen Überlegung
reden. Wie alle intellektuelle
Überlegung läuft sie in eine
Seinserkenntnis aus, aber diese
Erkenntnis wird in ganz eigenartiger
Weise hier im Vorsatz »aufgehoben«.
Die als geeignet erkannten Mittel
werden dann ja selbst vorgesetzt; oder
genauer — da es sich nicht um einen
neuen, selbständigen Vorsatz handelt
—: Der bereits entstandene Vorsatz
wird durch die praktisch-intellektuelle
Überlegung bereichert, er umfaßt nun
auch die Realisierung der Mittel,
welche diese entdeckt hat.

Von hier aus gesehen ist eine
Auffassung denkbar — und in der Tat
vertreten worden —, nach der es die
praktische Überlegung ist, welche den
Mord vom Totschlag unterscheidet. Es
erhebt sich hier für uns die Frage, von
welchem Gesichtspunkte aus sich eine
so viel schärfere Beurteilung der mit
einer praktisch-intellektuellen
Überlegung Begangenen Tötung
rechtfertigen läßt. Das Projekt ist hier
schon vorgesetzt, seine Realisierung
wird überhaupt nicht mehr in Frage
gezogen — warum hier die härtere
Verurteilung? Man kann den
Gesichtspunkt geltend machen, den wir

talk of a practical-intellectual
reflection. Like all intellectual
reflection, it culminates in a
recognition of being, but this
recognition is, in a quite unique way,
here 'depending on' the resolve. The
means recognised as suitable is already
then indeed endorsed; or, to be precise
— as there is no question of a new,
independent resolve —: the already
reached resolve is enriched through
practical-intellectual reflection; it now
embraces as well the realisation of the
means which {that reflection}
discovered.

Looking at it from this
perspective, an interpretation is
thinkable — which in fact is
represented — according to which it is
practical reflection which separates
murder from manslaughter. Here the
question arises for us: which
viewpoints allow us to justify such a
very harsh assessment of the killing
carried out with practical-intellectual
reflection? The project is already
resolved here, its realisation is no
longer brought into question at all —
why, here, the stronger condemnation?
One can put forward the view we
singled out earlier: here, the project is

früher herausgehoben haben: Es wird das Projekt immerhin hier in Betracht gezogen, wenn auch in einer andern Richtung als bei der voluntativen Überlegung; somit müßten Unwert und negatives Interesse doch mehr auffallen als bei gänzlich mangelnder Betrachtung, ähnlich wie die Ähnlichkeit eines Dinges mit anderen uns eher auffallen wird, wenn wir es auf seine Größe hin betrachten, als wenn wir ihm gar keine Beachtung schenken.

Es ist {305} demgegenüber zunächst zu betonen, daß die Unempfänglichkeit, die sich bei einer direkten Frage nach Wert und Interesse des Projektes dokumentiert, in jedem Falle sehr viel größer ist als bei der Frage nach seiner Realisierungsweise, daß es daher ganz und gar nicht einzusehen ist, warum man der voluntativen Überlegung die praktische Überlegung gleichgeordnet zur Seite stellen oder gar die erste durch die zweite ersetzen sollte. Wichtiger noch ist aber ein zweites: So sehr die Betrachtung des Projektes die Zugänglichkeit seines Wertcharakters befördern mag, so ungünstig kann auf der andern Seite die gebundene Betrachtungsrichtung wirken. Gerade weil das Subjekt nur nach dem »Wie« der Realisierung fragt, können Unwert

drawn into view throughout, if indeed in a different orientation compared to volitional reflection; thus, disvalue and negative interest would have to stand out more than without such attention, as when the similarity of a thing with others stands out sooner to us when we are regarding its size than if we pay it no attention.

In relation to this, it is {305} to be stressed that the unreceptivity which documents itself in a direct question about the value and interest of the project in any case is much greater than in the question about its means of realisation; that it therefore is incomprehensible why one should place volitional reflection on the same level as practical reflection, or indeed substitute the former for the latter. Still more important, though, is a second point: As much as the contemplation of the project might encourage access to its value-character, the narrow *angle* of viewing may also be equally unsuitable. Precisely because the subject only questions the 'how' of the project, disvalue and negative interest, which might still perhaps have

und negatives Interesse, die sonst sich vielleicht aufgedrängt hätten, außer acht gelassen werden, analog wie eine Ähnlichkeit, die mir sonst aufgefallen wäre, von mir unbeachtet bleiben kann, wenn mich die Frage nach der Größe des Dinges allzu ausschließlich beschäftigt. Von einer Eindeutigkeit des Symbolverhältnisses kann hier nicht die Rede sein; es ist daher ganz und gar ungerechtfertigt, die so ungeheuer weittragende Scheidung von Mord und Totschlag auf das Vorhandensein oder Nichtvorhandensein der praktisch-intellektuellen Überlegung zu gründen.

Man wird demgegenüber wohl einen neuen Gesichtspunkt geltend machen. Man wird von der Verwerflichkeit reden, die sich in der *Kaltblütigkeit* des Täters dokumentiert, wenn er sich nicht von der Vorsatzfassung aus sofort auf die Tat losstürzt, sondern in aller Ruhe die Mittel und Wege dazu erwägt. Aber auch das reicht nicht aus, um einen prinzipiellen Unterschied zu begründen. Denn die Symbolik, welche hier zwischen Kaltblütigkeit und Überlegung einerseits, Überstürztheit und Überlegungsmangel andererseits in Anspruch genommen wird, ist nach keiner Richtung hin eine eindeutige. Es

imposed themselves, could be ignored, analogously with how a similarity which might have stood out for me can go unnoticed if I occupy myself too exclusively with the thing's size. We cannot say that the symbolic relationship is unambiguous here; it is therefore well and truly unjustified to base the so enormously far-reaching difference between murder and manslaughter on the presence or absence of practical-intellectual reflection.

Against this, one would perhaps put forward another point of view. One could speak of the reprehensibility which documents itself in the *cold-bloodedness* of the agent if he does not leap directly from the reaching of resolve to the doing, but with total calm weighs up the means and the way. But this too does not suffice to found a principal difference. For the symbolism which here is invoked between cold-bloodedness and reflection on the one hand, between rashness and a lack of reflection on the other, is in no way unambiguous. There is not only calm reflection, but also a hasty, agitated seeking after the means to an already-

gibt nicht nur die ruhige Überlegung, sondern auch ein hastiges, aufgeregtes Suchen nach den Mitteln zu einem vorgefaßten Ziele. Ein solches Suchen kann ebensowohl etwa aus innerer Angst entspringen als aus innerer Kaltblütigkeit. Andererseits aber braucht die absoluteste Ruhe und Kaltblütigkeit nicht praktische Überlegung zur Folge zu haben. Man hat bei jenen Einwänden sich offenbar höchst einseitig an den Fällen orientiert, in denen zunächst noch die Realisierungsmöglichkeit von dem Subjekte *aufzusuchen* ist, oder in denen dem Subjekte eine Reihe von Realisierungsmöglichkeiten sich darbieten, unter denen es zu wählen hat. Keineswegs sind damit aber alle möglichen Fälle erschöpft.

Ein Mann lauert auf der Jagd einem Wilde auf, sein Todfeind geht vorüber. Er überlegt lange, ob er ihn töten soll, dann entschließt er sich und erschießt ihn. Das ist der typische Mord. Nach der Auffassung, welche nur praktische Überlegung gelten läßt, müßte es Totschlag sein; denn eine Überlegung der Mittel hat nicht stattgefunden. Hätte der Mann geschwankt, ob er mit Schrot oder Kugel laden solle, so wäre es Mord gewesen. Kann man aus solchen irrelevanten Zufälligkeiten so

grasped end. Such a seeking can just as well emerge from, perhaps, an inner anguish as from an inner cold-bloodedness. On the other hand, the most absolute calm and cold-bloodedness do not need to result in practical reflection. With these objections one has obviously turned most one-sidedly to those cases in which either the possibility of realisation is still to be *sought out* by the subject, or in which an array of possibilities of realisation appears before the subject from which he has to choose. In no way, however, are all possible cases exhausted by this.

A man lies in wait hunting game, when his mortal enemy passes by. He reflects at length on whether he should kill {the enemy}, decides, and shoots him. That is the typical murder. According to the understanding which only allows practical reflection to be valid, it would have to be manslaughter, because a reflection on the means has not taken place. Had the man vacillated over whether he should use shot or a bullet, then it would have been murder. Can such irrelevant accidental details lead

ungeheueren Konsequenzen ziehen? Es ist gewiß nicht zulässig, Theorien, welche die Aufgabe haben, eine sehr große Menge von Einzelfällen zu regeln, durch die absurde Konsequenz in irgendeinem einzelnen Falle zu »widerlegen«. Aber es kommt hier gar nicht auf den einzelnen Fall an, sondern auf das Prinzipielle, das bei ihm nur besonders deutlich zur Erscheinung kommt. Es gibt eine eigene Art von Fällen, in welchen der Weg zum Erfolg ohne weiteres eindeutig vor Augen liegt, in denen praktische Überlegung also gar keine Stelle hat — warum sollte man diesen ganz äußerlichen Umstand dem Verbrecher zugute halten? Und es gibt andere Fälle, in denen sich von vornherein mehrere Realisierungsmöglichkeiten des Erfolges darbieten, in denen also praktische Überlegung am Platze ist — warum sollte man um dessentwillen den Täter härter verurteilen? Insofern sich im Vorhandensein der praktischen Überlegung nach keiner Richtung hin notwendig eine verwerflichere Gesinnung dokumentiert als in ihrem Fehlen, entbehrt die Abgrenzung von Mord und Totschlag durch jenes Moment eines jeden vernünftigen Sinnes.

to such enormous consequences? Certainly, it is not permissible to 'refute' theories which have the assignment of governing a very large number of individual cases through the absurd consequences {they may have} in any one case. But here it is in fact not about the individual case, but rather about the principle which becomes especially visible in it. There is a specific kind of case in which the way to success lies clearly before one's eyes, in which practical reflection thus has no place at all — why should one count this quite superficial circumstance to be to the wrongdoer's credit? And there are other cases in which, from the outset, several possibilities for realisation of the action present themselves, in which case then practical reflection has a place — why should one condemn the agent more harshly because of that? Insofar as the presence of practical reflection in no way necessarily documents a more reprehensible disposition than its absence, the demarcation between murder and manslaughter with this factor lacks any rational sense.

Die Interpretation unseres Strafgesetzes, an der wir uns bisher orientiert haben, ist keineswegs die einzig mögliche. Man hat für sie historische, »dogmatische« und Gründe kriminalpolitischer Natur geltend gemacht.^{32*} Eine Beurteilung der Gründe, welche der Entstehungsgeschichte des § 211 entnommen werden, steht uns natürlich hier nicht zu. Für allein ausschlaggebend wird sie jedenfalls niemand halten. Die Berufung auf den Sinn und Zweck der Bestimmung kann, wie wir gezeigt haben, nur zur Ablehnung jener Interpretation führen. Aber auch die dogmatische Erwägung, d. h. die Untersuchung »des klaren Wortlautes des § 211«, ist nicht so entscheidend, wie man geglaubt hat. Zwar ist hier ausdrücklich ein *Ausführen* mit Überlegung gefordert; aber es ist nicht richtig, daß dabei notwendig an die Realisierung des Vorsatzes, an die Ausführungshandlung in diesem engen Sinne gedacht werden muß. Betrachtet man das Verhalten oder das Tun eines Menschen im ganzen, so kann man das, was er tut, und was als Identisches auch beliebig viele andere Menschen tun können, von dem Tun selbst abtrennen, von dem also, was bei hundert »dasselbe«

The interpretation of our criminal law which we have followed so far is in no way the only one possible. Reasons have been offered for {this interpretation} that are historical, 'dogmatic,' and of a criminal-political nature.^{34*} An assessment of the reasons, as they are gathered from the history of § 211, is naturally not appropriate for us here. Nobody would, in any case, take {this interpretation} as conclusive on its own. The appeal to the sense and purpose of the determination can, as we have indicated, only lead to the rejection of that interpretation. But the dogmatic consideration too, that is, the investigation of 'the clear wording of § 211,' is not so decisive as some have believed. Admittedly, a *carrying-out* with reflection is expressly called for here; but it is not correct that it is thereby necessarily the realisation of the resolve, the action of carrying-out in this narrow sense, that must be thought of. If one considers the behaviour or the conduct of a human being as a whole, then one can divide that which he does, and which could identically be done by any number of other human beings, from the doing itself; from that, that is, which, with a

tuenden Menschen hundertmal vorhanden ist. Wie die vielen Erlebnisse des *Urteilens* von dem einen in ihnen allen vollzogenen *Urteil*, so trennen wir das beliebig häufige *Tun* von der einen getanen *Tat*. Dies *Tun* der *Tat* nun, ihr Vollziehen, wird mitunter als ihre Ausführung bezeichnet. »Tat« mag z. B. ein Diebstahl sein, d. h. das vorsätzliche Wegnehmen einer fremden beweglichen Sache in der Absicht, sie sich rechtswidrig zuzueignen. Damit ist der eine identische Gesamttatbestand des Diebstahls bezeichnet, der in beliebig vielen Akten zum Vollzug oder zur »Ausführung« kommt. Zur Ausführung des Diebstahlstatbestandes gehört hier offenbar nicht nur das tatsächliche Wegnehmen, die Ausführung des Vorsatzes im engeren Sinne, sondern auch die Vorsatzfassung selbst. Unser jetziger Begriff der Ausführung — dessen häufige Verwendung außer Zweifel steht — bedeutet also etwas anderes {307} und Umfassenderes als der frühere, welcher sich lediglich auf die Realisation des Vorsatzes bezog. Wir sehen somit, daß auch jene dogmatische Erwägung zum mindesten nicht zwingend ist. Ist es aber möglich, die Ausführung im Sinne des § 211 als Realisierung des

hundred human beings who do 'the same', is present a hundred times. As {we divide} the many experiences of *judging* from the one *judgement* performed in each of them, so too we divide the individual, common *doings* from the one action that is *done*. Now the doing of the action, its performance, is sometimes indicated as its being carried out. 'Action' may, for example, be a theft, that is, the intentional taking away of a thing belonging to another with a view to illegally depriving them of it. Thereby the identical, complete offence of theft is designated, which in any number of actions comes to be fulfilled or 'carried out'. Not only the factual taking-away {of someone's property} and the carrying-out of the resolve in a narrow sense belong to the carrying-out of the offence of theft, but also the reaching of the resolve. Our current concept of carrying-out — of the common usage of which there is no doubt — therefore means something different {307} and broader than the earlier one, which simply relates to the realisation of the resolve. We see therefore that such dogmatic consideration, too, is at least not absolutely compelling. If it is possible, though, to understand the carrying-out in the sense of § 211 as

Gesamttatbestandes und nicht als the realisation of the entirety of the
 Realisierung des Vorsatzes real act and not as the realisation of
 aufzufassen, so eröffnet sich damit die the resolve, it becomes possible to
 Möglichkeit, den Überlegungsbegriff take the concept of reflection in the
 des Strafgesetzbuches als voluntativen civil code as being volitional.
 in Anspruch zu nehmen. Zugleich aber Immediately, the most different
 sind die verschiedenartigsten Theorien kinds of theories become possible;
 möglich geworden; wir sehen hier we see here clearly how the question
 deutlich, wie die Frage nach der about the kind of reflection and the
 Überlegungsart und das problem of localisation of the
 Lokalisierungsproblem der Überlegung reflection certainly stand in a close
 zwar in naher Beziehung stehen, aber relation, but in no way coincide.
 keineswegs zusammenfallen. Auch wer Also the one who is not of the view
 nicht der Ansicht ist, daß die that reflection must occur at the
 Überlegung bei der Ausführung im carrying-out in the narrow sense
 engerm Sinne statthaben muß, kann may insist on *practical* reflection
 ausschließlich die *praktische* exclusively, be it only at the reaching
 Überlegung fordern, sei es nur bei der of the resolve, be it — which would be
 Vorsatzfassung, sei es — was näher closer {to being correct} — at the
 liegen wird — bei der Vorsatzfassung reaching of the resolve or the carrying-
 oder der Ausführung oder bei beiden. out or at both. Conversely, whoever
 Dagegen kann, wer die voluntative permits volitional reflection may, as we
 Überlegung zuläßt, sie, wie wir gezeigt have shown, only demand it at the
 haben, nur für die Vorsatzfassung reaching of the resolve. Self-evidently,
 fordern. Selbstverständlich steht auch the possibility remains open to him
 ihm noch die Möglichkeit offen, also of demanding practical reflection
 daneben auch praktische Überlegung alongside, should it be alternatively or
 zu fordern, sei es alternativ oder cumulatively, and of localising this
 kumulativ, und diese praktische practical reflection at the reaching of
 Überlegung bei der Vorsatzfassung, resolve, or the carrying-out, or in both
 oder Ausführung oder an beiden places.^{35*} Which of these theories has
 Stellen zu lokalisieren.^{33*} Welche interpretive validity for the actual civil
 dieser Theorien für das geltende code is not our concern here; we have

Strafgesetzbuch interpretatorisch
Geltung hat, geht uns, die wir nur den
Sinn möglicher Bestimmungen zu
erörtern haben, nichts an. Daß
praktische Überlegung, von welcher
Form auch immer, nicht als
zuverlässiges Symbol verwerflicher
Gesinnung fungieren kann, haben wir
gezeigt. So bleibt uns nur noch übrig,
den Sinn der Theorie zu erörtern,
welche eine Vorsatzfassung mit
voluntativer Überlegung verlangt.

Das Wesentliche ist hier, daß
eine Überlegung des Projektes seiner
Vorsatzfassung vorausgeht. Mag man
ferner vom Standpunkt des positiven
Rechtes über das hinaus, was das
Wesen der Überlegung ausmacht,
vielleicht einen besonders intensiven
oder längere Zeit dauernden Prozeß
verlangen, gleichgültig ist jedenfalls,
ob der schließliche Vorsatz sich auf
Grund der überlegenden Tätigkeit
entwickelt, ob die Überlegung also zu
ihrem Ziele gelangt, oder ob sie zu
keinem Resultate führt und der Vorsatz
ganz unabhängig von ihr, etwa aus
einem plötzlichen Impuls heraus,
gefaßt wird, oder ob sie zu einem
entgegengesetzten Resultate führt, der
Vorsatz also dem Vernehmen einer
negativen Forderung zuwider gefaßt
wird.

only to discuss the *sense* of its possible
determination. We have shown that
practical reflection, of whatever form,
cannot function as a reliable symbol of
a reprehensible disposition. All that
remains for us is thus to discuss the
meaning of the theory which demands
the reaching of a resolve with
volitional reflection.

The essential point here is that a
reflection on the project precedes its
being resolved upon. Even if one
would, from the standpoint of the
positive law further to that which
concerns the *essence* of reflection,
perhaps call for an especially intensive
or long-lasting process, it is in any case
indifferent whether the final resolve
develops on the *basis* of the reflective
activity, whether the reflection thus
achieves its goal, whether it leads to no
result and the resolve is reached
independently of it, perhaps from a
sudden impulse, or whether it leads to
an opposing result, and the resolve is
reached in contradiction of a heard
negative demand.³⁶

In den hier in Frage kommenden Fällen wird das verbrecherische Projekt *in Betracht gezogen*; darin, daß das Subjekt den Vorsatz dennoch faßt, dokumentiert sich zum mindesten eine geringere Wertempfänglichkeit, jedenfalls also eine üblere Gesinnung, als wenn jede Überlegung gefehlt hätte. Unsere früheren Erörterungen greifen hier Platz; nur in einem Punkte bedürfen sie einer Ergän- {308} zung. Es handelt sich hier nicht mehr um die rein ethische, sondern um die *rechtliche* Bewertung des Tuns. Für sie sind zwar sicherlich auch die früher entwickelten ethischen Gesichtspunkte maßgebend, es treten aber neue, außerethische hinzu. Es bedarf zunächst keiner weiteren Darlegung, daß bei Verbrechen der Regel nach das *Interesse* des Projekts für den Täter, und nicht etwa sein Wert oder Unwert an sich, in der Überlegung in Frage gestellt wird.

Wir haben früher ausgeführt, daß auch bei dieser Einstellung eine geringere Wertempfänglichkeit sich dokumentieren kann, als wenn das Projekt überhaupt nicht und in keiner Richtung in Frage gestellt wäre. Aber für das Strafrecht kommt daneben auch die Unempfänglichkeit für gewisse

In the cases in question here, the criminal project is *drawn into consideration*; that the subject nevertheless reaches the resolve documents at least a lower receptivity to value, and thus also a more evil disposition than if reflection had been absent. Our earlier discussions enter in here; only in one point do they require elaboration. {308} Here, it is no longer a matter of the purely ethical, but of the *legal* evaluation of the doing. For this, the earlier developed ethical viewpoints are indeed certainly significant, but new, extra-ethical ones enter in. It requires at first no further explanation that with a crime, it is the *interest* of the project for the agent, and not, for example, its value or disvalue as such which is brought into question by the reflection.

We have earlier shown that in this attitude, too, a lower value-receptivity can document itself than if the project was not at all and in no way put into question. But for the criminal law, the unreceptivity to certain personal *interest* also comes into the question in a decisive way.

persönliche *Interessen* in ausschlaggebender Weise in Betracht.

Es ist ihm ja wesentlich, durch die Strafandrohung ein negatives Interesse des Verbrechens für jedermann künstlich zu erzeugen. Ihm genügt es vollkommen, wenn in Erkenntnis dieses negativen Interesses und nur mit Rücksicht darauf die von ihm bedrohten Handlungen unterlassen werden. Ein Mensch, der ein geplantes Projekt nur mit Rücksicht auf das drohende Strafleiden aufgibt, wird ethisch gewiß nicht höher, unter Umständen sogar niedriger gewertet werden, als wer es allem Leiden zum Trotz durchführt. Die rechtliche Beurteilung aber verläuft im umgekehrten Sinne. Die »antisoziale« Gesinnung fällt mit der unethischen nicht einmal in der Weise zusammen, daß sie einen kleinen Ausschnitt dieser bildete; zu ihr gehört auch die — ethisch nicht ohne weiteres negativ zu wertende — Unempfänglichkeit gegen das Strafübel.^{37*} Von hier aus gesehen ist es nicht einmal ein ethisches *Minimum*, welches das Strafrecht verlangt, sondern etwas, das jenseits aller ethischen Positivitäten liegt. Damit ist die rechtliche Beurteilung der Überlegung um einen neuen Gesichtspunkt bereichert. Insofern in

Indeed, it is essential to it, through the threat of punishment, to artificially create a negative interest of criminality for everyone. For {the criminal law}, it suffices perfectly if it is in recognition of this negative interest, and only in view of that, that the actions which are threatened {by punishment} are refrained from. A human being who gives up on a planned project only in view of the threatened suffering of punishment certainly does not become ethically higher, in the circumstances in fact is evaluated even lower, than one who carries it out in spite of all suffering. The legal assessment, however, proceeds in the opposite direction. The 'antisocial' disposition does not coincide with the unethical, not even in the sense that it forms a small section of it; to {the former}, unreceptivity to the evil of punishment — which is not simply to be valued negatively in an ethical context — also belongs.^{39*} From this perspective it is not at all an ethical *minimum* that the criminal law calls for, but something that lies beyond all ethical positives. Thereby, the legal judgement of reflection is expanded on account of a new viewpoint. Insofar as thoughts of

ihr dem Gedanken an die rechtlichen Folgen, an das Strafübel und alle mit ihm verbundenen Leiden ein größerer Spielraum gegeben ist, dokumentiert sich in der mit Überlegung begangenen Tat eine rechtlich in besonderem Maße verdammenswerte Gesinnung.^{38*} In merkwürdiger Weise ergibt sich hier bei dem Tötungsdelikte eine Komplikation der Sachlage dadurch, daß gerade das Moment, welches dazu bestimmt ist, das drohende Übel in eine besondere geistige Nähe zu rücken, durch sein Vorhandensein gleichzeitig dieses Übel beträchtlich erhöht.

So scheint also auf den ersten Blick die Scheidung von Mord und Totschlag durch das Moment der Überlegung, wie sie unser Strafgesetzbuch vornimmt, und wie sie, den Beschlüssen der Strafrechtskommission zufolge,^{41*} auch für die geplante neue Strafrechtskodifikation in Aussicht genommen ist, durchaus sinnvoll zu sein, insoweit es dabei speziell auf die voluntative Überlegung abgesehen ist. Indessen dürfen wir auch entgegengerichtete Gesichtspunkte nicht {309} außer acht lassen.

Der vieldeutige Symbolcharakter der Überlegung, den wir in unsrer allgemeinen Analyse nachgewiesen

the legal consequences, the evil of punishment and all of the associated suffering are given free reign in it, the action undergone with reflection documents an especially legally damnable disposition.^{40*} Strangely, a complication of the situation is present when dealing with the offence of killing, in that precisely the factor which is determined to move the threatened evil into an especial spiritual proximity, by its existence simultaneously increases this evil considerably.

At first glance, then, the distinction between murder and manslaughter by the factor of reflection as it is done by our civil code, and as it, as a consequence of the conclusions of the criminal law commission,^{42*} is also to be taken in the planned new modifications of the criminal law, appears to be thoroughly sensible, insofar as it thereby specifically envisages volitional reflection. But we ought not {309} to disregard opposite viewpoints.

The equivocal symbolic character of reflection, which we have shown in our general analyses, also becomes evident

haben, tritt auch hier zutage. Katzenstein,^{43*} welcher für den praktischen Überlegungsbegriff eintritt, hat gegen den voluntativen eingewendet, es werde dadurch ein Privileg geschaffen »für die verworfensten Verbrecher, für jene Mordbuben, in deren Seelen vor dem Entschlusse überhaupt kein Abwägen der widerstreitenden Motive stattfindet, bei denen die allgemeinen Vorstellungen der Religion, der Sittlichkeit und des Rechtes sich vor der Entschlußfassung gar nicht zur Geltung bringen können, eben weil ihnen derartige Vorstellungen vollständig mangeln«. ^{44*}

Man sieht, daß sich hier der vierte der von uns dargelegten Zusammenhänge geltend macht. Neben den Unwert, der sich im Vorhandensein der Überlegung dokumentiert, tritt der Unwert, welchen der Mangel an Überlegung anzeigt. Es bleibt natürlich dabei, daß, wer eine Handlung realisiert, obwohl er ihren Unwert fühlt, oder, auf Grund der Frage nach dem Tunsollen, hätte fühlen sollen, eben dadurch einen größeren Unwert repräsentiert, als wer zu einer Überlegung überhaupt nicht gekommen ist. Aber man darf darüber nicht außer acht lassen, daß die

here. Katzenstein,^{45*} who stands for the concept of practical reflection, has objected against the volitional that through it a privilege would be created 'for the most reproachable criminal, for such murdering thugs in whose souls no weighing-up of the various motives occurs before the decision, with whom the various presentations of religion, morality and the law do not enter into the reaching of decisions, as for them, such presentations are utterly absent'. ^{46*}

One sees that here the fourth of our discussed associations is valid.⁴⁷ Besides the disvalue which documents itself in the presence of reflection appears the disvalue which the lack of reflection indicates. It naturally remains thereby that whoever realises an action, although he felt its disvalue or, on the basis of the question about what he should do, should have felt it, represents in this a greater disvalue than whoever does not come to a reflection at all. But with regard to that, one ought not to forget that the fact that a volitional reflection was attempted at all, and the lack of such a reflection,

Tatsache, daß eine voluntative Überlegung überhaupt vorgenommen wurde, dem Mangel jeglicher Überlegung gegenüber einen rechtlichen bzw. ethischen Wert darstellt.

Kommt dann noch dazu, daß der Mangel an Überlegung aus keinem äußerlichen Grunde, sondern aus der prinzipiellen Nichtachtung aller Werte oder aus einer absoluten Unempfänglichkeit für sie entspringt — ein Fall, den Katzenstein offenbar im Auge hat —, so ist der Unwert zweifellos größer als da, wo von einer solchen prinzipiellen Einstellung schon auf Grund der Tatsache, daß voluntative Überlegung stattgefunden hat, keine Rede sein kann, und nur *dem einzelnen Falle gegenüber* jene Mißachtung oder Unempfänglichkeit vorhanden ist.

Der überlegende »Mörder« steht hier sittlich und rechtlich höher als der nicht überlegende »Totschläger«; die geltende Strafnormierung hat in solchen Fällen zweifellos ihren Sinn verloren, die Überlegung erweist sich als unfähig, als eindeutiges Kriterium zu fungieren.

Noch weitere Schwierigkeiten stellen sich ein. Wie ist es, wenn die Vorsatzrealisierung aus der

represent a legal value and an ethical value respectively.⁴⁸

If it then still comes about that the lack of reflection originates from no external reasons, but from the principal disregard of all values or from an absolute unreceptivity to them — a case which Katzenstein obviously has in mind — then the disvalue is doubtless greater than if there can be no talk of such a principled attitude on the basis that volitional reflection has in fact taken place, and such disregard or unreceptivity is only present *in the individual case*.

The reflecting 'murderer' here stands morally and legally higher than the non-reflecting 'manslaughterer'; the actual standard of punishment has in such cases doubtlessly lost its sense, {and} reflection proves itself as unsuitable to function as a univocal criterion.

Still further difficulties impose themselves. How is it if the realisation of resolve does not immediately

Vorsatzfassung nicht unmittelbar entspringt, sondern durch einen längeren zeitlichen Abstand von ihr getrennt ist — sei es, daß das Subjekt den Vorsatz längere Zeit in sich trägt, ohne ihn zur Ausübung bringen zu können, sei es, daß er seinem Inhalte nach von vornherein auf eine spätere Ausführung geht? Ist auch zur Zeit dieser Ausübung Überlegung erforderlich? Aber welche Überlegung sollte dies sein; wir wissen ja, daß die Forderung praktischer Überlegung prinzipiell nicht zu rechtfertigen wäre. Man wird hier zunächst zwei Fälle unterscheiden können. Eine Handlung kann auf Grund des früher gefaßten {310} Vorsatzes vollzogen werden oder aber auch unabhängig von ihm auf Grund eines neuen Vorsatzes. Verschiedene Möglichkeiten bieten sich hier noch. Der alte Vorsatz kann entschwunden, vergessen sein. Er kann noch bewußt sein, aber die Welt und mit ihm das Subjekt haben sich weiter entwickelt, so daß das Subjekt die Notwendigkeit verspürt, den Willensakt noch einmal in sich zu erneuern. Es ist klar, daß bei einem solchen Bedürfnis vor der Vorsatzfassung zumeist eine neue Überlegung einsetzen wird, notwendig aber ist das keineswegs: Ein originate from the reaching of resolve, but is separated from it by a long temporal delay — be it that the subject carries the resolve in him for a long time without being able to exercise it, be it that, according to its content, it concerns from the outset a being carried out later? Is reflection also necessary at the time of this executing? But which reflection should this be; we know already that the demand for practical reflection would in principle not be justified. One can here distinguish two cases. An action can be performed on the basis of an earlier-reached {310} resolve, or alternatively, independently of it, on the basis of a new resolve. Different possibilities present themselves here. The old resolve can disappear, be forgotten. It can still be known of, but the world and with it the subject have developed themselves further, so that the subject feels the necessity of once again renewing the act of willing. It is clear that with such a need, for the most part, a new reflection would begin before the reaching of the resolve, but that is in no way necessary: the thought of a project emerges, it displaces the old obsolete resolve, in the subject; but, unconcerned with this faded piece of the past, it at once and without

Projektgedanke taucht auf, es regt sich der alte, verjäherte Vorsatz im Subjekt, aber unbekümmert um dies verdorrte Stück Vergangenheit faßt es sofort und ohne Überlegung den alten Vorsatz zum zweiten Male. Dann stellt sich das darauffolgende Tun objektiv als eine Ausführung sowohl des alten als des neuen Vorsatzes dar. Es entspringt aber allein aus dem neuen Vorsatze und ist ihm und nur ihm als phänomenale Ausführungshandlung zugeordnet. Wo immer ein neuer Vorsatz gefaßt wird, bedarf es gemäß § 211 sicherlich einer erneuerten Überlegung.

Wo aber auf Grund des alten Vorsatzes gehandelt wird und mit Rückbeziehung auf ihn, ist eine solche Überlegung nicht erforderlich; sie wird sogar normalerweise ausgeschlossen sein. Denn jede voluntative Überlegung pflegt ja auf die Fassung eines ihr zugehörigen Vorsatzes abzielen. Höchstens an solche Fälle könnte man denken, in denen mit Abbrechung der neuen Überlegung und unbeeinflußt durch sie das Subjekt den alten Vorsatz wieder übernimmt. Aber selbst wo ein solcher Fall vorliegt, ist es die ursprüngliche, nicht die zweite Überlegung, welche die nunmehr vollzogene Tötung zum Morde stempelt.

reflection reaches the old resolve for a second time. Then, the doing that follows from this presents itself objectively as a carrying-out as much of the old resolve as of the new. But it originates solely from the new resolve and is to be categorised as an action of carrying-out of it and it alone. Wherever a new resolve is reached, it most probably requires in accordance with § 211 a renewed reflection.

Where, however, there is action on the basis of the old resolve and in hindsight of it, such a reflection is not needed; it is even normally shut out. Because every volitional reflection normally reaches a resolve that belongs to it. At most one could think of such cases in which with the breaking-off of the new reflection, and uninfluenced by it, the subject takes on the old resolve again. But even where such a case obtains, it is the original reflection, not the second, which stamps the now performed killing as murder.

So berechtigt diese Unterscheidung an sich auch ist, so wenig wird sie doch endgültig befriedigen können. Sehen wir ganz davon ab, daß in der Praxis die Trennung eines auf Grund des alten Vorsatzes vollzogenen und eines neu vorgesetzten Tuns fast niemals möglich sein wird, so bleibt uns noch eine Klasse bisher unberührter Fälle übrig. Zweifellos ist der Eindruck des Unwertes und des negativen Interesses eines Tuns sehr viel lebendiger, wenn der Täter vor der Ausführungshandlung steht, als wenn er, noch weit von ihr entfernt, den Vorsatz faßt. Wie steht es, wenn jemand in heftiger emotionaler Erregung einen Vorsatz ausführt, den er früher mit Überlegung gefaßt hat, vor dessen Ausführung er aber ohne jene Erregung sicherlich zurückgeschreckt wäre? Insofern auf Grund eines mit Überlegung gefaßten Vorsatzes gehandelt wird, ist der Fall als Mord zu beurteilen. Und doch liegt eine offenbare Ungerechtigkeit hier vor. Der Täter hat keineswegs die Wertunempfänglichkeit des Mörders bewiesen, welcher unmittelbar angesichts der Tat seinen Vorsatz faßt; seine Gesinnung braucht um nichts minderwertiger zu sein als die des Totschlägers, der erst in der Erregung

As justified as this distinction as such is, it is equally unsatisfactory in the end. If we completely ignore here that in practice, the separating of a doing performed due to the old resolve from one newly resolved would almost never be possible, a class of cases not touched upon thus far still remains for us. Without doubt, the impression made by the disvalue and the negative interest of a doing is much livelier when the agent stands before the action of carrying it out than if he, still far away from it, grasps the resolve. How is it if someone, in a violent emotive turmoil, carries out a resolve that he had earlier reached with reflection, but from which, before the carrying out, without such a turmoil, he would surely have shrunk away from in horror? Insofar as a resolve reached with reflection is carried out, the case is to be judged as murder. And yet an obvious injustice exists here. The agent has in no way proven the unreceptivity to value of a murderer, who reaches his resolve immediately in the face of the act; his disposition needs in nothing to be valued lower than that of the manslaughterer who first in the turmoil and without any reflection rushes to the decision.

und ohne jede Überlegung zum Entschlusse hingerissen wird.

Solche Erwägungen haben wohl mitgewirkt, wenn man Überlegung bei der Ausführungshandlung forderte. Aber es ist nach unseren Darlegungen klar, daß *voluntative* Überlegung hier keine Stelle haben, praktische Überlegung aber sinnvollerweise nicht zur Kennzeichnung des Mordes verwendet werden kann. {311} Man hat sogar verlangt, daß die Ausführungshandlung sich mit Überlegung *bis an ihr Ende vollziehe*. Indessen kann Überlegung den Handlungsvollzug zwar *unterbrechen*, um eine neue Erkenntnis oder einen neuen Willensentschluß vorzubereiten; aber innerhalb eines auf Überlegung beruhenden kontinuierlichen Handlungsabflusses hat sie keine Stelle. Hier macht sich freilich häufig eine verwirrende Äquivokation bemerkbar: Das mit Überlegung vollzogene oder »überlegte« Tun gilt als das ruhige und affektlose Tun, im Gegensatz zu dem in »leidenschaftlicher Aufwallung« vollzogenen. Man übersieht dabei, daß das Strafgesetzbuch beim Morde vom Vorhandensein der Überlegung und nicht vom Fehlen des Affektes spricht; und daß es beim Totschlag vom Fehlen

Such considerations probably played a role when reflection was demanded with the action of carrying-out. But it is clear from our discussion that *volitional* reflection has no place here; practical reflection, though, in a more sensible way, cannot be used for the identification of murder. {311} It has even been asked that the action of carrying out itself is *performed* with reflection *through to its end*. In this, reflection can *break into* the performance of the action, to prepare a new recognition or a new decision of the will; but within a continuous flow of actions based on reflection, it has no place. Here very often a confusing equivocation makes itself notable: the doing fulfilled with reflection, the 'reflected-on' doing, is seen as a calm and emotionless doing, in opposition to that performed in a 'surge of passion'. In this, {two facts are} overlooked: {first,} that the civil code speaks, with regard to murder, of the presence of reflection, not of the absence of emotion; and {second,} that with regard to manslaughter it speaks of the absence of reflection and not of the presence of emotion. Nothing, however, is clearer than that on the one

der Überlegung spricht und nicht vom Vorhandensein eines Affektes. Nichts aber ist klarer, als daß es einerseits Überlegung während einer Gemüts-erregung geben kann, und daß andererseits ein Fehlen der Überlegung möglich ist ohne jeden Affekt. Gerade weil die Typenbildung des gewöhnlichen Lebens — welche von der jeweiligen strafrechtlichen Typenbildung in weitem Maße unabhängig sein kann — unter Totschlag die im Affekt verübte Tötung zu verstehen pflegt, und weil auch die strafrechtliche Praxis sich von dieser außergesetzlichen Anschauung nicht selten leiten zu lassen scheint, muß ihre prinzipielle Unterscheidung von den maßgebenden Begriffen des positiven Rechtes in aller Schärfe vollzogen werden. Ob eine an der »Gemüts-erregung« orientierte Scheidung befriedigen könnte, müßte Gegenstand einer eigenen Untersuchung sein; das für uns Wesentliche ist, daß die Scheidung nach dem Merkmal der Überlegung *nicht* befriedigen kann. Die deutsche juristische Literatur hat sich überwiegend *gegen* seine Beibehaltung ausgesprochen.^{49*} Die philosophische Analyse führt zu demselben Ergebnis. Angesichts der kommenden

hand there can be reflection during a turmoil of feelings, and on the other hand an absence of reflection is possible without any emotion. Precisely because the classification used in ordinary life — which to a great extent can be independent of the classification under the particular criminal law — tends to understand by manslaughter the killing committed in an emotional state, and because the practice of criminal law, too, often appears to allow itself to be led by this non-legal opinion, its distinction in principle from the authoritative concepts of the positive law must be accomplished in all sharpness. Whether a distinction oriented according to emotional turmoil could be satisfactory would have to be the object of a separate investigation; what is essential for us is that the differentiation based on the characteristic of reflection can *not* satisfy. German juristic literature has expressed itself in majority *against* {the reflection-based distinction's} retention.^{50*} The philosophical analysis leads to the same conclusion. In view of the coming reform of the criminal law, it must be stressed with particular emphasis: insofar as reflection possesses a merely symbolic character in the criminal law, and insofar as it

Strafrechtsreform muß es mit besonderem Nachdruck betont werden: Insofern die Überlegung im Strafrecht bloßen Symbolcharakter besitzt, und insofern sie nicht nur Verschiedenes, sondern direkt *Entgegengesetztes* symbolisieren kann, ist sie absolut untauglich, eine so schroffe und folgenschwere Unterscheidung, wie die von Mord und Totschlag nach heutigem Rechte, zu fixieren.

¹ Literally, ‘by reason of’ or ‘on the basis of’.

² ‘*Menschen*’; not to be confused with ‘persons’.

³ Reinach suggests two terms, *Einstellung* and *Haltung*, which he treats as synonyms. Both are translated here as ‘attitude’.

⁴ Reinach discusses questioning and asserting in this sense — as social acts — in *Die Apriorischen Grundlagen des bürgerlichen Rechtes*, §3.

⁵ * Es gibt auch eine Überlegung, welche sich einzig und allein das Verstehen zur Aufgabe macht. Von ihr sei hier abgesehen.

⁶ * There is also a reflection whose single assignment is to understand. This will be left aside here.

⁷ i.e. it creates this necessity of really engaging with the subject.

⁸ * Ob die adäquate Veranschaulichung des hier in Rede stehenden Satzinhaltes zu einer unmittelbaren Evidenz überhaupt zu führen vermag, bleibe hier dahingestellt.

⁹ * Whether the adequate illustration of the statement-content discussed here suffices to lead to immediate evidence, we shall leave unexplored.

¹⁰ ‘Reflexion’ refers to analysis of the experience, as opposed to *Überlegung*’s deliberation or consideration.

¹¹ (p. 37) Reinach’s point here warrants some clarification. All reflection is characterised by (1) the questioning attitude, from which it begins and in which the subject remains, and (2) a specific endpoint that is aimed at from the beginning. The means of getting from the characteristic starting-point of reflection to its characteristic endpoint can vary, but not matter how much it does vary, the process remains one of reflection and not some other process. Thus, reflection of the kind Reinach now means to discuss (where no amount of clear understanding is enough to resolve the question, and one seeks out new evidence, reasons for and against believing in the state of affairs) is simply another type of reflection with the same key characteristics as before.

¹² ‘*Einfallen*’ literally translates as ‘to fall into’. The idiomatic English translation here also indicates the passive nature of this process; ‘it occurs to me’ suggests ‘it happens to me’.

¹³ Here, an intention in the sense of that which one sets out to do, not in the sense of intentionality.

¹⁴ *Stützpunkt* also translates as a military base or stronghold, suggesting that the reasons

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- can be likened to conquered territory.
- ¹⁵ That is, an approach to psychology that attempts to make its subject matter reducible to logic.
- ¹⁶ On this page, ‘emotion’ translates ‘*Emotion*’ rather than the more usual ‘*Gefühl*’.
- ¹⁷ This attitude is of the same type as the attitude towards contemplation and the attitude towards reasons, mentioned above.
- ¹⁸ * Der Mensch, welcher nach fest angenommenen Prinzipien seine Vorsätze faßt, scheidet hier freilich aus. Solange er nicht diese Prinzipien und ihren ethischen Wert selbst in Frage zieht, bereitet er seine Willensentschlüsse durch rein intellektuelle Überlegung vor.
- ¹⁹ * The human being who grasps his resolves based on already-established principles is of course separate here. So long as he does not question these principles and their ethical value, he prepares his decisions of willing through pure intellectual reflection.
- ²⁰ * Die für ethische Probleme wichtige Scheidung, von der hier die Rede ist, ist von Dietrich Hildebrand in einer - noch nicht gedruckten - Arbeit über den »Träger der sittlichen Werte in der Handlung« prinzipiell durchgeführt worden.
- ²¹ That is, in the ‘attitude towards values’ or the ‘attitude towards rightness’.
- ²² * The distinction, important for ethical problems, of which we speak here has been carried out in principle by Dietrich Hildebrand in a — not yet published — work on the ‘bearers of the moral values in actions’.
- ²³ * Auch hier sind natürlich axiomatische Zusammenhänge vorausgesetzt, deren genauere Formulierung zu weit führen würde.
- ²⁴ * Vergleiche unten sub 2.
- ²⁵ * Here too, naturally, axiomatic relationships are assumed, the more precise formulation of which would lead too far.
- ²⁶ * Cf. under section 2.
- ²⁷ * Vgl. aber unter III.
- ²⁸ * Cf., however, under III.
- ²⁹ Literally, ‘can only disappear behind’.
- ³⁰ The third assessment of reflection, i.e., that ‘a reprehensible action increases in ethical disvalue if it was performed with reflection’.
- ³¹ Based on Reinach’s subsequent comments, ‘commit’ here seems to mean the reaching of the resolve, not the actual carrying out of the crime.
- ³² * Vgl. Katzenstein, »Die vorsätzliche Tötung nach geltendem Recht«, *Zeitschrift für die gesamte Straf[rechts]wissenschaft*, Band 24, S. 517ff.
- ³³ * Über die Vertretung einzelner dieser Möglichkeiten in der Strafrechtstheorie vgl. Katzenstein, a.a.O., S. 516f.
- ³⁴ * Cf. Katzenstein, ‘Intentional killing in the present law’, *Zeitschrift für die gesamte Straf[rechts]wissenschaft*, volume 24, p. 517ff.
- ³⁵ * Concerning the advocacy of these possibilities in the theory of criminal law, cf. Katzenstein, *ibid.*, p. 516f.
- ³⁶ That is to say, indifferent under the positive law Reinach is discussing, which takes into account only whether or not the action was carried out ‘with reflection’.
- ³⁷ * Scharf davon zu trennen ist die Unempfänglichkeit gegenüber der Bestrafung als solcher, welche sehr wohl einen ethischen Unwert darstellen kann.
- ³⁸ * Unsre früheren Analysen und Unterscheidungen gestatten hier eine analoge Anwendung.
- ³⁹ * To be sharply divided from this is the unreceptivity towards being punished as such, which can very well be explained as an ethical disvalue.

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- ⁴⁰ * Our earlier analyses and differentiations allow here an analogous application.
- ⁴¹ * Vgl. Reichsanzeiger vom 12. Juli 1912.
- ⁴² * Cf. {*Deutscher*} *Reichsanzeiger* from July 12 1912.
- ⁴³ * a.a.O., S. 524f.
- ⁴⁴ * Analoge Bedenken vom rechtspolitischen Standpunkte aus bei von Liszt, *Vergleichende Darstellung des deutschen und ausländischen Strafrechts, Besonderer Teil, Band V*, S. 63.
- ⁴⁵ * *Ibid.*, p. 524f.
- ⁴⁶ * Analogous thoughts from a legal-political standpoint from von Liszt, *Comparative account of the German and foreign criminal laws*, special section, volume V, p. 63.
- ⁴⁷ i.e., that a human being who is thoughtless and unreflective is less morally valuable than one who reflects on his or her actions.
- ⁴⁸ Reinach's meaning is not clear here. So far he has indicated that the ethical and legal assessments of volitional reflection have the same conclusion, though for different reasons (and 'legal value' has not figured at all).
- ⁴⁹ * von Liszt, a.a.O., S. 43f.
- ⁵⁰ * von Liszt, *ibid.*, p. 43f.

APPENDIX (IV)

‘GRUNDZÜGE DER ETHIK’

Part of Reinach's *Einleitung in die Philosophie* course (1913).

First published in *Sämtliche Werke*, pp. 485-513.

GRUNDZÜGE DER ETHIK

{485} §1

[Das Wertproblem]

[Die] Welt der Werte und Unwerte [ist] grundsätzlich geschieden von [der] Welt, wie [die] Psychologie sie betrachtet. [Im] Gebiet der Psychologie [geht es um die] deskriptive Verwandtschaft der Akte. Liebe und Haß [sind in] ihm näher verwandt (Gesinnungen) als Liebe und Vergeben (Akte). Psychologie schaltet notwendig Wertbetrachtungen aus. [Der] Ethiker [scheidet] anders: Liebe und Vergeben [sind] sehr nahe verwandt, [auch] Haß und Neid. Aber Liebe und Haß [gehören ihm] auseinander. Es gibt nicht nur [den] von Spinoza so gut beschriebenen Gesichtspunkt des Psychologen in der Welt. Werte z. B. sind [ebenfalls eine] Sphäre, wo wir wahre und falsche Urteile [und] Auffassungen haben¹ können, [und es gibt] verschiedene Begabungen der Menschen in [der]

BASIC FEATURES OF ETHICS

{485} §1

[The problem of value]

[The] world of values and disvalues [is] fundamentally different from [the] world as psychology sees it. [In] the domain of psychology, [it is all a matter of] the descriptive relationships of acts. [In] it, love and hate [are] more closely related (dispositions) than are love and forgiving (acts). Psychology necessarily excludes the consideration of value. [The] ethicist [distinguishes things] differently: love and forgiving [are] very closely related, [as are] hate and envy. But love and hate, [for him] are opposites. [The] viewpoint of psychology so well described by Spinoza is not the only one that exists in the world. Values, for example, are [likewise a] sphere where we can have true and false judgements [and] perspectives, [and there are] different talents among human beings in the grasping of these distinctions of value.

Erfassung dieser Wertunterschiede.

[Es gibt] viele Orte der Werte im Bewußtsein: einzelne Erlebnisse (*Wertfühlen*), Charakterzüge, [die] ganze Person (*Wert der Person: Ethik als personale Werttheorie*). *Was macht etwas zum Wert, und was zum sittlichen Wert?* Wertcharaktere sonst [sind z. B. die] Schönheit einer Landschaft, Klugheit u. dgl. Was unterscheidet ethische Werte? [Es gibt] verschiedene Stufenreihen hier. *Man scheidet Wertmodalitäten, Werthöhe, Wertgröße, Wertcharakter*. Grund [genug] für [eine] Phänomenologie der ethischen Werte! Dann aber [auch für eine] Phänomenologie der sittlichen Wertcharaktere als Gegenständliches (*Träger der Werte: Personenwerte, Eigenschaftswerte, Aktwerte* u. Dgl.).

Soweit die personalen Funktionen der Personen; [*nun zur Rangordnung der Werte*]. In [diese] andere Richtung blickend [sehen wir, daß z. B. bei der] Geschichtswissenschaft statt [einer] bloß tatsächlichen Darstellung, welche [hier] ebenso möglich ist wie in [der] Psychologie, [eine] sittliche Beurteilung gewöhnlich dabei [ist]. [*Zwar werden wertfreie Tatsachen geschildert, aber [sie werden] doch*

[There are] many places for values in consciousness: individual experiences (*the feeling of value*), traits of character, [the] entire person (*value of the person: ethics as a personal value-theory*). *What makes something into a value, and what into a moral value?* {Non-moral} value-characters [are, for example, the] beauty of a landscape, wisdom, and suchlike. What distinguishes ethical values {from these}? [There are] different tiers here. *One distinguishes modalities, heights, magnitudes and characters of value*. Basis [enough] for [a] phenomenology of ethical values! But then [also for a] phenomenology of moral value-characters as objective (*bearers of values: values of persons, of characteristics, of acts, and so on*).

So far {we have addressed} the personal functions of persons; [*now to the hierarchy of values*]. Looking in [this] other direction [we see that, for example, in the] science of history, [a] purely factual presentation (which is just as possible [here] as in psychology) [is] customarily accompanied by [a] moral assessment. *Value-free facts [are indeed] portrayed, but [they are] nevertheless viewed in a valuating manner. [From*

wertend aufgefaßt. [Daher der] Streit: *this comes the] dispute: [is] history*
 [Ist] Geschichte schlicht erzählend *plainly narrative, or [to be viewed]*
 oder unter [den] Gesichtspunkt des *under the viewpoint of the 'ought to*
 Seinsollens [zu stellen]? Hier [in der] *be'?*² Here [in the] world of what
 Welt des Seinsollens [ist ein] neues *ought to be, [a] new domain of the*
 Gebiet des ethisch Rechten und {486} *ethically right and {486} wrong [is*
 Unrechten [gegeben]. [Dieser] Begriff *given]. [This] concept of moral*
 der sittlichen Rechtheit führt [den] *rightness takes value [from the] world*
 Wert [aus der] Welt der Werte in [die] *of values into [the] world of being.*
 Welt des Seins. [Rechtheit] steht in *[Rightness] stands in a close*
 nahem Zusammenhang mit [der] *connection with [the] world of personal*
 personalen Wertewelt. Aber [sie ist] *values. But {the former} is not so rich*
 nicht so reich wie diese. [Die] *as {the latter}. The extensive nuancing*
 weitgehende Nüancierung der ethisch- *of the ethical-personal world of values*
 personalen Wertewelt ([der] personalen *([the] personal moral values) finds no*
 sittlichen Werte) findet hier kein *analogue here.*
 Analogon.

Glück und Sittlichkeit in ihrem
 Verhältnis: Glück des sittlichen
 Menschen ist recht, d. h. es ist recht,
 daß der sittliche Mensch glücklich ist.
 Aber [es besteht] kein
 Seinszusammenhang hier, wie so viele
 behauptet haben. »[Der] sittlich
 wertvolle Mensch [ist] notwendig
 glücklich« ist [et]was prinzipiell
 anderes wie »Es sollte so sein, daß der
 sittlich wertvolle Mensch glücklicher
 ist als der sittlich Nichtwertvolle.« [Es
 ist z. B. ein] einleuchtender Satz, daß
 es nur gerecht ist, wenn die Guten
 glücklich sind. Man denke [auch] an
 Strafe!

Happiness and morality in their
 relationship: The happiness of the
 moral human being is right; that is, it is
 right that the moral human being is
 happy. But [there obtains] here no
 relationship of being, as so many have
 proposed. '[The] morally valuable
 human being is necessarily happy' is
 something in principle different from 'it
 should be so that the morally valuable
 human being is happier than the one
 who is not morally valuable.'³ [It is, for
 example, a] self-explanatory statement
 that it is only just if the good are happy.
 Think [also] of punishment!

Hier [ist der Ort für eine] Philosophie des Rechtes und *des* Unrechtes, [eine] Rechtsphilosophie im weitesten Sinne. *Darin [wäre die] Philosophie des positiven Rechts [nur] ein Kapitel.* Träger der Rechtheiten können anders sein als Träger der persönlichen Werte (*Sittlichkeitswerte*). Recht und unrecht sind nur Sachverhalte (*[Bereich der] sittlichen Rechtheitslehre*). Sittlich wertvoll sind Personen, Eigenschaften u. dgl.: keine Sachverhalte, sondern Gegenstände (*[Bereich der] sittlichen Wertlehre*). *[Ein] Drittes [ist die] Lehre von [den] Gütern (Güterlehre).* Was ist ein Gut? *[Hier gibt es eine] Rangordnung.* Im Strafrecht werden Güter geschützt. Leben oder Besitz sind nicht *[die] Person selbst.* Nur *[die] Existenz der Güter oder ihre Vernichtung* können recht oder unrecht sein.

[Die] Probleme der Ethik [sind] sehr verschieden formulierbar in bezug auf die drei Gebiete; besonders [aber] sind die drei auseinanderzuhalten.

§2⁸

Eudämonismus und Utilitarismus

Diese gehen aus vom menschlichen Handeln und *[sehen es als ihre] Aufgabe, [ein] Ziel für [das] Tun*

Here [is the place for a] philosophy of the right and *the* wrong, [a] philosophy of right⁴ in the widest sense. *Therein, [the] philosophy of the positive law [would be just] a chapter.* Bearers of rightness⁵ can be different from the bearers of personal values (*moral values*). Only states of affairs are right and wrong⁶ (*[sphere of the] doctrine of moral rightness*). Persons, characteristics and suchlike are morally valuable: not states of affairs, but objects (*[sphere of the] doctrine of moral value*). [A] third [is the] doctrine of goods (*doctrine of goods*). What is a good? [Here there is a] hierarchy. In the criminal law, goods are protected. Life or property is not [the] person herself.⁷ Only [the] existence of goods or their destruction can be right or wrong.

The problems of ethics [can be] very differently formulated in relation to these three domains; [but] importantly, the three are to be distinguished from one another.

§2

Eudaimonism and Utilitarianism

These take human action as their point of departure and *[see it as their] task to prescribe [a] goal for acting:*

vorzuzeichnen: Glück, Lust, Genuß beim Eudämonismus, Nutzen beim Utilitarismus. *happiness, pleasure, enjoyment for eudaimonism; usefulness for utilitarianism.*

Zuerst [ist der] spezifisch hedonistische Gedanke hervorzuheben: *Es liegt im Wesen, im Sinne des Wollens selbst, Lust des Wollenden zu suchen.* Irgendeine andere Willenslehre und Ethik [wird nicht zugestanden]. Jeder Mensch will nur das, kann nur das wollen, wovon er sieht, daß es ihm Lust machen wird. *Dem Sprachgebrauch nach läßt sich [darum statt] »Ich will etwas tun« sagen »ich habe Lust dazu«. [Zu untersuchen [ist]: Um welche Lust handelt es sich [dabei]? [Eine] Orientierung [der] hedonistischen Prinzipien an [der] Wahl [ist dabei gegeben]: [Von der] Vorstellung der verschiedenen Alternativen als realisiert [geht man über zur] Auswahl dessen, wovon man wesensmäßig die meiste {487} Lust erwartet. Bei Wahlakten [würde also] das ausgewählt, dessen vorgestellte Erfüllung uns am meisten befriedigt. Dies ist ein allgemeines Gesetz, sagt [der] Hedonismus. Maximum der Lust bzw. Minimum der Unlust ist [das] entscheidende Moment. Auswahl des Unlustigen [geschieht nur] um noch größere Unlust zu vermeiden.* First, [the] specifically hedonistic idea [is] to be emphasised: *it lies in the essence, in the meaning of willing itself, to seek the pleasure of the one who wills.* Any other kind of teaching on the will and ethics [is not admitted]. Every human being wants only that, can want only that of which he sees that it will bring him pleasure. *According to customary speech it is [thus] possible to say 'I want to do something' as 'It would please me to do that'.⁹ [To be] investigated [is]: which pleasure do we talk about here? [An] orientation [of the] hedonistic principles toward choice [is given with this]: [from the] presentation of the different alternatives as realised, [one proceeds to] pick out that from which, based on its essence, one expects the most {487} pleasure. With acts of choosing, [then], that {option} [will be] chosen whose predicted fulfilment will satisfy us the most. This is a general law, says hedonism. The maximum of pleasure and the minimum of displeasure is [the] decisive factor. The choosing of a displeasure [occurs only] in order to avoid even greater displeasure.*

Lust [meint] stets Eigenlust hier: *Wollen bezieht sich auf eigene Lust. Damit [ergibt sich] hier [die] Lehre des notwendigen Egoismus. Für [den] Hedonismus hat [die] Unterscheidung von Egoismus und Altruismus keinen Sinn, prinzipiell stehe [der] Altruismus auf gleicher Stufe wie [der] Egoismus. [Der] Gedanke des Retters, [einen] Menschen zu retten, [ist]¹⁰ lustvoller [und schenkt] größere Befriedigung als der des das Kind Ertrinkenlassens (in [einem] andern Fall kommt vielleicht [der] Gedanke an eigene Gefahr mehr zur Geltung). Hier [ist] gezeigt, daß es [eine] Ethik im gewöhnlichen Sinn gar nicht geben kann. [Das] Gebot »Bezwecke [das] Wohl des Andern in deinem Tun« ist sinnlos, denn es ist [eine] wesensgesetzliche Unmöglichkeit. Grundsatz der Ethik hier ist [daher der] Satz, wie etwas sein muß, statt sein soll. Ethik stellt nur fest, was klug ist; nur [eine] Klugheitslehre [ist hier] noch möglich. Gebote ethischer Art sind nicht mehr aufzustellen. [Ein] Gebot etwas zu tun ist sinnlos, entweder weil unmöglich oder selbstverständlich soseiend.*

[Der] Eudämonismus geht aus

Pleasure always [means] one's own pleasure here: *willing relates to one's own pleasure. Thus [is here stated] the doctrine of necessary egoism. For hedonism, the difference between egoism and altruism has no sense; altruism is in principle on the same level as egoism. [The] idea of rescuing [a] human being [is], for the rescuer, more pleasurable [and provides] greater satisfaction than leaving the child to drown (in [a] different case [the] thought of one's own being in danger may take priority). In this it [is] indicated that there cannot be [an] ethics in the customary sense at all. [The] exhortation 'aim toward the well-being of others in your actions' is senseless, because it is [an] impossibility by a law of essence. The basic statement of ethics here is [therefore the] statement of how something must be, instead of how it ought to be. Ethics only puts forward what is prudent; only [a] doctrine of prudence¹¹ [is] still possible [here]. Commandments of an ethical sort are no longer to be set out. [A] commandment to do something is senseless, either because it is impossible, or because it is self-evidently so.¹²*

Eudaimonism sets out from [a]

von [einer] hedonistischen Theorie des Wollens. *Kritik* [und] Stellung[nahme] zu diesen Grundsätzen: [Die] erkenntnistheoretische Struktur der Grundsätze *der Theorie* ist ganz komisch. *Alle Altruisten seien Egoisten, sagt der Hedonismus. Aber wenn auch faktisch alle Menschen Egoisten wären, würde dieses [eine] eudämonistische Lehre nicht nötig machen. Wir könnten doch sagen: Es sind alle Leute bis jetzt Egoisten gewesen, aber ihr sollt es nicht sein!* [Der] Eudämonismus meint aber [einen] Wesenszweck: *Im Wesen des Wollens liegt [es], Egoist zu sein.*

Dazu ist [die] Wollensstruktur näher zu untersuchen. *Nicht alles, dessen Realisierung gewollt ist, ist von gleichem Range. Endpunkt des Realisierens [ist der] Zweck des Wollens. Zweck [ist also], um dessen willen bei jedem Wollen das letztlich zu realisierende Ziel [gewollt wird], für das alles andere dabei Mittel ist. Motiv ist etwas anderes: das, was mich zum Entschluß bestimmt. [Das ist] ganz anders als [der] Zweck. [Der] Zweck muß etwas zukünftig zu Realisierendes sein, [das] Motiv kann in [der] Vergangenheit liegen. [Ein] Motiv [ist] in zwei Bedeutungen¹⁴ möglich: [als] vergangener Tatbestand oder dadurch*

Therefore, [the] structure of willing is to be investigated more closely. *Not everything whose realisation is willed is of the same status. The endpoint of the realisation [is the] purpose¹⁵ of the willing.* The purpose, [then, is] that for the sake of which the final goal to be realised [is willed], for which everything else is a means. Motive is something different: that which determines me to a decision. [That is] very different from [the] purpose. [The] purpose must be something to be realised in the future; [the] motive can lie in [the] past. [A] motive [is] possible in two senses: {first} [as] a past fact, or {second, as}

hervorgerufene Gesinnung. [Die] Tatsache einer vergangenen Wohltat z. B. oder Dankbarkeit [dafür]. Letzteres fassen wir nicht ins Auge, obgleich es da ist und motivierende Kraft ausübt. [Die] frühere Wohltat vergegenwärtige ich: [sie] ist Motiv. [Die] Dankbarkeit [*ist dagegen*] *nicht selbst Motiv*. *Dankbarkeit* nennen wir Quelle des *Wollens*. Z. B. Quelle [eines Wohltuns] ist Frömmigkeit, Zweck ist Hilfe der Armen, Motiv ist [das] Gebot Gottes. »Wozu« (»um zu«) weist hin auf Zweck, »weil« auf Motiv, »aus« auf Quelle.

{488} Soll [die] »Lust« des Hedonismus nun Zweck, Motiv oder Quelle *beim Wollen* sein? Wenigstens [ist sie] nicht Zweck in unserem Sinn. [*Dies*] *kann der Hedonist nicht sagen*. [Es gibt nur] sehr wenige Fälle, wo dieses wirklich das Ziel ist.¹⁶ *Nur bei abnormalen Fällen* [kommt dergleichen vor]: *beim* Psychologen *kann Zweck die Gewinnung der Lust sein*, der sich [z. B. einen] Fall von Lust zur Analyse herbeiholen will. *Aber Lust als Motiv?* Motiv [ist sie] auch nicht, [denn ein] *Motiv* [ist] das was uns vorschwebt und uns zum Tun

a disposition called for by the former. The fact of a past good deed, as an example {of the former}, or gratitude [for the same] {as an example of the latter}. We do not fix our attention on the latter, although it is there and exercises motivating power. [The] earlier good deed, {which} I presentiate to myself, is {my} motive. The gratitude, [*on the other hand, is*] *not itself a motive*. We call *gratitude* the source of the *willing*. For example, the source [of a good deed] is piety; the purpose is to help the poor; the motive is God's commandment. 'For what' ('*In order to*') indicates purpose, 'because' indicates motive, 'out of' indicates source.

{488} Should [the] 'pleasure' of hedonism now be the purpose, motive or source *for willing*? At least, [it is] not purpose in our sense. [*This*], *the hedonist cannot say*. [There are only] very few cases where this is really the goal. *Only in abnormal cases* [does this occur]: [for example], *for the* psychologist who wants to bring about [a] case of pleasure for analysis, *the achievement of pleasure can be a purpose*.¹⁸ *But pleasure as motive?* [It is] also not motive, [because a] *motive* [is] that which we have in mind and which determines us to action. With

bestimmt. Bei [der] Rettung des Kindes [ist es aber] sicher nicht so, [daß der] *Gedanke an künftige Lust [unser Handeln motiviert]*. Nun [erst kommt das] richtige Geschütz des Hedonismus: Lust ist *die* Quelle der Handlung. *Lust gibt dem Motiv erst die motivierende Kraft*. Aber hier [hilft] kein *Gedanke an künftige Lust*, sondern [nur ein] gegenwärtiges Gefühl der Lust. Wenigstens *sind* solche Fälle sehr häufig. [Die] Meinung¹⁷ [des Hedonismus] wäre hier wenigstens verständlich. Aber was hätte er eigentlich gewonnen? Es gibt Fälle, wo [der] *Gedanke an [das] Wohl eines Anderen uns mit Freude erfüllt* ([das] sind [die] gewöhnlich »altruistisch« genannten Fälle). *Freude als Quelle ist [also] möglich*. Aber daraus muß [der] Hedonismus nicht [den] Gedanken einer zukünftigen Lust *als Zweck* machen.

Ist [das] Wohl des anderen der Zweck, [so spricht man von] Altruismus. [Er wird] nicht aufgehoben dadurch, daß fremdes Wohl mich mit Freude erfüllt. Ist eigenes Wohl der Zweck, [so haben wir] Egoismus. [Die] Scheidung [von] Egoismus und²⁰ Altruismus betrifft [also den] Zweck. Selbst wenn [die] hedonistische Behauptung wahr wäre, so würde

[the] rescuing of a child, [though, it is] certainly not so [that the] *idea of future pleasure [motivates our action]*. Now [at last come the] real big guns of hedonism: pleasure is *the* source of action. *Pleasure¹⁹ gives the motive its motivational power*. But here, no idea of a future pleasure [helps], but [only a] present feeling of pleasure. At least such cases *are* very common. [The] opinion [of hedonism] would here at least be understandable. But what would it actually have achieved? There are cases in which [the] idea of [the] well-being of another fills us with joy (what would customarily be called the 'altruistic' cases). Joy as a source is [therefore] possible. But hedonism must not make of this that the idea of a future pleasure can be *a purpose*.

If [the] well-being of the other is the purpose, [then one speaks of] altruism. [This would] not [be] annulled {by the fact} that the well-being of others fills me with joy. If one's own well-being is the purpose, [then we have] egoism. [The] distinction [between] egoism and altruism [thus] relates to the purpose. Even if [the] hedonistic assertion were

[daraus] nichts für [die] Ethik folgen. Prinzipien u. dgl. [wären] hier noch möglich.

Wir wollen aber [den hedonistischen] Grundsatz selbst befragen. Welche Lust [ist darin gemeint]? [Die] eine Alternative [haben wir] abgelehnt. [Ein] *Wesensgesetz, daß Lust Quelle sei, [ist] nicht als solches anzuerkennen.* [Die] andere [Alternative ist]: [Der] Gedanke an [die] Realisierung des Willenszieles [ist] lustbereitend. [Aber] muß es so sein, daß ich bei [einer] Wahl das Ziel wähle, dessen Vorstellung mich mit größter Lust erfüllt?

[Man muß sich dabei] am Wollen [selber] orientieren. Es gibt eben verschiedene Wollens- und Wahlarten: freudiges, mühsames, ungernes u. dgl. *Notwendigkeit des Lustmoments?* [Aber] man muß sich nicht nur an ethischen Beispielen orientieren. Es gibt gänzlich gleichgültige Wahlen. *[Und es ist] möglich, Entschlüsse mit reiner Unlust zu fassen.* Jemand tut etwas, bloß weil es ihm geboten wurde. Das Befohlene selbst kann ihn sogar bloß mit Unlust erfüllen. Aber *der Hedonismus* sagt: *Die Befehlsausführung ist größere Lust, wenn auch das Ziel selbst Unlust erweckt, als [den] Befehl nicht zu*

true, [it] would have no consequences for ethics. Principles and the like [would] still [be] possible.

But we want to question [the hedonistic] founding statement itself. Which pleasure [is meant there]? [We have] rejected one alternative. *[A] law of essence that pleasure is the source [is] not, as such, to be acknowledged.* [The] other [alternative is]: [The] thought of [the] realisation of the goal of willing brings pleasure. [But] must it be that with the choosing of [a] goal, I choose the one whose presentation fills me with greater pleasure?

[In this we must] take our cue from willing [itself]. There are indeed different kinds of willing and choosing: joyful, laboured, reluctant, and so on. *Necessity of the factor of pleasure?* [But] one must not only look toward ethical examples. There are entirely indifferent choices. *[And it is] possible to make decisions with outright displeasure.* Someone does something simply because it was bidden of him. That which is ordered of one²¹ can, in and of itself, fill one with displeasure. But *hedonism* says: *To carry out the order is a greater pleasure than not to obey it, even if the goal itself brings displeasure;* [thus, the] carrying out of

erfüllen; [also die] Erfüllung des Befehls ist das, dessen Ausführung mich mit Freude erfüllt. *Solche Fälle der Befehlsausführung kommen vor, aber* [es ist] Unsinn [zu meinen], daß dieses stets [der] Grund ist. *Bei [einem] Befehl liegt meistens nicht [der] Gedanke an Lust vor.* [Ein] Soldat entschließt sich nicht auf Grund einer Vergegenwärtigung mehrerer Ziele, *[sondern der] Befehl wird einfach erfüllt.* {489} [Die] Tatsache, daß ich etwas gern oder ungern tue, hat begünstigenden oder entgegengesetzten Einfluß auf [das] Entschließen *[und die] Entschlußfassung.* Wo [ich etwas] ungern [tue], da ist [ein] besonderer Grund nötig, um es zum Entschluß zu bringen. Nach hedonistischer Theorie wäre ungerne Tun unmöglich. Es hilft nicht, nach Lust dabei zu suchen, denn [der] Hedonismus hat [hier schließlich ein] Wesensgesetz behauptet. [Der] Hedonismus scheitert [also] an zwei Sätzen:

1. Wäre alles Wollen lustvolles, dann wäre Lust noch nicht zum Zweck gemacht.
2. Selbst das [ist aber] nicht richtig.

[Die] Scheidung hier [von] Egoismus und Altruismus ist primitiv *[und] reicht nicht aus bei sittlicher*

the order is what fills me with joy. *Such cases of carrying out orders do occur, but* it is unsound [to believe] that this is always the reason. *With [an] order, the thought of pleasure mostly does not come into it.* [A] soldier decides not on the basis of the presentation of several goals, *[but the] order is simply carried out.* {489} [The] fact that I do something gladly or reluctantly has an encouraging or opposing influence on [the] deciding *[and the] decision.* Where [I do something] reluctantly, then [a] particular reason is necessary to bring about the decision. By hedonistic theories, reluctant doing would be impossible. It does not help to seek pleasure within that, because [here] hedonism has [ultimately] stated [an] essential law. Hedonism [thus] fails on two accounts:

1. If all willing was pleasant, then pleasure would still not be made into a purpose.
2. Even the former [is in any case] not correct.

[The] difference here [between] egoism and altruism is primitive [and] is not sufficient for a moral evaluation.

Wertung. Man kann etwas um der Gerechtigkeit selbst willen tun, [aber im] Gebot der Gerechtigkeit spielt mein und anderer Wohl keine Rolle. Dieses [ist dann] weder Egoismus noch Altruismus. Nur einen Ausschnitt aus [dem] ethisch relevanten Tun kann man also unter dieser Rubrik behandeln. [Wäre] Egoismus alles zu nennen, was auf Bereicherung der eigenen Person (statt [auf das allgemeine] »Wohl«) abzielt? Nein. [Das] Wesen des Egoismus [ist] durch [diese] Beziehung auf [die] eigene Person nicht ausgemacht [und] nicht eindeutig bestimmt. [Denn die] Rettung der eigenen Person kann wegen großer Aufgaben geschehen. Nur [die] Intention kommt für [die] Unterscheidung hier in Frage. [Das] Phänomen, das [dem] Egoismus zugrunde liegt, ist [eine] Haltung, die nichts in der Welt betrachten kann ohne Beziehung auf das Ich. Egoismus [ist dieses] Verschieben des eigenen Ich und [die] Beziehung aller Dinge auf das eigene Ich. Alles wird zum Größeren, Angenehm-für u. dgl. [Die] Größe eines Menschen [ist dann] stets [ein] »größer als ich«. Keine reinen Sachbetrachtungen [sind] hier möglich. Objektive Versenkung in [die] Welt und ihre Schönheit [z. B. ist]
One can do something for the sake of the justice of it, [but in the] commandment of justice my well-being and that of others play no part. This [is then] neither egoism nor altruism. So one can only treat of a part of ethically relevant acting under this rubric. [Would] everything that aims toward the enrichment of the individual person (instead of [toward the general] 'well-being') be described as egoism? No. [The] nature of egoism [is] not constituted from [this] relationship with one's own person [and] not univocally determined. [Because the] rescuing of one's own person can be done for the sake of great tasks. Only [the] intention comes into question for the differentiation here. [The] phenomenon that forms the basis of egoism is [an] attitude which cannot see anything in the world except through its relationship to the I. Egoism [is this] dislocation²² of one's own I and [the] orientation of all things toward one's own I. Everything becomes greater-than, pleasant for, and suchlike. [The] height²³ of a human being [is then] always 'bigger than me.' No pure viewings of facts²⁴ [are] possible here. Objective contemplation of [the] world and its beauty, [for example, is] impossible. [The] thought

unmöglich. *[Der] Gedanke an das Ich schiebt sich zwischen [das] Objekt und den Andern.* *of the I moves between [the] object and the other.*

Egoistisch ist [eine] Haltung, die immer fragt: Was bedeutet [eine] Handlung für mich; nie: für die anderen. *[Die] Auswahl der Projekte [geschieht] durch das »für mich«.* *[Die] Behauptung von Scheler: »Egoismus setzt [den] Blick auf andere voraus« stimmt nicht beim krassesten Egoismus.* *[Dieser] Egoismus setzt nicht [den] Blick auf [den] anderen voraus. Das, was ihn selbst bereichert, gewinnt für ihn, [den Egoisten,] zwar Vorzug.²⁵ [Aber] das Ich, die Person, steht nicht als ganze Persönlichkeit in gefühltem höherem Eigenwert da, ich [stelle mich] nicht als wertvolle Person vor. Egoismus ist Außersachlichkeit in besonders prägnantem Sinn, den wir sonst nicht in der Welt finden. [Ein] Mensch, der sich überschätzt, ist kein Egoist, [denn er] handelt noch aus Gründen ([der] Egoist schützt sie nur vor), [wenn] zwar [aus] einer subjektiven Täuschung. Aber [der] Egoist [ist] dadurch bezeichnet, daß ihm [sein] eigenes Wohl, bloß als eigenes, lieber ist als das eines anderen. Der echte Egoist handelt [insofern] nicht nach Gründen. Kants kategorischer Imperativ richtet sich* *[An] attitude is egoistic which always asks what [an] action means for me, never for others. [The] selection of projects [occurs] through the 'for me.'* *Scheler's assertion: 'egoism presupposes that one has others in mind' does not apply in the case of the most crass egoism. [This] egoism does not presuppose that one has others in mind. That which enriches [the egoist] himself or herself certainly earns his or her preference. [But] the I, the person, is not, as a complete personality, represented in the fullness of its higher intrinsic value; I do not [represent myself] as a valuable person. Egoism is non-objectivity²⁶ in an especially blatant sense, which we do not find elsewhere in the world. [A] human being who overrates himself is not an egoist, [because he] still acts based on reasons ([the] egoist only pleads them as excuses), [if] admittedly [from] a subjective delusion. But [the] egoist [is] characterised by the fact that, for him, [his] own well-being, simply for being his own, is dearer than that of any other. [To this extent] the genuine egoist does not act for reasons. Kant's categorical imperative opposes this*

besonders gegen diese spezielle particular attitude especially. *For Kant, Einstellung. Auch nach Kant müssen {490} too, all personal qualities must {490} alle personalen Qualitäten mit in be integrated into [the] action. Kant [die] Handlung aufgenommen werden. does not believe that [acting is] in Kant meint nicht, [zu handeln sei] general without regard for all allgemein ohne Ansehung aller circumstances. [But the] I can claim no Umstände. [Aber das] Ich kann keine exceptional position merely on account Ausnahmestelle behaupten bloß wegen of [its] being my own. We can deduce [seiner] Eigenheit. Aus dieser nearly all moral disvalues (envy, hate, Einstellung können wir beinahe alle malice, *ressentiment*) from this sittlichen Unwerte ableiten: Neid, Haß, attitude. *True egoism*, [therefore], is Bosheit, *Ressentiment*. *Der echte* rightly {called} the radical evil in *Egoismus* ist [so] recht das radikale human nature. Böse in [der] menschlichen Natur.*

Es gibt aber neben [dem] Alongside [the] egoism of the I, Egoismus des Ich einen Egoismus des however, there is also an egoism of the Wir, *worin [das] Ich des Egoisten nur We, wherein [the] I of the egoist is only ein Glied ist. Dieser steht auf einer one part. This stands on the same level Stufe mit [dem] anderen Egoismus. as [the] other egoism. [Here,] two [Hier sind] zwei verschiedene Fälle different cases [must be distinguished]. [zu unterscheiden]. Es kann [den] Fall [The] case can exist where [a] human geben, wo [ein] Mensch erst bei seinen being only really sees true, objective Freunden [so] recht objektive Werte values in relation to his friends. *One's* sieht. [Das] *eigene Wohl ist das own well-being is the most important; Wichtigste; nur beim Wohle der only to the friends' well-being does the Freunde tritt das Ich zurück. Da [liegt] I take second place. There, no we- kein Wir-Egoismus [vor]. [Ein] anderer egoism [obtains]. [A] different case, Fall aber ist richtiger Egoismus: Unser though, is true egoism: our well-being Wohl [wird gewollt], bloß weil [es] auf [is willed], merely because [it is] [das] Wir bezogen [ist]. Mit den related to [the] We. *Forming the We Freunden zusammen das Wir bildend, together with the friends, 'our' well- hat »unser« Wohl Vorrang vor fremdem being has precedence over the well- Wohle. [Das] Wesen des Egoismus [ist] being of strangers. [The] nature of***

hier genau dasselbe [wie oben].

Wie ist [der] Altruismus jetzt zu bezeichnen? *[Man darf ihn] nicht einfach am »fremden Wohl« orientieren. Altruismus [ist] ein Gegensatz zu egoistischem Tun [und insofern] ein Drittes neben [dem] sachlich Gerichtetsein und [dem] Egoismus. [Es] fehlt jeder Grund, [das] sachlich Gerichtetsein als »Altruismus« zu bezeichnen. Sachliche Einstellung [ist] nicht [ein] entsprechendes Gegenstück zum Egoismus. [Das wäre sie] nur da, wo Alter [einen] echten Gegensatz zu Ego bildet. Es gibt [tatsächlich] (seltene) Fälle, wo Alter an [die] Stelle des Ich tritt: Menschen, denen [das] Wohl der Fremden, bloß weil [es das] der Fremden ist, höher steht. Fremdes Wohl ist [dabei] wichtig einzig in [seiner] Eigenschaft als fremd. Neigung zur Selbstunterschätzung ist Folge, nicht Grund hier. Folgeerscheinung [ist außerdem die] Außersachlichkeit. Wo [der Altruismus] Gründe voraussetzt, [ist allerdings] dann immer noch [eine] sachliche Einstellung [gegeben]. [Aber] auch hier schützt man leicht Gründe vor, die man dann schließlich glaubt.²⁷*

[Die] gewöhnlichen

egoism [is] here precisely the same [as previously].

How is altruism now to be defined? *[One ought] not to align it simply on 'the well-being of others.'* Altruism [is] in opposition to egoistic doing, [and as such] is a third {position} alongside objective directedness²⁸ and egoism. There is no reason whatsoever to designate objective directedness as 'altruism.' *The objective attitude [is] not expressly [an] opposition to egoism. [It would only be so] where the other²⁹ forms [a] real opposition to the ego.* There are [in fact] (rare) cases where the other takes the place of the I: human beings for whom the well-being of others, simply because it is that of others, takes a higher place. *The well-being of others is [thereby] important simply in [its] distinctiveness as being that of others.* A tendency toward underestimation of the self is a consequence, not a cause here. *Consequence [is likewise the] non-objectivity.* Where [altruism] presupposes reasons, then a factual attitude [is] also still [given]. [But] here, too, one easily pleads excuses, which one then finally comes to believe.

[The] customary determinations

Bestimmungen [von] Egoismus und Altruismus [sind, wie gesagt,] viel zu primitiv. [Es] liegt im Wesen des Egoismus, daß er nicht motiviert ist, nicht aus Gründen geschieht, [vielmehr] alles aufs Ich bezogen [wird]. Selbstversenkung in Objekte ist [beim Altruismus] wenigstens möglich — [ein] äußerster Gegensatz zum Egoismus, wo jede Erscheinung ihre Bedeutung als »höher« oder »tiefer als ich« gewinnt. Charakteristisch ist [die] Art der Befriedigung aus solcher Einstellung: [sie ist] Selbstbefriedigung, Erhöhung des Ich und Genießen desselben. Nicht zu verwechseln mit Gefühlen der Befriedigung über [den] eigenen Wert (*Selbstwertgefühlen*) oder [mit] *Unbefriedigtheit* [bzw.] Schmerz über [den] eigenen Unwert.

Hier entspringen *Neid*, *Mißgunst* [und die] Erscheinungen des Ressentiments (Nietzsche), wo gefühlte Werte um- oder weggedeutet werden. Nietzsche hat {491} geglaubt, [das] Christentum als Ressentimenterscheinung beweisen zu [können]. [Dagegen] Schelers Widerlegung. *Verdrängungsverhältnisse können mitwirken beim Ressentiment, sind [aber] nicht das Wesentliche.*

Here originate *envy*, *resentment*³⁰ [and the] phenomena of *ressentiment* (Nietzsche), where felt values are reinterpreted or interpreted away. Nietzsche {491} thought he [could] prove Christianity to be a phenomenon of *ressentiment*.³¹ [Against that] {stands} Scheler's refutation. *Relationships of repression can play a role in ressentiment, but [are] not the essential. [Rather, the] dislocation of the I is essential.* The

[Vielmehr die] Ichverschiebung ist wesentlich. Tiefste Wurzel des Ressentiments ist [dieses] Vorschieben des Ich: [Es] würde bei Anerkennung des fremden Wertes sich selbst verkleinert fühlen. Von hier aus zu verstehen ist [die] Rede von [der] »Erlösung« des Ich durch Kunst o. dgl., [überhaupt durch] alles was zur objektiven Einstellung überführen würde. [Dies ist etwas anderes als die] Bereicherung des Ich als seines Ich beim Egoisten. [Der] Egoist hat eigentlich keine Gründe [und] sucht prinzipiell nicht nach Gründen. [Das] eigene Ich gewinnt ihm unmittelbaren Vorschub. [Er] täuscht sich nur gewöhnlich Gründe vor; täuscht sich und anderen Objektivismus vor.

[Der] Altruismus [ist] von gleicher Struktur wie [der] Egoismus. Auch da fehlt Abwägen und Sachlichkeit. Fremdes Wohl [ist] an [die] Stelle des eigenen gesetzt, [sein] Wert liegt rein im Fremdwertsein.

[Der] Satz des Hedonismus, daß alles Wollen auf Selbstbefriedigung geht, [und die] hedonistische Behauptung, wesensgesetzlich möglich [sei] nur [der] Egoismus, ist ganz falsch [und] sinnlos. Objektive Einstellung kann auch beim Egoismus und Altruismus

deepest root of resentment is [this] promotion of the I: in the recognition of foreign value, it would feel itself diminished. From here is to be understood all talk of the ‘redemption’ of the I through art or suchlike, [generally through] anything that would lead it on to the objective attitude. [This is something different from the] enrichment of the I as its own I to the egoists. [The] egoist has really no reasons [and] in principle does not look for reasons. His own I achieves for him immediate advantage. He only ordinarily pretends to have reasons; {he} falsely ascribes objectivism to himself and others.

Altruism [is] of the same structure as egoism. There too, there is no weighing-up or objectivity. The well-being of others [is] substituted for one’s own, its value lies purely in its being the value of another.

[The] precept of hedonism — that all willing has self-gratification as its goal — [and the] hedonistic assertion that, by a law of essence, only egoism [is] possible, is³² entirely false [and] senseless. The objective attitude can also appear with egoism and altruism; [there is] always only

vorkommen; [es ist] immer nur [ein] gewisser Bereich, wo beide herrschen. Auch [der] sog. Egoist ist es nur innerhalb bestimmter Grenzen. [Dennoch stehen beide im Gegensatz zum] sachlichen Typus [und seiner] Bestimmung durch objektive Gründe.

Hedonismus im von uns definierten Sinne ist nicht mit Eudämonismus überhaupt zu verwechseln. [Der] Hedonismus verwechselt Quelle, Zweck und Motiv; und nicht jede Quelle ist Lust.

Nicht jeder Eudämonismus ist hedonistisch in diesem Sinne. Neben [dem] Eudämonismus des unvermeidlichen (notwendigen) Seins gibt es [den] Eudämonismus des Sollens: Jede Handlung soll ausgehen auf höchste Lust. Lust ist [nämlich] höchstes Glück. Evtl. soziales: [Es] braucht nicht eigene Lust zu sein — nur daß [das] Lustmaximum sich realisiert (sozialer Eudämonismus). [Er findet sich] besonders in [der] englischen Ethik des 18. und 19. Jahrhunderts (Bentham und Mill).

Bentham [war] praktisch eingestellt. [Er] geht aus vom inneren Widersinn einiger Gesetzeszusammenhänge. [In seiner Philosophie] geht Bentham aus vom

[a] certain domain, where both hold sway. [The] so-called egoist, too, is only {an egoist} within specific boundaries. [Nevertheless, both stand in opposition to the] objective type [and his] determination through objective reasons.

Hedonism, in its sense as we have defined it, is not to be confused with eudaimonism as such. Hedonism confuses source, goal and motive; and not every source is pleasure.

Not every eudaimonism is hedonistic in this sense. Alongside [the] eudaimonism of inevitable (necessary) being, there is the eudaimonism of 'ought': every action should aim towards the highest pleasure. Pleasure is [accordingly] the highest happiness. Perhaps social: [it] does not need to be one's own pleasure — only that [the] greatest possible pleasure is brought about (social eudaimonism). [This comes up] especially in [the] English ethics of the 18th and 19th centuries (Bentham and Mill).

Bentham [was] practically-minded. [He] sets out from the contradiction internal to certain complexes of laws. [In his philosophy] Bentham sets out from the premise of

Satz der größten Lust (*größtmöglichen Glückseligkeit*) der *größtmöglichen* Anzahl. [Er] beweist [diesen] Satz nicht, [sondern] stellt ihn als selbstverständlich auf, als direkt einsichtig. [Dann wird ein] Maßstab zur Beurteilung der eigenen Handlung gesucht. Intensität, Dauer und Gewißheit der Lust sind Maßstäbe; und in bezug auf [die] Folgen Fruchtbarkeit und Reinheit und Ausbreitung der Gefühle der Lust (*aus Lust wieder Lust; [die] Menge von Lust*). [Sie fungieren] als Maßstäbe für [die] Bewertung der verschiedenen Lust[arten]. [Bentham] sucht daraus³³ alle Gesetzgebung und Ethik zu entwickeln, [indem] *menschliche Eigenschaften {492} nach [ihrer] Hervorbringung von Lust beurteilt [werden]. [So kommt er zu einer] Rangordnung der Güter. [Seine] psychologischen Erklärungen [sind] manchmal ganz primitiv. [Es kommt darauf an,] Lust und Unlust des Einzelnen den höchsten Zwecken dienstbar zu machen. [Die] Sanktionen der sittlichen Ordnung [werden darum bestimmt] durch Lust und Unlust der eigenen Person. [Bentham unterscheidet] 1. die physische Sanktion, 2. [die] moralische Sanktion (öffentliche Meinung u. dgl.), 3. [die]* the greatest pleasure (*the greatest possible happiness*) for the *greatest possible* number of people. [He] does not prove [this] premise, [but] presents it as self-evident, as directly intuitive.³⁴ [Then a] standard for the assessment of one's own actions [is] sought. The intensity, duration and certainty of the pleasure are {such} standards; and concerning [the] consequences {the} prolificness and purity and extent³⁵ of the emotion of pleasure (*from pleasure, further pleasure; [the] volume of pleasure*). [They function] as standards for [the] evaluation of different [kinds of] pleasure. [Bentham] seeks to base on those {standards} all lawmaking and ethics, [so that] *human characteristics {492} [are] assessed based on [their] production of pleasure. [So he arrives at a] hierarchy of goods. [His] psychological explanations [are] sometimes very primitive. [The point is to] make the pleasure and displeasure of individuals serve the highest purposes. [The] sanctions of moral order [are thus determined] by one's own person's pleasure and displeasure. [Bentham distinguishes] (1) the physical sanction, (2) [the] moral sanction (public opinion etc.), (3) [the] political sanction (punishments and rewards*

politische *Sanktion* (Strafe und Belohnung vom Staat), 4. [die] religiöse *Sanktion*. Ziel der Gesetzgebung ist, diese alle in einer Richtung zu gestalten: *[der] Staat muß sorgen für [ein] Maximum von Lust*. [Die] politischen Folgen liegen auf der Hand. Bentham [war darum] vor allem *juristischer und politischer Reformator*.

John Stuart Mills Ausgangspunkt [ist] ähnlich [dem] Benthams. *[Eine] Handlung [ist] recht, insofern wie auf Glückseligkeit abzielend, [und] Glückseligkeit ist Lust plus Abwesenheit von Leid*. [Er] behauptet aber *qualitative* Wertunterschiede innerhalb [der] Lüste selbst (*[in der] Abhandlung über »Utilitarismus«*; contra Bentham). [Er stellt die] Frage, wonach [der] Wert einer Lust sich bestimmt. *Mills* [Antwort]: nach Erfahrung. *»Reichtum an Freuden« [ist] mehr als [nur eine] Menge von Lust, menschliche Freude [ist] größer als tierische Freude, [und ein] Dasein möglichst frei von Schmerz und reich an Freude ist einsichtiges größtes Glück. Diese Glückseligkeit ist eigentlich [das] Ideal jedes Menschen. [Eine] Abmessung an Idealen vollkommenen Glückes liegt selbst beim Pessimisten vor,³⁶ weil er dieses Ideal hat.*

from the state), and (4) [the] religious *sanction*. The goal of lawmaking is to form all of these in one direction: *[the] state must facilitate [a] maximum of pleasure*. [The] political consequences are obvious. *Bentham* [was thereby] above all a *legal and political reformer*.

John Stuart Mill's starting-point [is] similar [to] Bentham's. *[An] action [is] right insofar as it is directed toward happiness, [and] happiness is pleasure plus the absence of suffering*. However, [he] asserts *qualitative* differences in value within [the] pleasures themselves (*[in the] treatise concerning 'Utilitarianism'*; against Bentham). [He puts forward the] question: according to what is [the] value of a pleasure determined? *Mill's* [answer]: according to experience. *'To be rich in joy' [is] something more than [just] {to have} [an] amount of pleasure; human joy [is] greater than animal joy, [and an] existence as free as possible from pain and as rich as possible in joy is evidently the greatest happiness. This blissful state is actually [the] ideal of every human being. [A] measuring by the ideal of perfect happiness presents itself even in the case of the pessimist, because he has*

this ideal.

Hier [dann Mills] Versuch, Einwände gegen [den] Utilitarismus zurückzuweisen. Was heißt »Selbstzweck« des Sittlichen? *Mill [sagt]: »Sittliche Werte um ihrer selbst erstreben« heißt: [Der] sittliche Wert ist [ein] Zweck, [der so beschaffen ist,] daß wir da[bei] stehenbleiben können, da schon Lust darin [enthalten ist], [wir also] Glückseligkeit schon daraus haben. [Ein anderer] Einwand [besagt], daß jede Selbstverleugnung dem Eudämonisten unmöglich [sei]. Mill [antwortet]: Akte der Selbstverleugnung haben [einen] eudämonistischen Hintergrund. Kants Einwand [lautete]: Wie kann man das allgemeine Wohl zum Prinzip des sittlichen Handelns machen, da wir nicht alle Konsequenzen unseres Tuns übersehen können? Aber Mill usw. [antworten]: Wir können sehr weit empirische Zusammenhänge zwischen Handeln [im Sinne der] Sittlichkeit und Glückseligkeit ([als] Gesamtglück) aufstellen. [Ein] großer fertiger Vorrat solcher Sätze [ist] schon [vorhanden, da die] Berechnung durch traditionelle Überlieferung [schon vorgegeben ist].*

[Nun] unsere Stellungnahme zum Utilitarismus [und] Kritik des Utilitarismus. Unsere drei Sphären

Here[, then,] {we have} [Mill's] attempt to repudiate objections [to] utilitarianism. What does the 'end in itself' of the moral mean? *Mill [says]: 'To pursue moral values for themselves' means: [the] moral value is [a] purpose [which is such] that we can stay with it, because pleasure [is] already [contained] in it and [we thus] already have bliss from it. [A different] objection [states] that it [would be] impossible for a eudaimonist to deny himself anything. Mill [replies]: acts of self-denial have [a] eudaimonistic background. Kant's objection [went]: how can one make the general good into the principle of moral action, if we cannot foresee all of the consequences of our actions? But Mill et al [respond]: we can establish very broad empirical connections between actions [in the sense of] morality and happiness ([as] collective happiness). [A] large supply of such principles³⁷ already [exists, since the] calculation [has already been established] by means of traditional customs.*

[Now] {to} our position towards utilitarianism [and] {our} critique of utilitarianism. Our three

[waren]: 1. *Sphäre der sittlichen Werte* (persönliche Werte), 2. *Sphäre des sittlichen Rechtseins* (Rechte, die wir erstreben), 3. *Sphäre der Güter* (Güterwelt). [Der] Utilitarismus möchte für *alle drei Sphären gelten*, alle drei beherrschen, [indem er] *alles in Beziehung zur Lust setzt*.

Korrelat [des] Wertfühlens ist [der] *sittliche Wert*; [er] wird [z. B.] an [einer] **{493}** *Gesinnung erfaßt*. [Dieses] Erlebnis [wird] innerlich wahrgenommen. [Ein] Wert [dagegen] wird nie innerlich erlebt, [er] wird höchstens *an dem innerlich Erlebten*, am Erlebnis *erfaßt* (gefühl). [Der] *Schönheitswert [ist] auch in [solchen] fühlenden Akten gegeben*. Das Fühlen der Werte, [sofern es] auf [die] Werte zu beziehen [ist], ist nicht mit Gefühlen (als Zuständen des Ich) im psychologischen Sinne zu verwechseln. [Diese] sind aber nie *Akte des Wertfühlens*. Allerlei verschiedene Gefühle können sich auf [das] Fühlen des Wertes aufbauen. *Bei gleichem Wert können [sogar] entgegengesetzte Gefühle entstehen* (Betrachtung des Werkes eines Feindes!). *Sittliche Werte [also werden] von uns an wertvollen Gegenständen erfaßt, gefühlt: [z.B.] in Güte als solcher gründet sittlicher*

spheres [were]: (1) *the sphere of moral values* (personal values); (2) *the sphere of moral being-right* (rights, for which we strive); (3) *the sphere of goods* (world of goods). Utilitarianism purports to *apply to all three spheres*, govern all three, [by] *placing everything in relation to pleasure*.

*The correlate of the feeling of value is moral value; [it] is grasped [for example], in [a] {493} {mental} disposition. [This] experience [is] perceived internally. [A] value, [on the other hand, is] never experienced internally; at most, [it] is grasped (felt) within the internally experienced, within experience. [The] value of beauty [is] also given in [such] feeling acts. The feeling of value, [insofar as it] concerns [the] values, is not to be confused with emotions (as states of the I) in the psychological sense. [These], on the other hand, are never acts of value-feeling. All kinds of different emotions can build themselves on [the] feeling of value. [Even] opposite emotions can arise from the same value (viewing the work of one's enemy!). Moral values [are thus] grasped by us in valuable objects; [for example], *moral value is founded in goodness as such*.*

Wert.

[Nach dem] Eudämonismus [According to] eudaimonism, [dagegen] beziehen Güter ihren Wert [on the other hand,] goods acquire aus Gefühlen der Lust oder Unlust, die their value based on the emotions of sie bereiten können. Edle Gesinnungen pleasure and displeasure which they wie Güte haben allgemein sittliche can bring about. Noble dispositions, Bedeutung [nur wegen ihrer] like goodness, [only] have moral Glücksfolgen.³⁸ Sittlichen Wert hat significance at all [because of the] Güte nur in bezug auf [daraus] happiness that is consequent from entspringende Lust. [Indessen,] wenn them: moral value has goodness only [der] Wert der Güte erfaßt [wird, ist in relation to the pleasure that arises dabei] nie an [die durch sie] bewirkte [from it]. [Whereas,] if [the] value of the good [is] grasped, [it is] never the Lust gedacht, auch nicht an die an pleasure that is brought about by {the einem Andern bewirkte Lust. [Und] value} that is thought of, nor the wenn Lust fehlt, bleibt doch Güte, [was pleasure that is caused to someone sie ist]. [Die] Theorie des Utilitarismus else. [And] if there is no pleasure, the [besagt] : Güte bringt im allgemeinen good nevertheless remains [what it is]. Lust hervor [und] wird darum sittlich [The] theory of utilitarianism [says]: bewertet. [Aber das stimmt nicht bei] the good brings about pleasure in Übertragung auf Fälle, wo [eine] general [and] is morally valued on that Glückshervorbringung fehlt. [Ein] edler basis. [But that does not] obtain in Mensch, der gelähmt ist, kann [seine] cases where the bringing about of edle Gesinnung nicht betätigen, aber pleasure does not occur. [A] noble [diese] edle Gesinnung büßt [dadurch] human being who is paralyzed cannot kein Stück ihres Wertes ein. Das kann act out [his] noble disposition, but der Utilitarismus nicht anerkennen. [Er but [this] noble disposition does not forfeit erklärt dies wie im Fall des] Geizigen: any part of its value [as a result]. [Dessen] Geld pflegt Nutzen zu Utilitarianism cannot recognize this. bringen; [der] Wert wird darum [dem] [Utilitarianism explains this as in the Geld selbst zugeschrieben. Aber der case of the] miserly: [their] money is Wert des Geldes sinkt, wenn usually useful; the value is therefore Nutzenschaffung unmöglich [wird; ascribed [to the] money itself. But the dagegen der] Wert von Güte sinkt nie.

[Dies ist das] »Gesetz der Heterogenie der Zwecke«. Ihm [gehört hier] große Bedeutung zugemessen. [Es ist zwar] möglich, daß Güte ursprünglich nur wegen [ihres] Nutzens geschätzt und erst spät [der] Wert von Güte selbst erkannt [wurde]. Es kann sein, daß aus Lustgefühlen erst allmählich sittliche Werte [den] Menschen aufgegangen sind. Falsch [ist aber], daß ihm bloße zufällige Bedeutung angerechnet werde. [Es ist] nicht so, daß Wert sich zufällig historisch an Güte geheftet [hätte].

*value of the money declines if its being put to use [becomes] impossible; [on the other hand], the value of goodness never declines. [This is the] 'law of heterogeny of purposes.'*³⁹ Great significance is to be allocated [here] to {this law}. [It is indeed] possible that goodness was first estimated only on the basis of its usefulness, and that the value of goodness itself only [came to be] recognised later. It is possible that it was gradually, through feelings of pleasure, that moral values were discovered by human beings. [But it is] false to assign only accidental significance to them. [It is] not the case that value [would have been] accidentally linked historically to goodness.

Nach [dem] Utilitarismus müßte Schadenfreude ein Wert sein. Wir erklären sie [aber] nicht deshalb für [einen] Unwert, weil andere Menschen sich darüber ärgern. [Vielmehr ist] einzusehen, [daß] Schadenfreude in sich selbst betrachtet [ein] Unwert ist. [Es ist] nicht möglich, [mittels ihrer] Beziehung auf Künftiges [über ihren Wert entscheiden zu wollen].

According to utilitarianism, joy at the misfortune of others (Schadenfreude) would have to be a value. We, [however,] do not consider it [a] disvalue just because it annoys other people. [Rather, it should be] recognised [that] Schadenfreude regarded in itself is [a] disvalue. [It is] not possible [to want to decide on its value by means of] its orientation toward things in the future.

Resultat: [Es ist] nicht möglich, personale und personal funktionale Werte und Unwerte auf Nutzen⁴⁰

Result: [It is] not possible to reduce the values and disvalues of persons and of personal functions to

zurückzuführen. [Die] erste These des Utilitarismus [haben wir damit] zurückgewiesen. Es hat keinen Sinn, personale Werte auf Lust oder Unlust zurückzuführen zu wollen. [Aber der] Utilitarist sagt dann: *Personale Werte {494} kümmern ihn nicht*, es kommt ihm *nur* auf sittliche Richtigkeit (Rechtheit) an. [Und der] Utilitarismus sagt zweitens: *Sittlich richtig [ist] das, was [ein] Maximum an Lust hervorbringt. Hier [haben wir das] Prinzip des Utilitarismus: Jede sittliche Rechtheit hat sich dadurch auszuweisen, daß sie Glück bereitet. [Die] Utilitaristen waren tatsächlich praktisch gerichtet, [auf] Politik u. dgl. [Als Illustration dieses Prinzips gibt es ein] schönes Beispiel aus [der] Beraubung einer Karawane (von Lipps kritisiert) [über] Glücks- und Unglücksfolgen erster, zweiter und dritter Ordnung.*

[Der] Utilitarist beurteilt die Tat, nicht den Täter. Der zufällige Erfolg eines Tuns ist irrelevant für [seinen] sittlichen Wert — [dies ist nach den Utilitaristen ein] Wesensgesetz. [Der] Utilitarist [sagt]: [Die] Tat als Tun bleibt gleich, aber [die] Folgen [können] verschieden sein, [und] danach [wird ihre] Sittlichkeit beurteilt. [Der]

*utility. [We have thereby] disproven [the] first thesis of utilitarianism. It is senseless to want to reduce personal values to pleasure or displeasure. [But] the utilitarian then says: *personal values {494} do not concern him*; for him it is *only* about moral correctness (rightness). [And] secondly, [the] utilitarian says: *That which brings about [a] maximum of pleasure [is] morally correct. Here [we have the] principle of utilitarianism: All moral rightness has proven to be such in that it causes happiness. [The] utilitarians were in fact practical in their outlook, oriented [toward] politics etc. [As an illustration of this principle, there is the] beautiful example of [the] robbing of a caravan (criticised by Lipps), [concerning] consequences of happiness and unhappiness of the first, second and *third* orders.**

[The] utilitarian assesses the act, not the agent. The accidental success of something that is done is irrelevant for [its] moral value — [this, for the utilitarians, is an]⁴³ essential law. [The] utilitarian [says]: [The] act as something that is done remains the same, but [the] consequences [can] be different, [and] it is on that basis that [its] morality [is] assessed.

Utilitarismus hält sich hier an Äußerlichkeiten, [an die] zufälligen Folgen der Akte.⁴¹ [Typisch ist seine] Berufung hier auf⁴² [die] allgemeinen Aussagen des sittlichen Bewußtseins. Aber eigentlich spricht dieses gerade gegen [das] Prinzip des Lustmaximum. [Die] Menschen aus [ihrer] passiven Glückseligkeit zu wecken, ist [ja die] ethische Aufgabe! Personale Funktionen und ihre sittlichen Werte und Unwerte [sind] unabhängig von Glück oder Unglück.

[Was] aber nun *sittliche Rechtheit in [ihrer] Beziehung zu personalen Werten* [betrifft, so zeigt sich ein] Wesenszusammenhang zwischen diesen Werten und [dem] Rechten: *[Die] Existenz personaler Werte ist sittlich recht [und] soll sein. Schadenfreude ist unrecht [und] soll nicht sein, obgleich sie Lust vorbereitet [und] Freude ist.*

[Die] *erkenntnistheoretische Struktur der sittlichen Rechtheit [wird vom Utilitarismus] verkannt. Sittliche Rechtheit [ist] ein Charakter, der im Wesen des Sachverhalts gründet. [Der] Utilitarist [sagt]: Der Charakter kann gehen und kommen, [er] ist zufällig. Allgemeine Sätze [sind darum] nicht auszusprechen, nur Einzelfälle zu beurteilen. [Aber] wie Ähnlichkeit* [Utilitarianism] *fails to recognise [the] epistemological structure of moral rightness. Moral rightness [is] a character which is founded in the essence of the state of affairs. [The] utilitarian [says]: The character can come and go, [it] is coincidental. General statements [are thus] not to be expressed; only individual cases can be assessed. [But]*

oder Verschiedenheit im Wesen der Sache [und] des Sachverhalts fundiert und nicht wie Röte oder Wärme [davon ablösbar sind, so] ist Mord sittlich unrecht [und] erscheint [als das], was die Folgen auch seien. [Der] Utilitarismus müßte sagen: An und für sich ist Mord weder recht oder unrecht; man müßte jeden Fall abwägen. Annahme eines Mordes im Schlaf: [Das] Opfer fühlt⁴⁴ keine Unlust, auch keine weiteren Folgen; nur große Lust des Mörders [ist gegeben]. [Dieser] Fall müßte recht sein! *[Aber das ist eine] erkenntnistheoretische Widersinnigkeit:* Ethische Bestimmtheiten von Sachen (*sittliche Rechtheit*) können nicht von zufälligen *empirischen* Umständen abhängig sein. *[Der] Utilitarist hat nicht [den] Mut anzuerkennen, daß [ein] Sachverhalt [sein] Recht in sich trägt.* Es gäbe nach [dem] Utilitarismus nichts Unrechtes, was nicht durch eventuelle Erfolge recht gemacht werden kann.

Einfluß [des Utilitarismus] auf [die] Strafgesetze und ihre Auffassung: Heute sieht man ebenso [das] Wesen der Strafe in Verbesserung des Verbrechers o. dgl. **{495}** *Strafe [wird] nur als Erziehung aufgefaßt in Beziehung auf zu erreichende Zwecke,*

as similarity or difference are founded in the essence of a thing or a state of affairs, and not [separable from it] in the way that redness or coldness [are, so] murder is morally wrong [and] appears [as such] whatever the consequences are. [The] utilitarian must say: In and of itself, murder is neither right nor wrong; one would have to weigh up each case individually. Take the murder of someone in {their} sleep; [the] victim feels no displeasure, and {there are} no further consequences; all [there is] is a great pleasure for the murderer. [This] case would have to be right! *[But that is] epistemological nonsense;* the moral determinations of things (*their moral rightness*) cannot be dependent on accidental *empirical* circumstances. *[The] utilitarian lacks the courage to acknowledge that [a] state of affairs carries [its] rightness in itself.* In utilitarianism, there would be nothing so wrong that it could not be made right by its possible consequences.

The influence [of utilitarianism] on [the] criminal law and its creation: Today one sees, like {the utilitarians did} [the] essence of punishment as being in the betterment of the criminal, etc. **{495}** *Punishment [is seen] only as education in relation*

statt darin einen Nebenzweck [zu sehen]. *[Damit wird die Eigenrechtheit der Strafe verkannt. Genau genommen [wird dann] Strafe nur um [ihrer] Konsequenzen willen gewollt, die auch auf andere Weise zu erzielen [sind].* An [ihre] Stelle könnte ebenso gut ärztliche Behandlung treten. Kants schöner Satz [steht] dagegen: Wenn [die] menschliche Gesellschaft sich auflösen sollte, müßte zuerst [der] letzte Mörder hingerichtet werden. Hier ist Unlust [also sogar] sittlich gefordert! [So stellt sich die] Frage nach [der] positiven Stellung *und ethischen Bewertung* von Lust und Unlust. Man [ist] oft in Reaktion gegen [den] Utilitarismus (besonders von seiten des Kantianismus) zu weit gegangen. *[Es ist gewiß] ethisch nicht bedeutungslos, ob [etwas dem] Menschen Glück bereitet. Aber welche Rolle spielt [die] Lust?* [Der] Eudämonismus redet [immer nur] mit zwei Wörtern — Lust, Unlust usw. —, als ob das alles dasselbe wäre: Lust, Glückseligkeit, Freude o. dgl. *[Der] Eudämonismus sah [so] nicht, was Lust eigentlich ist.*

*to a purpose to be achieved, rather than as a separate purpose {in itself}. [In this, the] intrinsic rightness of punishment in itself goes unrecognised. Strictly speaking, punishment [is then] only wanted for [its] consequences, which can also be achieved in other ways. Medical treatment could just as well take [its] place. Kant's beautiful objection against that goes: If human civilisation were to be dissolved, [the] last murderer would first have to be executed. [So] here, displeasure is [even] morally demanded! [Thus we have to ask the] question about [the] positive position *and ethical valuation* of pleasure and displeasure. One has often gone too far in reacting against utilitarianism, especially from the side of Kantianism. [It is of course] not ethically meaningless whether [something] makes someone happy. But what role does pleasure play?* Eudaimonism [only ever] uses two words — pleasure, displeasure, etc. — as if it were all the same thing: pleasure, bliss, joy, and so on. *[In this way] eudaimonism did not see what pleasure really is.*

Was ist Lust? Mill schon hat höhere und niedrigere Lust unterschieden. Wir haben [sogar noch] mehr: 1. *Spezifisch* sinnliche Lüste und

What is pleasure? Mill has already distinguished higher and lower pleasures. We have more, [in fact]: 1. *Specifically sensory pleasure and*

Unluste (*sinnlich Angenehmes, displeasure (the sensorily pleasant and Unangenehmes)*) — wo[bei] man es *unpleasant*) — it has been contested
 bestritten hat, ob [man] nicht hier bloß whether one does not only have to do
 mit *sinnlichen* Empfindungen statt with sensations here, instead of
 Gefühlen zu tun [habe]. *Sinnliche* emotions. *Sensations*, the feeling of
 Empfindung, Fühlen des that which is unpleasant in the
 Unangenehmen an [der] Empfindung sensation (*the grasping of the*
(Erfassen des character of acceptability)), and our
Annehmlichkeitscharakters) und unsere pleasure/displeasure (as regards *the*
 Lust/Unlust daran (*am Angenehmen pleasant*) are three different things.
 sind dreierlei. [Es besteht ein] *naher* [There obtains a] *closer systematic*
Zusammenhang, [eine] überaus enge *connection*, [an] extraordinarily close
 Verknüpfung zwischen link between the content of sensations
 Empfindungsinhalten und Lust/Unlust and the pleasure/displeasure derived
 daran. *Sinnliche Lust wurzelt in therefrom. Sensory pleasure is rooted*
Empfindungsinhalten, geht in the content of sensations, arises
phänomenal aus ihnen hervor. phenomenally from them.

2. *Freude-über: Wahrnehmung* 2. *About joy: The perceiving of*
 eines Ereignisses und Freude daran — an event and joy at it — over it —
 darüber — ist [eine] ganz andere [an] entirely different relationship.
 Beziehung. [*Die*] *Wahrnehmung des [The] perceiving of the event stands*
Ereignisses hebt sich scharf ab von out sharply from [the] joy; {the joy}
 [*der*] *Freude, geht nicht aus [der] does not arise from [the] perception*
Wahrnehmung hervor (wie oben). Hier (as above). Here we enter [the] world
 betreten wir [*die*] Welt des Geistes, of the spirit, [*the*] *domain of the*
 [*das*] *Gebiet des Geistigen in spiritual* in the precise sense, where we
 prägnantem Sinne, wo wir von can speak of motives, reasons and
 Motiven, Gründen o. dgl. reden suchlike, *where relations of motivation*
 können, wo [*also*] [*thus*] *are present* ([this is] on the other
Motivungsverhältnisse vorhanden hand [not the case] [with] sensory
 [*sind*] ([dies ist] dagegen [nicht der pleasure/displeasure). Joy and sadness
 Fall bei] *sinnlicher Lust/Unlust). are attitudes taken by the person.*
 Freude und Trauer sind *Sensory pleasure/displeasure, however,*

Stellungnahmen der Person. Sinnliche Lust/Unlust ist aber unvernünftig, [genauer:] vernunftlos. *[Die] Scheidung zwischen Geist und Sinnlichkeit hat hier volle Berechtigung. [Das hat der] Eudämonismus übersehen.* Intensitätsunterschiede reichen in diesem Gebiet nicht im mindesten zur Charakterisierung der hiesigen Unterschiede *[und] zur Deckung der Differenzen* aus. Betrübnis über [das] Wetter [ist] qualitativ *[nach] Gewichtigkeit [und] Tiefe* unterschieden von Betrübnis über [das] Schicksal. Begeisterung [ist] *gewichtiger*⁴⁵ als Entzücken. Ansetzen der vielen Gefühlseinheiten hier an allerlei verschiedenen Schichten der Persönlichkeit, *Anpacken an tieferer Schicht des Ich.* Ganz sanfte Freude kann uns vollständig erfüllen *und kann einfach dasein.* Intensität, Ausbreitung und Tiefe der Gefühle sind drei gegenseitig unabhängige Bestimmungen. *[Die] seelische Ausbreitung der Erlebnisse [ist] nicht identisch mit [ihrer] Intensität. [Eine] {496} intensivere Freude hat Ausbreitungstendenz, [aber diese] Tendenz braucht nicht erfüllt zu sein.* Begeisterung, Bewunderung sind ihrer Natur nach lustgefärbt; Verachtung,

is irrational; [more precisely], mindless. *[The] division between spirit and sensation has full legitimacy here. Eudaimonism [has] overlooked [this].* In this area, differences of intensity do not at all suffice to characterise these distinctions *[and] to cover the differences.* Being saddened because of [the] weather is qualitatively different *[in] importance [and] depth* from being saddened because of {one's} fate. Enthusiasm [is] weightier than delight. The many unities of emotion here correlate to all kinds of different layers of the personality, impact on *deeper layers of the I.* Entirely peaceful joy can fill us completely *and can simply exist.* The intensity, extent and depth of the emotion are three coexistent and independent dimensions {of it}. *[The] extension of experiences within the soul*⁴⁶ *[is] not identical with [their] intensity. [A] {496} more intense joy has a tendency to extend itself, [but this] tendency does not need to be fulfilled.* Enthusiasm and admiration are, by their nature, coloured by pleasure; contempt and hatred are by their nature coloured by displeasure.

Haß sind ihrer Natur nach unlustgefärbt.

Mill macht [einen] Unterschied zwischen sinnlicher und geistiger Lust. Aber daran [ist] nicht [die sittliche] Rechtheit zu orientieren. [Der] Utilitarismus müßte zugeben: Wenn Menschen sich über etwas freuen, worüber sie sich nicht freuen sollten, könnte dies [letztere] evtl. Pflicht werden. [Der] Eudämonismus gibt das vielleicht zu — aber damit [hat er] Lust abhängig gemacht von [der] ethischen Bedeutung des Korrelats, [und] damit schon [sein] Prinzip aufgegeben. [Der] Utilitarismus von edler und unedler Lust und Unlust ist nach [seinen] eigenen Gesichtspunkten nicht zu begründen. Geistige Lust kann unedel sein. [Zwar:] Sittliche Empörung über [eine] schlechte Tat [ist] »edle Unlust«, könnte [der] Utilitarist sagen. Aber woran [wäre] »edel« [zu] messen? Damit [ist ein] objektives Verhältnis schon vorausgesetzt. [Also der] Eudämonismus hört da auf, wo [die] Ethik anfängt.

Glück und Unglück sind etwas ganz anderes als Lust/Unlust. *Glück [hat] Bezug auf [die] ganze Daseinssphäre [und ist] auch nicht mit Stimmung, Stimmungswechsel o. dgl.*

Mill makes [a] distinction between sensory and spiritual pleasure. But [moral] rightness [is] not to be oriented on that. Utilitarianism would have to admit: If human beings enjoy something which they should not, [the latter] could perhaps be a duty. Eudaimonism does perhaps admit that — but thereby, it has made pleasure dependent on [the] ethical significance of its correlate, [and] thus has already abandoned [its] principle. The utilitarianism of nobler and baser pleasures and displeasures cannot be justified according to [its] own point of view. Spiritual pleasure can be base. [In fact: the] utilitarian could say that moral outrage over [a] bad act [is] 'noble displeasure.' But according to what [would] 'noble' [be] measured? Here, [an] objective relationship [is] already presupposed. [So] eudaimonism stops where ethics begins.

Happiness and unhappiness are something very different from pleasure/displeasure. *Happiness relates to the entire sphere of existence [and is] also not [to] be confused with*

[zu] verwechseln. Stimmung steht in Beziehung zu Glück, ist es [aber] nicht selbst. In Heiterkeit [liegt] vielleicht [ein] Hinweis auf Glück, aber [er ist] nie unfehlbar. Täuschung [bleibt] möglich. Kein eindeutiger Zusammenhang, keine eindeutige Beziehung hier. Glück und Unglück [liegen] in ganz anderer Schicht wie Freude. Glück und Unglück sind keine Erlebnisse wie Stimmungen; Glück [ist evtl.] vorhanden vor [seinem] Erfassen.

[Es ist ein] Grundfehler des Eudämonismus, daß er Glück mit jeder beliebigen Lust verwechselt. Glück ist [ein] hohes Gut, wenn auch nicht höchstes. Aber [die] Gutseigenschaft des Glücks ist nicht mit sittlichem Wert (personalen Funktionen usw.) zu verwechseln. Frohsinn kann gewertet Werden; Schicksal kommt hinzu: Glück und Unglück ist [also] etwas, das den Menschen zuteil wird. [Es ist ein] sehr schlechter Vorwurf gegen eine Ethik, daß sie Gut und Wert verwechselt.

[Es ist ein] frommer Traum schon bei [den] alten Griechen, daß die Guten die Glücklichen sind. So sind [die] Griechen gezwungen, [den] Menschen ans innere Leben zu beschränken (als [Ort der] Pflicht),

mood, change of mood and so on. Mood stands in relation to happiness, [but] is not itself {happiness}. In cheerfulness we may find a hint toward happiness, but [it is] never infallible. Deception [remains] possible. {There is} no univocal connection, no univocal relationship here. Happiness and unhappiness [reside] in a completely different layer {of the I} to joy. Happiness and unhappiness are not experiences like moods; happiness [can be] present before [it is] grasped.

[It is a] fundamental error of eudaimonism that it confuses happiness with any and all pleasure. Happiness is [a] great good, even if not the greatest. But [the] quality of goodness that happiness possesses is not to be confused with moral value (personal functions etc.). Cheerfulness can be valued; fate befalls one: thus, happiness or unhappiness is something that is bestowed upon the human being. [It is a] very serious reproach against a system of ethics that it confuses good and value.

It was already a pious dream with [the] ancient Greeks that the good people are also the happy ones. In this way [the] Greeks are forced to restrict people to their inner lives (as the place of duty), [and] Greek ethics (Stoicism)

[und die] griechische Ethik (Stoiker) sprach dem Schicksal jede Bedeutung ab.⁴⁷ Aber [das ist] Wegdeutung von Tatsachen [und heißt] vor Übeln [die] Augen verschließen. [Es wäre] Widersinn, daß [der] sittlich Wertvolle sich um Übel nicht kümmern solle. Ganz anders ist [es], wenn [man] behauptet, [der] unsittliche, ethisch wertlose Mensch müßte unglücklich sein. Ebenso wie [der] persönliche Charakter nicht zur Schaffung von Glück ausreicht, ebenso läßt hier [sein] Unwert Glück nicht aufkommen. [Derlei] Unwertfunktionen können [das] Glück hindern, [denn sie] sind dem Wert nach unlustgefärbt. [Ein] vollkommen unsittlicher Mensch kann nicht vollkommen glücklich sein, [denn es ist] wesensgesetzlich [eine] Ummöglichkeit, daß Glück mit ethischem Unwert vereint [sei].

denied any significance to fate. But [that is] ignoring facts [and is called] closing one's eyes to evil things. [It would be] nonsense [to say] that [the] morally valuable {person} should not concern herself with evil. [It] is something very different if one asserts that [the] immoral, ethically value-less human being must be unhappy. Just as [the] personal character is not enough to create happiness, so too, [its] disvalue does not prevent happiness from arising. [Such] disvaluable functions can hinder [the] happiness [because they] are, on account of their value, coloured with displeasure. [A] perfectly immoral human being cannot be perfectly happy [because it is an] essential impossibility that happiness [should be] united with ethical disvalue.

{497} Daß Lust ein Gut ist, werden wir nicht bestreiten. Nur gibt es hier Abstufungen [und] verschiedene Güterstufen. Luststufen sind nicht die einzigen Güter. Geistige Freude ist [ein] höheres Glück als sinnliche Freude. Aber Gesundheit [oder] Leben ist auch ein Wert [und ein] Gut, selbst [das] unglücklichste. Nur als eines unter vielen [Gütern] kann [das] Glück als Gut angesehen werden. Glück

{497} We would not dispute that pleasure is a good. There is simply a hierarchy here [and] different degrees of good. Degrees of pleasure are not the only goods. Spiritual joy is [a] higher happiness than sensory joy. But health [or] life is also a value [and a] good, even [the] unhappiest. Only as one among many [goods] can happiness be regarded as a good. Happiness takes a special place among

nimmt [eine] Sonderstellung unter [the] goods, [but] it is not the highest [den] Gütern ein, ist [aber] nicht viewpoint of the moral good. höchster Gesichtspunkt des sittlich Utilitarianism [must] pass over the real Guten. [Der] Utilitarismus [muß] mit ethical phenomena blindly. blinden Augen an [den] eigentlichen ethischen Phänomenen vorübergehen.

§ 3⁴⁸

Kants Ethik

[Den] deutschen Charakter [von] Kants Ethik [kann man darin erblicken, daß sie] Pflicht u. dgl., nicht Liebe [ins Zentrum rückt]. [Aber man muß die] Weltanschauung des Denkers *trennen* von [seiner] wissenschaftlichen Begründung *der Ethik*.⁴⁹

Kant hat auch hier verschiedene Stadien der ethischen Entwicklung durchgemacht. *In der ethischen Preisschrift* (Preisausschreiben der Berliner Akademie, 1764) [*ist sein*] *Prinzip*: »Tue das Vollkommenste, was durch dich möglich ist.« Aber davon [sind] keine positiven Grundsätze abzuleiten; *aus diesem rein Formalen [ist] nichts Materiales abzuleiten* ([Kant will] weg von [der] Aufklärungsphilosophie hier). Es muß [et]was hinzukommen; [ein] spezielles Vermögen des Gefühls, [*das*] *Vermögen Gutes zu empfinden*, [ist] hier heranzuziehen. *Einfluß der schottischen Schule*: Kant beruft sich

§ 3

Kant's Ethics

[The] German character [of] Kant's ethical theory [can be seen in that it moves] duty etc., not love, [into the centre]. [But one must] *separate* [the] world-view of the thinker from [his] scientific justification *for ethics*.

Kant too went through several stages of ethical development. *In his ethical competition piece* (Competition of the Academy of Berlin, 1764), [*his*] *principle [is]*: 'Do the most perfect thing that is possible for you.' But no positive principles [are] to be derived from that; *from this pure formality, nothing non-formal [is] to be derived* ([Kant wants] to be rid of [the] Enlightenment philosophy here). Something must be added; a special capability of emotion, *the capability to feel that which is good*, needs to be brought into play here. *The influence of the Scottish school*: Kant calls on Hutcheson here. [There is an]

hier auf Hutcheson. [Es gibt eine] unmittelbare Erfassung in Gefühlen der Billigung und Mißbilligung dessen, was recht ist: [der] moralische Sinn (von allen besessen). [Die] Werterfassung in dem »Gefühl« [ist] ebenso unmittelbar wie in äußerer Anschauung: Hier ist so und so [ein] Ding; so hier: Hier ist ein Wert. [Die behaupteten] Akte des Fühlens hier sind [von] solcher [Art]: Wir sehen [eine] Landschaft und fühlen ihre Schönheit. Allen Gegenstandsarten sind Aktarten korreliert. Werte werden gefühlt. Auch hier [gibt es] Unterschiede der Deutlichkeit, Klarheit u. dgl. Den Unwert eines Neides fühlen wir evtl. viel klarer, als wir [den] Neid selbst erleben. Hutcheson spricht aber von den Gefühlen statt von Akten des Fühlens. [Die Folge ist] Unklarheit durch die schwere Verwechslung von Ichzuständlichkeiten (*Gefühl*) mit fühlenden Akten. *Daran scheitert die Grundlegung der Ethik von Hutcheson.* Beim Fühlen gibt es Täuschungen. Aber [es] sind Akte, in deren Wesen es liegt, Objektives zu treffen. *Fühlen ist ein seinserfassender Akt.* Gefühle machen keine solchen Ansprüche. *Gefühle sind Zuständlichkeit, abhängig von Zufälligkeiten,* [und] können nicht [eine] objektive Ethik begründen.

immediate grasping of what is right in emotions of approval or disapproval: *the moral⁵⁰ sense (possessed by all).* [The] grasping of values in 'emotion' [is] just as immediate as in outward viewing: 'Here is such and such [a] thing,' so here: 'here is a value.' [The] acts of feeling [put forward] here are [of] such a [kind]: We see [a] landscape and feel its beauty. All kinds of objects are correlated to kinds of acts. Values are felt. Here too [there are] differences in the distinctness, clarity, etc. We feel the disvalue of envy perhaps much more clearly than we experience [the] envy itself. But Hutcheson⁵¹ speaks of emotions rather than acts of feeling. [The consequence of this is] *unclarity due to the serious confusion of states of the I (emotion) with acts of feeling. On this, Hutcheson's foundation for ethics fails.* In feeling, there are deceptions. But [there] are acts in whose nature it is to make contact with something objective. *Feeling is a being-grasping act.* Emotions make no such claim. *Emotions are states, dependent on accidental circumstances,* [and] cannot found [an] objective ethics.

Kant wendet sich später völlig ab von Hutcheson. Kant verließ [dessen] {498} Standpunkt und bekämpfte ihn später. In [der] »Kritik der reinen Vernunft« [haben wir den] Gegensatz von Sinnlichkeit und Verstand. [Die] Grundsätze dieser [beiden Vermögen] machen Erkenntnis erst⁵² möglich. [Dieser] Gesichtspunkt [des] Gegensatzes von Vernunft und Sinnlichkeit in Kants Erkenntnistheorie [ist] auch maßgebend für [die] »Kritik der praktischen Vernunft«: [er] findet sich in der Ethik wieder. [Diese] fragt, wie Urteile des »Sollens«, »Müssens« uns möglich sind. Nichts liegt Kant ferner, als [eine] neue Moral aufzustellen. [Seine Absicht ist] nur, allgemeine Vernunftprinzipien aufzudecken, die ihr zugrunde liegen [sowie die] Allgemeingültigkeit und Notwendigkeit bei Werturteilen und Geboten [zu begründen.]

Wie ist [das] Apriori in der praktischen Vernunft möglich? [Im] Ausgang vom Faktum des sittlichen Bewußtseins [gefragt]: Wie ist das sittliche Bewußtsein möglich? [Die] reine Moralphilosophie Kants [hat] alles bloß Empirische auszuschalten [und] muß alles ausschließen, was zur Anthropologie gehört. Er scheidet Maximen [und] Imperative. Maximen

Kant later turned away completely from Hutcheson. Kant abandoned [Hutcheson's] {498} standpoint and later attacked it. In [the] 'Critique of Pure Reason,' [we have the] opposition between sense and reason. [The] fundamental principles of [both of these faculties] are what make cognition possible. [This] viewpoint [of the] opposition between the rational and the sensory in Kant's epistemology [is] also determining for [the] 'Critique of Practical Reason': [it] is found again in the Ethics. [This latter] asks how judgements about 'ought' and 'must' are possible for us. Nothing could be further from Kant's intent than to establish [a] new morality.⁵³ [His intent is] only to discover its general fundamental principles of reason [and to justify the] universality and necessity of value-judgements and precepts.

How is [the] apriori in practical reason possible? [Asked in] relation to the fact of moral consciousness: How is moral consciousness possible? Kant's pure moral philosophy had to dismiss everything merely empirical [and] to exclude everything belonging to anthropology. He distinguishes maxims [and] imperatives. Maxims are

sind subjektiv. Anders sind Imperative: *[sie sind] objektiv, ein Seinsollen in sich enthaltend.* Sie können, *an den Willen sich wendend,* sich am Willen in verschiedenster Weise geltend machen.

1. Hypothetische Imperative: *[Solche] Sätze gelten allgemein, aber unter Voraussetzung gewisser Zwecke, in Ansehung einer begehrten Wirkung usw.* 2. Nun gibt es auch kategorische Imperative: *unbedingt geltend, ohne Voraussetzung; »du sollst« rein an und für sich, nicht für [einen] Zweck.* Alle anderen sind Vorschriften der Klugheit, Gebote des Scharfsinns. *Für Sittlichkeit kommt allein der kategorische Imperativ in Betracht.*

Allgemeiner Lehrsatz: Alle Sätze, die einen Zweck voraussetzen, sind empirisch bedingt. *Jeder hypothetische Imperativ beruht auf Erfahrung. Jede Zweckethik, die [die] Abhängigkeit des Wollens von einer fremden Macht voraussetzt, [ist] zu verwerfen.* So [ist der] Utilitarismus abhängig vom Streben nach Glück, und es ist nur empirisch erkennbar, was zum Glück führt. Jede Glücksethik ist [daher] falsch. Sittlichkeit [ist] um ihrer selbst willen [da]. Weshalb sollte [etwa der] Anblick der Pflicht den Menschen nicht mit Gefühlen des Hasses erfüllen? Auf Gefühle also kann

subjective. Imperatives are different: *[they are] objective, containing an ought-to-be in themselves.* They can, *turning towards the will,* impose themselves on the will in the most diverse ways. 1. Hypothetical imperatives: *[Such] statements are valid in general, but under the assumption of certain purposes, in view of a desired effect, etc.* 2. Now there are also categorical imperatives: *absolutely valid, without assumption; 'you should,' purely in and for itself, not for [a] purpose.* All others are prudential instructions, precepts of intelligence. *For morality, only the categorical imperative is relevant.*

General theorem: All statements that presuppose a purpose are empirically qualified. *Every hypothetical imperative is based on experience. Every teleological ethics that presupposes [the] dependency of the will on an external power [is] to be discarded.* In this way, utilitarianism [is] dependent on the striving for happiness, and what will lead to happiness is only recognisable empirically. Every ethics of happiness is [therefore] false. Morality [exists] for its own sake. For what reason should, [for example, the] appearance of duty not fill a human being with

Sittlichkeit des Tuns nicht zu begründen sein, auf zufällige Affektionen des Menschen. Eigentlicher Gegenstand sittlicher Wertschätzungen ist [der] gute Wille — nicht wegen [seiner] Resultate, sondern wegen [des] Willens selbst. *Moralischer Wert kann nur im Prinzip des Willens selbst liegen, nicht in einer Handlung oder Absicht. [Der] Wille [ist] »gut durch das Wollen selbst«, allein bestimmt durch absolutes Sollen.*

[Man muß] suchen, den guten Willen in Reinheit aufzustellen [und] jedes Gefühlsmäßige herauszuabstrahieren. [Der] ethische Wert einer Handlung [hängt also ab vom Wollen, und] *gut [ist] ein Wollen, das nicht aus Neigung entspringt, nur aus Achtung vor [dem] Sittengesetz. »Pflicht ist [die] Notwendigkeit einer Handlung aus Achtung vor dem Gesetze«, [und eine] Handlung aus Pflicht [ist] lediglich aus [der] Maxime des absoluten Pflichtgesetzes entspringend.* Kant {499} unterscheidet Legalität und Moralität der Handlungen. Ehrfurcht vor dem Gesetz ist [das] einzige Motiv [der] Ethik; [das] *Fundament der Sittlichkeit [liegt] in [der] Ehrfurcht vor dem Seinsollen.* Wo etwas aus Gefühl geschieht, auch [wenn] es mit [dem]

emotions of hatred? So the morality of actions cannot be *founded* on emotions, on *accidental affections of the human being*. The genuine object of moral value-estimation is [the] good will — not because of [its] result, but because of [the] willing itself. *Moral value can only lie in the principle of the will itself, not in an action or intention. [The] will [is] 'good because of the willing itself,' determined alone through {the} absolute ought.*

[One must] seek to establish the good will in its purity [and] abstract it from all things emotional. [The] ethical value of an action [is thus dependent on the willing, and] *a willing [is] good that does not issue from inclination, only from respect for [the] moral law.*⁵⁴ 'Duty is [the] necessity of an action out of respect for the moral law,' [and an] *action performed out of duty [is] simply originating from the maxim of the absolute law of duty.* Kant {499} distinguishes the legality and the morality of the action. Reverence for the moral law is [the] only motive [of] *ethics; the foundation of morality [lies] in reverence for what ought to be.* Where something occurs out of emotion, even [if] it agrees with [the] precept of the moral law, [it] has no moral value. [The] dignity of the

Gebot des Sittengesetzes übereinstimmt, hat [es] keinen sittlichen Wert. [Die] Würde der Person [besteht gerade] in [der] Möglichkeit der Achtung vor dem Moralgesetz. [Der] Grundton [von] Fichtes »Reden an die deutsche Nation« [findet sich schon] hier.

Wie ist [das] Sittengesetz zu formulieren? *Bestimmte konkrete Einzelhandlungen* [werden] nicht dadurch bestimmt, nur [die] Gesetzmäßigkeit der Handlung selbst. *Nur [eine] formale Bestimmung [liegt darin], und doch [ist es das] ethische Grundgesetz.* »Tue das unbedingt Gesollte«, »Handle stets...« u. dgl.: Der kategorische Imperativ ist [die] allgemeingültige Gesetzmäßigkeit selbst. *In [der] Tauglichkeit einer Handlung zum allgemeinen Gesetz liegt der sittliche Wert.* [Wir haben] nur eine Formalbestimmung hier. Wie durch allgemeine Gesetze (Kausalgesetz!) [der] Stoff der theoretischen Erkenntnis geformt und gestaltet [wird], so hier [durch den] kategorischen Imperativ. [Ein] konkreter Imperativ [wird] aus [dem] ganz formalen gewonnen: Sei moralisch! [Dieser ist das] Gebot, etwas zu tun — nie weil es diese oder jene Sache ist, sondern weil es recht

person [subsists precisely] in the possibility for her to respect the moral law. [The] tone [of] Fichte's 'Addresses to the German Nation' [is already to be found] here.

How is [the] moral law to be formulated? *Specific, concrete, individual actions* do not [become] determined by the above, only [the] lawfulness of the action itself. *Only [a] formal determination [is found therein], and yet [that is the] basic law of ethics.* 'Do what you absolutely ought to,' 'Always act...' etc.: the categorical imperative is in itself [the] universally valid law.⁵⁵ *Moral value lies in [the] suitability of an action to the general law.* [We] [have] only a formal characterisation here. Like how [the] material of theoretical cognition is given form and shape through general laws (law of causation!), so here {that material is given shape} [through the] categorical imperative. [A] concrete imperative [is] derived from [the] entirely formal: Be moral! [This is the] precept for doing something — not because it is this or that thing is, but because it is right. [We are talking of] pure practical

ist. [Es geht um die] reine praktische Vernunft hier.

Kant bezeichnet [diesen] Grundbegriff seiner Ethik als Autonomie des Willens. Würde gebührt eigentlich nur [dem] Sittengesetz selbst, der menschlichen Person nur als Teilnehmer an ihm. Alle Erscheinungen sind dem Gesetz gegenüber bloße Sachen. *[Es wäre ein Verstoß gegen [die] Würde der Person, wenn etwas um der Sache willen getan wird und nicht aus Achtung vor dem Gesetz entspringt. [Das] Gesetz der Gesetzmäßigkeit, [als] Autonomie des Willens, wird jetzt zum Gesetz der Wahrung der Würde des Menschen. [Die] Person [ist] stets als Zweck, nie bloß als Mittel [zu behandeln]. Wären wir durchaus vernünftig, dann gäbe es keine solchen Gebote. [Was] für [ein] reines Vernunftwesen (Gott z. B.) Naturgesetz [wäre], wird für uns ein »du sollst«.* [Der] Mensch [ist eben] Bürger zweier Welten — [der] sinnlichen und [der] intelligiblen. [Das] Sittengesetz als Gesetz der intelligiblen Welt [liegt] in uns selbst. [Das] Sittengesetz verleiht dem Menschen [einen] unendlichen Wert, indem er sich als Bürger dieser Welt fühlen kann. Der Mensch [ist] unwürdig genug, [aber die] Menschheit selbst ist

reason here.

Kant designates [this] basic concept of his ethics as the autonomy of the will. Dignity belongs only properly to the moral law itself; the human person {possesses it} only as a participant in the latter. All appearances are merely things in comparison to the law. *[It would be an] offense against [the] dignity of the person if anything was done for its own sake⁵⁶ and not out of respect for the moral law.* [The] law of conformity with the moral law, *[as] the autonomy of the will,* now becomes the law of the preservation of human dignity. [The] person [is] always [to be treated] as an end, never merely as a means. If we were thoroughly rational, there would be no such precepts. [That which would be a] law of nature for a being of pure reason (God, for example) becomes, for us, a ‘you should.’ [The] human being [is indeed] a citizen of two worlds — [the] sensory and [the] intelligible. As a law of the intelligible world, [the] moral law [resides] within us. [The] moral law lends the human being [an] unending value, insofar as he can feel himself to be a citizen of this world. The human being {may} lack dignity, [but] humanity itself always possesses

stets würdig, [denn sie ist befähigt zur] Kausalität durch Freiheit. Freien Willen [gibt es] nur, insoweit [der Mensch dem] kausalen Nexus des Geschehens nicht unterworfen [ist]. Freiheit ist Voraussetzung für Bestimmung durch [das] Sittengesetz. [Sie ist daher] für [die] intelligible Welt der Dinge an sich zu postulieren. [Das] Sittengesetz in uns verbürgt uns [die] Willensfreiheit: [Dies ist] Kants Umkehrung der gewöhnlichen Deduktion hier. [Die] Erfahrung zeigt uns überall kausale Bestimmtheit.

Freiheit bei Kant [ist] damit [noch] nicht eindeutig bestimmt. Frei ist auch [die] Fähigkeit, frei zu sein, [die] Möglichkeit, sich zu befreien von [der] Sinnlichkeit. {500} [Der] Mensch als Noumenon ist wirklich frei in [diesem] zweiten Sinne. *Daraus allein*⁵⁷ versteht Kant Verantwortung, Zurechnung u. dgl. [Das] Böse [ist] auch [ein] Werk der Freiheit. Beide Freiheitsbegriffe beziehen sich nicht auf [den] empirischen Verlauf der Dinge, [sondern] auf [die] Welt der Dinge an sich.

[Das] Ding an sich [ist] unzugänglich für Kants theoretische Erfahrung. [Das] sittliche Bewußtsein sollte zur Annahme dieser Welt zwingen. Als intelligible Wesen [stehen

dignity, [because it is empowered to] causality through freedom. [There is] only free will insofar as [the human being is] not subjected to the causal nexus of events. Freedom is a precondition for determination by [the] moral law. [Therefore it is] to be postulated for [the] intelligible world of things in themselves. [The] moral law in us vouches for our free will: [this is] Kant's turning around of the customary deduction here. Experience shows us causal determinedness everywhere.

Freedom for Kant [is still] not clearly defined with this. [The] capacity to be free, [the] possibility of freeing oneself from the senses, is itself free. {500} [The] human being as *noumenon* is really free in this second sense. Kant understands responsibility, accountability etc., *on this basis alone*. Evil [is] also [a] work of freedom. Both concepts of freedom relate not to [the] empirical procession of things, [but] to [the] world of the things in themselves.

[The] thing in itself [is] inaccessible for Kant's theoretical experience. Moral consciousness should force the acceptance of this world. As intelligible beings, [we] no

wir] nicht mehr unter kategorialen Gesetzen, sondern [sind] frei und geben uns [selber das] Gesetz des kategorischen Imperativs. [Im Gegensatz zu] Platons außerzeitlichem vorweltlichem Akt der freien Wahl ist bei Kant [der] freie Wille stets da. [Der] Ausgangspunkt beider ist [aber] derselbe: sonst [gäbe es] keine Schuld, Verantwortung u. dgl. Daran will man [aber] festhalten.

Kant will nicht [der] Glückseligkeit jede Bedeutung absprechen. [Er] betrachtet sie als [ein] Gut [und fragt nach dem] Zusammenhang zwischen Sittlichkeit und Glück. Nur [ein] sittlicher Mensch ist würdig der Glückseligkeit, aber⁵⁸ Erreichung der Glückseligkeit ist nicht Motiv des Wollens. [Die] Widersprechung des [tatsächlichen] Seins [ist] auch hier nicht ausreichend, um [etwas] Seinsollendes aufzuheben. [Daher das] Erwachsen der Idee der Unsterblichkeit der Person. Damit [sind wir] nicht schon sofort [bei der] Verwirklichung des höchsten Glückes, sondern nur bei [der] Annahme der sittlichen Weltordnung, und die [ist] nur durch [die] Existenz Gottes [garantiert]. [Dies sind] die drei Postulate der praktischen Vernunft. [Das] irdische Leben [erscheint]

longer [stand] under categorical laws; we [are] free and give [the] law of the categorical imperative to ourselves. [In opposition to] Plato's act of free choice outside of time and the world, [the] free will is always there for Kant. [However, the] starting-point of both is the same; otherwise there would be no guilt, responsibility, etc. [But] those, one will want to hold on to.

Kant does not want to strip blissfulness of all significance. [He] regards it as [a] good [and investigates the] connection between morality and happiness. Only [a] moral human being deserves bliss, but the achievement of bliss is not a motive for the will. [The] contradiction of [factual] being [is] also not sufficient here to suspend [something] that should be. [Hence the] growth of the idea of the immortality of the person. With that, [we are] not already [at the] realisation of the highest happiness, but merely at [the] acceptance of the moral order of the world, and the latter [is] only [guaranteed] through [the] existence of God. [These are] the three postulates of practical reason. Thereby, earthly life [appears] in [a] higher light.

dadurch in [einem] höheren Licht.

[Nicht zu unterschätzen ist die gewaltige Wirkung dieser Ethik: [Der] eigentliche Wert des Menschen [liegt] in diesem »Sollen«. [Dies ist eine] tiefe Bereicherung der Gedankenwelt der Menschen, wie man sich auch dazu stellt.

Kritik [an den wissenschaftlichen Gründen von Kants Ethik: Kants Theorie des sittlichen Handelns und des sittlich Guten [ist] orientiert am guten Willen: »Gut [ist] allein der gute Wille.« Sittliche Werte [sind also] an Akten haftend. Was in [der] Welt recht und unrecht ist, [ist dies] nie an sich selbst, sondern wegen [seiner] Entsprechung des Gesetzes. Aber so [kommt es zu einer] ungeheueren Beschränkung der Provinz der Ethik. [Der] Mensch ist nicht bloß [ein] wollendes Wesen. Einem Feinde sein Unrecht verzeihen, Verzicht auf [ein] Gut u. dgl. sind echt ethische Akte. [Sie haben] sittlichen Wert, aber [dabei findet sich] kein Wollen, [einen] Sachverhalt zu realisieren. [Auch] Vergeben [ist ein] Akt der Person — könnte man ihn [aber] zu [den] willentlichen Akten rechnen? Also⁵⁹ auch auf Erlebnisse nichtwillentlicher Akte beziehen sich Werte, auch an Erlebnissen

[The] mighty influence of this ethical theory [is not to be underestimated]; [the] genuine value of the human being [rests] in this 'ought.' [This is a] deep enrichment of the world of human thought, however one might assess it.

Critique [of the] scientific bases of Kant's ethics: Kant's theory of moral action and the moral good [is] oriented upon the good will: 'The good will alone [is] good.' Moral values [thus] attach to acts. Whatever is right and wrong in [the] world [is so] not in itself, but because of [its] correspondence with the moral law. But then an enormous reduction of the province of ethics [comes about]. [The] human individual is not simply [a] willing being. To excuse an enemy of his wrong, relinquishment of [a] good, etc., are genuine ethical acts. [They have] moral value, but [in these cases there is] no will to realise [a] state of affairs. Forgiving, [too, is an] act of the person — [but] could one consider it an act of willing? Thus, values relate also to the experiences of non-willing acts; we also detect an ethical character in experiences of a non-willing nature. For example, [the] emotion of resentment [or] inner participation in

nichtwillentlicher Natur spüren wir [den] ethischen Charakter. Z. B. [das] Gefühl der Mißgunst [oder] innere Teilnahme an unglücklichem Geschick. Wie [gäbe es] denn nur guten Willen in der Welt? Solche *personale Akte und Erlebnisse* [dienen vielmehr] als Zeichen für [die] personale Struktur. [Die] Person⁶⁰ selbst wird auch als ethisch wertvoll bewertet. [Eine] egoistische Handlung im einzelnen, aber auch [die] egoistische Person im ganzen [ist] verurteilbar. {501} Seit Kant also [ist] leider [die] Ethik als Lehre der guten Handlungen beschränkt. Luther sagte: [Die] Person muß gut sein [noch] vor [der] guten Handlung.

[Eine] wissenschaftliche Ethik muß versuchen, beidem gerecht zu werden. [Es ist] merkwürdig, wie weit [dies] von Kant verkannt [wurde in] zweierlei [Hinsicht]:

1. Relativierung der Werte bei Kant: *Überlegung [ist] nach Kant nur gut, wenn auf Gutes abzielend.* [Aber] ruhige Überlegung beim Menschen wird nicht zum Unwert, weil [sie] im Dienst des schlechten Willens [steht]. Wir nehmen sie als Zeichen für [die] Unempfänglichkeit des

an unhappy twist of fate. Why, therefore, would there exist only good will in the world? Such *personal acts and experiences* [serve in fact] as indications of [the] personal structure. [The] person herself is also assessed as ethically valuable. A specific egoistic action can be denounced, but so too can [the] egoistic person herself. {501} So, since Kant, ethics has sadly been limited to the doctrine of good actions. Luther said: [The] person must [already] be good, before [the] good action.⁶¹

[A] scientific ethics must attempt to account for both. [It is] noteworthy by how far Kant neglected to do that, on two points:

1. Relativisation of values by Kant: *For Kant, reflection [is] only good if it is direct towards the good.* [But] calm reflection in a human being does not become a disvalue just because [it] serves the bad will. We take it as an indication of [the] villain's lack of receptivity to the good, and condemn him all the more.

Bösewichts fürs Gute und verurteilen ihn desto mehr. Überlegung [ist] stets [ein] positiver Wert.

2. Talente des Geistes [sind] keine spezifisch sittlichen Werte. Warum beschränkt Kant sich auf diese und spricht nicht von *den ethischen Phänomenen der Güte, Treue, Barmherzigkeit* u. dgl.? [Dies sind] Sachen, die alle sich nicht auf Wollen reduzieren lassen.

[Für] Kants Ethik als bloße Ethik des guten Willens aber, müßte man sagen, ist 1. *ethisch recht der Sachverhalt, dem allgemeines Seinsollen zukommt.* 2. *Sittlich gut ist das Wollen, das [einen] solchen Sachverhalt realisiert, nicht um irgendeines Zweckes willen, sondern um des obersten Sittengesetzes willen;* [kurz eine] Handlung, die formal sich unter [das] Sittengesetz fügt.⁶² Etwas anderes ist [es aber] zu sagen, man soll dieses realisieren. *Wie ist sittliche Rechtheit im konkreten Fall zu erkennen?* [Die] Schwierigkeit [liegt darin], einzelne Handlungen aus [dem] bloß formalen Gesetz abzuleiten. [Die] Tauglichkeit zur allgemeinen Gesetzgebung hilft uns hier nirgends. [Man denke an den Fall der] Lüge

Reflection [is] always [a] positive value.

2. Spiritual talents [are] not specifically moral values. Why does Kant limit himself to these and not speak of *the ethical phenomena of goodness, faithfulness, compassion* and so on? [These are] things which do not admit of being reduced to willing.

But [for] Kant's ethics as a mere ethics of the good will, one would have to say: 1. *A state of affairs that in general ought to be is ethically right.* 2. *The willing that realises such [a] state of affairs, not out of desire for some {other} purpose but for the sake of the higher moral law, is morally good;* [it is, in short, an] action that formally fits under [the] moral law. [But it] is something different to say that one should realise it. *How is moral rightness to be recognised in concrete cases?* [The] difficulty [lies in] deriving individual actions from [the] mere formal law. Capacity for legislating the universal law does not help us here. [One might think of the example of the] lie under specific circumstances!

unter bestimmten Umständen!

Kants eigene konkrete Ableitung einzelner Fälle aus [dem] allgemeinen Sittengesetz [beim] Beispiel des Depositums. Aber warum sollte es [überhaupt] Deposita geben? [Ein] anderer Versuch: [Die] Formulierung der Maximen sollte⁶³ zum allgemeinen Naturgesetz taugen. Niemals aber ist Kant so weit von [den] Grundlagen seiner ganzen Ethik [entfernt] wie hier. [Das] sittliche Gesetz [macht er] hier davon abhängig, ob es Naturgesetz sein kann oder nicht. *Das widerspricht seinem eigenen ethischen Hauptsatz.* [Seine] dritte Formulierung [lautet]: Daß wir wollen können, [daß] unsere Maxime zum allgemeinen Gesetz wird. *Kriterium des sittlich Richtigen [ist also, man könne] unmöglich wollen, daß Unrichtiges allgemeines Naturgesetz werde.* [Aber ist das] so z. B. [im Fall des] Genußmenschen? Alle diese Bemühungen Kants, inhaltliche Gesetze aus formalen Gründen abzuleiten, müssen scheitern. *Es gelingt ihm nicht und kann nicht gelingen.*

Zweiter großer Einwand: *Kants Ethik* will formal sein und doch materiale Hinweise geben. *In keinem Falle kann [sie aber] sagen, was recht*

Kant's own concrete derivation of particular cases from [the] general moral law [with the] example of the deposit.⁶⁴ But why should there be deposits at all?⁶⁵ Another attempt: [the] formulation of maxims should lead to a general law of nature. Never is Kant so far from [the] foundations of his entire ethics as here. Here [he makes the] moral law dependent on whether it can be a law of nature or not. *That contradicts his own ethical first principle.* [His] third formulation: That we can want [that] our maxim should become a universal law. The criterion of moral correctness⁶⁶ [is thus that one could] not possibly want for something incorrect to become a general law of nature. [But is that] so, for example, [in the case of] one who is pleasure-driven? All of these efforts by Kant to derive substantial⁶⁷ rules from formal bases must fail. It does not succeed for him, and cannot succeed.

Second major objection: *Kant's ethics* wants to be formal and yet give non-formal references. *In no case, [though,] can [it] say what is right in a*

ist im besonderen Fall. Wenn er es versucht, stützt er sich auf [die] vagen sittlichen Einsichten des täglichen Lebens und gibt diese als aus allgemeinen Gesetzen abgeleitet aus; *setzt also voraus, was er nicht darf.* Inhaltliche Gesetze ([z. B.] *Rechtssätze*) werden von Kant hineingeschmuggelt [und] benützt. Wie [wir das] Wesen der Veränderung aufklären müßten, um [den] Satz »Jede Veränderung hat {502} ihre Ursache« aufstellen zu können, so hier [das] Wesen z. B. der Lüge. [So] erwächst hier [die] Idee einer materialen Ethik, die [das] ethisch Rechte in der Welt [und die] evidenten *Rechtheitszusammenhänge* erforscht.

Im letzten Grunde ist Kants Behauptung unanfechtbar, [auch wenn die] *Allgemeingültigkeit des Sittengesetzes bei Kant Allgemeingeseztlichkeit [wird].* Sittliche Rechtheit ist Wesensattribution: *Was recht ist, ist recht als solches, seinem Wesen nach,* Umstände machen [dabei] nichts aus. Was recht ist, läßt sich [darum] als allgemeine Gesetzmäßigkeit ausdrücken. Diese Einsicht [ist] nicht zu unterschätzen. *Darin hat Kant absolut recht. Die Relativierung der sittlichen Rechtheit auf Glückseligkeit* Kant's assertion is indisputable in the final analysis, [even if the] *universal applicability of the moral law [becomes] universal law for him.* Moral rightness is an attribute of essence: *that which is right, is right as such, on the basis of its essence;* circumstances make no difference [there]. What is right can [thus] be expressed as conformance to a general law. This insight is not to be underestimated. *Therein, Kant is completely right. Eudaimonism's relativisation of moral rightness to happiness [is] thereby dismissed.* All

beim Eudämonismus [ist] damit abgetan. Alle eudämonistische Ethik [ist] dadurch vernichtet, alle Erfolgsethik überhaupt.

Kant bestimmt auch [den] sittlichen Wert des Wollens nach [dem] Inhalt des Gewollten, nämlich nach [dem] sittlichen Wert des rechten Sachverhaltes [und] um seiner Rechtheit willen. Sittliches Wollen soll geschehen *im Hinblick auf [den] kategorischen Imperativ*, [d. h.] weil [der] kategorische Imperativ es befiehlt. Kant meint gerade dieses. *Aber kann man von Achtung vor einem formalen Gesetz sprechen, von [der] Würde eines Satzes? Pharisäer und Pharisäismus sind gerade durch [ihre] Achtung vor Gesetzen bestimmt.*⁶⁸

Man hat Kants Ethik als 1. voluntaristisch, 2. formalistisch, 3. rigoristisch bezeichnet.⁷⁰

1. Voluntarismus Kants: Nicht [der] Wille allein [ist] ethisch relevant. [Ein] unwillendes, bloß zusehendes Bewußtsein könnte mit boshafte Gefühlen o. dgl. erfüllt sein. Auch [ist ein] einzelnes Neiderlebnis o. dgl. von [der] neidischen Natur der Person zu unterscheiden. [Eine] rein voluntaristische Ethik bedeutet Verkümmern und Beschränkung der Ethik. Schwierigkeiten [zeigen sich] an

eudaimonistic ethics, all consequentialist ethics in general, [is] defeated by this.

Kant also determines [the] moral value of willing on the basis of [the] content of what is willed, that is to say on the basis of [the] moral value of the right state of affairs and for the sake of its rightness. Moral willing should occur *in view of [the] categorical imperative*; [that is,] because [the] categorical imperative demands it. Kant meant exactly this. *But can one speak of respect for a formal law, of [the] dignity of a statement? Pharisees⁶⁹ and Pharisaism are defined precisely by [their] respect for laws.*

Kant's ethics has been designated as: 1. voluntaristic; 2. formalistic; 3. rigoristic.

1. Kant's voluntarism: Not just [the] will [is] ethically relevant. [A] non-willing, merely observing consciousness could still be filled with malicious emotions and the like. And an individual experience of envy, or suchlike, is to be distinguished from [the] envious nature of a person. [A] purely voluntaristic ethics implies a crippling and diminishing of ethics. Difficulties [present themselves] on

vielen Punkten. *[Sie sind auch von]* many points. *[They also have]*
Einfluß auf [das] Problem der influence on *[the] problem of*
Auffassung der Sünde und des Bösen conceiving of sin and evil in the world.
in der Welt. *Wie ist Böses in die Welt* How has evil come into the world? *[An*
gekommen? [Eine Erklärung ist] explanation is] possible by appeal to
möglich bei Annahme von the freedom of the will (an attempt to
Willensfreiheit (Versuch, alles Böse aus explain all evil based on [the] free
[dem] freien Willen zu erklären). *Oder* will). *Or [one ends up] denying evil*
[man kommt zur] Ableugnung des [as it has] come to within the domain
Bösen, *[wie sie] erwachsen [ist] auf* of voluntaristic ethics (an attempt to
[dem] Boden [der] voluntaristischen deny the reality of evil in a positive
Ethik (Versuch, die Realität des Bösen form). Evil *in the world* is
in Positivität zu verneinen). [Das] Böse relativistically explained away. [So too
in der Welt [wird] relativistisch in] Theodor Lipps' *Ethischen*
wegerklärt. [So auch in] Th. Lipps' *Grundfragen*: Every motive in itself
»Ethischen Grundfragen«: Jedes Motiv [and] as such is good, evil arises from
an sich [und] als solches ist gut, Böses [the] relationship of the motives. Only
erwächst aus [dem] Verhältnis der in [their] opposite effect, in their false
Motive. Nur in [ihrer] equilibrium, are they bad. 'Not the
Entgegenwirkung sind sie schlecht, im willing of human beings is evil, *only*
falschen Gleichgewicht. »Nicht das the non-willing.'⁷¹
Wollen der Menschen ist böse, sondern
nur das Nichtwollen.«

Aber [eine] solche Auffassung *But* such [a] perspective is
ist haltlos [und] nur möglich, wo man unfounded [and] only possible where
[eine] unberechtigte voluntaristische one commits [an] unjustified
Beschränkung begeht. *Schon Regungen* voluntaristic reduction. *Strivings are*
unterstehen der ethischen Jurisdiktion. already answerable to the jurisdiction
Böses aus Mangel gibt es (wie bei of ethics. *There exists an evil from lack*
Lipps), Unempfindlichkeit für Werte ist (as for Lipps); unreceptivity to values
selbst unwert — und es handelt sich is itself disvaluable — and it is not
nicht immer [bloß] um always [just] a matter of unreceptivity!
Unempfindlichkeit! *Aber Mißgunst:* *But resentment: the other should not*

der Andere soll nicht haben, was er hat. Es ist [dies] nicht bloß [ein] »ich will haben, was er hat«; [das] kann {503} sogar fehlen. Wie können [solche] positive Regungen der Mißgunst, des Hasses u. dgl. so wegerklärt werden? Lipps' [Beispiel der] Grausamkeit: Nur Fehlen von Mitgefühl ist Unwert nach⁷² Lipps. Dem rohen Menschen [mit seiner] Unempfindlichkeit ist [sein] Opfer gleichgültig. Der Grausame aber genießt [das] Leiden des Opfers, kostet es aus. [Das ist ein] evident zu erfassender Unwert der Grausamkeit. Lipps [sagt dazu: Ein] höheres Machtbewußtsein werde erstrebt bei Grausamkeit, [und] das sei ein Wert (Lipps hebt [auch] sonst nur gute Elemente bei verschiedenen Unwerten hervor). [Ein] Grausamer [habe] kein Machtbewußtsein, wo [er] Leiden genießt, das er nicht selbst hervorgebracht hat. Aber es stimmt nicht mal ([man denke an die] Sklavenkämpfe [in] Rom)! [Eine] Konsequenz von Lipps' Auffassung [wäre]: [Sich] weiden an Grausamkeit [ist] wertvoller als bloßes Fehlen von Mitgefühl.

Böses [wird] also in sehr positiven Formen und Erlebnissen angetroffen. [Die] Ethik darf dieses

have what he has. Here it is not merely [a] 'I want to have what he has'; in fact [that] can {503} even be absent. How could [such] positive strivings of resentment, hate etc. be so {thoroughly} explained away? Lipps' [example of] cruelty: only the absence of sympathy is a disvalue according to Lipps. The callous human being [with his] unreceptivity is indifferent to [his] victim. But the cruel {human being} takes pleasure in the victim's suffering, enjoys it to the full. [That is an] evident disvalue to grasp in cruelty. Lipps [replies:] cruelty strives for [a] greater feeling of power,⁷³ and that should be a value (Lipps [elsewhere also] emphasises only good elements pertaining to different disvalues). [A] cruel human being has no feeling of power when he enjoys suffering that he did not produce himself. But even that is not correct ([one thinks of the] gladiatorial combats [in] Rome)! [A] consequence of Lipps' conception [would be]: to feed on cruelty [is] more valuable than to simply fail to sympathise.

Evil [is] thus found in quite positive forms and experiences. Ethics should not deny these. Metaphysics

nicht wegleugnen. [Die] Metaphysik still has work to do there.
hat da noch zu tun.

2. Formalismus: *Es gibt [tatsächlich eine] formale Ethik. Als formale Sätze [sind z. B.] selbstverständlich: »Wenn etwas positiv wertvoll [ist], so ist seine Existenz [ebenfalls] positiv wertvoll, seine Nichtexistenz negativ unwertvoll« und andere [solche] Sätze. Solche Zusammenhänge sind nicht zu unterschätzen, [und es bleibt] verdienstvoll, die hier [geltenden] trivialen Selbstverständlichkeiten zu entwickeln. Brentanos Versuch hier ist kein Grund des Niedrigschätzens. Hier[her gehören] auch Wesensbeziehungen zwischen Rechtheiten und Wert ([z. B.] »Ethische Rechtheit und sittlicher Wert sind Wesensprädikate«). Dieser Zusammenhang ist eigentlich das, was Kants kategorischer Imperativ ausdrückt; im letzten Grunde sagt [er] nicht mehr.*

2. Formalism: *There is [in fact a] formal ethics. As a formal statement, the following, [for example, is] self-evident: 'If something [is] positively valuable, then its existence is [also] positively valuable, its non-existence negatively disvaluable', and other [such] statements. Such connections are not to be underestimated, [and it remains] worthwhile to develop these kinds of self-evident truths. Brentano's attempt here is no reason to devalue this. Relationships of essence between rightness and value⁷⁴ also belong here ([for example], 'Ethical rightness and moral value are predicates of essence'). This connection is really that which Kant's categorical imperative expresses; in the final analysis [it] says no more than this.*

[Der] Bruch in Kants Ethik: *Er versucht, [die] materiale Ethik abzuleiten aus [einem] formalen Satz ([Beispiel der] Lüge). Es kann ihm nicht gelingen. Wenn Lüge sittlich unwert ist, dann gründet es in ihrem Wesen, [und] damit ist ihr Unwert allgemeingültig. Und nicht umgekehrt:*

[The] flaw in Kant's ethics: *he attempts to derive a non-formal ethics from a formal statement ([example of the] lie). He cannot succeed. If lying is morally disvaluable, that is because of its essence, [and] thus its disvalue is universally valid. And not the other way around; its disvalue [is] not to be*

aus Allgemeingültigkeit [ist] nicht der Unwert abzuleiten. [Das] wirkliche Verhältnis [wird] oft bei Kant direkt umgedeutet. Kant hat sich [dementsprechend auch] sehr gegen [eine] materiale Ethik gewendet. Diesem liegt Kants eigenartige Ansicht des Apriori zugrunde. Eine materiale Ethik muß nach Kant eine empirische Ethik sein, und die bekämpft er. [Er] hatte [eben] material mit empirisch [und] a priori mit formal verwechselt. [Seine] Wendung gegen [eine] empirische Ethik ist berechtigt; empirische Ethik [ist ein] Widersinn. [Der] Gegensatz empirisch — formal [ist] aber nicht gerecht[fertigt]. Kant kennt nur Formalismus und Empirismus, nicht das materiale Apriori. Aber Ethik hat es nicht mit [dem] Wertbewußtsein zu tun, sondern mit [dem] Wert, [und im Wertgebiet gibt es] apriorische Zusammenhänge materialer Natur. [Ihre] Allgemeingültigkeit und Notwendigkeit [ist] hier zu sehen. Also [sind sie auch] nach Kant a priori. [Und] mit [der] Möglichkeit materialer apriorischer Ethik fällt die Notwendigkeit, alle Ethik als formale ansehen zu müssen auf Grund der Forderung der Allgemeingültigkeit.

{504} Subjektivismus und

derived from generality. [The] actual relationship [is] often interpreted by Kant in the reverse sense. Kant [therefore also] turned strongly against [a] non-formal ethics. *The reason for this is Kant's peculiar view of the a priori. A non-formal ethics must, for Kant, be an empirical ethics, and that, he fights against.* [He] had confused 'non-formal' with 'empirical' [and] 'a priori' with 'formal.' [His] turning against [an] empirical ethics is justified; *empirical ethics [is a] nonsense.* The placement of empirical and formal as opposites, however, is not justified.⁷⁵ *Kant knows only formalism and empiricism, not the non-formal a priori. But ethics does not have to do with [the] consciousness of values, but with [the] values {themselves,} [and in the domain of values there are] a priori connections of a non-formal nature. [Their] universality and necessity [is] to be seen here. So [even] according to Kant [they are] a priori. [And] with [the] possibility of non-formal a priori ethics, the necessity falls away of having to view all ethics as formal on the basis of the demand for universality.*

{504} Subjectivism and

Relativismus in der Ethik: Da [erhebt sich die] Frage, ob wir je mit Sicherheit ethische Werte aufstellen können. »Ist nicht da alles subjektiv?« Man verweist auf [die] Kulturgeschichte, auf [den] Wandel der Ansichten u. Dgl., oder man verfällt dem Skeptizismus. *Wert, Unwert sei nur Ausdruck unserer* verschiedenen Gefühls- und Reaktionsweisen in verschiedenen Situationen — *wie könne man [da] zur Objektivität kommen?* Hobbes und Spinoza [sagen]: Nicht weil etwas gut ist, begehren wir es, sondern die [Dinge] sind gut, [d. h.] *nennen wir gut*, weil wir sie begehren. *Ähnlich andere Theorien.* Was *alle* diese Theorien bekämpfen, ist dasselbe: *daß Dinge in sich wertvoll sind.* Sie sagen: Streichen wir [das] Bewußtsein, so bleiben Dinge, aber nicht ihre Werte. Werte kommen [den] Dingen nicht so zu wie Ausdehnung o. Dgl.

Aber [unsere] ganze natürliche Verhaltensweise, *unsere* *Stellungnahmen zu der Welt (die wertende [usw.]*), setzen objektiv an sich bestehende Werte *und Unwerte* in [der] Welt voraus. *Lob und Tadel tun es.* Orientierung hier wieder an [einem] Beispiel: *Es gibt Dinge ohne rationale Motiviertheit ([z. B. ein] Erlebnis, das*

relativism in ethics: Here [arises the] question of whether we can indeed set out ethical values with certainty. 'Is that not all subjective?' One refers to cultural history, to [the] changing of perspectives and so forth, or one falls into scepticism. *Value {and} disvalue would be mere expressions of our* different modes of emotion and reaction in different situations — *how could one get from there to objectivity?* Hobbes and Spinoza [say]: we do not want something because it is good; [things] are good (*[that is,] we call them good*), because we desire them. *Likewise other theories.* All of these theories attack the same thing: *that things are valuable in themselves.* They say: if we take consciousness out of the equation, things remain, but not their values. Values do not belong to things as extension and suchlike do.

But [our] entire natural way of reacting, *our attitude toward the world (the valuing [etc.]*), presupposes the objective subsistence of values *and disvalues* in [the] world. *Praise and censure do this.* To orient ourselves here again with [an] example: *There are things without rational motivatedness ([for example, an]*

*sinnliche Lust am Wohlgeschmack einer Speise [gewährt]). Da hat Wert keine Stelle. Aber Freude über ein Geschehen [ist] motiviert, [ob] zu Recht oder Unrecht, [jedenfalls ein] Erlebnis mit innerem Sinngehalt, und da hat Wert eine Stelle. Durch [einen] Akt des Verzeihens z. B. wird tatsächlich [ein] neues Verhältnis zwischen zwei Personen geschaffen. Der Verzeihende kann wieder zornig werden, aber wir bemerken sofort, es liegt hier [dann] eine Sinnesinkonsequenz vor. Das ganze emotionale Leben ist *Leben mit [einem] bestimmten Sinngehalt*, mit Sinnes- und Unsinnskonsequenzen u. dgl. Wie in [der] Logik, so [gibt es] auch hier Sinngehalt und Unsinn des emotionalen Lebens. Unter [den] Cartesianern [wurde das] z. B. besonders bei Malebranche [gesehen]. Später in [der] mechanistischen Psychologie [hat man dies] vergessen, aber dann gründlich. In der Neuzeit [hat] Franz Brentano zuerst auf [den] intentionalen Sinnescharakter des inneren *psychischen* Lebens aufmerksam gemacht.*

*Unser Verhalten zur Welt setzt seinem Sinn nach Objektivität der Werte voraus. Wo den Werten Objektivität abgesprochen [wird], ist*⁷⁶

*experience that [gives] sensory pleasure from the good taste of a meal). There, value has no place. But joy over an occurrence [is] motivated, [whether] rightly or wrongly; [in either case an] experience with an inner content of sense, and there value has a place. Through [an] act of forgiving, for example, [a] new relationship is in fact formed between two persons. The forgiver can become angry again, but we notice immediately that we have an inconsistency of meaning here. All emotive life is *life with [a] particular meaning-content*, with consequences that can be sensible and nonsensical, and so on. As in logic, here too [there is] meaningfulness and nonsense of the emotive life. Among [the] Cartesians, for example, [that was seen] especially by Malebranche. Later, in *mechanistic psychology*, [people] forgot [this], and then seriously. In more recent times Franz Brentano was the first to take note of [the] intentional character of inner *psychic* life.*

Our relation to the world presupposes according to its meaning the objectivity of values. Where the values are denied objectivity, every

jede Begeisterung, jede Empörung, Entrüstung u. dgl. *in sich selbst* unsinnig. *Wir sind begeistert über die Tat um ihres Wertes willen.* Über [einen] psychologischen Mechanismus *kann man sich nicht begeistern oder empört man sich nicht; wenn man es doch täte, wäre es Täuschung.* [Die] Konsequenzen des Wertsubjektivismus [sind] sehr weitreichend. Alles [wird] auf [die] Lust des Einzelnen reduziert. [Bei einem] sittlichen und religiösen Genie muß [der] Subjektivismus sagen: [sein] Anblick erweckt Lust, der von gewöhnlichen Menschen nicht. Das ist [ein] bloßes Faktum. [Der] blinde irrationale Mechanismus des Lustgefühls ist [dann die] einzige bleibende Basis des Wertbewußtseins — und aller Kultur! [Dies führt zur] Proklamation von Sinnlosigkeit von Kultur beim Subjektivismus.

enthusiasm, every outrage, indignation and so on is meaningless *in itself*. We are enthused over the act because of its value. One cannot be enthused or outraged over [a] psychological mechanism; if one did so, it would be a deception. [The] consequences of value-subjectivism [are] very wide-ranging. Everything [is] reduced to [the] pleasure of the individual. [Of a] moral and religious genius, subjectivism must say: [his] outlook awakens pleasure {where} that of ordinary people {would} not. That is [a] plain fact. [The] blind, irrational mechanism of pleasure-feeling is [therefore the] only remaining basis for value-consciousness — and all culture! [This leads to the] proclamation of the meaninglessness of culture by subjectivism.

Aber [der] Subjektivismus hat ebensowenig [eine] Basis hier wie sonst. *Worauf stützt er sich [dann]? Auf Meinungsverschiedenheit kann er sich nicht {505} berufen, ebensowenig wie bei [der] Mathematik [und] in anderen Gebieten auch.* Wie kommt es dann, daß man behauptet, Werturteile seien bloß Ausdruck der gefühlsmäßigen Reaktionen der Einzelmenschen auf [ihre] Umwelt?

But subjectivism has just as little basis here as ever. *How does it [then] support itself? It cannot {505} appeal to differences of opinion, any more than in mathematics [and] other areas.* So why is it that one asserts that value-judgements are merely expressions of the emotional reactions of individual human beings to [their] environment? When we attribute beauty to [a] picture, we are looking at

Sprechen wir [einem] Bild Schönheit zu, so blicken wir nach [dem] Bild, nicht auf uns selbst. »Schönheit« spricht [dem] Gegenstand selbst [et]was zu. »Merkst du nicht diese und jene Schönheit?« Ob du dich an [der] Schönheit freust oder ob du dich darüber ärgerst, tut nichts dazu.⁷⁷ Anders bei Ärger über eine Sache, wo [wir] auf uns blicken. Ärger steht nie als etwas an der Sache Haftendes vor mir,⁷⁸ aber Werte werden an Sachen vorgefunden. In Akten des Fühlens kommen sie zur Gegebenheit. Es gibt hier alle Charaktere der erkennenden Akte; auch Täuschungen über Werte gibt es wie Täuschung bei Farben. Aber diese [sind] nur in neuen Akten derselben Art,⁷⁹ aber klareren o. dgl., erkennbar. Aber [die] Zuverlässigkeit des Wertfühlers überhaupt [ist] damit nicht zu bezweifeln. [Sie] wird vorausgesetzt bei Täuschungen.

Allerdings ist [das] Gefühl des Wertes zentraler als Sehen oder Hören [und] steht unter bestimmten Bedingungen. Feinheit und Schärfe des Wertfühlers sind abhängig von [der] Struktur der Person. Nur wo bestimmte personale Qualitäten da sind, ist ein bestimmtes Wertfühlen überhaupt möglich. Dadurch wird [es] erst möglich, daß Unempfindlichkeit als

[the] picture, not at ourselves. 'Beauty' attributes some[thing] to [the] object itself. 'Do you not notice this or that beauty?' Whether you take pleasure from the beauty or it irritates you makes no difference. *It is different with annoyance over a thing, where [we] look at ourselves.* Annoyance never stands as something in the thing before me, but values are found in things. In acts of feeling, they come to givenness. Here, all the characteristics of an act of cognition are to be found; there are deceptions with regard to value just as there are deceptions about colours. But these [are] only recognisable in new, but clearer, acts of the same kind. However, [the] dependability of value-feeling in general is not to be doubted on this basis. {That dependability} is presupposed with deceptions.⁸⁰

To be sure, [the] feeling⁸¹ of value is more central than seeing or hearing [and] is subject to specific conditions. Fineness and sharpness of value-feeling are dependent on [the] structure of the person. Only where specific personal qualities are present is a specific value-feeling possible at all. It is because of this that it becomes possible to grasp unreceptivity as a

Unwert der Person erfaßt wird. Aber disvalue in the person. But
Voraussetzungen des Erfassens sind assumptions about the grasping are not
nicht Voraussetzungen des Erfaßten, assumptions about what is grasped,
des Wertes selbst. Das vergißt [der] about the value itself. Subjectivism
Subjektivismus. Fiktion: [Es] könnte forgets this. Fiction: there could be
Werte geben, die so fein und values which are so fine and profound
tiefliegend sind [und] die ein so [and] that require so finely-
feindifferenziertes Wertfühlen differentiating a value-feeling that in
voraussetzen, daß faktisch kein fact no human being in the world can
Mensch in der Welt sie erfassen kann. grasp them. But it says nothing against
Aber es sagt nichts gegen die the objectivity of these values. But
Objektivität dieser Werte. Aber dann then, [the] entire basis of subjectivism
verfällt [der] ganze Grund des collapses, in that according to its
Subjektivismus, indem wir nach seinen presuppositions we could not regard
Voraussetzungen solche Werte gar such values as being possible at all.
nicht als möglich ansehen können. Pathological craving for subjectivity in
Krankhafte Subjektivitätssucht in such important matters is especially
solchen wichtigen Dingen ist reprehensible. Here is no place for
besonders verwerflich. Hier ist gar hasty judgements. Whether there is
nicht ein Boden für schnellfertige objective cognition of values is perhaps
Urteile. Ob es objektive Werterkenntnis the most important {question} in the
gibt, ist vielleicht das Wichtigste auf world.
der Welt.

Sokrates' und Platons Socrates' and Plato's assertion
 Behauptung [lautete]: Alle Sünde ist [went]: All sin is actually in error. *If*
 eigentlich Irrtum. *Wenn jemand genau someone genuinely knows what is*
weiß, was das Gute ist, muß er das good, he must do what is good. [This
Gute tun. [Dies wurde] vielfach has been] disputed in many ways. [In
 bestritten. [Im] Strafrecht [gibt es] the] criminal law [there are] certain
 gewisse Fälle, wo [ein] Bewußtsein der cases where [a] consciousness of
 Strafwürdigkeit vorausgesetzt [ist]. deserving punishment is presupposed.
 Nach Sokrates und Platon sollten diese According to Socrates and Plato, these
 [Fälle] unmöglich sein. Aber [das ist] [cases] should be impossible. But [that

zu oberflächlich. [Zum] sokratischen is] too superficial. [Of the] Socratic Begriff des Wissens [ist zu sagen, daß concept of knowing [we must say that es] verschiedene Begriffe von there are different concepts of Erkenntnis gibt. 1. Stellungen der cognition. 1. Positions of the greater or größeren oder geringeren Nähe des lesser proximity of the value, mere Wertes, bloßes Wissen ohne Anschauen knowing without intuition of the value des Wertes — [die] äußerste — [the] furthest distancing {of oneself} Fernstellung zu Werterfassungen. Auch from value-grasping. With judgements bei Urteilen, daß etwas wertvoll ist, bei that something is valuable, too, with jeder bloß intellektuellen every purely intellectual attitude-Stellungnahme ist Fernstellung taking, distancing is possible. 2. möglich. 2. Soll diese Überzeugung Should this conviction be tested, then geprüft werden, dann müssen wir auf we must go back to the feeling act of [den] fühlenden Akt der value-perception. Perception of value, Wertanschauung zurückgehen. feeling of value is the next {level of} Anschauen des Wertes, Fühlen des acquaintance with the value, [of which Wertes ist nächste Kenntnisnahme des there are] different grades of Wertes, [wobei es] verschiedene Grade adequateness. And if [a] {506} der Adäquation [gibt]. Und wenn [ein] disvalue is fully felt, then [the] {506} Unwert völlig gefühlt wird, dann inhibition against realisation [is] [ist die] Realisierungshemmung umso correspondingly more intensive the intensiver, je lebhafter [der] Unwert more vividly [the] disvalue [is felt]. [geföhlt wird]. Daß ich etwas Böses That I can do something evil, in full tun kann, mit bloßem Wissen, bloßer knowledge, full conviction of the fact, Überzeugung davon⁸² tun kann, ist is clear. But [a] vivid feeling of the klar. Aber [ein] lebendiges Föhlen des disvalue is immediately [a] hindrance Unwertes ist ohne weiteres [ein] that brings about an aversion against Hindernis, das nach [dem Maß der] the act [in the same degree as the] Lebendigkeit des Föhlers Abneigung vividness of the feeling. In every gegen⁸³ [das] Tun hervorbringt. In willing is [contained an] inner jedem Wollen ist [eine] innere affirmation of the thing; in the feeling Bejahung der Sache [enthalten], im of value, the taking of a position Föhlen von Wert ist Stellungnahme zum towards the value is present

Wert da (Brentano: Liebe und Haß). (Brentano's love and hate). It is here
 Hier[her gehört das] sokratische that [the] Socratic 'knowing'
 »Wissen«. [Der] sokratische Satz [ist] [belongs]. [The] Socratic statement
 nur soweit unverständlich, wie man [is] only impossible to understand
 bloßes kaltes Urteilen mit Erkennen insofar as one confuses mere, cold
 verwechselt. judgement with cognition.

[Eine] intellektuelle [An] intellectual attitude-taking
 Stellungnahme (Überzeugung) stellt (conviction) {which} installs itself via
 sich beim Einsehen der Sache ein, kann an insight into the matter can, however,
 aber auch hier unterdrückt werden also be suppressed here (examples [are
 (Beispiele [finden sich] in mancher to be found] in many scientific
 wissenschaftlicher Polemik). Ähnliches polemics). {It is} similarly so with
 bei fühlender Stellungnahme. Etwas feeling attitude-taking. To make
 zum Willensziel setzen, was innerlich something a goal of willing which is
 verneint wird durch lebhaftes Fühlen inwardly denied through vivid feeling
 des Unwerts, das ist nur möglich bei of its disvalue is only possible with an
 künstlichem Unterdrücken der artificial suppression of the emotive
 emotionalen Stellungnahme, nicht bei attitude-taking, not through unreserved
 rückhaltloser Hingabe an [ein] Fühlen devotion to [a] feeling of value. Thus,
 von Wert. So ohne weitere [the] Socratic statement does not hold
 Beschränkung gilt also [der] unconditionally. But [it] goes deeper
 sokratische Satz nicht. Aber [er] geht than most [of its] critiques. [The]
 tiefer als die meisten [seiner] Kritiken. Socratic statement leads deeply into
 [Der] sokratische Satz führt tief in [the] epistemological structure of
 [die] erkenntnistheoretische Struktur ethical values.
 ethischer Werte.

3. Rigorismus Kants: Weiter zu 3. Kant's rigorism: Further to
 Kants Idee, [eine] sittliche Handlung Kant's idea, [a] moral action would
 müsse lediglich aus Pflicht (durchs have to occur only out of duty
 Pflichtgebot bestimmt) und nicht auch (determined through the precept of
 [aus] Neigung geschehen. Alle innere duty) and not also [out of] inclination.
 Anteilnahme am Schicksal der For Kant, all inner participation in the
 Menschen gehört nach Kant nicht zu fates of human beings does not belong

echter Sittlichkeit. Nur [das] Gefühl der Achtung [wird] noch zugelassen. *Alle Neigung muß ausgeschaltet werden* (»Rigorismus«). Schillers spöttische Verse!

Kritik: Wenn etwas in [der] Welt wertvoll ist, dann ist [das] Fühlen des Wertes ein Wert; [auch] Empörung über [eine] unsittliche Tat ist selbst [ein] Wert. Im Stellungnehmen zu sittlichen *Werttatsachen* konstituieren sich wieder Werte. [Das] Wesen des Teufels [besteht ja gerade] darin, daß er das Gute haßt und nicht liebt. Im Mitleid liegt Wert. [Ein] weiterer Wert [ist es], wenn ich [einem] armen Menschen helfe. [Auch ein] Willensakt als solcher [ist] wertvoll. [Der] Wert der Rettung [wird] erfaßt und Hilfe verabreicht mit oder ohne Teilnahme am Geschick des Gefährdeten. [Sie ist aber ein] größerer Wert im zweiten Fall. *Was als Wert gefühlt [wird], wird als zu realisierend vorgesetzt, [und diese] Vorsetzung ist wertvoll.*

[Diese] *gefühlsmäßige Stellungnahme des Subjekts* [wird] als »Neigung« bekämpft von Kant. *Worauf beruht das?* Eigentlich [auf] zweierlei: 1. Wo etwas angestrebt [wird], nicht weil [es] wertvoll [ist], sondern weil es mich angeht (unser Egoismus, »außersachliches Verhalten«), [werden

to true morality. Only [the] emotion of respect [is] allowed. *All inclination must be shut out* ('Rigorism'). Schiller's mocking lines!

Critique: if something in [the] world is valuable, then [the] feeling of value is a value; outrage over [an] immoral act is also itself [a] value. In the taking of an attitude towards *matters of value-fact*, values constitute themselves again. [The] essence of the Devil [consists precisely] in that he hates the good, and does not love it. There is value in sympathy. [It is] another value if I help [a] poor person. [An] act of willing as such, too, [is] valuable. [The] value of a rescue is felt and help administered with or without participation in the fate of the one in danger. [But it is a] greater value in the second case. *That which [is] felt as of value is put forward as to be realised, [and this] putting-forward is valuable.*

[This] *emotion-oriented taking of an attitude by the subject* [is] attacked as 'inclination' by Kant. *On what is that based?* Really on two things: 1. Where something [is] striven for not because [it is] valuable but because it appeals to me (our egoism, 'non-objective behaviour'), *things*

die] Dinge nur betrachtet als »wichtig für mich«. Das [wird] mit Recht bekämpft von Kant. 2. Es gibt ein Tun, das darauf abzielt, mich von unangenehmen Gefühlen zu befreien (Helfen, weil [ein] Leid mich mit Unlust erfüllt) oder mir angenehme heranzuziehen. Hier [spricht] Kant wieder [von] »aus Neigung«, und auch [das ist] zu {507} bekämpfen. Aber Mitleid, echte Anteilnahme als »Quelle« des Tuns ist etwas ganz anderes. Aber [die] Not des Menschen ist [dabei das] Motiv, sie bestimmt mich. Hier [ist das Handeln] »aus Neigung« ein Wert. Sinnvolles Antworten auf objektiv erfaßte Werte ist selbst ein Wert. Bei Kant liegt [hier ein] Psychologismus zugrunde, der [den] Sinngehalt des Emotionalen übersieht. [Er] behandelt emotionale Stellungnahmen wie Zahnschmerzen.

Wie [steht es] denn mit [dem] Pflichtbegriff [und] Pflichtgefühl bei Kant [und seiner] Zurückführung auf [eine] phänomenale Quelle? Wo [ein] Sachverhalt als sittlich wertvoll erscheint, [wird die] Realisierung eines [solchen] werten Sachverhalts von uns verlangt; seine Realisierung durch uns »soll sein«. In [dieser] Realisierungsgerechtigkeit fundiert ist [das] Pflichtbewußtsein. Ist solches

[become] only regarded as 'important for me.' That, Kant rightly attacks. 2. There is a doing that aims to free me from unpleasant feelings (helping because [a] suffering fills me with displeasure) or to bring pleasant ones to me. Here Kant [speaks] again [of] 'out of inclination,' and again [that is] to be {507} attacked. But sympathy, genuine participation, as the 'source' of the doing is something completely different. But [the] need of the {other} human being is [the] motive [here]; it determines me. Here, [an action] 'out of inclination' [is] a value. A meaningful response to objectively-grasped values is itself a value. With Kant, there is [a] psychologism at work [here] that overlooks the meaning content of the emotive. [He] treats the emotive taking of attitudes like toothache.

How [is it] then with [the] concept of duty [and] {the} feeling of duty for Kant, [and its] reduction to [a] phenomenal source? Where [a] state of affairs appears {to us} as morally valuable, [the] realisation of [such] a worthy state of affairs becomes required of us; its realisation by us 'should be.' Consciousness of {one's} duty is founded in [this] rightness of realisation. Is this {kind of}

Pflichtbewußtsein hier konstitutiv [und] bestimmend für [den] sittlichen Wert? *[Die] sittliche Rechtheit des Tuns erleidet nicht Einbuße, wenn nur [ein] Fühlen des Rechtes da ist und nicht erst [die] Frage »soll ich es tun?« vorhergeht.* Wo ich hingerissen vom Wert handle, kann es nicht weniger wertvoll [sein] als [ein Handeln] aus Pflichtüberlegung. [Das] Pflichtbewußtsein ist gleichsam [die] Quittung für⁸⁴ [den] gefühlten Wert des Ziels.

Kants andere Ansichten, *diese Verzerrung des Ideals* (*»Handeln aus Grundsätzen«*), sind von seinen Voraussetzungen [her] verständlich. Kant redet von *»Achtung«* vor Sätzen. Wahrhaftigkeit ist [allerdings ein] sittlicher Wert; den kann ich schätzen. *Aber* [doch] nicht Sätze darüber! *Jedes Tun verliert [an] Wert in dem Maße, als es sich nach Grundsätzen richtet — [es] ist [dann] nur Rubrizierung.* [Statt] Kants Satz [der] Achtung vor den Imperativen [hat er] auch manchmal von Achtung vor dem Pflichtgebot im einzelnen Fall, vor konkreter Forderung, gesprochen. Aber man muß sich hüten: *[Das] Erleben der Forderung darf nicht gegenständlich gemacht werden, sondern im Hinblick auf [den]*

consciousness of value here constitutive [and] determining of moral value? *[The] moral rightness of action is not damaged if it is only preceded by a feeling of that rightness and not by [the] question 'should I do it?'* Where I act enthralled by value, it cannot [be] less valuable than [an action] out of reflection on duty. Consciousness of duty is at the same time [the] receipt for [the] felt value of the goal.

Kant's other opinions, *this distortion of the ideal* ('actions from principles'), are understandable from his assumptions. Kant speaks of 'respect' for statements. Truthfulness is [indeed a] moral value; that I can value highly. *But* not statements about it! *Every action loses value to the extent that it is oriented according to principles — [then it] is just classification.*⁸⁵ [Instead of] regard for the imperatives, Kant sometimes spoke of regard for *the* precept of duty in specific cases, *of concrete commands.* But one must be on one's guard: *[the] experience of the command should not be made objective; it is rather that action must take place with reference to [the] felt value. The former [approach] is a perversion.* There are

gefühlten Wert muß gehandelt werden. Das erstere ist eine Perversion. Es gibt Menschen, die gut dastehen wollen, die an [den] Werten stets vorbeischielen auf [ihre] eigenen Erlebnisse [hin]. »So handeln, daß man sich selbst achten könne«: Achtung als Ziel des Tuns ist Pharisäertum.

Alle Gefahren, die Kants Ethik bedrohen, alle Fehler Kants [entspringen] aus einem Grund: [der] Leugnung der Apriorität von materialen Wertverhältnissen. Materiale Ethik soll [nach seiner] Auffassung heteronom sein. Heteronomie ist uneinsichtige Bindung an [das] Urteil Anderer, wo sachlich nicht einzusehende Verhältnisse [uns] bestimmen. Aber heteronom [ist man auch] da, wo alles an [einer] sittlichen Formel gemessen [wird]. Kants eigene Prüfung [von] allem an [einer] formalen Regel ist eigentlich heteronom. Und echte Autonomie [ist vorhanden], wo ich aus [der] Evidenz der eigenen fühlenden Akte die Wertverhältnisse objektiv bestimme. Für Kants Ethik kann es nur [den] schroffen Gegensatz zwischen gut und schlecht, [einen] Dualismus gut — böse, geben unter [den] Akten. Innerhalb des Guten [kennt er] keine Grade. Eigentlich [wird eine]

human beings who want to be good, who always squint past the values at [their] own experiences. 'To act in such a way that one could respect oneself': respect as the goal of action is Pharisaism.

All of the dangers that threaten Kant's ethics, all Kant's failings, [originate] from one thing: {the} denial of *a priori* status to material relationships of value. Material ethics should [according to his] view be heteronymous. Heteronomy is an *uninsightful binding {of oneself} to [the] judgement of others*, where in fact [we] are determined by relationships that are not accessible to insight. *But heteronomy also applies where everything [is] measured according to [a] moral formula.* Kant's testing [of] everything according to [a] formal rule is really heteronymous. *And genuine autonomy [is present] when I objectively determine the value-relationships based on [the] evidence of my own acts of feeling.* In Kant's ethics there can only be among acts a strict dichotomy between good and bad, [a] *dualism of good and evil.* *Within the good, [he knows] no gradation.* In fact, an endlessly rich

unendlich reiche Nüancierung hier geleugnet, und das geht nicht. *Sittliche Werte {508} [sind] verschieden an Größe und Tiefe, und [die] Akte [sind] danach von verschiedenem Werte.*

Kants Begriff der Freiheit: Jede Pflichthandlung ist [ein] Akt der Freiheit selbst. Seit Aristoteles [herrscht] Streit zwischen Determinismus und Indeterminismus. [Ihr] Ausgangspunkt ist einfach genug. [Der] Determinismus betont: Auch [der] Willensprozeß, als Naturgeschehen, ist notwendig determiniert. [Der] Indeterminismus [dagegen unterstreicht mein] klares, helles Bewußtsein, daß ich meine Taten begehe. Es wäre [das andernfalls eine] seltsame Täuschung, die ich nicht durch Aufklärung aufheben kann.

Einleitende Diskussionen: [Dies ist ein] Streit meistens aus [den] Konsequenzen. [Der] Indeterminismus ist historisch [der] angreifende Teil: [Dem] Phänomen des Vorwurfs kann [der] Determinismus nie gerecht werden. [Denn das] setzt voraus, daß man anders sein könnte. [Aber] niemand macht mir meine Dummheit zum Vorwurf. Also sonst ist es anders wie in [der] Willenssphäre. Nach [dem] Indeterminismus sind auch Verantwortlichkeit, Schuld und Strafe

nuancing is denied here, and that will not do. *Moral values {508} [are] different in magnitude and depth, and [the] acts [are] accordingly of different values.*

Kant's concept of freedom: every action out of duty is [an] act of freedom itself. Since the time of Aristotle, a feud has reigned between determinism and indeterminism. [Its] starting-point is simple enough. Determinism emphasises: the process of willing too, as an occurrence in nature, is necessarily determined. Indeterminism, [on the other hand, underscores my] clear, bright consciousness that I commit my acts. [Otherwise] it would be a peculiar deception that I cannot remove by discovery of it.

Introductory discussions: [this is a] dispute mostly from [the] consequences. Indeterminism is historically [the] attacking side: determinism cannot justify [the] phenomenon of reproach. [Because that] presupposes that one could have been different. [But] nobody reproaches me for my stupidity. And thus it must be different in [the] sphere of willing. As far as indeterminism is concerned, responsibility, guilt and punishment are all impossible to

für [den] Determinismus unerklärlich. account for under determinism.

Antwort des Determinismus: Schuld [gibt es] nur, wo [ein] Akt aus [dem] Charakter des Subjekts hervorgegangen ist. Verantwortlich sind solche, die so [und so] handeln können. Eigentlich soll Strafe abschreckend und warnend, nicht vergeltend wirken.⁸⁶ [Der] Indeterminismus — so sagt [der] Determinismus — schadet sich selbst mehr als [dem] Determinismus. Wie sollen Strafen determinierend auf Menschen wirken, wenn Menschen nicht determinierbar sind?

[Zur] weiteren Bedeutung des Problems: [Dem] Determinismus wirft [der] Indeterminismus vor, er ersticke alle Aktivität u. dgl. [mit dem] Fatalismus als Resultat. Aber [der] Determinismus wirft [dem] Indeterminismus genau dasselbe vor: Nur beim Determinismus können wir auf uns vernünftigerweise wirken.

[Bezüglich des] Problems der Willensfreiheit [ist das] Motiv des Indeterminismus: Was für [einen] Sinn [hätte es], zu loben oder tadeln, wenn alles eindeutig bestimmt [wäre]? [Der] Indeterminismus fordert Willensfreiheit wegen der Verantwortlichkeit der Überlegung. [Wir haben das] Bewußtsein des dieses oder jenes Tuns,

Determinism's response: guilt only [exists] where [an] act is performed out of [the] character of the subject. Such people are responsible who can act in such and such a way. Really, punishment should be a deterrent, not serve retribution. [Der] Indeterminism, says determinism, damages itself more than determinism {does}. How can punishment manage to determine human beings when human beings are not determinable?

[To] the wider meaning of the problem: indeterminism reproaches determinism that it stifles all activity etc., [with] fatalism as the result. But determinism makes just the same reproach of indeterminism: only under determinism can we have an effect on ourselves according to reason.

[In relation to the] problem of freedom of the will, [the] motive of indeterminism is: what kind of sense [is there] in praising or censuring if everything [were] univocally determined? Indeterminism demands the freedom of the will because of the responsibility of reflection. [We have the] consciousness of acting this or

selbst nachdem wir gehandelt haben. *that way, even after* we have acted.
 [Das] Dogma des eindeutigen [The] dogma of being univocally
 Bestimmtseins, sagt [der] determined, says indeterminism, is
 Indeterminismus, fehlt eben beim defeated by the will⁸⁷ — [it] is only [a]
 Willen — [es] ist nur [ein] Dogma. dogma.

Phänomenologie darf sich nicht Phenomenology should not be
 mit dieser Fernstellung zu den Sachen satisfied with this distant attitude to the
 begnügen. In einem Punkt hat [der] matter. In one point, indeterminism is
 Indeterminismus recht: [Ein] correct: [an] act of willing is [a] unique
 Willensakt ist [eine] eigenartige Sache thing [and] is not to be thrown in with
 [und] nicht mit [einem] Naturvorgang the processes of nature. [*To the*
 zusammenzuwerfen. [*Zur* *essential uniqueness of the process of*
wesensmäßigen Eigenart des will [belongs the] phenomenal I-
Willensvorgangs [gehört die] authorship of all genuine acts of
 phänomenale Ichurheberschaft bei willing. Phenomenally speaking [the]
 jedem echten Willensakt. [Die] grasping of a resolution {to act} goes
 Vorsatzfassung geht phänomenal vom out from the I spontaneously. [The]
 Ich spontan aus. [Es ist die] Frage, ob question [is], whether this *spontaneous*
 dieser *spontane* Akt im Vollzug durch act in its entirety is absolutely
 vorangehende Umstände eindeutig determined by pre-existing
 bestimmt ist oder nicht. Das Ich faßt circumstances, or not. The I grasps [a]
 [einen] Vorsatz — aber das Ich resolution — but the I also feels fear at
 erschrickt auch beim Donnerschlag. a peal of thunder. But in {509} fear, the
 Aber im {509} Schrecken liegt passivity of the I becomes apparent;
 Passivität des Ich vor; [*der*] *Schrecken fear affects*⁸⁸ *us*. But here [it is]
affiziert uns. Hier aber [ist es] anders. different. Fear is acknowledged by
 [Den] Schrecken hat jeder als everyone as necessary [and] univocally
 notwendig [und] eindeutig determiniert determined (likewise with [the] process
 angesehen (auch [den] of presentation). Only where [the] I
 Vorstellungsverlauf). Erst wo [das] Ich emerges as the spontaneous author {of
 als spontaner Urheber auftritt, tritt the act} does [the] problem of freedom
 [das] Problem der Willensfreiheit auf, of the will arise, and these two domains
 und diese zwei Gebiete decken sich. coincide. *Phenomenal I-authorship*

*Phänomenale Ichurheberschaft delimits the realm of freedom.
umgrenzt den Kreis der Freiheit.*

Wir müssen hier eine⁸⁹ erst
neuerdings durchgeführte Scheidung
von Wollen und Streben anwenden.
Jedes Streben geht von einem Ich aus.
[Es gibt] Positivität und Negativität
hier; Streben nach etwas hin oder von
etwas weg oder gegen etwas (wider
etwas). Einige Strebungen können
peripher oder zentral, andere nur
zentral sein. Aber Strebungen sind kein
Wollen. Viele Strebungen zusammen
können sich ans Ichzentrum
heranmachen. [Das] Ichzentrum kann
willenlose⁹⁰ Beute der Strebungen sein:
der Kampf spielt sich im Ich ab. Ganz
anders das Vorsatzfassen. Streben kann
blind sein, auch wo [es] heftig [ist].
Beim Wollen (Vorsatzfassen) hätte
dieses keinen Sinn. *Wollen ist
Selbstbestimmungsakt des Ich.* Wir
können Wollen mit oder gegen
Neigung haben. [Wollen] scheint auch
möglich ganz ohne Streben, aus kalter
Überlegung. Dieses schwebte Kant oft
als Ideal vor.

*[Die] Grenze des
Freiheitsproblems [verläuft] zwischen
Streben und Wollen. Strebungen nun
[werden] von allen als eindeutig
determiniert angesehen. [Das wird]
auch von [den] Indeterministen*

Here we must employ a
differentiation, only recently made,
between willing and striving. Every
striving originates from an I. [There is]
{both} positivity and negativity here;
striving toward something or away
from something or against something
(in opposition to something). Some
strivings can be peripheral or central,
others only central. But strivings are no
willings. Many strivings together can
accost the I. [The] I-centre can be the
will-less prey⁹¹ of strivings: the
conflict {among them} takes place
within the I. Very differently from the
grasping of resolutions. Striving can be
blind, even where [it is] violent. With
willing (resolution-grasping) this
would make no sense. *Willing is the act
of self-determination of the I.* We can
have willing with or without
inclination. [Willing] also appears
entirely possible without striving,
issuing from cold reflection. This often
occurred to Kant as the ideal.

*[The] boundary of the problem
of freedom [runs] between striving and
willing. Strivings [are] viewed by all as
univocally determined. [The]
indeterminists too concede [that]. [It
is] different, says indeterminism, where*

zugegeben. Anders, sagt [der] the I intervenes in the conflict that is Indeterminismus, [ist es] wo das Ich in being played out. [So] only with diesen sich abspielenden Kampf willing would [the] problem of freedom eingreift. [Also] erst beim Wollen sei [exist]. But [the] question of freedom [das] Freiheitsproblem [gegeben]. [is] not to be limited to willing, [but] Aber [die] Freiheitsfrage [ist] nicht auf must be extended to all volitional acts, [das] Wollen zu beschränken, that is, [acts] of phenomenal I- [sondern] auszudehnen auf alle authorship. Why would one, out of all willentlichen Akte, d. h. [Akte] von⁹² the (countless) acts in which [the] I phänomenaler Ichurheberschaft. functions phenomenally as the author, Warum hat man aus allen (unendlich emphasise as free only the acts of [vielen]) Akten, in denen [das] Ich als willing? [There is] no reason [for that]. Urheber phänomenal fungiert, nur den Thus, turning towards something, Willensakt als frei hervorgehoben? affirming, judging, forgiving and so on [Dafür gibt es] keinen Grund. So [sind [are also] all voluntary⁹³ acts in which auch] Sich-etwas-Zuwenden, Bejahen, [the] I emerges as phenomenal author. Urteilen, Verzeihen u. dgl. alles Here, the concept of the spontaneous or willentliche Akte, wo [das] Ich als volitional acts comes forth. ([This] is phänomenaler Urheber hervortritt. Hier very different from willing, which aims stellt sich [der] Begriff des spontanen at the realisation of a state of affairs in oder willentlichen Aktes ein. (Ganz the world.) anders [gilt er] vom Willen, der auf Realisierung eines Sachverhalts in der Welt abzielt.)

Einige Eigentümlichkeiten Particular distinguishing dieser Akte [betreffen zunächst ihre] characteristics of these acts [relate to Möglichkeit der Motivierung. [Eine] their] possibility for motivation. [A] Tatsache hat Kraft zur phänomenalen fact has the power to phenomenally Bestimmung des Ich zum Vollzug des determine the I to the carrying-out of Aktes, [und diese] motivierende Kraft the act, [and this] motivational power [wird] den Tatsachen zuerteilt von is given to the fact by the source of [der] Erlebnisquelle. Bei passiven experience. With passive experiences Erlebnissen hätte dieses keinen Sinn. this would not make sense. [The]

[Das] Hören eines Donnerschlags ist verursacht, aber nicht motiviert. Jeder spontane Akt ist motivierbar, nicht notwendigerweise aber motiviert. [Die] Tatsache, daß Lärm mir nahekommt, bestimmt mich, mich ihm zuzuwenden, ist aber kein Motiv meines mich Hinwendens. Neue Frage: Wo beziehen vorschwebende Tatsachen ihre motivierende Kraft her? [Das ist je] anders bei verschiedenen Personen. Diese motivierenden Quellen selbst [sind] nicht vorschwebend. {510} [Sie] setzen [die] Erlebnisquelle also voraus, aus welcher [die] Motive ihre Kraft schöpfen können.

[Es herrschen] ganz eigenartige Verhältnisse hier: Was soll hier [eigentlich] indeterminiert oder determiniert sein? [Die] *phänomenale Freiheit*, [der] *mögliche* Aktvollzug durch das Ich ist [eine] letzte phänomenale Tatsache, die nicht umgestoßen werden kann. Daran daß Akte vom Ich vollzogen werden, könnte alle mögliche Determiniertheit durch Umstände nichts ändern. Hier [ist es] möglich zu sagen, [der] Mensch sei indeterminiert in einem Sinne, in dem man dieses bei Tieren bezweifeln muß. *Ob Tiere Akte vollziehen, ist problematisch.* Hier [herrscht] spontane Aktivität des Ich im Vollzug

hearing of a thunderclap is caused, but not motivated. Every spontaneous act can be motivated, not necessarily but in a motivated manner. [The] fact that a sound is coming close to me determines me to turn towards it, but is no motive for my turning. New question: where do facts that one has in mind obtain their motivational power? [That is in fact] different for different persons. These motivational sources [are] not themselves held in mind. {510} So [they] presuppose [the] source of experience from which [the] motives can take their power.

Entirely unique relationships [reign] here: what should [in fact] be undetermined or determined here? *Phenomenal freedom*, [the] possible carrying out of acts by the I is [an] ultimate phenomenal fact that cannot be got around. The fact that acts are carried out by the I could not be changed by any possible determinedness through circumstances. Here [it is] possible to say that [the] human being is undetermined in one sense, in which one must doubt that animals are. *Whether animals carry out acts is problematic.* Here, spontaneous activity of the I reigns in the carrying out of acts, [but that is] still not the

der Akte, [aber das ist] noch nicht die gemeinte Freiheit. freedom meant.

Phänomenale	Nötigung	Phenomenal	necessitation
innerhalb [des] Aktvollzugs ist etwas weiteres [und] hat nichts mit Motivierung zu tun. <i>Im Aktvollzug [gibt es] Modalitäten, die auf Freiheit resp. Unfreiheit hinweisen.</i> Von erlebter Nötigung kann in einem Fall nicht [die] Rede sein, wo man [eine] Aufforderung hört und einfach negiert. [Auch nicht] im zweiten Fall, wo [die] Aufforderung (gern oder ungern) zum Motiv eines Aktes wird. [Ein] dritter Fall [ist der], wo Zwang oder Nötigung phänomenal vorliegt. <i>[Bei] phänomenaler Nötigung geht von [einer] Aufforderung unmittelbar erlebter Zwang aus, [der] nicht mit Motivierung zu verwechseln [ist].</i> Z. B. [die] Aufforderung von [einem] Kunstkenner, [ein] Gemälde zu betrachten, vs. [den] Fall, wo Verwandte eines Hingerichteten herbeigefordert sind zuzusehen. <i>Hier [herrscht] Unfreiheit, obgleich Ichspontaneität auf Grund innerlich erlebter Nötigung von außen. Wo gar nicht Ichspontaneität [vorliegt], hat Freiheit [und] Unfreiheit keine Stelle, d. h. [dort herrscht] physischer Zwang, Gewalt.</i> [Der] phänomenale Unterschied zwischen Aufforderung	within [the] carrying out of acts is something further [and] has nothing to do with motivation. <i>In the carrying out of acts [there are] modalities that indicate both freedom and unfreedom.</i> We cannot speak of experienced necessitation in a case where one hears [a] requirement ⁹⁴ and simply rejects it. [Nor] in a second case where [the] requirement (gladly or reluctantly) becomes the motive for an act. [A third] case [is the one] where force or necessitation is phenomenally present. <i>[With] phenomenal necessitation [a] command produces an immediate experience of being coerced [which is] not to be confused with motivation.</i> For example, [the] command of [an] expert on art to look at [a] painting, versus [the] case where the relatives of a man being executed are compelled to come and watch. <i>Here, unfreedom [reigns], despite I-spontaneity on the basis of an inwardly experienced necessity from without. Where I-spontaneity is not [present] at all, freedom [and] unfreedom have no place; that is, [there] physical coercion and violence [reign].</i> [The] phenomenal difference between requirement and threat [is] not		

und Drohung [ist] nicht wegzuleugnen. to be denied.

Wo [das] Ich zum Aktvollzug Where [the] I [is determined] durch Drang, Zug von außen u. dgl. toward the fulfilment of an act through (nicht physisch), [durch] unmittelbar force, an external pull, etc. (not erlebte Nötigung von außen [bestimmt physical), [through] immediately wird, herrscht] phänomenale experienced necessitation from the Unfreiheit. [Es gibt] verschiedene outside, phenomenal unfreedom Grade davon, [und diese sind] von [reigns]. [There are] different grades of ethischem oder strafgesetzlichem this, [and they are] important from an Standpunkt von Wichtigkeit. ethical or legal standpoint.

[Der] Unterschied hier [ist] [The] difference here [is] ganz unabhängig von [der] Frage der entirely independent of [the] question Determiniertheit und of determinedness and Undeterminiertheit. Im Vollzug der und undeterminedness. In the fulfilment of Akte durch [das] Ich finden wir also acts through the I we thus find both phänomenale Freiheit und phenomenal freedom and phänomenale Unfreiheit. Nun [ist] es phenomenal unfreedom. It [is] strange; historically, seltsam: Historisch hat man (besonders people (especially [the] determinists) [der] Determinismus) [diese] Zweiheit have not seen [this] duality [of] I- [von] Ichvollzug und Unfreiheit usw. fulfilment and unfreedom, etc., [and] nicht gesehen [und die] Frage der have mixed up [the] question of eindeutigen Bestimmtheit durch absolute determinedness through Ursachen vermengt mit phänomenaler causes with phenomenal unfreedom in Unfreiheit im Aktvollzug. Aber was hat the fulfilment of acts. But what does the eindeutige Determiniertheit der Akte absolute determinedness of acts have to do with phenomenal unfreedom mit phänomenaler Unfreiheit (necessitation) zu tun? (necessitation)?

[Der] Mensch [ist] geneigt, [The] human being [is] inclined innere Verhältnisse auf äußere zu to transfer inner relationships to the übertragen, aber auch umgekehrt outside, but also vice-versa (Bergson). (Bergson). Der Determinismus Determinism treats acts of willing like behandelt Willensakte wie Fäuste und fists and stones that crash into one Steine, die aufeinanderstoßen. [In der] another. [In] external nature [there

äußeren Natur [gibt es] Ursache [und] Geschehen; [im] Psychischen [dagegen] Umstände [und] Akt-
{511}vollzug — [und] hier [stellt sich das] Freiheitsproblem. Bergson
bekämpft [die] Vermaterialisierung der Erlebnisse. [Das] Subjekt kennt phänomenale Nötigung. Dieses Müssen [wird] bildhaft in [die] Außenwelt projiziert: Kugelstoßen als Nötigung des einen durch den anderen, sich zu bewegen! Nun geht es weiter auf umgekehrte Weise. Das Müssen, das [seinen] ursprünglichen phänomenalen Sinn in [der] Außenwelt verloren hat, gewinnt ihn wieder hier, und hier werden [die] zwei durcheinandergeworfen. [So wird der] Determinismus durch [eine] äußerst plumpe Verwechslung zur Leugnung der Verantwortlichkeit gebracht. [Aber] Aktvollzüge durch [das] Ich sind kompliziertere Vorgänge. Wir werden finden, daß es so etwas [wie Verantwortlichkeit] beim Aktvollzug gibt, ganz unabhängig von [der] Frage nach [einer] Ursache [und von] eindeutiger Bestimmtheit.

An [der] eindeutigen Bestimmtheit alles Geschehens in der Welt wollen wir nicht zweifeln. Daß⁹⁶ ich in denselben Umständen anders hätte handeln können, ist zu verneinen.

are] causes [and] occurrences; [in the] psychological {realm,} [on the other hand,] there are circumstances [and] act-fulfilments — [and] here [the] problem of freedom [has its place]. Bergson attacks [the] materialisation of experiences. [The] subject knows phenomenal necessitation. This ‘must’ [is] projected visually into [the] external world: shot-puts compelled to move by one another!⁹⁵ Now it goes on in the opposite direction. The ‘must’ that has lost [its] original phenomenal sense in [the] external world attains it again here, and here the two are thrown together indiscriminately. [Thus] determinism [is] brought by an extremely unfortunate confusion to deny {the possibility of} responsibility. [But] act-fulfilments by [the] I are more complicated processes. We will come to find that there is such a thing [as responsibility] in act-fulfilment quite independently of [the] question of a cause [and of] univocal determination.

We do not want to doubt the univocal determinedness of all occurrences in the world. That I, in the same circumstances, could have done otherwise, is to be denied. [One thinks

[Man denke an das] Beispiel von Nietzsches wiederkehrender Welt! Wenn [der] Determinismus nur dieses meint, hat er sicher recht; wenn [der] Indeterminismus dieses verneint, hat er unrecht. Dieses alles [*und das*] *Freiheitsproblem*⁹⁷ hat [aber] mit [der] Frage der eindeutigen Determiniertheit *alles Geschehens* nichts zu tun. Wir müssen uns an [der] phänomenalen Bestimmung der Akte orientieren, besonders an der Aktquelle. *Die Iche sind qualitativ gleich*, [aber] verschiedene Ich vollziehen verschiedene Akte. [*Die*] *personale Struktur* [*darf man also*] nicht *verwechseln mit* [*dem*] *Ich*, *dem einheitlichen Beziehungspunkt aller Erlebnisse*. [*Die*] *personale Struktur* des Ich ist [*das*] jeweilig Determinierende, und zwar je nachdem, was von der personalen Struktur zur Geltung kommt.

[Der] Prozeß der Überlegung [steht] vor [dem] Willensakt. [Hier ist] Verschiedenes zu betrachten. [Dieser Prozeß ist] in [seiner] eigenartig fragenden Stellung etwas Besonderes. Vom überlegenden Subjekt selbst aus betrachtet sieht es so und so aus. Aber [die] Motivationsquelle strömt da mehr und mehr hinein, ohne daß sie bewußt ins Bild, [welches] das Ich sich vom

of the] example of Nietzsche's recurring world! If determinism means only this, it is certainly right; if indeterminism denies this, it is wrong. All of this [*and the*] *problem of freedom*, however, *has* nothing to do with [the] question of the absolute determinedness of *all occurrences*. We must orient ourselves toward [the] phenomenal determinant of the act, especially to the source of the act. *The Is are qualitatively alike*, but different Is fulfil different acts. [*Thus one should*] not confuse [*the*] *personal structure with* [*the*] *I*, the unified connecting-point of all experience. [The] personal structure of the I is the respective determinant of the I, and that depending on what of the personal structure accentuates itself.

[The] process of reflection [precedes] the act of willing. [Here] different things [are] to be observed. [This process is] something special in [its] unique questioning stance. From the perspective of the reflecting subject it seems to be in such and such a way. But [the] source of motivation streams more and more in, without it consciously entering into the picture

Prozeß macht, hereinkommt. In [der] Überlegung legt sich [die] Person⁹⁸ aus. Frei ist [das] Subjekt, *das Ich* in diesen Fällen insoweit, wie es wirklich alle Motivations- [und] Erlebnisquellen realisiert, die sich aus [seiner] personalen Struktur ergeben. [Die] personale Zugehörigkeit der Erlebnisse [verbürgt dabei die] Echtheit der Aktquellen. Hier [haben wir] wieder nichts mit Determinismus zu tun. [Das] Subjekt [kann] im Vorsatz mehr oder weniger in allen Abstufungen zur Geltung kommen. Nur einige Seiten können [unter Umständen] beteiligt sein. Es kann aber Abstufungen der Eigenheit hier geben, z. B. wo [ein] Schauspieler Othello spielt — [die] Handlung entspringt [dabei] spontan aus [dem] eingefühlten Ich.

Aus unechter Güte oder Tatkraft können gute Handlungen entspringen; [das ist sogar] sehr häufig. Bestimmt⁹⁹ [werden können sie evtl.] durch fertige Ideale der verschiedenen sozialen Schichten. Unfreiheit [herrscht jedenfalls immer da], wo {512} [die] personale Struktur nicht zum Durchbruch kommt. Unendlich vielgestaltige und mannigfaltige Lagen [gibt es] hier. [All das wurde] wenig von [der] Wissenschaft beachtet,

which the subject makes of the process. In reflection, [the] person interprets herself. [The] subject, *the I*, is free in these cases insofar as it actually realises all sources of motivation [and] experience that arise from [its] personal structure. [The] personal ownership of the experience [vouches in this way for the] genuineness of the source of the act. Here [we have] again nothing to do with determinism. In resolving {to do something}, [the] subject [can] be more or less brought out at all levels. Only specific aspects can be involved [in any given circumstances]. But there can be degrees of originality here; for example where [an] actor plays Othello — [there the] action originates spontaneously from [the] empathised I.

From inauthentic goodness or capacity for action, good actions can originate; [in fact this is] very common. [They can perhaps be] determined by pre-existing ideals of different social strata. Unfreedom [always reigns, in any case,] where {512} [the] personal structure does not achieve a breakthrough. [There] are situations here infinitely varied in their form and diversity. [All of that is] little noticed by science, [but] much by

[indessen] sehr von Nietzsche. Nietzsche. Nietzsche [says rightly]: Nietzsche [sagte zu Recht]: [Die] meisten Menschen sind Transmissionsmaschinen und keine Personen. [Die] Einflüsse einer Person auf eine andere sind hier von Bedeutung. Vor Gericht [gibt es z. B. eine] Verschiedenheit zwischen Fällen, wo man durch [den] Einfluß einer anderen [die] eigene Person geändert hat, und wo dieses nicht der Fall ist.

[Der] Fall der Wahlfreiheit [ist ein] Phänomen, das in [den] Diskussionen [eine] große Rolle gespielt hat. [Der] Indeterminismus beruft sich darauf. [Der] Determinismus [dagegen] sagt: [Das scheint] nur so [in Fällen], wo ich [die] übrigen Umstände nicht kenne. Wo sage ich aber dieses: »Ich hätte ebensogut das andere tun können«? [Doch nur in Fällen,] wo Neigungen, Gründe u. dgl. beinahe gleich [sind]. [Dies ist der] Tatbestand der Gleichbegründetheit zweier Vorsätze. [Hierher gehören die] historischen Probleme, wo man [einen] Esel zwischen zwei Heubündel setzt. [Der] Determinismus läßt hier keine Wahl, keine Entscheidung zu. [Es ist] bezeichnend, daß man gerade dieses Beispiel gewählt hat. Strebungen: [Ein] rein strebender Esel würde [tatsächlich] [The] case of free choice [is a] phenomenon that has played [a] major role in [the] discussions. Indeterminism appeals to this. Determinism, [on the other hand,] says: [It] only [appears] so [in cases] where I do not know [the] other circumstances. But where do I say: 'I could just have well have done other things'? [Really only in cases] where my inclinations, reasons etc., {on both sides} [are] nearly the same. [This is the] situation of the equally-foundedness of two resolutions. [Here belongs the] historical problem where one places [a] donkey between two hay bales. Determinism allows no choice, no decision here. [It is] indicative that one has chosen precisely this example. Strivings: a purely striving donkey would [it seems] starve. [This is] different from [the] case where we do something on impulse, out of a sudden

verhungern. [Dies ist] etwas anders hier als [der] Fall, wo wir etwas aus Laune, plötzlicher Regung u. dgl. tun. [Es ist aber eine] Fiktion, daß [das] Bewußtsein nur strebendes sein kann. [Ein] metaphysischer Esel könnte verhungern, [ein] wirklicher Esel nicht. Hier [ist] überhaupt keine Frage vom Willen [wegen der] Verwechslung von Streben und Wollen. [Der] Fall vom Menschen mit zwei gleichen Motiven [ist] aber nichts anderes [als ein] fiktiver Fall; unmöglich vorkommend.

Auch [wäre] hier kein Vorsatz möglich. Wirklich spielt sich alles anders ab. Wo [das] Hin- und Herschwanken langweilig wird und wir uns für eins der zwei Projekte entscheiden, ist [diese] Entscheidung »frei« von [der] Motivation durch eins der zwei, aber nicht frei in diesem Sinne [des Strebens]. [Der] Determinismus [macht sich] oft [dort geltend], wo keine vernünftigen Motive [zu finden sind]. Was hat [der] Determinismus [aber damit] gewonnen? Nichts, [denn nur] innerhalb [der] eindeutigen Bestimmtheit haben wir [den] Unterschied zwischen Freiheit und Unfreiheit.

Begeisterung über [einen] Wert [ist] viel sinnvoller und zentraler als [ein] launenhafter Impuls. [Die]

stirring, etc. [But it is a] fiction that consciousness can only be striving. [A] metaphysical donkey could possibly starve; [a] real donkey would not. Here there [is] no question of willing at all [because of the] confusion between striving and willing. [The] case of a human being with two equal motives, though, [is] nothing but a fictional case; one that cannot come about.

And here no resolution [would be] possible. In reality, it all plays out differently. Where vacillating back and forth grows tiresome and we decide on one of the two projects, [this] decision is 'free' from motivation by one of the two, but not free in this sense [of striving]. Determinism often [presents itself] where no rational motives are [to be found]. [But] what has determinism achieved [from this]? Nothing, [because only] within univocal determinedness do we have the difference between freedom and unfreedom.

Enthusiasm concerning [a] value [is] much more meaningful and central than [a] capricious impulse.

Stellung der Person zu [The] attitude of the person towards the
widerstreitenden Projekten kommt nur opposing projects only comes to light
im ersteren Fall zum Vorschein. Wo in the former case. Where [the] stance
[die] Stellung der Person zum Projekt of the person towards the project finds
keinen Ausdruck findet, können wir no expression, then we can say we
davon reden, wir hätten uns anders could have decided differently. [But]
entscheiden können. Freiheit [ist aber] freedom [is] not to be confused with
mit Unentschiedenheit nicht zu undecidedness, [as] Descartes and
verwechseln, [wie] Descartes und Malebranche have already [stressed].
Malebranche schon [betonten]. Gerade Precisely the examples [given here]
diese [hier gegebenen] Beispiele zeigen indicate determinedness, even though
[die] Determiniertheit, obgleich [es] they are beloved examples for
beliebte Beispiele des Indeterminismus indeterminism. Such cases, where no
sind. Solche Fälle, wo kein innerer inner conflict occurs within the I, [are]
Zwiespalt des Ich da ist, [sind] das the important ones in in the eyes of the
Wichtige im gerichtlichen Sinn. courts. Responsibility [is present]
Verantwortlichkeit [liegt vor], wo where [a] doing is determined by [the]
[eine] Tat aus [der] persönlichen personal structure of the doer.
Struktur des Täters [sich] bestimmt.

{513}Unter [den] eindeutig {513}[So] within [the] univocal
determinierten Akten finden wir [also] determinedness of acts we find both
Unterschiede der Freiheit und freedom and unfreedom. Here at last
Unfreiheit. Erst von hier aus gewinnt freedom achieves its high moral value.
Freiheit ihren hohen moralischen Wert. Most actions [are] in this sense unfree.
[Die] meisten Handlungen [sind] in [The] analysis of personal sources and
diesem Sinne unfrei. An die¹⁰⁰ Stelle structures must take the place of the
[des] Gegensatzes von opposition between determinism and
Indeterminismus und Determinismus indeterminism. [The] problem of
hat [die] Analyse der persönlichen freedom [is] thus ultimately also [a]
Quellen und Strukturen zu treten. [Das] problem for phenomenology.
Freiheitsproblem [ist] also schließlich
auch [ein] Problem der
Phänomenologie.

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- ¹ Ortmann's version. In Bell's text, 'machen'.
- ² Reinach is referring to the debate in historiography on whether it is desirable (or, in fact, possible) for a historian to present only plain, objective facts.
- ³ 'Unvalueful' here translates 'Nichtwertvoll', and refers to a comparative lack of value rather than the presence of disvalue (*Unwert*).
- ⁴ In German there is no linguistic distinction between 'law' and 'right.' '*Rechtsphilosophie*' can also refer to the philosophy of law, and in a sense, it does have that meaning here. As the next sentence states, the 'law' that is referred to is a far wider concept than anything to do with positive law.
- ⁵ The German here is plural, suggesting that there can be multiple 'rightnesses.'
- ⁶ The structure of this sentence in fact suggests that 'right and wrong are only states of affairs,' but Reinach's usual use of rightness as a predicate of states of affairs (see *Grundbegriffe*) and the fact that he here uses '*recht und unrecht*' instead of '*Rechtheit und Unrechtheit*', suggest the meaning that has been used here.
- ⁷ Gramatically, '*Person*' is a feminine noun in German, but in phenomenological terms it does not refer to a literal human being and is neither male nor female. For the purposes of this translation the abstract person is referred to as 'she.'
- ⁸ Ortmann's version. In Bell's text, '§1'.
- ⁹ The German word *Lust* as used here can mean either desire or pleasure. Idiomatically, this sentence would usually be translated as 'I want to do that.' While 'Lust' has been translated as 'pleasure' here, its dual meaning is significant.
- ¹⁰ The verb here could instead be reconstructed as '*sei*', signifying 'would be'. This would highlight the fact that Reinach is presenting a hedonistic interpretation of this hypothetical situation.
- ¹¹ Or 'wisdom,' or 'good sense.'
- ¹² Reinach explored this line of thought in his earlier *Apriori Foundations of the Civil Law*. One cannot say '2+2 ought to equal 5', because 2+2 can never equal 5; but it is also senseless to say '2+2 ought to equal 4' because 2+2 can never *not* equal 4. In the same way here, if no human action is possible that does not seek the greatest pleasure, one cannot talk about what one 'ought' to do because only one possibility exists in each situation.
- ¹³ Ortmann's version. In Bell's text, 'people' ('*Leute*').
- ¹⁴ Editors' version. In Bell's text, '*Sinnen*'.
- ¹⁵ '*Zweck*', 'purpose,' is to be distinguished from '*Ziel*', 'goal'. The purpose of the action is 'that for the sake of which the final goal is willed' (see below).
- ¹⁶ Bell notes, '*Reinach weiß nur einen Fall.*' ('Reinach knows only one case.')
- ¹⁷ Editors' version. In Bell's text, '*seine Meinung*'.
- ¹⁸ Reinach's point here is a psychologist wanting to study pleasure might first need to induce an experience of pleasure in an experimental subject. This is one of very few cases where a person might perform an action for the purpose of creating pleasure (as opposed to performing it for a different purpose and taking pleasure in the outcome).
- ¹⁹ Or the desire for pleasure. The German '*Lust*' has a dual meaning as 'pleasure' and 'desire.'
- ²⁰ Editors' version. In Bell's text, "vs."
- ²¹ This is to be distinguished from Reinach's '*Forderung*', the inwardly-experienced demand to carry out an action based on its value. Here, the situation is one where we would say colloquially that the subject 'has no choice'. As the next sentence suggests however, inaction is always a possible choice.
- ²² '*Verschiebung*' denotes a movement with negative connotations, a change in position

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- that is somehow wrong. This may also be an error in the text; the very similar word ‘*Vorschieben*’ would mean an advancement or promotion, which may be what is meant in context. However, ‘*verschieben*’ also appears later in the text.
- ²³ Or ‘greatness’ in a more abstract sense.
- ²⁴ ‘*Sachen*’ and ‘*sachlich*’ carry connotations of objective reality here. The egoist’s distorted perspective does not allow him to experience values as they truly are.
- ²⁵ Editors’ version. In Bell’s text, ‘*Vorschub*’.
- ²⁶ ‘*Außersachlichkeit*’. ‘*Sachlich*’, ‘factual’, refers to regard for actual felt value.
- ²⁷ Bell and Ortmann here note the date as July 22, 1913.
- ²⁸ ‘*Sachlich Gerichtetsein*’, that is, an attitude in which one is directed towards the objective, including values. This refers back to Reinach’s first case in the previous paragraph; action based on values, even if one’s grasping of them is limited, is never egoism or altruism by his definitions.
- ²⁹ Reinach’s meaning here is not clear. ‘*Alter*’ translates from German as age, seniority or an age group. In Latin it refers to otherness, which, given the unusual reference to ‘ego’ here, appears to be what is meant. In other words, the value (which for Reinach is outside the subject) would here take precedence over the subject’s ego, thus directly opposing egoism.
- ³⁰ Not to be confused with ‘*ressentiment*’ (see below).
- ³¹ The French term *ressentiment* does not translate easily into English or German, and was used in this form by Nietzsche and Scheler. Here, it refers to a process where someone at first recognises the value in something that he knows he can never have. To lessen the emotional pain of this separation, his perception of the thing’s value becomes twisted until he no longer wants it.
- ³² The singular ‘*ist*’ is used, even though two things seem to be being referred to, suggesting ‘are.’
- ³³ Editors’ version. In Bell’s text, ‘*davon daraus*’.
- ³⁴ ‘*Einsicht*’ refers to an insight rather than an intuition, but there is no direct English translation for ‘*einsichtig*’ in this sense.
- ³⁵ ‘*Ausbreitung*’ translates as ‘extent’, ‘spread’ or ‘distribution’. Reinach seems to be using it to refer to the extent to which an emotion ‘fills’ the I, possibly to the number of different layers of the I that are ‘seized’.
- ³⁶ Ortmann’s version. In Bell’s text, ‘*selbst Pessimist ist so*’.
- ³⁷ Literally, ‘statements’; this refers back to the ‘empirical connections’ described in the previous sentence.
- ³⁸ Bell has an incomplete note here: ‘*Diese tragen uns bis auf...*’
- ³⁹ Bell traces this reference to Wilhelm Wundt’s *Ethik*: ‘*Mit diesem Namen wollen wir die allgemeine Erfahrung bezeichnen, daß in dem gesamten Umfang menschlicher Willensvorgänge die Wirkungen der Handlungen mehr oder weniger über die ursprünglichen Willensmotive hinausreichen, so daß hierdurch für künftige Handlungen neue Motive entstehen [...] Der Zusammenhang einer Zweckreihe [...] wird wesentlich dadurch vermittelt, daß infolge nie fehlender Nebeneinflüsse der Effekt einer Handlung sich mit der im Motiv gelegenen Zweckvorstellung im allgemeinen nicht deckt.*’ (Wundt, *Ethik I* (1912), p. 284f.)
- ‘By this name we wish to indicate the general experience that, in the whole extent of human processes of volition, the effects of action more or less go beyond the original motive of volition, so that in this way, motives for future actions originate. [...] The systematic connection amongst a series of purposes [...] is essentially mediated by the fact that, as a result of never- absent secondary influences, the effect of an action

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- is not, in general, covered by the presentation of purpose laid down in the motive.’
- 40 Ortmann’s version. In Bell’s text, ‘*Gefühle*’.
- 41 Editors’ version. In Bell’s text, ‘*Akte hält*’.
- 42 Editors’ version. In Bell’s text, ‘*an*’.
- 43 The editorial note seems to go too far here, confusing the meaning of the sentence. The utilitarian is a consequentialist; as the rest of the paragraph indicates, the consequences of the action are what is morally relevant from a utilitarian point of view. If the words ‘for the utilitarians’ are removed, the sentence makes more sense.
- 44 Editors’ version. In Bell’s text, ‘*ist*’.
- 45 Ortmann’s version. In Bell’s text, ‘(*intrinsically*) *wichtiger*’.
- 46 Literally ‘the soul-ish distribution...’
- 47 Editors’ version. In Ortmann’s text, ‘*hat*’.
- 48 Bell and Ortmann here note the date as July 24, 1913.
- 49 Ortmann’s version. In Bell’s text, ‘*derselben*’.
- 50 ‘*Moralisch*’ rather than ‘*sittlich*’. Reinach may wish to emphasise that he is borrowing a word from Hutcheson’s vocabulary here.
- 51 Editors’ version. Bell abbreviated this to ‘H.’, and later (apparently erroneously) completed it as ‘*Hedonismus*’.
- 52 Editors’ version. In Bell’s text, ‘*zuerst*’.
- 53 Here, ‘*Moral*’ rather than ‘*Sittlichkeit*’.
- 54 This ‘moral law’ (‘*Gesetz*’) is not to be confused with ‘the law’ (*Recht*).
- 55 Literally ‘legality’.
- 56 Literally ‘for the want of itself’.
- 57 Ortmann’s version. In Bell’s text, ‘*nur darunter*’.
- 58 Bell notes here, ‘*Alle sittlichen Menschen sind so.*’ (‘All moral human beings are thus.’)
- 59 Editors’ version. In Ortmann’s text, ‘*Aber*’.
- 60 Ortmann’s version. In Bell’s text, ‘*Diese*’, suggesting the personal structure.
- 61 This text predates Reinach’s religious conversion in 1916. This appears to be an early sign of Reinach’s interest in Protestantism.
- 62 Editors’ version. In Bell’s text, ‘*sich fügt*’.
- 63 Editors’ version. In Bell’s text, ‘*sollte sich*’.
- 64 ‘In the *Critique of Practical Reason* Kant says that if a man contemplates keeping a deposit left for him for which no receipt was asked or given, he can consider whether “everyone may deny a deposit of which no one can produce a proof” could become a universal law. It could not, “because the result would be that there would be no deposits”.’ H.B. Acton, *Kant’s Moral Philosophy* (London: Macmillan, 1970), pp. 22-3.
- 65 Reinach may be referencing a criticism of Kant made by Hegel here. ‘In an essay entitled *On the Scientific Treatment of Natural Law*, Hegel says that all that Kant’s argument shows is that a system without deposits is contradicted by a system with deposits, but not that there is any contradiction in a system without deposits.’ Acton, *Kant’s Moral Philosophy*, p. 24.
- 66 ‘*Richtig*’, as opposed to ‘*recht*’, ‘right’.
- 67 ‘*Inhaltlich*’, literally ‘content-like’ or ‘having content’.
- 68 Bell and Ortmann here note the date as July 29, 1913.
- 69 In this context, a person who abuses the law by following its letter rather than its spirit.
- 70 Bell notes here, ‘*Ersten zwei schon behandelt.*’ (‘First two already treated of.’)

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- ⁷¹ Here Reinach quotes from Lipps, *Die ethischen Grundfragen*, p. 55.
- ⁷² Editors' version. In Ortmann's text, 'von'.
- ⁷³ Literally, 'consciousness of power' or of 'might'.
- ⁷⁴ As introduced by Reinach in *Grundbegriffe der Ethik*.
- ⁷⁵ Literally, 'the opposing of empirical — formal is not justified.'
- ⁷⁶ Editors' version. In Bell's text, 'so ist'.
- ⁷⁷ '...*tut nichts dazu*' is the editors' version. In Bell's text, 'daß du dich *intest* ?' (the last word was found to be illegible by the editors).
- ⁷⁸ Bell notes here, 'Weshalb ist anderes auch relevant? Wie nicht da gelassen, wo wir sie finden?' ('Why is anything else relevant, anyway? Why not leave it where we find it?').
- ⁷⁹ Editors' version. In Bell's text, 'Sorte'.
- ⁸⁰ That is, the fact that we can be deceived indicates the degree to which we take these experiences for granted.
- ⁸¹ Here, 'Gefühl' rather than 'Fühlen'. This is inconsistent with Reinach's usual usage of the terms; 'the emotion of value' does not make sense here.
- ⁸² Editors' version. In Bell's text, 'darüber'.
- ⁸³ Editors' version. In Bell's text, 'zum'.
- ⁸⁴ Editors' version. In Bell's text, 'auf'.
- ⁸⁵ Literally 'rubrication', placement under a rubric.
- ⁸⁶ Bell and Ortmann here note the date as July 31, 1913.
- ⁸⁷ Literally, 'is absent even with the will'.
- ⁸⁸ Or 'influences'.
- ⁸⁹ Editors' version. In Bell's text, 'hier erst eine'.
- ⁹⁰ Editors' version. In Bell's text, 'als willenslose'.
- ⁹¹ That is, at the mercy of strivings.
- ⁹² Editors' version. In Ortmann's text, 'vor'.
- ⁹³ In contrast with willing, which in the present context signifies that something is willed. In an act of judgement, the subject does not will (want) anything to occur or to be.
- ⁹⁴ 'Aufforderung' means a call to do something; an informal 'request' or a formal 'requirement'. Though it is described as being heard ('hört'), this is not necessarily a literal hearing.
- ⁹⁵ Reinach's reference here is to the classic metaphor of balls (usually billiard balls) striking and setting one another in motion.
- ⁹⁶ Editors' version. In Bell's text, 'ob'.
- ⁹⁷ Editors' version. In Ortmann's text, 'erstes Freiheitsproblem'.
- ⁹⁸ Bell's version. In Ortmann's text, 'lebt sich das Ich'.
- ⁹⁹ Editors' version. In Bell's text, 'Bestimmungen'.
- ¹⁰⁰ Editors' version. In Bell's text, 'seine'.