

## The Disappearance of Tradition in Weber

STEPHEN P. TURNER AND REGIS A. FACTOR

Traces of the evidence of Weber's academic origins in the study of the law are evident throughout his writings, and especially in his methodological writings. In the case of his employment of legal concepts of probabilistic causality and of the interest relativity of description, the sources are precisely attributed and the implications of the borrowings are readily understood.<sup>1</sup> But perhaps the most interesting case of Weber's reliance on, and modification of, the legacy of jurisprudential theory and legal modes of reasoning is in the passages in *Wirtschaft und Gesellschaft* in which Weber formulates his famous definitions of action, legitimacy, and forms of social order. Some of these definitions, notably the definition of the state as a territorial monopoly of legitimate violence, have become, in the later literature, links with Weber's name, and thought of as his own distinctive product; in fact, in this particular case, the formulation is found in the major work of the most famous jurisprudential thinker at the time of Weber's training in the law, Rudolph von Jhering.<sup>2</sup>

In this essay we will consider another basic topic: the problem of the nature of the distinctions between *Sitte*, *Brauch*, *Wert*, *Mode*, and *Recht*, on which Weber's discussion relies. These discussions typically involved the untranslatable concept of *Sitte*, which marks a contrast between practices or customs with normative force and "mere practice." There is a close parallel to this distinction in American social thought in W. G. Sumner's latinate distinction between the *mores* and folkways of a society. In what follows we shall simply use the German term as a reminder of its long history in German philosophy. Weber was obviously aware of this history, as was Jhering. Our aim will be to examine Weber's modifications of the received version of these distinctions and to consider the implications of these modifications. As we shall see, what Weber presents as an innocuous classificatory problem contains a much more significant conceptual transformation, which bears on the general image of modernity

as rationalization constructed by Weber. One need not speculate on Weber's sources in these passages; the sources are identified by Weber himself. Weber not only cites Jhering, describing his major work, *Der Zweck im Recht*, then thirty-five years in print, as "still a significant contribution"<sup>3</sup> on the subject, he also cites Tönnies's *Die Sitte*,<sup>4</sup> which is itself in significant part a commentary on Jhering, as well as on such figures as the theorist of matriarchy Bachofen, who was influenced by Savigny. Tönnies's work concludes with a discussion of some passages from Nietzsche's *Morgenröthe* of 1881. For Weber's contemporaries, these writings were among the statements on the nature of morality and the moral basis of law that defined the problem-domain, and Weber treated them accordingly.

### THE PROBLEM-SITUATION

The larger historical background to the problems, and the intellectual traditions that constituted them, gave them pivotal significance both in philosophy proper and in the political tradition of Germany, which was largely constituted by, and refracted in, the teaching of law. The main fact to which these distinctions were addressed was the problem of the relation between morals, which is to say the universal, and the particular or local practices to which moral significance is attributed, for example, such things as marriage customs. Many philosophical strategies were employed to resolve this conflict. In ethics, the typical solution was formalism—some version of an argument to the effect that the good in a practice was separable from the specific *content* of the practice, so that superficially conflicting practices could be treated as equally ethical in *form*. The point of these elaborate arguments was to avoid a certain kind of reduction, exemplified by Nietzsche. Nietzsche's early formulations served to reduce the universal claims of morality to the status of local custom, and custom to tradition, on genealogical grounds:

Morality (*Sittlichkeit*) is nothing other (therefore nothing more!) than obedience to customs (*Sitten*), of whatever kind they may be; customs, however, are the traditional (*herkommliche*) way of behaving (*handeln*) and evaluating. In things in which no tradition commands there is no morality; and the less human life is determined by tradition (*Herkommen*), the smaller the circle of morality.<sup>5</sup>

This reductive reasoning employs, though with the aim of parodying and breaking down, distinctions and a strategy of analysis with a complex prior history, of which the history of law forms a conspicuous part. Savigny dealt with the diversity of law between societies through an assertion of the basis of law in custom, and he took this historical origin to establish the continuing primacy of custom or customary morals over law, at least with respect to the questions of the moral authority or force of the law, the common feeling of inner necessity which gave mere statutes their moral force.<sup>6</sup> This doctrine, which Weber, a Romanist in his legal philosophy, rejected, was based on a conception of the *Volksgeist* that was

of course discredited by its subsequent uses: Weber faced *völkisch* thought as a living tradition.

To respond to the issues raised by this reduction of morality to the local (and by the universalistic dialectical responses to this reasoning evoked), Weber had to find a set of categories that reduced the conflict to less threatening dimensions. In this respect, his rhetorical strategy parallels Nietzsche's demotion of morality to convention. But his task is more delicate: for Weber it was essential to avoid reducing rationality to convention, or to a local tradition. Thus for Weber it is not the reductive strategy of genealogy, but the strategy of analytical separation that is demanded. Accordingly, where Nietzsche's and Jhering's vocabulary points to the filiations between ideas, notably between *Sitte* and *Sittlichkeit*, Weber's differentiates. He selects *Wert* in place of terms associated with *Sitte*, and the more neutral "Tradition" for *Herkommen*. Yet to make such substitutions persuasive, Weber also had to provide his own countergenealogy. In doing so, he relied on many of the conceptual markers established in the earlier discussion, transforming them to suit his own strategy. Nietzsche's strategy may be said to strengthen the philosophical conflicts by understanding them as historically real conflicts; Weber's strategy was to defuse the philosophical conflicts by turning the alternatives into historical types. Jhering and Tönnies had pursued this same strategy, so to understand Weber one must understand how he undermined and transformed the problematic that informed them. In each case, this issue was the binding character or the moral force of custom or laws: Nietzsche saw custom and conventional morality as historical and therefore not binding; Jhering and Tönnies wished to save the binding element in the face of historical change and diversity. In this particular aim Weber was conspicuously successful: today it is conventional, at least among social scientists, to think of the problem of the moral force of law as a problem of "legitimacy" and the problem of legitimacy in terms of the legitimating beliefs of the ruled.

Weber's approach was to create categorizations that were not class-concepts, but abstract paradigm cases or ideal-types. The approach itself derived not from the tradition of natural scientific definition or categorization, which would have aimed at objective criteria for membership in classes, but from the conceptual practices of Roman law, in which classifications express fundamental conceptual contrasts. These are to be applied to empirical material, but with the expectation that one could find many cases in which classification is difficult or impossible because the material falls between the ideal cases. Jhering's own philosophy of law utilized the same practices on much the same material, and the parallels in results are quite striking.<sup>7</sup>

There is, however, a fundamental difference in premises. Like many of his philosophical contemporaries, such as Durkheim's teacher Boutroux, and his sociological contemporaries, such as Spencer, to whose *The Data of Ethics Der Zweck im Recht* was favorably compared, Jhering was centrally concerned with the relation of purpose to causality. Just as the ethical formalists sought to resolve the problems raised by the diversity of morals by finding a universal formal element that held despite their diversity, Jhering sought a universal

purpose, or more precisely a diversity of purposes with universal roots. To account for the diversity of societal purposes he relied on cause, particularly the diversity of local conditions, history, and conditions of social life, and, in a utilitarian fashion, on the causal effect of individual desires. The legitimacy and explanatory power of the teleological consideration of societal purposes was assured for him by the possibility of accounting for social purposes on individualistic premises. Jhering thus did not wish to argue that there was a distinctive kind of causally efficacious end or will beyond individual ends and individual will. But he denied that the notion of egoism contained in the narrow concept of self-preservation of early utilitarianism was sufficient to account for the law and social life.

### ZWECK IM RECHT

For Jhering, the history of law is a history of the evolution of societal purposes. The problem of *Sitte* arises parallel to and in connection with his account of legal evolution. The "evolutionary" argument is that the law is a product of struggles between interests which represents the temporary resolution of the fundamental conflicts of interest within a given society. The role of revolutions and coups d'état is to create new legal orders by force. These new orders embody new compromises between interests, and then allow for the development of other interests; Jhering believed, and sought to demonstrate, that successive orders also serve successively larger societal interests. The difficulties in this reasoning are obvious, and were obvious to Jhering himself. It is paradoxical to speak of the imposition of law by force, when the specific instances of force in question, such as revolutionary violence, are extralegal. How does this kind of extralegal force become law? For Jhering, this was a central philosophical problem, but not a historical mystery. In history, legal orders arose in violence and came to be normative for the societies they governed. The problem, as Jhering put it, was of binding norm to force. Characteristically, Jhering thought of this problem in terms of sequential transitions: the binding of norm and force could arise, he thought, either by beginning with an agreement, and using force to compel adherence, or by force coming to be accepted as normatively valid law.

Jhering employed two bridge-concepts to connect the binding of norm to force to purposes. Both concepts were legal in character: "indispensability" and "necessity." Agreements, such as may be understood to underlie republican forms of government, may have as an "indispensable" part reliance on coercion in the sense that, without coercion or the threat of coercion, the agreement would be a nullity, as would be the case of a state in which individual citizens could repudiate their obligations to it without suffering serious consequences. This thought is fundamental for Jhering; the justification of law, or legal coercion, itself lies in its indispensability for the achievement of societal purposes. But force may be bound to law in another, and historically more important fashion: through "necessity," particularly the common recognition of the

necessity of force for the attainment of common ends.<sup>8</sup> In earlier times, Jhering suggests,

[the] relation between force and law corresponded to the conceptions of people at that stage. They did not look upon force with our eyes; they saw nothing improper or damnable in such a condition but only what was natural and self-evident. . . . They had an instinctive understanding that there is a need for an iron fist in a wild time to force resisting wills to common action, that there needs a lion to tame wolves, and took no offense at it devouring lambs.<sup>9</sup>

The purpose served by force in these cases was "self-evident": the purpose was peace. But if today "force constitutes the accessory element of law" rather than its most conspicuous feature, it is no less essential, and this becomes evident in moments of crisis.

The role of agreement in modern politics is highly visible; statutory law is the immediate product of procedures of agreement. The purposes which law serves, however, are perhaps more obscure—and certainly more obscure than the end he believed to be visibly served by force in times past—because they are more distant from the experience of the individuals in the society, more complex, and more difficult to understand. Yet they are, he believed, accessible to systematic rational analysis, and also open to rational improvement. Jhering's work was, in part, an account of these purposes.

While various social ends might easily be recognized retrospectively to be concealed in the practices of a society, from its manners to its statutory laws, it is not characteristically the case that people have a self-conscious understanding of the connection between the practices and their social purposes, much less a recognition that amounts to a warrant for the egoistic acceptance of the compulsory character of the practices. Nor did Jhering assume that the societal purposes served by various human aims are self-evident. In his discussion of "ideal interests," for example, he argued that such acts as dying for one's country or for particular principles in fact served societal purposes. So part of his own analysis is a kind of *Ideologiekritik* which shows the societal purposes behind such apparently non-egoistic, non-societal, human aims.<sup>10</sup>

Behind the so-called ideal interests, which we pursue, behind the idea, for which we set our strength and life, stand real personalities, whose well-being, be it what it will, ought to be fostered, we ourselves, our supporters, our comrades in belief, our fellow citizens, the poor, scientists, etc., at a higher power, a whole *Volk*, at the highest humanity—every idea of a practical motive of our action ends finally in living essence.<sup>11</sup>

### THE GENEALOGY OF *SITTEN*

Throughout the text of volume 1 of Jhering's work he refers to the coming discussion of this general topic in chapter nine, the first chapter of volume 2.

The chapter itself Jhering<sup>12</sup> clearly regarded as a significant achievement. The basic argument parallels the case of law: the claim that legal coercion was warranted by its indispensability also led to a recognition of the indispensability of the *Sittlich* realm to the societal purposes served by law, and to law itself, for while coercion is indispensable to the law, it is also insufficient. In short, from the point of view of the teleological side of his analysis, law and *Sitten* were analogous, in that both served societal purposes. The difficulty lay in extending the causal or genetic side of the analysis: the bridge-concepts that served in the case of law did not serve as readily in the case of *Sitten*.

The "lever" that is essential to state power is force. The levers that enforce conformity to *Sitten* differ. Jhering's analysis is a response to intuitionist accounts of moral feelings. *Sittlich* feeling, he argues, is the result, not the cause, of practice.<sup>13</sup> Normative custom or *Sitte* comes from custom in the sense of mere practice through the continuous repetition of an action until it becomes second nature or habitual, and therefore less dependent on will. The term *Gewohnheit*, which designates such habits, refers to their external properties; the term *Sitte* adds to this the inner element of bindingness or normativeness.<sup>14</sup> The source of this normativeness of the *Sitte* is the life of the *Volk*, the conditions of common life, to which the observance of the *Sitten* contributes. Thus the *Sitte* are relative to the historical situation of the *Volk*, and force of the *Sitte* rests on their being historically tested as obligations.

The latter steps in this argument may appear to be sleight of hand. It is unclear how "mere" practices come to be, or at what point and in what way they come to be, transformed into obligations, and how obligations to conform externally come to be transformed into a subjective sense of morals, into a matter of conscience as distinct from mere obedience or conformity. This last step, internalization of what Jhering calls the *sittliche Gesinnung* or moral intention is particularly puzzling. The command to obey the *Sitte* refers only to external conformity; morality refers to the internal, to the subjective realm of conscience and character.<sup>15</sup> Moralists had supposed that this means that the moral intention must then have a different source than *Sitten* do, perhaps an innate source. The difficulty with this theory is that *sittlich* feeling, however strong, varies historically and between societies.

Jhering deals with this problem in an interesting but roundabout manner. He considers various past philosophical discussions of the topic and settles on Locke's criticisms of the doctrine of innate moral ideas as the closest to the truth. Locke's error, he suggests, was one of emphasis. He should have stressed not only the negative side of the argument, but its positive suggestion that moral ideas are learned. The way in which this occurs is unfortunately mysterious in Jhering's own account. "Man has to learn that he may not rob, steal, kill; [or else] that common living cannot exist. Man must learn much through injury."<sup>16</sup> As he goes on to explain, "one rises to the *Sittlich* when one gains the insight that one's individual survival is conditioned via one's societal survival."<sup>17</sup> Thus, "[h]istory produces the *Sittlich Gesinnung*,"<sup>18</sup> which builds on the innate egoistic drive for well-being by showing what practices conduce to the societal good.

These practices are, of course, not presented to the individual as external imperatives which he or she might reject or accept, as *Sitten* themselves are, but as "descriptions of a *Geistig* world."<sup>19</sup> They are conceptual structures that are constitutive of the individual's moral life: its imperatives are experienced as conceptual necessities, and as an "emanation of his own *Sittlich* essence."<sup>20</sup>

This line of reasoning enabled Jhering to come to terms with the problem of the phenomenology of moral life, particularly the existence of an inner sense of correctness and conscience. Jhering distinguished four "social imperatives": style, *Sitte*, morals, and law.<sup>21</sup> The first, he argued, is distinguished by its transience, though he notes that modes of dress which serve the purpose of proclaiming the *volk*-community are long-term "fashions." The second, he said, borders on one side on custom, which is the non-obligatory "simple facticity of continued universal action" and on the other side, on morals. Customs would be *Sitte* and command, if they served not only the individual's interest but that of others or of the public at large by being linked through a chain of mutual interests.<sup>22</sup> Thus customs may be transformed in history into *Sitte*. "When individual action is imitated it becomes custom, and if the element of social obligation is attached to it, it is now *Sitte*."<sup>23</sup> The practice of tipping is illustrative of this process.<sup>24</sup> *Sitte* differs from morality in that while morality forbids the harmful, *Sitte* forbids the merely dangerous.<sup>25</sup> Each of these imperatives, through practice, creates its own "sense" or feeling. Moral intuitions, involving the harmful, are only the most conspicuous kind of inner sense. The commands of *Sitte* are generally prophylactic in character and need to be obeyed only in an external fashion. But the practice of *Sitte* also brings forth its own kind of inner sense, the sense of propriety, decorum, and tact; analogously in the case of the law, practical familiarity brings forth the judicial sense possessed by a good judge.

### THE PROBLEM OF WILL

While social ends may be made to explain individual behavior retrospectively, by translating these ends into individual advantages or goods, the same explanations do not hold prospectively. Thus while it may be evident that the adoption of some convention, such as the elimination of violent means to settle disputes, would be to the advantage of virtually all if virtually all adopted it, there would be no advantage to the first individual to lay down arms in the face of a violent world. The problem of accounting for obligation in terms of advantage is, of course, a fundamental problem for the individualists and rationalists of the present, whether utilitarians or game theorists. For thinkers like Tönnies, the most prominent Hobbes scholar of his day, these issues were also at the forefront of their thought. Their solutions to this problem were, like Hobbes's own, philosophical reconstructions of history as it must have been. They relied on ideas about the law-givers who established orders and a variety of psychologies in which the phenomenological feeling of the authority of tradition could be explained. Jhering's genealogy of *Sitten*, which he exemplified by the case of tipping, was just one of the available reconstructions. Others were more

compelling, at least with respect to the weak spot in all rationalistic accounts, the phenomenological sense that a practice is an obligation.

Nietzsche, the author of the most compelling genealogy of morals, insisted on the inherent conflict between tradition and utility when he wrote that tradition is "a higher authority which one obeys, not because it commands what is useful to us, but because it *commands*."<sup>26</sup> Indeed, as he insists,

if an action is performed *not* because tradition commands it but for other motives (because of its usefulness to the individual, for example), even indeed for precisely the motives which once founded the tradition, it is called immoral and is felt to be so by him who performed it: for it was not performed in obedience to tradition.<sup>27</sup>

Jhering was compelled to assume that this separation between moral feeling and utility was something that had not existed originally, and he characterized the mentality of primitives accordingly, as when he discussed their acceptance of the necessity of force. But the argument rests on an asymmetry: the utilitarian person, the rational individual, is taken for granted as the starting point of explanation. Nietzsche challenged this historical picture by challenging the asymmetry.

Originally. . . everything was custom, and whoever wanted to elevate himself above it had to become lawgiver and medicine man and a kind of demi-god: that is to say, he had to *make customs*—a frightful, mortally dangerous thing!<sup>28</sup>

In short, the individual of Hobbism and utilitarianism did not exist in the primal community. In one sense, Nietzsche merely shifted the burden of proof, or inverted the asymmetry, so that the rational individual became the historical product to be explained rather than the object on which explanation rested. But he was also able to elaborate his account of tradition historically. Even in recorded history, he pointed out, we can see that individualism in our present sense was not intelligible.

[T]o a virtuous Roman of the old stamp every *Christian* who "considered first of all his *own* salvation" appeared—evil.—Everywhere that a community, and consequently a morality of custom exists, the idea also predominates that punishment for breaches of custom will fall before all on the community: that supernatural punishment whose forms of expression and limitations are so hard to comprehend and are explored with so much superstitious fear.<sup>29</sup>

This was truer to the phenomenology of morals than Jhering's account had been, for although Jhering regarded *Sitte* as forbidding the dangerous, he could not easily account for the element of awe in attitudes toward customary practices. For Nietzsche,

fear in the presence of a higher intellect which here commands, of an incomprehensible, indefinite power, of something more than personal—there is *superstition* in this fear.<sup>30</sup>

The possibility of transmitting and maintaining these feelings depends on the fact that the transmission of the feelings underlying tradition occurs subrationally:

It is clear that moral feelings are transmitted in this way: children observe in adults inclinations for and aversions to certain actions and, as born apes, imitate these inclinations and aversions; in later life they find themselves full of these acquired and well-exercised affects and consider it only decent to try to account for and justify them. This "accounting," however, has nothing to do with either the origin or the degree of intensity of the feeling: all one is doing is complying with the rule that, as a rational being, one has to have reasons for one's For and Against, and that they have to be adducible and acceptable reasons. To this extent the history of moral feelings is quite different from the history of moral concepts. The former are powerful *before* the action, the latter especially after the action in face of the need to pronounce upon it.<sup>31</sup>

This analysis conflicts with Jhering's at its weakest point: the contrast between the phenomenology of moral feeling and its causal force, on the one hand and the purposive character, particularly the social purpose, which Jhering attributes to *Sitte* and whose conscious recognition in some sense is presumed to be a condition of their normative force. Yet while Nietzsche shifts the burden of proof, he does not provide an account of the diversity of morals, nor an analysis of the basic concepts—such as Community—on which his analysis relies. It is thus not surprising that Tönnies, the author of a famous book on community in addition to his Hobbes studies, took up these same issues when he published his own book on *Sitte* in 1909.<sup>32</sup>

### TÖNNIES'S ORIGIN STORY

Tönnies's strategy was to find a more fundamental concept from which to derive a conception of *Sitte*. He posed the problem as one of properly relating "three ideas related to custom which must be differentiated conceptually. These are the ideas of actual usage, of norm, and of social will."<sup>33</sup> The novelty of his analysis was in his use of the concept of social will, which he had introduced in *Gemeinschaft und Gesellschaft*. When he asks "Can the essential substance of custom as a configuration of the general will be developed from its manifestations?"<sup>34</sup> he is asking whether some notion of social will can serve as this fundamental concept.

The concept of will had a long and curious history in this discussion prior to Tönnies's intervention, quite apart from Nietzsche's famous use of it. Jhering had criticized Kant in a famous passage in which he remarked that "You might as well hope to move a loaded wagon from its place by means of a lecture on the theory of motion as the human will by means of the categorical imperative."<sup>35</sup> The argument could be extended to criticize other formalist conceptions of ethics. He argued that the source of will was interest, meaning individual purposes, and that action had such purposes, of which social purposes were a particular,

enlightened, variety. Tönnies sought to identify sources of social will which could not be reduced to utilitarian or quasi-utilitarian individual goods (such as Jhering's "well-being"). He could do so by extending the implicit personification of society found in the writings of Rousseau and many contemporary social theorists, and evident in remarks like Jhering's own comment<sup>36</sup> on the way in which society must "break the intractable will of the individual." He attributed to society, indeed both to *Gemeinschaft* and to *Gesellschaft*, "will." Like Jhering, this represents a rejection of formalism in ethics. But the derivation of will proceeds differently.

Tönnies's analysis of will begins with the concept of habit, which itself involves will—not in the sense of inherent or natural inclination, but as "second nature." Habit, he argues, becomes a power, as recognized in the expression "force of habit,"<sup>37</sup> and "established habits imperceptibly change into the instinctive" or "involuntary."<sup>38</sup> The relation between habit and instinct is that habit strengthens wishes and instincts,<sup>39</sup> which are themselves rooted in the "instinct of self preservation and emotions which stem from it."<sup>40</sup> Language does not adequately recognize this element of will in habit, but that is because

[t]he real and essential will is not what lies on the surface of consciousness. These are only the busy servants and messengers who pave his way while the sovereign sits unseen in his coach. The real and essential will is habit—that is will which has become lord and master through practice.<sup>41</sup>

Jhering, Tönnies noted, had argued that custom and habit differ with respect to the normative or "command" element. He had based this argument on his analysis of language: "language. . .discerned the command of custom but not of habit."<sup>42</sup> But Tönnies wished to argue that the analysis of language is inadequate on its own terms. Contra Jhering, some *Sitten* command and others do not. This raises a prior question: whether there is a sense in which the "commanding" and "permitting" which language attributes to some *Sitten*, as in the expression "custom permits that the sexes bathe together" points to an "authority" or "powerful will" that must be a social will, and one which must be perceived and "analysed in analogy to individual will."<sup>43</sup>

Tönnies was, of course, already committed to this thesis, and his analysis of *Sitte* merely extends it. He characterizes this "social will" in a fashion reminiscent of Durkheim. It serves "to order and regulate every individual will. Every common will can be understood as expressing a 'thou shalt!'"<sup>44</sup> This expression in itself, Tönnies held, implies the existence of a will, for the act of command implies the existence of autonomy and freedom whether it is the command of an individual to itself or the command of an association of individuals. But to "impute a will to custom, thus personifying it" is problematic on metaphysical grounds. "Custom cannot be imagined without people who want what custom wants." His solution to this problem of the seat of the social will is to locate it in the people. These "people" are the *Volk*, which connotes not only the living but the dead and the unborn.<sup>45</sup> It is thus the essential will, the "necessary and logical" will of the *Volk*, what Tönnies termed its *Wesenwille*, that is the

source of *Sitten*. Custom is the self-regulation of this will and emerges "through habit and out of practice."<sup>46</sup> Tönnies is able to build on this a genealogical account of moral feeling that subsumes Nietzsche's. Habit inherently "points toward the past,"<sup>47</sup> and this is the source of the distinctive fact of reverence and honor which attach to *Sitten*. *Sitten* fall in the category of things learned by the "obedience and imitation through which the young and disciples follow their parents and masters and learn from them."<sup>48</sup>

Reverence "results from the actual state of affairs as an inference and a claim."<sup>49</sup> It is an inference from the fact of parental power and superiority that gets generalized. The reverence accorded past practice is a special case of the reverence of the living for the dead, which is itself a special case of the reverence of children for parents and the young for the old.<sup>50</sup> This reverence, in the last analysis, is based not on custom, but "actually on nature, on 'natural law'—that is, on a tacit understanding about what has to be"<sup>51</sup> that inheres in the fact of dependence on parents. The characteristic features of this "natural" reverence, fear, and honor attach to the *Sitte* that are transmitted. The belief which results from this "inference" is a generalized reverential belief in past things and practices. Tönnies called this belief a "custom of customs. . . as a custom which rises above custom, links itself with it, and sanctions it."<sup>52</sup>

Tönnies might have used this origin story to attempt to account for practices in terms of the facts of transmission and the historical contingencies in transmission that account for their diversity. He makes a number of suggestions along these lines, particularly with respect to the special role of women in the transmission of *Sitten*. But his main concern was to reanalyze Jhering's distinctions in terms of his own analysis of will. The distinction between *Sitten* which are mere practices or *Brauch* and those *Sitten* which genuinely "command" is explained by Tönnies by the contrast between *Sitten* which do and do not spring from the social will. The remaining categories may be generated by the use of two devices: the consideration of the extent of actual empirical performance of the practice and the concept of imitation. Morals, in distinction to *Sitten*, are ideals which are not necessarily followed or achieved; *Sitten* must be facts of practice to exist at all. Ideals of decorum, however, are ideal standards, which are thought to be valid, or hold as demands, whether they are followed or not. *Sitten* form the predominant basis of such ideals, but they are separate and may even conflict with the *Sitten*.<sup>53</sup> They are often imitated because they are thought to be a mark of social superiority. Imitation or behavior based on inferences from the external conduct of others is thus a means of transmission distinct from those that inspire awe. Duty, in contrast to moral ideals, is a matter of imitation of actual practice, based on the inference that what others do one must also do.<sup>54</sup>

Because Tönnies is concerned to make the case for a non-individual will, he is concerned throughout to stress conflicts between the demands of *Sitte* and other sources of conduct, such as fashion, ideals of decorum, and the like. The enlightenment notion of the conflict between reason and tradition might be supposed to fit this. But Tönnies wishes to sociologize this contrast by identifying the utilitarian social order, the order that arises from the impulses of rational

individualism, with the *gesellschaftliche* elements of modern life. He constructs a genealogy to fit this. The original form of the contrast between reason and *Sitte*, according to Tönnies, arose from the variant interpretations of the idea of natural law. The "common idea of the Aryans before their separation," which appears in the *Veda*, treats the "regulation of nature" and "the regulation of human life" as one. In ancient Rome, however, a contrast developed between customary arrangements and those which are reasonable because they are purposeful or expedient. Modern rationalism, science, and critical philosophy have developed this contrast in a misleading manner. In large part because of the kinship of *Sitte* with superstition, rationalists have dismissed *Sitte* as sub-rational. Tönnies rejects this as an inadequate judgment. "The thinking person must recognize the unconscious creativity in the human, social and individual spirit, and must find rationality not only in what is rational in its *form*."<sup>55</sup> He preferred to state the problem in terms of the relation among the two kinds of will and *Wissenschaft*. The *Kurwille*, the will which chooses and exhibits expediency, may be united with *Wissenschaft*, but *Wissenschaft* may be united with the *Wesenwille* as well.

This is the basis for Tönnies's positive message. In the closing paragraphs of *Die Sitte* where Tönnies referred to aphorism 9 of *Morgenröthe*, he assents to the characteristic modernist claim, which Jhering himself made, that the morality of *Sitte* has become inadequate and that it needs to be replaced. But Tönnies, like Nietzsche, cannot accept that the rationality of the *Kurwille*, the rationality of utilitarianism, is sufficient as a replacement. What is needed is a "conscious ethic—that is, the recognition of that which makes man human and the self-affirmation of reason" which partakes of a new kind of reason: "reason, precisely through this, must cease being merely a scientific analytic power. Rather it must develop into the joyous creation of *Gemeinschaft*."<sup>56</sup>

### THE PROBLEM RESTATED

Weber's alternative was not presented, as Tönnies's was, as a solution to the problem of *Sitte*. It appears in the series of definitions and methodological comments that formed the preface to *Wirtschaft und Gesellschaft*. The section may be read as Weber presents it, as a series of idiosyncratic but potentially useful distinctions, which occasionally appropriate ideas from the previous literature, of which the writings of Jhering and Tönnies form a part.<sup>57</sup> But one may also read the section as a radical remapping of the domain of human conduct in which the problem Jhering and Tönnies sought to solve does not arise. Thus the subtext may be read by noticing, at each step of Weber's discussion, how one portion after another of the domain of *Sitte* that is explained by the theories of Jhering and Tönnies is explained differently or described in a way that makes further social explanation unnecessary or irrelevant.

The structure of Weber's classification of action, and to some extent the structure of the text of *Wirtschaft und Gesellschaft* as a whole, parallels Jhering's *Der Zweck im Recht*. Jhering and Weber both begin with the distinction

between purpose and cause. Weber makes a broad distinction between natural processes and processes with meanings, or intended purposes,<sup>58</sup> that parallels Jhering's distinction between mechanical "causes" and psychological "purposes." In both cases, the concepts are exclusive: in Weber the distinction is between processes which are natural or meaningless<sup>59</sup> and those that are meaningful; in Jhering, it is between influences on conduct that have or have not been converted into psychological motives.<sup>60</sup> Both accept, of course, that there are natural processes involved in various ways in action. For Weber, the category of natural processes includes memory, habituation, and such phenomena as can be attributed to racial or biological sources. Moreover, as we shall see, he is prepared to grant to these processes an extremely large portion of human conduct. The category of action proper, meaning action with an intended purpose, Weber draws more narrowly than Jhering. Where Jhering says "Purpose forms the only psychological reason of the will,"<sup>61</sup> hence "no volition, or, which is the same thing, no action, without purpose" (meaning that where there is volition there is "action"), Weber phrases the problem of "what is action" in terms of the "subjective meaning" an individual attaches to his action, and collapses the concept of subjective meaning into the concept of "intended purpose."

This stress on intentionality is a difference of some significance. It is evident that many of the cases in which the concept of purpose is employed in ordinary usage do not fully share the properties of the paradigm cases of purposive action, that is, those cases where the agent is fully conscious of the purposes toward which the action is directed, where these purposes are genuinely motivating, and where these purposes are articulable and comprehensible to others as purposes. Jhering and Weber handle deviations from this paradigm in quite different ways. Their divergent views of animal behavior are revealing in this respect. In the first edition of his book, Jhering had insisted that one fundamental difference between animals and humans was that animals used other animals only as means, and that animals do not learn and transmit their learnings. In later editions he recanted both claims, recognizing many cases of mutual aid and accepting that "even the idea of society, i.e., of regulated living together for the purpose of pursuing common ends, already appears in the animal world."<sup>62</sup> In this case, as elsewhere, Jhering is satisfied to infer purpose and declines to deny the animals' "purposing power the name of will because of a defective self-consciousness which is less complete than man's own."<sup>63</sup> Even "the idea of a future event," which is readily attributed to animals, "means an idea subsumed under the category of possibility," and this implies the "use of the categories of purpose and of means" and therefore the control of these by "understanding."

Weber begins with the epistemological problems of mental attributions and comes to drastically more stringent conclusions. Like Jhering, he accepts that "many animals 'understand' commands, anger, love, hostility, and react to them in ways which are evidently often by no means purely instinctive and mechanical and in some sense both consciously meaningful and affected by experience."<sup>64</sup> Jhering used this result to collapse animal behavior into the category of purposive action. Weber's strategy was the reverse. Although he was eager to

deny that there is reason to believe that biology can contribute much to the understanding of human action, he makes an exception for certain areas of human action. He argues that "biological analogies" may prove suggestive in connection with "the question of the relative role in the early stages of human social differentiation of mechanical and instinctive factors, as compared with that of the factors which are accessible to subjective interpretation generally." Not only are these factors "completely predominant" in the earlier stages of human development, they are "often of decisive importance" in later stages, particularly in connection with "traditional action" and "many aspects of charisma" in which "lie the seeds of certain types of psychic 'contagion.'" These types of action, says Weber,<sup>65</sup> "are very closely related to phenomena which are understandable only in biological terms or are subject to interpretation in terms of subjective motives only in fragments and with an almost imperceptible transition to the biological." This is quite a drastic extension of the domain of the biological or, more precisely, a sharp restriction of the relevance of "interpretation in terms of subjective motives." Weber was quite explicit about this. At one point he remarks that "there is no a priori reason to suppose that our ability to share the feelings of primitive men is very much greater"<sup>66</sup> than our ability to share those of animals.

One might put this down to excessive *epistemic* scrupulousness. But Weber sees it as a *conceptual* issue, that is, a problem of the boundaries between categories. The case of imitation is illustrative of Weber's approach to these problems. Nietzsche located the transmission of tradition in the subrational realm of ape-like limitation. For Weber, imitation is not even in the category of action: in discussing the influences of crowds, Weber said that for his own purposes, "mere 'imitation' of the actions of others. . . will not be considered a case of specifically social action if it is purely reactive so that there is no meaningful orientation to the actor imitated."<sup>67</sup> But Weber also stresses that "the borderline is. . . so indefinite that it is often hardly possible to discriminate."<sup>68</sup> The reason for this indefiniteness, which he said holds for both traditionalism and charisma, is "that both the orientation to the behavior of others and the meaning which can be imputed to the agent himself, are by no means capable of clear determination and are often altogether unconscious and seldom fully conscious."<sup>69</sup> This last clause is crucial, for it goes beyond the epistemic.

Jhering handled the problem of self-consciousness differently. Since he recognized that there can be actions that have "become habitual to such a degree that we no longer think of anything in the doing of it,"<sup>70</sup> he insisted that "even habitual action, in which we no longer do conscious thinking at all, is still purposeful action." His point in doing so is of considerable importance for his view of the character of practice:

Habitual action represents in the life of the individual the same phenomenon as morality and customary law do in the life of a people. In both, the individual as well as the people, a more or less clearly conscious or felt purpose originally called for the action, but the frequent repetition of the

same action from the same motives and with the same purpose has bound together purpose and action to such a degree that the purpose has ceased to be a consciously perceptible element of the voluntary process.<sup>71</sup>

In contrast, Weber places "purely traditional behavior" in the category of this "merely reactive" type.<sup>72</sup> He does not deny that the category is significant. Indeed, he remarks that the sociological importance of "merely 'reactive' imitative" may be "at least equal to that of the type which may be called social action in the strict sense."<sup>73</sup>

One may observe that this distinction between the category "natural processes" and action is not merely a classification. It is in part, the "natural" part, an aetiological or explanatory classification. To accept it is to accept the possibility that there may be a "racial" or other "natural" explanations of portions of human conduct. This step is an easy one to take if it is presented entirely as a category which may be empty. But this presentation is not entirely innocent. The arguments of Jhering and Tönnies, it should be recalled, are arguments that posit a problematic explanatory factor (in Tönnies it is the *Wesenwille*, in Jhering it is a particular account of human nature and the human past). We are not inclined to accept these problematic explanations unless we are compelled to: the arguments are arguments from explanatory necessity. To concede part of the domain, for example to concede Weber's reclassification of some of the phenomena into the domain of the "natural" is to concede part of the basis for the argument from explanatory necessity.

Weber does not, in fact, restrict himself to creating a conceptual category that might be empty. By suggesting that the conduct of primitive peoples is predominantly "natural," he removes a great deal from the category Tönnies and Jhering wish to explain and to explain with. This same strategy is repeated, in more or less subtle ways, throughout the discussion of the category of action and its subcategorizations. But in these discussions the problem of distribution is obscured by the character of the categories, which are explicitly ideal-typical.

### TYPES AND CATEGORIES

Our inability to draw the line between intentional and "reactive" behavior results from a generic methodological problem: the relevant imputations employ ideal-types, and in the cases of human action in question, these types characteristically diverge significantly from the material to which they are applied *precisely with respect* to intentionality. Weber explained:

The theoretical concepts of sociology are ideal types not only from the objective point of view, but also in their application to subjective phenomena. In the great majority of cases actual action goes on in a state of inarticulate half-consciousness or actual unconsciousness of its subjective meaning. The actor is more likely to be "aware" of it in a vague sense than he is to "know" what he is doing or to be explicitly self-conscious about it. In most cases his action is governed by impulse or habit. Only

occasionally and, in the uniform action of a large number of individuals, often only in the case of a few individuals, is the subjective meaning of the action, whether rational or irrational, brought clearly into consciousness. The ideal type of meaningful action where the meaning is fully conscious and explicit is a marginal case. . . . But. . . the sociologist may reason as if action actually proceeded on the basis of clearly self-conscious meaning. . . .<sup>74</sup>

Weber adds that the sociologist must often work with ideal-types because of their clarity, but he should keep in mind that he is in fact imputing motives and meanings on the basis of an ideal-type.<sup>75</sup> This means, in effect, that Weber claims that those actions in which the agent clearly is not consciously aware of the purpose of his action are nevertheless *to be understood on analogy* with ordinary intentional action, in which the agent is aware of his purposes, and that in the case of uniformities of action it is the conscious intentions of the *few cases in which conscious intentions figure* that are to be taken to be indicative of the unconscious intentions behind the rest, and that this kind of interpretation is sufficient (because, implicitly, it is the only kind possible).

In one sense, this alone settles the issue with Tönnies and Jhering, albeit on the most arbitrary of grounds. There is no point to the quest for underlying hidden intentions, because there are none of the appropriate kind that can be imputed in this fashion. What can be imputed will be the kinds of intentions Tönnies described as lying on the "surface of consciousness." Both Tönnies and Jhering inverted this analysis. They supposed that the underlying purposes were to be discerned in something lying beneath the surface; both of them regarded the reasons people gave for their conduct to be rationalizations of habit.<sup>76</sup> And they supposed that habit and its variations could not be accounted for without appeal to social purpose or will.

### THE CLASSIFICATION OF "ACTION"

Weber responds to this argument indirectly by his classification of the kinds of actions that fall under the general heading of "habitual" by the next step in his classification, which is to divide actions (which he has predefined as intentional, in the odd extended sense discussed above) into a set of four categories what are, in effect, categories of intentions: *zweckrational*, *wertrational*, affectual, and traditional. The last category is something of an oddity in the classification itself, for it is properly not a subcategory of the intentional but an extension of the notion of habit. But Weber says that despite the fact that "the great bulk of everyday action to which people have become habitually accustomed" are almost all automatic reactions, "its place in a systematic classification is not merely that of a limiting case because, as will be shown later, attachment to habitual forms can be upheld with varying degrees of self-consciousness."<sup>77</sup> "Strictly Traditional" action thus appears in this scheme in accordance with the idea that there is a continuum between the habitual and the intentional cases of a type of action

that is usually not performed with conscious intentions (and is therefore often on, or beyond, the borderline of "action" proper). This is an intriguing idea, for it serves to take back part of the ground ceded to the "natural," but only that part for which habitual action has a self-consciously intentional analogue.

"Affectual" behavior, in its pure form, "also stands on the borderline of what can be considered 'meaningfully' oriented, and often it too goes over the line" as, for example, when it is an "uncontrolled reaction to some exceptional stimulus."<sup>78</sup> So the categories of action that are action properly and unequivocally are *zweckrational* and *wertrational* action. Yet *zweckrational* action, strangely, is also a "limiting case," not because it is not "action" but because the orientation of action wholly to the rational achievement of ends requires ends, or as Weber puts it, a "relation to fundamental values," which cannot be chosen rationally.<sup>79</sup> Thus no action can be wholly *zweckrational*. The paradigm cases of *wertrational* action include "clearly self-conscious formulation of the ultimate values governing the action," which are thus the only cases which in their pure form properly speaking fall within rather than at the limits of the category of intentional action, and a *zweckrational* (or purposively rational, means-end) orientation to the achievement of these ends. The examples Weber gives are sacrifices for a cause, duty, honor, and the like.<sup>80</sup> These always involve, Weber says, "'commands' or 'demands' to the fulfillment of which the actor feels obligated."<sup>81</sup> Weber argues that this kind of conduct is rare. Jhering, it will be recalled, subjected these kinds of aims to an *Ideologiekritik* which interpreted them as serving social purposes.

One point of this strange categorization of what are, with one exception, limiting or borderline cases is to say that virtually all actions fall someplace in between the limits or borders. The categorization is thus a conceptual one, a mapping of a space in which actual cases may be located by placing them along continua. At the next level of classification the method of categorization changes: Weber divides action into class-like categories, uniform and nonuniform. The category of "uniformities" is then divided into subcategories and sub-subcategories which match, more or less closely, those familiar from Tönnies and Jhering. This is done by employing more than one level of subclassification. The level of uniformities includes four basic types: usages, actions involving legitimate orders, those that are *zweckrational*, and self-interestedly rational responses which are uniform because they are similarly rational responses to similar situations. The first two are in turn subdivided, but in the first subcategorization the same kinds of remarks as those initially made in connection with habit are made again. Thus we are told that the "transition from [mere practice] to validly enforced convention and to law is flowing."<sup>82</sup>

At the next lower level, however, the classifications are made on class-like, criteriological or empirical grounds rather than "conceptually" in terms of continua between pure types. The subcategorization of *Brauch* or usage reflects Tönnies's argument against Jhering's analysis of the relation between *Sitte* and *Sittlichkeit*. For Weber, a usage is an actually existent probability, the presence of which is "determined entirely by its actual practice." A usage is a *Sitte* if "the

actual performance rests on long familiarity."<sup>83</sup> This is meant to distinguish *Sitte* from cases in which a "uniformity exists in so far as the probability of its empirical performance is determined by the *zweckrational* orientation of the actors to similar ulterior expectation."<sup>84</sup> The category of usage also includes *Mode*, or fashion, which is distinguished from other usages by the fact that in the case of *Mode*, "the mere fact of the novelty of the corresponding behavior is the basis of action." The motivation for adherence to *Sitten* distinguishes *Sitten* from the kinds of uniformities that fall under the heading of legitimacy-related.

The actor conforms to them of his own free will, whether his motivation lies in the fact that he merely fails to think about it, that it is more comfortable to conform, or whatever else the reason may be. But always it is a justified expectation on the part of members of the group that a customary rule will be adhered to.<sup>85</sup>

One of the peculiarities of this particular categorization is that, although it is not presented as such, it is explicated in Weber's commentary as an aetiological classification, that is, it is a category that Weber defines by its causes, in this case the motives of the adherents.

The way in which the impression that the classification is merely a descriptive scheme is produced is by using the phrase "rests on long familiarity"<sup>86</sup> in the primary definition. But the phrase is blandly misleading. It is either an empty solecism for "done for a long time," so that *Sitte* would be merely old *Brauch*, or it is an explanation which points to a basis on which the practice rests. Weber says that the reasons for a person's adherence to the practice may vary, but he cites only such examples as "that he merely fails to think about it, that it is more comfortable to conform."<sup>87</sup> When Weber turns to the question of the "stability of customary action," he is more explicit: it "rests essentially on the fact that the person who does not adapt himself to it is subjected to both petty and minor inconveniences and annoyances as long as the majority of the people he comes into contact with continue to uphold the custom and conform with it."<sup>88</sup>

One may observe that this is an alternative to the account given by Jhering and Tönnies, but one with no basis in anything other than assertion. Uniformities based on comfortable habit and the avoidance of petty annoyance are hardly the place in which great hidden purposes are to be found. But we have no reason to accept this characterization of the motives for adherence to *Sitten*, to stop our analysis with these motives, or to conclude that there is nothing in the category of *Sitten* other than these kinds of uniformities. If one considers Jhering's examples, such as the practice of tipping, it is evident that in some sense the petty annoyances of which Weber speaks are a "lever" and are part of the process of learning and developing the practices which serve reciprocal relations in society.

Weber's next category is of uniformities of orders (which involve legitimacy) and includes law and convention. The procedure of subclassification Weber follows for these cases enables him to avoid giving any essentialist analysis to the distinctions among law, *Sitten*, and convention. Once he has defined *Sitten* as actual usages which do not involve external sanctions, he is free to

distinguish law and convention similarly, as obligations *with* sanctions, but sanctions with distinct sources: in the case of law, sanctions by a special group, namely the juridical; in the case of convention by individuals acting on their own to compel conformity, by the "psychic sanction" of "disapproval."<sup>89</sup> These classifications, which resemble Jhering's discussions of the "lever" of coercion, are close to criteriological in character, easy to apply, and involve only the superficial aspects of the law. They do not answer any of the essentialist questions that Jhering or Tönnies wished to ask about the law, such as "What makes law obligatory and mere *Sitte* not?"

The answer to these questions is foreshadowed in Weber's discussion of *Wertrationalität*, rational ordering of values. At the beginning of the section on uniformities, Weber said that the classification would be based on "typically appropriate subjective meaning attributable to"<sup>90</sup> persons acting in accordance with the uniformities. In fact, the discussion proceeds at the first level of subcategorization by distinguishing the sources of the sanctions employed on behalf of the regularity. But in discussing the cases of law and convention, Weber adds to the scheme the consideration that these orders are distinguished by the existence of belief in their legitimacy. When he turns to the question of what upholds or guarantees<sup>91</sup> the legitimacy of an order, he argues that there are two principal ways: from disinterested motives, which may be affectual (such as loyalty), *wertrational* or religious in origin, or by self-interested motives. These are, so to speak, practical guarantees of obedience. They do not, he argues, interrelate in a systematic way with considerations of morality that have distant social purposes, as Jhering supposed: ethical ideas, Weber says, may have profound influence on action without any sort of sanction, and, indeed, "This is often the case when the interests of others would be little influenced by their violation."<sup>92</sup> Yet "every system of ethics which has in a sociological sense become validly established is likely to be upheld to a large extent by the probability that disapproval will result from its violation, that is, by convention."<sup>93</sup> So it is the sanction of disapproval that makes the ethic effective; in contrast, legal rules often are simply expedient, and thus do not rest on "ethical" grounds.

This absence of systematic relations suggests that what he calls the "bases" of legitimate orders are to be found not in some sort of consistent social purposes or in the *Volkswille*, but in the beliefs on the basis of which legitimacy is ascribed to orders by their subjects. This is the subject of the next subcategorization, the famous categorization (into traditional, charismatic, and rational-legal) of kinds of beliefs about the validity of orders. "Tradition" appears here under the following definition: "belief in the sanctity of tradition" which is described as "the most universal and primitive case."<sup>94</sup> "The fear of magical penalties confirms the general psychological inhibitions against any sort of change in customary modes of action."<sup>95</sup> This is, of course, Tönnies's "custom of custom."<sup>96</sup>

These categories of belief are ideal-typical constructions which must be applied where they do not fit precisely. There is, moreover, a by-now familiar difficulty: "In a very large proportion of cases, the actors subject to the order are of course not even aware how far it is a matter of custom, of convention, of law.

In such cases the sociologists must attempt to formulate the typical basis of validity."<sup>97</sup> This means, as in the case of traditional action, that the classification must be applied by attribution to persons who do not consciously hold the beliefs.

### THE PROBLEM OF *SITTE*

The set of problems that concerned Jhering and Tönnies—the diversity of customs, the phenomenological sense of the "commanding" character of at least some of them, and the problem of explaining their evolution—disappears in this scheme. The category of *Sitte* or tradition is divided up into small portions. The problem of the identification of the *Sitten* of a given society, which Tönnies was careful to stress were hidden below the surface of consciousness, is resolved by the expedient of considering the case where *Sitten* are not consciously upheld as merely a variation of the few cases in which they *are* consciously upheld. This means, in effect, that there can be no mysterious category of compelling *Sitten* that are *in general* below the surface of consciousness. All that belongs to the category will have a conscious analogue, at least for some people in the group. The problem of compulsion is reduced to several distinct problems, each of which is solved differently: in the case of usage, it is a matter of petty annoyance or discomfort; in the case of conventions, it is the overt "sanction" of disapproval; in the case of law, it is the coercive sanctions of the specialized "legal" authorities. Each of these cases is in practice mixed, so that the load any given factor must bear is minimized by the fact that other factors, such as self-interest or mere habit, may bear the bulk of the load. So the problem of what makes *Sitten* compelling disappears.

Yet many of Weber's contemporaries, of whom Durkheim was the most notable, shared Jhering's and Tönnies's fascination for the problem of *Sitten*, and believed it to be fundamental. Durkheim treated the overt, conscious, forms of traditions as indications and incidental products of the existence of a causally powerful collective mental realm, the *conscience collectif*. This conception shared with Tönnies's the idea that consciously upheld ideals cannot be the model for *Sitten*, and, like Tönnies, Durkheim saw the problem as one of distinguishing habits which were mere habits from those which have normative force or reflect the force of society. Their "mapping" strategies are mirror images: where Weber divides the category into a long series of distinct problems, each of which is accounted for differently, Durkheim collects together a variety of apparently disparate phenomena under the heading of "constraint" and, like Tönnies and Jhering, proposes a univocal account of this unique category. Weber, in contrast, creates a vast four-sided gray area into which actions fall. But each of the sides is oddly defined. In the case of affectual and traditional action, the sides are vaguely defined borderlines between intentional action and mere behavior. In the case of *wertrational* action, the instances of the type are held by Weber himself to be historically unusual. In the case of *zweckrational* action, the pure form is a logical impossibility.

How compelling are these alternatives? How compelling is Weber's redrawing of the categories in terms of which the problem arises? An assessment of Weber's position that was true to its contextual origins—to Weber's own problem in revising his sources—might be organized around the following question: (1) How much of the realm of *Sitten* may be modeled on explicitly intended values? (2) Is there much left over? (3) Where does the model of explicitly intended values leave the problem of the diversity of morals? (4) Where does it leave the problem of the phenomenological sense of command, externality, incorporation, and the like attributed to *Sitten*? (5) Where does it leave the problem of the transmission or learning of *Sitten*? The answer to the first of these questions depends on the question of the existence of habits which are social practices (or shared mental structures, in the "Structuralist" forms of this thesis), which are in some sense "transmitted" non-verbally or in a way that cannot be reduced to the verbal or conscious content of the practices. Weber must deny that there are any such practices: the negative implication of his insistence on attributing motives of action involving traditions as approximations to ideal-types which involve conscious adherence to traditions is that there is nothing in the category, nothing "left over." Weber gives no argument for this, but he could do so by successfully answering the remaining questions. Jhering and Tönnies both have accounts which at least point toward answers to the problem of the diversity of morals: Jhering's process of social learning, for example, makes circumstances and the evolution of reciprocal action and practice account for the divergent forms of *Sitten* that may be observed historically and in the present. This account, it may be noted, allows for that which is transmitted to change in ways which are intrinsic to the process of learning itself.

Weber's answer to this set of problems must be in the form of an account in which the concept of value-choice figures heavily, for this is his only alternative to the transmission of unchanging habit through "imitation." Indeed, his reliance on imitation forces him to look elsewhere for an account of change, and this places the burden of explanation, with respect to both change and diversity, on conscious departures from tradition, meaning such historical processes as charismatic moral prophecy, submission to a dominant group, or rationalization understood as or identified with self-conscious revision. As he puts it, an important aspect of the "process of the 'rationalization' of action is the substitution for the unthinking acceptance of ancient custom, of deliberate adaptation to situations in terms of self interest."<sup>98</sup> The other aspects, including "conscious rationalization of ultimate values" or moral skepticism are equally "conscious" in character.<sup>99</sup>

The source of compulsion must also be found in the rationally compelling character of the ultimate values in question, in the force of charisma, or in some combination of these, or of these and the habits acquired through their practice. To be sure, the role of the element of pure normative compulsion may be minimized, as Weber himself does when he suggests that considerations of convenience, notably the avoidance of petty annoyances, account for the stability of

*Sitte*, and that a system of ethics is "likely to be upheld to a large extent" by the probability of disapproval of violations of it.<sup>100</sup> But the phenomenological experiences of rational acceptance of a conclusion, or logical compulsion, or convenience, of habit, and of social disapproval are distinct experiences from that of a sense of the demands of morality, and these are, in turn, distinct from the sense of demands which arise from a conscious value-choice. These differences are obscured by the fact that his account of value-choice is dependent on an analogy between largely unconscious actual conduct and ideal-types of conscious moral choice of the same kind as one finds in his discussion of tradition.

The plausibility of Weber's categorization thus rests on the plausibility of this manner of eliminating the problem of the phenomenological sense of externality and command by taking the cases that Jhering and Tönnies took to be paradigmatic and relocating them in the mixed category between these ideal-types, each of which Tönnies and Jhering, and many others such as Durkheim, took to be qualitatively different from *Sitten*. So the persuasiveness of the notion of value-choice and *werrational* action as a surrogate for the commanding power of *Sitten* is decisive both directly and indirectly, in connection with the problem of the change of *Sitten* and their diversity. Weber's overt rhetorical strategy conceals its centrality. Because he explicitly insists that empirical cases of action resemble the model of "pure rational orientation to absolute values"<sup>101</sup>. . . "for the most part only to a relatively slight extent,"<sup>102</sup> he does not invite empirical scrutiny of the question of the extent to which rationalization occurs.

Weber's highly persuasive picture of human history as emancipation from the enchanted world of unthinking, unchanging tradition into a world of subordination to an iron cage of rational self-consciousness depends on this unscrutinizable question. But if traditions—in the sense of practices not reducible to their conscious articulated expressions—are present and are constitutive parts of social life in the modern world as well as the world of our ancestors, Weber's methodological devices would conceal them from us. They will have disappeared in the categorization scheme, not in the world.

#### NOTES

1. Stephen Turner and Regis Factor, "Objective Possibility and Adequate Causation in Weber's Methodological Writings," *Sociological Review* 29 (1981): 5–28.
2. Stephen Turner and Regis Factor, "Decisionism and Politics: Weber as Constitutional Theorist," in *Max Weber, Rationality and Modernity*, edited by Scott Whimster and Jon Lash (London, 1987), 334–54.
3. Max Weber, *The Theory of Social and Economic Organization*, translated by A. M. Henderson and Talcott Parsons, edited and with Introduction by Talcott Parsons (New York, 1947), 122. (*Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie*, Winckelmann [Tübingen, 1976], 15.)
4. *Social and Economic Organization*, 127 (*Wirtschaft und Gesellschaft*, 17.)
5. Friedrich Nietzsche, *Daybreak: Thoughts on the Prejudices of Morality*, translated by R. J. Hollingdale (Cambridge, 1982), aph. 9. (*Morgenröthe. Nachgelassene Fragmente* [Berlin, 1971], aph. 9.)
6. Julius Stone, *Social Dimensions of Law and Justice* (Stanford, Calif., 1966), 94.

7. See Turner and Factor, "Decisionism and Politics." One might construct a complete table of conceptual correspondences, which would be quite impressive, though that is not attempted here.

8. Rudolph von Jhering, *Der Zweck im Recht*, vol. 1, 2d ed. (Leipzig, 1884), 254-55. The legal use of "necessity" ordinarily relates to legally definable conditions under which the law does not hold. As Jhering observed, the Imperial Criminal Code itself held that an act which would ordinarily be a criminal act would not be under conditions of "necessity" for which the agent was not responsible; moreover, the state can declare a state of exception. See Turner and Factor, "Decisionism and Politics."

9. *Der Zweck im Recht*, vol. 1, 254-55.

10. Jhering might have dodged these difficulties, as Kelsen later did, by restricting himself to a pure theory of the law that treated the law as a separate object, a system, to be studied as such.

11. Rudolph von Jhering, *Der Zweck im Recht*, vol. 2, 2d ed. (Leipzig, 1886), 89.

12. *Der Zweck im Recht*, vol. 1, xii.

13. *Der Zweck im Recht*, vol. 2, x-xi.

14. *Ibid.*, 21-22.

15. *Ibid.*, 38.

16. *Ibid.*, 112.

17. *Ibid.*, 198.

18. *Ibid.*, 116.

19. *Ibid.*, 99.

20. *Ibid.*, 100. In this and other respects, such as his stress on the constitutive character of moral ideas, Jhering is reminiscent of Durkheim. If Jhering's is not a wholly successful solution to the problem of subjective feeling, it is striking in its consistent insistence on the social determination of morals and on the dependence of phenomenologically "private" experience on social facts. In one especially striking passage, Jhering discusses the role of feasts. He (vol. 2, 203) argues that "every great societal act finds its expression in a feast" which are means by which "individual joy is raised to the height of the societal" and by which "one of the most beautiful bonds of the societal union" are built.

21. Vol. 2, 230-31.

22. *Ibid.*, 247.

23. *Ibid.*, 242.

24. *Ibid.*, 249.

25. *Ibid.*, 260-61.

26. *Daybreak*, aph. 9. (*Morgenröthe*, aph. 9.)

27. *Ibid.*

28. *Ibid.*

29. *Ibid.*

30. *Ibid.*

31. *Ibid.*, aph. 34. (*Morgenröthe*, aph. 34.)

32. Ferdinand Tönnies, *Custom: An Essay on Social Codes*, translated by A. Farrell Borenstein (Chicago, 1961). (*Die Sitte* [Frankfurt am Main, 1909]. Page numbers of German editions will appear in parentheses in following notes.

33. *Ibid.*, 114 (70).

34. *Ibid.*, 41 (16).

35. *Der Zweck im Recht*, vol. 1, 51.

36. *Der Zweck im Recht*, vol. 2, 256.

37. *Custom*, 32 (9).

38. *Ibid.*, 31 (9).

39. *Ibid.*, 33 (10).

40. *Ibid.*, 31 (9).

41. *Ibid.*, 34 (11).

42. *Ibid.*, 36 (12).

43. *Ibid.*, 37 (13).

44. *Ibid.*, 38 (14).

45. *Ibid.*, 39 (15).

46. *Ibid.*, 42 (17).

47. *Ibid.*, 42-43 (17).

48. *Ibid.*, 43 (18).

49. *Ibid.*, 45 (19).

50. *Ibid.*, 44 (19).

51. *Ibid.*, 45 (19).

52. *Ibid.*, 48 (21-22). In the case of religion, like the case of learning from parents, "reverence" derives from the manner of learning. In the case of the learning of ritual practices, "the natural sentiments, feelings of servility, of humility and diffidence, all of them expressions of reverence, are expressed strongly and distinctly through the performance" (*Custom*, 49 [22]).

53. *Custom*, 113 (69).

54. *Ibid.*, 93 (42-43).

55. *Ibid.*, 143 (92).

56. *Ibid.*, 146 (94-95).

57. Weber's explicit intent in formulating the categories is not terribly clear. At one point, Weber (*Social and Economic Organization*, 115 [13]) denies that he has "intention here of attempting to formulate in any sense an exhaustive classification of types of action," and he goes on to suggest that "the usefulness of the classification for the purposes of this [sociological] investigation can be only judged in terms of its results" (*Social and Economic Organization*, 115 [13]) without saying what sorts of results it is supposed to achieve, except perhaps "clarity."

58. *Social and Economic Organization*, 91 (3).

59. *Ibid.*

60. *Der Zweck im Recht*, vol. 1, 12.

61. *Ibid.*, 4.

62. *Ibid.*, 5.

63. *Ibid.*, 6.

64. *Social and Economic Organization*, 104 (7).

65. *Wirtschaft und Gesellschaft*, 8.

66. *Social and Economic Organization*, 104.

67. *Ibid.*, 114 (11).

68. *Ibid.*, (7).

69. *Ibid.*, (12).

70. *Der Zweck im Recht*, vol. 1, 15.

71. *Ibid.*, 21.

72. *Social and Economic Organization*, 90 (2).

73. *Ibid.*, 114 (12).

74. *Ibid.*, 111-12 (10-11).

75. *Ibid.*, 112 (11).

76. See Tönnies's discussion of the drunkard (*Custom*, 32-33 [10-11]).

77. *Wirtschaft und Gesellschaft*, 12.

78. *Custom*, 36 (12).

79. Some of the subsequent history of these ideas of reason, in relation to "value" is discussed in Stephen Turner and Regis Factor, *Max Weber and the Dispute Over Reason and Value: A Study in Philosophy, Ethics, and Politics* (London, 1984). The sociological side of the reception history is discussed in Alan Sica, *Weber, Irrationality, and Social Order* (Berkeley, Calif., 1988).

80. *Social and Economic Organization*, 116 (12).

81. *Ibid.*

82. *Ibid.*, 122 (15).

## Social Norms and Narrow Content

MEREDITH WILLIAMS

83. Ibid., 121 (15).  
 84. Ibid.  
 85. Ibid., 121–22 (15).  
 86. Ibid., 121 (15).  
 87. Ibid.  
 88. Ibid., 123 (16).  
 89. Ibid., 127 (17).  
 90. Ibid., 120 (14).  
 91. Ibid., 126–27 (17).  
 92. Ibid., 130 (19).  
 93. Ibid.  
 94. Ibid., 131 (19).  
 95. Ibid.  
 96. Like Tönnies, and in this respect like Nietzsche, this implies that “Conscious departures from tradition in the establishment of a new order” require special kinds of assertions of authority, either prophetic or assertions of return to supposedly earlier and more valid traditions (*Social and Economic Organization*, 131 [19]).  
 97. *Social and Economic Organization*, 132 (20).  
 98. Ibid., 123 (15).  
 99. Ibid.  
 100. Ibid., 130 (19).  
 101. Ibid., 116 (12).  
 102. Ibid., 117 (13).

There are at least two forms of individualism about mental content: individualism as a principle of the individuation of the mental states and processes; and individualism as an ontological thesis. Individualism as a principle of individuation, or radical internalism, is typically characterized negatively: “An individual’s being in any given intentional state (or being the subject of such an event) can be explicated by reference to states and events of the individual that are specifiable without using intentional vocabulary and without presupposing anything about the individual’s social or physical environment.”<sup>1</sup> The ontological thesis is a weaker form of individualism, according to which “an individual’s intentional states and events (type and token) could not be different from what they are, given the individual’s physical, chemical, neural, and functional histories.”<sup>2</sup> This second form of individualism is a strictly individualistic thesis. For the argument of this essay, I want to keep these two forms of individualism distinct. Mental content is *internal* if it is in the head; and it is *individualistic* if social structures and institutions are irrelevant to, or unnecessary for, the specification and existence of the mental content. Internalism is the stronger position, for an internalist about mental content thereby holds an individualistic conception of content. However, the converse does not hold. One could be an individualist about content without being an internalist.<sup>3</sup> Tyler Burge, for one, has argued strenuously against an individualistic conception of mental states under either interpretation. In this essay, I shall support Burge’s conclusions. The distinctive approach he uses, however, is limited in showing why internalism and individualism are mistaken. So, though I shall use the thought-experiment approach as a way into the problem of individuating mental content, the target is to show how individualism of either form goes wrong.

Burge’s basic methodological tool is that of the thought-experiment. In each essay, he invites his reader to consider a real world case and a counterfactual world case in which the individual protagonists of each story can be described identically in terms of what goes on from the surface of the skin

## MIDWEST STUDIES IN PHILOSOPHY

EDITED BY PETER A. FRENCH, THEODORE E. UEHLING, JR.,  
HOWARD K. WETTSTEIN

### EDITORIAL ADVISORY BOARD

ROBERT AUDI (UNIVERSITY OF NEBRASKA)  
JONATHAN BENNETT (SYRACUSE UNIVERSITY)  
PANAYOT BUTCHVAROV (UNIVERSITY OF IOWA)  
RODERICK CHISHOLM (BROWN UNIVERSITY)  
DONALD DAVIDSON (UNIVERSITY OF CALIFORNIA, BERKELEY)  
KEITH DONNELLAN (UNIVERSITY OF CALIFORNIA, LOS ANGELES)  
FRED I. DRETSKE (UNIVERSITY OF WISCONSIN, MADISON)  
GILBERT HARMAN (PRINCETON UNIVERSITY)  
MICHAEL J. LOUX (UNIVERSITY OF NOTRE DAME)  
ALASDAIR MACINTYRE (UNIVERSITY OF NOTRE DAME)  
RUTH BARCAN MARCUS (YALE UNIVERSITY)  
JOHN R. PERRY (STANFORD UNIVERSITY)  
ALVIN PLANTINGA (UNIVERSITY OF NOTRE DAME)  
DAVID ROSENTHAL (CITY UNIVERSITY OF NEW YORK GRADUATE  
CENTER)  
STEPHEN SCHIFFER (UNIVERSITY OF ARIZONA)  
MARGARET WILSON (PRINCETON UNIVERSITY)

Many papers in MIDWEST STUDIES IN PHILOSOPHY are invited and all are previously unpublished. The editors will consider unsolicited manuscripts that are received by January of the year preceeding the appearance of a volume. All manuscripts must be pertinent to the topic area of the volume for which they are submitted. Address manuscripts to MIDWEST STUDIES IN PHILOSOPHY, University of Notre Dame Press, Box L, Notre Dame, IN 46556.

The articles in MIDWEST STUDIES IN PHILOSOPHY are indexed in THE PHILOSOPHER'S INDEX.

### *Forthcoming Volumes.*

Volume XVI 1991 Philosophy and Art  
Volume XVII 1992 Wittgenstein's Legacy

### *Available Previously Published Volumes*

Volume IV 1979 Studies in Metaphysics  
Volume V 1980 Studies in Epistemology  
Volume VI 1981 Foundations of Analytic Philosophy  
Volume VII 1982 Social and Political Philosophy  
Volume VIII 1983 Contemporary Perspectives on the History of Philosophy  
Volume XI 1984 Causation and Casual Theories  
Volume X 1985 Studies in the Philosophy of Mind  
Volume XI 1986 Studies in Essentialism  
Volume XII 1987 Realism and Anti-Realism  
Volume XIII 1988 Ethical Theory: Character and Virtue  
Volume XIV 1989 Contemporary Perspectives in the Philosophy of Language II

# Midwest Studies in Philosophy Volume XV

## The Philosophy of the Human Sciences

### Editors

**Peter A. French**  
*Trinity University*

**Theodore E. Uehling, Jr.**  
*University of Minnesota, Morris*

**Howard K. Wettstein**  
*University of California, Riverside*

University of Notre Dame Press • Notre Dame, Indiana

# Midwest Studies in Philosophy Volume XV The Philosophy of the Human Sciences

Copyright © 1990 by the University of Notre Dame Press. All Rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher.

Published by the University of Notre Dame Press  
Notre Dame, IN 46556  
Printed in the United States of America

## Library of Congress Cataloging-in-Publication Data

The Philosophy of the human sciences / editors, Peter A. French, Theodore E. Uehling, Jr., Howard K. Wettstein.

p. cm. — (Midwest studies in philosophy : v. 15)

Includes index.

ISBN 0-268-01384-5 — ISBN 0-268-01385-3 (pbk.)

I. Social sciences—Philosophy. I. French, Peter A.

II. Uehling, Theodore E. III. Wettstein, Howard K. IV. Series.

B63.P48 1990

300'.1—dc20

90-12872

CIP

The University of Notre Dame  
is an equal-opportunity  
educator and employer

Walking Together:	
A Paradigmatic Social Phenomenon . . . . .	Margaret Gilbert 1
Rationality and Alien Cultures . . . . .	Lawrence H. Simon 15
Ratifiability and the Logic of Decision . . . . .	Brian Skyrms 44
The Idea of Science . . . . .	Hilary Putnam 57
Paradoxes of Rationality . . . . .	Cristina Bicchieri 65
How Do I Presuppose Thee? Let Me Count the Ways:	
The Relation of Regularities to Rules	
in Social Science . . . . .	David Braybrooke 80
Causes of Variability: Disentangling Nature and Nurture . .	Arthur Fine 94
Probabilism . . . . .	Richard Foley 114
Singular Explanation and the Social Sciences . . . . .	David-Hillel Ruben 130
Moral Realism and Social Science . . . . .	Alexander Rosenberg 150
The Methodological and Metaphysical Peculiarities	
of the Human Sciences . . . . .	Joseph Margolis 167
“Human Sciences” or “Humanities”:	
The Case of Literature . . . . .	Frederick A. Olafson 183
Social Science and the Mental . . . . .	Alan J. Nelson 194
Narrative Time:	
The Inherently Perspectival Structure	
of the Human World . . . . .	Robert Paul Wolff 210
Newcomblike Problems . . . . .	Jordan Howard Sobel 224
Soft Laws . . . . .	Terence Horgan and John Tienson 256
Do Social Structures Govern Action? . . . . .	Theodore R. Schatzki 280
Group Action and Act Consequentialism . . . . .	Richard Fumerton 296
Some Social Benefits of Uncertainty . . . . .	Gregory S. Kavka 311
Foucault’s Genealogical Method . . . . .	Gary Gutting 327
The Contractarian Explanation of the State . . . . .	Jean Hampton 344
The Deductive Method . . . . .	Daniel M. Hausman 372
Vigotsky and Artificial Intelligence:	
What Could Cognitive Psychology Possibly Be About? . .	Rom Harré 389
The Disappearance of Tradition in Weber . . . . .	Stephen P. Turner 400
and Regis A. Factor . . . . .	400
Social Norms and Narrow Content . . . . .	Meredith Williams 425