The Law’s Claim to Justice:

Normativity and the Morality of the Law

-Brandom, Korsgaard, and Soper-

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by

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ABSTRACT

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The philosopher Philip Soper believes that legal claims are largely misunderstood by certain critics of the law. These critics charge the law with having overstepped its boundaries whenever the content of any claim it makes cannot be morally justified. In such cases, they hold, the law should cease making such morally unjustified claims. Soper, however, believes that this critique is misguided. The law does not make its claims in terms of whether the content of any law is morally justified; rather, the law presents its claims as morally justified because a legal claim is like any claim made by people in ordinary circumstances. This thesis examines the nature of ordinary claims and the nature of normativity to better understand how a law acts as a norm for citizens. In particular, Soper’s discussion of the ‘Law’s Claim to Justice’ as the minimal normative claim of the law is investigated. The discussion follows Robert Brandom’s philosophy of language and Christine Korsgaard’s moral philosophy in analyzing normativity and claims-making. Ultimately, the sophistication of Soper’s treatment is revealed, as his perspectives on normativity and claims bear certain affinities to those expounded by Brandom and Korsgaard. Furthermore, Korsgaard’s discussion of morality as it relates to normativity leads the discussion to a similar inquiry into the relationship between the law’s morality and normativity. The conclusion briefly draws out the implications of these discussions for egoism and Kant’s claim to taste.
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From the Philosophy of Language to a Philosophy of Law

Beginning with the ‘linguistic turn’ in philosophy, Cristina Lafont identifies a division in the history of the philosophy of language between German-speaking and English-speaking philosophical traditions.1 Though both branches were motivated in many ways by German thinkers (the former by Humboldt, the latter by Frege), and German natives played a crucial role in later developments of Anglo-American philosophy, Lafont distinguishes between the two traditions on the basis of their respective focuses. On the one hand, the German-speaking branch concentrated on how the nature of natural languages is definitive of human existence. In particular, they focused on how certain aspects of ordinary discourse and common languages clarify and allow for clearer expression between individuals. This role played by language in human interaction was linked with the essence of the human condition: that we live by and through language, both internally and externally. In a sense, this tradition examined the way in which language conditions our thinking through its essentially discursive nature, which mediates social interaction.

The Anglo-American tradition, on the other hand, took logic and the languages of natural science as that in light of which human beings should be explained and should exist. In this sense, the two traditions focused on different structures in language. The former focused on the grammar of meaning (how meaning relates to usage), while the

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latter focused on the formal, logical structure of reasoning as the model form of human cognition. Certain contemporary philosophers in the Anglo-American tradition, however, have not focused on the structure of logic or natural science in describing human rationality, but rather have looked to common linguistic practices and usage for insight into the nature of human rationality.

Influenced by the work of Georg Hegel, a German philosopher often ostracized by the Anglo-American tradition in philosophy, Robert Brandom is one such English-speaking philosopher of language who has ignored this division. By analyzing the implicit normativity of social practices, Brandom constructs a philosophy of practical reasoning defined by its interest in the common practices of social discourse, not the languages of natural science. Christine Korsgaard may not identify herself so explicitly with the German-speaking tradition as described above, but she takes a similar approach to normativity by integrating it with practical reasoning and exploring its relationship to certain social practices. Thus, both philosophers explore normativity in light of social practices and a refined theory of practical reasoning.

The jurist Philip Soper exhibits a similar approach in drawing a comparison between the normative dimensions of certain social practices and the normativity of the law in his article, Law’s Normative Claims. His explanation of the law’s normativity includes not only such comparisons, but also how the normativity of the law relates to

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common features of practical reasoning like justification and moral defensibility. In doing so, he illustrates the affinity between his own work in the philosophy of law and the work of Brandom and Korsgaard; all of these philosophers concentrate on the importance of using common social practices to explain normativity in light of practical reasoning.

Soper’s brief treatment of such comparisons and explanations in this article provides reason for one to ask whether the theories of these other philosophers might not give further philosophical justification for Soper’s theory of the law’s normativity. This essay is an exploration of the affinities between these philosophies; the essay proceeds from summaries of each philosophical position to justifications of Soper’s position in light of the summations. Furthermore, in presenting his theory, Soper situates his investigation within a debate over the justifiability of the law. Therefore, by examining his theory in light of these other philosophies and the related debate, we shall argue for his position in the debate as well.

I. The Law’s Claim to Justice

In his article, *Law’s Normative Claims*, Philip Soper confronts a gap that many moral philosophers see between the claims to authority of modern legal systems and sound justifications for those claims presented by moral philosophy. This objection focuses on the divergence between the claims of the law and its entitlements, leading from this objection to a demand, namely: the law should change accordingly to only
include requirements capable of philosophical justification. Soper reacts to this demand by questioning the strength of the law’s normative claims. In showing how the law makes weaker claims than most moral philosophers maintain, Soper tries to defend the law from these charges. In evaluating just how strong these claims to citizen obligation are, he begins by considering what it means for the law to make a claim, before he proceeds to identifying what he sees as the most fundamental normative claims of the law.

Though legal theory has not found the question of what it means for the law to make a claim particularly problematic, Soper does take a moment to investigate the concept of a legal claim. By keeping in mind that any official who represents the legal system may make both private claims about the law just like those made by any other citizen, as well as those claims made when the official is speaking on behalf of the law, Soper gives a rough idea of what a claim means and how it might not be particularly problematic. Another way of conceiving of a legal claim is to consider what any sensible individual ought to recognize as a claim, should she hold an official position within the system involving the creation and implementation of system directives. Soper summarizes the point by writing, “the claims of the law are the claims of those who accept and enforce its norms.”

Soper then moves on to establish what he sees as the minimal claim made by most legal systems, namely, what he calls the claim to justice. Historically, the law’s claim to the right to use sanctions has been taken as the most fundamental claim made by any

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4 Soper, p. 218
5 Soper, p. 218
legal system. Yet for Soper, the essence of a legal claim is embodied by a closely linked and yet even more fundamental claim than that of the right to use sanctions. This minimal claim is that the actions of the law are morally defensible. These actions include both the creation and implementation of system directives, which Soper describes as, “both the establishment of legal norms (the ‘right to decide’) and the enforcement of those norms through the use of the state’s unique apparatus for imposing sanctions (the ‘right to enforce’).”6 Because the ‘right to enforce’ involves using sanctions while the ‘right to decide’ seems to effect people less obviously, the former is often seen as the more essential claim of the law.

Yet, in considering the meaning of the ‘right to enforce’ one realizes that it is a claim about the content being enforced; the state enforces what it believes is appropriate content for a legal norm. In choosing to enforce specific instances in a non-random fashion, the state is deciding what it believes to be enforceable. Thus, when a citizen acts against a legal rule, etc. that is binding on their activities and the law feels that it is appropriate to require compliance, then the law will use sanctions. In this way, the close connection between the ‘right to enforce’ a legal norm and the ‘right to decide’ what is appropriately normative for a citizen is illustrated. To more clearly discuss these two most essential yet so closely interwoven rights, Soper uses the phrase ‘the claim to justice’ in discussing this most basic claim, namely, the claim to sanctions being morally defensible. In a nutshell, the most fundamental claim of the law is this claim to justice, which includes the right to use sanctions in reacting to someone’s failure to observe a

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6 Soper, p. 218-9
legal norm deemed possessive of appropriately just or moral content. Thus, the minimal
claim of the law is best seen in light of other more common claims meant to illustrate that
its actions are morally defensible, including such actions as that “it is ‘right’ for citizens
to act as legal norms prescribe, or that it is ‘just’ for the state to enforce these norms.”

This normative posture of the law, one that views its norms as worthy of
enforcement because they are morally defensible, was in many ways overlooked by
earlier versions of legal positivism, a specific philosophy of law. Legal positivism’s
stress on the separation of law and morality obfuscated the recognition that legal systems,
despite how morally reprehensible they may be, tend to invoke this normative posture
and the claim to justice. Thus, while the point is no longer particularly controversial, it is
nonetheless worthy of consideration because only recently has this posture been widely
recognized. Therefore, though the point may be obvious, as Soper mentions, it is worth
considering how one might defend this description of the law as exhibiting a normative
posture if challenged.

One response to such a challenge, Soper maintains, would be to point out several
common features of social life, namely, that the kinds of sanctions used tend to so
seriously infringe upon a person’s interests, that one cannot exempt such actions from the
assumption that a morally conscientious agent would only commit such violations if they
believed their deeds were morally defensible. As Soper points out, “Only if one thought
that the law did not purport to be a morally conscientious agent (if it were considered to
be only a gunman writ large) could one fail to see that the practice of law belongs in the

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7 Soper, p. 219
8 Soper, p. 219
same category of other social practices that claim to be morally defensible." Soper describes how the ordinary citizen’s reaction to such serious sanctions is similar in her response to both a citizen sanction and the law’s imposed sanctions; in ordinary circumstances one would expect an agent to seriously infringe upon another only in cases when such action was morally justifiable. In this way, the law is seen to be closer to the ordinary person than a gunman writ large.

By calling attention away from the role of the ‘right to enforce’, and contextualizing it with the ‘right to decide’, the ‘claim to justice’ illustrates how the former prioritization of sanctions in defining the law ignored a fundamental dimension of the law. More akin to the conditions involved in the ordinary practices of social life, the law is more than a gunman writ large. As Soper writes, “Another response might be to draw an analogy between the law’s approach and actions and that of any ordinary person who expects to be taken seriously in attempting to communicate and interact with others.”

In this way, the claim to justice shifts focus from the sanctions and ‘gunman writ large’ aspect of the law to how the actions of the law bear certain affinities to the expectations found in daily actions and interactions. In citing the greater likelihood of a law known as ‘the Administration of Justice Act’ than the ‘Administration of Injustice Act’, Soper uses the work of Neil MacCormick to point to the most wide-spread features of the expectations within daily actions and interactions, as he writes, “The point is simply the truism about human behaviour that conscientious people do not offer advice, much less issue demands or take action that affects others, unless they implicitly believe

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9 Soper, p. 219
10 Soper, 219-220
that what they are doing is based on morally defensible beliefs about what it is permissible or right to do.”\textsuperscript{11}

Having taken the time to consider what it means for the law to make a claim, as well as what are the most fundamental normative claims of the law, Soper moves onto other topics of discussion. However, in doing so he has explored only some of the concepts used extensively in his discussion. Though he explores the concept of a legal claim and the meaning of the most basic claims of the law in light of their normativity, he does not take the time to examine normativity itself. Inasmuch as his discussion of the claim to justice hinges equally upon the concept of a norm and the concept of a legal claim, the concept of a norm does seem worth consideration. In drawing his focus to the expectations found in daily action and interaction, Soper examines the postures taken by agents of the law as well as those acting and interacting with one another on a daily basis. He also draws special attention to the role gross violations of an agent’s interest play in daily life to delineate the difference between the gunman writ large picture of the law and the more normatively minimalist version he describes.

There are two purposes of this paper: 1) to investigate the concept of the norm, which Soper does not examine in any detail; 2) to explore how the nature of normativity might shed light on Soper’s comparison between the practice of the law and other social practices that claim to be morally defensible. In end, this questioning of normativity will lead through a consideration of moral justification to a reconsideration of Soper’s claim to justice. In doing so, the discussion will cover both the normativity inbuilt within the

\textsuperscript{11} Soper, p. 220
expectations ordinary people have when interacting with one another in daily life, as well as the role of normativity in gross violations of agent interests. Each of these practices will be investigated in turn by looking at a relevant philosophical enterprise. Robert Brandom’s description of the normativity implicit within social practices and discourse sheds light on how similar the law’s normativity is to such discourse. Similarly, Christine Korsgaard’s views on the sources of normativity utilize a theory of identity, in turn illustrating both the normative dimension of gross violations of personal interests. By looking at her philosophy, we may come to a better understanding of both law’s normativity, and even its morality. Ultimately, the sophistication of Soper’s description of the law’s normativity will hopefully be at least as clear as it was originally, if not slightly more so.

II. Making Norms Explicit: Normativity, the Features of Ordinary Discourse, and their Affinity to the Claim to Justice

A. Sapience, Normativity, and Reasoning: An Overview


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12 Optional Addition: Discuss that inclinations do not come prior to reasons - endorsement and commitment p. 31
Characterized by ‘our’ cognitive capacities, our actions and interactions are understood by us in very specific ways. This traditional association of human beings with our tendency to distinguish the appropriateness of one understanding from another is commonly seen in classical descriptions of us as reasonable beings.\textsuperscript{14} According to this classical description of our nature, our ability to grasp the appropriateness of actions occurs in light of related reasons. Thus, for us to be reasonable means that we are compelled by related reasons to assess the appropriate course of action, which is to say, we are reasonable beings in that our motivations are subject to assessment according to their relation to reasons.

In this way, reasons carry a normative force for us, or as Brandom writes, in reasons we find for ourselves “a species of normative force, a rational ‘ought.’”\textsuperscript{15} Yet being reasonable does not only mean that an action or attitude has a correlating reason, but rather, that the force of reasons also includes the force of the better reason.\textsuperscript{16} As Brandom summarizes, “This ‘force of the better reason’ is a normative force. It concerns what further beliefs one is committed to acknowledge, what one ought to conclude, what one is committed or entitled to say or do.”\textsuperscript{17} Here Brandom clarifies that reasoning fundamentally involves how one assesses her attitudes or actions in light of better and worse reasons to discover what is proper.

\textsuperscript{13} Brandom, Robert. \textit{Making It Explicit: Representing, Reasoning, and Discursive Commitment}. Cambridge, Massachusetts: Harvard University Press, 1998. p. 4

\textsuperscript{14} Brandom, p. 5

\textsuperscript{15} Brandom, p. 5

\textsuperscript{16} Brandom, p. 17

\textsuperscript{17} Brandom, p. 17
Through this subjection to the influence of reasons, we find ourselves assessing the appropriateness of more than just our own actions in light of rational norms because just as we are not only governed by reasons, but are also sensitive to them, so we take the actions of others as both governed by and aware of reasons. Our attitudes are open to the discernment of others while our actions often interact with others. In making rational assessments according to rational norms, we place ourselves as well as one another into a shared “space of reasons.” This interactive process of “giving and asking for reasons for attitudes and performances,” as Brandom describes it, is a practical stance or posture in which actions and attitudes gain appropriateness in light of norms that are open for public consideration. Essentially, Brandom’s version of the classical description of reasonable beings here focuses on two aspects of human nature. The first is that our rationality makes reasons normative for us. The second is that in making reasons normative for our own actions and attitudes, we also request reasons from others for their actions and attitudes, which is to say, we see others as existing in a similar space of reasons.

Thus, as reasonable beings we make commitments in light of reasons and expect the same from others because our reasons are shared. Occupying the same space of reasons means that our actions and attitudes are open to rational assessment by more than just the agent’s consciousness. This focus on assessment over the action itself means that the propriety of the assessment of an individual who is searching for reasons to justify

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18 Brandom, p. 33
19 Brandom, p. 5
20 Brandom, p. 5
action, and the propriety of the action itself, are different. This bifurcation of the rational agent’s process of acting leads to an interesting result, namely, that normativity involves assessment at different levels of reasonableness. Assessment involves more than just the deed committed; it also involves assessment of the practical stance of the agent, a posture that illustrates how the agent took certain reasons to be determinative of her actions.

**B. Human Sapience Up-Close: Reasoning as Concept Use**

Yet how is it possible for one to hold such a practical stance and for it to illustrate an agent’s relationship to reasons? Brandom’s overall project is one he describes in terms of being a rationalistic expressivism committed to an inferentialist semantics. These descriptions indicate the two major commitments underlying his philosophy, both of which are founded in his philosophy of language. The first major commitment is to the rational nature of our expressions (we think in terms of reasoned expressions, that is, in a way that is meant to be communicated and justified to us and for others in terms of reasons). The other major commitment is to the inferential nature of thoughts and thinking. This description of thought is meant to show the way in which we reason and use our rationality: the concepts used in thinking are formatted such that they involve

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21 Options for investigation: This focus on assessment over the action itself means that the propriety of the assessment of an individual who is searching for reasons to justify action, and the propriety of the action itself, are different. This bifurcation of the rational agent’s process of acting leads to an interesting result. Firstly, the Kantian view that sees one as acting under the idea of freedom – we can act differently or fail to act even if our rational reflection upon reasons suggests another course of action. Secondly, sapience means we are not only subject to norms, but are also sensitive to them. Brandom p. 32-33

both explicit content (what they obviously mean), as well as implications (what the meaning of a concept also means in terms of other concepts) that can be drawn out through the use of inferential reasoning. Explaining these two aspects of human sapience and how they intertwine will lend further support and sophistication to the view of human rationality outlined above.

**i. Rationalistic Expressivism**

A *rationalistic expressivist* is someone who sees rationality as fundamentally concerned with *making claims* through the articulation of concepts.\(^23\) The nature of human rationality, as has been described above, hinges on the way in which we take and give reasons. In his more detailed treatment of this picture of human rationality, Brandom identifies his commitment to rationalistic expressivism by focusing on the way in which our rationality and this taking and giving of reasons entails the use of concepts. Historically *expressivism* is associated with several thinkers in the tradition of German Idealism (especially Herder and Hegel) who described the human condition in terms of continual self-expression or the unfolding of their personhood. Herder stressed that this expression occurs in various ways, including the creation of art, philosophy, and music. He looked to Goffried Wilhelm Leibniz for this insight into personhood, interpreting Leibniz’s term *Monad* and its unfolding to mean human being and self-expression.\(^24\) This interpretation concentrated more on Leibniz’s metaphysical writings on the nature of the

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\(^{23}\) Brandom, p. 81  
monad as opposed to his extensive writings on the meaning of a monad in terms of logic. Thus, Herder did not identify all expressions with reasoned results of logical, rational reflection. Irrationality played an important role in Herder’s idealism.

However, this picture seems to overlook the logical dimension of Leibniz’s thought. For Leibniz, the individual (monad) presents its unfolding in terms of conceptual articulation; an individual is obviously or explicitly one thing (the President of the U.S.) while at the same time implicitly involving commitments to other concepts (the concept of being President of the U.S. also means that one is an American citizen), which can be articulated through reasoning or self-expression (considering the rules associated with being President of the U.S.). Whereas Herder focused on the more metaphysical and poetic meaning of Leibniz’s work in his version of expressivism, Brandom interprets Hegel to have understood expressivism in terms of the more logical depiction of the monad’s unfolding as the articulation of a concept through rationality. Self-expression thus means the use of concepts in a way that understands them to involve explicit or obvious content (to use the concept ‘President George Washington’ is to invoke the concept ‘President of the U.S.’) as well as implicit commitments to meaning other concepts (American citizenship, etc.).

For Brandom, this conceptual scheme of expression is more apt, and characterizes human sapience as the use of concepts to express oneself. Inasmuch as reasons are simply concepts that are for us normative, to make claims from the rationalist perspective

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25 Leibniz’s views concerning personhood are best understood in terms of the monad, which is both a concept that can be described in terms of logic, as well as a metaphysical object such as person which is capable of unfolding or expressing itself in more familiar terms such as art.
would mean to use concepts (reasons) to articulate (express) oneself. Therefore, what makes his version of expressivism uniquely rationalistic is its limitation, unlike Herder, to self-expression in terms of reasoning/concept use. As a result, for the rationalistic expressivist, to express oneself is to put something into conceptual form.\(^{26}\) How does Brandom establish that all self-expression is conceptual though? Taking Kant’s contribution to the study of concepts to be that he shifted our concern from our grip of concepts to how concepts grip us,\(^{27}\) Brandom believes that Kant’s insight shows how being subject to concepts means that we are and must be situated within them. Here, the view that we can choose which concepts to use in our thinking without recourse to concepts is mistaken according to Kant. Instead, we must realize that there is no rationality without concepts, nor is there an agency that is capable of thinking without concepts. As a result, thinking necessarily involves the use of concepts.

\section*{ii. Inferentialist Semantics}

How concepts involve commitment or a sense of entitlement to decide or to act relates to his other position, inferentialist semantics. This theory of meaning is very Leibnizian in the sense that the content of a concept is a sort of monadological constellation. Just as for Leibniz a concept makes certain information explicit, while implying other information that unites it to other concepts in a web or network of meanings, Brandom’s inferentialist semantics concentrates on the way in which a concept

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\textsuperscript{26} Brandom, p. 16
\textsuperscript{27} Brandom, p. 80
\end{flushright}
is similarly a propositional mixture of explicit and implicit claims. This perspective is best understood by juxtaposing this inferentialist perspective on the content of a concept to its representationalist opponent. For Descartes, a concept such as “cup” gains its meaning by representing an object that is external to the mind (a real cup on in your cupboard, for instance). How the concept can represent an object was largely attributed to either divine intervention or the rhetorical device of the evil demon that makes all of our concepts line up.

Against this position, the inferentialist sees the content of a concept as less representation and more of a claim that means both the explicit and the implicit content. As Brandom describes the position of the early rationalist inferentialists,

“They were explicitly concerned, as Descartes was not, to be able to explain what it is for something to be understood, taken, treated, or employed as a representing by the subject … They start with a notion of content as determining what is a reason for what.”

Here Brandom clarifies the inferentialist alternative as a way of breaking down the content of a concept from a representation to a claim about the concept being a representation. These claims are made in the form of giving reasons (normative concepts) for taking the content of a given concept as a representation – my use of the concept cup is more than the use of a representation, it is a claim that there is a reason for taking it to be a representation of a real cup.

The inferential perspective, then, reformats the content of a concept as a practical posturing, a giving of reasons. To make such a claim or to ask for the reasons behind another’s claiming concept is to rely upon inferential relations like that of ‘if one takes x

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28 Brandom, p. 46-47
to be true, one should take y to be true’ as well. Thus, concept use requires other concepts and inferential relations to fully explicate and justify one’s claims. In this way, the concept is a Leibnizian notion, a constellation of other concepts and inferential relations. This leads Brandom to write, “Cognitively, grasp of just one concept is the sound of one hand clapping.” The use of such inferential relations and concepts involves both obvious (explicit) content of the concept (a cup as a drinking vessel) as well as implicit concepts (clay composition, for instance).

We have described above how Brandom allies himself to the Kantian insight that we are beholden to concepts … we are situated in their context. Given the inferentialist nature of concepts and their role in our claims-making, we can better understand the nature of human sapience. To be rational is to not so much to be capable of responding to certain stimuli as a thermometer would, but to be aware of concepts related to the stimulus. Human sapience means that we can not only grasp the explicit content of a concept, but that we are also capable of using inferential relations to make its implicit connections to other concepts explicit.

Thus, for Brandom the Socratic method is the ultimate example of human rationality at work, as the method draws out the implications of an action, decision, or belief through inferential relations to other concepts. Brandom explains how the inferentialism of the Socratic method relates to expressive rationalism by connecting the discussion of inferentialist semantics and claims-making: “Socratic method depends on

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29 (i.e. to say that ‘this cup is red’ is to make claims about the explicit content of the concept at hand (this cup) as well as inferential moves and concepts such as ‘a cup as a drinking vessel’ and that one ought to take the cup in question to be red)

30 Brandom, p. 49

31 Brandom, p. 48
the possibility of making implicit commitments explicit in the form of claims.³²

Through inferentialist semantics the meaning of a concept is not the result of correspondence to the world, but rather the use of its content’s relation to other concepts, which can only be ascertained by beings who understand the concept as a claim made and given in light of reasons. Therefore, practical posturing attains plausibility because it accommodates the nature of deciding and action – to decide and to act is to do so in a conceptual context that requires making both implicit and explicit claims that can be investigated by sapient creatures through the Socratic method.

In this way, a practical posturing demonstrates the taking and giving of reasons characteristic of those creatures who inhabit the space of reasons. To use any concept in thinking, deciding, or acting is to commit oneself to a claim. The normative dimension of this approach to concepts is not entirely clear as yet, though. Brandom supports his view by focusing on the way in which the use of any linguistic expression, through its use of concepts and inferential relations, involves a normative commitment to the correct circumstances in which the expression can be asserted and the necessary consequences of asserting it.³³ For Brandom, all concepts that are used to make claims (to express oneself) are reasons or normative concepts. Considering how the Socratic method works, one sees that inferentialism requires that a sapient being be capable of both understanding the grounds of the concept’s use (when and how it should be used to be understood) and the implications that claiming implicitly involves.

³² Brandom, p. 57
³³ Brandom, p. 63
As a result, we can see how a claim is a sort of proposition, a commitment from the grounds in which the concept should or is used moving through inference to the consequences (implications) of using the concept in that situation. Therefore, as Brandom points out, “the use of any concept or expression involves commitment to an inference from its grounds to its consequences of application.”34 Here Brandom means to say that one’s use of not only charged concepts like derogatory terms involves committing oneself to certain inferentially explicable implications (e.g. bigotry or racism), but also any concept or linguistic expression involves such a prepositional format, subject to Socratic investigation. In this way, our decisions and actions are commitments, or as it has been said above, assertions, from premises to conclusions that can be ascertained by others. Brandom makes explicit the implications of his semantic theory for a democratic society:

“Critical thinkers, or merely fastidious ones, must examine their idioms to be sure that they are prepared to endorse and so defend the appropriateness of the material inferential transitions implicit in the concepts they employ. In Reason’s fight against thought debased by prejudice and propaganda, the first rule is that potentially controversial material inferential commitments should be made explicit as claims, exploding them both as vulnerable to reasoned challenge and as in need of reasoned defense. They must not be allowed to remain curled up inside loaded phrases such as ‘enemy of the people’ or ‘law and order’.”35

34 Brandom, p. 70
35 Brandom, p. 70
Yet how would one ascertain whether an agent’s courses of action were just following a pattern of regularity, or were actually cognizant of acting according to reasons? Because objects tend to follow the laws of physics, does that mean that they are sensitive to the norms of physical law? Does regularity constitute normative awareness? Soper locates the normativity of the law in its claim to justice, which includes not only using sanctions but also presenting itself as morally justifiable. How are we to know that such actions are not just regularities akin to those of inanimate objects, but rather involve normative posturing?

Brandom takes time to address the critiques of some theorists regarding normativity as little more than regularities, noting the difficulties implicit in requiring that an agent provide evidence of its practical stance in the form of explicit reason-giving. Addressing Brandom’s focus on the role of “taking an agent’s actions as attitudinal posturings”, a regularity theorist might cite an animal’s ability to take one object as a mate as opposed to another object. Thus, in considering any agent, be it a person or the “law”, one must focus not on the capacity to exhibit actions in accord with rules, but rather one must concentrate on the capacity of an agent to adopt a practical stance, or as Brandom puts it, “to act in such a way as to attribute a normative significance, without doing so by saying that that is what one is doing.”

Focusing on Wittgenstein’s critique of the intellectualist position that requires such explicitness about reasoning, Brandom

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36 Brandom, p. 32
concentrates on a different aspect of behaviour, though: propriety. For Brandom, what matters is not that an agent can exhibit the ability to deem one object as something instead of another, but rather that she can exhibit the ability to take it as correct or proper to take one object as something instead of another.

To address this difference in focus, Brandom invokes the notion of sanctions, as he writes, “In part because much of the tradition of thought about normative status and attitudes has taken its departure from a legal model, it is natural to answer this question by invoking the notion of sanctions: of reward and punishment.” His basic observation regarding legality and sanctioning is that one illustrates normative posturing when one rewards one kind of behavior and punishes another kind. From this understanding of sanctioning, Brandom returns to his previous points to respond to the regularity theorists.

Earlier, Brandom had distinguished human beings as thinking creatures distinguished by our ability to be norm-governed in terms of our ability to strike normative attitudes that illustrate our ability to not only act according to reasons, but to be sensitive to them. To be sensitive to these norms known as reasons meant to be capable of assessments, that is to say the assignment of normative significances (reasons) to actions in such a way as to portray them as correct or incorrect, appropriate or inappropriate. This process of assignment or assessment of another agent’s assigned norms occurs in the space of reasons, where the process of giving and asking for reasons occurs – a process he defined as taking a normative posture.

37 Brandom, p. 34
38 Brandom, p.34
Regarding sanctions and the regularity theorists’ criticism, Brandom points out that sanctioning in terms of reward and punishment involves attitudes of assessment (normative posturing) as *dispositions* to sanction either positively or negatively. He goes on to propose a certain understanding of sanctioning:

“According to such an account the normative attitudes of taking or treating some performance as correct or incorrect are understood in terms of behavioral *reinforcement*, in the learning-theoretic sense. The advantage of such a way of putting things is that reinforcement is a purely functional descriptive notion, definable in abstraction from the particular considerations … Treating a performance as correct is taken to be positively sanctioning it, which is to say positively reinforcing it. Positively reinforcing a disposition to produce a performance of a certain kind as a response to a stimulus of a certain kind is responding to the response in such a way as to make it more likely in the future that a response of that kind will be elicited by a stimulus of the corresponding kind.”

This approach to sanctions illustrates how the use of sanctions, either positive or negative, have an in-built normative dimension, *reinforcement*, as a sanction rewards or punishes a behavior depending upon whether the agent would approve of further behavior along those lines in the future. Assessing attitudes are thus taken to be dispositions or practical stances to sanction, which entails reinforcement. Reinforcement here is really a reaction by an agent to the relationship they perceive between the actions of another agent and the norms they share in the space of reasons, since the practical stance to sanction involves assessment and assessment has accordingly been described in terms of giving and asking for reasons. But does this picture result in yet another version of the regularity theory? As Brandom writes, “In keeping with Kant’s insight (as transposed from an intellectualist to a pragmatist key), norms are discerned only where attitudes –

39 Brandom, p. 34-35
acknowledgements in practice of the bindingness of those norms – play a mediating role in regularities.”⁴⁰ Here Brandom points out that the difference between the regularities exhibited by a sanctioning agent as described above, and an inanimate object, is that Brandom’s regularity theory allows for the possibility of improper actions.

Brandom summarizes the position put forth:

“The fundamental strategy pursued by such a theory is a promising one. As here elaborated, it involves three distinguishable commitments. First, Kant’s distinction between acting according to a rule and acting according to a conception of a rule is taken to express an important insight about the special way in which we are normative creatures. Second, the pragmatist regress-of-rules argument is taken to show that in order to make use of this insight, it is necessary that the sort of normative attitude that Kant takes to play an essential mediating role in our government by norms be understood as involving implicit acknowledgement of norms in practice. Specifically, it is necessary to make sense of the idea of practically taking or treating performances as correct or incorrect. Third, taking or treating performances as correct or incorrect, approving or disapproving them in practice, is explained in terms of positive and negative sanctions, rewards and punishments.”⁴¹

In this way, Brandom summarizes the position as involving three central observations. The first is that of Kant, which says that acting in accordance with a rule is different from conceiving of one’s actions in terms of the rule.

The second observation deals with the regress that results from the criticism of some regularity theorists after one rejects the intellectualist position. In other words, given the difficulties of the intellectualist position that requires an agent to make commitments explicit in terms of justification, Wittgenstein’s critique of the intellectualist position is well-founded; however, by joining with Wittgenstein in this critique, then, Brandom’s position shifts its concentration from searching out explicit

⁴⁰ Brandom, p. 35
⁴¹ Brandom, p. 36
reason-giving on behalf of agents to express rational assessment to instead focusing on norms implicit within practice. This shift towards action requires that one exhibit more than the regularities exhibited by inanimate objects in regard to physical laws, though. Therefore, the difficulty is to study practices for implicit commitments and assessments without falling into the error of allowing for an action’s sensitivity to a norm to be simply the description of the action as following a certain regularity and therefore being cognizant of a rule or norm.

Finally, the third point is that in looking to sanctioning as a means to reinforcement, one can both look to a practice for implicit normative commitments and have a means of clearly observing a normative assessment on behalf of the agent. In this way, the criticism of the regularity theorist is circumvented without recourse to the intellectualist’s reliance upon explicitly made normative commitments.

**D. Explaining Law’s Normativity through the Nature of Norms and Human Sapience**

As we have seen, according to Brandom normativity is fundamentally a question of an agent asking for and giving reasons while in interaction with other agents, performing in such a way as to exhibit evidence of the agent’s having made rational assessments of an activity in light of the reasonableness of the action or its accordance with a rule. By specifically focusing on how an agent’s use of sanctions to reinforce her assessment of proper reasonableness in relation to a norm or rule, Brandom clarifies the relationship between the enforcement of a rule and the decision that a certain rule is significant enough to be worth enforcing, i.e. should be found to be normative for all
relevant agents. Thus, in essence Brandom describes the normative posturing of an individual as evidenced by the use of sanctions.

Above the law’s normativity has been discussed in terms of its claim to justice, which unites both the right to enforce and the right to decide. Soper presented this position as a way of nuancing the previous understanding of the law as fundamentally an institution that enforces through the use of sanctions. Having found classical legal positivism wanting in its understanding of the role of principles and the right to decide what to enforce, Soper presents the normativity of the law in terms that make clear the degree to which the law presents itself as morally defensible. In a sense, this presentation of the law as morally defensible is a normative posturing related to the use of sanctions. Just as Brandom identified normative posturing by recourse to the implicit normative commitments found in the use of sanctions, the law’s presentation of itself as morally defensible through the claim to justice is a similar posturing combined with using sanctions.

According to Brandom normativity fundamentally involves an agent’s asking for and giving reasons, which is most clearly evident when an agent implements sanctions to reinforce a course of action. Certainly, the law can be said to widely implement sanctions to reward and especially punish the actions of those it deems to be improper, inappropriate, or incorrect. In this way, the normativity of the law is clear after comparing Soper’s redefinition of the fundamental aspect of the law as being defined by its claim to justice (right to decide and right to enforce) as opposed to solely its right to enforce. In fact, one might say that given an earlier understanding of Brandom’s work,
earlier legal positivists may have taken special care to emphasize that in prioritizing the right to enforce, they were in fact also alluding to the role of normative assessment in the law. By allowing normative assessment to play a role in their conception of the law’s fundamental nature, these earlier theorists could have mitigated the effects of reorientation yielded by Dworkin’s critique of legal positivism, in which he stated that legal positivism’s focus on the law’s right to enforce overlooked the role principles play in the actions of the law.

Furthermore, the insights into the normativity of the law gained by comparing the work of Brandom to that of Soper is that one better understands the nature of the claim to justice, just how essential it is to an institution easily described as basically an institution for the implementation of sanctions, as well as how the separation thesis of legal positivism can remain despite the normative posturing built into the sanctions of the law. The normativity of the law is about the law’s deeming one activity worth sanctioning because it deems that activity to be incorrect – a position that takes into account Brandom’s defense of his account against the charge that his version of normative posturing is simply akin to that of an animal taking one object to be a mate as opposed to another object. Taking to be correct or incorrect, however, is not the same as being correct or incorrect. In this way, the separation thesis between law and morality remains intact.

Through this discussion we can see how the law’s claim to justice bears a remarkable resemblance to the common interactions between people as well as the reaction people have to reinforcement and sanctioning. By inhabiting a shared space of
reasons, the law as a posturing agent capable of making claims (as Soper describes them) is akin to an ordinary person acting as a rational agent in interaction with other agents. Through this perspective one can better see the truth in ascribing the claim to justice to the law, as well as the limited implications this normativity has for the law’s relationship to morality. The law, it seems, does not require sophisticated philosophical justification for each of its sanctions or its continual reinforcements, but rather in using sanctions to reinforce, includes a normative posture that leads to a tendency to present itself as morally defensible or capable of rational justification. As a result, the law is not so much presenting its sanctions as if they are in keeping with sophisticated philosophical justifications, but rather simply illustrating a normative posture that bears a resemblance to the posturing found in ordinary interaction between people. Thus, it should not be a surprise that the law does present itself as being rationally justified and normative, while failing to present its sanctions in light of sophisticated discussions of metaethics and political philosophy that are left out of most ordinary interactions between people when sanctions of other kinds are used.

III. Law’s Normativity as a Posture of Moral Defensibility: Our Obligation to One Another

A. Another View of Brandom’s Homo Sapiens: Christine Korsgaard’s Kantian Philosophy of Normativity and Morality

i. The Sources of Normativity

The philosopher Christine Korsgaard presents a Kantian approach to explaining the sources of normativity in her book *The Sources of Normativity*. Her approach relies
less upon the semantic theories of inferentialism used extensively by Robert Brandom to explain the nature of normativity and more on the subjective experience shared by human beings whenever they confront several ‘facts of life’. In doing so, she provides another, more approachable understanding to the sociality of norms, which is to say, she clarifies exactly what Brandom means when he describes us as inhabiting a space of reasons. Thus, to bring in her presentation of the sources of normativity should only further bolster this approach to normativity.

For Brandom assessment according to reasons is fundamental to normativity as well as what it means to be sapient; human reasoning characteristically involves a practical reasoning based upon the use of reasons to reach assessments. Ultimately, these assessments produce normative posturings on behalf of the individual. These posturings are capable of being assessed by others. In this way, the posturings exhibit the sociality of practical reasoning and the public nature of what humans take as reasons for themselves.

Like Brandom, Korsgaard begins her discussion by asserting the importance of reason-seeking reflection for the actions of human beings. Situating her discussion within a historical context, Korsgaard begins by discussing various approaches to the sources of normativity, before allying herself with the Kantian approach. Whereas the Kantian approach has been criticized for being an empty formalism, however, Korsgaard supplements the approach with identity theory to increase the depth and breadth of coverage for the Kantian position. In *Eichmann in Jerusalem*, Hannah Arendt discusses the Nazi Adolf Eichmann’s identification of his moral philosophy as being that of the
Kantian. For in describing how he lived his life, Eichmann claims to have lived it according to the Categorical Imperative, only acting upon laws he believed that others would agree to be good in nature. Many have reacted to this observation of Eichmann’s Kantian ethic by saying that Kant’s ethical philosophy is merely an empty formalism. Korsgaard reacts against these charges of empty formalism by bringing in this discussion of personal identity. As a result, one might characterize her overall approach as being a supplemented Kantian approach to normativity.

Within this context, Korsgaard presents Kant as belonging to a tradition of philosophers for whom reason-seeking reflection is a process of *reflective endorsement*. Reflective endorsement issues from several ‘facts of life’, one might say, that characterize human sapience and practical activities. One of these facts is that, despite how deterministic the world may be according to modern science, we live under the ‘idea of freedom’, as Kant said. This idea of freedom simply means that in life we must make choices. Another of these facts is that human beings are capable and live in a state of reflection. This fact means that whereas the attention of animals is fixated upon the world and they are conscious of the world through this attention, we are capable of not only similarly conscious focus on the world, but also of being conscious of this focus. Animals, then, are conscious of the world through their interaction with the world; human beings, however, are not only conscious of the world in this sense, we are also conscious of these interactions themselves. One other way of phrasing this point is to say that the mental activities of animals arise from their interaction with the world, whereas human
beings share this aspect but are also capable of thinking about these mental activities that include beliefs and perceptions.

Thus, human beings must make choices and are self-conscious or *reflective* upon their mental activities as well as being conscious of the world. But what does it mean to reflect upon these mental activities? This capability, through which we think about mental activities like beliefs and perceptions, as well as motives and impulses, means that all of these subjective concerns are subject to reflection. By being distanced from these concerns we are actually capable of calling them into question.\(^{42}\) This characteristic ability, however, sets up a central problem for humans, which is the problem of the *normative*\(^ {43}\) … perhaps the essential problem of the human condition. In questioning these concerns we find ourselves confronted with the simple fact of life that we must choose. Thus, we cannot simply question all of the time, nor can we avoid questioning. Rather, in being forced to choose, we find ourselves already in a state of questioning. Being incapable of escaping the need to make choices and to act upon those choices, reflection, then, becomes the feature through which we come to terms with the necessities of our nature.

Viewing our impulses and mental activities from the distance of reflection, we ask ourselves whether certain beliefs, impulses, desires, etc. are *reasons* for us to act upon them or to decide a certain way. Only reasons can pacify the inquisitiveness of reflection, Korsgaard maintains, when she writes, “The reflective mind cannot settle for perception and desire, not just as such. It needs a *reason*. Otherwise, at least as long as it

\(^{42}\) Korsgaard, p. 93.

\(^{43}\) Korsgaard, p. 93.
reflects, it cannot commit itself or go forward.\textsuperscript{44} Thus the human mind has two options, either it can make a choice based upon what compels the mind, reasons, or the mind can try best to let the passions drive its actions. It cannot, however, commit itself to believing in anything without a compelling reason to do so or to make a choice without seeking a reason for doing so. In a sense then, the options are between recognizing the inquisitiveness of the human mind and serving its reflective capacity, or trying one’s best to avoid making any kind of judgment. In this way, Korsgaard establishes the position of reflective endorsement within a Kantian model.

When faced with the demands of reflection, however, a problem springs forth from the nature of reflection. Since only a reason is capable of appeasing the human mind’s reflective dimension, and concerns are not necessarily attached to a reason, nor are they more \textit{reasonable} than another concern being questioned at any given time, we must confront the possibility that a belief, etc. we hold might be unreasonable. To find a concern wanting in reasonableness, though, also means that one lacks a reflectively endorsed choice. Without an endorsed choice, we find ourselves out of stasis. Only a reason will satisfy, and thus, without a reason, we remain unsatisfied. But as Korsgaard writes, “If the problem springs from reflection then the solution must do so as well. If the problem is that our perceptions and desires might not withstand reflective scrutiny, then the solution is that they might.”\textsuperscript{45} Therefore, one must find a reason for a choice or a belief to be appeased reflectively after reflection at least initially causes one to pause in uncertainty when considering a belief.

\textsuperscript{44} Korsgaard, p. 93.
\textsuperscript{45} Korsgaard, p. 93.
To summarize, impulses are enough to combat the essential need to act in life only so long as reflection is absent from one’s mind. Reflection calls into question a belief or impulse, yet leaves one’s relationship to the impulse or belief in limbo until it finds a reason. Once a reason is found either to follow or deny an impulse or to reject or endorse a belief, then reflection no longer presents a problem to the mind until it reconsiders the belief or impulse again without finding a reason immediately evident to satisfy the requirement of reflection. Therefore, to find a reason means to succeed in reflection, that is to say, to solve a problem posed by the human mind’s reflective capacity.\textsuperscript{46}

The normative problem set by our reflective capacity as human beings is thus a question of finding a reason; once we find a reason for or against something, then we can commit ourselves to it … we find this something worth committing ourselves to. In this way, while we are distanced from our impulses and beliefs in the state of reflection, we act under the idea of freedom, as Kant put it.\textsuperscript{47} Regardless of whether every impulse and belief is causally determined, to those who live with the burden of appeasing reflection by finding a reason so that they can endorse a choice or course of action, a completely deterministic worldview is irrelevant. One must choose, and it makes no difference to one’s reflective capacity whether one must choose because of their mind or because outside events have determined this choice hundreds of years in advance. To be able to explain every choice and action in deterministic, scientific, causal terms is “no substitute

\textsuperscript{46} Korsgaard, p. 93.
\textsuperscript{47} Korsgaard, p. 94. Kant, Foundations of the Metaphysics of Morals, p. 448; in Beck’s translation, p. 66.
for human life”; “nothing is more real than the fact we must make our decisions and choices ‘under the idea of freedom.’”

What is essential to human life is, as Korsgaard summarizes Kant’s position, “[that] as each impulse to action presents itself to us, we should subject it to the test of reflection, to see whether it really is a reason to act.” This problem, set within the context of acting under the idea of freedom, must next be examined at the stage of decision; how do we decide? Korsgaard maintains that “the will is practical reason, it cannot be conceived as acting and choosing for no reason.” She next posits that reasons are derived from principles, and therefore the free will must have a principle. What she means to say here, is that the will is guided by reasons once reflection has reared its head. In this way, the will is practical reason; the will is a rational or reflective consideration of mental activities, impulses, and beliefs in pursuit of reasons that motivate reflective success.

With the will pursuing reflective success in its conscious questioning, however, the need to come to an endorsement is evident; equally evident is the will’s aloofness from the concerns of the person and conscious interactions the person has with the world. Set in this state of questioning, what allows for the will to be satisfied with a reason? Just as causality occurs according to laws in physics, so must also the causality involved between the reason and the end of satisfying the will involve a cause. Another way of

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48 Korsgaard, p. 97.
49 Ibid.
50 Korsgaard, p. 98.
51 Korsgaard, p. 98.
52 Korsgaard, p. 97-8, alluding to Kant
looking at this observation from Kant is to acknowledge the degree to which the principle of sufficient reason pervades this Kantian point.

Korsgaard summarizes the point, then, by saying that, “Alternatively, we may say that since the will is practical reason, it cannot be conceived as acting and choosing for no reason.”\textsuperscript{53} Invoking the principle of sufficient reason, then leads Korsgaard to consider how the need for a reason to choose a reason relates to the idea of freedom under which the will chooses. Perceiving ourselves to be free in our choice, the determinism of the modern scientific worldview seems irrelevant to us as we choose. In a sense, then, the will does not find the influence of anything external to it to be persuasive, for in seeking a reason to act that is beyond itself, it will always find such a pursuit unsatisfying. The reason for deciding must come from within itself; otherwise the reason is open for further questioning. To recall Kant’s remark, what we need in such a position is an internal law derived from within the will that is as internal to the will as the laws of physics are to the world.

What we need, then, is an internal law that simply says, choose a law. According to Korsgaard, this is the content of the categorical imperative. However, she goes on to make a distinction between the categorical imperative and what she calls the ‘moral law’. Whereas the categorical imperative merely beckons us to choose a law, the moral law requires that we choose a law that other agents like ourselves would also choose in that situation. As we can now see, we can get from the simple need for a law to choosing a

\textsuperscript{53} Korsgaard, p. 98
law by simply having the will stipulate that it choose a law. To get to the moral law, however, is more complex.

Confronted by this gap, one must ask, what establishes any law as anything other than the law an individual chooses as the embodiment of a moment’s desires? Or of an individual’s lifestyle? What makes this a moral law considerate of others? Surely, the only way this law can attain some moral content is if the law ranges over all rational beings.\footnote{Korsgaard, p. 99.} Eichmann chose to act according to laws in a Kantian style, and from this use of the Kantian formalism one can see how anyone seems capable of choosing an equally repulsive law (that of agreement from other National Socialists, perhaps). The answer Korsgaard provides is that the person must consider herself as a Citizen of the Kingdom of Ends, which is to say, personal identity plays a role in determining that the laws one chooses to act by are not so arbitrary as to allow for an Eichmannian interpretation.

To bring the concept of personal identity into the discussion, Korsgaard returns to her previous discussion of human consciousness and its ability to reflect upon things beyond the will. One consequence of being conscious of mental activities as well as interactions with the world is that we are therefore also conscious of ourselves. The result of being self-conscious in this way, she maintains, is that we are forced to have a conception of ourselves.\footnote{Korsgaard, p. 100} This conception, however, does not imply the existence of a metaphysical self, as Kant point out, but rather illustrates how our decision-making occurs to us subjectively.\footnote{Korsgaard, p. 100}
perspective it may seem that we are merely driven by battling impulses within, a deliberative process appears within subjective experience, in which the subject feels that ‘she’ decides. The will belongs to this realm of personal identity because of the will’s role in the decision-making process that illustrates the presence of a self. Korsgaard believes that this choosing process, by uniting the will and personal identity through the freedom of the will, shows that the law one chooses is found to be self-expressive.\(^5\) Thus, the law (or principle, the terms are synonymous for Korsgaard) according to which you choose is a component of one’s personal identity and vice-versa.

As a result, depending on one’s personal identity(ies), different laws might issue from one’s will. If you think of yourself as belonging to a certain group, then certain kinds of laws are likely to issue. Eichmann’s use of the Kantian formalism can be accounted for in this way. Conceiving of himself as a member of the National Socialist party, for whom only the interests of party members matter, Eichmann could live according to universalizable laws that seemingly did not violate Kant’s categorical imperative. According to Korsgaard’s division of Kant’s position into two insights, namely, the categorical imperative and the moral law, Eichmann’s actions according to a self-conception of a National Socialist does seem to illustrate how the categorical imperative could be an empty formalism. However, that one has more than one of these personal identities makes the matter a bit more complex. Did Eichmann not also see himself as holding other self-conceptions, perhaps including that of a human being?

\(^5\) Korsgaard, p. 100
This use of the personal identity is not one that stipulates the metaphysical existence of such a self. Rather, as Korsgaard claims, “It is better understood as a description under which you value yourself, a description under which you find your life to be worth living and your actions to be worth undertaking.” Here Korsgaard tries to clarify the purpose of such an identity and how it affects reflection. If the purpose of having laws, which stem from personal identity, is to decide on laws for the will, then the value of such an identity is that it motivates one’s choices. With choice being a necessity in life, personal identity allows us to make the issuing of one law more appealing than another law. An identity capable of motivating the issuance of one law rather than others is defined by Korsgaard as a practical identity.

Faced with choice, then, personal identity allows for us to make certain laws which will lead to more meaningful choices. This sense of meaning stems from the way in which personal identity allows for one to choose laws in an at least non-random fashion. Herein we encounter at least the general location of normativity. What motivates us when we are forced into reflection by the facts of life (that one must choose, and that we are self-consciously in need of reflective endorsement) are personal identities. Thus, personal identities make our lives worth living by giving us a reason to issue certain laws rather than other laws, through which we can make decisions that are meaningful. Now we can better understand why some personal identities are practical identities; they play a crucial role in practical reasoning by giving reasons for confronting choice.

58 Korsgaard, p. 101
One way in which practical identities motivate is by invoking duties, such as “be a man about it.” Korsgaard shows how the general location of normativity is apparent in practical identities, as she writes, “No ought is necessary here, since the normativity is built right into the role.” Here we see how practical identities make demands of us, for they simply claim the cooperation of those sharing that identity. According to the personal identity used here, to identify oneself as a man means that one will approach such and such a choice in a certain way. As examples of this sense of obligation, Korsgaard cites some common phrases, “I couldn’t live with myself if I did that,” and “Just who do you think you are?” Herein we are meant to see the role that the self-conceiving will plays in our lives as it is influenced by practical identities. In the former quotation, the separation between the will and various identities is made obvious. In the latter, the relationship between reflection and practical identity is shown.

These expressions also indicate the importance of integrity (wholeness) for the self-conscious, reflective agent. According to these expressions, the agent prefers to use practical identities for issuing laws that are in keeping with other practical identities that have been used, the laws they have issued, and the choices that have resulted. Korsgaard describes the meaning and role of integrity in this preference, when she writes, “To be a thing, one thing, a unity, an entity, to be anything at all: in the metaphysical sense, that is what it means to have integrity. But we use the term for someone who lives up to his own standards. And that is because we think that living up to them is what makes him

59 Korsgaard, p. 101
60 Korsgaard, p. 101
61 Korsgaard, p. 101
one, and so what makes him a person at all.” Here Korsgaard highlights the usage of integrity within common discourse, focusing on how integrity is a measure how much a person lives up to their ideals or standards. Implicit within this perspective is a binary view of the person. One has standards, principles, laws, all of which issue from the identities one associates with; this is one part of the self. The other part includes one’s actions and decisions. Korsgaard defines integrity in terms of the degree to which one’s actions and decisions reflect the demands of one’s personal identities. However, she overlooks the degree to which integrity is also a matter of making one’s laws fit into one’s past history of actions and decisions. In this way, integrity is a question of matching up both one’s actions to one’s words, as well as one’s past actions to one’s current words.

In striving to make ourselves cogent along these integrative lines, we are motivated both by a desire to be whole and a fear to be found fragmented or self-contradictory. As Korsgaard points out, to become fragmented is to lose one’s integrity and also one’s greater self identity, which is to say, to no longer be who one is. She summarizes the meaning of the negative effects of such fragmentation as follows:

“… it is to no longer be able to think of yourself under the description under which you value yourself and find your life to be worth living and your actions to be worth undertaking. It is to be for all practical purposes dead or worse than dead. When an action cannot be performed without loss of some fundamental part of one’s identity, and an agent could just as well be dead, then the obligation not to do it is unconditional and complete. If reasons arise from reflective endorsement, then obligation arises from reflective rejection.”

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62 Korsgaard, p. 102
63 Korsgaard, p. 102
64 Korsgaard, p. 102
The effects of such fragmentation are a dreadful alienation that dissolves the meaning of one’s life as well as the very sense of one having a united life at all. One is obligated by personal identity in a sense then, for one must try to maintain integrity, enter into a state of alienation, or somehow avoid considerations of one’s integrity. The result is that our self-identification must lead to laws and principles for making decisions, or we must face the consequences. Here we find ourselves faced with the Kantian insight that we must be laws unto ourselves. From our self-conception must issue the normativity that motivates and obligates us.

Thus, Korsgaard’s discussion here brings together the previous discussion of reflective endorsement and personal identity to specify the nature and location of normativity: ourselves. Norms are that which compel, demand, and make claims for us to act in certain ways. In reflective endorsement we find ourselves compelled to follow one course of action, while in the pursuit of integrity we strive to avoid self-alienation. Practical reason unites these two concerns in the human being by using a discussion of the nature of human practical reason to enter into a consideration of practical identities. Both forms of motivation in this sense describe norms that issue from practical reasoning, a feature of human sapience. In other words, we are obliged to react against a threat of a loss of identity, or resort to a valueless, meaningless, and randomly acted out life. But these conclusions have not been fully expounded yet. The option of an agent merely

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65 Korsgaard, p. 102-104
66 For those who find the prospect of such a lifestyle more compelling than or plausible than an integrated selfhood, a consideration of what such meaninglessness would actually entail would be worthwhile. Consider, for one, that such a person would be reduced to randomness in action. That we find ourselves subjectively forced to make choices and find it difficult to simply follow whims without even beginning to consider their reasonableness illustrates the degree to which complete randomness is apparently impossible.
making exceptions to acts and decisions that conflict with personal identity raises a significant objection at this point. In reacting to this possibility, Korsgaard holds that there is a limit to the amount of exceptions one can make in such a scenario. With too many exceptions, personal identities become meaningless. After all, if a personal identity does not motivate one either towards or away from a law or decision, then how could it be a *practical* identity?

**ii. From Normativity to Morality**

In moving from her discussion of the functioning of the categorical imperative to that of the moral law, Korsgaard tries to establish a commonsense understanding of how we can go from a consideration of our own personal identity as normative to a respect for the identities of others. The moral law, for Korsgaard, is akin to Kant’s conception of people as living according to the Kingdom of Ends. The way Korsgaard approaches Kant’s thought here though is to cast it in terms of people living as Citizens of the Kingdom of Ends. Kant saw the Citizen of the Kingdom of Ends as a person who is willing to at least see other people as ends in themselves, meaning, not solely as instruments for achieving her own goals. For Korsgaard, this Kantian personal identity is the practical identity through which the moral law can be established; if we were to take this identity as normative for ourselves, then we would consider others as norms in themselves. To grant a normative status to others in this way would allow for us to move beyond an ‘anything goes’ practical identity to one with certain moral limitations and
implications. If we take the identity of others as fellow members in the Kingdom of Ends, then we take them as equals. Through sharing an equal normative status, then, morality is grounded.

Contrasted with the categorical imperative, we now see how the moral law (a specific version of the categorical imperative, in some ways) differs from the categorical imperative. One may, she maintains, live with a variety of personal identities according to the categorical imperative, from those of the Kantian Citizen of the Kingdom of Ends to the Egoist’s identity to that of Eichmann. The moral law, however, requires a personal identity that establishes the normativity of others through the concept of citizenship.

Korsgaard describes the meaning of citizenship as such:

“And that is again because citizenship is a form of practical identity, with the same two implications. To be a citizen is to make a certain set of decisions in company with the other citizens – to participate in a general will. In so far as you are a citizen, you do act autonomously in obeying the law. And for exactly that reason, in so far as you are a citizen, you aren’t free to act on your own private reasons any more.”

Herein we see how citizenship implies a freely chosen limitation on oneself; in freely choosing to take a personal identity as a practical identity, we are forced to limit ourselves in ways that preserve the identity and prevent self-alienation. To take ourselves as Citizens of the Kingdom of Ends is to freely choose limitations on our action in this way. These limitations are very specific, focusing on the ends-in-themselves normativity of other persons. But how could Korsgaard require that one adopt such an identity? How could this identity ever be more than another choice, just as that of the egoist is another choice?

67 Korsgaard, p. 106
Though these identities seem equally contingent, one aspect of every person is not contingent: that every self must have *some* conception of practical identity or else subside into meaningless drift. To understand this feature of ourselves is also to understand ourselves as human beings, though. For to agree that it is a feature of us humans that we require self-conceptions in this way is to say that we are all of a similar type, i.e. we all share a personal identity that makes certain demands on us (that we either adopt practical identities or live in meaninglessness). This recognition, that we all require personal identities, is a practical identity itself— a normative personal identity. We find certain laws issuing from our humanity, for instance, the law that we need to make up laws or live in a state of meaninglessness. Because such practical identities have been shown to be what gives value and meaning to our lives, we thus value our humanity. This identity also means, though, that others share this identity and that it is equally normative for them. In this way we take our personal identity as human beings to be both normative and equally normative to the humanity of others. We also, though, take our humanity to be valuable for us, and thus, we also take the humanity of others to be equally valuable.

This practical identity of humanity, like other identities, will generate laws. Because this identity secures an equal footing for other human beings, Korsgaard believes that this identity is a moral identity. Being a moral identity, one’s humanity produces the moral law. She summarizes this point:

“But so long as you remain committed to a role, and yet fail to meet the obligations it generates, you fail yourself as a human being, as well as failing in that role. And if you fail in all of your roles – if you live at random, without integrity or principle, then you will lose your grip on yourself as one who has any reason to live and act at all. Moral

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68 Korsgaard, p. 120
identity, unlike others, is necessary. You must value your own humanity if you are to value anything at all.\textsuperscript{69}

With this statement, Korsgaard explains the extent of our obligation. Commitment to the moral law is necessary if one is to value anything at all in life. We are committed to others as equals and Citizens in the Kingdom of Ends because if we devalue them, then we will alienate ourselves by compromising our personal identity as human beings (that is, not the only human being in the world). The obligation takes full force when situated within the description of practical reasoning provided. To decide we require reasons, and to decide upon a reason we need laws. Laws issue from practical identities. Thus, our human identity arrived at through the consideration above provides us with a reason for taking the human identities of other people (their thinking that they too are human, and therefore their possession of human identities as well, which are reasons for them) as reasons for ourselves. In the end, then, shared humanity provides us with a reason for considering ourselves as humans, as well as the identity of others as reasons worthy of consideration.

To what extent, though, is this morality merely the result of a process of critical reflection, confined to the inner thoughts of moral philosophers? Is there a way to lend further support to this position that goes beyond an investigation of the nature of practical reasoning?

\textsuperscript{69} Korsgaard, p. 123
iii. Further Towards the Moral Law: Moral Identity and Moral Defensibility

Korsgaard moves beyond this consideration to further support her theory by invoking other social practices and the role of natural languages in discourse. In doing so, she allies herself with the German-speaking tradition in the philosophy of language. As has been mentioned above, the German tradition focuses on language as a fundamentally communicative and expressive facet of thought. In this way, language is not a tool, but a dimension of thought. One of the most influential and earliest thinkers in this tradition was Wilhelm von Humboldt. Thinking does not occur without language, Humboldt believed. Furthermore, the essence of language is conversation. Jürgen Habermas took this observation further than any other thinker in this tradition, claiming that the linguistic framework of thought gears it fundamentally toward intersubjectivity – an understanding between different people that is achieved through the linguistic nature of thought.

Korsgaard reacts to the criticism that her theory of moral identity does not obligate or go beyond subjective thoughts and subjectivity by identifying the root of the problem first. She believes that the criticism is based upon a false assumption, namely the privacy of reasons. To say that the procedural thinking of Korsgaard’s theory is merely a subjective rumination that does not obligate us to move beyond thinking of ourselves is to implicitly believe that our reasons are subjective in one important way.

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70 Lafont
71 Lafont
72 Korsgaard, p. 131
Korsgaard presents a position of practical reasoning that is motivated solely by reasons through their role in reflective endorsement. Furthermore, she describes how reflection requires laws issuing from personal identities. From this position, she maintains that our need for personal identities obligates us against the threat of alienation to recognize our humanity, and therefore, that of others. Finally, in doing so, we take our humanity as a reason because we require a reason to issue a law, and humanity provides a practical identity for issuing just such a law. But in seeing our human identity as a reason for us, we should also see the humanity of others as a reason that must be taken into account by reflection.

The objection raised above, however, holds that reasons are private in nature; though we can understand how our human identity is a reason for us, we do not have a way for converting what is a reason for another person (her own identity as a human being) into a reason for us except through argument and explicit justification. How do the reasons others have acquire normativity for us if the reasons are limited to subjective consciousness? Only through conversation can we make our private reasons public and capable of becoming norms for others. Reasons acquire this normativity after two parties enter a conversation in which both parties deem each other’s reasons to be worthy of consideration. Without this conversational process, reasons are limited to subjectivity and cannot enter into the reflection of others.

Korsgaard’s reaction to this objection is to single out the assumption underlying it, namely, the private nature of reasons. To argue for the public nature of reasons, or their publicity, Korsgaard does not opt for a realist position. Such a position would hold
that reasons exist objectively, and like other facts of the world, are accessible to everyone. Instead of this approach, Korsgaard explains reasons in terms of their shareability.\textsuperscript{73} As Korsgaard goes on to say, she takes this position as the equivalent of another position, “namely, that what both enables us and forces us to share our reasons is, in a deep sense, our social nature.”\textsuperscript{74} Just as Brandom concentrates on social practices to establish normativity, Korsgaard focuses on the sociality of human beings to found her moral theory. The social nature of human beings is deeper than a desire to participate in activities with others. This aspect of humanity is what the private reasons theorists overlook. For in being social in a deeper way than desiring community, our thinking is also social in nature. Here Korsgaard allies herself with the German-speaking tradition in the philosophy of language. Language not only makes our interior thoughts and reflection possible, but it also unites our thinking with that of others through a shared medium: shared languages. From this context we can better understand Korsgaard’s formulation of the solution: “People suppose that practical reasons are private because they suppose that reflection is a private activity. And they suppose that, in turn, because they believe in the privacy of consciousness.”\textsuperscript{75} If the German-speaking tradition is correct, and the linguistic nature of thought endows it with an intersubjective relevance, then we can see the sense of direction Korsgaard will take. Having located the problem and the approach the solution should take, Korsgaard turns to a philosopher whose

\textsuperscript{73} Korsgaard, p. 135
\textsuperscript{74} Korsgaard, p. 135
\textsuperscript{75} Korsgaard, p. 136
relevance for the German-speaking and ordinary language traditions in philosophy has been tremendous: Ludwig Wittgenstein.\(^{76}\)

Wittgenstein provided a critique of this assumed privacy of consciousness in his private language argument. Korsgaard outlines the argument: a private language would be a language which is essentially private and incommunicable, say for instance a sensation that is yours alone, and cannot be described in any other way than by a name that you give it. You can’t even call it a tickle or an itch, for then it would be communicable. So you just call it ‘S’. And whenever you experience it, you say to yourself, ‘That was “S”’.\(^{77}\) Thus, the private language argument deals with one’s reflection on an experience that is both capable of being recognized by the subject, and yet incapable of being communicated. Yet Wittgenstein believes that this private language is impossible.\(^{78}\) Korsgaard explains why:

“One way to understand his argument goes like this: meaning is relational because it is a normative notion: to say that \(X\) means \(Y\) is to say that one ought to take \(X\) for \(Y\); and this requires two, a legislator to lay it down that one must take \(X\) for \(Y\), and a citizen to obey. And the relation between these two is not merely causal because the citizen can disobey: there must be a possibility of misunderstanding or mistake. Since it is a relation, in which one gives a law to another, it takes two to make a meaning.”\(^{79}\)

The normativity of meaning necessitates the publicity of reasons according to this argument. Meaning implies the identification of two things; one equates one thing with another. Yet in doing so, one is asserting that a person \textit{should} take one thing for another, i.e. \(X\) for \(Y\). In essence, then, when we make such identifications in reflecting upon reasons we are endowing the reasons with a normative dimension capable of

\(^{76}\) Korsgaard, p. 136
\(^{77}\) Korsgaard, p. 237
\(^{78}\) Korsgaard, p. 137
\(^{79}\) Korsgaard, p. 137
communication. In a similar way, reasons are normative entities: reasons too are relational, in that we take a reason for something, and thus commit ourselves to the plausibility of relating the two. In other words, as has been described above, we use reasons to figure out how to decide: should we take a given reason as a justification for deciding in a certain way.

Above we discussed the “parts” of the self, the thinking self and the acting self. In supplementing Korsgaard’s discussion, we showed that not only must the acting self fall in line with the standards of the thinking self; the thinking self must create laws and make decisions that are consistent with the past actions of the acting self. As a result, discussion focused on how one makes laws for oneself. This bifurcation allows for the separation between the law giver and the citizen in Korsgaard’s summary of Wittgenstein’s position. Thus, reflection is a matter of making decisions that are justifiable for another – be that other one’s acting self or another reflective self. As Korsgaard goes on to say, the private language argument is not so much an attack on the possibility of having a unique language for oneself, but rather that such a language could not be incommunicable.80 Taking into account the fundamental insight of the German-speaking tradition in the philosophy of language – that thought without language is impossible, and that language is communicable – Korsgaard’s attack on the privacy of language is particularly apt. Unless one could think or reflect in a non-linguistic form, one must realize that every thought is formatted for communication to other agents, other individuals who must similarly justify decisions with reasons for another (the acting self).

80 Korsgaard, p. 139
Thus, if I make a claim for my acting self, I am in turn also making a claim that other selves should be able to understand and find worthy of reflective endorsement.

When we hear words from other people spoken in a language we understand, we exemplify this insight into the nature of language and reasoning: we do not hear their words as babble, as the outpouring of a subjectivity that has not formatted the words for other persons; rather, we hear those words as meaningful for us. The classic example in cognitive science used on the first day of many psychology classes illustrates this point as well. ‘Don’t picture an elephant during the next minute,’ the instructor demands. Students then find themselves picturing the elephant in their heads and violating the command. Here we see how language unites us and allows others to “intrude into our thinking,” as Korsgaard says. She describes this insight by saying, “the space of linguistic consciousness is essentially public, like a town square.” And with this statement the affinities between Korsgaard and Brandom become evident: both see us as sharing a space of reasons, wherein people are offering and asking for reasons for decisions … actions. Thus, reasons are like the words of another in a language we understand: they must appear to us as formatted and ready for reflection. Perhaps herein lies the value of foreign language education: we learn to take the words (and thoughts) of a wider range of people to be normative for us.

As we have seen, reasons for us and reasons for others are formatted for reflection by all parties who at least share the same language community. Furthermore, we have seen how our humanity is a reason for us (serves as a moral identity that makes any

81 Korsgaard, p. 139
82 Korsgaard, p. 139
identity capable of becoming a practical identity at all). Therefore, that our humanity allows for both other human beings and their reasons for decision to count as reasons for us, has been shown.

**iv. The Rationalist Obsession with Reasons**

The views presented above in both Brandom and Korsgaard are focused on the role of justification according to reasons in practical reasoning. One result, is that both philosophers seem to concentrate on practical reason’s pursuit of reasons for *everything*. However, this picture seems to be at least partially implausible. The truth is, most people do not settle down for extended reasoning before doing everything they do or believing in everything they believe. Charles Larmore presents a slightly more nuanced version of rationalist practical reasoning in his book *The Morals of Modernity*. In this book, Larmore examines the obsession with justification that underlies so much rationalism. The rationalist pursuit of *total justification*, trying to justify every decision and action throughout ordinary life and social interaction, seems flawed and out of touch with actual practical reasoning. Though in our best moments we often do exhibit the kind of reflection about the propositional nature of our practical posturings as well as the Kantian reflection described by Korsgaard above, most of the time we seem to rather decide and act without proper justification until we have a reason *not* to continue to do so.
Furthermore, we do not subject everything we believe to a rational test for justification simply because we believe it.\textsuperscript{83}

Larmore presents an excellent discussion of this more realistic depiction of practical reasoning and reflection upon reasons. In lieu of the rationalist picture of agents as constantly subjecting everything to justification, Larmore depicts our normative commitments as existing within a sustaining context – a form of life.\textsuperscript{84} Our moral positions derive from rational reflection and argument as well as forms of training and socialization.\textsuperscript{85} We arrive at our moral positions throughout a lifelong process of rational reflection and socialization, the likes of which constitutes our form of life. Part of this form of life is the moral tradition we are socialized into. Through this tradition we learn the value or lack of value to be associated with rational reflection and pursuit of justification. Furthermore, through our form of life we also gain access to the memories that have fueled so much of the rational reflection that led to the positions within our moral traditions. Therefore, it is important that we keep in mind these memories and opportunities they have offered for reflective dialogue about how justified certain actions have been. Through these memories we too can learn to question beliefs that have been problematic in the past and to seek rational justification for them.

Thus, these collective memories and other aspects of our form of life serve to both socialize unquestioned beliefs into us as well as to provide grounds for questioning. So long as our form of life can serve as a personal identity for us, Larmore’s work serves an

\textsuperscript{83} Larmore, p. 62
\textsuperscript{84} Larmore, p. 63
\textsuperscript{85} Larmore, p. 58
excellent purpose in presenting a more nuanced discussion of Kantian rationalism as described by Korsgaard and Brandom. For Larmore’s critique is not a dismissal of this Kantian moral tradition, but rather a more realistic version of it. This Kantian tradition is part of the western moral tradition many of us have adopted and must react to daily in living our form of life (which is a form of personal identity). As Larmore points out, “By reasoning within this form of life, we are not doing less than reason demands.”86

The hollowness of Eichmann’s views illustrate the value of this moral tradition, even though it is in part just a part of our context. The Kantian perspective with its obsession with rational justification is an excellent way of checking ourselves to ensure that we understand the implications of our humanity, as well as the implications of our rationality and use of concepts.

B. Implications for the Normativity of the Law

The implications of Christine Korsgaard’s theory of normativity for Philip Soper’s jurisprudence clarify the strength of Soper’s position. For one, the normativity of the law is much clearer and more apparent at a non-academic level of discourse: so long as someone considers herself to be a citizen of a state possessing laws, those laws shall be normative for her because her personal identity as a citizen provides a reason for reflection. The extent of the law’s obligation upon her, furthermore, is derivative of the extent to which she considers this personal identity to be applicable to her self. In

86 Larmore, p. 64
attempting to integrate all of her various personal identities, she must create a sense of continuity in her thinking and actions by taking the laws of her state to be normative for her. Perhaps a person who feels completely alienated from the state, who is an illegal alien, or who is in the process of expatriation will not consider this identity in reflecting on her integrity. As a result, the extent to which the state actually obligates a person is unclear. This lack of clarity is most evident when one’s moral identity as a human being, which is necessary for the enactment of a meaningful life, conflicts with the demands of the law. Yet, the law is in no way required to be in line with the expectations of this identity in order to expect citizen obligation. What binds the citizen is not some complex social contract with other citizens and legal officials to meet certain ends, but rather that the citizen is believed to be a citizen.

Nonetheless, one can understand why Soper believes that the law feels voluntary compliance is expected regardless of the content of the laws: what obligates the citizen is not that the content of the laws is justifiable, but rather that the identity of citizenship demands that the laws be followed. Soper confronts the legal theorists who demand that the law get in line with the extent to which any law is morally justified, by pointing to this misunderstanding about the law’s expectations. Thus, as had been outlined above in the discussion of Soper’s position, he does successfully counter those critics of the law who simply overlook what is really at stake in the law’s normativity – whether a person believes that she is a citizen, and whether the law includes a person as a citizen.

87 Soper, p. 239
88 Soper, p. 239
C. Implications for the Morality of the Law

A popular topic in jurisprudence is the morality of the law. Though there is not adequate space here to completely treat the topic in detail, it is worth pausing to see whether the above discussion offers any interesting insights into the morality of the law. Christine Korsgaard’s philosophy includes a proceduralist moral philosophy; the moral law is established by a consideration of identity and the publicity of reasons and even thought itself in some ways. If the source of morality is the moral law, which uses our identity as human beings and the publicity of our reasons to establish morality, then the morality of the law would be the dimension of the law that supports or embodies these features of the procedural philosophy.

The morality of the law would then be two features represented by many legal systems in the world: 1) recognition of the equal status of all people by way of their citizenship (just as Citizens in the Kingdom of Ends achieve equality through their mutual recognition of everyone’s Citizenship); 2) a format for the legal institution that recognizes the publicity of reasons for action. Thus, the extent to which a legal system is moral would be the extent to which it establishes the equality of people and provides legal procedures through which citizens can see that the law believes everyone’s reasons for action are meant to be communicated. A legal system lacking such recognition and such procedures through which citizens can be assured of the law’s commitment to respecting sound reasoning and the value of personal identities is one lacking morality.
III. Conclusion: How the Law Tries to be Morally Defensible

A. Explanation

Philip Soper compares the law to other social practices in describing its normativity. Just like other social practices, he maintains, the law presents itself as morally defensible, regardless of whether the content of any given law can be philosophically justified. We have seen the nature of law’s normativity by focusing on the extent to which communication and interaction in terms of sanctioning involves implicit normativity, as well as how practical reasoning and personal identities of citizenship provide the means for law’s normativity without concern for content. The morality of the law has also been discussed in terms of recognition and proper procedures. Soper’s conclusion, then, that the law does present itself as morally defensible just like people do in ordinary circumstances, is perhaps now even more apparent. The quest for justification in both of the theories of practical reasoning discussed here shows how moral defensibility can be found in law just as in other social practices: sanctions imply a decision about what is worth sanctioning (a normative concept); citizenship requires a consideration of the practical identity of citizenship (a normative concept).

This insight into the normativity of the law reflects the position offered by the German-speaking tradition in the philosophy of language: our thoughts are necessarily formed within language, and are thus formatted and ready to be communicated to others. Just as we must justify our decisions to ourselves, so are our justifications readily at hand.
through posturings and language for justification to others. We truly do inhabit a 
linguistic space of reasons and reasoning, in which something like the claim to justice is 
an ordinary type of claim.

**B. Implication: Against Egoism**

In conclusion, one might wish to make explicit an implication of these arguments, 
namely, the flaws of egoism. Christine Korsgaard goes so far as to claim, “I believe that 
the myth of egoism will die with the myth of the privacy of consciousness.”89 The egoist 
might conceive of herself as existing with private thoughts amidst other individuals with 
their own private thoughts – everyone is thinking, conniving with their own ambitions 
and desires, and then presenting them behind a false façade so as to satisfy their desires. 
This picture presents people as atomized, alienated from one another by the barriers 
presented by their subjectivities. Meeting up with one another, each individual reflects 
upon her motives before figuring out how to format them for exchange – turning desires 
into what seem to be reasons. Believing their lives to be meaningless or meaningfully 
united by their interests, egoists only see themselves as driven by their desires to present 
reasons to get what they want, in a world of complete determinism as described by 
modern science.

And yet, as we have seen, the viewpoint of modern science regarding freedom is 
irrelevant to the decisions one must make. It does not matter how much one knows about 

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89 Korsgaard, p. 144
physics, one must still make decisions through reflective endorsement. With the privacy of thoughts under attack by the German-speaking tradition in the philosophy of language as well as Christine Korsgaard’s philosophy, the barriers that atomize individuals suddenly disintegrate. The egoist’s common argument that your reasons are your own and need not persuade her and vice-versa, and that as a result we should simply respect our differences in desires overlooks the complexity of the lives of human beings whose sapience requires them to make decisions under the idea of freedom and according to communicable reasons.

This is not to demand compliance from one another though, but rather to open up our eyes to the relevance of our decisions and henceforth actions to the lives of others. To live and act according to our own whims so long as we do not infringe upon the lives of others, a perspective often attributed to John Stuart Mill, is to overlook the degree to which our decisions are formulated for presentation, discussion, and justification. We should realize that our every decision and action should be capable of justification to others just as it is justified to our acting self. In this way, we might not only increase the integrity of ourselves, but also of our communities.

C. Implication: Kant and the Claim to Taste

Kant’s aesthetics focuses on the way that we react to what we deem to be the beautiful. Of particular interest to Kant one aspect of our reaction to the beautiful, namely, that we believe that others too should take it to be beautiful. Above we have
outlined the interconnectedness of humanity by both outlining Brandom’s position as well as Korsgaard’s theories. Brandom explains how concept usage commits us to normative commitments that are to be evaluated by others as propositions: the situation in which we make the claim is the premise upon which the consequences of our claim is investigated so as to be deemed acceptable. The concept of the beautiful, then, can be understood from Kant’s perspective, as we can better understand how any concept, let alone the beautiful, involves committing oneself to the belief that others should believe that one is entitled to make that claim. Furthermore, Korsgaard’s description of the publicity of reasons illustrates how our thought occurs in similar formats (languages) that make our claims readily available for evaluation by others. To claim that a certain object is beautiful, then, is to also claim that others should agree when considering one’s reasons. Concept use, through its relation to reasons which have been shown to be public in nature, thus commits the aesthete to the belief and yearning to have others agree that the observed beauty is beautiful. The claim to beauty is thus similar to other conceptual claims, excluding perhaps the way beauty often seems to penetrate to the core of our personal identities, and thus, define what makes our lives worth living.
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