Offprint:

Property Economics

Property Rights, Creditor's Money and the Foundations of the Economy

Edited by

Otto Steiger

Metropolis-Verlag
Marburg 2008

Understanding the Difference Between Law, Morals and Ethics

A Discussion of Lawrence Kohlberg's Research on Society

Hans-Ulrich Niemitz

1. Heinsohn and Steiger's research and the distinction between morality and ethics

On the basis of Gunnar Heinsohn and Otto Steiger's research, it can be proven that ethics is the concept or design principle upon which a society is founded (see Niemitz 2000). This is in contrast – or indeed in opposition – to lordship as well as to community, from which any forms of social organisation ethics are essentially absent. The design principle that is ethics provides us with a scientific criterion by which to determine whether a "legal system" or "law" is

> (i) merely a set of regulations or a rule established by a lord for his subjects, or by a council of elders for its community (such rules do not constitute law, but for all that, a superficial examination suggests that they do, given that they function as "the law of the land")

or whether it is

> (ii) a proper law, that is, one which accords with the design principles of ethics. This implies of course that there can be no society without ethics, and that there can be no ethics without society.

By the terms of this new conception, ethics allows us to answer key questions outside and beyond the realm of economics. For instance, with the

help of ethics, one can assess the problem of whether a society should permit such things as nuclear power stations, organ transplants or death penalty; indeed, one can render decisions on these issues. In general, by means of a strict application of ethics as the design principle upon which law and society are based, one can create a Civil Code worthy of its name. Such a code would in fact be significantly shorter than we are accustomed to using.

This should make the essential gist of this paper clear. Nor must such a re-conception be restricted to theory. Indeed, making this distinction in the realm of ethics will prove to have especially useful practical applications.

2. Ethics, morality and the law in different social formations (a)

2a. What is "society" and what is ethics (a)?

What is the foundation or rationale for society, law and ethics? It is the decision of a group of people traumatised by the experience of lordship, which they have just overthrown in a revolutionary gesture, to establish a "just" system of cohabitation. Such a system gives them the ability to decide for themselves, free of the constraints imposed by lordship; and their will is to make such decisions jointly, as a coherent group. They wish never again to live under lordship, with its attendant arbitrariness and force. Therefore, they establish three rules of exclusion:

(i) Exclusion of inequality: No one is to be treated unequally, as was the case under lordship. All people are to be equal to each other and before the "just" legislation to be enacted; that is, before the law. On principle, the following holds true: one man, one vote. These days we would say: one citizen, one vote.

(ii) Exclusion of bondage: No one may do violence to another and, by so doing, curtail that person's freedom, as was previously the case under lordship. No one has to obey another's command. If this were to occur, it would mean that that other was a lord. However, the ethical obligations ("the three exclusions") are to be met, which constitutes the ethical compulsion.

(iii) Exclusion of all others from my possession – and, at a later time (once the society is fully developed, which requires two steps), from

> my property as well. In the very early days of this society (during the "proto-society"), the former lord's land was equally or "justly" divided up as the possession of all people (for example, at the dawn of antiquity). Such a division, incidentally, is not a necessary condition. It is sufficient to guarantee possession legally – that is, ethically – even if it is unequally or unjustly assigned (see for instance the outset of modernity in England, a case of "unjust" distribution, where the land was not re-allocated).

These three rules of exclusion – which in their earliest form are to be understood as inviolable, and thus *"timeless"*, legal *rights* (and, consequently, compulsions) – also constitute (and here are identical with) law and ethics. They are meant to be eternally valid, timeless and inviolable, and thus in this construction represent at one and the same time the proto-law and the proto-ethics of this "proto-society". Later, a distinction will be made between law and ethics. All members of the society make sure that all adhere to these three rules of exclusion. And, since they function by exclusion, the rules are easy to enforce. All members of society themselves have the greatest interest in complying with the rules. If just one member of the society can get away with breaking the rules, the whole society is jeopardised.

It remains to be demonstrated how the principle of exclusion gives rise to legal *title* (or rather how the *exclusion of exclusion* does so), the title of which is no longer "timeless" but is instead now temporally fixed. This temporal fixing is what distinguishes law – or, more precisely, *trial* law – from ethics. The first legal title is the credit contract. As they require debtors to be disciplined, credit contracts promote dynamics of growth and prosperity for the society and its members, even though such benefits are not equally distributed (Heinsohn and Steiger 2006 [1996], 373 f., 388 f., 438, and 441).

The two other possible forms of civilisation apart from society are (i) *lordship*, which is characterised by a feudal ruler, *arbitrariness and/or force*, and (ii) *community*, which is characterised by *morality and custom* and allowing the "arbitrariness of the majority". Unlike these civilisations, *society* is characterised by *ethics and law*.

This concludes our fundamental explanation of the nature of society and ethics. A more detailed presentation follows below.

2b. What is law?

The three rules (equality, freedom and possession) – which, as we shall see, are supplemented by the rule of the "exclusion of exclusion" – permit every member of society to become either a debtor or a creditor (or both). If any members of society fall upon hard times or wish to undertake a venture but have insufficient means to do so, they must become debtors and find a creditor. There is no other option. Gone is the lord who might feed them in their time of need, or who might be open to persuasion; gone is the community obliged to lend a hand by the duty of solidarity. People must therefore begin to make credit contracts. As Heinsohn and Steiger have shown, this requires the guarantee of (legal) law, what might be called legal security. Neither (potential) creditors nor (potential) debtors will conclude a debt contract without the certainty that the law will stand by them in the case of a dispute.

The conclusion of debt contracts ultimately creates the need for a distinction between possession and property (although this is initially not the case). Depending on the circumstances, possession is a legal claim or legal title guaranteed to the possessor by law. In a sophisticated society, possession constitutes the licence to use something (a piece of land or an object), or more precisely, to exclude all others (at least for a certain period of time, depending on the circumstances) from such use.

Note, however, that possession is completely different from territory ("a piece of land") or booty ("an object"), and must be carefully distinguished from these. Territory and booty are matters of biology or lordship, while possession and property are legally and socially guaranteed and thus constitute legal claims or legal titles. Any possession not supported by legal title is merely simulated possession. It is in fact booty and, in social terms, constitutes stolen goods and is thus a matter for the criminal authorities. Every possession is also (and must also be) property. Possessor and proprietor, however, need not be the same person. Furthermore, both possession and property are guaranteed – that is, protected – by law. In other words, no one may purloin my possession or use it without my leave, and no one may behave like a proprietor or claim to be one without actually being one.

The core of (trial) law, the source of all of its justification, is the contract; that is, the credit contract (supplemented later by the rental contract). Law provides for credit contracts to be complied with in two ways:

(i) predictable, punctual *fulfilment* (for example, delivery and payment), and (ii) *execution*.

Execution entails the grantor's of the loan – the creditor's – receiving the collateral indicated (if not always explicitly) by the debtor upon conclusion of the credit contract. This collateral is a portion of the debtor's property that was put up as security for the duration of the credit contract. Execution is the second of the ways to complete and thus nullify a credit contract, *and the only other legally permitted form (besides fulfilment)*! After execution has taken place, the contract – and with it the law governing it – has been observed. Furthermore, and this is of paramount importance, the debtor is not a criminal. Within the legal context, in other words, the debtor's property situation after execution is the same as it would be if the contract had been fulfilled as planned. By putting up this collateral, that is, by encumbering his or her own property (initially: primitive possession), the debtor has "insured" the credit contract. Execution thus constitutes the risk against which the contract has been insured. This is known as compulsory personal liability insurance. As a rule, creditors oblige debtors to take out such compulsory personal liability insurance on their own and to secure it with their own property (initially: primitive possession).

Constructed thus, trial law and its attendant statutes are extremely simple. There are two – and *only* two – legal possibilities: either fulfilment or execution. Nor can credit contracts be broken. In the case of non-fulfilment of a contract, after all, creditors are always permitted to apply for execution, in which case they receive the writ of execution; that is, the right to have the contract executed.

If a creditor signs a loan contract with a debtor who does not own any actual collateral, that creditor is *de facto* acting without insurance. In case of non-fulfilment of the contract, the law (or rather the court) will provide that creditor with a judgement in the form of a writ of execution. Thus is justice done. If the contract in question, or rather the debtor, and thus the creditor, was uninsured, then the creditor has behaved foolishly. Jurisdiction, therefore, takes into account only the law, not the potential foolishness of its subjects.

Legally, all members of a society can predict what the outcome of an action will be. Predictability is an element of legal security. Primitive possession, followed by possession, property, predictability and legal security: these provide the model and example for all legal regulations –

that is, for all the laws of a society. Let us take criminal law as an example. Legal security means that every action refers to possession and property, which means that it is to be converted into the form of a contract. Violation of criminal law can be punished in three ways:

(i) the perpetrator can be subjected to a compulsory debtor's contract (a fine);

(ii) the perpetrator transfers the title to himself to the society or State, which takes over possession from the perpetrator and can dispose of his or her body and freedom (a prison sentence);

(iii) the perpetrator is declared mentally ill ("insane") and loses all civil rights; that is, the right to possess himself or as well as his or her possessions, and the right to act as proprietor of his or her property. The perpetrator is committed to a lunatic asylum.

To recapitulate: law is characterised on the one hand by *legal* security. This constitutes its *formal* aspect, which in turn comprises an axiomatic dimension (legislation) and a logical dimension (freedom from contradiction). Viewed thus, law may be said to be "*true"* in the way logic and mathematics are true. On the other hand, law is characterised by legal security. This constitutes its substantive (its *material* or objective) aspect, which comprises primitive possession, contracts (including fulfilment or execution), and eventually money and property. Viewed thus, law may be said to be "*actual"* in the way that reality is actual. We will see below that ethics also depends on this simultaneity of "truth" and "actuality".

This concludes our explanation of the nature of law. Note, however, that virtually no philosopher knows what a contract actually is: *a contract must always be a debt contract, or it is not a contract at all*. Not even the so-called contract theorists, such as in particular Immanuel Kant and John Rawls, have ever analysed an actual contract. Their deductions proceed from the assumption that the act of barter is constitutive of society, and they view selling and buying as forms of barter. Thus they understand reciprocal or symmetrical transactions involving barter as "contracts", which fundamental transactions they believe to be constitutive of society. This view, however, is fundamentally false.

2c. Transactions involving property must be insured to be legal

As noted above, all transactions involving property (and, in proto-societies, those involving possession) share a central feature, one that is often overlooked: they are *reversible by virtue of the duty of insurance*, that is, the duty of the debtor or issuer of the legal title (who can, for instance, become a debtor unwillingly by causing an accident, or may issue a legal title for the person harmed in such an accident) to ensure that the creditor or recipient of the legal title does not suffer any property damages in the worst-case scenario. As we know, "natural" damage (that is, irreversible damage, such as serious injury or death) can "naturally" enough not be reversed. In cases where natural compensation is impossible, the court attempts to determine compensation in the form of money or assets. The theory of this process is based on the principle of insurance. Of course, interest is payable during the period between the occurrence of the damage and the date by which payment is due. And this is what is remarkable about property: it can be assessed as part of a financial statement, and, by means of interest, over time as well. After all (and this is taken for granted in this contribution), interest is the chief reason for societies' compulsory accumulation as well as their dynamics (which is not found either in communities or under lordship).

This concludes our explanation of the fact that "legal" does not mean acting "naturally". It means acting legally, which in turn means acting with insurance, that is, reversibly, as provided for by law (*viz.* credit contracts, *etc.*).

2d. What is ethics (b) as distinct from morality?

A society requires ethics, or ethical argumentation, as soon as it comes into being. Following the revolution (the overthrow of the lord), morality did not exist. Under lordship, people lived together in a state of amorality: each person was permitted – indeed, he was expected – to betray the other, and arbitrariness and force were the order of the day. In proto-societies, morality and custom (which had been lost forever, along with community) had to be replaced with something else, something new. This had to be determined or constructed in a process that was just and rational, if necessarily subjective (or, from the group's perspective, inter-subjective, and thus nearly objective, because meant to be eternally

valid). Thus, the ethical rules were born, and from them (trial) law. In particular, the design principles could not be based on conventions ("that's the way we have always done it") or external authorities ("God said …"). The only alternative remaining, therefore, was to *lay them down as legislation*. Ethics must be generally valid (that is, for all members of society) and rational in the sense of being free of contradiction, predictable (*"true"*) and rooted in reality (*"actual"*). For this reason, ethics (and thus law) has its own design principles, which are not compatible with the community's morality (and thus custom). However, this is an explanation of ethics that is entirely different from that proffered by all philosophers.

For this reason, ethics has to do with something completely different than questions of morality or moral standards. Ethics is the construction and review of (new) legally acceptable laws, carried out under a society's particular conditions and in accordance with its requirements (and there is no other possible definition than this one). This means that, on principle, neither lordship nor community knows ethics, nor are they capable of developing it. Lordship is both amoral and without ethics, while community is moral but without ethics. A possible schematic rendering might look like this (Table 1):

Table 1
Morality and ethics in different social formations

social formation		***"moral"***		***"ethical"***
lordship	***betrayal*** betrayal is desirable	a-moral	(denunciation) betrayal is desirable	no ethics, physical, violent (command) (arbitrariness of the lord)
community	(custom) custom obliges	moral	***promise*** duty of solidarity is desirable	no ethics, but morals (co-operation, decision) (arbitrariness of majority)
society	(law) legal law obliges	moral	(immorality) "immorality" is not criminal	ethical, immoral (co-ordination) ***contract*** (*individuality*)

Thus we have explained lordship, community and society – as well as ethics and the difference between ethics and morality. *This is a key step*.

3. Ethics and morality, and the law in different social formations (b)

3a. Supplementary remarks on community, lordship and society

Communities feature morality and custom, and they provide security (at least of a certain kind) – but they are characterised by neither ethics nor law; that is, legal security. Communities *per se* do not feature ethics. For their part, societies may involve moral standards voluntarily agreed between individuals, which can be distinct from one another and may be modified. But they must be ethical!

Freedom of opinion permits the expression of "immoral" and, indeed, unethical points of view, because societies do not punish intentions, as expressed in opinions. Only deeds are punished; only omissions (failures to fulfil duties) are sanctioned, such as for instance the non-fulfilment of a contractual obligation, which is sanctioned with the contract's execution. In general, it is judgements or titles that are handed down; one does not receive "justice". The expression of an unethical opinion is merely an expression, and not a deed. It may be of great importance to express an unethical opinion, since only thus are the limits of ethics evident – or rather, only thus does ethical transgression become evident. A society cannot punish such an act, that is, such a revelation.

We may thus identify three dimensions: lordship, community and society. Furthermore, we may organise them according to these categories: amoral (or corporeal in the sense of biological, and thus psychical, to be understood in turn holistically as physical), moral and ethical. It is possible to act without ethics and morally at one and the same time (as in the case of a community), or ethically and morally (as in the case of a society). Furthermore (although only from the point of view of modern society, which recognises human rights as a category), it is also possible to act ethically and (ostensibly) immorally (indeed, even unethically) at one and the same time. This is exemplified by classical antiquity, in which societies featuring ethics and law also allowed slaveholding. However, be careful: concepts like "without ethics" constitute classifications, not value judgements, a point which often risks being neglected.[1]

[1] The German philosopher and sociologist Jürgen Habermas's arguments, for instance, are highly moral, but without ethics! His "discursive ethics" is a misnomer. It is in fact a "discursive morality", since it features a discourse that is like a long, rambling discussion and concludes with an arbitrary decision which, although it

This concludes our explanation of the nature of ethics.

3b. The modern version of morality and ethics: human rights

The concept of human rights is devised by society's moral and ethical members. It is they who decide morally to prohibit one human being from becoming the property or irrevocable possession of another and thus posit a new ethical design principle. The "prohibition against property" covers slavery, while the "prohibition against possession" refers to serfdom (which is in fact impossible within a society, arising, as it does, out of conditions of lordship and therefore not a legal relation).

Note, however, that a society as a whole, or its representative institution, the State, can become the possessor of a perpetrator sentenced to a prison term under criminal law, although such a condition is not irrevocable (even a life sentence can be reversed if it is found that a judicial error was committed), nor does the perpetrator become the State's property. The State may only order a form of "social death" by remanding the perpetrator to a psychiatric institute. In such cases, the perpetrator or "invalid" loses all property, with the exception of his or her self, of which he remains proprietor; nevertheless, he is forbidden to perform transactions involving property. (Here, too, however, the process can be reversed if it is found that a medical or judicial error was committed.) For this reason, no society can tolerate the death penalty, for by doing so it violates its own social principles and loses the status of "society".

The decision to prohibit irrevocable possession of one human being by another, or general property rights on the part of one human being to an-

represents the will of the majority or even the totality of the participants, is permitted to go against ethical principles. Nothing is absolutely inviolable, since there is no law that guarantees inviolability (namely, of property). The original constitution – the *social contract* – defined this principle of inviolability; and in the event that it should be infringed upon, as may become necessary in the case of a catastrophe, then the society is destroyed *qua* society and typically tends to become a lordship. The other alternative is that it turns into a community, which in fact never occurs, although this is precisely what Habermas proposes as the solution, or indeed the path to be followed. *Attention, however*: none of this involves the concepts of 'good' or 'bad'. What is proposed here are merely classifications for making sensible distinctions.

other, was contingent. It did not have to come into being, but rather came as a surprise. It was an arbitrary decision and, although derived from a moral intention, is ethical in nature. (In communities, meanwhile, the following is "morally" valid: all members are equal and free insofar as they may not be subjected to the arbitrary decisions of any other individual member of the community but only to that of the majority. Community knows neither possession nor property which could defend the individual against precisely that majority, among other things, by according him protection as a minority.) The decision gave the law an ethical character and accorded it a place in the ethical system; that is, constituting an eternally valid, irrevocable order of exclusion (and thus to be interpreted as a legal *claim*). Human rights constitute an exclusion that cannot itself be excluded, and are thus an exclusion in the sense of a prohibited action (one which is, however, possible, if punishable).

It is only thus, as a prohibition or exclusion of a particular action (one that was once legal, by the way), that human rights can be formulated so as to be legally certain; only thus can compliance be guaranteed. Human rights do not represent a human characteristic or feature, as once formulated ("he cannot be deprived of himself as property"), but rather an ethical principle from which the structure of (trial) law can be derived. This is in particular the case with labour law; that is, for the conclusion of employment contracts. The parties to such contracts enter into two separate creditor-debtor relationships, in the sense of a rental contract, as will be demonstrated below.

The first of these relationships means that the entrepreneur is a monetary debtor, while the labourer (who has rented out possession of himself) is a monetary creditor. If the entrepreneur does not pay (his or her wages), the worker may order execution of the contract signed by that tardy debtor. And the second creditor-debtor relationship can be formulated as follows: the entrepreneur is the creditor as regards the work to be done by the labourer, while the labourer is the debtor as regards that work. If the labourer does not do the work, the entrepreneur may only fire him. The entrepreneur has no right to a writ of execution, since the labourer is (on principle) without assets and would (on principle) have only himself to offer as the object of such writ of execution. This latter condition, however, which would be a form of slavery, is forbidden under human rights. Thus, the entrepreneur merely rents possession of the labourer (which is often referred to as "manpower") – he does not pur-

chase it. For this reason, both parties may terminate the contract at any time.

In general, the only point that remains to be noted is that human rights can exist only together with the concepts of possession and property. Without these concepts, there can be no human rights. (Thus, it was essentially impossible for either the German Democratic Republic or the Soviet Union to introduce human rights.) Nevertheless, as we have seen, it is possible for a society to exist without human rights.

This concludes our explanation of the nature of human rights.

4. Earliest contracts and their implications for possession, money and property

Let us recapitulate what we have established so far in the interest of clarity (see Table 1 above). Neither natural laws nor natural legal titles exist. Law, and in particular the courts that are inextricable from it, is the most unnatural phenomenon in the world. The roots of law are in society, which begins "logico-historically" as a "proto-society". This proto-society establishes "proto-possession" by way of exclusion, alongside the exclusion of inequality and non-freedom. This proto-possession constitutes the original objective legal claim. At this stage, law is still identical with ethics (*proto-law = proto-ethics*). This is because, both ethically and legally considered, the legal claims that are laid down or established are "eternal" (that is, those which are timeless because of the design principles on which they are based).

The members of the society begin to conclude credit contracts in *naturalia* (what we might call "natural credit contracts" or *NCC*s), because money does not exist as yet. The debtors must put up their primitive possessions (which constituted inalienable proto-possessions prior to the first *NCC*, but which now have become alienable primitive possessions) as collateral. Once the *NCC* has been fulfilled, the ex-debtors notice that their primitive possessions have taken on a new, unnatural characteristic: they have become an object of encumbrance; that is, they are capable of serving as collateral for a further *NCC*. In general, the *NCC*, which is the "first legal title" (in fact, it is an *NCC* promissory note in the possession of the creditor), is immediately joined by a "second legal title", at least theoretically: the writ of execution (*WE*). In fact, the *WE* is born as soon

as a debtor cannot fulfil a contract. Both legal titles provide deadlines for demands to be made and thus constitute titles rather than claims. They are both the result of the exclusion of another exclusion. The demand for fulfilment is the reversal of the exclusion of another exclusion.

In the case of an *NCC*, the creditor excludes the debtor from the exclusion from that creditor's possession – the debtor may take the creditor's *naturalia* (for example, grain). This, therefore, also constitutes a legal title for the debtor in regard to the creditor. In the case of a *WE*, the society excludes the exclusion from the possession of the bankrupt creditor on behalf of that creditor. The creditor may have the contract executed – on principle immediately (in which case "immediately" constitutes the "deadline").

Wealthy people, who are thus potential creditors, discover that it is possible to create legal titles by encumbering their primitive possessions. And, because they no longer wish to loan in kind, they issue their debtors a new legal title: the banknote (or money). The banknote as a legal title entails its possessor's right to demand from its issuer his primitive possession, at any time, immediately or at a later date, albeit determined by the money's possessor (hence, the banknote is a legal *title*). The debtors who receive this issue of money in turn issue their creditors, in return for the monetary issue, a monetary credit contract promissory note, which may simply be called a monetary credit contract (*MCC*). Thus, the money issued by creditors is offset against an *MCC*. And *the debtors must in the end pay their debts by the deadline in the form of money*. This is because the creditors must on all accounts retrieve the banknotes they have issued as a means to pay debts – after all, these banknotes, as money, constitute a legal title and, thus, a claim on the creditors' primitive possessions (which will be replaced, as the society develops, with their property).

Without the ability to purchase, money makes no sense. Thus, in one and the same process, monetary issue gives rise to purchasing and selling. The purchasers and sellers invent and issue new legal titles: the monetary debt contract (*MDC)* and, as its counterpart, the non-monetary debt contract (*nMDC*). This "non-money" is what the purchaser wishes to acquire as a primitive possession. While both contracts are born simultaneously, however, they are on principle fulfilled separately or, in the case of non-fulfilment, classified separately as credit contracts and executed. Once money has come into being, those with plenty of it can also simply conclude an *MCC* directly, without themselves having to issue money.

One might say that, at this point, the "monetary society" has been born (and we are not yet talking about property; we are still only dealing with primitive possession).

And here is the surprise: money makes it easy to conclude a rental contract (*RC*). How does it work? The tenant is the monetary debtor. The landlord is the monetary creditor. The landlord is a debtor *only* insofar as he owes the tenant the right to use the rental object – that is, the possession – while the tenant is a creditor *only* insofar as he may use the rental object – that is, the possession. This means that the landlord remains the proprietor, *since he retains the right to continue using the rental object as collateral,* so as to issue legal titles, such as a *MCC* or money. The tenant, meanwhile, is merely the user of the object and is forbidden to provide that object as collateral. He is nothing but its possessor. Only now can the members of the society recognise the following distinction: that between the proprietor, who may provide the object (real estate or thing) as collateral, and the possessor, who may not offer that object as collateral, but may only use it in a "natural" way. It is only at this point that the members of the society discover that every object can be both possession and property at one and the same time, because they have learned to distinguish between possessor (the legal, natural user) and proprietor (to whom the object legally belongs, and who can use it as collateral to issue legal titles). It is only at this point that they are members of an actual society – the "*society*" – and no longer of a primitive possession society. They now know that property is that which one can use as collateral, even if the proprietor is separated from the property; and possession is that which one may legally use but not provide as collateral.

Most theorists do not understand how to go from the proto-society to actual society by way of the primitive possession society and the money society. They tend to posit property as the first comprehensive legal title and thus proceed, both axiomatically and logically, in an unhistorical manner. They then posit possession as a less important, secondary, derivative legal title (mostly as legalised "natural possession"). This jeopardises the theoretical process. The *property premium* comes previously, as shown by Heinsohn and Steiger (2006 [1996]). This premium may be a possibility in a society (although we see this differently) – not, however, in either a primitive possession society or a money society. What would then, in the mind of these authors, correspond to the property premium? It is the potential of things to be encumbered, which we might

call encumbrance. If this potential is lost, one may no longer issue an *MCC*, as a debtor, or money, as a creditor; put more generally, one may no longer issue a legal title, which also means that one can no longer find a recipient for a legal title. Here it becomes obvious that, since possession and property are not yet conceived of separately, the basis of property is possession, or more precisely, primitive possession. Possession, for its part, in an advanced society such as our own constitutes either a legal claim, if it involves property, or a legal title, if it does not involve property. In this construction, property is always a legal claim: that is, on principle, when it is not encumbered, timelessly or eternally secured, but rather usable for the production of legal titles, and thus legally forfeitable (with the exception of human rights).

Ethics, the design principle of every society, is thus already present in the primitive possession and money societies: the exclusion of inequality, the exclusion of slavery or bondage, and the *exclusion of the risk of the recipient of a legal title*. Legal titles issued by both debtors and creditors are already familiar – and the recipients of these legal titles must be secured against all risks. For this reason, the issuers of legal titles must encumber their primitive possessions and later, in a more advanced society, their property. All this also goes for all other forms of legal title.

Table 2 below, entitled "The logical chain of legal titles", illustrates the steps described here. Ethics and law are rendered distinct by the invention of the *NCC*; that is, by the distinction made between legal claim and legal title. The first recipient of a legal title (which is the creditor who has taken on the *NCC* promissory note) must be excluded from risk. *Ethics can in general only be formulated once the second recipient of a legal title has come into being.* This is the debtor, who receives the money issued by the creditor.

Ethics here takes the place (in this representation and according to this derivation) of the property premium. Ethics provides the justification for the obligation imposed on the issuer of a legal title to put up collateral. Debtors in particular, and all issuers of legal titles in general, who enjoy protection for a certain period from the recipients of their legal titles, must provide or pay interest. This interest is something like a contribution made for the loss of security, or, to put it precisely, a *deposit or payment as compensation for the lost security*.

Table 2: The logical chain of legal titles

+

	OVERTHROW OF THE LORDS →	Proto-society
PROTO ETHICS	Exclusion of unfreedom	→ **Freedom**
= →	Exclusion of inequality	→ **Equality**
PROTO LAW	Exclusion of all others from my possessions	→ **Proto-possession**

TRIAL LAW: primitive possession: proto-poss., now at risk → Primitive poss. society

PRIM. POSS. ETHICS: freedom, equality, exclusion of creditor's risk (ethics ≠ law): THE DECISION WHETHER THE CREDIT CONTRACT WAS SIGNED OR NOT MUST BE EXCLUDED. THIS IN VIEW OF THE STATE OF THE CREDITOR'S PRIMITIVE POSSESSIONS (AFTER THE DEADLINE). **THE CREDITOR DECLARES *INDIVIDUALLY* HOW HE WANTS TO BE PROVIDED WITH COLLATERAL, IN ACCORDANCE WITH THE *GENERAL* PRINCIPLE OF CONTRACTUAL FREEDOM.** → INVENTION OF COLLATERAL ("INSURANCE AGAINST WORST-CASE SCENARIO") AND INTEREST ("REDRESS FOR THE LOST SECURITY").

Primitive poss.	→	Encumbrance of primitive possession (debtor)
NCC	←	**give credit** (creditor gives) [**natural credit**]
Writ of execution	←	Encumbrance of primitive possession (debtor)

GENERAL ETHICS: freedom, equality, exclusion of risk to receiver of legal title (the issuer of the legal title must guarantee this):

Proto-issuing bank		Encumbrance of prim. possession (creditor)
Money (M)	←	**Issue** [credit granted via **money issue**]
Money (M)	→	monetary possession → Purchasing becomes possible and necessary:
MDC		*buyer* (money debtor) *seller* (money creditor)
and	←	**Purchase** [**purchasing transaction**]
nMDC		*buyer* (nonmoney creditor) *seller* (nonmoney debtor) → ("Prim. poss/money") society
		Ecumbrance of prim. possession (money debtor)
MCC	←	(money creditor) **gives credit** [**money credit**]
Proto-business bank		→ monetary possession of money debtor

		Possessor	**Proprietor**
Money (M)	→	*tenant* (money debtor),	*landlord* (money creditor)
RC	←	**Rent**	[**rental transaction**]
Poss. (pure)	←	*tenant* (poss. creditor)	*landlord* (poss. debtor) → ("Money/prop./poss.") society

Possession	←	**The tenant becomes a possessor** (of "someone else's property")!
Property	←	**The landlord becomes a proprietor** ("without possessions")!
Property	→	Proprietor can encumber without being a possessor.

RC	→	What an x(non-C)C permits, e.g. an RC, is possession (DC w/out encumbrance defines possession).
x(C)C	→	What an x(C)C permits, is property (DC with encumbrance defines property). → Society

NCC	**Natural Credit Contract**	**(N-credit)**
MCC	**Monetary Credit Contract**	**(M-credit)**
(n)MDC	**(non-)Monetary Debt Contract**	**("debts")**
x(C)C	**Natural/monetary (Credit) Contract**	
RC	**Rental contract**	**(Rent)**

The temporary loss of security – that is, the temporary exclusion of the creditor from his own potential security – must be compensated for by the temporary "winner" of that security (who enjoys the security during this period). Thus, interest does not stem from property, but rather from ethics – that is, in the final analysis, from the concept of "society". The deposit as compensation for the lost security comes into being before property can be conceived of as separate from possession, and thus also prior to the emergence of the concept of a property premium.

If we use the concept of "licence" in our argument (and we would be well advised to do so in the future), we obtain the following result: licence is an exclusion of another exclusion. It is the permission to do something from which one was previously excluded. There are on principle three licences. The first two are well known and have been discussed above: property and possession. The third does not have its own name. It entails the exclusion of the exclusion from running a piece of data or a corresponding "intellectual" object. It involves entities that constantly serve as the basis of processing; that is, those entities which can be called a piece of data or "intellectual material" and which can be ascribed to an author. Such authors may exclude anyone they like from having their work (data, intellectual material) processed, or (in certain cases) from maintaining it in technical storage (that is, as data on a computer). The technical and legal problem here is that intellectual and electronic data can be reproduced at virtually no expense, and are thus not protected from certain illegal actions, as are pieces of land or objects, by their own non-reproducibility. In particular, reproducibility becomes a major problem with mass products such as songs, films, texts and software (Niemitz 2003; see also Niemitz 2002 and 2004). This is, however, beyond the scope of the present discussion.

Table 2 above explains the steps from "Proto-society" to "Society" passing the steps of "Primitive possession society", "Primitive possession / money society" and "Money / property / possession society". At the end, "The logical chain of legal titles" explains what the difference between possession and property is really about. (For a more detailed explanation see below).

5. Different social formations and Lawrence Kohlberg's research

5a. Individual behaviour in social formations and moral psychology

One of the most interesting researchers on the development of moral judgement of children and juveniles, and of human beings in general, is the American psychologist Lawrence Kohlberg (1927-1987). Kohlberg (1996 [1981] said he had empirically found six stages of moral judgement. Each human being can individually pass through these stages in the order from stage *one* to stage *six* (or stage *1* to stage *6*). It is not possible to skip a stage. It is known that not everybody reaches (or passes through) all stages. And one crucial problem is that no one has reached stage *6* (more about this problem later on). Most people stop at a stage lower than *5* – the highest stage ever reached according to empirical findings.

Figure 1: The six stages of moral judgement of individual human beings

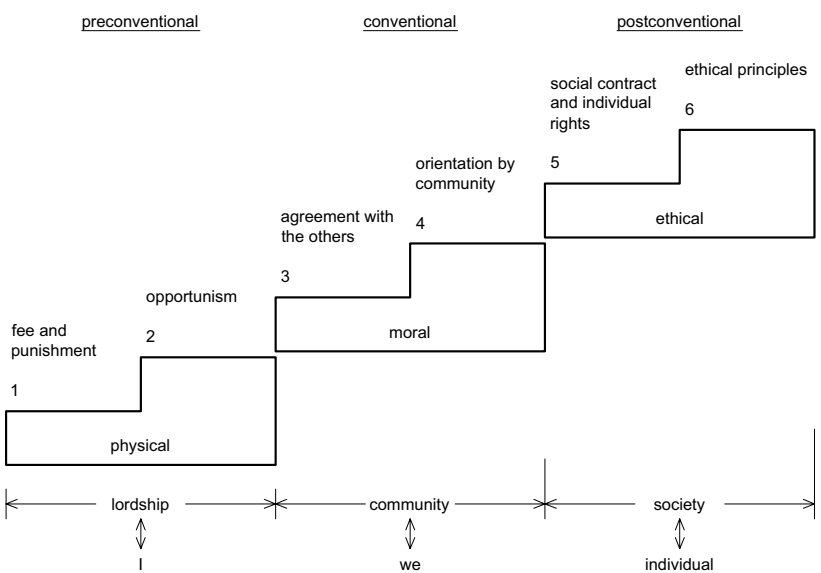


Figure 1 above shows the six stages of moral judgement of individual human beings. The design is similar to that of Kohlberg (see Heidbrink 1992, 72 f. and 104), with one important difference in stage *4*: instead of "society" (Kohlberg), we use the term "community". (For a more detailed explanation see the text below.)

The figure also gives an impression of this individual and stepped development (or order). The terms "physical" or "pre-conventional", "moral" or "conventional" and "ethical" or "post-conventional" all name the three levels. Each level contains two stages (the terms "pre-conventional", "conventional" and "post-conventional" are Kohlberg's nomenclature):

(i) *physical* (level *1* / *lordship*) contains "fee and punishment" (stage *1*) and "opportunism" (stage *2*);

(ii) *moral* (level *2* / *community*) contains "agreement with the others" (stage *3*) and "orientation by community" (stage *4*) [attention: "community" instead of "society", as you will read in Kohlberg's original texts];

(iii) *ethical* (level *3* / *society*) contains "social contract and individual rights" (stage *5*) and "ethical principles" (stage *6*).

Figure 1 also shows us an assignment of postulated social formations to the three individual levels. The social formations are named with the term "lordship" (assigned to physical), with the term "community" (assigned to moral) and with the term "society" (assigned to ethical). In this stepped order ("lordship → community → society"), human beings *as individuals* reach (or pass through) these three levels.

But the *historical (and likewise incremental!) order* of the three assigned social formations is:

(i) *community* (tribe; "primitive people"), then

(ii) *lordship* (lordships like feudalism and socialism – that means people "lose" the frame of community), and then

(iii) *society* (democracy or the republic of antiquity or, later, of modern times; in antiquity without and in modern democracy with human rights).

This order ("community → lordship → society") is ideal-typical. Real history has experienced "relapses". That means the relapse from society

to lordship (quite often) or, theoretically, from society to community – but this has never been observed in reality. It is important to note the following: You will never observe the step upward from community to society. (More about this a little bit later on.) If – and we are convinced of this – there is a "one-to-one relation" between the three levels (or dimensions) of the individual moral judgement and the three levels (or dimensions) of social formation, then we must ask: can all people of all social formations reach all three levels (or dimensions) or all six individual stages? We presume that this is not possible. Why not?

In a *community*, all members – including the adults – can only reach stages *1* to *4*. Stage *4* is the highest existing stage of possible individual moral judgement: This is the orientation towards community. The members of a community can never understand and never "live" the ethical ("post-conventional") concept of society (stages *5* and *6*), because there is no such thing as society.

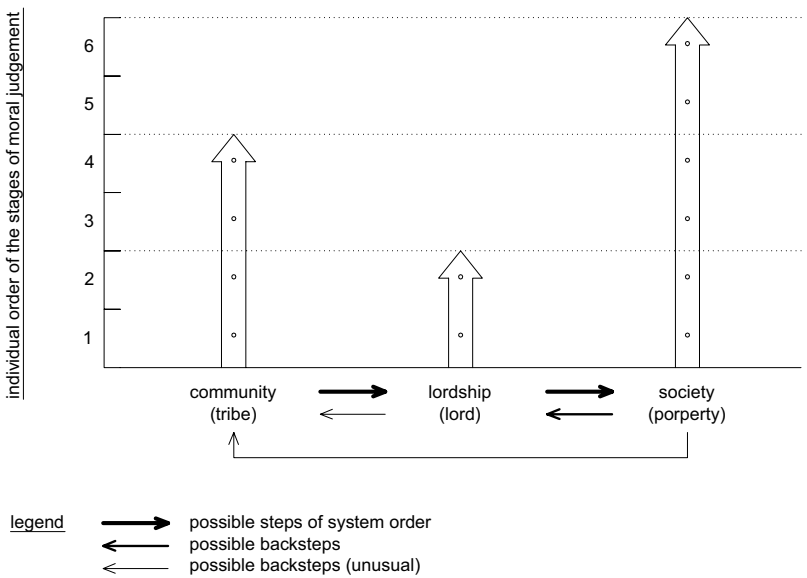
A *lordship* means a moral "relapse". All people (the whole social formation) fall into a lordship, coming from a ("moral") community (probably historically, as a result of a catastrophe) or coming from a(n) (ethical) society, in which case this is a double relapse: The previous society loses ethics and morals. In lordship – and that is the order of the lord – one is only allowed to reach stages *1* and *2*. It is very dangerous to try to reach higher stages. Ultimately, one can reach higher stages only in political resistance. In lordship, morals are not allowed and ethics does not exist. Instead, there is only the struggle to survive. The customary rules, which protect "community", or the laws, which protect "society", do not exist, because in lordship, there is no moral and no ethics. Lordship is amoral and unethical. Lordship is never a community or society (note: the majority of philosophers do not accept this).

The concept of community may come into being in resistance against lordship (not being allowed by the lord), but the concept of society cannot come into being in resistance. It can only come about after the overwhelming of the lordship – and then legally.

In a *society*, all people can (theoretically) reach all six stages or all three levels. The empirical research conducted by Kohlberg shows that only about 10 per cent of the people reach the ethical level *3*. Kohlberg believed that reaching or passing through all stages (or all levels) is a *universal* possibility in all social formations. He did not see the limits of

lordship and community mentioned above.[2] Negating these limits is popular and the usual wrong thinking of "evolutionarily" orientated science. Again and again, science will recognise (and prove in this manner) in the ontogenesis (development or "evolution" of the individual) the *phylogenesis* (development or "evolution" of the species). And again and again it fails. We all know the tragedy of evolutionary and universal thinking – and Kohlberg (as many other researchers and philosophers) is a prominent victim.

Figure 2: The historical order of social formations



[2] Kohlberg tried to construct a correlation between "kinds of societies" and his "stages" or "levels". He wrote (as re-translated from a German version – the original text was not available): "When the communist movement was established, it lost its orientation towards good fortune and equality of human beings and became a severe stage-four moral, in which loyalty to the communist party became an absolute value" (Kohlberg 1996 [1981], quoted from Garz 1996). We believe that Kohlberg made a false connection between communism and his stages. "Communism" means "lordship"; that is, stage *2* on the "physical" level. We suppose that Kohlberg is wrong, because he interpreted the character of the Communist Party as that of "parents" and not as that of "dictators" of a lordship.

Figure 2 above, demonstrating the historical order of social formations (see the abscissa) community → lordship → society, reveals that people may lose possible individual stages of moral judgement (see the ordinate). In the historical order – unlike the individual order – there is no necessary (and no other possible way for) "moral ascent."

The figure also ties together the order of the three possible *historical social formations* (community → lordship → society, see the abscissa) with the order of the possible *individual stages of moral judgement* inside the three social formations (each "perpendicular", meaning the ordinate). We can see that the step from community to lordship brings a loss of potentially reachable stages or levels of individual moral judgement. Only the step into society opens all individual possibilities of all stages of individual moral judgement.

As we have already mentioned above, you will never observe the step from community to society. Why? The principle that characterises the communities is the custom of solidarity. And the step toward society, which consciously denies this custom of solidarity, is not attractive. Why should one want to lose the custom of solidarity? Therefore, between community and society, the lordship – that abolishes the custom of solidarity – is historically essential. By the way: This is the major problem African people have who want to remain in community; this is also the reason why some theoreticians think that every society (as a continuation of lordship) is a special kind of lordship (Martin 2008); see our above comment on "quasi-societies".

Now the explanatory part is finished: We know – regarding the order of individual and social development – the correspondence and the difference between individual and, so to speak, social (and ethical) moral judgement.

5b. A proposition to redefine Kohlberg's terms: moral psychology, sociology and history

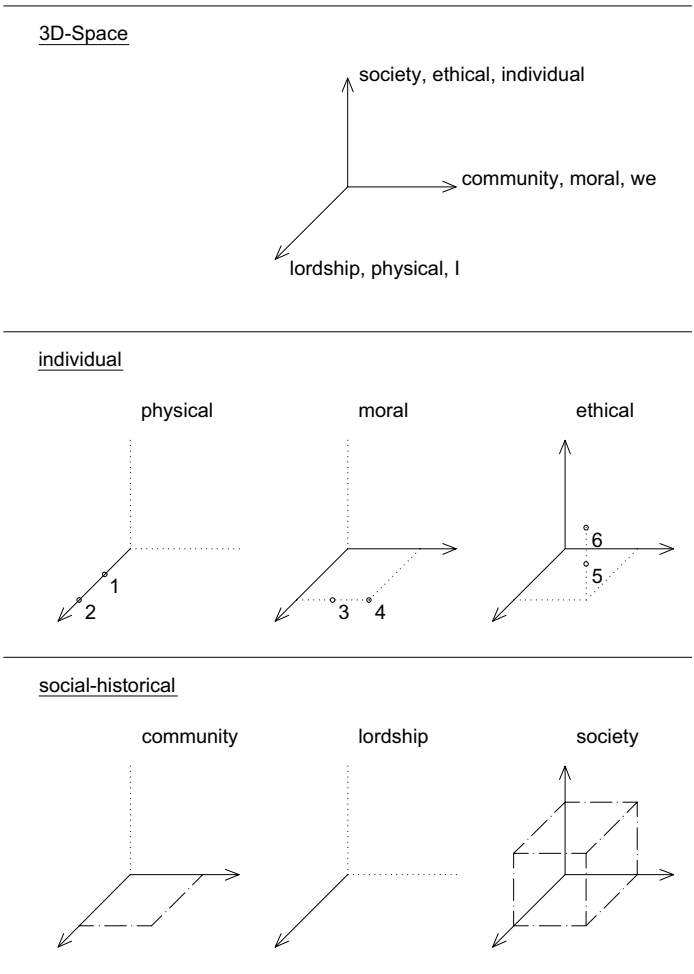
We believe that the system and the terms used by Kohlberg pose two problems. *First*: the model of stages and levels implies a morally "better" status connected with a "higher" stage and a morally "worse" status connected with a "lower" stage. And *second*: there is no evidence that stage *6* really exists. Why?

5b(i). A new model: dimension and attractor instead of level and stage

Often, developmental psychologists use the model of stages. Thus it is clear that nobody can skip a stage. But steps implicate the idea of "higher" and "lower", or morally better and morally worse, so to speak. It should, however, not be a question of "high" or "low" but rather simply a classification of more or less complexity; stages, however, imply that something is lost in a lower stage. We are convinced (see remarks above) that it is more appropriate to use the term "dimension" instead of "level" and to construct a model with dimensions, here with the three dimensions of "lordship/physical", "community/moral" and "society/ethical". Thus, we can construct a space with three dimensions (see Figure 3 below). In this space, all levels become dimensions and all stages become points. Let us name them "attractors". Each individual human being starts his or her life acting or "swinging" around attractor *1* (formerly: stage *1*), which lies on the straight line of dimension *1* (= level *1* / lordship / physical). If human beings swing too strongly, they will suddenly leave (and this is a qualitative jump!) attractor *1* and find a new attractor, namely attractor *2* (formerly: from stage *1* to *2*), which also lies on the straight line of dimension *1*. Now this is the attractor around which they swing.

The next "step" is more difficult, because it implies the creation of a new dimension (= level *2* / community / moral). Now we see a new attractor in the given space. This attractor is to be found on the plane that stretches between the two dimensions *1* and *2*. (This new attractor is the former "stage *3* on level *2*".) The next jump, which is from attractor *3* to attractor *4* (formerly: from stage *3* to *4*) is structurally the same as the one from attractor *1* to *2* ("same dimension"). The jump from attractor *4* to attractor *5* is structurally the same as the one from attractor *2* to *3* ("creating a new dimension"). This "step", again, is more difficult, because it implies the creation of a new – now the third – dimension (= level *3* / society / ethical). Then we see a new attractor in the model space. This attractor is to be found in the space that spreads out from the three dimensions. (This new attractor is the former stage *5* in level *3*".) And now (but see the following remarks on stage *6*), the jump from attractor *5* to *6* is structurally the same as those from attractor *1* to *2* or from attractor *3* to *4* ("same dimension"). Here we must add, or complete, a principle: Normally, one can only jump from an attractor with a low number to one with a higher number and one can only jump one step at a time.

Figure 3[3]: The 3D space of the dimensions lordship/physical/I, community/moral/we and society/ethical/individual and the ideal-typical order of individual development and social-historical development



[3] Lordship means a (possible) space with one dimension for a human being; community means a (possible) space with two dimensions for a member of the community; and society means a (possible) space with three dimensions for an individual. Each stage – from stage *1* to *6* – (in the sense as defined by Kohlberg) here is an attractor; that is, a point in this 3D space.

Thus, we have now left the model of stages and levels and have designed, instead, a new model of dimensions and attractors. But what do we gain with the new model?

With this model, we can describe both the *individual* development of moral judgement and the *historical* way of social formations.

The loss incurred by the historical jump from community to lordship is the loss of dimension *2* (= moral). "Lordship" has only one dimension (= physical). The gain made by the historical jump from lordship to society is that of dimension *3* (ethics) and the fact that you may (not must!) also think and act as you would in a community (dimension *2* / moral) – but you must act ethically. And: This very qualitative jump corresponds with the "creation" of a new dimension (ethical) and the optional reconstruction of a former dimension with a new quality (moral).

Kohlberg and his associated researchers mentioned some difficulties in the description of the observed development of moral judgement in the "stage model". For instance, it was necessary to introduce a stage *4½*. It seems that some of the young people in the western world – when starting their college career – step back from stage *5* to such stage *4½* and, after a period of time, step forward to stage *5* again. But a "stage *4½*" is impossible – isn't it? In the 3D space presented here, while you can point to the attractor (the point of "stage *4½*" in this space), no auxiliary explanation of stage *4½* is given. (This article, however, lacks the room to demonstrate this.)

Now we have learned that the new 3D space model serves to simplify the description and provides new insights.

5b(ii). A new (re)construction of stages 5 and 6 – a theoretical suggestion and a concept for a new research design

Never has Kohlberg observed an individual who had reached "stage *6*". We believe that this owes to the fact that Kohlberg, and with him all philosophers (whom he has studied), did not know (and do not know to date!) what ethics really means (see our argumentation above). They do not know what society, legal law, property (in relation to possession) and – most important – what contracts are. They cannot tell a contract apart from a promise. They do not know what a writ of execution is and means – and so on. Therefore, Kohlberg's nomenclature and the theoretical dis-

tinction between stage *5* and stage *6* are not correct. And what is wrongly defined in theory cannot be found empirically; that is, in reality. As we see it, a new research design with respect to dimension *3* (or level *3*, meaning stages *5* and *6*) must be started. While there is not enough room to discuss this here in detail, some related questions and remarks shall follow.

Ethics is possible without human rights. How would someone from ancient Rome or Greece answer Kohlberg's questions? Where could the attractors in the 3D space (or the stages in Kohlberg's concept) be for these people?

We know that only members of societies can emit money. That means: Only societies have (real) money. The dilemmas that Kohlberg used in his interviews to find the stage of moral judgement empirically tell about problems regarding money – and that applies to the stages lower than *5* (remember: Only societies allow the individuals to reach stage 5 and only societies let money come into the world). Perhaps new dilemmas must be constructed that do not present problems requiring decisions about money.

Furthermore, a design of new dilemmas should be discussed that allows us to find out the difference between stage *5* and stage *6*. We suppose that

> (i) stage *5* is "ethical" without human rights (particular ethics only for the group of real proprietors, so to speak) and
>
> (ii) stage *6* is "ethical" with human rights (ethics for all human beings, so to speak, because every human being has the property of his self).

In a similar way, we can see dimension *2* / moral (level *2*) with

> (iii) stage 3 (as an only particular "agreement with the others") and
>
> (iv) stage 4 (as all members' social "orientation by community" – thinking in the interest of the community and preserving the whole community).

And in a similar way, we can also see dimension *1* / physical (level *1*) with

> (v) stage 1 (as a particular "fee and punishment") and
>
> (vi) stage 2 (as a quasi-social "opportunism" – thinking in the interest of preservation of the lordship to one's own advantage).)

Now we have learned: The new theoretical way of asking (involving dimensions and attractors) entails the necessity for new empirical research on Kohlberg's stages.

5c. A surprise? What ethics does not allow for

No insurer will provide coverage for nuclear power plants. The reason is that – after an accident and the damage incurred – it is impossible to provide the required compensation, because the damage is too great. We see that even on the "legal" side, it is clear that there is no compensation possible – let alone on the natural side. Every insurer knows that. Hence, it is unethical to operate a nuclear power plant, because there is no possibility of *legal insurance* (see above). Any operation of a nuclear power plant is unconstitutional. Even if the majority of the society decides to allow nuclear power plants to be operated, such operation is nevertheless unethical and unconstitutional. Such a decision would mean the end of the society and the relapse (historically never seen!) into community (with its arbitrariness of the majority – see above) or may even mean – and we are convinced that it is – the regression to lordship; that is, to dictatorship (we must be careful and vigilant with respect to people propagating nuclear power).

Organ transplantation is unethical. The first, but less important, reason is that you must perform an act of violence to, or kill, a human being in order to remove the organ. The second, and most important, reason is: *No person has permission to have property of another person – and, consequently, of the organs of another person.* This "no permission" is the designing principle underlying human rights.

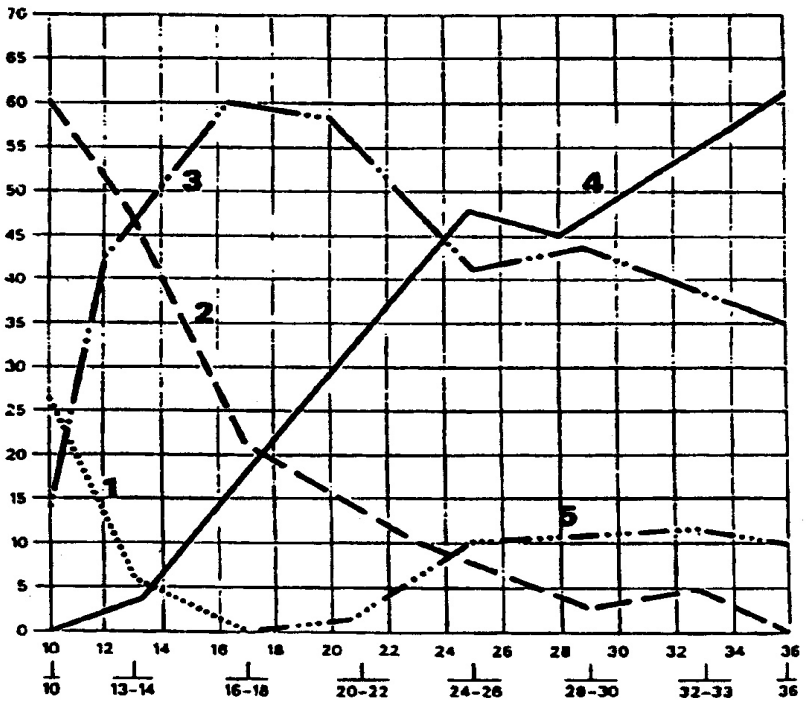
The death penalty is not allowed, because it is irreversible and therefore without legal insurance; in the event of an error of justice, it is impossible to find compensation. Therefore: The death penalty cannot be, nor ever become, legal, and at no time has it been legal.

Allowing organ transplantation, nuclear power plants or the death penalty is the decision of a community or a lordship – never that of a society. Now we have learned: The "insurance" determines whether or not an action is ethical. Operating nuclear power plants (because of the impossibility to provide insurance coverage; that is, to achieve reversibility in the sense of property), organ transplantation and the death penalty are

unethical, because there is no insurance; they are irreversible in the sense of property.

5d. Why can only a minority of people in societies understand what money is?

Figure 4: The average percentage of moral judgements (numbered from 1 to 5), plotted as a function of the age class of the persons tested[4]



Now we shall bring together three results of our research as exemplified in Figure 4 above.

[4] Source: Garz 1996, 64. One can see that at the age of 28, 43% have reached stage *3* – 45% stage *4* – and 10% stage *5*. At the age of 36, only 10% have reached stage *5* – and, consequently, have the possibility to understand what money is (see text body for more details).

(i) Only members of societies can issue (real) money, because only in a society can one act legally, meaning to conclude credit contracts and the like. Credit contracts with money issuing creditors are the basis of money. Particularly the execution of contracts must be accepted as normal and all right.

(ii) Only an individual who has understood what society is can understand what money (theoretically) is. *All individuals in stages 1 to 4* (or attractor *1* to *4*) *can principally not understand what money (theoretically) is*. Only individuals in stages *5* and *6* have the ability to understand what money is. (Note: this only applies to the *possibility* – it is not certain that they actually make an effort to understand money).

(iii) *Only 10 per cent of the members of any society reach, as individuals, stage 5* (see Figure 4 above). This is an empirical result of the research conducted by Kohlberg. The remaining 90 per cent remain on lower stages and can principally not understand what money (theoretically) is, despite the fact that they are members of a society. Human beings living in lordship or community have principally no chance to understand it.

The empirical result is: at best a maximum of 10 per cent of the members of a society can (but do not have to) understand what money (theoretically) is.

And we must add: all people must pass, in the course of their lives, the stages from *1* to maximally *5* – or *6*, in a society. In their childhood, they become acquainted with money and they must interpret it as medium of barter; there is no other chance. And only relatively late in life, they will be given the possibility to modify this interpretation. But why should they do so? You can become a millionaire or a professor of economics or the chief jurist or president of the European Central Bank without a correct understanding of money. The system is so stable (until today) that it works legally and without even its governors really understanding it. But things get dangerous when these "conventional" people make a reform of the laws concerning the emission of money: Then, such unawareness becomes obvious.

5e. The Kohlberg dilemma is our dilemma

The author of this essay is a teacher of ethics. As such, I have learned (empirically) that a maximum of 10 per cent of my students can understand what I teach: ethics. At the beginning of my lecturing it came as a surprise to me that in my weekend lecture (which I teach each semester) with the title "Was ist Recht? Juristische und ethische Argumente" (What is legal law? Legal and ethical arguments), normally only one or two out of 20 students could understand me – and sometimes nobody could! You see: 10 per cent or less is normal. At first, I thought I was a very bad teacher. I can observe a similar situation in my lecture "Was ist Geld?" (What is money?). Normally, it takes 70 per cent of the time (about 10 lessons of 2 hours each) until the first students really begin to understand ("maturing takes time"). Some students never did understand – or forgot what they had understood – of which I became aware when speaking to some of my former students.

Kohlberg had similar experiences. He worked as a teacher to prove that it is possible to teach morals and ethics. And he was frustrated. We know why – and Kohlberg knew, too. Students, and people in general, must come to maturity. And "maturity" is not easy to teach. A final remark: Often, researchers criticise Kohlberg's theory – but in the wrong manner. Why is it wrong? We learned that these researchers have reached (only and maximally) stage *4* (see Edelstein and Nunner-Winkler 1986 and 2000). They had not yet reached the maturity required to really criticise! And: The people expressing such criticism say that Kohlberg is arrogant. But he is not arrogant: He is just in an awful dilemma.

References

Edelstein, W., and G. Nunner-Winkler (editors) (1986). *Zur Bestimmung der Moral,* Frankfurt am Main: Suhrkamp.

Edelstein, W., and G. Nunner-Winkler (editors) (2000). *Moral im sozialen Kontext*. Frankfurt am Main: Suhrkamp.

Garz, D. (1996). *Lawrence Kohlberg: Zur Einführung*. Hamburg: Junius.

Heidbrink, H. (1992). *Gerechtigkeit: Eine Einführung in die Moralpsychologie*. München: Quintessenz-Verlag.

Heinsohn, G., and O. Steiger (2006 [1996]). *Eigentum, Zins, Geld. Ungelöste Rätsel der Wirtschaftswissenschaft*. Reinbek bei Hamburg: Rowohlt. 4th, corrected and reset edition, Marburg: Metropolis.

Kohlberg, L. (1996 [1981]). *Essays on Moral Development – Volume 1: The Philosophy of Moral Development*. New York: Harper and Row. Quoted from the German translation *Die Psychologie der Moralentwicklung*. Frankfurt am Main: Suhrkamp.

Martin, P. C. (2008). "Power, the State, and the Institution of Property." In *this volume*.

Niemitz, H.-U. (2000). "Das Konzept 'Eigentum' und seine Rolle in der Diskussion um Chronologie, Evolutionismus, Ethik, Recht und Gesellschaftsvertrag." *Zeitensprünge* (Gräfeling), 2(3), pp. 318-338.

Niemitz, H.-U., (2002). "Warum Zahlungsmittel nicht immer Geld sind – oder warum es sich für Informatiker lohnt, in Schuldverträgen zu denken." In *Von E-Learning bis E-Payment: Das Internet als sicherer Marktplatz* (LIT'02), edited by K. P. Jantke, W. S. Wittig and J. Herrman, pp. 37-44. Leipzig: infix.

Niemitz, H.-U. (2003) "Warum wo beim elektronischen Handel mit virtuellen Gütern die Schwachstelle ist." In *Von E-Learning bis E-Payment: Das Internet als sicherer Marktplatz.* (LIT'03), edited by K. P. Jantke, W. S. Wittig and J. Herrmann, pp. 99-110. Leipzig: infix.

Niemitz, H.-U. (2004). "Die undefinierten Kategorien Eigentum und Besitz und ihre Konsequenzen für die Internetökonomie." In *Von E-Learning bis E-Payment 2004: Das Internet als sicherer Marktplatz* (LIT'04), edited by K. P. Fähnrich, K. P. Jantke and W. S. Wittig, pp. 180-189. Berlin: Aka.