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## Comment on Robert Frank's 'A Theory of Moral Sentiments'

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"Theory of Moral Sentiments"*

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Modern economic theory developed through the study of competitive markets in which there are prices and quantities, but not people or organizations. In place of people, there are perfectly rational decision makers who take market prices as given and respond to them. In place of organizations there are production functions. In recent years price theory has been supplemented by game theory, which puts people and organizations back into the science. In game theory, each player decides what to do in the knowledge that other people are making the same decision and that their choices will jointly determine everyone's payoffs. Under these conditions, people have to form strategies that anticipate the reaction of other people. Organizations provide a payoff structure in which such interactions take place. "Thought is biology," an ethologist said to me. In the same spirit, an economist would say: "Social interaction is game theory."

Game theory brings economics closer to the other social sciences, as shown in Frank's chapter in this book. A player in a game can frequently gain an advantage by making a commitment that restricts his own freedom. The standard example is the general who burns the bridges behind his advancing army in order to make retreat impossible. Commitments can be advantageous in at least two distinct ways. First, in a bargaining game, a commitment precludes the party who makes it from compromising further, so the responsibility for additional concessions devolves upon others. Second, in a cooperative game, a commitment makes cooperation more secure by imposing a prohibitive cost upon anyone who withdraws from the agreement.

Frank deftly shows some implications of this idea for personality and morality. The propensity to emotion constitutes a commitment because a person seized by a passion is compelled to act upon it. Thus a person's emotion may force others to compromise. Alternatively, an emotional commitment to an organization may overcome obstacles to cooperation. The cultivation of good character also constitutes commitment. To illustrate, a person who cultivates truthfulness may find lying difficult. The fact that others recognize this trait of character, or learn of it through reputation, may make others willing to enter into forms of cooperation with the truthful person that would be too risky otherwise.

In games, much depends upon the probability of making a mistake when observing commitments by others. If the probability of error were nil, so that

commitments could always be observed, Prisoner's Dilemma games would always have a cooperative solution. If the probability of error were very high, so that believable signals of commitment were impossible, Prisoner's Dilemma games would always have a noncooperative solution. If the probability of error is low, mixed strategies will be observed in which cooperation is the usual outcome and noncooperation is the occasional outcome.

The observation of another's emotion and character occurs with some probability of error. Dissimulation is possible but difficult for most people. Consequently, commitment can be signaled with a modest probability of error. If emotion and character were opaque, there would be a lot less cooperation. If emotion and character were transparent, there would be a lot more cooperation. Because emotion and character are translucent, there is a mixture of cooperation and cheating. This is Frank's explanation of why games have mixed solutions in which cooperation depends upon commitment through emotion and character. And Frank's explanation is a game theorist's understanding of the human condition.

To this one can add that the game theorist's understanding of the human condition is also that of the evolutionary biologist. At the same time, however, the evolutionary perspective also stresses the characteristically *social* nature of the norms or expectations against which a specific event or behavior is compared. Although chimpanzees typically exhibit the roots of this process in monitoring reciprocities between pairs of individuals, in some cases the bystander plays a central role (de Waal, Chapter 11); for humans, rules, norms, and especially laws—in their very verbal or linguistic formulation—are addressed to the bystander as well as to the participants in any conflict (Fikentscher, Chapter 6; Strahlendorf, Chapter 7).

The vast literature using game theoretical approaches to cooperation and altruism has often, though not always, assumed that a dyadic situation such as the Prisoner's Dilemma is the basic model of human social life (e.g., Axelrod, 1984). Without underestimating the importance of reciprocity as the foundation of justice, evolutionary theory suggests that the elemental situation is essentially a triad. This is particularly important because only with a third party or bystander is it possible to extend cooperation through the mechanisms of indirect reciprocity (Masters, chapter 4). Insofar as the legal system intervenes to regulate conflict over violations of rules, moreover, this triadic relationship underlies the role of the sense of justice in modern states and political systems.

This is a point of great importance, according to E. Donald Elliott of Yale Law School, who had participated in the planning of the Fourth Monterey Dunes Conference, but was prevented from attending by his nomination as



general counsel to the United States Environmental Protection Agency. Professor Elliott's memorandum to the participants nicely states the importance of moving beyond a simple dyad as the underlying social relationship entailed in the human sense of justice as it relates to legal experience.

### *The Logic of the Triad*

E. Donald Elliott (Yale Law School)

The basic point that I would try to make during the discussions if I were there is the importance of the "logic of the triad" for understanding justice, at least when the latter term is used in its modern, legal sense.

Philosophical concepts of "justice" have been invented to provide systematic theories explaining when we feel a sense of *injustice*. Over the last thousand years, too much attention has been paid to the philosophical concept of justice, with relatively little progress having been made. A better strategy is to focus attention on the *empirical* question of why people feel injustice when they see others receiving certain types of treatment. This is the provocative argument of Harvard government professor Judith Shklar in her recent Storrs lecture,<sup>2</sup> which I recommend to all of you. Shklar's argument focuses our attention on the *sense of injustice* as the basic ethological "building block" (in Helmrich's sense, Chapter 10) for the legal concept of justice.

At least if we are interested in understanding what is meant by the concepts of justice and injustice in the context of modern societies with governments and legal systems, I believe that it is crucial to focus not on two-party interactions (as does McGuire, Chapter 2), but on the role of third parties—how others in the social group perceive and respond to events or disputes in which they themselves are not direct participants.<sup>3</sup> This is a very old idea—traceable back to the role of the chorus (representing the conscience of the community) in Sophocles, and Antiphon the Sophist's remark that justice is what we do when someone is watching—but it has recently been rediscovered by a number of modern authors. Political scientist Martin Shapiro, in his provocative book *Courts* (1978), studies the process of judging in three or four disparate cultures and identifies what he calls the "logic of the triad" as a crucial feature common to all of them. The basic idea is that a neutral, third party who represents the community's shared sense of justice serves to mediate/resolve disputes. How a third party would react is also the cornerstone for several influential modern philosophical theories of justice,