SEMANTICS, LAW, AND "PRIESTLY-MINDED MEN" *

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The Language of Social Agreement

THE BACKGROUNDS of semantics, the original purpose of which was the clarification of meanings, were in science. If I may make a complicated story as simple as possible, two, and only two, kinds of statements were in the early stages of semantics acknowledged to be meaningful. The first is the naming statement, such as, "Mehitabel and Tobermory are cats," and "A bachelor is an unmarried man." ("Unmarried men may also be called bachelors.") Statements of this kind are about language, in that they instruct us what names to use for what situations, or as equivalents for other words.

The second kind of statement acknowledged to be meaningful is the pointing statement—one which describes any kind of situation that may be pointed to: "The car is in the garage." Such a statement stands for a state of affairs in the observable world, and we may, if we wish, go out to the garage to see if the statement is or is not true. Statements of scientific fact, as well as all other purportedly factual statements, belong in this category. They are statements that have, in the language of semantics, "referents" in external reality.

The early semanticists (including the so-called "logical positivists") threw all remaining kinds of statements—metaphysical statements, lyrical poetry, value judgments, hortative utterances, and no doubt most of law and jurisprudence—into a vast kitchen-midden generously labelled "emotive utterances"

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(Ogden and Richards), "pseudo-propositions" (the logical positivists), or, less technically, "nonsense."

There was a reason for this dogmatism and ruthlessness. The early semanticists—especially the logical positivists—were interested strictly in cleaning up the language of science, in which nonreferential terms mistakenly assumed to be referential can (and do) cause needless confusion.

> Thus we find a great similarity between metaphysics and lyrics. But there is one decisive difference between them. Both have no representative function, no theoretical content. A metaphysical proposition, however—as, distinguished from a lyrical verse—seems to have some, and by this not only is the reader deceived, but the metaphysician himself. . . . The danger lies in the deceptive character of metaphysics; it gives the illusion of knowledge without actually giving any knowledge.[1]

In thus laying down the conditions of meaningfulness in scientific discourse, the logical positivists introduced needed rigor into scientific thought. But they did not worry about the special kinds of meaning in, for example, poetic statements. Nor did they concern themselves with ethical statements or the language of law. These problems they left, if they thought about them at all, for others to deal with.

If the meaning of naming statements ("analytic propositions") resides in the rules of language, and if the meaning of pointing statements ("synthetic propositions") resides in the external world, the meaning of "emotive utterances" or "pseudo-propositions" can be said to lie in the nervous system of the speaker or hearer. This is obviously so in the case of a simple "lyrical" statement such as "Ouch!"—which simply expresses an internal condition. It is equally so in the somewhat more complex statement, "Life is essentially tragic," even if the theme is elaborated through a volume or two of philosophizing. But such "lyrical" utterances by no means constitute the entire class of statements whose meanings can be said to lie in the nervous system of the speaker. The threefold

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[1] Rudolf Carnap, *Philosophy and Logical Syntax* (London, 1935), pp. 30-31.

classification of uses of language into naming statements, pointing statements, and emotive statements—with the implication that emotive statements are not capable of being seriously discussed—omits much that a serious student of meaning must take into consideration. For our present purposes, the most important omission is a consideration of the language of social agreement.

At some time around the age of three or four, children learn to react meaningfully to expressions such as "It's my turn . . . it's Billy's turn next." "My turn" is something that cannot be pointed to—its meaning is not "referential" in the strictly positivist sense—nor is it merely "lyrical." Nevertheless, the meaning of the expression does lie within the nervous systems of the speaker and hearer. It is an elementary form of social agreement. It says something both about the present and the future. With the achievement of the child's ability to react meaningfully to "my turn" and "Billy's turn," there is rejoicing in the heart of his parent or play-school teacher—for the child has taken a significant step towards being socialized —which is to say, human.

Also at these early stages of life, the child learns to react acceptably to such expressions as "naughty," "good manners," "bad manners," "not fair," and so on. These are, of course, judgmental statements the meanings of which are in the nervous system of the parent who utters them—"I approve (disapprove) of what you are doing." At first the child simply obeys—he has to. But sooner or later he begins (as the parent says) to "understand"—which means that the child begins to share the parent's approval and disapproval of given courses of action. The parent's judgments have been, as they say in psychoanalysis, "introjected"—that is, the meaning of such terms as "naughty" is now in the nervous system of the child as well as that of the parent. Most of the bringing up of children (to say nothing of the process of "making good citizens") is the process of getting the young to hold such value-judgments in common with their elders. These commonly held value-judgments are another form of social agreement.

THE LANGUAGE of law, then, is the most formidable and most formalized portion of that larger collection of linguistic events which we have here termed the language of social agreement. But in the very act of saying "language of social agreement," it appears to me that we distort the facts, since without the language there could not be the kind of social agreement that exists at the human level. The difference between use and ownership, between cohabitation and marriage, between a killing and a murder, is a linguistic product. "Cohabitation" says something about the present, and perhaps too about the past; but it makes no commitments about the future. The very fact that commitments can be made rests upon our ability to talk—our ability to make abstractions and symbolizations about the future. "Sirloin next Sunday" is meaningless to a dog, since to a dog a sign has no significance unless its referent is present or immediately forthcoming. But human beings formulate goals for "next Sunday," for "thirty days after date," "until death do us part," or for even longer periods—thereby imposing some kind of order and predictability upon behavior. Social agreements, which are commitments about the future, statements of intent, are made in language—or they are not made at all. As Aldous Huxley writes:

> The existence of language permits human beings to behave with a degree of purposefulness, perseverance and consistency unknown among the other mammals and comparable only to the purposefulness, perseverance and consistency of insects acting under the compulsive force of instinct. Every instant in the life, say, of a cat or a monkey tends to be irrelevant to every other instant. Such creatures are the victims of their moods. Each impulse as it makes itself felt carries the animal away completely. Thus, the urge to fight will suddenly be interrupted by the urge to eat; the all absorbing passion of love will be displaced in the twinkling of an eye by a no less absorbing passion to search for fleas. The consistency of human behaviour, such as it is, is due entirely to the fact that men have formulated their desires, and subsequently rationalized them, in terms of words. . . .

> If it were not for the descriptive and justificatory words,
> with which we bind our days together, we should live like
> the animals in a series of discrete and separate spurts of
> impulse.[2]

Law is the mighty collective effort made by human beings
to inhibit the "discrete and separate spurts of impulse" and
to organize in their place that degree of order, uniformity, and
predictability of behavior that makes society possible.

There is a tremendous difference, therefore, between the
"predictability" of science and that of law. What science
predicts ("Ice will melt at temperatures above 32° F.")
comes true independent of our volition. What law predicts
("Persons convicted of murder will be hanged") comes true
because we are resolved to do what we said we would do.
At the basis of law is our own resolve—our "agreement," our
"willingness," our "intent."

As the general semanticist, Alfred Korzybski, said, "Hu-
man beings are a symbolic class of life." Among the many
things we do with our symbols is to organize not only our
past experiences and our present perceptions, but also our
future behavior. Language is not only descriptive, in the sense
of supplying verbal "maps" of nonverbal "territories." It is
also prescriptive or directive in the sense of supplying us with
verbal "blueprints" of nonverbal "territories" which we in-
tend, through our own efforts, to bring into being. The lan-
guage of law is of necessity, therefore, to a large degree
hortatory. In addition to prescribing certain forms of behavior,
it must also create the intent, the resolve, to follow the pre-
scription. The judge is to a large degree a preacher. The trial
is to a large degree a morality play.

The Pitfalls of Hortatory Utterances

HORTATORY UTTERANCES are almost invariably stated at
a higher level of abstraction and with a greater degree
of dogmatism than the immediate situation calls for. The
reasons for this are partly rhetorical: to get attention and to
impress the directive firmly on the hearer's mind. The rhetoric

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[2] Huxley, *Words and Their Meanings* (Los Angeles, 1940), p. 14.

in turn is dictated by the human need, in both the speaker and the hearer, for apparent "purposefulness, perseverance and consistency" in human behavior.

To reduce this matter to a simple example, let us suppose that the purpose of a given hortative utterance is to get Junior to eat his peas. If the simple demand, "Junior, eat your peas," does not work, one proceeds immediately to a higher level of abstraction, "Vegetables are good for you," and "All growing boys should get plenty of vegetables." In other words, my demand that Junior eat his peas is asserted to be not merely a passing whim, but the particularization of a general nutritive principle. If Junior still leaves his peas untouched, one appeals to history: "Your grandfather was a vegetarian, and he lived to the age of ninety-nine," and "Sailors in the old sailing ships used to die of scurvy because they didn't get enough fresh vegetables." From here on, it is but a short jump to say that God intended that peas be eaten and that fathers be obeyed.

But the great principles we enunciate on one day prove to be extremely inconvenient on another day, as inevitably they must, since they stated so much more than was necessary to begin with. So, as father himself leaves untouched the carrot-and-raisin salad a few days later, he can say if challenged, "What I was arguing for all along is not vegetables as such, but for a balanced diet—and it is possible to achieve balance without this particular salad. A man can't keep going on rabbit food. Did you know that Vilhjalmur Stefansson proved that one can live healthily and well on an all-meat diet? Do you know of the millions in Asia that are suffering from protein deficiency because they get nothing but vegetables to eat?" Thus do fathers keep all bases covered and strive to maintain the fiction of infallible wisdom.

If the layman regards the law with a mixture of exaggerated respect and exaggerated distrust, is it not because lawyers and judges perform in a spectacular and awe-inspiring way what the rest of us do daily? Judges, when they change the interpretation of the Constitution, are almost always at considerable pains to assert that their new interpretation is what the Constitution really meant all along. If we, as laymen,

approve of the change, we agree that this is indeed what the Constitution meant all along. If we disapprove the change, we are furious at the temerity of judges who take it upon themselves to "change the Constitution."

The hortatory habit of mind, if too uncritically indulged whether by laymen or by jurists, results in a proclivity for claiming for one's exhortations a longer-lasting validity and a wider generality of applicability than any immediate situation would warrant.

Priestly-Minded Men (and Women)

SUCH REMARKS as, "The law is what the judge says it is," and Mr. Dooley's, "No matter whether th' constitution follows th' flag or not, th' Supreme Coort follows th' iliction returns," are usually made with sarcastic or cynical intent. This so because it is widely assumed—by lawyers as well as by laymen—that "the law" is, or should be, something eternal and changeless, which undergoes attrition only because judges and legislatures, like other men, are afflicted with something called "human nature." When it is pointed out that laws do change with every session of the legislature, the reply is usually to the effect that of course minor adjustments in particular statutes and regulations are constantly being made, but that the "principles" remain unchanged. It is this assumption of a transcendental, changeless "law" that was mockingly described by Justice Holmes as "a brooding omnipresence in the sky."

The belief, implicit or explicit, in such brooding omnipresence is an almost inevitable product, it appears to me, of the hortatory habit of mind, which involves, as I have argued, frequent recourse to extremely high levels of abstraction. Impelled simultaneously by a need to give generality to one's directives and a need to be consistent, we dream up a heaven of abstract principles—principles which are thought of as dwelling together in perfect and harmonious logical order. This heavenly order gives moral sanction to the earthly, practical decisions arrived at. Jerome Frank, gives the following description of such a transcendental system:

And this Bealish Law can approximate perfection. It can have, to use Beale's phrase, "purity of doctrine," free from "warping by bad precedent." It can be rid of disturbing novelties and aberrations. It can be a harmonious closed system of principles, not marred by discontinuities, a system from which correct rules can be infallibly and unhesitatingly worked out. In this realm of pure Law, the answer to a particular problem can always be correct. In the sub-lunar world in which the courts dwell, mistakes will happen. But such mistakes are not Law. For such apparent law is not real. Mistaken law is not "truly law," even if the courts stubbornly act as if it were.

In short, real law, for Beale, is superhuman.[3]

However, Thurman Arnold, in his brilliant and amusing work, *The Symbols of Government* (New Haven, Conn., 1935), states that an examination of this supposedly harmonious system, as enunciated in the literature of jurisprudence, reveals neither harmony nor system, but merely a restatement in a more difficult and abstract vocabulary of the contradictions and bewilderments of daily living. The jurists and scholars who devote themselves to the contemplation of this supposed divine order Mr. Arnold characterizes as "priestly-minded men."

Being myself a member of a profession which is to a large degree hortatory in its functions—I am a teacher of English—I repeatedly find in my colleagues both the tendencies described, although I should hasten to add that I do not find them as often today I used to. First, there is the ideal of "good English" towards which it is the duty of the English teacher constantly to goad his pupils. This results in the creation of a heavenly Never-Never Land of people who speak nothing but "good English." To justify the nagging of pupils and the red-pencilling of their written themes, all sorts of abstract grammatical and rhetorical principles are appealed to. These principles often contradict each other and are habitually ignored by working writers, speakers, and journalists—especially the most effective ones; nevertheless they are believed

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[3] Frank, *Law and the Modern Mind* (New York, 1930), p. 54.

to have a profoundly salutary effect. (It is difficult to imagine a linguistic principle to justify the correct reading of the sentence, "There was a tear in his shirt and a tear in his eye," although teachers make constant appeals to consistency. Furthermore, nobody ever takes the double negative of "I ain't got no money" to mean the affirmative "I have money," but the reason still given for avoiding the double negative is that it constitutes an affirmative.)

Concerned with improvement and uplift, and therefore with the celestial mechanics of the legal heavens, the "priestly-minded man," according to Mr. Arnold, tends to ignore as inconsequential and irrelevant much that happens on earth—in magistrates' courts and other such unscholarly places, because, with his habits of mind, he "cannot look at the world as it is without a shudder." The reader will no doubt recall from his own secondary school experience the teacher of English to whom a like description might have been applied: concerned with the improvement and uplift of student English and therefore with the grammatical terminology and rules of an unrealistically defined "good English," the priestly-minded English teacher was the poorest kind of observer of the actualities of language, because she (it was often a she) could not listen to American English as it is spoken without a shudder. Such English teachers, instead of taking notes (like H. L. Mencken) on what was happening, simply cringed at the way the English language was daily being "abused."

The differences among the regional and class dialects of the United States, the actualities of usage and vocabulary-development among farmers, auto workers, disk-jockeys, radiation laboratory technicians, jazz musicians, and newspaper columnists—these were not and in some places still are not considered fit objects of study in departments of English composition, although nine-tenths of the practical communication of the nation is negotiated through just such dialects. The high-priests of linguistic etiquette never did bother to answer Mark Twain's famous question (or was it Clarence Darrow's?), "When you learn good English, who are you going to talk it to?" Until the fairly recent emergence of a descriptive lin-

guistic science and a descriptive American grammar, the priestly-minded English teachers had the field pretty much to themselves.

The Extensional Orientation

IN THE TERMINOLOGY of the general semantics of Alfred Korzybski, the attitude described by Mr. Arnold as "priestly-mindedness" and which I have called the "hortatory habit of mind" are both instances of "intensional orientation." *An intensional orientation is the habit of orienting oneself by means of words,* to the more or less complete exclusion of a consideration of what the words stand for. It is orientation in terms of definitions, prescriptions, categories, aristotelian "essences." In the apt phrase of Wendell Johnson, it is "letting your language do your thinking for you." [4]

What Korzybski calls the "extensional orientation" is, in contrast, *the habit of orienting oneself in terms of the non-verbal realities* for which words presumably stand, to which words are often an imperfect guide, and from which we are too often shielded by verbal smoke-screens. It is an orientation of fact-mindedness, as opposed to word-mindedness. Korzybski proposed his general semantics as a discipline in extensional orientation.[5] His emphasis was on education and mental hygiene, but he regarded his "epistemological re-education" as a generalization of tendencies common to all creative modern thought, in the social as well as physical sciences, in intellectual life no less than in the problems of daily living.

These common tendencies and their parallels in the "functional approach" of the "legal realists" (or, if you will, the "legal positivists"—their intellectual genealogy goes back at least to Jeremy Bentham) have been succinctly described by Felix S. Cohen:

In physics, the functional or operational method is an assault upon such supernatural concepts as absolute space and absolute time. . . . Modern "functional grammar" is an assault upon grammatical theories and

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[4] Johnson, *People in Quandaries* (New York, 1946).

[5] *Science and Sanity,* 4th ed. (Lakeville, Conn., 1958).

distinctions which, as applied to the English language, simply have no verifiable significance. . . . And passing to the field of art, we find that functional architecture is likewise a repudiation of outworn symbols and functionless forms that have no meaning—hollow marble pillars that do not support, fake buttresses, and false fronts.

So, too, in law. Our legal system is filled with supernatural concepts, that is to say, concepts which cannot be defined in terms of experience, and from which all sorts of empirical decisions are supposed to flow. Against these unverifiable concepts modern jurisprudence presents an ultimatum. Any word that cannot pay up in the currency of fact, upon demand, is to be declared bankrupt, and we are to have no more dealings with it.[6]

THIS OPPOSITION to verbalism unchecked by fact or experience is by no means the only respect in which the "semantics movement," from Ogden and Richards' "finding the referent," to P.W. Bridgman's "operationalism," to Korzybski's "extensional orientation," parallels the thinking of the functionalist school of law. A few other respects in which semantics and legal functionalism run parallel to and reinforce each other may be enumerated. In both there is the determination to eliminate metaphysics. In both there is a sharp awareness of the difference between questions of fact and questions of language, and therefore a determination not to fall into linguistic traps. In both there is awareness of the processes of abstraction and symbolization by means of which human beings organize their perceptions and their knowledge. Consequently in both there is profound awareness of the deceptive character of any set of abstractions considered apart from the complex of events from which the abstractions were made. In this respect, Thurman Arnold's derisive remarks about our failure to understand society because we persist in studying it in separate compartments called "law," "economics," "sociology," "political science," etc., fit in exactly with Korzybski's insistence upon the study of man as an "organism-as-a-whole-in-an-

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[6] Cohen, "Transcendental Nonsense and the Functional Approach," *Columbia Law Review*, XXXV (1935), 809.

environment," and his insistence upon the study of human events in their full biological, ecological, psychological, economic, political, and cultural complexity.

But perhaps the most important respect in which the semanticists and the legal functionalists see eye-to-eye is their acceptance of the world-as-process, and therefore of society-as-process. According to, for example, the grammatical fundamentalists, to accept the fact of change in grammar and usage is to condone, if not to invite, linguistic anarchy. According to legal fundamentalists, admission of the possibility of change in "the law" is regarded as equally threatening to the social order. The semanticist, the functional grammarian, and the legal functionalist appear to be alike in their rejection of absolutes, and in their confidence that permanence and change can be reconciled in a dynamic concept of order.

What is central to the views of order held by the legal fundamentalists and the functionalists is that they arise from contrasting sets of assumptions about language-fact relationships. Of the former, Jerome Frank writes:

> Legal Absolutism, then, is word-worship? A suggestive hypothesis. Particularly so when we compare the legal Absolutists with another group of persons to whom the abstract term is well-nigh divine—the metaphysical reasoners of whom Plato is the arch-type. Plato saw that beautiful things become corrupted or die, that men who seem noble in character do evil deeds. The evanescence of values was painful to him. How make them permanent? Plato found an ingenious answer: The "Beautiful" endures even when beautiful roses wither or beautiful youths become old and ugly. The "Good" remains good when good men grow wicked. Such terms are the names of imperishable entities. . . . These universals are stable; they are therefore the Real. Thus Plato found relief from unbearable chance and change in the stable meaning of words; thus, by fooling himself with words, he reached "the region of purity, eternity, immortality and unchangeableness" at which he aimed, finding it only in the most abstract. "Abstraction was the Jacob's ladder by which the philosopher ascended to certainty. The further he was

from the facts, the nearer he thought himself to be to the truth." [7]

In contrast to such a Platonic view is that held by such a modern British scholar as Glanville Williams:

> The view of the semanticist may perhaps be stated as follows. All universals are arrived at by a process of abstraction. . . . Abstraction may be defined as the imaginative selection of some one characteristic of a complex situation so that it may be attended to in isolation. . . . Abstraction is, in short, the perception of similarity in spite of differences.
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> The importance of abstraction in our thinking cannot be stressed too much. "Without abstraction there can be no recognition of similarity; without the recognition of similarity there can be no advance in knowledge" (Stebbings). But the process has its dangers. The danger is particularly present when we objectify ("hypostatize") our abstractions. As a matter of linguistic convenience we are accustomed to hypostatize words expressing qualities or properties, thus speaking of (say) "justice" or "redness" as though these things were part of the stuff of nature. But semantically there is no difference between the adjectives "just" and "red" and the nouns "justice" and "redness"; the difference is only in grammatical form. Qualities like these are not to be found by themselves anywhere. . . . To speak of redness apart from red things is like speaking of the grin without the Cheshire cat.[8]

IF, THEN, language is a set of abstractions, constructed according to the conventions of one's tongue and modified according to changing events and changing needs, the fact of change in the meanings and interpretations of words, from context to context and over the course of time, need not be contemplated with a shudder. Change is simply a fact. Novelty is also a fact. And the inability of human beings to agree on the applicability of old abstractions to new situations is

[7] Frank, pp. 58-59.

[8] Williams, "Language and the Law," *Law Quarterly Review*, LI (1945), 82-83.

neither to be wondered at nor deplored. In a way, what human beings are constantly trying to do is to describe the Battle of Britain in Anglo-Saxon—which means that the battle is distorted because of the shortcomings of language, or that the language is stretched and distorted and given novel meanings because of the demands of the event. As Glanville Williams further writes:

> I have already pointed a number of legal morals in the course of this section [on types of uncertainty in legal terminology], but some general conclusions of legal interest remain to be drawn.
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> (1) In the first place, the theory here advanced destroys completely and forever the illusion that the law can be completely certain. Since the law has to be expressed in words, and words have a penumbra of uncertainty, marginal cases are bound to occur. Certainty in law is thus seen to be a matter of degree. (2) Correlatively, the theory destroys the illusion that the function of the judge is simply to administer the law. If marginal cases must occur, the function of the judge in adjudicating upon them must be legislative. The distinction between the mechanical administration of fixed rules and free judicial discretion is thus a matter of degree, not the sharp distinction that it is sometimes assumed to be.[9]

Among present-day teachers of English—at least those who have been trained in modern linguistic science—it is believed that accurate knowledge of the facts of current usage in different social classes, on different social occasions, among different occupational groups, and in different areas of the country, and knowledge of the processes of linguistic change are essential if one is to develop in his students the ability to write and speak well. The emphasis in instruction is not upon authoritarian rules and principles, but upon the development of curiosity and habits of accurate observation of language-in-process, whether in the writings of Dickens, at Chamber of Commerce meetings, or in labor-organizing drives. Styles of discourse, whether in scientific papers or in under-

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[9] *Ibid.*, pp. 302-303.

world argot, are studied, and their effectiveness within their social context is noted. Such training in linguistic observation produces students who, instead of being petrified into inarticulateness by stilted notions of "correctness," take delight in the variety and richness of the English language, and seek to cultivate that flexibility of linguistic resources that will enable them to take in stride whatever problems of communication they may encounter.

Just as functional grammarians try to understand how language works, the legal functionalists, if I understand them rightly, try to understand how society works, not through knowledge of law alone, but through acquaintance with the workings of the commercial, industrial, educational, military, political, and other institutions out of whose activities and interplay arise the problems that lawyers must deal with. Competent in the law, yet trained to observe without prejudice what is going on in a changing society, the legal functionalist would make of the law not a body of shibboleths, not an entangling web of verbal taboos, but an increasingly efficient instrument for the orderly negotiation of day-to-day adjustments and accommodations in the relations of individuals and institutions to each other. The sum of these accommodations, made in such a way as to leave in their wake a minimum of dissatisfaction, prevents the building up of those pressures that make orderly change impossible, and creates that combination of stability and flexibility that characterizes every viable society.

In modern mathematics there is a phrase, "invariance under transformation," which I have found increasingly meaningful as I consider the problems of lawyers, English teachers, and all of us in a period of bewildering change. If you draw a figure of intersecting lines and curves on a rubber sheet, then stretch or distort the sheet in different directions, the lengths of the lines will change, the angles at which they meet each other will change, the sizes of enclosed areas will change, but certain relationships among the lines will remain "invariant" despite the many "transformations." The abstracting of what is invariant through many transformations is,