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Kant: The Metaphysical Elements of Justice

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THE METAPHYSICAL ELEMENTS OF JUSTICE. By *Immanuel Kant*. Translated, with an Introduction, by John Ladd. Indianapolis: Bobbs-Merrill. 1965. Pp. 150. \$1.45. (Paperback).

The year 1966 has brought the American people past the mid-way mark in a decade which has been characterized by fundamental and widespread changes in attitudes and reactions to many facets of human action and inaction. Incessant grasping for what lies ahead or what perhaps seems to be only a short distance ahead has traditionally been regarded as one of the basic features of the American psyche. During certain periods in the past with respect to certain spheres of human activity, this characterization of the American people has been looked upon by some individuals as more of a myth than a reality. These persons insisted that the nation was not proceeding swiftly enough toward the attainment of certain worthwhile objectives. American history is replete with examples of individuals who sought to secure basic changes in the pattern of our society speedily. Illustrative of efforts in this direction have been the third party movements¹ and the establishment of communities dedicated to the idea of erecting a utopia within our national boundaries.² However, through the 1920's, demands that the nation head off in an essentially new direction were, for the most part, rejected. Although the century and a half that followed the founding of the nation witnessed numerous alterations in American society and the laying of portions of the foundation upon which new structures could be built, no cleavage with the past was ever so deep and extensive in our nation's development as that which took place after the advent of the Great Depression. The 1960's have reflected

1. See generally NASH, *THIRD PARTIES IN AMERICAN POLITICS* (1959). One of the most significant third parties in American history was the Populist Party. See HICKS, *THE POPULIST REVOLT* (1931). Populism has been viewed as a product of environment. See POLLACK, *POPULIST RESPONSE TO INDUSTRIAL AMERICA* (1962).

2. See generally HERTZLER, *THE HISTORY OF UTOPIAN THOUGHT* (1923); KATEB, *UTOPIA AND ITS ENEMIES* (1963).

responses to long-restrained pushes and pulls—some of which have roots that can be traced back to the first half of the nineteenth century—aimed at effecting changes.

One who is close to events which he undertakes to describe and evaluate in terms of their impact on long-term trends is subject to the danger of over-emphasizing the significance of such events. He is prone to exaggerate the scope of their meaning, for proximity frequently lends an aura of importance to occurrences. A retrospective examination, on the other hand, often has an opposite effect. Acknowledging, therefore, that one writing in 1966 may not successfully elude the aforementioned pit-falls, the following conclusions nonetheless appear to be warranted by the events which have taken place within the last three decades.

In the course of the past thirty years, thought, as well as conduct, has undergone a fundamental shift in emphasis. Desiderata, as well as the means used to attain them, have been substantially changed. Long respected concepts, oftentimes regarded as basic in nature and viewed as determinative of what is "right" and what is "wrong," have been swept away or in some fashion modified. In the face of this shifting emphasis, the incidents of old attitudes and ideas could not remain untouched; restraints imposed upon various sectors of the American society, as well as the protection accorded to others, were battered and punctured in the 1930's. By 1966 the list of shibboleths either laid to rest or partially discarded included: (1) the almost sacrosanct treatment accorded certain activities of the business community, on account of which businessmen enjoyed the right to determine by and for themselves, within the confines of a broad spectrum of right and wrong, how they would conduct their commercial and industrial affairs; (2) the admonition that laissez-faire and the Jeffersonian approach to government insure the attainment of the most desirable form of social, political, and economic structure; (3) the idea that individuals should have the freedom to pursue their own goals by means of any lawful steps believed to be essential, so long as both the benefits of success and the undesirable consequences of failure are accepted; (4) the belief that the interaction of supply and demand, combined with competition and the individual's pursuit of his own self-interest, unfettered by government intervention, is the appropriate regulator of the market place; and (5) the view that, to the extent compulsive powers of government must be invoked, the state rather than the federal government should be entrusted with the job of determining the necessary minimum quantum of governmental activity. Even a passing observation of our contemporary societal format reveals the extent to which each of the foregoing ideas has been altered, if not actually obliterated.

Is there a single attitude, common likeness, similarity of thought, or cohesiveness that one can discern after carefully examining the manifestations of change that have been provided by the new standards of propriety? Has there been a fundamental frame of reference that has played a determinative role in shaping the pattern of responses and events that have taken place since the beginning of Franklin D. Roosevelt's New Deal? At first blush one might, out of hand, unequivocally answer "no"! To insist that a single factor can be utilized by an observer to explain the moving forces underlying the pattern of events of several decades may be looked upon as an indication of the observer's naïveté. But the more one probes what has taken place in the immediate past and is taking place currently in the United States, the greater the probability that he will experience a sensation of having uncovered evidence that the question should be answered with an equivocal "yes." The more one digs, the more one scrutinizes, the more he is attracted to, and in time perhaps even overwhelmed by, the following proposition: The thread of resemblance, the stitching that seems to tie together a goodly number of the changes and events that have occurred and are taking place, is the growing national interest in the integrity of the individual.

Our society has concurrently grown in size and been subjected to shocks caused by the fruits of modern technology. The words "regimentation" and "interdependence" have been used to describe many aspects of American life in the immediate past as well as in the present. Each American is surrounded today by an unprecedented number of other human beings, as well as by techniques that may be used to measure and control his own conduct.³ Realizing the significance of these facts, and finding distasteful the anonymity ascribed to some members of our mass society, persons from various sectors of society have sought to find new and meaningful roles for the individual.

In this setting, it is not surprising to find that those charged with formulating the content of our legal system have manifested a growing concern for the welfare of the individual. American lawmakers have joined in the struggle for the survival of the individual as an entity, indeed, as a figure of importance, in an impersonal milieu. Laws have been changed and continue to be modified as the battle for the preservation of the individual is waged.⁴ The fear

3. Physical crowding, technology, and their impact on American society were the subjects of an address by August Heckscher which was printed and distributed by the Twentieth Century Fund, Inc., in 1965, in pamphlet form, under the title "The Individual and the Mass."

4. A recently-published work devoted to a study of the expansion of individual liberty, under the aegis of the judiciary, since the end of World War II is KONVITZ, *EXPANDING LIBERTIES* (1966).

that a single member of society is for all practical purposes dwarfed to insignificance by the growing size of government and its spheres of competence, by the capacities of man-made devices and by human ingenuity in finding new uses for such mechanisms, has fomented vigorous defensive efforts.⁵ In the course of the conflict, our legal system has been seized as a shield as well as an offensive weapon to hold at bay and to ward off those forces that have tended to decimate the integrity of the individual. Some of the responses of those who breathe life into our law can be found in the treatment of indigents, the concern for the ratio of voters to representatives in the nation's legislative bodies, the manner in which members of minority groups are dealt with, and the restraints imposed upon individuals and particular groups.

The new translation of Immanuel Kant's *The Metaphysical Elements of Justice*, and the accompanying forty-eight page introduction—each the work of John Ladd, Professor of Philosophy at Brown University—offer a refreshing and welcome beacon for those who are searching for an answer to the question: "What standard of right and wrong should a people employ in order to determine whether its body of court-enforced norms is desirable?"⁶ The succinctly written and lucidly presented introduction, and the captivating and clearly prepared translation permit one to indulge joyously in pondering Kant's proposals relating to the prime objectives of a country's legal system. Kant's work, published in its original form approximately a century and a half ago, has an almost unbelievable relevancy to the current era: the philosophy of law is keyed to the individual human being, his freedom and his personal integrity; the role of the state is envisaged as that of a guardian—the protector of individual freedom.

Immanuel Kant was born in East Prussia in 1724. He died in 1804, after a life in which he had not strayed far from his place of birth. This man, whose life has been depicted as an "ivory tower" prototype, not only exerted a significant influence on the philosophical thought of his day, but also has affected succeeding generations of philosophers.⁷ His insight, ability to formulate general prin-

5. At its 1966 Annual Meeting, the American Bar Association established a Section on "Individual Rights and Responsibilities." Members of this division have the task of studying and suggesting to the Association the position it should take on socio-legal issues. For the history and composition of the new body, see N.Y. Times, August 9, 1966, pp. 1, 26.

6. Prior to the appearance of Professor Ladd's book, a translation by William Hastie, published in 1887, was the only widely-circulated English version of Kant's work devoted to his philosophy of law. Hastie's work is entitled *The Philosophy of Law, An Exposition of the Fundamental Principles of Jurisprudence*.

7. The part Kant played in the evolution of German thought is discussed in BOSSENBROOK, *THE GERMAN MIND* 227-35 (1961). Kant, his ideas, and their influence are presented in an interesting fashion in DILL, *GERMANY* 59-60 (1961).

principles, and capacity to communicate ideas have earned him a lasting place in the history of philosophy.⁸

Kant's philosophy has been described as realistic, formal, rational, idealistic and transcendental: realistic, in the sense that he eschewed the idea that human passions and sentiment could be beneficially utilized to decide whether a particular standard of conduct was right or wrong; formal, in that he insisted that a particular procedure had to be followed if one were to arrive at a correct conclusion, placing great stress on the use of logic; rational, in that he extolled the power of human beings to reason, assuming that all men possess the ability to act in a rational fashion and to guide themselves exclusively by reason; idealistic, since at the core of his philosophy is respect for individual freedom, the shunning of dogma, and the rejection of unwarranted conformity and regimentation; transcendental, in that he looked for ends and means that were independent of man's environment and human experience, insisting that standards of right and wrong had universal applicability.

In this volume Kant did not undertake to set forth a desirable, detailed, *in-toto* set of laws for a nation. Instead, he tried to convey to the reader his thinking pertaining to the general philosophical base upon which the legal system of a civilized society should be structured. *The Metaphysical Elements of Justice* does not embody an enumeration of specifics. It contains Kant's personal attitude toward the law and his plea for its acceptance by society. Kant's presentation leaves the concrete application of his directives to those persons who are obligated to rule upon the apportionment of rights and duties between individuals and between an individual and the state.

The crux of Kant's philosophy is the antithesis of what many individuals now consider to be an essential element of a meaningful approach to the "is" as well as the "ought" of the law. Responsiveness to environment has been hailed by numerous proponents of change as the correct base upon which to build a nation's legal system. Kant argued against this proposition, labelling his philosophy of law "metaphysical." Metaphysical, in the Kantian sense, is a non-scientific and non-empirical approach to law. According to Kant, government-enforced norms should not reflect the results of experiments and inquiries which probe man or his environment. Rather, such norms should be determined on an a priori basis, their content to be the product of man's rational, disinterested, practical, pure reasoning processes. Kant vehemently attacked the idea that human conduct should be shaped by environment, observations and conclusions based on past or present events, man's passions or his

8. For a consideration of Kant's philosophy and its relationship to current-day attitudes toward freedom, see MULLER, FREEDOM IN THE MODERN WORLD (1966).

predispositions. He boldly proclaimed that impersonal reason must be the source of the demands formulated and imposed by the law-makers. Kant refused to accept the premise that the best way to test the validity of a legal standard is to invoke the scientific method. Resorting to attempts to verify the propriety of an enforceable standard of human conduct by studying its effect on man and society was foreign to Kant's philosophy.⁹ He insisted that the correctness of a rule of law should be determined by relying solely upon reason.

In Kant's opinion, the fundamental frame of reference of all law should be the protection and the promotion of individual freedom. One of the most important underpinnings of his thinking was his insistence upon respect for the autonomy of the individual. No man, according to Kant, should be used as a tool to secure the attainment of certain objectives. The freedom of each individual, Kant urged, was to be viewed as the objective of the law. Individual freedom was therefore the focal point of Kant's test of whether a legal principle was good or bad; if it advanced individual freedom, it was good, whereas if it hampered the exercise of individual freedom, it was bad.

It is especially interesting to note that although Kant regarded the advancement of freedom as the ultimate goal of law, he did not advocate the per se elimination of the powers of the state. Here, Kant's attitude was diametrically opposite to that manifested by those who, in the eighteenth and nineteenth centuries, were enraptured by and glorified man's status in a primitive and stateless society.¹⁰ Kant stated that man's freedom could not be assured, absent the existence of an organized state government. He believed that freedom was not self-enforcing. In a state of nature, devoid of government, man could readily be denied his freedom, for might was the determining factor. Kant espoused the proposition that the compulsive powers of the state could, and should, be invoked to shield and advance individual freedom.

Kant's insistence upon individual freedom, however, did not mean that he argued in favor of unrestricted freedom for each and every person to do precisely as he desired. Rather, Kant drew the

9. Compare Kant's attitude with that of the Supreme Court contained in *Brown v. Board of Education*, 347 U.S. 483 (1954) wherein the Court rejected the "separate-but-equal doctrine" which had previously been relied upon as a basis to sustain segregation. Mr. Chief Justice Warren wrote: "We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." *Id.* at 492-93. In supporting footnotes, the Court cited reports based on studies of the impact of segregation on individuals. *Id.* at 494-95 nn. 10, 11.

10. John Locke (1632-1704) was one of the leading political theorists who glorified the individual. He differed from Kant in that he looked to the individual, rather than the state, for the protection of freedom. Two of Locke's treatises were reprinted in 1924 under the title *Of Civil Government*.

line between proper restraint and valued freedom as follows: One man's freedom was circumscribed by boundaries that surrounded the outermost limits of another man's freedom.¹¹ A man was not free to act in a manner that would infringe upon the breadth of permissible freedom of another individual.¹² According to Kant, man's a priori reasoning should fashion the norms essential to secure and promote individual freedom, and the powers of the state could then be utilized to put them into effect.

Kant's belief that man is capable of devising a suitable system of law was consistent with his personal appraisal of human beings. He believed that human beings are socially-oriented, good and ethical. These traits, he contended, permit men to be the creator of desirable legal standards. Such features, according to Kant, are possessed by all human beings, and from this premise followed his contention that there are certain universal rules that the legal systems of all nations must enforce. Kant's universality of law concept is reminiscent of the natural law philosophy.¹³ However, unlike many proponents of natural law, Kant, as we have seen, maintained that man must rely upon reason, rather than looking to a Supreme Being or environment in devising state-enforced norms.¹⁴

Infliction of punishment, according to Kant, is the only type of action that society, through its legal system, might properly take against one convicted of a crime. He condemned the view that individuals who offend the penal law should, under certain circumstances, be taken under the beneficent and protective wings of the state with a view toward their rehabilitation. Kant's refusal to accept the proposition that the criminal law can be used as a means to reconstruct those who violated its commands and transform them into worthwhile members of society reflects his lack of interest in environmental factors. He regarded the criminal as an atypical human being. To dole out punishment to one who breaks one or more of society's mandates, as far as Kant was concerned, is rational. He regarded any other use of the criminal law as inappropriate.¹⁵

11. Kant wrote of the need for an accommodation between freedom and state power. He stated that if men were to enjoy freedom it was necessary that these two competing factors co-exist in "harmony" with one another. See generally ARTZ, *REACTION AND REVOLUTION* 75-76 (1934).

12. The depth of attention Kant paid to the idea of freedom under law, rather than freedom without state-imposed restraints, is dealt with in CAIRD, *THE CRITICAL PHILOSOPHY OF IMMANUEL KANT* 171, 254 (1909).

13. For an examination of natural law and freedom, see MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* (Anson transl. 1943).

14. The influence of theology on natural law is examined in RAMSEY, *NINE MODERN MORALISTS* (1962).

15. Criminal law and the demands of environmental factors, as well as the use of knowledge amassed and theories formulated by members of other disciplines are considered in HALL, *STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY* (1958). See also MANNHEIM, *CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION* (1946) for a discussion of the rehabilitation approach to the treatment of criminals.

Kant was, in a way, a polemicist. He examined areas of human activity which he believed were in need of consideration and then proceeded to construct his proposals of how particular problems should be handled. He immersed himself in a study of the "ought" of the law. For those who have devoted or are now devoting some portion of their time to a consideration of such matters as civil rights and the liberties of the individual, this volume will prove to be especially fascinating reading.

Many persons have been attracted to the philosophy that the promotion of individual freedom should be the prime objective of all national legal systems as well as of international law.¹⁶ However, there is a growing awareness that unrestricted freedom may at times be as detrimental to human freedom as excessive restraints imposed by the state. Kant, in his *Metaphysical Elements*, insisted that individuals are obliged to obey the laws of the state. This does not mean that Kant favored a dictatorial state. His position here is consistent with his premise that it is the state which, by using its coercive powers, can guarantee individual freedom. Absent enforceable laws individuals would be denied freedom. Kant's contention that some restraints upon freedom are essential for freedom touches upon one of the most difficult problems facing our legal system today—civil disobedience and lawlessness carried on under the banner of freedom.¹⁷

16. An individual's right to life, liberty and security of his person are among the rights included in the International Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948. U.N. GEN. ASS. OFF. REC. 3d Sess., Res. No. 217, at 71 (A/810) (1948). The Convention for the Protection of Human Rights and Fundamental Freedoms, signed November 4, 1950, by the member states of the Council of Europe, guaranteed individual liberty to subjects of each of the states. The text of the Convention is contained in EUROPEAN COMMISSION OF HUMAN RIGHTS, DOCUMENTS AND DECISIONS 1955-1956-1957 2-91 (1959). See Tucker, *Has The Individual Become The Subject of International Law?*, 34 U. CINC. L. REV. 341 (1965).

17. Several of the decisions handed down during the 1965-1966 term of the Supreme Court emphasize the Court's appreciation of the urgency that it keep a "sense of balance" when it is called upon to determine individual rights. One person's rights, as well as the rights of other individuals, must be accorded recognition simultaneously. In *Miranda v. Arizona*, 384 U.S. 436 (1966), Mr. Chief Justice Warren wrote: "The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime." *Id.* at 439. In *Miranda* the Court ruled that a confession made by a defendant while in the custody of the police could not be used in a state criminal proceeding unless he had been warned, prior to making the confession, that he had a right to remain silent, that any statement he might make could thereafter be used as evidence against him and that he had the right to have an attorney at his side, either one he retained or one who was appointed, to advise him. The Court, in support of its result, cited the report of the 1961 Commission on Civil Rights. In *Malloy v. Hogan*, 378 U.S. 1 (1964), the Court held that the fourteenth amendment prohibited the states from compelling an individual to incriminate himself. The Court's current concern for the rights of individuals was reflected in its holding in *Sheppard v. Maxwell* 384 U.S. 333 (1966) wherein a state court criminal conviction was reversed on the ground that the defendant could not have had a fair trial due to the large amount of

Professor Ladd's excellent introduction lays a fine groundwork for an appreciation of Kant's *Metaphysical Elements of Justice*. Ladd not only touches upon major points of Kant's thinking, but also explains numerous terms employed by this giant of philosophy. The explanations facilitate one's reading of Kant; they make the perusal of this work more enjoyable than it might otherwise be, since Kant used many terms which he himself formulated to communicate his thoughts to his audience.

The legal philosophy buff will find irresistible the fine glossary of Kant's German terms, with their English translations, which is contained in this book. This reviewer happily greeted Kant's "Supplemental Explanations of the *Metaphysical Elements of Justice*," (immediately preceding the glossary), which is Kant's response to a review of *The Metaphysical Elements of Justice*. In his reply to the review, Kant expounded upon some of his thoughts which the reviewer contended were not clearly presented or with which the reviewer took issue.

This volume is well-ordered, extensively footnoted and attractively arranged. College students, law students, lawyers, law professors and all persons who wish to add to their storehouse of knowledge or re-evaluate their personal ideas about freedom and law will heartily welcome this presentation of the thoughts of one of the foremost philosophers of Western Civilization. Professor Ladd's efforts and their product should prove to be extremely satisfying and valuable reading.

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adverse publicity which appeared in the newspapers prior to and during the course of his trial. However, concern for society's interests outweighed the right of the individual in the eyes of the majority of the Court in *Ginzburg v. United States*, 383 U.S. 463 (1966). In *Ginzburg* the Court sustained the conviction of the defendant who had been accused of violating the Federal obscenity statute. In the Court's opinion the defendant had engaged in "commercial exploitation of erotica solely for the sake of their prurient appeal" and therefore had gone beyond the scope of protection guaranteed by the first amendment. *Id.* at 466. For a discussion of the need to balance responsibility of the individual and the freedom to publish, see Epstein, *The Obscenity Business*, *The Atlantic*, Aug. 1966, pp. 56-60.