

## THE KINGDOM OF ENDS IN MORALS AND LAW

Kant's philosophy of law and his moral philosophy generate a set of conflicts which stem from three basic tensions in his system: He believes that the individual must be left with a fundamental autonomy in order that he might be a moral being; but he also believes that there is a social need for obedience to the public rules of the community. He believes that pure practical reason combined with practical reason in its concrete context must determine what each individual ought to do; but he also believes that there are basic claims of the social order to be obeyed — in some sense — because it *is* the social order. He believes that the individual must pass judgement on *individual* acts; but he also believes that morality ultimately implies a general moral order (the Kingdom of Ends).

These conflicts are clearly related to each other — sometimes in ways which generate new conflicts. One can see them as general expressions of moral individualism against moral communitarianism; but there is another dimension of conflict as well. Moral autonomy, itself, may conflict with the notion of rules which are absolutely binding; and the idea of reason in moral judgement may conflict with the moral notion that individual acts ought to be judged.

To an important extent, Kant hopes to resolve these conflicts by establishing some distance between law and morality — chiefly in the idea of morality as internally binding on the autonomous moral agent and the idea of law as external.

In this paper, we hope to trace the sources of these conflicts and to show that they can be resolved only by taking the perspective of the Kingdom of Ends to be fundamental and binding on *both* moral and legal systems. It will be

possible to retain some elements of the distinction which Kant insisted upon by showing that it is binding on law and morals in two different ways, and by making clear an important difference — often unclear in Kant — between legal and political authority. But it is only in a Kingdom of Ends that one can reconcile the universality of moral rules with the individuality of moral judgment and it is only a community with a certain structure which is entitled, therefore, to the powers which Kant associates with the law. To effect this reconciliation one needs a rather richer concept of the Kingdom of Ends than the one Kant actually gives us, but it will be possible to retain what seem to us to be Kant's central notions.

First let us explore Kant's position, he generally rejects all the easy ways out of his difficulties and hardly seeks to disguise the tensions. In an essay on thinking in 1786, he argued powerfully for autonomy and freedom of thought as necessary for the discovery of truth. After all, restrictions on thought and its dissemination run counter to the whole concept of honest thinking. Yet he finally admits the claims of the social order and throws us back on the mercy of rulers.<sup>1</sup>

In the same year, in his essay on Hufeland, he rejected the view that coercion can be justified on the basis of a general duty towards perfection which we might have in the state of nature, for, of course, that claim would not explain how some people came to have authority over others.<sup>2</sup> (In 1795, he used the same argument in the "contra Hobbes" section of "Theory and Practices": The right to control the behaviour of others can arise only *after* we have a civil society).<sup>3</sup>

Kant agrees with the Hobbesians that a condition necessary for civil society is a community with power to coerce the individual, but he rejected their key assumption — the assumption that an historical account of the origins of civil society can prescribe the relationship between the people

and the concerning power. One may, for Kant, have a good reason to submit to a power without thereby incurring an obligation to go on submitting to it. The power to coerce and moral authority are not the same thing.<sup>4</sup>

He does not, however, simply conclude that one has a duty to obey the political authority only when that authority is right. Rather, he seems to suggest that, once a civil society has been formed, the citizen always has some duty to maintain it because it *is* the community. This idea, which became vital to Kant's account, seems have been developed in the course of his critical analysis of Locke.

Kant agrees with Locke that the purpose of civil society is to serve the needs and ends of individual men, but he puts an important gloss on this notion; these needs and ends can *only* be fulfilled in a civil society.

He asserts that we are morally obliged to create and sustain civil society, for this is the only way in which men can actually have rights, and social justice can be achieved. The argument for the moral obligation to maintain civil society goes like this: Since we are morally obliged to treat everyone as a member of the Kingdom of Ends, that is, to treat them as ends and never solely as means, we are obliged to treat others as beings who have rights which ought to be protected; we are thus obliged to maintain the condition under which rights can be protected. Since the only condition under which rights can be protected is a civil society, we have an unconditional duty to maintain a civil society.<sup>5</sup>

But, given a civil society, what are we to do in case the legislators begin to dictate unjust rules under the guise of laws? Must these rules be obeyed?

Here the Kantian theory confronts the central tension between the individual and the community. Kant's own proposed solution appears to increase the difficulties rather than to resolve them. He argues that unjust governments

must be *reformed*, but he denies that we have any right or obligation to *replace* them if by that we mean adopting illegal means.<sup>6</sup> But what is the meaning of the obligation if conditions forbid us from discharging it — what does it mean to be obliged to reform a government which permits no legal conditions for reform? Kant finally argues that the legislators have a moral duty to reform themselves but, in an impasse, the people have neither right nor duty to reform them.

But we must explore in more detail Kant's conditions for a morally functioning society. In 1793, he laid down a set of conditions on which, he thought, a functioning civil society with some semblance of moral claim might be based. The conditions centre on the notions of freedom, equality and independence. The duty to provide these conditions is he says, a moral one. The community, evidently, is entitled, in his view, to do whatever it must do to perform its duty. (It seems axiomatic to him that obligation implies entitlement). If that is so, the law is entitled to compel my behaviour.<sup>7</sup> But it is entitled to do so if and only if, in doing so, it enhances the extent to which the community possesses these virtues. Even this enhancement (of course) cannot be understood in a consequentialist way. The compulsion and the enhancement must be integral to one and the same act. Here morality seems to reach out and provide a basis for compulsion. Yet in doing so it intrudes at once upon moral autonomy.

In *Perpetual Peace*, two years later, Kant repeats some of his earlier discussion and adds two rules derivable from the categorical imperative.<sup>8</sup> "All actions relating to the right of other men are unjust if their maxim is not consistent with publicity" and "all maxims which stand in need of publicity in order not to fall in their end, agree with politics and right combined."<sup>9</sup>

The point which Kant wants to make is the possibility of the rule of law, conceived as the possibility of a *public*

rule which all can follow is the same as the possibility for a universal moral law. What can be publicized as a rule must be a rule which everyone can follow, and this is a crucial ingredient, at least in the categorical imperative.

This seems to be a way of resolving the tension between moral law as a law which the individual might make for himself and the public law of the state as something made for him by a lawmaker. But here the tension appears in another form. The two, he admits do not always coincide even if in principle they are not reconcilable.

Kant admits here a distinction first made in his *Lectures on Ethics* in 1775 or shortly thereafter<sup>10</sup> — the distinction between strict justice and equity. In the *Metaphysik der Sitten* he tells of the servant who has contracted for a salary only to find it effectively wiped out by inflation. In equity (i.e. normally) he is entitled to more, but in strict justice, as he can expect to find it in the courts, he is not. This, Kant insists, is a matter of conscience. If he must appeal, he must appeal to the conscience of the people.<sup>11</sup> But this seems to leave the individual with a duty to obey justice in strict law and to respond to the demands of equity in his own conscience. Sometimes, these may conflict as they would today: In countries in which there are wage controls where the government may forbid the employer from paying the full cost of inflation.

The problems which are thus generated have, of course, no obvious solution in the terms in which Kant pose them. Indeed, they reiterate the conundrums of the “unsocial sociability of man” which he described in the *Idea for a Universal History from a Cosmopolitan Point of View*.<sup>12</sup>

There, the difficulties are posed in terms of a theory of human nature; men seek to live together in groups, but they also seek to dominate those groups. “Unsocial sociability” is posed in that essay simply as a given fact about human nature. If it has an explanation at all, the sugges-

tion is that it is a device employed by divine providence to ensure human progress and maximal goodness. No single man can instantiate all the forms of goodness or all the virtues of which the human species is capable. Hence men must live in communities in order to achieve the aims of God. But they must also be differentiated. The unsociability of man is what creates the pressure which leads to the differentiation.

At the back of this scheme, however, there no doubt lurks more general notions about the human predicament. Every man is trapped within an experience of which he is the centre but all men share a common structure of experience.

But though this background is something to be borne in mind if we are to grasp Kant's point of view, knowledge of it does not really settle the issues. If we are to sort out the difficulties; we must begin with the way in which the community enters into the dispute. Behind the law and morality conflict, there is the problem of law and politics. And much of Kant's difficulty has to do with the arrangements by which legal decisions are made and with the conditions for their enforcement.

We might, perhaps, agree that politics is, if not *the* art of the possible, at least one of the arts of the possible. Thus politicians may have to propose laws which lie within the limits of the agreement one can find in the legislature and the limits of the behaviour which can be expected of ordinary, prudent men at a given place and time.

The courts, however, must always give a meaning to these laws in terms of a general system and its overall aims. A legal system consists of rules which are intended to be applied in conjunction with one another and must fit together into a coherent system of such a kind that some action is clearly indicated by their various functions. The law, therefore, is always looking for universality and for coherence in systems which, however, have components generated by legislatures which are limited by the possi-

bilities of the moment. The laws which they generate may well lack the appropriate logical properties.

It is here that the serious question of the morality of the legal system arise — just as, in Kant's moral system, the need for pieces of moral apparatus such as the categorical imperative in its various forms arises when there are maxims to be tested. The categorical imperative does not generate the maxims, though it may test them in some absolute way. Thus the courts must act to weed out those laws which conflict with the ideal embodied in a set of legal aims and give a meaning to each piece of legislation such that that legislation remains tolerable to the system. If they cannot, they must reject the proposed law as inconsistent and thus, in the most basic sense, unconstitutional. But though they can demand coherence and adhesion to some systematic standard, they cannot, of course, dictate the choice amongst technically acceptable contents. The law cannot, in short, always aim at the best.

The law, itself, does not imply coercion. One is supposed to obey the law because it *is* the law, because, that is, in the largest sense, it accords with — or at least does not violate — the dictates of reason. Coercion enters in only when in one of two ways the law has failed: I may have to be coerced because the courts did not succeed in reconciling the legislation with an ultimate set of legal ideals. Or I may have to be coerced because the law, though rational, did not reach through to my confused irrational will.

In these cases, the matter returns to the political authority which may or may not set the police on me. But even if it does, the coercion is not part of the law but, in *either* case, the result of its failure.

But what is the political authority justified in doing by way of coercion? Confusion enters at this point in the discussion because there is more than one sense of justification and because some of the notions of justification which seem most natural collide head-on with the central concepts of

the notion of law which seems to underly the relation of law and morals for anyone who takes Kant's view of morality seriously.

On the face of it, one might say that the law will ultimately be justified when it *has brought about* something like the Kingdom of Ends. That is quite different from saying that it is now justified because it *is bringing about* the kingdom of kinds. It may *seem* natural to say that it may be justified now if it can be shown that its actions are those most conducive to bringing about the Kingdom of Ends. From this it would seem to follow that coercion would be justified if it could be shown that it led most effectively to the Kingdom of Ends. But this in consequentialism and evidently incompatible with Kant's own view of moral authority.<sup>13</sup>

Even if one abandoned Kant's own interpretation of his own ideas of morality, however, the justification of coercion implied by such an argument would be relative. For, if legal principles derive from some idea such as that of the Kingdom of Ends, there is no *legal* justification for the sacrifice of an individual's well-being for the future well-being of the collectivity. There may be a political justification. But if the legal system is morally superior to the political system — if, that is, the legal system is, in fact, closer to the basic idea of morality, then what seems to follow is that the political authority is justified in using the minimum amount of coercion necessary to maintain the possibility of the legal system and not more. Many of Kant's problems seem to stem from arguments in which he develops the idea of a political structure — the idea of a civil authority — and then assumes the legal and political order to be identical. The political order, though subservient to the legal order really does have a measure of independence. For it may act when the legal system fails. Basically, the *unsocial sociability* of man is a *political* not a legal problem.



But we can make the distinction between legal and political authority stronger. For it seems that, if law is really distinct from fiat and force, law is concerned with making human activities possible rather than with restricting them. For this, the Kingdom of Ends model really is apt.

The legitimacy of Kant's idea of an external order, however, becomes clearer when one looks at a different but related point. The Kingdom of Ends model is intended to emphasize the optimization of freedom of action. But Kant certainly seems to have understood that one must be intolerant of intolerance in order to optimize the possibility of freedom.

And this raises a more dramatic possibility: What if there are certain agents for whom, at a given moment of time, forbidden actions of intolerance constitute the sole ends which they are capable of envisaging? Must they not then be used solely as means? And does this not mean that the law, even in its positive function as something which facilitates action, will turn out to be in conflict with morality?

Here we cannot so easily throw the burden of the problem onto the distinction between legal and political action. It would appear that the rule itself must take precedence — that the rule must be that one acts so as to achieve the Kingdom of Ends. Let us then consider first Kant's notion of a Kingdom of Ends.<sup>14</sup>

The first and clearest sense which Kant gives to the notion of Kingdom of Ends is in the *Groundwork* where it is defined as a systematic union of "different rational beings under common laws."<sup>15</sup> The same idea is found in a number of other works. In *Religion Within the Limits of Reason Alone*, Kant uses the term "Commonwealth" and distinguishes between juridical and Ethical Commonwealths. The Commonwealth however is, in either case, an association of men under common laws, in the one case legal and in the other ethical.<sup>16</sup> The terms used in the *Meta-*

*physics of Ethics and Theory and Practice* revolve around the idea of the state — civil and ideal. It is clear that this notion needs to be elaborated somewhat. But the "ideal state" turns out to be the same as a Kingdom of Ends.<sup>17</sup>

If we look at the notions which Kant uses explicitly and implicitly, we shall see that a Kingdom of Ends is a system in which the law is limited by (a) the rule that each member is an end in himself and (b) the rule that every member of the community *can* be used by the community but can never be used solely as a means.

Furthermore, a Kingdom of Ends is a system in which what the law must contain is:

- (i) a place for every *bona fide* individual who has a claim on the community as one of its constituents,
- (ii) a set of rules providing for the continuing equality of all individuals,
- (iii) the conditions for the freedom (and so the moral responsibility) of each individual.

The idea of such a system is entirely the idea of a set of ideals. It does not depend upon any factual description except the assertion that there are rational agents capable of being conceived as ends in themselves. This (assuming that the notion is not itself self-contradictory) is true in any possible world in which, in fact, reasoning can be said to be going on, and in which the reasons being presented can be associated with agents (i.e., any world in which there is a discussion and there is some procedure according to which it may be said to make a difference which discussant utters the propositions under consideration). Since we are in the midst of the discussion, we can suppose that reasoning is going on. Such a system does not depend upon factual constraints but it is also not a fiat.

Thus we must suppose a world in which, in fact, acceptance and rejection are possible. And we must introduce a

rule to the effect that propositions which are significant for action should always be considered, and that those which are acceptable by some criterion or criteria should be accepted while the others should be rejected. There seems no way of avoiding these assumptions while continuing to talk as though moral theorizing was important and ought to be taken seriously. But to make such assumptions is to demand optimal conditions for acceptance and rejection of moral proposals.

What the idea of a Kingdom of Ends provides are the social conditions for optimizing the possibilities for acceptance and rejection themselves. It supposes, that is, exactly a system in which choices are made by free decision and not by force and fiat. For the denial of the existence of ends in themselves and the denial of their equality is precisely the assertion that some propositions (namely those which distinguish arbitrarily between some rational agents and others) should be accepted by force or by fiat.

Yet the idea of the Kingdom of Ends obviously functions rather differently in the moral order than it does in the political order. In the moral order, as we saw, Kant enjoins us to act always "as if" we were members of the Kingdom of Ends — as if the world in which we acted were, indeed, morally ordered. Kant, indeed, thinks that there is a postulate of pure practical reason which asserts that the noumenal reality is a moral order, ordained by God to be just and it is not unreasonable, therefore, to act as if this were the case.<sup>18</sup>

Thus the individual is to act with reference to an order to which he belongs but which is not successfully actualized in the phenomenal world. It may be, for instance, that, as a good Christian, the citizen will offer his hat to the man who steals his coat. It is at any rate certain that Kant means the reference to the moral order to rule out various arguments which one might put forward to the effect that one is justified in less than optimal conduct because of the bad

conditions of the society around one. One is not to say that one cannot be truthful in a world full of liars or keep one's promises in a world full of those who do not discharge theirs.

But the legal system is obviously in a different situation. Faced with a failure to get conformity to its directives, what possibilities are open to it? In the system there are rules which would be appropriate to the Kingdom of Ends. There are also rules which, in principle, safeguard the moral autonomy of the individual who participates in the legal system. The idea of the Kingdom of Ends, for example, presumably dictates a system which provides a place for conscientious objectors and allows them not to participate in acts of the state which they deem unworthy. It also demands the outlawing of acts which represent the bias of one group of individuals toward any other and which actively provides an acceptable social place for every citizen, i.e., for every rational agent who comes within its jurisdiction.

The law is not supposed to *act if* a Kingdom of Ends exists but to *be* the rational structure of the Kingdom of Ends. It may authorize the political authority to use the *minimum* of coercion which is necessary to keep the possibility that all the potential moral agents in the system will continue to have open to them the possibility of becoming members of a genuine Kingdom of Ends.

It is here that the tension which so occupied Kant can be seen most clearly — and finally dissolved. The *political order* clearly has the right of coercion — the right to see to it that every individual does what is necessary as a member of the community. But it draws its authority from a legal order within which the notion of coercion is, after all, anathema. Kant usually associates the legal order with force and coercion, but what he means, of course, is the *legal political order* — i.e., the political order which is sanctioned by the legal order. But that sanction has severe

limits. Its limit, if one looks at the logic of the case, the coercion which it may use is, as we have argued, just that minimum necessary to maintain access to the Kingdom of Ends.

The conundrum seemed to be the most acutely centred on the notion that the legal political order, since it was *legal*, could not be dissolved by action which would itself count as legal. But, of course, if it has exceeded its claims and if it can be replaced by an order which stays within the limits of minimal coercion, it would appear that a revolution could be justified. If Kant did not see this, it was just because he did not distinguish adequately between the legal order, the political order, and the legal-political order, or perhaps because he doubted that a revolution could be compatible with the necessary continuity of legality.

The notion of a minimum of coercion is absolutely crucial because what happens when coercion enters into the system is always that some principle is sacrificed in order to keep intact some other principle that seems more central to the idea of a Kingdom of Ends. But if the central principle is the maintenance of the possibility of moral action, then, of course, the central idea of that minimum will be the intolerance of intolerance.

The working out of this principle is necessarily a task for another occasion. But it should be clear that intolerance essentially takes two different forms. One of them is interference with the individual's expression of his opinions and with the actions necessary to maintain his personal integrity. The other, however, is a principle of social action. For it is equally important to the idea of a Kingdom of Ends that every individual have an acceptable functioning place in his society — bluntly, he ought to have a job and a way of expressing his talents so as to contribute to that society. Intolerance consists equally in insisting on the rights to a privileged place in society for oneself — a place

which denies to others an equal share in the whole system of social well-being.

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#### NOTES

1. *Was heisst: Sich im Denken orientiren, werke*, German Academy of Sciences, Vol. VIII, p. 139.
2. *Recension von Gottlieb Hufeland's Versuch Über den Grundsatz des Naturrechts*, German Academy of Sciences, Vol. VIII, p. 127ff, partly translated in Rabel, *op. cit.*, (note 1 above).
3. *Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis, Werke*, Vol. VIII, pp. 288-96 and 300.
4. *Ibid.*
5. *Ibid.*, pp. 273 ff.
6. *Ibid.*, pp. 303-305.
7. *Ibid.*, 273 ff.
8. Here we may understand the categorical imperative in its most general form as the rule that one should act only on maxims which one can will (given a logically appropriate structure) to become universal laws.
9. *Zum ewigen Frieden, Anhang II, Werke*, Vol. VIII, p. 370 ff.
10. *Eine Vorlesung über Ethik*, reconstructed by Paul Menzer from class notes of a student who matriculated at Königsberg in 1779. Kant gave the course in question from 1775 onwards.
11. *Metaphysik der Sitten, Werke*, Vol. VI, pp. 231-235.
12. *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht Beantwortung der Frage; Werke*, Vol. VIII, pp. 15-43.
13. Kant's arguments against consequentialism take many forms. See, for instance. *Grundlegung zur Metaphysik der Sitten, Werke*, Vol. IV, pp. 440-446, and *Kritik der Praktischen Vernunft, Werke*, Vol. V, pp. 71-77.
14. *Grundlegung zur Metaphysik der Sitten, Werke*, Vol. IV, pp. 385 ff. and *Kritik der Praktischen Vernunft, Werke*, Vol. V, p. 83. The "Kingdom of Ends" does seem to include just that

part of morality which concerns law — that part which makes feasible a realm of moral agents.

15. *Grundlegung, Werke*, Vol. IV, p. 453.
16. *Die Religion innerhalb der Grenzen der bloßen Vernunft; Werke*, Vol. VI, pp. 91-99.
17. *Metaphysik der Sitten, Werke*, Vol. VI, pp. 314.
18. See especially, *Kritik der Urtheilskraft; Werke*, Vol. V, pp. 434-435.

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