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KANT'S MORAL AND POLITICAL RIGORISM

I. *Introduction*

Kant notoriously expressed some extreme moral and political opinions. The authority and interest they may have derive from his unchallengeable status as a philosopher. There is consequently a case, not only for trying to establish what his opinions exactly were (since exaggerations and misunderstandings abound), but also for enquiring how far they were determined by his general philosophical position, how far by his considered judgement on particular issues, and how far by accidental features of his upbringing and situation. Such questions are harder in relation to Kant than, say, to Russell, whose sufficiently remarkable practical opinions were always unmistakeable in import, and were direct responses to changing circumstances, largely uninfluenced by his philosophy.

For the sake of concreteness I will concentrate on Kant's treatment of lying, rebellion and punishment. On the two former he, to all appearances, holds that it is categorically forbidden to lie or to rebel, no matter how great the good to be obtained or evil averted. On the third he appears to hold that there is a categorical obligation to impose punishment, especially capital punishment for murder, entirely regardless of considerations of social good or harm.

My belief is that Kant did indeed hold the views commonly attributed to him. My suspicion is that they mainly result, naturally if not strictly logically, from structural features of his moral theory, on which consequently, for many readers, they must reflect some discredit. It is no easier to disregard them as accidental aberrations than it is to defend them in their unqualified form, as undistorted good sense. As one would expect of Kant, there are indeed considered convictions involved: truthfulness is an aspect of his ideal of rational humanity; and 'republicanism' (the rule of law backed by penal sanctions), a necessary condition for the realisation of rational

human values, is seen as something that can be achieved only by reformist policies. These intelligible and respect-worthy commitments are, however, obscured rather than clarified by the ethical system in which Kant chose to enfold them.

II. *Lying*

Is the stereotype right? Does Kant really think all deliberate untruth telling always wrong? In the end I think he virtually does. Though his position is by no means simple, the complications do less than might have been hoped to moderate its rigour.

First of all he draws a distinction between lying as a breach of legal duty to others and lying as a breach of moral duty to oneself. The familiar reference to the division of duties (*Groundwork,* 421 note) is avowedly over-compressed and directs the reader to the then future *Metaphysic of Ethics* (MdS). This late work begins with some general discussion, after which it divides into a *Rechtslehre* or theory of law (justice) and a *Tugendlehre* or theory of morality (virtue) Kant holds that law and morality both fall under the supreme practical principle, formulated generally in the *Groundwork* (421) as: Act only on that principle through which you can at the same time will that it should become a universal law (Paton trans.). This is echoed in MdS (213-14). There are, however, two ways in which actions can be regarded: either 'externally', as things done, disregarding motives, *or* '*internally*' taking into account motives too. Law or justice considers actions from the former point of view. Law is bound up with the possibility of coercion, and external actions alone are coercible: though the threat of punishment may make people act, it cannot by its nature make them act from the thought that they ought. Morality, as opposed to law, is concerned with actions from the inner point of view, requiring that they be performed from the right motive. Accordingly, in its distinctively moral application, the general practical principle has the particular form: Act according to a maxim of ends which it can be a universal law for everyone to have (MdS 394, Gregor trans.); whereas, in its distinctively legal application, it has the form: Act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law (MdS 231, Ladd translation).

One would expect, in the light of this, there to be a difference between the legal and moral duties in regard to lying. The legal duty

would simply forbid every *act* of lying, whereas the moral requirement to adopt a *maxim of ends* might be taken to be a matter of framing a policy of truthfulness, different from or additional to not lying. This could be by analogy with the way that the moral duty of he lping other people seems to require the adoption of a general policy of helpfulness (or, at least, the non-adoption of a general policy of unhelpfulness), rather than the impossible policy of helping in every case of need that presents itself. It is certainly the case that Kant does distinguish the legal and moral approaches to lying; but hedoes not (*pace* Hofmeister) show any sign of thinking that a policy of truthfulness is compatible with occasional lying. His discussion of lying in the Theory of Morality (Part I, Book I, chap. ii) puts heavy and exclusive emphasis on the internal aspect of lying, but contains no suggestion that inner truthfulness might be compatible with external falsehood telling. In this place Kant is not discussing the legal aspects of lying; bnt nothing he says about the moral aspects indicates that he thought the external legal duty of truth telling might be overriden. If anything, the implication is that there might be a moral duty in cases where there was strictly speaking no legal one.

Two further considerations are relevant here. *One* is that, although Kant recognises moral duties on matters where there are no legal ones, he also maintains that there is a general moral duty to discharge all one's legal duties simply from the thought that they are duties (MdS 389-91, and cf. Gregor xxi). This surely rules out any possilility that Kant's concession of a measure of latitude in moral duties might involve his accepting any abatement of the rigour of the legal prohibition of lying.

The *second* consideration involves the perfect/imperfect duty distinction. This is multi-faceted: relating to whether or not discharge of the duties can be enforced by sanctions and thus to the law/-morality distinction; and to whether duties are determinate or indeterminate, narrow or wide, strict or meritorious. Emphasis varies from context to context, but overall it seems clear that Kant does allow exceptions to imperfect duties in a way there cannot be to perfect ones. Once again, however, this does not qualify the perfect duty of not lying. Quite apart from the recently noticed moral duty to discharge all legal duties, Kant idiosyncratically insists that there are some *moral* duties of perfect obligation, among which is included the duty of truthfulness. That Kant allows that there are moral duties of imperfect obligation unquestionably shows that he is not in all re-

spects as rigorous as he is often taken to be; but it does nothing to suggest a softening of his attitude towards untruthfulness in particular. Nor can it make any difference with regard to rebellion and capital punishment, which fall within the legal sphere anyway.

It remains, however, the case that Kant does recognise some few, faint limitations to the legal and moral duties concerning lying. Similarly marginal qualifications are allowed in relation to rebellion and capital punishment.

Kant's remarks about the legal aspects of lying are in fact disappointingly meagre in MdS, amounting to no more than the pronouncement that, legally speaking, a falsehood constitutes a lie only if it infringes the rights of others. This is in accord with the line taken in the longer discussion in the somewhat suspect (since compiled posthumously from pupils' notes) *Lectures on Ethics* (they are held to have been delivered in the late 1770's). Kant expresses some unease about suggestions that we might have to lie self-defensively from 'necessity' (a thought he considers in MdS in relation to rebellion and capital punishment too), and about the doctrine of the white lie; but nevertheless allows that, if a would-be thief asks if I have money, I may lie: 'The forcing of a statement from me under conditions which convince me that improper nse would be made of it is the only case in which I can be justified in telling a white lie' (448, Infield 228). On the next page Kant goes on to allow equivocation, not straight telling, in order to preserve a secret; though apparently only if we have not given explicit undertakings to tell the truth. These limitations', 'exceptions', is hardly the word, contrast with the extreme rigour of that other suspect source: *On the Supposed Right to tell Lies from Benevolent Motives* - suspect as the irritable defence by an old man of something he must have thought he had said, though he had apparently not done in so many words (Paton, 1953-4).

Paton, in support of his view that the *Supposed Right* is an aberration, further suggests that in old age Kant regressed to the moral absolutes of his Pietistic childhood. It seems to me rather that there is no need for this hypothesis. Kant's position is entirely consistent with his insistence, from the *Groundwork* onwards, that rules of perfect duty admit of no exceptions. Throughout the critical period, as Ward's survey brings out, is if anything a stiffening of his conviction of the apriority, and hence universality and necessity, of moral laws.

So much by way of qualifications to the legal duty. As for the moral, Kant appends some 'casuistical questions', which he thinks generally appropriate for moral duties, even the perfect ones, though not for the perfect duties of law. The questions are indeed only questions, not answers; but the natural interpretation of their import is that Kant will allow only fringy lies on unimportant matters. The questions run:

> Can an untruth from mere politeness (e. g. the «your obedient servant» at the end of a letter) be considered a lie? No one is really deceived by it. - An author asks one of his readers; «How do you like my work?»... The author will be insulted at the slightest hesitation with one's answer. May one, then, say what the author would like to hear?
>
> If I tell a lie in more serious matters, which concern the Mine and Thine, must I answer for all the concequences it might have? For example, a householder has ordered his servant to say «not at home» if a certain man asks for him. The servant does this and as a result, the caller slips away and commits a serious crime, which would otherwise have been prevented by the guard sent to arrest him. On whom (according to ethical principles) does the blame fall in this case? On the servant, surely, who violated a moral duty to himself by this lie, the resultes of which his own conscience imputes to him (429-30 Gregor trans.).

It is remarkable, and surely significant,that Kant does not allow to the domestic servant the defence of necessity and the facility of the white lie that he had been pepared to tolerate in the *Lectures*.

III. The Conflict of Duties

So far I have been trying to document the claim that, though less rigorous than repute suggests, Kant is still very reluctant to allow substantial exceptions to his legal and moral duties concerning lying. An abstract possibility is that this mainly reflects his extreme horror of lying in particular (it is the greatest violation of humanity and rationality in one's own person); but its true source is, I am sure, general and theoretical. Kant so conceives perfect duties that they cannot admit of exception, or indeed conflict with one another. Rules of perfect duty are, for good or ill, held to be a priori, universal and necessary: since the maxims of actions contrary to them are contradictory, i. e. inconceivable as universal laws, the universalised ma-

xims of actions in accordance with them are presumably necessary. Kant, it is true, does not *state* that rules of perfect duty cannot conflict; but neither does he say that they can, even though he could have avoided embarrassment by saying, so, if that was what he thought.

The question certainly arose for him, in so far as he thought that he could establish a number of *standing* rules of perfect duty. Such rules, even though they may be compatible to the extent that none requires an act of the same description as another prohibits, may still conflict in the sense that, in a particular situation, what is required by one rule, may under another description constitute the breach of another. It is in this way, to use Kant's own example from the *Supposed Right* paper, that the perfect duty of not lying conflicts with the imperfect duty of helping others. The likelihood of such conflict can be reduced by taking care in the formulation of rules of duty (it has to be said that Kant's examples are very rough and ready); but it cannot be eliminated altogether, save perhaps by representing standing rules of perfect duty as essentially negative (prohibitions) and insisting that omissions never amout to actions - Kant, however, appears not to take this route.

Kant's treatment of the topic of conflict is to my mind suspiciously sketchy, though he does, of course, say something. Relevant remarks in *Groundwork* II are cryptic and incomplete, but seem to allow, in the first place, that in a way imperfect duties can conflict with one another, for example (not Kant's), cultivating one of my talents could get in the way of my helping someone in trouble. But there is no theoretical problem here. The one duty is, in effect, not to neglect my talents completely; the other is not to adopt the maxim of never helping anybody. In conflict situations, if 'conflict' is the word, one can always postpone action towards fulfilling one imperfect duty in the interests of fulfilling another. It will be possible to make up for it later. (In the *Groundwork* the suggestion is that we can follow inclination in deciding how to discharge our imperfect duties; in Section vii of the Introduction of the Theory of Morality in MdS it is rather that we may limit one maxim of duty only by another). In the second place, there can, obviously, be conflict between an imperfect duty and a perfect one. In this case Kant's view has to be that the perfect duty should prevail: there is no leeway in it (cf Ward 127 and 176) as there always is with an imperfect duty. This is the doctrine of the *Supposed Right* paper too, where the perfect

duty of not lying is represented as conflicting with the imperfect duty of benevolence interpreted to involve protecting life. (Perhaps Kant should have seen this lying /saving life case as a conflict between two perfect duties, the second being that of not taking innocent life; but he did not).

There is, it is true, an explicit refence to the conflict of duties in the Introduction to the MdS, page 224. Here the view is that conflict of duties or obligations is strictly speaking impossible: two conflicting rules cannot both be necessary at the same time. There can indeed be conflicting grounds of obligation (as distinct from obligations), and then the stronger ground prevails. This passage seems to me to give less guidance than might have been hoped to Kant's opinion on the possibility of a conflict of perfect duties. Paton, indeed (1953-4), thinks it compatible with his view that Kant allows perfect duties to conflict, and further suggests that when they do Kant could taken the 'human and reasonable view' that one perfect duty may be overriden by another, and even that a perfect duty may on occasion be overridden by an imperfect. Humanity and reasonableness are not, however, sure guides to interpretation. There is every other reason to dispute that Kant would ever have allowed an imperfect duty to override a perfect. The question about perfect duty conflicts is not clear; but Paton's view can hardly be reconciled with Kant's manifest belief that there are standing rules of perfect duty, on obedience to which he showed a remarkable determination to insist, despite considerations of humanity and reasonableness. Downgrading rules of perfect obligation to rules of prima facie obligation might well be an improvement on Kant's view; but it is not a move he made nor, I think, one that could occurred have to him.

Paton recognises that there are problems, and tries to make something of the point adverted to above, that Kant's examples of rules of duty are not carefully formulated. Paton complains that Kant fails to maintain distinctions between fundamental principles (the various formulations of the categorical imperative, in one application of that phrase), moral laws (e.g. One ought not to lie) which apply to people generally, and moral rules, applying to particular categories of people (e.g. that soldiers and executioners may be obliged to kill). That Kant shows no embarrassment in applying the phrase 'categorical imperative' to laws and rules as well as principles supports Paton's charge that he takes too little account of the distinctions in question; and is indeed a manifestation of what is pro-

bably the theoretical root of his rigorism: the assumption that the necessity and universality (inconceivability of exceptions), which no doubt are features of fundamental principles, carry over to moral laws and rules.

Anyway, having drawn his distinctions, Paton contends that Kant allows no exceptions to fundamental principles. To moral laws there are allowed no arbitrary exceptions, though non-arbitrary exceptions may be required in particular cases by an overriding law: in general, one may not kill, but soldiers and executioners sometimes must. A fortiori there may be non-arbitrary exceptions to moral rules. Paton seems to think that Kant's unavowed recognition of exceptions is obscured by the absence of detail in his moral writings. Even the supposedly 'applied' MdS does not descend to a level of detail below that of moral laws: account is taken of human qualities and characteristics; but only such as are supposed to be common to people generally. Though true, this is misleading, as is all talk of exceptions to moral laws or rules. Indubitably Kant thinks both that killing is generally wrong and that killing by soldiers and executioners may be obligatory. It is not, however, that the moral law forbidding killing admits exceptions; but rather that 'One onght not to kill' is an inadequate formulation of the moral law 'One ought not to murder', where the concept of murder is supposed to be so defined as to exclude the cases of killing that Kant thinks obligatory or permissible. Similarly, no doubt, with lying. What few untruths Kant thinks permissible are not to be counted as lies. (His rather uneasy manoeuvring with the concept of the white lie we encountered in the *Lectures* is significant in this regard, as is his repudiation of permissive laws in *Perpetual Reace,* 347 note, and contention that any tolerance of exceptions deprives rules of the universality the concept of law requires.) In this sort of way, a disingenuous liberal casuist could insist that there were theoretically no exceptions to moral laws and rules. He could pay lip service to standing rules of perfect duty while accommodating 'exceptions' by flexibility in the definition of moral concepts. Kant himself is not disingenuous in this way. What rather happens is that the formally exceptionless character of moral laws and rules, which is highly congenial to his conviction that morality has its sourre in reason, reinforces the practical rigorism for which he is notorious, and renders it impossible for him to admit that there can be a genuine conflict of perfect duties. In this perspective the severity of the *Supposed Right* is no aberration but an expres-

sion of fundamental commitment. So is the fact, noted by Paton, that in the paper Kant slides off the real question, whether a man may have a duty to lie (which would have raised the unthinkable possibility of a conflict of perfect duties) onto the less threatening question of whether he might have a right to do so. In this perspective too Kant's rigorism is regard to rebellion and capital punishment is exactly what was to have been expected.

IV. *Rebellion*

Kant's categorical prohibition of rebellion is founded in his attempted justification of the authority of the state. This starts from the first principle of law, quoted above from MdS 231, which Kant takes to entail that any hindrance to freedom is unjust and hence, in the famous phrase, that any hindrance to such a hindrance is just. Such coercion as may be needed to maximise freedom all round is thereby justified, but only such coercion. (There is, indeed, in an appendix to the Introduction to the Theory of Law, a reference to that 'necessity', which was seen above to figure in Kant's discussion of the white lie in his *Lectures*. Here the line is that self-defensive necessity at best excuses, but never justifies.)

After his introduction Kant takes the traditional step of postulating a state of nature, a situation in which there is no determinate political authority to make, interpret and enforce laws. Kant makes no claim that there ever was such a state of nature. Conceiving it is only a thought experiment, a way of bringing out the point of political institutions by representing as being in accordance with justice those institutions which could be chosen by rational beings in a state of nature (Theory of Law, Section 47).

The following passages from *Theory and Practice* II are relevant too. Kant has been arguing that the social contract never happened in fact. It is merely an Idea of reason with practical reality - 'it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of a whole nation.... This is the test of the rightness of every public law. For if the law is such that a whole people could not possibly agree to it (for example, if it stated that a certain class of *subjects* must be privileged as an hereditary *ruling class*), it is unjust; but if it is at least *possible* that a people could agree to it, it is our duty to consider the law as just, even if the people is at present in such a position or attitude of mind that

it would probably refuse its consent if it were consulted' (297, Reiss 79). And, later on: 'For so long as it is not self-contradictory to say that an entire people could agree to such a law, however painful it might seem, then the law is in harmony with right. But if a public law is beyond reproach—...with respect to right, it carries with it the authority to coerce those to whom it applies, and conversely, it forbids them to resist the will of the legislator by violent means' (299, Reiss 80-81).

The second passage makes plain the way in which the social contract test is just a version of the universalisation test of Kant's ethical works. The same is true of the publicity test of *Perpetual Peace* too. This is supposed to rule out maxims of rebellion, which are bound to be rendered ineffectual if made public (rebellion has to be prepared in secret), but not to rule out maxims of rebellion suppression, which can quite safely be publically announced. (Kant's claim seems dubious even in its own terms, but that is by the way).

In both passages Kant seems to be arguing illicitly that, because a maxim which fails his test is prohibited, any maxim which passes his test is mandatory. The right conclusion would, however, appear to be that it is permissible; and this is compatible with there being several permissible contraries of the excluded maxim, between which choice can hardly be a matter of indifference. Just because anything which could not have been chosen by rational beings is wrong, it does not follow that anything which could have been chosen has to be accepted. Nor, just because a maxim which cannot be made public is wrong, does it follow that any which can is authoritative. No doubt the *contradictory* of a prohibited maxim must be obligatory; but it looks as though Kant tends to misidentify the *contrary* he happens to prefer as the contradictory. So, anyway, it has seemed to me, and I think also to Nell, p. 80: but I shall consider the possibility that sufficient other considerations come in to acquit Kant of the charge of mere logical error (see page 23).

But, to return to the main theme of the Theory of Law, one sees that Kant allows mankind a variety of rights in the state of nature. What is, in effect, the general right of freedom divides into a number of more specific rights, including property rights *a la* Locke, but *not* including Locke's natural right to punish - for Kant no action not authorised by government can count as punishment. There are, then, rights in the state of nature; but no rights are there secure. Everyone will do what he thinks good to secure his rights, and

there will be no impartial judges to decide what these rights are. A man will use violence on others on the mere suspicion that they will use it on him (Section 48). Kant is emphatic that he is not saying simply that men unrestrained by law tend to violence, though obviously they do. Nor is he putting forward a hypothetical imperative backed by the fact that political organisation tends to restrain violence. His conclusions are supposed to have a more dignified source in an a priori Idea. An aspect of what is involved here is that there can be no such thing as justified coercion where everyone has the right to do whatever seems good to him. (Kant is making the conceptual claim that nothing could count as justified coercion in state of nature). From this it is held to follow that anyone committed to the Idea of justice is obliged to leave the state of nature. This thought may be expressed as the postulate of public law: 'If you are so situted as to be unavoidably side by side with others, you ought to abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of juridical legal justice' (Section 42). This postulate is said to be a derivable analytically from the concept of justice as opposed to that of violence in human relations.

Kant further insists, perhaps partly echoing Rousseau's doctrine of forcing to be free, that justice permits, perhaps requires, everyone to force others to enter the juridical state - the ground apparently being that only in the state is justice conceptually possible at all. This seems to be the argument that, because only a state can justly coerce, any coercion by or on behalf of a state is just. It seems to involve moving from a necessary to a sufficient condition, and recalls the argument noted above as running from the possibility of a law's being accepted to its being acceptable. (But, again, see pages 22-23 below).

Kant next distinguishes three functions within the state: the sovereign legislative, the executive and the judicial (Section 46); whence he proceeds, in the manner of Rousseau, to maintain that the general united will of the people alone enjoys the sovereign authority to legislate. He further, still in the manner of Rousseau, distinguishes between the ruler (the government) and the sovereign: the ruler has executive authority, but under law (Section 49). The sovereign people, at this stage of the story anyway, can take authority from the ruler, can depose him and reform his administration; but they cannot punish him - logically, not pragmatically, cannot. Punishment is an executive act, and so properly the act of a ruler, as

distinct from a sovereign. (Somewhat similarly, neither sovereign nor ruler can judge: they can only appoint judges). It is not very easy to follow Kant's train of thought, since his use of the term 'sovereign' is insufficiently systematic. Nor can I, at anyrate, see why he should be so strongly committed (logically or pragmatically or by his sources?) to the separation of powers. It is, however, an aspect of his constitutionalism, and as such a factor in his attitude to rebellion.

The treatment of rebellion is to be found in the Theory of Law, II, I, Section 49A and the conclusion to the Appendix, and Section 52 (*Theory and Practice* II is also relevant, as is Perpetual Peace). There are many startlingly authoritatian statements. Subjects are not to be too curious about the origins of the supreme authority (which must here be the executive government; though, when Kant remarks in *Perpetual Peace* that soveignty can assume a variety of forms, it is not so clearly the executive he has in mind). One might suppose that sovereignty would be credited to an abstractly (non-institutionaily) conceived legislative power as in Rousseau; but in Kant that authority seems to be transferred, in a way that needs more explanation than it gets (but see below), to a concrete legislative and executive head of state. Anyway, people should not enquire too closely into the genesis of the supreme authority, lest they there discover force and fraud, and so come to question their duty of obedience. The argument here is that the people's judgment has the force of law only so far as they are united into one legislative will. Hence they can judge only as the chief of state wills! In the spirit of the Pauline doctrine that the powers that exist are ordained of God, Kant maintains that it is a practical principle of reason that one should obey any legislative authority that actually exists, regardless of its origin. Subjects may at most complain, but never resist.

A constitution cannot, moreover, provide a right to resist the chief magistrate (head of state), because any authority entitled to offer such resistance would itself be chief magistrate. A 'moderate' political constitution, guaranteeing a right of resistance, is thus nonsensical. There can be no rights of sedition, rebellion, or tyrannicide. Any attempt to provide such rights involves the contradiction of holding the supreme authority not to be supreme. Similarly, resistance to the sovereign can never be lawful or just - how can there be law, not proceeding from sovereign authority, yet regulating relations between sovereign and subject?

It is hard to feel sure that one is interpreting Kant correctly. It rather looks as though a rationalistic preference for a priori argument leads him into the fallacy of assuming that consequences, extracted analytically from the concept of sovereignty, necessarily apply to *de facto* ruling bodies. Locke and, up to a point, Rousseau, are clearer here. They locate sovereignty in the people at large; but recognise that a people cannot govern, and so provide for a non-sovereign government to carry out the sovereign will. They can both agree that it can never be lawful to oppose the sovereign; but they can consistently maintain that the sovereign people is entitled to resist or replace the government. Kant's position seems, in this regard, closer to Hobbes', who notoriously does locate sovereignty in the government. It is surprising that Kant, with his preference for starting political arguments from a priori Ideas, should follow Hobbes in making *de facto* power the title to sovereignty. So far as there is an argument, it seems to be that the Idea of sovereignty needs to be actualised in a determinate human superior. The clearest statement to this effect I have found is in the Theory of Law: 'This chief (the sovereign) is, however, only an abstract object of thought (representing the whole people) as long as there is no physical person to represent the highest authority of the state and to procure an effective influence of this Idea on the popular Will' (338, Ladd translation). Presumably the thought is that a human individual is required to 'typify' an Idea of reason (cg. KpV, 67-71).

Kant goes on to maintain that alteration of a constitution should be only by way of reforms initiated by the sovereign, never by revolution - this may be no more than a way of saying that changes should always be made by due process. He further suggests (still in Section 49A) that changes may be made in the executive government only, not in the sovereign legislative. There is more on the matter in Section 52, on the ideal state, namely that the sovereign has the right to effect changes in the original constitution in accordance with the spirit of the original contract. He thinks there is no point in changing from one of the traditional forms of government (autocracy, aristocracy, democracy) in the direction of another, holding that such distinctions of form are merely superficial. (In the *Strife of the Faculties*, 1798, he claims that George III of England was an absolute monarch, despite the parliamentary forms). To be legitimate change must be towards a 'republican' constitution. It seems that, like Rousseau, his use of 'republican' reflects the influence of Plato,

i.e. the term is used to refer to an ideal system, not clearly defined in institutional terms, though apparently involving sepatation of powers and the rule of law. Witness the statement in the Theory of Law: 'This (republican) constitution is the only enduring political constitution in which the law is autonomous and is not annexed to any particular person' (341). In *Perpetual Peace,* where a distinction is drawn between form of sovereignty (autocracy, aristocracy, democracy) and form of government - meaning I think, manner of governing (republican or despotic), we are warned not to identify the republican constitution with democracy. The rule of law is actually most at risk in democracy, because the people are there particularly likely to tale the execution of the law into their own hands. Monarchy is not incompatible with a republican constitution, which, whatever its institutional form, is always representative of the people.

Kant, then, is opposed to resistance to rulers and, as reported at the beginning of the present section, takes the stern line that the 'necessities' of rebellious subjects may at best excuse but never justify them. He elaborates this theme in a long note to Section 49 A. People, who have been driven by necessity to depose a monarch, acquire no right to punish, still less to kill him. But even such murders may be excused in so far as they are motivated by self-preservation. It is the formal execution of a monarch which strikes Kant as really horrible, a total subversion of every concept of justice: not simply a matter of breaking the law, but a formal repudiation of law, a sort of principled rejection of principle, which presents itself to Kant as at once morally outrageous and logically absurd. So much so that he concludes that historical cases of the judicial execution of monarchs are best understood as really cases of unprincipled self-defence masquerading as principle.

In spite of the above, however, Kant goes on to argue that, if a revolution has succeeded and a new constitution been established, the illegitimacy of these beginnings will not exempt citizens from obedience to the new authority. Shades of Hobbes! All this in spite of the fact that the deposed monarch retains the right to seek restoration, even to employ outside help if he can get it - though whether other states have the right to help is a question in the law of nations, to which the answer seems in Kant's view to be negative.

There seems, to say the least, some ambivalence if not incoherence in Kant's attitude to rebellion. He betrays some unease himself, in that he returns to the topic in the Appendix to the Theory of

Law, and tries to reply to the following very telling criticism he quotes from a reviewer: 'to our knowledge, no philosopher has admitted the most paradoxical of all paradoxes, namely, the proposition that the mere idea of sovereignty should necessitate me to obey as my lord anyone who has imposed himself on me as my lord, without my asking who has given him the right to issue commands to me. Is there to be no difference between saying that one ought to recognise sovereignty and a chief of state and saying that one ought to hold a priori that this or that person, whose existence is not even given a prior, is one's lord' (371, Ladd translation).

I wish I could feel confident that I can understand Kant's reply, in which among other things he says that obedience is a categorical imperative. His line seems to be that any existing order is at least a step towards substituting law for unregulated violence in the affairs of mankind. Sometimes it may be a small step only. Actual constitutions may have gross defects, which require gradually to be eliminated. Nevertheless, even in the worst case, forcibly to overturn a constitution is to regress to violence from the rule of law. (In *Perpetual Peace,* 373 note, Kant remarks that any legal constitution is better than none at all.) Rebellion is not merely pragmatically hazardous, but everywhere and always morally prohibited. The circumstances of particular cases make no difference.

It very much looks as though we have here a very remarkable manifestation of Kant's rationalistic rigorism, already noted as surfacing in his tendency to treat any preferred contrary of a prohibited maxim as mandatory (p. 11 above) and to argue from the possibility of a law's being accepted to the necessity of obeying it (p. 12). Kant's over-absolute condemnation of rebellion seems entirely of a piece with his rigoristic opposition to lying, and his failure adequately to accommodate the conflict of duties or to allow for the possibility of exceptions to what are in general sound moral rules. It is, thus, extremely tempting to suppose that the main determinant of Kant's attitude to rebellion is the dyed in the wool rationalism of his ethical theory, which forces him to choose between the unappealing alternatives of supposing rebellion to be generally permissible or never so.

There is I am sure a formidable case for Kant to answer; and it is largely his own fault that he is in the dock. But I am less sure that there is nothing he could he say in his defence. His line would have to be something like this: that 'republicanism', the rule of law, as the

indispensably necessary condition of everything good, including morality, is the aim; that rebellion, however apparently justified, is a very unhandy instrument, which either provokes more violence if it fails or does nothing to bring about the rule of law if it succeeds; that it is therefore better to try to bring about reform by peaceful persuasion; that governments will be more likely to respond to persuasion if it is understood that their critics will meantime obey - the idea being that obedience is the price of influence. (This last point, of course, reflects Kant's assumption that there are no irreconcilable divisions of interest in society). A further consideration is Kant's philosophy of history, which is intended to justify our believing as a matter of 'practical faith' that there will be progress in the republican direction. Reformism is not guaranteed to be successful in any particular generation, but we can at least hope that the long term trend will be in the right direction. (See Kant's *Universal History,* which I have discussed in Pompa).

V. *Punishment*

Kant discusses punishment in Section 49F and Appendix 5 of the Theory of Law. He begins by observing that the right to punish, to inflict pain on account of a crime, is as a matter of conceptual necessity confined to a properly constituted authority, the magistrate. From this, as we have seen, he infers that the head of state, as chief magistrate, cannot be himself punished. Kant further is insistent that punishment must be exclusively retributive, in the sense of being conceived as essentially the requital of an offence and never as a means to an indepedently good result. To impose a judicial punishment merely for the sake of deterrence or reform is logically incoherent, and morally atrocious in that it is using a human being merely as a means. Punishment, moreover, must never be inflicted on someone who has committed no crime. We must never follow the Pharisees in holding it better that one man should die than that the whole people should perish, for 'If legal punishment perishes, then it is no longer worthwhile for men to remain alive on earh' (332). This, no dout, seems extravagant taken by itself, bnt Kant sees it simply as an application of his general claim that political organisation, the state, is the necessary condition of everything worthwhile.

The law of punishment is a categorical imperative, admitting no exceptions. It would be wrong to spare the life of a man justly co-

ndemned to death, even though he volunteered to have important medical experiments performed on him. Everyone who has commited murder must die; though, to be sure, convicted murderers may not in any other way be maltreated. The notorious passage reads as follows:

> Even if civil society were to dissolve itself by common agreement of all its members (for example, if the people inhabiting an island decided to separate and disperse themselves around the world), the last murderer remaining in prison must first be executed, so that everyone will only receive what his actions are worth and so that the blood guilt thereof will not be fixed on the people because they failed to insist on carrying out the punishment; for if they fail to do so, they may be regarded as accomplices in this public violation of legal justice (333).

Kant assures his readers that nobody condemned to death for murder complains that his punishment is excessive. The only abatement of the law that all murderers must die, which Kant recognises, is that, if there are so many accomplices in a murder that to execute them all would itself disturb the peace and threaten a return to the state of nature, then the sovereign, by decree not law, may commute the sentence to deportation, as a concession to necessity. As with the legal duty of truth telling in the *Lectures,* so here, Kant is prepared to make some concession to necessity. (It is possible, too, that the drift of the rather curious discussion of infanticide and killing in duels is to the effect that such killings are necessitated by barbaric notions of honour, and to an extent, therefore, to be excused. 335-7).

Kant replies to an argument from Beccaria, that capital punishment must be wrong, because the parties to a social contract would never have undertaken to subject theselves to it - the argument, in effect, that a people could not agree to laws sanctioned by capital punishment (see 10-11 above). Kant concedes that, in one sense, it is true that nobody wills to be punished. People suffer punishment, not because they have willed it as such, but because they have willed an action, which, because it is illegal, is punishable. The only sense in which anyone may be held to will his own punishment is: 'I submit myself along with everyone else to those laws, which, if there are any criminals among the people, will necessarily include penal laws' (335)

Kant is on strong ground in holding that a political society will need laws backed by punishments, and he is clear headed in insisting

that it is of the essence of punishment that it be of an offender, for an offence, and imposed by an appropriate authority. He is less pesuasive in his insistence that punishments must be applied, come what may; and seemingly obsessive in his insistence that death is the one and only penalty for murder. On the latter point he goes beyond Locke, who at the beginning of his *Second Treatise* makes it definitional of political power that it include the right to impose the death-penalty, but I think mainly as a way of saying that it is the right to impose whatever penalty may be necessary ('and consequently all less Penalties'), Chap I, Sect 3). Kant, however, is under the sway of the *lex talionis,* of making the punishment fit the crime. This, though commonly associated with is surely logically independent of the retributive conception of punishment. Capital punishment perhaps fits murder as well as any punishment can fit a crime; but there are many cases where such equality is unattainable. Kant very fairly reports his aforementioned reviewer as pointing this out, without, however, being at all shaken in his view by the objection.

On the former point, that punishments *must* be applied, largely regardless of social consequence, Kant would seem to have been driven into or reinforced in a nearly impossible position by his regarding the need to punish as a categorical imperative. It renders him incapable of looking beyond the institution of punishment to its social point. Viewed *internally,* a penal system is indeed retributive, in the sense that it is by definition a system for imposing penalties on offenders, because they have offended. Considerations of personal or social good or harm do not come in, except in so far as the law itself provides that they should. (Retributivists tend to forget that penal laws can and do so provide). Viewed *externally*, however, a penal system is only one procedure of social control among others. There is much in the notion that it is the procedure most consonant with human freedom and dignity, the system least offensively paternalistic. And I am sure that it is empirically very nnlikely that any complex society could dispense with penal procedures altogether. But I cannot see how, in particular situations, we can avoid having to choose between penal and other procedures in the light of considerations of social good and harm. Kant's clear, if over-rigid, understanding of the concept of a penal system does not, by itself, give any guidance as to how widely or narrowly penal procedures should be employed. Kant is obviously right that mankind cannot do without political organisation, and it is true that penal laws will so

far as anyone can see always be part of it, but they are not by any means the whole.

VI. *Conclusions.*

That Kant's rigorism would be multiply determined is no more than was to be expected from a thinker of his subtlety and width of commitment. What I have tried most to stress in the above is the importance of his theoretical motivation: specifically, that he so conceives categorical imperatives, or at least the rules of perfect duty, that they can neither conflict nor in any way admit of exceptions. In principle, as I tried to explain, this does not preclude concessions being made to humanity and reasonableness, though it does require that they should so to say be built into the formulations of the rules of pefect duty themselves or, which comes to the same thing, into the definitions of the moral concepts. In the light of this it is difficult to see how Kant could suppose, as he apparently does, that there can be simple standing rules of perfect duty. Kant plainly did not strongly feel this difficulty, that has impressed so many of his critics, and I think there can be little doubt that the tendency of his theory, whatever the abstract possililities, discouraged him from doing so.

Fortunately, however, this is not the whole story; nor is the rest of it only a matter of a simple- minded absolutism, surviving from Kant's youth. In each of the three cases we have looked at, specific thought-out considerations come in. In the case of lying there is Kant's conviction that it is the ultimate sin against rationality and humanity as such. (In the Theory of Morality we are told that the Bible teaches that evil entered the world, not with the first murder, but the first lie-the Devil is the father of lies, 430). One can recognise that this is in origin an intelligible and reputable thought, however much one may regret that Kant developed it so rigidly to such lengths. In the cases of rebellion and punishment, by contrast, we move from ends to means, to hindering hindrances to the service of ends in themselves. Here Kant's ruling conviction is that peace and order, which only government and law enforcement can bring, are the absolutely necessary conditions of everything that is intrinsically valuable, not excluding morality itself. Here too Kant manifests characteristic apriorism and extremism, but the basic thought makes good sense in empirical terms. There is a more speculative dimen-

sion to it as well. In his philosophy of history Kant expresses the optimistic thought - rather the *hope* - that the 'unsociable' dispositions of mankind, which make law and government necessary, and have already brought about the nation state, will retain their paradoxically 'social' influence until international peace and order are established too. There is indubitably, as many readers have felt, something sublime about the total scorn of worldy consequence associated with Kant's conception of the categorical imperative. But many have felt there to be something irrational about it too. These are just the two sides of the great diffirence Kant held there to be between the realms of nature and freedom. But Kant did not leave the matter there. He aimed in his *Critique of Judgement* to licence a teleological view of nature, which would make it possible to see how freedom (rational morality) might fit the natural world, itself conceived as adapted to receive it. His philosophy of history is an aspect of this attempt to harmonise nature and freedom, and within it the categorical imperatives concerning government and law, rebellion and punishment, are meant to be seen as, in the long term, means to human good.

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