

## Chapter VIII

**T**HERE is a possibility now of a new crusade, one having all the elements of a Second Religiousness. Some missionary may realize the tremendous importance of the suggestions contained in the last section of Vaihinger's *Philosophy of "As If."* There is more divine economic gospel to be found in his treatment of the real Kant, of Forberg's interpretation of Kant, and of Frederick Lange's "Standpoint of the Ideal," from the latter's *History of Materialism*, than is to be found in the "uplift" books turned out by sectarian authors of this day. It may be that a new school will arise, the "*Als Ob*" school, and do more for the betterment of mankind by preaching the real Kant than the churches have done in preaching Paul.

Kant said he would not be understood for another hundred years; the hundred years are long up. How little Kant was understood can be judged by the fact that his crowning work, the *Rechtslehre*, was not translated into English until 1887, and only in this generation have the Germans themselves learned to appreciate something of the greatness of Kant.

It is scarcely possible to understand what he is really driving at in the *Foundations of the Metaphysics of Ethics*, and in the *Critique of Judgment*, unless the reader is in possession of the fundamentals laid down in the *Rechtslehre*; for in the earlier works there always seems to be something wanting, something indispensable, binding man naturally to the universe, relating him, without vague moral or legal conventions, to the earth. Without the earth, he is useless; he dies. With-

out him, the animal who can produce his own food and bring order into the vegetable and animal kingdom, the earth, the source of food, would revert to chaos. Here, in the *Philosophy of Law*, to give the *Rechtslehre* its English title, according to Hastie, Kant lays down the fundamentals of life and conduct, the essentials given and found in the natural state by every newcomer. Here he posits that each and every child born into this world is co-heir to the opportunities and forces which are indispensable to its well-being. This co-heirship of the human family, as tool-using, food-producing animals, is a link which binds man to the earth. The idea is not original with Kant, for many philosophers, Hooker, Locke, Butler, and others; worked from the same fundamental.

The *Philosophy of Law* is not easy to read; the import of it is not easily grasped, and there is much justification for the complaint that Kant is not as clear as the earlier philosophers. In the translator's preface to the *Philosophy of Law*, Hastie says:

It is not meant that everything presented here by Kant is perfect or final. On the contrary, there is probably nothing at all in his whole System of Philosophy—whose predominant characteristics are criticism, initiation, movement—that could be intelligently so regarded; and the admitted progress of subsequent theories of Right, as briefly indicated above, may be considered as conceding so much. It must be further admitted of Kant's "Science of Right," that it presents everywhere abundant opening and even provocation for "Metacriticism" and historical anticriticism, which have certainly not been overlooked or neglected. But it is meant withal that the Philosophy of Jurisprudence has really flourished in the Nineteenth Century only where Kant's influence has been effective, and that the higher altitudes of jural science have only come into sight where he has been taken as a guide. The great critical thinker set the problem of Right anew to the pure speculative Reason, and

thus accomplished an intellectual transformation of juridical thought corresponding to the revolutionary enthusiasm of liberty in the practical sphere. It is only from this point of view that we can rightly appreciate or estimate his influence and significance. The all-embracing problem of the modern metamorphosis of the institutions of Society in the free State, lies implicitly in his apprehension. And in spite of his negative aspect, which has sometimes entirely misled superficial students, his solution, although betimes tentative and hesitating, is in the main faithful to the highest ideal of humanity, being foundationed on the eternity of Right and crowned by the universal security and peace of the gradually realized Freedom of mankind. As Kant saved the distracted and confused thought of his time from utter scepticism and despair, and set it again with renewed youth and enthusiasm on its way, so his spirit seems to be rising again with us in this our hour of need, with fresh healing in its wings. Our Jurists must therefore also join the ever-increasing throng of contemporary thinkers in the now general *return to Kant*.

At any rate, there is this to be said: that, in laying the fundamentals of a "Philosophy of Law," Kant has done something not only for the jurist, but for the economist, also. The basis is an economic one, and that is where he triumphs.

Kant takes the three formulæ of Ulpian and renders them afresh:

1. "Live Rightly (*Honeste Vive*)." Kant gives it thus: "Do not make thyself a mere Means for the use of others, but be to them likewise an End." And then he adds: "This Duty will be explained in the next Formula as an Obligation arising out of the *Right* of Humanity in our own Person (*Lex justii*)."

2. "Do Wrong to no one (*Neminem Læde*)." This is given as follows: "Do no Wrong to anyone, even if thou shouldst be under the necessity, in observing this Duty, to cease from all connexion with others and to avoid all Society (*Lex juridica*)."

3. "Assign to everyone what is his own (*Summ Cuique Tribue*)." Kant renders it: "Enter, if wrong cannot be avoided, into a Society with others in which everyone may have secured to him what is his own." He then explains that if this formula were to be simply translated, "Give everyone *his own*," it would express an absurdity, for we cannot give anyone what he already has. If it is to have a definite meaning, it must therefore run thus, "enter into a state in which everyone can have what is his own secured against the action of every other (*Lex justitiæ*)."

Now, it is in this new rendering of the formulæ of Ulpian that the metacritic, concluding too hastily, decides that Kant does not define what he means by "*his own*." It is urged that Kant takes too much for granted, or, on the other hand, he has failed to convince the reader that he is clear himself as to the basis of ownership. It is true, there is no precise definition given, but throughout the whole of the work the suggestion is there, that primarily ownership springs from the labourer's right to what he produces from the earth. In the section on "The Principles of Public Right," Kant says: "Whatever one has *made* substantially for himself, he holds as his incontestable property." But what more can be required than the following statement of the relationship of men to the earth:

All men are originally and before any juridical act of Will in rightful possession of the Soil; that is, they have a right to be wherever Nature or Chance has placed them without their will. Possession (*possessio*), which is to be distinguished from residential settlement (*sedes*) as a voluntary, acquired, and *permanent* possession, becomes *common* possession, on account of the connexion with each other of all the places on the surface of the earth as a globe. For, had the surface of the earth been an infinite plain, men

could have been so dispersed upon it that they might not have come into any necessary communion with each other, and a state of social Community would not have been a necessary consequence of their existence upon the Earth.—Now that Possession proper to all men upon the earth which is prior to all their particular juridical acts, constitutes *an original possession in common (Communio possessionis originaria)*. The conception of such an original, common possession of things is not derived from experience, nor is it dependent upon conditions of time, as is the case with the imaginary and indemonstrable fiction of a *primeval Community of possession* in actual history. Hence it is a practical conception of Reason, involving in itself the only Principle according to which Men may use the place they happen to occupy on the surface of the Earth, in accordance with Laws of Right.

From this fundamental the whole of the Kantian philosophy is reared; and it seems not to be so much the coping-stone of Kant's great edifice, coming as it did towards the end of his career (it appeared first in 1798); rather it appears to be the foundation-stone of the whole structure of his philosophy. This idea must have always been present in his mind. It is the source from which spring his *Ethics* and his *Metaphysic of Morals*. It is here that the economic basis of man's existence is found, the basis which was the root of natural law, before anything of a political nature was thought of. This antedates the state in any shape or form.

Natural Right (says Kant), understood simply as that Right which is not statutory, and which is knowable purely *a priori* by every man's Reason, will include Distributive Justice as well as Commutative Justice. It is manifest that the latter, as constituting the Justice that is valid between Persons in their reciprocal relations of intercourse with one another, must belong to Natural Right. But this holds also of Distributive Justice, in so far as it can be known *a priori*; and Decisions or Sentences regarding it, must be regulated by the Law of Natural Right.

In the *Science of Right*, Kant undoubtedly laid down the essentials of a philosophy of law such as Adam Smith had in mind when, forty years earlier, he published *The Theory of Moral Sentiments*. Whether Kant was in any way indebted to Adam Smith for the great principles which underlie most of his work, is not known. Some German commentators on Kant have pointed out not only similarity of thought but of method. Anyway, it is extraordinary to find two philosophers in the same century dealing with first principles: one, Smith, in his youth; the other, Kant, in his old age; and at a time when a world convulsion was not only threatened, but broke in all its terrible ferocity. It gave birth to a new system in America, while it shattered Europe and, for three quarters of a century, at least, left her people maimed, distraught, and wellnigh destitute.

It is a pity that *The Theory of Moral Sentiments* was withdrawn from publication and that it was overshadowed by the author's great work, *The Wealth of Nations*. That the latter should come from the same mind as the former is, perhaps, one of the most extraordinary performances of a philosopher. *The Wealth of Nations* gains enormously when it is considered with the philosophy of the earlier work.

A book was published anonymously in 1850, under the title of *The Theory of Human Progression and Natural Probability of a Reign of Justice*. It was written by Patrick Edward Dove. Here is a little-known work, which succeeds in uniting faith and reason in the most illuminating way. Unfortunately, the strong sectarian prejudice of the author militated against the success it deserved. Dove was a strong Presbyterian and very much opposed to Rome. Yet, it is not too late to take *The Theory of Human Progression*, and strip it of its unnecessary sectarianism. It contains an abundance of essential in-

formation. Dove's mind was alert and penetrative. Take the following statement on pauperism:

How comes it that, notwithstanding man's vast achievements, his wonderful efforts of mechanical ingenuity, and the amazing productions of his skill, his own condition in a social capacity should not have improved in the same ratio as the improvement of his condition with regard to the material world. In Britain, man has to a great extent *beaten* the material world. He has vanquished it, overpowered it; he can make it serve him; he can use not merely his muscles, but the very powers of nature to effect his purposes; his *reason* has triumphed over matter; and matter's tendencies and powers are to a great extent subject to his will. And, notwithstanding this, a large portion of the population is reduced to pauperism, to that fearful state of dependence in which man finds himself a blot on the universe of God—a wretch thrown up by the waves of time, without a use and without an end, homeless in the presence of the firmament, and helpless in the face of the creation. Was it for this that the Almighty made man in his own image, and gave him the earth for an inheritance? Was it for this that he sent his Son into the world to proclaim the divine benevolence, to preach the doctrine of human brotherhood, and to lay the foundation of a kingdom that should endure for ever and ever? We do not believe it; neither do we believe that pauperism comes from God. It is man's doing, and man's doing alone. God has abundantly supplied man with all the requisite means of support; and where he cannot find support, we must look, not to the arrangements of the Almighty, but to the arrangements of men, and to the mode in which they have portioned out the earth. To charge the poverty of man on God, is to blaspheme the Creator instead of bowing in reverent thankfulness for the profusion of his goodness. *He* has given enough, abundance, more than sufficient; and if man has not enough, we must look to the mode in which God's gifts have been distributed. There *is* enough, enough for all, abundantly enough; and all that is requisite is freedom to labour on the soil, and to extract from it the produce that God intended for man's support.

This statement might have served for a front-page text to *Progress and Poverty*, which came over a generation later. Dove says:

If then, we admit that every generation of men has exactly the same free right to the earth, unencumbered by any arrangements of past ages, the great problem is to discover "*such a system as shall secure to every man his exact share of the natural advantages which the Creator has provided for the race; while at the same time, he has full opportunity, without let or hindrance, to exercise his labour, industry, and skill, for his own advantage.*" Until this problem is solved, both in theory and practice, political change must continually go on.

There is one thing to do, and that is the fundamental thing; get that right, and the other things may come right, too. Must history go on for ever repeating itself, men repeating the same old blunders? Is there no way to abolish war, greed, and poverty? No way at all, but one which man does not think wise or practical. An old-time Jew would say, perhaps, that all these things must go on, because we prefer to live in sin, and God has not sufficiently punished us. A Christian should be able to say that God has little or nothing to do with it, that man is responsible for his own suffering, because he does nothing to help the coming of the reign on earth, the restoration of God's justice.

The restoration that Dove calls for is, in principle, no different from the restorations that took place in the time of Josiah and Nehemiah. He says men never go backward, they always go forward, and he ridicules the idea that justice can be restored only by the redivision of the lands. He points out that such a division would not only be useless, but quite improper. He says such a scheme would be "more than useless—



it is unjust; and unjust, not to the present so-called proprietors, but to the human beings who are continually being born into the world, and who have exactly the same natural right to a portion that their predecessors have. . . . The *actual* division of the soil need never be anticipated, nor would such a division *be just*, if the divided portions were made the property (legally, for they could never be so morally) of individuals." How, then, is restoration to take place, how is man to return to the just system? Dove points out that successive generations of men cannot have their fractional share of the actual soil: "How can a division of the advantages of the natural earth be effected?" Then Dove makes the following reply:

*By the division of its annual value or rent; that is, by making the rent of the soil the common property of the nation. That is (as the taxation is the common property of the state), by taking the whole of the taxes out of the rents of the soil, and thereby abolishing all other kinds of taxation whatever. And thus all industry would be absolutely emancipated from every burden, and every man would reap such natural reward, as his skill, industry, or enterprise rendered legitimately his, according to the natural law of free competition.*

In a footnote he adds: "We have no hesitation whatever in predicting that all civilized communities must ultimately abolish all revenue restrictions on industry and draw the whole taxation from the rents of the soil. And this because the rents of the soil are the common produce of the whole labour of a community."

Since the publication of *The Theory of Human Progression*, at least two generations of voters have had many opportunities of showing, not only their electoral strength, but the value of their economic and political knowledge. They have since

Dove's day mightily increased their electoral strength in all countries of Western civilization, and the world today is what they have made it. Naturally, they put the blame on their servants: their cabinets, their governments, their bureaucracies, their spending departments, and so on. In recent years, since Labour and Socialist factions have had more to do with the administrations, there has been an inclination to say less about the responsibility of cabinets and governments, and quite a comic shift has been made towards the money market as a scapegoat; much is now heard about the wicked things that go on in the world of finance, thwarting the good intentions of the millions of men with the vote.

It is time to come to grips with this terrible problem. First, men must rid themselves of the enervating sentimentality which has lain like a blight upon these problems for the past thirty years. This business of doing things for people and not letting them do things for themselves has caused almost irremediable havoc amongst all classes of society.

The Church must now realize that it is not sufficient to concentrate wholly upon the philanthropic side of the teaching of Christianity. It must once again preach the full gospel. Jesus never at any time offered bread without demanding that the receiver should seek the kingdom and its justice. In John there is to be found the saying attributed to Jesus that has caused so much bitterness of heart amongst dissentients in the past: "For the poor always ye have with you; but me ye have not always." It is significant that the concordances of some Bibles pass this over as if it were a text not to be mentioned. Why not face up to it? Suppose the Gospel according to John is accepted; surely this saying attributed to Jesus cannot be accepted, in that form, as coming from his lips. Jesus would have said: "For the poor always ye have with you, so

long as you have this system," or, "For the poor always ye have with you until the coming of the kingdom." How could he possibly desire the reign of God's justice on earth for a community that was to be always in want?