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Legal Philosophers: Aristotle, Aquinas and Kant on Human Rights

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ARISTOTLE, AQUINAS & KANT ON HUMAN RIGHTS

[I]nequality is generally at the bottom of internal warfare in states, for it is in their striving for what is fair and equal that men become divided.

—Aristotle, *The Politics*, Book V, ch. 1.

Now in human affairs a thing is said to be just from being right according to the rule of reason. . . .

—St. Thomas Aquinas, *Summa Theologica*, I-II, 96.

[M]an . . . exists as an end in himself, not merely as a means to be arbitrarily used by this or that will. . . .

—Kant, *Fundamental Principles of the Metaphysics of Morals*, 2d sec.

I. INTRODUCTION

The intent of this article, as the title indicates, is to explore what such philosophers on the law as Aristotle, St. Thomas Aquinas, and Immanuel Kant had to say in the area of human rights. To be sure, the selection of these three political thinkers was not one of chance, for their writings on the law have ever been drawn upon, directly and indirectly, by the greatest of jurists. For example, legal ideas expressed by publicists and constitutional lawyers on natural law may be traced back to a common source in the philosophy of the pagan Aristotle, as well as that of the scholastic theologican, St. Thomas. Indeed, for Aristotle, Aquinas, and Kant alike, legal philosophy was a topic of central import.[1]

Particularly relative to the question here of human rights, these three philosophers would all agree that in understanding oneself as a human person one sees what he ought realize in order to actualize himself as a person in his free acts, both those which are internal and those which affect the world.[2] Additionally, each further shared the belief that man, as a creature endowed with the capacity of reasoning, would, in choosing between alternative courses of action, employ some standard by which he rejected those acts he regarded as "bad," while accepting those he regarded as "good."[3]

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1. M. COHEN, REASON AND LAW 1, 10-11, 101 (1950) [hereinafter cited as COHEN].

2. Rommen, *In Defense of Natural Law*, in LAW AND PHILOSOPHY 114 (S. Hook ed. 1964) [hereinafter cited as *In Defense of Natural Law*].

3. Friedman, *An Analysis of "In Defense of Natural Law,"* in LAW AND PHILOSOPHY 147 (S. Hook ed. 1964).

In this paper the thoughts of Aristotle, St. Thomas, and Kant will be treated separately to examine not only the similarities, but the dissimilarities as well, in their respective approaches toward human rights.

II. The Human Rights of Great Philosophers on the Law

A. Aristotle

In his "Letter from Birmingham City Jail," dated April 16, 1963, Dr. Martin Luther King, paraphrasing an Aristotelian principle, wrote that equals should be treated equally; Aristotle, however, made a distinction between the justice of which Dr. King spoke and another, more fundamental justice.[4]

His thoughts serving as a model for all future discourses on the subject,[5] Aristotle viewed justice as neither exclusively ethical nor confined to morality; rather, it meant that which was adequate, fitting exactly into relation with something else.[6] To be differentiated were the two objects of justice: that which is naturally just and that which is legally just.[7] Although they were in constant conflict,[8] Aristotle was convinced that the latter wished to realize the former.[9] In his words, "Justice According to Nature is . . . better than Justice According to Law."[10]

In this famous distinction, natural justice, being one of the constituent elements,[11] by nature, transcended the order of voluntary action.[12] Being the product of rational order, this type of justice was in accord with nature and, thus, universal[13] with regard to laws and requirements of society in general,[14] including both public law and rights of property and possession.[15] It was fundamental law, a higher law—unwritten, eternal and unchangeable,

4. *Id.* at 154.
5. J. Shklar, Legalism 113 (1964).
6. Y. Simon, The Tradition of Natural Law 41-42 (1965) [hereinafter cited as Simon].
7. H. Rommen, The Natural Law 17 (1959) [hereinafter cited as Rommen].
8. C. Haines, The Revival of Natural Law Concepts 23 (1965) [hereinafter cited as Haines].
9. Rommen at 19.
10. W. Seagle, The History of Law 370 (1946) [hereinafter cited as Seagle].
11. *Id.* at 200.
12. Simon at 41-42.
13. Haines at 6-7, 23.
14. R. Pound, Justice According to Law 4-5 (1958) [hereinafter cited as Justice].
15. J. Zane, The Story of Law 120-21 (1927).

common to all regardless of source.[16] It had the same force everywhere,[17] or, as Aristotle analogized in his 4th century B.C. *Ethics*, "the fire burns the same both here and in Persia."[18]

Whereas natural justice was complete virtue, the other particular justice was a special kind of virtue concerned with equality.[19] According to the *Ethics*, this justice in its idea could only be just with respect to those things which were by nature indifferent.[20] The law of such conventional justice was solely derived from the enactment of positive legislation, whence came its title to be "just."[21] Being local, ordinary laws applicable to a particular place and to each separate community, these imperative, positive, man-made enactments were designed to meet the contingencies of the moment.[22]

Aristotle, in influencing the mold of the classical doctrine of natural rights in criminal law (not to mention the other branches of law), distinguished those acts which were crimes by nature (*mala per se*), and thus prohibited among all people, from those which were prohibited only in certain places by special legislation.[23]

Furthering his effective use of dualism,[24] Aristotle divided this second category of particular justice into distributive and corrective justices[25]—the former being defined in terms of rights and duties apportioned to each party and the latter in terms of functions for redress or the enforcement of rights. Today, perhaps, these could be equated, respectively, with substantive laws, setting down actual rights and wrongs, and adjective laws, setting forth the methods and procedures to obtain redress and enforce the righting of wrongs.[26]

Where the original distribution of justice had a defect and needed to be righted, corrective justice was called for. The object of virtue in this communicative justice was to render to everyone

16. HAINES at 6-7, 23.
17. SEAGLE at 370.
18. E. PATTERSON, LAW IN A SCIENTIFIC AGE 4 (1963).
19. JUSTICE at 4-5.
20. R. POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 25 (1922) [hereinafter cited as PHILOSOPHY OF LAW].
21. *Id.*; SEAGLE at 370.
22. HAINES at 7.
23. COHEN at 19.
24. SEAGLE at 370.
25. JUSTICE at 4.
26. J. ZANE, *supra* note 15, at 120.

as nearly as possible that which belonged to him.[27] Aristotle had identified virtue as a mean between extremes, the quality of virtue here being that every man was to receive his due of justice outside legality. The law was, thus, supplemented by the principle of equity, or rule by humane exception, as the concepts of grace and leniency were introduced to justice.[28] Another kind of justice—*epieckeia*—involving the application of fairness and reasonableness to legal rules, was thus born.[29] Because "law falls short of what is required by the universal terms in which it is set forth,"[30] equity (or fairness) was needed to correct this shortcoming.

Recognizing that no system was entirely perfect and that positive laws, inasmuch as they did not fit all cases, necessarily exhibited imperfections, Aristotle saw that equity was required to overcome the deficiencies of formal law through natural law, applied by the judge,[31] whose business it was to fix punishments and penalties equally for all in accord with the rule of law.[32]

Of the duality, however, the most important feature was the doctrine of distributive justice, on the basis of which political rights were distributed by the legislator,[33] in a process much like that in which scarce goods (both material and intangible) are handed out to competing groups and persons according to accepted notions of merit.[34] With each being judged equally with his fellow man according to merit, the guiding idea for equality thus became one of proportion based upon merit[35]—the better getting more of what was good and each getting that which benefited him.[36]

To Aristotle, rights could only exist between those who were free and equal before the state.[37] Equality, the basic criterion for political justice, was to be found among men who shared their lives in community, thus being both free and equal "either proportionally or arithmetically."[38] Essentially, justice was something

27. JUSRICE at 5, 9.
28. B. CARDOZA, THE PARADOXES OF LEGAL SCIENCE 38-39 (1927).
29. J. ZANE, *supra* note 15, at 121, 225.
30. SEAGLE at 182.
31. ROMMEN at 18.
32. JUSTICE at 9.
33. *Id.* at 5.
34. J. SHKLAR, *supra* note 5, at 115.
35. JUSTICE at 9.
36. M. HAMBURGER, MORALS AND THE LAW: THE GROWTH OF ARISTOTLE'S LEGAL THEORY 135 (1951) [hereinafter cited as HAMBURGER].
37. JUSTICE at 9.
38. HAMBURGER at 58.

human; man was, of course, human, and, as to sources of political organization and justice, justice existed between people related[39]—the relationship being that of man with fellowman, governed by ethics.[40] Since human life was always a social existence, Aristotle deduced that man was the "social animal,"[41] as well as *zoon politikon*, the political animal—a gregarious, household animal, who, when lonely, tended toward partnership with those to whom he was akin by nature.[42] Man, by his very essence, being a rational creature[43] was guided by reason toward attainment of that for which he was striving.[44] His goal, which Aristotle spoke of as "virtue," could only be achieved as a citizen of a state, or *polis*, through obedience of its laws. In his firm belief of the excellence of the existing laws of the *polis*,[45] Aristotle rejected Plato's idea that there could be a law antecedent or superior to the law of existing society.[46] No goal transcended the ideal of the *polis*, against which no right of a citizen could be admitted.[47] Concerned as he was with goodness and its reality in the state,[48] Aristotle saw as the end of the *polis* the good life by means of the institutions of social life.[49]

Indeed, Aristotle averred that a good man may not be the same as a good citizen, for only in a state could the good man and the good citizen be absolutely identified.[50] There alone could man "realize his moral destiny." The individual who was apart from the state was looked upon by Aristotle as the "most malignant and dangerous of beasts."[51] He who is "without *polis* by reason of his own nature" was a human beast worse than any animal, a brutish man and barbarian not found among other men because he was beyond true human nature; he stood outside of human society in violation of the very concept of "man."[52] Because of this, Aristotle

39. *Id.* at 86, 135.
40. ROMMEN at 32.
41. J. ZANE, *supra* note 15, at 2.
42. HAMBURGER at 58.
43. C. CURTIS, IT'S YOUR LAW 131-32 (1954).
44. A. ROSS, ON LAW AND JUSTICE 237 (1954).
45. ROMMEN at 18-19.
46. SEAGLE at 202.
47. ROMMEN at 18.
48. J. ZANE, *supra* note 15, at 13.
49. HAMBURGER at 169.
50. *Id.* at 43.
51. JUSTICE at 9.
52. HAMBURGER at 85, 89.

preferred the established rule of law, which he recognized as emanating from the state,[53] to that of any individual man:[54] if man himself were to rule he would add the character of the beast to pervert even the best man. Thus, Aristotle praised constitutionalism for the rule of law (reason *sans* passion) and fair equality.[55] A constitutional system-of-laws rule would not suffer from personal caprice.[56] Then, for those for whom such laws were enacted—the members of a state—there was legal justice, but not for those who were nonmembers.[57]

Justice in the state demanded a unanimity in which mutual rights would not be violated and each would keep in his appointed sphere. Inequality arose between individual men in their differences of worth and capacity for the things which the social order called for.[58] For example, on the subject of manual labor, Aristotle, seemingly overwhelmed by the separation of the skilled hand and technical judgment, at times implied that one who worked with his hands to shape physical nature according to human desires worked merely out of routine, his actions proceeding from nonrational habits. Such acts Aristotle likened to the way fire burns in his under-evaluation of manual laborers. Like weaknesses are also said to be found in Aristotle's discussion of slavery.[59]

Aristotle tried to justify the belief that certain men, incapable of being educated to virtue were by nature unfit for citizenship.[60] Due to their psychosomatic structure, these men could not truly determine themselves by reason and, thus, were ruled by their passions instead. Because of this, they ought to be ruled in the form of ownership as slaves, maintained Aristotle, by those who were nimbler of mind.[61] Slaves by nature were, therefore, men who could obey reason, although they were unable to exercise it.[62] From Aristotle on, these justifications were voiced in defense of slavery.[63]

53. THE RULE OF LAW 5, 26 (A. HARDING ed. 1961).
54. A. SUTHERLAND, GOVERNMENT UNDER LAW 118 (1956).
55. HAMBURGER at 59.
56. J. ZANE, *supra* note 15, at 123.
57. HAMBURGER at 58.
58. JUSTICE at 9; PHILOSOPHY OF LAW at 82.
59. SIMON at 29, 81.
60. ROMMEN at 9, 32.
61. *In Defense of Natural Law* at 115. St. Thomas Aquinas tried to explain slavery as a consequence of sin.
62. SIMON at 117 n.2.
63. *In Defense of Natural Law* at 115.

Indeed, some historians have accused Aristotle with influencing the idealogy of American slavery. Margaret Coit, Calhoun's biographer, has written that the South Carolinian statesman's low estimation of the mental potentialities of Negroes was the result of his being steeped in Aristotelian philosophy.[64] Yet, Aristotle advocated a humane exercise of the rule of the master:

> There is . . . community of interest, and a relation of friendship between master and slave, when both of them naturally merit the position in which they stand.[65]

This humanitarianism led him to regard a slave as more a man than a living tool; surely, a slave had more reason than a child, whom one had but to command.[66] In fact, Aristotle did see an injustice in slavery based on "conquest" or "force of law," although he did distinguish it from slavery "by nature."[67] However, there is reason to suspect that Aristotle was evidently uncomfortable with his argument for slavery, since in his will he freed his slaves.[68] In arranging for their freedom, Aristotle was true to his words when he wrote that "it is wise to offer all slaves the eventual reward of emancipation."[69]

B. St. Thomas Aquinas

Aristotle's philosophy was influential in developing the character of law and justice that was to follow.[70] Respectfully referring to Aristotle as "*the* Philosopher," St. Thomas Aquinas was one of those feeling this influence, as evidenced by his teachings and writings during the Middle Ages, while constructing his "imposing edifice" ot scholasticism[71]—and particularly in his works reaffirming the idea of justice as a general virtue.[72] While admitting to the two kinds of justice defined by Aristotle,[73] St. Thomas took Aristotle's analysis and moved toward the first secularization of the

64. SIMON at 117 n.2.
65. HAMBURGER at 139.
66. *Id.*
67. SIMON at 117 n.2.
68. *In Defense of Natural Law* at 115.
69. HAMBURGER at 139.
70. A. ROSS, *supra* note 44, at 237.
71. HAMBURGER at 156.
72. G. DEL VECCHIO, JUSTICE 24 (1953).
73. *Id.* at 35.

idea of justice.[74] Giving as he did a more precise interpretation of Aristotle's theory,[75] Aquinas enriched and synthesized the Greek master's philosophy.[76]

St. Thomas looked upon justice as a divine virtue, which, like other virtues, found its existence in God Himself as a perfect example. In relation to true and formal justice, however, there could be no place for man, as God's creation, with Him, even though man had fulfilled his duties to God, for while God may give any man his due, He is still not a debtor—and, above all, the disparity and infinite distance between God and man makes it impossible for any proper justice.[77] Yet, for man, justice meant duties to other men and it so directed him in these relations in a two-fold way: first, toward individuals, and, second, toward others in general (*i.e.*, the community). Continually speaking of the function of circumstances in determining the reasonableness of the law for executing justice directed at the common good,[78] St. Thomas, in his *Summa Theologica*, saw the law as "an ordinance of reason for the common good, promulgated and emanting from Him who has care of the community"—God.[79]

Defining law as a rule and measure of human action,[80] St. Thomas, in his *Treatise on Law*, divided human law into "just" and "unjust," and then subdivided those classes into one species contrary to divine will and another in conflict only with human well-being.[81] Here, returning again to the "Letter from Birmingham City Jail," Dr. King, in his resistance to Southern segregation laws on the basis of their being unjust, specifically mentioned Aquinas when he wrote: "[A]n unjust law is a human law not rooted in eternal and natural law."[82]

Far superior to human law,[83] natural law, as a part of eternal law, was, to Aquinas, the primary law from which all others were

74. JUSTICE at 18-19.

75. G. DEL VECCHIO, *supra* note 72, at 62.

76. ROMMEN at 31.

77. G. DEL VECCHIO, *supra* note 72, at 9, 14, 29.

78. ROMMEN at 206, 255.

79. Nielson, *The Myth of Natural Law*, in LAW AND PHILOSOPHY 243, 246 (S. Hook ed. 1964); SIMON at 109.

80. SIMON at 71. The distinction between law and rules of law in modern legal science can be traced back to Aquinas. PHILOSOPHY OF LAW at 25-26. These rules, or national laws, were designed for human ends, subject to change as human condition varied. HAINES at 13.

81. G. DEL VECCHIO, *supra* note 72, at 160.

82. Friedman, *supra* note 3, at 152.

83. SEAGLE at 202.

derived[84]—*bonum est faciendum, malum vitandum*.[85] In *Summa Theologica* he described natural law as "the light of natural reason whereby we discern what is good and what is evil."[86] It was *the* natural law, as much as the principle of identity was *the* principle of reason.[87] Because man was a rational creature who applied the eternal law to human affairs by distinguishing the good from the bad,[88] it was inevitable that natural law should result and that man could apprehend all this with unaided reason[89] (though Aquinas believed the circumstances of climate might prevent the development of reason in some men).[90] Concluded St. Thomas: "Whatever the particular reason naturally apprehends as man's good belongs to the precepts of natural law."[91]

It was St. Thomas' understanding that the human person was the free master of his person, but subsisted by and in himself. Freedom of conscience was undeniable—even to the point where Aquinas recognized religions for Jews and Saracens.[92] Judgment was left to people in immediate situations to act accordingly,[93] with natural law serving as the basis. Although positive laws and actions that today may rightly be thought of as criminal were clearly sanctioned by eternally valid natural law,[94] in the Thomistic division between private and public immorality, the conservative Thomists denied that sin was a concern of criminal law.[95] St. Thomas, great moralist that he was, would not base what are not crimes on mere authority, his appeal being to a rational view on the divine will.[96]

The judgment to be made or the choice given to man between good or evil was fixed on an objective order laid down partly by

84. Nielson, *supra* note 79, at 124, 129.
85. *Id.* at 124.
86. Oppenheim, *The Metaethics of Natural Law*, in LAW AND PHILOSOPHY 243, 246 (S. Hook ed. 1964).
87. SIMON at 122.
88. HAINES at 13-14.
89. Nielson, *supra* note 79, at 129.
90. COHEN at 81.
91. Abelson, *Unnatural Law*, in LAW AND PHILOSOPHY 170 (S. Hook ed. 1964).
92. *In Defense of Natural Law* at 113, 119.
93. SIMON at 186 n.17.
94. Baumgardt, *Natural Right Valid in Itself & Allegedly Relativistic Endamonism*, in LAW AND PHILOSOPHY 173 (S. Hook ed. 1964).
95. J. SHKLAR, *supra* note 5, at 45, 49, 87.
96. COHEN at 20.

universal reason and partly by the Scriptures.[97] Akin to Aristotle's moral and legal philosophy, St. Thomas viewed the world as striving toward good, with its own perfection in agreement with God[98] and, thus, felt that human beings were most likely to turn toward virtuous behavior. Goodness he attributed to God's very reason, which was interpreted by the Church[99] (assuming it was the exclusive interpreter of natural law and of which it stood as guardian over both state and individual).[100] Because goodness was not simply an expression of divine fiat,[101] God's intelligence was thus prior to His will. So a large part of St. Thomas' philosophy was grounded in theology[102]—and understandably so. He had forcefully identified the law of nature with the law of God.[103] While the natural law and rights that Aquinas spoke of were like those of Aristotle (what is just by nature transcends the order of voluntary action),[104] these ideas were energetically carried on by Catholic churchmen to be incorporated in final form with the Christian concept of God, thereby giving a firmer content to natural law.[105]

Also belonging to natural law was the inclination of man not only to know the truth about God, pertaining to reason, but to live in society, to associate.[106] This recognition of the essentially political nature of man was a concept Aquinas had derived from Aristotle. Only through the state could man achieve the aforementioned perfection, for without it, he was unthinkable.[107] It was the *full right* of "an earnest, moderate, and reasonable people which cherishes the general welfare" to govern themselves "through republican institutions and freely elected officials." Aquinas, believing that a state's constitution should be suited to the people's character and moral vigor, considered the best form of government to be part kingdom, "wherein one is given power to preside over all," and part democracy, wherein all are eligible to govern and can choose

97. Friedman, *supra* note 3, at 146.
98. A. Ross, *supra* note 44, at 243-44.
99. Friedman, *supra* note 3, at 146.
100. Seagle at 202.
101. Friedman, *supra* note 3, at 146.
102. Nielson, *supra* note 79, at 129-30.
103. Seagle at 201; Haines at 13-14.
104. *In Defense of Natural Law* at 42.
105. A. Ross, *supra* note 44, at 224-25, 239, 243.
106. Rommen at 49; Simon at 122-24.
107. J. Snee, *Leviathan at the Bar of Justice*, in Government under Law 94-95 (1956).

their ruler. As he advised in *Summa Theologica*, "All should take some share in government." A constitution of this form, he continued, would ensure peace among the people, commend itself to all, and be the most enduring.[108]

The influence of the philosophy of Thomas Aquinas upon the modern Catholic Church is rather pronounced. Evidencing this effect are both the writings of jurists hoping to restore natural law to its former primacy in the legal-political world and the fact that Thomistic philosophy has served as a basis of instruction adopted by Church schools and seminaries to this day.[109]

C. *Immanuel Kant*

As well as St. Thomas, also influenced by Aristotle's analysis of law and justice was Immanuel Kant.[110] Declaring that "jurists still seek a definition of their concept of the law,"[111] Kant was bold enough to supply one himself. Behind this famous reproach to jurists was the assumption of legal absolutism—that there could be but one true or correct definition of an object.[112] To Kant, justice, which was determined by some ideal, common equality, was a synthesis of liberty and equality,[113] the "discovery" of which provided the basis of law.[114] This formula was later adopted by Spencer in his law of equal freedom, which was ascertained by observation in the same way as were physical or chemical laws.[115]

Given such an approach to liberty, freedom of the individual became the starting point in Kant's sytem.[116] Man was born free and equal.[117] Individual liberty or autonomy was the sole right belonging to *every* man by virtue of his humanity.[118] Viewing man not merely as a being of nature, but also as a being of freedom in whose life reason could have a determining influence, Kant looked not merely to what nature made of man, but, more importantly,

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108. ROMMEN at 259, 220.
109. COHEN at 145, 153; HAINES at 278.
110. JUSTICE at 5.
111. SEAGLE at 4-5.
112. COHEN at 65.
113. JUSTICE at 17-18.
114. J. ZANE, *supra* note 15, at 39.
115. JUSTICE at 26; PHILOSOPHY OF LAW at 219.
116. ROMMEN at 100.
117. JUSTICE at 17-18.
118. ROMMEN at 100.

to what man could make of himself as a *free agent*.[119] Alone or jointly, "a person is subject to no other laws than those he gives himself."[120] Kant's idea was thus seen in the freely developed and acting personality.[121] All this caused Ernest Cassier to remark, "Kant looks for constancy not in what man is but what he should be."[122]

Kant's whole philosophy of liberty exhibited individual natural law in its highest form.[123] Although he still believed in natural law (because of the access of practical reason to his metaphysical world, an access that theoretical reason lacked),[124] the Aristotelian concept of nature and its law became the doctrine of *Summum Bonum*.[125] What was good for nature was relevant to the study of natural law.[126] It was the state of nature that was already social, according to Kant's own theory, with norms of nature law having force in it as private law.

In trying to accommodate the abstract freedom of will to the abstract idea of property, Kant (considered by scholars to be the founder of the metaphysical school[127]) undermined the natural rights foundation of private property.[128] His initial efforts to justify that above idea to himself gave rise to the metaphysical theories of property. As always, Kant began with the premise of the inviolability of the individual human personality, stating that a thing rightfully belongs to a person when he is so connected with it that anyone else who uses it—*sans* his consent—does that person an injury. Furthermore, believing that a contract for property was alien to and inconsistent with one's substance as involved in the very idea of individual right, Kant had said it was impossible to prove one ought to keep his promise of consideration merely as a promise (however, it should be noted that he did attach an inherent moral significance to any promise made). An undertaking to perform something of that sort might be considered an alienation of one's services and property. When worked out to completion,

119. SIMON at 184.
120. ROMMEN at 101.
121. B. CARDOZA, *supra* note 28, at 39.
122. SIMON at 184.
123. ROMMEN at 100.
124. *In Defense of Natural Law* at 118.
125. COHEN at 130.
126. SIMON at 42.
127. SEAGLE at 23.
128. PHILOSOPHY OF LAW at 210, 203, 260.

Kant's theory showed a use of the ideas of occupation and compact, the former involving a unilateral pact not to disturb others in their occupation of other things and the latter based upon a reconciliation of wills through a universal law, wherein one who declared his will as to object A was compelled to respect the declaration of his neighbor's will as to object B.[129]

So there were limits to liberty: the external liberty of each man was limited by and adjusted to the like liberty of all others. According to Kant's theory of internal morality, as set forth in his *Metaphysical Elements of Justice*,[130] these external activities of man were to be distinguished from morals, which were confined to the development of inner life.[131] As he advised man, "Act externally in such a manner that free exercise of thy Will may be able to co-exist with the freedom of all others. . . ."[132] Law, then, could be viewed as a system of principles or universal rules to be applied to human action.[133] Its end or purpose was the promotion and maintenance of maximum individual self-assertion.[134] A course of action was lawful only if the liberty to pursue it was compatible with the liberty of everyone else. The demand for equality was, thus, identical with the demand for that general principle of freedom wherein conflicting human wills would be reconciled in action under the sum total of conditions.[135] Above all codes and enactments, this principle was sought to furnish criterion for establishing the validity of *all* legal rules.[136]

Kant's theory of the supreme principle expressed in universal legislation demonstrated his legalistic ethics.[137] Ethical relations were involved in the autonomy of free will—and, from the Kantian view, law itself was a branch of social ethics.[138] Viewing the law as an eternal idea to which external human conduct ought to con-

129. *Id.* at 213-14, 260-61.

130. Ladd, *Law and Morality: Internalism and Externalism*, in LAW AND PHILOSOPHY 62-63 (S. Hook ed. 1964). Cardoza, on Kant, wrote that the purity of will was the concern of morality, while acts, in and of themselves, had no ethical quality apart from will of action. B. CARDOZA, *supra* note 28, at 31-32.

131. JUSTICE at 17-18.

132. ROMMEN at 100.

133. PHILOSOPHY OF LAW at 84.

134. JUSTICE at 17-18.

135. A. ROSS, *supra* note 44, at 276.

136. SEAGLE at 10.

137. HAINES at 237.

138. COHEN at 105.

form, Kant had assumed that the conscience of all rational beings demanded norms based on authority of intuition or unanimous consent. Therefore, he believed the law told man what was categorically imperative on society at all times.[139] In fact, Kant was the first to recognize that laws, commands, principles, and rules all belonged to the same family, since they were all expressed in the imperative mood.[140] Kant said of his Categoric Imperative, "Act on a maxim which thou canst will to be law universal."[141] Hence, an action was right if it proceeded on such a maxim[142]—a meta-moral maxim in the Kantian sense of adopting rules.[143]

The Categoric Imperative was meant to be unconditional. Being backed up by threats of punishment, it was, in a sense, coercive.[144] Although the Categoric Imperative has been described as a general "Thou shall not," it must also be remembered that Kant's was a moral world in which all conduct was governed by an absolute rule of regularity.[145] To be sure, the Categoric Imperative could not be used to form universal rules of conduct unless consideration were given to the consequences of obeying such rules.[146] For this reason, the Categoric Imperative involved not only universal law but, also, the idea of duty.[147]

Kant regarded obedience to the law as an absolute duty, at times to the extent of putting duty for duty's sake ahead of everything.[148] This absolutism led Kant to proclaim that one could not tell a lie under any circumstances—not even to save a human life. However, when applied to the legal field, this approach was somewhat weakened, as Kant acknowledged exceptions to the duty of obeying the law, such as in the case of executing a murderer (which opened the way to speculation that the number of exceptions might be increased).[149] That a murderer's life could be taken in exchange

139. *Id.* at 21, 85.
140. Abelson, *supra* note 91, at 162.
141. HAINES at 238.
142. ROMMEN at 100.
143. Beardsley, *Equality and Obedience to Law*, in LAW AND PHILOSOPHY 36 (S. Hook ed. 1964).
144. Abelson, *supra* note 91, at 163-64.
145. ROMMEN at 85, 105. Kant's Categoric Imperative is discussed at greater length in J. STONE, THE PROVINCE AND FUNCTION OF LAW 241-44 (1950).
146. E. PATTERSON, *supra* note 18, at 49.
147. HAINES at 238.
148. COHEN at 18, 42.
149. *Id.* at 87.

for the life of his victim was the principle of equality of crime and penalty offered by Kant, but this principle could not be extended. Because the moral duty not to kill was an absolute duty for both the individual and the community, Kant refused to prescribe the death penalty as punishment for dueling, infanticide, or rebellion. Further still, he hesitated in prescribing the death penalty in any case where it would not act as a deterrent. Rejecting secular and sacred authority alike and refusing to determine what specific acts were criminal and ought to be treated as such, Kant developed a penal code having an absolute moral base. While it would be unjust to punish anyone except for a wrong actually committed,[150] a world would be immoral if actual virtue went unrewarded and sin unpunished—and any immoral or unjust world, in the eyes of Kant, was not worth preserving.[151]

Of course, the only way to guarantee the realization of innate liberty and equality was through establishment of a political organization formed by a social contract,[152] *a la* Rousseau. Liberty, then, came only through the state, wherein authority of the general will was made consistent with the perfect freedom of individual will. While initially predicating certain limits of the state, Kant later tended toward consenting to practically absolute authority under the state's ruling forces.[153] For example, Kant, in what may seem to be a remarkable stance for him to have taken, called for a prohibition of any inquiry as to how existing government acquired its authority.[154] Nevertheless, his belief in individualism was strong enough to keep him from completely following Rosseau's limitations in subordinating individual will to the state.[155] After all, according to Kant, government to have any claim to morality must, like law, be based on freedom and aimed at the protection of individual autonomy.[156]

III. CONCLUSION

Having examined the thoughts of Aristotle, Aquinas, and Kant in areas related to human rights, those salient ideas might be syn-

150. *Id.* at 20-21, 42-43, 47.
151. *Id.* at 110.
152. JUSTICE at 18.
153. HAINES at 238.
154. COHEN at 18.
155. HAINES at 238.
156. J. SHKLAR, *supra* note 5, at 232 n.63.

thesized into the following statement: An individual possesses the freedom to develop his own thoughts, free from orthodox dogma, to differ in opinion, and to live as he desires provided this freedom does not impinge upon the rights of others to do the same. To this, moreover, let there be added the latter-day thoughts of the late Senator Harry F. Byrd, who admonished, "[A]lways remember that human freedom is not a gift to man . . . [but] an achievement by man . . . gained by vigilance and struggle."