

Autonomous Morality and the Question of the Decrepitude of Justice*

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One cannot study the serious literature of Western or Eastern civilization without being impressed by a persistent concern for justice.¹ The language varies; the definitions are not altogether the same; the ascription of grounds and the delineation of implications diverge. But there is a powerful continuity of concern for justice and righteousness in the Hebraic law and the prophets, the Christian Gospels and the letters of Paul, Plato and Aristotle, Cicero and Justinian, Augustine and Aquinas, and so on to Brunner and Tillich, Pound and Rawls.

Consequently, it is no small matter when a philosopher who is profoundly knowledgeable of the history of thought and aware of the history of institutions proposes a morality in which justice is presented as an obstacle to the moral task rather than an aspiration for the moral life. That is precisely what Walter Kaufmann has argued in a major treatise in moral thought, *Without Guilt and Justice: From Decidophobia to Autonomy*. Justice, according to Kaufmann, is a decrepit idea whose time is now past if indeed it ever was an acceptable moral principle. Kaufmann's negative argument against justice and, by entailment, against guilt, rests on his positive proposal for a new autonomous morality which would, in its complete form, combine personal autonomy with "the new integrity" and a set of cardinal virtues. The treatise is a provocative addition to the many translations, interpretations, and constructive essays Kaufmann has already published.

A major curiosity of Kaufmann's treatise is that justice, although explicitly rejected, would seem to be in fact required by the morality proposed. The difficulty may lie in Kaufmann's narrow construction of the meaning of justice. The presentation of this thesis will follow a critical sketch in five propositions of the basic outlines of Kaufmann's argument.

1. *There is need for a new, autonomous morality.*—The dominant purpose of the treatise is the promotion of autonomy defined as "making with open eyes the decisions that give shape to one's life" (p. 2; see also p. 180). In a recasting of the myth of the Garden, Kaufmann ascribes this speech to the serpent: "'Fear not to stand alone! Nobody knows what is good. There is no such knowledge. Once upon a time God decided, but now that he is dead it

* Walter Kaufmann, *Without Guilt and Justice: From Decidophobia to Autonomy* (New York: Peter H. Wyden, Inc., 1973). 274 pages. \$7.95.

¹ Note, for example, Upton Sinclair's *The Cry for Justice* (New York and Pasadena, Calif.: Upton Sinclair, 1915), an anthology of "the writings of philosophers, poets, novelists, social reformers, and other who have voiced the struggle against social injustice." The writings were "selected from twenty-five languages covering a period of Five Thousand Years" (p. 1).

Autonomous Morality and the Question of Justice

is up to you to decide. . . . You can be autonomous” (p. 237). Autonomy is thus the good that remains when nobody knows what is good.

Persons, however, have a deep fear of autonomy, a dread of making fateful decisions. They suffer from “decidophobia.” Kaufmann shrewdly characterizes strategies of decidophobia, including *inter alia* religion, commitment to a movement, exegetical thinking, politics, and marriage. But the most revealing strategy, given Kaufmann’s argument about justice and guilt, is moral rationalism, which “claims that purely rational procedures can show what one ought to do or what would constitute a just society” (p. 22).

Moral rationalism is wrong both in its epistemological arrogance and in its reliance on given, precise norms for moral judgment. To Kaufmann, there are no known religious or ontological or otherwise rationalistic grounds for moral decision. As he wrote in *The Faith of a Heretic*: “The main objection to absolute morality is that even if there were absolute moral standards we should have no way of knowing whether we had found them.”² In moral matters, we are forced to pursue a *via ignorantia*.³ To Kaufmann this means his ethic “is not absolute but a morality of openness. It is not a morality of rules but an ethic of virtues. It offers no security but goals.”⁴ Thus where moral rationalism pretends to offer a set of presumably known principles for the direction of human conduct, precluding the need for decision, Kaufmann argues that an autonomous morality is more in keeping with the actual human condition, a condition of ignorance and a condition of such variability that no principles can be accepted as determining what one should do in all circumstances.

2. *Justice and guilt are obstacles in the way of autonomy.*—Kaufmann defines justice as “meting out to men what they deserve” (p. 39; italics removed). In Kaufmann’s actual usage of the term, the operation of justice assumes fixed principles that are knowable and applicable with authoritative certainty. But, in fact, desert is incalculable, there are no knowable fixed principles, and in moral matters there is no authority beyond oneself.

Kaufmann’s discussion of justice is rich and subtle. He cites the horrors committed beyond the usual trilogy of retribution, deterrence, and reform. He convincingly instances the virtual impossibility of doing unqualified justice in the case of distributing salaries in universities.

But there are problems in Kaufmann’s interpretation of justice. For example, he limits the reference of retributive justice to the meting out of

² Walter Kaufmann, *The Faith of a Heretic* (Garden City, N.Y.: Doubleday & Co., 1961), p. 308.

³ Kaufmann’s position on this point is akin to that of F. A. Hayek, who has constructed a well-known economic and political philosophy largely on the proposition that “the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends” (*The Constitution of Liberty* [London: Routledge & Kegan Paul, 1960], p. 29).

⁴ *The Faith of a Heretic*, p. 317.

punishment. Within the sphere of law this means retributive justice is limited to matters of criminal law. He explicitly distinguishes procedures of recompense and restitution from the sphere of retributive justice altogether (pp. 35, 94). Such a limitation, of course, strengthens his case against justice; but the problem is that there is a long tradition of including restitution under the rubric of justice, even construed as “meting out to men what they deserve.” This is clearly the sense of Aristotle’s rectificatory justice, which, contra Kaufmann, is in truth a form of retribution (p. 38). And there is no good reason why procedures of tort law and contract law—in which, strictly speaking but granting exceptions, no punishment is involved—should not be called the doing of justice at least in the sense of distributing loss and often in the sense of a giving back.

Second, Kaufmann construes retributive justice in the mode of mechanical jurisprudence, although he nowhere uses the term.⁵ That is, he assumes that to do justice there must be known principles that can and should be strictly applied to appropriate cases, and that punishments can and should be strictly proportioned to wrongdoing. The construction again has been effected to give support to his case that justice is impossible, efforts to do justice are inhumane, and the entire tradition of justice is out of keeping with the actual moral situation of mankind. But few, if any, sophisticated theorists of justice in law or morality have been proponents of mechanical jurisprudence. It is unclear why one cannot appreciate the relativity of moral and legal systems, the open texture of rules, the difficulties of rule interpretation and application, the sense of what legal realists call “rule-skepticism” and “fact-skepticism,” and yet make an effort to do justice understood as meting out to persons what they deserve. Indeed, it is difficult to know how this is different from what Kaufmann himself proposes about punishment, namely, that at times it is necessary (pp. 60–61); it can be more or less appropriate (p. 58); but it should always be future oriented and should be applied only to those who have violated a law (pp. 132–33). At least it is possible to employ the terms “desert” (which Kaufmann rejects) and “appropriateness” (which he uses) as both indicating the same basic consideration that is critical in deciding what is just, namely, the consideration of attending to the given character of the situation within which justice is to be done.

A third problem emerges in Kaufmann’s “attack on distributive justice.” The attack is brilliant in its demonstration of the difficulty of determining desert either in principle or in practice. There is, however, a twist in the positive affirmation on which the negative critique rests, the affirmation that “no two men or women are alike,” that “all men and women are

⁵ See Roscoe Pound, “Mechanical Jurisprudence,” *Columbia Law Review* 8 (December 1908): 605–23. Jerome Frank calls the same perspective “mechanistic law” in *Law and Modern Man* (Garden City, N.Y.: Doubleday & Co., 1963), pp. 127–58, 221–31.

Autonomous Morality and the Question of Justice

brothers and sisters, and each should be conceived as an individual,” and that “no two cases are alike” (pp. 85–86). The twist is that, instead of taking this affirmation as a basis for rejecting distributive justice as impossible or inhumane if possible, it can be taken as an indication of the need to refine procedures of doing justice personally and institutionally to take account of the individuality of persons and events. Paul Tillich’s concept of “creative justice” is such an effort and satisfies all that Kaufmann seeks to preserve.⁶ It requires one in processes of distribution to take into account the uniqueness of other persons, the particular character of historical events, the uncertainty but necessity of decision, and even the inability of satisfying all legitimate claims unqualifiedly.

On behalf of autonomy, Kaufmann attacks both justice and guilt, for both entail the notion of desert. To be guilty is to deserve punishment. But if desert is indeterminable, no one should feel guilty. “The liberation from guilt spells the dawn of autonomy” (p. 114). Kaufmann would have guilt feelings replaced with self-criticism and self-correction as a characteristic of the autonomous person. He dismisses a whole tradition of dealing with the psychodynamics of personality with the judgment that guilt feelings are irrational, therefore dispensable, and should be dispensed with. This does not mean that decisions are easy matters, for “the world is capricious and cruel” (p. 129), “it is impossible to satisfy all claims” (p. 131), and decisions are open, fearsome, and ambiguous. But one should make them without pretending to do justice and without any sense of guilt.

3. *Alienation is a requisite of autonomy.*—Kaufmann distinguishes himself from much of modern Western intellectual history by his insistence that alienation is not a bad thing. It is fruitful when it means estrangement or critical distance from the given world. As persons become increasingly self-conscious, they become increasingly “troubled by the world, society, their fellow men and their own shortcomings” (p. 147). Alienation so defined is a necessary condition for autonomy, for the autonomous person stands alone and subjects all traditions, all principles, all claims, and even his own past to criticism.

4. *The moral life involves the cultivation of four cardinal virtues.*—Autonomy, to Kaufmann, does not mean anything is permitted. It is allied with “the new integrity,” a kind of honesty which is “the heart of rationality, the essence of scientific method.” It entails “the canon,” an imperative to ask a certain set of questions whenever one is confronted with convictions, policies, or beliefs that concern the possibility of fateful decisions. One must ask: “(1) What does this mean? (2) What speaks for it and (3) against it? (4) What alternatives are available? (5) What speaks for and (6) against each?”

⁶ Paul Tillich, *Love, Power, and Justice* (New York: Oxford University Press, 1960), pp. 64–66, 84–90.

The Journal of Religion

And (7) what alternatives are most plausible in the light of these considerations?" (p. 178). The new integrity involves as well those qualities of character that are required to effectuate one's conclusions.

At this point Kaufmann incorporates his theory of the four cardinal virtues—honesty, courage, "humbition," and love.⁷ Honesty is the open application of "the canon" to the views, purposes, and policies held by oneself and others. This virtue in itself is significant, for, declares Kaufmann, one cannot possess the virtue of honesty and be a devotee of Stalinism or Hitlerism (pp. 181 ff.). Courage is the strength of character required to effectuate the other virtues and to act autonomously. "Humbition" is Kaufmann's coinage, a contraction of humility and ambition. It is the compound quality of willingness to admit error (humility) and aspiration to improve or to change for the better (ambition). Love is "the habit of trying to imagine how others feel and what they think; to share their griefs and hurts at least in some small measure; and to help" (p. 118).⁸

Kaufmann's theory of the four cardinal virtues provokes two questions, not fully answered in his treatise. First, what is the connection of the four virtues with each other and with autonomy? Second, given the necessity of the *via ignorantia* in moral matters, what is their ground and justification?

In response to the first question, Kaufmann provides two distinct and at least *prima facie* inconsistent answers. On the one hand, he cites Clytemnestra as an autonomous person to remind us "that autonomy is no warrant of virtue" (p. 32; see also p. 180). He makes much of the point that the cardinal virtues may conflict with each other to the extreme that one or two of the virtues may be exercised in the absence of, even to the detriment of, the others (pp. 184–85). On the other hand, Kaufmann affirms that "the four cardinal virtues form an organic unity" (p. 229). Furthermore, in various passages, he insists that there is an intimate if not essential connection between autonomy and the virtues of honesty, courage, and humbition (pp. 28, 33, 189, 200). Perhaps he means to suggest that autonomy and these three virtues entail each other to *some* extent, for it would be impossible to be autonomous, in Kaufmann's sense in the *total* absence of the new integrity, courage, and a combination of humility and ambition. But what about the virtue of love? Given the underlying individualism⁹ of autonomous morality, the connection between autonomy and love seems distant, except so far as love contributes to self-understanding and self-criticism (pp. 229 ff.).

Kaufmann's response to the question of the justification of his theory of four cardinal virtues is also somewhat problematic. In an earlier book, he declares that the "four virtues cannot be proved," since no ethical theory

⁷ Kaufmann's theory of the four cardinal virtues was first developed in *The Faith of a Heretic*, pp. 317 ff.

⁸ See also *ibid.*, pp. 320–23.

⁹ Kaufmann will admit only to "the seemingly individualistic part of my ethic" (p. 229).

Autonomous Morality and the Question of Justice

can be proved.¹⁰ On the other hand, he rejects moral intuitionism. In order to avoid certain forms of moral theory—relativism, subjectivism, emotionalism, dogmatism, fideism, rationalism—he presents the alternative of justification by consequentialism or, more specifically, justification according to social utility (pp. 186–90). That is, he argues that the four cardinal virtues contribute to the survival and maintenance of society. Their total absence would make social living impossible.¹¹ But at the conclusion of the argument, Kaufmann remains open to counterargument and solicits alternative theories of the virtues, thereby, curiously, demonstrating his underlying commitment to the virtues he has himself formulated, in particular, the new integrity.¹²

The problematic created by this justificatory argument is twofold. First, no reason is offered for adopting a social utility or consequentialist mode of justification. In fact, it is not evident how social utility jibes with Kaufmann's fundamental insistence upon autonomous morality and the need for alienation from society. Second, Kaufmann slights the possibly stronger argument of justification by implication. That is, the virtues, especially the first three, might be commended as an implication of the full meaning of autonomy. This would require Kaufmann to go beyond the presentation of autonomy as an interpretation of the profound though often unacknowledged and unrealized moral condition of mankind to a justification of autonomy as the proper intention of mankind.

5. *Autonomous morality is compatible with happiness.*—Kaufmann writes: “In some ways, autonomy is an austere ideal” (p. 204). Indeed it is. It would have each person become self-determinative, self-reliant, self-critical, self-corrective, directed to self-improvement, measured by self-defined goals. It has all the appearances of a secularized form of inner-worldly asceticism. This does not mean that autonomy is incompatible with happiness, however, so long as happiness is understood as “a state, not necessarily conscious, that is desired” (p. 205; italics removed). This is so not only if the state desired is autonomy itself (which results in a circular argument), but also if the state desired is, for instance, Nirvana, the creative life, or the life of service. Of these states, all of which Kaufmann discusses, he prefers the life of creativity, which he suspects all persons really desire (p. 219).

The precise difference between the life of creativity and full-fledged autonomy is obscure. But more important than the argument that autonomy and happiness are compatible as defined is the revealing and disturbing comment in a concluding section of the treatise that were the creative person (and presumably, therefore, the autonomous and virtuous person) asked to choose between two types of society, a more egalitarian or a more creative society, “the one with fewer social inequalities would not necessarily be

¹⁰ *The Faith of a Heretic*, p. 331.

¹¹ See *ibid.*, pp. 333–38.

¹² *Ibid.*, p. 338. See also *Without Guilt and Justice*, p. 190.

The Journal of Religion

better: it might be stagnant, uncreative, afflicted with boredom and despair. A more creative society might be preferable even if it were more inegalitarian. It is better to create than to receive, and autonomy surpasses possessions" (p. 235).

There is a remarkable similarity at this point between Walter Kaufmann's and Friedrich A. Hayek's social and economic philosophy. Both take the *via ignorantia* as a primary moral premise, and both are led from that to conclude that freedom is preferable to social justice as a principle of social and economic organization.¹³ It is instructive to contrast Kaufmann and Hayek with Nicolai Berdyaev, who is no less a devotee of creativity and freedom but who argues that the problems of bread and freedom are tied intimately together and that an adequate social philosophy must conjoin at one and the same time the principles of democratic equality in the distribution of political rights and economic goods and services and of aristocratic inequality, or perhaps more accurately aristocratic diversity, in creative expressions of the human spirit.¹⁴

It is at this point that Kaufmann should be brought to reconsider the relation between autonomy and justice on the basis of an understanding of justice that is at least as much in keeping with significant strains of the history of Western and Eastern thought as Kaufmann's construction. That is, *justice can be understood as the disposition and its expression in personal conduct and in institutional structure to effectuate a form of relation between beings that is as fully responsive as possible to their several needs and claims given their ontological and cultural condition.* Given this understanding of justice, it can be contended that, within the context of social interaction, the full actualization of personal autonomy is possible only in and through processes of procedural and distributive justice.

Kaufmann passes off procedural justice in two brief passages, arguing that procedural justice may also be called fairness and that just or fair procedures do not assure just results (pp. 57, 69). One may grant both of those points but nonetheless argue that, on Kaufmann's own terms, what has by long tradition been called procedural justice inheres in the full sense of autonomy. That is, autonomy requires the canon of honesty, of the new integrity. But the seven questions of the canon can be taken as indicating the considerations that underlie the concept of due process,¹⁵ which rests on the general egali-

¹³ See the reference in n. 3 above.

¹⁴ See, for example, Nicolai Berdyaev, *Slavery and Freedom* (New York: Charles Scribner's Sons, 1944), pp. 9-11, 150-51, 217-19.

¹⁵ According to Edmond Cahn, the main requirements of due process are the following: "We must not accuse anyone of an act violating some standard of behaviour unless he could have ascertained the existence and meaning of the standard before he committed the act. We must let him know what he is accused of doing and must give him a fair opportunity to collect his evidence and then to present it. The judge and jury who hear his case must be unbiased and attentive and, especially where the accusation is a grave one, the accused is entitled to

Autonomous Morality and the Question of Justice

tarian principle that every person, by virtue of the fact of being a person, deserves his or her day in court and, by extension, in every forum where important decisions are made affecting his or her life. In this sense, creative autonomy depends on the egalitarian principle of procedural justice. It is precisely the greater or lesser violation, often the systemic violation, of that principle in judicial and other decision-making processes that enslaves, that denies autonomy not only to individual but to whole classes of persons, and that provokes the cry for justice.

In turn, therefore, the full effectuation of procedural justice is essentially related to distributive justice both in the sense of assuring the distribution so far as possible of the rights of due process in decision-making to all persons whose lives are or might be significantly affected by the particular decisions to be made and in the sense of providing for a sufficient level of educational, cultural, economic, and social goods and opportunities to employ those rights of due process effectively. One may grant Kaufmann's strong argument that the delineation of the terms of distributive justice is a difficult and uncertain matter. Decisions must be made. But the principle as principle is unaffected. It must be acknowledged that illiteracy, ignorance, malnourishment, poverty, and racism are obstacles to the full effectuation of due process and therefore to the full effectuation of personal autonomy. This means that if, as Kaufmann seems to be asserting, autonomy is a specifically human goal given the human condition, then distributive justice, in the sense of assuring, so far as possible, that each person has access to those goods, services, and opportunities needed to make fateful decisions within the natural and social world, should be considered part and parcel of autonomous morality.

In sum, in the epilogue to *The Faith of a Heretic*, Kaufmann bemoans that there is no Mozart in philosophy. But then, he declares, there cannot be, for philosophy, to do its job, must carry its themes to the bitter end. It cannot be pleasing. It cannot delight. It must be upsetting. It must be honest. *Without Guilt and Justice* is, it must be said, an honest book. But honesty, for the sake of autonomy and the avoidance of decidophobia, invites critical response. While there are many areas of Kaufmann's treatise that deserve critical response,¹⁶ one of the most important is his rejection of justice and guilt,

the assistance of a counsel and advocate. Moreover, even after an accused has been found guilty, due process of law requires that we provide some sort of remedial procedure to uncover and correct any serious error that may have been committed in the trial of his case" (*The Moral Decision: Right and Wrong in the Light of American Law* [Bloomington: Indiana University Press, 1955], p. 253).

¹⁶ Besides those areas already mentioned in the text, one might note Kaufmann's persistent gibes at "liberals" (e.g., pp. 44 ff., 93, 103, 109); his assertion that in Judaism, Christianity, and Hinduism retributive justice has always been the essence of justice (p. 40); his occasional and moderate defensiveness about American society (e.g., pp. 148 ff., 164 ff., 181 ff.); his critique of those to whom alienation is an evil to be overcome (e.g., p. 166) and of those who "dream of community" (p. 171); and the possible effect of his personal religious and historical

The Journal of Religion

which rejection rests on his epistemological skepticism, austere individualism, social utilitarianism, and narrow construction of the meaning of justice. The more immediate question is whether, within the actual world, autonomous morality is possible in the total absence of procedural and distributive justice. The more ultimate question, which has not been touched on in this review except by implication, is whether autonomy is a sufficient category to interpret the moral condition of mankind.

experience on his rejection of justice and guilt, that is, the effect of his Jewish tradition together with his experience of Holocaust (see *The Faith of a Heretic*, pp. 18–20).