

XI. MORALITY AND LAW. FREEDOM AND NECESSITY

"In the sphere of politics and law the principles expounded in this course are based on the *most exhaustive specialised studies*. It is therefore... necessary to realise from the start that what we have here... is the logical exposition of the *conclusions* reached in the sphere of legal and political science. My original special subject was in fact jurisprudence, and I not only devoted to it the customary three years of theoretical university preparation, but also, during a further three years of legal practice, continued to study it particularly with a view to the *deepening* of its scientific content... And *certainly* the critique of private law and of the legal shortcomings in this field could not have been put forward with *such confidence* but for the consciousness of *knowing* all the weaknesses of the subject as well as its stronger sides."

A man who is justified in saying this of himself must from the outset inspire confidence, especially in contrast to the "early, admittedly scamped legal studies of Herr Marx." And for that reason it must surprise us to find that the critique of private law which steps on to the stage with such confidence is restricted to telling us that "the scientific character of jurisprudence... has not developed far," that positive civil justice is injustice in that it sanctions property based on force, and that the "natural basis" of criminal law is *revenge*—an assertion which in any case is only new in its mystical wrapping of "natural basis." The results in political science are limited to the transactions of the famous three men, one of whom has hitherto held down the others by force; in dealing with which Herr Dühring in all seriousness conducts an investigation into whether it was the second or the third who first introduced violence and subjection.

However, let us go a little more deeply into our confident jurist's most exhaustive specialised study and scientific content deepened by three years of legal practice.

Herr Dühring tells us of Lassalle that he was prosecuted for "inciting to an attempt to steal a cash-box" but that "no decision to convict could be reached by the court, as the so-called *provisional acquittal*, which was *then still possible*, supervened... this *half acquittal*."

The Lassalle case referred to here came up in the summer of 1848, before the assizes at Cologne, where, as in almost the whole of the Rhine province, French criminal law was in force. The Prussian *Landrecht* had been introduced by way of exception only for political offences and crimes, but already in April 1848 this exceptional application had been abrogated by Camphausen. French law has no knowledge whatever of the Prussian *Landrecht's* loose category of "inciting" to a crime, let alone inciting to an attempt at a crime. It knows only *instigation* to crime, and this is only punishable if it takes the form of "gifts, promises, threats, abuse of authority or of power, deceitful machinations or criminal artifices" (*Code pénal*, art. 60). The State Ministry, steeped in the Prussian *Landrecht*, overlooked, just as Herr Dühring does, the essential difference between the sharp and definite French code and the vague indefiniteness of the Prussian *Landrecht*, and prosecuted Lassalle for political reasons, egregiously failing in the case. Only a person who is completely ignorant of modern French law can venture to assert that French criminal procedure permits the Prussian *Landrecht* form of *provisional acquittal*, this *half acquittal*; criminal procedure under French law admits no intermediate form, but only conviction or acquittal.

And so we are forced to say that Herr Dühring would certainly not have been able to apply this "historical treatment in the grand style" in relation to Lassalle if he had ever had the *Code Napoléon* in his hands. We must therefore conclude that modern French law, the only modern bourgeois law code, which rests on the social achievements of the Great French Revolution and translates them into legal form, is *completely unknown* to Herr Dühring.

In another place, in the criticism of trial by jury with majority decision which was adopted throughout the Continent from the French model, we are taught: "Yes, it will *even* be necessary to familiarise oneself with the idea, which for that matter is not without precedent in history, that a conviction *where opinions are divided*

would be one of the impossible forms of institution in a perfect community.... This *important and profoundly intelligent* conception, however, as already indicated above, must of necessity seem unsuitable for the traditional political forms, because it is *too good* for them."

Once again, Herr Dühring is ignorant of the fact that the unanimity of the jury is absolutely essential, not only for criminal convictions but also for decisions in civil suits, under English common law, *i.e.*, the unwritten law of custom which has been in force since time immemorial, certainly at least since the fourteenth century. The important and profoundly intelligent conception, which according to Herr Dühring is *too good* for the present-day world, has therefore had legal validity in England as far back as the darkest Middle Ages, and from England it was transported to Ireland, the United States of America and all the English colonies. And yet the most exhaustive specialised study failed to reveal to Herr Dühring even the faintest whisper of all this! The area in which a unanimous verdict by the jury is required is therefore not only infinitely greater than the tiny area where the Prussian *Landrecht* is in force, but is also much more extensive than all the areas taken together on which jury decisions are reached by a majority. Not only is French law, the only modern legal code, totally unknown to Herr Dühring; he is also equally ignorant of the only Germanic law which has developed independently of the influence of Roman law up to the present day and spread to all parts of the world—English law. And why does Herr Dühring know nothing of it? Because English manner of juridical thought, "would, however, not be able to stand up against German juridical studies in the pure concepts of the classical Roman jurists," says Herr Dühring; and further he says "what is the English-speaking world with its childish hodge-podge of language as compared with our natural language forms?" To which we might answer with Spinoza: "*Ignorantia non est argumentum*. Ignorance is no argument."

We can accordingly come to no other final conclusion than that Herr Dühring's most exhaustive specialised study consisted in his absorption for three years in the theoretical study of the *Corpus juris*, and for a further three years in the practical study of the noble

Prussian *Landrecht*. That is certainly quite meritorious, and should qualify him to be a really respectable district judge or advocate in Old Prussia. But when a person undertakes to compose a legal philosophy for all worlds and all ages, he should at least have some degree of acquaintance with legal systems like those of the French, English and Americans, nations which have played quite a different role in history from that played by the little corner of Germany in which the Prussian *Landrecht* flourishes. But let us follow him a little further.

"The variegated medley of local, provincial and national laws, which clash with one another in the most various directions, in very arbitrary fashion, sometimes as common law, sometimes as written law, often cloaking the most important issues in a purely statutory form—this pattern-book of confusion and contradiction, in which particular cases override general principles, and then at times general principles override particular rules—is really not calculated to enable anyone to form a clear conception of jurisprudence."—But where does this confusion exist? Once again, within the area where the Prussian *Landrecht* holds sway, where alongside, over or under this *Landrecht* there are also provincial laws and local statutes, here and there also common law and other trash, ranging through the most diverse degrees of relative authority and making all practising jurists give that scream for help which Herr Dühring here so sympathetically echoes. He need not even go outside his beloved Prussia—he need only come as far as the Rhine to convince himself that all this has been forgotten for seventy years—not to speak of other civilised countries, where these antiquated conditions have long since been abolished.

Further: "In a less crude form the glossing over of the natural responsibility of individuals occurs by means of secret and therefore anonymous collective decisions and actions on the part of *collegia* or other official institutions which mask the personal share of each separate member." And in another place: "As things are at the present time, it will be regarded as an *astonishing* and extremely far-reaching claim if one opposes the glossing over and covering up of individual responsibility through the medium of collective bodies."

information when we tell him that in the sphere of English law each member of the judicial collegium has to give his decision separately in public session, stating the grounds on which it is based; that administrative collective bodies which are not elected, and do not transact business and vote publicly, are essentially a *Prussian* institution and are unknown in most other countries, and that therefore his claim can only be regarded as astonishing and extremely far-reaching—in *Prussia*.

In the same way his complaints about the compulsory introduction of religious practices in birth, marriage, death and burial, apply to Prussia alone of all the greater civilised nations, and since the introduction of civil registration they no longer apply even to Prussia. What Herr Dühring only accomplishes by means of a future "socialitarian" state of things, even Bismarck has meanwhile managed by a simple law. It is just the same with his complaint in connection with "the inadequate preparation of jurists for their profession," a complaint which could also be extended to cover the "administrative officials"—it is a specifically Prussian jeremiad; and even his hatred of Jews, exaggerated to the verge of absurdity, which he exhibits on every possible occasion, is a feature which if not specifically Prussian is yet specific to the region east of the Elbe. That same philosopher of reality who has a sovereign contempt for all prejudices and superstitions is himself so deeply imbued with personal crotchets that he calls the popular prejudice against the Jews, inherited from the bigotry of the Middle Ages, a "natural judgment" based on "natural grounds," and he rises to the pyramidal heights of the assertion that "socialism is the only power which can oppose population conditions with a strong Jewish admixture." (Conditions with a Jewish admixture! What "natural" German language!)

Enough of this. The grandiloquent boasts of judicial erudition have as their basis—at best—only the most commonplace specialised knowledge of quite an ordinary jurist of Old Prussia. The sphere of legal and political science whose results Herr Dühring logically expounds "is identical" with the area where the Prussian *Landrecht* holds sway. Apart from the Roman law with which every jurist is fairly familiar, now even in England, his juridical knowledge is

limited simply and solely to the Prussian *Landrecht*—that legal code of an enlightened patriarchal despotism which is written in a German such as Herr Dühring appears to have been trained in, and which, with its moral glosses, its juristic vagueness and inconsequentiality, its flogging as a means of torture and punishment, still belongs entirely to the pre-revolutionary epoch. Whatever exists beyond this Prussian law Herr Dühring regards as evil—both modern bourgeois French law, and English law with its quite exceptional developments and its safeguarding of personal liberty to an extent unknown anywhere on the Continent. The philosophy which “cannot allow the validity of any merely *apparent* horizon, but in its mighty revolutionising sweep involves all earths and heavens of external and inward nature”—has as its *real* horizon: the boundaries of the six eastern provinces of old Prussia, and in addition in any case only the few other patches of land where the noble *Landrecht* still holds sway; and beyond this horizon it involves neither earths nor heavens, whether of external or of internal nature, but only the crassest ignorance of what is happening in the rest of the world.

It is difficult to deal with morality and law without coming up against the question of so-called free will, of human responsibility, of the relation between freedom and necessity. And the philosophy of reality also has not only one but even two solutions of this problem.

“All false theories of freedom must be replaced by what we know from experience is the nature of the relation between rational judgment on the one hand and instinctive impulse on the other, a relation which *so to speak* unites them into a single mean force. The fundamental facts of this form of dynamics must be drawn from observation, and for the calculation in advance of events which have not yet occurred must also be estimated *as closely as possible*, in general both as to their nature and magnitude. In this way the foolish delusions of inner freedom, which have been a source of worry and anxiety for thousands of years, are not only thoroughly cleared away, but are also replaced by something positive, which can be made use of for the practical regulation of life.”—On this basis freedom consists in rational judgment pulling a man to the right while irrational impulses pull him to the left, and in this parallelogram of

forces the actual movement follows the direction of the diagonal. Freedom is therefore the mean between judgment and impulse, reason and unreason, and its degree in each individual case can be determined on the basis of experience by a "personal equation," to use an astronomical expression. But a few pages later on we find: "We base moral responsibility on freedom, which however in our view means nothing more than susceptibility to conscious motives in accordance with our natural and acquired intelligence. All such motives operate with the inevitable force of natural law, notwithstanding our awareness of the possible contradiction in the actions; but it is precisely on this inevitable compulsion that we rely when we bring in the moral lever."

This second definition of freedom, which quite unceremoniously gives a knock-out blow to the other, is again nothing but an extremely superficial rendering of the Hegelian conception of the matter. Hegel was the first to state correctly the relation between freedom and necessity. To him, freedom is the appreciation of necessity. "Necessity is blind only in so far as it is not understood." Freedom does not consist in the dream of independence of natural laws, but in the knowledge of these laws, and in the possibility this gives of systematically making them work towards definite ends. This holds good in relation both to the laws of external nature and to those which govern the bodily and mental existence of men themselves—two classes of laws which we can separate from each other at most only in thought but not in reality. Freedom of the will therefore means nothing but the capacity to make decisions with real knowledge of the subject. Therefore the *freer* a man's judgment is in relation to a definite question, with so much the greater *necessity* is the content of this judgment determined; while the uncertainty, founded on ignorance, which seems to make an arbitrary choice among many different and conflicting possible decisions, shows by this precisely that it is not free, that it is controlled by the very object it should itself control. Freedom therefore consists in the control over ourselves and over external nature which is founded on knowledge of natural necessity; it is therefore necessarily a product of historical development. The first men who separated themselves from the animal kingdom were in all essentials as unfree as the animals them-

Freedom
appreciation
of necessity

What are the
alternatives?

Freedom
means
control
over ourselves

selves, but each step forward in civilisation was a step towards freedom. On the threshold of human history stands the discovery that mechanical motion can be transformed into heat: the production of fire by friction; at the close of the development so far gone through stands the discovery that heat can be transformed into mechanical motion: the steam engine. And, in spite of the gigantic and liberating revolution in the social world which the steam engine is carrying through—and which is not yet half completed—it is beyond question that the generation of fire by friction was of even greater effectiveness for the liberation of mankind. For the generation of fire by friction gave man for the first time control over one of the forces of Nature, and thereby separated him for ever from the animal kingdom. The steam engine will never bring about such a mighty leap forward in human development, however important it may seem in our eyes as representing all those powerful productive forces dependent on it—forces which alone make possible a state of society in which there are no longer class distinctions or anxiety over the means of subsistence for the individual, and in which for the first time there can be talk of real human freedom and of an existence in harmony with the established laws of Nature. But how young the whole of human history still is, and how ridiculous it would be to attempt to ascribe any absolute validity to our present views, is evident from the simple fact that all past history can be characterised as the history of the epoch from the practical discovery of the transformation of mechanical motion into heat up to that of the transformation of heat into mechanical motion.

It is true that Herr Dühring's treatment of history is different from this. In general, as the record of error, ignorance and barbarity, violence and subjugation, it is a repulsive object to the philosophy of reality; but considered in detail it is divided into two great periods, namely (1) from the identical state of matter up to the French revolution; (2) from the French revolution up to Herr Dühring; at the same time, the nineteenth century remains "still in essence reactionary, indeed from the intellectual standpoint even more so than the eighteenth." Nevertheless, it bears socialism in its womb, and therewith "the germ of a mightier regeneration than was concocted (!) by the forerunners and the heroes of the French revo-

lution." The philosophy of reality's contempt for all past history is justified as follows: "The few thousand years, the historical memory of which has been transmitted in original documents, with the development of human nature so far, are of *little significance* when one thinks of the succession of thousands of years which are still to come. . . . The human race as a whole is still very young, and when scientific memory will look back on tens of thousands instead of thousands of years, the intellectual immaturity and childishness of our institutions will not be contested and will be a self-evident axiom in relation to our epoch, which will then be considered as primeval antiquity."

Without dwelling on the really "natural language form" of the last sentence, we must note two points. First, that this "primeval antiquity" will in any case still remain a historical epoch of the greatest interest for all future generations, because it is the basis for all subsequent higher development, having for its starting point the emergence of man from the animal kingdom, and for its content the overcoming of obstacles such as will never again face the associated human race of the future. And secondly, that the close of this "primeval antiquity" (in contrast with which future periods of history, which will no longer be held back by these difficulties and obstacles, hold the promise of quite other scientific, technical and social achievements) is in any case a very strange moment to choose to lay down prescriptions for these thousands of years that are to come, in the form of final and ultimate truths, immutable truths and deep-rooted conceptions which have been discovered on the basis of the intellectually immature childishness of our so extremely "backward" and "retrogressive" century. Only the Richard Wagner of philosophy—but without Wagner's talents—could fail to see that all the depreciatory terms slung at historical development up to the present day remain sticking also on what is claimed to be its final outcome—the so-called philosophy of reality.

One of the most significant morsels of the new deep-rooted science is the section on the "individualisation" and the "increasing value" of life. In this section oracular commonplaces bubble up and gush forth in an irresistible torrent for three full chapters. Unfortunately we must limit ourselves to a few short samples.

“The deeper nature of all sensation and therefore of all forms of subjective life rests on the *difference* of one state from another. . . . But it can also be shown quite easily (!) that, for a *full* (!) life, it is not the continuation of a particular state but the transition from one state of life to another through which the appreciation of life is heightened and the decisive stimuli are developed. . . . The state which approximates to the identical which is *so to speak* in permanent inertia and *so to say* continues in the same position of equilibrium, whatever its nature may be, has but little significance for the appreciation of life. . . . Habituation and *so to speak* familiarisation with one’s life makes it something of absolute indifference and unconcern to us, something which is not very distinct from death. The torment of boredom at most also enters into it as a kind of negative life-impulse. . . . A life of stagnation extinguishes all passion and all interest in existence, both for individuals and for peoples. *But it is our law of difference through which all these phenomena become explicable.*”

The rapidity with which Herr Dühring establishes his “fundamentally original conclusions”—passes all belief. The commonplace that the continued stimulation of the same nerves or the continuation of the same stimulus fatigues each nerve or each nervous system, and that therefore in a normal condition nerve stimuli must be interrupted and varied—which for many years has been in every textbook of physiology, and is known to every philistine from his own experience—is first translated into the language of the philosophy of reality. And this platitude, which is as old as the hills, has hardly been translated into the mysterious formula that the deeper nature of all sensation rests on the difference of one state from another, when it is immediately further transformed into “*Our law of difference.*” And this law of difference makes “absolutely explicable” a whole series of phenomena which in turn are nothing more than illustrations and examples of the pleasantness of variety which requires no explanation even for the most common philistine understanding and gains not the breadth of an atom in clarity by reference to this alleged law of difference.

But the deep-rootedness of “*our law of difference*” is far from being exhausted by what has been given above: “The sequence of

ages in life, and the emergence of different conditions of life bound up with them, furnish a very obvious example which demonstrates our principle of difference. Child, boy, youth and man experience the intensity of their feeling of life at each stage not so much when the state in which they find themselves has already become set, as in the periods of transition from one to the other." Even this is not enough. "Our law of difference can be given an even more extended application if we take into consideration the fact that the repetition of what we have already tried or done has no attraction for us." And now the reader can imagine for himself the oracular twaddle for which sentences of the depth and deep-rootedness of those cited form the starting point. Herr Dühring may well shout triumphantly at the end of his book: "The law of difference is both in theory and in practice decisive for the appraisal and heightening of the value of life!" This is certainly true of Herr Dühring's appraisal of the intellectual value of his public: he must believe that it is composed exclusively of sheer asses or philistines.

We are further given the following extremely practical rules of life: "The method whereby total interest in life can be kept active" (a fitting task for philistines and those who want to become philistines!) "consists in allowing the particular and *so to speak* elementary interests, of which the total interest is composed, to develop and succeed each other in accordance with natural periods. For the same state we may resort to the replacement of the lower and more easily satisfied stimuli by the higher and more permanently effective excitations in order to avoid the occurrence of any gaps which are entirely devoid of interest. But it will also be necessary to ensure that the natural excitations or those arising in the normal course of social existence are not arbitrarily multiplied or forced or—the contrary form of perversion—satisfied by the lightest stimulus, and thus prevented from developing a want which is capable of gratification. In this as in other cases the maintenance of the natural rhythm is the pre-condition of all harmonious and agreeable movement. Nor should anyone set before himself the impossible task of trying to prolong the stimuli of any situation beyond the period allotted them by nature or by the circumstances of the case"—and so on. The worthy fellow who takes as his rule of life these solemn oracles of philistine

pedantry subtilising over the shallowest platitudes will certainly not have to complain of "gaps which are entirely devoid of interest." It will take him all his time to prepare his pleasures and get them in the right order, so that he will not have a moment left to enjoy them.

We should try out life, full life. There are only two things which Herr Dühring prohibits: firstly "the uncleanness of using tobacco," and secondly drink and food which "have properties which rouse disgust or are in general repugnant to the finer feelings." In his *Course of Political Economy*, however, Herr Dühring writes such a dithyramb on distilling that it is impossible that he should include spirits in this category; we are therefore forced to conclude that his prohibition covers only wine and beer. He has only also to prohibit meat, and then he will have raised the philosophy of reality to the same height as that on which the late Gustav Struve moved with such great success—the height of pure childishness.

For the rest, Herr Dühring might be slightly more liberal in regard to spirituous liquors. A man who, by his own admission, still cannot find the bridge from the static to the dynamic has surely every reason to be indulgent in judging some poor devil who has for once dipped too deep in his glass and as a result also cannot find the bridge from the dynamic to the static.