

1984

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4 Miss. C. L. Rev. 161 (1983-1984)

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BOOK REVIEW

Juridical Positivism and Human Rights. Mieczyslaw Maneli.*
New York: Hippocrene Books, Inc., 1981. pp. 406, \$24.95.

*Reviewed by W. Glen Watts***

Mieczyslaw Maneli was Professor of Law at Warsaw University in Poland. Dismissed during the anti-liberal purges of 1968, he emigrated to the United States. The author of some twelve books and hundreds of essays and articles, he is an internationally recognized authority on legal philosophy in both Western and Eastern Europe. He is currently the co-founder and Chairman of the Center for the Study of Ethics and Public Policy at Queens College, the City University of New York.

Maneli has written a thorough and spirited defense of "juridical positivism." He defines juridical positivism as a philosophical synthesis of traditional positivism, American "realistic" jurisprudence, as well as national and international norms relating to human rights. In his view it is a theory of law adjusted to the social realities, as well as the national and international economic and political tensions, which characterize life in the last decades of the twentieth century.

Juridical positivism has been criticized in the Communist countries for being a "bourgeois ideology," and in the West for being a source of corruption and totalitarianism. Maneli argues that juridical positivism from Bentham to the present has never been an uncritical "establishment theory," supporting existing laws and regimes whether in the West or the East. He believes that this theory can and should promote the creation of new legal provisions, and institutions, as well as new interpretations of existing laws.

Maneli tried to reverse the notion that positivism is an ideal tool for tyrants. Since it recognizes no laws except those enacted

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by a state, it supposedly leaves the citizens helpless to oppose oppressive or unjust laws. Maneli argues that this view of positivism has been perpetuated by "natural law theorists," who have developed a mythological view of law as an expression of timeless moral law.

Maneli does not deny that moral norms exist. Some of these moral beliefs may lend support to some of the legal norms of a society, but others may not. Maneli insists that morality exists because some group in the society regards such norms as part of their internalized code for regulating their conduct. But he likewise accepts the pluralistic nature of modern society; and that there will never be universal acceptance of any one moral system in our societies. Likewise, moral systems and codes are not static but changing. And he maintains that struggles between different ways of viewing social reality and the impact of one's actions on others will always be occurring. Likewise, he recognizes that in all societies there are periods in which dialogue and compromise fail, and unfortunately violence ensues.

Law is not and cannot be a panacea for all social diseases Legal norms exist because our earth is not a paradise but is full of vices and passions. In these human conditions moral and legal norms must coexist, fight each other, support and defeat each other. There must be an endless interplay, cooperation, and struggle between law and morality, and these conflicts can either be resolved by a dialogue, arguments, or compromise or, in the absence of amicable settlements, there will be violence; then it will be force that will decide what is 'just' or 'unjust.'¹

For Maneli law can be law even if it violates someone's moral code, but that does not mean a person must obey these provisions. He does not recognize any general obligation to obey the law. Maneli recognizes the right to revolt if the situation in a country is dire enough, whereas, natural law theorists argue that "immoral law" is not law and therefore need not be obeyed.

While Maneli thinks the law should support freedom of speech, and press, as do natural law theorists, he points out that unless citizens can communicate and have free access to the necessary information, these freedoms will not amount to much. And every society needs to make improvements in this regard, including the United States. For unless communication, dialogue, and

1. M. MANELI, JURIDICAL POSITIVISM AND HUMAN RIGHTS 290 (1981).

the probing of argument, evidence, and assumption are permitted, citizens, no less than legislators and judges, will not have access to the means they need to address the pressing problems they are seeking to resolve. The result will be the compounding of problems, resentments, and the increasing of tension and turmoil for the society.

Maneli thinks that a modern day Antigone has better recourse in appealing to the letter of the law than to an unchanging moral law. The wide acceptance by most sovereign states of the Charter of the United Nations, and the Universal Declaration of Human Rights, as well as principles which at least pay lip service to human rights, makes this possible. Given these facts, a modern day tyrant like Creon is embarrassed by appeals to the law he is violating in forbidding a contemporary Antigone from burying her dead brother. The appeal to a higher norm which is eternal and unchanging only obscures matters.

Maneli believes that there is no contemporary legal code in the world today, whether in Eastern or Western Europe, which can be accepted by the citizens of that state as somehow guaranteeing them a safe, orderly and just life. What citizens must do is accept the conflict and change that is inevitable, given the changing economic and political forces at work in our respective societies, and remain vigilant in striving to defend and protect their interests and needs from encroachment by others or by the state itself.

Modern day tyrants whether in Communist, Socialist, or Capitalist countries operate more by subterfuge, propaganda, indoctrination, and concealment of fact than by open admission of having violated anyone's rights. It is for this reason that Maneli believes the best way to oppose oppressive acts by rulers is to challenge their actions as illegal both within the courts of one's country, and also before international forums such as the United Nations. As he says:

In totalitarian states . . . democratic and progressive legal norms . . . are the last life preserver that the oppressed citizens may look to. The security police can violate . . . these liberties. But . . . the victim knows his rights and can claim them; the oppressor knows that he has violated the law, he must hide his violations, must consider . . . the possibility of future punishment, which has not been evaded by much more powerful violators than he.²

2. *Id.* at 365.

Law shares with other areas of normative discourse a common vocabulary, which makes it easy to confuse statements about legal systems and moral duties. Words like "right," "duty," "obligation" occur in both moral and legal discourse. Part of the strength of positivism, and of Maneli's defense of it is his attempt at avoiding blurring the distinction between these two different ways of speaking about the same and similar phenomena.

Maneli is to be commended for writing a book which attempts to develop a theory of law which goes beyond the conventional boundaries of the subject. He has also contributed to a better understanding of Eastern European thinking on law, whether for countries behind the iron curtain, or not. His concern with the protection of the rights of the citizen under different types of government is one that many of us share. We need to remember his warning that there are no guarantees in any of our societies. The price of freedom will continue to be vigilance and a sturdy self-reliance. As Maneli states: "Law is always and everywhere only a part of the social and political system, only one of many institutions existing in society Even the best laws cannot create what the society, or at least its active part, does not want to accomplish."³

3. *Id.* at 296.