VIOLENCE AND JUSTICE

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The terrorism and violence that we are witnessing today cannot be attributed solely to the crisis in specific social institutions. In various parts of the world there is a generalised crisis in the fundamental values on which social and individual life is based. I think that contemporary secular civilisation finds itself in a period of darkening of spiritual values.

By secular conceptions I mean here conventionally those that exclude or are contrary to conceptions of religous transcendence. It is not possible to speak of all the values. Here I shall limit my remarks to some considerations on the justice to which nowadays terrorism and violence are opposed, the tendency towards homicide, the scorn or contempt of the existence and freedom of others, to which it is necessary to add attempts on the individual's own life, the latter it may be through an indeterminate wish to escape from oneself, for example, by the use of drugs. The awareness of this tendency towards injustice with respect to oneself and to others requires reference to the justice for which, however, we require, if it is to be stimulating, not just any definition whatever, but meditation, though it may be only by way of rapid reference, on a process through which the whole of Western civilisation is passing.

In order to oppose injustice and violence with a conscious and educative attitude, we cannot avoid the effort of critically condensing in our view of today's problems, fundamental elements of Western culture.

From this standpoint, which is not reducible simply to terms of sociological "invariables" and of enunciations of relationships of probability among human events, the problem is posed of fundamental values of life. How can one take up a definite position with respect to violence and terrorism if one does not set out from a directive inspired by certain fundamental values: a directive that can function as a guideline for action? Every technical strategy against

violence must necessarily be inspired by a very clear idea of "antiviolence".

Violence is a negative value. Now, clearly a value to oppose this negative value is justice. But justice, too, is a word used in its turn to define certain procedures and certain techniques. Except that, these techniques, precisely because they are techniques, concern means. What is the content of justice which in reality can serve as a guideline to action and as an end? In the face of this question the task of humanistic culture, so to speak, consists in the identification of the content of justice (as a value contrary to the negative value constituted by violence). It is a question of comparison between various conceptions which, to be valid, must be without restraint and contrary to every forced theoretical adjustment.

So that a comparison is necessarily imposed between various points of view concerning justice, from the conceptions that might be called purely secular to that of the Christian religion. By secular conceptions, I mean here, as I have said above, those that exclude, or are contrary to, conceptions of religious transcedence.

As regards secular conceptions, I refer precisely to certain tendencies indicated, more or less accurately, by the words: rationalism, empiricism, utilitarianism, materialism, etc. To avoid all possibility of misunderstanding, I speak here of analytical reason, or of reason a priori, or of mathematising reason or geometrising reason as Maritain called it, to indicate conventionally and schematically the same thing, that is, knowledge as distinct from perceptible experience.

Again, conventionally, I speak of experimental reason as implying "experiment" and "empirical observation" in the sense of direct or indirect "perceptible experience". This being said, by the word "rationalism" I mean, generally and in a broad sense, the conception of a superiority of reason (analytical, a priori, formal, mathematising, geometring, etc.), of a superiority of reason thus understood as compared with perceptible experience. So that with respect to the superior power of mathematical thought, the contribution of empirical observation is, according to rationalism, accessory, even though useful.

Now, leaving aside the mythical element that envelops his thought, Plato may be placed conventionally at the beginning of rationalism. For Plato, in fact, ideas have a degree of superior reality which is incompletely reflected in material objects and natural and human events. Justice, too, is an ideal reality expressible in the geometrising form of "harmony"; as such it is the object of knowledge and of "vision" through " $\nu o \tilde{\nu} \zeta$ ", that is, of reason as capability to see as the mind's eye, as " $o\mu\mu\alpha \ \tau \tilde{\eta} \zeta \ \psi\nu\chi\tilde{\eta} \zeta$ " in Symposium (219A), in Republic

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(7, 533D), and other works. What is just is known, according to Plato, as that which is true.

There is a kind of parallelism between knowledge and morals² and therefore between knowledge and justice. At the origin of rationalism, in Western culture, knowledge, in its superior expression, is mathematising knowledge and justice is symbolised matematically.

Aristotle does not escape this mathematising symbolism in his listing of the platonic idea of justice. In his specifications he uses in fact mathematical notions with the exception of the concept of "enieikeia" as "equity" in the Nicomachean Ethics (V, 1137b-1138a), and in Rhetoric (I, 1374a-1375b), where the flexible reasonableness of the judge takes the place of mathematising rationality.3

Rationalism goes through the centuries down to Kant, then it develops in a different way under a form no longer mathematical in the dialectic of Hegel and his followers. As regards justice, even that great contemporary current of thought that is called "phenomenology" does not escape rationalism. For example, according to Reinach, the obligation to keep a promise, as an obligation of justice, is based on its very rational and a priori self-evidence (in spite of the phenomenological verbalism of the writer).

However, after Kant, rationalism received a severe blow inflicted by that very mathematical knowledge in which the notion itself of justice had found its model. Non-Euclidean geometries were discovered. As long as the possibility of a single geometry, Euclidean geometry, was believed in, mathematical or pseudomathematising reason could be considered as the sole legislator of nature and of human events. And, at the same time, the logical possibility was believed in of a single idea of justice, universal and valid for all men. But after the discovery was made of various mathematically thinkable geometries, the choice of geometry suitable to describe the physical reality was to be left to experiment, to direct or indirect perceptible experience, and no longer attributed to mathematising reason, which thus came to lose its primacy over experiment and over perceptible experience.5

¹ Cfr. B. Snell, Die Entdeckung des Geistes, Studien zur Entstehung des europäischen Denkers bei den Griechen, Hamburg, 1955, p. 32.

² See H. Reichenbach, "Rationalism and Empiricism, An Inquiry Into the Roots of Philosophical Error" in *Philosophical Review* (LVII, 4), 1948, p.p. 330-346; *The Rise of Scientific Philosophy* (I ed. 1951), Berkely, Los Angeles, 1963, pp. 50 ff.

³ See R. A. Gautier, J. V. Jolif, L'éthique à Nicomaque, T. II, Louvain, Paris, 1959, pp. 481 ff.

⁴ A. Reinach, Zur Phänomenologie des Rechts Die apriorischen Grundlagen des burgerlichen Rechts, München, 1953, p.p. 54 ff.

⁵ See M. Born, Experiment and Theory in Physics, Cambridge, 1943. In the Italian translation, II potere della fisica, Torino, 1962, p. 9.

On the other hand, against the idea of a single and universal justice deducible from pure reason, there succeeds the empirical and experimental consideration of a multiple variety of conceptions of justice linked to different and even contrasting situations. And in place of justice, more and more frequent mention is made of ideologies,

In any case, in a secular conception of individual and social life, the formulas with which it was believed and is still believed possible to express justice (rationally, that is deducing it a priori from pure reason) remain empty, adiaphorous, purely formal, and not serving as guidelines. To demonstrate this, it suffices to consider some of them. I refer to the notions of legal justice, to the notion of "otherness", to the formula "to each his own", to the criterion of "equality", to the criterion of "just mean".

Legal Justice: If I mean by "legal justice" what is expressed by positive laws and nothing more, the problem remains of the just law. All laws would be just from the single fact of having been desired. But, if justice is not a distinct and superior criterion as compared with the positive laws, any evaluation of the positive laws in terms of justice is at least tautological (setting aside here the problem concerning the evaluations and the decisions of judges).

Otherness: If one speaks of juridical otherness as the relation between the obligation of one person and the claim of another, one does not resolve the problem of the peculiarity of the justice which refers back to that by which an obligation and a claim can be called just, and one falls into a vicious circle.

Justice as that to which each has a right: If one says that justice is "giving to each what he is entitled to", one is drawn again into a vicious circle, since it is a question of knowing what, according to justice, each is entitled to.

Justice as equality: If one speaks of equality, it must not be forgotten that equality is always and only an abstraction operating on the undeniable natural and human inequalities.⁶

This abstraction implies that one shall choose a point of view with respect to which human actions and events can be considered equal. Apart from the practical difficulty of this consideration, the concept of equality does not, in itself, give us the criterion of justice, but refers us back to a point of reference of which it is a question of seeing whether it is just or not. So that the concept of equality through which it is desired to express the idea of justice requires an idea of justice. Nor can we derive this idea of justice even from the

⁶ See G. Radbruch, Rechtsphilosophie, ed. E. Wolf, Stuttgart, 1950, p. 126.

enunciation of Kant's principle for which "we should treat all human beings as ends-in-themselves and not merely as means".

In certain cases it is very difficult to distinguish clearly between the treatment of one as a means or as an end. This is difficult on the basis of an aprioristic knowledge for which between "yes" and "no" there is not a third possibility. According to secular rationalism the concept of man, as an end in himself, is not at all clearly understandable, in my opinion. In fact the concept of end presupposes the concept of activity which tends to achieve the end. But it is evident that an end can be achieved even through injustice and violence. If, on the other hand, we conceive of an end in itself independently of all activity to achieve that end, the end itself is reducible to an enunciation without content, that is, empty. And violence can come in to fill this void.

Justice as intermediacy: Even at the time of Aristotle justice was defined as "intermediacy between vices, one by excess and the other by defect", as "just mean which exists in passions and in actions", as the point equidistant from the ends of a segment. But this implies that the ends, in order to be recognised as such and just, presuppose in their turn a criterion of justice. The argument of the just mean, in short, presupposes what one desires to demonstrate and falls into the vicious circle of "preposterousness" (by which what one wishes to demonstrate is the presupposition from which one sets out).

I abstain from pursuing the examination of other criteria adopted by rationalism. Those who wish to seek in them directives to oppose violence and injustice remain empty-handed. Reichenbach is right in considering Hegel and hegelism—as I have said— to be in the line of development of a priori rationalism, though it may be through a dialectic distortion as compared with the Kantian matrix. Benedetto Croce, for example, who is often and, it seems to me, rightly considered as a neo-hegelian, however enriched and clarified by Italic cultural elements, denies that justice has the character of a universal notion. There is not, in his opinion, a universal concept of justice. Justice is a pseudo-concept. In the place of justice he puts the concept of freedom. But the trouble is that the freedom of the individual in flesh and blood may become abuse and violence. Croce cannot deny it. Therefore he appeals to freedom as a universal idea in which is expressed the universality of the historic process as determined in the

⁷ Kant, Grundlegung zur Metaphysik der Sitten, 2. Abschn, in Gesamm. Schr. hg. v. der K. preuss, Ak. der Wiss., Werke, IV. Bd., Berlin (Reimer), 1911, p. 428/429.

⁸ Sce for example, B. Croce, Libertà e giustizia. Revisione di due concetti filosofici, Bari, 1944, pp. 10 ff.

particularity of the human situation and "happenings". But, in my opinion, the appeal to history is unacceptable against the violent person who believes that he is performing in homicide a historically necessary act. The appeal to history does not serve as a directive opposed to violence and terror. History itself teaches us that the appeal to history does not serve.

The conscious terrorist (not the psychiatrically unconscious) might delude himself that he is rationally and historically justifying his action on the basis of criteria offered to him by secular rationalistic culture. And this, as a consequence of the merely formal nature of the criteria of action emerging from secular culture itself: empty and dangerous criteria precisely because they are susceptible —I repeat—of being filled with the most diverse and opposite contents.

But, against these consequences of rationalism, to which I have so far referred, not even recourse to empiricism can serve to overcome the difficulty observed. Not even from empiricism is it possible to obtain an idea of justice to effectively oppose violence and terror. What does the empiricistic point of view consist of? It consists of admitting it is no longer geometrising reason, but experiment that is the legislator of nature (the experiment to which, on the other hand, mathematics is of use).

Empiricism comes in to break up what, according to rationalism, has often been considered the indissoluble unity of justice and truth. Against violence, for example, the dissolver of social structures, there is no longer any sense in opposing justice as truth. If truth is fundamentally empirical and can be verified only by means of experiment, justice is no longer truth but concerns the evaluation of the ends which, through experiment, it is desired to attain. Violence, as far as it is conscious (and not psychiatrically unconscious), concerns besides the means through which they are made effective, choices of ends, and when it is violence for the sake of violence, it regards itself tautologically and tragically as an end. This is, I repeat, one consequence of the empiricist dissociation of justice from truth.

Experiment (and therefore experimental reasoning as distinct from pure reasoning) with respect to physical reality appears constructive and productive. On the contrary, empiricist criticism, instead of broadening our consciousness of moral values to be opposed to violence, appears, more often than not—though not always—the dissolver of traditional principles without achieving the discovery of new principles to replace them. And in fact according to certain exasperated neo-empiricist affirmations, though coherent with respect to their presuppositions, justice is an irrational and emotional ideal;

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it does not depend upon experimental empirical reasoning. Experimental reasoning—from the point of view of the empiricists themselves—serves to determine in the moral field the relations between means and ends, not the ultimate ends as contents of justice, that is, those ends that are unthinkable as suitable means for the attainment of ultimate ends. While experimental reasoning and experiment are valid as compared with means they do not serve either to carry out or to justify the choices of the individual and social ultimate ends, which may be in conflict with each other. From an empiricist point of view justice has even been defined by some writers as a "deceptive ideology" or as an irrational and emotional ideal. Justice being in this way reduced to a purely emotional element, one does not note that through this reduction the doors to violent emotion are flung wide open. There is no value that is opposed to violence; justice itself is a negative value and a deceit.9

When the present terrorist is not simply mentally sick, he may find in secular empiricism the cultural support for his homicidal acts, in the theory, precisely, according to which the choice of ultimate ends depends upon emotion and only emotion. Above all it must be noted that on the line of development of empiricism and neoempiricism justice ends up by being reduced to the will of those who achieve, or think they achieve, political success. This will is raised to the absolute degree. In this case we might speak of the dogmatism of the will, the founder of moral principles as opposed to pure reason; but this will is susceptible of falling either into anarchy or into the belief that it can do anything it wishes.

In dialectical materialism, justice is reduced to the dominant will. From this point of view even materialism makes will absolute. I take as an example the theory recently expressed by an important inter-

^{9 &}quot;Justice is an irrational ideal. However indispensable it may be for volition and action of men, it is not subject to cognition". "Yet one is inclined to set forth one's own idea of justice as the only correct (. . .). The need for rational justification of our emotional acts is so great that we seek to satisfy it even at the risk of self-deception. And the rational justification of a postulate based on a subjective judgment of value, that is, on a wish, as for instance that all men should be free, or that all men should be treated equally, is self-deception or -what amounts to about the same thing- it is ideology" (H. Kelsen, General Theory of Law and State, trans. A. Wedberg, Cambridge, Mass., 1946, pp. 8, 13). The tendency to identify the ideal of justice with the ideal of peace in a compromise between opposed interests, of which Kelsen (op. cit. p. 14) later speaks leaves the problem open. At what price is peace obtained? Is every form of peace just or do there exist forms of unjust peace (as I think)? In what conditions is the peace just? Can the compromise between opposed interests be identified with justice? I think that the compromise, or the integration between opposed interests in conflict implies (in greater or less measure) the prevalence of certain interests over others. On the basis of what prevailing interests must the compromise be effected so that the peace and the compromise shall be just?

preter of Marxism: Radomir Lukic, according to whom justice is substantially the *will* of those who have the power to impose it. "The law must be just", he says, "for the part of society which is most vigorous and the strongest and which therefore dominates".¹⁰

Secular rationalism had given us formulas of justice empty of content. Empiricism dissolves justice in the mutable will of humanity. Atheistic materialism cancels the will itself. At the limit of materialism there are no possibilities of choice. The individual in flesh and blood is swallowed up by an eternally struggling social totality, compelled to immolate himself to the great Minotaur which is history. In the place of justice there remains a total immolation to the voracity of becoming historic, where man dissolves "like a blade of grass in the humus of the soil to render it more fertile" (Maritain) in a tragic confusion amidst homicide and suicide. There is lacking here, after all, the soul of the individual person and his dignity. Finally, in a philosophical sense there is no person.

It is useful, on the other hand, to note that in a purely rationalistic sense (and in certain cases agnostic or atheistic) the person may be conceived as simply equivalent to a point X presupposed as simply a point without other determination, as a point of departure of ideas, of passions, of feelings, of interests, etc., which are manifested through human activity: a point X indifferent with respect to such activity, that is an unknowable constant, a simple abstract presupposition, as Max Scheler says referring to Kant. 11 After all, the human person, in itself, reduced to this point X rationalistically understood as a pure a priori form, does not satisfy the needs that today, more than ever before, are necessary to save the right to live and the dignity of the person against any kind of violence. The fault of empiricism, and even of David Hume (to whom, for the sake of brevity, I cannot refer here), is not that of being opposed to the rationalistic concept of person as empty of content, but that of not having reproposed the concept of person, attributing to it its most profound human content.

As regards the ideal of justice to be opposed to violence the failure of rationalistic culture, of empiricistic, of utilitarian and of other forms of development in the so-called secular sense, this consists mainly in the removal or the elimination of a theory of the person. Emptied and reduced to a mere rational presupposition or to a mere

¹⁰ R Lukic, "La giustizia e l'obiettività del diritto, in Rivista internazionale di filosofia del diritto, 1964 (Fascicolo VI) p. 688, Id., Theorie de l'état et du droit, Paris, 1974, p. 372.

11 M. Scheler, Der Formalismus in der Ethik und die materiale Wertethik, Halle, 1927, p. 490.

result of a scientific experiment, the person disappears and, with it, that of which the person is an indispensable ingredient.

I have referred up to now, to those currents of thought that do not appear to me, for the reasons stated, to offer a notion of justice as a valid criterion towards violence and also those conceptions which, in one way or another, directly or indirectly, seem, when all is said and done, to adapt themselves to the justification of violence.

It remains to examine briefly the Christian idea of justice, as it is manifested also through up-to-date documents of renewal of the tradition. My aim with regard to this latter purpose is now to illuminate the field in which the critical and conscious choice between contrasting prospects can be exercised: between secular and Christian conceptions.

In the Christian conception there is a reversal of the relationship between law and justice, between "ius" and "iustitia" as compared with contemporary secular culture, and there is a special attribution of meaning to the word "ius". Speaking schematically, one can say that, in certain versions of rationalism criticised by empiricism and by the so-called "legal positivism", the law (in the fairly commonly used meaning of the term) presupposes justice. On the contrary, in certain so-called secular forms of what today is mainly understood as "legal positivism", the notion of law has no need of the notion of justice. Instead, for Christianity and according to St. Thomas "Law is the object of justice". Among other things in the "Summa Teologica" the treatise on justice is preceded by a "quaestio" "regarding law". Law implies the "suum". The "suum" is the right to which every individual is entitled. The concept of entitlement (der Begriff des Zustehens") as Pieper says, belongs inflexibly to the notion of right. The notion of legal right "is at this point an original concept that cannot be referred back to another that came before it. This means that it can at most be circumscribed, never, "in and of itself defined". "Man has inalienable rights precisely because he has been created as a person by a Divine act". Justice presupposes these rights. 12

What each is entitled to is, first of all, the right to live. Homicidal violence or suicide is, at every level, and therefore also in cases of abortion, a negation of the right to exist. The right to live comprises as consequences the freedom to practise one's faith, one's "Beruf", one's vocation, one's task. Any negation of life in the name of freedom is the most radical contradiction that there can be of freedom in the most original and unsurpassable meaning that can be evoked with

¹² J. Pieper, Uber die Gerechtigkeit, München, pp. 20-21-28.

the word freedom. This implies on the part of the true Christian the most determined opposition to any form of violence or of intolerance with regard to the person. The radical rejection of violence, on the other hand, places the true Christian in a weak material situation before those who practise and organise intolerance and violence. But in authentic Christianity a greater spiritual strength stands guard over this material weakness, and in the end there is an acceptance of martyrdom.

Often in contemporary culture, deriving from Hegel and others, there are manifested forms of anthropocentrism as unlimited exaltation of the cognitive and creative powers of man. The loss, or the lack, of a faith in the Divine Absolute is replaced by raising man to the Absolute. There is a secular belief that man is capable of transforming the world and society and of attaining, at least in the future, perfect justice. This triumphal attitude can be indicated by the word "perfectionism".

Against that, according to the Christian conception, is the deceptive perfectionistic illusion. Christian justice implies an element irreducible and yet complementary with respect to the "suum cuique". This element can be expressed in "aequaliter omnia accipere": "aequaliter", not in the meaning of equality understood quantitatively, understood only in terms of comparison and measurement, but "aequaliter" implying that "animus aequus", that equal soul to which is linked a certain attitude of "Gelassenheit", of acceptation, precisely in a condition in which something has been abandoned (that is, feelings of vengence, of resentment, of countering violence with violence, etc.). Against any undue confusion between evangelical Messianism and political aspirations, the "Gelassenheit", and therefore the imperturbable moderation of the authentic Christian, can be viewed as an equilibrating element in "giving" and "receiving". It frees us from every pretense to determine, in a certain sense, an absolutely perfect justice. In fact, one who pretends to achieve perfect justice can produce, in other senses, injustice and implacable resentment.¹³

The failure of a certain philosophy as regards justice depends on the very statement of the problem. As has happened many times, an attempt has been made to reduce the problem exclusively to terms

¹³ Sec I. Tammelo, Zur Philosophie des Überlebens. Gerechtingkeit, Kommunikation und Eunomik (Ausklang: Gerechtigkeit und Gelassenheit), Freiburg, München, 1975, pp. 259-267 and also for the bibliography, see my writings: "Perfettismo e giustizia" nel volume collettivo La perfezione oggi, ed. R. Crippa, Padova ("Liviana"), 1977, pp. 149-155 e Filosofía del lavoro, Milano ("Giuffrè"), 1977 pp. 201-206.

of a conclusive definition through an intellectualistic determination of the limits between "just" and "unjust".

It can be affirmed instead, that, according to Christianity, justice presupposes a "precomprehension", a Vorverständnis (which I might call conscious and integral) and not simply a pure a priori rational comprehension or an experimental comprehension, empiricistically understood, of the process out of which it emerges. This process may be actuated solely through an intentional attitude and by means of an effort of explication of the human conscience in its implicit profundity. Any definition that leaves this effort out of consideration is vain. On the contrary, any definition that is instead determined by this intentional effort is the formulation of a non-definitive result, but such that it receives its sense from the possibility of expressing the need of a further intentional effort (intentional, "intentio", "Absicht").

Here we have, it seems to me, the prospect of the true Christian in which is involved all his religious experience as a concrete revelation of his conscience.

In order to be able to distinguish, from time to time, the just from the unjust, the true Christian must, I think, place himself, at least imaginatively, in the situation of the real or hypothetical persons who receive the effects of his actions. But, for the Christian, this putting himself in another's shoes would be reduced to a pure play of morally unimportant prospectives if it were not sustained by the intentional effort to treat others as God's creatures. So that to secular culture the true Christian, though he makes use of reason and of experiment, opposes his integral religous experience, which unavoidably implies the Divine mystery, the mystery of faith, the mystery of grace. On the other hand, if justice implies an intentional effort, grace too implies the necessary effort and commitment to be worthy of and able to receive it. It is a question therefore of a complex religious experience, in which the sense of justice receives its most profound consistency. But I cannot enter now in the theological field.

At this point I can only stop at the antithesis between secular conceptions and the Christian conceptions. "Reason is and ought only to be the slave of the passions". 14 This affirmation of David Hume, the genius of empiricism, is pregnant with meaning beyond any interpretative research that has been attempted to attenuate its impact. This means that the limit of passion is given by the other passions and not by reason. The limit of violence is set by other vio-

¹⁴ D. Hume, A Treatise of Human Nature, ed. L. A. Selby-Bigge, Oxford, 1946, p. 415.

lences. Living together is a strategy of passions and nothing more. On the contrary, and antithetic to this point of view, the Christian appeal to justice against violence has a sense capable of being articulated into concrete forms of human communication for those who accept the Divine mystery as such and transcendent with respect to every other human possibility. Heidegger said: "man is more than pure man". For the Christian this more is the "metarational", not to be confused with the irrational, and precisely the metarational as mystery implied in the totality of awareness that man has of himself and of things.

In fact, as I have said, according to the Christian, justice implies the person, the person implies creation, and creation implies the Divine mystery. It is just here that is concentrated the antithesis to which I referred, that is between the secular and the Christian conceptions, between two views of human life and two ways of being with all their respective theoretical, practical, and political consequences, etc. One cannot escape this antithesis without choosing one or the other of the two opposed terms (secularism or Christianity). There is no synthesis but option. A difficult option, a radical choice. This choice—and this option—the more responsible and the less arbitrary it is, the more it is sustained by the critical and philosophical consciousness of its premises and its consequences.

The result of these considerations of mine do not free us from the choice between the two terms of the alternative that I have delineated, that is secular conception and religious conception. The result of this discourse stops here at the dilemma between the two terms of an alternative emerging from contemporary life. I have wanted simply to throw light on the terms of the alternative; this, I believe, is the task of philosophy, to seek as far as possible that the choice shall be a conscious one respecting the opinions of others.