

*CATHY NIJMAN*

***GOETHE'S FAUST: A KANTIAN ANALYSIS***

“Kant ist der Philosophen vorzüglichste, ohne allen Zweifel. Er ist auch derjenige, dessen Lehre sich fortwirkend erwiesen hat und die in unsere deutsche Cultur am tiefsten eingedrungen ist”

– Johann Wolfgang von Goethe, 11 April 1827.

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This paper contains 3374 words (excluding table of contents, footnotes and bibliography).

## **I INTRODUCTION**

Goethe, Faust, and Immanuel Kant have much in common. All three were German polymaths whose work spanned the 18<sup>th</sup> and 19<sup>th</sup> centuries; Goethe and Faust were lawyers and while Kant was not a legal scholar, his works in moral philosophy included a complete jurisprudential theory of law. Kant's legal theory (most fully articulated in *The Metaphysics of Morals*<sup>1</sup>), contains both positivist and naturalist arguments, as well as being an exposition on external duties (legal obligations), and internal duties (moral obligations) to oneself and others. There is, therefore, a polarity in Kant's legal theory not unlike the many polarities in Goethe's *Faust*.

This paper uses the Faust-Gretchen relationship as a case study to argue that Kantian legal theory provides a valid basis for analysing the legality and the morality of the main characters' actions. The paper begins with a brief discussion of Kant's influence on Goethe. The outline of Kant's legal theory, focussing on how his views of "practical reason", freedom, and morality inform both the outward manifestation of law and its inner substance, is followed by an analysis of how key scenes from Faust conform (or not) with Kant's theory of law and morality. It is noted that Gretchen's final salvation contradicts Kant's theory of law. The paper concludes that the tragedy could have been avoided had either Faust or Gretchen acted in accordance with Kant's maxim for a universal law.

## **II KANT AND GOETHE**

Goethe acknowledges a deep interest in Kantian philosophy from the time he returned from Italy in 1788.<sup>2</sup> He undertook an in depth study of Kant's first and third *Critiques*<sup>3</sup> and "thirty years later he still [viewed] the pencil marks that trace the course of his readings with evident acknowledgement of their lasting significance."<sup>4</sup> Goethe identifies Kant as the "most excellent" philosopher and the one who had had the "most profound effect on our German culture."<sup>5</sup>

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<sup>1</sup> Three translations were consulted: see Immanuel Kant *The Philosophy of Law* (translated by W Hastie) (T & T Clark, Edinburgh, 1887) [Kant, 1887]; Immanuel Kant *The Metaphysics of Virtue – Part II of The Metaphysics of Morals* (translated by Mary J Gregor) (University of Pennsylvania Press, Philadelphia, 1964) [Kant, 1964]; and Immanuel Kant *The Metaphysics of Morals* (translated by Mary J Gregor) (Cambridge University Press, Cambridge, 1991) [Kant, 1991].

<sup>2</sup> Johann von Goethe *Einwirkung der neueen Philosophie* (1820) quoted in Géza von Molnár "Hidden in Plain View: Another Look at Goethe's *Faust*" (2003) 35(3) *Eighteenth-Century Studies* 469, 470, fn 4: "Over and over again I returned therefore to Kant's teachings; I thought that I understood some chapters better than others and gained quite a lot for my own household." The "household [*Hausgebrauch*]" referred to is Goethe's intellectual and theoretical "household".

<sup>3</sup> *Critique of Pure Reason* (1781); *The Critique of Judgement* (1790).

<sup>4</sup> von Molnár, above n 2, 470.

<sup>5</sup> Goethe to Johann Peter Eckermann (11 April 1827) quoted in von Molnár, above n 2, 470, fn 7.

There are several correlations between Kant's writings and *Faust*, the most significant of which (for current purposes) is Kant's view that the concepts of purpose and telos<sup>6</sup> do not derive from nature, but "apply solely to *human agency in its freedom*."<sup>7</sup> Goethe's "second phase"<sup>8</sup> of work on *Faust* saw the work given a "new direction ... this [Kantian] model furnished the frame which the drama of Faust was to unfold ... on the binary track of human telology."<sup>9</sup>

### III KANT'S THEORY OF LAW

Kant's *Metaphysic of Morals*<sup>10</sup> is divided into two parts: the *Rechtslehre* or *Doctrine of Rights* (the *Rights Doctrine*) and the *Doctrine of the Elements of Ethics*.<sup>11</sup> The *Rights Doctrine* asks how individuals' arbitrary and inconsistent ends can be combined in a legal system focused on liberty.<sup>12</sup> The *Rights Doctrine* is: "The sum of those laws for which an external law-giving is possible ...".<sup>13</sup> *Recht* (Right) incorporates both the empirical content of positive laws as well as the a priori principles that Kant calls "external natural laws".<sup>14</sup> The moral dictate of human action, manifested in the categorical imperative of "practical reason", was the basis of all law.<sup>15</sup>

#### A Practical Reason

For Kant, "practical" encompassed "everything that is possible through freedom".<sup>16</sup> Free will is choice motivated by reason, as opposed to will (choice) driven by experience ("sensuous impulses").<sup>17</sup> Free will results in purposive action. Purposive action contrasts with the passivity of cause and effect generated by someone acting on "animal will".<sup>18</sup> Purposive action, therefore, is rational; it is determined not by the

<sup>6</sup> An ultimate object or aim.

<sup>7</sup> von Molnár, above n 2, 484 (emphasis added).

<sup>8</sup> 1788–90: David Constantine "Chronology" in Johann Wolfgang von Goethe *Faust, Part 1* (translated by David Constantine) (Penguin Books, London, 2005) xxii [*Faust*].

<sup>9</sup> von Molnár, above n 2, 484.

<sup>10</sup> First published in 1797; it should not be confused with Kant's *Groundwork of the Metaphysic of Morals*, first published in 1785. The *Metaphysics of Morals* developed the principles of morality investigated in the *Groundwork* into a system from which specifically human duties could be derived.

<sup>11</sup> Kant, 1887, above n 1. In Kant, 1964, above n 1, Mary J Gregor translated the titles as *The Doctrine of Law* and *The Doctrine of Virtue*. However, she reverted to the same form used by Hastie in 1887 for her 1991 translation.

<sup>12</sup> H J Paton "Foreword" in Kant, 1964, above n 1, xi.

<sup>13</sup> Kant, 1991, above n 1, 55, 229.

<sup>14</sup> H J Paton "Foreword" in Kant, 1964, above n 1, x.

<sup>15</sup> John W Salmond "The Nature of Law" (1895) 11 LQR 121, 137.

<sup>16</sup> Ernest J Weinrib "Law as a Kantian Idea of Reason" (1987) 87 Colum L Rev 472, 481.

<sup>17</sup> *Ibid*, 481.

<sup>18</sup> *Ibid*, 482-83.

content of the action, but whether it could serve as a principle guiding the actions of others in a similar situation whatever their personal inclinations. This finds expression in the Kantian imperative: “Act upon a maxim that can also hold as a universal law.”<sup>19</sup> Freedom is the ability to engage in purposive activity determined by its inherent rationality; it is this mode of determination that Kant calls “practical reason.”<sup>20</sup>

## **B Freedom and Law**

Both the *Rights Doctrine* and *Elements of Ethics* are “laws of freedom” derived from the “supreme moral principle”<sup>21</sup> Two forms of freedom are relevant to Kant’s concept of law. First is external or outer freedom, that is an individual’s freedom to act on her or his own choices.<sup>22</sup> However, one person’s freedom can conflict with another’s. “Law” reconciles individuals’ subjective choices in a way that guarantees the maximum external freedom for all.<sup>23</sup> Second is internal freedom, that is the ethical laws that arise directly in “inner legislation” for which practical reason provides both the law and its accompanying constraint. Inner legislation is a form a freedom because it frees the individual from the influence of base inclinations (such as desired ends or sensuous experiences) enabling her or him to act in accordance with the dictates of practical reason.<sup>24</sup> Inner legislation provides individuals with the ability to make moral choices.

## **C Morality and Law**

The “supreme moral principle” is the a priori proposition (previously stated) that a person should act in accordance with the maxim that one should only act in a way that would be consistent with a universal law.<sup>25</sup> Kant distinguishes “Law” (*Gesetz*) which is “other-regarding” from the broader concept of Right (*Recht*). “Law” focuses on ensuring that reciprocal choices are freely made with due regard to the freedom of others.<sup>26</sup>

For Kant, “what is Right” necessarily involves more than the “right” of positive laws, that is what was enacted at a given place at a given time. “Empirical principles”

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<sup>19</sup> Mary J Gregor “Preface” in Kant, 1991, above n 1, 51. A maxim is a “subjective principle of action”; but the principle of reason “prescribes to him absolutely and objectively (how he *ought* to act)”.

<sup>20</sup> Weinrib, above n 16, 472, 483.

<sup>21</sup> Mary J Gregor “Translator’s Note” in Kant, 1964, above n 1, xx.

<sup>22</sup> George P Fletcher “Law and Morality: A Kantian Perspective” (1987) 87 Colum L Rev 533, 535.

<sup>23</sup> *Ibid.*

<sup>24</sup> Mary J Gregor “Translator’s Note” in Kant, 1964, above n 1, xx.

<sup>25</sup> Mary J Gregor *Laws of Freedom* (Basil Blackwell, Oxford, 1963) 3.

<sup>26</sup> *Ibid.*, 37.

must be informed by “judgments [sourced] in reason alone” in order to establish whether a positive law is “right” (or wrong).<sup>27</sup> Although Kant considers positive laws can be “excellent guides” to what was “right”, he says: “Like the wooden head in Phaedrus’ fable, a merely empirical doctrine of Right is a head that may be beautiful but unfortunately it has no brain.”<sup>28</sup> And as Faust says after agreeing the terms of the wager with Mephisto:<sup>29</sup>

Pedant, you want the thing in writing, do you?  
 ... shall a written promise hold me fast?  
 ... Happy the man who keeps the faith pure within him!  
 He pays whatever the cost without regret.  
 But a parchment written and embossed  
 Is a spectre everyone fears.  
 Before it leaves the pen the word expires  
 And nothing counts but wax and vellum.

Before meeting Mephisto, Faust is of the opinion that the “empirical doctrine of Right” (the “parchment written and embossed”) was worth nothing (“it has no brain”) without the internal freedom to act out of duty (“Happy the man who keeps the faith pure within him.”)

Kant’s “moral concept of Right” is contained in the obligation corresponding to the duty, that is the external relations of individuals insofar as their actions may impact directly or indirectly on one another.<sup>30</sup> Freedom in moral action is internal rather than external.<sup>31</sup> The last two statements may seem contradictory, but the focus on the concept of duty enables an individual to “abstract his conduct from [the] sensual input”<sup>32</sup> that would otherwise interfere with the dictates of reason. The *internal* freedom to act in accordance with practical reason paves the way for a person to act *out of duty* (because it is the right thing to do) rather than merely acting in accordance *with* duty.<sup>33</sup>

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<sup>27</sup> Kant, 1991, above n 1, 55, 230. The translator notes (at fn 22) that Kant used *gerecht and ungerecht* as well as *iustum and iniustum* for the right and wrong of external laws. While *recht* and *unrecht* were used in a more general sense to differentiate right and wrong, the context in which *recht* and *unrecht* were used in the *Doctrine of Right* makes it clear that he was only referring to external laws.

<sup>28</sup> Kant, 1991, 56, 230.

<sup>29</sup> *Faust*, above n 8, 58, 1716–29.

<sup>30</sup> Kant, 1991, above n 1, 55.

<sup>31</sup> Fletcher, above n 22, 537.

<sup>32</sup> *Ibid*, 538.

<sup>33</sup> *Ibid*.

## D *Three in One ...*

The concepts of practical reason, obligation, and duty are (to borrow from Mephisto) “Three and one and One in Three.”<sup>34</sup> They are the essential constituent elements making up a single indivisible whole. The “Three and One and One in Three” concept can also be applied to the juridical, ethical, and moral aspects of the laws of freedom. The “Laws of Freedom” are by definition moral laws. Their juridical character defines the lawfulness of external actions; their internal ethical character determines the principles guiding action; and an action in accordance with those ethical principles further defines the morality of the action (and the law itself).<sup>35</sup>

Kant’s theory of morality juxtaposes the individual’s “struggle with temptation” with the categorical imperative of practical reason which “commands our will with an inflexible dignity.”<sup>36</sup> There are parallels between Kant’s portrayal of humans as inherently flawed, but with an innate capacity to determine a morally right course of action – by definition, a priori precepts cannot be determined empirically – and God’s view of man, as expressed in the Prologue in Heaven:<sup>37</sup>

A good man, though impelled in darkness, yet  
Is well aware of what the right way is.

The next section of the paper puts Kant’s (and God’s) theory to the test.

## IV *FAUST – A MORAL MAN*

In *Study(1)*, Faust, at peace with himself after returning from his walk with Wagner and no longer contemplating suicide, echoes God’s words when he says:<sup>38</sup>

... in any heart  
That knows itself, the light returns.  
Reason begins to speak again

“Reason”, *Vernunft* in the original German, “may be understood to mean the intellectual power of arriving at truth by reflection, without the assistance of empirical proof.”<sup>39</sup>

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<sup>34</sup> *Faust*, above n 8, 89, 2561.

<sup>35</sup> Kant, 1887, above n 1, 14.

<sup>36</sup> Garrath Williams “Kant and the Question of Meaning” (1999) 30(2) *The Philosophical Forum* 115, 116.

<sup>37</sup> *Faust*, above n 8, 15, 328–29.

<sup>38</sup> *Faust*, above n 8, 42, 1196–99.

<sup>39</sup> R-M S Heffner, Helmut Rehder and W F Twaddell (eds) *Goethe Faust* (vol 2, The University of Wisconsin Press, Madison, 1975) 33 [Heffner, vol 2].

This reflects Kant's ideal of "practical reason". In the writer's view this, together with the Faust's scorn of a solely empirical doctrine of Right (noted above), establishes Faust as a *moral* being. This Faust would not have contemplated the seduction of Gretchen. His words indicate an acceptance that in order to be true to oneself and to act consistently with others' Rights, awareness of something more than subjective desire and external experience is required.

#### ***IV FAUST – IMMORAL MAN***

The change in Faust after he concludes the wager with Mephisto is profound. The moral scholar, albeit one increasingly dissatisfied with his "wordy trade",<sup>40</sup> almost immediately becomes someone whose only concern is his own "pain and pleasure":<sup>41</sup>

So becomes in the deep of sensuality  
I'll quench my passions' heat.  
Make me at once all kinds of wonder ready,  
... I'll ride the rush of time and chance  
... A man must do the acts of restlessness.

Tellingly absent from this paean to his own wants and needs is any consideration from Faust as to how his *self*-regarding actions will impact on the Rights, the external freedom, of others. In surrendering himself to action dictated by subjective (sensuous) experiences, Faust abandons the a priori dictates of practical reason and with it the inner legislation that enables individuals to make moral choices. From this point on, Faust's actions are, with few exceptions, contrary to Kant's universal law maxim.

#### ***A The Seduction of Gretchen***

##### ***I Witch's Kitchen***

This marks the physical and mental transformation of Faust as he was into the Faust of the Gretchen tragedy that follows.<sup>42</sup> Transfixed by the "heavenly" image of feminine beauty he sees in the mirror,<sup>43</sup> Faust drinks the potion that will turn him into an amorous young man. He succumbs to Mephisto's demand to engage in *physical*

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<sup>40</sup> *Faust*, above n 8, 17, 385.

<sup>41</sup> *Faust*, above n 8, 59, 1750–58.

<sup>42</sup> Heffner, vol 2, above n 39, 55.

<sup>43</sup> *Faust*, above n 8, 84, 2430.

activity (“It is imperative that you sweat ...<sup>44</sup>) to enhance the effect of the witch’s brew (“... to hurry / The virtue through the inner and outer man.”<sup>45</sup>). Mephisto promises that he will soon see the paragon in the mirror, in the flesh, “Soon enough in every woman.”<sup>46</sup> The image of the witch’s brew as “the virtue” and *experience* enhanced through sensuality displaces the notion of *virtue* (Kant’s Right) arising from inner legislation. Totally absent is any notion of “other-regarding” action.

## 2 *Street*

Here, too, Faust fails to consider the impact of his actions on others; his sole concern is with his own “appetites”. When Faust first sees Gretchen returning home from confession, he demands of Mephisto: “Listen, get me that girl. You must.”<sup>47</sup> “Girl” was *dirne* in the original German;<sup>48</sup> it reveals Faust’s contempt for Gretchen’s youthful innocence. *Dirne* carries the pejorative connotation of a female as a bitch; “easy”; a prostitute; or a street-walker.<sup>49</sup> Clearly, then, Faust thought himself at liberty to use Gretchen as he saw fit; other-regarding action is not within his contemplation.

While this scene denies any notion of Kantian Right, or *moral* action, Faust is keenly aware of the *legal* impediment to his pursuit of Gretchen. When, arguably, Mephisto warns against him rape:<sup>50</sup>

The way you talk! Like Dirty Dick –  
Wants every lovely bloom, and quick,  
And every honour, so he supposes,  
And favour’s for plucking when he chooses.  
But that’s not always how it goes.

Faust retorts: “Spare me the *law* and the homily”.<sup>51</sup> “Law” was *Gesetz*,<sup>52</sup> not *Recht*.

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<sup>44</sup> *Faust*, above n 8, 91, 2594.

<sup>45</sup> *Faust*, above n 8, 91, 2595.

<sup>46</sup> *Faust*, above n 8, 91, 2604.

<sup>47</sup> *Faust*, above n 8, 92, 2618.

<sup>48</sup> Heffner, vol 2, above n 39, 59.

<sup>49</sup> *The New English–German Dictionary* www.iee.et.tu-dresden.de (accessed 8 May 2007).

<sup>50</sup> *Faust*, above n 29, 92, 2628–32.

<sup>51</sup> *Faust*, above n 29, 92, 2633 (emphasis added).

<sup>52</sup> Heffner, vol 2, above n 39, 60.

3 *Evening / Street(2) / Marthe's Garden*

*Evening* emphasises “the basic antagonism between [Gretchen’s] simple purity of heart and the baseness of the threat to her peace.”<sup>53</sup> Gretchen’s peace is the Kantian external freedom that Faust is about to destroy.

The atmosphere of Gretchen’s room causes Faust to have second thoughts about seducing Gretchen. He recognises incongruity of his current situation as a person driven to action to fulfil his own desired end without consideration of his moral duty not to *do* wrong to Gretchen.<sup>54</sup>

And you? What purpose have you here?  
 ... What is it you want? Why does the heart sink so?  
 Faustus, wretch, I do not know you.

Faust’s final effort to avoid (immoral) involvement with Gretchen: “Let us go! I’ll never come back. Let us go!”<sup>55</sup> founders in the face of Mephisto’s scheme (the casket of jewels) to help seduce Gretchen. Faust’s hesitancy: “I don’t know. Should I?”<sup>56</sup> reveals two things. First, Faust knows what the morally right, other-regarding action is (what he *ought* to do). Second, Faust is poised to continue down the path of *knowing* immorality.

That Faust chooses the path of knowing immorality is revealed in *Street(2)* when, after an initial refusal, he agrees to lie (by swearing to Schwerdtlein’s death) to secure Marthe’s assistance in arranging a tryst with Gretchen.<sup>57</sup> Perjury breaches both Law and Right. In the assignation that follows, Gretchen accedes to Faust’s request that she give her mother a soporific so they can consummate their “love” undisturbed.<sup>58</sup> There is a tragic inevitability about Gretchen’s own descent into immorality and the loss of life that follows.

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Faust*, above n 8, 95, 2719–20.

<sup>55</sup> *Faust*, above n 8, 96, 2730.

<sup>56</sup> *Faust*, above n 8, 96, 2738.

<sup>57</sup> *Faust*, above n 8, 109, 3067–72.

<sup>58</sup> *Faust*, above n 8, 126–27, 3510–20.

## V *GRETCHEN – FROM CATECHISM TO CATAclysm*

Until this point Gretchen is depicted as someone who has “devoted her existence to the service of others. Their lives are her life, their welfare is hers ... devout, ... [d]evotion and loyalty are the keynotes of her existence.”<sup>59</sup> Gretchen epitomises Kant’s ideal of other-regarding Right. However, her affair with Faust was contrary to both Law<sup>60</sup> and Right; and it directly led to three deaths. Gretchen’s appeal to the Virgin Mary: “From shame and death keep me”<sup>61</sup> at the end of *Shrine in the Town Wall*, foreshadows what follows.

### A *Night*

Valentin’s speech reveals two things. First, Faust’s liaisons with Gretchen have been frequent – Faust confirms this before he and Valentin meet.<sup>62</sup> Second, the affair has become common knowledge.<sup>63</sup> The crowd’s response to Gretchen after Faust kills Valentin – referring to him as “Your mother’s son”<sup>64</sup> (not “your brother”) emphasises their disgust.<sup>65</sup> “Shame and death” have not been avoided.

Valentin’s condemnation of Gretchen as a whore includes a list of the penalties she could expect in accordance with the Law and customs of the time:<sup>66</sup>

Never again come to the altar rail,  
Never again wear pretty lace  
At your throat nor a chain of gold ...

Both local and church law forbade young women of “ill repute” from wearing gold jewellery, participating in church services, or wearing “fine clothes” in public.<sup>67</sup>

Gretchen’s own words: “Oh brother, oh the pains of hell!”<sup>68</sup> acknowledge his denunciation is justified. Motivated by self-interest, while hoping to avoid the consequences of Law (“shame and death”), Gretchen has disregarded the “inner

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<sup>59</sup> R-M S Heffner, Helmut Rehder and W F Twaddell (eds) *Goethe Faust* (vol 1, The University of Wisconsin Press, Madison, 1975) 84 [Heffner, vol 1].

<sup>60</sup> Heffner, vol 2, above n 39, 75.

<sup>61</sup> *Faust*, above n 8, 131, 3616.

<sup>62</sup> *Faust*, above n 8, 133, 3674–75.

<sup>63</sup> *Faust*, above n 8, 132, 3639–45.

<sup>64</sup> *Faust*, above n 8, 135, 3720.

<sup>65</sup> Heffner, vol 2, above n 39, 77.

<sup>66</sup> *Faust*, above n 8, 136, 3720.

<sup>67</sup> Heffner, vol 2, above n 39, 78.

<sup>68</sup> *Faust*, above n 8, 136, 3770.

legislation” that previously guided her other-regarding external action. The result is Valentin’s death at her lover’s hands. Valentin’s final words to Gretchen: “When you and honour said farewell / You stabbed me to the heart ...”<sup>69</sup> places responsibility for his death as firmly at her feet as if she, not Faust, had wielded the sword.

**B** “*I have killed my mother, / I have drowned my child.*”<sup>70</sup>

1 *Cathedral*

The evil spirit is Gretchen’s own conscience, troubled by knowledge of her sin.<sup>71</sup> When it asks: “Are you praying for the soul of your mother who slept for you ...”<sup>72</sup> we learn for the first time that Gretchen’s mother is dead. While the cause of death is not discussed, Gretchen confirms her culpability in the final *Prison* scene:<sup>73</sup>

She slept so long, she’ll sleep for ever  
She slept for our pleasure

Gretchen’s mother was killed by the sleeping potion administered by Gretchen so she and Faust could meet undisturbed. Leaving aside the question of whether Gretchen had a “right” to meet her lover, she facilitated those meetings contrary to Right, that is at the expense of her mother’s own external freedom (and ultimately, her life). Whether the overdose was accidental or deliberate is unclear, but an accidental death resulting from a deliberate act remains contrary to Law. However, there is no room for doubt over the death of Gretchen’s son.

2 *Prison*

The tragedy reaches its inevitable denouement with Gretchen sentenced to death for murder. The deliberate taking of another’s life is the ultimate disregard for her or his Rights. While Gretchen hallucinates when recounting the death to Faust,<sup>74</sup> there is no *proof* of what drove Gretchen to drown her son. But the point is moot; infanticide is a capital crime. The Law does not recognise mitigating circumstances as a defence,<sup>75</sup> although Goethe and Kant agreed that infanticide differed from other categories of

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<sup>69</sup> *Faust*, above n 8, 136, 3772–73.

<sup>70</sup> *Faust*, above n 8, 164, 4507–08.

<sup>71</sup> Heffner, vol 2, above n 39, 79.

<sup>72</sup> *Faust*, above n 8, 137, 3787.

<sup>73</sup> *Faust*, above n 8, 166, 4571–72.

<sup>74</sup> *Faust*, above n 8, 162, 4442–50; see also 166, 4551–62.

<sup>75</sup> Helga Stipa Madland “Infanticide as Fiction: Goethe’s *Urfaust* and Schiller’s ‘Kindsmörderin’ as Models” (1989) 62(1) *The German Quarterly* 27, 27.

murder. Goethe, when asked by Karl August for his opinion on child murderer Johanna Höhn's pending death sentence in 1783, said: "*Auch ich* [me too]", but he did *not* unequivocally support the death penalty for infanticide.<sup>76</sup> Kant, too, while generally supportive of the death penalty, considered infanticide an exception.<sup>77</sup> Nevertheless, the penalty imposed by Law had to be implemented.

### **C     *Crime and Punishment***

Kant considers "penal justice" a "categorical imperative".<sup>78</sup> Just as the categorical imperative of practical reason is the basis of all law, so the *state-sanctioned* punishment imperative operates to control immorality that purely private means cannot.<sup>79</sup> And penal justice demands that "the unlawful killing of another must be punished by death."<sup>80</sup>

Although Kant equivocates over the state's right to insist on the death penalty for infanticide,<sup>81</sup> he considers a greater evil results if a penalty imposed is not implemented; a failure to carry out the punishment would be a "public violation of justice."<sup>82</sup> Even if society was to disband, "the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve ...".<sup>83</sup>

The positive law demanded a penalty, Gretchen's life, in return for her son's murder. Her refusal to escape with Faust (unless both were going to their deaths)<sup>84</sup> indicates acceptance of her fate, but at the very end she appeals to the "Court of God"<sup>85</sup> and "Is saved"<sup>86</sup> thus avoiding one of the fundamental tenets of Kant's theory of law.

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<sup>76</sup> Willem Wächtershäuser *Das Verbrechen des Kindesmordes im Zeitalter der Aufklärung: Eine rechtsgeschichtliche Untersuchung der dogmatischen, prozessualen und rechtssoziologischen Aspekte* (Schmidt, Berlin, 1973) 33-34, quoted in Madland, above n 25, 27.

<sup>77</sup> Madland, above n 25, 27.

<sup>78</sup> Kant, 1991, above n 1, 145, 337.

<sup>79</sup> Jeffrie G Murphy "Does Kant Have a Theory of Punishment?" (1987) 87 *Colum L Rev* 509, 521.

<sup>80</sup> Kant, 1991, above n 1, 145, 337.

<sup>81</sup> Kant, 1991, above n 1, 144-45, 336.

<sup>82</sup> Kant, 1991, above n 1, 142, 333.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Faust*, above n 8, 165, 4538-42.

<sup>85</sup> *Faust*, above n 8, 165, 4606.

<sup>86</sup> *Faust*, above n 8, 165, 4613.

## VI CONCLUSION

There is a unity and logical indivisibility in Kant's notion of practical reason as the supreme principle of morality, and of the juridical, ethical, and moral foundation of the laws of freedom. Gretchen's loss of her sense of moral self leads her to act contrary to Right and Law. The three deaths discussed reveal the downward spiral. Gretchen's involvement in Valentin's death was incidental at most; the action leading to her mother's death was intentional (with an accidental outcome); but her son's death *was* intended. However, she remains more deserving of our sympathy (and that of the Law) than Faust.

It would be wrong to categorise Faust as *amoral*: his sense of right and wrong remains intact. Worse, his treatment of Gretchen is *immoral*: Faust *knows* his seduction and abandonment of Gretchen is *wrong* but he is concerned only with his own pleasure. His attempt to rescue her from prison is too little, too late. Acting in accordance with her inner legislation would have enabled Gretchen to make a moral choice *before* becoming involved with Faust, but Gretchen genuinely loves him and this colours her idea of what is "right".

In the writer's view, the Gretchen tragedy is the inevitable outcome of a situation where two people transgressed the Kantian "supreme principle of morality". Had either Gretchen or Faust acted in a way that their maxim could form the basis of a universal law, the tragedy and three deaths would have been avoided – and Gretchen would not have needed God's intervention to avoid the consequences of what, for Kant and Goethe, was arguably an unjust law.

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***Discussion Questions:***

1. Do you consider *Faust* portrays Law and Right as different for men and women? If so, in what way/s?
2. What responsibility does Faust bear for the deaths of Valentin, Gretchen's mother, and his and Gretchen's son?
3. Do you agree with Kant's theory of crime and punishment – that the penalty imposed by law should always be implemented in order to secure "justice"?