Immanuel Kant

Metaphysical Elements of Justice

Second Edition

The complete text of
the Metaphysics of Morals, Part I

Translated, with Introduction and Notes, by
John Ladd

METAPHYSICAL ELEMENTS
OF
JUSTICE

Metaphyſiſchhe Anfangsgründe

der

Rechtslehre

von

Immanuel Kant.

Königsberg,
bey Friedrich Nicolovius.
1797.

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Contents

[Editorial Note: Titles and footnotes enclosed in brackets do not appear in the original German text, but are added by the translator simply as a guide.

Footnotes indicated by a bold asterisk (*) are Kant's.

Numerals in the margins refer to page numbers in vol. VI of the Academic edition.

Numerals enclosed in brackets and preceded by A indicate the original paragraph number in the Academic edition of the *RL*.

Alternative translations of *Recht* appear in the Contents: "right," "justice," or "Law."

Capitalized nouns, such as Idea, Will, Person, and Nature, are used to translate German terms used by Kant in specific technical senses.]

PREFACE TO THE SECOND EDITION

This book is a translation of the first part of Kant's *Metaphysics of Morals* (*Metaphysik der Sitten*). It is generally known as the *Rechtslehre*, the full title being *Die metaphysische Anfangsgründe der Rechtslehre*, which is translated here as the *Metaphysical Elements of Justice*. Different translators have given different English titles to this work, such as "Philosophy of Law" (Hastie) and "Doctrine of Right" (Gregor). In order to avoid confusion, in referring to this work, I prefer to use the standard nickname *Rechtslehre* (or the abbreviation *RL*).

The second part of the *Metaphysics of Morals* is generally known as the *Tugendlehre*, the full title again being *Die metaphysische Anfangsgründe der Tugendlehre*. Here again, there is a variety of different English titles that have been given to this work. I shall therefore simply refer to it as the *Tugendlehre* (*TL*).

Thus, as will be seen in the introduction to the metaphysics of morals in the present work, the subject of the first part (*RL*) is justice, rights and law, while the subject of the second part (*TL*) is virtue.

Basically the original German text for this translation comes from the second edition of the *Rechtslehre* (1798). The standard edition of the text was published by the Preussische Akademie der Wissenschaften and is generally known as the *Academische Ausgabe* (abbr. *AA*). This edition is now available through de Gruyter press under the title *Kants Werke: Akademie Textausgabe*, vol. VI. The complete works (thirty volumes) has the title, *Kants Gesammelte Schriften*. In the present translation, the standard pagination of Kant's works is indicated in brackets giving the page number in Volume VI of these editions. Using these standard reference numbers should make it easy for students to compare translations and to refer back to German texts.

There are a number of reasons why a new edition of this translation is needed. First, since the first edition was prepared some forty years ago, there has been a virtual explosion in Kant scholarship and of scholarly interest in Kant's political and legal philosophy in particular. There have been several new editions of the text in German as well as a number of new translations of the text, for example, in French and English, and a flood of new secondary literature on the *RL* in general

and on specific topics in it, in many languages, especially in German, English, and French. Second, some parts of the *RL* were omitted in the first edition and this new edition makes up for this deficiency. Finally, as the result of a discovery by Gerhard Buchda (1929), it is generally conceded that the text handed down to us is defective, although there is a raging controversy among scholars over the details. Bernd Ludwig, in particular, has taken a fresh look at the old text and has decided, for reasons that will be explained as we proceed, that the old text needs to be revamped to make the ordering of the individual parts more rational and coherent. Taking into account some of the revisions suggested by Ludwig, the present translation has tried to present Kant's discussions in a more orderly way than before. It is hoped that these changes will make the book more readable and understandable to Anglophone readers than it would be otherwise.

Over the years, and especially during the past years, I have received help and advice about the new translation from so many knowledgeable individuals that I cannot begin to list them. I am particularly grateful for the help that I have received from Georg Geisman, Kenneth Westphal, and the editors at Hackett Publishing Company, Deborah Wilkes and Meera Dash. However, I cannot forbear from mentioning two great mentors, H. L. A. Hart and Sir Isaiah Berlin, both eminent non-Kantians, who in the early days gave me encouragement and support, not to mention hours of precious time advising me in preparing the first edition. May their souls rest in peace for helping to bring Kant back to life!

John Ladd

TRANSLATOR'S INTRODUCTION

I. The Spirit of Kant's Moral and Political Philosophy

The key to Kant's moral and political philosophy is his conception of the dignity of the individual. This dignity gives the individual person an intrinsic worth, a value *sui generis* that is "above all price and admits of no equivalent."[1] It is the source of one's innate right to freedom, and from the right to freedom follow all one's other rights, specifically one's legal and political rights. Inasmuch as every individual possesses this dignity and right, all persons[2] are equal. Thus, Kant may be regarded as the philosophical defender *par excellence* of the rights of persons and their equality, and of a republican form of government.

In emphasizing the rights of individual persons, Kant sets himself against every form of utilitarianism as well as traditional forms of natural law theory. He believes that neither morality nor law should be founded on social utility, the general happiness, or the common good; they must be founded, instead, on the rights of the individual. Insofar as any course of action, private or public, conflicts with these rights, it is *ipso facto* wrong; and it is wrong regardless of the amount of good that may result from it. In this sense, he categorically repudiates the principle that the end justifies the means, however good and worthwhile the end may be. Thus, for example, he severely castigates those who hold that the aim of bringing Christianity and civilization to primitive societies justifies the use of violence and fraud against them. "The good of humankind" cannot be used as an excuse for such injustice. A theme throughout his political writings is the injustice of violence and fraud, and this explains his strictures against war and revolution. They are all violations of human rights.

From the conception of the dignity of the individual person, summed up in the concept of freedom, Kant derives all of an individual's civil and political liberties. This conception not only demands the repudiation of slavery and all other forms of inequality, but also requires

[1] Kant, *Foundations of the Metaphysics of Morals*, trans. Lewis W. Beck, Library of Liberal Arts, No. 113 (New York: Liberal Arts Press, 1959), p. 53.

[2] Throughout this book, I use "person" or "people" (as the plural of person) to translate *Mensch*. See Note on the Text and the Translation.

us to strive for a constitutional and republican form of government and, on the international level, for the abolition of war and the establishment of an international organization of states. These political objectives are obligatory, not because they are advantageous or useful for humankind, but because every individual has an inalienable right to be his (or her) own master and to live in freedom and peace. Freedom and peace are not philanthropic ideals but demands of justice.

This freedom automatically involves equality, for, like Rousseau, Kant regards freedom and equality as two sides of the same coin. If everyone is free, then all are equal, and if all are equal, they will all be free. This is because unfreedom and inequality come from being subject to the will of another, including his or her use of violence and of power.

We now have to ask, How does a person come to possess this inherent dignity? What is the source of these rights and of the claim to freedom and equality? Kant's answer is that they arise from the fact that each member of humankind is a moral being. In order to explain this, some reference must be made to the doctrine of the categorical imperative.

The classic statement of Kant's moral philosophy is contained in the categorical imperative, which says, "Act only according to that maxim by which you can at the same time will that it should become a universal law."[3] Practically, Kant argues, this amounts to the principle, "Act so that you treat humanity, whether in your own Person or in that of another, always as an end and never as a means only."[4] Underlying the categorical imperative is the idea that every person gives the moral law to himself; that is, each individual is not only a subject, but also a sovereign legislator in the "realm of ends," the moral realm. The very conception of morality involves the notion of moral autonomy.

The condition that makes morality both possible and necessary is that a person is a rational being possessing freedom, for freedom alone explains moral autonomy. "Freedom must be presupposed as the property of the will of all rational beings."[5]

There are two aspects of this freedom. Kant calls them "negative" and "positive freedom."[6] *Negative freedom* is the capacity to act inde-

[3] Kant, *Foundations*, p. 39 (*AA* 4, 421).

[4] Ibid., p. 47 (*AA* 4, 429).

[5] Ibid., p. 66 (*AA* 4, 447).

[6] Ibid., p. 64 (*AA* 4, 447). For a useful discussion of these two senses of "free-

pendently of foreign, external causes; in other words, it is freedom from external constraint. *Positive freedom,* on the other hand, is the "property of the Will to be a law to itself,"[7] that is, it is the property of autonomy. In Kant's view, the Will itself is the source of moral laws, as a self-legislator. It is this fact of positive freedom, that a person subjects himself voluntarily to the moral law by legislating it for himself, that makes him a moral being and gives him dignity. (It should be noted that Kant does not want to say that a person actually always acts morally, but only that each one of us acknowledges himself to be bound by moral principles.)

Negative freedom is a necessary condition of positive freedom, because a person must be negatively free in order to be positively free. In other words, a person can set the moral law to him- or herself only if they are free from external constraint. Politics and law are concerned only with a person's negative freedom, which it is their business to secure. (I shall call this negative freedom "liberty.") It is no business of the state or, for that matter, of other individuals to try to make people moral; only individuals can do that for themselves. (Otherwise, they would not be autonomous; to make others moral is, for Kant, a self-contradiction.) Nevertheless, morality demands that persons be negatively free, and in this sense, therefore, the demand for liberty is a moral one. A person's innate right to liberty has its basis in the negative freedom that is demanded as a condition of moral autonomy, that is, of morality itself.

One general comment about Kant as a moral philosopher should be added here. He did not believe that it is the business of the philosopher to discover new principles of conduct, for he thought that everyone knows "in his heart" what is right and what is wrong. (Politicians, however, and others in authority are usually blinded by their greed for power; they need to be "reminded" that they, as much as others, are subject to the moral law, and that they must not choose fallacious maxims that lead to iniquitous modes of conduct.) Thus, we should not expect Kant to offer us a full-blown political or legal theory, with all the answers, so to speak. His purpose is, rather, to lay bare the principles underlying government and law and to provide a philosophical foun-

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dom," see Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason.* Chicago: University of Chicago Press, 1960, pp. 122–123.

[7] Ibid., p. 65 (*AA* 4, 447).

dation for them. His aim is therefore much more modest than that of, say, Plato or Mill.

II. Divisions of Moral Philosophy

The title of the present work, *The Metaphysical Elements of Justice,* Part I of *The Metaphysics of Morals,* indicates its place in Kant's conception of moral philosophy.

To begin with, "metaphysics" is a technical term in Kant's philosophy. It stands for "the science which exhibits in systematic connection the whole body (true as well as illusory) of philosophical knowledge arising out of pure reason";[8] that is, it is the body of synthetic a priori basic principles of a particular discipline. Insofar as these principles are concerned with how things do happen, that is, the theoretical knowledge of things (what we call "science"), it is called "the metaphysics of nature"; and, insofar as it is concerned with principles of what ought to happen, that is, practical knowledge leading to action, it is called "the metaphysics of morals."[9]

It is important to note that, for Kant, metaphysics as such is entirely a priori. Thus, the metaphysics of morals is concerned only with the pure a priori part of morals, in abstraction from its empirical side, and therefore must not be taken to constitute the whole of moral philosophy. Nevertheless, because the subject matter of the two parts of the *Metaphysics of Morals,* justice and virtue, involves the application of these a priori concepts to practice, the empirical part cannot be entirely neglected. Hence a completely pure metaphysics of justice and virtue is impossible, and so, instead of referring to their principles as "metaphysical basic principles" (*Grundsätze*), he prefers to call them simply "elementary principles" (*Anfangsgründe*).[10]

The metaphysics of morals, considered as pure moral philosophy (*Sittenlehre*), is divided into two parts: theory of justice or jurisprudence (*Rechtslehre*) and ethics (*Tugendlehre*), and these are concerned with justice (Law) and virtue, respectively.[11]

[8] Kant, *Critique of Pure Reason*, A 841/B 869.

[9] The opening Introduction to the Metaphysics of Morals in this book explains what this means.

[10] See *infra*, Preface, pp. 1–2. Kant relegates the less pure parts to what he calls "remarks," which appear in indented paragraphs. They are noted in this translation as *Remarks*.

[11] Note that Kant uses the German *Sittenlehre* as a translation of the Latin

Kant draws the distinction between these parts in two ways that do not entirely overlap. His first distinction is between types of legislation, which he calls "external" and "internal," or "juridical" and "ethical," respectively; the second distinction is between kinds of duties—those of justice and those of virtue.

Essentially, the distinction between juridical and ethical legislation relates to the kind of motives involved in law as opposed to ethics. Kant holds that there are two distinct ways of being bound to do one's duty (*die Art der Verpflichtung*), namely, from the outside or from within. I may be obliged to do my duty by someone else, for example, by a political authority employing coercion or threats of coercion. This is what Kant calls "external" or " juridical" legislation; it entails the use of external coercion and involves the corresponding motives to move me to do what is required. On the other hand, I may do my duty simply because it is a duty, in which case the Idea of duty is my motive and I am coercing myself rather than being coerced from the outside. Kant calls this "internal" or "ethical" legislation.

Now, according to Kant, some duties may be required by both types of legislation simultaneously. For example, keeping a promise may be an object of both juridical and ethical legislation. If I perform such a duty simply because it is my duty, then my act may be said to be "moral"; if, however, I do it only because of some external coercion, then my act will be merely "legal."

We can now understand what Kant means when he defines justice (or Law) as the body of laws that are susceptible of being given in external legislation; for he thinks it of the essence of law that it prescribes duties that can be, although they need not be, externally enforced. In other words, law is a coercive order. All our duties as such, however, are prescribed by ethical legislation, even though some of them may also be prescribed by juridical legislation. In this sense, then, ethics may be said to encompass justice (or Law).

The second distinction is between duties of justice and duties of virtue. Here Kant uses a fourfold classification of duties. The four types are: (1) perfect duties to oneself, (2) imperfect duties to oneself, (3) perfect duties to others, and (4) imperfect duties to others. A perfect duty ("narrow duty") is one the nonperformance of which is

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philosophia moralis and *Rechtslehre* and *Tugendlehre* as translations of *ius* (or *iurisprudentia*) and *ethica*, respectively. Actually, he uses *Ethik* and *Tugendlehre* interchangeably. For an explanation of the meaning of *Recht* and *Rechtslehre*, see the next section.

wrong; it is a duty owed. Keeping a promise would be an example of such a duty. An imperfect duty ("wide duty"), on the other hand, is one whose performance is meritorious, but whose omission is not an offense. Benevolence is an imperfect duty. Jurisprudence, that is, justice and Law, is concerned only with perfect duties to others (that is, #3). Kant calls these duties of justice.

Why justice (and Law) should be limited to this third class of duties should be immediately apparent if we remember that justice relates only to what is subject to external legislation. Only duties to others and those that are owed could satisfy this requirement of enforceability, for one obviously could not enforce duties to oneself and should not enforce duties the omission of which is not wrong. It follows from this that all duties that are not duties of justice are duties of virtue, and duties of justice and duties of virtue form two mutually exclusive classes of duties.

In sum, justice (Law) is distinguished from ethics in that (1) it is the subject of external legislation, (2) it relates only to duties of justice, and (3) it is concerned only with external actions in relation to others. Insofar as ethics is especially concerned with the duties of virtue, it excludes theory of justice; but insofar as, in ethical legislation, it is generally concerned with all duties whatsoever, it also includes theory of justice.

III. Law and Justice: Meanings of *Recht*

It is impossible to understand the present work without taking into account the various meanings of the German word *Recht* and the special meanings assigned to it by Kant. To begin with, in German, as in other Continental languages, there are two words that can properly be translated by the English word "law," namely, *Recht* and *Gesetz.* (In Latin, the equivalent words are *ius* and *lex;* in French, *droit* and *loi.*) Basically, the difference between these two terms is this: *das Recht* (*ius, droit*) is used for the corpus of laws and legal principles of a particular legal system; that is, it is what we call "*the* law" in contrast, say, to "*a* law." As such, it is a collective concept and has no plural form. It is here translated as "Law" (capitalized). *Gesetz,* on the other hand, is the word used for a particular law or statute, and it has a plural, "laws." It is here translated as "law" (uncapitalized). Etymologically, the word *Gesetz* is related to the verb *setzen*—to set, to posit, to enact—so that *Gesetz* implies that it is something set or laid down by someone, for example, a legislator. Kant would very likely say that every law (*Gesetz*)

implies a lawgiver or legislator; indeed, he conceives of the moral law itself as a kind of law that one gives, that is, legislates to oneself. (This is his doctrine of autonomy.)

The word *Recht* (*ius, droit*), however, also contains an ambiguity that is not duplicated in English, for, in addition to referring to *the* Law, it is used for what we call a "right," that is, the kind of right that one person exercises against another. (As a legal right, this kind of right might be defined as a legal capacity or legal power.) In contrast to the first sense of *Recht,* one can in this sense speak of *ein Recht* ("a right") or, in the plural, of *Rechte* ("rights"). An analogous ambiguity is to be found in other Continental languages in such words as *ius* and *droit,* which may refer either to the corpus of law or to rights (as belonging to persons). For convenience in distinguishing these two senses of Right (*Recht, ius, droit,* and so on), Continental jurists have invented the terms "objective Right" to designate the corpus of law and "subjective Right" to designate rights belonging to persons. Because this ambiguity is not present in English, *Recht* in the objective sense may be translated simply as "Law," and *Recht* in the subjective sense can and will be translated as "right." (There are, however, a few passages in the text where it is not entirely clear which sense of *Recht* is intended by Kant.)

Kant has his own way of dealing with this recognized ambiguity of *Recht* (*ius*). When he wants to make it clear that he is referring to *Recht* in the objective sense, that is, as a corpus, he sometimes uses the term *Rechtslehre* ("jurisprudence").[12] In general, he uses the term *Lehre* for a corpus of principles, for example, of laws. *Rechtslehre* and *Tugendlehre* are both bodies or systems of principles—the one legal, the other ethical—and they are not, as later uses of the word *Lehre* might suggest, doctrines about these principles. (In my opinion, it is therefore not only unintelligible but also incorrect to refer to the present work as "The Doctrine of Right.")

Finally, for an understanding of Kant's philosophy, the most important consideration about *Recht* is that this word, in contrast to our own word "law," carries with it the connotation of moral rightness, that is, justice. Indeed, for Kant, *Recht* applies only to the moral side of law in general. (In this respect, *Recht* is like *ius, droit,* etc.) He expresses this by saying that *Recht* consists of a priori principles of practical reason. As such, it is the same for all people and equally binding

[12] See, for example, pp. 28, 162.

on all. In this respect, *Recht is* to be distinguished from *Gesetz*, which is enacted or statutory law, the law of the land, and as such varies from country to country and can be known only by empirical means.[13] In order to distinguish in this translation between these two senses of law, I shall capitalize Law when it means *Recht* and leave law in lower case when it means *Gesetz*. However, because of its moral connotations of rightness, I prefer usually to use the word "justice" as the usual translation of *Recht* (*ius*). This translation accords with one of the first meanings given the words in most standard German and Latin dictionaries and, I submit, with Kant's basic intent.

In the traditional terms of Western political and legal thought, Kant's *Recht,* like its Roman Law counterpart (*ius*), is generally identified with what is called Natural Law. (The identification goes back to Cicero.) The principal difference between Kant's position and that of other natural-law theorists is that, on his view, (1) our knowledge of *Recht* is a priori rather than empirical, (2) as law, it comes from within ourselves rather than from God or nature, and (3) its content relates to rights rather than to the common good (as it does, for example, for Aquinas). By the same token, Kant's *Gesetz* (law) can be identified with what natural law theorists call "positive law," or enacted law. For Kant, however, unlike Aquinas, *Gesetz* can be in conflict with *Recht,* if it is enacted, for example, by a despot. Accordingly, there can presumably be unjust laws.

Before continuing, one additional consideration needs to be pointed out, namely, that German (as well as Latin) has another word for *justice*, namely, *Gerechtigkeit* (*iustitia*), which refers to the application of the law as reflected in our expressions "a court of justice" or receiving "justice." It might even be translated "justness."[14] This term, *Gerechtigkeit*, is used by Kant only to refer to law as it is promulgated and administered by a public authority, e.g. in the courts, that is, to what is nowadays often known as "legal justice." Accordingly, in order to distinguish between *Recht* ("justice") and *Gerechtigkeit* in this translation, I have used "legal justice" or "applied justice" for

[13] Kant often uses *Rechtens* for "law of the land," that is, the lawyer's law.

[14] I should point out that in English the word "justice" is ambiguous. It may stand for the "quality of being just" or for the abstract principles of right and wrong. This is an ambiguity that does not exist in German, for in German there are two words: *Gerechtigkeit* (the quality) and *Recht* (the principles). The same, incidentally, goes for Latin and French.

Gerechtigkeit. (In this connection, it should be observed that, for Kant, *Gerechtigkeit* or "legal justice," exists only where there are courts to administer justice.)

IV. Kant's Radicalism

One cannot begin to understand Kant's legal and political philosophy, much less his ethics, unless one realizes how radical they are, that is, how far they diverge from the conventional established methods and assumptions about them that, until Kant came along, governed most if not all of the Western philosophical tradition, especially the genteel tradition of Anglo-American moral philosophy based on empiricism. What all these older traditions have in common might be called their *elitism* in the sense that they encourage and even require for ethical and political purposes some sort of ranking of individuals by class, either inherited or acquired, or by ability, moral attributes, achievement, or contribution to the common good or social utility. In other words, people are typically weighed in terms of some standard or other, say, as saints, heroes, or sinners, or as worthy or unworthy in terms of some standard of respectability. Kant, as we shall see, absolutely rejected this kind of approach.

Radicalism was not new to him. For in his theory of knowledge Kant proclaimed what he called his *Copernican Revolution* where, in analogy to Copernicus's explanation of the apparent motions of the stars through the real movements of the earth—a turn-around of perspective so to speak—Kant explained the categories of science, which appear to be embedded in nature, as due to the workings of the human mind.

So now Kant has another revolution, a turn-around, in the moral sphere, which has been called the *Rousseauean Revolution*. The first statement of this revolutionary change in orientation, which he attributes to Rousseau, is found in Kant's handwritten notation in what is now known as the *Remarks in the Observations on the Feeling of the Beautiful and Sublime*. There Kant writes:

> I am by inclination a seeker after truth. I feel a consuming passion for knowledge and a restless thirst to advance in it as well as satisfaction in every accomplishment. There was a time when I believed that this alone brought honor to humanity and I despised the common people who know nothing. Rousseau set me

> right. The deceptive feeling of superiority vanished. I learned to respect ordinary people and I should consider myself much less useful than a common laborer if I did not believe that this consideration would besides all others give value to establishing the rights of humanity.[15]

In the same writing, Kant says:

> There can be nothing more dreadful than that the actions of one person are placed under the Will of another."[16]

The two principles of equality and freedom set forth in these quotations are the keynote of Kant's legal and political philosophy. It should be observed that, according to Kant, neither equality nor freedom are instrumental goods, as they are for Anglophone liberalism and utilitarianism. Instead, they are what might be called intrinsic goods, goods in themselves. Furthermore, it is not necessary to look for a tradeoff between them, because for Kant freedom and equality are essentially the same thing; they are different sides of the same coin. Kant's basic principles, therefore, represent a radical departure from Anglican liberalism and utilitarianism as they do, also, from classical natural-law theories.

The Rousseauean position also represents a challenge to the basic social structure of 17th- and 18th-century German society, which was thoroughly hierarchical, patriarchal, and authoritarian. The basic moral values in that society were determined by the *Ständeordnung,* the proper ordering of social positions (levels or classes) of society. German society was divided into many *Stände*, social positions, which dictated an individual's privileges, rights, and obligations towards those above and those below in the social hierarchy. The social structure was at the same time completely authoritarian, thus exemplifying perfectly what Kant had in mind by "being under the Will of another."[17]

[15] *Bemerkungen in den "Beobachtungen über das Gefühl des Schönen und Erhabenen"* (*AA* 20, 44).

[16] Ibid., *AA* 20, 88. Here Kant means by "under the Will" being under the command, domination, or power of someone else. See later comments on *Wille.*

[17] For an easily accessible account of the authoritarian "zeal" of 18th-century German society, see Gordon A. Craig, *The Germans.* New York: Meridian Books, 1991, especially pp. 23–25.

To fully grasp the radical implications of the *Rechtslehre* (*RL*) it is important to observe what it fails to include as well as what it does include. Here the first thing to note is the complete absence of any reference to *Stände* (social position) or more broadly, legal status. For example, there is no mention at all of guardianship (*tutela, Vormundschaft*), a legal status that was assigned to women and children, which, according to Prussian law in Kant's time, prescribed a wife's subjection to her husband as being legally incompetent, like a minor (*Unmündigkeit*). In the Law (or justice), as Kant outlines it, there are only persons, not kinds of persons, no *Stände*, no special privileges, no authorities, no aristocrats, and no patriarchs. In other words, the Law (*Recht, ius*) as conceived by Kant is completely egalitarian. The principle of equal liberty applies to everyone, to all persons (*Menschen*). It has even been suggested that Kant's theory of possession and ownership of land, as applied to peasants, represents a progessive kind of emancipation from feudal law that accords well with the spirit of the reforms associated with the Enlightenment.

It is obvious that in his encounters with Roman Law and specifically with the Justinian code, Kant found significant support for his project of developing an egalitarian interpretation of basic legal categories. Roman Law helps in a number of ways, which will become evident from a careful reading of the present text. But it was not only for Kant but also for reformers of the German Enlightenment that the code provided a rational alternative to the regressive legal status quo in Germany at the time.[18] For, although Roman Law, during its long history and development, had in its earlier stages supported various conservative social institutions, including the guardianship of women, Justinian's reforms were remarkably progressive and enlightened, especially with regard to women, who were given complete equality with men.

In sum, the Justinian code of the Roman Law provided a superb vehicle for Kant to develop an egalitarian and libertarian theory of law. It would therefore be a big mistake for Anglophone philosophers to dismiss out of hand this aspect of the Kantian theory, for that would be to throw the baby out with the bath—so to speak.

Before turning to a more detailed discussion of Kant's use of the Roman Law, I need to discuss another significant side of Kant's philo-

[18] For extensive and illuminating scholarly discussions of these issues, see Ute Gerhard, hrsg., *Frauen in der Geschichte des Rechts*. München: Verlag C. H. Beck, 1997.

sophical radicalism in moral philosophy, namely, his use of a particular conception of the a priori as the basis of a new approach to morals, justice, and virtue. The rejection of traditional empiricist approaches to morality gave him a brand-new weapon against authoritarianism and elitism.

V. The A Priori Basis of Morals, Justice, and Virtue: A Radical Egalitarian Analysis

The radical character of the a priori approach in Kant's theory of morals, justice, and virtue is likely to be ridiculed by Anglophone philosophers, who, owing to their doctrinaire empiricist background, are conditioned to reject references to the a priori out of hand and to try instead to construct empirical analyses of the very concepts that Kant took to be a priori, such as, for example, liberty and equality. In order to understand what is at issue here, it will be useful to review briefly what Kant meant by designating his key concepts as a priori and what his grounds for doing so were.

It is not too much to say that all of Kant's philosophy in the array of different subjects he wrote about is founded, in one way or other, on the a priori/empirical dichotomy and that, as a consequence, his philosophical inquiries on so many different sorts of subjects are almost entirely concerned with articulating and grounding the a priori concepts and principles of the particular subject matter that he is addressing, for example, in such subjects as science, mathematics, morals, law, religion, and aesthetics.

What does the a priori side of all these intellectual enterprises contribute to our understanding of these subjects? The ready-made formalistic answer to this question is that the a priori side of the matter in question explains its universality and necessity. But that answer, of course, is open to the charge of begging the question and so does not help very much. Going beyond these formalisms, the easiest way to get to the bottom of the question we are asking is to inquire with regard to a particular a priori concept or principle before us, Why cannot it be empirical? Why cannot science (e.g. the principle of causality) or ethics (e.g. the categorical imperative) be completely empirical? What is wrong with taking them to be empirical all the way through?[19]

[19] The empiricist that Kant usually had in mind was, of course, David Hume. All these questions could be asked of Hume's moral philosophy.

This way of asking the question is, of course, a general question that cannot be satisfactorily addressed here. But we might briefly indicate some relevant considerations, especially as they relate to the current subject, namely, a priori concepts in law and politics. To begin with, empirical knowledge is derived from, applies to, and is based on objects in space and time. A priori principles and concepts, on the other hand, abstract from space and time, and their validity and cogency cannot be derived from or be dependent on experiences in space and time.

Here we might follow the clue that Kant gives in the Preface to the *Foundations*, namely, that science (which is identified in this book with the empirical) is about what *is* and ethics with what *ought to be.* In modern terms and in a very crude way, we might say that in the field of practical philosophy (e.g. ethics or law) the empirical is what is descriptive and the a priori is what is normative; they represent the Is and the Ought.[20]

Kant's opening discussion of Mine and Yours (of belonging) in §1 illustrates this point, because it is not possible to base the claim that something belongs to someone (is mine, yours, or his) simply on the empirical fact that he has that thing in his custody—as a thief might. Thus we need a concept that goes beyond the empirical and that is, in some important way, logically and conceptually independent of the empirical, i.e. is a priori. This distinction is formulated in Kantian language as the difference between *noumenal* and *phenomenal* possession respectively. (These are alternative terms for a priori/empirical.) The apple example, in § 4, illustrates the same point.

But this is only a beginning, for there are other reasons in Kant's mind for adopting the a priori/empirical dichotomy. To begin with, empirical propositions (in this case, empirical knowledge) are contingent and for the most part uncertain, whereas a priori propositions (e.g. ethical principles) are necessary and certain. Take the question of whether or not you ought to lie to a customer about something you are trying to sell to them. Suppose that you are an empiricist and so want to base your decision on a comparative empirical assessment of the total possible consequences of lying versus not lying. Using this method, the calculations would become so difficult and complicated

[20] This is not an entirely accurate rendition of the passage referred to, because there Kant is concerned with a slightly different issue. But in the *RL*, the Ought/Is distinction is basic to the distinction we are discussing.

that the final decision would itself be murky and uncertain. In contrast, looked at a priori (and non-consequentialistically) the principle that it would be wrong to lie is (comparatively) simple and certain. You don't have to go through all those empirical calculations to know that. Although Kant himself would probably be inclined to give a more formalistic answer to our question, I think that he would not be averse to the kind of pragmatic argument that I have just given against the empirical approach.

Furthermore, as Kant points out, empirical assessments of the kind just mentioned are accessible only to the *elite*, that is, to those who have special training and knowledge, in other words, to the upper classes. But ethics (and subjects like law that are based on ethics) are and should be accessible to everyone—regardless of intellectual status—for, being egalitarian, status and special qualifications are rejected as qualifications for "knowing" what is right and wrong. (Greeks like Plato and Aristotle thought otherwise, as do utilitarians.) In this regard, Kant says that an eight-year-old child can know what is right and wrong, even though (Kant does not say this but implies it) the child cannot read and write.[21]

Arguments like these support his contention that "where duty is involved, morality must abstract from all purposes and consider the form alone."[22] One may infer from this that, in contrast to an ethics based on purposes, one based on "the form alone" would be more easily accessible without special expertise. For that reason, the role of a priori conceptions and principles in ethics can be used to support egalitarianism and so Kant's emphasis on the a priori is, I would contend, part and parcel of his egalitarianism.

One caveat about the a priori/empirical dichotomy must be borne in mind, namely, that Kant is not talking about two entirely different and separate spheres, but only about one sphere, the world as we all experience it. The a priori approach takes a certain point of view to-

[21] The argument that I have just presented may be found in the *Common Saying (Gemeinspruch) on Theory and Practice* [*AA* 8, 286] where Kant attacks the notion that one can have a morality that is purely empirical. (See also *Critique of Practical Reason*, *AA* 5, 155.) In one of his lectures, Kant tells the story of a village where no one is literate and only illiterate people are allowed to hold office. He says that as a result, the village is better governed than others. It should be recalled that in Germany of his time, 50 percent of the women were illiterate.

[22] *Religion within the Bounds of Reason Alone* (*AA* 6, 4).

wards the experienced world that is different from the empirical view. One is not reducible to the other, and they are different in significant ways. But the fact that their outlooks are different does not mean that they are separable. Kant's favorite analogy is that of abstraction; just as one can abstract the spatial shape from a ball disregarding its color, so one can abstract its color while disregarding the shape. To say that the ball is spherical does not in any way imply that it is not, say, red. In this regard the moral aspect of an action can be compared to the shape without the color; the action may involve many other things besides, such as feelings and relationships. To use another analogy, morality can be compared to the framework of a building; it determines how the various parts of the building are to fit together, but to become a building many other things are necessary beside the framework, for example, the materials. Likewise, many other things are required besides pure morality to produce a moral action, a juridical transaction, of an individual or of a government.

Kant's A Priori Concepts: *Wille* and *Willkür*

In applying the a priori/empirical dichotomy, Kant differentiates between two senses of will, which he calls *der Wille* and *die Willkür*. They play crucially different roles in Kant's analysis of law and of moral philosophy in general.

The two terms represent roughly pairs of terms found in Latin, French, and other non-English languages: e.g. *voluntas/arbitrium*, *volonté/arbitre*, etc. Although there is only one English word for "will," it has, according to the dictionary, two senses that are similar to the others: (1) "will denotes fixed and persistent intent or purpose" (*conation*), e.g. "Thy Will be done" and (2) "will refers to conscious choice as to action or thought" (*volition*), e.g. will as decision to act, choice, or preference. These two senses of will represent, for Kant, two quite different ways in which an individual is and can be involved in morality and law. Crudely put, they represent the commander and the subject of the categorical imperative, the imperative of morality.

Der Wille is used more specifically by Kant to stand for *will* when it functions as the source of a command or law. This sense of "will" comes under the first sense of the English just noted. Will, in this sense, is a legislating will. For Kant, it is the source of law, moral as well as legal. His conception of Will resembles closely Rousseau's conception of the general will (*volonté generale*), and, like that Will, it lays down the

principles of right and wrong and cannot itself err. Moreover, because in Kant's system Will is identified with practical reason, the Will of each is the same as the Will of all, and its commands have universal validity.[23] It is clear, therefore, that, in Kant's theory of moral autonomy, the individual's Will plays the same role that is assigned to the Will of God by some theologians: it provides the foundation of morality.

Die Willkür ("will"), on the other hand, is the faculty of deciding, for example, to act. It may also be called "choice" or "arbitrary preference," for it may select between alternatives and reflects the personal desires of the individual subject. *Willkür,* in contrast to *Wille,* is therefore individualistic and arbitrary in the sense that what one person chooses often differs from and may even be incompatible with what another person chooses. This kind of will provides the subject matter of law, for laws are concerned with directing and controlling the personal wills of individuals; that is, the will that is made up of choices, preferences, intentions, and decisions among people.

Now Kant takes will in the first sense, *der Wille*, to be a priori, that is, noumenal, and will in the second sense, *die Willkür*, to be empirical, that is, phenomenal. *Die Willkür* is an empirical property of human beings as well as of animals.

The twin concepts of coercion and liberty (negative political freedom), which, as we have noted, are the principal concern of political philosophy, relate to *die Willkür,* not to *der Wille,* for liberty consists in being able to do what is in accordance with one's will, whereas coercion means being forced against one's will (*Willkür*).

The relation between the two kinds of will is that *der Wille* is the legislative Will that issues decrees, as it were, for *die Willkür,* which acts or fails to act conformably with them. Nevertheless, *die Willkür* provides the subject matter and the occasion for such legislation. The distinction between these two senses of "will" is not always clearly and consistently drawn in Kant's writings, but it will suffice for our purposes if we note that the law originates in a Will but prescribes the relations between wills.[24]

[23] Occasionally Kant speaks of a "private Will" (*Privatwille*). This kind of Will still functions to command or prescribe, but not universally, that is, for everyone.

[24] The word *Willkür* is not used in present-day German, although there is an adjective formed from it, *willkürlich,* meaning "arbitrary." For a more detailed discussion of these two concepts of will, see Lewis White Beck, *A Commentary on Kant's Critique of Practical Reason* (Chicago: University of Chicago Press, 1960), pp. 176–181.

Various English words have been used to denote the difference between these two senses of will in Kant's moral philosophy, such as "elective will" or "choice" for *die Willkür* and "legislative will" for *der Wille*. I shall indicate the difference between these two senses by using will (lower case) for *die Willkür* and Will (capitalized) for *der Wille*.

VI. Kant and Roman Law

Kant's attitude towards Roman (or Civil) Law is most forcefully expressed in the following quotation:

> The corpus Juris is certainly the greatest and most certain proof of human profundity. The discovery of the Pandects in Naples in the 11th century is the best find that human beings could ever have made among books. In general, the ancients are always inimitable models in the art of writing.[25]

We have already seen why Kant would for philosophical reasons be predisposed to regard Roman Law as a paradigmatic legal system and thus (implicitly) accept it as an enlightened advance over German Law of his time. But since Anglophone readers may not be familiar with Roman Law and might therefore read into Kant's legal categories preconceptions coming from Common Law, it will be worthwhile to call attention to some basic differences between Roman and Common Law. Most of these differences will be obvious to anyone acquainted with the Civil or Roman Law.

The first and most obvious difference between these two legal systems relates to what jurists call *the sources of law*, that is, authorities to which appeals are made in determining what is valid law. Here, the sources of Roman Law, in general terms, were traditionally statutes (enactments), edicts (of magistrates or Praetors), and interpretations of the jurists, such as Paul and Ulpian. These sources were later incorporated into the Justinian codes of which the principal ones were the Digest (Pandects) and, for our purposes, a summary known as the *Institutes*[26] (A.D. 533). In Roman Law, then, the interpretation (and

[25] *Kant: Lectures on Logic* (Blomberg) (*AA* 24, 181).

[26] The *Institutes* are available in an inexpensive paperback with Latin on one page and English on the opposite page, translated with an introduction by Peter Birks and Grant McCleod. Ithaca: Cornell University Press, 1987.

determination) of the law was, roughly speaking, in the hands of jurists and through them the emperors. Common Law was quite different in this respect, because the interpretation (and determination) of the law was taken over by the judges. Thus, in British and American Common Law, judges have always played a predominant role in making law, where the rule *stare decisis* is paramount. Accordingly, some American legal thinkers have gone so far as to maintain that "all law is judge-made." In contrast, in Roman or Civil Law systems, such as the Continental systems, the judges' role is simply to apply the decrees that are given to them and their role is reduced to that of bureaucratic functionaries. For them to ask whether the decrees themselves are just is to be "rejected as absurd."[27] Thus, judges have no discretion whether or not to apply the law, even if they think the law is wrong or unjust. One should not be surprised, therefore, to find hardly any discussion of judges in the *RL*.

The next important difference between the two legal systems has already been mentioned, namely, that Roman Law makes a sharp distinction between two senses of "law": *ius* (*Recht, Law*) and *lex* (*Gesetz, law*), the first being the unenacted principles of justice[28] and the second being enactments of the state. The classical definition of law in the latter sense is: "what pleases the prince has the force of law (*lex*)." The significance of this distinction for Kant's philosophy of law has already been noted.

Another difference is that the principal division of Roman Law is into two kinds: *private Law* and *public Law*. Private Law relates to legal relations between private individuals, whereas public Law relates to law in which the state (or government) is a party. Thus, the latter comprises what we call "constitutional law," "criminal law," and "international law." One glance at the list of contents will show that the *RL* is structured according to this division.

There are other important differences that relate to specific concepts that will be encountered in the text. Since Kant is generous in providing Latin equivalents for the German legal concepts that he discusses, it is easy to find equivalent terms in Continental languages where Roman Law is practiced. It is more difficult to find equivalents

[27] *Conflict of the Faculties* (*AA* 7, 24–25).

[28] Various sources of *ius* are given by Roman jurists, including principally the *ius gentium* and the Natural Law (Cicero).

in English. Anyone who wants exact definitions of Roman (i.e. Civil) Law concepts will find *Black's Law Dictionary* to be a useful source.

Possession and Property (or Ownership)

One of the most important concepts for an understanding of Kant's theory is the Roman Law concept of *possession,* which, unlike in the Common Law, is radically distinguished from *property* (or ownership). In Common Law, "possession," "ownership," and "property" all run together: they are not sharply distinguished. In Roman Law, on the other hand, "*Property has nothing in common with possession*" (Ulpian in the Digests (41.2. 12.1)). The absolute difference between possession and property is still operative in present-day Civil Law systems; for example, a recent German legal text reaffirms the distinction. It asserts that "Possession (*Besitz*) is the factual control of a person over a thing. It is to be distinguished from property, which expresses the juridical ordering of a thing to a person."[29] This is also the basis for Kant's views on possession.

Property (*dominium*), according to Roman Law, is an absolute, inclusive ordering of a thing to a person. An owner of the property can do whatever he wishes with his property and can exclude everyone from affecting it. He can simply sell it, misuse it, give it away, change it, and, should the occasion arise, use it up or destroy it. We can therefore understand why Kant was adamant in denying that persons or their actions could be owned, although, as we will see, he was ready in certain ways to apply the concept of possession to them.

The basic elements of possession are factual control (detention) and the will to possess. As such, possession is not a right, but it may have juridical consequences, depending on the kind of possession that is in question. Up to the present day, Roman Law and Civil Law distinguish numerous kinds of possession, beginning with another person's (e.g. a thief's) possession of a thing that does not belong to him. Simply put, some possession is rightful (juridical) and some is wrongful (illegal). To an outsider, the most remarkable doctrine connected with possession is what is called *usucapio* (*Ersiztung,* sometimes wrongly translated as "prescription"). Through *usucapio,* it is possible for a person who had unchallenged possession of a thing for a certain period of time, say, ten years, to acquire that thing as his property. Thus, one English writer contends that the core idea of legal (or jurid-

[29] *Beck'sches Rechtslexikon.* DTV, 1996, p. 114.

ical) possession is that, provided certain conditions are fulfilled, it can "ripen into" property.

It should be observed that the complexities of the concept of possession in Roman Law from Justinian to the present are not inventions of Kant's. But these well-known complexities provide a wealth of opportunities for typical Kantian analyses that move back and forth between a priori (noumenal) considerations and empirical (phenomenal) ones. Thus Kant's distinction between "noumenal" and "phenomenal" possession corresponds closely to what in Roman Law are called respectively *possessio civilis* and *possessio naturalis*. But it should also be observed that Kant applies the concept of possession to things that could not become property either in Kant's view of property or in our Anglo-American conception of property, namely, contracts and domestic relations. We cannot own other people (as slaves) although in a sense we can "possess" them (or aspects of them).

Rights *in Rem* and Rights *in Personam*

In Roman Law, and in Common Law following it, there are two basic kinds of rights, rights over a thing (*in rem*) and rights against a person (*in personam*). It is commonly said that rights *in rem* avail against the whole world. Thus, if someone owns a thing, for example, an automobile, then the person has rights over that thing (*in rem*) that hold against everybody and anybody who might try to use it. A right *in personam,* on the other hand, avails only against a particular individual. For example, if Jones makes a contract with Smith, his rights stemming from the contract hold only against Smith; and, incidentally, there is nothing to prevent him from making additional contracts with others, thus acquiring new rights *in personam* against them that do not nullify the first right or any other rights *in personam*. The first two sections of chapter one of the *RL* are devoted to each of these kinds of right in turn.

Kant thought that one of his most notable contributions to legal theory was the discovery of a third kind of right, namely, a personal right like a right *in rem* over persons. The rights involved here have traditionally been relegated to the heading of legal status, or to what Roman Law calls the law of persons (which includes slaves). As I have already pointed out, Kant's egalitarianism excludes the idea of legal status of this kind, and so he has to invent a new kind of right[30] to replace it.

[30] See § 22.

Rights *in Personam* and Contracts

Kant departs somewhat from Roman Law in confining these rights to those arising out of contract. The Roman Law notion of contract differs somewhat from the Common Law notion in ways that we need not discuss here.[31] It should be observed, however, that in the *Institutes,* for example, these rights *in personam* are discussed under the heading of "obligations" rather than under rights as such. (Logically they amount to the same thing, since obligations of the kind in question are just the other side of rights *in personam.*)

What is also interesting for our purposes is that in Roman Law, gifts (*donatio*) and legacies are treated as contracts and as such require the consent of the recipient to go into effect. In cases of inheritance and legacies this presents both a theoretical and a practical problem, because the testator, the person who makes the will, no longer exists when the contract is to come into force, and so consent to receive the inheritance cannot be made by the heir to the donor (the testator) since the person is dead! This dilemma is resolved by Roman Law through the invention of a peculiar concept called *haereditas iacens,* which serves to mediate, as it were, between the dead and the living. [32]

VII. Liberty and Coercion

Kant's doctrine of justice and law turns on the concept of coercion. Law is conceived as a coercive order, and justice treats only what can be made a matter of coercion (that is, an object of external legislation). The principles of justice themselves determine the legitimate and illegitimate uses of coercion. The legitimate use of coercion is coercion that accords with liberty, and the illegitimate use is one that transgresses liberty. The illegitimate use of coercion is called violence (*Gewalt*).[33]

[31] For a helpful discussion comparing the two different concepts of contract, see Barry Nicholas, *An Introduction to Roman Law*, Oxford: Clarendon Press, 1962.

[32] See commentary in § 34. Classical Roman Law also used slaves to solve this problem. This is obviously not a viable solution for Kant.

[33] *Gewalt* has two meanings in German. First, it means violence in the sense of immoderate and unlawful use of force. In this sense, it is a key term in Kant's political philosophy, for he opposes *Gewalt* (in this sense) to *Recht*. But *Gewalt* has a second and quite different meaning where it refers to the authority to control others legitimately, as an officer might. Here a natural translation would be legitimate power (*potestas* in Latin). In the present translation, "authority" is used as a standard translation of *Gewalt* in this second sense.

Liberty (negative freedom) and violence are regarded by Kant as correlative opposites: where there is liberty there is no violence, and where there is violence there is no liberty. A person's innate right to liberty (freedom) consists in the right to be free from violence, and, indeed, all of a person's legal rights are derivable from this concept. Now, as already noted, the basis of a person's right to liberty is the fact that the person is an autonomous moral being, that is, a sovereign moral lawmaker, as well as a subject to the law (the moral law). In other words, it is a person's capacity for moral lawmaking that serves as an ethical foundation for the right to political liberty. It follows that this right to liberty is justified only as long as it is lawful. Lawfulness provides not only the basis but also the limits of rightful liberty.

Accordingly, any transgression of the bounds of lawful liberty is illegitimate. It is *ipso facto* an infringement of someone else's liberty, and, as such, is necessarily an act of violence. Violence is wrong, therefore, because it is an infringement of lawful liberty.

Coercion is, of course, permitted, but only if it is used to prevent violence or, more generally, to protect liberty. Otherwise, it is simply violence. The rightful function of the political order, that is, civil society, is to control violence and thus to protect liberty. Because everyone has the right to be protected from violence as an immediate consequence of their innate right to freedom, everyone also has a right to live under a political order and to demand that others join them in this. This political order, or civil society, as Kant calls it, is a necessary condition of the rule of law. The foundation of political authority, then, is a person's innate right to live in peace and freedom, which, incidentally, includes the right to have one's property secure and guaranteed. Everyone has a duty to obey the political authorities because they represent the rule of law, and, in obeying them, a person is *ipso facto* respecting the rights of others to live in peace and freedom. Accordingly, it is the rule of law that provides the final basis of political authority[34] and political obedience, rather than, as for Locke, a presumed contractual relation among the citizens or between the people and the ruler. (Kant doubts that such a contract ever took place and maintains that, even if it had taken place, it could not provide the basis of political authority.)

[34] The social contract for Kant relates to giving up *Zwangsrechte,* the compulsory side of rights, to the sovereign (or to the commonwealth). It does not alter the content of private Law, as it does for many social contract theorists. See § 41.

Following earlier political theorists, Kant makes a conceptual distinction between the state of nature (that is, a stateless society) and the civil society (that is, a society subject to political authority). Like Hobbes, Kant conceives the state of nature as one of war, in the sense that, even when there is no overt aggression, there is an ever-present threat of hostilities. He makes it clear, however, that the distinction is made only for theoretical, ethical purposes and does not imply that any actual historical conditions such as a state of nature ever actually existed before the advent of the civil society. He does believe, however, that in his own era, the nations of the world live in a state of nature in relation to one another. The concept of the state of nature is introduced merely as a logical device to show in what way and to what extent justice and the legal order depend on the state as such and, in particular, to bring out the differences between our obligations to other individuals and our obligations to the state.

A state of nature in the traditional sense, a condition of war and violence, is considered by Kant incompatible with a person's innate right to liberty. In such a state, people do, of course, possess a kind of lawless liberty, but they have no enforceable rights in that state. Their innate right extends only to lawful liberty, because it comes from their nature as moral lawmakers. That is why it is a demand of justice, incumbent on everyone, to quit the state of nature and why everyone has a right to employ force to make others join them in doing so. Thus, a lawful liberty to which everyone has a right is substituted for a lawless one in which no one has a (secure) right.

War between states, as between individuals, is a condition of lawlessness. Hence, the demand that we abandon the state of nature applies to states as well as to individuals. On the international level, it requires the establishment of a federation of states.[35]

Any act of violence or lawlessness, whether on the part of individuals or of states, represents a return to the state of nature and is to be deprecated as a crime of injustice. Hence, revolution, which Kant conceived as involving the dissolution of the civil state and a return to a state of nature, is always unjust. Treason and murder are crimes for the same reason. Legitimate coercion—that is, coercion that is used to counterbalance illegitimate coercion (violence)—will on reflection be seen to be equivalent to coercion consistent with the freedom of

[35] See Kant, *Perpetual Peace*, trans. Lewis W. Beck, Library of Liberal Arts, No. 54 (New York: Liberal Arts Press, 1957).

everyone in accordance with universal laws. The principle that coercion is legitimate under these conditions explains why we can force others to quit the state of nature. It also explains the basis of the state's right and duty to punish criminals. Kant is very strict about punishment; no other end, such as deterrence or reformation, is allowed as a justification for punishment. The crime's being an act of violence, illegitimate coercion, provides both a sufficient and a necessary condition of the legitimate use of coercion—in this case, punishment.

These considerations concerning the conditions of legitimate coercion—namely, that it be used only to establish and preserve the rule of law—suggest that every state is limited in the kinds of coercion that it may employ. A state founded on violence, like the Nazi one, definitely exceeds those limits, and I do not see how Kant could, consistently with his stated principles, condemn those who opposed the activities of that kind of regime, although he repeatedly asserts that we must obey the powers that be.

The main function of the civil state, therefore, is to maintain the rule of law, to guarantee and protect the rights of its subjects. This he calls the juridical condition of society, the state of public justice, legal justice. The individual rights to be secured are not, however, themselves created by the civil society. They already exist in a state of nature, albeit only *provisionally* and not *peremptorily*. Hence, it is not the function of the state to create rights, but only to enforce them and to adjudicate disputes concerning them.[36]

But that is not the whole of the story, because the state itself, as a law-making body (sovereignty), can make binding laws (*Gesetze*) for various purposes, including the common good, taxation, criminal justice, and so on. These come under public Law (or justice) and may or may not coincide with justice in the sense of *Recht* (*ius*). Kant devotes a section to judicial cases where there is a divergence of (positive) law and morality. The section on oaths (§ 40) is particularly enlightening in this regard.

In sum, the doctrine of the state of nature is introduced by Kant, not to explain the historical origin of the civil state, but to exhibit the logical basis of various rights and duties of the individual. In particular, it makes plain two central theses of Kant's political theory: (1) the unconditional demand for the rule of law as a prerequisite of peace

[36] This statement has to be qualified to allow for "rights" created by the state through positive Law. However, these are not really rights in the strict sense.

and freedom, and (2) the proposition that the basic rights of the individual are not created by the state, but are only protected by it, although there are obligations to the state that do not serve individual rights but that may, indeed, be in conflict with them.

VIII. The Ideal and the Actual in Kant's Political Philosophy

Every political philosophy must, sooner or later, come to grips with the problem of the relationship between the actual and the ideal in government and law. Should our allegiance be to what is actual or to what is ideal? Is law defined by what is actual or by what is ideal? The natural-law tradition, to which in this connection Kant unquestionably belongs, analyzes government and law by reference to the ideal. It maintains that law is part of morals. This has led to the frequent accusation that it utterly confuses crucial political issues by identifying law (and government) as it is with law (and government) as it ought to be. Legal positivists, who are the most ardent opponents of the natural-law theory, are quick to point out that the practical effect of identifying law with a part of morals is either to nullify existing law in favor of an ideal law or to elevate all existing law to the status of what is moral; in other words, the natural-law theorist, they maintain, has to be either a radical revolutionary or an unregenerate reactionary.

Kant himself was subjected to both criticisms even during his lifetime. Admittedly, at times he does seem to adopt extreme positions that appear to be incompatible with one another. The most noteworthy instance of this is his view concerning the French Revolution; he eulogizes this important event of his times as a "moral cause" inserting itself into history while (even on the same page) condemning revolution as something that is always "unjust."[37]

However, a close study of the present work will show that, far from ignoring this seeming paradox, Kant makes it the central theme of his inquiry. The whole book may be regarded as an extended philosophical commentary on the relation between what is and what ought to be, both in politics and in law. In order to follow the various discussions in the book, it is essential to realize that at times he is discussing the

[37] "An Old Question Raised Again," trans. Robert E. Anchor in Kant, *On History*, ed. Lewis White Beck, Library of Liberal Arts, No. 162 (New York: Liberal Arts Press, 1963), pp. 143-146. (Kant: *AA* 7, 85–6.)

morality of actual states and of actual obligations, while at other times he is discussing the ideal. In the final analysis, of course, these two aspects of justice and law, actual and ideal, cannot be separated, just as their a priori and empirical aspects are inseparable.

Let us begin here with Kant's notion of an Idea (*Idee*), which is a technical term in Kant's philosophy.[38] Kant writes: "I understand by *Idea* a necessary concept of reason to which no corresponding object can be given in sense-experience."[39] As a "pure concept of reason," it is to be sharply distinguished from other kinds of concepts and ideas. An Idea is an archetype in the sense in which Plato's forms are archetypes. In fact, an Idea represents a certain kind of perfection that is not found in empirical reality, but which must be an object of our moral striving. (In Kant's view, therefore, it has practical rather than theoretical significance.)

Ideas are, in other words, ideals. There are many concepts that are referred to as Ideas in Kant's moral philosophy: God, freedom, and duty are called Ideas; and, in politics, the social contract, a republican form of government, and perpetual peace are referred to as Ideas. None of these are empirically real; they are real only in the sense that they are necessary objects of striving and possible realities.

For example, when Kant speaks of the Idea of the state, he is not talking about any actual state or constitution, but only of the ideal toward which every state or constitution should strive. Thus he writes,

> A constitution allowing *the greatest possible human freedom* in accordance with laws by which *the freedom of each is made to be consistent with that of all others* . . . is at any rate a necessary Idea, which must be taken as fundamental not only in first projecting a constitution but in all its laws. . . . This perfect state may never, indeed, come into being; none the less this does not affect the correctness of the Idea, which, in order to bring the legal Constitution of human beings ever nearer to its greatest possible perfection, advances this maximum as an archetype.[40]

[38] It is not to be confused with the English term "idea." In order to distinguish between idea in the ordinary English sense and Idee in this technical sense, I shall always capitalize Idea.

[39] Kant, *Critique of Pure Reason*, A 327/B 383.

[40] Ibid., A 316–317/B 373–374. A discusssion of Ideas and their association with Plato, using the *Republic* as an example, is to be found in the preceding section A 312/B 369 to A 317/B 374.

In the Idea, all laws, that is, positive laws, are based, either directly or indirectly, on the principles of justice or natural Law. Therefore, we ought to obey them because they represent duties of justice. Nevertheless, some laws are obviously better than others, and there are, of course, also bad laws, that is, laws that ought not to have been made. Kant is ready to admit this and, indeed, provides us with examples. In order to distinguish between laws as they are and laws as they ought to be, he calls the first "the letter of the law," and the second, "the spirit of the law."[41] "The letter of the law" represents what is actual law and what must be obeyed; "the spirit of the law" represents what ought to be law and what we should strive for.

As far as government is concerned, Kant constantly emphasizes that some forms of government are better than others. As we have seen, a republican form of government is, in his opinion, the best—that is, the most just—form of government. By republican government he means a constitutional one in which there is a separation of powers into the legislative, executive, and judicial authorities. This form of government embodies the Idea of the state, that is, the concept of the state as it ought to be, although many, perhaps most, actual states are not republican in this sense.

The Idea of the state, the perfect constitution, derives from the Idea of the original contract, that is, the principle that government should ideally be by universal consent of its citizens.[42] In Kant's *Nachlass* (his posthumously published notes) the concept of the original contract is stated very clearly as follows:

> The original contract is not a principle explaining the origin of the civil society; rather it is a principle explaining how it ought to be. . . . It is not the principle establishing the state; rather it is the principle of political government and contains the ideal of legislation, administration, and public legal justice.[43]

Every actual state represents to a greater or lesser degree of perfection the Idea of the state; in Plato's terms, it "participates in" or

[41] See § 52.

[42] See Kant, *Perpetual Peace*, pp. 11–13 (*AA* 8, 349–351).

[43] Kant, *Handschriftliche Nachlass, VI*, Band XIX of the *Gesammelte Schriften*, herausgegeben von der Preussischen Akademie der Wissenschaften (Berlin: Walter de Gruyter, 1934).

"imitates" the Idea of the state, the archetype. The quality of any actual state is measured by the degree to which it approaches the Idea; the closer to a republic it is, the better state it is. Progress consists in advancing toward the Idea and Kant believed that progress is inevitable. (That is why the French Revolution can be regarded as progress.)

Since all our political and legal obligations have their source in the Idea, we are obligated to obey the political authorities in actual states because, however imperfectly, they still represent the Idea. By the same token, we are not allowed to use violence or any other immoral means to expedite the coming of the Idea.

There are two practical maxims that can be derived from this conception of the Idea. First, there should never be any backward movement. Any course of action that is retrogressive, that is, leads from a better condition to a worse one, is *ipso facto* unjust. (For example, once a monarch has given up the sovereignty to the people, it would be unjust for them to give it back to him.)[44] An even worse course would be to attempt to bring about the Idea through a revolution, because a revolution means returning to the state of nature (and war), which is the worst conceivable state of affairs. The second maxim is that no step must be undertaken that would render further progress and the achievement of the Idea impossible. (For example, in war one must never do anything that would render peace impossible.)[45]

Finally, we encounter a typical Kantian argument for the proposition that the Idea is practically possible. Because we ought always to work for the realization of the Idea, it follows from the principle that ought implies can that the Idea is possible or, more accurately, that it is something that we must, for practical purposes, assume to be realizable. Thus we have a moral argument giving rational support to the hope that mankind can ultimately achieve a republican form of government and, on the international level, perpetual peace.

IX. Understanding Kant through Questions

Like other great philosophers, Kant is surrounded by controversy: his philosophical doctrines, the interpretations of them, their significance, and even translations of his works—not to mention accounts of his

[44] See § 53.

[45] See § 57.

private life—are controversial. So one should not expect to escape these controversies in reading Kant's *Rechtslehre*. Right from the beginning, within months of its first publication, Kant encountered cogent criticisms of the book from its first reviewer. His novel definition of marriage has been a constant source of criticism, indeed of ridicule, from the very beginning. (See the next section.)

These controversies suggest that as a philosopher, as a teacher of philosophy, as well as a translator one needs to consider the question; What should we look for in Kant's philosophy, in particular, in the *Rechtslehre*? What is there of value to be gained from studying Kant?

Some might say that we should look to Kant for solutions to our own social and political problems. But that would be difficult since Kant's answers about ethics and law grew out of the problems of his day, his century, and he could not have anticipated present-day problems emerging from the Industrial Revolution and from advances in technology. Some philosophers, on the other hand, say that because Kant is so wrong on all the important issues, all that we can learn from him is what to avoid. Both answers appear to be using what might be called the *score-card approach.* Giving good and bad marks to someone like Kant does not, I would suggest, seem to be a worthwhile activity.

The alternative is to try to learn how to do philosophy, or more broadly how to think deeply about political and legal philosophy by watching how Kant does philosophy, how he asks questions and how he connects issues with each other. This suggests that the best approach to understanding the claims that he makes and the positions that he defends is to look to his reasons, and to the questions behind them. For Kant himself favored exploring the questions before looking for the answers.

He set forth his questions approach in his *Announcement of Lectures for 1765–1766.*[46] There he stated that philosophy is not a finished systematic discipline to be learned like the sciences; rather it is essentially an activity, philosophizing, that consists in inquiry, asking questions. He called that *zetetic*. We find this zetetic approach throughout Kant's major works.

The importance that he attributed to beginning with questions is evident from the opening pages of his great work, the *Critique of Pure Reason,* where he begins by stating that, "Much is gained already when we can bring a multitude of inquiries under the formula of a single

[46] *AA* 2, 307.

problem. . . . Now the proper problem of pure reason is contained in this question:

How are synthetic judgments possible a priori?"[47]

There can be no better way to understand what the *Rechtslehre* is all about than to follow this lead and start with this question: How are the a priori concepts and principles of pure practical reason relating to justice possible?

In order to understand this question, we must begin with the general assumption already explained in Section V above that the *Metaphysics of Morals* in general and the *Rechtslehre* in particular are essentially only concerned with a priori concepts and principles. Thus the more specific questions concerning, say, justice, come under the general question just quoted. In this sense, the general question is played out in all the specific questions asked throughout the text of the *Rechtslehre*.

Now, we might ask, What is the *problem*? What is meant by their being *possible*? And what is meant by the word *how*? Finally, why should there be a *problem* at all?

To begin with, as in his other philosophical inquiries, Kant starts off with the assumption that the a priori concepts and propositions in question *are* possible. That is, their validity is not in question. For example, such things as the validity of rules of possession and property, of contracts, and so on up through the basic political concepts to those relating to international law—all of them are possible, because, to use the technical word, they are real, that is, they are actually valid and binding. They are not in doubt.

So the question before us is not to how to prove the validity of these concepts. Rather the question is, Where do they come from? What makes them valid? In other words, what makes them possible?

Now one needs to ask, Why is this a problem? To see what Kant means, consider the case where he thinks there is no problem, namely, with empirical knowledge. Suppose, for example, that the concepts and principles were empirical, that is, entirely referrable to experience; then the answer to the question "How are they possible?" would be simple, namely, "They come from experience." We could take as an example the case of natural possession (e.g. detention); if we were to

[47] *Critique of Pure Reason*, translated by Werner S. Pluhar. Indianapolis: Hackett, 1996 (B 19). For a helpful explanation of what this means, see the Introduction by Patricia Kitcher.

ask how is detention, e.g. of an apple, possible, the answer would be simple, namely, by grasping it in my hand. That is easy. But, of course, we are interested not in natural (empirical) possession but in noumenal (a priori) possession and that cannot be explained empirically. We need some other sort of explanation—an a priori explanation. Indeed, Kant tries to give the required explanation in his discussion in § 6 and 14. The technical term he uses for this kind of validation of an a priori concept is *Deduktion*.

Deduktion, as Kant uses the term, does not mean straightforward deduction from premises to a conclusion, as it does in logic. Rather, *Deduktion* in the Kantian corpus is explained by comparing it to a lawyer's defense of *quid iuris;* it explains by what right one uses a concept.[48] Thus, in terms of the previous example, one could ask, By what right does one use the concept of noumenal possession? How is its use validated? Sooner or later, all the *Deduktions* given relate the concept in question to the moral principles of liberty and equality (or to the categorical imperative), although in somewhat different ways for each example.

It can now be seen that there is a whole set of a priori concepts of justice that raise questions about their possibility and that need to be validated, that is, given a *Deduktion* or, in the other jargon, shown how they are possible. The problematic nature of the thing in question varies with the subject. Often it arises from an ostensible conflict between the thing in question, for example, a right, and the general principles of equality and liberty. Is the right to exclude someone from my property an interference with his freedom? Does the right to get married interfere with the principle of treating all persons as ends in themselves?

Finally, one might indeed come to the conclusion that the whole of the *RL* in particular, and of the *Metaphysics of Morals* in general, are designed by Kant to provide a configuration of answers to the multiple challenges of an empiricist ethics, such as utilitarianism or the natural law theory, that automatically subscribe to the principle that the end justifies the means and assume that equality and liberty as well as human rights are simply means to further ends, such as utility or happiness. In other words, I suggest here that Kant's ultimate aim is to show that a *non-teleological theory of justice, Law, and rights* is not only possible but more rational than any other alternative.

[48] See *Critique of Pure Reason*, A 84/B 116.

X. Kant on Marriage and Children

Over the years Kant's conception of marriage has received more attention and more virulent criticism since it was first advanced than all the rest of his philosophical works put together. According to one commentator, it has "cast a dismal fog on all the rest of his philosophy." Hegel called it a "shame," Bertold Brecht wrote a parodying sonnet about it, and others have called it a "comic perversity," "a return to Lutheranism," or just plainly "immoral." On closer inspection, however, it becomes clear that many of these detractors have not even read the basic text. Generally speaking, until the 1930s little effort was made to understand Kant's position and to examine his arguments. Since the groundbreaking investigations of Ebbinghaus and Horn, all that has changed. There are now a number of significant studies of Kant's theory of marriage that put his ideas about marriage in a new light and expand our notions of his ethics in general. In the remarks presented here, I am greatly indebted to those studies.[49]

The present observations on Kant's theory of marriage and the family reflect the general principles set forth earlier in this Introduction. First, like the rest of the Private Law part of the *Rechtslehre* the subject is *rights*, specifically human or natural rights rather than positive rights. It is therefore not about the social and psychological values of marriage and the family or such things as their contribution to individual and social welfare. Nowhere does Kant deny that these are goods, but his analysis explicitly abstracts from such empirical considerations and considers these institutions only from an a priori point of view and in their relation to justice (and rights). It is a mistake, therefore, to assume that Kant thinks that, say, rights of some kind or other comprise the whole or perhaps even the most salient side of the good life. Instead, what he claims is that the a priori principles—basically freedom and equality—are necessary, though not sufficient, conditions of marriage and the family as morally just institutions. For reasons already mentioned, Kant deliberately excludes empirical theories of marriage, such as those advanced by natural-law theorists and utilitarians, not only because they are inadequate as a

[49] See, for example, Julius Ebbinghaus, "Über den Grund der Notwendigkeit der Ehe"; Adam Horn, *Immanuel Kants ethisch-rechtliche Eheaufassung*, which includes illuminating comments by Hariolf Oberer; Thomas Heinrichs, "Die Ehe als Ort gleichberechtiger Lust"; and Barbara Herman, "Could It Be Worth Thinking about Kant on Sex and Marriage?"

moral basis of these institutions, but also because they are misdirected and immoral, in that they operate necessarily and ingenuously on the principle that the end justifies the means—in short, because they are exploitative.

Kant's objective, therefore, is to develop a theory of marriage and the family that is valid on a priori grounds and compatible with the categorical imperative and the principles of freedom and equality. As a corollary it excludes empirically based methodologies like authoritarianism, paternalism, patriarchalism, and any other conceptions that are, as he sees it, inconsistent with the human rights of freedom and equality.

We can appreciate the radical nature of Kant's proposals from a social and legal point of view if we examine briefly the extraordinarily patriarchal and oppressive conceptions of marriage that dominated 18th-century German society, not only in public opinion but also among intellectuals and in the law. Luther set the stage for this cultural attitude when he elevated the family to the central site of holiness and Christian duty as a replacement for monasteries and other Catholic institutions that placed a high premium on celibacy as a preferred alternative to marriage. Luther's idea of marriage in turn was structured hierarchically with the husband-father at the top as the "high priest for the wife, children, and servants." Historians see the hierarchical authoritarian family structure as the paradigmatic model for the state and other social institutions. *Ordnung* and its correlate, obedience, became the primary value in this context. The combination of the doctrine that the aim of marriage was to produce and rear children with the theological downgrading of women as inherently sinful because of Eve, reduced women to the status, as Kant would say, of cattle (*Vieh*)—a paradigm in Kantian language of treating others as means only.[50] The family, which served as paradigm, was the ideological seat of the oppression and exploitation of women. This was one of Kant's primary concerns, which he expressed in a number of places. (See, for example, Appendix: 3 for what he says about the burdens of pregnancy.)

The key legal concept used to enforce the subjection of women was *Unmündigkeit* (tutelage), which means being, like a minor, under some sort of permanent guardianship. By custom and law, a woman was

[50] Some Lutheran theologians denied that women had souls, and women were not allowed in church. The pietists were by contrast egalitarian.

under the guardianship of either her father or her husband. In fact, on marrying she moved from being under the guardianship of one of them to that of the other. A few points about this concept (*Unmündigkeit*) need to be noted. First, it is basically a legal concept. As such, it is a concept that goes back to early Germanic law and is etymologically related to *Munt,*[51] an old German word for the power and authority of the head of a unit such as a household. The *Unmündigkeit* of women, and of wives in particular, became an established principle of German law and was even explicitly incorporated in the "reform" Prussian Law Code of 1794 as well as other reform codes of the time.

What is interesting for us is that *Unmündigkeit* and related concepts such as *Vormundschaft,* which refer to status of one sort or another, as does the Roman Law concept of *tutela*, are not even mentioned as a legal category in the *Rechtslehre*; for, as I have pointed out earlier, status of any sort is not part of Kant's juridical system. Any reference to the "law of persons," which in Roman Law in the late period mostly covered slaves but which was also an important part of Germanic Law (*ius commune*) owing to its preoccupation with stratification, is completely omitted; indeed it must have been deliberately excluded from Kant's concept of justice (Law). The word *Unmündigkeit* appears in only a few places in the Kantian corpus, and there it is mentioned for the most part only derisively.[52]

Active v. passive citizenship. A few words about the distinction between active and passive citizenship will make it clear that it should not be confused with the *Unmündigkeit* of women. In *Rechtslehre* § 47 (A 46), Kant distinguishes between two kinds of citizenship. The first kind, active citizenship, includes active participation in the political process, such as voting and being a legislator. Passive citizenship, on the other hand, includes rights of freedom and equality but excludes active participation. Kant explicitly assigns women to the second rather than the first kind of citizenship; in other words, he denies

[51] *Die Munt* (feminine) has no relationship to *der Mund* (masculine). But there is a whole set of cognates, such as *Vormund*, *Vormundschaft*, *Mündel*, *Mündigkeit*, etc., all of which are connected with the Germanic concept of the power and authority of the master of the household. At the present time, *unmündig* is only used for minors and persons committed to guardianship because they are mentally incompetent.

[52] See *Anthropology* 7, 209. The word is used only once in the *RL* § 47 (A 46), Remark.

them active political participation such as taking part in legislation. Here careful attention to the text will make it clear that Kant did not intend to back down on the egalitarianism mentioned above. Let's look at his arguments. First, he argues that a necessary condition of active citizenship is "civil independence," that is, being in the position of not owing one's "existence and support to the arbitrary will of another person in the society." The idea is that if a person is under the authority or control of someone else, he or she will not be able to vote independently. In the appended *Remark*, he provides examples of such dependencies, which include apprentices, servants, and "all women." Here it should be noted first of all that by placing these examples under *Remarks,* he indicates that the list is contingent and empirical rather than a priori. As such the listing reflects empirical conditions of the time. As a matter of fact, as has already been pointed out, women in 18th-century Germany were socially and by law *unmündig* and so were entirely subject to their husband's (or their father's) will; they had no civil independence. Furthermore, in the last sentence of this *Remark,* Kant states that everyone must be able to "work up from this passive status to an active status." In other words, the passive status is not irremedial; it is not an inherent or unmodifiable characteristic of women as such. By mentioning that they can move to the active status, Kant may be covertly criticizing the status quo rather than endorsing it.

Theodor Gottlieb von Hippel (1741–1796). Some brief remarks are in order about this unusual and interesting person, who was a student, friend, and neighbor of Kant. The contrast between these two men throws further light on Kant's view of women. Hippel knew Kant well and admired him greatly. He went to the same excellent pietist school that Kant had attended. He was a government official who worked his way up the bureaucratic ladder and finally became "mayor" of Königsberg. In his off-hours, he secretly wrote novels and a couple of radical political books on women and marriage, in one of which he advocated complete civic equality for women.[53] Many people assumed that these radical books, which were published anonymously, had been written by Kant. That made Kant furious, particularly because he held on philosophical grounds that it was immoral for an author to publish

[53] See Theodor Gottlieb von Hippel, trans. Timothy F. Sellner, *On Improving the Status of Women.* Detroit: Wayne State University Press, 1979. (The identity of the author became known only after his death.)

anonymously.[54] As we shall see, he was also understandably unhappy to have the anonymous author's strange (and unphilosophical) views attributed to him. Basically Hippel's pro-feminist argument went back to Eve and claimed, laced with many biblical references, that women were superior to men and that Eve, as against Adam, should be recognized as the great emancipator because she brought about the "breakthrough of reason." His arguments throughout the book consist mostly of references to stories that prove the intellectual and moral superiority of women. Kant, of course, would have been quite unsympathetic to that approach, for he would have claimed that the arguments for equality are and must be a priori and do not depend on contingent empirical facts. We also know that he disagreed with Hippel's theological approach and his authoritarianism. But, of course, he did not know at the time that Hippel was the author of this controversial book. This is an interesting saga about 18th-century intellectual life in Königsberg and the clash of personalities of two oddly paired geniuses.[55]

The Moral Side of Marriage: How Is Marriage Possible?

We must recognize that Kant's theory of marriage is complex and multifaceted, and, to be honest, in many ways quite puzzling. Horn has sympathetically but also thoroughly and insightfully worked through the argument in its most complicated parts. The present account draws heavily on his work and that of his later editor, Hariolf Oberer. In order to bring out its problematic character, I suggest that we approach the theory in typically Kantian fashion by asking, "How is marriage possible?"

In order to deal with this question, we need first to understand the problem and that requires beginning with the prior question, *Why must marriage be possible?* For this, we need to turn to Kant's teleological conception of Nature.

Kant maintained that we can look at Nature from two different points of view. Accordingly, viewed scientifically Nature can be conceived mechanistically as a system of causes and effects. But it can also be viewed teleologically as a system of interlocking ends and means.

[54] See the section "What Is a Book?" p. 84.

[55] For the story of Kant's reaction to Hippel's anonymous publication, see Jauch, 1988.

Teleological or purposive explanations are the subject of one of the parts of the *Critique of Judgment*. Taking Nature in this second sense, we can conclude that one of the purposes of Nature is to provide for the continuance of the human species on earth.[56] Human reproduction, which is the means for this purpose, requires, of course, sexual intercourse, for which in turn it contrives sexual attraction and desire.

Now the moral relationship between the aims of Nature, which are teleological, i.e. based on means and ends, and human morality, which is based on freedom and autonomy as represented in the categorical imperative, is complex. To begin with, human individuals do not and cannot take it to be their duty to adopt the aims of Nature as their own ends, for that would be to make them into utilitarians and require them to treat persons as mere means. In other words, the operations of Nature as a teleological system are as such inconsistent with the categorical imperative. On the other hand, it is wrong for human individuals to act contrarily to the aims of Nature; more specifically, it would be wrong to adopt a maxim that cannot obtain as a "law of nature," e.g. a law forbidding sexual intercourse. In this regard, Kant compares the individual's duty not to commit suicide with society's duty not to allow itself to be extinguished.[57] Thus, although there may not be a positive duty to reproduce through sexual intercourse (as a utilitarian or a natural-law theorist might maintain), it must be possible to do so, for otherwise, one would be contradicting a law of nature, that is, one of the aims of Nature.

Given, then, that sexual intercourse *must* be possible, we now have the question, *How is it possible?* That is, how can sexual intercourse be made consistent with the categorical imperative? That leads to the next question, *What is the problem?* What is problematic about sexual intercourse? Here we find help in Kant's earlier discussion of sexual intercourse in his Lectures.[58] From that we see that Kant's view is that intercourse is per se problematic because it involves treating oneself as well as one's partner as a mere means and not as an end-in-itself. In other words, it violates the categorical imperative. It is a violation of the first of Ulpian's principles: "Do not make yourself a mere means

[56] The ultimate aim of Nature, which is sometimes identified as Providence, is freedom for humanity and perpetual peace. For a useful account of this doctrine, see Howard Williams, *Kant's Political Philosophy*.

[57] *Tugendlehre* § 7.

[58] Horn has worked out the argument in detail using this lecture as a basis.

for others but be for them at the same time an end." This is the *right of humanity* in one's own Person.[59]

Why this should be so in relation to sexual intercourse is an important question for Kant (and perhaps in itself as well). In his *Lectures on Ethics*[60] he recognizes that we often use others as means in many of our normal activities, but not as *mere* means, that is, disregarding that the other person (or oneself) is an end-in-itself, that is, is a Person. In order to show that, he argues that sex involves the whole body and the whole body and the Person are the same. So in using another's body as well as using one's own body for sex both parties are using the other and themselves as mere means, i.e. without reference to their being Persons. Using the whole body of another person for one's own pleasure is, to cite Kant's favorite analogy, comparable to cannibalism.[61]

Kant's identification of what it means to be used as *mere* means, that is, as merely a thing, is clearly not well worked out—as his critics are quick to point out. So I shall not dwell on the details. As Kant himself point outs, consent is not enough to make sex legitimate as it might be if it were part of a contract of hire for sex. In our own society, in issues about rape, consent is not always a sufficient defense against the charge of rape. Why is it insufficient? Here Kant's answer, or rather his way of putting the question, may be relevant to contemporary discussions. Even though his own answer will not work, Kant has opened up the issue of the moral relationship between sex , the body of a person, and the person himself or herself.

Now the question becomes, *Given the moral problematics mentioned, how can sex become legitimate?* Kant's answer, of course, is that marriage makes the sexual community legitimate. Why and how? Here we must be careful not to inject extraneous considerations such as love, children, companionship, etc., not only because they can exist outside of marriage, but also because they do not address the central ethical question just mentioned, that is, the need to treat one's sexual partner as a person and not as a mere thing, that is, not just as a body.

Before continuing, it is important in understanding Kant's theory of marriage not to confuse *possession* and *property* (ownership) in this

[59] Division of the Theory of Justice. A. p. 37.

[60] See the lecture on "Duties towards the body in respect of sexual intercourse," in Immanuel Kant, *Lectures on Ethics*, trans. Louis Infield (New York: Harper & Row, 1963), pp. 162 ff. There are several other versions of these lectures now available, but they all contain the lecture mentioned here.

[61] See Appendix: 3. Examples.

discussion. For Kant is quite adamant that it is impossible to *own* a person, even oneself. (That is why slavery is impossible, not to mention any talk about owning one's self or one's body, one's spouse or one's children. All that is anathema.) Possession, however, is different. To be able to *use* something, whatever it might be, requires that one possess it; that is, one must have it in some way or other in one's physical power, and that is possible without owning the thing in question. Sexual intercourse involves using the body of one's partner and vice versa, "mutual possession of sex organs," and that is primarily a physical condition, not a moral one. We must keep in mind that for Kant, ethical questions involving sex are questions of use and possession, for which, according to Roman Law, permanent arrangements are quite conceivable and legitimate. So a permanent arrangement for mutual possession and use of their sex organs is part of the solution. What is still missing is the reference to Personhood.

To return to sexual intercourse, then, what is wrong about it when it is wrong is that it treats the other person as well as oneself as a mere thing, say, a body, and not also as at the same time a Person. It denies the "right of humanity." The question is, therefore, how can I treat the other and myself also as Persons in sexual intercourse? Now the problem for Kant is that the whole body and Personality are inseparable (unlike part of the body, say, a hand and Personality) and yet sexual intercourse involves using the body, the whole body, as a thing and not as a Person. What is the solution to this dilemma?

Kant believes that the solution lies in marriage, and in particular, in the marriage contract, where one partner gives himself up as a Person to the other and in return the other partner gives herself up as a Person to him in a kind of interchange of Personhood, so that each partner loses his (or her) Personality to the other and gains it back in exchange from the other. Accordingly, as Oberer suggests, the reciprocal loss of the right (of humanity) is reciprocally negated and so the right (of humanity) is regained. The outcome is the mutual (reciprocal) possession of each other's sex organs (i.e. body), which makes possible their use and enjoyment.

It should be pointed out in passing that the marriage contract as described here is no ordinary, garden-variety contract, but a very special contract, a metaphysical contract; it might more properly be called a "covenant." Logically the marriage contract might be compared to the social contract (which Kant calls the original contract), where one gives up one's lawless freedom and gains in return a lawful freedom.

Losing oneself to gain oneself sounds in a way like something from the Gospel. In all of these peculiar contracts the move involves some kind of metaphysical (as well as ethical) transformation—and, unlike ordinary contracts, they are irreversible.

Now, the idea of the marriage contract as suggested by Kant is a very sophisticated and complicated notion that obviously needs further clarification as to what the "transformation" is and how it takes place. Horn suggests that Kant, a busy man as he got older, did not have enough time to work out this concept in the way that he had worked out other novel and subtle concepts in the *Critique of Pure Reason.* That sounds right to me, because at the bottom of the problem here is the need for a more extended analysis of the relationship between body and the self (Personality), where the mechanistic categories that Kant tried to use in his analysis are inadequate and, to be sure, out of date. Horn suggests that Kant could have made use of the concepts and principles he introduced in the *Critique of Judgment* in relation to teleology, but I think that it is more likely that a totally new set of concepts from psychology and sociology are needed to deal with the questions that Kant raises.

In any case, Kant's contribution, I suggest, has been to open up new problems by putting old questions in a new light. That is what being *zetetic* really means.

J.L.

Note on the Text and the Translation

Die Metaphysiche Anfangsgründe der Rechtslehre, Part I of the *Metaphysik der Sitten*, was first published in 1797 (Königsberg, Friedrich Nicolovius). The second edition, along with an appendix responding to a critic's review, appeared in 1798. It is now the basic text edited by Paul Natorp, including his meticulous text editing, in volume VI of the Königliche Preussische Akademie der Wissenschaft edition of Kant's works, now published by de Gruyter (Berlin) under the title *Kants Gesammelte Schriften.* The present translation is based on Natorp's text with a few changes suggested by later editions. Marginal numbers in the present translation are the standard page numbers from volume VI of this edition, which is also abbreviated AA.

Throughout, brackets indicate my own editorial interpolations, including the bracketed titles that have been added to help the reader in both the Contents and the text. Parenthetical clauses, such as Kant's Latin references, are uniformly Kant's. As Kant notes in his Preface, he includes what he calls "Remarks," which are indented in the text. Following the French translations, I have inserted the word *Remark* at the head of such indented passages.

There is no such thing as a perfect translation. A translator needs to keep in mind the intended audience and purpose of the translation. Some Kant scholars will naturally disagree with my renderings, but that might be because they have a different purpose in mind from mine. My aim is to offer a translation that is not only accurate, but readable, intelligible, and clear to the non-expert who may not know German. I have assumed as a governing principle that what Kant wrote is intelligible and that he intended his book to be intelligible to a general educated audience of interested persons and not just to scholars. For this reason, I have adopted as a rule of thumb not to try to translate one of Kant's sentences until I have understood it. In any case, a student who wishes to undertake a serious scholarly study of Kant's political philosophy and philosophy of law cannot simply rely on translations, but should consult the German text directly. Still, if students wish to compare different translations, they can easily do so now, because in the last few years many other

translations have appeared not only in English, but in French and other languages.[62]

From its first appearance and for over a hundred years, it was generally thought that this book was a product of Kant's old age when he was already becoming senile. Beginning with a remarkable discovery by Gerhard Buchda in 1929 that parts of the text were extraneous additions, it is now generally accepted that some passages in the traditional text are faulty. Perhaps Kant was not senile after all! Perhaps somewhere along the line, pieces of his lectures or other notes had been mixed in, possibly by the amanuensis, in the copy sent to the printer. There are many theories about how this might have happened, but in the meantime a raging controversy has taken place over which parts of the old text should be changed. Here opinions among scholars range from conservative to radical, the former intuitively and piously adhering to the old text and at least one, Bernd Ludwig, adopting quite radical revisions in his new edition. The changes suggested by Ludwig principally consist of relocating parts and removing redundant and what appear to be extraneous parts to an appendix. As a result, he has presented us with a radically different version of the *Rechtslehre*,[63] and, if correct, one that shows that Kant was far from senile!

Frankly recognizing that changes in the text are controversial, I have nevertheless adopted many but not all of the rearrangements of the text proposed by Ludwig, that is, I have accepted particular changes that seem to me logical and rational. My rationale for these changes is simply that, at least as far as my stated aim is concerned, they make it possible to present Kant's views in a clearer and more intelligible way than in the customary scrambled ordering.[64] All the changes I have adopted are, however, signalled in italic notations and, it should be emphasized, nothing from the original text has been omitted or changed. Pieces of text have simply changed their location. In certain cases, these changes require renumbering of the § numbers.

[62] See, for example, Mary Gregor's *Metaphysical First Principles of the Doctrine of Right* (Cambridge University Press), as well as Alain Renaut's elegant French version published as *Métaphysique des Moeurs II* (GF-Flammarion).

[63] Immanuel Kant, *Metaphysische Anfangsgründe der Rechtslehre*. Neu herausgegeben von Bernd Ludwig. Felix Meiner: Hamburg, 1986.

[64] The old ordering was used in the first edition of this translation.

Where new numbers have been adopted, I have included the old numbers in brackets next to them, so that it will be easy to find one's way around between the old and the new.

Finally, a few additional remarks about vocabulary may be found helpful. Comments on legal vocabulary have already been made in the sections on *Recht* and Roman Law vocabulary, as well as on vocabulary associated with a priori concepts. (See Translator's Introduction.) It is particularly important to note that a capitalized word indicates that the word is used in a special meaning intended by Kant.

There are two words that cause special difficulties in translating Kant's German. The first is *Mensch,* the generic word for human being without regard to gender or age. The natural English equivalent is "person," which is actually the first meaning for *Mensch* in new dictionaries. Kant uses another word, *Person,* which in traditional German is used for persons of rank or position, i.e. personages, and persons in the view of the law. Since this is a rather specialized use of "person," I shall capitalize it when translating the German *Person.* In my view, the accustomed use of "man" to translate *Mensch,* as in the "Esssay on Man," is Victorian and sexist. It is not only misleading, it is indeed a mistranslation. In this regard, it is interesting to note that, in one of his lectures, Kant himself observes that because the English and the French have only one word for both the species and its male members, they are prone to identify being human with being male, which, for him, would be a big mistake. When, as he occationally does, Kant means *man,* he uses the German word *Mann*, which, as far as I know, is never applied to women!

A second word that presents difficulties is the German word *Befugnis* (*befugt,* etc.), which is often translated "authorization" (or "authority"). It will be translated here as "entitlement." *Befugnis* in the sense of authorization in contemporary German is something that can be "received" or "granted" from someone in authority. That concept, on the face of it, would be problematic for Kant, who was a radical anti-authoritarian. If one looks at the context in which Kant uses the word, the authoritarian interpretation does not make any sense (for example, in § D, where *Befugnis* is used to link rights and coercion). Perhaps the word had a different meaning for Kant than it has today. Etymologically we find that the word is related to *Fug,* an old German word that means proper, fitting, seemly, or becoming in a strong sense. That kind of meaning is suggested in the passages where Kant uses the word.

The English word "entitlement" has now become the favorite word for this kind of concept in English, that is, one that justifies or rationalizes, say, a claim. Since this word does not imply that there is an authority granting the claim, it seems to be a better word for what Kant meant.

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METAPHYSICS OF MORALS: FIRST PART

METAPHYSICAL ELEMENTS OF JUSTICE

Preface

The *Critique of Practical Reason* was to be followed by a system, the *Metaphysics of Morals*. The *Metaphysics of Morals* falls into two parts: the *Metaphysical Elements of Justice* and the *Metaphysical Elements of Virtue*. (They may be considered the counterparts of the *Metaphysical Elements of Natural Science*, which has already been published.[1]) The following introductory remarks are intended to describe and, in part, to elucidate the form of this system.

The theory of justice, which constitutes the first part of moral philosophy,[2] is the kind of theory from which we demand a system derived from reason. Such a system might be called "the metaphysics of justice." Because, however, the concept of justice is a pure concept which at the same time also takes practice (i.e. the application of the concept to particular cases presented in experience) into consideration, it follows that, in making a subdivision [of its concepts], a metaphysical system of justice would have to take into account the empirical diversity and manifoldness of those cases in order to be complete in its subdivision (and completeness in its subdivisions is an indispensable requirement of a system of reason). Completeness in the subdivision of the empirical [i.e. of empirical concepts] is, however, impossible, and, when it is attempted (or when even an approach to completeness

[1] [*Metaphysische Anfangsgründe der Naturwissenschaft* (Riga, 1786). This work is devoted to an exposition of various a priori principles of natural science, in particular of Newtonian mechanics.]

[2] [*Sittenlehre*]

is attempted), such concepts do not belong to the system as integral parts of it, but are introduced by way of examples in the remarks. Thus, the only appropriate name for the first part of the theory of morals is The Metaphysical Elements of Justice, for, if we take these cases of application into account, we can expect to attain only an approximation of a system, not a system itself. Accordingly, the same method of exposition that was used in the (earlier) *Metaphysical Elements of Natural Science* will be adopted here; the discussion of justice so far as it belongs to the outline of an a priori system will appear in
206 the main text, whereas the discussion of those rights that are related to particular cases arising in experience will appear in the remarks, which are sometimes rather lengthy. Unless some such procedure is adopted, the parts that are concerned with metaphysics will not be clearly distinguishable from the parts that refer to the empirical practice of Law.[3]

I have often been reproached for writing in a philosophical style that is obscure; indeed, I have even been charged with intentionally cultivating and affecting unclarity in order to give the appearance of having had deep insights. There is no better way of anticipating or removing this objection than by readily accepting the duty that Herr Garve,[4] a philosopher in the true sense, has laid down as especially incumbent on any philosophical writer. Nevertheless, in accepting this duty, I would limit it to the condition that it must be obeyed only to the extent that is allowed by the nature of the science that is to be improved and enlarged.

This wise man (in his "Miscellaneous Essays"[5]) quite rightly demands that every philosophical theory be capable of being popularized (that is, that it must be possible to make it intelligible to the general public) if the author of the theory himself is to avoid being charged with conceptual obscurity. I admit this gladly, with the exception only of the system of a critique of the faculty of reason itself and of everything that depends solely on this system for its determination. My reason for this is that the distinction between the sensible and the supersensible in our knowledge still comes under the competence of reason. This system can never become popular, nor can, in general, any formal metaphysics, although their result can be rendered quite illuminating for the ordinary man (who is a metaphysician without knowing it!). In

[3] [*Rechtspraxis*. For the translation of *Recht*, see Translator's Introduction, pp. xx ff.]

[4] [Christian Garve (1742–1798), professor of philosophy at Leipzig]

[5] [*Vermischte Aufsätze* (Breslau, 1796), pp. 352 ff.]

this subject, popularity (popular language) is unthinkable; instead, we have to insist on scholastic precision (for this is the language of the schools), even if it is denounced as meticulosity. Only by this means can over-hasty reason be brought to understand itself before it makes its dogmatic assertions.

When, however, pedants presume to address the general public (from the pulpit or in popular writings) using the kind of technical vocabulary that is suitable only for the schools, the critical philosopher should not be blamed any more than the grammarian should be blamed for the follies of the wordcaviler (*logodaedalus*). The laughter should be turned against the man only, not the science.

It sounds arrogant, egotistical, and, to those who have not yet given up their ancient philosophical system, derogatory to assert that before the advent of critical philosophy there was no philosophy. Before we can pass judgment on this apparent presumption, we must first ask: Is it indeed possible for there to be more than a single philosophy? Certainly there have been various ways of philosophizing and of going back to the first principles of reason in order to lay, with greater or less success, the foundations of a system. Not only have there been, but there also had to be many attempts of this kind, each of which also deserves credit from contemporary philosophy. Nevertheless, inasmuch as there is, objectively speaking, still only one human reason, there cannot be many philosophies; that is, however variously, even contradictorily, men may have philosophized over one and the same proposition, only a single system of philosophy founded on principles is possible. Thus, the moralist says quite rightly: There is only one virtue and one theory of virtue, that is, a single system that unites all the duties of virtue under one principle. The chemist says: There is only one [system of] chemistry (that of Lavoisier).[6] Likewise, the physician says: There is only one principle for the system of classifying diseases (that of Brown).[7] But the fact that the new system has superseded all the others does not detract from the merit of earlier men (moralists, chemists, and physicians), because, without their discoveries or even without their unsuccessful attempts, we should never have attained the systematic unity of the true principle of all philosophy.

[6] [Antoine Laurent Lavoisier (1743–1794), French chemist, finally refuted the phlogiston theory in chemistry and laid the foundations for modern chemistry.]

[7] [John Brown (1735-1788), Scottish physician. His *Elementa Medicinae* (1780) was much in vogue at the time.]

When, therefore, someone announces a system of philosophy as his own creation, he is in effect saying that there has been no other philosophy prior to his. For, were he to admit that there is another (and true) philosophy, then he would be admitting that there are two different philosophies concerning the same thing, and that would be self-contradictory. Consequently, when the critical philosophy announces that it is a philosophy prior to which there was absolutely no philosophy, it is not doing anything different from what anyone who constructs a philosophy according to his own plan has done, will do, and, indeed, must do.

Of less significance, but not entirely without importance, is the reproach that one essential and distinctive part of this philosophy is not a product of its own inner development, but has been taken from another philosophy (or mathematics). An example of this is the discovery that a reviewer from Tübingen[8] claims to have made concerning the definition of philosophy that the author of the *Critique of Pure Reason* gives out as his own, not inconsiderable, contribution. He finds that this definition was given in practically the same words by someone else
208 many years ago.* I will leave it to the reader to decide whether the words *intellectualis quaedam constructio* were meant to express the thought of "the exhibition of a given concept in an a priori intuition" through which philosophy is once and for all quite definitely distinguished from mathematics. I am certain that Hausen himself would have refused to accept this interpretation of his words. Indeed, the possibility of an a priori intuition and of space being such an intuition, rather than merely (as Wolff held[10]) the juxtaposition of the manifold of objects external to one another that is given in empirical intuition—all this would have thoroughly shocked him for the simple reason that

[8] [Probably Prof. J. F. Flatt, who reviewed many of Kant's works in the *Tübingen Gelehrter Anzeiger*]

* *"Porro de actuale constructione hic non quaeritur, cum ne possint quidem sensibiles figurae ad rigorem definitionum effingi; sed requiritur cognitio eorum, quibus absolvitur formatio, quae intellectualis quaedam constructio est."* C. A. Hausen, *Elem. Mathes.* (1743), Part I, p. 86.[9]

[9] ["Furthermore, the concern here is not with the actual construction, for sensible figures cannot be made with the rigor required by a definition; rather, the knowledge that is sought is of what produces the form of the figure, which is, as it were, a construction of the intellect." C. A. Hausen (1693–1745), professor of mathematics at Leipzig.]

[10] [Christian Wolff (1674–1754), in his *Ontology*, § 588]

he would have felt that a consideration of such questions would entangle him in far-reaching-philosophical investigations. By the words "the exhibition [construction] made, as it were, by the understanding," this acute mathematician meant simply that, in an (empirical) drawing of a line corresponding to a concept, we pay attention only to the rule [by which it is constructed], and we ignore and abstract from the deviations from a perfect line that cannot be avoided when we make a drawing; his point can easily be seen if we think of the construction of figures in geometry that are supposed to be equal to one another [*Gleichung*].

Least significant of all from the point of view of the spirit of this critical philosophy is the mischief wrought by its imitators, who have made improper use of the technical expressions of the *Critique of Pure Reason*. In the *Critique*, these expressions cannot very well be easily replaced by others, but they should not be used outside this philosophical context in the public interchange of ideas. This mischief certainly deserves to be corrected, as Herr Nicolai[11] has done, although he avoids asserting that these expressions can be entirely dispensed with even in their proper field, as though they were used everywhere as a cover to hide a poverty of thought. In the meantime, of course, it is more fun to laugh at the unpopular pedant than at an uncritical ignoramus. (Actually, a metaphysician who rigidly adheres to his system without turning to a critique belongs to this latter class, although he deliberately ignores those considerations that he will not allow because they are not part of the system of his old school.) But if, as Shaftes- 209
bury says, a touchstone—which is not to be despised—for the truth of a theory (especially a practical one) is that it survives being laughed at,[12] then, indeed, the turn of the critical philosopher will come in

[11] [Christoph Friedrich Nicolai (1733–1811), German author and bookseller. He belonged to a group calling themselves "popular philosophers," which made ridiculous attacks on the ideas of Kant, Goethe, Schiller, and others. The present reference is to *Die Geschichte eines dicken Mannes* ("The story of a fat man") (Berlin and Stettin, 1794), where he tries to make fun of the use of Kantian terminology in everyday life. This probably explains Kant's bitter remarks about laughing at philosophers.]

[12] [Anthony Ashley Cooper, Third Earl of Shaftesbury (1671–1713), in his *Characteristics of Men, Manners, Opinions, Times*, Treatise II. "*Sensus communis*, An Essay on the Freedom of Wit and Humour (1709), Part I, section 1, paragraph 3: "Truth . . . may bear all lights; and one of those principal lights . . . is ridicule itself . . . So much, at least, is allowed by all who at any time appeal to this criterion."]

time, and he will be able to laugh last, and therefore also best, when he sees the systems of those who have talked big for such a long time collapse like houses of cards and sees all their adherents run off and disappear—a fate that inevitably awaits them.

Toward the end of the book, I have worked out some of the sections in less detail than might be expected in comparison to the earlier ones. This is partly because it seemed to me that they could be easily inferred from the earlier statements and partly because the subjects of the later parts (concerning Public Law) are just now under so much discussion and are yet so important that they amply justify delaying for a while the making of any decisive pronouncements.

I hope that the *Metaphysical Elements of Virtue* will be ready shortly.[13]

[13] [This sentence was omitted from the second edition. The second part of the *Metaphysics of Morals* appeared during the same year (1797).

Note: The four parts of the Introduction to the Metaphysics of Morals that follows have been rearranged from the Academic edition to make the sequence of parts more logical. The original order is indicated in brackets.

Also, within Part III (Rudimentary Concepts) the ordering of some of the paragraphs has been changed to make their sequence more logical.]

Introduction to the Metaphysics of Morals

I [AII]
Of the Idea and the Necessity of a Metaphysics of Morals

It has been shown elsewhere[14] that we must have a priori principles for natural science, which has to do with the objects of the outer senses, and that it is possible—indeed, even necessary—to prefix a system of 215
such principles, under the name of a metaphysical natural science, to physics, which is natural science applied to particular experiences. Metaphysical natural science, if it is to be universal in the strict sense, must be deduced from a priori grounds; although physics (at least when the purpose is to guard its propositions against error) may assume many principles to be universal on the testimony of experience, just as Newton adopted the principle of the equality of action and reaction in the influence of bodies on one another as based on experience and yet extended that principle to all material nature. The chemists go still further and base their most general laws of combination and dissociation of substances by their own forces entirely on experience, and yet they have such confidence in the universality and necessity of these laws that they do not worry about discovering any error in the experiments that they make with them.

But it is otherwise with moral laws. They are valid as laws only insofar as they can be seen to have an a priori basis and to be necessary. Indeed, concepts and judgments concerning ourselves and our actions and omissions have no moral significance at all if they contain only what can be learned from experience. Anyone so misled as to make into a basic moral principle something derived from this source would be in danger of the grossest and most pernicious errors.

If moral philosophy were nothing but eudaemonism [the happiness-theory], it would be absurd to look to a priori principles for help.

[14] [Namely, in the *Metaphysische Anfangsgründe der Naturwissenschaft* (*Metaphysical Elements of Natural Science*) (1786)]

However plausible it might seem that reason, even before experience, could discern by what means one can attain a lasting enjoyment of the true joys of life, nevertheless everything that is taught a priori on this subject is either tautological or assumed without any ground. Only experience can teach us what brings us joy. The natural drives for food, sex, rest, movement, and (in the development of our natural predispositions) for honor, the enlargement of our knowledge, and so on, can alone teach us where to find these joys and can only do so for each individual in his own way and, similarly, can teach him the means by which to seek them. All apparently a priori reasoning is here basically
216 nothing but experience raised to generality through induction; this generality (*secundum principia generalia, non universalia*)[15] is so deficient that infinitely many exceptions must be allowed everyone in order to make his choosing [*Wahl*] of a way of life fit his particular inclination and susceptibility to satisfaction; yet, in the end he becomes prudent only through his own or other people's misfortunes.

But it is otherwise with the laws of morality. They command everyone without regard to their inclinations, solely because and insofar as they are free and have practical reason. Instruction in the laws of morality is not drawn from observation of oneself and the animality within oneself nor from the perception of the course of the world as to how things happen and how men in fact do act (although the German word *Sitten*, like the Latin word *mores*, designates only manners and ways of life). Rather, reason commands how one ought to act, even though no instance of such action might be found; moreover, reason does not take into consideration the advantage that can accrue to us therefrom, which admittedly only experience could teach us. Although reason allows us to seek our advantage in every way open to us and can, on the basis of the testimony of experience, also probably promise us greater advantages, on the average, from obeying its commands than from transgressing them, especially if obedience is accompanied by prudence, yet the authority of its precepts as commands does not rest on this fact. Instead, reason uses such considerations (by way of advice) only as counterweights to inducements to do the opposite of what is moral; as counterweights they are used, first, to correct the error due to partiality in the scales of practical judgment and, then, to make certain that the scales are tipped in favor of the a priori grounds of a pure practical reason.

[15] ["According to general principles, but not universal ones"]

If, therefore, a system of a priori knowledge from mere concepts is called *metaphysics*, then a practical philosophy that has as its object not nature but the freedom of will would presuppose and require a metaphysics of morals; that is, to have such a metaphysics is itself a duty. Moreover, every person has such a metaphysics within himself, although commonly only in an obscure way; for, without a priori principles, how could he believe that he has a universal legislation within himself? But just as in the metaphysics of nature there must be principles of application of the supreme universal basic principles of nature in general to objects of experience, so likewise a metaphysics of morals 217
cannot dispense with similar principles of application. Accordingly, we shall often have to take as our object the special nature of man, which can be known only by experience, in order to point out the implications of the universal moral principles for human nature. But doing so will not derogate from the purity of such laws or cast any doubt on their a priori origin. That is as much to say that a metaphysics of morals cannot be founded on anthropology, although it still can be applied to it.

The counterpart of a metaphysics of morals, as the other member of the division of practical philosophy in general, would be moral anthropology, which would, however, contain only the subjective conditions in human nature hindering as well as favoring the execution of the laws of the metaphysics of morals. It would treat of the generation, diffusion, and strengthening of basic moral principles (in education through school and popular instruction) and would contain other similar doctrines and precepts based on experience that cannot be done without but that definitely must not be given priority over the metaphysics or be mixed with it. For, otherwise one would run the risk of producing erroneous or at least indulgent moral laws that would falsely portray as unattainable that which has simply not yet been attained, either because the law has not been acknowledged and set forth in its purity (the very thing in which its strength consists) or because spurious or impure motives are used for what in itself accords with duty and is good. Those kinds of motives leave no room for unmistakably basic moral principles to serve either as guides to judgment or for the discipline of the mind in conforming to duty, whose precepts absolutely must be given a priori by pure reason.

The higher division under which that just mentioned[16] comes is the division of philosophy into theoretical and practical. I have explained

[16] [That is, metaphysics of morals and moral anthropology]

myself sufficiently concerning this elsewhere (in the *Critique of Judgment*[17]) and have shown that the latter branch can be nothing but worldly wisdom.[18] Everything practical that is supposed to be possible according to laws of nature (the proper business of technical skill [*Kunst*][19]) depends for its concept entirely on the theory of nature. Only that which is practical in accordance with laws of freedom can have principles that do not depend on any [scientific] theory, for there can be no [scientific] theory of that which transcends the determination of nature. Accordingly, by the practical part of philosophy (coor-
218 dinate with its theoretical part) is to be understood not a *technically-practical*, but simply a *morally-practical* discipline [*Lehre*]. And if will's ability [*Fertigkeit der Willkür*] to act in accordance with laws of freedom—in contrast to nature—were also to be called skill [*Kunst*] here, then such a skill would have to be understood as one that makes a system of freedom analogous to a system of nature. That would truly be a divine skill, if we were in a position by its means completely to achieve what is prescribed by reason and to turn its Idea[20] into reality [*Werk*].

II [AI]
Of the Relation of the Faculties
211 ## of the Human Mind to the Moral Laws

The *faculty of desire* [*Begehrungsvermögen*] is the capacity to be the cause of the objects of one's representations by means of these representations. The capacity that a being has of acting in accordance with its representations is called *life* [*Leben*].

First, desire and aversion are always bound up with *pleasure* or *displeasure* [*Lust, Unlust*], the receptivity to which is called *feeling* [*Gefühl*]. But the converse does not always hold, for there can be a pleasure that is not connected with any desire for an object, but merely with the representation that one frames for himself of an object (it

[17] [*Critique of Judgment*: Introduction, sections I and II]

[18] [*Weltweisheit*. This is the general term that Kant uses for what we should call "ethics" in the nonspecialized sense, which includes empirical as well as a priori aspects.]

[19] [This is obviously a German translation of the Greek *techne*—"art"—which plays such a central role in Plato's *Republic*.]

[20] [See Translator's Introduction, p. xl.]

does not matter whether or not its object actually exists). Second, the pleasure or displeasure taken in an object of desire does not always precede the desire and may not always be regarded as the cause of it, but can also sometimes be regarded as its effect.

Now, the capacity to take pleasure or displeasure in a representation is called *feeling* because both pleasure and displeasure involve what is merely *subjective* in relation to our representation and do not refer to an object as an object of possible knowledge* (not even to the knowledge of our own [mental] state). In other cases, however, sensations, in 212
addition to the quality that depends on the constitution of the subject (for example, the quality of red, of sweet, and so on), also are referred to objects and constitute part of our knowledge. But pleasure or displeasure (in what is red or sweet) expresses absolutely nothing in the object, but simply a relation to the subject. Pleasure and displeasure cannot be more closely defined for the reason just given. We can only specify their consequence under certain circumstances in order to make them recognizable in use.

Pleasure that is necessarily connected with desire (for an object whose representation affects feeling in this way) may be called *practical pleasure*, whether it is the cause or the effect of the desire. On the other hand, pleasure that is not necessarily connected with a desire for an object and that essentially, therefore, is not pleasure taken in the existence of the object of the representation, but only adheres to the

* Sensibility can in general be defined by means of the subjective element in our representations, for it is the understanding that first refers the representations to an object; that is, it alone thinks something by means of them. Now, the subjective element in our representations may be of two kinds. On the one hand, it can be referred to an object as a means to cognizing it (with regard either to its form or to its matter; in the first case, it is called pure intuition and, in the second, sensation); here sensibility, as the receptivity for a representation that is thought, is *sense*. On the other hand, the subjective element in our representations may be such that it cannot become a factor in cognition inasmuch as it contains only the relation of a representation to the subject and does not contain anything that can be used for cognizing the object; in this case, the receptivity for the representation is called *feeling*. Now, feeling contains the effect of the representation (whether it be a sensible or an intellectual representation) on the subject and belongs to sensibility, even though the representation itself may belong to the understanding or to reason.

mere representation, can be called mere *contemplative pleasure*, or passive gratification. [The ability to have] the feeling of the latter kind of pleasure is called *taste*. In a practical philosophy, accordingly, this kind of pleasure can be treated only incidentally, not as a concept properly belonging to that philosophy. But, as regards practical pleasure, the determination of the faculty of desire that is caused by and, accordingly, is necessarily preceded by this pleasure is called *appetite* in the strict sense; habitual appetite, however, is called *inclination*.

The connection of pleasure with the faculty of desire, insofar as this connection is judged by the understanding to be valid according to a general rule (though only for the subject), is called *interest*; and hence in this case the practical pleasure is an interest of inclination. If, on the other hand, the pleasure can only follow upon an antecedent determination of the faculty of desire, then it becomes an intellectual pleasure; and the interest in the object must be called an interest of reason. For, if the interest were sensible and not founded merely on
213 pure principles of reason, then the sensation would have to be bound up with pleasure and so be able to determine the faculty of desire. Although where a merely pure interest of reason must be assumed, no interest of inclination can be attributed to it. Nevertheless, in order to accommodate ourselves to ordinary speech, we could admit an inclination even to what can only be the object of an intellectual pleasure, that is to say, a habitual desire from a pure interest of reason. In that case, however, the inclination would not be the cause but the effect of a pure interest of reason and we could call it *sense-free inclination* (*propensio intellectualis*).

Further, *concupiscence* (craving) is to be distinguished from desire itself as being the stimulus to its determination. Concupiscence is always a sensible mental state that has not yet turned into an ongoing act of the faculty of desire.

The faculty of desire relative to concepts, insofar as the ground determining it to action is found in the faculty of desire itself and not in the object, is called the faculty of *doing or forbearing as one likes* [*nach Belieben zu tun oder zu lassen*]. Insofar as it is combined with the consciousness of the capacity of its action to produce its object, it is called will [*Willkür*].[21] If not so combined, its act is called a *wish* [*Wünsch*]. The faculty of desire whose internal ground of determination and, consequently, even whose likings [*das Belieben*] are found in the reason

[21] [See Translator's Introduction, pp. xxix–xxx.]

of the subject is called the *Will* [*der Wille*]. Accordingly, the Will is the faculty of desire regarded not, as is will, in relation to action, but rather in relation to the ground determining will to action. The Will itself has no determining ground; but, insofar as it can determine will, it is practical reason itself.

Insofar as reason can determine the faculty of desire in general, will and even mere wish may be included under Will. A will that can be determined by *pure reason* is called free will [*freie Willkür*]. The will that is only determined by inclination (sensible impulse, stimulus) would be animal will (*arbitrium brutum*). Human will, by contrast, is the kind of will that is affected but not determined by impulses. Accordingly, in itself (apart from an acquired facility with reason), it is not pure; but it can nevertheless be determined to actions by pure Will. *Freedom* of will is just the aforementioned independence of determination by sensible impulses; this is the negative concept of freedom.[22] The positive concept of freedom is that of the capacity of pure reason to be of itself 214
practical. This is possible, however, only through the subjection of the maxim of every action to the condition of its fitness to be a universal law. Inasmuch as pure reason is applied to will without regard to its object, it is the faculty of principles (and here they are practical principles, and so it is a legislative faculty); and, as such, because it disregards the matter of the law, there is nothing that it can make the supreme law and determining ground of will except the form of the law, which consists in the fitness of the maxim of will to be a universal law. Because the maxims of a human being are based on subjective causes that do not of themselves coincide with the aforementioned objective maxims, reason can only prescribe this law as an imperative of command or prohibition.

In contradistinction to natural laws, these laws of freedom are called *moral*. Insofar as they relate to mere external actions and their legality, they are called *juridical*; but if, in addition, they require that the laws themselves be the determining grounds of actions, they are *ethical*. Accordingly we say: agreement with juridical laws constitutes the *legality* of action, whereas agreement with ethical ones constitutes its *morality*. The freedom to which juridical laws relate can only be freedom in its external use; but the freedom to which ethical laws refer is freedom in both the internal and external exercise of will, insofar as will is determined by laws of reason. In theoretical philosophy we say

[22] [See Translator's Introduction, pp. xvi–xvii.]

that only the objects of the outer senses are in space, whereas all objects—those of the outer senses as well as those of the inner sense—are in time, because the representations of both kinds of object are still representations and therefore belong to inner sense.[23] We can say the same kind of thing with regard to freedom in the external or in the internal exercise of will; that is, freedom's laws, being pure practical laws of reason governing free Will in general, must at the same time be internal grounds of determination of will, although these laws may not always be regarded from this point of view.

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III [AIV]
Rudimentary Concepts of the Metaphysics of Morals
(*Philosophia practica universalis*)

The concept of *freedom* is a pure concept of reason. In consequence it is transcendent for theoretical philosophy; that is, it is a concept for which no corresponding example can be given in any possible experience. Accordingly, it does not constitute an object of any theoretical knowledge that is possible for us; and it can by no means be valid as a constitutive principle of speculative reason, but can be valid only as a regulative and, indeed, merely negative principle of speculative reason. In the practical exercise of reason, however, the concept of freedom proves its reality through practical basic principles. As laws of a causality of pure reason, these principles determine the will independently of all empirical conditions (independently of anything sensible) and prove the existence in us of a pure Will in which moral concepts and laws have their origin.

On this concept of freedom, which is positive (from a practical point of view), are founded unconditional practical laws, which are called *moral*. For us, these moral laws are *imperatives* (commands or prohibitions), for the will is sensibly affected and therefore does not of itself conform to the pure Will, but often opposes it. Moreover, they are categorical (unconditional) imperatives. In being unconditional, they are distinguished from technical imperatives (precepts of skill), which always give only conditional commands. According to these

[23] [Kant's doctrine of outer and inner sense is expounded in his *Critique of Pure Reason* A 23/B 37 *et passim.*]

categorical imperatives, certain actions are permitted or not permitted, that is, they are morally possible or impossible. However, some actions or their opposites are, according to these imperatives, morally necessary, that is, obligatory. Hence, for such actions there arises the concept of a duty, the obedience to or transgression of which is, to be sure, combined with a pleasure or displeasure of a special kind (that of a moral *feeling*). But we can take no account of this pleasure or displeasure in the practical laws of reason because these feelings do not relate to the ground of the practical laws, but only to the subjective effect on the mind that accompanies the determination of our will by these laws, and because such feelings can differ greatly in different persons without objectively—that is, in the judgment of reason—adding or taking away anything from the validity or influence of these laws.

The following concepts are common to both parts of the meta- 222
physics of morals.

Obligation is the necessity of a free action under a categorical imperative of reason.

Remark:

An imperative is a practical rule through which an action, in itself contingent, is made necessary. An imperative is distinguished from a practical law by the fact that, though the latter represents the necessity of an action, it does not consider whether this necessity already necessarily resides internally in the acting subject (as in the case of a holy being) or whether it is contingent (as in man). Where the former is the case, there is no imperative. Accordingly, an imperative is a rule the representation of which makes necessary a subjectively contingent action and thus represents the subject as one who must be constrained (necessitated) to conform to this rule.

The categorical (unconditional) imperative is one that does not command mediately, through the representation of an end that could be attained by an action, but immediately, through the mere representation of this action itself (its form), which the categorical imperative thinks as objectively necessary and makes necessary. Examples of this kind of imperative can be supplied by no other practical discipline than the one that prescribes obligation (moral philosophy). All other imperatives are technical and altogether conditional. The ground of the possibility of categorical imperatives lies in the fact that they relate to no

determination of will (through which a purpose can be ascribed to it) other than its freedom.

An action is *permitted* (*licitum*) if it is not opposed to obligation, and this freedom that is not limited by any opposing imperative is called entitlement (*facultas moralis*).[24] Hence it is obvious what is meant by *unpermitted* (*illicitum*).

Duty is that action to which a person is bound. It is therefore the content [*Materie*] of obligation. As such, (as far as action is concerned), duty remains the same, although we can be obligated to it in different ways.

Remark:

223 The categorical imperative, inasmuch as it asserts an obligation with regard to certain actions, is a morally practical *law*. But, because obligation includes, not only practical necessity (of the sort that a law in general asserts), but also constraint,[25] the imperative mentioned is a law either of command or of prohibition according to whether the performance or the nonperformance is represented as a duty. An action that is neither commanded nor prohibited is simply permitted, because there is no law that limits freedom (entitlement)[26] and, therefore, also no duty with respect to it. Such an action is called morally indifferent (*indifferens, adiaphoron, res merae facultatis*). We may ask whether there are any such actions and, if there are, whether in order to be free to do or forbear as one wants, a law of permission (*lex permissiva*) would be needed in addition to a law of command (*lex praeceptiva, lex mandati*) and a law of prohibition (*lex prohibitiva, lex vetiti*). If this were so, then entitlement[27] would not always apply to an indifferent action (*adiaphoron*), since, for such an indifferent action, if one looks at it in terms of ethical laws no special law would be required.[28]

An action is called a *deed* [*Tat*] insofar as it stands under laws of obligation and, consequently, insofar as the subject is considered in

[24] [*Befugnis*]

[25] [*Nötigung*]

[26] [*Befugnis*]

[27] [*Befugnis*]

[28] [*sittlichen Gesetzen*]

this action [or obligation] under the aspect of the freedom of his will. Through such an act, the agent is regarded as the originator of the effect, and this effect together with the action itself can be imputed to him if he is previously acquainted with the law by virtue of which an obligation rests on him.

A *Person* [*Person*] is that subject whose actions are susceptible to *imputation*.[29] Accordingly, *moral personality* [*moralische Persönlichkeit*] is nothing other than the freedom of a rational being under moral laws (whereas psychological personality is merely the capacity to be conscious of the identity of one's self in the various conditions of one's existence). From this it follows that a Person is subject to no laws other than those that he gives himself (either alone or at least with others at the same time).

A *thing* [*Sache*] is something that is not susceptible to imputation. Every object of a free will that itself lacks freedom is therefore called a thing (*res corporalis*).[30]

Right or wrong in general (*rectum aut minus rectum*) [refer to] a deed insofar as it accords with or is opposed to duty (*factum licitum aut illicitum*), without regard to what may be the content or the origin of the 224
duty. A deed opposed to duty is called a *transgression* (*reatus*).

An unintentional transgression that can at the same time be imputed is called a simple fault (*culpa*) [*Verschuldung*]. An intentional transgression (that is, one accompanied by the consciousness that it is a transgression) is called a crime (*dolus*). That which is right according to external laws is called [legally] just (*iustum*); what is not so is [legally] unjust (*iniustum*).[31]

A *conflict of duties* (*collisio officiorum s. obligationum*) would be a relationship between duties by virtue of which one of them would (wholly or partly) cancel out the other. Since, however, duty and obligation are in general concepts that express the objective practical necessity of certain actions and because two mutually opposing rules cannot be necessary at the same time, then, if it is a duty to act according to one of them, then it is not only not a duty but contrary to duty to act according to the other. It follows, therefore, that a conflict of duties and obligations is inconceivable (*obligationes non colliduntur*). It may,

[29] [*Zurechnung*]

[30] ["Corporeal things"—a concept borrowed from Roman law.]

[31] [The German terms are *gerecht* and *ungerecht*. They refer to what is "just" and "unjust" according to applied or legal justice, as defined by the positive Law.]

however, very well happen that two grounds of obligation (*rationes obligandi*), one or the other of which is inadequate to bind as a duty [*Verpflichtung*] (*rationes obligandi non obligantes*), are united in a subject and in the rule that he prescribes to himself, and then one of the grounds is not a duty. When two such grounds are in conflict, practical philosophy does not say that the stronger obligation prevails (*fortior obligatio vincit*), but that the stronger ground binding to a duty [*Verpflichtungsgrund*] prevails (*fortior obligandi ratio vincit*).[32]

In general, binding laws for which an external legislation is possible are called external laws (*leges externae*). Among external laws, those to which an obligation can be recognized a priori by reason without external legislation are *natural laws*, whereas those that would neither obligate nor be laws without actual external legislation are called *positive laws*. Hence it is possible to conceive of an external legislation which contains only positive laws; but in that case it would have to be preceded by a natural law providing the ground of the authority of the legislator (that is, his entitlement to obligate others through his mere will).

225 The basic principle that makes certain actions a duty is a practical law. The rule that an agent adopts on subjective grounds as his principle is called his *maxim*; it follows therefore that the maxims of agents may vary greatly with regard to particular laws.

The categorical imperative, which in general only asserts what obligation is, is this: act according to a maxim that can at the same time qualify as a universal law. Therefore, first of all, you must examine your actions in terms of their basic subjective principle. But you can only recognize whether or not this principle is also objectively valid by this: that, when your reason puts it to the test of conceiving yourself as at the same time thereby legislating universally [and] that it qualifies for such universal legislation.

The simplicity of this law, in comparison to the great and manifold consequences that can be drawn from it, along with its ability to command without obviously being supported by a motive, must frankly at first glance be disconcerting. But, in our astonishment at the capacity of our reason to determine will by the mere Idea of the qualification of a maxim for the universality of a practical law, we learn that it is just these practical (moral) laws that first make known a property of will,

[32] ["The stronger ground of obligation wins."]

namely, freedom. That is a property that speculative reason never could have acquired either from a priori grounds or through experience, and the possibility of which speculative reason could by no means prove even if it did arrive at it. At the same time, practical laws incontestably prove this freedom. Consequently, it should surprise us less to find laws that are indemonstrable and yet apodeictic, like mathematical postulates. At the same time, we will see a whole field of practical knowledge opening before us, a field that is absolutely closed to reason in its theoretical use when it treats the same Idea of freedom or, indeed, any other of its Ideas of the supersensible.

The agreement of an action with the law of duty is its *legality* (*legalitas*); the agreement of the *maxim* of the action with the law is its *morality* (*moralitas*).[33] A *maxim* is the *subjective* principle of action that the subject adopts as a rule for himself (namely, how he wants to act). In contrast, the basic principle of duty is that which reason absolutely and therefore objectively commands (how he ought to act).

The supreme basic principle of moral philosophy is therefore: act 226
according to a maxim that can at the same time be valid as a universal law. Every maxim that does not so qualify is opposed to morality [*Moral*].

Remark:

Laws proceed from the Will; maxims from the will. In human beings the will is free.[34] The Will, which relates to nothing but the law, cannot be called either free or unfree, for it relates, not to actions, but directly to legislation for the maxims of action (and is therefore practical reason itself). Consequently, it is absolutely necessary and is itself incapable of constraint. Only will can, therefore, be called free.

Freedom of will cannot be defined, however, as the capacity to choose [*Wahl*] to act for or against the law (*libertas indifferentiae*), as some people have tried to define it, even though as a phenomenon will provides frequent examples of this in experience. For freedom (as it first becomes known to us through the moral law) is known only as a *negative* property within us, the property of not being constrained to action by any sensible determining

[33] [*Gesetzmässigkeit/Sittlichkeit*]

[34] [For a discussion of these two senses of "will," see Translator's Introduction, pp. xxix–xxx.]

grounds. Freedom as a *noumenon*, however—that is, in relation to the capacity of a person regarded merely as an intelligence—[that is] in its positive character as it constrains sensible will, freedom cannot by any means be theoretically described. But we can see clearly that, although experience tells us that man as a sensible being exhibits a capacity to choose [*zu wählen*], not only in accordance with the law, but also in opposition to it, yet his freedom as an intelligible being cannot be thus defined, because appearances can never make a supersensible object (as is free will) intelligible. Furthermore, we can see that freedom can never be posited on the fact that the rational subject is able to choose in opposition to his (legislative) reason, even though experience often enough proves that this does happen (and yet we cannot comprehend the possibility of this).

For it is one thing to admit a proposition (of experience) and quite another to make it the defining principle (of the concept of free will) and the universal mark that distinguishes free will
227 from *arbitrio brute s. servo* ["brute or servile will"], since in the first case [i.e. of experience] we do not claim that the mark necessarily belongs to the concept, which we are required to do in the latter case [the defining principle of free will]. Only the freedom relating to the internal legislation of reason is properly a [positive] capacity; the possibility of deviating from it is an incapacity. How, then, can the former be explained by the latter? Such a definition is a *bastard definition* (*definitio hybrida*), for to the practical concept it tacks on the exercise of it as experience teaches it; thus, it presents the concept in a false light.

A (morally practical) *law* is a proposition that contains a categorical imperative (a command). He who commands (*imperans*) through a law is the *lawgiver* (*legislator*). He is the originator (*auctor*) of the obligation imposed by the law, but is not always the originator of the law. In the latter case, the law is positive (contingent) and arbitrary. The law that binds us a priori and unconditionally through our own reason can also be expressed as proceeding from the Will of a supreme lawgiver, that is, of one who has only rights and no duties (therefore from the divine Will). But that only means the Idea of a moral being whose Will is law for all, yet without thinking of him as the originator [i.e. creator] of that law.

Imputation (*imputatio*) in the moral sense is the judgment through which someone is regarded as the originator (*causa libera* ["free cause"]) of an action, which is then called a "deed" (*factum*) and stands under laws. If this judgment also carries with it the juridical consequences of this deed, it is a legally binding judicially valid [*rechtshräftig*] imputation (*imputatio iudiciaria s. valida*); otherwise it would be only a *critical*[35] imputation (*imputatio diindicatoria*). That Person (physical or moral) who is entitled to attribute a legally binding judicial imputation is called a *judge* or a *court* (*iudex s. forum*).

When someone does something that is in conformity with duty but that is more than what he can be compelled to do by the law it is *meritorious* (*meritum*); when someone does only what is required by the law it is *dutiful* [*Schuldigkeit*] (*debitum*); finally, when someone does less than what the law demands it is *moral demerit* (*demeritum*). The juridical effect of demerit is *punishment* (*poena*); that of a meritorious deed is *reward* (*praemium*), provided that the reward promised in the law was the moving cause of the deed. Conduct that agrees with dutifulness has no juridical effect. Charitable recompense (*remuneratio s. repensio beneficа*) relates to the deed in no way that has a relation of justice [*Rechtsverhaltnis*].

Remark:

The good or bad consequences of a dutiful action as well as the consequences of omitting a meritorious action cannot be imputed to the subject (*modus imputationis tollens*).

The good consequences of a meritorious action as well as the bad consequences of an illegitimate action can be imputed to the subject (*modus imputationis ponens*).

Subjectively[36] considered, the degree of imputability (*imputabilitas*) of actions must be estimated by the magnitude of the obstacles that have to be overcome. The greater the natural obstacles (of sensibility) and the less the moral obstacle (of duty), the higher is the imputation of merit in a good deed, for example, if, at a considerable sacrifice, I rescue from dire necessity a person who is a complete stranger to me.

[35] [*beurteilende*]

[36] [Empirically]

On the other hand, the smaller the natural obstacle and the greater the [moral] obstacle [based on] grounds of duty, so much the more is transgression (as blameworthy) imputed. Therefore, the state of mind of the subject, namely, whether he committed the deed with emotion or in cool deliberation, makes a significant difference in imputation.

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IV [AIII]
Of the Subdivision of a Metaphysics of Morals*

All legislation (whether it prescribes internal or external actions, and whether it is prescribed a priori through simple reason or through another person's will) consists of two elements: first, a *law* represents objectively the action that is to be done as necessary, that is, that makes the action into a duty; second, a motive that *subjectively* links the ground determining will to this action with the representation of the law. So this second element amounts to this, that the law makes duty the motive. Through the first element, the action is represented as a duty; as such, it is mere theoretical knowledge of the possible determination of will, that is, a knowledge of practical rules. Through the second element, the obligation so to act is joined in the subject with a determining ground of will in general.

Therefore (even though one legislation may agree with another with regard to an action required as a duty for example, the actions
219 might in all cases be external ones) legislations can nevertheless be differentiated from each other with regard to their motives. The kind of legislation that makes an action a duty and at the same time makes this duty the motive, is *ethical*. If, however, the legislation does not include the latter condition in the law and therefore admits a motive other

* The Deduction of the division of a system, that is, the proof of its completeness as well as of its continuity, namely, that the transition from the concept being divided to each member of the division in the whole series of subdivisions takes place without any gaps (*divisio per saltum*), is one of the most difficult conditions for the constructor of a system to fulfill. It is even difficult to say what is the ultimate divided concept of which right and wrong (*aut fas aut nefas*) are divisions. It is the act of free will in general. Similarly, teachers of ontology begin with the concepts of something and nothing without being aware that these are already subdivisions of a concept that is not given but that can only be the concept of an object in general.

than the Idea of duty itself, it is *juridical*. As regards juridical legislation, it is easily seen that the motive here, being different from the Idea of duty, must be derived from pathological grounds determining will, that is, from inclinations and disinclinations and, among these, specifically from disinclinations, since it is supposed to be the kind of legislation that constrains, not an attraction that allures.

One calls the mere agreement or disagreement of an action with the law, without regard to the motive of the action, *legality*; but, when the Idea of duty arising from the law is at the same time the motive of the action, then the agreement is called the *morality* of the action.

Duties arising from juridical legislation can only be external duties because such legislation does not require that the Idea of this duty, which is internal, be of itself the ground determining the will of the agent. Because such legislation still requires a suitable motive for the law, it can only join external motives with the law. In contrast, ethical legislation also makes internal actions duties, without, however, excluding external actions. Rather, it applies generally to everything that is a duty. But, for the very reason that ethical legislation incorporates in its law the internal motive of the action (the Idea of duty), which is a determination that must by no means be joined with external legislation, ethical legislation cannot be external (not even the external legislation of a divine Will), although it may adopt *duties* that rest on external legislation and take them, insofar as they are duties, as motives in its own legislation.

From this it can be seen that all duties, simply because they are duties, belong to Ethics.[37] But their *legislation* is not therefore always included under Ethics; in the case of many duties, it is quite outside Ethics. Thus, Ethics commands me to fulfill my pledge given in a contract, even though the other party could not compel me to do so; but the law (*pacta sunt servanda*)[38] and the duty corresponding to it are taken by Ethics from Law [*Rechtslehre*]. Accordingly, the legislation 220
that promises must be kept comes not from Ethics, but from *ius*.[39] From this, Ethics simply teaches that if the motive that juridical legis-

[37] [*Ethik* is translated as Ethics,with a capital E; "ethics" is the translation of *Tugendlehre*. For the most part, Kant uses these terms interchangeably.]

[38] ["Agreements ought to be kept."]

[39] ["Right," "Law," "justice." *Ius* is the word that Kant translates as *Rechtslehre* (theory of justice). He uses *ius* here and *Recht* (justice) later in this paragraph instead of *Rechtslehre* because these two nouns are of neuter gender, and, in his

lation combines with that duty, namely, external coercion, were absent, the Idea of duty alone would still be sufficient as a motive [for this duty]. For if this were not so and the legislation itself were not also juridical and the duty arising from it not properly a duty of justice (in contradistinction to a duty of virtue), then keeping faith (in accordance with one's promise in a contract) would be put in the same class as actions of benevolence and the manner in which we are bound to perform the latter as a duty, and this certainly must not be the case. It is not a duty of virtue to keep one's promise, but a duty of justice, one that one can be coerced to perform. Nevertheless, it is still a virtuous action (evidence of virtue) to do so where no coercion can be applied. Theory of justice and ethics [*Rechtslehre* and *Tugendlehre*] are distinguished, therefore, not so much by their differing duties as by the difference in the legislation that binds the one or the other motive to the law.

Ethical legislation is legislation that cannot be external (even though the duties themselves may in some cases be external); juridical legislation is legislation that can also be external. Thus, keeping one's promise in a contract is an external duty; but the command to do so merely because it is a duty, without regard to any other motive, belongs only to *internal* legislation. Accordingly, this obligation is reckoned as belonging to Ethics, not as being a special kind of duty (a special kind of action to which one is bound)—for it is an external duty in Ethics as well as in justice—but because the legislation in this case is internal and cannot have an external legislator. For the same reason, duties of benevolence, though they are external duties (obligations to external actions), are reckoned as belonging to Ethics because their legislation can only be internal.

To be sure, Ethics also has duties peculiar to itself (for example, duties to oneself); but it also has duties in common with justice, though the *manner of being bound* to such duties differs. The peculiarity of ethical legislation is that it requires actions to be performed simply because they are duties and makes the basic principle of duty itself, no matter where the duties come from, into a sufficient motive of will. Thus, though there are indeed many direct ethical duties, internal legislation also makes all the rest of them indirectly ethical.

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typical cryptic style, Kant wants to draw the distinction between *Recht* (*ius*) and *Ethik* (*Tugendlehre*) grammatically as well as conceptually, neuter nouns and pronouns for one and feminine nouns and pronouns for the other.]

Division of the Metaphysics of Morals in General[40]

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I

All duties are either duties of justice (*officia iuris*) [*Rechtspflichten*], that is, those for which external legislation is possible, or duties of virtue (*officia virtutis s. ethica*) [*Tugendpflichten*], for which such legislation is not possible. The latter cannot be the subject matter of external legislation because they refer to an end that is (or the adoption of which is) at the same time a duty, and no external legislation can effect the adoption of an end (because that is an internal act of the mind), although external actions might be commanded that would lead to this [outcome] without the subject himself making them his end.

Remark:

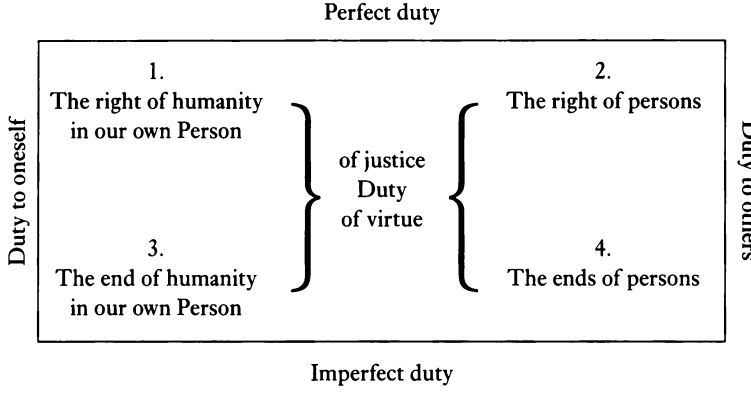
Inasmuch as duties and rights are related to each other, why is moral (*Moral*) philosophy usually (for example, by Cicero) labeled the theory of duties and not also of rights? The reason for this is that we know our own freedom (from which all moral laws and hence all rights as well as duties are derived) only through the moral imperative, which is a proposition commanding duties. The capacity to obligate others to a duty, that is, the concept of a right, can be subsequently derived from this imperative.

II

In the theory of duties, persons [*der Mensch*] can and should be represented from the point of view of the property of their capacity for freedom, which is completely supersensible, and so simply from the point of view of their humanity considered as a personality, independently of physical determinations (*homo noumenon*). In contradistinction to this, persons can be regarded as subjects affected by these determinations (*homo phaenomenon*). Accordingly, [the ideas of] just and end, which are related to duty under these two aspects, will in turn give us the following division.

[40] [Transposed from the end of *Introduction to Rechtslehre* to the end of *Introduction to Metaphysics of Morals*]

240 **Division According to the Objective Relationship of the Law to Duty**[41]



III

241 Inasmuch as subjects may be related to one another in several ways with respect to the relationship of right to duty (genuinely or spuriously), a division can also be made from this point of view.

Division According to the Subjective Relationship Between the Subject Who Imposes the Duty and the Subject Bound by the Duty

1.
The juridical relationship of persons to beings who have neither rights nor duties.

Vacat,[42] since these are nonrational beings that neither bind us nor can we be bound by them.

2.
The juridical relationship of persons to beings who have both rights and duties.

Adest, for this is the juridical relationship of persons to persons.[43]

3.
The juridical relationship of persons to beings who have only duties but no rights.

V*acat*, since these would be persons without Personality (serfs, slaves).[44]

4.
The juridical relationship of persons to a being who has only rights but no duties (God).

Vacat, that is, in mere philosophy, because it is not an object of possible experience.

[41] [*Gesetz, Pflicht*]

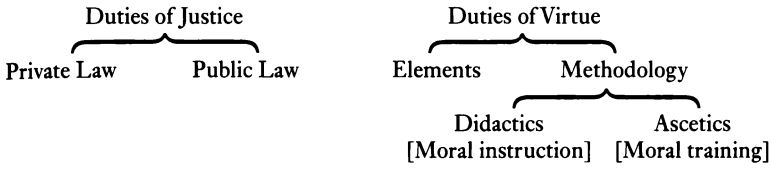
[42] [*Vacat*: has no members; *Adest*: has members]

[43] [*Menschen*: persons, human beings]

[44] [*Personlichkeit*. The term is used here with the technical legal meaning, where

Thus a real relationship between right and duty can occur only under No. 2. The reason that such a relationship is not to be found under No. 4 is that it would require a transcendent duty, that is, a duty for which no external subject imposing the duty can be given. Hence, the relationship is only ideal from the theoretical point of view; that is, it is a relationship to an object of thought that we make for ourselves, although the concept thereof is not completely empty, but one that is fruitful from an internal, practical point of view in relation to ourselves and to maxims of internal morality, inasmuch as our whole immanent (accomplishable) duty consists of this purely imagined 242
relationship.

Division of Morality as a System of Duties in General



and so on, everything that comprises, not only the matter [content], but also the architectonic form of a systematic moral philosophy [*wissenschaftliche Sittenlehre*] until the metaphysical elements will have laid completely bare the universal principles.

[*Note: The original table, reproduced in* AA *6, 242 differs from the above in that "Elements" and "Methodology" made up the top division. Ludwig and Ebeling argue that this is an error, because there is no methodology in the* RL. *The table as given here incorporates this correction, suggested by Ludwig and accepted by Ebeling.*]

"Personality" implies being subject of rights and duties; "persons" (lower case) is the translation for *Mensch.*]

INTRODUCTION TO THE ELEMENTS OF JUSTICE

§ A. What is the theory of justice?[45]

The essence of those laws for which an external legislation is possible is called justice[46] (*Ius*). Where such legislation is actual, the body of the laws is called positive Law [rights]. A person who is well informed in the latter is a legal expert[47] in positive law, or a jurist[48] (*Iurisconsultus*). He is said to be skilled in the law (*Iurisperitus*) if he knows these external laws also externally in the sense that he knows how to apply them to concrete cases presented in experience. Such skill can also become jurisprudence[49] (*Iurisprudentia*). Without the two together [i.e. theoretical and applied], however, the theory of justice (Law) is pure juridical science (*Iurisscientia*).[50] The last designation applies to the systematic knowledge of the domain of Natural Law (*Ius naturae*), although an expert in Natural Law must be able to provide immutable principles for all positive legislation.[51]

[45] [The German word is *Rechtslehre.* This passage clearly brings out Kant's equivocal use of this word, first, to refer to the domain or theory of Law (i.e. justice), which is also called "doctrine," and second, to refer to its subject matter, Law or justice. The definition that he gives, as well as the reference to the Latin *Ius,* focus on the second sense of *Rechtslehre,* the subject matter of this book.]

[46] [*Rechtslehre*: the domain of Law. It is clear from the context, including the reference to *ius*, that Kant is using this word to refer to what civil jurists call "objective right." See Translator's Introduction.]

[47] [*Rechtskundige*]

[48] [*Rechtsgelehrte*]

[49] [*Rechtsklugheit*]

[50] [In *The Conflict of Faculties* (Gregor pp. 36–9; *AA* VII 24–5), Kant maintains that the jurist who applies the law acts as a civil servant and as such is obligated to apply the decrees of the positive law without questioning whether they are true or false, i.e. consistent with the Natural Law.]

[51] [The construction of the last three sentences is so ambiguous that it is not clear whether Kant intends the term "juridical science" to apply to the science of posi-

§ B. What is justice?

This question can be just as perplexing for a jurist as the well-known question "What is truth?" is for a logician, assuming, that is, that he does not want to lapse into a mere tautology or to refer us to the laws of a particular country at a particular time. A jurist can, of course, tell us what the actual Law of the land is (*quid sit iuris*), that is, what the laws say or have said at a certain time and at a certain place. But whether what these laws prescribe is also just and the universal criterion that will in general enable us to recognize what is just or unjust (*iustum et iniustum*)—the answer to such questions will remain hidden 230
from him unless, for a while, he abandons empirical principles and searches for the sources of these judgments in pure reason. [To do so is necessary] in order to lay the foundations of any possible positive legislation. (Although [the empirical knowledge of these actual laws] can provide us with helpful clues), a purely empirical theory of justice and Law (like the wooden head in Phaedrus'[52] fable) is very beautiful, but, alas, it has no brain!

The concept of justice, insofar as it relates to an obligation corresponding to it (that is, the moral concept of justice), applies [only under the following three conditions]. First, it applies only to the external and—what is more—practical relationship of one person to another in which their actions can as facts exert an influence on each other (directly or indirectly). Second, the concept applies only to the relationship of a will to another person's will, not to his wishes or desires (or even just his needs), which are the concern of acts of benevolence and charity. Third, the concept of justice does not take into consideration the matter [content] of the will, that is, the end that a

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tive Law, of Natural Law, or of both. But the nomenclature introduced here has little significance for the rest of this treatise. The German terms are as follows:

"theory of justice (Law)"—*Rechtslehre*
"jurist"—*Rechtsgelehrte*
"positive Law"—*positives Recht*
"legally skilled"—*rechtserfahren*
"legal specialist"—*Rechtskundige*
"legal knowledge"—*Rechtsklugheit*
"juridical science"—*Rechtswissenschaft*]

[52] [A Roman fabulist of the early first century after Christ]

person intends to accomplish by means of the object that he wills; for example, we do not ask whether someone who buys wares from me for his own business will profit from the transaction. Instead, in applying the concept of justice we take into consideration only the form of the relationship between the wills insofar as they are regarded as free, and whether the action of one of them can be conjoined with the freedom of the other in accordance with a universal law.

Justice is therefore the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law of freedom.

§ C. Universal principle of justice

"Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law."

If, therefore, my action or my condition in general can coexist with the freedom of everyone in accordance with a universal law, then anyone who hinders me in performing the action or in maintaining the condition does me an injustice, inasmuch as this hindrance (this opposition) cannot coexist with freedom in accordance with universal laws.

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It also follows that I cannot be required to adopt as one of my maxims this principle of all maxims, that is, to make this principle a maxim of my action. For anyone can still be free, even though I am quite indifferent to his freedom or even though I might in my heart wish to infringe on his freedom, as long as I do not through an external action violate his freedom. That I adopt as a maxim the maxim of acting justly is a requirement that Ethics [rather than justice] imposes on me.

Hence the universal law of justice is: act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law. Admittedly, this law imposes an obligation on me, but I am not at all expected, much less required, to restrict my freedom to these conditions for the sake of this obligation itself. Rather, reason says only that, in its very Idea, freedom is restricted in this way and may be so restricted by others in practice. Moreover, it states this as a postulate not susceptible of further proof. Given that we do not intend to teach virtue, but only to give an account of what is just, we may not and ought not to represent this law of justice as being itself a motive.

§ D. Justice is united with the entitlement to use coercion

Any opposition that counteracts the hindrance of an effect promotes that effect and is consistent with it. Now, everything that is unjust is a hindrance to freedom according to universal laws. Coercion, however, is a hindrance or opposition to freedom. Consequently, if a certain use of freedom is itself a hindrance to freedom according to universal laws (that is, is unjust), then the use of coercion to counteract it, inasmuch as it is the prevention of a hindrance to freedom, is consistent with freedom according to universal laws; in other words, this use of coercion is just. It follows by the law of contradiction that justice [a right] is united with the entitlement to use coercion against anyone who violates justice [or a right].

§ E. Justice in the strict sense can also be represented as the possibility of a general reciprocal use of coercion that is consistent with the freedom of everyone in accordance with universal laws

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This statement amounts to saying that justice [or a right] cannot be conceived of as composed of two separate parts, namely, the obligation implied by a law and the entitlement that someone has, by virtue of obligating another through his will, to use coercion to make the other fulfill [his obligation]. Instead, the concept of justice [or of a right] can be held to consist immediately of the possibility of the conjunction of universal reciprocal coercion with the freedom of everyone.

Just as justice in general has as its object only what is external in actions, so strict justice, inasmuch as it contains no ethical elements, requires no determining grounds of the will besides those that are purely external, for only then is it pure and not confused with any prescriptions of virtue. Consequently, strict (narrow) justice is that which alone can be called wholly external. Strict justice is admittedly founded on the consciousness of each person's obligation under the law; but, if it is to remain pure, this consciousness may not and cannot

be invoked as a motive in order to determine the will to act in accordance with it. For this reason, strict justice relies instead on the principle of the possibility of external coercion that is compatible with the freedom of everyone in accordance with universal laws.

Accordingly, when it is said that a creditor has a right to demand from his debtor the payment of a debt, this does not mean that he can persuade the debtor that his own reason itself obligates him to this performance; on the contrary, to say that he has such a right means only that the use of coercion to make anyone do this is entirely compatible with everyone's freedom, including the freedom of the debtor, in accordance with universal laws. Thus "right" [or "justice"] and "entitlement to use coercion" mean the same thing.

Remark:

The law of a reciprocal use of coercion that is necessarily consistent with everyone's freedom under the principle of universal freedom may in certain respects be regarded as the construction of this concept [of justice]; that is, it exhibits this concept in a pure a priori intuition on the analogy of the possibility of the free movement of bodies under the law of the equality of action
233 and reaction. Just as in pure mathematics we cannot immediately deduce the properties of the object from a concept, but can only discover them by means of the construction of the concept, so likewise the exhibition of the concept of justice is not made possible so much by the concept itself as by the general reciprocal and equal use of coercion that comes under a universal law and is consistent with it. In the same way that this dynamic concept [of the equality of action and reaction] still has a ground in a purely formal concept of pure mathematics (for example, of geometry), reason has also taken as much care as possible to provide the understanding with a priori intuitions to aid in the construction of the concept of justice.[53] [A geometrical analogy may also throw

[53] [This passage is complicated because Kant seems in fact to be calling attention to three distinct analogies. First, there is an analogy between the free movements of human beings and those of bodies, in that the law of the equality of action and reaction, reciprocal coercion, makes "freedom" possible in both cases. Another analogy appears in the introduction of the typical Kantian concept of a "construction of a concept." "To *construct* a concept means to exhibit a priori the intuition which corresponds to a concept. . . . Thus I construct a triangle by representing the object which corresponds to this concept either by imagination alone, in pure

light on the concept of justice and right. In geometry, there are two uses of the term "right" (*rectum*).] On the one hand, we may speak of a right line [straight line], in which case the opposite of "right" is "curved" [or "crooked"]; or on the other hand, we may speak of a right angle, in which case the opposite is "oblique."[54] The unique feature of a right line is that only one such line can be drawn between two points; similarly, where two lines intersect or join each other, there can be only one right angle. The perpendicular forming the right angle may not incline more to one side than to the other, and it divides the space on both sides equally. This bears an analogy to jurisprudence, which wants to know exactly (with mathematical precision) what the property of everyone is. In ethics, in contrast, such narrow exactitude should not be expected, since it cannot refuse to make some room for exceptions (*latitudinem*).

But, without having to enter the field of Ethics, we are confronted with two cases that claim to be decidable by justice, but for which no one can be found who could decide them and which, as it were, belong to Epicurus' *intermundia*.[55] These two cases must first be excluded from jurisprudence proper, to which we shall presently proceed, so that their shaky principles

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intuition, or in accordance therewith also on paper, in empirical intuition—in both cases completely a priori, without having borrowed the pattern from any experience. The single figure which we draw is empirical, and yet it serves to express the concept, without impairing its universality"—*Critique of Pure Reason*, trans. Kemp Smith, B 741–742. According to Kant, all mathematical knowledge is gained from the construction of concepts. In other words, in order to accomplish a complete analysis of the concept of justice, we need to resort to more concrete phenomena (for example, the use of coercion). Finally, at the end of this passage, Kant introduces a third analogy which points up the necessity for having "intermediate" concepts; thus, geometry provides "intermediate concepts" for physics, and similarly there must be "intermediate concepts" in Law.]

[54] [The translation into English of the next few lines is rendered difficult because of the various uses of the German word *Recht*. I have consequently translated rather freely, without, however, fundamentally changing the sense of the original. It may be pointed out that Kant was without doubt deliberately making puns in this passage, because he goes out of his way to use certain expressions. Thus, besides punning on *Recht*, he was punning on *krumm* (curved), which also means "crooked" or "dishonest," and on *schief* (oblique), which may mean "askew" or "crooked."]

[55] [Spaces between the worlds]

will not acquire any influence on the fixed basic principles of that discipline itself.

APPENDIX TO THE INTRODUCTION TO THE ELEMENTS OF JUSTICE

Equivocal Rights (*Ius aequivocum*)

With every right in the narrow sense (*ius strictum*) is bound the entitlement to use coercion. But one can also think of a right in a wider sense
234 (*ius latum*) where the entitlement to use coercion cannot be set by any law. Now, there are two true or supposed rights of this kind—equity and the right of necessity. The first assumes a right without any coercion; the second, coercion without any right. It can be easily seen that this equivocation arises from the fact that there are problematic rights with regard to which no judge could be put up to render a decision.

I. Equity (*Aequitas*)

Equity (regarded objectively)[56] is by no means the ground of a demand based simply on the ethical duty of others (their benevolence and kindness). Rather, someone who demands something on the ground of equity bases his demand on a right, except that the requisite conditions are missing that would make it possible for a judge to determine how much and by what means the claims can be properly met. [For example,] when one of the partners of a mercantile company formed under the condition of sharing the profits equally has nevertheless done more for the company than the other members and through various mishaps has thereby lost more than the others, then on the grounds of equity he can demand that he receive more than just an equal share with the others. If he rests his case solely on justice proper (strict right) and if one imagines a judge in this case—the judge would have no definite particulars (data) to serve as a guide in rendering a decision as to how much he should receive according to the contract; thus his request would be refused. Again, a domestic servant whose wages through the end of the year have been paid in a currency that has in the intervening period become devalued, with the result that he can no longer buy what he could have bought with the same money at

[56] [Observe that Kant uses "objective" and "subjective" as equivalents of "a priori" and "empirical."]

the time of concluding the contract, cannot appeal to a right to be compensated for the loss caused by the fact that the same amount of money no longer has the same value. The servant can only appeal to equity (a silent goddess who cannot be heard), because nothing was stipulated about this in the contract, and a judge cannot pronounce in accordance with unstipulated conditions.

From this it follows that an *equity court* (for disputes with others over their rights) implies a self-contradiction. Only when the rights of the judge himself are involved and over matters of which he can dis- 235
pose for his own person may and should he give a hearing to equity. For example, this might happen in a case in which the Crown itself takes over the loss that others have suffered in its service and which it is regarded as requiring compensation, although by strict justice and strict right to reject the claim on the grounds that they undertook the service at their own risk.

Indeed, the motto (*dictum*) of equity is: "The strictest right is the greatest injustice" (*summum ius summa iniuria*); but for this evil there is no remedy in the proceedings of justice and right, even though a claim of justice is involved. For the claim belongs only to the court of conscience (*forum poli*), while every question of actual Law must be taken before a civil court (*forum soli*).[57]

II. The Right of Necessity (*Ius necessitatis*)

This imagined right is supposed to authorize me to take the life of another person when my own life is in danger, even if he has done me no harm. It is quite obvious that this conception implies a self-contradiction within jurisprudence,[58] since the point in question here has nothing to do with an unjust assailant on my own life, which I defend by taking his life (*ius inculpatae tutelae*), for even in such a situation the recommendation of moderation (*moderamen*) is not part of justice, but belongs only to Ethics. The question under discussion is whether I am permitted to use violence against someone who himself has not used it against me.

It is clear that this allegation [of a right based on necessity] is not to be understood objectively, according to what a law might prescribe,

[57] [*Das Gewissensgericht; das burgerliche Recht. Forum poli* means "the court of heaven" (*polus*: heaven), and *forum soli* means "the court of the earth" (*solum*: earth).]

[58] [*Rechtslehre*]

but merely subjectively, as the sentence might be pronounced in a court of law. There could be no penal law assigning the death penalty to a person who has been shipwrecked and finds himself struggling with another person—both of them in equal danger of losing their lives—and in order to save his own life pushes the other person off the plank on which he had saved himself. For no threatened punishment from the law could be greater than losing his life in the first instance. Now a penal law applied to such a situation could never have the effect intended, for the threat of an evil that is still uncertain (being condemned to death by a judge) cannot outweigh the fear of an evil that is certain (being drowned). Hence, we must judge that, although an act
236 of self-preservation through violence is not inculpable (*inculpabile*),[59] it still is unpunishable (*impunibile*),[60] and this subjective exemption from punishment, through an amazing confusion among jurists, is held to be an objective legality.

The motto of the right of necessity is, "Necessity has no law" (*necessitas non habet legem*); but there still cannot be any necessity that will make what is unjust legal.

It is apparent that, in both kinds of judgment concerning justice and rights (equity and the right of necessity), the equivocation arises from a confusion of the objective with the subjective grounds of the exercise of justice ([that is, justice] before reason and before a court). Thus, on the one hand, what someone recognizes on good grounds to be just will not receive confirmation in a court of justice, and, on the other hand, what one must judge to be in itself unjust will be treated with indulgence by the court. This is a consequence of the fact that the term "justice" [or "right"] is not used with the same meaning in the two cases.

DIVISION OF THE THEORY OF JUSTICE

A. General Division of the Duties of Justice

In this division, we can well use Ulpian's[61] formulas provided that we give them a meaning that he himself indeed may not have had in mind but that can still be developed from them or given to them.

[59] [*unstraflich*]

[60] [*unstralbar*]

[61] [Domitius Ulpianus, Roman jurist (fl. A.D. 211–228). About one-third of Justinian's *Digest* consists of selections from Ulpian. These famous three general precepts are to be found in Justinian's *Institutes* 1, 1, 3.]

(1) *Be an honest person* (*honeste vive*). Juridical honorableness consists of this: maintaining in relation to others one's own worth as a human being. This duty is expressed in the proposition: "Do not make yourself into a mere means for others, but be at the same time an end for them. " This duty will be explained later[62] as an obligation resulting from the right of humanity in our own Person (*lex iusti*).

(2) *Do no one an injustice* (*neminem laede*), even if on that account you should have to give up any association with others and would have to avoid society altogether (*lex iuridica*).

(3) (If you cannot avoid the latter [i.e., association with others and 237
society]), *enter into a society with others in which each person can get and keep what is his* (*suum cuique tribue*). If the last formula were to be translated literally as "give to each what is his," it would be nonsense, inasmuch as one cannot give to someone something that he already has. In order to make sense of this formula, it must be interpreted as: "Enter into a condition in which each person has what is his guaranteed against everyone else" (*lex iustitiae*).

Thus, these three classical formulas serve at the same time as principles of the division of the system of duties of justice into internal, external, and those that contain the derivation of the latter from the former through subsumption.[63]

B. General Division of Rights

(1) Rights, considered as systematic bodies,[64] can be divided [into those based on] *Natural Law,* which rests on nothing but a set of a priori principles, and [those based on] *positive* (statutory) Law, which proceeds from the Will of a legislator.

(2) Rights considered as (moral) capacities [*moralische Vermögen*] to bind others, that is, that provide the lawful ground for binding others (*titulum*) can be divided into the main divisions of *inborn* rights and *acquired* rights. An inborn right is one that belongs to everyone by nature and independently of any juridical act; an acquired right is one that requires such an act.

[62] [Kant is probably referring to the *Metaphysical Elements of Virtue* (*TL*).]

[63] [Kant appears to be saying that the external duty not to injure others can be derived from the internal duty to assert one's own rights by using the duty to enter into civil society as an intermediary premise.]

[64] [*systematische Lehren*]

Inborn Mine and Yours can also be called *internal* (*meum vel tuum internum*), since what is external must always be acquired.

There Is Only One Innate Right

Freedom (independence from the constraint of another person's will[65]), insofar as it [this freedom] is compatible with the freedom of everyone else in accordance with a universal law, is the one sole and original right belonging to every person[66] by virtue of his humanity.

[This is] innate *equality*, that is, independence from being bound by
238 others to do more than one can also reciprocally bind them to do. Thus, it is the property of a person's being his own master (*sui iuris*)[67] comparable to being a respectable and innocent person (*iusti*), who, before any juridical act, has done no wrong[68] to anyone. Finally, [it includes] also the entitlement[69] to do anything to others that does not of itself derogate from what is [properly] theirs in the sense that they themselves would not be willing to accede to it. An example of that would be merely sharing one's thoughts with others or telling or promising them something, no matter whether what is said is true and honest or false and dishonest (*veriloquium aut falsiloquium*), for it is entirely up to them whether they want to believe him.* All these entitlements are already implied in the principle of innate freedom and are really not (as species in a division under a higher concept of right) distinct from it.

[65] [*Willkür*]

[66] [*Mensch*]

[67] [In Roman Law *sui iuris* means "possessing full social and civil rights; not under any legal disability or power of another, or guardianship." *Black's Law Dictionary*, p. 1434.]

[68] [*Unrecht*]

[69] [*Befugnis*]

* Indeed, the deliberate telling of a falsehood, even if it is done in a frivolous manner, is ordinarily called a lie (*mendacium*), because at the very least it can harm him who, after faithfully repeating the lie to others, thereby becomes a laughingstock on account of his gullibility. In the juridical sense, however, a falsehood is called a lie only if it is immediately prejudicial to the right of another; such as, for example, the false allegation that a contract has been concluded with someone in order to deprive him of what is his (*falsiloquium dolosum*). This distinction between closely

The purpose of introducing this further division of the system of Natural Law with respect to innate rights was that, when a controversy arises over an acquired right and the question is raised as to who has the burden of proof (*onus probandi*)—either with respect to a disputed fact or, if this is settled, with respect to a disputed right—someone who denies this obligation [to prove his case] can methodically appeal to his innate right of freedom (which can now be specified according to his various relations) as though he were invoking various subdivisions of rights.

Since with regard to innate, internal Mine and Yours there are not [several] rights, but only one, the two parts that make up this superior division are utterly unequal and dissimilar. Hence it can be put among the prolegomena, the preliminary observations; and the division of the elements of justice [theory of justice] will be concerned only with external Mine and Yours.

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related concepts is not ungrounded, because, when a person simply states his thoughts, the other always remains free to accept them as he pleases. Nevertheless, the well-founded rumor that such a person is one whose talk cannot be believed comes so close to calling him a liar that here the borderline that separates what belongs to *ius* [justice] from what belongs to Ethics is scarcely discernible.

Table of the Division of the Theory of Justice[70]

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[70] [This table has been moved here from the beginning of the Introduction to the Metaphysics of Morals.]

The supreme division of Natural Justice [or Law][71] cannot be into natural and social justice [or Law] (as it sometimes is thought to be), but must be into Natural Justice [Law] and civil Justice [Law]. The first of these is called private Justice [Law]; and the second, public Justice [Law]. For the condition of the state of nature is not opposed and contrasted with the social condition but with the civil condition. For within a state of nature there can indeed be society, but not a civil society (that guarantees Mine and Yours through public Law). Therefore, justice [or Law] in the state of nature is called private Justice [or Law].[72]

[71] [*Naturrecht*. Might also be translated as "Natural Law."]

[72] [For the distinction between private and public Law, see Translator's Introduction, p. xxxii.]

THE GENERAL THEORY OF JUSTICE FIRST PART: PRIVATE JUSTICE [LAW]

Concerning External Mine and Yours in General[1]

FIRST CHAPTER
Of the Mode of Having Something External Belong to One

§ 1

Something is *juridically mine* (*meum iuris*) if I am so bound to it that anyone who uses it without my consent would thereby injure me. The subjective condition of the possibility of the use of an object in general is *possession*.

An external thing would be mine, however, only if I can assume that it is possible that I can be injured by someone else's use of the thing *even when it is not in my possession*. Consequently there would be a self-contradiction in having an external thing as one's belonging [e.g. mine] if it were not possible for the concept of possession to have different meanings, namely, *sensible possession* and *intelligible possession*.

[1] [Kant uses the German words das *Meine* (mine), das *Deine* (yours), and das *Seine* (his) to designate the broadest category of "belongingness," or what might be called "assets." These terms are difficult to translate, because, unlike German, Latin, and French, English has no way of changing pronouns into nouns, except through clumsy locutions such as "what is mine" or "what belongs to me," etc. The general concept that Kant has in mind here encompasses various kinds of possession and property. Legally, it covers every kind of thing that is called *res* in Roman Law and that creates obligations for others. Philosophically, it contains the bare bones of the distinction between what is mine and what is yours, which, as such, presents a basic moral problem for Kantian autonomy, a problem that is of particular concern to Kant.]

Under the first sense is to be understood the physical possession of the object and under the second sense a purely juridical possession.[2]

The expression, "an object is external to me," may mean either that it is simply an object that is *different and distinct* from me (as subject) or that, in addition to this, the object is in another *place* (*positus*) in space or time. Only in the first meaning can possession be thought of as rational possession; in the second meaning it would have to be called an empirical concept. An *intelligible* possession (if it is possible) is pos- 246
session without detention (*detentio*).[3]

§ 2

[*This section on the Juridical Postulate has been moved to § 6.*]

§ 3

[*This section might be omitted because it simply repeats § 1. See Note on the Text and the Translation.*]

He who intends to assert that he holds a thing as belonging to him must be in possession of the object, for, if he were not in possession of the object, then he could not be injured by someone else's using it without his consent. If something that is external to him, but not bound to him *de iure*, affects this object, that something would not be able to affect him himself (the subject) and to wrong him.

§ 4
Outline[4] of the concept of external Mine and Yours

Only three kinds of things can be external objects of my will: (1) a (corporeal) thing outside me; (2) the will of another [person] regarding a specific deed (*praestatio*[5]); (3) the situation of another [person] in relation to me. These correspond to the categories of substance,

[2] [They could also be called *de facto* and *de iure* possession, respectively. In Roman Law, Kant's distinction corresponds to what is called "natural" and "civil" possession. See Translator's Introduction for general commentary on possession.]

[3] [That is, physical custody or control. See Translator's Introduction, p. xxxiii.]

[4] [*Exposition*]

[5] [In Roman Law, obligations of a personal character; for example, the performance of something promised.]

causality, and community between external objects and myself in accordance with the laws of freedom.[6]

Remark:

(a) I cannot call an object in space (a corporeal thing) mine unless I can still claim to have another real (nonphysical) kind of possession of that object although I do not have physical possession of it. Thus, for example, I do not call an apple mine simply because I hold it in my hand (possess it physically), but only if I can say: "I possess it even when I let it out of the hand that is holding it." Similarly, I cannot say of the land on which I am camping that it is mine just because I am camping on it; I can say that it is mine only if I can assert that it is in my possession even if I leave the place in question. The reason for this is that, in the
248 first case (of empirical possession), if someone were to wrench the apple out of my hand or to carry me off from the place where I was camping, he would not injure me with respect to what is externally mine, although, of course, he would injure what is internally mine (my freedom). But he would not injure me as far as my external belonging is concerned unless I could also claim to have possession of the object even without detention of it; therefore, in the present case, I cannot call these objects (the apple and the camp) mine.

(b) I cannot call the performance of something through the will of another person mine if I can only say that the performance has come into my possession at the same time as that person's promise (*pactum re initum*).[7] I can call it mine only if I can maintain that I would have possession of the will of another (to determine it to this performance) even if the time of the performance is yet to come. The promise of the latter accordingly belongs among my worldly goods[8] (*obligatio activa*), and I can include it under what is mine. But I can count it as belonging to me not merely when I have what is promised in my possession (that is, the first case) but also when I do not yet possess what is

[6] [These categories are explained in detail in the *Critique of Pure Reason,* esp. A 182/B 229 to A 218/B 265.]

[7] [A pact begun through the thing pacted]

[8] [*Habe und Gut*]

promised. Consequently, I must be able to think of myself as having possession of this object [the performance] quite independently of temporal limitations and empirical possession.

(c) I cannot call a wife, a child, a servant, or any other Person[9] mine just because at present I am able to command them as members of my household or because I have them under my coercive power and under my authority[10] and in my possession. I can do so only if, even though they are outside my power[11] and I therefore do not (empirically) possess them, I can still say that I possess them through my mere Will as long as they are alive in some place and at some time—that is, simply juridically. They belong to my worldly belongings only when and insofar as I can claim the latter.

§ 5
Definition of the concept of the external Mine and Yours

A *nominal definition* serves only to distinguish the objects defined from all others and precedes the complete and determinate elucidation of a concept. The nominal definition of what is externally mine would be as follows: A thing is externally mine if it is something outside me which is such that any interference with my using it as I please would constitute an injury[12] to me (a violation of my freedom, which can co- 249
exist with the freedom of everyone in accordance with a universal law).

The *real definition* of this concept, however, is sufficient for the validation[13] of the concept (that is, of the knowledge of the possibility of the object) and emerges from a complete and definitive exposition of the concept. It is as follows: A thing is externally mine if it is such that any hindrance of my use of it would constitute an injury to me, even when it is not in my [physical] possession (that is, I am not the holder[14] of the object). Nevertheless, I must have some kind of possession of an external object if that object is to be called mine; otherwise, anyone acting against my will so as to affect the object would not at the same

[9] [*Person*]

[10] [*Gewalt*]

[11] [*Zwange*]

[12] [*Läsion*]

[13] [*Deduktion*]

[14] [*Inhaber*: detention, custody]

time affect me and so also would not injure me. Consequently, following § 4, if there is to be anything externally mine or yours [i.e. belong to me or you], we must assume that intelligible possession (*possessio noumenon*) is possible. Thus, empirical possession is only possession in appearance (*possessio phaenomenon*), although in this connection the object that I possess is not regarded as an appearance, as it was in the transcendental analytic [of the *Critique of Pure Reason*], but as a thing-in-itself. That work was concerned with reason as it relates to the theoretical knowledge of the nature of things and with how far it reaches. Here, however, we are dealing with reason as it relates to the practical determination of the will in accordance with laws of freedom, and its object might be known either through the senses or merely through pure reason. Justice [or right] is an example of the latter, for it is a pure, practical, rational concept of the will under laws of freedom.

For this reason, one should not carelessly speak of possessing a right to this or that object. Rather, one should speak of simply possessing the object juridically. For a right is already an intellectual possession of an object, but "to possess a possession" would be an expression without any meaning.

§ 6
Deduction of the concept of a purely juridical possession of an external object (*Possessio noumenon*)

The question of how it is possible for something to be externally mine or yours is now transformed into another question, How is mere juridical (intelligible) possession possible? And this question in turn becomes a third question, How is a synthetic a priori proposition concerning rights[15] possible?

All propositions about rights are a priori, for they are laws of reason (*dictamina rationis*). A proposition about rights [or justice] with respect
250 to empirical possession is analytic, for it says no more than what follows from the concept of empirical possession by the law of contradiction, namely, that, if I am the holder of a thing (that is, physically connected to it), then anyone who touches it without my consent (for example, wrests an apple from my hand) affects and diminishes that which is internally mine (my freedom). Consequently, the maxim of that person's action stands in direct contradiction to the axiom of jus-

[15] [*Rechtsatz*]

tice [rights]. Thus, the proposition concerning empirical legitimate possession does not go beyond a Person's right with respect to himself.

In contrast, the proposition concerning the possibility of possessing a thing outside myself after abstracting from all the conditions of empirical possession in space and time (in other words, the assumption of the possibility of *possessio noumenon*)—this proposition does go beyond the aforementioned limiting conditions. The proposition is *synthetic* because it postulates as necessary to the concept of what is externally yours or mine a kind of possession without detention.[16] Now, it is the task of reason to show how such a proposition that extends beyond the concept of empirical possession is a priori possible.[17]

The Juridical Postulate of Practical Reason[18]

[This postulate asserts that:] it is possible to have any and every external object of my will as mine. In other words, a maxim according to which, if it were made into a law, an object of will would have to be in itself (objectively) ownerless[19] (*res nullius*)[20] conflicts with Law and justice. [The reason for this postulate is as follows.]

An object of my will is something that I have the physical power to use. Let us suppose that it were absolutely not within my power[21] juridically to make use of this thing, that is, that such power would not be consistent with the freedom of everyone in accordance with a universal law (and would therefore be unjust). In that case, freedom would be robbing itself of the use of its will in relation to an object of

[16] [*Inhabung*]

[17] [The next five paragraphs in the *AA* are omitted here because they have been shown by Buchda to be extraneous, and his conclusions are generally accepted today. (The omitted text can be found in the Translator's Addendum of Omitted Texts.) Following Ludwig, the discussion of the Juridical Postulate has been moved from § 2 to its present position. See Note on the Text and the Translation.]

[18] ["By a postulate of pure practical reason, I understand a theoretical proposition which is not as such demonstrable, but which is an inseparable corollary of an a priori unconditionally valid practical law"—*Critique of Practical Reason*, trans. L. W. Beck, Library of Liberal Arts, No. 52 (New York: Liberal Arts Press, 1956), p. 127. *AA* 5, 220.]

[19] [*herrenlos*]

[20] [*Res nullius*: the property of no one. Although this is an accepted concept in traditional Roman law, Kant contends that it is an absurdity. This is the basic premise in his argument for the Juridical Postulate.]

[21] [*Macht*]

the same will, inasmuch as it would be placing usable objects outside all possibility of use. In other words, it would reduce these objects to naught from a practical point of view and make them into *res nullius*, despite the fact that formally the will involved in the use of these things is still consistent with the freedom of everyone in accordance with universal laws.

Now, pure practical reason provides nothing but formal laws as a basis for the use of the will and thus abstracts from the material content of the will, that is, from the remaining characteristics of its object, considering the object only insofar as it is an object of will. Hence, pure practical reason can contain no absolute prohibition concerning the use of an object of this type [*res nullius*], inasmuch as to do so would constitute a contradiction of external freedom with itself.

An object of my will, however, is something which I have the physical capacity to make any use of as I wish, [if] the use is within my power (*potentia*). This capacity must be distinguished from having the same object under my authority[22] (*in potestatem meam redactum*).[23] The latter presupposes, not merely a *capacity*, but also an act of will. But in order merely to conceive of something as an object of my will, it is sufficient that I be aware of the fact that it is within my [physical] power. Consequently, it is an a priori assumption of practical reason that any and every object of my will be viewed and treated as something that has the objective possibility of being mine or yours.

247 This postulate can be called a permissive law of practical reason (*lex permissiva*). For it confers on us an entitlement that we cannot derive from mere concepts of justice in general, namely, the entitlement to impose an obligation on everyone else—an obligation that they otherwise would not have had—to refrain from using certain objects of our will because we were the first to take possession of them. Reason requires that this postulate be taken as a basic principle and, indeed, it does this as practical reason extending itself a priori by means of this, its postulate.[24]

[22] [*Gewalt*]

[23] ["Brought under my authority (power)." Note the two senses of power in Latin (*potentia v. potestas*) and in German (*Macht v. Gewalt*). For Kant, *Macht* is descriptive and empirical, whereas *Gewalt* is normative and a priori. *Gewalt* is translated here as "authority."]

[24] [This is the end of text from *AA* § 2. The paragraphs that follow are the same as *AA* § 6.]

A *theoretical* a priori basic principle (according to the *Critique of* 252
Pure Reason) must have an a priori intuition underlying the given concept and so [if this principle of possession were merely theoretical] something else would have to be added to the concept of the possession of the object. But, with a practical principle [such as this one], we proceed in the opposite fashion and must remove (abstract from) all the conditions of intuition that provide the grounds of empirical possession in order to extend the concept of possession beyond the empirical concept thereof and be able to say, "Any and every external object that I have under my authority (and insofar as it is under my authority) can be counted as juridically mine without my having to possess it.[25]

The possibility of such a non-empirical kind of possession as well as the vindication[26] of the concept of non-empirical possession are founded on the juridical postulate of practical reason: "It is a duty of justice to act toward others so that external objects (usable objects) might also become theirs." The possibility and the vindication [of non-empirical possession] are at the same time bound up with the elucidation of the latter concept [of Mine, Yours, and His], which grounds the external of belonging to him on nonphysical possession alone. The possibility of nonphysical possession cannot in any way be proved by itself, nor can it be immediately grasped as true (simply because it is a concept of reason for which no corresponding intuition can be given). Instead, its possibility is an immediate consequence of the aforementioned postulate. For, if it is necessary to act according to that basic principle of right and justice, then the intelligible condition (of a merely juridical possession) must also be possible.

It should surprise no one that the theoretical principles of external Mine and Yours become lost in the intelligible world and do not represent any advance in knowledge, because the possibility of the concept of freedom, on which they rest, is not susceptible of theoretical Deduction. It can only be inferred from the practical law of reason (the categorical imperative) as a fact [*Faktum*] of practical reason.[27]

[25] [I.e. empirically, physically]

[26] [*Deduktion*]

[27] [For elaboration of the concept of a fact of practical reason, see *Critique of Practical Reason*, trans. Beck, p. 43. *AA* 5, 72.]

§ 7
Application of the principle of the possibility of external Mine and Yours to objects of experience

The concept of a mere juridical possession is not an empirical concept (that would be dependent on temporal and spatial conditions). Never-
253 theless, it has practical reality; that is, it must be applicable to objects of experience, the knowledge of which depends on temporal and spatial conditions.

The procedure with the concept of right [or justice] in relation to the latter [objects of experience] considered as possible external Mine and Yours will be as follows: the concept of right, which resides only in reason, cannot be directly applied to objects of experience or to the concept of empirical possession. Rather, it must first of all be applied to the concept of possession in general, which is a pure concept of the understanding. Therefore, instead [of using the concept] of detention (*detentio*), that is, an empirical representation of possession, we must [use] the concept of *having*,[28] abstracted from all spatial and temporal conditions, and think of the object simply as subject to my authority (*in potestate mea positum esse*).[29] For [in this conception of "having"] the expression *external* does not mean its existing at a place different from where I am or that [in a contract] the decision of my Will and my acceptance of an offer take place at a time other than that of the making of the offer;[30] rather, "external" means simply that the object is *distinct* from me. Now, practical reason through its law of right [and justice] requires that, in applying [the concept of] Mine and Yours to objects, we not think of [the concept] in terms of sensible conditions, but in abstraction from them, because we are concerned with the determination of the will in accordance with laws of freedom. This law also requires that we think of this possession [as a concept of the understanding], for only a concept of the understanding can be subsumed under concepts of justice [and rights]. Thus I can say: I possess a field even though it is located at a place completely different from where I now actually find myself. For we are talking here only about an intellectual relationship to the object, namely, so far as it is subject to my authority (the concept of possession as a concept of the under-

[28] [*Haben*. See p. 42, n. 1.]

[29] [Being placed under my authority]

[30] [Kant refers to the notion of a contract as a uniting of wills. For further details, see §18.]

standing, which is independent of spatial determinations); and it is mine because my Will to use the object as I please does not conflict with the law of external freedom.

This is precisely because, apart from possession in appearance[31] (detention) of this object of my will, practical reason demands that possession be conceived in terms of concepts of reason rather than empirical concepts, in other words, [it should be conceived] through concepts that can contain a priori the conditions of possession.[32] The ground of the validity of this kind of concept of possession (*possessio noumenon*) is [provided by] a universally valid legislation, for that kind of legislation is contained in the expression: "This external object is *mine*," because an obligation is thereby imposed on everyone else that they would otherwise not have to refrain from using the object.

Therefore, the way to have something external to oneself as mine is 254
through a purely juridical joining of the Will of the subject with that object, independently of the relationship to it in space and time and in accordance with the concept of intelligible possession.

A spot on the earth is not externally mine simply because I occupy it bodily (for here it is only a question of my external *freedom*, hence, of the possession of myself and not the possession of something outside me. So it involves only an internal right). My external right is involved only if, although I have left the place and gone elsewhere, I still possess it. If someone wishes to make my continuous and personal occupation of a place into a condition of having the place as mine, then either he must maintain that it is not possible to have something external as one's own (which contradicts the Juridical Postulate in § 6) or, in order to make it possible, he must demand that I be in two places at the same time. This last, however, is self-contradictory, since it amounts to saying that I should be and should not be at one place.

The same considerations apply to the case in which I have accepted a promise. When I accept a promise, my belongings[33] [i.e. my claim] to what is promised is not invalidated by the fact that at one time the promiser says, "This thing shall be yours," but at a later time says concerning the same thing, "I will now that the thing shall not be yours." It is a feature of such intellectual relationships that they are taken to be

[31] [By "appearance" Kant means empirical reality, e.g. the object of science]

[32] [The translation of this very difficult sentence is based on the French translation by A. Philonenko.]

[33] [*Habe und Besitz*]

as if there were no any intervening time between the two declarations of the person's Will, "It shall be yours, and, also, it shall not be yours," and this contradicts itself.

Again, the same thing holds for the concept of the juridical possession of a Person[34] or so far as he [or she] belongs[35] to the subject (for example, his wife, child, servant): for a domestic community and the reciprocal possession of the relationships[36] of all its members are not nullified by the [moral] capability[37] they have of being *physically in different places* from each another, because it is a juridical relationship that links them together, and what is here externally mine or yours, as in the previous cases, rests entirely on the presumption of the possibility of pure rational possession without detention.

Remark:

Juridical practical reason is actually forced into a critique of itself in connection with the concept of what is externally mine and yours. This is because of an antinomy of propositions concerning the possibility of this kind of possession. For only as a result of an unavoidable dialectic in which the thesis and antithesis make equal claims for the validity of two mutually incompatible sets of conditions is reason, even in its practical employment (involving rights), obliged to distinguish between possession as appearance and possession as conceivable merely through the understanding.

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The *thesis* states: *It is possible* to have something external as mine even though I do not have possession of it.

The *antithesis* states: *It is not possible* to have something external as mine if I do not have possession of it.

Solution: Both propositions are true—the first, when I take the word "possession" to mean empirical possession (*possessio phaenomenon*); the second, when I take it to mean pure intelligible possession (*possessio noumenon*).

However, the possibility of intelligible possession and hence also of what is externally yours or mine cannot be grasped directly but must be inferred from the postulate of practical

[34] [*Person*]

[35] [*zu der Habe gehörend*]

[36] [*Zustand*: lit. state of affairs, condition. For clarification, see *infra*, § 22–30.]

[37] [*Befugnis*]

reason. It is especially noteworthy that here, practical reason proceeds without intuitions,[38] not needing even a single a priori intuition, and extends itself by simply omitting empirical conditions, a procedure justified by the law of freedom. Thus it can set up synthetic a priori propositions concerning rights,[39] the proof of which (as will be shown presently), can be carried out afterwards from a practical point of view in an analytical fashion.

§ 8
Having an external thing as belonging to one is possible only in a juridical condition of society under a public-legislative authority, that is, in a civil society

When I declare (by word or deed), "I will that an external something shall be mine," I thereby declare it obligatory for everyone else to refrain from [using] the object of my will. This is an obligation that no one would have apart from this juridical act of mine. At the same time, however, this presumption includes the acknowledgment of being reciprocally bound to everyone else to [exercise] a similar and equal restraint with respect to what is theirs. For the obligation involved here comes from a universal rule of external juridical relationships.[40] Consequently, I am not bound to leave an external belonging of another untouched if everyone else does not in turn guarantee to me 256
with regard to what is mine that he will act in accordance with exactly the same principle. This guarantee does not require a special juridical act, but is already contained in the concept of being externally juridically bound to a duty[41] on account of the universality, and hence also the reciprocity, of an obligation coming from a universal rule.

Now, with respect to an external and contingent possession, a unilateral Will cannot serve as a coercive law for everyone, since that would be a violation of freedom in accordance with universal laws. Therefore, only a Will binding everyone else—that is, a collective, universal (common), and powerful Will is the kind of Will that can pro-

[38] [*Anschauungen*. These are, in contrast to practical reason, a necessary component of theoretical reason and empirical knowledge. This is one of the key doctrines of the *Critique of Pure Reason*. Kant is fond of contrasting practical reason and theoretical reason in this regard. For Kant's conception of antinomy, see *Critique of Pure Reason* A 406/B 433.]

[39] [*Rechtsätze*]

[40] [The German term is in the singular.]

[41] [*Verpflichtung*]

vide the guarantee required. The condition of being subject to a general external (that is, public) legislation that is backed by power[42] is the civil society. Accordingly, a thing can be externally yours or mine only in a civil society.

Conclusion: If it must be juridically possible to have an external object as a belonging, then the subject must also be allowed to compel everyone else with whom he comes into conflict over the question of whether such an object belongs to him to enter, along with him, into a society under a civil constitution.

§ 9
In a state of nature, there can be a real external Mine and Yours, but it is only provisional

In a society under a civil constitution, Natural Law (that is, that kind of Law [rights] that can be derived for such a society from a priori principles) cannot be abrogated by the statutory laws of that society. Consequently, the juridical principle remains in force, "Anyone who acts from a maxim according to which it becomes impossible for me to have an object of my will as mine thereby injures me." For only a civil constitution provides the juridical condition under which each person's belonging is secured and guaranteed to him, although it does not actually stipulate and determine what that shall be.

Thus, the guarantee itself already presupposes [the notion of] something's belonging to a person (to whom it is guaranteed). Therefore, an external yours and mine must be assumed to be possible prior to the civil constitution (or disregarding it). Along with it goes a right to compel everyone with whom we might have any kind of commerce to enter along with us into a society under a constitution where the se-
257 curity of what belongs to one can be guaranteed.

A possession in expectation and preparation for a civil society, which can only be founded on a law of the common Will—which therefore consents to the possibility of such a law—is *provisional juridical* possession. In contrast to this, the kind of possession that would be found in an actual civil society would be *peremptory* possession.

Before entering a civil society, which the subject is prepared to enter, a person has a right[43] to resist those who do not put up with it and

[42] [*Macht*]

[43] [*mit Recht*]

want to disturb him in his interim possession. [The person can do this rightfully] because the Will of all those besides himself that proposes to impose an obligation on him to abandon a particular possession is still merely an unilateral Will, and as such has exactly as little lawful force to oppose his possession as he, for his part, has to assert it (for lawful force is found only in the general Will). Still, the person in question has the advantage over the rest in that he is ready to consent to the introduction and establishment of a civil society.

In one word, the mode of having something external belong to one in a state of nature is physical possession, which carries with it the juridical presumption that, through the union of the Will of everyone in public legislation this possession will be made into juridical possession. In the preparatory period preceding the civil society, such possession counts in anticipation as comparatively juridical.

Remark:

This prerogative of a justice based on empirical possession, following the formula, "Happy is he who has possession" (*beati possidentes*), is not based on the presumption that the person in question is *an honest man*, for whom it would be unnecessary to prove that he possesses something legitimately (for that kind of argument is acceptable only in litigation.[44] Instead, [this principle] follows from the postulate of practical reason according to which everyone has the capacity to have an external object of his will as a belonging. Consequently, every detention is a state of affairs whose legitimacy is founded on that postulate through an act of Will preceding it [that is, of detention], and, as long as this detention does not conflict with someone else's more ancient possession of the same object, it is a state of affairs that, in accordance with the law of external freedom, provisionally justifies [my] preventing anyone who refuses to enter with me into the condition of public lawful freedom [that is, the civil society] from usurping the use of the object. Thus, in conformity with the postulate of reason, he subjects to his own use something that would otherwise be reduced to naught[45] from the practical point of view.

[44] [*im streitigen Rechte*]

[45] [I.e. a *res nullius*. Kant's argument, which by now should be familiar, is that if, other things being equal, one cannot take possession (detention) of an external thing, then it would be a *res nullius*, which is an absurdity.]

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SECOND CHAPTER
How an External Thing Can Be Acquired

§ 10
The general principle of external acquisition

I acquire something if I bring it about (*efficio*) that something becomes *mine*. An external thing would be originally mine if it is also mine independently of any juridical act. An acquisition, however, would be original if it is not derived from what belongs to another person.

No external thing is originally mine, although indeed it can be acquired originally, that is, it can be acquired without being derived from what is another person's.

A situation where there is a community of mine and yours (*communio*) can never be conceived of as original, but must always be acquired (through an external juridical act), although the possession of an external object can be originally only communal and common. Even if one were (problematically) to think of an *original* community (*communio mei et tui originaria*) it would have to be distinguished from a *primeval* community (*communio primaeva*) that might be assumed to be established in the earliest times of juridical relationships between humans and that as such would only be grounded in history. In contrast, the former, an original community, would be grounded on principles, and so unlike the latter, the primeval community, which could only be grounded in history and would always need to be conceived as acquired and derived (*communio derivata*).

The principle of external acquisition is therefore this: Whatever I can bring under my [control or] *authority*[46] (in conformity with the law of external freedom) and with respect to which as an object of my will I have the ability to make use of (in conformity with the Postulate of practical reason), and finally what (in accordance with the Idea of a possible united *Will*) I *will* that it be mine, that will be mine.

[*Two paragraphs that follow in the* AA *are moved to § 17. The remaining three paragraphs in this section have been expunged by Ludwig, because they repeat materials given elsewhere and express doubts that are cleared up later. With some hesitation these passages have been included here, so that the reader can judge whether they belong.*]

[46] [*Gewalt*]

The original acquisition of an external object of the will is called *occupation or seizure*[47] (*occupatio*) and can only be applied to physical things (substances). Where this takes place it requires as a condition of empirical possession *priority in time* before anyone else who wills to take possession by seizing the thing (*qui prior tempore potior iure*).[48] As original it is also only the result of a *unilateral* Will, for if a *bilateral* Will were required for it, then it would be derived from a contract of two (or more) Persons and consequently derived from what belongs to others. 259

How such an act of will as is involved in occupation could serve as a ground of what is someone's own is not easy to understand.[49]

Nevertheless, a first acquisition is still not an original acquisition simply because it is first. For the acquisition of a public juridical state of affairs through the union for a universal legislation of the Wills of everyone would be precisely that [i.e. a first acquisition], which no other may precede, and yet it would be derived from the particular Will of everyone and would be *omni-lateral,* whereas an original acquisition can only come from a *unilateral* Will.

Division of the Acquisition of External Mine and Yours

1. As far as the *matter* (the object) is concerned, I acquire either a physical *thing* (substance) or the *performance* (causality) of another person or that other *Person* him- or herself, that is, their situation, as far as I obtain the right to manage[50] the same (that is, interact and deal with them[51]).[52] 260

2. As far as the *form* (mode of acquisition) is concerned, a *right relating to things* (*ius reale*)[53] or a *right relating to persons* (*ius personale*)[54] or *a right of a real kind relating to persons* (*ius realiter personale*)[55] in-

[47] [*Bemächtigung,* i.e. to seize or take hold of something. See § 14.]

[48] ["He who is prior in time has the stronger right."]

[49] [The fact that Kant gives the answer, e.g. in § 14, indicates that these paragraphs on occupation are extraneous, as Ludwig suggests.]

[50] [*verfügen*]

[51] [*Commercium*]

[52] [Here the threefold division corresponds to threefold division of categories in the *Critique of Pure Reason.* See § 4 (above).]

[53] [*Sachenrecht* or real rights—rights *in rem*]

[54] [*Personenrecht* or rights *in personam*]

[55] [*dinglich-persönliches Recht*]

volves the possession (although not the use) of another Person as a thing.

3. As far as the *juridical ground*[56] (*titulus*) of the acquisition is concerned. This is strictly speaking not a special section of the division of rights but relates rather to an aspect of the way in which they are exercised. The ways by which an external thing is acquired may be divided into acts of a *unilateral*, of a *bilateral*, or of an *omnilateral* will (*facto, pacto, lege*).[57]

First Section
Concerning Rights in Things[58]
[Real Rights or Rights *in Rem*]

§ 11
What is a real right?

The usual definition of *a right in a thing* (*ius reale, ius in re*) is that "it is a right *against every possessor of the thing*."[59] This is a correct nominal definition.

However, [we need to ask] what is it that makes it possible for me to demand and compel (*per vindicationem*[60]) with respect to an external object any holder[61] thereof to restore the possession of it to me? Is this external juridical relationship of my will some kind of *immediate* relationship to a physical thing?[62] If that were so, then a person who believes that his right is not immediately related to Persons but to

[56] [*Rechtsgrund* or title]

[57] ["Through a fact, a pact, or a law." These terms summarize legally the three modes just mentioned.]

[58] [*Sachenrecht*: lit. the Law concerning things. The section is about what are often known as rights *in rem*. "A right *in rem* is one that imposes an obligation on persons generally, either on all the world or on all the world except certain determinate persons." *Black's Law Dictionary*, p. 1324.]

[59] [See preceding note.]

[60] [*Vindicatio*: "In civil law, the claiming a thing as one's own, the asserting of a right or title in or to a thing." *Black's Law Dictionary*, p. 1570.]

[61] [*Inhaber.* In Roman Law, this term is used for detention or (physical or natural) possession.]

[62] [Here Kant has in mind the view, which may be attributed to Locke, that possession relates persons to things, rather than to other persons, which is Kant's view.]

things, would certainly (although only in an obscure way) have to accept the following: inasmuch as corresponding to a right on one side there must be a duty on the other side, an external thing that has become lost to its original possessor would still always be *duty bound* to him and therefore would be bound to reject the claims of any other possessor because it [the thing] is already obligated to him [the original possessor]; and so my right would be like a guardian spirit accompanying the thing and protecting it against all strange attacks that would always direct the new possessor to me [as original possessor]. It is absurd, therefore, to think of an obligation of a Person to a thing and vice versa, even though it might still be all right to use this kind of picture simply to visualize and to express the juridical relationship in that way.

A real definition would therefore have to run as follows: A *right in a thing* is the right to the private use of a thing, with regard to which I am in common possession, either originally or established,[63] with everyone else. For that kind of common possession is the single condition under which it is ever possible that for me to exclude every other possessor from [my] private use of a thing (*ius contra quemlibet huius rei possessorem*).[64] This is because, without the presupposition of that kind of common possession, it would be impossible to understand how, even though I am not in possession of a thing, I can be injured[65] by others who are in possession and who use the thing.

I cannot bind another person to refrain from the use of a thing, if otherwise he would not have such an obligation, simply through [my] unilateral will. [Such an obligation would be possible] only though the united will of everyone in a common possession. Otherwise, I would have to conceive of a right in a thing as if the thing [itself] had an obligation to me and the right [I have] against every possessor of the thing would need first to be derived from that—which is an absurd way of thinking.

Under the term *real Law* [or rights relating to things] (*ius reale*) must furthermore be understood not simply the right in a thing (*ius in re*), but also the quintessence of all those laws concerning mine and yours that relate to things.

[63] [*gestifteten*. Usually, this is assumed to mean "by contract," but other means of acquisition are not excluded.]

[64] [The right against whomsoever is possessor of the thing]

[65] [*lädiert*]

It is clear, however, that if a person were to exist on the earth all alone, then he really could not have or acquire a thing as belonging to him,[66] because between him as a Person and all the other external things as things[67] there cannot be any relationship of obligation. Therefore, strictly and literally understood, there can be no (direct) right in a thing, but what is called that refers only to what comes to a Person against all the others who [together participate] in the common possession with everyone else (in a civil condition).

270 ***Remark on Property:***[68]

An external object that belongs to someone[69] in regard to its substance is that person's *property* (*dominium*). All the rights in the thing (as well as in the accidents of the substance) inhere in it and the owner of the property can do whatever he wishes with it (*ius disponendi de re sua*).[70] It clearly follows from this that such an object can only be a physical thing (to which one has no obligations). Therefore human beings can be their own masters (*sui iuris*), but not the owners of themselves (*sui dominus*) (that is, they are not able to dispose of themselves as they wish), much less can they be owned as property by others, because they are responsible to the humanity in their own Person. It should be said right away that since this point is about the right [Law and justice] of humanity and not about a right that belongs to [individual] human beings, a discussion of it does not properly belong here and it is brought up here in passing simply to give a better understanding of what was just discussed above.

It should be added that there can be two full property owners[71] of one and the same thing without its being something that is a common mine and yours. Rather they can be common posses-

[66] [*als das Seine*]

[67] [*Dingen als Sachen*]

[68] [As suggested by Ludwig, the following paragraphs have been moved from *AA* § 17. Their relevance is obviously peripheral.]

[69] [*das Seine von jemanden*]

[70] [The right to dispose of one's property]

[71] [This appears to be a reference to the Germanic law of divided property. It is not in the Roman Law. It is introduced later in connection with a discussion of sovereignty. See Translator's Introduction, p. xxxiii. See also p. 129, n. 31.]

sors of the thing, which can only belong to *one* of them as *their own* [property]. [What is really meant by] so-called common owners (*condomini*) is that one of them has the whole possession without its use and the other person has complete use along with the possession. This can take place only under the condition that the former [e.g. the owner] (*dominus directus*) restricts the latter (*dominus utilis*) to a persistent performance [of holding the thing] without limiting his use of it.[72]

§ 12
The first acquisition of a thing can be none other than the acquisition of land[73]

With respect to everything moveable on [a piece of] land (by which is to be understood all inhabitable countryside) the land itself must be considered to be the *substance* and the existence of the moveables to be inherent in it. Accordingly, just as in the theoretical sense accidents cannot exist apart from a substance, so also in the practical sense the moveables on the land cannot belong to a person[74] if that person cannot already be assumed to be in juridical possession of the land (as belonging to him).

For, supposing that the land belonged to no one, then I would be 262
able to take every moveable thing that is located on it away from its place in order to collect it for myself until they all disappeared entirely—all this could take place without damaging the freedom of any other person who right now is not an inhabitant[75] of the land. But everything that can be destroyed, a tree, or a house, etc., is, at least as far as its matter is concerned, moveable and if one calls a thing that cannot be moved without destroying its form an *unmoveable*,[76] then the mine and yours of the thing would not be understood as [applying] to the substance but to what is attached to it, which is not the thing itself.

[72] [Here Kant is borrowing practically *verbatim* a distinction made by Achenwall in his *Ius naturae* (see p. 114, n.5). Kant appears to be trying to reinterpret the divided property concept as two kinds of possession.]

[73] [*Boden*, lit. ground or earth]

[74] [*das Seine*]

[75] [*Inhaber*: holder, occupier]

[76] [*Immobile*. The German legal term for "real estate"]

§ 13
Every piece of land can be acquired originally and the ground of the possibility of this acquisition is the original community of the land in general

As far as the first of these propositions is concerned, it is grounded in the Postulate of Practical Reason.[77] The second proposition is grounded in the following proof.

Originally (that is, prior to any juridical act of will)[78] all human beings are legitimately in possession of the land, that is, they have a right to be where nature or chance (without the intervention of a Will) has placed them. This [kind of] possession (*possessio*) is to be distinguished from a residence (*sedes*), which is a willful and hence an acquired permanent possession. [In contrast to the latter, the possession in question here is] a common possession owing to the unity of all places on the surface of the earth as a globe; for if the earth were an infinitely large flat plane, humans could disperse themselves so that they would not be in any kind of community and a community would not be a necessary consequence of their existence on earth.

The [kind of] possession of all human beings on the earth that precedes any juridical act by them [and] constituted by Nature itself is an *original common possession* (*communio possessionis originaria*). Its concept is not empirical and does not depend on temporal conditions as does the fictitious and never proven concept of a *primitive common possession* (*communio primaeva*). Rather the concept of an original common possession is a practical concept of reason that encompasses a priori the principle that only through it can human beings make use of a place on the earth in accordance with juridical laws.

§ 14
The juridical act of this kind of acquisition is seizure (*Occupatio*)[79]

263 *Taking possession* (*apprehensio*), considered as the beginning of detention of a physical thing in space (*possessionis physicae*), can accord with

[77] [§ 6=*AA* § 2 *supra*, p. 47]

[78] [*Akt der Willkür*]

[79] [In civil law, *occupare* means "to seize or take possession of, to enter upon a vacant possession; to take possession before another." *Black's Law Dictionary*, p. 1079.]

the law of external freedom of everyone only under the condition of *priority in time*, that is, as the *first* taking possession (*prior apprehensio*), which is an act of will.[80] However, the Will[81] that a thing (along with a particular circumscribed spot on earth) shall be mine, that is, the appropriation[82] (*appropriatio*) of it, can in an original possession be only *unilateral (voluntas unilateralis s. propria)* The acquisition through a unilateral Will of an external object of the will is *seizure* (*occupatio*). Hence the original acquisition of the object, along with a circumscribed [piece of] land can only take place through seizure (*occupatio*).[83]

The possibility[84] of acquiring in that way cannot be intuited in any manner or demonstrated from premises. Rather, it is a direct consequence of the Postulate of Practical Reason. However, the Will involved here can still only validate[85] an external acquisition insofar as it involves an a priori united, absolutely commanding Will, that is, [a Will united] through the union of the wills of all those that can enter into a practical relationship with each other. For a unilateral Will (which includes a bilateral Will that still is a particular Will) can [as such] never impose an obligation on everyone, for in itself it would be contingent. Instead, for this purpose what is required is an omnilateral, not contingent, but an a priori and necessarily united Will, which alone could be a legislating Will. For only through this as its principle is the agreement of the will of each with the freedom of everyone possible, and consequently a right in general [justice] as well as external mine and yours [made] possible.

[80] [*Akt der Willkür*]

[81] [*Der Wille*. Note that in these two sentences Kant makes a distinction between taking possession (apprehension, detention) and appropriation using two different senses of "will." The first might be called "physical" and the second "mental." See Commentary below.]

[82] [*Zueignung*]

[83] [*Commentary*: Kant is only repeating in his own language a distinction between taking possession and appropriation that comes from Roman Law, where the two elements of (legitimate) possession are detention or custody and *animus*. "'One acquires possessio,' says Paul, 'by an act of the mind and an act of the body (animo et corpore).'" (Nicholas, p. 112) The act of the mind, i.e. the declaration of the intention to possess, is what Kant here calls an act of Will.]

[84] [Here Kant means a priori possibility.]

[85] [*berechtigen*: justify]

Remark [on Taking Possession]:[86]

265 Now the question arises, How far does the entitlement to take possession of a piece of land extend? [Answer:] It extends as far as one has the ability to hold it under one's authority, that is, as far as a person who would own it can defend it. It is as if the land itself said to him, If you cannot protect me, then you cannot command [govern] me.

For example, this is the principle that should be followed in a dispute over a free or a closed sea: Within an area that can be reached by cannons off the coast of a country that already belongs to a particular state, no one may fish, dig amber from the bottom of the sea, and suchlike.

In addition [one might ask:] Is working the land (such as building on it, tilling it, draining it, and so on) necessary for acquiring it? No! For these forms (of specification [of the land]) are only accidents and so do not constitute objects of direct possession. They can belong to the subject's possession only insofar as their substance has previously been recognized as belonging to him [i.e. as his].[87] If the question is about first acquisition, working the land is nothing more than an external sign of taking possession, which could be replaced by many other signs that take less trouble. Again, [one might ask:] May one block someone else in the act of taking possession so that neither of them can claim the right of priority [of possession] and so the land would remain free from belonging to anyone? It would be absolutely impossible for that sort of blocking to take place, because in order to do it, the other person would have to be situated somehow or other on an adjacent piece of land where he himself could be blocked; it follows that blocking [hindering the other] in the absolute sense would be a contradiction. But relative to a particular piece of land that lies between them that they leave unused as a neutral dividing line [between them], the right of seizure would exist for both together; but then this land would belong to both and would therefore not be ownerless (*res*

[86] [This remark is taken from *AA* § 15, which was removed to the Appendix by Ludwig. It is included here because it relates to taking possession and is interesting in its own right.]

[87] [*das Seine desselben*]

nullius) because it is used by both in order to separate them from each other.

Again (one might ask), Can a person still have a thing as his that is on a piece of land no part of which belongs to anyone?[88] Yes! Just as in Mongolia anyone who leaves his bundle of belongings or a horse that has run away can retrieve them as what is his [i.e. as belonging to him] and [take them] back into his possession, because the whole land belongs to the people and the use of it is available to every individual. But that a moveable thing that is on the land of another can be his [i.e. belong to a person] is in- 266
deed possible, but only through a *contract*. Finally, there is the question, Can two neighboring people[89] (or families) oppose each other in adopting a specific utilization of the land, for example, a hunting people against a sheep-herding people or farming people, or these against plant [gatherers]? By all means, for the general way in which they want to settle on the earth's land is, as long as they stay within their borders, simply a matter of doing what they please[90] (*res merae facultatis*).

Finally, one can still ask, whether, if neither nature nor chance, but our own Will makes us neighbors with a people with whom there is no prospect of entering into a civil union, if we have the intention of founding [such a union] and of raising these people (savages) into a juridical society (people such as the American savages, the Hottentots, or the New Dutch), would we then be entitled to establish colonies, if need be through violence or (what is not much better) through fraudulent purchases? [And so] become owners of their land and, without regard for the first possession [by the indigent population], make use of our superiority. [We might be particularly so entitled] because Nature itself (which abhors a vacuum) seems to demand it, for otherwise wide stretches of land in other parts of the world would remain barren of civilized inhabitants, land that is now marvellously populated, but otherwise would indeed always remain [empty]. [For if the land were to be left empty,] the purpose of creation would be thwarted. It is easy, however, to see through

[88] [*das Seine*: what belongs to him. It should be observed that "his" like Mine and Yours are noncommittal as to whether possession or property is involved.]

[89] [*Völker*]

[90] [*Beliebens*]

this veil of injustice (Jesuitry) that justifies any means to a good end; this method of acquiring land is reprehensible.

Uncertainty regarding the quantity as well as the quality of the object of external acquisition makes the task of [identifying] a single original external acquisition above all a most difficult one to solve. Yet, in the meanwhile there must somehow or other be an original acquisition of an external [thing]; for every acquisition cannot be derived. Therefore, one cannot give up this task as insoluble and as in itself impossible. But if it is solved by means of the original contract, then, as long as the contract does not extend over the whole human race, the acquisition will always remain only provisional.

§ 15[91]

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§ 16 [A § 17][92]

Deduction[93] of the concept of original acquisition

We have found that the *basis*[94] of an acquisition in an original community of the land, accordingly under spatial conditions of an external possession, is bound up with the Will that the external object belong to me,[95] although the *method of acquisition* [itself] involves the empirical conditions of taking possession (*apprehensio*). Now what is still required is [that the concept of] acquisition itself, that is, external mine and yours, which follows out of both of these given elements, namely, the concept of intelligible possession (*possessio noumenon*) of the object, be developed as a concept out of the principles of pure practical reason.

The juridical concept[96] of *external Mine and Yours*, considered as *substance,* does not mean by the word "external" being "*outside me*" in

[91] [Following Ludwig, the title of this section has been moved to § 17, where it properly belongs, and the rest of the section has been expunged and reprinted in the Translator's Addendum of Omitted Texts.]

[92] [Following Ludwig the number of this section has been changed from §17 to §16 in order to make the sequence more coherent. The title and contents of this section are the same as in *AA* § 17.]

[93] [*Deduktion*, i.e. validation or vindication of the a priori side, which distinguishes property from possession]

[94] [*Titel*]

[95] [Or in his earlier terminology, as mine (*den Meinen*)]

[96] [*Rechtsbegriff*: concept of justice]

the sense of being in different place from where I am, for it is a concept of reason. Rather, since only a pure concept of the understanding can be subsumed under it, "external" can only mean simply something *distinct* from me and a concept of a non-empirical possession (which, if it were empirical, would so to speak be a continuing taking possession). Instead, it refers only to the concept of having an external thing under my authority[97] (linking the thing to me as a subjective condition of possible use). This [concept, then,] is a pure concept of the understanding. Now leaving out or disregarding (abstraction) these sensible conditions of possession [which might be considered] a relationship of a Person to *objects*, which do not have obligations, is really a relationship of a Person to *Persons*, all of which are bound through the Will of the first [Person] with respect to the use of things in accordance with the axiom of external freedom, the *postulate* of the capacity and the universal legislation of a Will thought of a priori as a unified Will. That is therefore the *intelligible possession* of the things in question, that is, one that [holds] simply by right [and justice], even though the object (the thing that I possess) is [itself] a sensible object.

The essential elements[98] (*attendenda*) of original acquisition are 259
therefore the following: 1. The seizure[99] of an object that belongs to no one, for otherwise it [i.e. the seizure] would conflict with the freedom of another person according to universal laws. This seizure is taking possession of an object of will in space and time; in other words, the possession that I enter upon is a (*possessio phaenomenon*).[100] 2. An affirmation (*declaratio*) of possession and decision[101] of my will to keep everyone else away from it. 3. The appropriation (*appropriatio*) as an act of an externally universal legislative Will (as an Idea) through which everyone is bound to agree with my will.

The validity of the last of these elements of acquisition on which the conclusion that this external object is mine rests, that is, that the possession is valid as a merely juridical possession (*possessio*

[97] [*Gewalt*, that is, legitimate control. In this context, "having" (*Habens*) also carries connotations of "having as a belonging," or perhaps "owning."]

[98] [*Momente.* These two paragraphs have been moved from § 10.]

[99] [*Apprehension*]

[100] [I.e. a phenomenal or sensible possession. See §1.]

[101] [*Akt*]

noumenon), is grounded in the following way. Since all of these acts are juridical acts that come from practical reason, and therefore in the question about what is just and lawful[102] can be abstracted from the empirical conditions of possession, the conclusion that that external object is mine is a correct way of proceeding from[103] sensible to intelligible possession.

268 ***Remark:***

It is clear in itself that first working on a piece of land, drawing boundaries, or in general giving form to it cannot bestow a *title* of acquisition to the land, that is, the possession of the accidental properties cannot serve as a ground for the juridical possession of the substance itself. Indeed, it is clear that quite the opposite is the case: mine and yours must be inferred from the ownership of the substance according to the rule (*accessorium se-*
269 *quitur suum principale*).[104] It is also clear that someone who works on a piece of land that he did not already own has lost his effort and labor to the first owner. [All this is so clear that] such an old and widespread opinion can hardly be attributed to any other cause than the secret but predominant delusion that personifies things. So just as if someone could make a thing obligated to himself through his working on it and [so obligated] not to be at the service of anyone but himself, thus thinking directly to have a right against the thing. For one would probably not glide over with such a light foot the natural question that has already been mentioned: "How is the right in a thing possible?" For the right against every possessor of a thing means only the entitlement of a particular will to use an object insofar as it is contained in a synthetically universal Will and can be thought as agreeing with it.

As far as physical objects on the land are concerned, if the land is already mine, they belong to me unless they belong to someone else. [Moreover, they] belong to me without my need-

[102] [*Rechtens*]

[103] [*richtig geführt*]

[104] ["That which is accessory follows its principal." In other words, "That which is accessory or incident does not lead, but follows, its principal." *Black's Law Dictionary*, p.14.]

ing to perform a special juridical act (not *facto* but *lege*)[105] for that purpose, this is simply because they can be regarded as accidents inhering in a substance (*iure rei meae*)[106] to which everything belongs that is so bound up with a thing of mine that another person cannot separate them from what is mine without changing it (for example, in goldplating, mixing materials with other materials, being washed ashore or changing an adjoining riverbed and thereby enlarging my land, and so on). Whether, however, land that has been acquired extends further than the ground, namely, even to a part of the sea bottom ([such as] the right to fish, to collect amber and suchlike), such extensions must be decided on exactly the same basic principles. To the extent that from my place of residence[107] I have the mechanical capacity to defend my land against an attack by another (for example, as far as cannons can reach from the shore) it belongs to my possession and the sea is to that extent closed (*mare clausum*). Since on the wide sea, however, no residence is possible, possession cannot be extended to it and the open sea is free (*mare liberum*). With regard to what has been washed ashore or stranded on the beach, either human beings or things belonging to them, being unintentional it cannot count as coming under the right of acquisition of the owners of the beach. This is because it (the beaching) is not an injurious act[108] (indeed, it is not even a fact[109]) and the thing that has been washed up on the land still belongs to someone, and so cannot be handled as a *res nullius*.[110] A river, in contrast, can be acquired originally by anyone who possesses both shores just like any piece of land under the restrictions mentioned above and as far as the possession of its shore reaches.[111]

[105] [That is, the act in question that is denied would be a legal rather than a factual act.]

[106] [According to a right that inheres in my things]

[107] [*Sitze*]

[108] [*Läsion*]

[109] [*Faktum*. "That out of which the point of law arises." *Black's Law Dictionary*, p. 592.]

[110] [No one's property]

[111] [The next passage in AA § 17, which is about property, was moved to § 11, under *Remark*.]

§ 17 [A § 16]
[Only in a civil constitution can something be acquired *peremptorily*, whereas in a state of nature it can still be acquired but only *provisionally*.[112]]

267 All human beings originally have a common possession of the land of the whole earth (*communio fundi originaria*) along with the Will of each person, warranted[113] by Nature, to make use of the land (*lex iusti*). In view of the naturally unavoidable antagonism of the will of one person against the will of others, this Will to use the land would nullify all the use of it if it [i.e. the Will] did not at the same time contain a law by which a particular possession for each person on the common land can be specified (*lex iuridica*). But the law that allots the mine and yours of the land for each person can in accordance with the Axiom of external freedom arise from none other than an *original* and a priori united Will (which presupposes no juridical act for its union.) Thus, it can only arise in a civil society (*lex iustitiae distributivae*) which alone determines what is just, what is juridical and what is within one's rights.[114]

In a situation, however, that is prior to the founding although in anticipation of it, that is, *provisional,* to act in conformity with the law of external acquisition is a *duty.* Consequently [there is] a juridical capacity of the Will to bind everyone to acknowledge the act of taking possession and appropriation as valid even though it is still unilateral. Thus, a provisional acquisition of land with all of its juridical consequences is possible.

Such an acquisition, however, still needs and has the approval[115] of the law (*lex permissiva*) with respect to the determination of the boundaries of juridically possible possession in itself. For since it precedes the juridical condition and being only preparatory to it, it is not yet peremptory, the approval extends only to the willingness of others (participants) to [go along with] the establishment of the latter [the juridical condition]. But in case of their opposition to entering into (a civil society), and as long as that condition [i.e. the state of nature] persists, all the effects of a legitimate acquisition still follow since this outcome is grounded in duty.

[112] [Title has been taken from *AA* § 15 and the text from *AA* § 16.]

[113] [*von Natur zustehenden Wille*]

[114] [*recht, rechtlich, Rechtens*]

[115] [*Gunst*: favor, permission]

Second Section
Concerning Rights in Persons
[Personal Rights or Rights *in Personam*]

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§ 18
[Personal rights in general]

A personal right is the possession of the will of another person. It is the capacity through my will to determine that other person's will [to perform] a certain deed. (The external mine and yours with regard to the causality of another person) is an [individual] right. I can have several personal rights of this kind against the very same person or against others. [On the other hand] the essence (the system) of laws according to which I can have this kind of possession [is called] Personal Law [or justice], of which there is only one.[116]

The acquisition of a personal right can never be original or self-authorized[117] (for if it were, it would not accord with the principle of the agreement of the freedom of my will with the freedom of everyone, thus it would be unjust). Similarly, I also cannot acquire [such a right] through an unjust [unlawful] deed[118] of another person (*facto iniusto alterius*); for, even if I were myself to suffer this injury and can by right demand redress, what is mine would thereby still remain undiminished and I would acquire nothing more than what I previously had [as mine].

Acquisition through the deed of another person which I can require that person to do in accordance with laws of justice[119] is always derived from what belongs to that other person. Considered as a juridical act this derivation cannot thereby be a *negative* act, namely, of *abandonment*, or an act of *renunciation* of what is one's own (*per derelictionem aut renunciationem*). For through them what belongs to one or

[116] [Here Kant is simply calling attention to the ambiguity of *Recht*, which can stand for individual rights (so-called "subjective rights") or for the body of law relating to rights (so-called "objective right"). In German, as Kant frequently notes, *Recht* in the first sense has a plural, whereas *Recht* in the second sense has none. The latter is translated here as Law (capitalized) or justice. Inasmuch as, in Kant's theory, the latter is identical to the collection of rights, I shall often use the term "rights" to translate *Recht* in the objective sense. See Translator's Introduction, p. xxi.]

[117] [*eigenmächtig*]

[118] [*rechtswidrige Tat*]

[119] [*Rechtsgesetzen*]

the other would be nullified, but nothing is acquired. But [acquisition takes place] only through *transference* (*translatio*), which is only possible through a common Will through which the object is always under the authority of one person or the other person. Thereupon one of them gives up part to the community and so the object through being accepted (hence a positive act of will) comes to belong to that person.

The transference of one's *property* to another person is *alienation*. The act of the united wills of two Persons through which what belongs to one passes over to the other is a *contract*.

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§ 19
[The formation of contracts]

In every contract there are two *preparatory* and two *constitutive* juridical acts of will.[120] The first two of these (which come under the *negotiation*) are the *offer* (*oblatio*) and the *assent* (*approbatio*) to it; the other two (which are the *conclusion*) are the *promise* (*promissum*) and the *acceptance* (*acceptatio*). For an offer cannot be considered a promise unless I previously determine that the offer (*oblatum*) is something that would be agreeable to the promisee, which is indicated in the first two declarations but through which nothing is yet acquired.

But neither through the particular Will of the promiser nor through that of the promisee (as receiver) does something that belongs to one pass from one party to the other. This can take place only through the united Will of both parties, and so far as the declaration of both Wills is simultaneous. Now, this simultaneity would be impossible if they were empirical Acts of declaration, for then they would necessarily follow each other in time and they could never be simultaneous. For if I have promised and the person now wants to accept, I could in the intervening time (however short it might be) change my mind, because I am still free until the acceptance, just as for exactly the same reason the acceptor could hold himself not bound by a response to the promise. The external formalities (*solemnia*) at the closing of a contract (such as shaking hands or breaking a piece of straw held by both Persons (*stipula*)) and all the back and forth affirmations of their earlier declarations prove more clearly the perplexities of the contractees over how and in what manner to represent declarations that always follow one another as taking place *simultaneously* in one moment. That is something that they cannot succeed in doing, because

[120] [*Akte der Willkür*]

the acts follow each other in time and when one of them takes place the other has not yet taken place or has already taken place.

However, only a transcendental deduction[121] of the concept of acquisition through contract can resolve these difficulties. In a *juridical* external relationship, my taking possession of the will of another person (and so reciprocally) becomes the ground of the determination of that person to [perform] a certain deed. In fact it is first conceived empirically as a declaration and counter-declaration of the will of each of 273
the two parties in time as the sensible condition of the taking possession [of the will]. Here the two juridical acts only follow one upon the other [in time]. [But,] inasmuch as the relationship in question (as a juridical relationship) is purely intellectual and is conceived of as an intelligible possession (*possessio noumenon*) resting on the Will as a legislative faculty of reason that represents the mine and yours [involved in this situation] through concepts of freedom in abstraction from the empirical conditions [just mentioned]. Here both the acts of promising and of acceptance are conceived not as following one another, but (like a *pactum re initum*) as arising out of a single joint Will (which is expressed by the word "simultaneous"[122]). And so, by leaving out the empirical conditions, the object promised (*promissum*) is represented as acquired in accordance with the law of pure practical reason.

Remark:

That this is the true and only possible deduction of the concept of acquisition through a contract is sufficiently confirmed by the laborious and nevertheless always futile endeavors of legal scholars to find a proof of the possibility of this kind of acquisition. (For example, Moses Mendelssohn's attempt in his *Jerusalem*.)

The question was: *Why should* I keep my promise? For everyone can see for himself that I *should*. It is, however, absolutely impossible to give a proof of this categorical imperative just as it is impossible for a geometer to prove by deductive inference that in order to make a triangle I need to take three lines (which is an analytic proposition) of which two put together must be greater than the third (which is a synthetic proposition, both of which are a priori). That it is a postulate of pure reason, abstracting

[121] [*Deduktion*: validation]

[122] [*zugleich*]

from all the sensible conditions of space and time that concern the concept of rights, and the theory[123] of the possibility of abstracting from those conditions without thereby nullifying the possession of it, that [together] constitute the deduction itself of the concept of acquisition through contract, just as the theory of the acquisition of external things through seizure [was presented] in the previous section.[124]

§ 20
[What I acquire through a contract]

What, then, is the external thing that I acquire through a contract? Since it is only the causality of the will of the other person in regard to a promised performance that I acquire, I do not directly acquire thereby an external thing but [only] that person's deed. Through that
274 deed the thing in question is placed under my authority[125] through which I make it mine. Thus, through the contract I acquire the promise of another person (not what is promised) and yet something is added to my assets[126]; I have become richer through the acquisition of an active obligation [constraining] the freedom and fortune of the other person.

This right of mine, however, is only a *personal* right, that is, it is a right against a *particular* physical Person and specifically in regard to his causality (his will) to perform something for me. It is *not a real right* against that moral Person who, as such, is none other than the Idea of the a priori united will of everyone through which alone I can acquire a right against every possessor of the thing—which is what constitutes the whole of every right to a thing.[127]

Remark:

The transference of something that is mine through a contract takes place through the *law of continuity* (*lex continui*), that is, the possession of the object is never for a moment interrupted while this act is taking place. For otherwise, I would acquire in this situation an object that would be something that had no pos-

[123] [*Lehre*]

[124] [§ 14. Moses Mendelssohn (1729–1786): *Jerusalem oder über religiöse Macht und Judentum*. Berlin, 1783.]

[125] [*Gewalt*]

[126] [*Habe*]

[127] [*Sache*. Equivalent to *res* in Roman Law. See Translator's Introduction.]

sessor (*res vacua*), consequently I would acquire it originally, which contradicts the concept of a contract.

This continuity, however, implies that it is not the particular Will of one of the two parties (*promittentis et acceptantis*),[128] but their united Will that transfers what is mine to the other person. In other words, the kind of transfer involved here is not as if the promiser first abandons (*derelinquit*) his possession for the advantage of the other person, or renounces (*renunciat*) his right and the other immediately takes it over or the other way around. The transference is therefore an act in which for a moment the object belongs to both together just as when a stone is thrown up [in the air] at the summit of the parabolic track it can be conceived of for a moment as both rising and falling at the same time as it changes from a rising movement to a falling one.

§ 21
[Acquiring possession of a thing through a contract]

A thing is not acquired in a contract through the *acceptance* (*acceptatio*) of the promise, but only through the *delivery* (*traditio*) of what is promised. For every promise relates to a *performance*, and if what is promised is a thing, the performance can only be carried out through 275
an act by which the promisee is placed in the possession of the thing by the promiser, that is, through delivery. Therefore, before possession takes place and before the thing has been received the [required] performance has not yet taken place; the thing has not been transferred from one person to another and consequently it has not been acquired from him. That is why the right created by the contract is only a personal right and becomes a real right only through delivery.[129]

Remark:

A contract that is immediately followed by delivery (*pactum re initum*) excludes any intervening time between the conclusion [closing] and the execution of the contract and does not require any [additional] special and to be anticipated act through which what belongs to one person[130] is transferred to the other person. But if there is an agreed upon time interval

[128] [Of the promiser or of the acceptor]

[129] [*Tradition*. Kant often uses this Latin term instead of the German.]

[130] [*das Seine*: what is his]

(specified or unspecified) between the two acts concluding the contract and the time of delivery, one might ask whether, before delivery, the thing [contracted for] already belongs to the acceptant[131] [simply by virtue of the contract] and his right has become a right in the thing [i.e. a right *in rem*], or whether, on the other hand, still another special contract must be added to [the original contract] relating only to the delivery. If the latter is the case, the right created by the acceptance is only a personal right [i.e. a right *in personam*] and becomes a right in the thing only through delivery. That in this matter the latter [interpretation] is the one that actually holds is clear from what follows.

If I conclude a contract about a thing, say, a horse, that I wish to acquire and then immediately take it with me to my stall or take physical possession of it in some other way, then it is mine (*vi pacti re iniți*)[132] and my right is a right to the thing [that is, right *in rem*]. But if I leave it in the hands of the seller without specifically agreeing with him about who will have physical possession (custody) of the thing [horse] before my taking possession (*apprehensio*) of it, that is, before the change of possession, then the horse is not yet mine and the right that I acquire is only a right against a particular person, namely, the seller, [to the effect] that I be *placed in possession* by him (*poscendi traditionem*)[133] [for] that is the subjective condition of any possible use of the thing. In that case, then, my right is only a personal right to demand from the other person the performance promised (*praestatio*), namely, that he put me in possession of the thing [the horse]. Now, if the contract does not include delivery at the same time (as *pactum re initum*), and if there is a time interval between the conclusion of the contract and the acquirer's taking possession of the thing, I cannot acquire possession in the intervening time except by carrying out a special juridical act
276 (*actum possessorium*), a possessory act that sets up a special contract. This special contract would say that I would have the thing (the horse) fetched and the seller would agree to that. For it cannot simply be taken for granted that the latter [the seller] would hold a thing for safekeeping for the use of another person

[131] [*das Seine des Acceptants*]

[132] [Through the force of a contract executed through the thing]

[133] [To demand delivery]

at his own risk. For that a special contract is required according to which the seller remains the owner[134] of his thing [the horse] for a specific period of time (and is liable for any dangers that might affect the thing); and only if the acquirer delays in [fetching the thing] can he be viewed by the seller as if it had been delivered to him. Therefore prior to such a possessory act all that is acquired through the contract is only a personal right and the promisee can acquire an external thing only through delivery.

[*Following Ludwig, the next few sections, beginning with § [21a* A*§ 31] and including discussions of Money, etc., have been moved forward from their conventional place after the section on Domestic Rights to the end of the discussion of Personal Rights (Contracts). The discussions in these subsections are more pertinent to the discussion of contracts, etc., than to Domestic Rights, which interrupts the natural sequence of exposition. The paragraph numbers have been changed to indicate the new sequence. The old numbers are in brackets and marked* A.]

§ 21a [A § 31]
The a priori classification[135] of rights acquired through contract

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A metaphysical theory of justice and rights[136] can be expected to provide a priori a classification (*divisio logica*) that completely and precisely specifies a priori its components and so establishes a true system of them. In contrast to that, all empirical classification is only fragmentary (*partitio*) and leaves uncertain whether there are still more components that are needed to fill out the whole sphere of the concept being articulated. A classification [or division] according to an a priori principle (in contrast to an empirical classification), can therefore be called *dogmatic*.[137]

Every contract in itself, that is, considered objectively, consists of two juridical acts, the promise and the acceptance of the promise. (As long as there is not a *pactum re initum*[138] that requires immediate delivery),

[134] [*Eigentümer*]

[135] [*dogmatische Einteiling*]

[136] [*Rechtslehre*]

[137] [In the *Critique of Pure Reason*, Kant defines "dogmatic" as using "strict proofs from secure a priori principles." (B xxxv).]

[138] [A contract initiated through a thing]

acquisition through acceptance is not a part of the contract but a juridically necessary consequence of it. Subjectively [i.e. empirically] considered, however, that is, as an answer to the question whether this necessary consequence according to reason (that is, that acquisition ought to take place) will indeed actually result (as a physical consequence); for that I still have no guarantee[139] from the acceptance of the promise [i.e. that in fact it will actually be carried out]. The certainty[140] of the acquisition through the contract belongs outside the modality of a contract [i.e. its a priori character], and is a supplementary item concerning the completeness of the means for achieving the aim of the contract, namely, of the acquisition. For this last [practical] purpose three Persons are required: a promisor, an acceptor, and a guarantor.[141] Through the latter and his special contract with the promisor, the acceptor gains a means of coercion to obtain what is his own,[142] although he does not gain anything more from it as far as the object [promised] is concerned.

Following these principles of the logical (rational) division [of contracts], there are really only three simple and pure types of contract. In addition to the principles of mine and yours founded on pure laws
285 of reason, we need, however, to include innumerable mixed and empirical types [of contract] that are based on statute or convention. But they lie outside the circle of the metaphysical theory of justice, which alone is at issue here.

Remark:

All contracts specifically have as their aim either A. a one-sided acquisition (a beneficent contract), or B. a reciprocal acquisition (a burdensome contract), or C. not any kind of acquisition, but a guarantee of what belongs to a person (which may, on the one hand, be benevolent or may, on the other hand, at the same time be burdensome).

A. A beneficent contract (*pactum gratuitum*) may be:
   a) For the safekeeping of entrusted property (*depositum*),
   b) For the loan of a thing (*commodatum*),
   c) For a gift (*donatio*).

[139] [*Sicherheit*]

[140] [*Gewissheit*]

[141] [*Cavent*]

[142] [*dem Seinen*]

B. A burdensome contract

I. A contract for transfer [or alienation] (*permutatio late dicta*)[143]
   a) For exchange [or barter] (*permutatio stricte sic dicta*) Commodities against commodities.
   b) To buy and sell (*emtio venditio*). Commodities against money.
   c) A loan for consumption (*mutuum*).[144] Transfer of a thing under the condition of receiving it back only in kind (for example, produce v. produce or money v. money).

II. A contract of letting for hire (*locatio conductio*)[145]
   a) The hiring of a thing of mine to another person for his use (*locatio rei*), which, if it is returned only *in specie* [i.e. in kind] may be combined, as in a burdensome contract, with payment of interest[146] (*pactum usurarium*).
   b) A wage contract (*locatio operae*), that is, the granting of the use of my energies to another person for a certain price (*merces*). A worker under this kind of contract is a wage-earner (*mercenarius*).
   c) A contract of mandate (*mandatum*).[147] [This refers to] managing a business in place of and in the name of another person. If managing takes the other person's place but without at the same time managing in that other person's name (i.e. as the person represented), it is management without mandate (*gestio negotii*).[148] If, however, it is

[143] [*Veräusserungsvertrag,* lit. a contract for alienation. *Permutatio* in the strict sense means "exchange."]

[144] [*Anleihe, Mutuum*: "a loan for consumption . . . of chattels, upon agreement that the borrower may consume them, returning to the lender an equivalent in kind and quantity, as a loan of corn, wine or money." *Black's Law Dictionary*, p. 1022.]

[145] [*Verdingungsvertrag, Locatio conductio*: "In civil law . . . used to denote the contract of bailment for hire . . . expressing the action of both parties, viz., a letting by the one and a hiring by the other." *Black's Law Dictionary*, p. 940.]

[146] [*Verzinsung*]

[147] ["A mandate . . . is an act by which one person gives power to another to transact for him and in his name one of serveral affairs." *Black's Law Dictionary*, p. 962.]

[148] [*Negotiorum gestio*: "the doing of another's business; an interference in the affairs of another in his absence, from benevolence or friendship, and without

carried out in the name of the other person, it is called a mandate, in which case as a contract for hire it is a bur-
286 densome contract (*mandatum onerosum*).

C. A warranty contract (*cautio*)[149]

a) A pledging [or pawning] and the taking of a pledge [or pawn] (*pignus*)

b) Vouching for the promise of another person (*fideiussio*)[150]

c) A personal guarantee (*praestatio obsidis*)

Remark:

In this table of all the various kinds of transference (*translatio*) of what is one's own to someone else are found concepts of objects or artifacts of the transference in question that are empirical and that, as far as their possibility is concerned, really have no place in a metaphysical theory of justice and rights.[151] For the latter requires that the divisions be made according to a priori principles and so must be abstracted from the matter of the transactions (which might be conventional) and must be viewed merely in reference to the form. Under the heading of *buying and selling* the same sort of thing goes for the concept of money in contrast to all other alienable things, that is, commodities, or for the concept of a *book*. But it can be shown that that concept [of money], which is the greatest and most useful of all means of exchange of things among people called *buying and selling* (commerce), and for the same reason the concept of a book, as the means for the greatest interchange of thoughts, [these two concepts] can both still be turned into pure intellectual relationships, so that the table of pure contracts will not become impurified through empirical admixtures.

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authority." *Black's Law Dictionary*, p. 687. For an authoritative discussion of the concept, see Justinian, *Institutes*, book iii, xxvii, "*De obligationibus quasi ex contractu*." Moyle, pp. 456–7.]

[149] [*Cautio*: "In the civil law . . . security given for the performance of any thing." *Black's Law Dictionary*, p. 222.]

[150] [*Fide-jussio*: "an act by which any one binds himself as an additional security for another." *Black's Law Dictionary*, p. 624.]

[151] [*Rechtslehre*]

[§ 31 (cont'd) Money, Book, Rent]

I. What Is Money?

Money is a thing the *use* of which is possible only through its being alienated [or transferred].[152] That is a good nominal definition of money (according to Achenwall), for it suffices for distinguishing this particular kind of object of will from all others. It does not, however, give us any information about the possibility of such a thing. Still, one sees at least this from it, first, that in commerce the transfer is intended not as a gift but as a reciprocal acquisition (through a *pactum onerosum*); second, that since money is considered (among people) to be a generally preferred and simple means for trade,[153] although it is something that has no value in itself and as such is to be contrasted with a commodity[154] (that is, something that has that kind of value and 287
that relates to a particular need of someone or other among the people), money can be thought to represent all commodities.

A bushel of grain has the greatest direct value as a means for satisfying human needs. One can use it to feed animals, which provide us with nourishment, with means for moving around, and for working for us. And then by means of them, humans can thus increase and maintain themselves, not only so that they can reproduce themselves over and over again as products of nature, but also so that they can, through skillful inventions, help us with all of our needs as by providing us with dwellings, clothing, and selected pleasures and leisure in general—all of which comprise the benefits of industry. The value of money, on the other hand, is only indirect. One cannot enjoy it by itself or use it as such directly for any purpose. Nevertheless it is a means, an instrument, which of all things is of the highest utility.

Using this as a basis, a *real definition* of money might provisionally be grounded: it is *the universal means by which the hard work*[155] *of people*[156] *can be exchanged with each other*, so that insofar as it is acquired by means of money, the national wealth is in fact the sum of the hard

[152] [*veräussert*]

[153] [*Handel*]

[154] [*Waare*]

[155] [*Fleiss*]

[156] ["People" is used here and in the passages that follow as a translation of *Menschen* (humans).]

work with which people reward each other and which is represented by money that is circulated in the population.[157]

Now, the sort of thing that might be called money must therefore itself have cost as much hard work to produce or to bring it in addition into the hands of other people as to be equal to the hard work through which commodities (as natural or industrial products) were acquired and for which they are exchanged. For if it were easier to get the material that is called money than it is to get commodities, then more money would come to the market than there would be commodities for sale. Then, since the seller would need to expend more hard work on his commodities than the buyer to whom money flows more quickly, as a consequence the hard work in preparing commodities and the materials in general along with productive work that creates public wealth would immediately disappear and be reduced. For that reason, banknotes and assignats[158] cannot be viewed as money even though for a time they take its place. For it costs almost no work to produce and its value rests solely on the popular belief that their conversion into cash would continue as before. This belief will suddenly disappear upon the simple discovery that the cash in question is not there in sufficent quantity and that loss of payment is inevitable.

288 In comparison to the amount of hard work involved in the manufacture of commodities in Europe, the hard work of those who dig in the gold and silver mines in Peru and New Mexico is probably much greater, especially if one counts the fruitless work involved in frequently unsuccessful searches for new mine deposits. Their work is unrewarded and discounted and soon results in those countries sinking into poverty. In contrast, hard work in Europe, which is spurred on by these materials [i.e. gold and silver], at the same time expands proportionally and keeps the continuing interest in mining alive among the former [the mine workers] through the appeal of luxury goods that are offered. Thus, hard work always comes into competition with hard work.

How is it possible, however, that what was at the outset a commodity could become money? [It happens] when a big and powerful spendthrift takes a material that he at first used simply for decorating and furbishing the servants (in his court), (using, for example, gold; silver;

[157] [*in dem Volk*]

[158] [Assignats were promissory notes circulated as currency by the French government in the French Revolution.]

copper; or a kind of beautiful musselshell, cowry; or also, as in the Congo, a kind of mat called Makuten; or, as in Senegal, iron rods; or on the Guinea coast, even negro slaves), [then] if a ruler demands payment of taxes from his subject with this material (as a commodity) and those whose hard work to acquire it is thought to be motivated by this arrangement and [then] for them it is worthwhile to trade in accordance with [his] decrees under and with each other (in a market or an exchange).[159] Only in this way (in my opinion) would it be possible for a commodity to become a legal means of trade of the subjects [of a ruler] with each other and thereby make the state's wealth, that is, money, possible.

The intellectual concept of money, which provides the basis for the empirical concept, is therefore the concept of a thing that, considered in terms of the circulation of possessions (*permutatio publica*), determines the price of everything else (all other commodities). Included among these things are even the sciences [i.e. branches of learning] as long as they are not taught for free; for taken all together the sciences are part of the people's wealth (*opulentia*). For price (*pretium*) is the public judgment of the value (*valor*) of a thing in relation to the proportional amount of what is the universal representative means of the reciprocal exchange of hard work (in circulation).

Therefore, where business is large, neither gold nor copper is taken for real money but only as commodity, because there is too little of the 289
first [i.e. gold] and too much of the second [i.e. copper] to bring it easily into circulation and still have it in small enough pieces for the turnover required to exchange against a commodity or against a number of them in small purchases. Therefore, in the great business of the world, silver (more or less mixed with copper), is taken as the real material of money and as the standard for calculating all prices; the other metals (and even more non-metal materials) can only be found in a nation with little business. If the first two [i.e. gold and silver] are not only weighed but are also stamped with a mark indicating how much they are worth, they are legal money, that is, *coins*.

"Money (according to Adam Smith) is therefore that material thing the alienation of which is the means and at the same time the measure of hard work [industry]. With it, people and nations carry on business

[159] [This entire long sentence is complicated and not entirely coherent. I have tried to give what I think is its general gist.]

with one another."[160] This definition goes thereby beyond the empirical concept of money to the intellectual concept so that it sees only the *form* of the reciprocal performances in an onerous contract (and abstracts the matter from it), considering it [only] as the juridical side of the exchange of Mine and Yours in general (*commutatio late sic dicta*). [In this way] it adequately represents the table given above of the dogmatic division a priori as well as the metaphysics of justice [and rights] as a system.

II. What Is a Book?

A book is a piece of writing (it makes no difference whether it be handwritten or printed) which represents a discourse that someone conducts with the public through visible language signs. A person who speaks in this way in his own name is called the *author* (*autor*). A person who speaks publicly through the writing in the name of another (the author) is the *publisher*. If the publisher does so with the permission of the author, he is the legitimate [publisher]. If, however, he does so without permission, he is an illegitimate publisher, that is, a *plagiarizer*.[161]

The plagiarizing of a book is juridically forbidden.

290 A piece of *writing* is not the direct expression of a particular concept like a copperplate, or a portrait, or a plaster cast that represents a particular important person[162] as a bust. Rather it is a discourse with the public in which the author speaks publicly through the publisher. The publisher, however, does not speak in his own name (through his workman, *operarius*, the printer) for then he would be portraying himself as the author. Rather, he speaks in the name of the author, which he is justified in doing only through the authorization (*mandatum*) of the author himself. Now, the plagiarizer in his unauthorized publishing also speaks in the name of the author, but without his authoriza-

[160] [This is the general theme of Adam Smith's *Wealth of Nations*, Book 1, Chap. 4: Of the Origin and Use of Money. The same theme is developed in his *Lectures*. It is not clear whether or not Kant's words are intended as an actual quotation, in which case it is impossible to determine precisely where it comes from. Kant's theory of money appears to be taken almost entirely from Smith's account.]

[161] [*Nachdrucker*: lit. reprinter]

[162] [*Person*, i.e. a personage]

tion (*gerit se mandatarium absque mandato*).[163] Consequently, he commits a crime against the author's commissioned (and so legitimate) publisher, a crime that consists of robbing the advantage that the latter could and might wish to derive from his use of the right (*furtum usus*).[164] Accordingly, *the plagiarization of a book is juridically forbidden.*

The explanation of why, what [even] at first sight is such a powerfully conspicuous [instance] of applied injustice,[165] plagiarism [copying] gives the appearance of being juridically right is as follows: since a book, on the one hand, is a *physical artifact* (*opus mechanicum*) that can be reproduced (by someone who finds himself in legitimate possession of an exemplar), he therefore has a *real right*[166] to do it. On the other hand, however, a book is also simply a *discourse of the publisher with the public*, which he cannot reproduce publicly without authorization from the author to do so, [and that is] *a personal right.* Now the error involved here consists in confusing these two [types of right] with each other.

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[More On the Confusion of Rights: Purchase Against Rent]

The confusion of a personal right [*ius in personam*] with a thing right [*ius in rem*] in a case involving a rental contract provides another subject for dispute, for example, renting a lodging (*ius incolatus*).[167] This question might be asked: If a property owner has rented his house (or land) to someone and then sells the house before the end of the rental period to someone else, is he [the owner] bound to include in the contract of sale a condition that the rental be continued or, on the other hand, does purchase overrule rent (even with prior notice [to the renter] within the customary period of time)? In the first case, the house would really have a burden (*onus*) resting on it, a right that the renter had acquired with respect to the house. That could well happen 291
(through extension of the rental contract over the house); in that case, however, it would not be a simple rental contract, but would be one to which another contract would have to be added (one to which not

[163] ["He acts as if mandated without having a mandate."]

[164] [Theft of the use]

[165] [*Ungerechtigkeit*]

[166] [*Sachenrecht*]

[167] [Right of domicile]

many renters would agree). Accordingly, the principle that "purchase overrules rent" means that the full right in a thing (as property) overrules all personal rights insofar as they are inconsistent with that right [of property]. But it is still open to the renter to appeal to such a right [i.e. personal] as the ground for an action to be indemnified for damages stemming from the breaking of the contract.

Third Section
Personal rights of a real kind[168] [Domestic Rights]

§ 22
[General]

276 This kind of right consists in the right of possession of an external object as of a thing and the use of it as of a person. The belonging [Mine and Thine] involved in this kind of right is domestic belonging and the relationship involved in this state is a relationship of a community of free beings. Through the reciprocal influence of (one person on another) according to the principle of external freedom (causality) these free beings make up an association of members of a whole (of persons belonging to a community). This whole is known as a *household.*

The mode of acquiring this condition and (remaining) in it does not come about through a self-authorized act (*facto*) or through a sim-

[168] [*Commentary*: As pointed out in the Translator's Introduction, the German *das Recht* can be translated in several ways. Here the word is used collectively to refer to the body of rights connected, e.g. with marriage. Hence I translate it in the plural as "rights." In view of the fact that since its first publication, Kant's notion of this special kind of right has been derided by his critics, it is important to understand the intent and basis of this peculiar concept. First, as pointed out in the Translator's Introduction, Kant's thoroughgoing egalitarian theory of rights and law, leads him to abandon the traditional treatment of the institutions covered here, e.g. marriage, children, based on *status* and on accompanying levels of authority. His task therefore is to provide an analysis of the legal relationships involved in marriage, children, and household staff using only individual rights instead of social structures as his basic tools of analysis. This, however, presents a problem, because the previously discussed two types of right do not exactly fit marital, parental, and *Gesinde* relationships: for they cannot be property rights (the full-blown case of real rights), because that entails no restriction on use and domination (i.e. deprivation of liberty and equality) and they cannot be personal rights, because unlike the latter the rights in question must be exclusive. So Kant argues, the rights in question are of a third kind, like and unlike the other two kinds in specific respects, briefly, non-domination and exclusiveness.]

ple contract (*pacto*), but through the law (*lege*).[169] Since this [law] is not a right to a thing [right *in rem*] and is not a simple right against a person [right *in personam*], yet is at the same time the possession of a person, it must be a [kind of] right that lies far beyond all real and personal rights, namely, the right of humanity in our own person. From this right of humanity there follows as a consequence a natural permissive law that by its benevolence makes this kind of acquisition possible for us.

§ 23
[Division]

Acquisition according to this law may be divided according to its object into three kinds: The *husband* acquires a *wife*, the *pair* acquires *children*, and the *family* acquires *domestic staff*.[170] What is acquired in this way is at the same time inalienable and the rights of the possessor of these objects are far and away the most personal of rights.

The Rights of a Domestic Group—First Subdivision

§ 24
Marital rights

A *sexual community*[171] (*commercium sexuale*) is the reciprocal use that one person makes of the sexual organs and faculties of another person (*usus membrorum et facultatum sexualium alterius*). This use may be either a natural use (through which one's own kind can be produced) or an unnatural use. The latter may be either of a person of the same sex or of an animal of another than human species. These unnatural uses are transgressions of the laws and are known as *unnatural vices* (*crimina carnis contra naturam*) that are also unnameable. As a violation of the humanity in our own Person they cannot be rescued from total condemnation through limitations or exceptions of any kind.

[169] [By law, Kant here means the law of the state, i.e. the positive Law. *Lex*, not *ius* (justice).]

[170] [*Gesinde*. A collective name for the household staff. In 18th-century Germany, this group of servants in a household had a distinctive legal and social status, which conferred special privileges, rights, and duties that set them off from other employees. They were almost part of the family; they ate with the family and usually stayed with the family on a more or less permanent basis.]

[171] [Kant discusses community from a theoretical point of view in *Critique of Pure Reason* B 112–113 and A 212–213/B 260. His view is basically mechanistic rather than idealistic or organic.]

The natural sexual community itself is either in accordance with simple *animal nature* (*vaga libido, venus vulgivaga, fornicatio*) or in accordance with the law. The latter kind is *marriage* (*matrimonium*), that is, the binding together of two persons of different sexes for the lifelong reciprocal possession of their sexual attributes. The purpose to produce and educate children may indeed be a purpose of Nature, for which it has implanted the mutual attraction of the sexes for each other. But in order to establish the legitimacy of this bond it is unnecessary that a person who marries have this purpose in mind; for otherwise, when childbearing ceases, a marriage would automatically be dissolved.

278 Even under the assumption that it involves the pleasure of the reciprocal use of their sexual attributes, the marriage contract is not a matter of arbitrary choice[172] but is a necessary contract under the law of humanity. That is, when a man and a woman want mutually to enjoy each other's sexual attributes, then they must necessarily become married. That they do so is necessary according to the laws of justice of pure reason.

§ 25
[Sexual intercourse in marriage and Personality]

For the natural use that one sex makes of the sexual organs of the other is a pleasure for which one party gives itself up to the other. In this act a person makes himself [or herself] into a thing, which is inconsistent with the right of humanity in one's own Person.[173] This is possible only under one condition, that, while one Person is acquired by the other as if a thing, this other [Person] in turn reciprocally acquires the first. For in that way the Person regains himself (or herself) and once more reestablishes his (or her) Personhood.[174] However, for a human being, the acquisition of a body part[175] is at the same time the acquisition of the whole Person, for a Person is an absolute unity. Consequently, one sex's giving itself up and taking on [the other] for the pleasure of the other is not only allowable under the condition of mar-

[172] [*beliebiger*]

[173] [Note the subtle transition from person (*Mensch*) to Person in the metaphysical, legal sense.]

[174] [*Persönlichkeit.* It should be observed that since *Person* is a feminine noun, all the relevant pronouns are, for grammatical reasons, also feminine.]

[175] [*Gliedmass*]

riage, but it is also only possible under that condition. That this *personal right*, however, is at the same time of a real kind is based on the consideration that, if one of the married people runs away or gives himself [or herself] up into the possession of someone else, the other person [in the marriage] is at all times undeniably entitled to bring the runaway back into his or her power, as if he (or she) were a thing.[176]

§ 26
[Equality in marriage]

For the same reasons, the relationship of the married couple is one of *equality of possession* as well as of the Persons that reciprocally possess each other. (Consequently, [this relationship is possible] only in *monogamy*, for under *polygamy* the person who gives themself away wins only part of the person to whom he [she] gives themself and therefore makes themself into a mere thing.) The equality [of the married couple] is also an equality of the good things in life. With respect to these things, however, they are entitled to give up the use of one part thereof, although only by means of a special contract.

Remark:

It follows from the reason given above that no continuing contract for concubinage can be a right[177] any more than can a contract for service with a Person for a one-time pleasure (*pactum fornicationis*). For, as far as the last kind of contract is concerned, everyone will agree that, if the Person who made it were to regret having done so, he (she) cannot be held juridically to the fulfillment of the promise. And, by the same token, the first kind of contract, namely, that of concubinage (as *pactum turpe*), ceases to hold because it would be a contract for hire (*locatio conductio*)[178] and specifically of a body part for the use by another. Consequently, because of the inseparable unity of the body parts from a Person, this Person would have to give him or herself up as a thing to the will of the other. Therefore, either party could cancel the contract with the other as soon as he (or 279

[176] [For the earliest critique of Kant's theory about this, see Appendix: 3. Examples.]

[177] [*zu Recht . . . fähig*]

[178] [*Locatio conductio* is defined by *Black's Law Dictionary* as "a civil law term for a contract of bailment for hire." P. 1089.]

she) wants without the other party having any ground to complain that his (her) rights had been violated.

Exactly the same goes for a left-handed marriage[179] which uses the inequality of rank between the two parties for the domination of one party over the other; for, in actuality, it does not differ from the mere natural right of concubinage and is not a real marriage.

Therefore, the question is, Is it not also inconsistent with the equality of marriage partners if the law[180] says of the relationship of husband to wife: He shall be your Lord and Master (he is the party that commands and she the party that obeys)? This cannot be regarded as inconsistent with the natural equality of a human pair, if the grounds of the dominance lie only in the natural superiority of a man over a woman in the ability to bring about the community interest of the household and the right to command that is based on it. So that this right to command itself can thus be derived from the duty of unity and equality in relation to the purpose [of the household].[181]

§ 27
[Marriage and sexual intercourse]

The marriage contract is only consummated through having sexual relations (*copula carnis*). A contract between two persons of both sexes that is made with a secret understanding either that they would ab-

[179] [A left-handed or morganatic marriage was a marriage entered into by a man of aristocratic or noble rank with a woman of inferior status upon the condition that neither the wife nor the children should partake of the man's titles or succeed to his property by inheritance. (See *Black's Law Dictionary*, p. 1124.)]

[180] [*Gesetz*, i.e. the positive law of the state, not *Recht*, i.e. justice or the Natural Law. Kant is probably referring to the newly adopted Prussian code, which contains such a provision.]

[181] [*Zweck*. Here Kant seems to be referring to the *purpose* of the household (marriage or family), an approach that he dismisses earlier in favor of a rights approach. In general, *Zweck* is a term that he ascribes to Nature rather than to individuals in their moral capacity. Although Kant denies that we have a duty to adopt Nature's purposes (e.g. to have children), there is a natural permissive law that permits us to do so. It would follow that the husband's domination mentioned here might be permitted, i.e. is not basically inconsistent with equality, but is not a necessary aspect of the concept of marriage. (Otherwise, Kant would not put the idea in the form of a question and include it only as a *Remark*.)]

stain from sexual relations or with the knowledge that one or both parties are impotent is a sham contract and does not bring about a marriage. It can also be dissolved by either of the two as they wish. If, however, the impotence appears only later, the marital rights cannot be lost through this guiltless mishap.

The acquisition of a wife or of a husband does not come about *facto,* 280
i.e. through the fact (of having sexual relations) without a preceding contract. Nor does it come about *pacto,* (simply through a marriage contract without being followed up by sexual relations). Rather, it comes about *lege,* i.e. through law, that is, as a juridical consequence of the obligation not to enter into a sexual community except through a reciprocal possession of persons, a possession that is actualized likewise only through the reciprocal use of their sexual attributes.

The Rights of a Domestic Group—Second Subdivision

§ 28
Parental rights

Just as from the duty of human beings to themselves, that is, to the humanity in their own Persons, arises the personal right of the two sexes mutually to acquire each other in a *real* way through marriage, so from the procreation in this union follows a duty to support and care for its products,[182] that is, the children. As Persons, the children have thereby at the same time an original inborn (not an inherited) right to be cared for by their parents, until they are able to take care of themselves; actually this right comes directly from the law (*lege*) without any special juridical act being required for it.

Since the being that is produced[183] is a Person and it is impossible to frame any concept of the production through a physical operation of a being endowed with freedom,* so from the practical point of view

[182] [*Erzeugnis.* See next note.]

[183] [The German word *Erzeugung* and its cognates can be used either for biological procreation or for production in the sense of manufacture. Throughout this section, Kant deliberately uses these words to bring out the paradoxes in the notion of Persons making Persons.]

* Even if, as is possible, God created free beings, then it would be the case, it would seem, that all subsequent actions of those beings would be predetermined by the first act and included in the chain of natural necessity, and would therefore not be free. But that they (we humans) nevertheless are free is proved from the moral-practical point of view by the cate-

it is a quite correct and also necessary Idea to look on the act of procreation as one through which we have put a Person in the world without his (or her) consent and have brought him (or her) over here arbi-
281 trarily and willfully.[184] For this act an obligation is incurred by the parents, insofar as it is within their powers, to make them [i.e. children] satisfied with their condition. They cannot [treat] their child as if it were their artifact[185] (for such a thing could not be a being endowed with freedom) and destroy it as their property or even simply abandon it to chance, because in him [i.e. the child] they have brought over here not simply a worldly being but also a world citizen into a situation with regard to which they can also never be indifferent in terms of concepts of justice.

§ 29

From this duty there necessarily also arises the right of parents to manage and educate their children for as long as they cannot control

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gorical imperative, as through an authoritative pronouncement of reason, without being able to make the possibility of this relationship of cause and effect intelligible, because both of them are supersensible. The only thing that one can expect here would simply be that it shows that there is nothing contradictory in the concept of the *creation of free beings* and from that it might very well happen that it is shown that the contradiction appears only if the category of causality is at the same time linked with temporal conditions, which cannot be avoided with reference to sensible objects, [for there] the ground of an effect precedes the effect [in time]. But if this [i.e. temporality] is stretched to the relations between supersensible things to each other (which would indeed have to happen if that causal concept [i.e. involving time] considered from a theoretical point of view were to become objective reality). But the contradiction disappears if the pure category (without its underlying schema) is used from a moral-practical point of view, that is, from a nonsensible point of view, to apply to concepts of creation.

The philosophical jurist will not find this inquiry into the first elements of transcendental philosophy in a metaphysics of morals to be unnecessary rumination that becomes lost in pointless obscurity, if he reflects on the difficulty of the task to be solved and the necessity yet of giving here a satisfactory account of the principles of justice.

[184] [*eigenmächtig*]

[185] [*Gemächzel*: lit. little bed chamber. Throughout this discussion Kant uses down-to-earth terms to shock the reader into seeing how riduculous the questions are.]

their own use of their limbs or their use of the understanding.[186] Besides providing nourishment and care they have the right to bring up their children and to educate them not only pragmatically, so that in the future they will be able to support themselves and secure a livelihood, but also morally, for otherwise the guilt for their negligence will fall on the parents. All of this [pertains] until the time that the child is released from the parents (*emancipatio*), at which time the parents relinquish both the paternal right to command and all claims for reimbursement of expenses for the food and care that they provided up to now, for which, after the education has been completed, the obligation of the children (to their parents) can only be considered only a duty of virtue, namely, a duty of gratitude.

Given their Personality it follows that the children could never be 282
regarded as the property of the parents, although they still belong to the parents' Mine and Yours (inasmuch as they are possessed by parents similarly to a thing and they can, even against their Will, be brought back to the parents from possession by someone else). It follows also that the parents' right is not completely a real right [*in rem*], for it is not alienable (*ius personalissimum*), but it is also not completely a personal right [*in personam*], instead it is a personal right of a real kind.

From this it is becomes clear that the usual classification of rights is incomplete, because the heading of "personal rights of a real kind" in the theory of justice[187] must necessarily be added to the headings of real and personal rights. This is because in discussions concerning the rights of parents over their children, as a piece of their house, the parents are not limited to invoking the duty of the children to return if they have run away, but are entitled to compel and capture them as things (like escaped domestic animals).

The Rights of a Domestic Group—Third Subdivision

§ 30

The rights of the head of a household

The children of the house, together with the parents, make up a family. [Then] without any kind of contract to end their previous dependency, [and] simply through acquiring the ability to support

[186] [The German for child is *das Kind* and, like the English, covers both boys and girls. It is a neuter noun; the pronouns are also neuter. In order to convey this gender neutrality, I have used the plural. In fact, Kant himself switches back and forth between singular and plural in discussing children.]

[187] [*Rechtslehre*]

themselves (either through naturally coming of age in the general course of nature or in accordance with their natural abilities), they attain adulthood [or majority] (*maiorennes*). That is, they become their own masters (*sui iuris*) and acquire their right without any special juridical act but simply through the law (*lege*) [*Gesetz*]. They do not owe a debt to their parents for their education, while the parents, on the other hand, are released in the same way from their obligations to the children. Therein both sides win or rewin their natural freedom. The domestic society (social group), on the other hand, which was required by the law, is now dissolved.

Both parties can from now on actually remain in exactly the same
283 household, although there will be a different way of being bound to a duty, namely, it will be like the tie between the head of the household and the staff (male and female servants of the house), that is, the same domestic society, which will now be a household. This is done through a contract that the parent makes with the children that have grown up or, if the family does not have any children with other free people (intimates of the house). Thereby they found a domestic society that will be a society of unequals (of one who commands, the master, and of those who obey, i.e. the servants (*imperantis et subiecti domestici*)).

The domestic staff belong to the master of the house, the householder, as one of his assets [*das Seine*] and, in fact, as far as its form is concerned (*the status as an asset*[188]) it is similar to that of a real right, for, if one of the staff runs away, the householder is able through his unilateral will to bring him [or her] back under his authority. As far as the matter [of the possession] is concerned, however, that is, the kind of use he can make of this housemate of his, he can never act as if he were his owner (*dominus servi*).[189] That is because the household has authority over him [the servant] only on acccount of a contract. But any contract through which one party were to renounce part of his whole freedom for the advantage of the other and cease to be a Person,[190] would be null and void, because it would have the [logical] consequence that [the servant] would have no duty to keep a contract and would only recognize force [power] and that would be self-contradictory. (The

[188] [*Besitzstand*]

[189] [Owner of a slave]

[190] [Note that Kant here uses *Person* in the legal sense, which excludes slaves, to be contrasted with *Mensch* (person), which includes slaves.]

kind of ownership right against someone who has forfeited his Personality through a crime is not at issue here.)

Thus, the contract between the head of the household and the staff is not of the kind where the use of the latter becomes an abuse,[191] but the judgment over whether or not it is that is not just up to the householder, but also to the servants (who can never be bond-servants). The contract can never be made for life, but if need be only for an indefinite time within which one party can give notice to terminate the relationship to the other. Children, however, (including even the children of someone who has through a crime become a slave), are always free. For every human being is born free, because he has not yet committed any crime and because the costs of education up to adulthood cannot be counted as a debt that has to be paid off. Even a slave would, if possible, have to educate his children without requiring them to pay back; in the case of the slave's inability to do this, his possessor takes on this obligation instead.

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Thus one sees here also, as in the previous subdivisions, that there are personal rights of a real kind (such as those of a master [or mistress] over the household staff), since one can bring them back and can demand them back as part of one's external belongings from any other possessors even before investigating their reasons for doing so and their right.[192]

Supplementary Section[193] Concerning the Ideal Acquisition of an External Object of the Will

§ 32 [General]

I call an acquisition *ideal* if it does not contain any causality in time, 291
and therefore has a mere Idea of pure reason as its ground. It is not on

[191] [*Verbrauch*]

[192] [It is unclear to whom the German pronoun *sie* (they, their) refers. Renaut assumes that it refers to the *Gesinde*, as does Gregor. I think that it makes more sense to say that it refers to the master, simply because his having a prior right makes it unnecessary to defend the action by giving reasons for it.]

[193] [*Episodischer Abschnitt*. For § 31, see p. 77.]

that account any less true; it is not an imaginary acquisition, but is called not real only because the act of acquisition is not empirical; for the subject acquires [the thing] from another [person] who either *does not yet exist* (concerning whom one only assumes the possibility that he will exist), or from someone who has *ceased to exist*, or if he himself *no longer exists*, so that the attainment of possession is a mere Idea of reason.

There are three [of these] modes of acquisition: (1) through *usucapio*, (2) through *inheritance*, (3) through *immortal merit* (*meritum immortale*), that is, the claim to a good name after death. All three can in fact have their effect only under a public juridical state of affairs [i.e. a civil society], but they are not grounded in the constitution of the civil society or its arbitrary statutes, but are also conceivable a priori in the state of nature and indeed as necessary beforehand in order to establish laws afterwards under the civil constitution (*sunt iuris naturae*) in accordance with them.

§ 33

I. The mode of acquisition through *usucapio*[194]

I acquire the property of another person simply through *long possession* (*usucapio*) not because I can legitimately presuppose that he has consented thereto (*per consensum praesumptum*) nor because I can assume,
292 since he does not deny it, that he has abandoned the thing in question. Rather, even if there were a real pretender claiming to be the owner, I acquire it [the property] because I may exclude him on the basis of my long possession and may ignore his previous existence quite as if his existence were indeed only something imaginary. I can do this even if afterwards I were to find out that he actually exists and about the actuality of his claim.

It is not quite correct to call this kind of acquisition acquisition through *prescription* (*per praescriptionem*), since the exclusion [just mentioned] has to be viewed only as a consequence [of long posses-

[194] [*Ersitzung*. For the Roman Law notion of *usucapio*, see Translator's Introduction, p. xxxiii. It should be noted that the subject is the acquisition of property, not of possession. *Usucapio* is the subject of Justinian 2, 6: "Usucapio and Long-Term Possession." In Roman Law, the length of time required for *usucapio* differed from time to time. Justinian specifes three years for moveables and ten years for immoveables (land) between people present and twenty years between people apart, a just cause being presupposed (op. cit.).]

sion] and possession must have preceded it.[195] The possibility of this mode of acquisition [i.e. *usucapio*] must now be proved.

A person who fails to exercise a continuing *possessory act* (*actus possessorius*) over an external thing as belonging to him[196] will rightfully be regarded as not existing (as possessor); for as long as he is not justified in claiming the title of possessor he cannot complain to be injured [by someone else's possession.] And if later on, after someone else has taken possession, he [still] declares himself to be possessor, he is really only saying that he was at one time earlier the owner but not that he still is [or] that [his] possession remains unbroken [even] without a continuous juridical act [i.e. possessory act]. Only through a juridical and really continually sustained and attested possessory act is it possible for him to secure what belongs to him over a long period of non-use.

For, if we were to suppose that the absence of this kind of possessory act did not have the consequence that another person could ground his right to continual possession (*possessio irrefragabilis*) on his legally valid and honorable possession (*possessio bonae fides*) and could regard the thing that is in his possession as acquired by him, then, in that case, no acquisition [whatsoever] would be peremptory (secure) and all acquisition would be merely provisional (temporary). That would be so because historical studies are not able to reach in their investigations way back to the first possessor and his [first] possessory act.

The presumption upon which *usucapio* is grounded is not simply *legitimate* (allowed, *iusta*) as a *conjecture*, but it is also a juridical presumption (*praesumtio iuris et de iure*) presupposed by coercive laws (*suppositio legalis*): he who fails to attest his possessory act has lost his claim against the present possessor. Accordingly, the length of time of 293
the failure (which indeed cannot and may not be prescribed) can only be used to establish the certainty of the default. The supposition, however, that, an hitherto unknown possessor whose possessory act is interrupted (even if it is not his fault) could always regain (*vindicire*) a

[195] [Prescription generally relates to a limitation (exclusion) of actions in cases where we might invoke a statute of limitations. It can be used, for example, in respect to a right *in personam*, e.g. a debt. In other words, Kant is correctly arguing that *usucapio* is based on a positive notion of possession and not on the negative one of extinction (through prescription) of another's rights. For a discussion, see Nicholas, pp. 120 ff. For bibliographic details, see Selected Bibliography.]

[196] [*als der seinen. Sache*]

thing (*dominia rerum incerta facere*)[197] contradicts the Postulate of juridical-practical reason given earlier.[198]

If, however, he is a member of the commonwealth,[199] that is, in a civil society, the state might well preserve his possession for him (as his representative), even though the possession was interrupted as a private possession and the present possessor is not allowed to prove his title of possession by reference back to the first possessor or to ground it on *usucapio*. But in the state of nature, title through *usucapio* is legitimate, [but] not really as a way of acquiring a thing, but rather as a way of remaining in possession apart from any juridical act. Such freedom from claims [of others against oneself] is also customarily called possession. Thus, prescripton which applies to the earlier possessor also belongs to the law of nature (*est iuris naturae*).[200]

§ 34
II. Inheritance (*Acquisitio haereditatis*)

Inheritance consists in the transference (*translatio*) of the assets of a person who dies to a survivor by means of an agreement of the Will of both parties.[201] The acquisition by the heir (*haeredis instituti*) and the abandonment by the testator (*testatoris*), that is, the change of mine and thine, takes place in an instant (*articulo mortis*), namely, when the latter ceases to exist. It is therefore actually not a transference (*translatio*) in the empirical sense which would assume that there are two acts one after the other, where the first gives up his possession, whereupon the other acquires it. Instead, it is an ideal acquisition.[202]

[197] ["Make the ownership of things uncertain"]

[198] [Here Kant is simply giving a philosophical twist to the customary argument of Roman lawyers that defended the doctrine of *usucapio* on the grounds that long possession and conversion into property provides protection against the insecurity of possession and against unnecessary litigation over possession. Characteristically, Kant turns this pragmatic argument into a philosophical one.]

[199] [*des gemeinen Wesens*]

[200] [Here prescription obviously includes *usucapio*.]

[201] [Roman Law builds the law of inheritance on the principle of universal succession, that is, the inheritance as a whole (*hereditas*) passes to a single heir (*heres*). The heir then distributes different items called legacies to others according to the stipulations of the will. In some ways the heir in Roman Law does what an executor would do in Common Law with certain important qualifications. (See Nicholas, pp. 236 ff.)]

[202] [Viewed as a gift, the transfer of the estate from testator to heir requires a con-

Since inheritance without bequest (*dispositio ultimae voluntatis*)[203] is inconceivable in the state of nature and regardless of whether it be a testamentary contract[204] or a unilateral appointment of an heir [through a will] (*testamentum*), the question comes up as to whether and how in exactly the same instant in which the subject ceases to exist 294
the changeover of mine and thine takes place. So we must investigate the question, How is acquisition through inheritance possible? [This is a question] that must be investigated independently of the many possible forms for carrying it out (that can only be found in a commonwealth).

"It is possible to acquire [something] through a testamentary contract." For the testator Cajus promises and declares in his last will that on his death his belongings shall go to Titius, who knows nothing about the promise, [but] as long as he [Cajus] lives, they remain his property alone. Now, needless to say nothing can be transferred through a mere unilateral Will to another person. Rather, a promise requires acceptance thereto by the other party and a simultaneous Will [of both]. That is missing here, for as long as Cajus is alive, Titius cannot expressly accept in order to make the acquisition, since he (Cajus) intended the promise to take effect only after his death (for otherwise the property would for an instant [be shared] in common, which is not the Will of the testator. Still, he (Titius), however, acquires, although silently, a strange right to the legacy as a real right [thing right], namely, to accept it exclusively (*ius in re iacente*). Therefore the [legacy] that takes place at the hypothesized temporal instant is called *haereditas iacens*.[205] Now since every person necessarily accepts such a right (because he can indeed win and never lose through it) and consequently would also silently accept it and since Titius is in this situation after the death of Cajus, he can acquire the inheritance through the acceptance of the promise, for the inheritance is in the intervening time not completely ownerless (*res nullius*) but only *vacant* (*res vacua*).

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tract (or quasi-contract), which involves an agreement of the Wills of both parties, i.e. a "meeting of minds." See above, § 19 and § 21a. Hence the legal complications that lead Kant to call the transfer momentary and "ideal."]

[203] [Direction of the final will]

[204] [*Erbvertrag*]

[205] [A prostrate or vacant inheritance. In Roman Law, as long as no one has acquired the inheritance, this was by legal fiction used to represent the decedent. See *Black's Law Dictionary*, p. 712.]

He can do so because he has the exclusive right to choose whether he wants to make the bequeathed belongings his or not.

Remark:

Therefore testamentary wills are also valid according to the simple Law of Nature (*sunt iuris naturae*); this statement, however, is to be understood as [meaning] that they are capable and worthy of being introduced and sanctioned into civil society (once this is entered into). For only this [i.e. the civil society] (the general will within it) preserves the possession of an estate while it is suspended between acceptance and rejection and really belongs to no one.

§ 35
III. The legacy of a good name after death (*Bona fama defuncti*)

295 It would be absurd to maintain that a dead person (if he no longer exists) could after his death still possess something, as if a legacy were a thing.[206] However, a *good* name, although it is only an ideal mine or thine, is something innate and external that is attached to a subject as a Person[207] and I can and must abstract from the question of whether or not it ends with death or still survives as such, because I have a juridical relationship with every other Person simply on account of their humanity, *homo noumenon.* Therefore any attempt to create an evil false reputation about someone after his death is always questionable, even if there may be grounds for complaints about him. (Therefore, the saying *de mortuis nihil nisi bene*[208] is incorrect.) It is still questionable, however, because to spread charges without the greatest certainty against someone who is absent and cannot defend himself is at least unmagnanimous.

That a person who has led an irreproachable life up to the time of his death should acquire a (negative) good name [to count] among his belongings, which survives him when he no longer exists as *homo*

[206] [*Sache.* Here Kant means what in Roman Law is called *res,* which is anything that can be a subject of rights.]

[207] [*Person.* Here "person" is used nondescriptively to designate a moral status. In order to distinguish it from person (*Mensch*), I have capitalized it. See Translator's Introduction.]

[208] ["Of the dead nothing should be said unless it is good."]

phaenomenon, and that survivors (whether related or strangers) are entitled to defend him before the Law[209] (because unproven charges might put them altogether in danger of similar encounters after their death), that is, that he could acquire [such] a right is, I would say, a strange but nevertheless an undeniable manifestation of the a priori legislating reason, whose commands and prohibitions also stretch beyond the boundary of life.

If someone spreads a rumor about a dead person's crime that when alive would have made him dishonorable or at least despicable, anyone who can provide evidence that this accusation is intentionally false and a lie can then openly declare that he who cast aspersions on the dead man's character is a calumniator, which [in turn] makes [that person] himself dishonorable. He [the defender of the dead man] would be unable to do all of this if he did not rightfully[210] assume that the dead man was insulted thereby, even though he was dead, and that he [the dead man] was owed an apology from him [the rumor monger], even if he no longer exists.*

[209] [*Recht*]

[210] [*mit Recht*]

* One should not infer that this implies a fanatic notion of some kind of visionary premonition of a future life or an invisible relationship to souls separated from the body. For nothing more is involved here than a purely moral and juridical relationship that also holds between human beings [*Menschen*] who are alive. At issue is simply their status as intelligible beings when everything physical (relating to their existence in space and time) is logically separated out, that is, is abstracted from. It is not intended here that they should abandon their nature as human beings and become spirits, for that [i.e. being human] is a situation in which they would feel the insult from their slanderer.

He who after a hundred years says something evil about me that is false already insults me now. For in a pure juridical relationship that is wholly intellectual, abstraction is made from all physical conditions (of time) and the honor-robber (calumniator) is just as punishable as if he had done it during my lifetime—not through a criminal court, but in public opinion through the loss of honor in accordance with the right of retaliation [to compensate] for what he has done to the other one [i.e. me!]. Even plagiarism that is committed by a writer against a dead person, even though it does not stain the victim's honor but only steals a piece of it from him, would be rightfully avenged as an injury to him (like kidnapping).

One does not need to prove an entitlement to play the role of apologist for the dead man, for every person[211] is unavoidably entitled [to do so], not simply as a duty of virtue (taken ethically), but as belonging to the rights of humanity[212] in general. [Therefore] no special personal grievance growing out of such a blot on the dead man that could affect friends or relatives is required to justify him undertaking that kind of rebuke. Accordingly, it is not to be disputed that this kind of ideal acquisition and a right of human beings after death against survivors has a grounding, although a deduction of the possibility of it is not feasible.

THIRD CHAPTER
Of Acquisition That Is Subjectively Determined by the Opinions of a Public Judiciary[213]

§36
[General]

If the Natural Law is conceived as only nonstatutory justice [Law],
297 that is, simply justice [Law] that can be known a priori by every person,[214] then not only will *applied justice*[215] pertaining to mutual dealings of Persons with one another (*iustitia commutativa*)[216] be included, but also *distributive applied justice* (*iustitia distributiva*). To the extent that its law can be known a priori, that is, the law according to which a judicial decision (*sententia*) has to be rendered, it likewise belongs to the Natural Law.[217]

[211] [*Mensch*]

[212] [*Recht der Menschheit*]

[213] [*Ausspruch einer öffentlichen Gerichtsbarkeit*. We would say "the courts."]

[214] [*Mensch*. When capitalized, Person translates as *Person*, which is a moral-legal noumenal status. A classical definition of Person is as a "subject of rights and duties."]

[215] [*Gerechtigkeit*]

[216] [Commutative justice applies to individuals in their relations to each other, whereas distributive justice is applied by the civil society. See § 41.]

[217] [*Commentary*: This whole chapter is concerned with differences between the requirements of "abstract" justice, which is here identified with Natural Law, and practical justice as it is applied by the courts. Following his customary terminol-

The moral Person[218] who administers practical justice is a *court of law* (*forum*),[219] and the process of administering the office is a *trial* (*iudicium*).[220] These are a priori conceptions following from the conditions of justice itself, without regard to how a particular kind of constitution is set up and organized (for which statutes, that is, empirical principles, are required).

The question that arises here is therefore not simply, What is just in itself, that is, how does every person judge about it for himself? Instead the question is, What is just before a court of law, that is, what is Lawful?[221] Now, there are four cases in which the two kinds of judgment differ and are opposed to each other. Yet they can nevertheless be consistent with each other, for they [the judgments] are made respectively from two different but equally true points of view—the one from the point of view of private justice [private Law]; and the other, from the point of view of the Idea of public justice [public Law]. The four cases are: (1) a gift contract (*pactum donationis*), (2) a loan contract (*commodatum*), (3) recovery (*vindicatio*), and (4) the administration of oaths (*iuramentum*).

Remark:

It is a common error of deviousness of jurists to take the juridical principle that a court of law, for its own special purposes (hence from a subjective point of view), is entitled, indeed even bound to accept in deliberating and deciding about every right due to an individual, [to take it] as a juridical principle that is also objectively just in itself. This is a fallacy (*vitium subreptionis*)[222] inasmuch as the former [i.e. the court's principle] differs greatly from the latter [i.e. what is just in itself]. It is therefore of

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ogy, Kant calls the first "objective" (a priori) and the second "subjective" (empirical). The difference between them is not that of superior and inferior, but a reflection of different points of view from which to approach justice, Law, and rights.]

[218] [By "moral person," Kant means an artificial person, such as, for example, a corporation. Thus, a court that consists of several judges may be considered one "moral person." For another example, see § 46 below.]

[219] [*Gerichtshof*]

[220] [*Gericht*]

[221] [*Rechtens*, that is, required by the laws of the country]

[222] [Fallacy of deception]

no slight importance to make known and to call attention to the specific difference between them.

§ 37
A. Of gift contracts[223]

Through this kind of contract (*donatio*) I can transfer something mine, my thing (or my right), [to someone else] *gratuitously* (*gratis*). This implies a relationship between me, the *giver* (*donans*) and another [person], the *receiver* (*donatarius*) through which following Private Law
298 what is mine passes over to the other through acceptance by the latter. But it is not to be assumed that I thereby intend to be compelled to keep the promise and also that I therefore give away my freedom for nothing and along with it I throw myself away so to speak (*nemo suum iactare praesumitur*). That would happen according to the Law[224] in civil society; for there the prospective recipient can compel me to keep my promise. If the matter were to come to trial in accordance with a public Law, it would have to be presumed either that the giver willingly agreed to this coercion, which would be absurd, or that the court in its decision ignores whether or not he [the giver] has reserved the freedom to break his promise, but [the court bases its decision] on what is certain, namely, the promise and the acceptance by the promisee. Therefore, although the promiser, as one might suspect, had thought that if he regretted having made the promise before carrying it out, no one could bind him to it; still the court assumes that he should have made this reservation explicit and, if he had not done so, he could be compelled to keep the promise. The court assumes this principle because otherwise it would be terribly difficult or even, indeed, impossible, to reach a judicial decision[225] in such cases.

§ 38
B. Of gratuitous loan contracts

In this kind of contract (*commodatum*) I gratuitously permit someone to use something belonging to me, where if this is a thing, the contracting parties agree that the borrower will return *exactly the same thing* to my authority [and control]. Right away, the receiver [the bor-

[223] [*Commentary*: Under Roman Law, free gifts and loans are treated as contracts. See the classification of contract in § 21a (31).]

[224] [*nach dem Recht*]

[225] [*Rechtsprechen*]

rower] of the thing loaned cannot also assume that the owner of the thing will accept all the risk (*casus*) of the possible loss of the thing [loaned] or of its properties that are useful to him, risks that might arise from his having given possession of the thing to the borrower. For it is not understood by itself that in addition to being willing to let the borrower use the thing that the owner has waived for him the guarantee against unavoidable damage and security against any harm that 299
might happen to it [the thing loaned] once it was out of his custody. Instead, for that a special contract has to be made. Thus, the only question that can be asked is, Upon which of the two, the loan-giver or the loan-receiver, is it incumbent to add explicitly to the loan contract a condition about taking on the risks that might happen to the thing loaned? Or, if that is not done, which of them can be presumed to have consented to guarantee the owner's property (by returning it or its equivalent)? Not from the lender, because it cannot be assumed that he did not agree free of charge to more than the mere use of the thing (that is, to take over himself the security of the property in addition), but from the loan receiver, because he has done nothing more than precisely what is contained in the contract.

Say, for example, I enter into someone's house during a pouring rain and ask to borrow a coat. The coat, however, is completely ruined by an unexpected flooding through the window that has discolored its material, or if, when I visit another house and take off the coat, it is stolen from me. In such cases, everyone would believe it absurd to think that I have nothing more to do than return the coat, whatever its condition or, [in the other case] to report the theft. In any case, it would still be a matter of simple courtesy to express my sorrow for the loss to the owner, since he [the owner] cannot demand anything as his right. It would be quite different if, in requesting this kind of free use, I asked in advance that the risk also be covered [by the owner] if something unfortunate should happen to the thing [borrowed], because I am poor and am not able to replace the loss. No one would find this [request] to be unnecessary or laughable except perhaps if the loaner were well-known to be a wealthy and well-intentioned man, because in that case it would almost be an insult not to expect a generous waiving of the debt.

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Now, as regards what is mine or yours in loan contacts, if nothing is previously agreed to about any possible accident (*casus*) that might

300 happen to the thing [loaned], and the agreement can only be presumed, the contract itself is an uncertain contract (*pactum incertum*). Therefore, the determination concerning it, that is, the decision who is to be burdened with the accident, cannot be made from the conditions of the contract itself, but *only by a court of justice*, which always looks for certainty in cases like these (which is here the possession of the thing as property) to reach a decision. Therefore the decision in a state of nature that accords with the inner character of the thing [the matter] would be as follows: the cost of the accident to a loaned thing falls on the borrower (*casum sentit commodatarius*). In contrast, in a civil society, that is, before a court of justice, the decision would be given as follows: the cost falls on the lender (*casum sentit dominus*) and this is on grounds that differ from the prescriptions of simple sound reason; for a judge cannot base [his decision] on a presumption about what the one or the other party might have thought [about their responsibility]. Rather it must be that he who has not made the condition of being free from all damages to the thing loaned a part of a specially attached contract, should carry the burden himself. Accordingly, the difference between the judgment that would be made by a court of justice and one that the private reason of every person would be justified in reaching is definitely not to be overlooked in the understanding of judgments in the Law.[226]

§ 39
C. Of the recovery (reseizure) of something that has been lost (*Vindicatio*)[227]

It is clear from what has been said earlier that a continuously enduring thing that is mine remains mine even though I do not have continuous detention[228] of it and it does not by itself cease to be mine without a juridical act (*derelictionis vel alienationis*)[229] [that is, my act abandoning or alienating it]. Furthermore, it is also clear that my right in this thing holds against any detentor [i.e. possessor] whatsoever and not simply

[226] [*Rechtsurteile*]

[227] [*Vindicatio*: "In civil law, the claiming of a thing as one's own; the asserting of a right or title to a thing." *Black's Law Dictionary*, p. 1570. "The vindication lies against someone in possession, the thief or anybody else." Justinian, 4, 1, 19.]

[228] [*Inhabung*. See earlier discussions of this concept, variously translated as "detention," "custody," or "natural possession."]

[229] [Lit. of abandonment or of alienation. Note that Kant simply uses the Latin to complete the sentence.]

against a particular Person [as a personal right] (*ius personale*). Now, the question is this: whether this right must be considered *by everyone else* as a right by itself of continuous ownership,[230] if I simply have not renounced it and the thing is in the possession of another.

Suppose that I have lost the thing (*res amissa*) and it is taken by someone else in an honest way (*bona fide*)[231] to be a find or it has come 301
to me through a formally correct transfer from the possessor, who presents himself as the owner, although he is not the owner, one could ask: whether, since I cannot acquire a thing from a non-owner (*a non domino*), I should be excluded by him from any right in the thing and simply have left a personal right against the illegitimate possessor. The last [situation] is obviously the case if the acquisition is judged simply by its inner justifying grounds (in the state of nature) rather than by its usefulness in a court of law.

For everything alienable must be capable of being acquired from someone or other. The legitimacy of the acquisition, however, totally depends on the form by which what is in the possession of another person can be be transferred to me and taken over by me. That is, it depends on the formality of the juridical act of the dealing (*commutatio*) between the possessor of the thing and the one acquiring it, without my needing to ask how he got it. That is because to ask would already be an insult (*quilibet praesumitur bonus, donec, etc.*). Assume then that it actually turns out that this [person] is not the owner but instead someone else is the owner, then I cannot say that the latter [the true owner] should treat me (as he would anyone else who would like to be the occupier[232] of the thing). For I have not stolen anything from him, rather I have bought it, e.g. a horse, which was for sale in an open market and bought quite legally (*titulo emti venditi*). Since, for my part, the title of acquisition is unchallenged, but I (as buyer) am not bound to inquire into the title of the possession of the other party (the seller)—for the ascending series in such an inquiry would be endless—so I am not only not bound but I am also not even entitled to do it. Therefore, through the relevantly titled purchase I become not just the putative but the true owner of the horse.

On the other hand, the following juridical considerations arise: Any acquisition from someone who is not the owner of a thing (*a non*

[230] [*fortdauerndes Eigentum* (property)]

[231] [In good faith]

[232] [*Inhaber*]

domino) is null and void. I cannot derive more for myself from what belongs to another [person] than what he himself legitimately has, and although I proceed juridically quite correctly as far as the form of acquisition is concerned (*modu acquirendi*), if I bargain for a stolen horse that is for sale in the market, the title of acquisition is missing, since the horse did not properly belong to the actual seller. I may indeed be an honest possessor of the thing (*possessor bonae fidei*), but I am only a
302 putative owner and the true owner has the right of *recovery* (*rem suam vindicandi*).

If it is asked what (in the state of nature) is just in itself[233] with regard to principles of [applied] justice in dealings among persons (*commutativa iustitia*) in the acquisition of external things, then it must be admitted that whoever has this intention in mind definitely needs to investigate whether the thing that he wants to acquire may not already belong to someone else; for even though he has observed the formal conditions of the derivation of the things belonging to the other one (and bargains for the horse in the market in the proper way), he could still at most acquire a personal right with respect to a thing (*ius ad rem*) as long as he still does not know whether the other one (the seller) is the true owner. Consequently, if someone appears who can document his earlier ownership, nothing is left for the putative new owner than the use of the thing that he has legitimately enjoyed up to this moment as an honest possessor. Now, since it is most of the time impossible to find in the whole succession of putative owners the absolutely first owner (original owner), it follows that no dealing with external things, however well it complies with the formal conditions of this kind of justice (*iustitia commutativa*), can guarantee a reliable acquisition.

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Here again the juridical-legislative reason enters with the principle of *distributive justice* that takes as its guiding principle for the juridically legitimacy of possession, not how it is judged in itself in relation to the private Will of each person (in the state of nature), but how it is judged by a *court of law* in a society based on a general-united Will (in a civil society). There the accordance with the formal conditions of acquisition, which in itself can only ground a personal right, is postulated as sufficient to replace the material grounds (which were used to

[233] [*an sich Rechtens*]

justify the derivation of what is his[234] of an earlier purported owner). Thus, what would in itself be a personal right, when *adduced in a court of law* counts as a real right. For example, if all the rules for buying and selling are observed, the horse that is for sale in a public market under police supervision can become my property (although the right of the 303
true owner still remains and he can bring a claim against the buyer on the basis of his older unforfeited possession). And so my otherwise personal right will be changed into a real right, which permits me to take (vindicate) what is mine where I find it without needing to become involved in how the seller came by it.

It is therefore only for the purposes of a judicial ruling[235] in a court of law (*in favorem iustitiae distributivae*)[236] that a right in relation to a thing is *not as it is in itself* (that is, a personal right) but as it can *most easily* and with most certainty be *adjudicated* (as a real right), and yet still be accepted and handled in accordance with a pure principle a priori. This principle serves later on as the ground for various statutory laws (ordinances)[237] whose principal aim is to arrange those conditions under which alone a mode of acquisition can have the force of law, so that a judge can award what is his[238] to everyone in the easiest and most harmless way. For example, with regard to the proposition that purchase outweighs rent where what is according to the nature of the contract, that is, in itself, a real right, [as] (rent) is simply [deemed] a personal right and the other way around in the case mentioned above where what is in itself a personal right is deemed a real right. [Such examples turn on] the question which principles to recommend to a court of justice in a civil society in order to give the greatest certainty to its verdicts about the rights to which everyone is entitled.

§ 40
D. Securing certainty through swearing oaths[239] (*Cautio iuratoria*)

No ground can be given that could bind people juridically to believe and confess that there are gods other than that with it, they can swear

[234] [*des Seinen*]

[235] [*Rechtsspruch*]

[236] [In favor of distributive justice]

[237] [*Verordnungen*]

[238] [*das Seine*]

[239] [Requiring oaths was an essential part of Roman Law judicial procedure. Oaths were used for several purposes. At the beginning of a trial, the plaintiff had to

an oath, and through fear of an all-knowing power, whose anger they solemnly call down upon themselves in case their statements are false, they could be forced to be truthful in their statements and faithful in their promises. That one does not rely here on the morality of these
304 two constituents [of honesty], but only on blind superstition can be seen clearly [from the fact that] their solemn assertion before the court is not considered to provide any guarantee in juridical matters,[240] although it relates to the duty of truthfulness in a situation that concerns the holiest that can exist among human beings (human rights)[241] as is clearly seen by everyone. Hence, [we find] simple fairy tales being used as the motivating ground [of honesty], such as, for example, among the Rejangs, a pagan people on Sumatra, who, according to Marsden's account, swear by the bones of their dead relatives, even though they do not believe that there is life after death; or the oath of the blacks of Guinea who suppose that their fetish, such as a bird's feather, will break their neck and such like. They believe that an invisible power, which may or may not have intelligence, has by nature this magical force which can be moved to act by such a provocation, However, that kind of belief, whose name is religion but really should be called superstition, is indispensable for the administration of justice [Law], because without being able to rely on it. a court of law would not be sufficiently able to establish secretly held facts and to administer justice.[242] A law that binds to this [use of superstition] is clearly made only for the purposes of the judiciary.[243]

But now the question is, What is the ground of the obligation that a person has in a court to accept the oath of another person as a juridically valid proof of the truth of his allegations that would then end the dispute [with him]? That is, what binds me juridically to believe that

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swear that his complaint was not frivolous, and his failure to do so resulted in the case being dismissed. Again, a plaintiff could demand that the defendant swear to the validity of his defense. If he took the oath, the case was lost. If he refused to take the oath, the plaintiff won. Similarly, the defense could challenge the plaintiff to swear an oath to his allegations. If he did, the defense lost and if he refused the defense won. Kant is clearly conflicted about this procedure, which he thought was indispensable for the legal process but basically absurd, not to say immoral. See his further remarks on the subject in *TL*: *AA* 6, 486 footnote.]

[240] [*Rechtssachen*]

[241] [*Recht der Menschen*]

[242] [*recht zu sprechen*]

[243] [*richtende Gewalt*]

the other person (the person swearing) has any religion at all so that I can rest my right on his oath? Similarly, the other way around, Can I ever in general be bound to swear? Both are unjust in themselves.[244]

But in relation to a court of law, that is, in a civil society, if one assumes that in certain cases there is no other means to reach the truth except through an oath, it must be presupposed that as far as religion is concerned, everyone has it [i.e. religion]. [This must be assumed] in order to use it [i.e. the appeal to religion] as an emergency means[245] (*in casu necessitatis*) for purposes of juridical procedure before a court of law. For the court views this spiritual compulsion[246] (*tortura spiritualis*)[247] as a quick means for the discovery of what is hidden and one adapted to the superstitious inclination of people.[248] So it holds that for this reason it is justified in using these means. However, the legislative authority basically acts unjustly in conferring this entitlement [to employ these means] on the judical authority, because even in civil society compulsion to give oaths contradicts [a person's] inalienable human freedom. 305

Remark:

Oaths of office [professional oaths] are usually *promissory*, [asserting] that one has the serious intention of administrating one's office dutifully. If these oaths are transformed into *assertoric* ones, to the effect that the official is bound, say, at the end of the year (or of several years) to swear that he has carried out his official duties faithfully during the year, then that would create more to trouble one's conscience than does a promissory oath. For the latter always leaves open the possibility afterwards, the inner excuse, that even with the best of intentions one could not anticipate the troubles that will be encountered only later while administering the office. If [on the other hand] the transgressions of duty are summed up by the observer all at once [at the end of the year], then that will cause more worry than if one were simply reprimanded for one thing after another (so that the earlier ones will be forgotten).

[244] [*an sich unrecht*]

[245] [*Notmittel*]

[246] [*Geisteszwang*. Here Kant is being ironic!]

[247] [Torture of the spirit]

[248] [*der Menschen*]

As far as swearing to [religious] belief (*de credulitate*) is concerned, that cannot be required by a court. For, first of all, it involves a self-contradiction pertaining to something in the middle between opinion and knowledge,[249] because it is something that one can indeed venture to bet about but by no means *swear* about. Second, the judge in making the unreasonable demand of one of the parties that he swear an oath of [religious] faith in order to promote something that, in his opinion, belongs to, let us assume, the common good, [thereby] commits a gross offense to the oath-swearer's [moral] conscientiousness, partly because of the frivolity to which it leads and through which the judge undermines his own purpose, [and] partly through the pangs of conscience that a person must feel who today regards a matter from a certain point of view as highly probable, but tomorrow, from a different point of view, finds it to be quite improbable, and thus he [the judge] brings harm to the person that he forces to swear such an oath.

[249] [*Meinen und Wissen*. Kant's theory about the differences between opinion and knowledge is set forth in the *Critique of Pure Reason*, Part II, Section III: On Opinion, Knowledge and Faith. He refers to betting as "a touchstone" of conviction (A 824/B 852). He also discusses these concepts, including betting, in the *Logic* Introduction: IX (*AA* 9, 73). Simply put, his idea is that the test of the strength of a belief depends on how much one is willing to bet on it, but swearing bypasses this test.]

OF THE ELEMENTS OF JUSTICE SECOND PART: PUBLIC JUSTICE AND LAW

Transition from What is Mine and Yours in the State of Nature to What It Is in a Juridical Condition in General

§ 41

A juridical state of affairs is a relationship among human beings that involves the conditions under which alone everyone is able to enjoy his 306
right. The formal principle of the possibility of this state of affairs, regarded as the Idea of a general legislative Will, is called public legal justice. Public legal justice can be divided into three parts as it relates to the possibility, actuality, and necessity of the possession of objects in accordance with laws.[1] (These objects are the content [matter] of the will.) These three parts are *protective*, *reciprocally acquisitive*, and *distributive legal justice*, respectively (*iustitia tutatrix, iustitia commutative, iustitia distributive*).

Thus law[2] sets forth: first, simply what [kind of] conduct is inwardly just as regards its form (*lex iusti*); second, in regard to its matter, what [things] are capable of [being objects] of external legislation[3] that is, the possession of which is juridically right (*lex iuridica*); third, what, before a court of law, is the decision that accords with a given law with regard to a particular case coming under law, that is, what the actual Law of the land (*lex iustitiae*) is.[4] Whence a court of law itself is called the "justice" of a country, and, as it is the most important of all juridical concerns, one can ask whether this kind of justice exists or not.

[1] [*Nach Gesetzen.* The structure of the German sentence is ambiguous, so that other translations might be "divided according to laws," or "these parts separated according to laws."]

[2] [*das Gesetz*]

[3] [*gesetzfähig*]

[4] [The German terms corresponding to these three sides of law are *recht*, *rechtlich*, and *Rechtens*.]

A nonjuridical state of affairs, that is, one in which there is no distributive legal justice, is called the *state of nature* (*status naturalis*). The state of nature is not (as Achenwall[5] thought) to be contrasted to living in society, which might be called an artificial state of affairs (*status artificialis*); rather, it is to be contrasted to civil society, where society stands under distributive justice. Even in a state of nature, there can be legitimate societies (for example, conjugal, paternal, domestic groups in general, and many others) concerning which there is no a priori law declaring, "Thou shalt enter into this condition." On the other hand, it can indeed be said of the juridical state of affairs that all persons ought to enter it if they ever could (even involuntarily) come into a relationship with one another that involves mutual rights [or justice].[6]

The first and second of these states of affairs can be called the state of private Law, whereas the third and last can be called the state of public Law. Public Law does not involve any additional or different duties among persons than can be thought of under private Law; the matter [that is, the substance] of private Law is exactly the same in both. The laws of public Law are concerned only with the juridical form of their living together (the constitution), in respect to which these laws must necessarily be thought of as public laws.

A civil union itself cannot even be called a society, for between a
307 commander (*imperans*) and his subject (*subditus*) there is no coequal partnership. They are not associates, for one is subordinate rather than coordinate to the other. For the same reason, those who are coordinate to one another must regard themselves as equal among themselves insofar as they are subject to common laws. The civil union does not, therefore, constitute a society, but rather makes one.

§ 42
[Postulate of public Law]

The postulate of public Law comes out of private Law in the state of nature. It says: If you are so situated as to be unavoidably side by side with others, you ought to abandon the state of nature and enter, with

[5] [Gottfried Achenwall (1719–1772), a German political scientist. For many years, Kant used Achenwall's book *Ius naturae in usum auditorum* (1767) as a textbook in his lectures on Natural Law. Part II of this work is reproduced in its entirety in Volume XIX of Kant's *Gesammelte Schriften* (*Akademie Ausgabe*).]

[6] [*Rechtsverhältnisse*]

all others, a juridical state of affairs, that is, a state of distributive legal justice. The ground of this postulate can be developed analytically from the concept of justice in external relations, as contrasted to violence[7] (*violentia*).

No one is bound to refrain from encroaching on the possession of another if the latter does not in equal measure guarantee that the same kind of restraint will be observed towards him. Therefore, he need not wait until he finds out through bitter experience about the hostile attitude of the other person. There is nothing binding him to wait to become chary until after he has suffered a loss. For he can quite adequately observe within himself the inclination of humans in general to play the master over others (that is, not to respect the superiority of the rights of others when they themselves feel superior to them in might or cunning), and it is not necessary to wait for actual hostilities. He is entitled to use coercion against anyone who by his own nature threatens him with coercion. (*Quilibet praesumitur malus, donec securitatem dederit oppositi.*)[8]

If they deliberately and intentionally intend to be in and remain in this state of external lawless freedom, then they cannot wrong each other by fighting among themselves; for whatever holds for one of them holds for the other as if by mutual consent (*uti partes de iure suo disponunt, ita ius est*).[9] Nevertheless, they are really acting in the highest degree wrongly [and unjustly]* by wanting to be and to remain in a 308
situation that is not a juridical condition, that is, a situation where no one is secure against violence with regard to what is his.

[7] [*Gewalt*]

[8] ["Someone is presumed bad until he has provided assurance of the opposite."]

[9] ["As the parties dispose of their rights, so it becomes a right."]

* The distinction between what is wrong [or unjust] merely formally and what is also materially wrong [or unjust] has many uses in the theory of justice. An enemy who, instead of honorably carrying out the capitulation of the garrison of a besieged fortress [to which he had agreed], mistreats them during their withdrawal or in some other way breaks his contract, cannot complain of being wronged [or of injustice] if the occasion were to arise for his opponent to play the same trick on him. Nevertheless, they are really acting in the highest degree unjustly, because they completely rob the concept of justice [and rights] of all of its validity and hand over everything to wild violence, as if it were legitimate, and so subvert the rights of human beings [*das Recht der Menschen*] altogether.

§ 43 [A § 44]
[Rights in a state of nature]

312 Although experience teaches us that human beings live in violence and are prone to fight one another before the advent of external compulsive legislation, it is not experience that makes public lawful coercion necessary. The necessity of public lawful coercion does not rest on a fact, but on an a priori Idea of reason, for, even if we imagine them to be ever so good natured and righteous before a public lawful state of society is established, individuals, nations, and states can never be certain that they are secure against violence from one another, because each will have his own right to do what seems just and good to him, entirely independently of the opinion of others. Consequently, the first decision that he must make, if he does not wish to renounce all concepts of justice, is to accept the principle that one must quit the state of nature, in which everyone follows his own judgment, and must unite with everyone else (with whom he comes in contact and whom he cannot avoid), subjecting himself to a public lawful external coercion; in other words, he must enter a condition of society in which what is to be recognized as belonging to him must be established lawfully and secured to him by an effective power that is not his own, but an outside power. That is, before anything else, he ought to enter a civil society.

Certainly, a state of nature need not be a condition of injustice [*Ungerechtigkeit*] (*iniustus*) in which people treat each other solely according to the amount of power they possess; it is, however, still a state of society in which justice is absent [*Rechtlosigkeit*] (*status iustitiae vacuus*) and one in which, when there is a controversy concerning rights (*ius controversum*), no competent judge can be found to render a decision having the force of law. For this reason, everyone may use violent means to compel another to enter into a juridical state of society. Although according to everyone's own concept of justice and right an external thing can be acquired by occupation or by contract, such acquisition is still only provisional as long as there is no sanction of Public Law for it, for the acquisition is not determined by any public legal (distributive) justice and is not guaranteed by any authority executing the Law.

Remark:

If it were held that no acquisition, not even provisional acquisition, is juridically valid before the establishment of a civil society, then the civil society itself would be impossible. This follows

from the fact that, as regards their form, the laws concerning Mine and Yours in a state of nature contain the same things that 313
are prescribed by the laws in civil society insofar as they are considered merely as pure concepts of reason; the only difference is that, in the civil society, the conditions are given under which the [right of] acquisition can be exercised (in conformity with distributive legal justice). Accordingly, if there were not even provisional external Mine and Yours in a state of nature, there would be no duties of justice with respect to them, and, consequently, there would be no command to quit the state of nature.

§ 44 [A § 43]
[Definition of public Law]

The quintessence of those laws that require public promulgation in 311
order to produce a juridical condition is called *public Law*. Public Law is therefore a system of laws for a nation—that is, a multitude of human beings—or for a multitude of nations. In order to be able to participate in the actual Law of the land, these human beings and nations require, because they mutually influence one another, a juridical condition of society. For this, they require a condition of society under a Will that unites them—a constitution.

When the individuals within a nation are related to one another in this way, they constitute a civil society (*status civilis*); and, viewed as a whole in relation to its own members, this civil society is called the state (*civitas*). Because the state is by its very form a union proceeding from the common interest of all in having a juridical condition of society, it is called a commonwealth (*res publica latius sic dicta*). In relation to other nations, however, a state is called simply a power (*potentia*)—hence the word "potentates." When there is a pretense of common heredity, it is also called a nationality or race [*Stammvolk*] (*gens*). Hence, not only municipal Law, but also a Law of nations [*Völkerrecht*] (*ius gentium*) may be thought of as belonging to the general concept of public Law. Because the surface of the earth is not unlimited in extent, both kinds of Law inevitably lead to the Idea of international Law [*Völkerstaatsrecht*] (*ius gentium*) or of world Law [*Weltbürgerrecht*] (*ius cosmopoliticum*).

Consequently, if just one of these possible forms of juridical condition lacks a principle circumscribing external freedom through laws, then the structure of all the others will unavoidably be undermined and must finally collapse.

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PUBLIC LAW
First Section
Municipal Law[10]

§ 45
[The civil state]

A state (*civitas*) is a union of a group of persons under laws of justice.[11] Insofar as these laws are a priori necessary and follow from the concepts of external justice in general (that is, are not established by statute), the form of the state is that of a state in general, that is, the Idea of the state as it ought to be according to pure principles of justice. This Idea provides an internal guide and standard (*norma*)[12] for every actual union of persons in a commonwealth.

Every state contains within itself three authorities,[13] that is, the general united Will is composed of three persons (*trias politica*). The sovereign authority resides in the person of the legislator; the executive authority resides in the person of the ruler (in conformity to law), and the judicial authority (which assigns to everyone what is his own by law) resides in the person of the judge (*potestas legislatoria, rectoria, et iudiciaria*). These three parts are like the three propositions in a practical syllogism: the *law* of the sovereign Will is like the major premise; the *command* to act according to the law is like the minor premise, that is, it is the principle of subsumption under the Will; and the *adjudication* (the judicial sentence) that establishes the actual Law of the land for the case under consideration is like the conclusion.

[10] [*Staatsrecht.* In contrast to international law, municipal law is in common political usage the law of an individual national state.]

[11] [*Rechtsgesetze*]

[12] [The German reads "... (*also im Inneren*) *zur Richtschnur.*" I believe that Kant's point is that the principles of justice can function as motives in themselves only when regarded as inner ethical precepts. Idea is reminiscent of Plato's ideal forms. See Translator's Introduction, p. xli.]

[13] [*Gewalten.* This is the standard translation used by Kant of the Latin, *potestas*, which is not to be confused with *potentia* (*Macht*). English has only one word for both concepts. In order to avoid confusion, "authority" is adopted as the standard translation of the first of these concepts rather than "power," which is the more common word in Anglophone political discourse.]

§ 46 [A § 48] 316
[The mutual relationships of the three authorities]

The three authorities in the state are related to one another in the following ways: First, considered as three moral persons,[14] they are *coordinate* (*potestates coordinatae*); that is, one serves as a complement to the others for the completeness of the state's constitution (*complementum ad sufficientiam*). Second, they are *subordinate* to one another so that one cannot at the same time usurp the function of the others which are there to aid it. Instead, each has its own proper principle; that is, although it commands when considered in its quality as a particular person, it does so only under the condition of the Will of a superior person. Third, the combination of both relationships secures to every subject what is just and right.[15]

Of these authorities considered in their dignity,[16] we can say: the Will of the legislator (*legislatoris*) with respect to external Mine and Yours is irreproachable (*irreprehensibel*); the executive capacity of the chief magistrate is irresistible (*irresistibel*); and the adjudication of the supreme judge (*supremi iudicis*) is unalterable (*inappellabel*).

§ 47 [A § 46] 313
[The legislative authority and the citizen]

The legislative authority can be attributed only to the united Will of the people. Since all of justice [and rights] is supposed to proceed from this authority, it can do absolutely no injustice to anyone. Now, when someone orders something against another, it is always possible that he thereby does the other an injustice, but this is never possible with respect to what one decides for oneself (for *volenti non fit iniuria*).[17] Hence, only the united and consenting Will of all—that is, a general 314
united Will of the people by which each decides the same for all and all decide the same for each—can legislate.

The members of such a society (*societas civilis*), that is, of a state,

[14] [By "moral person," Kant means what we would call an artificial person (for example, a corporation), and by "physical person" he means a natural person. See note 218, § 36, p. 103.]

[15] [Natorp and Cassirer agree that part of the text is missing here.]

[16] [*Würde*. This difficult but common German word has no exact equivalent in English. Here it has the connotation of "an office carrying with it a title and a special honor."

[17] ["He who consents cannot be injured."]

who are united for the purpose of making laws are called *citizens* (*cives*). There are three juridical attributes inseparably bound up with the nature of a citizen as such: first, the lawful *freedom* to obey no law other than one to which he has given his consent; second, the civil *equality* of having among the people no superior over him except another person whom he has just as much of a moral capacity to bind juridically as the other has to bind him; third, the attribute of civil *self-sufficiency* that requires that he owe his existence and support, not to the arbitrary will of another person in the society, but rather to his own rights and powers as a member of the commonwealth (hence his own civil Personality may not be represented by someone else in matters involving justice and rights).

Remark:

Only fitness for voting qualifies someone to be a citizen. To be fit to vote, a person must be independent and not just a part of the commonwealth, but also a member of it, that is, he must of his own accord, together with others, will to be an active part of the commonwealth. This qualification leads to the distinction between an *active* and a *passive* citizen, although the concept of the latter seems to contradict the definition of the concept of a citizen in general.[18] The following examples [of passive citizens] may serve to clear up this difficulty: an apprentice of a merchant or artisan; a servant (not in the service of the state); a minor (*naturaliter vel civiliter*)[19]; all women; and generally anyone who must depend for his support (subsistence and protection), not on his own industry, but on arrangements [management] by others (with the exception of the state)—all such people lack civil personality, and their existence is only in the mode of inherence. The woodcutter whom I employ on my estate; the smith in India who goes with his hammer, anvil, and bellows into houses to work on iron, in contrast to the European carpenter or smith, who can offer the products of his labor for public sale; the pri-

[18] [The distinction between active and passive citizenship is attributed to Emmanuel Joseph Sieyès, French writer and revolutionary statesman, and was incorporated into the constitution of 1791 during the French Revolution. See A. Renaut. *Kant: Métaphysique des Moeurs II*, p. 385, n. 75. See also Translator's Introduction, pp. xlviii–xlix.]

[19] [Kant distinguishes between natural and legislated minority (*Unmündigkeit* or tutelage). See *Anthropology, AA* 7, 209.]

vate tutor in contrast to the schoolteacher; the sharecropper in contrast to the farmer; and the like—all are mere underlings of the commonwealth, because they need to be under the orders or protection of other individuals. Consequently, they do not possess any civil self-sufficiency. 315

This kind of dependence on the Will of others and this inequality are by no means opposed to the freedom and equality that such persons have as *human beings* who together make up a people. Rather, only under these conditions can they become a state and enter into a civil constitution. Under this constitution, however, not everyone is equally qualified to have the right to vote, that is, to be a citizen as well as a fellow subject.[20] For, from being able as passive parts of the state to demand to be treated by all others in accordance with the laws of natural freedom and equality, it does not follow that they have the right as active members to manage the state, to organize, and to work for the introduction of particular laws; it follows only that, whatever might be the kind of laws to which the citizens agree, these laws must not be incompatible with the natural laws of freedom and with the equality that accords with this freedom, namely, that everyone be able to work up from this passive status to an active status.

§ 48 [A § 49 first part][21] 316
[The executive authority]

The ruler of the state (*rex, princeps*) is that (moral or physical) person who has the executive authority (*potestas executoria*). He is the agent of the state who appoints the magistrates and prescribes those rules for the people by means of which each of them can, in conformity with the law, acquire things or preserve their belongings[22] (by subsumption of one case under the law). If the ruler is regarded as a moral person, he is called the directory or the government. The commands that he gives to the people, the magistrates, and the ministers who are in charge of the administration (*gubernatio*) are not laws, but ordinances and decrees, because they involve decisions about particular cases and

[20] [The two terms are *Staatsbürger* and *Staatsgenosse*.]

[21] [This section is divided into two parts in order to separate the part on the Executive from that on the Judiciary.]

[22] [*das Seine*, that is, their assets]

are considered subject to change. A government that at the same time
317 makes laws would be called *despotic*, in contrast to a *patriotic* government. A patriotic government should not be confused with a *paternalistic* government (*regimen paternale*), which is the most despotic of all, for it treats its citizens as children. In a patriotic government (*regimen civitatis et patriae*), the state itself does indeed treat its subjects as members of a family, but at the same time it also treats them as citizens of the state, that is, in accordance with laws of their own proper independence; and everyone possesses himself and does not depend on the absolute Will of another next to or over him.

Therefore, the sovereign [*Beherrscher*] of the people (the legislator) cannot at the same time be the ruler, for the ruler is himself subject to the law and through it is obligated to another, the sovereign. The sovereign can take his authority away from the ruler, depose him, or reform his administration, but cannot punish him. (That is the only meaning that can be given to the common saying in England, "The King, that is, the supreme executive authority, can do no wrong.") The ruler cannot be punished because to punish him would itself in turn be an act of the executive authority, to which alone belongs the supreme capacity to use coercion in accordance with the law. To punish the ruler would mean that the highest executive authority itself would be subject to coercion, which is a self-contradiction.

§ 49 [A § 49 second part]
[The judiciary and the distinct functions of the three authorities]

Finally, neither the sovereign nor the ruler can judge; they can only appoint judges as magistrates. The people judge themselves through those of their fellow citizens whom they have named by free elections as their representatives and whom they have named, indeed, specially for each act. An adjudication (a sentence) is an individual act of public legal justice (*iustitiae distributivae*) performed by an official of the state (judge or court of justice) on a subject, that is, on someone who belongs to the people. Consequently, as such, the act is not invested with any authority to acknowledge or distribute what is his to the subject. Because everyone among the people is purely passive in relation to the supreme power, if either the legislative or the executive authority were to decide in a controversial case concerning what belongs to him, it might do him an injustice, for it would not be the people themselves acting or saying that their fellow citizen is guilty or not guilty. But,

once the facts in a legal suit have been established, then a court of justice has the judicial authority to apply the law and to render, through the mediation of the executive authority, to each person what is his. Therefore, only the people can judge one of themselves, although they do this indirectly by means of their delegated representatives (the jury). It would also be beneath the dignity of the chief of state to perform the function of judge, because this would place him in a position 318
in which it would be possible to do an injustice and thus to subject himself to the demand for an appeal to a higher authority (*a rege male informato ad regem melius informandum*).[23]

Thus there are three distinct authorities (*potestas legislatoria, executoria, iudiciaria*) by means of which the state (*civitas*) acquires its autonomy, that is, by means of which it forms and maintains itself in accordance with the laws of freedom. The state's well-being consists in their being united (*salus reipublicae suprema lex est*).[24] But the well-being of the state must not be confused with the welfare or happiness of the citizens of the state, for these can be attained more easily and satisfactorily in a state of nature (as Rousseau maintained) or even under a despotic government. By "the well-being of the state" is meant that condition in which the constitution conforms most closely to the principles of justice, that is, the condition that reason through a categorical imperative obligates us to strive after.

GENERAL REMARKS ON THE JURIDICAL CONSEQUENCES ARISING FROM THE NATURE OF THE CIVIL UNION

A. [Revolution, Resistance, and Reform]

The origin of the supreme authority is, from the practical point of view, not open to scrutiny by the people who are subject to it; that is, the subject should not be overly curious about its origin as though the right of obedience due it were open to doubt (*ius controversum*). For in order for the people to be able with the force of law to judge the supreme political authority (*summum imperium*), they must already be viewed as united under a general legislative Will; hence they can and may not judge otherwise than the present chief of state wills (*summus imperans*). Whether as a historical fact an actual contract between them

[23] ["From a king poorly informed to a king who ought to be better informed."]

[24] ["The welfare of the commonwealth is the supreme law."]

originally preceded the submission to authority (*pactum subiectionis civilis*) or whether, instead, the authority preceded it and the law only came later or even is supposed to have followed in this order—these are pointless questions that threaten the state with danger if they are asked with too much sophistication by a people who are already sub-
319 ject to civil law; for, if the subject decides to resist the present ruling authority as the result of ruminating on its origin, he would be rightfully punished, destroyed, or exiled (as an outlaw, *exlex*) in accordance with the laws of that authority itself.

A law that is so holy and inviolable that it is a crime even to doubt it or to suspend it for an instant is represented as coming, not from human beings, but from some kind of highest perfect legislator. That is the meaning of the statement, "All authority comes from God," which is not a historical explanation of the civil constitution, but an Idea that expresses the practical principle of reason that one ought to obey the legislative authority that now exists, regardless of its origin.

From this follows the statement: the sovereign in the state has many rights with respect to the subject, but no (coercive) duties. Furthermore, if the organ of the sovereign, the ruler, proceeds contrary to the laws—for example, in imposing taxes, recruiting soldiers, and so on, so as to violate the law of equality in the distribution of political burdens—the subject may lodge a complaint (*gravamina*) about this injustice but may not actively resist.

Indeed, even the constitution itself cannot contain an article that would make it possible for there to be some authority in the state that could oppose or restrain the chief magistrate in case he violates the constitutional laws. For anyone who would restrain the authority of the state must have more power than, or at least as much power as, the person whom he is supposed to restrain, and, as a legitimate commander, if he orders his subjects to resist, he must also be able to protect them and to render a judgment having the force of law in any particular case that arises; in other words, he must be able to command the resistance publicly. But then he, the latter and not the former, would be the chief magistrate; and this supposition contradicts itself. In this case, the sovereign is at the same time, through his minister, acting as a ruler, and is therefore acting despotically; the hocus-pocus of letting the people (who properly have only legislative authority) imagine that they are limiting the authority through their deputies cannot succeed in covering up the despotism so that it will not be obvious in the methods that the minister employs. The deputies who represent the people

(in parliament) and who act as guarantors of their freedom and rights have a lively personal interest in positions for themselves and their families; and, inasmuch as these depend on the minister—as in the army, navy, or civil bureaucracy—these deputies are always much more ready to play into the hands of the administration (instead of re- 320
sisting the encroachment of the government). (Besides, the public promulgation of such resistance requires an already existent unanimity among the people concerning it, but such unanimity cannot be permitted in time of peace.)

It follows that a so-called moderate political constitution,[25] representing itself as the constitution of the internal justice and Law of the state, is nonsense and that, instead of being a part of justice and Law, it is a clever principle devised to make the arbitrary influence on the government of a powerful transgressor of the people's rights as little onerous as possible by cloaking it in the appearance of conceding to the people [the right of] opposition.

There can therefore be no legitimate resistance of the people against the legislative chief of the state; for juridical status, legitimacy, is possible only through subjection to the general legislative Will of the people. Accordingly, there is no right of sedition (*seditio*), much less a right of revolution (*rebellio*), and least of all a right to lay hands on or take the life of the chief of state when he is an individual person on the excuse that he has misused his authority (*tyrannis, monarchomachismus sub specie tyrannicidii*). The slightest attempt to do this is high treason (*proditio eminens*), and a traitor of this kind, as someone attempting to destroy his fatherland (*parricida*), can receive no lesser punishment than death.

It is the people's duty to endure even the most intolerable abuse of supreme authority. The reason for this is that resistance to the supreme legislation can itself only be unlawful; indeed it must be conceived as destroying the entire lawful constitution, because, in order for it to be allowed,[26] there would have to be a public law that would permit the resistance. That is, the supreme legislation would have to contain a stipulation that it is not supreme and that in one and the same judgment the people as subjects should be made sovereign over him to whom they are subject; this is self-contradictory. The

[25] [*gemässigte Staatsverfassung*. Kant has in mind the British constitution, which he regarded as a fraud!]

[26] [*befugt*]

self-contradiction involved here is immediately evident if we ask who would act as judge in this controversy between the people and the sovereign (because, regarded juridically, they are still two distinct moral persons). [In such a controversy] it is plain that the people want to act as judge of their own cause [and that is absurd].*

* It is conceivable that the dethronement of a monarch may be effected either through a voluntary abdication of the crown and a renunciation of his authority by returning it to the people or through a relinquishment of authority carried out without laying hands on the highest person, who thereafter returns to the status of a private citizen. Consequently, the people might have at least some excuse for forcibly bringing this about by appealing to the right of necessity (*casus necessitatis*), but they never have the least right to punish the suzerain for his previous administration, inasmuch as everything that he previously did in his role of suzerain must be regarded as having been externally legitimate; and, because he is regarded as the source of the laws, he cannot himself do what is unjust. Of all the abominations involved in the overthrow of a state through revolution, the murder of the monarch is still not the worst, because it is possible to imagine that the people are motivated by the fear that, were he to remain alive, he might regain his power and give them the punishment they deserve; in that case, this deed would not be an act of penal justice, but only one of self-preservation. It is the formal execution of a monarch that fills the soul, conscious of the Ideas of human justice, with horror, and this horror returns whenever one thinks of scenes like those in which the fate of Charles I [of England] or of Louis XVI [of France] was sealed. How can this feeling be explained? It is not an aesthetic feeling (of the kind of compassion that results from imagining oneself in the place of the sufferer), but a moral feeling arising from the complete subversion of every concept of justice. It is regarded as a crime that remains eternally and cannot be expiated (*crimen immortale, inexpiabile*), and it appears to resemble the kind of sin that, according to theologians, can never be forgiven in this world or the next. The explanation of this phenomenon of the human spirit seems to emerge from the following reflections on oneself, and these reflections also throw some light on the principles of political justice [*staatsrechtlichen Prinzipien*].

Every transgression of the law can and must be explained only as arising from the maxim of the criminal (the maxim of making such a misdeed into a rule), for, were it to be derived from a sensible impulse, it would not be committed by the agent himself as a free being and could not be imputed to him. It is absolutely impossible to explain how a subject can form a maxim in opposition to the clear prohibition of legislative reason, for

An alteration in a (defective) constitution of a state, which may 321
sometimes be required, can be undertaken only by the sovereign himself through reform, and not by the people through a revolution. Moreover, such an alteration should affect only the executive author- 322
ity, not the legislative authority. Even in what is called a limited constitution,[27] that is, in a constitution of a state in which the people through

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only events in the mechanism of nature are susceptible of explanation. Now, the criminal can commit the misdeed either by following a maxim of a presumed objective rule (supposed to be universally valid) or as an exception to the rule (by dispensing with it for the occasion). In the latter case, he only strays from the law (even though intentionally); he can at the same time detest his own transgression, and he can still want to circumvent the law without formally renouncing his obedience to it. In the former case, however, he repudiates the authority of the law itself, even though he cannot deny its validity before his own reason; his maxim is not merely deficient (*negative*) with respect to the law, but is even contrary (*contrarie*) to it, or, we might say, it is diametrically opposed to it as a contradiction (hostile, as it were). Thus, it is clear to us that to commit a crime of such formal (completely futile) malevolence is impossible for any man and cannot be introduced into a system of morality (except as the pure Idea of extreme perversity).

The reason why the thought of a formal execution of a monarch *by his people* is so horrible is that, whereas a *murder* must be conceived of only as an *exception* to the rule, a *formal execution* must be conceived of as a complete *subversion* of the principles governing the relationship between a sovereign and his people (that is, it makes the people the master over the former, to whose legislation alone they owe their existence). Accordingly, the employment of violence is brazenly and deliberately [*nach Grundsätzen*] placed above the holiest right and justice: as such, it is like being swallowed up in an abyss from which there is no return, like the state's committing suicide, and so it appears to be a crime that is incapable of being expiated. There is good reason to believe, therefore, that assent to such executions is not really based on a supposed juridical principle, but rather on the fear of revenge by the state, which might perhaps revive again, and that these formalities are adopted merely in order to give the deed the semblance of an act of punishment, a juridical process (which could not be murder). But such a disguise will do no good, inasmuch as this kind of arrogant usurpation on the part of the people is much more heinous than murder itself, for it contains within itself a principle that must make impossible the restoration of a state that has been overthrown.

[27] [*eingeschränkte Verfassung*]

their representatives (in parliament) can lawfully oppose the executive or his representative (his minister), no active resistance is permitted—no resistance, that is, in which an arbitrary association of the people coerces the government into acting in a certain way, for this would be arrogating to itself an act of the executive authority. A limited constitution permits only a negative resistance, that is, a refusal by the people (in parliament) to accede always to the demands of the executive authority with regard to what the latter alleges to be required for the administration of the state. Indeed, if these demands were always acceded to, we would have a sure sign that the people are corrupt, their representatives venal, the chief of the government through his minister despotic, and the minister himself a betrayer of the people.

Moreover, if a revolution has succeeded and a new constitution has
323 been established, the illegitimacy of its beginning and of its success cannot free the subjects from being bound to accept the new order of things as good citizens, and they cannot refuse to honor and obey the suzerain[28] who now possesses the authority. The dethroned monarch (who survives such a revolution) cannot be held accountable for, much less be punished for, his past administration, provided that he has retired to the private life of a citizen of the state and prefers peace and quiet for himself and the state to the foolhardy act of running away in order, as a pretender, to attempt the adventure of recovering his kingdom, whether it be through a secretly instigated counterrevolution or through the help of outside powers. If, however, he prefers the latter course of action, his right to do so remains unchallengeable, because the insurrection that deprived him of his possession was unjust.[29] But whether other powers have the right to join in an alliance in favor of this dethroned monarch merely so that this crime of his people shall not go unpunished and so remain a scandal to all other states and whether they are therefore justified and called upon to use their authority and power to restore the old constitution in every state where a new constitution has been set up as the result of a revolution—these are questions that come under the Law of nations.[30]

[28] [*Obrigkeit*]

[29] [*ungerecht*]

[30] [See Appendix: Conclusion, for additional remarks on the subject of revolution.]

B. [The Sovereign as the Over-Proprietor of the Land: Taxation, Police, Inspection]

Can the sovereign be regarded as the over-proprietor[31] (of the land), or must he be regarded only as the person who exercises supreme command over the people by virtue of the laws? Because [the existence of] land provides the chief necessary condition of the possibility of having external things as belonging to one[32] and establishes the first acquirable right of possible possession and use, all such rights would need to be derived from the sovereign as the lord of the land[33] or, better put, from the over-owner (*dominus territorii*). The people, as the aggregate of his subjects, also belong to him; they are his people but not as their owner (by a real right); rather, as their supreme commander (by a personal right).

Such over-ownership, however, is only an Idea of the civil union that serves the purpose of representing the necessary unification of the private property of all the people under a public general possessor in order to represent the determination of particular ownership of everyone in accordance with the necessary formal principle of division (di- 324
vision of the land) in terms of concepts of justice, rather than in accordance with principles of aggregation (which proceed empirically from part to whole). It follows from this that the over-owner cannot privately own any land (for otherwise he would become a private person); for the land belongs to the [whole] people (not taken indeed collectively, but distributively). (An exception to this is to be found in nomadic tribes, where there is no private ownership of land at all.) Therefore, the supreme commander can have no private estates, that is, he cannot have lands for his private use (for the maintenance of his

[31] [*Obereigentümer. Commentary*: Here Kant is responding to the traditional German legal concept (from the so-called *ius commune*) of *split property*, which distinguished between "over-property" and "under-property" (*Untereigentum*). The former characterized the property rights, typically, of a feudal lord, the latter those of the peasant. This was an obvious carryover from the feudal hierarchical system and contradicts everything that Kant says earlier about property, which builds on the Roman Law principle that there can be only one owner of real property and that accommodates other uses of land under the category of possession. For more details, see James Q. Whitman, *The Legacy of Roman Law in the German Romantic Era*. Princeton: Princeton University Press, 1990, especially pp. 167 ff.]

[32] [*als das Seine haben*]

[33] [*Landesherr*]

court), for, if he did, since the limits and extent of his lands would depend on his own pleasure and discretion, the state would be in danger of seeing all ownership of the land pass into the hands of the government, and all the subjects being considered bondsmen of the soil (*glebae adscripti*) and possessors only of what is owned only by someone else. They would consequently be regarded as having lost all of their freedom (*servi*).[34] Accordingly, one can say of the lord of a country [*Landesherr*] that he *possesses nothing* (as his own) except himself, since, if he were to own anything adjacent to someone else in the state, a dispute might arise between them, and there would be no judge to settle it. But one can also say that he *possesses everything* because he has the right of command over the people, to whom all external things belong (*divisim*) (and by this right he assigns to each person what belongs to him).

From this it follows that there can be no corporation, class, or order in the state that could, under certain statutes, as owners transmit lands to succeeding generations for their sole and exclusive use (for all time). The state can at all times rescind such statutes, but only on condition that it compensates the survivors. The knightly order (considered as a corporation or even just as the rank of specially honored individual Persons) and the order of the clergy, which is called the church, can never acquire ownership in land that is transmissible to their successors by virtue of the privileges with which they are favored; they can acquire only its temporary use. The military orders, on the one hand, can be deprived of their estates without hesitation (except for the condition mentioned above) if public opinion no longer wants to use them as a means of defending the state by conferring military honors in order to overcome indifference to its defense. The churches, on the other hand, can similarly be deprived of their estates if public opinion does not want to use them to save the people of the state from eternal fire by means of masses for departed souls, prayer, and a multitude of clergy. Those who are affected by such reforms cannot complain that
325 their property has been taken from them, inasmuch as the only ground for their previous possession was the opinion of the people, which, as long as it remains unchanged, makes the possession necessarily valid. As soon as public opinion changes, however—but public opinion only as it is reflected in the judgment of those who through their merits have the best claim to lead it—then the claimed ownership must cease

[34] [I.e. slaves]

just as though it had been lost through an appeal to the state (*a rege male informato ad regem melius informandum*).[35]

This originally acquired basic ownership provides the basis of the right of the chief commander as over-owner (or of lord of the country) to tax the private owners of land. This right permits him to levy land taxes, excises, and customs or services (such as providing troops for military service). Although this procedure will conform to laws of justice and right only when the people tax themselves through their corps of deputies; compulsory loans (deviating from the previously established law) may be imposed by the right of majesty in one situation, namely, when the state is in danger of being dissolved.

The right of the supreme commander to administer the national economy, finances, and police. rests on the same principle. The police provide for public security, convenience, and decency. It is important to provide for public decency, for if the feeling for decency (*sensus decori*)—considered as negative taste—is not benumbed by the prevalence of beggars, excessive street noises, offensive odors, and public prostitution (*venus volgivaga*), all of which violate the moral sensibilities, the business of ruling the people through laws is made considerably easier for the government.

There is still a third right that belongs to the state for its preservation: the right of inspection (*ius inspectionis*). By this right, no association (political or religious) that can have any influence on the public welfare of the society (*publicum*) may remain concealed, and such an association may not refuse to reveal its constitution if the police demand that it do so. However, the search of the private residence of anyone by the police is allowed only in case of necessity, and in every instance it must be authorized by a higher authority.

C. [Public Welfare: The Poor, Foundling Hospitals, Churches]

Indirectly, inasmuch as he takes over the duty of the people, the supreme commander has the right to levy taxes on them for their own 326
conservation [i.e. of the people], in particular, for the relief of the poor, foundling hospitals and churches; in other words, for what are usually called charitable and pious foundations.

The general Will of the people has indeed united itself into a society in order to maintain itself continually, and for this purpose it has subjected itself to the internal authority of the state in order to support

[35] ["From a king badly informed to a king who ought to be better informed."]

those members of the society who are not able to support themselves. Therefore, it follows for reasons of state that the government[36] is justified in requiring the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves. Because their existence depends on the act of subjecting themselves to the commonwealth for the protection and care required in order to stay alive, they have bound themselves to contribute to the support of their fellow citizens, and this is the ground for the state's right to require them to do so. In order to fulfill this function, the state may tax the property of the citizens or their commerce or establish funds and use the interest from them; but the money cannot be used for the needs of the state as such, since the state is rich, but only for the needs of the people. The money should not be raised merely through voluntary contributions, but by compulsory exactions as political burdens, for here we are considering only the rights of the state in relation to the people. (This also excludes voluntary contributions, such as lotteries, which are made for gain; but lotteries ought not to be permitted because they increase the number of the poor and bring greater dangers to public property than there would be without them.) In this connection, we might ask whether the funds for the care of the poor should be raised from current contributions so that each generation will support its own poor or whether it is better to have recourse to permanent funds that are collected gradually or by pious foundations in general (such as widows' homes, hospitals, and so on). In any case, the funds should not be raised by begging, which is closely related to robbery, but by lawful assessments. The first arrangement—current contributions—must be considered the only one compatible with the rights of the state, which cannot abandon anyone who has to live; because, by using current contributions when the number of poor people increases, poverty will not become a means of livelihood for the lazy (as, it may be feared, is likely to happen in pious foundations), and thus the state will not be required to impose an unjust burden on the people.

As for children abandoned because of poverty or out of shame or even murdered for these reasons, the state has the right to charge the people with the duty of not letting them perish knowingly, even though they are an unwelcome addition to the population. Whether

[36] [Note that Kant, like Rousseau, distinguishes between the government and the state.]

this should be arranged by taxing the old bachelors and spinsters (that 327
is, rich unmarried people)—who, as such, are in part responsible for the evil—for the purpose of establishing foundling hospitals or whether it can be done justly by some other means (other means of doing it justly might be difficult to find)—this is a problem that has not yet been solved without running into conflict either with right and justice or with morality.

[The state will also be concerned with the church, which fills one of its true needs.] At the very outset, we must carefully distinguish the church from religion, which is an inner attitude of mind quite outside the effective jurisdiction of civil power. The church, on the other hand, is an institution for public divine worship serving the people, to whose opinion or conviction it owes its origin. For the state, the church serves the need felt by the people to regard themselves as subjects of a highest unseen power to which they must pay homage and which can often come into unequal conflict with the civil power. Consequently, though the state does not have the right to order the internal constitutional legislation of the church for its own purposes or to prescribe or command the beliefs and rituals (*ritus*) of the people (for all this must be left entirely to the teachers and elders whom they have chosen for themselves), the state does have a negative right to prevent any activities of the public teachers that might prejudice the public peace. Thus, it may intervene in an internal controversy or in a controversy between churches in order to prevent any danger to civil harmony. This negative right is also a right of the police. Nevertheless, it is beneath the dignity of the supreme authority to meddle to the extent of determining that a church should hold one particular belief and which one it should have or that it should keep this belief unaltered and may not reform itself; for, by participating in a scholastic wrangle, it places itself on a footing of equality with its subjects (the monarch makes himself into a priest), and they can tell it bluntly that it does not understand such matters. All this applies especially to the prohibition by the supreme authority of any internal reforms, for what the whole people cannot decide concerning itself cannot be decided by the legislator for the people. But the people cannot now decide never to make any progress in their insights (in enlightenment) as regards their faith, nor can they resolve never to reform their church, because to do so would conflict with the humanity in their own person and would be incompatible with the highest right of the people. It also follows that the supreme authority cannot make such a decision with

328 regard to the people. As far as the cost of maintenance of the religious establishment is concerned, for the same reason the burden of paying does not devolve on the state, but must be borne by that segment of the people which adheres to this or that faith, in other words, the congregation.[37]

D. [Public Offices—the Nobility]

The rights of the supreme commander also include: (1) the distribution of offices that involve employment for pay; (2) the distribution of positions of dignity[38] that are distinctions of rank not involving pay and that are based on honor alone; these distinctions of rank establish a superior class (entitled to command) and an inferior class (which, although free and bound only by public law, is determined in advance to obey the former); (3) in addition to these (relatively beneficent) rights, the supreme commander has rights that concern the penal Law.

When we consider civil offices, the question arises, Does the sovereign have the right, after he has given an office to someone, to take it away again at his own discretion (without any crime having been committed by the holder of the office)? I say, "No," for the chief of state can never make a decision about a civil official that the united Will of the people would never make. Now, without any doubt, the people, who are supposed to bear the costs incurred by the appointment of an official, want such an official to be fully competent in the job assigned to him; but this is possible only after the person in question has spent a sufficiently long time in preparation and training, time which he could have spent in learning some other job in order to secure a means of livelihood. But, if arbitrary dismissals were permitted, then the civil service would be filled with people who would not have the requisite ability and mature judgment that is acquired through practical experience, and this would be contrary to the intentions of the state. Indeed, the state must make it possible for every individual to rise from a lower office to higher offices (which would otherwise fall into the hands of incompetents) and for every official to be able to count on a secure income for the rest of his life.

Under positions of dignity, we must include not only those attached to a political office, but also those that make the holders into members of a higher class or rank without performing any particular

[37] [See Appendix: 8 for additional remarks on the subject of this section.]

[38] [*Würden*. See p. 119, n. 16.]

political services—in other words, the nobility as distinct from the class of common citizens who constitute the people. The rank of nobility is inherited by male descendants and is also acquired by their 329
wives who are not nobly born. However, a woman born to the nobility does not convey her rank to a husband not nobly born; instead, she herself returns to the class of common citizens (the people). The question that we must now ask is whether the sovereign is justified in establishing a nobility as a hereditary class between himself and the rest of the citizens of the state. In this question, we are not concerned with whether it would be expedient for the sovereign or to the advantage of the people to do so. Here we are interested only in whether it would be consistent with the rights of the people to have a class of persons above them who are, by reasons of their [noble] birth, commanders in relation to them or, at least, have certain privileges.

As before [in the case of the dismissal of officials], the answer to this question is to be derived from the principle, "What the people (the whole mass of subjects) cannot decide with regard to themselves or their fellows also cannot be decided by the sovereign regarding them." Now, a hereditary nobility is a class of persons who acquire their rank before they have merited it. Furthermore, there is no reason to hope that they will merit it. To think so is pure fancy and quite unrealistic, for, even if an ancestor had merit, he obviously could not bequeath it to his descendants, each of whom must earn it for himself; it is clear that nature has not arranged it so that the talent and [good] Will that are necessary for meritorious service to the state are hereditary. Inasmuch as it can be assumed that no person would throw away his freedom, it is impossible that the general Will of the people would consent to such a groundless prerogative, and therefore neither can the sovereign make it valid.

It may happen, however, that an anomaly such as subjects who want to be more than just citizens, that is, to be hereditary officials (imagine a hereditary professor!), has crept into the machinery of a government in ancient times (under feudalism, which was almost entirely organized for making war). Under such conditions, the only course of action for the state to take in order to rectify this earlier mistake of unjustly[39] conferring hereditary privileges is to eliminate them gradually, either by agreement or by allowing the positions to become vacant. Consequently, the state provisionally has a right to allow these

[39] [*widerrechtlich*]

positions of dignity based on titles to continue until public opinion comes to recognize that the threefold division into sovereign, nobility, and people should be replaced by the only natural division, namely, sovereign and people.

No person in the state can indeed be without any position of dignity at all, inasmuch as he (or she) has at least that dignity adhering to
330 a citizen. The only exception is someone who has lost it through his own criminal act, in which case, although he is allowed to stay alive, he is made into a mere tool of the will of someone else (either of the state or of another citizen). Such a person (and he can become one only through judgment and Law) is a slave (*servus in sensu stricto*) and is owned by someone else (*dominium*). The latter is, therefore, not merely that person's master (*herus*), but also his owner (*dominus*); being the owner, he can sell or alienate him as a thing, can use him as he pleases (but not for ignominious purposes), and can dispose of his abilities and energies,[40] although not of his life or limbs.

No one can bind himself by a contract to the kind of dependency through which he ceases to be a Person, for he can make a contract only insofar as he is a Person. Now, it might seem that a person could obligate himself through a work contract (*locatio conductio*) to perform certain services (for wages, board, or protection), such that the services to be performed would be of the kind that is permissible, but would not be specified in amount; and it might be held that this would make him only a servant (*subiectus*) and not a slave (*servus*). Nevertheless, this is a mistake and an illusion, because, if a master is entitled to make use of the energies and abilities[41] of his servant as he pleases, he could utterly exhaust him and reduce him to death or despair (as has been done with the Negroes in the Sugar Islands);[42] thus in effect, the servant will have given himself away to his master to be owned by him, and this is impossible. It follows that someone can hire himself out only to do work that is specific both as to kind and amount, either as a day laborer or as a "live-in" servant. In the latter case, he might make a

[40] [*Kräfte*]

[41] [*Kräfte*]

[42] [Through this reference as well as in other passages, Kant demonstrates that he intends his principles of justice and human rights to extend to all human beings regardless of skin color or race. Elsewhere he describes the Sugar Islands as "the seat of the most completely cruel and carefully planned slavery," and says of its masters that "they drink injustice like water!" *Perpetual Peace* (*AA* 8, 359).]

contract in part to labor on his master's land [in exchange] for the use of it instead of drawing wages and in part to pay a certain amount of rent[43] for his private utilization of the same land; and all this would be specified in the lease. This is possible without his making himself into a serf (*glebae adscriptus*) and so forfeiting his personality. Thus, he would still be able to make a leasehold for a number of years or in perpetuity [*Zeit-oder Erbpecht*]. Even supposing that he has become a personal subject as the result of having committed a crime, his servile status still cannot be transmitted to others by inheritance, inasmuch as it is the penalty of his own guilt. Much less can the offspring of such a slave be claimed as another slave on the ground that it cost so much to raise and educate him; for parents have a natural duty to educate their children, and, if the parents happen to be slaves, this duty devolves on their masters, who take over the duties of their subjects along with the possession of them.

E. The Penal Law and the Law of Pardon 331

I. [The Right to Punish]

The right to punish contained in the penal law [*das Strafrecht*] is the right that the magistrate has to inflict pain on a subject on account of his having committed a crime. It follows that the suzerain of the state cannot himself be punished; we can only remove ourselves from his jurisdiction. A transgression of the public law that makes him who commits it unfit to be a citizen is called either simply a crime (*crimen*) or a public crime (*crimen publicum*). [If, however, we call it a public crime, then we can use the term "crime" generically to include both private and public crimes.][44] The first (a private crime) is brought before a civil court, and the second (a public crime), before a criminal court. Embezzlement, that is, misappropriation of money or commodities entrusted in commerce, and fraud in buying and selling, if perpetrated before the eyes of the party who suffers, are private crimes. On the other hand, counterfeiting money or bills of exchange, theft, robbery, and similar acts are public crimes, because through them the commonwealth and not simply a single individual is exposed

[43] [*Abgabe, Zins*]

[44] [Natorp and Cassirer agree that there is something wrong with the sentence following this one. Either a sentence has been omitted or the sentence in question has been misplaced. Kant's meaning is, however, perfectly clear, and I have inserted a sentence to provide the transition.]

to danger. These crimes may be divided into those of a base character (*indolis abiectae*) and those of a violent character (*indolis violentae*).

Judicial punishment (*poena forensis*) is entirely distinct from natural punishment (*poena naturalis*). In natural punishment, vice punishes itself, and this fact is not taken into consideration by the legislator. Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else and can never be included among objects of the Law of things [*Sachenrecht*]. His innate Personality [that is, his right as a Person] protects him against such treatment, even though he may indeed be condemned to forfeit his civil Personality. He must first be found to be deserving of punishment before any consideration is given to the utility of this punishment for himself or for his fellow citizens. The law concerning punishment is a categorical imperative, and woe to him who rummages around in the winding paths of a theory of happiness looking for some advantage to be gained by releasing the criminal from punishment or
332 by reducing the amount of it—in keeping with the Pharisaic motto, "It is better that one man should die than that the whole people should perish." If legal justice perishes, then it is no longer worthwhile for humans to remain alive on this earth. If this is so, what should one think of the proposal to permit a criminal who has been condemned to death to remain alive, if, after consenting to allow dangerous experiments to be made on him, he happily survives such experiments and if doctors thereby obtain new information that benefits the community? Any court of justice would turn down such a proposal with scorn if it were suggested by a medical college, for [legal] justice ceases to be justice if it can be bought for a price.

What kind and what degree of punishment does public legal justice adopt as its principle and standard? None other than the principle of equality (illustrated by the pointer on the scales of justice), that is, the principle of not treating one side more favorably than the other. Accordingly, any undeserved evil that you inflict on someone else among the people is one that you do to yourself. If you vilify him, you vilify yourself; if you steal from him, you steal from yourself; if you kill him, you kill yourself. Only the Law of retribution (*ius talionis*) can determine exactly the kind and degree of punishment; it must be well understood, however, that this determination [must be made] in the

chambers of a court of justice (and not in your private judgment). All other standards fluctuate back and forth and, because extraneous considerations are mixed with them, they cannot be compatible with the principle of pure and strict legal justice.

Now, it might seem that the existence of class distinctions would not allow for the [application of the] retributive principle of returning like for like. Nevertheless, even though these class distinctions may not make it possible to apply this principle to the letter, it can still always remain applicable in its effects if regard is had to the special sensibilities of the higher classes. Thus, for example, the imposition of a fine for a verbal injury has no proportionality to the original injury, for someone who has a good deal of money can easily afford to make insults whenever he wishes. On the other hand, the humiliation of the pride of such an offender comes much closer to equaling an injury done to the honor of the person offended; thus the judgment and Law might require the offender, not only to make a public apology to the offended person, but also at the same time to kiss his hand, even though he be socially inferior. Similarly, if a man of a higher class has violently attacked an innocent citizen who is socially inferior to him, he may be condemned, not only to apologize, but to undergo solitary 333
and painful confinement, because by this means, in addition to the discomfort suffered, the pride of the offender will be painfully affected, and thus his humiliation will compensate for the offense as like for like.

But what is meant by the statement, "If you steal from him, you steal from yourself"? Inasmuch as someone steals, he makes the property of everyone else insecure, and hence he robs himself (in accordance with the Law of retribution) of the security of any possible property. He has nothing and can also acquire nothing, but he still wants to live, and this is not possible unless others provide him with nourishment. But, because the state will not support him gratis, he must let the state have his labor at any kind of work it may wish to use him for (convict labor), and so he becomes a slave, either for a certain period of time or indefinitely, as the case may be.

If, however, he has committed a murder, he must die. In this case, there is no substitute that will satisfy the requirements of legal justice. There is no sameness of kind between death and remaining alive even under the most miserable conditions, and consequently there is also no equality between the crime and the retribution unless the criminal is judicially condemned and put to death. But the death of the crimi-

nal must be kept entirely free of any maltreatment that would make an abomination of the humanity residing in the Person suffering it. Even if a civil society were to dissolve itself by common agreement of all its members (for example, if the people inhabiting an island decided to separate and disperse themselves around the world), the last murderer remaining in prison must first be executed, so that everyone will duly receive what his actions are worth and so that the bloodguilt thereof will not be fixed on the people because they failed to insist on carrying out the punishment; for if they fail to do so, they may be regarded as accomplices in this public violation of legal justice.

Furthermore, it is possible for punishment to be equal in accordance with the strict Law of retribution only if the judge pronounces the death sentence. This is clear because only in this way will the death sentence be pronounced on all criminals in proportion to their inner viciousness (even if the crime involved is not murder, but some other crime against the state that can be expiated only by death). To illustrate this point, let us consider a situation, like the last Scottish rebellion, in which the participants are motivated by varying purposes, just as in that rebellion some believed that they were only fulfilling their obligations to the house of Stuart (like Balmerino and others)[45] and others, in contrast, were pursuing their own private interests. Suppose that the highest court were to pronounce as follows: Each person shall have the freedom to choose between death and penal servitude. I say that a
334 man of honor would choose death and that the knave would choose servitude. This is implied by the nature of human character, because the first recognizes something that he prizes more highly than life itself, namely, honor, whereas the second thinks that a life covered with disgrace is still better than not being alive at all (*animam praeferre pudori*).[46] The first is, without doubt, less deserving of punishment than the other, and so, if they are both condemned to die, they will be pun-

[45] [Arthur Elphinstone, Sixth Baron Balmerino (1688–1746), participated in the Jacobite rebellion that attempted to put Prince Charles Edward Stuart on the British throne. He was captured, tried, found guilty, and beheaded. He is said to have acted throughout with great constancy and courage.]

[46] ["To prefer life to honor"—Juvenal, *Satire* 8.88. The complete text, lines 7–84, is quoted in the *Critique of Practical Reason*, *AA* 5, 158–9: "Be a stout soldier, a faithful guardian, and an incorruptible judge; if summoned to bear witness in some dubious and uncertain cause, though Phalaris himself should command you to tell lies and bring up his bull and dictate to you a perjury, count it the greatest of all sins to prefer life to honour, and to lose, for the sake of living, all that makes

ished exactly in proportion [to their inner viciousness]; the first will be punished mildly in terms of his kind of sensibility, and the second will be punished severely in terms of his kind of sensibility. On the other hand, if both were condemned to penal servitude, the first would be punished too severely and the second too mildly for their baseness. Thus, even in sentences imposed on a number of criminals united in a plot, the best equalizer before the bar of public legal justice is death.

It may also be pointed out that no one has ever heard of anyone condemned to death on account of murder who complained that he was getting too much [punishment] and therefore was being treated unjustly; everyone would laugh in his face if he were to make such a statement. Indeed, otherwise we would have to assume that, although the treatment accorded the criminal is not unjust according to the law, the legislative authority still is not entitled to decree this kind of punishment and that, if it does so, it comes into contradiction with itself.

Anyone who is a murderer—that is, has committed a murder, commanded one, or taken part in one—must suffer death. This is what [legal] justice as the Idea of the judicial authority wills in accordance with universal laws that are grounded a priori. The number of accomplices (*correi*) in such a deed might, however, be so large that the state would soon approach the condition of having no more subjects if it were to rid itself of these criminals, and this would lead to its dissolution and a return to the state of nature, which is much worse, because it would be a state of affairs without any external legal justice whatsoever. Since a sovereign will want to avoid such consequences and, above all, will want to avoid adversely affecting the feelings of the people by the spectacle of such butchery, he must have it within his power in case of necessity (*casus necessitatis*) to assume the role of judge and to pronounce a judgment that, instead of imposing the death penalty on the criminals, assigns some other punishment that will make the preservation of the mass of the people possible, such as, for example, deportation. Such a course of action would not come under a public law, but would be an executive decree,[47] that is, an act based on the right of majesty, which, as an act of reprieve, can be exercised only in individual cases.

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life worth having." Trans. G. G. Ramsey, Loeb Classical Library. (Phalaris, tyrant of Agrigentum, had criminals burned to death in a brass ox.)]

[47] [*Machtspruch*]

In opposition to this view, the Marquis of Beccaria,[48] moved by
335 sympathetic sentimentality and an affectation of humanitarianism, has asserted that all capital punishment is illegitimate. He argues that it could not be contained in the original civil contract, inasmuch as this would imply that every one of the people has agreed to forfeit his life if he murders another (of the people); but such an agreement would be impossible, for no one can dispose of his own life. It is all sophistry and inversion of justice.

No one suffers punishment because he has willed the punishment, but because he has willed a punishable action. If what happens to someone is also willed by him, it cannot be a punishment. Accordingly, it is impossible to will to be punished. To say, "I will to be punished if I murder someone," can mean nothing more than, "I submit myself along with everyone else to those laws which, if there are any criminals among the people, will naturally include penal laws." In my role as co-legislator making the penal law, I cannot be the same Person who, as subject, is punished by the law; for, as a subject who is also a criminal, I cannot have a voice in legislation. (The legislator is holy.) When, therefore, I enact a penal law against myself as a criminal it is the pure juridical legislative reason (*homo noumenon*) in me that submits myself to the penal law as one capable of committing a crime, that is, as another Person (*homo phaenomenon*) along with all the others in the civil union who submit themselves to this law. In other words, it is not the people (considered as individuals) who dictate the death penalty, but the court (public legal justice); that is, someone other than the criminal, who dictates it. The social contract does not include the promise to permit oneself to be punished and thus to dispose of oneself and of one's life, because, if the only ground that entitles the punishment of an evildoer were a promise that expresses his willingness to be punished, then it would have to be left up to him to find himself liable to punishment, and the criminal would be his own judge. The chief error contained in this sophistry (*proton pseudos*) consists in the confusion of the criminal's own judgment (which we must necessarily attribute to his reason) that he must forfeit his life with a resolution of the Will to

[48] [Cesare Bonesana, Marquis di Beccaria (1738–1794), Italian publicist. His *Dei delitti e delle pene* (1764) (*On Crimes and Punishments*, trans. Henry Paolucci, The Library of Liberal Arts, [Indianapolis: 1963]) was widely read and had great influence on the reform of the penal codes of various European states.]

take his own life. The result is that the execution of the Law and the adjudication thereof are represented as united in the same Person.

There remain, however, two crimes deserving of death with regard to which it still remains doubtful whether legislation is entitled to impose the death penalty. In both cases, the crimes are due to being led astray by the sense of honor. One involves the honor of womanhood; the other, military honor. Both kinds of honor are genuine, and duty requires that they be sought after by every individual in each of these two classes. The first crime is infanticide at the hands of the mother (*infanticidium maternale*); the other is the murder of a fellow soldier (*commilitonicidium*) in a duel.

Now, legislation cannot take away the disgrace of an illegitimate child, nor can it wipe away the stain of suspicion of cowardice from a junior officer who fails to react to a humiliating affront with action that would show that he has the strength to overcome the fear of death. Accordingly, it seems that, in such circumstances, the individuals concerned find themselves in a state of nature, in which killing another (*homicidium*) can never be called murder (*homicidium dolosum*); in both cases, they are indeed deserving of punishment, but they cannot be punished with death by the supreme power. A child born into the world outside marriage is outside the law (for this is [implied by the concept of] marriage), and consequently it is also outside the protection of the law. The child has crept surreptitiously into the commonwealth (much like prohibited commodities), so that its existence as well as its destruction can be ignored (because by right it ought not to have come into existence in this way); and the mother's disgrace if the illegitimate birth becomes known cannot be wiped out by any official decree.

Similarly, a military man who has been commissioned a junior officer may suffer an insult and as a result feel obliged by the public opinion of his companions in that social class to seek satisfaction and to punish the person who insulted him, not by appealing to the law and taking him to court, but instead, as would be done in a state of nature, by challenging him to a duel; for, even though in doing so he will be risking his life, he will thereby be able to demonstrate his military valor, on which the honor of his social class rests. If, under such circumstances, his opponent should be killed, this cannot properly be called a murder (*homicidium dolosum*), inasmuch as it takes place in a combat openly fought with the consent of both parties, even though they may have participated in it only reluctantly.

What, then, is the actual Law of the land with regard to these two cases (which come under criminal justice)? This question presents penal justice with a dilemma: either it must declare that the concept of honor (which is no delusion in these cases) is null and void in the eyes of the law and that these acts should be punished by death or it must abstain from imposing the death penalty for these crimes, which merit it; thus it must be either too cruel or too lenient. The solution to this dilemma is as follows: the categorical imperative involved in the legal justice of punishment remains valid (that is, the unlawful killing of another person must be punished by death), but the legislation itself (including also the civil constitution), as long as it remains barbaric and undeveloped, is responsible for the fact that motives of honor among the people do not coincide (subjectively) with the standards that are (objectively) appropriate to their intention, with the result that public legal justice as administered by the state is injustice from the point of view of the people.[49]

II. [The Right to Pardon]

The right to pardon a criminal (*ius aggratiandi*), either by mitigating or by entirely remitting the punishment, is certainly the most slippery of all the rights of the sovereign. By exercising it he can demonstrate the splendor of his majesty and yet thereby wreak injustice[50] to a high degree. With respect to a crime of one subject against another, he absolutely cannot exercise this right, for in such cases exemption from punishment (*impunitas criminis*) constitutes the greatest injustice toward his subjects. Consequently, he can make use of this right of pardon only in connection with an injury committed against himself (*crimen laesae majestatis*). But, even in these cases, he cannot allow a crime to go unpunished if the safety of the people might be endangered thereby. The right to pardon is the only one that deserves the name of a "right of majesty."

[49] [See Appendix: 5. In the *Critique of Pure Reason*, trans. Kemp Smith, B 373, Kant writes, "The more legislation and government are brought into harmony with the . . . idea . . . (of a constitution allowing the greatest possible human freedom in accordance with laws by which the freedom of each is made to be consistent with that of all others) . . . the rarer would punishments become, and it is therefore quite rational to maintain, as Plato does, that in a perfect state no punishments whatsoever would be required." The order of the sentence has been changed.]

[50] [*unrecht*]

F. [A § 50] [The juridical relationships of a citizen to his own and to foreign countries]

A territory whose inhabitants are already fellow citizens of the same commonwealth by virtue of the constitution, that is to say, without having to execute any special juridical act (and are consequently fellow citizens by birth), is called their country [or fatherland]. A territory in which they are not citizens unless such special conditions are fulfilled is called a foreign country;[51] and, when a country is under the general dominion of a government, it is called a province (in the sense in which the Romans used this word). A province must respect the land of the ruling state as the "mother country" (*regio domina*), since it is not incorporated as part of the realm as such (*imperii*), wherein the fellow citizens reside, but is only a possession of the realm, to which it is subject. 338

(1) A subject (regarded also as citizen) has the right to emigrate, for the state cannot detain him as a piece of property. Nevertheless, he can take only his movable belongings and not his fixed belongings with him out of the country; the latter would take place if he were entitled to sell the land that he possessed and to take with him the money that he received for it.

(2) The country's ruler[52] has the right to encourage foreigners (colonists) to immigrate and settle in his country, even though his native subjects[53] do not regard this action favorably. He may do so, however, only providing that the private property of the land of the natives is not diminished.

(3) In the case of a subject who has committed a crime that makes association with his fellow citizens dangerous to the state, the country's ruler has the right to banish that person to a province outside the country, where he will no longer participate in any of the rights of a citizen; that is, he may be deported.

(4) The ruler even has the right to exile such a criminal from his domain altogether (*ius exilii*) and to send him out into the world at large, that is, outside his country altogether[54] (which is called *Elend* ["misery"] in old German). Since the lord of the country thereby

[51] [*das Ausland*]

[52] [*Landesherr*]

[53] [*Landeskinder.* Lit. children of the land]

[54] [*das Ausland überhaupt*]

withdraws protection, this action amounts to making that person an outlaw within the boundaries of his own country.

§ 50 [A § 47] [The three authorities and the original contract]

315 All the three authorities in the state are dignities, and, inasmuch as it follows from the Idea of the state in general that they are necessary to the formation of a state (constitution), they are public or civil dignities.[55] They embody the relationship of a universal suzerain (who, when regarded under the laws of freedom, can be none other than the united people) to the aggregate of individuals considered as subjects, that is, the relationship of commander (*imperans*) to one who obeys (*subditus*). The act by means of which the people constitute themselves a state is the original contract. More properly, it is the Idea of that act that alone enables us to conceive of the legitimacy of the state. According to the original contract, all (*omnes et singuli*) the people give up their external freedom in order to take it back again immediately as
316 members of a commonwealth, that is, the people regarded as the state (*universi*). Accordingly, we cannot say that a person has sacrificed in the state a part of his inborn external freedom for some particular purpose; rather, we must say that he has completely abandoned his wild, lawless freedom in order to find his whole freedom again undiminished in a lawful dependency, that is, in a juridical state of society, since this dependency comes from his own legislative Will.

338 ### § 51 [The three forms of the state: Autocracy, aristocracy, and democracy]

The three authorities in the state that proceed out of the concept of a commonwealth in general (*res publica latius dicta*) are nothing more than so many relationships in the united Will of the people, which originates a priori in reason. They constitute the pure Idea of a head of state, and this Idea possesses objective practical reality. This head (the sovereign) is, however, only an abstract object of thought (representing the whole people) as long as there is no physical person to represent the highest authority of the state and to procure an effective influence of this Idea on the popular Will. The relationship of the highest authority in the state to the people may be conceived in three ways: a single person in the state has command over all, or several persons who are equal and united have command over all the rest, or all the people

[55] [*Staatswürden*]

together have command over each person, including themselves. Accordingly, the form of the state may be either *autocratic*, *aristocratic*, or *democratic*. (It would be improper to use the term "monarchical" instead of "autocratic" for the concept intended here, for a monarch is 339
one who possesses only the highest authority, whereas an autocrat, or "self-commander," is one who possesses all the authority. The latter is the sovereign; the former merely represents him.)

It can be easily seen that the autocratic form of the state is the simplest [because it contains only one relationship], namely, that of a single person (the king) to the people, and consequently there is only one legislator in an autocracy. The aristocratic form of the state is already composed of two relationships, namely, the relationship of the nobles (as legislators) to one another that constitutes them a sovereign and the relationship of this sovereign to the people. The democratic form of the state is the most complex [for it contains the following relationships]: first, the Will of all to unite to constitute themselves a people; then, the Will of the citizens to form a commonwealth; and, finally, [their Will] to place at the head of this commonwealth a sovereign, who is none other than this united Will itself.* As far as the administration of justice in the state is concerned, the simplest form is without doubt also at the same time the best; but, as far as justice and Law are concerned, the simplest form is the most dangerous for the people in view of the fact that it strongly invites despotism. Simplification is indeed a reasonable maxim in the machinery of uniting the people through coercive laws, provided that all the people are passive and obey the one person who is above them; but, under such circumstances, none of the subjects are citizens. [Under such a government,] the people are supposed to remain content with the hope that is held out to them that monarchy (more correctly, autocracy) is the best political constitution as long as the monarch is good (not only has a good Will, but also the requisite intelligence). But this statement is just a tautological wise saying inasmuch as it says no more than that the best constitution is one that makes the administrator into the best ruler; in other words, it is that which is the best!

* I shall not discuss here the perversion of these forms that arises from the usurpation of power by unauthorized persons (oligarchy and ochlocracy) or so-called mixed political constitutions, for to do so would lead us too far afield.

§ 52 [The ideal state]

To inquire after the historical origin of this mechanism of government is futile; that is to say, it is impossible to reach back to the time at which the civil society came into being (for savages do not draw up documents when they submit themselves to the law, and, indeed, from the very nature of uncivilized people it can be inferred that this [original submission] was achieved through the use of violence). It would,
340 however, be a crime to conduct such an inquiry with the intention of [finding a pretext] for changing the present existing constitution by force. This kind of transformation [of the constitution] could only be effected by the people acting as a riotous mob, not by means of legislation; and insurrection under an existing constitution involves the destruction of all civil juridical relationships, including all Law. Thus it is not an alteration of the civil constitution, but the dissolution of it; and the transition to a better constitution is not a metamorphosis, but a palingenesis. This in turn requires a new civil contract, on which the former contract (which is now null and void) has no influence.

Nevertheless, it must still be possible for the sovereign to change the existing constitution if it does not accord well with the Idea of the original contract and by this means to introduce that form that is essential in order for the people to constitute a state. This change cannot be such that the state transforms itself from one of these three forms to another, for example, by an agreement among the aristocrats to submit to an autocracy or to convert to a democracy or conversely; for, in doing so, the sovereign would be acting as though it were a matter of his own free choice and pleasure to decide to which kind of constitution he wants the people to submit. Even if the sovereign were to decide to transform himself into a democracy, he would still be doing the people an injustice, because the people themselves might abhor this kind of constitution and might find that one of the other two was more satisfactory for them.

The forms of the state are, as it were, only the *letter* (*littera*)[56] of the original legislation in civil society, and they may therefore continue as long as they are held by ancient, long-standing custom (hence only subjectively) to be necessary to the machinery of the constitution of the state. However, the spirit of that original contract (*anima pacti originarii*) entails the obligation of the constituted authority to make

[56] [Kant is here making a distinction between the letter (*Buchstabe*) and the spirit (*Geist*) of the law or constitution.]

the type of government conform to this Idea and, accordingly, to change the government gradually and continually, if it cannot be done at one time, so that it will effectively agree with the one and only legitimate constitution, namely, that of a pure republic. Thus, those old (statutory) empirical forms of the state, which serve only to effect the subjection of the people, must be transmuted into the original (rational) form, which is the only one that makes freedom its principle and, indeed, the condition of every use of coercion. Coercion under the condition of freedom is required for a juridical constitution of the state in the proper and true sense, and, when this has been accomplished, the spirit of the constitution will also have become the letter [that is, actual law].[57]

This [republican] constitution is the only enduring political constitution in which the law is self-governing[58] and does not depend on any particular Person. It is the ultimate end of all public Law and the only condition under which each receives what belongs to him peremptorily; for, as long as, according to the letter [that is, in actuality], the other forms of the state represent so many distinct moral Persons as invested with the supreme authority, it must be recognized that only a provisory internal justice and no absolutely juridical state of civil society can exist. 341

However every true republic is and can be nothing else than a representative system of the people if it is to protect the rights of its citizens in the name of the people. Under a representative system, these rights are protected by the citizens themselves, united and acting through their representatives (deputies). As soon, however, as the chief of state as a Person (whether it be a king, the nobility, or the whole population—the democratic union) also allows himself to be represented, then the united people do not merely represent the sovereign, but they themselves are the sovereign. For the supreme authority resided originally in the people, and all the rights of individuals considered as mere subjects (and especially as political officials) must be derived from this supreme authority. Accordingly, the republic that has now been instituted no longer needs to let the reins of government out of its hands and to return them to those who had them previously, to those who could then by their absolute and arbitrary will destroy the new institutions again.

[57] [The construction of the last part of this sentence is not entirely clear, so I have translated it rather freely to accord with what has gone before.]

[58] [*selbstherrschend*]

Remark:

Thus, a great error in judgment was made by one of the powerful sovereigns of our time when he attempted to extricate himself from the embarrassment caused by large state debts by leaving it to the people to take over this burden and to distribute it as they saw fit.[59] The natural result was that he handed over to the people legislative authority, not only over taxation, but also over the government, that is, authority to restrain the government from making new debts through extravagance or war. As a consequence, the sovereignty of the monarch disappeared completely (it was not just suspended) and passed over to the people, to whose legislative Will the property of every subject now became subject. Nor can it be contended that in this case we have
342 to assume that the national assembly made a tacit (contractual) promise not to make itself the sovereign, but just to administer the business for the sovereign and promised to relinquish the reins of government into the hands of the monarch after it finished this business. It is impossible to make such an assumption, because a contract of this kind would be null and void inasmuch as the right of supreme legislation in a commonwealth is not an alienable right, but the most personal of all rights. Whoever possesses this right can control and direct the people [*disponieren*] through the collective Will of the people, but cannot dispose of the collective Will itself, for the collective Will itself is the first and original foundation of any public contract whatsoever. A contract that would obligate the people to give back its authority could not be consistent with its role as legislative power, and to hold that such a contract has any binding force is self-contradictory by the principle, "No one can serve two masters."

[59] [Kant is referring to the revolutionary constitutional developments in France after the calling of the Estates General, May 5, 1789, by Louis XVI in order to extricate himself from financial difficulties. This body first transformed itself into the National Assembly and then, as the Constituent Assembly, adopted a new constitution on September 3, 1791, that reduced the monarchy to impotence. Later, the monarchy was eliminated.]

PUBLIC LAW
Second Section
The Law of Nations

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§ 53 [Definition of the Law of nations]

Those individual human beings who make up a nation[60] can, as natives of the country, be represented as the offspring of a common ancestry (*congeniti*), although this is, of course, only a kind of analogy and is not strictly true. If, however, we interpret this relationship in an intellectual and juridical sense, a nation bears a resemblance to a family (*gens, natio*) whose members (citizens) are by birth equal to each other, having been born of a common mother (the republic). As such, they regard those who might happen to live next to them in a state of nature as social inferiors and consequently will not mingle or marry with them, even though the latter (the savages) think that they themselves are superior by virtue of the lawless freedom that they have chosen. People who live thus in a state of nature constitute tribes,[61] rather than states. Our present concern, however, is with the Law governing the relations among states [rather than among peoples or societies], although it has been given the name of the Law of nations.[62] (The expression "the Law of nations" is therefore a misnomer, and the Law concerned should more properly be called "the Law of states"—*ius publicum civitatum.*)

Under the Law of nations, a state is regarded as a moral Person living with and in opposition to another state in a condition of natural freedom, which itself is a condition of continual war. [Accordingly, the Law of nations is concerned with those rights of a state that involve war in one way or another. These rights consist] partly of the right to make war, partly of rights during a war, and partly of rights after a war, namely, the right to compel each other to abandon the state of war and to establish a constitution that will guarantee an enduring peace. The

[60] [The German *Volk* can be translated by either "people" or "nation." In general, I shall use "nation" when the relations among nations are involved and "people" where the internal relations among the people and the state and its officials are involved. The reader should be warned, however, against attributing connotations of nationalism to Kant's use of *Volk*.]

[61] [*Völkerschaften*]

[62] [*Völkerrecht*]

principal difference between the state of nature that exists among individuals or families (in their relationship to one another) and that which exists among nations as such is that the Law of nations is concerned, not only with the relationship of one state to another, but also with relationships of individuals in one state to individuals in another
344 and of an individual to another whole state. But this difference between the Law of nations and the Law of individuals in a state of nature does not imply any [special] qualifications that are not easily deducible from the concept of the latter.

§ 54 [The elements of the Law of nations]

The elements of the Law of nations are as follows:

(1) With regard to their external relationship to one another, states are naturally in a nonjuridical condition (like lawless savages).

(2) This condition is a state of war (of rights of the stronger), even though there may not be an actual war or continuous fighting (hostility). Nevertheless (inasmuch as neither side wants to have it better), [and] although one does not suffer unjustly from another, it is still a condition that is in itself unjust in the highest degree, and it is a condition that states adjoining one another are obligated to abandon.

(3) A league of nations in accordance with the Idea of an original social contract is necessary, not, indeed, in order to meddle in one another's internal dissensions, but in order to afford protection against external aggression.

(4) But this alliance must not involve a sovereign authority (as in a civil constitution), but only a confederation. Such an alliance can be renounced at any time and therefore must be renewed from time to time. This is a right that follows as a corollary *in subsidium* from another right, which is original, namely, the right to protect oneself against the danger of becoming involved in an actual war among the adherents of the confederation (*foedus Amphictyonum*).[63]

§ 55 [The right of going to war in relation to the state's own subjects]

In connection with the original right of free states in a state of nature to wage war against one another (in order perhaps to establish a condition closer to the juridical state of affairs), the first question that arises

[63] [An amphictyonic league was a league of neighboring states or tribes in ancient Greece that was formed for religious purposes and mutual protection. The most famous of these was the Theban amphictyony (sixth century B.C.).]

is, What right does the state have over its own subjects in the war? May it employ them in the war, use their goods, or even expend their lives, regardless of their personal judgment as to whether they want to go to war? May the sovereign send them into the war through his supreme command [alone]?

It might seem that his right to do so could be easily demonstrated from the right that a person has to do whatever he wants to do with what belongs to him, that is, with what he owns. But everyone indisputably owns whatever he himself has substantially made,[64] that is, something that he has actually brought into existence and has not merely changed. This is the Deduction of this right as it would be formulated by a mere jurist.

[Let us now examine the argument in more detail.] In any country, there are, of course, various products of nature that nevertheless, because of their abundance, must be regarded as artifacts (*artefacta*) of the state, inasmuch as the land would not have produced so much had there been no state or powerful government, but the inhabitants had, instead, remained in a state of nature. For example, because of shortage of feed or beasts of prey, hens (the most useful species of bird), sheep, swine, cattle, and the like would either not exist at all in the country in which I live or would be exceedingly rare if there were no government to safeguard the acquisitions and possessions of its inhabitants. The same goes for the human population [in a country], for [without a government] it can only remain small, just as it is in the American wilderness; indeed, the people would still remain small in numbers even if we were to assume that they are much more industrious [than those who live under a government] (as, of course, they are not). The inhabitants of such a country would be very sparse, since they would be unable to spread themselves out on the land with their households, because of the danger of devastation by other people, by savages, or by beasts of prey. Consequently, under such circumstances, there would be no adequate means of livelihood for such a great number of people as now populate a country. 345

Inasmuch as crops (for example, potatoes) and domestic animals are products of human labor, at least as far as their quantity is concerned, we can say that they can be used, exploited, or consumed (be killed). By the same token, it would seem that we could say that the supreme authority in the state, the sovereign, also has the right to lead his subjects into a war as though it were a hunting expedition and to march

[64] [*der Substanz nach*]

them onto a field of battle as though it were a pleasure excursion on the grounds that they are for the most part his own products.

This kind of argument for a right (which in all likelihood hovers darkly in the minds of monarchs) is indeed valid with respect to animals, which can be owned by human beings, but it absolutely cannot be applied to human beings, and especially not to citizens. A citizen must always be regarded as a colegislative member of the state (that is, not merely as a means, but at the same time as an end in itself, and as such he must give his free consent through his representatives, not only to the waging of war in general, but also to any particular declaration of war. It is only under this limiting condition that the state may
346 demand and dispose of a citizen's services if they involve being exposed to danger.

Therefore, we will do well to derive the right in question from the duty of the sovereign to the people (rather than the other way around). That means that we must be certain that the people have given their consent, and, in this respect, even though they may be passive (in the sense that they merely comply), they also still act for themselves and themselves represent the sovereign.

§ 56 [The right of going to war in relation to other states]

In the state of nature among states, the right to go to war (to commence hostilities) is the permitted means by which one state prosecutes its right against another. In other words, a state is permitted to employ violent measures to secure redress when it believes that it has been injured by another state, inasmuch as, in the state of nature, this cannot be accomplished through a judicial process (which is the only means by which such disputes are settled under a juridical condition of affairs). [The offenses for which remedy may be sought in this way include,] not only actual injury (from first aggression, which is to be distinguished from first hostilities), but also threats. We may consider a threat to exist if another state engages in military preparations, and this is the basis of the right of preventive war (*ius praeventionis*). Or even the mere menacing increase of power (*potentia tremenda*) of another state (through the acquisition of new territory) can be regarded as a threat, inasmuch as the mere existence of a superior power is itself injurious to a lesser power, and this makes an attack on the former undoubtedly legitimate in a state of nature.

On this is founded the right to preserve a balance of power among all states that are contiguous to one another and act on one another.

Among those overt attacks that provide grounds for the exercise of the right to go to war, acts of retaliation (*retorsio*) must be included, that is, acts by which one nation seeks through self-help to gain redress for an injury done to it without attempting to obtain compensation (through peaceful means). In its form, this procedure is much like starting a war without declaring war beforehand. If, however, one wants to find any justice or rights in a state of war, then something analogous to a contract must be presupposed, namely, the acceptance of the declaration of war by the other party, so that it can be assumed that both parties wish to pursue their rights in this fashion.

§ 57 [Rights in a war] 347

The question of justice and rights during a war presents the greatest difficulty, inasmuch as it is difficult without contradicting oneself even to form any concept of such a right and to think of there being any law in a condition that is itself lawless (*inter arma silent leges*).[65] If there is any justice and right under such circumstances, it must be as follows: The war must be conducted according to such principles as will not preclude the possibility of abandoning the state of nature existing among states (in their external relations) and of entering into a juridical condition.

No war between independent states can be a *punitive war* (*bellum punitivum*), for punishment takes place only where there is a relationship of a superior (*imperantis*) to a subject (*subditum*), and no such relationship exists between states. Nor can any war be a war of *extermination* (*bellum internecinum*) or a war of *subjugation* (*bellum subiugatorium*), inasmuch as such wars result in the elimination of a state as a moral being by absorbing its people into one mass with the people of the conqueror or by reducing them to slavery. It is not that the state's use of such measures, if they were necessary to achieve peace, would in themselves contradict the rights of a state, but the Idea of the Law of nations only involves the concept of an antagonism that is in accordance with the principles of external freedom, that is to say, it permits the use of force only to maintain and preserve what belongs to one but not as a means of acquisition of the kind that would result in the aggrandizement of one state becoming a threat to another.

To a state against which a war is being waged, defensive measures of every kind except those that would make a subject of that state unfit to

[65] ["In war, the laws are silent."]

be a citizen are allowed. If it were to employ such measures, it would thereby make itself unfit to be considered a Person in relation to other states in the eyes of the Law of nations (and as such to participate in equal rights with the other states). Among such forbidden measures are the following: employing its subjects as spies and using them, or even foreigners, as assassins or poisoners (we should also include here so-called guerrillas,[66] who wait for individuals in ambush) or just using them to spread false rumors; in a word, it is forbidden to employ any such treacherous measures as would destroy the mutual faith that is required if any enduring peace is to be established in the future.

During a war, although it is permissible to impose exactions and contributions on a vanquished enemy, it is still not permissible to plunder the people, that is, to seize forcibly the belongings of individuals (because that would be robbery, inasmuch as it was not the conquered people themselves who waged the war, but the state to which they were subject and which waged the war through them). Furthermore, receipts should be given for any requisitions that are made, so that in the peace that follows the burden that was imposed on the country or province can be equitably distributed.

§ 58 [Rights after a war]

Justice and rights after a war, that is, at the time the peace treaty is concluded and in relation to the consequences of the treaty, consist in the following: The victor lays down the conditions, and these are customarily drawn up in a peace treaty, to which the vanquished power is supposed to agree and which customarily leads to the conclusion of the peace. In laying down these conditions, the victor does not appeal to a right against his opponent that is based on some supposed injury from him, but, leaving such questions unanswered, he rests his case on his strength[67] alone. It follows that the victor cannot request compensation for the costs of the war, because, by doing so, he would have to admit that the waging of war on the part of his opponent was unjust.[68] Even if he thinks that this is a good argument, he still cannot use it here, because, in doing so, he would be declaring that the war was a punitive one, and, in waging a punitive war, he himself would in turn be committing an offense against his opponent. [On the conclusion of peace,] there should be an exchange (with no ransom) of prisoners of

[66] [*Scharfschützen*]

[67] [*Gewalt*]

[68] [*ungerecht*]

war without regard to the equality of the numbers of prisoners released by each side.

Neither a vanquished state nor its citizens lose their civil freedom as a result of the capture of their country in the sense that their state is degraded to the status of a colony or their own status to that of slaves. For otherwise the war would be a punitive one, which is self-contradictory. A colony or province consists of a people who, indeed, have their own constitution, legislation, and land. In this land, those people who belong to another state are aliens, even if their state has executive authority over the people in the colony or province. Such a state is called the "mother state." The "daughter state" is subject to the "mother state," but it rules itself (through its own parliament, which is usually presided over by a viceroy [*civitas hybrida*]). Such a relation existed between Athens and the various islands and now exists between Great Britain and Ireland.

It is even less possible to base slavery on the conquest of a people through war and to derive its legitimacy from this fact, for this would require us to assume that the war was a punitive one. Least of all 349
would hereditary slavery based on conquest be possible; indeed, it would be quite absurd, inasmuch as the guilt from a person's crime cannot be inherited.

That a general amnesty should be included in a peace treaty is already implied in the concept of the latter.

§ 59 [The rights of peace]

The rights of peace are as follows: (1) the right to remain at peace when there is a war in the vicinity, that is, the right of *neutrality*, (2) the right to secure for oneself the continuation of a peace that has been concluded, that is, the right of *guarantee*, (3) the right to form reciprocal alliances with other states (confederations) for *common defense* against any possible attacks from without or from within; but this does not include the right to form a league for aggression and internal aggrandizement.

§ 60 [The right of a state against an unjust enemy]

There is no limit to the rights of a state against an unjust enemy[69] (in respect to quantity or degree, although there are limits with respect to

[69] [*ungerechter Feind*. In this paragraph, I have translated *ungerecht* and *Ungerechtigkeit* as "unjust" and "injustice," respectively. It should be noted, however, that the connotation of "legal justice" is retained, as can be seen in the paragraph that follows.]

quality or kind). In other words, although an injured state may not use every means at its disposal in order to defend what belongs to it, it may use those means that are allowable in any amount or degree that it is able to do so. But what, then, is an unjust enemy according to concepts of the Law of nations, which holds that every state is a judge in its own cause as in a state of nature in general? An unjust enemy is someone whose publicly expressed Will (whether by words or by deeds) discloses a maxim that, if made into a universal rule, would make peace among nations impossible and would perpetuate the state of nature forever. An example of this would be the violation of public treaties, which, it can be assumed, is a matter that concerns every nation, inasmuch as their freedom is thereby threatened. And so all nations are called upon to unite against this mischief and to take away from the malefactor the power of committing it. But this does not include [the right of] causing a state at the same time to disappear from the face of the earth, so that its land will be distributed among the others.That would be an injustice against the people, who cannot lose their original right to unite into a commonwealth. They may be required, however, to adopt a new constitution that by its nature will be unfavorable to the passion for war.

As a matter of fact, the expression "an unjust enemy in a state of nature" is a redundancy, for the state of nature is itself a condition of legal injustice. A just enemy would be one to whom I would do an injustice if I resisted him; but in that case he would also not be my enemy.

§ 61 [The establishment of enduring peace]

Inasmuch as the state of nature among nations, just like that among individual people, is a condition that should be abandoned in favor of entering a lawful condition, all the rights of nations and all the external belongings of nations that can be acquired or preserved through war are merely provisional before this change takes place; only through the establishment of a universal union of states (in analogy to the union that makes a people into a state) can these rights become peremptory and a true state of peace be achieved. Because, however, such a state composed of nations would extend over vast regions, it would be too large to govern, and consequently the protection of each of its members would, in the end, be impossible, with the result that the multitude of such corporations would lead back to a state of war. It follows that perpetual peace (the ultimate goal of all of the Law of nations) is, of course, an Idea that cannot be realized. But the basic polit-

ical principles that aim at this Idea by instructing us to enter such alliances of states as a means of continually approaching it closer are themselves feasible, inasmuch as continually attempting to approach this Idea is a requirement grounded in duty and in the rights of persons and states.

Such a union of several states whose purpose is to preserve peace may be called the "permanent congress of states." Any neighboring state is free to join such a congress. We have an example of such a congress (at least as far as the [legal] formalities of the Law of nations relating to the preservation of peace are concerned) in the assembly of states-general at The Hague in the first half of this [the eighteenth] century. To this assembly, the ministers of most European courts and even of the smallest republics brought their complaints about the hostilities carried out by one against another. Thus, all of Europe thought of itself as a single federated state, which was supposed to fulfill the function of judicial arbitrator in these public disputes. Later, however, instead of this, the Law of nations disappeared from the cabinets [of these states] and survived only in books, or, after force had already been employed, it was relegated as a [useless] form of deduction to the darkness of the archives. 351

A congress, in the sense intended here, is merely a free and essentially arbitrary[70] combination of various states that can be dissolved at any time. As such, it should not be confused with a union (such as that of the American states) that is founded on a political constitution and which therefore cannot be dissolved. Only through the latter kind of union can the Idea of the kind of public Law of nations that should be established become a reality, so that nations will settle their differences in a civilized way by judicial process, rather than in the barbaric way (of savages), namely, through war.

PUBLIC LAW
Third Section
World Law

§ 62 [The world community]

This rational Idea of a peaceful, even if not a friendly, universal community of all nations on earth that can come into mutual active relations

[70] [*willkürliche*]

with one another is not a philanthropic (ethical) principle, but a juridical principle. From the fact that nature has enclosed all nations within a limited boundary (because of the spherical shape of the earth on which they live, as a *globus terraqueus*), it follows that the possession of the land on which an inhabitant of the earth can live can always be conceived only as the possession of a part of a determinate whole, such that every person can be conceived as originally having [had] a right to it.[71] Accordingly, all nations originally hold a community of the land, although it is not a juridical community of possession (*communio*), and therefore of use, or community of ownership of the same. Instead, the kind of community that they have is that of possible physical interaction (*commercium*), that is, a community involving a universal relationship of each to all the others such that they can offer to trade with one another; and so have the right to try to trade with a foreigner without that person's being justified in taking anyone who tries it to be an enemy. These rights, insofar as they involve a possible unification of all nations for the purpose of establishing certain universal laws regarding their intercourse with one another, can be called *world Law* (*ius cosmopoliticum*).[72]

It might appear that oceans make a community of nations impossible. But this is not so, for, thanks to navigation, they provide the most favorable natural condition for commerce, which is even more lively when the coastlines are close to one another (as they are in the
353 Mediterranean Sea). Nevertheless, frequent visits to strange coasts and, even more, the founding of colonies that are linked with a mother country provide an occasion for doing evil and violence to some place on our globe that will be felt everywhere. The fact that such abuse is possible does not nullify the right of a citizen of the earth to attempt [to establish] a community with everyone and to visit all the regions of the earth for this purpose. This right still does not, however, include the right to colonize the land of another nation (*ius incolatus*), for this requires a special contract.

At this point, the following question could be raised, Where lands have been newly discovered, may a nation settle (*accolatus*) and take possession of land in the neighborhood of a people who have already settled in that region, even without obtaining their consent?

If such a settlement takes place far enough away from the place

[71] [See § 13 ff.]

[72] [*das weltbürgerliche Recht*]

where the first people live so that there will be no encroachment on their use of the land, then the right to do so is indubitable. If, however, the people are sheepherding or hunting tribes (like the Hottentots, the Tongas, or most of the American Indians) whose livelihood depends on large, wild tracts of land, such settlement should not be undertaken through violence, but only through a contract. Moreover, any such contract must not take advantage of the ignorance of the inhabitants in regard to the cession of their territory. Against this view, it might seem that there is ample justification for the use of violent means in this kind of situation because of the good for mankind that results from it. On the one hand, it is a means of bringing culture to primitive peoples (this is like the excuse that Büsching[73] offers for the bloody introduction of Christianity into Germany), or, on the other hand, it is a means by which it is possible to clean out vagrants and criminals from one's own country, who, it is hoped, will improve themselves or their children in some other part of the world (like New Holland). Nevertheless, all these good intentions still cannot wash away the stains of injustice[74] from the use of such means. Here, one might object that, had there been such scruples about using violence to start the erection of a lawful state of society, then perhaps the whole world would still be in a lawless condition. But such an argument will not succeed in invalidating the conditions of justice any more than does the excuse offered by revolutionaries, namely, that, when constitutions are evil, it is proper for the people to reform them by violent means and so generally to be unjust once and for all, in order thereafter to establish legal justice on a foundation that is so much more secure and to cause it to flourish.

CONCLUSION
[Perpetual Peace]

If one cannot prove that a certain thing exists, one can try to prove that it does not exist. If one succeeds in doing neither (as frequently happens), one can still ask whether one has any interest in assuming that one or the other is true (hypothetically) and, if there is such an interest, whether it is a theoretical or a practical interest. Thus, from

[73] [Anton Friedrich Büsching (1724–1793), German theologian and geographer. He wrote many works, principally on geography, of which the main one was the *Erdbeschreibung*, a description of the earth, in seven parts. He is often regarded as the founder of modern statistical geography.]

[74] [*Ungerechtigkeit*]

a theoretical point of view, we make an assumption in order to explain a certain phenomenon (for example, for an astronomer, the phenomenon to be explained might be the retrograde motion of the planets). Or, on the other hand, from the practical point of view, we make an assumption in order to attain some end; such an end may be either pragmatic (purely technological) or moral. If it is a moral end, it is one that duty requires us to adopt as a maxim. Now, it is evident that [although duty may require us to adopt an end as our maxim] it does not require us to assume (*suppositio*) the feasibility of the end in the sense
354 in which such an assumption is a purely theoretical judgment, and a problematic one as well, for there can be no obligation to do this (to believe something). What duty requires is that we act in accordance with the Idea of such an end, even if there is not the slightest theoretical probability that it is feasible, as long as its impossibility cannot be demonstrated either.

Now, moral-practical reason within us voices its irresistible veto: *There shall be no war*, either between you and me in a state of nature or among states, which are still in a lawless condition in their external relations with one another, even though internally they are not. This is not the way in which anyone should prosecute his rights. Accordingly, there is no longer any question as to whether perpetual peace is a reality or a fiction and whether we deceive ourselves if we assume in a theoretical judgment that it is real. We must, however, act as though perpetual peace were a reality, which perhaps it is not, by working for its establishment and for the kind of constitution that seems best adapted for bringing it about (perhaps republicanism in every state), in order to bring perpetual peace and an end to the abominable practice of war, which up to now has been the chief purpose for which every state, without exception, has adapted its institutions. Even if the realization
355 of this goal of abolishing war were always to remain just a pious wish, we still would certainly not be deceiving ourselves by adopting the maxim of working for it with unrelenting perseverance. Indeed, we have a duty to do so, and to assume that the moral law within us might deceive us would give rise to the disgusting wish to dispense with reason altogether and to conceive of ourselves and our principles as thrown in together with all the other species of animals under the same mechanism of Nature.

It can be said that the establishment of a universal and enduring peace is not just a part, but rather constitutes the whole, of the ultimate purpose of justice and Law [*Rechtslehre*] within the bounds of

pure reason. When a number of people live together in the same vicinity, a state of peace is the only condition under which the security of Mine and Yours is guaranteed by laws, that is, when people live together under a constitution. Furthermore, the rule involved here is not a norm of conduct for others that is based on the experience of those who have hitherto found it most to their advantage. On the contrary, is a norm that must be derived a priori through reason from the Idea of a juridical association of persons under public laws in general. In fact, every [empirical] example is deceptive (and can be used only to illustrate but not to prove [a principle]), and so a metaphysics is most certainly required. Even those who deride metaphysics still acknowledge its necessity when they say, for instance, as they often do, "The best constitution is one that is ruled, not by men, but by the laws." What could be more sublimely metaphysical than this Idea? Yet it is an Idea that by their own admission possesses the most authentic objective reality, as can be easily shown in particular instances if need be. No attempt should be made, however, to realize this Idea precipitously through revolutionary methods, that is, by the violent overthrow of a previously existing imperfect and corrupt [government] (for in that case there would be an intervening moment when the entire juridical state of affairs would be annihilated). Instead, the Idea should be attempted and carried out through gradual reform according to fixed principles. Only in this way is it possible to approach continually closer to the highest political good—perpetual peace.

APPENDIX
Supplementary Explanations of the Metaphysical Elements of Justice

The occasion for most of these remarks is provided by a review of this book that appeared in the *Göttingen Journal* (Number 28, February 18, 1797). In this review, the book is subjected to a penetrating and acute critical examination, but at the same time the reviewer writes with appreciative understanding and expresses "the hope that these *Elements* will remain a permanent contribution to knowledge." I shall use the remarks made in that review as a guide for my critical comments and for a further elaboration of the system.[1]

[On the Definition of the Faculty of Desire]

At the very beginning of the Introduction, my acute and critical reviewer finds a difficulty with a definition. What is meant by the faculty of desire? It is, according to the text, the capacity of being, by means of one's representations, the cause of the objects of those representations. In criticism of this definition, it is objected "that the definition amounts to nothing as soon as one abstracts from the external conditions of the consequences of desiring. But the faculty of desire is something that exists even for an idealist, although the external world does not exist for him."

Answer: Are there not also intense yearnings that are consciously recognized to be in vain (for example, "Would to God that so and so were still alive!")? Indeed, such yearnings do not issue in overt action, nevertheless they are not entirely without consequences, namely,

[1] [According to one of Fichte's letters, the reviewer was Professor Friedrich Bouterwek of the University of Göttingen. A later publication by Bouterwek containing substantially the same criticisms bears this out. The complete review is reprinted in Kant's *Gesammelte Schriften* (*AA*, Vol. XX, pp. 445–453, note). Kant intended this appendix to be attached to the second edition of the *RL*, but it was not ready in time. So, in order to save his readers from having to purchase another copy of the second edition, Kant had the Appendix printed as a separate pamphlet. After that it was incorporated into subsequent printings of the second edition. See Ludwig, p. xxiii for details. Ludwig also contains a copy of the title page of the original printing of the Appendix.]

within the subject, although not in the external world. (They might, for example, make a person ill.) Even when a subject perceives the inadequacy of his representations for producing the desired effect, it is still a mode of causality, at least internally within the subject. The source of the misunderstanding is this: inasmuch as (in the case under 357
consideration) the consciousness of our capacity in general is at the same time also a consciousness of our incapacity with respect to the external world, the definition is not applicable for an idealist [because an idealist denies the existence of the external world]. In the meantime, since only the relationship in general between the cause (the representation) and the effect (the feeling) is involved here [in this definition], the causality of the representation (whether it be external or internal causality) with respect to its object must inevitably be considered to be included in the concept of the faculty of desire.

1. Logical Propadeutic to a Newly Ventured Concept of Rights

If philosophers of law want to rise to the level of the metaphysical elements of justice [and Law] and deal with them (for without them juridical science would be only about statutes), then they cannot be indifferent to certainty about the completeness of the classification of the concepts of justice [Law]; for otherwise that science would not be a rational system but just a junk heap! The topology[2] of the principles must be complete as far as the form of the system is concerned, that is, the place for a concept (*locus communis*) must be indicated so that it will be open for the concept following the synthetic form of the classification [i.e. division] of that concept; even if afterwards it might be shown that one or other of the concepts that is assigned to that place is self-contradictory and so the place becomes vacant.

Up to now, jurists have filled just two common places[3] [in this classification], that of real rights and of personal rights. It is natural to ask whether two other places also remain open in the a priori classification, [that is, places] for the simple form of the connection of the two to a concept, such as a real right of a personal kind as well as a personal right of a real kind. [In other words,] one can ask whether such a newly

[2] [*Topik*. In the *Anthropology*, Kant likens this concept to a "frame-work for concepts" or a classification scheme like that of Linnaeus, which helps us to locate a concept as we would a plant or, say, a book in a library. *Anthropology* (*AA* 7, 184).]

[3] [That is, categories in the classification scheme]

arrived concept is allowable and placeable in the complete table of the classification, even though it might be problematic. This last point does not allow any doubt. For a simple logical division (that abstracts from the content of the knowledge, i.e. its object), is always a *dichotomy*, for example, each individual right is either a real right or not a real right. But the kind of division [classification] that is involved
358 here, that is, a metaphysical division, can also be a *tetrachotomy*, because, beside the two simple components of the division there are two relationships that must be added to them, namely, relationships that provide limiting conditions under which one right is joined with another one. This possibility needs to be specially investigated. The concept of a real right of a personal kind drops out without further ado, for a right of a thing against a person is inconceivable. Now the question is whether the inversion of this relationship is also inconceivable, that is, whether the concept of a personal right of a real kind not only is not self-contradictory, but is a concept (given a priori in reason) that necessarily belongs to the concept of external Mine and Yours. [That would be a concept according to which] Persons could be treated as things not in every detail, but so that they can be possessed and dealt with in many situations as things.

2. Justification of the Concept of a Personal Right of a Real Kind

The definition of a personal right of a real sort is actually short and easy. It is this: "It is a right of a human being to have a Person outside itself as belonging to him [or to her].[4*] I take pains to use the word Per-

[4] [*als das Seine*]

* Here I say not that a Person is mine (as an adjective) but that the Person is what belongs to me as what is Mine [that is, it is part of what is mine, what belongs to me, an asset of mine] (the *meum* as a substantive [rather than as an adjective]). For I can say that this [person] is *my father,* which simply refers to my physical relationship (connection) to him in general, for example, I have a father. But I cannot say that I have him as one of my belongings (what is mine). But if I speak of my wife, that indicates a special juridical relationship of a possessor to an object as a thing (even if it is also a Person). Possession (physical), however, is the condition of the possibility of handling (*manipulatio*) a thing [*Ding*] as a material article [*Sache*], even though, in another relation the same thing must be handled as a Person.

son; for someone else who is still a human being could have forfeited his [legal] Personality through committing a crime (and has become a slave) might be held as a thing. But that case is not at issue here.

Whether then the concept in question can be taken to be a *Stella Mirabilis*[5] in the juristic heaven (that is, a star that grows to the first 359
magnitude that has never happened before, but gradually disappears again, perhaps sometime to reappear again) or whether it is simply a shooting star—that will now be investigated.

3. Examples

To have an external thing as one's belonging means to possess it juridically. But possession is the condition of the possibility of the use [of a thing]. If this condition is simply thought of as physical, it is called *detention.*—Legitimate detention [holding] is indeed not sufficient to declare that the object is among my belongings [*das Meine*] or to make it such. If, however, for whatever reason I am entitled to retrieve an object that has escaped or has been snatched out of my control,[6] this concept of justice [and Law] is a sign (like the effect of a cause) that I hold that I am entitled to claim it as Mine as well as to view myself also as in intelligible possession of the thing and entitled to use this object as such.

To call it a belonging of someone does not in any way mean that the Person of the other one is his property (for a human being cannot even be the owner of himself, much less of another Person). Instead, it means only that he has the usufructuary enjoyment directly from that Person as a means to my end as if he (or she) were a thing, but still without any harm or damage to his (or her) Personality.

As a condition of the legitimacy of this use, however, the end must be morally necessary. Neither can the man desire the woman, in order to feel immediate enjoyment from the mere animal community with her, nor can the woman give herself to him for that, without both of them giving up their Personality, which, as mutual giving up of oneself's Person into the possession of the other, must be decided upon in advance. [For that is necessary] in order not to dehumanize [themselves] through the bodily use that they make of each other.

Without this condition, the pleasure in flesh is in principle (although not in result) *cannibalistic.* Whether with mouth and teeth or

[5] [A wonderful star]

[6] [*Gewalt*]

with the female partner through pregnancy and the perhaps resulting delivery, which may possibly be fatal for her, or for the male partner
360 [whose life] is sapped away through the exhaustion due to the frequent demands of the woman on the man's sexual functions, they all differ only in the fashion of enjoyment. One partner becomes for the other in this reciprocal use of their sex organs really [just] an expendable and fungible matter (*res fungibilis*). But [for them] to produce it [as a fungible thing] through a contract would be an unlawful contract (*pactum turpe*).[7]

Clearly, a man and a woman cannot produce a child as their mutual piece of work (*res artificialis*) without both sides undertaking an obligation to the child and to each other to support it. That is like the acquisition of a human being as a thing but in the form of a personal right of a real kind. The parents* have a right against any possessor of the child who has taken it away from their control [authority] (*ius in re*) and at the same time they have a right to require the child to do whatever they demand and to obey any of their orders that are not inconsistent with possible legal freedom (*ius ad rem*). In other words, they also have a personal right against it [the child].

Finally, when the children reach adulthood, the duty of the parents to support them ceases. But the parents still have the right to use them to work for the household as members of the household subject to their orders until they are released. That is a duty that the parents have towards them that follows from the natural limitation of their parental rights. Up to that time, they were indeed members of the household and belonged to the family, but from then on they will belong to the domestic staff (*famulatus*)[8] and as such belong to the master of the house only through a contract.

In the same way, there can be servants from outside the family that belong to the master of the house as a personal right of a real kind and acquired in the status of house servants[9] (*famulatus domesticus*) through a contract. But such a contract is not a simple contract for hire (*locatio*

[7] [A shameful contract]

* In written German the word *Ältern* is used for *Seniores* [the elderly], while the word *Eltern* is used for *Parentes* [parents]. [But] in spoken German the two words cannot be distinguished. In meaning, however, they are very different.

[8] [*Dienerschaft*]

[9] [*Gesinde*]

conductio operae)[10] but [a kind of] *renting* of the Person (*locatio conductio personae*)[11] through which the Person gives him (or her) self into the possession of the master of the house. The difference between the two is that the latter is distinguished from a simple hiring in that the servant agrees to do whatever is permissible for the good of the household rather than simply performing a settled and specifically determined 361
kind of work. The first would be the case of being hired (as a handworker or day laborer) for a specific job that does not involve giving himself to belong to another person [as an asset] and does not involve becoming a member of the household.

With respect to the latter [a simple hire], since the persons hired are not part of the juridical possession of another person, they are only duty-bound to the hirer to perform specific tasks [for which they were hired]. But even if the persons hired reside in the house (*iniquilinus*), the master of the house cannot compel them (*via facti*) as a thing[12] to carry out what was promised, but for the promised performance in accordance with his personal right he must rely on the judicial means (*via iuris*) at his disposal.[13]

So much for the elucidation and defense of a strange, newly added category of right in the theory of Natural Law—although it has always been in use silently.

4. Of the Confounding of Real and Personal Rights

In addition, another charge of heterodoxy [in my views] about Natural Private Law has been raised in criticism of the proposition that *purchase overrides rent* (§ 31).

[10] [Apparently, Kant is alluding to a distinction recognized in Roman Law between two kinds of hiring: *locatio conductio operis,* which is hiring for a specific task, and *locatio conductio operarum,* which is hiring for a service, e.g. a gardener. (See Metzger, pp. 159–60.) The distinction does not quite fit the one that Kant had in mind. But I believe that his intention is to replace the traditional Germanic social and legal category of persons (of *Gesinde*), which is authoritarian, paternalistic, and oppressive by a Roman Law category which reduces the personal status of *Gesinde* (family servant) to a contractual relationship.]

[11] [Hiring of a person]

[12] [*Sache.* Remember that *Sache* (*res*) can be anything that is the object of a right or duty.]

[13] [In German society at the time, the *Gesinde,* unlike day laborers, were subject to family discipline like the children. See § 30 notes.]

At first look it certainly seems to be inconsistent with all the rights stemming from a contract that someone should be able to terminate the rental of his house before the expiration of the settled time of occupancy and thus, so it appears, could break his promise to the renter only if he observes the customary time to move out according to the civil-legal waiting period. If, however, it can be shown that, when he made the rental contract, the renter knew, or ought to have known, that the promise that had been made by the landlord as the owner was naturally (without its explicitly being stated in the contract), that is, silently, linked to the condition of "as long as he (the landlord) in the meantime does not sell the house" (or would not to need to hand it over to his creditors because of bankruptcy). Hence, he [the landlord] has not broken a promise that would in itself be taken by reason to be conditional, and the renter is not deprived of his right by any actual termination of the lease before rental period was up.

362 For the right of the latter (the renter) stemming from the rental contract is a *personal right* regarding what a particular Person has to do for the other (*ius ad rem*) and not a *real right* against any possessor of the thing (*ius in re*).

Now the renter could, of course, secure a guarantee that is set forth in the rental contract itself and thereby obtain a real right in the house: he could actually do this by having a liability inscribed and registered to the effect that he could not have his rent terminated through notice from the landlord before the expiration of the previously agreed upon time, even if he (the landlord) dies (naturally or civilly—through bankruptcy). The renter might not want to do that, because he might want to remain free to take a rent elsewhere under better conditions, or the owner might not want to have his house encumbered by such an onus. In view of all of that it can be inferred that both of them have consciously made a contract containing the silent unstated condition that it could be annulled at their convenience. The confirmation of the entitlement to break a rent through sale is clear from certain juridical consequences relating to such a naked rental contract; for if the landlord dies, his heirs are not expected to have an obligation to continue the rent. That is because this obligation is only an obligation to a particular Person, which ends with his death (although the legally prescribed time for giving notice needs to be taken into account). Exactly the same goes for the rights of the renter as such, which cannot be transmitted to his heirs without a special contracts, just as when they

are both living he (the renter) is not entitled to sublet without an explicit prior agreement.

5. Additional Remarks in Elucidation of the Concepts of the Penal Law

The mere Idea of a political constitution among people involves the concept of penal justice as an attribute of the supreme authority. The only question is whether the particular sort of punishment is a matter of indifference to the legislator as long as it serves as a means of suppressing crime (considered as a violation of the state's guarantee of the possession by each of what belongs to him) or whether the respect due to the humanity in the Person of the miscreant (that is due to the 363
human species) should also still be taken into account, simply on grounds of justice. I have contended that the *ius talionis* is the only principle of penal Law that accords with the form stipulated a priori by the Idea (that is, the principle is not derived from experience, which could provide us with the most effective remedies for achieving this end [that is, suppressing the crime]).* (But how can this principle [of the equality of crime and punishment] be applied to punishments that do not allow reciprocation because they are either impossible in them-

* Every time a punishment is imposed, the sense of honor of the accused is (rightfully) hurt, because the imposition of punishment involves a purely one-sided use of coercion. As a result, the dignity of a citizen as such, in this particular case, is at least suspended, inasmuch as he is subjected to an external duty against which he, on his part, cannot bring any resistance. A person of respectable rank or of wealth who has to pay a fine feels the humiliation of having to bow to the Will of a person of inferior status much more than the loss of the money. Penal justice (*iustitia punitive*), because the arguments about punishability are moral (*quia peccatum est*) ["because he is at fault"], must be sharply distinguished from that kind of punishment that is purely pragmatic and utilitarian (*ne peccetur*) ["in order to keep him from transgression"] and which is grounded on what experience has shown to be the most effective means of preventing crime. Penal justice has a quite different place (*locus iusti*) in the topology of concepts of justice and Law: it has neither the place of the *conducibilis* [what is conducible to an end] nor of what is beneficial in some respect; Indeed, it does not even occupy the place of simple *honesti* [simply being honest], for that places it under Ethics.

selves or would themselves be punishable crimes against humanity in general? Rape, pederasty, and bestiality are examples of the latter. For rape and pederasty, [the punishment is] castration (after the manner either of a white or of a black eunuch in a sultan's seraglio), and for bestiality the punishment is expulsion from civil society forever, because he has made himself unworthy of remaining in human society. *Per quod quis peccat, per idem punitur et idem.*[14] The crimes just mentioned are called unnatural because they are committed against humanity itself [that is, against the purely human element in persons]. To impose an arbitrary punishment for them would be contrary to the letter of penal justice. The only time a criminal cannot complain that he is treated unjustly is when he draws the evil deed back onto himself [as a punishment] and when he suffers that which according to the spirit of the penal law—even if not to the letter thereof—is the same as what he has inflicted on others.

6. On the Right of *Usucapio*

[The reviewer writes:] "The right of *usucapio* is said in § 33 (A 291 ff.)
364 to be grounded in the Natural Law. Therefore one must not assume that an ideal acquisition, as it is called here, can be grounded on possession in good faith[15] so that no acquisition would be peremptorily secure. (But Herr K himself assumes that in the state of nature, acquisition is only provisional and he insists for that reason on the juristic necessity of a civil constitution. But I [can claim] to be a possessor in good faith only against someone who cannot prove that he was the possessor in good faith earlier than I of the same thing and that he has not given up the Will to be the possessor.)"

But this is not the issue. It is, rather, whether I can claim to be the owner, even if a pretender were to announce himself as an earlier owner of the thing, although the investigation of his existence as possessor and of his possessory status as owner is absolutely impossible. This last would be the case if he [the pretender] has given no publicly valid evidence whatsoever of his uninterrupted possession (regardless of whether it is his own fault or not); such evidence might be an entry in a register or unchallenged voting as an owner in a civil assembly.

[14] ["He who commits a sin is punished through the same sin and in the same way."]

[15] [*ehrlicher Besitz.* Here the common English term for the Latin *bona fide* is used for the German.]

For the question here is, Who has to prove his legitimate acquisition? The possessor cannot be burdened with this obligation (*onus probandi*), since he is, as far as his history is known, in possession of the thing. For his part, the presumptive earlier owner of the thing, in the intervening time in which he did not give any civilly valid evidence of his ownership, is completely cut off from the series of one after the other possessors according to principles of justice [and Law]. This absence of any public possessory act makes him an untitled pretender. (Against him, one can say as in theology, *conservatio est continua creatio!*[16]) Suppose a pretender were to turn up with hitherto not manifest documents that were discovered later, there a doubt would still prevail whether some day a still earlier pretender would emerge who could have grounds to support his earlier possession. Here it is not at all a question of the length of time of the possession [that determines] acquisition by *usucapio* (*acquirere per usucapionem*). For it is absurd to suppose that through lasting a long time a wrong [an injustice] practically becomes a right [just]. Custom [or use], however long it has lasted, presupposes the right in a thing, far from being the other way around [i.e. that right should be grounded in custom]. Hence to take 365
usucapio to be *acquisition* through the long use of a thing is a self-contradictory concept. *Prescription*[17] of claims as a mode of sustaining them (*conservatio possessionis meae per praescriptionem*)[18] is no less so. Still, one of the concepts distinguished earlier relates to the argument for appropriation.[19] [To exclude by prescription] is a negative ground, that takes the total non-use of one's right, not even when it is needed to show oneself to be the possessor, to be [equivalent to] the renunciation of the same [the possession] (*derelictio*). [But] renunciation is a juridical act involving the use of one's right against another in order to acquire his (the other's) object through the exclusion of his claims to acquire it, which implies a contradiction.[20]

[16] ["Conservation is continuous creation!"]

[17] [*Verjährung*]

[18] [The conservation of my possession through prescription]

[19] [*Zueignung*. See § 34, 35.]

[20] [It appears that what Kant is saying is that it is self-contradictory to use prescription to establish one's right against another person except negatively. To use it as a positive argument is self-contradictory because it presupposes that in order to renounce a right I must already have the right, which is what the argument seeks to disprove.]

Thus, I acquire [a thing] without [needing to] present a proof and without any juridical act: I do not need to prove, but [acquire it] through the law (*lege*); and so what [do I acquire]? The public liberation from claims, that is, the legal security of my possession, for which I do not need to present a proof and so I can base it on an uninterrupted possession. The consideration that all acquisition in the state of nature is provisional has no consequence for the question of the certainty of the possession of what has been acquired. For the latter [the question of acquisition] must come before the former [i.e. the question of provisionality].

7. On Inheritance[21]

As far as the right of inheritance is concerned, the Herr Recensent (reviewer) has this time failed with his acute understanding to reach the nerve of the proof of my claim. Indeed, I do not say (§ 34; AA, 294) that every person will necessarily accept everything offered to him, since through that acceptance he can only win and lose nothing (for there are no such things). Rather, I say that everyone has the *right of offer* [i.e. to have the offer made to him] that at the same instant is unavoidable and silent, but [that he] still really accept validly: even if the nature of the thing is such that retraction is absolutely impossible, because it occurs at the moment of his [promiser's] death. For then the promiser cannot retract and the promisee, without needing to under-
366 take any juridical act, becomes the acceptor, not of the promised inheritance but of the right to accept or reject it. At this moment at the disclosure of the will he [the promisee] sees that already before the acceptance of the inheritance he has become richer than he was, for he has exclusively acquired the entitlement to accept, which already is a kind of wealth.

That a civil society is presupposed [in order] to make a thing belonging to one person become the belonging of someone else, even if the first person is not there any more, does not change the transition of possessions at the hands of the dead as far as the possibility of acquisition according to general principles of the Natural Law is concerned, although a civil constitution must provide the basis for the application of these principles to particular cases.

[21] [For the complications of the Roman Law conception of inheritance, see comments in the notes to § 34 *supra*. In the passages that follow here, the promiser is the testator and the promisee is the heir.]

A thing that is so placed as to be without any conditions within my free choice to accept or to reject is called *res iacens.*[22] If an owner offers me something for free (promises that it will be mine), for example, a piece of furniture from a house that I am thinking of leaving, as long as he does not withdraw the offer (which would be impossible to do if he dies) I have the exclusive right to accept the thing offered (*ius in re iacente*),[23] that is, only I can, as I may choose, accept or reject it; and I obtain this exclusive right to choose not on account of a special juridical act of declaration by me that I will that this right shall hold for me, but without any such act (*lege*).[24] Indeed, I can declare that I will that the thing should not belong to me (because accepting it might cause difficulties with other people), but I cannot will to have the exclusive choice whether it should or should not belong to me; for I have this right (to accept or reject) directly from the offer apart from any declaration of my acceptance. For if indeed I were able to reject the choice, then I would choose not to choose, which is a contradiction. This right to choose comes to me at the moment of death of the testator, [although] through that person's legacy (*institutio haeredis*) I do not yet acquire anything from the testator's worldly goods except the merely juridical (intelligible) possession of these goods or part of them. Through acceptance of this offer I can now provide for the interests of others.[25]

In this way, the possession in question is never for a moment interrupted. Rather the succession proceeds as a continuous series from the dying person to the appointed heir through his acceptance. Thus, the proposition *testamenta sunt iuris naturae*[26] is established against all possible doubt.

8. Of the Rights of the State Relating to Perpetual Foundations for Its Subjects 367

An endowed foundation (*sanctio testamentaria beneficii perpetui*) is a voluntary institution sanctioned by the state and established for the

[22] [A thing lying dormant. Ownership is in abeyance.]

[23] [Right to a thing in abeyance]

[24] [through law]

[25] [For more on the concept of heir in Roman Law, see *supra*, § 34 and accompanying notes.]

[26] [Testamentary inheritances come under Natural Law.]

benefit of a particular class of members of the state who follow one another successively until the whole class dies out. An endowed foundation is called "perpetual" when the enactment that establishes and maintains it is combined with the constitution of the state itself (inasmuch as the state must always be regarded as perpetual). These endowed foundations are, however, intended to benefit either the people in general or a part of the people united under a certain set of particular basic principles, a particular class, or a family and its descendants in perpetuity. Examples of the first kind of endowed foundation are hospitals; of the second, churches; of the third, orders (spiritual and secular); and, of the fourth, *majorats*.[27]

Now, it is said that these corporations and their right of succession cannot be abolished because, through a testamentary will, they have become the property of the established heir, and to abrogate such a constitution [charter] would amount to taking what belongs to a person away from them.

A. [Private Institutions for the Poor, Invalid, and Sick]

Those beneficent institutions for the poor, the invalid, and the sick that are financed from the state's funds (homes for the poor and hospitals) are certainly not subject to abolition. [But it is otherwise for private institutions, for,] if preference is to be given to the sense rather than to the letter of the Will of the testator [who has endowed them], in the course of time circumstances might arise that would make the abolition of such a foundation advisable, at least in its [present] form. Thus, (with the exception of mental hospitals) it has been found that the poor and sick can be better and more cheaply cared for when a grant in aid of a certain sum of money (proportionate to the needs of the times) is made to the persons concerned so that they can board wherever they please, with relatives or acquaintances; and this arrangement enables them to obtain better and cheaper care than they would have in a magnificent institution—such as the Greenwich Hospital—which is served by highly paid personnel, but where their freedom is nevertheless extremely limited. If such an arrangement is made as a substitute for foundations, it cannot be said that the state is taking away something that belongs to the people, namely, their enjoyment of

[27] [A majorat is "an entailed estate, landed or funded, annexed to a title of honor and descending with it by primogeniture."—*Webster's New International Dictionary* (2nd ed.).]

the benefits of such foundations to which they have a justifiable claim; rather, it should be said that, in choosing wiser means for their support, the state is actually doing much more than before for their health and welfare.

B. [The Church]

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The clergy who do not propagate themselves by means of the body (that is, the Roman Catholic clergy) possess, with the approval of the state, landed estates and subjects attached to those lands that belong to a spiritual state (called a church). [This is an institution] to which, in order to save their souls, lay people have given up themselves as pieces of deeded property. Accordingly, as a special class of persons, the clergy has a [kind of] possession that can be legally transmitted from one age to the next, and this possession is sufficiently well attested in papal bulls. May we now assume that this [special] relationship of the clergy to the laity can be taken away from them through the absolute power of the secular state? If it is thus taken away, would it not mean that what belongs to a person has been taken away from him by violence, just as was attempted by the unbelievers of the French Republic?

The question here is whether the church can belong to the state or the state to the church as something that belongs to it;[28] for two supreme authorities cannot be subordinate to each other without implying a contradiction. It is perfectly clear that only the first [type of] constitution (*politico-hierarchica*) [that is, where the church belongs to the state] can be permanent, for every civil constitution is of this world, because it is an earthly authority (of humans); and this fact, together with its consequences, can be documented by experience. Even if we grant them that there is a constitution relating to that other kingdom (*hierarchico-politica*), the faithful, whose kingdom is in the other world, in heaven, must still submit to the sufferings of this [earthly] time under the supreme authority of this world's people. Hence, there is room only for the first [type of] constitution.

Religion (in the world of appearances) regarded as belief in the dogmas of the church and in the power of the priests, who are the aristocrats under such a [religious] constitution or even when the constitution is monarchical (papal)—religion in this sense can neither be imposed on the people nor taken away from them by any civil author-

[28] [*das Seine*]

ity, nor, indeed, may the civil authority exclude a citizen from political services and the benefits that accompany them on the basis of a religious difference between the court and that person (as indeed Great Britain does with the Irish people).

Now, in order to share in the grace that the church promises to procure for them even after death, certain devout and believing souls may establish an endowed foundation in perpetuity [with the intention
369 that,] through such an act, certain landed estates are to become the property of the church after their death. In such circumstances, the state may pledge its allegiance and homage to the church in one respect or other or even to the church as a whole in order [to make it possible for its people to improve] their lot in the next world through prayers, indulgences, and penitences that the church's appointed ministers promise will be advantageous to them there.[29] Nevertheless, even if such endowed foundations are supposedly established in perpetuity, their basis is by no means perpetual, since the state can, whenever it pleases, throw off the burden thus placed on it by the church.

The church is itself an institution founded merely on faith, and when, as a result of popular enlightenment, all the fraud and illusion disappear from these beliefs, the terrible might[30] of the clergy that is founded on them will fall away; and then the state will, with full right, seize the property that has been usurped by the church, that is, the land bequeathed to the church through testamentary wills. However, whenever this happens, the then-tenants of the previously existing institutions have the right to demand that they be indemnified for the rest of their lives.

If the specific character of any foundation for the poor or for education that is endowed in perpetuity is stipulated by the scheme [*Idee*] of its endowing founder, then such a foundation cannot [actually] be

[29] [The German text is corrupt here. It is not only inconsistent grammatically, but some words are missing. Natorp suggests that the rest of the sentence after the brackets is misplaced and should be placed immediately after "believing souls." But his suggested change fails to account for the role and purpose of the state in its relation to the "devout souls" and the endowed foundations. If, as has been done here, a phrase like the one in brackets is inserted, the state's purpose in pledging allegiance, as well as permitting the endowed foundations, is explained. The present interpretation is entirely consistent with what Kant wrote earlier, in § 49 C.]

[30] [*Gewalt*. Here Kant may be playing on the ambiguity of this concept, which may mean either authority or violence.]

founded in perpetuity and so be a burden on the land. Rather, the state must have the freedom to adapt any endowed foundation to the needs of the time. On the other hand, no one should be surprised to find that it is not at all easy to carry out this Idea (for example, to require little paupers to beg by singing in order to make up for the inadequacy of those school funds that have been established by charity). Furthermore, a person who generously endows a foundation and at the same time is somewhat desirous of receiving glory therefrom does not want anyone with new ideas to alter his original plan, for he wants himself to be immortalized in the foundation. But none of this changes the nature of the things themselves and the right of the state, indeed its duty, to alter any foundation that is inconsistent with the state's preservation and its progress toward something better. Therefore, such a foundation can never be regarded as founded in perpetuity.

C. [The Nobility]

The nobility in a country that is subject, not to an aristocratic, but to a monarchical constitution, is an institution that may well be allowed for a certain time, an institution that may even be made necessary by circumstances. Nevertheless, it is impossible to maintain that such a class could be founded in perpetuity and that the chief of state might not be entitled to abolish this class completely or that, were he to do so, he would be taking away from his (noble) subject something that belongs 370
to him as his. The nobility is a temporary confraternity authorized by the state; but it must adapt itself to the circumstances of the time and may not do violence to universal human rights, which have been suspended for so long.

The rank of nobleman in the state is not only dependent on the constitution itself, but is also merely an accidental [accretion] to the constitution, and as such it can exist in the state only in the mode of inherence. (A nobleman as such can be conceived of only in a civil state and not in the state of nature.) When, therefore, the state alters its constitution, no one who thereby loses his title and rank can claim that what belongs to him [i.e. what is his] has been taken away from him, inasmuch as his title and rank are his only under the condition that that particular form of the state remains the same, and the state [always] has the right to change its form (for example, to transform itself into a republic). Orders and the privilege of wearing certain insignia distinctive to these orders do not therefore establish any perpetual right of possession.

D. [Majorats]

An endowed foundation that is called a *majorat* is established as follows: In appointing his heirs, a landowner stipulates that, in the series of successive heirs, always the nearest of kin to the family shall become the master of the estate[31] (by analogy to a monarchical political constitution where the lord of the country is determined in this way). Not only can such an endowment be abolished at any time with the consent of all agnates,[32] but it also may not endure in perpetuity, as though the right of inheritance were attached to the land. Instead, when such a federative system of the subjects of the state, who are like vice regents (analogous to dynasties or satrapies), has become extinct as the result of gradual reforms initiated by the state, the state has a right, indeed a duty, not to allow this system to be resuscitated.

CONCLUSION
[Duty to Obey the Powers That Be]

Finally, the reviewer mentioned above makes the following observation in commenting on the Ideas presented under the heading of Public Law, with regard to which, as he says, there was no room left for further elaboration. He says,

371 To our knowledge, no philosopher has admitted the most paradoxical of all paradoxes, namely, the proposition that the mere Idea of sovereignty should necessitate me to obey as my lord anyone who has imposed himself upon me as a lord, without my asking who has given him the right to issue commands to me. Is there to be no difference between saying that one ought to recognize sovereignty and a chief of state and that one ought to hold a priori that this or that person, whose existence is not even given a priori, is one's lord?

Now, admitting that there is a paradox here, I hope that, when the view is examined more closely, it will at least not be proven to be heterodox. Furthermore, I hope that this judicious and conscientious reviewer, who has been so moderate in his criticisms (and who, despite the objection just mentioned, "regards these Metaphysical Elements

[31] [*Gutsherr*]

[32] [An agnate is a relative on the male side.]

of Justice on the whole as a contribution to knowledge") will not be sorry for having taken my views under his protection against the spiteful and superficial condemnations of others and for having regarded my views as an attempt that is not unworthy of further examination.

The objectionable proposition in question is this: A person who finds himself in possession of the supreme executive and legislative authority over a people must be obeyed; and this [duty of obedience] is so unconditional juridically that it is in itself punishable to inquire publicly into the title of his acquisition [of this authority], that is, to raise questions about his title with a view to opposing him on the grounds of some defect in the title. In other words, a categorical imperative says: "Obey the suzerain (in everything that does not conflict with internal morality) who has authority over you."

But, not only is the reviewer perturbed by this principle, which makes a matter of fact (occupation or seizure) the condition that is the ground of a right, but he is even more shocked that the mere Idea of a sovereignty over a people should necessitate me, who belong to the people, to obey the usurped right without previously inquiring about it (§ 49 A [*supra*, pp. 123 ff.]).

Every matter of fact is an object in appearance (of the senses) [as phenomenon]; on the other hand, that which can be represented only through pure reason and which must be included among the Ideas—that is the thing in itself. No object in experience can be given that adequately corresponds to an Idea. A perfect juridical [just] constitution among men would be an example of such an Idea.

When a people are united through laws under a suzerain, then the people are given as an object of experience appropriately conforming to the Idea of the unity of the people in general under a supreme powerful Will. Admittedly, this is only an appearance; that is, a juridical 372
constitution in the most general sense of the term is present. Although the [actual] constitution may contain grave defects and gross errors and may need to be gradually improved in important respects, still, as such, it is absolutely unpermitted and culpable to oppose it. If the people were to hold that they were justified in using violence against a constitution, however defective it might be, and against the supreme authority, they would be supposing that they had a right to put violence as the supreme prescriptive act of legislation in the place of every right and Law.

The Idea of a political constitution in general is holy and irresistible [i.e. incapable of being opposed], [for] it is an Idea that is an absolute

command of practical reason judging in accordance with concepts of justice—a command binding on every people. Even if the organization of the state is defective by itself, still no subordinate authority in that state can bring any active resistance against the legislative chief of that state. Rather, the deficiencies that are attributed to him must be gradually removed by reforms, which he carries out by himself. Otherwise, if a subject were to adopt a conflicting maxim (to proceed in accordance with his own arbitrary will), a good constitution would come into being only as a result of blind chance.

The command, "Obey the suzerain who has authority over you," does not ruminate on how the suzerain acquired this authority (for the purpose, if need be, of undermining it). The authority that is now here and under which you live is already in possession of the [right of] legislation. Though you may indeed publicly discuss and debate this legislation, you cannot set yourselves up as opposing legislators.

The unconditional submission of the popular Will (which is in itself not united and hence is lawless) to the sovereign Will (uniting everyone through one single law) is a deed that can begin only with the seizure of the supreme authority and in this way provides a foundation for a public Law in the first place. To permit any opposition to this absolute power (an opposition that might limit that supreme authority) would be to contradict oneself, inasmuch as in that case the power (which may be opposed) would not be the lawful supreme authority that determines what is or is not to be publicly just. And this principle already resides a priori in the Idea of a political constitution in general, that is, in a concept of practical reason, a concept for which no *adequately* corresponding example from experience can be found, but one which, however, no one must contradict as a norm.

Translator's Addendum of Omitted Texts

[*The following passages were removed from the main text because they appear to represent earlier formulations of ideas and duplicate materials found elsewhere in the main text.*]

(1) From § 6, paragraphs 4–8 in AA *250–251.*

In this way, taking possession of a secluded piece of land is an act of private will without being an arbitrary usurpation. The possessor bases his act on [the concept of] the innate common possession of the earth's surface and on the a priori general Will corresponding to it, which permits private possession of land (since otherwise unoccupied things [e.g. land] would in themselves and in accordance with a law become ownerless things). Thus, the possessor originally acquires a piece of land through first possession and withstands by right [*mit Recht*] (*iure*) anyone else who might interfere with his private use of it. In a state of nature, however, he cannot do this through legal proceedings [*rechtswegen*] (*de iure*), for there is no public law in that condition.

Even if a piece of land is regarded as free or declared to be so, that is, open for everyone's use, one still cannot say that it is free by nature or free originally, prior to any juridical act. Even that would be a relationship to things, namely, to the land that refuses possession of itself to everyone. But this freedom of the land consists in a prohibition addressed to everyone not to help himself to it; for this common possession of the land would be required and cannot take place without a contract. Because a piece of land can be made free only through a contract, it must actually be in the possession of all those (united together) who mutually prohibit to themselves the use thereof or suspend such use.

Remark:

The original community of the land and, along with the land, of the things on it (*communio fundi originaria*) is an Idea that has objective (juridical-practical) reality. This kind of community must be sharply distinguished from the primitive community (*communio primaeva*), which is a fiction. Such a primitive community would have to have been a community founded on and issuing out of a contract, a contract through which everyone is

supposed to have renounced his private possessions and to have transformed them into a common possession by uniting the possessions of each with those of everyone else; history would have to provide us with a proof that this happened. To regard such a procedure as an original taking of possession and to hold that the particular possession of each man can and should be grounded on it is a contradiction.

Possession (*possessio*) must also be distinguished from squatting [*Sitz*] (*sedes*), and taking possession of land with the intention of acquiring it must be distinguished from settling or colonizing [*Niederlassung, Ansiedelung*] (*incolatus*). The latter is merely the continuing private possession of a place that depends on the presence of the subject at that place. I am not speaking of settling considered as a second juridical act that can, but need not follow taking possession; this kind of settling would not be an original possession, but one derived from the consent of others.

Purely physical possession (detention) of land already constitutes a right in a thing, although it is obviously not sufficient for considering the land mine. In relation to others, this possession is (as far as one knows) a first possession and as such is consistent with the law of external freedom and is, at the same time, implied in the original community of possession, which, in turn, implies the a priori ground of the possibility of private possession. It follows that interference with the first holder of a piece of land in his use of it constitutes an injury. Thus, first possession has for itself a ground in right [*Rechtsgrund*] (*titulus possessionis*), and this ground is original common possession. Hence the proposition, "happy is he who is in possession" (*beati possidentes*), is a basic principle of natural justice, for no one is bound to authenticate his possession. This basic principle sets up the first taking of possession as a *de iure* ground of acquisition on which every first possessor can rely.

(2) From § 15, heading and paragraphs 1–4, AA *6, 264.*

Only in a civil constitution can something be acquired *peremptorily*, whereas in a state of nature it can still be acquired but only *provisionally*.

[*This heading, which was obviously misplaced, has been moved to § 17.*]

Although its reality is subjective and contingent, a civil constitution is at the same time objective and necessary, that is, as a duty. Consequently, with respect to the same (the constitution) and its establishment there is a real juridical law of Nature to which all external acquisition is subject.

The empirical title of acquisition [was] physical taking possession (*apprehensio physica*) grounded on the original community of the land. [But], since a possession only in [the world of] appearance can underlie possession according to concepts of reason, this concept must correspond to an intellectual taking of possession (leaving out all empirical conditions of space and time. This grounds the proposition: "With respect to what I can bring under my control [authority] in accordance with laws of external freedom and will that it shall be mine, that becomes mine."

The rational title [*Vernunfttitel*] of acquisition can only rest in the Idea of an a priori united (necessarily to be united) Will of all, which is a silent and absolutely essential precondition [of this title of acquisition]; for through a unilateral Will no obligation can be imposed on another person that he otherwise would not in itself have.—But the situation, however, where there is actually a general united Will for legislation is the civil society. Thus, [it is possible] only in conformity with the Idea of a civil society, that is, with respect to it and its realization. But before the realization of this (for otherwise the acquisition would be derived) something external can be originally acquired only provisionally.—Peremptory acquisition can take place only in civil society.

Nevertheless, such provisional acquisition is still true acquisition, for according to the postulate of juridical-practical reason the possibility of acquisition, regardless of the condition of the society (even in the state of nature) is a principle of private justice [and Law]. That is a principle according to which everyone is justified to use that kind of coercion through which alone it is made possible to leave the state of nature and to enter into the civil society which alone can make all acquisition peremptory.

[*The Remark originally attached to this paragraph has been moved to § 14 in the main text.*]

Glossary

* Words marked with an asterisk are discussed in the Translator's Introduction.

Akt	(official or ceremonial) act
Anfangsgrund*	element, first principle
Befehlshaber	magistrate
Befugnis*	entitlement
befugt	entitled
Beherrscher	sovereign
Bemächtigung	occupation
Besitz	possession
Besitznehmen	take possession
bürgerliche Gesellschaft	civil society
dingliches Recht	real right, right *in rem*
Deine, das	what is yours, what belongs to you (see Meine)
Eigentum	property, what is owned (*dominium*)
Ersitzung	*usucapio*
Erwerben	acquire
Ethik	ethics
Gemeinwesen	commonwealth
gerecht	(legally) just
Gerechtigkeit*	legal (or applied) justice
Gesetz*	law
gesetzlich	lawful
gesetzlos	lawless
gesetzmässig	legal
Gesetzmässigkeit	legality
gesetzwidrig	unlawful
Gewalt (1)	authority (legitimate power)
Gewalt (2)	violence
Grundsatz	basic principle
Habe	belonging, assets
Herrscher	sovereign
Idee*	Idea
Inhabung	detention, custody, holding

Landesherr	master or lord of the country
Macht*	power (i.e. physical power)
Meine, das; (Deine, das; Seine, das)*	what is mine (yours, his); what belongs to me (you, him)
Mensch*	person, human being; (plural) people
Naturrecht	Natural Law
Oberbefehlshaber	chief commander, supreme commander
Obere, Oberhaupt, Oberst	suzerain
Obrigkeit	suzerainty
Person*	Person (as status)
Pflicht	duty
Recht*	justice, Law, right(s)
Recht, mit	rightfully
Rechtens	Lawful, according to the Law of the land
rechtlich*	juridical, *de iure*
rechtmässig	legitimate
Rechtmässigkeit	legitimacy
Rechtsbegriff	concept of justice (or Law)
Rechtsgelehrte	jurist
Rechtskräftig	having the force of law
Rechtslehre*	theory of justice, Law
rechtswidrig	contrary to law
Regent, Regierer	ruler
Regierung	the government
Seine, das	what is his, what belongs to him (see Meine)
Sittenlehre	moral philosophy
Staatsoberhaupt	chief of state
Strafrecht	penal law, penal justice
Tat	act, deed
Triebfeder	motive
Tugendlehre*	ethics
ungesetzmässig	illegal
Ungesetzmässigkeit	illegality
Unrecht tun	do an injustice (to someone)
unrechtmässig	illegitimate
Unrechtmässigkeit	illegitimacy
ursprünglicher Vertrag	original contract

Veräusserung	alienation, transference
verbinden	bind, obligate
Verbindlichkeit	obligation
Verfassung	constitution
verpflichten	to bind to a duty
Verpflichtungsart	way of being bound to a duty
Vertrag	contract
Volk	people, nation
Völkerschaft	tribe, gens
Wille*	Will
Willkür*	will
Würde	dignity (applied to persons and to offices)
Zurechnung	imputation
Zustand	condition, state of affairs, status
Zwang	coercion

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