The Metaphysics of Morals

This is the only complete English translation of Kant's major work in applied moral philosophy in which he deals with the basic principles of rights and of virtues. It should not be confused with the *Groundwork of the Metaphysics of Morals* (1785), an earlier work which is sometimes treated as if it were the definitive statement of Kant's moral philosophy but which, in fact, merely lays the foundation for the longer work. It is in the longer work that Kant tries to give content to his formal principle, the categorical imperative.

The Metaphysics of Morals (1797) comprises two parts: The *Doctrine of Right*, which deals with the rights that people have or can acquire, and the *Doctrine of Virtue*, which deals with the virtues they ought to acquire. Parts have been translated before, but this new edition is the only complete translation of the whole work. A substantial introduction considers the relation between the two parts, and there is extensive annotation on the unfamiliar and sometimes difficult vocabulary.

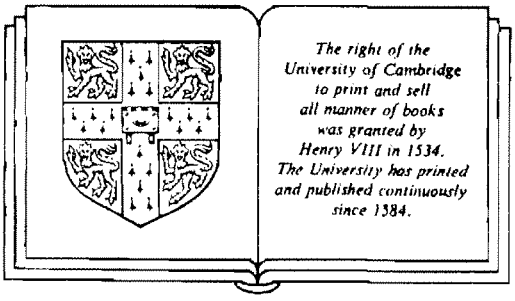
Given Kant's status as one of the most important moral philosophers of all time, the publication of this new translation will be of critical importance to all students of ethics and of legal and political philosophy.

IMMANUEL KANT

The Metaphysics of Morals

Introduction, translation, and notes
by
Mary Gregor

SAN DIEGO STATE UNIVERSITY



Cambridge University Press
Cambridge
New York Port Chester Melbourne Sydney

Published by the Press Syndicate of the University of Cambridge
The Pitt Building, Trumpington Street, Cambridge CB2 1RP
40 West 20th Street, New York, NY 10011, USA
10 Stamford Road, Oakleigh, Melbourne 3166, Australia

First Published 1991

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Kant, Immanuel, 1724–1804.
[Metaphysik der Sitten. English]
The metaphysics of morals / Immanuel Kant ; introduction, translation, and notes by Mary Gregor.
p. cm. – (Texts in German philosophy)
Translation of: Metaphysik der Sitten.
Includes bibliographical references and index.
ISBN 0–521–30372–9 (hardcover). – ISBN 0–521–31657–X (pbk.)
1. Ethics – Early works to 1800. 2. Duty – Early works to 1800.
3. Virtue – Early works to 1800. I. Title. II. Series.
B2785.E5G74 1991 91–17329
170–dc20 CIP

A catalog record for this book is available from the British Library.

ISBN 0–521–30372–9 hardback
ISBN 0–521–31657–X paperback

Contents

pology, which, however, would deal only with the subjective conditions in human nature that hinder men or help them in *fulfilling* the laws of a metaphysics of morals. It would deal with the development, spreading, and strengthening of moral principles (in education in schools and in popular instruction), and with other similar teachings and precepts based on experience. It cannot be dispensed with, but it must not precede a metaphysics of morals or be mixed with it; for one would then run the risk of bringing forth false or at least indulgent moral laws, which would misrepresent as unattainable what has only not been attained just because the law has not been seen and presented in its purity (in which its strength consists) or because spurious or impure incentives were used for what is itself in conformity with duty and good. This would leave no certain moral principles, either to guide judgment or to discipline the mind in observance of duty, the precepts of which must be given a priori by pure reason alone.

As for the higher division under which the division just mentioned falls, namely that of philosophy into theoretical and practical philosophy, I have already explained myself elsewhere (in the *Critique of Judgment*) and explained that practical philosophy can be none other than moral wisdom. Anything that is practical and possible in accordance with laws of nature (the distinctive concern of art)[13] depends for its precepts entirely upon the theory of nature: Only what is practical in accordance with laws of freedom can have principles that are independent of any theory; for there is no theory of what goes beyond the properties of nature. Hence, philosophy can understand by its practical part (as compared with its theoretical part) no *technically practical* [218]
doctrine but only a *morally practical* doctrine; and if the proficiency of choice in accordance with laws of freedom, in contrast to laws of nature, is also to be called *art* here, by this would have to be understood a kind of art that makes possible a system of freedom like a system of nature, truly a divine art were we in a position also to carry out fully, by means of it, what reason prescribes and to put the Idea of it into effect.

III.
On the Division of a Metaphysics of Morals*

In all lawgiving (whether it prescribes internal or external actions, and whether it prescribes them a priori by reason alone or by the choice of

*A *deduction* of the division of a system, i.e. a proof that it is both complete and *continuous* – that is, that a transition from the concept divided to the members of the division takes place without a leap (*divisio per saltum*) in the entire series of subdivisions – is one of the most difficult conditions which the architect of a system has to fulfill. Even what the *highest divided concept* would be, the divisions of which are *right*

another) there are two elements: **first,** a *law,* which represents an action that is to be done as *objectively* necessary, that is, which makes the action a duty; and **second,** an incentive, which connects a ground for determining choice to this action *subjectively* with the representation of the law. Hence, the second element is this: that the law makes duty the incentive. By the first the action is represented as a duty, and this is a merely theoretical cognition of a possible determination of choice, that is, of practical rules. By the second the obligation so to act is connected in the subject with a ground for determining choice generally.

All lawgiving can therefore be distinguished with respect to the incentive (even if it agrees with another kind with respect to the action that it makes a duty, e.g., these actions might in all cases be external).

[219] That lawgiving which makes an action a duty and also makes this duty the incentive is *ethical.* But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the Idea of duty itself is *juridical.* It is clear that in the latter case this incentive that is something other than the Idea of duty must be drawn from *sensibly dependent* determining grounds of choice,[14] inclinations and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not an allurement, which invites.

The mere conformity or nonconformity of an action with law, irrespective of the incentive to it, is called its *legality* (lawfulness); but that conformity in which the Idea of duty arising from the law is also the incentive to the action is called its *morality.*

Duties in accordance with rightful[15] lawgiving can be only external duties, since this lawgiving does not require that the Idea of this duty, which is internal, itself be the determining ground of the agent's choice; and since it still needs an incentive suited to the law, it can connect only external incentives with it. On the other hand, ethical lawgiving, while it also makes internal actions duties, does not exclude external actions but applies to everything that is a duty in general. But just because ethical lawgiving includes within its law the internal incentive to action (the Idea of duty), and this feature must not be present in external lawgiving, ethical lawgiving cannot be external (not even the external lawgiving of a divine will), although it does take up duties that rest on another, namely an external, lawgiving by making them, *as duties,* incentives in its lawgiving.

and *wrong* (*aut fas aut nefas*), calls for reflection. This concept is the *act of free choice* in general. Teachers of ontology similarly begin with the concepts of *something* and *nothing,* without being aware that these are already members of a division for which the concept divided is missing. This concept can be only that of an *object* in general.

It can be seen from this that all duties, just because they are duties, belong to ethics; but it does not follow that the *lawgiving* for them is always contained in ethics: For many of them it is outside ethics. Thus, ethics commands that I still fulfill a contract I have entered into, even though the other party could not coerce me to do so; but it takes the law (*pacta sunt servanda*) and the duty corresponding to it from the doctrine of Right, as already given there. Accordingly the giving of [220] the law that promises agreed to must be kept lies not in ethics but in *Ius*. All that ethics teaches is that if the incentive which juridical lawgiving connects with that duty, namely external constraint, were absent, the Idea of duty by itself would be sufficient as an incentive. For if this were not the case, and if the lawgiving itself were not juridical so that the duty arising from it was not really a duty of Right (as distinguished from a duty of virtue), then faithful performance (in keeping with promises made in a contract) would be put in the same class with actions of benevolence and the obligation to them, and this must not happen. It is no duty of virtue to keep one's promises but a duty of Right, to the performance of which one can be coerced. But it is still a virtuous action (a proof of virtue) to do it even where no coercion may be *applied*. The doctrine of Right and the doctrine of virtue are therefore distinguished not so much by their different duties as by the difference in their lawgiving, which connects one incentive or the other with the law.

Ethical lawgiving (even if the duties might be external) is that which *cannot* be external; juridical lawgiving is that which can also be external. So it is an external duty to keep a promise made in a contract; but the command to do this merely because it is a duty, without regard for any other incentive, belongs to *internal* lawgiving alone. So the obligation is assigned to ethics not because the duty is of a particular kind (a particular kind of action to which one is bound) – for there are external duties in ethics as well as in Right – but rather because the lawgiving in this case is an internal one and can have no external lawgiver. For the same reason duties of benevolence, even though they are external duties (obligations to external actions), are still assigned to ethics because their lawgiving can be only internal. Ethics has its special duties as well (e.g., duties to oneself), but it also has duties in common with Right; what it does not have in common with Right is only the kind of *obligation*. For what is distinctive of ethical lawgiving is that one is to perform actions just because they are duties and to make the principle of duty itself, wherever the duty comes from, the sufficient incentive for choice. So while there are many *directly ethical* [221] duties, internal lawgiving makes the rest of them, one and all, indirectly ethical.

Introduction to the Doctrine of Right

§A. What the Doctrine of Right Is

The sum of those laws for which an external lawgiving is possible is called the *Doctrine of Right* (*Ius*). If there has actually been such lawgiving, it is the doctrine of *positive Right,* and one versed in this, a jurist (*Iurisconsultus*), is said to be *experienced in the law* (*Iurisperitus*) when he not only knows external laws but also knows them externally, that is, in their application to cases that come up in experience. Such knowledge can also be called *legal expertise* (*Iurisprudentia*), but without both together it remains mere *juridical science* (*Iurisscientia*). The last title belongs to *systematic* knowledge of the doctrine of natural Right (*Ius naturae*), although one versed in this must supply the immutable principles for any giving of positive law.

§B. What Is Right?

Like the much-cited query "what is truth?" put to the logician, the question "what is Right?" might well embarrass the *jurist* if he does not want to lapse into a tautology or, instead of giving a universal solution, refer to what the laws in some country at some time prescribe. He can indeed state what is laid down as right[21] (*quid sit iuris*), that is, what the laws in a certain place and at a certain time say or have said. But whether what these laws prescribed is also right, and what the universal criterion is by which one could recognize right as well as wrong [230]
(*iustum et iniustum*)[22] – this would remain hidden from him unless he leaves those empirical principles behind for a while and seeks the sources of such judgments in reason alone, so as to establish the basis for any possible giving of positive laws (although positive laws can serve as excellent guides to this). Like the wooden head in Phaedrus' fable, a merely empirical doctrine of Right is a head that may be beautiful but unfortunately it has no brain.

The concept of Right, insofar as it is related to an obligation corresponding to it (i.e., the moral concept of Right), has to do, *first,* only with the external and indeed practical relation of one person to another, insofar as their actions, as facts,[23] can have (direct or indirect) influence on each other. But, *second,* it does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the other's *choice. Third,* in this reciprocal relation of choice no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the *form* in the relation of choice on the part of both, insofar as choice is regarded merely as *free,* and whether the action of one can be united with the freedom of the other in accordance with a universal law.

Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom.

§C.
The Universal Principle [*Prinzip*] of Right

"Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."

If then my action or my condition[24] generally can coexist with the freedom of everyone in accordance with a universal law, whoever hin-
[231] ders me in it does me *wrong;* for this hindrance (resistance) cannot coexist with freedom in accordance with a universal law.

It also follows from this that it cannot be required that this principle of all maxims be itself in turn my maxim, that is, it cannot be required that *I make it the maxim* of my action; for anyone can be free as long as I do not impair his freedom by my *external action,* even though I am quite indifferent to his freedom or would like in my heart to infringe upon it. That I make it my maxim to act rightly is a demand that ethics makes on me.

Thus the universal law of Right [*Rechtsgesetz*], so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, is indeed a law [*Gesetz*], which lays an obligation on me, but it does not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom *is* limited to

those conditions in conformity with the Idea of it and that it may also be actively [*tätlich*] limited by others; and it says this as a postulate that is incapable of further proof.[25] When one's aim is not to teach virtue but only to set forth what is *right*, one may not and should not represent that law of Right as itself the incentive to action.

§D.
Right Is Connected with an Authorization to Use Coercion

Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with Right by the principle of contradiction an authorization to coerce someone who infringes upon it.

§E.
A Strict Right Can Also Be Represented as the Possibility of a Fully Reciprocal Use of Coercion That Is Consistent with Everyone's Freedom in Accordance with Universal Laws

[232]

This proposition says, in effect, that Right should not be conceived as made up of two elements, namely an obligation in accordance with a law and an authorization of him who by his choice puts another under obligation to coerce him to fulfill it. Instead one can locate the concept of Right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone. That is to say, just as Right generally has as its object only what is external in actions, so strict Right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice; for only then is it pure and not mixed with any precepts of virtue. Only a completely external Right can therefore be called *strict* (Right in the narrow sense). This is indeed based on everyone's consciousness of obligation in accordance with a law; but if it is to remain pure, this consciousness may not and cannot be appealed to as an incentive to determine his choice in accordance with this law. Strict Right rests instead on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws.

Thus, when it is said that a creditor has a right to require his debtor to pay his debt, this does not mean that he can remind the debtor that his reason itself puts him under obligation to perform this; it means instead that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with a universal external law. Right and authorization to use coercion therefore mean one and the same thing.

The law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction.* In pure mathematics we cannot derive the properties of its objects immediately from concepts but can discover them only by constructing concepts. Similarly, it is not so much the *concept* of Right as rather a fully reciprocal and equal coercion brought under a universal law and consistent with it, that makes the presentation of that concept possible. Moreover,
[233] just as a purely formal concept of pure mathematics (e.g., of geometry) underlies the dynamical concept [of the equality of action and reaction], reason has taken care to furnish the understanding as far as possible with a priori intuitions for constructing the concept of Right. A right line (*rectum*), one that is straight, is opposed to one that is *curved* on the one hand and to one that is *oblique* on the other hand. As opposed to one that is curved, straightness is that *inner property* of a line such that there is only *one* line between two given points. As opposed to one that is oblique, straightness is that *position* of a *line* toward another intersecting or touching it such that there can be only *one* line (the perpendicular) that does not incline more to one side than to the other and that divides the space on both sides equally. Analogously to this, the doctrine of Right wants to be sure that *what belongs* to each has been determined (with mathematical exactitude). Such exactitude cannot be expected in the doctrine of virtue, which cannot refuse some room for exceptions (*latitudinem*). But without making incursions into the province of ethics, one finds two cases that lay claim to a decision about rights, although no one can be found to decide them, and that belong as it were within the *intermundia* of Epicurus. We must first separate these two cases from the doctrine of Right proper, to which we are about to proceed, so that their wavering principles will not affect the firm basic principles of the doctrine of Right.

Division of the Doctrine of Right

A.
General Division of Duties of Right

One can follow Ulpian in making this division if a sense is ascribed to his formulas which he may not have thought distinctly in them but which can be explicated [*entwickelt*] from them or put into them. They are the following:

1) *Be an honorable man* (*honeste vive*). *Rightful honor* (*honestas iuridica*)[27] consists in asserting one's worth as a man in relation to others, a duty expressed by the saying, "Do not make yourself a mere means for others but be at the same time an end for them." This duty will be explained later as obligation from the *Right* of humanity in our own person (*Lex iusti*).

2) *Do not wrong anyone* (*neminem laede*) even if, to avoid doing so, you should have to stop associating with others and shun all society (*Lex iuridica*).

[237] 3) (If you cannot help associating with others), *enter* into a society with them in which each can keep what is his (*suum cuique tribue*). If this last formula were translated "Give to each what is *his*," what it says would be absurd, since one cannot give anyone something he already has. In order to make sense it would have to read: "*Enter* a condition in which what belongs to each can be secured to him against everyone else" (*Lex iustitiae*).

So the above three classical formulas serve also as principles for dividing the system of duties of Right into *internal* duties, *external* duties, and duties that involve the derivation of the latter from the principle of the former by subsumption.

B.
General Division of Rights

1) As systematic *doctrines*, Rights are divided into *natural Right*, which rests only on a priori principles, and *positive* (statutory) Right, which proceeds from the will of a legislator.
2) The highest division of rights, as (moral) *capacities* for putting others under obligations (i.e., as a lawful basis, *titulum*, for doing so), is the division into *innate* and *acquired* right. An innate right is that which belongs to everyone by nature, independently of any act that would establish a right;[28] an acquired right is that for which such an act is required.

What is innately mine or yours can also be called what is *internally* mine or yours (*meum vel tuum internum*); for what is externally mine or yours must always be acquired.

There Is Only One Innate Right

Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. This principle of innate freedom already involves the following authorizations, which are not really distinct from it (as if they were members of the division of some higher concept of a right): innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a man's quality of being *his own master* (*sui iuris*), as well as being a man [238]
beyond reproach (*iusti*), since before he performs any act affecting rights he has done no wrong to anyone; and finally, his being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it – such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere (*veriloquium aut falsiloquium*); for it is entirely up to them whether they want to believe him or not.*

*Telling an untruth intentionally, even though merely frivolously, is usually called a *lie* (*mendacium*), because it can also harm someone, at least to the extent that if he ingenuously repeats it others ridicule him as gullible. The only kind of untruth we want to call a lie, in the sense *bearing upon rights*, is one that directly infringes upon another's right, e.g., the false allegation that a contract has been concluded with someone, made in order to deprive him of what is his (*falsiloquium dolosum*). And this distinction between closely related concepts is not without basis; for when

The aim in introducing such a division within the system of natural Right (so far as it is concerned with innate right) is that when a dispute arises about an acquired right and the question comes up, on whom does the burden of proof (*onus probandi*) fall, either about a controversial fact or, if this is settled, about a controversial right, someone who refuses to accept this obligation can appeal methodically to his innate right to freedom (which is now specified in its various relations), as if he were appealing to various bases for rights.

With regard to what is innately, hence internally, mine or yours, there are not several *rights;* there is only *one* right. Since this highest division consists of two members very unequal in content, it can be put in the prolegomena and the division of the doctrine of Right can refer only to what is externally mine or yours.

[239] *Division of the Metaphysics of Morals as a Whole*

I.

All duties are either *duties of Right* (*officia iuris*), that is, duties for which external lawgiving is possible, or *duties of virtue* (*officia virtutis s. ethica*), for which external lawgiving is not possible. Duties of virtue cannot be subject to external lawgiving simply because they have to do with an end which (or the having of which) is also a duty. No external lawgiving can bring about someone's setting an end for himself (because this is an internal act of the mind), although it may prescribe external actions that lead to an end without the subject making it his end.

But why is the doctrine of morals usually called (especially by Cicero) a doctrine of *duties* and not also a doctrine of *rights,* even though rights have reference to duties? The reason is that we know our own freedom (from which all moral laws, and so all rights as well as duties proceed) only through the *moral imperative,* which is a proposition commanding duty, from which the capacity for putting others under obligation, that is, the concept of a right, can afterward be explicated [*entwickelt*].[29]

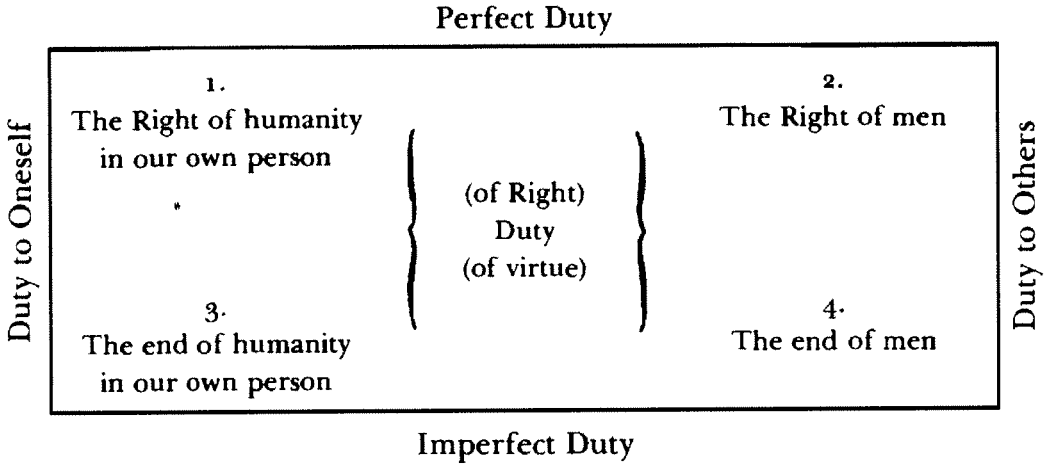
someone merely says what he thinks, another always remains free to take it as he pleases. But a rumor, having some basis, that this is a man whose talk cannot be believed comes so close to the reproach of calling him a liar that the borderline separating what belongs to *Ius* from what must be assigned to ethics can only be drawn in just this way.

II.

In the doctrine of duties man can and should be represented in terms of the property of his capacity for freedom, which is wholly supersensible, and so too merely in terms of his *humanity*, his personality independent of physical attributes (*homo noumenon*), as distinguished from the same subject represented as affected by physical attributes, *man* (*homo phaenomenon*). Accordingly Right and end, related in turn to duty in this twofold property, yield the following division:

[240]

DIVISION
in Accordance with the Objective Relation of Law to Duty



III. [241]

The subjects between whom a relation of right to duty can be thought of (whether admissibly or not) can stand related to each other in different ways, and so a division can also be made from this point of view.

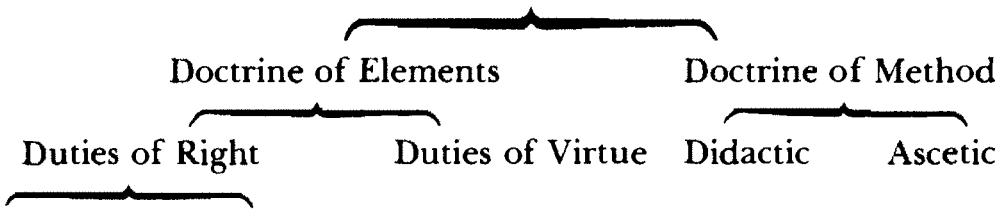
DIVISION
in Accordance with the Relation of the Subject Imposing Obligation to the Subject Put Under Obligation.

1.	2.
The relation in terms of rights of men toward beings that have neither rights nor duties.	The relation in terms of rights of men toward beings that have rights as well as duties.
Vacat[a]	*Adest*
For these are beings lacking reason, which can neither bind us nor by which we can be bound.	For this is a relation of men to men.
3.	4.
The relation in terms of rights of men toward beings that have only duties but no rights.	The relation in terms of rights of men toward a being that has only rights but no duties (God).
Vacat	*Vacat*
For these would be men without personality (serfs, slaves).	At least in philosophy, since such a being is not an object of possible experience.

So only in Number 2 is there found a *real* relation between right and duty. The reason that it is not to be found in Number 4 is that this would be a *transcendent* duty, that is, a duty for which no corresponding external subject imposing the obligation can *be given,* so that the relation here is only *ideal* from a theoretical point of view, that is, a relation to a thought-entity [*Gedankending*]. We ourselves *make* the concept of this being, but this concept is not altogether *empty;* instead it is fruitful in reference to ourselves and to maxims of internal morality, and so for an internal practical purpose, inasmuch as our entire
[242] *immanent duty* (that which can be fulfilled) lies only in this relation that can merely be thought of.

[a] *Vacat* might be rendered "has no members," *Adest* " has members."

On the Division of Morals as a System of Duties in General



and so on, everything

that involves not only the contents of a scientific doctrine of morals but also its architectonic form, once its metaphysical first principles have traced out completely the universal principles for it.

The highest division of natural Right cannot be the division (sometimes made) into *natural* and *social* Right; it must instead be the division into natural and *civil* Right, the former of which is called *private Right* and the latter *public Right.* For a *state of nature* is not opposed to a social but to a civil condition, since there can certainly be society in a state of nature, but not *civil* society (which secures what is mine or yours by public laws). This is why Right in a state of nature is called private Right.

[245]

PRIVATE RIGHT
CONCERNING WHAT IS EXTERNALLY MINE OR YOURS IN GENERAL

CHAPTER I

How to Have Something External as One's Own [30]

§1.

That is *rightfully mine* (*meum iuris*) with which I am so connected that another's use of it without my consent would wrong me. The subjective condition of any possible use is *possession.*

But something *external* would be mine only if I may assume that I could be wronged by another's use of a thing[31] even *though I am not in possession of it.* So it would be self-contradictory to say that I have something external as my own if the concept of possession could not have different meanings, namely *sensible* possession and *intelligible* possession, and by the former could be understood *physical* possession but by the latter a *merely rightful* possession of the same object.

But the expression "an object is *external to me*" can mean either that it is an object merely *distinct* from me (the subject) or else that it is also to be found in *another location* (*positus*) in space or time. Only if it is taken in the first sense can possession be thought of as rational possession; if taken in the second sense it would have to be called empirical possession. *Intelligible* possession (if this is possible) is possession of an
[246] object *without holding it* (*detentio*).

§2.
Postulate of Practical Reason with Regard to Rights[32]

It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to rights.[33]

For an object of my choice is something that I have the *physical* power to use. If it were nevertheless absolutely not within my *rightful* power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice

with regard to an object of choice, by putting *usable* objects beyond any possibility of being *used;* in other words, it would annihilate them in a practical respect and make them into *res nullius,* even though in the use of things choice was formally consistent with everyone's outer freedom in accordance with universal laws. But since pure practical reason lays down only formal laws as the basis for using choice and thus abstracts from its matter, that is, from other properties of the object *provided only that it is an object of choice,* it can contain no absolute prohibition against using such an object, since this would be a contradiction of outer freedom with itself. But an object of my *choice* is that which I have the physical capacity to use as I please, that whose use lies within my *power* (*potentia*). This must be distinguished from having the same object under my control (*in potestatem meam redactum*), which presupposes not merely [such] a *capacity* but also an *act* of choice. But in order to *think of* something simply as an object of my choice it is sufficient for me to be conscious of having it within my power. It is therefore an a priori presupposition of practical reason to regard and treat any object of my choice as something that could objectively be mine or yours.

This postulate can be called a permissive principle (*lex permissiva*)[34] [247] of practical reason, which gives us an authorization that could not be got from mere concepts of Right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession. Reason wills that this hold as a principle, and it does this as *practical* reason, which extends itself a priori by this postulate of reason.

§3.

Whoever wants to assert that he has a thing as his own must be in possession of an object, since otherwise he could not be wronged[35] by another's use of it without his consent. For if something outside this object which is not connected with it by rights affects it, it would not be able to affect himself (the subject) and do him any wrong.

§4.
Exposition of the Concept of External Objects That Are Mine or Yours

There can be only *three* external objects of my choice: 1) a (corporeal) *thing* external to me; 2) another's *choice* to perform a specific deed

(*praestatio*); 3) another's *status* in relation to me. These are objects of my choice in terms of the categories of *substance, causality,* and *community* between myself and external objects in accordance with laws of freedom.

a) I cannot call an object in *space* (a corporeal thing) mine unless, *even though I am not in physical possession of it,* I can still assert that I am actually in some other (hence not physical) possession of it. So I shall not call an apple mine because I have it in my hand (possess it physically), but only if I can say that I possess it even though I have put it down, no matter where. In the same way, I shall not be able to say that the land on which I have lain down is mine because I am on it, but only if I can assert that it still remains in my possession even though I have left the place. For someone who tried in the first case (of empirical possession) to wrest the apple
[248] from my hand or to drag me away from my resting place would indeed wrong me with regard to what is *internally* mine (freedom); but he would not wrong me with regard to what is externally mine unless I could assert that I am in possession of the object even without holding it. I could not then call these objects (the apple and the resting place) mine.

b) I cannot call the *performance* of something by another's choice mine if all I can say is that it came into my possession *at the same time* that he promised it (*pactum re initum*), but only if I can assert that I am in possession of the other's choice (to determine him to perform it) even though the time for his performing it is still to come. The other's promise is therefore included in my belongings and goods (*obligatio activa*), and I can count it as mine not merely if (as in the first case) I already have *what was promised* in my possession, but even though I do not possess it yet. So I must be able to think that I am in possession of this object independently of being limited by temporal conditions, and so independently of empirical possession.

c) I cannot call a *wife,* a *child,* a *servant,* or, in general, another person mine because I am now in charge of them as members of my household or have them within my restraining walls and in my control and possession, but only if, although they have withdrawn from such constraint and I do not possess them (empirically), I can still say that I possess them merely by my will, hence *merely rightfully,* as long as they exist somewhere or at some time. Only if and insofar as I can assert this are they included in my belongings.

§5.
Definition of the Concept of External Objects That Are Mine or Yours

The *nominal definition* [*Namenerklärung*] of what is externally mine – that which suffices only to *distinguish* the object from all others and arises from a complete and determinate *exposition* of the concept – would be: That outside me is externally mine which it would be a wrong (an infringement upon my freedom that can coexist with the freedom of everyone in accordance with a universal law) to prevent me from using as I please. But the *real definition* [*Sacherklärung*] of this concept – that which also suffices for the *deduction* of it (for knowledge of the possibility of the object) – goes like this: Something external is mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object). I must be in some sort of possession of an external object if it is to be called *mine*, for otherwise someone who affected this object against my will would not also affect me and so would not wrong me. So, in consequence of §4, *intelligible possession* (*possessio noumenon*) must be assumed to be possible if something external is to be mine or yours. Empirical possession (holding) is then only possession in *appearance* (*possessio phaenomenon*), although the *object* itself that I possess is not here treated, as it was in the Transcendental Analytic, as an appearance but as a thing in itself; for there reason was concerned with theoretical knowledge of the nature of things and how far it could extend, but here it is concerned with the practical determination of choice in accordance with laws of *freedom*, whether the object can be known through the senses or through the pure understanding alone, and *Right* is a pure practical *rational concept* of choice under laws of freedom. [249]

For the same reason it is not appropriate to speak of possessing a right to this or that object but rather of possessing it *merely rightfully;* for a right is already an intellectual possession of an object and it would make no sense to speak of possessing a possession.

§6.
Deduction of the Concept of Merely Rightful Possession of an External Object (*possessio noumenon*)

The question, How is it possible for *something external to be mine or yours?* resolves itself into the question, How is *merely rightful* (intelligible) *possession* possible? and this, in turn, into the third question, How is a *synthetic* a priori proposition of Right possible?

All propositions of Right are a priori propositions, since they are principles of reason (*dictamina rationis*). An a priori proposition of
[250] Right with regard to *empirical possession* is *analytic*, for it says nothing more than what follows from empirical possession in accordance with the principle of contradiction, namely that if I am holding a thing (and so physically connected with it), someone who affects it without my consent (e.g., snatches an apple from my hand) affects and diminishes what is internally mine (my freedom), so that his maxim is in direct contradiction with the axiom of Right.[36] So the proposition about empirical possession in conformity with rights does not go beyond the right of a person with regard to himself.

On the other hand, a proposition about the possibility of possessing a thing *external to myself*, which puts aside any conditions of empirical possession in space and time (and hence presupposes the possibility of *possessio noumenon*), goes beyond those limiting conditions; and since it affirms possession of something even without holding it, as necessary for the concept of something external that is mine or yours, *it is synthetic*. Reason has then the task of showing how such a proposition, which goes beyond the concept of empirical possession, is possible a priori.[37]

[In this way, for example, taking possession of a separate piece of land is an act of private choice, without being *unsanctioned*. The possessor bases his act on an innate *possession in common* of the surface of the earth and on a general will corresponding a priori to it, which permits *private possession* on it (otherwise, unoccupied things would in themselves and in accordance with a law be made things that belong to no one). By being the first to take possession he originally acquires a definite piece of land and resists with right (*iure*) anyone else who would prevent him from making private use of it. Yet since he is in a state of nature, he cannot do so by legal proceedings [*von rechtswegen*] (*de iure*) because there does not exist any public law in this state.

Even if a piece of land were considered or declared to be *free*, that is, open to anyone's use, one could still not say that it is free by nature or *originally* free, prior to any act establishing a right; for that would again be a relation to things, namely to the land, which would refuse possession of itself to anyone; instead one would say that this land is free because of a prohibition on everyone to make use of it, and for this, possession of it in common is required, which cannot take place without a contract. But land that can be free only in this way must really be in the possession of all those (joined together) who forbid or suspend one another's use of it.

This can also be applied to the case of my having accepted a promise. For my having and possession [*Habe und Besitz*] in what was promised is not annulled by the promisor's saying at one time "this thing is to be yours" and then at a later time saying of the same thing "I now will that it not be yours." For in such intellectual relations it is as if the promisor had said, without any time between the two declarations of his will, "this is to be yours" and also "this is not to be yours," which is self-contradictory.

The same holds of the concept of rightful possession of a person, as included in the subject's belongings (his wife, child, servant). This domestic community and the possession of their respective status vis-à-vis one another by all its members is not annulled by their being authorized to separate from one another and go to different *places;* for what connects them is a relation *in terms of rights*, and what is externally mine or yours here is based, as in the preceding cases, entirely on the assumption that purely rational possession without holding each other is possible.

Rightfully practical reason is forced into a critique of itself in the concept of something external that is mine or yours, and this by an antinomy of propositions concerning the possibility of such a concept; that is, only by an unavoidable dialectic in which both
[255] thesis and antithesis make equal claims to the validity of two conditions that are inconsistent with each other is reason forced, even in its practical use (having to do with rights), to make a distinction between possession as appearance and possession that is thinkable merely by the understanding.

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

The *antithesis* says: *It is not possible* to have something external as mine unless I am in possession of it.

Solution: Both propositions are true, the first if I understand, by the word possession, empirical possession (*possessio phaenomenon*), the second if I understand by it purely intelligible possession (*possessio noumenon*). But we cannot see how intelligible possession is possible and so how it is possible for something external to be mine or yours, but must infer it from the postulate of practical reason. With regard to this postulate it is particularly noteworthy that practical reason *extends* itself without intuitions and without even needing any that are a priori, merely by *leaving out* empirical conditions, as it is justified in doing by the law of freedom. In this way it can lay down *synthetic* a priori propositions about Right, the proof of which (as will soon be

shown) can afterwards be adduced, in a practical respect, in an analytic way.[39]

§8.
It Is Possible to Have Something External as One's Own Only in a Rightful Condition, under an Authority Giving Laws Publicly, That Is, in a Civil Condition

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the [256]
same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule. Now a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. But the condition of being under a general external (i.e., public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours.

Corollary: If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution.

§9.
In a State of Nature Something External Can Actually Be Mine or Yours but Only Provisionally

When people are under a civil constitution, the statutory laws obtaining in this condition cannot infringe upon *natural Right* (i.e., that

Right which can be derived from a priori principles for a civil constitution); and so the rightful principle "whoever acts on a maxim by which it becomes impossible to have an object of my choice as mine wrongs me," remains in force. For a civil constitution is just the rightful condition, by which what belongs to each is only secured, but not actually settled [*eigentlich aber nicht ausgemacht*] and determined. Any guarantee, then, already presupposes what belongs to someone (to whom it secures it). Prior to a civil constitution (or in *abstraction* from it) external objects that are mine or yours must therefore be assumed to be possible, and with them a right to constrain everyone with whom we could have any dealings to enter with us into a constitution in which external objects can be secured as mine or yours. Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is *provisionally rightful* possession, whereas possession found in an *actual* civil condition would be *conclusive* possession. Prior to entering such a condition, a subject who is ready for it resists with right those who are not willing to submit to it and who want to interfere with his present possession; for the will of all others except for himself, which proposes to put him under obligation to give up a certain possession, is merely *unilateral,* and hence has as little lawful force in denying him possession as he has in asserting it (since this can be found only in a general will), whereas he at least has the advantage of being compatible with the introduction and establishment of a civil condition. In summary, the way to have something external as one's own *in a state of nature* is physical possession that has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this holds *comparatively* as rightful possession.

[257]

In accordance with the formula *Happy is he who is in possession* (*beati possedentes*), this prerogative of Right arising from empirical possession does not consist in its being unnecessary for the possessor, since he is presumed to be an *honest man,* to furnish proof that his possession is in conformity with right (for this holds only in disputes about rights). This prerogative arises instead from the capacity anyone has, by the postulate of practical reason, to have an external object of his choice as his own. Consequently, any holding of an external object is a condition whose conformity with right is based on that postulate by a previous act of will; and so long as this condition does not conflict with another's earlier possession of the same object he is provisionally

justified, in accordance with the law of outer freedom, in preventing anyone who does not want to enter with him into a condition of public lawful freedom from usurping the use of that object, in order to put to his own use, in conformity with the postulate of reason, a thing that would otherwise be annihilated practically.

An oath of office is usually *promissory*, an oath, namely, that the official earnestly *resolves* to fulfill his post in conformity with his duties. If it were changed into an *assertoric* oath – if, that is, the official was bound, perhaps at the end of a year (or more), to swear that he had faithfully fulfilled his office during that time – this would arouse his conscience more than an oath he takes as a promise; for having taken a promissory oath, he can always make the excuse to himself later on that with the best of intentions he did not foresee the difficulties which he experienced only later, during the administration of his office. Moreover, he would be more concerned about being accused of failing in his duty if an observer were going to look at the sum of his offenses than if they were merely censured one after the other (and the earlier ones have been forgotten). But a court can certainly not demand swearing to a *belief* (*de credulitate*). For in the first place it involves a self-contradiction; this thing intermediate between opinion and knowledge is the sort of thing that one can dare to bet on but certainly not to swear to. Second, a judge who requires swearing to a belief from a party in order to find out something relevant to his purpose, even if this purpose is the common good, commits a grave offense against the conscientiousness of the person taking the oath, partly by the thoughtlessness to which the oath misleads him and by which the judge defeats his own purpose, partly by the pangs of conscience a man must feel, when he can find a certain matter very likely today, considered from a certain point of view, but quite unlikely tomorrow, when he considers it from a different point of view. A judge therefore wrongs one whom he constrains to take such an oath.

Transition from What Is Mine or Yours in a State of Nature to What Is Mine or Yours in a Rightful Condition Generally

§41.

[306] A rightful condition is that relation of men among one another that contains the conditions under which alone everyone is able to *enjoy* his rights, and the formal condition under which this is possible in accordance with the Idea of a will giving laws for everyone is called public justice. With reference to either the possibility or the actuality or the necessity of possession of objects (the matter of choice) in accordance with laws, public justice can be divided into *protective justice* (*iustitia tutatrix*), *justice in men's acquiring from one another* (*iustitia commutativa*)

and *distributive justice* (*iustitia distributiva*). In these the law says, *first,* merely what conduct is intrinsically *right* [*recht*] in terms of its form (*lex iusti*); *second,* what [objects] are capable of being covered externally by law, in terms of their matter, that is, what way of being in possession is *rightful* [*rechtlich*] (*lex iuridica*); *third,* what is the decision of a court in a particular case in accordance with the given law under which it falls, that is what is *laid down as right* [*Rechtens*] (*lex iustitiae*). Because of this a court is itself called the *justice* of a country, and whether such a thing exists or does not exist is the most important question that can be asked about any arrangements having to do with rights.

A condition that is not rightful, that is, a condition in which there is no distributive justice, is called a state of nature (*status naturalis*). What is opposed to a state of nature is not (as Achenwall thinks) a condition that is *social* and that could be called an artificial condition (*status artificialis*), but rather the *civil* condition (*status civilis*), that of a society subject to distributive justice. For in the state of nature, too, there can be societies compatible with rights (e.g., conjugal, paternal, domestic societies in general, as well as many others); but no law, "You ought to enter this condition," holds a priori for these societies, whereas it can be said of a *rightful* condition that all men who could (even involuntarily) come into relations of rights with one another *ought* to enter this condition.

The first and second of these conditions can be called the condition of *private Right,* whereas the third and last can be called the condition of *public Right.* The latter contains no further or other duties of men among themselves than can be conceived in the former state; the matter of private Right is the same in both. The laws of the condition of public Right, accordingly, have to do only with the rightful form of men's association (constitution), in view of which these laws must necessarily be conceived as public.

The *civil union* (*unio civilis*) cannot itself be called a *society,* for between the *commander* (*imperans*)[53] and the *subject* (*subditus*) there is no [307]
partnership. They are not fellow-members: One is *subordinated to,* not *coordinated with* the other; and those who are coordinate with one another must for this very reason consider themselves equals since they are subject to common laws. The civil union *is* not so much a society but rather *makes* one.

§42.

From private Right in the state of nature there proceeds the postulate of public Right: When you cannot avoid living side by side with all others,[54] you ought to leave the state of nature and proceed with them

into a rightful condition, that is, a condition of distributive justice. The ground of this postulate can be explicated [*entwickeln*] analytically from the concept of *Right* in external relations, in contrast with *violence* (*violentia*).

No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint toward him. No one, therefore, need wait until he has learned by bitter experience of the other's contrary disposition; for what should bind him to wait till he has suffered a loss before he becomes prudent, when he can quite well perceive within himself the inclination of men generally to lord it over others as their master (not to respect the superiority of the rights of others when they feel superior to them in strength or cunning)? And it is not necessary to wait for actual hostility; one is authorized to use coercion against someone who already, by his nature, threatens him with coercion. (*Quilibet praesumitur malus, donec securitatem dederit oppositi.*)

Given the intention to be and to remain in this state of externally lawless freedom, men do *one another* no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent (*uti partes de iure suo disponunt, ita ius est*). But in general they do wrong in the highest degree* by wanting to be
[308] and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence.

*This distinction between what is merely formally wrong and what is also materially wrong has many applications in the doctrine of Right. An enemy who, instead of honorably carrying out his surrender agreement with the garrison of a besieged fortress, mistreats them as they march out or otherwise breaks the agreement, cannot complain of being wronged if his opponent plays the same trick on him when he can. But in general they do wrong in the highest degree, because they take away any validity from the concept of Right itself and hand everything over to savage violence, as if by law, and so subvert the Right of men as such.

SECTION I

The Right of a State

§43.

The sum of the laws that need to be promulgated generally in order to bring about a rightful condition is *public Right.* Public Right is therefore a system of laws for a people, that is, a multitude of men, or for a multitude of peoples, that, because they affect one another, need a rightful condition under a will uniting them, a *constitution* (*constitutio*), so that they may enjoy what is laid down as right. This condition of the individuals within a people in relation to one another is called a *civil* condition (*status civilis*), and the whole of individuals in a rightful condition, in relation to its own members is called a *state* (*civitas*). Because of its form, by which all are united through their common interest in being in a rightful condition, a state is called a *commonwealth* (*res publica latius sic dicta*). In relation to other peoples, however, a state is called simply a *power* (*potentia*) (hence the word *potentate*). Because the union of the members is (presumed to be) one they inherited, a state is also called a nation (*gens*). Hence, under the general concept of public Right we are led to think not only of the Right of a state but also of a *Right of nations* (*ius gentium*).[55] Since the earth's surface is not unlimited but closed, the concepts of the Right of a state and of a Right of nations lead inevitably to the Idea of a *Right for all nations* (*ius gentium*) or *cosmopolitan Right* (*ius cosmopoliticum*). So if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse.

§44. [312]

It is not experience from which we learn of men's maxim of violence and of their malevolent tendency to attack one another before external legislation[56] endowed with power appears. It is therefore not some fact that makes coercion through public law necessary. On the con-

trary, however well disposed and law-abiding men might be, it still lies a priori in the rational Idea of such a condition (one that is not rightful) that before a public lawful condition is established, individual men, peoples, and states can never be secure against violence from one another, since each has its own right to do *what seems right and good to it* and not to be dependent upon another's opinion about this. So, unless it wants to renounce any concepts of Right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined *by law* and is allotted to it by adequate *power* (not its own but an external power); that is to say, it ought above all else to enter a civil condition.

It is true that the state of nature need not, just because it is natural, be a state of *injustice* (*iniustus*), of dealing with one another only in terms of the degree of force each has. But it would still be a state *devoid of justice* (*status iustitia vacuus*), in which, when rights are *in dispute* (*ius controversum*), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it or by contract in accordance with its *concepts of Right,* this acquisition is still only *provisional* as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority putting this right into effect.

[313] If no acquisition were recognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect (in keeping with distributive justice). So if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of Right with regard to them and therefore no command to leave the state of nature.

§45.

A *state* (*civitas*) is a union of a multitude of men under laws of Right. Insofar as these are a priori necessary as laws, that is, insofar as they

follow of themselves from concepts of external Right as such (are not statutory), its form is the form of a state as such, that is, of *the state as Idea,* as it ought to be in accordance with pure principles of Right. This Idea serves as a norm (*norma*) for every actual union into a commonwealth (hence serves as a norm for its internal constitution).

Every state contains three *authorities* within it,[57] that is, the general united will consists of three persons (*trias politica*): the *sovereign authority* [*Herrschergewalt*] (sovereignty) in the person of the legislator;[58] the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge (*potestas legislatoria, rectoria et iudiciaria*). These are like the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law, i.e. the principle of subsumption under the law; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand.

§46.

The legislative authority can belong only to the united will of the people. For since all Right is to proceed from it, it *cannot* do anyone wrong by its law. Now, when someone makes arrangements about *another,* it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for *volenti non fit iniuria*).[a] Therefore only the concurring and united [314] will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative.

The members of such a society who are united for giving law (*societas civilis*), that is, the members of a state, are called *citizens of a state* (*cives*). In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful *freedom,* the attribute of obeying no other law than that to which he has given his consent; civil *equality,* that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of Right in a way that he could not in turn bind the other; and third, the attribute of civil *independence,* of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people. From his independence follows his civil personality, his attribute of not needing to be represented by another where rights are concerned.

[a] "No wrong is done to someone who consents."