

THE FUNDAMENTAL PROBLEM OF KANT'S JURIDICAL SEMANTICS

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The Concept of Practical Philosophy in Later Kant

Kant defines a philosopher as "the legislator of human reason" (*Pure Reason*, B867). The philosopher's legislation has two objects, nature and freedom, and therefore contains both the laws of nature (natural laws) and the laws of freedom (moral laws). The former determine a priori *what is* and comprise the system of nature; the latter determine a priori *what should be* and make up the system of freedom.¹ Theoretical or speculative philosophy takes care of the former; practical philosophy takes care of the latter.

In Kant's later writings, practical philosophy is split into a "metaphysics of morals" and a "moral anthropology" (*Doctrine of Right*, 6:217). The former contains a priori the principles that dispose of "freedom in both the external and the internal use of choice" (*Doctrine of Right*, 6:214),² and for that reason is also called "anthroponomy" (*Doctrine of Virtue*, 6:406).³ The latter, moral anthropology, comprises the study of subjective conditions, pertaining to human nature, that are either favorable or contrary to the *execution* of the laws of practical reason (*Doctrine of Right*, 6:217).

This distinction is a novelty relative to the first *Critique*. In the first *Critique*, Kant contrasts practical philosophy, especially pure morals, which deals with the principles that "determine **action** and **omission** a priori and make them necessary," with anthropology, conceived as an empirical, scientific theory. He says, for example, that "the metaphysics of morals is really the pure morality, which is not grounded on any anthropology (no empirical condition)" (*Pure Reason*, B869–70). This thesis is maintained in the *Metaphysics of Morals* (1797), but then the problem of the basis and validity of the a priori laws of the doctrines of right and of virtue is formulated according

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to the results of the *Critique of Practical Reason* (1788). Hence, it demands a demonstration of the *immanent* applicability of practical laws, that is, that they can be valid in the domain of actions that can be effectively carried out by free human agents.⁴ This shift in focus is reflected in Kant's remark that "a metaphysics of morals cannot be based upon anthropology but can still be applied to it" (*Doctrine of Right*, 6:217). One of the main innovations of the *Metaphysics of Morals* that was inspired by the second *Critique* is precisely the addition of the *realm of acts that can be freely performed* to the *realm of possible objects* specified in the first *Critique*. This paved the way for the development of an *a priori* theory of the application of the concepts and laws of the metaphysics of morals to the former realm, that is, for an *a priori* semantics as part of Kant's practical philosophy. This is an indispensable task, according to Kant:

But just as there must be principles in a metaphysics of nature for applying [*Prinzipien der Anwendung*] those highest universal principles of a nature in general to objects of experience, a metaphysics of morals cannot dispense with principles of application, and we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to *show* in it what can be inferred from universal moral principles. (*Doctrine of Right*, 6:217–18)

In other words, the constitution of a metaphysics of morals put forth in the *Doctrine of Right* implies, as a necessary subtask, the elaboration of the principles for applying the fundamental propositions of the *metaphysics of morals* to the realm of human acts. This incumbency is conceived by Kant in exact parallel to the task carried out in his 1786 *Metaphysical Foundations of Natural Science*, which provided rules for determining the "objective reality, that is, meaning and truth" of the fundamental concepts and propositions of the *metaphysics of nature* (*Natural Science*, 4:478). Thus, an "excellent and indispensable" service was rendered to general metaphysics, insofar as "examples (instances in *concreto*) in which to realize the concepts and propositions of the latter," that is, "to give a mere form of thought sense and meaning [*Sinn und Bedeutung*]" were provided (4:478).

Rather than eliminating it, this parallel highlights a significant difference between Kant's theories of the "sense and meaning" of natural and moral *a priori* concepts: whereas the former are interpreted onto the objects of experience, the latter refer to freely performable acts, which is the subject matter of moral or pragmatic anthropology. As opposed to "physiological" anthropology, that is, the anthropology that is part of natural science and "concerns the investigation of what *nature* makes of the human being," pragmatic anthropology is concerned with "the investigation of what *he* as a free-acting being makes of himself, or can and should make of himself" (*Anthropology*, 7:119).

The Order of the Problems in the Doctrine of Right

The final—not merely the initial or partial—total goal of the *Doctrine of Right*, which is to be carried out within the bounds of mere reason, is the establishment of a universal and permanent peace. But why perpetual peace? Because the rational regulation of social life demands that what is mine and what is yours should be safely *secured*, and in a multitude of human beings living as neighbors to one another, only a state of peace enforced by laws offers that assurance. To be sure, these are a priori juridical laws assembled in a civil constitution according to the ideal of “association of human beings under public laws as such” (*Doctrine of Right*, 6:355).

Formulated in terms of a *Doctrine of Right*, the solution to the problem of perpetual peace therefore presupposes the solution to problems concerning private ownership, in particular, the problem of finding out *if* and *how* reason can say whether something can be rightfully mine. It seems unproblematic to say a priori that something that is in my physical possession—something that I hold—can also be rightfully and even legally mine, since everything leads us to think that the suppression of this possibility is equivalent to the pure and simple suppression of all external use of free choice. It is much harder to justify, based on pure practical reason alone, that something is mine even when it is not in my physical possession. Kant refers to this way of having something be mine as “merely rightfully” (*bloss-rechtlich*) mine, or as “intelligible possession,” which are phrases that designate a basic concept of practical reason. The practical objective meaning of this concept must be warranted, since it is used in judgments or propositions⁵ of the type “this external object is mine,” which state the *first* lawgiving acts of Kant’s natural right. When I make such a statement, I understand “externally mine” as something that “I would be wronged by being disturbed in my use of it *even if I am not in possession of it* (not holding the object)” (*Doctrine of Right*, 6:249; see also 6:245). Here we have a lawgiving act, Kant says, by means of which “an obligation is laid upon all others, which they would not otherwise have, to refrain from using the object” (6:253). Kant reaffirms the same point by saying that “when I declare (by word or deed) that 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” (*Doctrine of Right*, 6:255).

Such declaration includes a presumption that the possession is *rightful*, a prerogative of right (*Doctrine of Right*, 6:257) that lays upon all others a duty of right prior to the existence of positive laws warranting its *legality*. Because it cannot be derived from the concept of the external use of freedom (free choice), the statement of the presumption is *synthetic*; and because it purports to be universally valid and necessary, it is *a priori*. Hence, “reason has then the task of showing how such a proposition, which goes beyond the

concept of empirical possession, is possible *a priori*" (6:250). Kant formulates this task as follows: "how is a *synthetic a priori* proposition about right possible?" (6:249), namely, a proposition such as "this external object is mine," where the term "mine" means "mine in terms of natural right."

The deduction of the possibility of propositions of this type is a prior condition for dealing with the problem of the possibility of all other propositions about natural right, both private and public, or civil. Propositions of this type are constitutive of Kant's *Doctrine of Right*. The latter is conceived within the bounds of mere reason and based solely on the *a priori* principles of practical reason, and has as its final goal that of securing perpetual peace.⁶ Furthermore, the task of warranting the possibility of these propositions precedes that of deciding whether the juridical claims that they convey are valid. Propositions of the type "this external object is mine" are therefore *basic* in Kant's *Doctrine of Right*, and the task of showing that they are possible is its *fundamental problem*.

According to Kant, showing that a synthetic *a priori* judgment is possible (that it *can be* objectively valid or invalid) means making explicit the conditions under which it can be applied in a realm of *sensible* data.⁷ Likewise, an *a priori* concept is said to be possible if its referent and its meaning can be sensitized in this way. Judgments and concepts possible *a priori* are said to be *objectively real* theoretically if they are theoretical, and *objectively real* practically if they are practical. The objective possibility or reality⁸ of the former is warranted by the *givenness* of objects;⁹ and that of the latter by the *performability* of actions.¹⁰ Givenness is a topic of Kant's theory of possible experience; performability, a topic of moral anthropology, or pragmatics.

According to the interpretation I presented elsewhere,¹¹ the task of making explicit the possibility of synthetic *a priori* theoretical judgments is part of the *a priori* semantics of those judgments. Therefore, the problem of the possibility of basic *a priori* juridical propositions is the fundamental problem of Kant's *juridical semantics*.¹²

According to the first *Critique*, the "general problem" of transcendental philosophy is that of the possibility of synthetic *a priori* theoretical judgments (*Pure Reason*, B73). The remarks I have just made allow us to conclude that, in working out the project of a transcendental philosophy, the later Kant extended that problem in order to encompass not only *a priori* theoretical judgments, but also any other synthetic *a priori* judgment. Thus, the generalized problem of transcendental philosophy became the following: how are synthetic *a priori* judgments in general possible? The answer to this question also aims at another goal: justifying the *decision procedures* for these judgments, that is, the procedures by which it is possible to determine whether they are valid. In some cases (theoretical and moral judgments, for example) these procedures provide *proofs*; in other cases (aesthetic

judgments, for example) they provide decisions based exclusively on certain reflexive argumentative strategies.¹³

The Definition of the Concept of Rightful, Restrictive External Action

Since the synthetic a priori proposition whereby I state that an external object is mine "in terms of natural right" is something that I do unilaterally, thus laying upon all others an obligation or duty and restricting their external freedom, it becomes necessary to determine also a priori the conditions under which lawgiving acts of this kind can be justified. In other words, the study of the semantics of basic juridical propositions requires a clarification of the concept of *rightful, restrictive external action*. Kant takes on this task right away in the Introduction to the *Doctrine of Right* (Part 1 of the *Metaphysics of Morals*), and says clearly that it is an analysis preliminary to the study of the central problem, which, as we have just seen, is that of the possibility of propositions stating acts whereby one gains intelligible possession over something.

Kant defines the concept of rightful restrictive external action in terms of the conditions laid by pure practical reason upon practical external interpersonal relations among human beings. These conditions are part of the external lawgiving of practical reason, which is the subject matter of juridical science. In this context, human beings are thought to be agents who have free choice. To choose is to be able to act or refrain from acting according to one's wishes, which is connected with the consciousness of the capacity to perform actions that produce objects or modify them. A choice is free if it can be determined by the laws of pure reason, in particular, by the moral law (*Doctrine of Right*, 6:213). The concept of right presupposed by the external lawgiving of Kant's *Doctrine of Right* is therefore a moral concept, but that does not imply that juridical laws are themselves moral laws.

The relations among people endowed with free choice can be studied from three distinct points of view. First, insofar as their actions are affected by other human beings. These actions, as "*Facta*" (i.e., free human *deeds*), "can have (direct or indirect) influence on each other" (*Doctrine of Right*, 6:230). For example, the act whereby I declare an object to be mine influences the actions of others in the sense that it lays upon them an obligation to refrain from using that object.¹⁴ Second, insofar as they have to do exclusively with the relation between one's choice to the choice of others (one's capacity to act freely on what is outside oneself), but not the relation of one's choice to the mere wishes or needs of others. Third, disregarding the matter, that is, the ends sought by free choices, but taking into account only the forms of their reciprocal relations, that is, the condition whereby "the action of one

can be united with the freedom of the other in accordance with a universal law" (6:230).¹⁵

That said, Kant defines right (*das Recht*) as "the sum of conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom" (*Doctrine of Right*, 6:230).¹⁶ Juridical science is the "systematic knowledge" of those conditions (6:229). Thus conceived, the subject matter of right is the fundamental principle of the external lawgiving of practical reason, which assures rights and duties in the external use of freedom and lays restrictions upon its use.

Juridical doctrine is based on the universal criterion by which it is possible to recognize whether an act that imposes restrictions on the free will of others is right (*recht*) or wrong (*unrecht*). This criterion is made explicit by Kant in the form of a "universal principle of right": "An 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" (*Doctrine of Right*, 6:230; my emphasis in italics). This principle, also known as the "axiom of right," in fact offers the *definition* of rightful restrictive external action in terms of a formal property of its maxim, namely, the compatibility of one's maxim with the maxims of external actions of all other free agents, in accordance with an unspecified universal law.¹⁷ This is merely a *nominal* definition, obtained through an analysis of the idea of free external action that allows for a conceptual distinction between right and wrong actions but does not specify the conditions under which rightful actions are to be performed. As usual, here too the analysis of concepts given a priori precedes the solution of the problem of its a priori synthesis; in the case at hand, the problem of warranting the possibility of an act of synthesis whereby I declare something as rightfully mine.¹⁸

From this analytic definition of rightful action, and taking into account that external actions are *facta* (deeds), that is, that they influence one another, one can draw a consequence containing the elements for the *real* definition of rightful action. Kant begins by introducing the concept of hindrance to a rightful action: "If then my action or my condition generally can coexist with the freedom of everyone in accordance with a universal law, whoever hinders me in it does me *wrong*; for this hindrance (resistance) cannot coexist with freedom in accordance with a universal law of freedom" (*Doctrine of Right*, 6:230–31).

After adding that "whatever is wrong is a hindrance to freedom in accordance with universal laws," Kant goes on to say: "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" (*Doctrine of Right*, 6:231).

From this one concludes that performing of a rightful action is always accompanied by an authorization for offering *effective* resistance to the hindrance of its actualization. In Kant's own words, "there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it" (*Doctrine of Right*, 6:231). Therefore, a *principle of external coercion* follows analytically from the universal principle of right (more precisely, from the maxims of right). As an analytic consequence of the definition, that is, of what is "in the idea" of external freedom, this principle should be considered an *analytic* proposition. Kant says so explicitly in the *Doctrine of Virtue*. The "supreme principle of right," according to which "in accordance with the principle of contradiction . . . if external constraint checks the hindering of outer freedom in accordance with universal laws (and is thus a hindering to the hindrances to freedom), it can coexist with ends as such," and does not need to go "beyond the concept of freedom to see this," whatever the end sought. Therefore, Kant continues, "the supreme *principle of right* is therefore an analytic proposition" (*Doctrine of Virtue*, 6:396). According to this analysis, the right to perform a rightful action can also be represented as the possibility of a universal "reciprocal use of coercion that is consistent with everyone's freedom in accordance with universal laws" (*Doctrine of Right*, 6:232). Kant concludes his analysis by stating: "Right and authorization to use coercion therefore *mean one and the same thing*" (6:232; my italics).

The Semantics of the Concept of a Universal Reciprocal External Coercion

Due to the synonymy between the natural right to perform a rightful act justified on the basis of reason alone and the authorization to exert coercion (as long as it is backed by a universal law) on the free choice of others who oppose its execution, it follows that the objective reality of the a priori concept of *rightfulness* is warranted. This assures the objective reality of the a priori concept of *coerciveness* backed by law. As it happens, both are concepts of practical reason, but according to the transcendental semantics presented in the first *Critique*, of no concept of reason, theoretical or practical, can an adequate example be exhibited. None can be presented in a realm of sensible data provided by intuition. Hence the suspicion that these concepts might be empty, with the consequence that, if this is the case, they ought not to be used in juridical propositions that have doctrinal purposes.

However, some of these concepts can be made sensible *indirectly*. In particular, the concept of universal reciprocal external coercion can be given an example in "intuition *a priori*," only not directly, but also "by analogy," namely, by "presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*" (*Doctrine of Right*, 6:232). The law at

hand is obviously the "third analogy" of the theoretical understanding.¹⁹ This principle, says Kant, is "as it were, the *construction*" (6:232) of both the concept of universal reciprocal coercion and—due to the above-mentioned synonymy—the concept of right, which renders possible the factual (sensible) "presentation" of these two concepts of practical reason, and hence their application to the realm of performable actions.

A short digression is in place here. In this context, "construction" designates the way theoretical concepts are given reference and meaning, that is, how they are schematized.²⁰ A schematized concept of the theoretical understanding—for example, a category—is said to be "realized" (*Pure Reason*, B185), that is, referred directly to the realm of possible experience, thus receiving a theoretical objective reality (see *Pure Reason*, B185–86, 221, 268). This procedure for giving reference and meaning to the concepts of the theoretical understanding should be distinguished from *schematism by analogy* or *symbolization*, used in sensitizing ideas of reason in general.²¹ "The symbol of an idea (or a concept of reason)," Kant says, "is a representation of the object by analogy" (*Progress in Metaphysics*, 20:280). A concept schematized by analogy, or symbolized, is not "realized," since the content or objective reality that is assigned to it has a rather fictional character. Thus, such a concept *cannot* be used to convey knowledge. Nonetheless, the symbolization of concepts of reason is of great *operational* significance, since it allows the ideas of reason to be used in the construction of the system of nature—as is the case of theoretical ideas that can give *order* to the collection of natural laws produced by the understanding²²—as well as in establishing the system of freedom, that is, the rational regulation of human courses of action, which is the goal aimed at by sensitized practical ideas.

Once the analogy between universal reciprocal practical coercion and physical coercion is accepted, what is *subsumed* under the concept of right and belongs to pure practical reason is not directly this or that act of free choice, but rather the pure concept of action and reaction of the *theoretical* understanding: the category of community, employed in the formulation of the third analogy (*Doctrine of Right*, 6:252–53, 268). The advantage of this subsuming is that, although it is not an empirical representation, the category in question can be schematized (sensitized, made intuitive) in two ways: (a) by its schema, and (b) by mathematical models.²³ Kant takes the schema of the category of community for granted and makes explicit only a mathematical analogy that represents the rightfulness of an act. In mathematics, there is only one straight line between two given points; likewise, within right there is only one way of assuring the rightfulness and correctness of the reciprocal influence between two free agents. In mathematics, only one perpendicular line can be constructed on a given point of a straight line; likewise, within right there is only one way of deciding: impartially.²⁴

Establishing the analogy between the practical concept of universal reciprocal external coercion—which agrees with everyone's freedom in accordance with a universally valid law—and the category of community of physical objects—which corresponds to the a priori principle of action and reaction of the understanding—is the key to Kant's semantics of the a priori concepts of the doctrines of right and virtue. Kant stresses the significance of this symbolization when he says, at the beginning of the *Doctrine of Virtue*, that in the theory of the duty of right, "*what is mine* and *what is yours* must be determined on scales of justice exactly, in accordance with the principle that action and reaction are equal, and so with a precision analogous to that of mathematics" (*Doctrine of Virtue*, 6:376 note). This mathematical analogy finds support, in part, on the fact that we experience that others "are to be considered fellow human beings, that is, rational beings with needs, united by nature in one dwelling place so that they can help one another" (6:453).

Kant extends this point of view to all his theory of rights, that is, to all his metaphysics of morals, saying: "In speaking of laws of duty (not laws of nature) and, among these, of laws for human beings' external relations with one another, we consider ourselves in a moral (intelligible) world where, by analogy with the physical world, *attraction* and *repulsion* bind together rational beings (on earth)" (*Doctrine of Virtue*, 6:449). Schematization by analogy—this is a very important point for the understanding of Kant's juridical semantics—does not render the concept of right a theoretical concept and does not determine it precisely. It remains a practical concept, not directly applicable to the realm of performable actions.

The Exposition of the Concept of "Externally Mine"

Following this semantic analysis of the concept of rightful external action, Kant shifts his focus, already in the body of the first part of the *Doctrine of Right*, which is dedicated to public right, to the problem of the rightfulness of acts that declare something as mine "merely in terms of natural law." He then asks, first, what it *means* to say that an external object is mine or yours. That is, he begins to deal with the semantics of the predicate "mine" as it is used in natural right.

Kant begins by noting that, so as to be able to call something rightfully mine, I must rightfully possess it. Thus a new problem emerges: what does it mean to possess something in general and, in particular, rightfully possess it? The answer to this question entails the specification of what the possible objects of possession are. Objects of possession can be external or internal. An object of external possession is something *outside me*. This last phrase has two senses: on the one hand, it designates something distinct from me as a human being; on the other, something that is to be found elsewhere in

space and time (*Doctrine of Right*, 6:245). Objects taken in the first sense are merely intelligible; the others are necessarily sensible.

The object of *internal* possession is one only: my innate freedom, that is, "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" (*Doctrine of Right*, 6:237). Here freedom is neither defined in terms of the moral law, nor as the possibility of behaving as one wishes, nor simply as free choice (appetitive capacity connected to the consciousness of the capacity to perform object-producing actions, determined by pure practical reason), but by the axiom of right made explicit above. This is freedom of choice, or freedom insofar as it is an object of the external lawgiving of practical reason, and the origin of external actions that affect other people and objects of external use.²⁵

The internal freedom to act externally, represented by the natural-right concept of freedom, is something that is rightfully mine, that is, my possession of it is directly assured by practical reason. This possession is based on a *natural right* "which belongs to everyone by nature, independently of any act that would establish a right" (*Doctrine of Right*, 6:237), that is, a right that follows from the axiom of right. Thus, it is an *innate* right to freedom, which is also innate and concerns actions that affect external objects and others who are likewise free to perform external actions. The innate right to freedom includes an innate equality and various other authorizations, entailing, according to the axiom of right, the right to resist all obstacles to the external use of internal juridical freedom (that is, of what is internally mine) and the right to resist all violations of the innate right to freedom.²⁶

Kant distinguishes two concepts of possession of an external object, which is something that deserves special attention. An external object is said to be in my physical possession (empirical, or sensible, possession: *possessio phaenomenon*) if it is physically mine, for example, if it is on my hands or at the reach of my guns. Physical possession of something is synonymous with having a *physical power* over that thing, which is a kind of "physical connection" to the object. This entails that the object of my possession is also empirical and that there are spatio-temporal relations between me and the object.

On the other hand, I cannot disregard the fact that an object remains mine if I was the first to possess it and declared it to be mine, either by words or by some other means, but from which I *later* moved physically away. This is a case of *intelligible possession* (or *noumenon possessio*) of an external object, which is itself also intelligible. This possession is understood in the sense of a "connection of the subject's will with that object . . . *independently of any relation to it in space and time*" (*Doctrine of Right*, 6:254; my italics). Here the predicate "intelligibly mine" is applied to an external object "with which I

am so connected that another's use of it without my consent would wrong me," it would hurt my (natural) right (6:245).

In both cases, the external object that is possessed can be numerically the same. However, when we speak of empirical possession, both the relation of possession and the objects possessed are subject to the conditions of intuition, in particular, the objects possessed must be cognizable empirically and thus be objects for the senses, or appearances (see *Doctrine of Right*, 6:268). On the other hand, the object of a rightful possession must be thought of as a thing in itself (*Sache an sich selbst*), not "as it was in the Transcendental Analytic as an appearance" (6:249).²⁷ In the *Doctrine of Right*, the object of right, even when it can be cognized empirically, is always regarded as an object of choice, that is, of freedom in its external use, determined by practical reason. Objects of this type are not appearances, but rather "things" to which I am connected by merely juridical relations. Since these relations are noumenal, those "things" must also be thought to be noumenal, or "things in themselves." This analysis indicates yet another feature of Kant's juridical semantics: the objects of possession referred to by basic juridical judgments do not have—to borrow a phrase from Heidegger—the same sense of being as those objects accessible to our cognitive apparatus in possible experience.

The Fundamental Problem of the Semantics of Synthetic A Priori Propositions about Natural Right

Typical examples of *basic propositions* about right are, "this external object is mine," "this external object is not mine," and "this external object is yours (not mine)." Hence, from a qualitative point of view, these propositions are affirmative, negative, or limitative. From the point of view of quantity, relation, and modality, they seem to be singular, predicative, and assertoric. I say "seem" because a finer analysis reveals that they contain a hidden universal quantifier (by saying "this external object is mine," I lay upon *anyone else* that may come to interact with me an obligation to refrain from using that object); they do not express a monadic predicate but rather a relation (being mine is a relation), and state an obligation that is not merely affirmed but also cogent.²⁸

Here I cannot articulate Kant's semantics of all the syntactic components of the basic juridical propositions. I will focus exclusively on the difference between the ones in which the *predicate* "mine" (that is, the *relation of possession*) is understood in the empirical sense and those in which that relation has a merely intelligible sense. This point is crucial for the remainder of the semantic analysis of propositions about right offered by Kant in the *Doctrine of Right*.

If "mine" means physically mine, in the sense made explicit above, then the proposition "this external object is mine" is *analytic*. In fact, in this case,

what the basic proposition about right says is that "If I am holding a thing [*Sache*] (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)" (*Doctrine of Right*, 6:250). A proposition with that content is analytic because it "does not go beyond the right of a person with regard to himself" (6:250). Which right is that? The one relative to what is "internally mine," my freedom, which I have by virtue of an innate right. The external use of my body—in Kant's example, my hand—"concerns only my outer *freedom*, hence only possession of myself, not a thing external to me, so that it is only an internal right" (6:254). The axiom of right applies both to the innate internal right and to external rights acquired by an act. Thus, the action or maxim of action that consists in snatching an apple from someone's hand cannot coexist with the freedom of my choice in accordance with a universal law. It contradicts the axiom of right. From this it follows analytically that I have a natural right to resist physically the above-mentioned action, that is, to defend physically what is physically mine.

Let us consider now the second case, where the predicate "mine" means "intelligibly mine." In this case, the proposition "this external object is mine" is synthetic *a priori*. It is *a priori* because it employs a term from pure practical reason, "intelligibly mine," which does not have any immediate meaning in sensation. It is *synthetic*, because it cannot be derived from the axiom of right, that is, from the definition of the concept of rightfulness (*Doctrine of Right*, 6:250). The axiom of right does not allow us "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" (6:247; my italics). The possibility of stating that an external object is mine in the merely intelligible sense raises a presumption of right, which, because it is *a priori*, intends to be understood as universally valid and necessary, but because it is *synthetic* still needs to be *justified*. So the *fundamental task* of Kant's *juridical semantics* comes to be determined more precisely as follows: "how is a [basic] synthetic *a priori* proposition about right possible?" (6:249).²⁹ As we shall see, this task essentially boils down to that of establishing the possibility of a single *a priori* concept used in propositions of this type: that of intelligible possession.

The Nature of the Problem and the Solution Procedure

It helps to recall here some crucial distinctions of Kant's theory of the proof of *a priori* synthetic propositions in general. First, the problem of proving the possibility of propositions of this type is different from that of assuring its

validity. In the former case, one asks for "conditions of possibility," that is, conditions under which it may or may not be valid. In the latter, one decides based on those conditions that of these two exclusive possibilities is realized: for theoretical propositions, whether they are true or false; for practical propositions, whether or not they hold. In that context, Kant's goal is merely to prove the possibility of propositions of the type "this external object is mine"—that is, to establish that they *can* hold a priori and that lawgiving is therefore possible on the basis of them—and not to decide whether they actually hold. Second, the conditions of possibility and decidability considered by Kant are always defined for a realm of sensible data and are thus objective: those of the synthetic a priori theoretical judgments for the realm of objects of experience, and those of the synthetic a priori practical judgments for the realm of actions performable by free human agents. Hence, the *possibility* or *validity* sought (and sometimes proved) are also said to be "objective."

The method used by Kant for solving the problem of the objective possibility of synthetic a priori propositions about right—the only ones that interest us here—is analogous to the one employed in the first *Critique* for proving the objective possibility of the principles of the understanding. In both cases, at the core of the procedure is the proof that the a priori concepts employed in these propositions—the categories, in the principles of the understanding; the concept of intelligible mine, in the basic propositions of the *Doctrine of Right*—are objectively possible. According to the general thesis of Kant's semantics of pure concepts, restated in the *Doctrine of Virtue*, logical consistency is not enough to assure the objective reality of a concept (see *Doctrine of Virtue*, 6:382). This requires showing the real possibility of the thing designated by the concept, that is, its referent, by giving a real definition of the concept. In the first *Critique*, Kant does so with respect to the categories in two steps: first, their transcendental deduction, and then their transcendental schematism. In the *Doctrine of Right*, Kant again proceeds in two steps: he first deduces the a priori objective possibility of intelligible possession and then offers a procedure for its application to the domain of actually performable actions.³⁰ This two-step procedure is analogous, but not at all identical—as will become clear in what follows—to the two-step procedure used in the first *Critique* (transcendental deduction and schematism of the categories).

The Postulate of Right

Kant deduces the concept of intelligible possession by showing that its objective possibility (practical-juridical objective reality) is an "immediate consequence" of the postulate of right of practical reason: "The possibility of

this kind of possession, and so the deduction of the nonempirical concept of possession, is based on the postulate of practical reason with regard to rights" (*Doctrine of Right*, 6:252). In one of its formulations, this postulate says: "It is possible for me to have any external object of my choice as mine" (6:250). Here the term "possible [*möglich*]" has the practical meaning of "allowing," since the postulate of right conveys a moral capacity or faculty for unilaterally *laying* obligations upon anyone else with whom I might freely interact. Kant calls the postulate of right a permissive law (6:247, 276). The same point is detailed in the observation: "This prerogative arises . . . 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" (*Doctrine of Right*, 6:257).

The postulate that allows for unilateral coercion is neither a command (*lex praeceptiva*) nor a prohibition (*lex prohibitiva*, *lex vetiti*), but rather an authorization or permission (*lex permissiva*).³¹ As a permissive law, the postulate renders private possession rightful for practical reason, imposing the duty to respect the rightful acts by means of which we secure the private possession of the external objects of free choice (*Doctrine of Right*, 6:250).³² This component of the meaning of the postulate is explicit in another formulation, which says that "it is a duty of right to act towards others so that what is external (usable) could also become someone's" (6:252).³³ 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" (6:247).³⁴

If the concept of "having as mine" is interpreted in an empirical sense, in which "mine" means "physically mine"—mine in certain spatio-temporal conditions—the postulate of right is an *analytic* proposition, not to mention what the postulate of right already says, which, as we have seen, is also an analytic proposition. In fact, if what is in my physical power to use could not also be in my rightful power, 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*" (*Doctrine of Right*, 6:246). But, Kant goes on, practical reason lays down only formal laws as the basis for using choice and with respect to an object of choice "it can contain no absolute prohibition against using such an object, since this would be a contradiction of our outer freedom with itself" (6:246).

However, if the predicate "mine" is understood in the sense of intelligible possession, the postulate of right "could not be got from mere concepts of right as such" (*Doctrine of Right*, 6:247). It says something new that *extends* the use of practical reason, and must therefore be considered as a synthetic *a priori* proposition.³⁵

Deduction of the Possibility of the Concept of Intelligible Possession

The objective reality of the concept of intelligible possession is an immediate consequence of the postulate of right in its synthetic a priori sense. Kant's argument consists of a single sentence, set up as a hypothetical: "For if it is necessary to act in accordance with that principle of right, its intelligible condition (a merely rightful possession) must then also be possible" (*Doctrine of Right*, 6:252).

In this context, the phrase "principle of right" designates the postulate of right, so that the antecedent of the hypothetical sentence above speaks of the need to act in accordance with the postulate of right. Likewise, the phrase "intelligible condition," which occurs in the consequent of the deduction, is not saying that something might condition intelligible possession, but rather that the possession is implied by the need to act in accordance with the postulate.

This deduction procedure differs in several important points from the one employed by Kant in the transcendental deduction of the categories. The proof of the objective validity of the a priori concepts of the understanding in the realm of sensible objects, offered in the first *Critique*, consists of showing by conceptual analysis that these concepts are a necessary condition of the objective validity of synthetic judgments in general.³⁶ Kant found this solution by asking for the possibility of synthetic a priori judgments in pure mathematics (Euclidean geometry) and natural science (Newton's physics), considered as *facta* or products of pure theoretical reason (*Prolegomena*, 4:275). Although their validity is undeniable, these judgments are themselves still contingent.³⁷ The concept of intelligible possession, on the other hand, is deduced by showing that its objective validity in the realm of acts performable by human beings is implied by the objective validity of an a priori practical judgment—namely, the postulate of right, recognized not as a contingent deed of the likewise contingent pure speculative reason, but rather as an *imposition* of the lawgiving will of pure reason on free human agents. The difference between the two deductions can be presented as follows: theoretical reason does not want anything, but merely renders possible the intelligibility of Euclidean geometry, and also its a priori truth for our cognitive apparatus; on the other hand, practical reason does want something, namely, for "merely rightful" possession to be practicable, but it does not warrant the intelligibility of such a practice. It merely warrants the claim that by not allowing for the possibility of intelligible possession we would be contradicting what reason wants and, in *this practical sense*, we would be irrational. "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" (*Doctrine of Right*, 6:255).

On the other hand, the deduction procedure for the objective practical reality of intelligible possession is strongly reminiscent of the one by which Kant established the same result for the concept of freedom in the second *Critique*: the objective practical reality of freedom is there also established as an immediate consequence of a law, namely, the moral law, considered as an a priori imperative.³⁸ In both cases, the deduction does not show the intelligibility of the concept deduced, but merely its practical possibility.³⁹ Kant himself emphasizes this parallel by saying that no one needs to be surprised by the fact that the remarks about objects that are "mine or yours get lost in the intelligible . . . since no theoretical deduction can be given for the possibility of the concept of freedom, on which they are based. It can only be inferred from the practical law of reason (the categorical imperative) as a fact of reason" (*Doctrine of Right*, 6:252). This observation is particularly instructive, since it highlights the reach of a deduction technique that is essentially different from the one used in the first *Critique* and was applied for the first time in the *Critique of Practical Reason* for the idea of freedom. Later it was employed in various works, including the *Critique of the Power of Judgment* and the *Metaphysics of Morals*.

Despite the parallel indicated, there is an important difference between the deduction of the objective reality of freedom, based on the moral law, and the deduction of intelligible possession, in the context of the postulate of right. The moral law is a categorical imperative or postulate. It says that "one ought absolutely to proceed in a certain way" (*Practical Reason*, 5:31), commanding that our actions be ruled by universal maxims. The postulate of right is also a problematic imperative (not a categorical imperative) in the sense of being compatible with a merely possible practical reason (see *Practical Reason*, 5:11 note). As a permissive law only, it does not command us, but merely opens up an a priori space for a certain way of life.⁴⁰ Thus, the imperative of right does not generate a fact (*factum*) of reason, as the moral law does, but allows for these facts to be generated by rightful external actions, that is, actions whose maxims can be made compatible with each other in accordance with a universal law.⁴¹

This difference can only be properly appreciated in the context of a more detailed reconstruction of Kant's concept of *facticity of reason*. I emphasize here two points of that reconstruction, which are particularly illuminating. First, one should consider Kant's distinction between the *facta* of theoretical reason, which I have just mentioned, and the "sole fact of pure reason," defined in the second *Critique* as the consciousness of being internally coerced to act in accordance with universal maxims, consciousness that is identical to being obligated by the moral law (*Practical Reason*, 5:31). This

distinction, in its turn, needs to be analyzed in light of the later Kant's thesis that the theoretical faculty of the human being, though not the *faculty of moral self-obligation*, can very well be a "quality of a living corporeal being," and that we cannot decide either by experience or by pure reason alone whether life is a "property of matter." In moral relationships, however, "the incomprehensible property of *freedom* is revealed by the influence of reason on the inner lawgiving will" (*Doctrine of Virtue*, 6:418). The subjects of these relationships are not bodies and souls, that is, men as sensitive beings characterized by natural properties and belonging to an animal species, but rather men as beings of reason.

Second, one ought to distinguish between the fact of reason, as defined in the second *Critique*, and the facts of reason that comprise valid a priori juridical lawgiving acts or the external actions that follow from them (that which man as a free being—that is, influenced by practical reason—*makes of himself*). The set of *these* facts make up the object of the a priori history of the human race, which is essentially a history of moralizing rationalization and not one of technical-practical rationalization.

Rules for Applying the Concept of Intelligible Possession

The deduction of the concept of intelligible possession showed *that*, given the postulate of right, that concept is objectively possible, but it did not specify *how* the concept can be *applied* to the realm of human praxis.⁴² So as to assure the possibility of lawgiving about what is mine or yours using propositions of the type "this external object is mine," one needs to identify the procedures by which it is possible to render *practically real* the relation or link between my will and the external object in question, which is thought a priori by means of the concept of intelligible possession. Only thus can the *Doctrine of Right* go beyond the presuppositions of practical reason and show itself fruitful as a guide for human action (see *Doctrine of Right*, 6:242).

Given that the concept of rightful possession is an a priori concept of *reason*, it "cannot be applied *directly* to objects of experience and to the concept of empirical possession" (*Doctrine of Right*, 6:252). In other words, it cannot be schematized in the same way as the categories of the theoretical understanding. Since it is impossible to find a *direct* and *adequate* sensible reference for the concept of noumenal possession, one ought to conclude that this concept is *empty* of any content and has no objective practical reality. Following Kant, one ought not to try to find a less direct or only partially adequate procedure for assuring its applicability to human acts.

Overall, Kant's solution comprises a new *schematization by analogy*. The concept of intelligible possession needs first to be referred, also a priori, to

an intermediate concept—the concept of having—which belongs to the *theoretical* understanding, whose object is something external to myself and under my coercive control (*Gewalt*). If I *subsume* the concept of intelligible theoretical possession under the concept of intelligible practical possession, or inversely, if I *interpret* the latter in terms the former, then my statement that an external object is merely rightfully mine—for example, that this land is merely rightfully mine, whereby I presume that it is effectively mine, even when I do not physically occupy it—means that I find myself in “an intellectual relation to an object insofar as I have it *under my control* (the understanding’s concept of possession independent of spatial determinations)” (*Doctrine of Right*, 6:253). Thus, the practical objective reality of the concept of intelligible possession is warranted by its applicability to the *realm of physical causal actions* theoretically thought. Kant writes:

It is precisely in this—in the fact that, *abstracting* from possession in the appearance (of detention) of an object of my choice, reason wants possession to be thought in accordance with the concepts of the understanding, not empirical ones, but rather those that contain *a priori* its conditions—where the ground of the validity of such a concept of possession (*possessio noumenon*) as a universal legislation; since that legislation is contained in the judgment “This external object is *mine*.” (*Doctrine of Right*, 6:253)

Now, like any other *a priori* concept of the understanding, the concept of coercive control (or coercive cause) also admits, at least in principle, of being applied to empirical concepts, for example, to the concepts that designate my *physical-empirical causal power* over an external object, such as the power of my weapons. Hence, the *a priori* juridical concept of rightful possession becomes applicable to the realm of actions (effectively) performable, thus assuring, albeit indirectly and only by means of an analogy, the practical objective reality of the synthetic *a priori* basic proposition of the metaphysics of morals in the realm of sensible human acts. The problem of the effective applicability of practical reason’s concept of intelligible possession—which must not be confused with the problem of the deduction of that same concept, analyzed above—essentially boils down to that of the effective applicability of the theoretical understanding’s concept of coercive control. Juridical *a priori* lawgiving over what is mine or yours can be interpreted and applied in terms of laws for the use of our coercive control, thought in practical-technical empirical terms.

In part 2 of the “Doctrine of Private Right”—from the first half of the *Doctrine of Right* (§§10–31, 6:258–86)—Kant devotes himself precisely to the task of identifying the empirical procedures (effectively taking possession, use of individual force or armed forces, contract, positive laws prior to a public constitution, etc.) whereby we acquire and exert rightful possession

over various types of external objects. These same procedures are also used as *instruments of proof*, that is, for deciding what is rightfully mine or yours. As an illustration, I mention Kant's thesis that in the state of nature—therefore prior to the establishment of a civil constitution based on reason and on coercive control by the state—I cannot rightfully claim that an object is mine if I cannot physically defend it. The high seas, for example, cannot be said to be mine given that they are beyond the reach of my guns (*Doctrine of Right*, 6:265).

The schematization of the concept of intelligible possession is similar, but not identical, to the one offered for the concept of universal reciprocal external coercion (see section 4 above). The similarity lies in the fact that in both cases the juridical concepts of practical reason are interpreted by causal concepts (causal relations) of the theoretical understanding. The difference is in the choice of the latter: the concept of reciprocal coercion is symbolically schematized by the category of community (reciprocal, circular causality) and that of intelligible possession by the category of causality (unilateral, linear). This difference brings about a new problem: how can I be *sure* that everyone else will recognize the rightfulness of my unilateral act and behave accordingly?

Kant's answer begins with the observation that the judgment whereby I state that something external is merely rightfully mine contains a reciprocal obligation that "arises from a universal rule" (*Doctrine of Right*, 6:256). However, since a unilateral act of the will about an external possession—an accidental act therefore—cannot on its own serve as coercive law for all, we have to understand that "it is only a will putting everyone under obligation, hence only a collectively general (common) and powerful will, that can provide everyone this assurance" (*Doctrine of Right*, 6:256).⁴³

Now, the only mode of social organization in which there is lawgiving accompanied by a universal external (i.e., public) power is the civil state. Therefore, only in a civil state can there safely be a mine and a yours, without both entailing war. Before the establishment of a social organization based on a public legislation, that is, a civil constitution, my intelligible possession of an external object remains legally *provisional*, and only becomes *permanent* after the effective realization of a state of right. When that happens, my unilateral act begins to be thought of as "included in a will that is united *a priori*" (*Doctrine of Right*, 6:263), or yet as proceeding "from practical reason" (6:259). So the permission, given by the postulate of right to human subjects, allowing each to have as one's own any and all objects of external use implies an additional permission 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" (*Doctrine of Right*, 6:256).

Toward an A Priori Politics and History

This same a priori permission had been formulated by Kant already in 1795, in a note to the first definite article of peace in *Toward Perpetual Peace*. Given that the state of nature is a state of war, whoever remains in a state of nature "wrong[s] me just by being near me in this condition," for the lack of legislation is a permanent threat to me. For this reason, "I can coerce him either to enter with me into a condition of being under civil laws or to leave my neighborhood" (*Perpetual Peace*, 8:349 note). This permission is formulated by Kant in the following "postulate": "all men who can mutually affect one another must belong to some civil constitution" (8:349 note).

As with the postulate of right that establishes duties of right or legal duties, this new postulate, which we might call Kant's *fundamental political postulate*, not only states a permission, but also a duty, namely, the basic *political duty* to all people, expressed in the formula: "a people is to unite itself into a state in accordance with freedom and equality as the sole concepts of right" (*Perpetual Peace*, 8:378). A politics developed on this "communitarian" basis according to a social contract, will be necessarily linked to the concept of right, and will essentially be "the *Doctrine of Right* put into practice" (8:370). Thus conceived, politics will always be a *moral politics*, where morality is understood according to the *Doctrine of Right* (*Perpetual Peace*, 8:384). It is clear that the maxims of this politics cannot be extracted from empirical expectations about the well being or happiness of the citizens, but must be issued from "the pure concept of duty of right (from 'I ought,' the principle which is given *a priori* by pure reason" (8:379). This case is precisely that of the three definite articles for perpetual peace. They all state duties, namely, *political-juridical duties*. They are justified by considerations that refer to Kant's 1797 *Doctrine of Right*, and to follow them is to promote the establishment of perpetual peace internationally.

Thus one opens the door to "a politics cognizable *a priori*" (*Perpetual Peace*, 8:378). What does it mean here to be able to cognize a politics *a priori*? According to the interpretive line of Kant's critical project adopted here, it means to establish a priori the possibility and validity of the fundamental principles of politics, and to warrant the possibility of carrying them out by means of pragmatic-anthropological considerations. The first task unfolds into two: (1) showing that the principles of the *Doctrine of Right* required by political theory are not "empty thought" (8:372); and (2) showing the same for the maxims of politics itself, and especially making evident that the definite articles for perpetual peace are possible and therefore that the idea of perpetual peace is not "ineffectual," but rather a *humanly performable task*.⁴⁴

In both cases, the problem is the same: showing that the principles in question "can be carried out" (*Perpetual Peace*, 8:380). Kant moves toward his solution, indicating the fact that "the moral principle in the human being

never dies out, and reason, which is capable of pragmatically carrying out rightful ideas in accordance with that principle, grows steadily with advancing culture" (8:380).⁴⁵ Thus, there is a "well-founded hope" that the successive attempts at creating a state of perpetual peace "comes steadily closer to its goal (since the times during which equal progress takes place will, we hope, become always shorter)" (8:386).⁴⁶

These theses about the possibility of accomplishing the task of establishing perpetual peace, defined in terms of the *Doctrine of Right*, anticipate an answer to another necessary question of practical reason: how is an a priori history possible? This inquiry, which was explicitly raised by Kant for the first time in *The Conflict of the Faculties* (1798a, 7:172), can be reformulated as follows: does the human race (as a whole) constantly advance toward the better? "Better" here is thought in terms of right, that is, as a quality of a civil constitution comparatively more agreeable to the interests of practical reason. The answer to this question is not only possible, but can be phrased as a "divinatory historical narrative of things imminent in future times," therefore, Kant adds, "as a possible representation [*Darstellung*] of events which are supposed to happen then" (*Conflict*, 7:72). To the narratives that anticipate the future, one can add the ones about the past and the present (7:84). The a priori history sought by Kant consists therefore of *narrative judgments that anticipate, recall, and observe*, all of which are grounded on the following *fundamental judgment* of Kant's theory of history: "the human race has always been in progress toward the better and will continue to be so henceforth" (7:88–89).

Here one must necessarily face the central question of Kant's critical philosophy of history: how are synthetic a priori judgments about history possible?—a semantic question that becomes ipso facto, the *fundamental problem* of Kant's theory of history. The point here is to find out, first of all, whether the fundamental a priori judgment about history just mentioned is possible—and, if it is possible, how it can be proved. That fundamental judgment, as one can easily see, is not theoretical, moral, juridical, or reflecting. According to the basic rule of transcendental semantics, the proof of the possibility of that judgment requires that it be referred to a sensible experience. It is precisely this demand that Kant reaffirms in the title of section 5 of the *Conflict of the Faculties*: "Yet the Prophetic History of the Human Race Must be Connected to Some Experience." At the very beginning of this section, Kant clarifies what he means by this type of experience: "There must be some experience in the human race which, as an event, points to the disposition and capacity of the human race to be the cause of its own advance toward the better, and (since this would be the act of a human being endowed with freedom), to the human race as being the author of this advance" (*Conflict*, 7:84). The author of such an advance is conceived by Kant as having an

a priori tendency—in particular, a tendency to establish republican constitutions—which can be seen not in individuals, but in the human race *as a whole*. Here we have a new concept within Kant's practical philosophy. It is a concept that has a mixed nature, since it designates on the one hand the noumenal cause that authors political-juridical progress (namely, the collective rational will, which has universal coercive power) and, on the other hand, the concrete ways in which this cause manifests itself in factual history. The former component of this mixed concept is an important addition to the metaphysics of morals; the second, to pragmatic anthropology. The concept is developed in the last part of Kant's *Anthropology*—published in the same year as *The Conflict of the Faculties*—where Kant deals with the fundamental character traits of the *human species*. There we read that humanity, as a species, due to its rational nature has a tendency “some day to bring about, *by its own activity*, the development of good out of evil” (*Anthropology*, 7:329; my italics).⁴⁷ This is why Kant can say, in *The Conflict of the Faculties*, that an *a priori* history is possible “if the diviner himself makes and contrives the events which he announces in advance” (*Conflict*, 7:80), which is a thesis that makes of this kind of development a *self-fulfilling prophecy*.

Hence, “an occurrence must be thought which points to the existence of such a cause and to its effectiveness in the human race, undetermined with regard to time” (*Conflict*, 7:84). Could there be an event that satisfies these conditions? Yes, there is, says Kant: it is the way in which world public opinion experienced the achievements of the French Revolution. That experience consisted in the “wishful participation that borders closely on enthusiasm” (7:85).⁴⁸ The jubilation with which the human race received the development of the republican constitution, revealed by the events in France that marked the end of the eighteenth century, is the sought “*demonstrative sign*” of the “tendency of the human race viewed in its entirety” (Kant no longer says “of the human being”) to advance toward what is morally and juridically better. This *experience* is at the same time an “*of remembrance sign*”—which allows us to say, based on other *political-juridical deeds*, that humanity has forever advanced in that way—and a “*prognostic sign*,” since it authorizes us to predict *a priori* that it will continue advancing likewise (7:84).

Kant manages here a decisive step forward for his semantics of *a priori* judgments about politics and history: not because he introduced the abstract idea of unified general will—that step had already been taken in the *Doctrine of Right*—but because he elaborated the idea of a *sensitized general will*, more precisely of the concept of a *collective subject for history*, characterized by a *tendency* toward what is morally and juridically better. This collective subject has not only purposes and capacities for action but also other faculties that were up until then commonly reserved exclusively to individuals,

such as memory: the achievement of a republican constitution by the French people is a phenomenon in human history that “*will no longer be forgotten*” (*Conflict*, 7:88). The possibility of a priori politics and history can then be warranted by the application of concepts and judgments of these two disciplines to the realm of sensible data comprising what the human race can do and cease doing.⁴⁹ When not only individuals but also organized groups and even humanity as a whole, living on the terrestrial globe as an actual collective subject, begins to *do* for a priori reasons what public opinion considers *should* happen, when a *universal movement* demands that our legal and political duties be obeyed, then not only the fundamental judgment about history becomes possible, and even demonstrable, but also all narrative synthetic a priori judgments that anticipate a priori real events as outcomes of the progress toward the better (for example, the lessening of violence between individuals and peoples, the raising of social welfare, etc.).

These indications suffice, I believe, to make evident that the judgments about history, whose semantics were sketched by Kant in 1798, comprise a class of its own of a priori judgments, because they differ substantially from foretelling and prophetic judgments—unacceptable in any doctrine that intends overcome Kant’s criticism—as well as all other classes of a priori judgments, either theoretical-predictive, moral-determining, juridical-law-giving, or even reflecting, whose semantics had been laid out by Kant in prior works.⁵⁰ Assuring the “sense and meaning” of this new type of a priori judgment not only allows for setting up history as an a priori doctrine, but also opens up new perspectives for a rereading of Kant’s political philosophy from the perspective of his philosophy of history.

Practical Philosophy within the Bounds of the Critical Project

The analysis that I have just presented allows for an interesting retrospective on the path followed by Kant in search of a formulation and resolution of the problems of the metaphysics of morals within the framework of his critical project, that is, from the question: how are synthetic a priori judgments in general possible? In both the 1781 and 1787 editions of the *Critique of Pure Reason*, practical philosophy is left completely out of the project of transcendental philosophy and the problem of the possibility of synthetic a priori practical judgments is not even formulated (*Pure Reason*, B833). In the 1784 essay *Idea for a Universal History with a Cosmopolitan Aim*, the history of the human race is conceived as a natural history, therefore without any connection to a theory of a priori practical judgments. The *Groundwork for a Metaphysics of Morals* is the first work in which Kant explicitly formulates the problem of the possibility of synthetic-practical a priori judgments (*Groundwork*, 4:420), but it is generally recognized that he fails to solve it, in

part because he sought the answer by having recourse to metaphysical considerations in studying the "practical rational faculty" in human beings. The solution only comes up in the *Critique of Practical Reason* (1788), and consists of the thesis that the consciousness of the need that our will has for the moral law—a need that binds us to act in accordance with universal maxims—is sufficient factual or sensible evidence for the effectiveness of that law, and therefore also of its possibility. In the 1795 essay *Toward Perpetual Peace*, this kind of approach, which replaces ontological-material considerations with questions about the performability of actions governed by practical concepts, comes progressively to the forefront in the treatment of topics of political philosophy. In the *Doctrine of Right*, published a couple of years later, the general line of investigation is directed precisely at questions about whether pure practical concepts of right can be interpreted by pure theoretical concepts of the understanding (concerning the use of physical force). It is also directed toward the practical *application* of the pure practical concepts of right by means of pure schemata, and to providing empirical examples of the latter. The same shift in Kant's focus from the field of ontology to that of semantics can be observed in Kant's theory of history, tightly connected to the theories of natural right and politics, with the difference that in this case the domain of interpretation is not the set of acts of individuals but rather the human race.⁵¹

This *semantic turn* in approaching the questions of the metaphysics of morals also allows the later Kant to solve, in a novel manner, questions relative to the unity of the *system* of critical philosophy. The problem of the compatibility between nature and freedom, for example, does not remain open, as it had in the first *Critique*, nor does it remain confined to merely reflecting judgments, as in the third *Critique*, but instead receives a solution that is at once rational and sensitized, in terms of the theory of the *physical* performability of a priori principles of *moral* politics. This is a theory that was first presented, as I have shown, in *Toward Perpetual Peace*, and completed in *The Conflict of the Faculties*.

Notes

1. See *Critique of Pure Reason*, B869; and *Doctrine of Right*, 6:218.
2. See also *Doctrine of Right*, 6:219 note. From the standpoint of the source of the obligation, moral lawgiving can be either juridical or ethical. The source of the obligation is external coercion in the former, and internal coercion in the latter. Hence, juridical lawgiving concerns merely the external use of choice, whereas ethical lawgiving applies both to the internal and the external use (internal and external actions) of choice. See *Doctrine of Right*, 6:218.
3. Acts of free choice can be regarded from a formal standpoint and from the standpoint of their goals. Accordingly, the metaphysics of morals is divided into a

Doctrine of Right and a doctrine of virtue or ethics. The former has to do merely with "the formal condition of choice that is to be limited in external relations in accordance with laws of freedom" (*Doctrine of Virtue*, 6:375). Ethics, on the other hand, "provides a matter (an object of free choice), an end of pure reason" (6:380).

4. In Kant's practical philosophy, the concept of an act of choice plays the same role as the concept of object in "ontology," or theoretical philosophy: just as in the latter, objects are sorted out as "something" or "nothing" (*Etwas und Nichts*), so too practical philosophy begins by distinguishing the acts of free choice that conform to the laws of freedom from those that do not (*Doctrine of Right*, 6:219 note).

5. According to the *Jäsche Logic*, in a judgment (*Urteil*) "the relation of various representations to the unity of consciousness is thought merely as problematic," whereas in a proposition (*Satz*) it is "assertoric" (§30, 9:109). In most contexts, however, Kant does not seem to stick to this distinction between judgments and propositions, but rather uses the two terms interchangeably. In this paper, I merely follow the established translations of the passages I am commenting, and employ either the term "judgment" or "proposition" accordingly.

6. In Kant's later practical philosophy (see *Perpetual Peace* and especially *Conflict*), that which is thought to secure perpetual peace is not nature or providence, as it had been in previous texts (see *Idea for a Universal History*), but rather the human race's acceptance of the moral-juridical duty of living in peace—an acceptance that is sensitized by the enthusiasm for the progress toward a republican constitution that was achieved during Kant's time.

7. All empirical judgments are by definition possible.

8. The term "reality" here means "content," so that the phrase "objective reality" is synonymous with "objective content," that is, sensible content. Objective reality can be theoretical (contents accessible in the realm of objects of possible experience) or practical (actions performable by a free human agent). Objective reality is not always actual, so we may distinguish between the objective reality and the actuality of a concept or judgment. Within proof contexts, this distinction plays an essential role.

9. For a concept or some other theoretical knowledge to be possible, logical consistency is not enough. It must also have objective reality, that is, "be related to an object, and . . . have significance and sense in that object." Thus, "the object must be able to be given in some way," that is, it must be givable (*dabile*) in the realm of possible experience (*Pure Reason*, B194).

10. On the synonymy of practical possibility, practical objective reality, and performativity, see, for example, *Judgement* (5:457, 472, and 474), *Perpetual Peace* (8:356, 371, and 380), *Doctrine of Right* (6:246), and *Doctrine of Virtue* (6:405).

11. See Zeljko Loparic, "Sobre a interpretação de Rawls do fato da razão," in *Justiça como Equidade*, ed. Sônia Felipe (Florianópolis: Insular, 1998), 73–85; "O fato da razão: Uma interpretação semântica," *Analytica* 4 (1999): 13–55; "Acerca da sintaxe e da semântica dos juízos estéticos," *Studia Kantiana* 5 (2001): 49–90; and *A semântica transcendental de Kant*, 2nd ed. (Campinas: CLE, 2002).

12. In Kant, the solution to the problem of semantic possibility is a condition for the solution of the problem of decidability or demonstrability (see Loparic, *Semântica transcendental*, chapter 1).

13. These theses are presented and argued for in greater detail in Loparic, "O fato da razão" and *Semântica transcendental*.

14. Kant is here, in the context of the theory of right, returning to his doctrine of the natural antagonism between free human agents, which was worked out prior to the *Metaphysics of Morals*. See, for example, *Idea*, Proposition 4 (8:20–22).

15. The concept of a "rightful action," sought by Kant, is thus not a wholly abstract a priori concept, since it refers to actions as anthropological *facta* of the type mentioned above. But is it not merely a posteriori either, since it refers to *free* actions, and the concept of freedom is the one that is proved to be practically real by the moral law. It is a mixed concept, which has both a priori and a posteriori marks, much like some theoretical concepts, such as the concept of change (or movement). In the second edition of the first *Critique*, Kant writes: "Among a *priori* cognitions, however, those are called **pure** with which nothing empirical is intermixed. Thus, e.g., the proposition 'Every alteration has its cause' is an a *priori* proposition, only not pure, since alteration is a concept that can be drawn only from experience" (*Pure Reason*, B3).

16. A similar definition of right can be found in Kant's *Theory and Practice* (8:289–90). However, in this passage both the principle of universal reciprocal coercion and the postulate of right (see below) are yet to be stated.

17. For this reason, the universal principle of right is also called the "principle of all maxims" of law (*Doctrine of Right*, 6:231; see also *Doctrine of Virtue*, 6:283).

18. The "principle of all maxims" of right can also be formulated as a *command*: "so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (*Doctrine of Right*, 6:231). This command, also called the "universal law of right" or "postulate of right," differs from the categorical imperative of ethics in at least two points. First, whereas the moral law asks me to act according to duty, the principle of all maxims of right does not demand that I *should* restrict my freedom by the maxims of right, but says merely that "freedom is limited to those conditions in conformity with the idea of it may also be actively limited by others" (*Doctrine of Right*, 6:231). Second, the maxims of rightful action do not have to be, as ethical maxims themselves do, principles of universal lawgiving, but merely compatible with a universal law of practical reason.

19. In the first edition of the *Critique of Pure Reason*, this principle is called the "principle of community" and formulated as follows: "All substances, insofar as they are **simultaneous**, stand in thoroughgoing community (i.e., interaction with one another)." This is also the Kantian version of Newton's third law, of action and reaction (cf. *Pure Reason*, B256–62).

20. In Kant's semantics of theoretical concepts, the model for schematizing is the construction of concepts in pure intuition, as practiced by mathematicians since antiquity (see *Pure Reason*, B299; *Doctrine of Right*, 6:208 note).

21. On this point, see, for example, *Judgment* (§59, 5:351–54).

22. Kant's theory of the systemic use of theoretical ideas is presented in Loparic, *Semântica transcendental*, chapters 8–9.

23. One could add, as Kant occasionally does in the *Doctrine of Right*, another way of sensitizing this same concept, which considers the fact that human beings cannot but "interact" with other human beings (see *Doctrine of Right*, 6:312).

24. It is interesting to note that, according to Kant, there are cases in which we assume a right without explicit coercion and coercion without a right, so that no judge can decide on them (see *Doctrine of Right*, 6:234).

25. See *Doctrine of Right*, 6:249 and 252. Hence, for Kant there are various definitions of the concept of freedom, and we have to determine clearly in each context which of them is being used.

26. According to Kant, it is not correct to say that I possess an innate right to freedom, since the fundamental right "is already an intellectual possession," and to speak of possessing a possession "would make no sense" (*Doctrine of Right*, 6:249).

27. Kant calls the object of a rightful possession a "*Sache an sich selbst*" and not a "*Ding an sich selbst*." The latter is more characteristic of his critique of theoretical reason.

28. This same difference between surface syntax and deep syntax can be seen in other cases as well, for example, in theoretical judgments (see Loparic, *Semântica transcendental*, chapter 6) and in judgments of taste (see Loparic, "Acerca da sintaxe").

29. Obviously, the same question needs to be raised and answered with regard to all other synthetic a priori propositions about right before they can be included in the *Doctrine of Right*.

30. Because we are dealing here with an a priori concept of *practical* reason, we must "apply mine and yours to objects not in accordance with sensible conditions but in abstraction from them" (*Doctrine of Right*, 6:253). Thus, in the realm of *theoretical* possible experience, the objective reality of the concept of merely intelligible or rightful possession cannot be proved, or even understood (*Doctrine of Right*, 6:252; see also 6:255).

31. The same distinction is made by Kant in an important note to *Toward Perpetual Peace* (1795, 8:348), in which he calls the attention of juridical scientists to the systematic significance of the concept of permissive law. Kant returns to this point in the Introduction to the *Doctrine of Right* (6:223).

32. If the external object possessed is a corporeal substance, the possession is called property (*Doctrine of Right*, 6:270). However, the possession of services of other people and the actual possession of other people are not property.

33. From this postulate it follows analytically that it is contrary to right any 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*)" (*Doctrine of Right*, 6:246).

34. For now I will leave open the question whether this rational will is the one each of us has, or is to be thought as a general will, or as a natural human disposition. These alternatives are laid out explicitly by Kant.

35. Here the question whether and how the postulate of right can be justified remains open, when it is understood in the sense of a synthetic a priori proposition.

36. "The explanation of the possibility of synthetic judgments" is "in a transcendental logic . . . the most important business of all," says Kant in the first *Critique* (B193).

37. The circumstance that the *facta* of theoretical reason are contingent (*Pure Reason* B795), or due to chance, leaves open the way for skeptical doubts about

them. These doubts are only raised by the critique of reason, that is, by the study of the bounds of our cognitive capacities as such (B789).

38. Recalling the thesis presented for the first time in the *Critique of Practical Reason*, Kant says: "that such beings (we human beings) are still free the categorical imperative proves for morally practical purposes, as through an authoritative decision of reason" (*Doctrine of Right*, 6:281 note).

39. Even after it has been demonstrated to be practicably possible, and even practically actual, the concept of freedom could not "realize this thought, that is, could not convert it into cognition of a being acting in this way" (*Practical Reason*, 5:49).

40. Kant's use of the term "postulate" is inspired in Greek geometry (Euclid), where it designates an order or imperative to execute an action thought to be easily performable by everyone (see, for example *Pure Reason*, B285–87; and *Practical Reason*, 5:31). During the development of his critical program, Kant extended the concept of postulate so as to encompass propositions that postulate the possibility of objects or their properties, such as God and the immortality of the soul (*Practical Reason*, 5:11 note).

41. Kant's distinction between problematic and categorical (apodictic) imperatives is related to his considerations about the modality of practical propositions, which, on its turn, refer to the table of categories of practical reason, that is, to the "categories of freedom" (*Practical Reason*, 5:66).

42. Likewise, the transcendental deduction of the (theoretical) categories establishes only that they contain the "grounds of the possibility of all experience," and not how they render experience possible (*Pure Reason*, B167).

43. This point is of crucial importance, since it marks the passage from the theory of individual free choice to the theory of the general will. For another formulation of the same thesis, see *Doctrine of Right* (6:263).

44. The "realistic" aspect of Kant's political thought has been appropriately highlighted by other authors, although not in the context of the problem of the sense and meaning of political judgments. See, for example, Lewis White Beck, "Introduction" to Immanuel Kant, *Perpetual Peace* (Indianapolis: Bobbs-Merrill, 1957); Wolfgang Kersting, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie* (Frankfurt am Main: Suhrkamp, 1993); and José Heck, *Direito e moral: Duas lições sobre Kant* (Goiânia: Editora UFG, 2000).

45. The idea of a capacity or aptitude (*Tüchtigkeit*) of reason to influence human beings on the idea of the authority of the law, as if reason had a physically coercive power, which was made explicit in several other passages from *Toward Perpetual Peace* (see, for example, *Perpetual Peace*, 8:372 and 386), resumes, on the one hand, Kant's doctrine of the fact of reason presented in the *Critique of Practical Reason* and, on the other, paves the way for the *Metaphysical First Principles of the Doctrine of Virtue*, where virtue is defined as "the strength of a human being's maxims in fulfilling his duties" (*Doctrine of Virtue*, 6:394). I cannot therefore agree with Ricardo Terra when he says that in *Toward Perpetual Peace* Kant intends to assure peace from a reflecting-teleological perspective, or that "the admixture, in political judgments, of determining judgments with reflecting-teleological and aesthetic judgments marks that which is specific to the realm of politics" Ricardo Terra, "Juízo político e prudência em *À paz perpétua*," in *Kant e a Instituição da Paz*, ed. Valerio Rohden (Porto Alegre:

Goethe-Institut, 1997), 231. From the point of view of the theory of judgment, it is hard to understand what this type of "admixture" could mean.

46. In the light of this interpretation of Kant's practical philosophy, focused on its semantics of a priori practical judgments, Kant's political philosophy, as presented in *Toward Perpetual Peace*, acquires a consistency to which it had been denied by certain authors guided by different interpretative hypotheses. I have particularly in mind Hannah Arendt, *Das Urteilen: Texte zu Kants politischen Philosophie* (Munich: Piper, 1985), who underestimates the significance of Kant's philosophy of right for the understanding of political matters. She takes *Toward Perpetual Peace* to be a minor text, and refers to the aesthetic-teleological judgments of the third *Critique* for a reconstruction of Kant's political theory. On my interpretation, political life is conceived by Kant as "communitarian-juridical" or, alternatively, "juridically communitarian" (*gemeinschaftlich-gesetzlich*), in the sense that civil society ought to be grounded on maxims dictated by the collective rational will, which become sensitized as the human race constantly advances toward the better, as defined by the *Doctrine of Right*. On Arendt's interpretation, the communitarian nature of a politics such as Kant's would be based on a communitarian sense analogous to the aesthetic communitarian sense. My results are akin, however, to some more recent readings of Kant, such as Volker Gerhardt, *Immanuel Kants Entwurf "Zum ewigen Frieden": Eine Theorie der Politik* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1995).

47. This remark suggests the need for a history of Kant's pragmatic anthropology, which would take into account the advances of his remarks about the fundamental concepts of the metaphysics of morals and their applicability to human nature.

48. According to the *Doctrine of Virtue*, the affective participation in the promotion of good is an individual virtue that stems from practical reason (see *Doctrine of Virtue*, §34, 6:456). The "passionate participation on the good" that Kant speaks of in *The Conflict of the Faculties* (7:86) can only be considered to be a collective virtue, and attributed to a collective subject—this is a point that would therefore demand an extension of the metaphysics of morals of 1797.

49. The consequences of this shift in the domain of interpretation of judgments about history have escaped various commentators. Weil, for example, failed to retrace Kant's step that acknowledges humanity as a moral-juridical subject, and for that reason reserves the condition of a "moral subject" to individuals only. Eric Weil, *Problèmes kantien* (Paris: Vrin, 1982), 140. Philonenko—to mention another well-known commentator—objects that Kant remains in the field of historical utopias, alleging that even in Kant's later writings practical reason remained the *ratio cognoscendi* of divine Providence. A. Philonenko, *Études kantien* (Paris: Vrin, 1982), 72. Besides the incompatibility with the analyses presented here, Philonenko's thesis is irreconcilable with paragraph 4 of *The Conflict of the Faculties* and with everything else Kant said about the unavoidable failure of any philosophical attempts at producing a theodicy (see *Theodicy*).

50. The present reconstruction, which is merely programmatic, of the path Kant took in the elaboration of his practical philosophy uses essentially the same material analyzed by Ricardo Terra in *A política tensa: Idéia e realidade na filosofia da história da Kant* (São Paulo: Iluminuras, 1995). The latter is a work that offers a more doxographic approach, and contains a vast array of recent discussions on the topic. The

reader should note that certain divergencies both in the presuppositions—one of them pertaining to the nature of Kant's program for a critical philosophy—and in the results—one of them being the relevance of the problem of a priori synthetic-practical *judgments* for the development of Kant's practical philosophy and in particular of his theory of politics and history.

51. Here would be the place for asking also what Kant has to say about the possibility of an a priori pedagogy.