

THE PHILOSOPHY OF LAW

An Exposition

OF THE

FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE

AS

THE SCIENCE OF RIGHT.

BY

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Translated from the German

BY

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TRANSLATOR'S PREFACE.

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KANT'S *Science of Right*¹ is a complete exposition of the Philosophy of Law, viewed as a rational investigation of the fundamental Principles of Jurisprudence. It was published in 1796,² as the First Part of his *Metaphysic of Morals*,³ the promised sequel and completion of the *Foundation for a Metaphysic of Morals*,⁴ published in 1785. The importance and value of the great thinker's exposition of the Science of Right, both as regards the fundamental Principles of his own Practical Philosophy and the general interest of the Philosophy of Law, were at once recognised. A second Edition, enlarged by an

'But next to a new History of Law, what we most require is a new Philosophy of Law.'—SIR HENRY SUMNER MAINE.

¹ Rechtslehre.

² It appeared soon after Michaelmas 1796, but with the year 1797 on the title-page. This has given rise to some confusion regarding the date of the first Edition, which is now usually quoted as 1796-7. (Schubert, *Kant's Werke*, Bd. ix. viii., and *Biographie*, p. 145.)

³ Die Metaphysik der Sitten. Erster Theil. Metaphysische Anfangsgründe der Rechtslehre. Königsberg, 1797.

⁴ Grundlegung zur Metaphysik der Sitten. Translated by Willich (1798), Semple (1836), and Abbott (1873).

Appendix, containing Supplementary Explanations of the Principles of Right, appeared in 1798.¹ The work has since then been several times reproduced by itself, as well as incorporated in all the complete editions of Kant's Works. It was immediately rendered into Latin by Born² in 1798, and again by König³ in 1800. It was translated into French by Professor Tissot in 1837,⁴ of which translation a second revised Edition has appeared. It was again translated into French by M. Barni, preceded by an elaborate analytical introduction, in 1853.⁵ With the exception of the Preface and Introductions,⁶ the work now appears translated into English for the first time.

Kant's *Science of Right* was his last great work of an independent kind in the department of pure Philosophy,

¹ These Supplementary Explanations were appended by Kant to the *First Part* of the work, to which most of their detail more directly apply; but they are more conveniently appended in this translation to the whole work, an arrangement which has also been adopted by the other Translators.

² *Initia Metaphysica Doctrinæ Juris. Immanuelis Kantii Opera ad philosophiam criticam. Latine vertit Fredericus Gottlob Born. Volumen quartum. Lipsiæ, MDCCCLXXXVIII.*

³ *Elementa Metaphysica Juris Doctrinæ. Latine vertit G. L. König. Amstel. 1800, 8. (Warnkönig and others erroneously refer it to Gotha.)*

⁴ *Principes Métaphysiques du Droit, par Emm. Kant, etc. Paris, 1837.*

⁵ *Eléments Métaphysiques de la Doctrine du Droit, etc. Paris, 1853.*

⁶ The Preface and the Introductions (*infra*, pp. 1-58, 259-265) have been translated by Mr. Semple. See *The Metaphysic of Ethics* by

and with it he virtually brought his activity as a master of thought to a close.¹ It fittingly crowned the rich practical period of his later philosophical teaching, and he shed into it the last effort of his energy of thought. Full of years and honours he was then deliberately engaged, in the calm of undisturbed and unwearied reflection, in gathering the finally matured fruit of all the meditation and learning of his life. His three immortal Critiques of *the Pure Reason*² (1781), *the Practical Reason*³ (1788), and *the Judgment*⁴ (1790), had unfolded all the theoretical Principles of his Critical Philosophy, and established his claim to be recognised as at once the most profound and the most original thinker of the modern world. And as the experience of life deepened around and within him, towards the sunset, his

Immanuel Kant, translated by J. W. Semple, Advocate. Fourth Ed. Edited with Introduction by Rev. Henry Calderwood, LL.D., Professor of Moral Philosophy, University of Edinburgh. Edin.: T. & T. Clark, 1886.—These are indispensable parts of the present work, but they have been translated entirely anew.

¹ He ceased lecturing in 1797; and the only works of any importance published by himself subsequent to the *Rechtslehre*, were the *Meta-physische Anfangsgründe der Tugendlehre* in 1797, and *Der Streit der Facultäten* and the *Anthropologie* in 1798. The *Logik* was edited by Jäsche in 1800; the *Physische Geographie* by Rink in 1802, and the *Pädagogik*, also by Rink, in 1803, the year before Kant's death.

² *Kritik der reinen Vernunft*. Translated anew by Max Müller (1881).

³ *Kritik der praktischen Vernunft*. Translated by Abbott.

⁴ *Kritik der Urtheilskraft*. Translated into French by M. Barni.

interest had been more and more absorbed and concentrated in the Practical. For to him, as to all great and comprehensive thinkers, Philosophy has only its beginning in the theoretical explanation of things; its chief end is the rational organization and animation and guidance of the higher life in which all things culminate. Kant had carried with him through all his struggle and toil of thought, the cardinal faith in God, Freedom, and Immortality, as an inalienable possession of Reason, and he had beheld the human Personality transfigured and glorified in the Divine radiance of the primal Ideas. But he had further to contemplate the common life of Humanity in its varied ongoings and activities, rising with the innate right of mastery from the bosom of Nature and asserting its lordship in the arena of the mighty world that it incessantly struggles to appropriate and subdue to itself. In the natural chaos and conflict of the social life of man, as presented in the multitudinous and ever-changing mass of the historic organism, he had also to search out the Principles of order and form, to vindicate the rationality of the ineradicable belief in human Causation, and to quicken anew the lively hope of a higher issue of History. The age of the Revolution called and inspired him to his task. With keen vision he saw a new world suddenly born before him, as the blood-stained product of a motion long toiling in

the gloom, and all old things thus passing away; and he knew that it was only the pure and the practical Reason, in that inmost union which constitutes the birthright of Freedom, that could regulate and harmonize the future order of this strongest offspring of time. And if it was not given to him to work out the whole cycle of the new rational ideas, he at least touched upon them all, and he has embodied the cardinal Principle of the System in his *Science of Right* as the philosophical Magna Charta of the age of political Reason and the permanent foundation of all true Philosophy of Law.

Thus produced, Kant's *Science of Right* constituted an epoch in jural speculation, and it has commanded the homage of the greatest thinkers since. Fichte, with characteristic ardour and with eagle vision, threw his whole energy of soul into the rational problem of Right, and if not without a glance of scorn at the sober limitations of the 'old Lectures' of the aged professor, he yet acknowledges in his own more aerial flight the initial safety of this more practical guidance.¹ In those early days of eager search and high aspiration, Hegel, stirred to the depths by Kant, and Fichte, and Schelling, wrote his profound and powerful essay on the Philosophy of

¹ Fichte's *Nachgelassene Werke*, 2 Bd. *System der Rechtslehre* (1804), 498, etc. (Bonn, 1834.) Fichte's *Grundlage des Naturrechts* (1796), as he himself points out, was published before Kant's *Rechtslehre*, but its principles are all essentially Kantian. (Translated by Kroeger, Philadelphia, 1870.)

Right, laden with an Atlantean burden of thought and strained to intolerable rigidity and severity of form, but his own highest achievement only aimed at a completer integration of the Principles differentiated by Kant.¹ It was impossible that the rational evangel of universal freedom and the seer-like vision of a world, hitherto groaning and travailing in pain but now struggling into the perfection of Eternal Peace and Good-will, should find a sympathetic response in Schopenhauer, notwithstanding all his admiration of Kant; but the racy cynicism of the great Pessimist rather subsides before him into mild lamentation than seeks the usual refuge from its own vacancy and despair in the wilful caustic of scorching invective and reproach.² Schleiermacher, the greatest theologian and moralist of the Century, early discerned the limitations of the *à priori* formalism, and supplemented it by the comprehensive conceptions of the primal dominion and the new order of creation, but he owed his critical and dialectical ethicality mainly to Kant.³ Krause, the leader of the latest and largest

¹ Hegel's Werke, Bd. i. Philosophische Abhandlungen, iv. *Ueber die Wissenschaftlichen Behandlungsarten des Naturrechts* (1802-3); and the Grundlinien der Philosophie des Rechts, oder Naturrecht und Staatswissenschaft im Grundrisse (1821). Werke, Bd. viii. (*passim*). Dr. J. Hutchison Stirling's *Lectures on the Philosophy of Law* present a most incisive and suggestive introduction to Hegel's Philosophy of Right.

² Die beiden Grundprobleme der Ethik (1841), pp. 118-9.

³ Grundlinien einer Kritik der bisherigen Sittenlehre (1803). Entwurf

thought in this sphere—at once intuitive, radical, and productive in his faculty, analytic, synthetic, and organic in his method, and real, ideal, and historic in his product—caught again the archetypal perfectibility of the human reflection of the Divine, and the living conditions of the true progress of humanity. The dawn of the thought of the new age in Kant rises above the horizon to the clear day, full-orbed and vital, in Krause.¹ All the continental thinkers and schools of the century in this sphere of Jurisprudence, whatever be their distinctive characteristics or tendencies, have owned or manifested their obligations to the great master of the Critical Philosophy.

eines Systems der Sittenlehre, herausg. von A. Schweizer (1835). Grundriss der philosophischen Ethik, von A. Twisten (1841). Die Lehre vom Staat, herausg. von Ch. A. Brandes (1845).

¹ Grundlage des Naturrechts (1803). Abriss des Systems der Philosophie des Rechts oder des Naturrechts (1828). Krause is now universally recognised as the definite founder of the organic and positive school of Natural Right. His principles have been ably expounded by his two most faithful followers, Ahrens (*Cours de Droit Naturel*, 7th ed. 1875) and Röder (*Grundzüge des Naturrechts o. der Rechtsphilosophie*, 2 Auf. 1860). Professor J. S. del Rio of Madrid has vividly expounded and enthusiastically advocated Krause's system in Spanish. Professor Lorimer of the Edinburgh University, while maintaining an independent and critical attitude towards the various Schools of Jurisprudence, is in close sympathy with the Principles of Krause (*The Institutes of Law: a Treatise of the Principles of Jurisprudence as determined by Nature*, 2nd ed. 1880, and *The Institutes of the Law of Nations*). He has clearly indicated his agreement with the Kantian School, so far as its principles go (*Instit.* p. 336, n.).

The influence of the Kantian Doctrine of Right has thus been vitally operative in all the subsequent progress of jural and political science.¹ Kant, here as in every other department of Philosophy, summed up the fragmentary and critical movement of the Eighteenth Century, and not only spoke its last word, but inaugurated a method which was to guide and stimulate the highest thought of the future. With an unwonted blending of speculative insight and practical knowledge, an ideal universality of conception and a sure grasp of the reality of experience, his effort, in its inner depth, vitality, and concentration, contrasts almost strangely with the trivial formalities of the Leibnitzio-Wolffian Rationalists on the one hand,² and with the pedantic

¹ This applies to the latest German discussions and doctrines. The following works may be referred to as the most important recent contributions, in addition to those mentioned above (such as Ahrens and Röder, xi. n.) :—Trendelenburg, *Naturrecht auf dem Grunde der Ethik*, 2 Auf. 1868. Post, *Das Naturgesetz des Rechts*, 1867. W. Arnold, *Cultur und Rechtsleben*, 1865. Ulrici, *Naturrecht*, 1873. Zoepfl, *Grundriss zu Vorlesungen über Rechtsphilosophie*, 1878. Rudolph von Ihering, *Der Zweck im Recht*, i. 1877, ii. 1883. Professor Frohschammer of Munich has discussed the problem of Right in a thoughtful and suggestive way from the standpoint of his original and interesting System of Philosophy, in his new volume, *Ueber die Organisation und Cultur der menschlichen Gesellschaft*, *Philosophische Untersuchungen über Recht und Staat, soziales Leben und Erziehung*, 1885.

² Leibnitz, *Nova Methodus discendæ docendæque Jurisprudentiæ*, 1767. *Observationes de principio Juris. Codex Juris Gentium*, 1693-1700.

Wolff, *Jus Naturæ Methodo Scientifica pertractatum*, Lips. 8 Tomi.

tediousness of the Empiricists of the School of Grotius on the other.¹ Thomasius and his School, the expounders of the Doctrine of Right as an independent Science, were the direct precursors of the formal method of Kant's System.² Its firm and clear outline implies the substance of many an operose and now almost unreadable tome; and it is alive throughout with the quick, keen spirit of the modern world. Kant's unrivalled genius for distinct division and systematic form, found full and appropriate scope in this sphere of thought. He

1740-48. *Institutiones Juris Naturæ et Gentium*, Halæ, 1754. (In French by *Luzac*, Amsterdam, 1742, 4 vols.) *Vernünftige Gedanken*.

Vatel, *Le Droit des Gens*, Leyden, 1758. Edited by Royer-Collard, Paris, 1835. English translation by Chitty, 1834. [For the other works of this school, see Ahrens, i. 323-4, or Miller's *Lectures*, p. 411.]

¹ Grotius, *De Jure Belli ac Pacis*, lib. iii. 1625. Translated by Barbeyrae into French, 1724; and by Whewell into English, 1858.

Pufendorf, *Elementa Juris Universalis*, 1660. *De Jure Naturæ et Gentium*, 1672. [English translation by Kennett, 1729.]

Cumberland, *De Legibus Naturæ Disquisitio Philosophica*, London, 1672. Translated into English by Towers, Dublin, 1750.

Cocceji, *Grotius illustratus*, etc., 3 vols. 1744-7. [See Miller, 409.]

² Christian Thomasius (1655-1728) first clearly distinguished between the Doctrine of Right and Ethics, and laid the basis of the celebrated distinction of Perfect and Imperfect Obligations as differentiated by the element of Constraint. See Professor Lorimer's excellent account of Thomasius and of Kant's relation to his System, *Inst. of Law*, p. 288; and Röder, i. 240. The principal works of this School are: Thomasius, *Fundamenta juris naturæ et gentium ex sensu communi deducta*, 1705. Gerhard, *Delineatio juris naturalis*, 1712. Gundling, *Jus Naturæ et gentium*. Koehler, *Exercitationes*, 1728. Achenwall, *Prolegomena Juris naturalis*, and *Jus Naturæ*, 1781.

had now all his technical art as an expounder of Philosophy in perfect control, and after the hot rush through the first great Critique he had learned to take his time. His exposition thus became simplified, systematized, and clarified throughout to utmost intelligibility. Here, too, the cardinal aim of his Method was to wed speculative thought and empirical fact, to harmonize the abstract universality of Reason with the concrete particularities of Right, and to reconcile the free individuality of the citizen with the regulated organism of the State. And the least that can be said of his execution is, that he has rescued the essential principle of Right from the debasement of the antinomian naturalism and arbitrary politicality of Hobbes¹ as well as from the extravagance of the lawless and destructive individualism of Rousseau,² while conceding and even adopting what is substantially true in the antagonistic theories of these epochal thinkers; and he has thereby given the birthright of Freedom again, full-reasoned and certiorated, as 'a possession for ever' to modern scientific thought. With widest and

¹ Hobbes, *De Cive*, 1642. *Leviathan seu de civitate ecclesiastica et civili*, 1651. On Hobbes generally, see Professor Croom Robertson's Monograph in 'Blackwood's Philosophical Classics.'

² *L'origine et les fondements de l'inégalité parmi les hommes*, Dijon, 1751. *Contrat social*, 1762. Rousseau's writings were eagerly read by Kant, and greatly influenced him. On Rousseau generally, see John Morley's *Rousseau*, Lond. 1878.

furthest vision, and with a wisdom incomparably superior to the reactionary excitement of the great English Orator,¹ he looked calmly beyond 'the red fool-fury of the Seine' and all the storm and stress of the time, to the sure realization of the one increasing purpose that runs through the ages. The burden of years chilled none of his sympathies nor dimmed any of his hopes for humanity; nor did any pessimistic shadow or murmur becloud his strong poetic thought, or disturb 'the mystical lore' of his eventide. And thus at the close of all his thinking, he made the Science of Right the very corner-stone of the social building of the race, and the practical culmination of all Religion and all Philosophy.

It is not meant that everything presented here by Kant is perfect or final. On the contrary, there is probably nothing at all in his whole System of Philosophy—whose predominant characteristics are criticism, initiation, movement—that could be intelligently so regarded; and the admitted progress of subsequent theories of Right, as briefly indicated above, may be considered as conceding so much. It must be further admitted of Kant's *Science of Right* that it presents

¹ Burke is assigned to the Historical School of Jurisprudence by Ahrens, who not inaptly designates him 'the Mirabeau of the anti-revolution' (i. 53). See the *Reflections on the French Revolution* (1790). Stahl gives a high estimate of Burke as 'the purest representative of Conservatism.'

everywhere abundant opening and even provocation for 'Metacriticism' and historical anticriticism, which have certainly not been overlooked or neglected. But it *is* meant withal that the Philosophy of Jurisprudence has really flourished in the Nineteenth Century only where Kant's influence has been effective, and that the higher altitudes of jural science have only come into sight where he has been taken as a guide. The great critical thinker *set* the problem of Right anew to the pure Speculative Reason, and thus accomplished an intellectual transformation of juridical thought corresponding to the revolutionary enthusiasm of liberty in the practical sphere. It is only from this point of view that we can rightly appreciate or estimate his influence and significance. The all-embracing problem of the modern metamorphosis of the institutions of Society in the free State, lies implicitly in his apprehension. And in spite of his negative aspect, which has sometimes entirely misled superficial students, his solution, although betimes tentative and hesitating, is in the main faithful to the highest ideal of humanity, being foundationed on the eternity of Right and crowned by the universal security and peace of the gradually realized Freedom of mankind. As Kant saved the distracted and confused thought of his time from utter scepticism and despair, and set it again with renewed youth and enthusiasm on its way, so his spirit

seems to be rising again upon us in this our hour of need, with fresh healing in his wings. Our Jurists must therefore also join the ever increasing throng of contemporary thinkers in the now general *return to Kant*.¹ Their principles are even more conspicuously at hazard than any others, and the whole method of their science, long dying of intellectual inanition and asphyxia, must seek the conditions of a complete renovation. It is only thus, too, that the practical Politician will find the guidance of real principle in this agitated and troubled age in which the foundations of Government as well as of Right are so daringly scrutinised and so manifestly imperilled,² and in which he is driven by the inherent necessary

¹ 'The very cry of the hour is, Fichte and Schelling are dead, and Hegel, if not clotted nonsense, is unintelligible; let us go back to Kant. See, too, in other countries, what a difference the want of Kant has made.' Dr. J. H. Stirling, *Mind*, No. xxxvi. 'Within the last ten years many voices have been heard, both in this country and in Germany, bidding us *return to Kant*, as to that which is alone sound and hopeful in Philosophy; that which unites the prudence of science with the highest speculative enterprise that is possible without idealistic extravagances.' Professor E. Caird, *Journal of Speculative Philosophy*, vol. xiv. 1, 126. 'From Hegel, we must, I think, still return upon Kant, seeking fresh hope for Philosophy in a continued use of the critical method.' Professor Calderwood, *Introduction to Kant's Metaphysics of Ethics*, p. xix.

² The Socialistic and Communistic Doctrines of Owen (1771-1858), Fourier (1777-1837), Saint-Simon (1760-1825), Louis Blanc, Proudhon, and Cabet, 'considered as aberrations in the development of Right,' are sketched by Ahrens (i. § 12) with his characteristic discrimination and fairness. The principles of the contemporary English Socialism will be

implication of local politics to face the inevitable issue of world-wide complications and the universal problem of human solidarity. And thus only, as it now appears, will it be possible to find a Principle that will at once be true to the most liberal tendency of the time, and yet do justice to its most conservative necessities.

Of criticism and comment, blind adulation and unjust depreciation of Kant's system of Right, there has been, as already hinted, abundance and even more than enough. Every philosophical Jurist has had to define more or less explicitly his attitude towards the Kantian standpoint. The original thinkers of the dogmatic Schools—Fichte, Schelling,¹ Hegel, and Krause,

found summed up in *A Summary of the Principles of Socialism written for the Democratic Federation*, by H. M. Hyndman and William Morris (1884). Compare also Hyndman's *The Historical Basis of Socialism in England*, and *To-day and Justice*, the organs of the Social Democracy.

¹ Schelling's contributions to the Science of Right have hardly received the attention they deserve. The absorption of his thought in the Philosophy of Nature left him less free to devote himself to the Philosophy of History, but it is mainly to him that the idea of the systematic objectivity and the organic vitality of the State, in its latest forms, is due. Hegel and Krause have severally adopted and developed the two sides of this conception. Compare Schelling's *Abhandlung über das Naturrecht in Fichte and Niethammer's Journal*, iv. and v.; and his *Vorlesungen über die Methode des akademischen Studiums*, p. 146, etc. See Stahl's excellent account of Schelling's Doctrine, *Philosophie des Rechts*, i. 403-14, and *The Journal of Speculative Philosophy*, vol. xiii. No. 3, vi., 'Schelling on History and Jurisprudence.'

—have made it the starting-point of their special efforts, and have elaborated their own conceptions by positive or negative reference to it. The recent Theological School of Stahl and Baader, De Maistre and Bonald,¹ representing the Protestant and Papal reaction from the modern autonomy of Reason, has yet left the Kantian principle unshaken, and has at the best only formulated its doctrine of a universal Divine order in more specific Christian terms. The Historical School of Hugo and Savigny² and Puchta,³—which is also that of Bentham, Austin

¹ Stahl and Baader represent the Neo-Schellingian standpoint in their philosophical doctrines.—F. J. Stahl, *Die Philosophie des Rechts*, 3 Bde., 3 Auf. 1865 (an important and meritorious work).—Franz von Baader's *Sämmtliche Werke*, 16 Bde. 1851-60. (Cf. Franz Hoffmann's *Beleuchtung des Angriffs auf Baader in Thilo's Schrift*: 'Die theologisikende Rechts- und Staatslehre,' 1861).—Joseph de Maistre, *Soirées de St. Petersburg*, Paris, 1821. *Mémoires*, etc., par A. Blanc, 1858.—L'Abbé de Bonald, *Législation primitive*, 1821.

² Hugo (1768-1844) is usually regarded as the founder, and Savigny (1778-1861) as the chief representative of the Historical School. Hugo, *Lehrbuch des Naturrechts als einer Philosophie des positiven Rechts*, 1799, 3 Auf. 1820. Frederich Carl von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*, 1814; *System des heutigen Römischen Rechts*, 1840. (See Guthrie's translation of Savigny, *Treatise on the Conflict of Laws*, with an excellent Preface. T. & T. Clark.)

³ The Historical School, as Ahrens shows, must be carried back so as to include such thinkers as Cujas, the great French Jurist of the 16th century, who called the History of Right his 'hameçon d'or'; Montesquieu (1689-1755), whose well-known book, *L'Esprit des Loix* (1748), ran through twenty-two editions in a few years; and the Neapolitan Vico (1688-1744), the founder of the 'New Science' of History. Vico is only now becoming properly appreciated. See Professor's Flint's able and

and Buckle, Sir George C. Lewis and Sir Henry Sumner Maine, and Herbert Spencer,—with all its apparent antagonism, has only so far supplemented the rational universality of Kant by the necessary counterpart of an historical Phenomenology of the rise and development of the positive legal institutions, as the natural evolution and verification in experience of the juridical conceptions.¹ The conspicuous want of a criterion of Right in the application of the mere his-

instructive 'Vico' in Blackwood's *Philosophical Classics*. 'In his work, *De universi juris uno principio et fine* (1820), Vico divides the whole Science of Right into three parts: (1) the Philosophy of Right, (2) the History of Right, and (3) the Art of applying the Philosophy to facts. He distinguishes profoundly in Laws the spirit or will of the legislator (*mens legis*) and the reason of the law (*ratio legis*), which consists in the accordance of a law with historical facts and with the eternal principles of the True and Good' (Ahrens). The contemporary Historical School does not yet occupy so philosophical a position.

¹ Sir Henry Sumner Maine, the most eminent English representative of the Historical School, continues to regard 'the philosophy founded on the hypothesis of a state of nature' as 'still the greatest antagonist of the Historical Method' (*Ancient Law*, pp. 90, 91); but this is evidently said in disregard of the transformation of Rousseau's theory by Kant, and the contributions to the application of the Historical Method by Hegel and his school, in whose principle the historic evolution is an essential element. Sir H. S. Maine's own contributions cannot be too highly recommended for their thoroughness and suggestiveness. He has gathered much of his original and pregnant matter from direct acquaintance with India, where, as is the case with the forms of nature, the whole genesis and stratification of the forms of Society are presented livingly to view. (*Ancient Law*, 1861, 7th ed. 1880. *Village Communities in the East and West*, 4th ed. 1881. *Early History of Institutions*, 1874.)

torical Method to the manifold, contingent, and variable institutions of human society, has been often signalized; and the representatives of the School have been driven again, especially in their advocacy of political liberalism, upon the rational principles of Freedom.¹

The Civil Jurists who have carried the unreasoning admiration of the Roman Law almost to the idolatry of its letter, and who are too apt to ignore the movement of two thousand years and all the aspirations of the modern Reason, could not be expected to be found in sympathy with the Rational Method of Kant. Their multiplied objections to the details of his exposition, from Schmitthenner² to the present day, are, however, founded upon an entire misapprehension of the purpose of his form. For while Kant rightly recognised the

¹ Extremes meet in the moral indifference of the universal naturalism of the ultra-historical School and the abstract absolute rationalism of Spinoza. It was Grotius who first clearly distinguished between positive fact and rational idea in the sphere of Right, and thus originated the movement of modern 'jural' speculation. For evidence of the statement in the text, see Bentham's *Works*, Buckle's *History of Civilisation*, Mill on *Liberty*, and especially Puchta's *Encyclopädie*, introductory to his *Cursus der Institutionen*, 6 Auf. 1865. The standpoint of the Historical School has been thoroughly reviewed by Stahl, i. 570-90; Ahrens, i. 51-61; and Röder, i. 266-279.

² 'Ueber den Charakter und die Aufgaben unserer Zeit in Beziehung auf Staat und Staatswissenschaft,' Giess, 1832. *Zwölf Bücher vom Staate*, 1839. See Rosenkranz's *Geschichte der Kant'schen Philosophie*, p. 268.

Roman Law as the highest embodiment of the juridical Reason of the ancient world, and therefore expounded his own conceptions by constant reference to it, he clearly discerned its relativity and its limitations; and he accordingly aims at unfolding everywhere through its categories the juridical idea in its ultimate purity. In Kant the juridical Idea first attains its essential self-realization and productivity, and his system of Private Right is at once freer and more concrete than the Systems of Hobbes and Rousseau, because it involves the ancient civil system, corrected and modernized by regard to its rational and universal principles. This consideration alone will meet a host of petty objections, and guard the student against expecting to find in this most philosophical exposition of the Principles of Right a mere elementary text-book of the Roman Law.¹

In England, Kant's *Science of Right* seems as yet to

¹ This remark especially applies to the running fire of criticism in Von Kirchmann's recent *Erläuterungen zu Kant's Metaphysik der Sitten*, 1882. It is a matter of regret that such criticisms cannot be here dealt with in detail. Kant has himself clearly indicated the position stated above, as at p. 54, *infra*.—The depth and subtlety of Kant's method, so far transcending the common modes of juridical thinking in England, are inseparable from the system, but he has himself given the sufficient reason for their appearance in it (*infra*, p. 116). Without entering in detail upon the point, the translator may remark with regard to one conspicuous, yet irremovable blot, that he homologates the unanimous disapprobation of subsequent jurists, and would only refer to Dr. Hutchison Stirling's drastic castigation of it in his *Lectures*, p. 51. But

have been little studied, and it has certainly exerted but little influence on English Juridical Science. This has no doubt been mainly due to the traditional habit of the national mind, and the complete ascendancy during the present century of the Utilitarian School of Bentham.¹ The criterion of Utility found a ready application to the more pressing interests of Political and Legal Reform, and thus responding to the practical legislative spirit of the time, its popular plausibilities completely obscured or superseded all higher rational speculation. By Austin the system was methodically applied to the positive determination of the juridical conceptions, under aid of the resources of the German Historical School, with the result that Right was made the mere 'creature' of positive law, and the whole Rational Method pretentiously condemned as irrational 'jargon.' In Austin² we have only

of this and other difficulties in so original and originative a work can only be said in the meantime:

'Sunt delicta tamen, quibus ignovisse velimus.'

And every reader and student should be ready to apply the Horatian rule here too:

'Verum ubi plura nitent . . . non ego paucis
Offendar maculis, quas aut incuria fudit
Aut humana parum cavit natura.'

¹ Fragment on Government, 1776. Essay on Political Tactics, 1791. Principles of Morals and Legislation, 1780. Traité de Legislation, 1802.

² Province of Jurisprudence determined, or Philosophy of Positive Law, 1832. Lectures on Jurisprudence, edited by his Widow.

Austin (1790-1859) has been greatly overestimated as a Jurist by his

the positive outcome of Hobbes and Hume and Bentham. The later forms of this legal positivism have not been fruitful in scientific result, and the superficiality and infutility of the standpoint are becoming more and more apparent. Nor does the Utilitarian Principle,¹ with all

friends and followers. The affectionate tributes of his widow may be borne with, but it is more extraordinary to find Professor Sheldon Amos characterizing him as 'the true founder of the Science of Law' (S. Amos, *The Science of Law*, p. 4). Here is Austin's estimate of Kant's *Science of Right*: 'A treatise darkened by a philosophy which, I own, is my aversion, but abounding, I must needs admit, with traces of rare sagacity. He has seized a number of notions, complex and difficult in the extreme, with distinction and precision which are marvellous, considering the scantiness of his means. For of positive systems of law he had scarcely the slightest tincture; and the knowledge of the principles of jurisprudence, which he borrowed from other writers, was drawn, for the most part, from the muddiest sources; from books about the fustian which is styled the Law of Nature.' (*Lectures*, iii. 157.) And here is his account of the German Jurists generally: 'It is really lamentable that the instructive and admirable books which many of the German Jurists have certainly produced, should be rendered inaccessible, or extremely difficult of access, by the thick coat of obscuring jargon with which they have wantonly incrustated their necessarily difficult science' (ii. 405). Comment on this is superfluous. In the same breath a more condemnatory judgment is dealt out even to Sir W. Blackstone. So long as such statements passed as philosophical criticism there was no possibility for a genuine Philosophy of Law in England. Austin, notwithstanding his English reputation, is entirely ignored by the German Jurists. He seems to have known only enough of German to consult the more popular productions of the Historical School. Dr. Hutchison Stirling has dealt with Austin's commonplace Hedonism in a severe way, and yet not too severely, in his *Lectures on the Philosophy of Law (sub fin.)*.

¹ Utilitarianism has been the subject of incessant discussion in England down to its latest systematic exposition in Sidgwick's *Methods of Ethics*.

its seeming justice and humanity, appear capable of longer satisfying the popular mind with its deepening Consciousness of Right, or of resolving the more fundamental political problems that are again coming into view. In this connection we may quote and apply the authority of Sir Henry Sumner Maine when he says:¹ 'There is such widespread dissatisfaction with existing theories of jurisprudence, and so general a conviction that they do not really solve the questions they pretend to dispose of, as to justify the suspicion that some line of inquiry necessary to a perfect result has been incompletely followed, or altogether omitted by their authors.' The present unsatisfactory condition of the Science of Right in England—if not in Scotland²—could not be better indicated.

On the Continent the system has also been carefully and ably reviewed by Th. Jouffroy (*Cours de droit naturel*, 1835), Ahrens (i. 48, but less fully in the later editions), I. H. Fichte (*Die philosophischen Lehren von Recht, Staat und Sitte*, 1850), De Wal (*Prysverhandeling van het Natuurrecht*, 1833), and particularly by the Italian Jurists (Röder, i. 108).

¹ Ancient Law, p. 118.

² Much more may be justly claimed for Scotland than for England since the middle of the last century in regard to the cultivation of the Philosophy of Right. The Scottish School of Philosophy started on this side from Grotius and Thomasius. Gershom Carmichael edited Pufendorf with praiseworthy notes. Hutchison discussed the doctrine of Right with fulness and care in his *System of Moral Philosophy* (1755). Hume, in consistency with the method of his Intellectual Philosophy, derationalized the conceptions of Justice and Right, and resolved them into empirical products of public Utility (*Treatise on Human Nature*, 1739. *Essays*,

In these circumstances, no other alternative is left for us but a renewed and deepened appeal to the universal principle of Reason, as the essential condition of all true progress and certainty. And in the present dearth of philosophical origination and the presence of the unassimilated products of well-nigh a century of thought, it seems as if the prosecution of this Method of all methods

1742). Reid, leading the realistic reaction, examined this side of Hume's speculation with his characteristic earnestness, and advanced by his practical principle of Common Sense to positions akin to those of Kant's Practical Reason (*Active Powers*, 1788, Essay V. c. iii. *Of Systems of Natural Jurisprudence*, and the following chapters on Hume's Utilitarianism). Henry Home, Lord Kames, prosecuted the same method with more juridical knowledge (*Principles of Equity; Historical Law Tracts*, 1758; *Sketches of the History of Man*). The movement was carried on by Adam Ferguson (*Principles of Moral and Political Science*, 1792; *Essay on the History of Civil Society*, 1767), Dugald Stewart (see especially the account of the Grotian School in the *Dissertation*, 1815), and Dr. Thomas Brown (*Lectures*). Sir James Mackintosh wrote a *Discourse on the Study of the Law of Nature and Nations*, 1835. The cultivation of the Philosophy of Law has never been extinct in the Scottish Universities. Since the revival of the Chair of Public Law in the University of Edinburgh in 1862, Professor Lorimer has done much by his devotion and erudition to further the cultivation of the subject. (See the reference to his own works, *supra*, xi. n.) One of his pupils, Mr. W. G. Miller, Lecturer on Public Law in the University of Glasgow, has published a series of excellent Lectures on the subject, displaying extensive knowledge and critical acumen, with general regard to the Hegelian standpoint (*Lectures on the Philosophy of Law*, designed mainly as an introduction to the study of International Law, 1884). Professor Flint's important work on the *Philosophy of History in France and Germany*, and Professor Edward Caird's recent book on Comte's *Social Philosophy*, may also be referred to in this connection.

can only now be fruitfully carried on by a return to *Kant* and advance through his System. Enough has perhaps already been said to indicate the recognised importance of the Kantian standpoint, and even to point to the rich fields of thought and inquiry that open everywhere around it to the student. Into these fields it was the original intention of the translator to attempt to furnish some more definite guidance by illustrative comment and historical reference in detail, but this intention must be abandoned meanwhile, and all the more readily as it must be reckoned at the most but a duty of subordinate obligation and of secondary importance. The Translation is therefore sent forth by itself in reliance upon its intelligibility as a faithful rendering of the original, and in the hope that it will prove at once a help to the Students and an auxiliary to the Masters of our present juridical science.

W. H.

EDINBURGH, *January* 1887.

BIBLIOGRAPHICAL NOTE.

RÖDER remarks (i. 254) that by far the most of the later philosophical writers on Natural Right—'*nomen illis legio!*'—follow the system of Kant and Fichte, which is in the main identical in principle with that of Thomasius. It was impossible to refer to them in detail in these prefatory remarks, but it may be useful to quote the following as the more

important works on the subject from this standpoint since the appearance of Kant's *Rechtslehre* :—

- A. Mellin, *Grundlegung zur Metaphysik der Rechte*, 1796.
 P. J. A. Feuerbach, *Kritik des natürlichen Rechts*, 1796.
 H. Stephani, *Grundlinien der Rechtswissenschaft*, 1797.
 Ph. Schmutz, *Erklärung der Rechte des Menschen u. des Bürgers*, 1798. *Handbuch der Rechtsphilosophie*, 1807.
 R. Gerstäcker, *Metaphysik des Rechts*, 1802.
 L. Bendavid, *Versuch einer Rechtslehre*, 1802.
 K. H. v. Gros, *Lehrbuch des Naturrechts*, 1802. 6 Ausg. 1841.
 Friès, *Philosophische Rechtslehre u. Kritik aller positiven Gesetzgebung*, 1803.
 L. N. Jacob, *Philosophische Rechtslehre*, 2 A. 1802.
 K. S. Zachariä, *Anfangsgründe der Philosoph. Privatrechts*, 1804.
Philosophische Rechtslehre o. Naturrecht u. Staatslehre, 1819.
 Vierzig Bücher vom Staate, 1839–43.
 Chr. Weiss, *Lehrbuch der Philosophie des Rechts*, 1804.
 A. Bauer, *Lehrbuch des Naturrechts*, 1808. 3 Ausg. 1825.
 J. C. F. Meister, *Lehrbuch des Naturrechts*, 1809.
 Dresch, *Systematische Entwicklung der Grundbegriffe u. Grundprinzipien des gesammten Privatrechts, Staatsrechts, und Volkerrechts*, 1810, 1822.
 V. Zeiller, *Naturrecht*, 1813.
 W. F. Krug, *Dikäologie oder philosophische Rechtslehre*, 1817, 1830.
 Eschenmeyer, *Normalrecht*, 2 Thle. 1819.
 S. Beck, *Lehrbuch des Naturrechts*, 1820.
 V. Droste-Hülshoff, *Lehrbuch des Naturrechts o. der Rechtsphilosophie*, 1823, 1831.
 Pölitz, *Natur- und Volkerrecht, Staats- und Staatenrecht*, 1823, 1825.
 J. Haus, *Elementa doctrinæ philosophiæ sive juris naturalis*. Gondavi, 1824.
 K. von Rotteck, *Lehrbuch des Vernunftrechts und der Staatswissenschaft*, 4 Bde. 1829–34, 1841.
 Ant. Virozil, *Epitome juris naturalis*. Pesthina, 1839.
 F. Fischer, *Naturrecht und natürliche Staatslehre*, 1848.
 G. Schilling, *Lehrbuch des Naturrechts*, 1859.

Besides these a considerable number of similar German works might be referred to by Schaumann, Heydenreich, Klein, A. Thomas, Weiss, J. K. Schmid, T. M. Zachariä, Stöckhardt, E. Reinhold, Schnabel, Pfitzer, and others.

Of the French works, from the Kantian standpoint, may be quoted (Ahrens, i. 326) :—

- M. Bussart, *Elements de droit naturel privé*. Fribourg en Suisse, 1836.
 V. Belime, *Philosophie du droit*. Paris, 1844, 4 ed. 1881.

In Italy, where the Philosophy of Law has been cultivated 'with great zeal and intelligence' (Ahrens, i. 327; Röder, *Krit. Zeitschrift für Rechtswiss.* xv. 1, 2, 3), the Kantian system has been ably discussed by Mancini, Mamiani, Rosmini, Poli, and others. Its chief representatives have been—

- Baroli, *Diritto naturale privato e pubblico*, 6 vol. Cremona, 1837.
 Tolomei, *Corso elementare di diritto naturale*, 2 ed. Padova, 1855.
 Soria di Crispan, *Filosofia di diritto pubblico*. (Philosophie du droit public. Brux. 1853–4.) Transl. into French.
 Rosmini-Serbati, *Filosofia del diritto*, 1841. (In part Kantian.)

[Since writing the foregoing Preface there has come to hand the important work, 'La Vita del Diritto, nei suoi rapporti colla Vita Sociale: Studio comparativo di Filosofia Giuridica. Per Giuseppe Carle, Professore ordinario di Filosofia de Diritto nella R. Università di Torino.' Its comprehensive method and profound insight add to the already ample evidence of the 'great zeal and intelligence' with which the Philosophy of Law is now being cultivated by the countrymen of Vico, the natural successors of Antistius Labeo, and Papinian. Professor Carle points out the relation of Kant not only to Rosmini, but also to Mamiani and others. His view of the importance and influence of the Kantian System is in accord with the brief indications ventured in these Prefatory hints. It is impossible to quote his exposition here, but attention may be directed to P. ii. L. i. Cap. ii. § 3, 'Emmanuele Kant come iniziatore del metodo rationale nello studio del diritto naturale;' and L. ii. Cap. v. 'Ulteriore svolgimento,' etc.—TR.]

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THE METAPHYSICAL PRINCIPLES OF THE SCIENCE OF RIGHT

AS CONTAINED IN

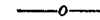
THE METAPHYSIC OF MORALS.

BY

IMMANUEL KANT.

Translated from the German.

PREFATORY EXPLANATIONS.



THE METAPHYSIC OF MORALS, as constituting the System of Practical Philosophy, was to follow the 'Critique of the Practical Reason,' as it now does. It falls into two parts: (1) THE METAPHYSICAL PRINCIPLES OF JURISPRUDENCE AS THE SCIENCE OF RIGHT, and (2) THE METAPHYSICAL PRINCIPLES OF ETHICS AS THE SCIENCE OF VIRTUE. The whole System forms a counterpart to the 'Metaphysical Principles of the Science of Nature,' which have been already discussed in a separate work (1786). The General Introduction to the 'Metaphysic of Morals' bears mainly on its *form* in both the Divisions; and the Definitions and Explanations it contains exhibit and, to some extent, illustrate the formal Principles of the whole System.

THE SCIENCE OF RIGHT as a philosophical exposition of the fundamental Principles of Jurisprudence, thus forms the First Part of the Metaphysic of Morals. Taken here by itself—apart from the special Principles of Ethics as the Science of Virtue which follows it—it has to be

treated as a System of Principles that originate in Reason; and, as such, it might be properly designated 'The Metaphysic of Right.' But the conception of Right, purely rational in its origin though it be, is also applicable to cases presented in experience; and, consequently, a Metaphysical System of Rights must take into consideration the empirical variety and manifoldness of these cases in order that its Divisions may be complete. For completeness and comprehensiveness are essential and indispensable to the formation of a rational system. But, on the other hand, it is impossible to obtain a complete survey of all the details of experience, and where it may be attempted to approach this, the empirical conceptions embracing those details cannot form integral elements of the system itself, but can only be introduced in subordinate observations, and mainly as furnishing examples illustrative of the General Principles. The only appropriate designation for the First Part of a Metaphysic of Morals, will, therefore, be THE METAPHYSICAL PRINCIPLES OF THE SCIENCE OF RIGHT. And, in regard to the practical application to cases; it is manifest that only an approximation to systematic treatment is to be expected, and not the attainment of a System complete in itself. Hence the same method of exposition will be adopted here as was followed in the former work on 'The Metaphysical Principles of the Science of Nature.' The Principles of Right which belong to the rational system will form the leading

portions of the text, and details connected with Rights which refer to particular cases of experience, will be appended occasionally in subordinate remarks. In this way a distinction will be clearly made between what is a Metaphysical or rational Principle, and what refers to the empirical Practice of Right.

Towards the end of the work, I have treated several sections with less fulness of detail than might have been expected when they are compared with what precedes them. But this has been intentionally done, partly because it appears to me that the more general principles of the later subjects may be easily deduced from what has gone before; and, also, partly because the details of the Principles of Public Right are at present subjected to so much discussion, and are besides so important in themselves, that they may well justify delay, for a time, of a final and decisive judgment regarding them.

PROLEGOMENA.



GENERAL INTRODUCTION

TO

THE METAPHYSIC OF MORALS.

GENERAL INTRODUCTION TO THE
METAPHYSIC OF MORALS.

I.

THE RELATION OF THE FACULTIES OF THE HUMAN MIND
TO THE MORAL LAWS.

The Practical Faculty of Action.—THE ACTIVE FACULTY OF THE HUMAN MIND, as the Faculty of Desire in its widest sense, is the Power which man has, through his mental representations, of becoming the cause of objects corresponding to these representations. The capacity of a Being to act in conformity with his own representations, is what constitutes the Life of such a Being.

The Feeling of Pleasure or Pain.—It is to be observed, *first*, that with Desire or Aversion there is always connected PLEASURE or PAIN, the susceptibility for which is called FEELING. But the converse does not always hold. For there may be a Pleasure connected, not with the desire of an object, but with a mere mental representation, it being indifferent whether an object corresponding to the representation exist or not. And, *second*, the Pleasure or Pain connected with the object of desire does not always precede the activity of Desire; nor can it be regarded in every case as the cause, but it may as well be the Effect of that activity. The capacity of experiencing Pleasure or Pain on the occasion of a

mental representation, is called 'Feeling,' because Pleasure and Pain contain only what is *subjective* in the relations of our mental activity. They do not involve any relation to an object that could possibly furnish a knowledge of it as such; they cannot even give us a knowledge of our own mental state. For even Sensations,¹ considered apart from the qualities which attach to them on account of the modifications of the Subject,—as, for instance, in reference to Red, Sweet, and such like,—are referred as constituent elements of knowledge to Objects, whereas Pleasure or Pain felt in connection with what is red or sweet, express absolutely nothing that is in the Object, but merely a relation to the Subject. And for the reason just stated, Pleasure and Pain considered in themselves cannot be more precisely defined. All that can be further done with regard to them is merely to point out what consequences they may have in certain relations, in order to make the knowledge of them available practically.

¹ The Sensibility as the Faculty of Sense, may be defined by reference to the subjective Nature of our Representations generally. It is the Understanding that first refers the subjective Representations to an object; it alone *thinks* anything by means of these Representations. Now, the subjective nature of our Representations might be of such a kind that they could be related to Objects so as to furnish knowledge of them, either in regard to their Form or Matter—in the former relation by pure Perception, in the latter by Sensation proper. In this case the Sense-faculty, as the capacity for receiving objective Representations, would be properly called Sense-perception. But mere mental Representation from its subjective nature cannot, in fact, become a constituent of objective knowledge, because it contains merely the relation of the Representations to the Subject, and includes nothing that can be used for attaining a knowledge of the object. In this case, then, this receptivity of the Mind for subjective representations is called FEELING. It includes the effect of the Representations, whether sensible or intellectual, upon the Subject; and it belongs to the Sensibility, although the Representation itself may belong to the Understanding or the Reason.

Practical Pleasure, Interest, Inclination.—The Pleasure, which is necessarily connected with the activity of Desire, when the representation of the object desired affects the capacity of Feeling, may be called *Practical Pleasure*. And this designation is applicable whether the Pleasure is the cause or the effect of the Desire. On the other hand, that Pleasure which is not necessarily connected with the Desire of an object, and which, therefore, is not a pleasure in the existence of the object, but is merely attached to a mental representation alone, may be called Inactive Complacency, or mere *Contemplative Pleasure*. The Feeling of this latter kind of Pleasure, is what is called *Taste*. Hence, in a System of Practical Philosophy, the Contemplative Pleasure of Taste will not be discussed as an essential constituent conception, but need only be referred to incidentally or episodically. But as regards *Practical Pleasure*, it is otherwise. For the determination of the activity of the Faculty of Desire or Appetency, which is necessarily preceded by this Pleasure as its cause, is what properly constitutes DESIRE in the strict sense of the term. Habitual Desire, again, constitutes *Inclination*; and the connection of Pleasure with the activity of Desire, in so far as this connection is judged by the Understanding to be valid according to a general Rule holding good at least for the individual, is what is called *Interest*. Hence, in such a case, the Practical Pleasure is an Interest of the Inclination of the individual. On the other hand, if the Pleasure can only follow a preceding determination of the Faculty of Desire, it is an Intellectual Pleasure, and the interest in the object must be called a rational Interest; for were the Interest sensuous, and not based only upon pure Principles of

Reason, Sensation would necessarily be conjoined with the Pleasure, and would thus determine the activity of the Desire. Where an entirely pure Interest of Reason must be assumed, it is not legitimate to introduce into it an Interest of Inclination surreptitiously. However, in order to conform so far with the common phraseology, we may allow the application of the term 'Inclination' even to that which can only be the object of an 'Intellectual' Pleasure in the sense of a habitual Desire arising from a pure Interest of Reason. But such Inclination would have to be viewed, not as the Cause, but as the Effect of the rational Interest; and we might call it the *non-sensuous* or RATIONAL INCLINATION (*propensio intellectualis*).—Further, *Concupiscence* is to be distinguished from the activity of Desire itself, as a stimulus or incitement to its determination. It is always a sensuous state of the mind, which does not itself attain to the definiteness of an act of the Power of Desire.

The Will generally as Practical Reason.—The activity of the Faculty of Desire may proceed in accordance with Conceptions; and in so far as the Principle thus determining it to action is found in the mind, and not in its object, it constitutes a *Power of acting or not acting according to liking*. In so far as the activity is accompanied with the Consciousness of the Power of the action to produce the Object, it forms an act of *Choice*; if this consciousness is not conjoined with it, the Activity is called a *Wish*. The Faculty of Desire, in so far as its inner Principle of determination as the ground of its liking or Predilection lies in the Reason of the Subject, constitutes THE WILL. The Will is therefore the Faculty of active Desire or Appetency, viewed not so much in relation to the action—which is the relation

of the act of Choice—as rather in relation to the Principle that determines the power of Choice to the action. It has, in itself, properly no special Principle of determination, but in so far as it may determine the voluntary act of Choice, it is THE PRACTICAL REASON ITSELF.

The Will as the Faculty of Practical Principles.—Under the Will, taken generally, may be included the volitional act of *Choice*, and also the mere act of *Wish*, in so far as Reason may determine the Faculty of Desire in its activity. The act of Choice that can be determined by *pure Reason*, constitutes the act of Free-will. That act which is determinable only by Inclination as a sensuous impulse or stimulus would be irrational brute Choice (*arbitrium brutum*). The human act of Choice, however, as human, is in fact *affected* by such impulses or stimuli, but is not *determined* by them; and it is, therefore, not pure in itself when taken apart from the acquired habit of determination by Reason. But it may be determined to action by the pure Will. The *Freedom* of the act of volitional Choice, is its independence of being *determined* by sensuous impulses or stimuli. This forms the *negative* conception of the Free-will. The *positive* Conception of Freedom is given by the fact that the Will is the capability of Pure Reason to be practical of itself. But this is not possible otherwise than by the Maxim of every action being subjected to the condition of being practicable as a universal Law. Applied as Pure Reason to the act of Choice, and considered apart from its objects, it may be regarded as the Faculty of Principles; and, in this connection, it is the source of Practical Principles. Hence it is to be viewed as a law-giving Faculty. But as the *material* upon which to construct a Law is not furnished to it, it can only make

the *form* of the Maxim of the act of Will, in so far as it is available as a universal Law, the supreme Law and determining Principle of the Will. And as the Maxims, or Rules of human action derived from subjective causes, do not of themselves necessarily agree with those that are objective and universal, Reason can only prescribe this supreme Law as an absolute Imperative of prohibition or command.

The Laws of Freedom as Moral, Juridical, and Ethical.—The Laws of Freedom, as distinguished from the Laws of Nature, are *moral* Laws. So far as they refer only to external actions and their lawfulness, they are called *Juridical*; but if they also require that, as Laws, they shall themselves be the determining Principles of our actions, they are *Ethical*. The agreement of an action with Juridical Laws, is its *Legality*; the agreement of an action with Ethical Laws, is its *Morality*. The Freedom to which the former laws refer, can only be Freedom in external practice; but the Freedom to which the latter laws refer, is Freedom in the internal as well as the external exercise of the activity of the Will in so far as it is determined by Laws of Reason. So, in Theoretical Philosophy, it is said that only the objects of the external senses are in Space, but all the objects both of internal and external sense are in Time; because the representations of both, as being representations, so far belong all to the internal sense. In like manner, whether Freedom is viewed in reference to the external or the internal action of the Will, its Laws, as pure practical Laws of Reason for the free activity of the Will generally, must at the same time be inner Principles for its determination, although they may not always be considered in this relation.

II.

THE IDEA AND NECESSITY OF A METAPHYSIC OF MORALS.

The Laws of Nature Rational and also Empirical.—It has been shown in *The Metaphysical Principles of the Science of Nature*, that there must be Principles *à priori* for the Natural Science that has to deal with the objects of the external senses. And it was further shown that it is possible, and even necessary, to formulate a System of these Principles under the name of a 'Metaphysical Science of Nature,' as a preliminary to Experimental Physics regarded as Natural Science applied to particular objects of experience. But this latter Science, if care be taken to keep its generalizations free from error, may accept many propositions as universal on the evidence of experience, although if the term 'Universal' be taken in its strict sense, these would necessarily have to be deduced by the Metaphysical Science from Principles *à priori*. Thus Newton accepted the principle of the Equality of Action and Reaction as established by experience, and yet he extended it as a universal Law over the whole of material Nature. The Chemists go even farther, grounding their most general Laws regarding the combination and decomposition of the materials of bodies wholly upon experience; and yet they trust so completely to the Universality and Necessity of those laws, that they have no anxiety as to any error being found in propositions founded upon experiments conducted in accordance with them.

Moral Laws *à priori* and Necessary.—But it is otherwise with Moral Laws. These, in contradistinction to Natural Laws, are only valid *as* Laws, in so far as they

can be rationally established *à priori* and comprehended as *necessary*. In fact, conceptions and judgments regarding ourselves and our conduct have no *moral* significance, if they contain only what may be learned from experience; and when any one is, so to speak, misled into making a Moral Principle out of anything derived from this latter source, he is already in danger of falling into the coarsest and most fatal errors.

If the Philosophy of Morals were nothing more than a Theory of Happiness (*Eudæmonism*), it would be absurd to search after Principles *à priori* as a foundation for it. For however plausible it may sound to say that Reason, even prior to experience, can comprehend by what means we may attain to a lasting enjoyment of the real pleasures of life, yet all that is taught on this subject *à priori* is either tautological, or is assumed wholly without foundation. It is only Experience that can show what will bring us enjoyment. The natural impulses directed towards nourishment, the sexual instinct, or the tendency to rest and motion, as well as the higher desires of honour, the acquisition of knowledge, and such like, as developed with our natural capacities, are alone capable of showing in what those enjoyments are to be *found*. And, further, the knowledge thus acquired, is available for each individual merely in his own way; and it is only thus he can learn the means by which he has to *seek* those enjoyments. All specious rationalizing *à priori*, in this connection, is nothing at bottom but carrying facts of Experience up to generalizations by induction (*secundum principia generalia non universalia*); and the generality thus attained is still so limited that numberless exceptions must be allowed to every individual in order that he may adapt the choice of his

mode of life to his own particular inclinations and his capacity for pleasure. And, after all, the individual has really to acquire his Prudence at the cost of his own suffering or that of his neighbours.

But it is quite otherwise with the Principles of Morality. They lay down Commands for every one without regard to his particular inclinations, and merely because and so far as he is free, and has a practical Reason. Instruction in the Laws of Morality is not drawn from observation of oneself or of our animal nature, nor from perception of the course of the world in regard to what happens, or how men act.¹ But Reason commands how we *ought* to act, even although no example of such action were to be found; nor does Reason give any regard to the Advantage which may accrue to us by so acting, and which Experience could alone actually show. For, although Reason allows us to seek what is for our advantage in every possible way, and although, founding upon the evidence of Experience, it may further promise that greater advantages will probably follow on the average from the observance of her commands than from their transgression, especially if Prudence guides the conduct, yet the authority of her precepts as *Commands* does not rest on such considerations. They are used by Reason only as Counsels, and by way of a counterpoise against seductions to an opposite course, when adjusting beforehand the equilibrium of a partial balance in the sphere of Practical Judgment, in order thereby to secure the decision of this Judgment, according to the due weight of the *à priori* Principles of a pure Practical Reason.

¹ This holds notwithstanding the fact that the term 'Morals,' in Latin *Mores*, and in German *Sitten*, signifies originally only *Manners* or *Mode of Life*.

The Necessity of a Metaphysic of Morals.—'METAPHYSICS' designates any System of Knowledge *à priori* that consists of pure Conceptions. Accordingly a Practical Philosophy not having Nature, but the Freedom of the Will for its object, will presuppose and require a Metaphysic of Morals. It is even a *Duty* to have such a Metaphysic; and every man does, indeed, possess it in himself, although commonly but in an obscure way. For how could any one believe that he has a source of universal Law in himself, without Principles *à priori*? And just as in a Metaphysic of Nature there must be principles regulating the application of the universal supreme Principles of Nature to objects of Experience, so there cannot but be such principles in the Metaphysic of Morals; and we will often have to deal objectively with the particular *nature* of man as known only by Experience, in order to show in it the consequences of these universal Moral Principles. But this mode of dealing with these Principles in their particular applications will in no way detract from their rational purity, or throw doubt on their *à priori* origin. In other words, this amounts to saying that a Metaphysic of Morals cannot be founded on Anthropology as the Empirical Science of Man, but may be applied to it.

Moral Anthropology.—The counterpart of a Metaphysic of Morals, and the other member of the Division of Practical Philosophy, would be a Moral Anthropology, as the Empirical Science of the Moral Nature of Man. This Science would contain only the subjective conditions that hinder or favour the *realization* in practice of the universal moral Laws in human Nature, with the means of propagating, spreading, and strengthening the Moral Principles,—as by the Education of the young and the

instruction of the people,—and all other such doctrines and precepts founded upon experience and indispensable in themselves, although they must neither precede the metaphysical investigation of the Principles of Reason, nor be mixed up with it. For, by doing so, there would be a great danger of laying down false, or at least very flexible Moral Laws, which would hold forth as unattainable what is not attained only because the Law has not been comprehended and presented in its purity, in which also its strength consists. Or, otherwise, spurious and mixed motives might be adopted instead of what is dutiful and good in itself; and these would furnish no certain Moral Principles either for the guidance of the Judgment or for the discipline of the heart in the practice of Duty. It is only by Pure Reason, therefore, that Duty can and must be prescribed.

Practical Philosophy in relation to Art.—The higher Division of Philosophy, under which the Division just mentioned stands, is into Theoretical Philosophy and Practical Philosophy. Practical Philosophy is just Moral Philosophy in its widest sense, as has been explained elsewhere.¹ All that is practicable and possible, according to Natural Laws, is the special subject of the activity of Art, and its precepts and rules entirely depend on the Theory of Nature. It is only what is practicable according to Laws of Freedom that can have Principles independent of Theory, for there is no Theory in relation to what passes beyond the determinations of Nature. Philosophy therefore cannot embrace under its practical Division a *technical* Theory, but only a *morally practical* Doctrine. But if the dexterity of the Will in acting according to Laws of Freedom, in contradistinction to

¹ In the *Critique of the Judgment* (1790).

Nature, were to be also called an *Art*, it would necessarily indicate an Art which would make a System of Freedom possible like the System of Nature. This would truly be a Divine Art, if we were in a position by means of it to realize completely what Reason prescribes to us, and to put the Idea into practice.

III.

THE DIVISION OF A METAPHYSIC OF MORALS.

Two Elements involved in all Legislation.—All Legislation, whether relating to internal or external action, and whether prescribed *à priori* by mere Reason or laid down by the Will of another, involves two Elements:—1st, a LAW which represents the action that ought to happen as necessary *objectively*, thus making the action a Duty; 2nd, a MOTIVE which connects the principle determining the Will to this action with the Mental representation of the Law *subjectively*, so that the Law makes Duty the motive of the Action. By the first element, the action is represented as a Duty, in accordance with the mere theoretical knowledge of the possibility of determining the activity of the Will by practical Rules. By the second element, the Obligation so to act, is connected in the Subject with a determining Principle of the Will as such.

Division of Duties into Juridical and Ethical.—All Legislation, therefore, may be differentiated by reference to its Motive-principle.¹ The Legislation which makes

¹ This ground of Division will apply, although the action which it makes a duty may coincide with another action, that may be otherwise looked at from another point of view. For instance, Actions may in all cases be classified as external.

an Action a Duty, and this Duty at the same time a Motive, is *ethical*. That Legislation which does not include the Motive-principle in the Law, and consequently admits another Motive than the idea of Duty itself, is *juridical*. In respect of the latter, it is evident that the motives distinct from the idea of Duty, to which it may refer, must be drawn from the subjective (pathological) influences of Inclination and of Aversion, determining the voluntary activity, and especially from the latter; because it is a Legislation which has to be compulsory, and not merely a mode of attracting or persuading. The agreement or non-agreement of an action with the Law, without reference to its Motive, is its *Legality*; and that character of the action in which the idea of Duty arising from the Law, at the same time forms the Motive of the Action, is its *Morality*.

Duties specially in accord with a Juridical Legislation, can only be external Duties. For this mode of Legislation does not require that the idea of the Duty, which is internal, shall be of itself the determining Principle of the act of Will; and as it requires a motive suitable to the nature of its laws, it can only connect what is external with the Law. Ethical Legislation, on the other hand, makes internal actions also Duties, but not to the exclusion of the external, for it embraces everything which is of the nature of Duty. And just because ethical Legislation includes within its Law the internal motive of the action as contained in the idea of Duty, it involves a characteristic which cannot at all enter into the Legislation that is external. Hence, Ethical Legislation cannot as such be external, not even when proceeding from a Divine Will, although

of Right, to which we are now about to advance ; and we may consider them now by way of supplement to these introductory Explanations, in order that their uncertain conditions may not exert a disturbing influence on the fixed Principles of the proper doctrine of Right.

F.

Supplementary Remarks on Equivocal Right.

(Jus æquivocum.)

With every Right, in the strict acceptation (*jus strictum*), there is conjoined a Right to compel. But it is possible to think of other Rights of a *wider* kind (*jus latum*) in which the Title to compel cannot be determined by any law. Now there are two real or supposed Rights of this kind—EQUITY and THE RIGHT OF NECESSITY. The first alleges a Right that is without compulsion ; the second adopts a compulsion that is without Right. This equivocalness, however, can be easily shown to rest on the peculiar fact that there are cases of doubtful Right, for the decision of which no Judge can be appointed.

I. EQUITY.

EQUITY (*Æquitas*), regarded objectively, does not properly constitute a claim upon the moral Duty of benevolence or beneficence on the part of others ; but whoever insists upon anything on the ground of Equity, founds upon his *Right* to the same. In this case, however, the conditions are wanting that are requisite for the function of a Judge in order that he might determine what or what kind of satisfaction can be done to this claim. When one of the partners of a Mercantile Company,

formed under the condition of Equal profits, has, however, *done more* than the other members, and in consequence has also *lost more*, it is *in accordance with Equity* that he should demand from the Company more than merely an equal share of advantage with the rest. But, in relation to *strict Right*,—if we think of a Judge considering his case,—he can furnish no definite data to establish how much more belongs to him by the Contract ; and in case of an action at law, such a demand would be rejected. A domestic servant, again, who might be paid his wages due to the end of his year of service in a coinage that became depreciated within that period, so that it would not be of the same value to him as it was when he entered on his engagement, cannot claim by Right to be kept from loss on account of the unequal value of the money if he receives the due amount of it. He can only make an appeal on the ground of Equity,—a dumb goddess who cannot claim a hearing of Right,—because there was nothing bearing on this point in the Contract of Service, and a Judge cannot give a decree on the basis of vague or indefinite conditions.

Hence it follows, that a COURT OF EQUITY for the decision of disputed questions of Right, would involve a contradiction. It is only where his own proper Rights are concerned, and in matters in which he can decide, that a Judge may or ought to give a hearing to Equity. Thus, if the Crown is supplicated to give an indemnity to certain persons for loss or injury sustained in its service, it may undertake the burden of doing so, although, according to strict Right, the claim might be rejected on the ground of the pretext that the parties in question undertook the performance of the service occasioning the loss, at their own risk.

juridical relation by a sensible image of this kind, and to express it in this way.

The Real Definition would run thus: 'RIGHT IN A THING is a Right to the Private Use of a Thing, of which I am in possession—original or derivative—in common with all others.' For this is the one condition under which it is alone possible that I can exclude every other possessor from the private use of the Thing (*jus contra quemlibet hujus rei possessorem*). For, except by presupposing such a common collective possession, it cannot be conceived how, when I am not in actual possession of a thing, I could be injured or wronged by others who are in possession of it and use it.—By an individual act of my own Will I cannot oblige any other person to abstain from the use of a thing in respect of which he would otherwise be under no obligation; and, accordingly, such an Obligation can only arise from the collective Will of all united in a relation of common possession. Otherwise, I would have to think of a Right in a Thing, as if the *Thing* had an Obligation towards me, and as if the Right as against every Possessor of it had to be derived from this Obligation in the Thing, which is an absurd way of representing the subject.

Further, by the term 'Real Right' (*jus reale*) is meant not only the 'Right in a Thing' (*jus in re*), but also the *constitutive principle* of all the Laws which relate to the real Mine and Thine.—It is, however, evident that a man entirely alone upon the earth could properly neither have nor acquire any external thing as his own; because between him as a Person and all external Things as material objects, there could be no relations of Obligation. There is therefore, literally,

no *direct* Right in a Thing, but only that Right is to be properly called 'real' which belongs to any one as constituted against a Person, who is in common possession of things with all others in the Civil state of Society.

12.

The First Acquisition of a Thing can only be that of the Soil.

By the Soil is understood all habitable Land. In relation to everything that is moveable upon it, it is to be regarded as a *Substance*, and the mode of the existence of the Moveables is viewed as an *Inherence* in it. And just as, in the theoretical acceptation, Accidents cannot exist apart from their Substances, so, in the practical relation, Moveables upon the Soil cannot be regarded as belonging to any one unless he is supposed to have been previously in juridical possession of the Soil so that it is thus considered to be his.

For, let it be supposed that the Soil belongs to no one. Then I would be entitled to remove every moveable thing found upon it from its place, even to total loss of it, in order to occupy that place, without infringing thereby on the freedom of any other; there being, by the hypothesis, no possessor of it at all. But everything that can be destroyed, such as a Tree, a House, and such like—as regards its matter at least—is moveable; and if we call a thing which cannot be moved without destruction of its form an *immoveable*, the Mine and Thine in it is not understood as applying to its substance, but to that which is adherent to it, and which does not essentially constitute the thing itself.

RIGHTS OF THE FAMILY AS A DOMESTIC
SOCIETY.

TITLE THIRD.

HOUSEHOLD RIGHT.

(Master and Servant.)

30.

Relation and Right of the Master of a Household.

The Children of the House, who, along with the Parents, constitute a Family, attain *majority*, and become MASTERS OF THEMSELVES (*majorennnes, sui juris*), even without a Contract of release from their previous state of Dependence, by their actually attaining to the capability of self-maintenance. This attainment arises, on the one hand, as a state of natural Majority, with the advance of years in the general course of Nature; and, on the other hand, it takes form, as a state in accordance with their own natural condition. They thus acquire the Right of being their own Masters, without the interposition of any special juridical act, and therefore merely by Law (*lege*); and they owe their Parents nothing by way of legal debt for their Education, just as the parents, on their side, are now released from their Obligations to the Children in the same way. Parents and Children thus gain or regain their natural Freedom; and the domestic society, which was necessary according to the Law of Right, is thus naturally dissolved.

Both Parties, however, may resolve to continue the

Household, but under another mode of Obligation. It may assume the form of a relation between the Head of the House as its Master, and the other members as domestic Servants, male or female; and the connection between them in this new *regulated* domestic economy (*societas herilis*) may be determined by Contract. The Master of the House, actually or virtually, enters into Contract with the Children, now become major and masters of themselves; or, if there be no Children in the Family, with other free Persons constituting the membership of the Household; and thus there is established a domestic relationship not founded on social equality, but such that one *commands* as Master, and another *obeys* as Servant (*Imperantis et subjecti Domestici*).

The Domestics or Servants may then be regarded by the Master of the household, as thus far his. As regards the *form* or mode of his Possession of them, they belong to him as if by a Real Right; for if any of them run away, he is entitled to bring them again under his power by a unilateral act of his will. But as regards the *matter* of his Right, or the *use* he is entitled to make of such persons as his Domestics, he is not entitled to conduct himself towards them as if he was their proprietor or owner (*dominus servi*); because they are only subjected to his power by Contract, and by a Contract under certain definite restrictions. For a Contract by which the one party renounced his *whole* freedom for the advantage of the other, ceasing thereby to be a person and consequently having no duty even to observe a Contract, is self-contradictory, and is therefore of itself null and void. The question as to the Right of Property in relation to one who has lost his legal personality by a Crime, does not concern us here.

or whether it is to be regarded as merely a shooting and falling star!¹

III.

Examples of Real-Personal Right.

1. To have anything external as one's own, means to possess it rightfully; and Possession is the condition of the possibility of using a thing. If this condition is regarded merely as physical, the possession is called *detention* or holding. But legal detention alone does not suffice to make an object mine, or to entitle me so to regard it. If, however, I am entitled, on any ground whatever, to press for the possession of an object which has escaped from my power or been taken from me, this conception of right is a sign in effect that I hold myself entitled to conduct myself towards it as being mine and in my rational possession, and so to use it as my object.

The 'Mine' in this connection does not mean that it is constituted by ownership of the Person of another; for a man cannot even be the owner of himself, and much less of another person. It means only the right of Usufruct (*jus utendi fruendi*) in immediate reference to this person, as if he were a thing, but without infring-

¹ According to the Definition, I do not use the expression 'to have another Person as my Person,' but as 'mine' (*meum*), as if the Person were viewed in this relation as a Thing. For I can say 'this is my father' in indicating my natural relationship of connection with him, by which I merely state that I have a father. But I may not say 'I have him as mine' in this relation. However, if I say 'my Wife,' this indicates a special juridical relation of a possessor to an object viewed as a thing, although in this case it is a person. But physical possession is the condition of the use of a thing as such (*manipulatio*); although in another relation the object must at the same time be treated as a Person.

ng on the right of his personality, even while using him as a means for my own ends.

These ends, however, as conditioning the rightfulness of such use, must necessarily be moral. A man may neither desire a wife in order to enjoy her as if she were a thing by the immediate pleasure in mere physical intercourse, nor may the wife surrender herself for this purpose; for otherwise the rights of personality would be given up on both sides. In other words, it is only under the condition of a marriage having been previously concluded that there can be such a reciprocal surrender of the two persons into the possession of each other that they will not dehumanize themselves by making a corporeal use of each other.

When this condition is not respected, the carnal enjoyment referred to, is in principle, although not always in effect, on the level of cannibalism. There is merely a difference in the manner of the enjoyment between the exhaustion which may thus be produced and the consumption of bodies by the teeth and maw of the savage; and in such reciprocal use of the sexes the one is really made a *res fungibilis* to the other. Hence a contract that would bind any one for such mere use would be an illegal contract (*pactum turpe*).

2. In like manner, a husband and wife cannot produce a child as their mutual offspring (*res artificialis*) without both coming under the obligation towards it and towards each other to maintain it as their child. This relation accordingly involves the acquisition of a human being as if it were a thing, but it holds only in form according to the idea of a merely Personal Right of a real kind. The parents have a Right against any possessor of the child who may have taken it out of their power (*jus in*

established for all time, and that the Head of the State should not have the right entirely to abolish the privileges of such a class; nor, if this be done, can it be held that thereby what belonged to the Nobility as Subjects, by way of a hereditary possession, has been taken from them. The Nobility, in fact, constitute a temporary corporation or guild, authorized by the State; and it must adapt itself to the circumstances of the time, nor may it do violence to the universal right of man, however long that may have been suspended. For the rank of the nobleman in the State is not only dependent upon the Constitution itself, but is only an accident, with a merely contingent inherence in the Constitution. A nobleman can be regarded as having a place only in the Civil Constitution, but not as having his position grounded on the state of Nature. Hence, if the State alters its constitution, no one who thereby loses his title and rank would be justified in saying that what was his own had been taken from him; because he could only call it his own under the condition of the continued duration of the previous form of the State. But the State has the right to alter its form, and even to change it into a pure Republic. The Orders in the State, and the privilege of wearing certain insignia distinctive of them, do not therefore establish any right of *perpetual* possession.

D. Primogeniture and Entail.

By the Foundation of *Primogeniture and Entail* is meant that arrangement by which a proprietor institutes a succession of inheritance, so that the next proprietor in the series shall always be the eldest born heir of the family, after the analogy of a hereditary monarchy in

the State. But such a Foundation must be regarded as always capable of being annulled with the consent of all the Agnates; and it may not be held to be instituted as for all time, like a hereditary Right attaching to the Soil. Nor, consequently, can it be said that the abrogation of it is a violation of the Foundation and Will of the first ancestral Founder. On the contrary, the State has here a Right and even a duty, in connection with gradually emerging necessity for its own Reform, if it has been once extinguished, not to allow the resuscitation of such a federative system of its subjects, as if they were viceroys or sub-kings, after the analogy of the ancient Satraps and Heads of Dynasties.

IX.

Concluding Remarks on Public Right and Absolute Submission to the Sovereign Authority.

With regard to the ideas presented under the Heading of PUBLIC RIGHT, the Reviewer says that 'the want of room does not permit him to express himself in detail.' But he makes the following remarks on one point: 'So far as we know, no other philosopher has recognised this most paradoxical of all paradoxes, that the mere *idea* of a Sovereign Power should compel me to obey as my master any one who gives himself out to be my master, without asking who has given him the Right to command me? That a Sovereign Power and a Sovereign are to be recognised, and that the one or the other whose existence is not given in any way *à priori* is also to be regarded *à priori* as a master, are represented so as to be one and the same thing.' Now, while this view is admitted to be *paradoxical*, I hope when it is more

