

The reading assigned for Thurs. 10/28 consists of several selections which concern in one way or another the way Kant conceives of ethics. (1) A first group (EG 49f, 54f, 61f) comes from section 3 of the *Grounding of the Metaphysics of Morals*, a section which is largely concerned with the relation of ethics to other parts of philosophy. The remainder come from the *Metaphysics of Morals* itself. These consist of selections from (2) the general introduction to both parts of the work (EM 9-13, 17-20), (3) the introduction to the first part of the work, Kant's discussion of the law (on this handout), and (4) the introduction to the second part of the whole, Kant's discussion of ethics in the sense in which it is distinct from the law (EM 47-55).

Selections from Kant's *Metaphysical Principles of Right*

(From: Immanuel Kant, *The Philosophy of Law*, W. Hastie, tr., Edinburgh: T. & T. Clark, 1887, pp. 43-49)

INTRODUCTION TO THE SCIENCE OF RIGHT.

GENERAL DEFINITIONS AND DIVISIONS.

A.

What the Science of Right is.

THE SCIENCE OF RIGHT has for its object the Principles of all the Laws which it is possible to promulgate by external legislation. Where there is such a legislation, it becomes in actual application to it, a system of positive Right and Law; and he who is versed in the knowledge of this System is called a Jurist or Jurisconsult (*jurisconsultus*). A practical Jurisconsult (*jurisperitus*), or a professional Lawyer, is one who is skilled in the knowledge of positive external Laws, and who can apply them to cases that may occur in experience. Such practical knowledge of positive Right, and Law, may be regarded as belonging to *Jurisprudence* (*Jurisprudentia*) in the original sense of the term. But the theoretical knowledge of Right and Law in Principle, as distinguished from positive Laws and empirical cases, belongs to the pure SCIENCE OF RIGHT (*Jurisscientia*). The Science of Right thus designates the philosophical and systematic knowledge of the Principles of Natural Right. And it is from this Science that the immutable Principles of all positive Legislation must be derived by practical Jurists and Lawgivers.

B.

What is Right?

This question may be said to be about as embarrassing to the Jurist as the well-known question, 'What is Truth?' is to the Logician. It is all the more so, if, on reflection, he strives to avoid tautology in his reply, and recognise the fact that a reference to what holds true merely of the laws of some one country at a particular time, is not a solution of the general problem thus proposed. It is quite easy to state what may be right in particular cases (*quid sit juris*), as being what the laws of a certain place and of a certain time say or may have said; but it is much more difficult to

determine whether what they have enacted is right in itself, and to lay down a universal Criterion by which Right and Wrong in general, and what is just and unjust, may be recognised. All this may remain entirely hidden even from the practical Jurist until he abandon his empirical principles for a time, and search in the pure Reason for the sources of such judgments, in order to lay a real foundation for actual positive Legislation. In this search his empirical Laws may, indeed, furnish him with excellent guidance; but a merely empirical system that is void of rational principles is, like the wooden head in the fable of Phædrus, fine enough in appearance, but unfortunately it wants brain.

1. The conception of RIGHT,—as referring to a corresponding Obligation which is the moral aspect of it,—in the *first* place, has regard only to the external and practical relation of one Person to another, in so far as they can have influence upon each other, immediately or mediately, by their *Actions* as facts. 2. In the *second* place, the conception of Right does not indicate the relation of the action of an individual to the *wish* or the mere desire of another, as in acts of benevolence or of unkindness, but only the relation of his free action to the freedom of *action* of the other. 3. And, in the *third* place, in this reciprocal relation of voluntary actions, the conception of Right does not take into consideration the *matter* of the act of Will in so far as the end which any one may have in view in willing it, is concerned. In other words, it is not asked in a question of Right whether any one on buying goods for his own business realizes a profit by the transaction or not; but only the *form* of the transaction is taken into account, in considering the relation of the mutual acts of Will. Acts of Will or voluntary Choice are thus regarded only in so far as they are *free*, and as to whether the action of one can harmonize with the Freedom of another, according to a universal Law.

RIGHT, therefore, comprehends the whole of the conditions under which the voluntary actions of any one Person can be harmonized in reality with the voluntary actions of every other Person, according to a universal Law of Freedom.

C.

Universal Principle of Right.

'Every Action is *right* which in itself, or in the maxim on which it proceeds, is such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal Law.'

If, then, my action or my condition generally can co-exist with the freedom of every other, according to a universal law, any one does me a wrong who hinders me in the performance of this action, or in the maintenance of this condition. For such a hindrance or obstruction cannot co-exist with Freedom according to universal Laws.

It follows also that it cannot be demanded as a matter of Right, that this universal Principle of all maxims shall itself be adopted as my maxim, that is, that I shall make it the *maxim* of my actions. For any one may be free, although his Freedom is entirely indifferent to me, or even if I wished in my heart to infringe it, so long as I do not actually violate that

freedom by *my external action*. Ethics, however, as distinguished from Jurisprudence, imposes upon me the obligation to make the fulfilment of Right a *maxim* of my conduct.

The universal Law of Right may then be expressed, thus: 'Act externally in such a manner that the free exercise of thy Will may be able to co-exist with the Freedom of all others, according to a universal Law.' This is undoubtedly a Law which imposes obligation upon me; but it does not at all imply and still less command that I *ought*, merely on account of this obligation, to limit my freedom to these very conditions. Reason in this connection says only that it *is* restricted thus far by its Idea, and may be likewise thus limited in fact by others; and it lays this down as a Postulate which is not capable of further proof. As the object in view is not to teach Virtue, but to explain what Right *is*, thus far the Law of Right, as thus laid down, may not, and should not be represented as a motive-principle of action.

D.

Right is conjoined with the Title or Authority to compel.

The resistance which is opposed to any hindrance of an effect, is in reality a furtherance of this effect, and is in accordance with its accomplishment. Now, everything that is wrong is a hindrance of freedom, according to universal Laws; and Compulsion or Constraint of any kind is a hindrance or resistance made to Freedom. Consequently, if a certain exercise of Freedom is itself a hindrance of the Freedom that is according to universal Laws, it is wrong; and the compulsion or constraint which is opposed to it is right, as being a *hindering of a hindrance of Freedom*, and as being in accord with the Freedom which exists in accordance with universal Laws. Hence, according to the logical principle of Contradiction, all Right is accompanied with an implied Title or warrant to bring compulsion to bear on any one who may violate it in fact.

E.

Strict Right may be also represented as the possibility of a universal reciprocal Compulsion in harmony with the Freedom of all according to universal Laws.

This proposition means that Right is not to be regarded as composed of two different elements—Obligation according to a Law, and a Title on the part of one who has bound another by his own free choice, to compel him to perform. But it imports that the conception of Right may be viewed as consisting immediately in the possibility of a universal reciprocal Compulsion, in harmony with the Freedom of all. As Right in general has for its object only what is external in actions, Strict Right, as that with which nothing ethical is intermingled, requires no other motives of action than those that are merely external; for it is then pure Right, and is unmixed with any prescriptions of Virtue. A *strict* Right, then, in the exact sense of the term, is that which alone can be called wholly external. Now such Right is founded, no doubt, upon the consciousness of the

Obligation of every individual according to the Law; but if it is to be pure as such, it neither may nor should refer to this consciousness as a motive by which to determine the free act of the Will. For this purpose, however, it finds upon the principle of the possibility of an external Compulsion, such as may coexist with the freedom of every one according to universal Laws. Accordingly, then, where it is said that a Creditor has a right to demand from a Debtor the payment of his debt, this does not mean merely that he can bring him to feel in his mind that Reason obliges him to do this; but it means that he can apply an external compulsion to force any such one so to pay, and that this compulsion is quite consistent with the Freedom of all, including the parties in question, according to a universal Law. Right and the Title to compel, thus indicate the same thing.

The Law of Right, as thus enunciated, is represented as a reciprocal Compulsion necessarily in accordance with the Freedom of every one, under the principle of a universal Freedom. It is thus, as it were, a representative *Construction* of the conception of Right, by exhibiting it in a pure intuitive perception *à priori*, after the analogy of the possibility of the free motions of bodies under the physical Law of *the Equality of Action and Reaction*. Now, as in pure Mathematics, we cannot deduce the properties of its objects immediately from a mere abstract conception, but can only discover them by figurative construction or representation of its conceptions; so it is in like manner with the Principle of Right. It is not so much the mere formal *Conception* of Right, but rather that of a universal and equal reciprocal Compulsion as harmonizing with it, and reduced under general laws, that makes representation of that conception possible. But just as those conceptions presented in Dynamics are founded upon a merely formal representation of pure Mathematics as presented in Geometry, Reason has taken care also to provide the Understanding as far as possible with intuitive presentations *à priori* in behoof of a Construction of the conception of Right. The Right in geometrical lines (*rectum*) is opposed as the Straight to that which is Curved, and to that which is Oblique. In the first opposition there is involved an *inner quality* of the lines of such a nature that there is only one *straight* or *right* Line possible between two given points. In the second case, again, the *positions* of two intersecting or meeting *Lines* are of such a nature that there can likewise be only *one* line called the Perpendicular, which is not more inclined to the one side than the other, and it divides space on either side into two equal parts. After the manner of this analogy, the Science of Right aims at determining what every one shall have as his *own* with mathematical exactness; but this is not to be expected in the ethical Science of Virtue, as it cannot but allow a certain latitude for exceptions. But without passing into the sphere of Ethics, there are two cases—known as the equivocal Right of Equity and Necessity—which claim a juridical decision, yet for which no one can be found to give such a decision, and which, as regards their relation to Rights, belong, as it were, to the '*Intermundia*' of Epicurus....