The Nomothetics of Pure Reason

A juridical account of Immanuel Kant's 'Critique of Pure Reason'

Sofie Christine Møller

Thesis submitted for assessment with a view to obtaining
the degree of Doctor of Laws of the European University Institute

Florence, 03 November 2017

European University Institute
Department of Law

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Examining Board

Prof. Dennis Patterson, EUI (Supervisor)
Prof. Nehal Bhuta, EUI
Prof. Paul Guyer, Brown University (external co-supervisor)
Prof. Marcus Willaschek, Goethe University Frankfurt

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SUMMARY

This thesis demonstrates that to understand Immanuel Kant's account of reason, we must interpret reason's legislation as embedded in the intricate collection of juridical metaphors that are repeated in the entire body of the *Critique of Pure Reason*. These metaphors teach us that Kant understands reason as operating analogously to a legal system.

Kant repeatedly describes both reason and its critique using legal vocabulary; he likens the critique to a tribunal, the transcendental deduction to a legal deduction and the situation among metaphysicians of his day to a state of nature. Of these juridical metaphors, only the *quid juris* metaphor, which introduces the transcendental deduction, has been discussed extensively in Kant scholarship, starting with Dieter Henrich's study of the similarities between the transcendental deduction and legal deductions. The remaining metaphors have either been neglected or studied jointly with the political metaphors.

This thesis shows that the juridical metaphors are central to understanding Kant's account of reason's legislation and its ability to make valid judgments. Through an analysis of the juridical metaphors in their entirety, it is demonstrated that Kant conceives of reason as having the structure of a legal system in a natural right framework. Against this background, the method of critical philosophy becomes the nomothetics of pure reason.

The parallel is substantiated by investigating the metaphorical presentation of five aspects of Kant's account of reason: reason's legislation, the notion of a deduction, the critical tribunal, reason's authority (*Befugnis*) and its systematicity. It is argued that Kant's aim in the first *Critique* is to make cognizers become similar to authorized judges within such a system by proving the legitimacy of the laws and the conditions under which valid judgments can be pronounced. These elements consolidate the conclusion that reason's systematicity is legal systematicity.

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INTRODUCTION

> Philosophy is the study of the laws of human reason. The artist of reason needs rules, the teacher of reason laws. *Leguleius.*
> *Est nomothetica rationis humanae.*[1]
>
> Kant, *Reflection 5007*

> But if reason has to be criticized, by whom can it be done? By no-one but itself, thus it is both defendant and judge. And according to what can it be judged? Only according to itself; thus it is also law and witness. The difficulties of this judgeship are immediately evident.[2]
>
> Herder, *Metakritik zur Kritik der reinen Vernunft*

Kant illustrates the *Critique of Pure Reason* with an intricate collection of legal images; all its parts are populated with laws, judges, lawyers, tribunals, legislators, witnesses and many other references to legal theory and practice. Both the critique of pure reason and of reason as such are described as legislator, judge and tribunal. In the A-preface, we learn that the task of a critique of reason is to institute a court of justice which is "none other than the *critique of pure reason* itself".[3] In order to function as a court of justice, the critique also has to act "as wise legislators do"[4] and revise proposed laws when they lead to contradictory judgments. Reason's approach to nature must be "like an appointed judge who compels witnesses to answer the questions he puts to them."[5] The critique thus investigates whether reason can legislate and

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[1] Ref 5007, AA 18, 58 (my translation). ["Die philosophie ist die Gesetzkunde der Menschlichen Vernunft. Der Vernunftkünstler bedarf Regeln, der Vernunftlehrer Gesetze. *leguleius*. *Est nomothetica rationis humanae*."]
[2] Herder, *Metakritik zur Kritik der reinen Vernunft*, 27. (my translation) ["Wenn aber Vernunft kritisiert werden soll, von wem kann sie es werden? Nicht anders als von ihr selbst; mithin ist sie Partei und Richter. Und wonach kann sie gerichtet werden? Nicht anders als nach sich selbst; mithin ist sie auch Gesetz und Zeuge. Sofort erblickt man die Schwierigkeiten dieses Richteramtes."]
[3] KrV, A XII, CPR, 101. ["dieser ist kein anderer als die *Kritik der reinen Vernunft* selbst."]
Unless otherwise specified, I cite Kant's works in English translation from the *Cambridge Edition of the Works of Immanuel Kant* in the main text and put the German original from the Akademie edition (Kant, *Kant's Gesammelte Schriften*) in square brackets in the footnotes. I abbreviate the *Kritik der reinen Vernunft* as KrV and the Cambridge translation of this work as CPR. A complete list of the abbreviations I use for Kant's works is attached on p. 187 below. In references to the *Critique of Pure Reason*, I use the paging from the two original editions and mark the 1781-edition with A and the 1787-edition with B. For all Kant's other works, I refer to the paging of the Akademie-edition of which I indicate the volume with 'AA'. I have kept the original spelling in quotations from the Akademie-edition and other older works.
[4] KrV, A 424/B 452, CPR, 469. ["wie weise Gesetzgeber thun"]
[5] KrV, B XIII, CPR, 109. ["in der Qualität [...] eines bestallten Richters, der die Zeugen nöthigt auf die Fragen zu antworten, die er ihnen vorlegt."]

judge legitimately. Even though Kant explicitly and repeatedly formulates his account of reason in juridical terms, interpreters usually overlook the juridical aspect of reason.[6]

Although Dieter Henrich and other scholars have promoted a legal understanding of the transcendental deduction, we still lack an understanding of the philosophical significance that the juridical metaphors in their entirety contribute to the *Critique of Pure Reason*.[7] I believe there are three ways of reading the juridical metaphors: As rhetorical devices, as presentations of the logical structure of arguments, or as presentations of Kant's account of reason. Even though the juridical metaphors are presented in a large number and great variety, most interpreters have focused on understanding what the juridical metaphors tell us about the structure of the arguments used in the first *Critique*. Especially the transcendental deduction has been interpreted by means of the juridical metaphor which introduces the argument. In this particular metaphor, Kant likens his notion of a philosophical deduction to that of a juridical deduction, a similarity which is based on both arguments addressing the question *quid juris*, i.e., the question of right. This parallel has led a number of scholars to interpret Kant's legal imagery as a key to understanding the intended structure of deductions in general, inspired by Dieter Henrich's influential study of the parallel between legal deductions and the transcendental deduction.[8] However, Henrich's focus on the juridical metaphors as clues about argument structure misses important features of Kant's philosophical project, which are illuminated if we consider the juridical metaphors as a whole. If we focus exclusively on the structure of the transcenden-

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[6] Notable exceptions to this general tendency are Guyer, "Kant's Legacy for German Idealism: Versions of Autonomy"; Ameriks, *Kant and the Fate of Autonomy: Problems in the Appropriation of the Critical Philosophy*; Pollok, *Kant's Theory of Normativity: Exploring the Space of Reason*.

[7] Studies of individual juridical metaphors include Dieter Henrich's study of the transcendental deduction Henrich, "Kant's Notion of a Deduction." Other discussions of the transcendental deduction and the *quid juris* metaphor are Rosenberg, "Transcendental Arguments Revisited"; Stroud, "Transcendental Arguments and 'Epistemological Naturalism'"; Rosenberg, "Reply to Stroud"; Proops, "Kant's Legal Metaphor and the Nature of a Deduction"; Bubner, "Selbstbezüglichkeit als Struktur transzendentaler Argumente"; Stoddard, "Reason on Trial: Legal Metaphors in the Critique of Pure Reason"; Ishikawa, *Kants Denken von einem Dritten*; Pievatolo, "The Tribunal of Reason"; and my "The Court of Reason in Kant's Critique of Pure Reason."
Studies which engage with the juridical metaphors in their entirety are: O'Neill, *Constructions of Reason*; Kersting, "Die juridische Gesetzgebung der Vernunft"; Brandt, "'Sei ein rechtlicher Mensch (honeste vive)' - wie das?"; Stentzler, *Die Verfassung der Venunft*. Rose, *Dialectic of Nihilism, Post-Structuralism and Law*. Rose's study is discussed and expanded in Cutrofello, *Discipline and Critique: Kant, Poststructuralism, and the Problem of Resistance*, in which the author proposes a postjuridical version of critique.
Textual commentary on the juridical metaphors in their entirety is found in Röttgers, *Kritik und Praxis*, 31–41; Saner, *Kants Weg vom Krieg zum Frieden*, 237ff; Tarbet, "The Fabric of Metaphor in Kant's Critique of Pure Reason" and Vaihinger, *Kommentar zu Kants Kritik der reinen Vernunft*.

[8] See Henrich, "Kant's Notion of a Deduction"; Rosenberg, "Transcendental Arguments Revisited"; Stroud, "Transcendental Arguments and 'Epistemological Naturalism'"; Rosenberg, "Reply to Stroud"; and Proops, "Kant's Legal Metaphor and the Nature of a Deduction."

tal deduction, we miss the fact that what is proven in this argument is that reason can legitimately apply the categories to objects of experience, which is proof of a legal authority rather than a legal possession.

While some of the juridical metaphors give us important indications about what philosophers can learn from legal arguments, the majority of the juridical metaphors address the structure and task of reason and its critique. The metaphors tell us how reason structures its own activity by giving laws to experience, how it judges in accordance with these laws, and how it discovers and sanctions unauthorized judgments. The main point of the juridical metaphors taken as a whole does not concern the structure of arguments. When read carefully, the juridical metaphors teach us how Kant understands reason as operating analogously to a legal system. The juridical metaphors present reason in several different legal roles, all of which are of crucial importance in the establishment of a legal system. As legislator, reason gives itself laws according to which it both structures and judges appearances. As tribunal, reason follows established procedures in order to reach a reliable outcome in its judgments. As judge, reason pronounces judgments in accordance with valid laws and procedures and these judgments have the value of cognition. My claim is that in order to understand how reason can be legislative and judicial, we need to understand reason's systematicity as legal systematicity.

However, the legal understanding of reason risks leaving us with what I call 'Herder's dilemma' as cited above: it becomes a pressing question how reason can perform all juridical roles without entering a vicious circle. The idea that reason is legislator, judge and judicial reviewer seems in clear violation of the division of powers which Kant defends in his later *Doctrine of Right*.[9] Reason appears to be disqualified to judge in a trial against itself: How can the critique – as a tribunal of reason – judge objectively if the accused is identical with both the legislator and the judge? If the Transcendental Dialectic shows that reason cannot trust its own judgments, how can we be sure that reason's investigation of itself is not another deceptive illusion? If reason accuses itself of making incoherent judgments in accordance with invalid laws, how can it be sure that its critical solution is different? In line with this reading, it would seem that reason's proposed legal system is incapable of proving its own validity.[10] If we conceive of Kant's juridical formulation of reason as a modern legal framework, we will not be

[9] MS, AA 06, 31.

[10] Modern legal systems struggle with a legal version of Gödel's incompleteness theorems: If the system determines what is just, then nothing can determine whether the system itself is just. In Kelsenian terms, the basic norm (*Grundnorm*), which justifies everything within the legal system, cannot be justified by the system (Kelsen, *Reine Rechtslehre*) On the neo-Kantian origins of Kelsen's jurisprudence, see Paulson, "The Neo-Kantian Dimension of Kelsen's Pure Theory of Law."

able to escape this vicious circle. Since reason covers all roles in the legal system, there is no external power to keep its exercise in check. Instead I propose an understanding of Kant's juridical metaphors as referring to a legal system in the natural right tradition rather than a legal system in the positivist tradition.

Kant proposes other comprehensive metaphors in the first *Critique*; there are also images taken from natural science, architecture and biology, which I discuss in more detail in section 5.1.[11] These images do not stand in opposition to the legal imagery; they merely emphasize different aspects of reason. Although these same images also emphasize other features of reason, it is the legal imagery which makes the notion of critique discernable; critical self-scrutiny makes little sense in organic, scientific or architectonic depictions of reason. Organisms develop teleologically into autonomous entities, but they are neither legislative nor judicial. Architects build systematic structures in which the stability of the whole depends on the systematic placement of the parts, but edifices cannot make judgments. Science depends on hypothetical reasoning, but pure reason cannot rely on mere hypotheses.[12] Only the juridical features of reason in combination with the structure of natural right can explain how reason can prescribe laws and judge in accordance with them.

Kant describes precritical reason as a state of nature, in which reason "cannot make its assertions and claims valid or secure them except through *war*."[13] The critique then transforms this chaotic situation into a state under the rule of law, in which reason has the authority to end conflicts by pronouncing verdicts. This imagery ties reason's juridical nature to the framework of natural right theory, which is also fundamental in Kant's description of how natural scientists perform experiments. Apart from portraying reason as juridical, the metaphors tell us the story of reason's development from the precritical state of nature to reason's state of law.[14] As the Transcendental Dialectic shows, reason cannot function as an appointed judge who has the authority to pass judgment before it has examined its own juridical legitimacy. The task of the critique is to transform reason into a system similar to a legal system and establish its 'lawful condition', in which reason can legislate and judge legitimately.

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[11] On Kant's different metaphors, see Eucken, "Über Bilder Und Gleichnisse Bei Kant."
[12] See The Discipline of Pure Reason with Regard to Hypotheses, KrV, A 769-782/B 797-810.
[13] KrV, A 751/B 779, CPR, 649. ["kann ihre Behauptungen und Ansprüche nicht anders geltend machen oder sichern, als durch *Krieg*."]
[14] KrV, A 751/B 779, CPR, 649. ["im Stande der Natur", "eines gesetzlichen Zustandes"]

The establishment of this condition does not entail that reason will no longer be in conflict with itself or no longer feel compelled to make metaphysical claims. The aspiration of the first *Critique* is not to avoid all conflicts about what is rational; its aim is to have a valid procedure for deciding these conflicts which arise inevitably. The image of reason as an appointed judge not only incorporates reason's tendency to be in conflict with itself, but also provides an internal process to decide these conflicts. In Kant's metaphorical description, the critique provides a due process which ends with a valid and authoritative verdict.[15] The juridical account of reason does not eradicate its dialectical tendencies, instead it provides a procedure for deciding between the conflicting parties. Reason's legislation is thus to a state under the rule of law rather than a dictatorship which tolerates no dissidence.

In accordance with the juridical account of reason, Kant describes philosophy as the "nomothetics of reason".[16] Kant writes that "the government of reason"[17] must be performed in a systematic manner, and the systematicity of reason is closely connected with its legitimacy: philosophy, like reason itself, must be systematic in order to be legitimate. Although the philosopher is the legislator of reason, he is not free to invent whichever laws he pleases.[18] Kant expresses this by emphasizing that "the philosopher is not an artist of reason but the legislator of human reason"[19] and that "the idea of his legislation is found in every human reason".[20] The legislative function of philosophy consists in recognizing the laws which are already present in the way reason shapes experience. Against this background, it is meaningful for Kant to call philosophy both "unchangeable and legislative".[21] These two adjectives usually stand in juxtaposition to each other, but can be united if we understand the legislation of reason as recognition of principles that are already present in its continued activity.

I argue that if we understand the juridical nature of reason as analogous to a legal system in the natural right tradition, then Herder's dilemma no longer poses a threat to Kant's juridical

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[15] KrV, A 751/B 779, CPR, 650. ["*Sentenz*"]
[16] Ref 5007, AA 18, 58. Kant modifies this expression from Baumgarten, who defines philosophy as the nomothetics of nature. Baumgarten, *Initia philosophiae practicae primae*, § 78.
[17] KrV, A 832/B 860, CPR, 691 ["Regierung der Vernunft"]
[18] When speaking of people in general, I prefer to keep Kant's to these as 'he' rather than changing the anachronistically to 'him or her'. Although I do not share Kant's ideas of excluding women from this context, I think it is important to keep his instructions as they were rather than changing them into what I personally would like them to be. Still, it might be argued, as Marcia Baron does, that Kant's philosophy was in fact more progressive than Immanuel Kant the individual and writer. See Baron, *Kantian Ethics Almost without Apology*, 228.
[19] KrV, A 839/B 867, CPR, 695. ["der Philosoph ist nicht ein Vernunftkünstler, sondern der Gesetzgeber der menschlichen Vernunft."]
[20] KrV, A 839/B 867, CPR, 695. ["die Idee aber seiner Gesetzgebung allenthalben in jeder Menschenvernunft angetroffen wird"]
[21] KrV, A 847/B 875, CPR, 699. ["unwandelbar und legislatorisch"]

account of reason. Reason as judge and reason as natural scientist are not in juxtaposition to each other because both depend on the same framework. A contemporary example of this conception of legislation is the formulation of civil constitutions and the declaration of human rights. Many civil constitutions strive to found a civil state on principles which are already universally valid, but are given legal validity through a legal declaration. The Universal Declaration of Human Rights is an example of a document which gives juridical validity to a normative structure already present in the world.[22] Similarly, civil constitutions can be constitutive of legal systems and at the same time strive to give juridical validity to norms whose normative validity does not depend on their juridical formulation. In this thesis, I argue that we ought to understand reason's legislation as a declaration which makes preexisting norms legally binding.

In the above, I have followed Kant's usage and left the term 'reason' purposively vague. However, it will be useful for the following discussion to untangle Kant's different uses of the term. According to the Architectonic, reason is "the entire higher faculty of cognition".[23] However, according to the Introduction to Transcendental Dialectic, reason is but one of these faculties – the one responsible for cognition from principles.[24] As an approximation to the complex distinctions, I will call reason as comprising the entire faculty of cognition 'reason in the broad sense' and call the faculty of inference 'reason in the narrow sense'. When I talk about reason without any further qualification, I mean reason in the broad sense as comprising understanding, power of judgment, imagination and reason in the narrow sense.

Metaphors, symbols and hypotyposes

Before beginning the examination of Kant's juridical metaphors, I will explain what I understand by a metaphor. I use the term 'metaphor' in a very broad sense covering what in rhetorical

[22] The Universal Declaration of Human Rights frames itself as a recognition of inherent rights and begins with the statement: "Whereas *recognition* of the *inherent* dignity and of the equal and *inalienable* rights of all members of the human family is the foundation of freedom, justice and peace in the world". ("The Universal Declaration of Human Rights | United Nations." (my emphasis).)

[23] KrV, A 835/B 863, CPR, 693. ["das ganze obere Erkenntisvermögen"] On Kant's theory of the mental faculties, see Falduto, *The Faculties of the Human Mind and the Case of Moral Feeling in Kant's Philosophy*.

[24] KrV, A 299/B 356. Marcus Willaschek has pointed out that Kant's different definitions of reason are better understood in terms of oppositions than in a broad or narrow sense; Kant occilates between defining reason in terms of the oppositions a priori versus empirical and discursive versus sensible. Marcus Willaschek, "Kant's Two Conceptions of (Pure) Reason in the Critique of Pure Reason."

terms are metaphors, symbols, similes, analogies, and metonyms. In short, by metaphors I understand the different ways in which an expression is used to describe something other than its literal meaning. Metaphors liken objects that are similar in some senses and differ in others, and we should therefore not confuse them with identity claims. Of course, reason and jurisprudence differ in a number of ways, and it is not the purpose of this work to claim that they are similar in all respects. The exercise that I propose is to take Kant at his word when he repeatedly writes that reason is similar to different legal institutions, and ask in which ways Kant's account of reason resembles parts of a legal system and in which ways it differs from it. Distinguishing between the similarities and the differences is not always easy and there is a considerable risk of taking the analogies too far and drawing interpretative conclusions merely to gain structural coherence. When Kant writes that reason resembles a tribunal, this does not mean that we ought to identify all features of a tribunal within Kant's account of reason. There need be no critical equivalents of clerks, lawyers and legal briefs for there to be a philosophically relevant analogy between Kant's account of reason and the legal institution of a tribunal. We not be tempted to assign a legal persona to each function of reason: Kant puts a grid for a structural understanding our disposal, but we must resist the urge to fill all the spaces of this grid at all times.

In order to discuss the different legal aspects individually, I will separate the different aspects of reason's activity. Separating the different moments of reason's juridical structure serves the purpose of exposition, but remains a fundamental condition of Kant's account of reason that reason is unitary. Any scrutiny of reason's laws will ultimately end in judgment, which uses the same laws. The whole system is in other words presupposed in each activity, but it is only at the end of the process that the legitimacy of the system itself is confirmed.

In many cases, new technical terms are born out of metaphorical stretches of a word's original meaning. The term 'law' is one such case; the historical development of its application shows how the term evolved from designating statutory laws to indicating any kind of regularity in events, actions or judgments. Some of Kant's juridical metaphors are cases of neologistic inventions of technical terms, but their new meaning is based on a metaphorical application. I have chosen to include the term 'law' in my treatment of Kant's juridical metaphors because it is spun into a web of other juridical metaphors. These images emphasize the metaphorical nature of the term, and as such make its reference broader than that of a technical term.

Since the objects of this study are Kant's metaphors, I rely on Kant's own account of metaphors as given in the *Critique of the Power of Judgment*: In Kant's terminology, what I call a metaphor would be a 'symbol', which he explains as the transference of a rule of reflection from the concept of one object to a different object:

> All intuitions that are ascribed to concepts a priori are thus either *schemata* or *symbols*, the first of which contain direct, the second indirect presentations of the concept. The first do this demonstratively, the second by means of an analogy (for which empirical intuitions are also employed), in which the power of judgment performs a double task, first applying the concept to the object of a sensible intuition, and then, second, applying the mere rule of reflection on that intuition to an entirely different object, of which the first is only the symbol.[25]

Symbols have the function of presenting a priori intuitions to the senses by projecting the rule of reflection from the concept of the sensible intuition to the a priori concept. Kant's own example of such a symbol is the representation of a civil state through the image of either a body or a machine. These concepts become symbols of the state when the rule of reflection connected with the concepts of a body or machine is transferred to the state in order to present an abstract concept to the senses. Reflection is here a type of judgment that is opposed to a determining judgment; rather than applying a general rule to a single instance, reflective judgment finds the rule of which the object is an instance. By a 'rule of reflection' Kant is referring to the *form* of a reflection rather than its content; the rule of reflection is a type of general rule rather than a specific one. In Kant's example of the hand mill as a symbol of despotism, the relationship of the parts to the whole is transferred from the concept of a machine to that of the state, thus making an abstract entity indirectly accessible to the senses.[26] Kant calls this sensualization of an *a priori* concept – which can be either schematic or symbolic – a *hypotyposis*.[27] The purpose of a hypotyposis is to present an abstract concept through an intuition and thereby give the concept a semblance of objective reality.[28]

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[25] KU, AA 05, 352, *Critique of the Power of Judgment*, 226. ["Alle Anschauungen, die man Begriffen a priori unterlegt, sind also entweder *Schemate* oder *Symbole*, wovon die ersteren directe, die zweiten indirecte Darstellungen des Begriffs enthalten. Die erstern thun dieses demonstrativ, die zweiten vermittelst einer Analogie (zu welcher man sich auch empirischer Anschauungen bedient), in welcher die Urtheilskraft ein doppeltes Geschäft verrichtet, erstlich den Begriff auf den Gegenstand einer Sinnlichen Anschauung und dann zweitens die bloße Regel der Reflexion über jene Anschauung auf einen ganz andern Gegenstand, von dem der erstere nur das Symbol ist, anzuwenden."]

[26] KU, AA 05, 352. On the problematic lack of reflective judgment in the *Critique of Pure Reason*, see Ypi, "Practical Agency, Teleology and System in Kant's Architectonic of Pure Reason"; and Guyer, "Reason and Reflective Judgment."

[27] On Kant's notion of hypotyposis, see Gasché, "Some Reflections on the Notion of Hypotyposis in Kant"; Jäger, "Das schreibende Bewusstsein. Transkriptivität und Hypotypose in Kants 'Andeutungen yur Sprache'"; and Lamacchia, "Sprachphilosophische Erwägungen zur Funktion von Signum und Symbolum in Kants Kritischer Philosophie."

[28] In Kant's terminology, concepts have objective reality if they can be applied to possible objects of experience (KrV, A 155/B 194). Accordingly, the concept "horse" has objective reality while the concept "God" does not.

Thus, symbols serve a cognitive function; according to Kant, they present concepts whose instances are not tangible objects to the senses and consequently symbolic reasoning can lead to a practical understanding of an abstract concept. Symbols thus provide a means to imagine what an object falling under this concept might look like in terms of its structural properties. Because schematic sensualization approximates objective reality, hypotyposis is decisive for the validity of an abstract concept in its application to the objects of experience.[29]

The *Critique of Pure Reason* is concerned with giving an account of reason: an abstract concept whose instances we can never meet in experience. By providing symbols of different aspects of reason, Kant gives the reader an idea of its structural properties. In Kant's terminology, the juridical metaphors are examples of symbolic hypotyposis which provide concrete presentations of thought processes which cannot be represented directly to the senses. While we cannot have a direct experience of reason, we can grasp the structural features of tribunals and transfer these to our understanding of reason. As symbolic presentations of an abstract concept, the juridical metaphors indicate a structural similarity between reason and certain legal procedures and roles; by reflecting on the similarities between a legal system and reason, the reader gains a practical understanding of reason which would otherwise escape her. Following Kant's line of reasoning, the juridical metaphors serve a cognitive purpose because they provide concrete illustrations of abstract thought processes.

This leads us to the question as to which structural similarities are transferred to our understanding of reason through the juridical metaphors. The juridical metaphors rarely include explicit descriptions of legal practices, which means that they draw on the reader's own background knowledge of legal theory and procedure. The references are never explicit enough for the reader to decide exactly which legal systems and procedures Kant has in mind. As we shall see, he often refers to a mixture of ideal and actual legal systems. In order to interpret the philosophical implications of the juridical metaphors, we therefore need to reconstruct at least part of the background knowledge that Kant presupposes his readers possess. The aim of this reconstruction is to decipher the juridical metaphors and understand which legal theories or practices Kant uses as an image of reason.

Kant's account of the cognitive function of metaphors suggests that identifying the relevant similarities between the two objects and transferring the rule of reflection from one to the other

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[29] KU, AA 05, 350, cf. Flach, "Zu Kants Lehre von der symbolischen Darstellung," 455. Kant distinguishes between hypotyposes as sensualisations of a priori concepts and characterisms which are expressions rather than presentations of concepts. See also Cazeaux, *Kant, Cognitive Metaphor and Continental Philosophy* and Nuyen, "The Kantian Theory of Metaphor."

is a matter of interpretation. This interpretative work points in the direction of the central claim in today's theories of metaphors; unlike concepts, metaphors are characterized by having polyvalent meanings which depend on the interpretation of the metaphor.[30] Isolated from its context and without any further qualification, the metaphor "reason is a tribunal" can be interpreted in many ways: it can mean that reason is a physical building which is the seat of a tribunal, that reason is an institution which makes judgments in accordance with the positive laws of a certain legal system, that reason is an institution to which people go to have a final verdict concerning their disputes, and so on.

In order to understand which of these interpretations applies to the juridical metaphors we need to understand both objects better; understanding the juridical metaphors requires a better understanding of both reason and the legal institutions to which it is likened. Once we have reached such an understanding, we will be able to transfer the relevant structural similarities from one object to the other to achieve a concrete illustration of something as abstract as our own cognitive faculties.[31]

Methodological considerations

The legal images are a *Leitfaden* connecting the different parts of the first *Critique* with each other and with the debates and practices that lie beyond the work. Interpreting the *Critique of Pure Reason* through the juridical metaphors helps us insert the work into a dialogue with other discussions in legal thought.[32] As we saw in the previous section, Kant maintains that symbolic presentations make abstract concepts conspicuous by indicating structural properties which the

[30] See Schumacher, *Metapher*.

[31] Analogies play a central role in Kant's account of how reason functions. Because of the discursive nature of our intellect, all of cognition must be comparative. In the *Critique of Pure Reason*, the analogies of experience are what bring us to apply our a priori concepts to our experience. According to this section, we can only make a judgment which combines the singular with the universal because we are able to recognize similarities in experience. It is a reflection on what a particular object has in common with other objects that leads us to have cognition about our experience. All cognition presupposes reflection on the similarities of objects, and all reflection presupposes an analogical approach to experience. According to the introduction to the analogies of experience, we are able to gain knowledge about an object because we recognize its similarities with another object. KrV, A 179-181/B 221-224.

[32] Dieter Henrich includes the context in his analysis of the transcendental deduction, but he limits it to a single metaphor and he only considers how it helps us understand the argumentative structure in the transcendental deduction (Henrich, "Kant's Notion of a Deduction"). Ian Proops and Fumiyasu Ishikawa rely completely on Henrich's research of the origin of Kant's deduction (Proops, "Kant's Legal Metaphor and the Nature of a Deduction" and Ishikawa, *Kants Denken von einem Dritten*). Onora O'Neill aims at giving an interpretation of the meaning of all the juridical metaphors, but she reads them as a subcategory of all the political metaphors and she does not relate her understanding of the juridical metaphors to the context in which the work was written. (O'Neill, *Constructions of Reason*) Also Maria Chiara Pievatolo considers the juridical metaphors in their entirety, but she does not include the intellectual-historical context in her analysis (Pievatolo, "The Tribunal of Reason")

abstract notion shares with an empirical object. However, reflection on structural properties presupposes some knowledge of the two entities. To understand which similarities the juridical metaphors emphasize, we need to reconstruct part of the understanding of legal theory and practices which Kant's intended readers had.[33]

The investigations in this thesis take the form of many small hermeneutical circles; first I identify Kant's use of juridical metaphors in the text, then I explore the intellectual historical background to which these images refer, and finally I return to Kant's text to interpret the philosophical meaning of the images in light of the context.[34] The juridical metaphors help integrate the reading of Kant's works into many different discussions among his contemporaries on topics which go beyond philosophy, but I limit my investigations in intellectual history to support the signaling function of the metaphors.[35] A complete reconstruction of the context is an infinite enterprise and I have but scratched the surface of the discussions on legal codification, the limits of judicial authority, and procedural justice in which intellectuals were engaged in Kant's time.

Following the example of Quentin Skinner, many studies in intellectual history recover the political context in which past thinkers were writing. This type of approach seeks to locate texts in the history of political thought as political acts and not just as thought experiments.[36] This is not the approach I adopt here.[37] My point is neither to reconstruct the *Critique of Pure Reason* as a political manifesto nor to reconstruct the legal procedures in late 18th century Prussia. Instead, I am interested in the way in which Kant uses images and metaphors to create what has since become the highly specialized language of critical philosophy. The tools I borrow from intellectual history are thus closer to Pocock's idea of recreating the language in which a text was written.[38] Although many words have not changed their definition since Kant's time,

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[33] On the notion of the intended reader as an interpretive tool in works of fiction, see Eco, *Lector in fabula: la cooperazione interpretativa nei testi narrativi*.

[34] I take this image from Richard Rorty who describes rational and historical reconstruction of the history of philosophy as different moments within the same circular movement: "These two topics [i.e., rational and historical reconstruction] should be seen as moments in a continuing movement around the hermenuetic circle, a circle one has to have gone round a good many times before one can begin to do *either* sort of reconstruction." Rorty, "The Historiography of Philosophy: Four Genres," 53, note 1.

[35] For Rorty, history of philosophy differs from intellectual history because the latter proceeds in complete disregard of disciplinary divides: "In my sense, intellectual history consists of descriptions of what the intellectuals were up to at a given time, and of their interaction with the rest of society – descriptions which, for the most part, bracket the question of what activities which intellectuals were conducting." Ibid., 68.

[36] Skinner, "Meaning and Understanding in the History of Ideas."

[37] For a successful use of this approach to Kant's works, see Maliks, *Kant's Politics in Context*. In this study, Maliks demonstrates how Kant's political ideas were influenced by the French Revolution and how Kant's theoretical philosophy influenced radical political thinkers.

[38] Pocock, "The History of Political Thought: A Methodological Inquiry." See also Haakonssen, "The History of Eighteenth Century Philosophy: History or Philosophy?"

the connotations associated with them and the associations they create have undergone immense changes. Kant's neologisms and redefinitions of terms have become part of standard philosophical terminology to such an extent that many entries in the *Historisches Wörterbuch der Philosophie* start with Kant's definition of a term.

At the time Kant wrote the *Critique of Pure Reason*, he had not yet developed an explicit philosophy of law. This means that we cannot directly transfer his account of legal philosophy from his later *Doctrine of Right* without surveying the sources from the period in which he wrote the first *Critique*. His views on law and obligation changed from the earliest margin notes in Kant's copies of Achenwall's and Baumgarten's works on practical philosophy, through the lecture notes to the final *Doctrine of Right*. Werner Busch has showed how Kant's understanding of legal philosophy changed considerably in the years leading up to the publication of the first *Critique*. Busch argues that Kant's early (1766-1768) account of law is characterized by the idea "that laws and power stand in an undissolvable correlation in the formation of a real external state of right."[39] This conclusion is based on Kant's margin notes in Achenwall's *Ius Naturae*, where he comments that the natural condition must be seen in opposition to the civil condition rather than the social condition, because only the civil condition guarantees consistent adjudication through a structured legal system.

Kant was lecturing on natural right and ethics while he was writing both editions of the first *Critique*, but he could hardly expect the general public to be familiar with the content of his lectures or indeed his margin notes. I assume that Kant's legal metaphors were meant to be understood by readers of the time, and I therefore rely on Kant's discussions of those legal theories and procedures which were known to the general public. Although Kant's own unpublished notes and the student notes from his lectures can help us comprehend how Kant approached legal topics around the time he wrote the first *Critique*, his readers were not necessarily familiar with these documents. I therefore aim to reconstruct his readers' background knowledge of how judges and legal systems worked during this period in order to understand the purpose of the juridical metaphors Kant employed.

[39] Busch, *Die Entstehung der kritischen Rechtsphilosophie Kants 1762-1780*, 34. (my translation). ["daß Rechtsregel und Macht zur Entstehung eines wirklichen äußeren Rechtsverhältnisses in unauflöslicher Wechselbeziehung stehen."] See also Oberer, "Zur Frühgeschichte der Kantischen Rechtslehre."

Outline

This thesis is divided into five chapters; chapters one to four present different aspects of reason and critique as presented in the juridical metaphors. These aspects are the natural right analogy as an image of reason's legislation, the legal understanding of deductions, the image of the critique as a tribunal of reason and reason's judicial authority. The fifth chapter coalesces these aspects in an understanding of reason's systematicity as legal systematicity and the critique of pure reason as the nomothetics of reason.

In the first chapter, I explore the parallels between the critique and the establishment of a civil condition in natural right theory. I provide an introduction to natural right theory and the notion of laws in the natural sciences as historical background to the juridical metaphors. I argue that it is meaningful to interpret Kant's notion of laws as embedded in his juridical metaphors, and I show that the account of natural regularities as lawful also originates in the natural right framework.

In the second chapter, I investigate the *quid juris* metaphor that introduces the transcendental deduction. As a guide for the interpretation, I outline the historical background of deduction writings in Prussia. Through my analysis of the *quid juris* metaphor, I reject Henrich's understanding of the transcendental deduction as a loosely structured proof of an origin and instead argue that we should read the *quid juris* metaphor in parallel with Kant's account of judicial imputation.

The third chapter is a reconstruction of the different roles at the tribunal of reason as they appear in the Transcendental Dialectic. I compare this portrayal of the critique as an inner tribunal to the traditional image of moral conscience as an inner tribunal and discuss whether moral conscience is a model of the way in which a reflexive investigation can be both internal and objective.

The fourth chapter is an account of reason's authority as authorization by virtue of its systematicity. The historical background for this account explores discussions of judicial authority of the period, and Kant's own account of judicial power.

In the final chapter, I compare the legal metaphors to the other images of reason's systematicity. I also discuss the idea that reason in the narrow sense provides a legislation which applies to the understanding and forwards a systematic approach to cognition. I finally put forward an account of philosophy as the nomothetics of reason – a notion which lends this thesis its title.

1. THE NATURAL RIGHT METAPHOR

In the Doctrine of Method, Kant likens the purpose of the critique to that of statutory law in a civil society. According to this image, the practical purpose of the critique is to end quarrels among metaphysicians by establishing a procedure to decide epistemological conflicts. Without such a procedure, there can be no certainty in metaphysics and no way of avoiding the illusions of pure reason which lead to contradictory judgments. To illustrate the pressing need for critique, Kant uses images from natural right theory; without the critique, "reason is as it were in the state of nature, and it cannot make its assertions and claims valid or secure them except through *war*."[40] This image associates the relationship of reason to its own laws with the notion of a state of nature in which there is no objective procedure for deciding disputes over legal claims. Just as the civil condition replaces an uncertain and unjust state of nature, "the endless controversies of a merely dogmatic reason finally make it necessary to seek peace in some sort of critique of this reason itself."[41]

In such images, Kant explains his enterprise with vocabulary from natural right but it is unclear to which accounts of natural right he is referring to and how many of their arguments he is adopting. Are we to take these images as arguments for the usefulness of the critique or are they merely an illustration of its purpose? In this chapter, I explore the ways in which Kant illustrates the critique using images and vocabulary from the natural right tradition. My aim is to clarify how the critique is similar to the establishment of a civil condition and how a priori principles are similar to civil or natural legislation.

In the first two sections, I introduce the idea that the critique is the tribunal of reason and I explore the image of precritical reason as a state of nature and examine the idea that the critique establishes perpetual peace among metaphysicians. As part of this investigation, I discuss the historical background of this image. In section 3, I show the way in which the juridical metaphors rely on a distinction between natural right and positive law. In section 4, I introduce the idea that the critique determines reason's legislation in a manner that relies on a natural right understanding of law. In section 5, I sketch out the metaphorical background of the laws of nature in natural science, which I connect to Kant's understanding of laws of nature in section

[40] KrV, A 751/B 779, CPR, 649–50. ["(…) ist die Vernunft gleichsam im Stande der Natur und kann ihre Behauptungen und Ansprüche nicht anders geltend machen, oder sichern, als durch *Krieg*."]
[41] KrV, A 752/B 780, CPR, 650. ["Auch nöthigen die endlosen Streitigkeiten einer bloß dogmatischen Vernunft, endlich in irgend einer Kritik dieser Vernunft selbst".]

5. I end the chapter with considerations on how Kant's notions of rules, laws and principles fit into the metaphorical account of reason's legislation.

1.1. The tribunal metaphor

The image of a critical tribunal is introduced in the A-introduction where Kant gives the first description of the critical enterprise:

> This [the indifference to metaphysics, SCM] is evidently the effect not of the thoughtlessness of our age, but of its ripened *power of judgment*, which will no longer be put off with illusory knowledge, and which demands that reason take on anew the most difficult of all its tasks, namely, that of self-knowledge and to institute a court of justice, by which reason may secure its rightful claims while dismissing all its groundless pretensions, and this not by mere decrees but according to its own eternal and unchangeable laws; and this court is none other than the *critique of pure reason* itself.[42]

This passage introduces three central legal images and terms that reappear throughout the work: the reflexive nature of the critical project in which reason is judged according to "its own eternal and unchangeable laws", the distinction between "rightful claims" and "groundless pretensions", and the notion of a "ripened power of judgment."[43] These three expressions frame the critique of pure reason in legal vocabulary. They set up the illustration of the critique of pure reason as a process through which reason establishes a system whose governing features mirror those of a legal system.

The establishment of this kind of system depends on the critique finding its own "eternal and unchangeable laws." The fact that the critique first needs to find its own laws emphasizes the fact that the legal imagery cannot be completely analogous to the proceedings within a legal system, since legal proceedings presuppose an established and recognized legal system. Unlike legal proceedings, the critical investigation is twofold; it examines the legality both of individ-

[42] KrV, A XI-XII, CPR, 100-101 (notes omitted). ["Sie [i.e., the indifference to metaphysics] ist offenbar die Wirkung nicht des Leichtsinns, sondern der gereiften *Urtheilskraft* des Zeitalters, welches sich nicht länger durch Scheinwissen hinhalten läßt, und eine Aufforderung an die Vernunft, das beschwerlichste aller ihrer Geschäfte, nämlich das der Selbsterkenntnis, aufs neue zu übernehmen und einen Gerichtshof einzusetzen, der sie bei ihren gerechten Ansprüchen sichere, dagegen alle grundlose Anmaßungen nicht durch Machtsprüche, sondern nach ihren ewigen und unwandelbaren Gesetzen abfertigen könne; und dieser ist kein anderer als die *Kritik der reinen Vernunft* selbst."]

[43] We reencounter this distinction e.g., in the Discipline of Pure Reason, where Kant points out that Hume "does not know the difference between the well founded claims of the understanding and the dialectical pretensions of reason". KrV, A 768/B 796, CPR, 658. ["zwischen den gegründeten Ansprüchen des Verstandes und den dialektischen Anmaßungen der Vernunft".]

ual claims and of the laws which supposedly make up their legal foundation. As an investigation of the laws as well as the legality of a claim, the critique of pure reason takes its approach both from legal proceedings and the role of legislators.[44]

Once the laws have been found, reason can distinguish between "rightful claims" (*gerechte Ansprüche*) and "groundless pretensions" (*grundlose Anmaßungen*), both of which were terms for legal claims in Kant's time.[45] These two types of claims appear consistently through the juridical metaphors and they provide a legal formulation of the very core of the critical project. The difference between the two is that one has a legal foundation and the other does not. The critique uncovers the conditions of making this distinction; it connects the notion of evaluating claims with that of a law. If a claim to knowledge is to be understood as a legal claim then justification is understood as legal foundation. The legal formulation allows Kant to make lawfulness the criterion of justification. In accordance with this definition, the task of the critique becomes one of securing the validity of laws in order to allow a legal distinction to be made between rightful claims and groundless pretensions. The legal language thus underpins the connection between knowledge and laws.

The tribunal metaphor also shows that the critique is not carried out in isolation from its intellectual context; it depends on previous developments in the history of philosophy which have paved the way for what Kant calls a "ripened power of judgment". The critique is only capable of establishing itself as a tribunal of reason because it rests on a power of judgment which has developed historically. This point connects the introduction to the last chapter in which Kant sets his account of reason within the history of philosophy.[46] This broader understanding of a power of judgment is clearly different from the technical term of the Transcendental Doctrine of the Power of Judgment which is the alternative title of the Analytic of Principles. Still, it is significant that the critique of pure reason rests on a faculty of subsumption and distinction which has been honed through the course of the history of philosophy.

The tribunal metaphor also emphasizes the inherently circular nature of the critique by depicting reason as carrying out all of the different roles at tribunals. The image quickly became

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[44] Alongside the juridical metaphors, metaphors from the experimental sciences also dominate Kant's illustration of the methodology undertaken in the work. See section 1.5 below.

[45] According to Adelung's dictionary, '*anmaßen*' in general means claiming a title without foundation and in legal vocabulary, it can simply mean making a claim. Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, vol. 1, 339. '*Anspruch*', in the legal sense, means to claim a right to something and the dictionary specifies that this term designates "both the statement of the right and the claim made in virtue of this". ["so wohl sie Äußerung dieses Rechtes und die Forderung Kraft desselben."] Ibid., vol. 1, 375.

[46] Kant is thus merely the carrier of this ripened power of judgment; this impersonal attitude is indicated in the Baconian motto to the B-edition: "De nobis ipsis silemus". ["Of our own person we will say nothing."] KrV, B II, CPR, 91.

a shorthand account of Kant's theoretical philosophy, regardless of whether the author meant to promote or question it. We have already encountered a viciously circular version of the tribunal in Herder's dilemma.[47] An example of a favorable adaptation is found in Karl Leonhard Reinhold's *Letters on Kant's Philosophy*, in which Reinhold contrasts the "petty tribunals of superstition and nonbelief" to the "seat of judgment of reason."[48]

While Kant's juridical metaphors quickly became part of the Kantian philosophical tradition, Kant's own metaphors depend on vocabulary and imagery from the natural right tradition. To properly understand what Kant means by reason being in a state of nature and reason's legislative activity, we need to understand how these terms were used in the natural right tradition.

1.2. The state of nature

Natural right was a dominant topic in 18th century legal philosophy; discussions of law and obligation reached across faculties, including the faculties of law, theology and philosophy. At Prussian universities, future lawyers and philosophers had to follow a course in natural right, which means that Kant could presuppose many of his educated readers to have at least a basic knowledge of natural right.[49]

Kant himself held a course on natural right 12 times in the period 1767-1788 and he was lecturing on natural right four times a week for the most of period in which he wrote the A-edition of the *Critique of Pure Reason*.[50] The textbooks indicated in the lecture descriptions were the *Prolegomena Iuris Naturalis* by Gottfried Achenwall and Johann Stephan Pütter, and

[47] For a survey of how Kant's different metaphors influenced philosophical terminology, see Pietsch, *Topik der Kritik*.
[48] Reinhold, *Letters on the Kantian Philosophy*, 64.
[49] Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg (1720-1804). Mit einer Einleitung und Registern*, XXX–XXXIII and von der Pfordten, "Kants Rechtsbegriff." On the relation between natural law and natural right among especially protestant thinkers see Haakonssen, *Natural Law and Moral Philosophy. From Grotius to the Scottish Enlightenment* and Tuck, "The 'Modern' Theory of Natural Law."
[50] See Schröder, "Gottfried Achenwall, Johann Stephan Pütter und die 'Elementa Iuris Naturae'" and Naragon, "Kant in the Classroom," http://www.manchester.edu/kant/Lectures/lecturesListDiscipline.htm#law, last modified February 2014.
Kant wrote the final edition of the A-edition between May/June and September 1780 (Kuehn, *Kant. A Biography*, 240). In the summer semester of this year (starting April 10), he taught natural right on Mondays, Tuesdays, Thursdays and Fridays, between 8-9 AM. (Naragon, "Kant in the Classroom." http://www.manchester.edu/kant/Lectures/lecturesTableLectureSemester.htm#1780, last modified August 2011) and Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg (1720-1804). Mit einer Einleitung und Registern*.

the fifth edition of Achenwall's *Ius Naturae*.[51] These works had a great influence on Kant's understanding of law, and the *Doctrine of Right* (1797) contains many similarities with Achenwall's work on natural right and Kant even includes many of his objections to Achenwall.[52]

Apart from Achenwall's account, Kant was familiar with many other theories of natural right, which influenced his later account of legal and political philosophy.[53] The extent of Kant's knowledge of natural right is evident in his 1786 review of Gottlieb Hufeland's *Essay on the Principle of Natural Right* (1785), in which Kant lists 27 different natural right theorists whose ideas he can discern in Hufeland's essay.[54] In this review, which Kant wrote while preparing the second edition of the *Critique of Pure Reason*, Kant focuses on Hufeland's account of obligation in natural right as stemming from perfection as the highest end of rational beings.[55] Kant objects to this account arguing that the quest for perfection could not be delegated to the state and, in addition, the command to perfect oneself is so vague that no specific principles of right can be concluded from it.[56]

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[51] Achenwall, *Jus Naturae in Usum Auditorum*. The second part of the book is reprinted in Kant, AA 19, 323-442 along with Kant's margin notes. Pütter and Achenwall's *Prolegomena* are available in German translation: Achenwall and Pütter, *Anfangsgründe des Naturrechts (Elementa iuris naturae)*.
See Schröder, "Gottfried Achenwall, Johann Stephan Pütter und die 'Elementa Iuris Naturae,'" 335. Byrd and Hruschka, *Kant's Doctrine of Right. A Commentary*, 15–19 and Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg (1720-1804). Mit einer Einleitung und Registern*.
Pütter was only co-author of the first two of the work's eight editions and his contribution to these seems to have been less than Achenwall's. See Schröder, "Gottfried Achenwall, Johann Stephan Pütter und die 'Elementa Iuris Naturae,'" 333–34.
On Achenwall's biography and the intellectual context in Göttingen, see Streidl, *Naturrecht, Staatswissenschaften und Politisierung bei Gottfried Achenwall (1719-1772): Studien zur Gelehrtengeschichte Göttingens in der Aufklärung*.

[52] See Byrd and Hruschka, *Kant's Doctrine of Right. A Commentary*, von der Pfordten, "Kants Rechtsbegriff" and Ritter, *Der Rechtsgedanke Kants nach den frühen Quellen*.

[53] Rousseau's *Social Contract* influenced Kant's legal and political thought, but also Hobbes's writings influenced his account of natural right in general and the state of nature in particular, as we shall also see in the metaphors from the first *Critique*. See Tuck, *The Rights of War and Peace. Political Thought and the International Order from Grotius to Kant*, 207–25 and Williams, "Natural Right in Hobbes and Kant." These studies have challenged the idea that Kant's notion of the foundation of a civil condition is only taken from Rousseau. The first idea is e.g.,found in Schmucker, *Die Ursprünge der Ethik Kants in seinen vorkritischen Schriften und Reflektionen*, 396.

[54] "Grotius, Hobbes, Pufendorf, Thomasius, Heinrich und Sam. von Cocceji, Wolff, Gundling, Beyer, Treuer, Köhler, Claproth, Schmauss, Achenwall, Sulzer, Feder, Eberhard, Platner, Mendelsohn, Garve, Höpfner, Ulrich, Zöllner, Hamann, Selle, Flatt, Schlettwein" (Hufeland, AA 08, 127).

[55] Also Achenwall and Pütter depart from a perfectionist understanding of obligation. See Achenwall and Pütter, *Anfangsgründe des Naturrechts (Elementa iuris naturae)*, § 9, 18. ["Hinc lex animae humane generalissima: *Perfice te!*"]

[56] "Yet that even the authorization to coerce must always have as its ground an obligation laid on us by nature itself – to the reviewer this does not seem to be clear, chiefly because the ground contains more than what is necessary for that consequence. For it seems to follow from it that one *can cede nothing* of one's right as permitting coercion, because this permission rests on an inner obligation in every case to obtain the contested perfection for ourselves, if necessary with force." AA 08, 128-129, *Practical Philosophy*, 116. ["Allein das die Befugniß zu zwingen sogar eine Verbindlichkeit dazu, welche uns von der Natur selbst auserlegt sei, durchaus zum Grunde haben müsse, das scheint Recensenten nicht klar zu sein; vornehmlich weil der Grund mehr enthält, als zu jener

Although we know that Kant was teaching natural right while he was writing the first *Critique*, notes from these lectures are no longer available today. The only set of student notes from Kant's lectures on natural right we do have is the so-called *Naturrecht Feyerabend*, a collection of notes taken during Kant's summer semester lectures of 1784.[57] In this period, Kant was writing the *Groundwork of the Metaphysics of Morals* (1785) and there are many points of contact between this work and the lecture notes.[58] In the *Naturrecht Feyerabend*, Kant generally follows the structure of Achenwall's *Ius Naturae*, which is divided into four main sections: natural right in the narrow sense (*Ius Naturale strictissime dictum*), universal social right (*Ius Sociale Universale*), universal civil right (*Ius Civitatis Universale*), and universal law of nations (*Ius Gentium Universale*). Of these, the last is only treated briefly with the justification that "[t]his right has still not yet been brought to universal principles."[59] Kant later includes all four topics in the *Doctrine of Right*, but treats natural right and social right under the common title Private Right, and civil right and the right of nations under the title Public Right.[60] This division reflects Kant's distinction between "*natural right*, which rests only on a priori principles and *positive* (statutory) right, which proceeds from the will of a legislator."[61] In the *Naturrecht Feyerabend*, we find this division reflected in Kant's objection to Achenwall's ac-

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Folge nöthig ist. Denn daraus scheint zu folgen, daß man von seinem Rechte sogar nichts nachlassen könne, wozu uns ein Zwang erlaubt ist, weil diese Erlaubniß auf einer innern Verbindlichkeit beruht, sich durchaus und mithin allenfalls mit Gewalt die uns gestrittene Vollkommenheit zu erringen."]

On the period in which Kant wrote the second edition of the first *Critique*, see Kuehn, *Kant. A Biography*, 309.

[57] The manuscript mistakenly indicates the winter semester rather than the summer semester. See Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg (1720-1804). Mit einer Einleitung und Registern*, vol. II, 500.

On the history of these notes, see the helpful introduction to Kant, *Lezioni sul diritto naturale*, Sadun Bordoni, "Kant e il diritto naturale. L'lntroduzione al Naturrecht Feyerabend" and Delfosse et al., *Stellenindex und Konkordanz zum "Naturrecht Feyerabend."*

[58] The *Naturrecht Feyerabend* begins with general moral considerations on man as the end (*Zweck*) of creation. Kant writes: "A human being is an end so it is contradictory to say that a human being should be a mere means." (Feyerabend, AA 27, 1319) ["Der Mensch ist Zweck, daher widerspricht es sich, daß er bloß Mittel seyn sollte."] He then goes on to argue that this finality presupposes freedom: "The inner value of a human being is based on the freedom that he has a will of his own. Because he should be the final end his will must be dependent on nothing else". (Ibid.) ["Des Menschen innrer Werth beruht auf seiner Freiheit, daß er einen eignen Willen hat. Weil er der letzte Zweck seyn soll; so muß sein Wille von nichts mehr abhängen."]

On the connections between the *Naturrrecht Feyerabend* and the *Groundwork*, see also Guyer, "Stellenindex und Konkordanz zum Naturrecht Feyerabend, Teilband I," 111.

[59] Feyerabend, AA 27, 1392. Kant nevertheless recommends Vattel, *The Law of Nations* as the best book on the topic.

[60] For Achenwall, private and public right are subdivisions of civil right. Achenwall, *Jus Naturae in Usum Auditorum*, § 87, AA 19, 364.

[61] MS, AA 06, 237, *Practical Philosophy*, 393. ["*Naturrecht*, das auf lauter Principien *a priori* beruht, und das *positive* (statutarische) Recht, was aus dem Willen eines Gesetzgebers hervorgeht."]

count of the state of nature. For Achenwall, the state of nature is opposed to the social condition, to which Kant objects that there is already sociality in the state of nature and that the state of nature ought to be opposed to the civil condition instead.[62] Kant had thus already included social right under natural right in the *Naturrecht Feyerabend*.

In Kant's copy of Achenwall's textbook, he remarks in a margin note: "The *status naturalis* (state of nature) is a condition of freedom without law, and so freedom to do wrong."[63] The *Naturrecht Feyerabend* contends that the state of nature is not necessarily a state of unease, but always a state of injustice.[64] What makes it necessary to leave the state of nature is not the sense of insecurity – although that might be a subjective motivation – but that the state of nature is a state of injustice, and this makes the establishment of the civil condition normatively necessary. Even if man were sufficiently virtuous to live in peace in the state of nature, this would not make the state of nature justified.[65] Kant later repeats this argument in the *Doctrine of Right*, but the *Naturrecht Feyerabend* and Kant's margin notes in the textbook suggest that his position was already developed in the late 1770s.[66]

In the first *Critique*, Kant adopts natural right vocabulary in his elaborate image of reason's state of nature before the critique. He likens precritical reason to a state of nature and postcritical reason to the civil condition, which he calls a state of law (*gesetzlicher Zustand*).[67] Like the state of nature, precritical reason is a state of war in which the evaluation of knowledge claims is only preliminary and possesses no ultimate authority. This metaphor describes the effect of the critique in a way that parallels many accounts of the state of nature. The critique provides a transition which is equivalent to establishing a rightful condition which grants authority to the evaluation of knowledge claims:

> Without this [i.e., the critique], reason is as it were in the state of nature, and it cannot make its assertions and claims valid or secure them except through *war*. The critique, on the contrary, which derives all decisions from the ground-rules of its own constitution, whose authority no one can doubt, grants us the peace of a state of law, in which we should not conduct our controversy except by *due process*. What brings the quarrel in the state of nature to an end is a *victory*, of which both

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[62] Feyerabend, AA 27, 1381. This objection is also included in the *Doctrine of Right*, MS, AA 06, 242.
[63] Ref, AA 19, 497, note tentatively dated 1773–75 or 1769. ["Der *status naturalis* ist ein Zustand der Freyheit ohne Gesetz, folglich unrecht zu thun."]
[64] Feyerabend, AA 27, 1383.
[65] In the *Anthropology,* Kant discusses Rousseau's description of how man is weakened by leaving the state of nature to form a civil state, Kant remarks that this account of the state of nature should not be read as an encouragement to leave the civil state and return to the state of nature but rather as an account of the possible challenges that face people living together in a civil condition. (Anth, AA 07, 326-327)
[66] MS, AA 06, 306.
[67] In other writings, Kant refers to the state of law as a civil condition (Feyerabend, AA 27, 1372) and a rightful condition (TP, AA 08, 290), where the rightful condition seems to be a subcategory of the civil condition.

> sides boast, although for the most part there follows only an uncertain peace, arranged by an authority in the middle; but in the state of law it is the *verdict*, which, since it goes to the origin of the controversies themselves, must secure a perpetual peace.[68]

Before the critique, there can be no authoritative answer to metaphysical questions, since there are no recognized criteria according to which metaphysical claims can be evaluated. The critique justifies the use of certain laws as criteria of knowledge and thereby institutes reason's rightful condition within which the rules of due process allow reason to reach a conclusion which possesses the same authority as a verdict pronounced by a court of law.[69] This finality only applies in metaphysical cases; pure reason must be able to answer the questions it puts itself but this does not apply to empirical questions.[70]

The mentioned 'constitution' (*Einsetzung*) refers to reason's ground rules as constitutive of knowledge rather than a political constitution of a state (*Verfassung*). In order to pass from the preliminary authority of force in precritical reason to the consolidated authority of postcritical reason, the critique needs to legitimize its own authority. According to the metaphor, the critique derives its authority from the evident authority of its own ground rules. Thus, the self-evidence of reason's ground rules ensures the authority of the critique even though it operates before the establishment of reason as a state of law. It is implicit in the passage that once the laws have been discovered, no rational person can doubt their authority.[71]

The idea is that metaphysical disputes can be finally settled through the critique and that its account of reason's claims can function as a final verdict.[72] The verdict or *Sentenz* over pure reason's metaphysical ambitions is dealt with at the greatest length in the Doctrine of Method, especially in the section dealing with the Discipline of Pure Reason in Polemical Use, where this metaphor appears. In this section, Kant discusses the possibility of a polemic of pure reason

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[68] KrV, A 751/B 779, CPR, 649. ["Ohne dieselbe ist die Vernunft gleichsam im Stande der Natur und kann ihre Behauptungen und Ansprüche nicht anders geltend machen, oder sichern, als durch *Krieg*. Die Kritik dagegen, welche alle Entscheidungen aus den Grundregeln ihrer eigenen Einsetzung hernimmt, deren [unclear whether it is of the decisions or of the ground rules] Ansehen keiner bezweifeln kann, verschafft uns die Ruhe eines gesetzlichen Zustandes, in welchem wir unsere Streitigkeit nicht anders führen sollen, als durch *Proceß*. Was die Händel in dem ersten Zustande endigt, ist ein *Sieg*, dessen sich beide Theile rühmen, auf den mehrentheils ein nur unsicherer Friede folgt, den die Obrigkeit stiftet, welche sich ins Mittel legt, im zweiten aber die *Sentenz*, die, weil sie hier die Quelle der Streitigkeiten selbst trifft, einen ewigen Frieden gewähren muß."]

[69] On the notion of critique as a tribunal, see also Röttgers, *Kritik und Praxis*, 31–39; Kaulbach, "Der Herrschaftsanspruch der Vernunft in Recht und Moral bei Kant" and Kersting, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie*, 216–17.

[70] KrV, A 695/B 723.

[71] Whether or not Kant provides an argument for his choice of categories or not is a point of much scholarly debate. See e.g., Longuenesse, *Kant and the Capacity to Judge. Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason*. Brandt, *Die Urteilstafel. Kritik der reinen Vernunft A 67-76; B 92-101* and Wolff, *Die Vollständigkeit der kantischen Urteilstafel: mit einem Essay über Freges Begriffsschrift*.

[72] Zedler lists *Sentenz* and *Urteil* as synonyms (Zedler, *Universal-Lexicon*, vol. 37, 141–147). Also Krug defines *Sentenz* as a type of short judgment. Krug, *Handworterbuch der philosophischen Wissenschaften*, vol. 3, 730.

as an antagonistic approach to philosophical disputes, in which a proposition must only be defended against its negation in order to be considered valid. Kant rejects this approach as mere sophistry, but also declines a skeptical satisfaction in the form of suspension of judgment. The problem with these approaches is that they grant merely preliminary conclusions, whereas Kant aims to provide a final verdict on reason's ability to achieve a priori cognition. In his description of why finality in judgment is necessary, Kant combines the legal images with metaphors of war and battle: the aim of the verdict is to secure peace since the alternative to the verdict is lawlessness.

Kant's own account of the state of nature argument appears in the *Doctrine of Right* (1790). In this version, what motivates people to leave the state of nature is the fact that they cannot be assured of their possessions; all possession is merely preemptive in the state of nature and only in the civil state can there be a right to property. The entire condition is wrongful and no one can feel safe of their possessions, including their own body which is the only property right already established in the state of nature.[73] We find similar thoughts in the *Naturrecht Feyerabend*, in which the motivation to leave the state of nature comes partly from the presupposition that man is just by nature and partly from the lack of security in the state of nature: "I for example have a right to seek security consequently I can coerce each to enter the state where each is secure."[74] Normatively, we ought to leave the state of nature because it is a state of injustice. Pragmatically, we are motivated to leave the state of nature because it does not guarantee our security and possessions. In the philosophical image, the critical state of nature has no way of securing cognition and no secure procedure for defending one's claims against opposing claims.

In the first *Critique*, the state of nature metaphor continues with a parallel between the need to exit the state of nature and the need to leave precritical reason behind to ensure peace:

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[73] "Given the intention to be and to remain in this state of externally lawless freedom, men do *one another* no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent (*uti partes de iure suo disponunt, ita ius est*.) But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence." MS, AA 06, 307-308, *Practical Philosophy*, 452. ["Bei dem Vorsatze, in diesem Zustande äußerlich gesetzloser Freiheit zu sein und zu bleiben, thun sie *einander* auch gar nicht unrecht, wenn sie sich unter einander befehden; denn was dem Einen gilt, das gilt auch wechselseitig dem Anderen, gleich als durch eine Übereinkunft (*uti partes de iure suo disponunt, ita ius est*): aber überhaupt thun sie im höchsten Grade daran unrecht in einem Zustande sein und bleiben zu wollen, der kein rechtlicher ist, d. i. in dem Niemand des Seinen wider Gewaltthätigkeit sicher ist."]

[74] Feyerabend, AA 27, 1381-1382. ["Ich habe z.B. ein Recht für Sicherheit zu sorgen, folglich kann ich jeden zwingen, in den Zustand zu treten, wo jeder sicher ist."]

> And the endless controversies of a merely dogmatic reason finally make it necessary to seek peace in some sort of critique of this reason itself, and in a legislation grounded upon it; just as Hobbes asserted, the state of nature is a state of injustice and violence, and one must necessarily leave it in order to submit himself to the lawful coercion which alone limits our freedom in such a way that it can be consistent with the freedom of everyone else and thereby with the common good.[75]

The passage suggests a parallel between the legislation of "some sort of critique" of reason and a "lawful coercion" which replaces "the endless controversies" of dogmatic reason which is analogous to the "injustice and violence" of the state of nature. The part of the quote introduced by "just as Hobbes asserted" contains no indication of how much of what follows also applies to the critique; it is not specified whether "lawful coercion" and the "promotion of the common good" are limited to Hobbes' description or whether we are to understand them as part of the metaphorical description of the critique. Kant explicitly writes elsewhere that the critique is performed by reason, which is shared by all human beings and that it does not rely on a conception of the common good. Instead, the critique is an investigation of whether this shared notion of reason can obtain knowledge in abstraction from empirical experience.[76] This, thus, makes it unlikely that the critique should promote coercion on the basis of a notion of the common good.

Perpetual philosophical peace as the aim of the critique is repeated several times as an order for quarrelers to "hold their peace" (A 501/B 529); as the "peace of a state of law" (A 751/B 779), and as a "perpetual peace" (A 751/B 779, A 777/B 805). Kant later uses this expression as the title of the essay on how to reach perpetual peace in the political sphere.[77] There Kant proposes a federation of republican states, which is intended to end all war. This proposal relies on the internal justice of the states to avoid inter-state conflicts. The idea is that once the citizens of each state are co-legislators under a republican constitution, states will have more to lose than to win by entering a state of war. Republican constitutions ensure that states are governed in accordance with the well-being of the people, and war worsens rather than improves

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[75] KrV, A 752/B 780, CPR, 650. ["Auch nöthigen die endlosen Streitigkeiten einer bloß dogmatischen Vernunft, endlich in irgend einer Kritik dieser Vernunft selbst und in einer Gesetzgebung, die sich auf sie gründet, Ruhe zu suchen; so wie Hobbes behauptet: der Stand der Natur sei ein Stand des Unrechts und der Gewaltthätigkeit, und man müsse ihn nothwendig verlassen, um sich dem gesetzlichen Zwange zu unterwerfen, der allein unsere Freiheit dahin einschränkt, daß sie mit jedes anderen Freiheit und eben dadurch mit dem gemeinen Besten zusammen bestehen könne."]

[76] "For the issue is not what is advantageous or disadvantageous to the common good in these matters, but only how far reason can get in its speculation in abstraction from all interest, and whether one can count on such speculation at all or must rather give it up altogether in favor of the practical." KrV, A 746-747/B 774-775, CPR, 647. ["Denn es ist die Rede gar nicht davon, was dem gemeinen Besten hierunter vortheilhaft oder nachtheilig sei, sondern nur, wie weit die Vernunft es wohl in ihrer von allem Interesse abstrahirenden Speculation bringen könne, und ob man auf diese überhaupt etwas rechnen, oder sie lieber gegen das Praktische gar aufgeben müsse."]

[77] The phrase 'perpetual peace' and the joke connected with it (that perpetual peace is only reached at the cemetery) is also present in Leibniz's correspondence as a comment on Abbé de St. Pierre's project for perpetual peace in Europe. See Leibniz, *Political Writings*, 183.

the condition of the people as a whole. For this reason, Kant argues, republics do not start wars. The internal rightful condition of each state makes tribunals of international law superfluous. The treatise does not rely on any kind of external enforcement instead, it places its trust in the internal constitutions of each republic. Once a people has become politically autonomous and self-legislating, it has have no interest in starting wars against other autonomous peoples. This is why the treatise is only made among republics.

In *Perpetual Peace*, Kant describes international politics as analogous to a state of nature among individuals, and goes on to argue that reason as the "highest morally legislative power" demands they institute a pact for perpetual peace.[78] Although the *Critique of Pure Reason* and the treatise of *Perpetual Peace* were written in different periods, we might consider whether Kant's idea for perpetual peace in the philosophical community fits the same scheme of his solution for political peace in the international community. In *Perpetual Peace*, the idea is that politically autonomous communities will start wars with one another because of the risks to their inhabitants' lives. In the state of nature metaphor, the perpetual peace among philosophers is ensured by each of them being capable of autonomous judgments that agree with what others have judged. This analogy between the individual and the state is also common in the first *Critique* where a rational individual is likened to a state in a rightful condition. The establishment of an inner rightful condition within each individual state, or rational agent, is a necessary condition of lasting peace among individual states or persons. In analogy with republican peace, peace among metaphysicians is guaranteed by their inner observance of valid laws rather than an external coercive authority.

The notion of a state of nature, perceived either as factual or imaginary, as opposed to a civil condition was part of the vocabulary used in all theories of natural right in Kant's time. Although Kant explicitly mentions Hobbes' notion of the state of nature as a state of war, his use of the notions of a state of nature and a state of law is sufficiently general to fit almost any treatment of natural right in the period. On Hobbes' account of the state of nature, the only

[78] "The way in which states pursue their right can never be legal proceedings before an external court but can only be war; but right cannot be decided by war and its favorable outcome, victory; […] yet reason, from the throne of the highest morally legislative power, delivers an absolute condemnation of war as a procedure for determining rights and, on the contrary, makes a condition of peace, which cannot be instituted or assured without a pact of nations among themselves, a direct duty". ZeF, AA 08, 355-356. ["Da die Art, wie Staaten ihr Recht verfolgen, nie wie bei einem äußern Gerichtshofe der Proceß, sondern nur der Krieg sein kann, durch diesen aber und seinen günstigen Ausschlag, den Sieg, das Recht nicht entschieden wird […] daß doch die Vernunft vom Throne der höchsten moralisch gesetzgebenden Gewalt herab den Krieg als Rechtsgang schlechterdings verdammt, den Friedenszustand dagegen zur unmittelbaren Pflicht macht, welcher doch ohne einen Vertrag der Völker unter sich nicht gestiftet oder gesichert werden kann."]

natural right is the right of self-preservation, but in the juridical metaphor Kant adds that human freedom can only be guaranteed in a civil condition.[79] Although Kant's account of the passage from a state of nature to the civil condition is in many ways similar to Hobbes', the added notion of innate right adds a dimension of preliminary right to Kant's account of the state of nature.[80] Although Kant refers to Hobbes' version of the social contract which institutes an absolute sovereign, he goes on to specify that the authority of reason is not dogmatic. Indeed, by focusing on laws, the critique is aimed at limiting the dogmatic use of reason.[81] The state of nature metaphor shows that Kant expects his readers to be familiar with this vocabulary and the theories associated with it, and the key image of a state of nature allows Kant to create a juridical metaphor by drawing on the repertoire created by theories of natural right.

In opposition to Achenwall, Kant emphasizes that there is sociality in the state of nature.[82] The state of nature has all the structures of private law; people have possessions and relations to other people, in particular to members of the same family. But all of these relations are merely preemptive, they are not assured by any civil authority. In the state of nature there is no way to distinguish property from possession, since property presupposes that one can claim a right to objects outside of one's immediate reach. Although the state of nature might *de facto* be a peaceful state, in which people organize themselves in small family groups, this still does not make it a rightful condition. This peacefulness is merely a token of luck, which might turn into conflict since no rights are protected by a civil state. Since the state of nature does not live up to the a priori understanding of right, leaving it becomes a duty. Any civil state is better than the state of nature, because the state ensures a condition in which there is a systematic application of the law and establishes a condition of right. In the rightful civil state, positive laws converge with natural right, and the convergence between positive law and the a priori principles of right is what characterizes a rightful civil state. In the *Doctrine of Right*, Kant explicitly states that: "When people are under a civil constitution, the statutory laws obtaining in this condition cannot infringe upon natural right, (i.e., that right which can be derived from a priori principles for a civil constitution)."[83] Kant reinterprets the notion of natural right as a

[79] Hobbes, *Leviathan*, I.xiii-xiv, 110–130, see also Tuck, *The Rights of War and Peace. Political Thought and the International Order from Grotius to Kant*, 212–13 and Zagorin, *Hobbes and the Law of Nature*.
[80] See also Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* and Byrd and Hruschka, *Kant's Doctrine of Right. A Commentary* on Kant's account of the state of nature.
[81] See KrV, A 739-740/B 767-768.
[82] Feyerabend, AA 27, 1381 and MS, AA 06, 242.
[83] MS, AA 06, 256.

priori principles for any rightful civil constitution although he rejects many of the traditional presuppositions of natural right.[84]

In the *Naturrecht Feyerabend* we find a description of the difference between the solution of conflicts in the state of nature and the civil condition that is similar to the one used in the state of nature metaphor:

> In *Statu civili* this [i.e., the conclusion of conflicts] happens through trial, in *statu naturali bello* through war.[85]

This description of the state of nature as a state in which the resolution of conflicts is uncertain mirrors the metaphorical description found in the first *Critique*. In both accounts it is the certainty in adjudication of conflicts which distinguishes the civil state from the state of nature. Kant keeps this view of the state of nature in all his accounts of legal philosophy; people in the state of nature have a duty to establish a civil state because it will allow for the establishment of rights.

The provisionally rightful possession in the state of nature becomes conclusive possession when entering the civil condition in accordance with the formula "*Happy is he who is in possession* (*beati possedentes*)".[86] This same formula is applied to the ideas of pure reason in the first *Critique*, where Kant phrases the maxim as "*melior est conditio possidentis*" [87] to allow pure reason to use its ideas in a regulative manner even though they are not constitutive of cognition.[88] Since pure reason is already in possession of its ideas, their continued use is allowed although it is not confirmed as cognition after the critique.

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[84] Krieger, "Kant and the Crisis of Natural Law." I would object to the claim that "Kant's critical philosophy had destroyed the faith in the premises and methods of natural law that had dominated the previous centuries." Reimann, "Nineteenth Century German Legal Science," 843. See also Sadun Bordoni, "Kant e il diritto naturale. L'lntroduzione al Naturrecht Feyerabend," 214–15 on the interpretation of Kant as the undertaker of the natural law tradition.

[85] Feyerabend, AA 27, 1372, my comment in brackets. ["In *Statu civili* geschieht das durch den Prozeß, in *Statu naturali bello* durch Krieg."] We find a similar evaluation of the end of controversies in Pütter and Achenwall's *Prolegomena*: "Therefore the war in itself does not end the controversy, neither does a victory finish a dispute." Achenwall, Gottfried, and Johan Stephan Pütter. *Anfangsgründe des Naturrechts (Elementa iuris naturae)* § 533, 170–171. My translation. ["Itaque bellum ipsum non finit controversiam; nec victoria decidens finit litem."] Kant also describes the state of nature as a state of war in his *Doctrine of Right*, AA 06, 344.

[86] MS, AA 06, 257, *Practical Philosophy*, 410. ["wohl dem, der im Besitz ist (*beati possidentes*)"]

[87] "the position of the possessor is better"

[88] KrV, A 777/B 805.

1.3. Natural right and positive law

The history of philosophy is full of examples of the term 'laws' used to refer to many different types of regularities. There are laws of nature, a priori laws, moral laws, laws of logic and divine laws in many other philosophical texts. Even today, the law metaphor is so frequent in everyday language that it is often not considered a metaphor.[89] We might say that the law metaphor has faded into literalness.[90] One of the reasons why the juridical metaphors are so frequent in the first *Critique* is that the work promotes a new understanding of laws in philosophy; Kant's account of the understanding as the legislator of nature is central to his account of the objectivity of epistemology, and he adopts lawfulness as a criterion of objectivity, both in practical and theoretical use. The terminology in itself is not innovative; although Kant uses the term 'law' in a variety of ways, most of his metaphorical applications were common stretches of the term in his time but he employs these traditional metaphors in new ways.[91]

In Kant scholarship the notion of a law has gained a technical meaning over time: the idea that "[c]ategories are concepts that prescribe laws *a priori* to appearances"[92] has become the slogan for reason's legislation. Borrowing Kant's descriptions, scholars talk of the categories as constitutive of natural regularities or the understanding prescribing laws to nature without connecting these terms to the remaining juridical metaphors.[93] These juridical metaphors have thus become the technical description of the function performed by the categories via the transcendental unity of the apperception. As a consequence, many interpreters read Kant's notion of a law as shorthand for 'objectively valid rules', which is his explicit definition of the term.[94] But this reduced reading fails to take into account the cluster of terms from the legal sphere with which Kant describes not just the understanding but all the higher cognitive faculties. Although no single juridical metaphor can capture the way in which reason imposes laws on

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[89] Eric Watkins argues that Kant's laws are not metaphors, but explicit terms, because they are all instances of the same type. Watkins, "What Is, for Kant, a Law of Nature?"

[90] Richard Rorty writes on the metaphorical origin of many neologisms: "Old metaphors are constantly dying off into literalness, and then serving as a platform and foil for new metaphors." (Rorty, "The Contigency of Language," 16).

[91] Pietsch, *Topik der Kritik*.

[92] KrV, B 163, CPR, 263. "Categories are concepts that prescribe laws *a priori* to appearances, thus to nature as the sum total of all appearances (*natura materialiter spectata*)". ["Kategorien sind Begriffe, welche den Erscheinungen, mithin der Natur als dem Inbegriffe aller Erscheinungen (*natura materialiter spectata*) Gesetze *a priori* vorschreiben."]

[93] See, among others, Watkins, "What Is, for Kant, a Law of Nature?"; Pollok, "'The Understanding Prescribes Laws to Nature': Spontaneity, Legislation, and Kant's Transcendental Hylomorphism"; Friedman, "Laws of Nature and Causal Necessity"; and Massimi, "Prescribing Laws to Nature. Part I. Newton, the Pre-Critical Kant, and Three Problems about the Lawfulness of Nature."

[94] KrV, A 126.

itself and experience, the juridical metaphors indicate that the term 'law' is used as more than a synonym for 'objectively valid rule'.

I will therefore show that it is meaningful to interpret the term 'law' as a juridical metaphor, even if it is arguably an implicit one. This metaphorical approach has a number of interpretive advantages: The metaphorical nature of Kant's a priori laws show that they fit into a larger ratio-juridical framework whose foundation is laid in the first *Critique*. We will see that Kant's account of a priori laws is not merely a colorful way of expressing a new philosophical approach; he is building an entire framework around a juridical structure. Because a priori laws are conceived as laws rather than rules, they need to be justified; they are applied though judgments, and they are valid within a limited domain. These are features that Kant's account of a priori laws share with modern positive law. However, modern positive law is not the right model for Kant's account of how reason prescribes laws to nature. If we restore the sense of metaphor in the term 'law', Kant's engagement with the natural right debate emerges more clearly and we gain a better understanding of how reason's legislation creates a normative structure, as I argue in the final chapter of this thesis.

This approach departs from the idea that the distinction between explicit technical terms and metaphors is porous; many technical terms are born as metaphors and as they gain a specific meaning their metaphorical origins are slowly forgotten.[95]

The state of nature metaphor shows that the task of establishing a philosophical system shares fundamental structural features with the way in which legislators endeavor to introduce positive law that corresponds to natural right. While legislators ought to introduce laws that cohere with the a priori principles of right, philosophers too ought to introduce laws that cohere with the a priori principles of cognition. In the introduction to the *Doctrine of Right*, Kant puts forward the juridical endeavor by distinguishing between 'what is laid down as right' ('*Rechtens*') and 'what is right' ('*rechtlich*'), i.e., between positive and natural right:

> Like the much-cited query "what is truth?" put to the logician, the question "what is right?" might well embarrass the *jurist* if he does not want to lapse into a tautology or, instead of giving a universal solution, refer to what the laws in some country at some time prescribe. He can indeed state what is laid down as right (*quid sit iuris*), that is, what the laws in a certain place and at a certain time say or have said. But whether what these laws prescribed is also right, and what the universal criterion is by which one could recognize right as well as wrong (*iustum et iniustum*), this would remain

[95] One can account for this development by saying that the metaphor had become so pervasive that it had become a metaphor we live by rather than an independent metaphor. This is the account offered by Lakoff and Johnson (Lakoff and Johnson, *Metaphors We Live By*). Although theirs is an insightful study of common metaphors in English, they do not account of the historical dimension of metaphors and of the importance of single works or agents in this development.

> hidden from him unless he leaves those empirical principles behind for a while and seeks the sources of such judgments in reason alone, so as to establish the basis for any possible giving of positive laws (although positive laws can serve as excellent guides to this).[96]

The will of the legislator determines what is laid down as law and if these laws correspond with natural right then they are both valid and right. What is laid down as right takes the shape of a system of laws:

> Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (*constitutio*), so that they may enjoy what is laid down as right.[97]

A legal system is not the same as the metaphysics of right as a system, which would contain a complete and determinate division of right from *a priori* principles.[98] The a priori principles of right and a possible metaphysics of right serve as an idea which empirical legal systems strive toward. They are a guide of justice rather than a principle of the validity of positive law.

Apart from the state of nature argument, the background in natural right theory helps us understand how Kant uses law as the structure of all obligation and necessity. Several of the natural right theorists whom Kant cites discuss the relationship between law and reason, and the nature of obligation. Although most natural right theorists ascribed normative value to natural right, there was no consensus on the relative status of natural right vis-à-vis positive law in 18th century legal theory. Natural right was generally recognized as a source of law, but its relationship to other sources of law was much debated. While some theorists conceived of natural right as a criterion which determines the validity of positive law, others saw natural right as a requirement which serves as a guide for legislators.[99]

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[96] MS, AA 06, 229-230, *Practical Philosophy*, 386–87. ["Diese Frage möchte wohl den Rechtsgelehrten, wenn er nicht in Tautologie verfallen, oder statt einer allgemeinen Auflösung auf das, was in irgend einem Lande die Gesetze zu irgend einer Zeit wollen, verweisen will, eben so in Verlegenheit setzen, als die berufene Aufforderung: Was ist Wahrheit? den Logiker. Was Rechtens sei (*quid sit iuris*), d. i. was die Gesetze an einem gewissen Ort und zu einer gewissen Zeit sagen oder gesagt haben, kann er noch wohl angeben: aber ob das, was sie wollten, auch recht sei, und das allgemeine Kriterium, woran man überhaupt Recht sowohl als Unrecht (*iustum et iniustum*) erkennen könne, bleibt ihm wohl verborgen, wenn er nicht eine Zeit lang jene empirischen Principien verläßt, die Quellen jener Urtheile in der bloßen Vernunft sucht (wiewohl ihm dazu jene Gesetze vortrefflich zum Leitfaden dienen können), um zu einer möglichen positiven Gesetzgebung die Grundlage zu errichten.']
The question of what is laid down as right, ["was Rechtens ist'] is, according to the *quid juris* metaphor, the question that is answered through a deduction. KrV, A 84/B 116.

[97] MS, AA 06, 311, *Practical Philosophy*, 357-358. ["Dieses ist also ein System von Gesetzen für ein Volk, d. i. eine Menge von Menschen, oder für eine Menge von Völkern, die, im wechselseitigen Einflusse gegen einander stehend, des rechtlichen Zustandes unter einem sie vereinigenden Willen, einer Verfassung (*constitutio*), bedürfen, um dessen, was Rechtens ist, theilhaftig zu werden."]

[98] MS, AA 06, 284.

[99] "Damit bleibt es für die Juristen bei der schon im frühen 18. Jahrhundert verbreiteten Lehre, daß das Naturrecht allenfalls das positive Rechts ergänzen und erläutern, nicht aber verdrängen kann und insoweit nur für den Gesetzgeber von Bedeutung ist." Schröder, "'Naturrecht bricht positives Recht' in der Rechtstheorie des 18. Jahrhunderts," 432.

Similarly, there is no consensus about the status of natural right among the natural lawyers cited by Kant: Hobbes recognizes that natural right is not law in the literal sense. Grotius provides a rationalist account of natural right, in which the insight into natural right depends on reason alone. In Grotius' account, God is not decisive for the validity of natural right. Cumberland, too, in his refutation of Hobbes, *A Treatise on the Laws of Nature* (1672) recognizes that the language of obligation is merely a metaphor in natural right.[100] In Cumberland's view, an obligation remains an "Act of a Legislator,"[101] which prescribes natural right as necessary in the pursuit of the common good and individual happiness, the combination of which coincide.

For Pufendorf, law is the fundamental model of obligation; in *On The Duty of Man And Citizen According to the Natural Law* (1673) he offers a voluntarist answer to the question of obligation: Obligation arises through the will of a superior. In the state of nature, this superior is God, while the civil state inserts the sovereign as an intermediate superior between the citizen and God. Outside of the civil state there is no human superior, and therefore no binding civil law, but natural right is binding as the command of God. On Pufendorf's account, human reason is shaped by sociality even in the state of nature, and it is this shaping which allows us to improve our reason and obtain insight into natural right.[102] Pufendorf objects to Hobbes' claim that there is no law in the state of nature; God as a superior gives validity to natural right as an objective legal order, which is also valid in the state of nature.[103] In contrast to Grotius, he argues that rationality is not enough to give us an obligation to follow natural right, since without the assurance of God, we have no certainty that our reason gives valid laws. And even if we had this certainty, without the will of a superior, a priori laws alone would not be binding unless they were prescribed by a superior. Christian Wolff also regarded natural right as binding and he used the mathematical method as a way of deducing positive law from axioms, thus deriving positive law from natural right understood as rational principles.[104]

Kant confronts natural and statutory law both in the *Naturrecht Feyerabend*, in the *Conflict of the Faculties* and in the *Doctrine of Right*. In all three texts, he recognizes natural right as

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[100] Hobbes recognizes that natural laws are "Lawes, but improperly". Hobbes, *Leviathan*, bk. 1, XV, 41. For Cumberland, Justinian's definition of obligation as a bond of the law is "somewhat *obscure* from Metaphors; for the *Mind* of Man is not properly '*tied with Bonds*'". ["obscuritate quâdam è metaphoris oriundâ. Vinculis enim propriè non astringitur animus humanus."] Cumberland, *De legibus naturae*, 240, *A Treatise of the Laws of Nature*, 554. See also Haakonssen, "The History of Eighteenth Century Philosophy: History or Philosophy?" vol. 2, 994 and Darwall, *The British Moralists and the Internal "Ought,"* 15.

[101] Cumberland, *A Treatise of the Laws of Nature*, chap. V, § 27, 554. ["actus Legislatoris"]

[102] Samuel von Pufendorf, *On the Duty of Man and Citizen According to Natural Law*. See also Haakonssen, *The Cambridge History of Eighteenth-Century Philosophy*, vol. 2, 991.

[103] Pufendorf, *Of the Law of Nature and Nations*.

[104] Wolff, "De Jurisprudentia civili in formam demonstrativam redigenda," § 1, 84–86.

right, but at the same time he emphasizes that this right has no force with regard to others until it is secured in a civil condition. In explicit opposition to Achenwall, Kant rejects that all obligation stems from divine command.[105] Without divine command to impose natural right, there can be no binding law outside of the civil condition and entering the civil condition is therefore a duty.[106] For Kant, natural right is thus not coercive, but merely a way of evaluating statutory law: "Natural right contains *principia* of *dijudication* not of execution. Law must have authority and the authority of those whose will is at the same time a law is legitimate authority."[107] Without authority, natural right has no coercive power, but it does nevertheless remain "The content of all principles of dijudication of that which is right."[108] According to Kant, "it would be useless to refer here to God" because we have no way of ascertaining the content of divine command.[109]

In the *Conflict of the Faculties*,[110] Kant describes the evolution of history as the striving for a constitution which is in accordance with natural right:

> This occurrence is the phenomenon, not of revolution, but (as Erhard expresses it) – a phenomenon of the evolution of a constitution in accordance with *natural right* which, to be sure, is still not won solely by desperate battles – for war, both civil and foreign, destroys all previously existing *statutory* constitutions. This evolution leads to striving after a constitution that cannot be bellicose, that is to say, a republican constitution. The constitution may be republican either in its *political form* or only in its *manner of governing,* in having the state ruled through the unity of the sovereign (the monarch) by analogy with the laws that a nation would provide itself in accordance with the universal principles of legality.[111]

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[105] Feyerabend, AA 27, 1334, which objects to Achenwall, *Jus Naturae in Usum Auditorum*, § 43.
[106] Feyerabend, AA 27, 1337.
[107] Feyerabend, AA 27, 1337. ["Das Naturrecht enthält Principia der Diiudication, nicht der Execution. Gesetz muß Gewalt haben, und Gewalt dessen, dessen Wille zugleich ein Gesetz ist, ist rechtmäßige Gewalt."]
Already in these lectures, Kant defines the highest principle of right as "*the limitation of the particular freedom of each by the conditions under which universal freedom can exist.*" Feyerabend, AA 27, 1334. ["*die Einschränkung jeder besondern Freiheit auf die Bedingungen, unter denen die allgemeine Freiheit bestehen kann.*"] which he repeats in the *Doctrine of Right* as the universal principle of right: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law." (MS, AA 06, 230*, Practical Philosophy*, 387). ["Eine jede Handlung ist *Recht*, die oder nach deren Maxime die Freiheit der Willkür eines jeden mit jedermanns Freiheit nach einem allgemeinen Gesetze zusammen bestehen kann."]
[108] Feyerabend, AA 27, 1338. ["Der Inbegriff aller Principien der Diiudication dessen was recht ist."]
However, in a republican constitution the united will of all guarantees that there can be no injust law: "Now if human beings unite with one another then they can do no wrong; consequently the law is so constituted that it is not wrong, for the will of all is the law." Feyerabend, AA 27, 1382. ["Vereinigen sich nun Menschen untereinander; so können sie sich nicht unrecht thun: folglich ist das Gesetz so beschaffen, daß es nicht Unrecht ist; denn der Wille aller ist das Gesetz. Sie sind alle Gesetzgeber."]
[109] Feyerabend, AA 27, 1334. ["Wir haben es aber schon voher widerlegt, daß es unnütz sey, sich hier auf Gott zu beziehen."] Achenwall, *Jus Naturae in Usum Auditorum*, § 43.
[110] Published 1798, this quote is from the essay 'An Old Question Raised Again' written 1795.
[111] SF, AA 07, 87-88, *Religion and Rational Theology*, 304. ["Diese Begebenheit ist das Phänomen nicht einer Revolution, sondern (wie es Hr. Erhard ausdrückt) der Evolution einer *naturrechtlichen* Verfassung, die zwar nur unter wilden Kämpfen noch nicht selbst errungen wird – indem der Krieg von innen und außen alle bisher bestan-

According to this description, natural right functions as a regulative idea after which civil constitutions strive. In an ideal historical development, civil constitutions evolve to emulate natural right to a larger and larger degree. However, such an evolution is only possible if we admit at the outset that some civil constitutions infringe on natural right.

In Kant's minimal understanding, natural right provides the a priori principles of reason which serve to understand what is just and which civil constitutions we ought to strive after. On its own, natural right has no binding force since it is not imposed by any authority. Although natural right provides the principles to evaluate statutory laws, they provide a criterion of the justice of civil law, but not of their validity. However, Kant provides a pragmatic observation in the cited passage from the *Conflict of the Faculties*; although civil constitutions that infringe on natural right are not invalid, in practice they are overcome by civil and foreign war.[112]

Kant's reference to reason's active giving of laws (*Gesetzgebung*) emphasizes the fact that reason imposes laws on the objects of experience and itself. The legislative structure connects reason's legislation to the voluntaristarism debate in the natural right tradition. The core of this debate was whether God could will something that goes against the principles of natural right; in other words, the question is whether something is good because God wills it or whether God wills something because it is good. In Kant's answer to this dilemma, reason is the one imposing laws upon itself, and the question is how reason can identify its own infringements. When reason scrutinizes itself, its lawful character becomes the criterion for its legitimacy, and the search for lawfulness is central to reason's investigation of its own legitimacy.[113]

The state of nature metaphors connect the epistemological investigation with a wider discussion of the normativity of law. Kant's conception of normativity is closely connected with lawfulness; in his moral philosophy, it is the rational ability to set maxims for our actions which distinguishes free will (*Wille*) from mere choice (*Willkür*).[114] Although the terminological distinction between descriptive and normative laws emerges after Kant, he clearly separates the

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dene *statutarische* zerstört –, die aber doch dahin führt, zu einer Verfassung hinzustreben, welche nicht kriegssüchtig sein kann, nämlich der republicanischen; die es entweder selbst der *Staatsform* nach sein mag, oder auch nur nach der *Regierungsart*, bei der Einheit des Oberhaupts (des Monarchen) den Gesetzen analogisch, die sich ein Volk selbst nach allgemeinen Rechtsprincipien geben würde, den Staat verwalten zu lassen."]

[112] Thomas Pogge has a fitting description of Kant's account of positive law and natural right: "Natural law, whether complete or not, requires intersubjective recognition to fulfill its function. Natural law must then not only be complemented by, but also be *incorporated into* positive law, if a public delimitation of domains of external freedoms is to be achieved." Pogge, "Kant's Theory of Justice," 415, note 16.

[113] See for example KrV, A 786-787/B 814-815.

[114] KpV, AA 05, 33 and GMS, AA 04, 440.

two when he distinguishes between laws of freedom and laws of nature.[115] In the *Metaphysic of Morals* (*Metaphysik der Sitten*), Kant includes both the *Doctrine of Virtue* on ethics and the *Doctrine of Right* on law. Although both virtue and law are systems of what we would call normative laws, only virtue requires the action to be motivated by an autonomous maxim. For an action to comply with civil law, it is enough for the externally observable action to converge with what is prescribed by the law.[116] Civil law does not require the agent to be motivated in a particular way, as long as his behavior conforms with given laws.[117] The question of the inner observance of a maxim is left to moral conscience as the inner tribunal.[118] The single free action contains an act of the will, which sets up a maxim in accordance with the moral law. The moral law thus becomes constitutive of the action's moral worth, but it is not constitutive of the action itself, which depends on an individual act of the will. The natural right parallel raises the question of the normativity of a priori laws; are we to understand a priori laws as laws of freedom or laws of nature? This question leads us to Kant's account of how reason prescribes laws to nature.

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[115] The distinction between normative and descriptive laws was introduced in philosophy about a century after Kant. In Germany, the distinction between explicative and normative approaches was introduced by Wilhelm Wundt to distinguish between natural and human sciences. To make this distinction, Wundt specifies that the natural and legal sciences have a concept of laws whose origin is normative, but that the concept of a norm has vanished from the notion of a law of nature: "Darum hat sich in dem Naturgesetz der Normbegriff am meisten seinem eigenen Ursprung entfremded." Wundt, *Ethik*, 4. In Anglophone philosophy, the distinction between descriptive, prescriptive and evaluative judgments was made popular by R.M. Hare, who explains this distinction in the chapter "Describing and prescribing" in Hare and Oxford University Press, *Freedom and Reason*, 1–85.
The term 'normative' was not used in Kant's time, but the term 'Norma' was used as a term for a law or rule, Zedler defines it as a term used in law for "eine vorgeschriebene Regel, oder Gesetz" (Zedler, *Universal-Lexicon*, 1311). Adelung refers to 'Norma' as a Latin term for a rule for behaviour in a convent. (Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, 1020).

[116] In the *Naturrecht Feyerabend*, the main problem of the natural right tradition is explained by the fact that natural right as part of God's creation of man cannot be reconciled with an understanding of man's free will: "Without laws no cause, hence no will, is thinkable for the cause is that from which something follows in accordance with a constant rule. If freedom is subject to a law of nature then it is not freedom. It must thus itself be a law. Comprehending this appears to be difficult and on this point all the teachers of natural right have erred, they simply never noticed it." ["Ohne Gesetze läßt sich keine Ursache, mithin kein Willen denken, da Ursache da ist, worauf etwas nach einer beständignen Regel folgt. Ist Freiheit einem Gesetz der Natur unterworfen, so ist sie keine Freiheit. Wie muß sich daher selbst Gesetz seyn. Das einzusehen, scheint schwer zu syn, und alle Lehrer des Naturrechts aben um den Punkt geirret, den sie aber nie gefunden haben."] Feyerabend, AA 27, 1322.

[117] MS, AA 06, 214. On Kant's relationship to the natural right tradition, see Hoffmann, "Kant und das Naturrechtsdenken"; Sadun Bordoni, "Kant e il diritto naturale. L'introduzione al Naturrecht Feyerabend"; Zöller, "'[O]hne Hoffnung und Furcht'. Kants Naturrecht Feyerabend über den Grund der Verbindlichkeit zu einer Handlung"; Krieger, "Kant and the Crisis of Natural Law"; Vigo, "Kant's Conception of Natural Right"; and Schneewind, "Kant and Natural Law Ethics."

[118] Contrary to popular belief, feelings do play an important part in Kant's account of virtuos acts. Note that acting in accordance with a maxim and being motivated by a maxim is not the same thing. Kant recognizes that also virtuous acts can be motivated by feeling. This is for example seen in his account of the duty to cultivate the right kind of feelings, which can motivate virtous acts. See MS, AA 06, 399-403.

1.4. The laws of nature

In the previous sections, we saw how Kant adapts the natural right discourse to fit his search for a priori laws. This framework makes the problem of objectivity in metaphysics analogous to the relationship between natural right and positive law; between the civil laws imposed on members of a society and the natural order imposed on the world by a legislating God or by reason. To indicate the harmony between divine order and civil codes, the natural right tradition termed both types of commands 'laws'. By the time Kant wrote first *Critique*, the term 'laws of nature' had become a technical term that denoted mathematical descriptions of regularities in nature. In this sense, Kant was adopting a technical term that was already in wide use in the scientific community, but by putting it side by side with new juridical metaphors, Kant invites the reader to rediscover the metaphorical character of the laws of nature. I will therefore briefly sketch the metaphorical origins of the modern notion of laws of nature.

Galileo was one of the first to use mathematical principles to describe natural regularities, but he rarely described the regularities he was mapping as 'laws'. Instead he called them 'principles' or 'proportions'; for example, rather than the law of the lever, Galileo wrote of the 'ratio' or 'principle' of the lever.[119] He did refer to the laws of logic, geometry, mathematics and planetary motion, but he used the term 'law' to describe the regularities in nature in only very few passages.[120] One reference is found in a letter to Bishop Piero Dini from 1615 in which Galileo defends himself against the accusation of heresy. Galileo writes that he has observed that the sun has spots and rotates on its own axis, but that "we know that the intention of this Body is to praise the divine law."[121] In the same letter Galileo mentions the "laws of the planets".[122]

Similar to Galileo, Johannes Kepler mainly wrote about the principles rather than the laws of planetary motion or of nature in general.[123] When describing the regularities of planetary

[119] "ragioni non soltanto della leva" (Galilei, "Discorsi e dimostrazioni matematiche intorno a due nuove scienze. Attenenti alla mecanica e i movimenti locali," 152), "questo principio" (ibid., 152)
[120] Galielei, Il Saggiatore, vol. VI, 230, 248. Dialogo sopra i due massimi sistemi del mondo ibid., vol. VII, 30. See also Milton, "The Origin and Development of the Concept of the 'Laws of Nature,'" 181.
[121] Letter to Piero Dini, March 23, 1615 in: Galilei, "Discorsi e dimostrazioni matematiche intorno a due nuove scienze. Attenenti alla mecanica e i movimenti locali," vol. V, 304. ["noi sappiamo che l'intenzione di questo Salmo è di laudare la legge divina"]
[122] Istoria e dimostrazioni intorno alle macchie solari e loro accidenti ibid., vol. V, 189. ["le leggi de i pianeti"] Galileo's use of the law metaphor for the regularities in nature is very infrequent, but not inexistent as is claimed by Edvard Zilsel (Zilsel, "The Genesis of the Concept of Physical Law," 182).
[123] Alfredo Ferrarin has accounted for other philosophical aspects of Kepler and Galileo's approaches to natural science and provides an account of the importance of imagination in the modern scientific method. See Ferrarin,

movement, Kepler used the terms 'principles' or 'proportions'. Unlike Galileo, he did use the term 'law' to describe the law of the lever (*lex staterae*) and the laws of optics.[124] Although he used the term, Kepler clearly understood the laws of planetary motion as a metaphor, and he even wrote a poem about the metaphorical parallel between astronomy and jurisprudence.[125] When both Kepler and Galileo referred to the movements of the planets as lawful, they presupposed God to be the legislator behind this law. They connected the idea of a law of nature with the idea of an obligation to follow the command of a superior. I believe this is why Galileo used this language to defend himself from heresy, but usually preferred the neutral term 'principles', which is detached from theological connotations, to describe natural regularities.

These two of the earliest promoters of the scientific method thus used the term 'laws of nature' very infrequently. Among the first to adopt the laws of nature as the technical term was Descartes; in the *Discourse on the Method* (1637), he forwarded a mathematical representation of the "laws of mechanics, which are identical with the laws of nature."[126] Newton, too, used this terminology consistently; in his *Principia*, an introductory section is dedicated to *Axioms, or Laws of Motion* (1687).[127] Although the laws of nature became a technical term, the metaphorical sense was not immediately forgotten; for example Spinoza recognized that "it seems

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Galilei e la matematica della natura. On the development of the concept of a law of nature, see also Daston and Stolleis, *Natural Law and Laws of Nature in Early Modern Europe*.

[124] Kepler, *Gesammelte Werke*, vol. 12, 23, 51, 52, 131, and 479 and "Dioptrice," 341.

[125] "Sequor jubentem: copulat pares Numen:
Profeßio communis ista sublesta est
Scientibus coeli, et scientibus Juris:
Errata utrique corrigunt suae plebis:
Prognostica illa vitiat, ista sed Fastos:
Sed illa falsa, sed dolens; dolo haec fallens,
Fastos Nefastos clamitat, calat Luces
Mensesque, quoties improbam tuens causam
Sententiam non aßis aestimat justam:
Vincatur aere, jure qui nequit vinci:
Processus addat, jura si negant, culpam."
Kepler, *Gesammelte Werke*, vol. 12, 250.

[126] Descartes, "Discourse on the Method," pt. V, 139. The first study of this development was Edgard Zilsel's "The Genesis of the Concept of Physical Law" of 1942, in which he investigates why the modern scientific understanding of the laws of nature emerged when it did and not before. His main claim, known as the Zilsel thesis, is that the scientists adopted the mathematical description of natural phenomena from master artisans. Here I am mainly interested in his account of the shift in language used to describe natural regularities. Zilsel describes an initial period in which the term 'law' could not be applied to inanimate objects, a transitory period in which laws were applied to nature metaphorically and a final period in which 'law' became the literal term for the regularities uncovered by natural science. Zilsel, "The Genesis of the Concept of Physical Law," 270. Other studies that agree with this analysis of Descartes importantance in introducing the idea that natural science maps laws of nature, but disagree with Zilsel's main account, include Ruby, "The Origins of Scientific 'Law.'" Oakley, "Christian Theology and the Newtonian Science"; Milton, "The Origin and Development of the Concept of the 'Laws of Nature'"; Henry, "Metaphysics and the Origins of Modern Science"; and Harrison, "Voluntarism and Early Modern Science."

[127] Newton, *Pricipia*, vol. 1, 13. See also Milton, "The Origin and Development of the Concept of the 'Laws of Nature,'" 175.

to be only by a metaphor that the word law (*lex*) is applied to natural things. What is commonly meant by a law is a command which men may or may not follow."[128] Spinoza then goes on to argue that the divine law as command coincides with the laws of nature and of reason, making prescription and description two sides of the same coin. Also in Leibniz's writings, the juridico-theological origin of the notion of laws of nature is clear. He writes that everything in nature happens in accordance with "certain mathematical laws prescribed by God."[129] Leibniz is referring to the understanding that a law comes from a legislator, developing the law metaphor as a basis for the understanding of the scientific laws of nature.

What these accounts of the laws of nature have in common is that the notion of a law presupposes a legislator who has the authority to impose it. While a principle is an immanent property, a law is imposed by a higher authority.[130] The objects of nature are not inherently lawful; they are orderly because an order is imposed on them. In the metaphorical formulation, the laws of nature are imposed on natural objects as natural law. The laws of nature are, in their terminological origin, the same as natural right; an imposed regularity that defies the distinction between prescription and description. In the natural sciences therefore, scientists describe the laws which have been prescribed by the legislator of a natural order. From the point of view of the scientist, the laws are descriptive while they are prescriptive from the point of view of the legislator.

This brief overview shows how the term 'law of nature' developed from being an explicit analogy between civil or divine law and regularities in nature to being understood as the unambiguous technical term for necessary regularities in the empirical world.[131] The scientific laws of nature and Kant's juridical metaphors consequently refer to the same metaphorical depiction of nature as analogous to a legal system.

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[128] Spinoza, *Theological-Political Treatise*, chap. IV 2, 58. See also Zilsel, "The Genesis of the Concept of Physical Law," 270.

[129] Leibniz, *Die philosophischen Schriften von Gottfried Wilfelm Leibniz*, vol. 1, 196–197. ["certis legibus mathematicis a DEO praescriptis"]. See also Topitsch, *Vom Ursprung und Ende der Metaphysik*, 225.

[130] Oakley, "Christian Theology and the Newtonian Science," 433. Oakley argues that the modern conception of laws of nature and natural right "were linked by an enduring theological tradition". Ibid., 445. Against Oakley, Peter Harrison argues that "the voluntarism and science thesis is fatally flawed and its major contentions should be abandoned" because it depends on too imprecise a definition of voluntarism, necessity and contingency. Still, Harrison agrees that "the idea of a divine legislator who directly rules the creation seems to have played an important role in the formation of the notion of 'laws of nature'." Harrison, "Voluntarism and Early Modern Science," 79.

[131] I have left out the discussion of voluntarism vs. non-voluntarism in this overview; for an account of this debate, see Watkins, *The Divine Order, the Human Order, and the Order of Nature*.

Since the laws of nature are imposed rather than immanent, Kant can adopt this model by changing the legislator and replace God as the prescriber of laws with reason.[132] Kant's conception of a law of nature as prescribed by reason consequently draws on both the natural right tradition and the notion of law in the natural sciences. This is possible because the two notions are closely connected; they originate in the same idea of a natural order imposed by a universal legislation. On the metaphorical interpretation, Kant's account of laws relies on a tradition which sees descriptive laws as striving to express a prescriptive order.

1.5. Prescribing laws to nature

Kant specifies that the notion of a deduction refers to the process of showing the validity of a judgment by referring to the laws according to which it was made:

> even if you cannot yet penetrate their deception you still have a perfect right to demand the deduction of the principles that are used in them, which, if they are supposed to have arisen from pure reason, will never be provided for you. And thus it is not even necessary for you to concern yourself with the development and refutation of each groundless illusion, but you can dispose of the entire heap of these inexhaustible tricks of dialectic at once in the court of a critical reason, which demands laws.[133]

This passage shows how the lawfulness of judgments also becomes the criterion which allows Kant to deny that the ideas of reason constitute cognition. Since no valid law can be proved for the claims that go beyond possible experience these metaphysical claims are judged as invalid. The function of deduction is thus explained as the justification of a claim by proving that it derives from a valid law.

Kant explains the function of a priori laws by using juridical metaphors in which he likens the critique of reason to a tribunal. In this image, the critique of reason is a tribunal that investigates itself by specifying the laws according to which it passes judgments. Once the extraor-

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[132] The non-voluntarist account of natural right points in a similar direction; this is e.g., the case in Grotius' 'etiamsi daremos': "all we have now said would take place, though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs." Grotius, *The Rights of War and Peace*, vol. 1, Prol. § XI, 89. ["Et haec quidem quae iam diximus, locum aliquem haberent etiamsi daremus, quod sine summo scelere dari nequit, non esse Deum, aut non curari ab eo negotia humana".

[133] KrV, A 786-787/B 814-815, CPR, 667. ["ob ihr gleich das Blendwerk derselben noch nicht durchdringen könnt, so habt ihr doch völliges Recht, die Deduction der darin gebrauchten Grundsätze zu verlangen, welche, wenn sie aus bloßer Vernunft entsprungen sein sollen, euch niemals geschafft werden kann. Und so habt ihr nicht einmal nöthig, euch mit der Entwickelung und Widerlegung eines jeden grundlosen Scheins zu befassen, sondern könnt alle an Kunstgriffen unerschöpfliche Dialektik am Gerichtshofe einer kritischen Vernunft, welche Gesetze verlangt, in ganzen Haufen auf einmal abweisen."]

dinary investigation of the critique has been completed, reason itself becomes similar to a tribunal and is able to make legitimate judgments within its jurisdiction if it makes these in accordance with its own laws.

The general structure which all the different types of cognition must have is what Kant calls a priori laws. By using the term 'law' rather than 'rule', Kant is invoking the same type of descriptive necessity which the natural sciences borrowed from natural right theory. In Kant's terminology, "Rules, so far as they are objective (and thus necessarily pertain to the cognition of objects) are called laws."[134] Laws are consequently rules that relate to the regularities of objects of experience; they show that cognition can never be singular since a thought can only become cognition if it is an instance of a law. Their relation to objects distinguishes laws from other kinds of rules. A rule is confirmed as a law once it is proven that it necessarily applies to all possible objects of experience. Because the understanding makes appearances lawful, it is a "legislation for nature"[135] but it only provides the formal conditions for the laws of nature. While the critique recognizes the most general forms of this legislation, the task of discovering the specific laws of nature is left to the natural sciences.

According to both editions of the transcendental deduction, which I discuss in further detail in the chapter 2, the understanding prescribes laws to appearances, and thus makes nature possible as a synthetic unity of the manifold. In simplified terms, without the synthesizing activity of the understanding, there could be no systematic unity in nature and thus no such thing as laws of nature. Because the laws of nature presuppose the conceptual unity provided by the categories, Kant can maintain that the laws of the understanding are the highest laws of nature. The categories are the structural features which the specific laws of nature presuppose, since any law is a combination of singular objects according to a general rule. The two versions of the transcendental deduction take different routes to this conclusion, but both argue that because the legislation of nature has the same structure as the forms of judgment, reason as such is authorized to judge with regard to the objects of experience.

The categories prescribe laws to appearances through the transcendental unity of the apperception and they provide the forms of judgment according to which the power of judgment makes

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[134] KrV, A 126, CPR, 242. ["Regeln, so fern sie objectiv sind (mithin der Erkenntniß des Gegenstandes nothwendig anhängen), heißen Gesetze."]

[135] KrV, A 126, CPR, 242 (A-edition of the transcendental deduction). ["die Gesetzgebung für die natur"] Kant does not use the word 'legislation' in the B-deduction, but he repeatedly refers to the laws of understanding as prescribing laws to appearances in both versions.

judgments about experience. The categories can thus be applied in synthetic judgments by the power of judgment, which operates in accordance with the synthetic unity of the manifold. The categories as the rules of judgment are applied to sensible intuition by the *Urteilskraft* to form a judgment. Presupposing the transcendental unity of the apperception, the categories provide laws for all objects of experience and for all judgments concerning them. The laws of the understanding can be expressed in synthetic a priori judgment as Kant proves in the Analytic of Principles. The *Urteilskraft* operates in accordance with the unity of the transcendental apperception, which grounds the unity of the manifold. This manifold is given as intuition, but not as a unity. An experience results as possible only in accordance with this process as a lawful possibility:

> The supreme principle of all synthetic judgments is, therefore: Every object stands under the necessary conditions of the synthetic unity of the manifold of intuition in a possible experience.[136]

This principle grounds all other laws of reason and ties the notion of a judgment to the unity of experience. The mentioned necessary conditions of synthetic unity are the forms of intuition and the categories of experience. Since every object stands under these conditions, any possible experience must conform to these a priori principles. This is what Kant understands by the idea that the understanding prescribes laws to experience. Kant continues this passage with an affirmation that the conditions of the possibility of experience in general are also the conditions of the possibility of the objects of experience. This correspondence ensures that the activity of reason corresponds to the objects of any given possible experience.

The idea that the understanding prescribes law to nature combines the modern scientific account of laws of nature with a juridico-theological conception of laws as commands from a superior.[137] Both these elements would have been familiar to Kant's contemporaneous readers. Their combination becomes clear in the images that combine the critique and a scientific enterprise.

The most famous of Kant's scientific images is found in the B-preface where he explains transcendental idealism through its similarities with the Copernican revolution, in which the

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[136] KrV, A 158/B 197, CPR, 283. ["Das oberste Principium aller synthetischen Urtheile ist also: ein jeder Gegenstand steht unter den nothwendigen Bedingungen der synthetischen Einheit des Mannigfaltigen der Anschauung in einer möglichen Erfahrung."]

[137] Adelung defines prescribing (*vorschreiben*) as commanding particular rules of conduct: "Figuratively, giving obliging rules of conduct, something only those who have command over us can do." ["Figürlich, verbindliche Regeln des Verhaltens ertheilen, welches nur der thun kann, der uns zu befehlen hat"] Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, 1294.

roles of observer and observed object are reversed.[138] In other passages, Kant writes that the critical method imitates scientific experiments.[139] The critique and natural science both aim at discovering the laws behind appearances, and they thus both conceive of regularity as lawfulness. The critique is supposed to imitate natural science, but we have seen that natural science in its turn imitates legal procedures. Kant combines the two images to illustrate the proper scientific staging of experiments through a juridical metaphor:

> Reason, in order to be taught by nature, must approach nature with its principles in one hand, according to which alone the agreement among appearances can count as laws, and, in the other hand, the experiments thought out in accordance with these principles – yet in order to be instructed by nature not like a pupil, who has recited to him whatever the teacher wants to say, but like an appointed judge who compels witnesses to answer the questions he puts to them.[140]

Clearly, there is a substantial difference between a scientist who approaches nature in order to discover its laws and a judge who questions a witness in order to apply already enacted laws. However, Kant stresses the similarity in the role of the judge, the scientist and the philosopher: they ask questions on the basis of hypotheses, and they compel their interlocutors to answer.[141] Although the judge can compel the witness to answer his questions, he cannot dictate the content of the answer. This is why the correct analogy for the philosopher is not a schoolteacher but rather a scientist or a judge since they represent a figure who asks questions in order to make a legitimate judgment about regularities without dictating their answers.

In this metaphor, we meet both principles and laws; the scientist uses principles to construct experiments in order to understand the laws of nature. This means that the scientist takes an active role, in which he uses the principles of systematicity to understand nature's specific laws. Principles are general guidelines, while the specific mathematical laws of nature must be found through scientific experiments.[142] In the case of empirical laws, the scientist can never obtain final confirmation of his hypotheses of laws. As Kant explains in the Appendix to the

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[138] KrV, B XXIII.

[139] "This method, imitated from the method of those who study nature, thus consists in this: to seek the elements of pure reason in that *which admits of being confirmed or refuted through an experiment.*" KrV, B XVIII, note, CPR, 111. ["Diese dem Naturforscher nachgeahmte Methode besteht also darin: die Elemente der reinen Vernunft in dem zu suchen, *was sich durch ein Experiment bestätigen oder widerlegen läßt*."] See also KrV, B XXI.

[140] KrV, B XIII, CPR, 109. ["Die Vernunft muß mit ihren Principien, nach denen allein übereinkommende Erscheinungen für Gesetze gelten können, in einer Hand und mit dem Experiment, das sie nach jenen ausdachte, in der anderen an die Natur gehen, zwar um von ihr belehrt zu werden, aber nicht in der Qualität eines Schülers, der sich alles vorsagen läßt, was der Lehrer will, sondern eines bestallten Richters, der die Zeugen nöthigt auf die Fragen zu antworten, die er ihnen vorlegt."]

[141] See Kutschmann, "Erfinder und Entdecker oder Richter der Natur? Die Kantsche Richter-Metapher und die Selbstlosigkeit der modernen Naturwissenschaften" for a discussion of whether Kant's description of scientific experiments applies to today's scientific practice.

[142] I discuss reasons's systematic principles in section 5.2 below.

Transcendental Deduction, the systematicity of nature remains a regulative ideal, which reason in the narrow sense imposes on the understanding and thereby urges it to further cognition.[143]

Kant uses 'nature' as a technical term for all objects of experience.[144] He explains that we can only have knowledge about nature if we presuppose that it is structured by the same concepts as our judgments. The forms of intuition, categories and systematic principles of reason are the a priori conditions of the possibility of science; as such they make scientific inquiry possible, but lie beyond this mode of inquiry. The specific laws of nature, on the other hand, are validated empirically and can therefore never be completely certain. This is why Kant later calls the laws of nature 'so-called' laws, unlike a priori laws, which are objectively valid. The open-ended nature of scientific inquiry emerges more clearly in the third than in the first *Critique*. In the first *Critique*, the understanding projects its laws onto the objects of experience thereby making their appearance lawful.[145]

In *The Art of Judgement*, Howard Caygill suggests calling the way the understanding prescribes laws to nature its 'productive legislation'. Caygill argues that the understanding's concepts behave like laws that structure the appearances in order to make them subsumable under the concepts.[146] We as rational agents then "put ourselves under the tutelage of our own law by objectifying it".[147] This description is a helpful way of understanding the work of the understanding as structuring the objects of experience through the categories. Reason's theoretical legislation is objective because it produces the regularities it prescribes. There are, however,

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[143] In the third *Critique*, Kant radicalizes his account from the first *Critique* and argues that all laws of nature are merely so-called laws: "These rules, without which there would be no progress from the general analogy of a possible experience in general to the particular, it [i.e., understanding] must think as laws (i.e., as necessary), because otherwise they would not constitute an order of nature, even though it does not and never can cognize their necessity. Thus although it cannot determine anything *a priori* with regard to those (objects), it must yet, in order to investigate these *empirical so-called laws*, ground all reflection on nature on an *a priori* principle, the principle, namely, that in accordance with these laws a cognizable order of nature is possible". KU, AA 05: 184-185, *Critique of the Power of Judgment*, 71. (my italics) ["Diese Regeln, ohne welche kein Fortgang von der allgemeinen Analogie einer möglichen Erfahrung überhaupt zur besonderen stattfinden würde, muß er [i.e., understanding] sich als Gesetze (d. i. als notwendig) denken; weil sie sonst keine Naturordnung ausmachen würden, ob er gleich ihre Notwendigkeit nicht erkennt oder jemals einsehen könnte. Ob er also gleich in Ansehung derselben (Objekte) a priori nichts bestimmen kann, so muß er doch, um diesen *empirischen sogenannten Gesetzen* nachzugehen, ein Prinzip *a priori*, daß er nämlich nach ihnen eine erkennbare Ordnung der Natur möglich sei".]

[144] KpV, AA 05, 43.

[145] According to Guyer and Walker the problem is that although the categories of understanding provide the concepts necessary to cognize the empirical world, they do not give us any guidelines as to the method through which we can discover the laws of nature. Guyer and Walker, "Kant's Conception of Empirical Law," 235. In other words, transcendental idealism makes it necessary for there to be laws of nature, but it can never make us overcome the problem of induction when it comes to discovering the content of the laws of nature. See also Kaulbach, "Der Zusammenhang zwischen Naturphilosophie und Geschichtsphilosophie bei Kant."

[146] Caygill, *The Art of Judgement*, 296.

[147] Ibid., 378.

two pitfalls in Caygill's account of reason's productive legislation. The first is that reason does not produce the objects of experience from nothing; it shapes them from the input it receives through sensibility. The second is that reason cannot choose its legislation since this is already present in the objects of experience as they appear to us. The process of objectifying the law is also the creation of the objects of experience as objects that are accessible to us but this process is not performed consciously.

The fact that the categories and forms of intuition structure the objects of experience through its own activity means that a priori laws are also the principles of the laws of nature. It is not the task of philosophy to discover specific laws of nature, but rather to provide the epistemological justification for scientific procedure. Objects of experience are structured in accordance with the categories which provide the general form of the laws of nature. For the moral law, reason imposes laws to which morally good acts must necessarily conform.[148] Because reason in the broad sense prescribes laws for good epistemological behavior, we can gain insight into the grounds of empirical knowledge, but we cannot modify them.

A possible objection to lending importance to a priori laws as a metaphor is that this was a common term in many philosophical writings of the period; the principles which regulate cognition were called "laws" by many other authors before Kant, and he might simply be repeating a common term rather than inventing a new legal conception of reason. Kant is, however, the first to connect the notion of laws to the problem of epistemology and to make them the central illustration of the reflexive structure of reason. E.g., in Locke's writings, the 'law of reason' does not concern cognition, but instead denotes the laws of nature as implanted in man by God.[149]

Kant's description of the scientist as a judge resembles the imagery Francis Bacon uses to explain scientific experiments. I assume that Kant was familiar with Bacon's use of juridical metaphors because the motto of the second edition of the *Critique of Pure Reason* is taken from

[148] I take the point that Kant's two account of laws, laws of nature and the moral law depend on two types of necessitation from Eric Watkins: "[Kant's] notion of law can be univocal between laws of nature and the moral law precisely because the notion of necessity it involves is relatively abstract and can thus take on more specific forms in the case of the different kinds of laws – namely, determination and obligation." Watkins, "What Is, for Kant, a Law of Nature?" 488. Watkins here only considers laws of nature and the moral law, not the laws that reason sets for cognitive behaviour.

[149] Koselleck, Brunner, and Conze, "Gesetz." Hans Blumenberg connects the law metaphors for truth to the notion of property. He argues that since "*[p]roduced* truth is truth that is legitimally *one's own."* the notion of property based on labor forms the foundation of the legalistic understanding of truth. Blumenberg, *Paradigms for a Metaphorology*, 32.

a page of Bacon's *Great Instaurations* that contains a juridical metaphor.[150] Bacon, who was a lawyer by both education and profession, repeatedly used juridical metaphors in his works.[151] His juridical metaphors concern the regularities of nature and thought, and they do not refer only to laws; Bacon includes many different legal procedures and terms in his description of nature and cognition respectively. The laws of nature are part of a pervasive metaphor that connects regularities in nature and thought with the prescriptions of civil society and natural right.[152]

In his motto to the second edition of the *Critique of Pure Reason*, Kant – echoing Bacon, – promises to put a legitimate end to a chain of errors in previous thought. For our purposes, it is interesting that Bacon continues the cited description of the task with the following disclaimer: "I cannot be fairly asked to abide by the decision of a tribunal which is itself on trial."[153] Here we find the notion of an inquiry into the nature of reason set up as a tribunal, which is the same imagery that Kant uses to describe the critique of pure reason.[154] Bacon thus exempts himself from Herder's dilemma. Unlike Bacon, Kant commits himself to abiding by the decision of the critique of pure reason and because of this commitment the whole project risks circularity. Although Kant excludes himself as a particular person from the investigation, he does demand that the critique abides by its own principles.

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[150] KrV, B II.

[151] Bacon's use of law in philosophy was so frequent that William Harvey famously accused him of writing of natural philosophy "like a lord chancellor". See Cardwell, "Francis Bacon, Inquisitor."

[152] On the notion of metaphors which are pervasive in a culture, see Lakoff and Johnson, *Metaphors We Live By*, 17. Lakoff and Johnson's analysis central claim is that our cognition is structured by pervasive metpahors. However, their ahistorical account of the metaphoric structures of language and cognition is completely void of the people and works that inspired these pervasive metaphors.

[153] Bacon, "The Great Instauration," 21.

[154] Apart from the juridical metaphor for the investigation of reason, Bacon also uses juridical metaphors for the inductive method.
Ernst Cassirer goes as far as to describe Bacon's notion of induction as a legal method and believes that a judicial rather than an investigative spirit guides the entirety of Bacon's scientific approach: "Bacon sits as a judge over reality, questioning it as one examines an accused. Not infrequently he says that one must resort to force to obtain the answer desired, that nature must be 'put on the rack'. This procedure is not simply observational but strictly inquisitorial." Cassirer, "Die platonische Renaissance in England und die Schule von Cambridge," 48. ["Bacon sitzt über die Wirklichkeit zu Gericht, und er verhört sie, wie man einen Angeschuldigten verhört. Nicht selten ist die Rede davon, daß man ihr die Antwort, die man begehrt, abnötigen, daß man die Natur 'auf die Folter spannen muß.' Das Verfahren ist nicht einfach betrachtend oder beobachtend, sondern es ist streng inquisitorisch."] Cassirer notably does not refer to any source in which Bacon speaks of putting nature on the rack and Kenneth Cardwell among others has pointed out that this is due to the fact that Bacon never makes such a suggestion. Correcting Cassirer, Kenneth Cardwell writes: "I have not found in Bacon an unambiguous instruction to rack nature. Bacon does speak of nature revealing itself when driven out of its course by the vexations of art; and puns on "quaestio" are possible. A judge of Common Law did not, as a rule, examine the accused." Cardwell, "Francis Bacon, Inquisitor," 285 note 4. On the myth of Bacon putting nature on the rack, see Pesic, "Wrestling with Proteus: Francis Bacon and the 'Torture' of Nature." Cardwell adds that the notion of inquisition as scientific investigation is in fact a juridical metaphor which is used consistently by Bacon for the scientific enterprise (Cardwell, "Francis Bacon, Inquisitor," 274).

Form and matter

Kant's distinction between form and matter is a helpful way of explaining how he understands laws as objective rules. The formal regularities present in appearances are laws rather than rules because they express the forms of any object of experience. The matter, on the other hand, is provided through the intuition as a shaping of the manifold. Through the activity of the understanding, the objects of experience are shaped according to regular patterns. In the transcendental deduction, Kant focuses on the synthesis performed by the understanding on the basis of the transcendental unity of the apperception. He is thus presupposing the other synthesis, performed by intuition, which prepares the manifold for the application of concepts.

When Kant writes in the A-deduction that the understanding is the legislator of nature, he raises the question of whether the understanding can impose any legislation on appearances. The phenomenal understanding, as we consciously experience our own use of this faculty, is not capable of choosing its own legislation for nature. Instead, it follows structures which are present in all uses of the understanding, and which the individual cognizer has no control over. The transcendental principles describe the structures that are necessarily part of any use of this faculty. The legislation imposed on the objects of experience by the understanding is not the result of an act of the will but is synthesized through the synthetic unity of the transcendental apperception. A thinking subject can make any judgment he pleases, but he can only be certain of the validity of his judgments once he has recognized that the laws of understanding are the structures which grant his judgments objective validity by providing the conditions for a law of nature to be possible, as a law corresponding to a transcendental necessity. Still, the specific laws of nature are not directly accessible to us; we must first experience them in nature, and our judgments about nature must always be assumed and comparatively universal:[155]

> Particular laws, because they concern empirically determined appearances, *cannot* be *completely derived* from the categories, although they all stand under them.[156]

The categories inform us of the form of any law of nature, but experience is required to cognize particular laws.

Only one of the two aspects of reason – legislator and judge – that we meet in the juridical metaphors is accessible to the will of the single cognizer: while he can determine the content of his own judgments, he cannot determine the laws which make the judgments universally

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[155] KrV, B 3.
[156] KrV, B 165, CPR, 264. ["Besondere Gesetze, weil sie empirisch bestimmte Erscheinungen betreffen, können davon *nicht vollständig abgeleitet* werden, ob sie gleich alle insgesammt unter jenen stehen"]

valid. If he merely has opinions and beliefs, but makes no claims to knowledge, the cognizing subject does not incarnate reason as a judge, but when he makes knowledge claims he must take on the role of the judge and evaluate his claims according to the laws that he himself projects onto nature.

The lawful connection of appearances in nature is assured by the fact that the categories of understanding condition the way in which the empirical world appears. However, although the subject prescribes laws to empirical appearances, they are not the result of the subject's whim. What we can do as cognizing subjects is recognize the laws of the understanding and in doing so recognize that while they structure all possible experience, we cannot choose which laws to apply. In this way, the laws of understanding ensure the objective validity of our judgments, because they themselves structure nature in a way that is law governed and mandatory.[157] The first *Critique* presents a world structured by reason through intersubjective structures, which are projected onto nature. This subjective, but at the same time intersubjectively valid, structuring of the world allows Kant to combine the Stoic notion of a world ruled by *logos* with the notion of nature as lawful in virtue of its being created by a universal legislator. The cognizing subject can make his own judgments, but whether they are valid or not depends on the laws of understanding whose structure is inescapable and present in all experience.

Hegel on Kant's legislative reason

We reencounter the notion of legislative reason in the *Phenomenology of Spirit*, where Hegel uses Kant's conception of reason as legislative to reject Kant's account of normativity as being empty formalism. The conception of reason as legislative is one of the moments in the development of reason into spirit. Hegel's description of this moment in the development of spirit includes an attack on Kant's account of ethics. Hegel describes legislative reason as a form of knowledge which is unwilling to go beyond the relationship between conscience and the object. This situation urges reason to give determinate, normative (*sittliche*) laws to itself.[158] Every categorical imperative comprises a number of implicit hypotheticals. "You shall speak the truth" presupposes that you speak, that you know the truth, and that your beliefs are correct

[157] That the individual judgment is the acknowledgement of the laws which he himself has prescribed to nature, but which are not subject to his active choice is argued in Pollok, "'The Understanding Prescribes Laws to Nature': Spontaneity, Legislation, and Kant's Transcendental Hylomorphism," 529–30. I agree with the following description: "The *pure act* of acknowledging these laws does not create the laws themselves. Rather, it vindicates the right of our 'usage' of space, time, and the categories of our experience." Ibid., 530.
[158] Hegel, *Phänomenologie des Geistes*, 229.

and so on. And thus the universal necessity of legislative reason becomes complete arbitrariness.[159] Hegel describes legislative reason as practical; he does not include the theoretical laws of reason in this description of the development of spirit. Legislative reason is the last moment of reason before it develops into spirit. It is the moment in which reason is pushed beyond itself as normative that it becomes spirit. According to Hegel, categorical imperatives, in so far as they are effective, are not laws, but only commands.[160] In order to apply to single cases, they need too many intermediaries to remain general laws. Because this moment of reason prescribes universal laws, it has no specific content; it thus remains a mere measuring stick with nothing to measure.[161]

Does Hegel's criticism apply to reason's theoretical legislation as well? Is reason's legislation mere universality lacking content? Hegel's objection is that as soon as reason's laws become specific enough to apply to singular instances, they are no longer universal laws, but specific commands. Reason's laws have to become decrees before they can have any practical relevance. Unlike Hegel's caricature, Kantian reason is not solely legislative; it is both legislative and judicial. I call this combination juridical reason; juridical reason is capable both of giving itself universal laws and of applying these universal laws to singular instances in judgments. It is when reason judges that its universal laws become concrete. The activity of judging depends on the same synthesis as that which generates singular intuitions, and because of this affinity, reason can apply its concepts to intuitions without issuing decrees. Because reason is not only legislative but also has the authority to apply these laws to singular instances, its laws are not empty formalism.

1.6. Laws, rules and principles

As we have seen, the categories of the understanding function as laws that determine the form of objects of experience.[162] Because the categories give form to all objects, they determine the necessary structures of any law of nature. Metaphysically, the categories are the principles of any law of nature. Epistemically, they determine the necessary properties of any judgment that may qualify as cognition. There are, however, also other types of rules and there are types of

[159] Ibid., 230.
[160] Ibid.
[161] On Hegel's criticisms of Kant and possible Kantian replys, see Ferrarin, *Il pensare e l'io*.
[162] KrV, A 113.

laws that do not state necessary features of experience. The two types of normative laws in Kant's practical philosophy, moral and civil laws, do not state necessary features of appearances, instead they are laws of freedom, which concern the ways in which individual agents ought to act autonomously. The theoretical laws of reason indicate the necessary features of all experience, and they allow reason to judge appearances in accordance with its own a priori principles. By defining theoretical laws as objective, Kant intends that they determine the way in which intuitions are synthesized into objects of experience. The laws of cognition are objective because they determine the way objects appear to us. This line of argument emerges clearly in the B-deduction as an elaboration on the way in which the understanding prescribes laws to experience.[163] The laws of freedom concern the way in which a rational agent ought to act in order to be consistent with his own rational faculties. For Kant, this distinction marks a fundamental break with the natural right tradition.

The different types of rules include laws, principles and norms. All concepts function as rules, because when they are applied to a singular in a judgment, they state what is universal in the single instance. The role of rules is fundamental in both versions of the transcendental deduction in which Kant grapples with how rules are necessary for the unity of self-consciousness. The understanding is defined as the faculty of rules, which is capable of combining the singular with the universal in a consistent manner. For the understanding, there is no strict distinction between concepts and rules; they are two sides of the same procedure. These rules are specified as the forms of judgment that in their turn presuppose the categories.[164]

The distinction between laws and maxims of reason suggests that there are two different levels of regularity in reason: Reason is free to set itself whichever maxims it pleases. The maxim that for each conditioned we must find the condition is an example of such a maxim. This practical maxim indicates a certain procedure which is characteristic of proper epistemic behavior. However, if this maxim is mistaken for a law that is constitutive of experience then the difficulties we read about in the ideal of pure reason ensue. Rules are an umbrella term for prescriptive and descriptive accounts of regularities. When these rules are objective, they determine how objects of experience must be. In addition to this, Kant proposes a number of

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[163] KrV, B 164, CPR, 263: "For laws exist just as little in the appearances, but rather exist only to the subject in which the appearances inhere, insofar as it has understanding, as appearances do not exist in themselves, but only relative to the same being, insofar as it has senses." ["Denn Gesetze existiren eben so wenig in den Erscheinungen, sondern nur relativ auf das Subject, dem die Erscheinungen inhäriren, sofern es Verstand hat, als Erscheinungen nicht an sich existiren, sondern nur realtiv auf dasselbe Wesen, sofern es Sinne hat."]

[164] Rules are not self-interpreting and all rules require an act of interpretation in order to by applied to specific instances. This is where the work of the power of judgment enters into the epistemological procedure.

maxims of reason to avoid the metaphysical mistakes committed in the past. A priori laws have the function of justifying the epistemic behavior that accords with them, whereas the mere maxims of speculative reason are guidelines for practice that provide no justification of this practice.[165]

Kant's notion of law is closely connected with that of a condition: A law is a condition according to which a certain appearance is necessarily *posited* (*gesetzt*).[166] Laws are rules that condition the way in which empirical objects appear to us. The necessity that laws impose on empirical appearances is different from the "assumed and comparative"[167] necessity that is hypothesized in the empirical laws of nature. The a priori character of these laws goes beyond the descriptive necessity of the laws of nature and the prescriptive necessity of positive law.[168] The aim of the critique of pure reason is to make the systematic account of reason coincide with the a priori principles of experience; its purpose is therefore similar to a legislator in the natural law tradition who strives to recognize the principles of justice in his positive legislation.

Decrees

In the metaphorical language of the first *Critique*, the opposite of a law is a decree (*Machtspruch*).[169] Decrees are singular as opposed to general and contingently based on a single will. This opposition is connected to Kant's account of the two types of philosophers: While the critical philosopher is a legislator, the dogmatic philosopher issues decrees founded on transcendent – in other words, inaccessible – principles.[170] In the *Doctrine of Right*, Kant defines a decree as "an act of the right of majesty" in which the sovereign assumes the role of judge and overrides public law in his judgment.[171] In that work, the right to issue decrees in

[165] KrV, A 666/B 694.
[166] KrV, A 113.
[167] KrV, B 3, CPR, 137. ["angenommene und comparative *Allgemeinheit*"]
[168] Friedrich Stentzler suggests reading the critique as a sort of consitution of reason, a notion which is intentionally ambiguous and includes both reason's fundamental lawfulness and its general condition. Stentzler, *Die Verfassung der Venunft*. This account does not reflect Kant's distinction between a priori laws and mere decrees.
[169] KrV, A XII. See also *Über das Misslingen*, AA 08, 255. In *Religion inside the borders of mere reason*, Kant defines appealing to the authority of the Bible as a decree which cannot be reasoned with. See Rel, AA 06, 107.
[170] KrV, A 691/B 719.
[171] MS, AA 06, 334, *Practical Philosophy*, 475. ["Act des Majestätsrechts"]

case of emergency is part of the sovereign's powers. This right is not included in Kant's analogous account of reason; speculative reason cannot override its own laws.[172] What distinguishes laws from decrees is that laws derive their validity from a justificatory structure.[173] The understanding prescribes laws to appearances, but it is not free to choose arbitrarily; the structure of these laws are what make up understanding as a faculty. Without the categories, there would be no understanding.

Principles

Not all regularities in reason's activity qualify as laws; there are also prescriptive principles that guide cognitive behavior but do not qualify as laws of reason because they are not necessary for experience of objects. Kant refers to a least three types of principles in the first *Critique*; principles of pure understanding, principles of pure reason in the narrow sense, and the principle of unity of the apperception. In addition to these, he offers a number of *Grundsätze*, which are often translated into English as principles.[174] To confuse matters further, Kant also writes that the categories are principles of the possibility of experience.[175]

The notion of law becomes complicated when applied to logic, whether general or transcendental. Kant usually refers to laws when writing of the whole of a philosophical system, but when referring to the specific rules of cognitive activity, he writes of rules and principles. In order to distinguish them from each other, he calls the understanding the "power of rules", and reason in the narrow sense "the power of principles".[176] The principles of pure understanding

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[172] Although speculative reason cannot issue decrees, this is not the case for practical reason as is seen in the *Doctrine of Right* (MS, AA 06, 280) where Kant refers to the categorical imperative as a decree of reason. Another reference to a decree of practical reason is *Über das Misslingen*, AA 08, 262.

[173] Kant mentions the ideal of a state whose laws are based on a single principle, that of freedom, already in the first *Critique*: "A constitution providing for the *greatest human freedom* according to laws that permit *the freedom of each to exist together with that of others* (not one providing for the greatest happiness, since that would follow of itself) is at least a necessary idea, which one must make the ground not merely of the primary plan of a state's constitution but of all the laws too; and in it we must initially abstract from the present obstacles, which may perhaps arise not so much from what is unavoidable in human nature as rather from neglect of the true ideas in the giving of laws." KrV, A 316/B 373, CPR, 397. ["Eine Verfassung von der *größten menschlichen Freiheit* nach Gesetzen, welche machen, daß jedes *Freiheit mit der andern ihrer zusammen bestehen kann*, (nicht von der größten Glückseligkeit, denn diese wird schon von selbst folgen) ist doch wenigstens eine nothwendige Idee, die man nicht bloß im ersten Entwurfe einer Staatsverfassung, sondern auch bei allen Gesetzen zum Grunde legen muß, und wobei man anfänglich von den gegenwärtigen Hindernissen abstrahiren muß, die vielleicht nicht sowohl aus der menschlichen Natur unvermeidlich entspringen mögen, als vielmehr aus der Vernachlässigung der ächten Ideen bei der Gesetzgebung."]

[174] *Grundsätze* are accounts of properties whereas principles are instructions; the *Grundsatz* of intuition is that the manifold stands under the formal conditions of space and time. (B 136). The *Grundsatz* of the synthetic unity of apperception becomes the highest principle of any *use* of the understanding (B 142).

[175] KrV, B 168.

[176] This terminology is not rigid; the second book of the transcendental analytic specifies the principles of pure understanding. There are both rules and principles of the understanding and reason in the narrow sense. The

(A 150-235/B 189-294) are written into a system that is intended to provide the correct application of the concepts of pure understanding in judgments.[177]

In the A-deduction we learn that "pure apperception therefore yields a principle of the synthetic unity of manifold in all possible intuition."[178] According to this version of the transcendental deduction, it is the principle of the unity of the imagination that grounds the possibility of the transcendental apperception. It is not clear from the A-deduction whether this principle is a rule, i.e., whether it has a conceptual structure, or not. This principle represents the possibility of giving unity to a manifold. However, it is a point of great debate whether the concepts of the understanding play a role in this synthesis.[179] If we read the principles of the synthesis performed by the imagination as rules, then they presuppose conceptual work performed by the understanding. However, if we read the principles as nonconceptual guides for synthesis, then they are not rules.

The principle of reason in the narrow sense is not a law but a maxim because it is not constitutive of cognition.[180] The principle of reason prescribes a certain procedure, to follow a series of conditions in the search of an unconditioned, but this procedure is given as a task which is never fully accomplished:

> Thus the principle of reason is only a *rule*, prescribing a regress in the series of conditions for given appearances, in which regress it is never allowed to stop with an absolutely unconditioned.[181]

In contrast to the laws of reason in the narrow sense, the rule of pure speculative reason does not give validity to the activity it regulates. As a prescriptive rule, it does have normative value, but this normativity is not combined with a constitutive nature. Laws of reason which do not match the constitutive features of experience are not real laws, they are mere rules. Framed in

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principles of pure understanding are guidelines for the proper construction of synthetic judgments as it is carried out by the power of judgment. In general, we might say that principles indicate the way in which a cognition is achieved whereas laws indicate general rules for all objects of experience. To complicate the distinction further, Kant occasionally calls reason in the broad sense 'understanding' and thus refers to the principles of reason as the "principles of pure understanding" (KrV, A 301/B 357, CPR, 388. ["Grundsätze des reinen Verstandes"]) On reason's powers, see Ferrarin, *The Powers of Pure Reason*.

[177] This division draws on Johann Nikolaus Tetens's *Philosophische Versuche* rather than the principles of natural right.

[178] KrV, A 116-117, CPR, 237. ["also giebt die reine Apperception ein Principium der synthetischen Einheit des Mannigfaltigen in aller möglichen Anschauung an die Hand."]

[179] The original debate on this topic was between Beck and Reinhold. Today the debate continues under the headings of 'conceptualism' and 'non-conceptualism'. See Schulting, *Kantian Nonconceptualism*.

[180] I discuss this point in further detail in section 5.2 below.

[181] KrV, A 508-509/B 536-537, CPR, 520. ["Der Grundsatz der Vernunft also ist eigentlich nur eine Regel, welche in der Reihe der Bedingungen gegebener Erscheinungen einen Regressus gebietet, dem es niemals erlaubt ist, bei einem Schlechthin-Unbedingten stehen zu bleiben."]

the maxim of St. Augustine, it counts for the laws of reason in the narrow sense that *lex iniusta non est lex*.[182] The fate of the rules of pure speculative reason show that reason cannot merely give itself the laws it pleases. If its principles do not conform with the constitutive features of reality, they do not count as laws. The problem with principles is that they risk being so broad that they draw us into the illusions of the Transcendental Dialectic.

The principles of pure reason are regulative guidelines that help the understanding advance its cognition, either by ordering cognitions in inferences or by inferring a universal from a particular cognition as a hypothesis, which the understanding investigates. These principles differ from the laws of the understanding, which, according to their definition, are rules that have objective reality, meaning that they can correspond with an object of experience. The principles of pure reason relate to the objects of experience as a whole but not to any possible object in particular. This is why they have objective but indeterminate validity.[183] Kant emphasizes that although the term 'principle' commonly refers to a specific cognition such as an axiom in mathematics which is a synthetic cognition from concepts, in his use, cognition from principles is cognition of the particular in the universal. He mentions the specific principle of reason which "shows how one can first get a determinate experiential concept of what happens."[184] After giving this description of a specific principle of reason, Kant goes on to compare the principles of reason with the principles of legality in a civil state:

> It is an ancient wish – who knows how long it will take until perhaps it is fulfilled – that in place of the endless manifold of civil laws, their principles may be sought out; for in this alone can consist the secret, as one says, of simplifying legislation.[185]

According to this analogy, principles are more fundamental than laws; they are the guidelines that indicate how the laws can be united in a systematic unity. Worded thus, the principles of reason are closer to the natural right theory than to an axiomatic system. In an axiomatic system, principles are cognitions from concepts, whereas in a rational approach to law, the principles of legality guide the construction of positive law. Neither the principles of reason nor those of civil law are cognitions from concepts: they depend on the input of experience for the

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[182] Augustine, *De libero arbitrio voluntatis; St. Augustine on free will*, bk. I, 5.
[183] KrV, A 663/B 691. See also section 5.2 below.
[184] KrV, A 301/B 357, CPR, 388. ["vielmehr zeigt der Grundsatz, wie man allererst von dem, was geschieht, einen bestimmten Erfahrungsbegriff bekommen könne."]
[185] KrV, A 301/B 358, CPR, 388. ["Es ist ein alter Wunsch, der, wer weiß wie spät, vielleicht einmal in Erfüllung gehen wird: daß man doch einmal statt der endlosen Mannigfaltigkeit bürgerlicher Gesetze ihre Principien aussuchen möge; denn darin kann allein das Geheimniß bestehen, die Gesetzgebung, wie man sagt, zu simplificiren."]

judgments they take as premises.[186] This is why the system of reason is not an axiomatic system, but a system of laws united by principles. The principles are guidelines for the construction of judgments through inferences from other judgments rather than cognitions from concepts.[187] This means that reason is not legislative for experience the way the understanding is. Instead, reason provides the legislation for the use of the remaining faculties.

Conclusion

To motivate the critical inquiry, Kant employs a strategy from natural right theory; he invites the reader to imagine a philosophical state of nature. The contrast between the philosophical state of nature and the ordered status of post-critical reason emphasizes the pressing need to perform a critique of reason, which is intended to introduce a lawful condition in which epistemological disputes can be solved peacefully. The state of nature metaphor puts Kant's inquiry of the bindingness of epistemological laws into dialogue with debates concerning the bindingness of civil and natural right.

The natural right metaphors show that *Critique of Pure Reason* is not only a description of how knowledge is obtained but also a process that enables reason to evaluate metaphysical claims with certainty by acknowledging the laws present in any possible experience. The state of nature image shows that reason changes through the critique; Kant marks this change by distinguishing between pre- and postcritical reason. Rather than constructing a new legislation of reason, Kant is proposing a systematic justification of reason's legislation as its preexisting potential allows. The change from precritical to critical reason is justificatory and not substantial; the a priori structures remain the same in both states. Before the critique, the world is also ordered in causal relationships, but after the critique, we can legitimately make a priori judgments about these relationships. Every effect has a cause before the critique, but we can make this judgment a priori legitimately after the critique has proved the a priori structures of any experience. Through their justification, our metaphysical decrees become lawful judgments.

What changes after the critique is that some patterns are justified, while it is clarified that other patterns can never be justified. The critique gives validity to the laws of the understanding in a way that is similar to the validity of positive law in the natural right tradition. Reason can

[186] The use of experience as a condition for the application of a priori principles of right is later included in Kant's own definition of the *Metaphysics of Morals.* See *Doctrine of Right*, AA 06, 217.
[187] In the Doctrine of Method, Kant distinguishes between two types of principles: intuitive and discursive. Axioms, as they are used in mathematics, are intuitive principles, whereas the principles of reason are discursive principles, which depend on inferences rather than direct cognitions from concepts. KrV, A 732-734/B 760-762.

only establish itself as a legal system because it bases its legislation on the normative structures present in the objects of experience. The principles of reason are given a guiding status in the formation of judgment as principles in inferences.

The critique lays the foundation of reason's civil condition by providing it with valid laws. However, this ordered condition is only possible because it is in harmony with the principles that structure experience. Reason becomes legitimately legislative of experience once it has established itself into a system. Before the establishment of such a system, reason is formally, but not legitimately legislative. After this survey of reason's natural right, the topic of the next chapter is therefore the transcendental deduction as a proof of the legitimacy of the categories as the most general laws of nature and judgment.

2. DEDUCTIONS

We have seen how the state of nature metaphor connects the idea of reason as legislative to the natural right tradition; the critique aims to ensure peace among metaphysicians by establishing a system in which conflicts can be resolved by an established procedure which ensures an objectively valid outcome. But how can we be certain that the proposed legislation applies not just to past experience but also to future cases? In a critical self-examination, how can reason decide the legal foundation of its own claims? In other words, how can we know that the critique departs from valid principles when validity can only be guaranteed within the system? In lawyer's Latin, the critique needs to answer the question *quid juris* to justify its authority to make necessary judgments about experience. Kant presents the transcendental deduction as the answer to this question and he introduces both versions of the argument with a metaphorical reference to legal deductions.

The latent ambiguity of the term 'deduction' might cause some confusion. In today's terminology, a deduction is a technical term for an argument with a specific structure. It is the derivation of a specific conclusion from general premises – the opposite of an inductive argument.[188] This modern terminology might lead readers to search for a specific structure in the transcendental deduction, but such a search would be in vain, as neither of the two versions of the transcendental deduction deduce specific conclusions from general premises.

In this chapter, I explore the similarities and differences between the transcendental deduction and legal deductions, as Kant and his contemporaries knew them. This investigation will help us understand how the question *quid juris* fits into the critique's examination of whether reason can apply its legislation in synthetic a priori judgments. I argue that the *quid juris* metaphor should be read in parallel with Kant's two-fold account of legal imputation, which requires separate authorities to perform the imputation of the fact and the imputation of the law.

I begin the chapter with an introduction to the transcendental deduction and the legal metaphor. In the second section, I introduce the historical background of legal deductions and Kant's

[188] This meaning of the term is the only one given in the *Historisches Wörterbuch der Philosophie*: "the derivation of a proposition (thesis) from other propositions (hypotheses) with help from rules of logical closure (logical entailment)". ["die Ableitung einer Aussage (These) aus anderen Aussagen (Hypothesen) mit Hilfe der Regeln des logischen Schließens (logische Folgerung)"]. Lorenz, Kuno: "Deduktion". In Ritter, Gründer and Gabriel, eds.: *Historisches Wörterbuch der Philosophie* vol. 2, 27.

understanding of lawyer's proofs. In section 3, I reject that the metaphysical deduction is the proof of *quid facti*. I connect Kant's understanding of the question of fact and the question of law in light of his account of judicial imputation in section 4. I then provide a guide to the transcendental deduction. In the final section, I consider the analogy between concepts and property and its limitations.[189]

2.1. The transcendental deduction

To introduce the transcendental deduction, Kant explains that it is similar to a legal deduction because both answer the question about what is lawful:

> Jurists, when they speak of entitlements and claims, distinguish in a legal matter between the questions about what is lawful (*quid juris*) and that which concerns the fact (*quid facti*), and since they demand proof of both, they call the first, which is to establish the entitlement [*Befugnis*] or the legal claim, the *deduction*.[190]

According to this analogy, possessing a concept is the question of fact, while the entitlement to use this concept is the question of law. From the proof of the *quaestio juris* follows an authorization (*Befugnis*), whereas no authorization follows from the proof of the *quaestio facti*. According to this passage, jurists demand proof of both questions, but only the proof of the question of law is called a deduction. Whether the proof of the question of fact might also be a deduction and whether this would be the metaphysical deduction is a separate question, which I discuss below. For now it suffices to say that the question of fact is not proven by an account of how concepts are acquired in a Lockean manner. This type of proof would be a mere physiological derivation, which only shows the occasion on which concepts were acquired, but not their a priori origin. As an example of this distinction, let us say I buy a piece of land from someone. An empirical derivation would trace this acquisition through a chain of previous owners, but this would not establish my right to the land. Such a right can only be established if I can deduce that the land was acquired legitimately, i.e., in accordance with valid laws. The

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[189] I published a discussion of Henrich's analysis in Møller, "The Court of Reason in Kant's Critique of Pure Reason" and "Human rights jurisprudence seen through the framework of Kant's legal metaphors" and this chapter partly relies on my discussion there.

[190] KrV, A 84/B 116, CPR, 219-220. ["Die Rechtslehrer, wenn sie von Befugnissen und Anmaßungen reden, unterscheiden in einem Rechtshandel die Frage über das, was Rechtens ist (*quid juris*), von der, die die Thatsache angeht (*quid facti*), und indem sie von beiden Beweis fordern, so nennen sie den erstern, der die Befugniß oder auch den Rechtsanspruch darthun soll, die *Deduction*."]
According to *Meyers enzyklopädisches Lexikon*, the question of law (*quaestio juris*) is an investigation of the possibility of establishing the content of the act and the legal judgment of the facts, in opposition to the question of fact (*quaestio facti*), which is the question of the facts of the matter. *Meyers enzyklopädisches Lexikon, mit 100 signierten Sonderbeiträgen*, vol. 19, 449.

proof of my right to the land has to show that the transaction was made in accordance with valid laws. In the case of concepts, the question of origin must be kept separate from actual acquisition, which is not relevant to a critique of pure reason. It is only the justification of the authorization which Kant calls a deduction. According to the *quid juris* metaphor, the aim of the deduction is to prove our authorization to use the categories in synthetic a priori judgments. As yet, Kant has said nothing about the structure of the argument, only its purpose for proving that the categories can be used legitimately.

The justification of empirical concepts follows from their acquisition through continued experience. The concept 'horse' can be applied legitimately in judgments about experience because it is derived from experience; to justify our use of the concept, we simply have to refer to similarities with other animals that also have four legs, hoofs, etc. But the case is different for concepts that are used a priori; our entitlement to use these concepts must always be proven through a deduction.[191] The transcendental deduction serves to show that the categories are not usurped concepts such as fortune or fate:

> But there are also concepts that have been usurped, such as *fortune* and *fate*, which circulate with almost universal indulgence, but that are occasionally called upon to establish their claim by the question *quid juris*, and then there is not a little embarrassment about their deduction because one can adduce no clear legal ground for an entitlement [*Befugnis*] to their use either from experience or from reason.[192]

Also in this passage, the notion of a deduction is explained in legal terms; the transcendental deduction is supposed to demonstrate that there are legal grounds on which an entitlement can be established. But what would such legal grounds consist in? In a another passage later in the work, Kant explains that a deduction depends on finding the right documents, which can serve to prove this entitlement.[193] But how are we to understand these 'documents'? How do legal deductions establish legal grounds by exhibiting documents? In order to understand these references, we need to investigate what legal deductions were at that time and how jurists argued for their claims.

The aim of the deduction is to establish a *Befugnis*, the right to perform an action, which I have translated as 'authorization'. The analogy with property, which I discuss in section 2.6,

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[191] KrV, A 85/B 117, CPR, 220: Concepts which are used only a priori "always require a deduction of their entitlement". ["dieser ihre Befugniß bedarf jederzeit einer Deduction"]

[192] KrV, A 84-85/B 117, CPR, 220. ["Es giebt indessen auch usurpirte Begriffe, wie etwa *Glück*, *Schicksal*, die zwar mit fast allgemeiner Nachsicht herumlaufen, aber doch bisweilen durch die Frage: *quid iuris*, in Anspruch genommen werden; da man alsdann wegen der Deduction derselben in nicht geringe Verlegenheit geräth, indem man keinen deutlichen Rechtsgrund weder aus der Erfahrung, noch der Vernunft anführen kann, dadurch die Befugniß seines Gebrauchs deutlich würde."]

[193] KrV, A 209-210/B 255.

should not be mistaken as the analogy between a concept and a thing; this analogy likens the application of a concept to the authorization to use property. To return to the example of buying land, the property right to the land entails the right to use it in different ways; I can rent it to someone else, I can build on it or I can sell it. None of these permissions follow from a mere empirical account of how I came to possess the land without the application of a law.

The *quid juris* metaphor has been debated since Dieter Henrich's seminal "Kant's Notion of a Deduction and the Methodological Background of the First Critique" (1989), which showed that this metaphor must be central in an interpretation of the transcendental deduction. Henrich's research into the so-called deduction writings is explained more thoroughly in his "Die Beweisstruktur der transzendentalen Deduktion der reinen Verstandesbegriffe – eine Diskussion mit Dieter Henrich" from 1984.[194] The achievement of Henrich's study was to show that the term 'deduction' does not necessarily denote a chain of syllogisms that proves a specific conclusion from general premises. Instead, Henrich suggests reading the transcendental deduction as a legal argument that establishes the validity of the categories by demonstrating that they originate in the transcendental apperception. The transcendental deduction is thus not a deduction in the formal logical sense, but rather the inference of an origin. According to Henrich, a deduction "seeks to discover and to examine the real origin of our claim and with that the source of its legitimacy."[195] In order to prove the objective validity of the categories, Kant shows how they have a right to inherit their validity from the "I think" which must accompany all mental representations.

This interpretation of the transcendental deduction turns the juridical metaphor into a model which the argumentative structure of the transcendental deduction follows. Reading the transcendental deduction in this way implies that the validity of this argument should be evaluated according to the standards for legal arguments rather than according to the standards of formal logical proofs. Henrich argues that Kant adopted juridical procedures as the "methodological

[194] Henrich, "Die Beweisstruktur der transzendentalen Deduktion der reinen Verstandesbegriffe-eine Diskussion mit Dieter Henrich." In this text, Henrich also addressed the use of the term deduction in the Wolffian school, which was later developed by Manfred Kuehn in Kuehn, "The Wolffian Background of Kant's Transcendental Deduction."
[195] Henrich, "Kant's Notion of a Deduction," 35.

paradigm"[196] of the first *Critique* and that this analogy indicates that "[d]eductions cannot assume the shape of rigorous and exhaustive reasoning."[197] In Henrich's reading, the understanding of the question *quid facti* remains incomplete because we have no access to the transcendental unity of apperception, but, according to Henrich, Kant uses the legal analogy to show that a justification can be based on the incomplete proof of the factual circumstances on which it rests.

Henrich thus argues that the transcendental deduction is modeled on a legal deduction, more specifically arguments in succession law. He bases his reading on the similarities between the section headings of the B-deduction and legal deductions concerning inheritance and the right to noble titles. Henrich's point is that the transcendental deduction rests on an analogy between the right to apply the categories of understanding to the objects of experience and the inherited property right to a piece of land. According to his account, the question of fact concerns the actual possession of the land whereas the question of law concerns the lawfulness of this possession. In succession law, a legal proof would involve the proof that the first acquisition was lawful and a deduction of the lawfulness of a potential inheritance which shows that such an acquisition derives lawfully from the first acquisition, for example by showing how a potential heir descends from the original owner of the title or land. Henrich points out that this kind of legal deduction was quite widespread in Kant's time and that printed deductions were circulating amongst scholars, making it probable that Kant was familiar with these writings. Especially deductions of rights to land and noble titles were very common and they would often be printed and circulated among the general public by those making claims to a certain title. There are no collections of deductions in the catalogues of Kant's books, but he did own very few books of the books he read, and Henrich makes a good case that Kant would have been familiar with collections of legal deductions from his previous work as a librarian.[198]

However, Kant's knowledge of legal deductions of titles to land does not entail that the structure of the transcendental deduction mimics the proof of the origin of a possession. Firstly, the validity of the categories is not only grounded in their origin in the transcendental apperception but in their being the necessary structures in the synthesis which creates objects of

[196] Ibid., 38. Henrich later personally informed me that he did not intend such a strong reading of the legal deduction as a model of the structure of argument in the transcendental deduction.
[197] Ibid., 46.
[198] For a list of books owned by Kant, see Warda, *Immanuel Kants Bücher, mit einer getreuen Nachbildung des bisher einzigen bekannten Abzuges des Versteigerungskataloges der Bibliothek Kants*. On Kant's reading habits, see Kuehn, *Kant. A Biography*, 160.

experience. The unity of this experience and the possibility of thinking the objects of experience is grounded in the transcendental apperception, but this does not imply that the transcendental apperception alone justifies applying the categories to appearances. The categories do not derive directly from the transcendental apperception; their validity rests on their giving formal structure to all appearances.[199]

Part of Henrich's structural point is that the B-deduction concludes with a 'brief concept of this deduction' (B168-169), which is a typical feature of legal deductions. This section is not present in the A-deduction, which instead has a 'summary representation'. The *quid juris* metaphor is present in both editions, but in Henrich's reading it is expanded in the B-deduction in the final summary using legal terminology. However, Henrich does not specify whether his analysis applies to both editions of the transcendental deduction.

Henrich's conclusion concerning the validity of the transcendental deduction *qua* legal deduction is that it should be held up to other standards than formal logical proofs because it is modeled on a legal deduction. In his reading, the transcendental deduction can rely on an incomplete account of the nature of the transcendental unity of apperception because it is modeled on a legal argument.[200] However, he does not give an account of how Kant conceives of legal arguments.

While I appreciate Henrich's drawing attention to the *quid juris* metaphor, I disagree with his conclusions both regarding the structure of the transcendental deduction and its standard of evaluation. On the first point, Henrich does not provide sufficient ground for concluding that legal deductions are models for the structure of argument given in the transcendental deduction and even less so for the deductions presented by Kant in his other critical works. Even if the transcendental deduction were modeled on the structure of legal deductions, Henrich would still need to provide a separate argument showing that the transcendental deduction should live up to a different standard of evaluation.

Apart from the *quid juris* metaphor, Kant makes another analogy between legal proofs and transcendental deductions: In the discipline of pure reason, he describes legal proofs as synonyms of 'direct proofs', and he requires the participants of a discussion not to focus on arguing against their opponents, but instead each of them

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[199] Kant introduces the notion of an original acquisition of the categories in *On a discovery* where he argues against Eberhard's interpretation of the categories as being simply Leibnizian innate ideas. See also Oberhausen, *Das neue Apriori. Kants Lehre von einer "ursprünglichen Erwerbung" apriorischer Vorstellungen*.
[200] Henrich, "Kant's Notion of a Deduction," 46.

> must conduct his case by means of a *legal proof* through transcendental deduction of the bases of proof – in other words, directly – so that one can see what bases his claims of reason can adduce on their own behalf. (my emphasis)[201]

Here legal proofs and the transcendental deductions are both associated with a direct proof. Direct proofs are identified with ostensive proofs, which demonstrate the truth of a claim by demonstrating the sources of this truth, i.e., with the grounds of its possibility.[202] Following this definition, there is nothing logically distinct about legal proofs; they follow the same structure as ostensive proofs. What Kant emphasizes in the *quid juris* metaphor is thus not the structure of the argument, but rather its purpose. [203]

Because of its connection with the transcendental deduction, the question *quid juris* is usually interpreted as referring to specific laws which allow reason to make objectively valid judgments, and these specific laws would then amount to the table of categories. Kant conceives of a priori laws not only as single laws, but also as the underlying principles which provide unity in experience.[204] As the structuring principle of all synthesis, pure understanding provides the principle on which the single categories rest on. The notion of a law of reason cannot be reduced to the table of categories; it comprises the entire structure from which the single categories, and later the empirical laws of nature, draw their validity.[205]

If the structural interpretation is incorrect, what is the function of the *quid juris* metaphor? What does it tell us about the transcendental deduction and its role in the critique? In order to

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[201] KrV, A 794/B 822, *Critique of Pure Reason*, translated by Pluhar, 726. ["Ein jeder muß seine Sache vermittelst eines durch transscendentale Deduction der Beweisgründe geführten rechtlichen Beweises, d. i. direct, führen, damit man sehe, was seine Vernunftansprüche für sich selbst anzuführen haben."] On CPR, 671, Guyer and Wood translate "Sache" as "affair" and "rechtlicher Beweis" as "legitimate proof", which makes the legal analogy inconspiscuous in their translation of this passage.

[202] KrV, A 789/B 817.

[203] Kant makes this more explicit connection between deductions and the justification of the use of concepts in a reflection dated by Adickes as around 1780-1785: Ref 5636**,** AA 18, 267: "*Quaestio facti* is the way in which one first came into possession of a concept: *qvaestio iuris* is the way in which one possess and uses this." ["*Quaestio facti* ist, auf welche Art man sich zuerst in den Besitz eines Begrifs gesetzt habe; *qvaestio iuris,* mit welchem Recht man ~~dies~~ denselben besitze und ihn brauche."]
There are very few mentions of this distinction in the deductions I have had access to. One deduction in Holzschuher and Siebenkees collection mentions "Deductio iuris et facti" together. Another distinguishes the two between a history of the facts and a deduction of the question of right: "Dokumentierte *Historia facti et Proc. cum solida deduct. iuris*". (Holzschuher and Siebenkees, *Deductions-Bibliothek von Teutschland*, vol. 1, 204 and 315.)

[204] "The pure understanding is thus in the categories the law of the synthetic unity of all appearances, and thereby first and originally makes experience possible as far as its form is concerned." KrV, A 128, CPR, 243. ["Der reine Verstand ist also in den Kategorien das Gesetz der synthethischen Einheit aller Erscheinungen und macht dadurch Erfahrung ihrer Form nach allererst und ursprünglich möglich."] Among the many studies on the unity of reason, see for example Henrich, *The Unity of Reason* and Neiman, *Unity of Reason. Rereading Kant*.

[205] "All appearances therefore stand in a thoroughgoing connection according to necessary laws, and hence in a *transcendental affinity*, of which the empirical affinity is the mere consequence." KrV, A 113-114, CPR, 235-235. ["Also stehen alle Erscheinungen in einer durchgängigen Verknüpfung nach nothwendigen Gesetzen und mithin in einer *transcendentalen Affinität*, woraus die empirische die bloße Folge ist."]

answer this question, I investigate the tradition of legal deductions and Kant's account of legal inferences in the following two sections.

2.2. Legal arguments

Legal deductions

The tradition of providing legal deductions as texts containing legal arguments was well established in Kant's time. Legal deductions were not a specific type of argument, but rather a whole category of legal documents, whose function lay somewhere between that of a legal procedure and a political document. Deduction writings were in particular written to convince a larger public and were often prepared and published in the eventuality that a legal dispute would arise. Individual deductions were compiled in large collections, of which the largest is *Deductions-Bibliothek von Teutschland: Nebst dazu gehörigen Nachrichten* (1778) collected by Christoph Siegmund von Holzschuher and Johann Christian Siebenkees.[206] The first volume of this series contains an introduction to the style and purpose of these texts:

> Under deductions, however, one understands in a somewhat wide sense writings in which disputed rights and claims founded on these of conflicting parties are examined and defended.
> When writings of this type are concerned with the rights of high lords to lands and people, successions and other high entitlements, they are called writings of state.[207]

Deductions are thus writings in which legal claims are defended. Johann Stephan Pütter gives a similar introduction to deductions, as a guide for their composition, in his *Anleitung zur juristischen Praxi* from 1765. Among other recommendations, Pütter advises attaching a short summary to longer deductions, as we see in Kant's 'Brief concept of this deduction' (B168).[208]

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[206] Holzschuher and Siebenkees, *Deductions-Bibliothek von Teutschland*.

[207] Ibid., vol. I, 467–468, III. ["Unter Deductionen aber werden, in einer etwas weitläufigern Bedeutung solche Schriften verstanden; worinnen die streitigen Rechte und die derauf sich gründenden Ansprüche streitender Parteien untersucht und vertheidigt werden. Wenn dergl. Schriften hoher Häupter Gerechtsame auf Land und Leute, Erbfolgen, oder andere hohe Befugnisse betreffen, so werden sie Staatsschriften gennant."] A similar definition is given by Justi: "Deductions are those written compositions in which the authorizations, rights and claims of princes, free powers and other persons of state are treated in detail and convincingly and in public." ["Deductionen sind solche schriftliche Ausarbeitungen, worinnen die Befugnisse, Rechte und Anforderungen der Prinzen, freyen Mächte und anderer Staatspersonen ausführlich und überzeugend abgehandelt, und der Welt öffentlich vor Augen gelegt werden."] Justi, *Anweisung*, § 9, 605.

[208] Pütter, *Anleitung zur juristischen Praxi*, § 115. Pütter recommends adding the "brief concept" at the beginning of the deduction, whereas Kant places it at the end. Pütter gives instructions for both the order of work and the order of the text; he recommends that lawyers start by drawing a family tree before writing the deduction. The next step is to write up the history of the dispute and the family. After this the lawyer should state the main question of the dispute and state the arguments for and against his case. After stating all the arguments that might help his case, the lawyer should include a short summary of the text before the deduction itself; a "brief concept of the contents". ["kurzen Begriff des Inhalts."] Ibid., §§ 95–116.

Pütter also recommends focusing on the information that may persuade readers: "The aim of a deducer consists only in presenting the case from his side as he wishes so that those to which the writing is destined read it and are moved by it."[209]

In short, deduction writings were a type of text destined for the general public, in which a lawyer gave the justification to the legal claims of his client. These claims might be either civil or criminal, and concern property, succession or other civil disputes. Unlike the *acta*, which contained all the legal proceedings at a court, deductions would only contain the arguments of one party.

The terms *questio juris* and *quaestio facti* are used in the deductions, but they are not clearly separated. For example, in the collection of deductions written by Heinrich de Cocceji, there is only one deduction which explicitly contains a deduction of both right and fact (*deductio juris et facti*).[210] Although many individual deductions are named "Deductio facti et iuris,"[211] the two aspects are only separated in the title and there is no further mention of them in the texts. The legal analogy thus does not entail looking for a separate deduction of the question *quid facti* in the first *Critique*.

Kant was familiar with legal deductions of claims to titles and lands. In the *Doctrine of Right*, he mentions a deduction of a prince's right to a certain title. In his treatment of the failed attempt to establish a republic of peoples in Europe, he writes that this dream remains in obscure deduction alone which were produced after, rather than before, violent acts.[212] He also presents the deduction of a sovereign's right to go to war "as a mere jurist would draw it up."[213] This legal deduction deduces a king's right to lead his subjects into war by showing that the subjects are the products of the king's activity since the land would have been scarcely populated without this sovereign's protection. Kant goes on to refute this argument because it is

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[209] Pütter, *Anleitung zur juristischen Praxi*, § 126. ["Der Zweck eines deducenten gehet nur dahin, die Sache von seiner Seite vorzustellen, so wie er wünscht, daß sie der, an welchen die Schrift gerichtet ist, auch ansehen, und sich dadurch bewegen lassen möge."]

[210] De Cocceji, *Deductiones, Consilia et Responsa in Causis Illustrium*, 159.

[211] Heser, *Deductio Iuris Et Facti, In Causa Nassau-Siegen Contra Nassau-Siegen Cum rationibus dubitandi & decidendi, & refutatione contrariorum. Das ist*; *Juris et Facti Deductio pro Heredibus Ab Intestato Defuncti Doctoris Marzani Adversus Presbyterum Petrum Ferdinandum Marzani de Steinhoff Assertum Heredem Testamentarium*; *Deductio iuris et facti pro colorando possessorio*; *Deductio Iuris et Facti, in Sachen Sachsen-Weymar Contra Schwartzburg Arnstadt Vasallen.*

[212] "But later, instead of this, the right of nations survived only in books; it disappeared from cabinets or else, after force had already been used, was relegated in the form of a deduction to the obscurity of archives." MS, AA 06, 350, *Practical Philosophy*, 488. ["statt dessen späterhin das Völkerrecht bloß in Büchern übrig geblieben, aus Cabinetten aber verschwunden, oder nach shon verübter Gewalt in Form der Deductionen der Dunkelheit der Archive anvertrauer worden ist".]

[213] MS, AA 06, 345, *Practical Philosophy*, 483. ["wie sie ein bloßer Jurist sie abfassen würde."]

based on a false analogy between people and things.[214] There are also legal deductions in *Perpetual Peace* where Kant mentions archives containing deductions of old claims[215] and a "dogmatic deduction of grounds of right."[216] Although Kant evidently knew the content and function of legal deductions, it is also clear that he uses the term "deduction" in many different ways in his different works.

In discussing the term 'deduction', it is important to keep in mind that it was also an ambiguous term in Kant's time. We see this in the variations of definitions given in dictionaries from the period. Adelung's dictionary of 1811 only states the legal meaning; here a deduction is "a writing, in which the claims and the legal grounds founded on them by the conflicting parties is investigated."[217] A legal deduction is thus not an argument, but a text genre. In the current German dictionary of foreign terms of 1974-1986, we find the two definitions side by side for the late 18th century.[218] There were several technical meanings of the term, among them the proofs given by Wolff and Baumgarten and the legal term for the application of a law to a case, but the term also had a broader application meaning "to lead something from something else." A legal deduction could be an investigation, an exposition, a thorough consideration, a review, explanation, description, account, dispute, or procedure, but not a single argument or proof. If we read the legal deduction as a specific model for the proof structure of the transcendental deduction, we are conflating the two types of deductions: the legal deduction as a text and the logical deduction as an argument. The *quid juris* metaphor is indeed a reference to deduction writings, but in order to understand the philosophical significance of this reference, we need to distinguish between deductions as a text genre deductive arguments. A legal deduction is a text

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[214] In this work Kant also speaks of a deduction of the completeness and continuity of his philosophical system. MS, AA 06, 218, note.
[215] ZeF, AA 08, 344.
[216] ZeF, AA 08, 382, *Practical Philosophy*, 348. ["eine dogmatische Deduction der Rechtsgründe"]
[217] "Die Deduction." In Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*. ["eine Schrift, worin die Ansprüche und darauf gegründeten Gerechtsame einer streitenden Partey untersucht werden"]
[218] „Mitte 16. Jh. entlehnt aus (flekt. Form von) mlat. deductio Darlegung(-sschrift), rechtsstreitliche Ausführung; Exposition/lat. deductio Ab-/Fortführen; Her-, Ableitung; verminderter Abzug, Verringerung […]
1. Zunächst in direkter Anlehnung aus das Mlat. (s. o.) als juristischer Terminus in der Bed. (schriftliche) Darlegung eines für die Entscheidung einer Streitsache relevanten Tatbestandes, einer Rechtsfrage, (Rechts)Ausführung; ausführliche Überlegung, Erörterung, Erklärung, Beschreibung, Bericht; (rechtliche) Auseinandersetzung; institutionelle Durchführung […]
2. Seit spätem 16. Jh. unter Rückgriff auf das Lat. (s. o.) in der Bed. Her-, Ableitung, Folgerung (des Einzelnen/Besonderen aus dem Allgemeinen)' und 'Ergebnis des Ableitens (einer Einzelgröße aus dem Allegemeinen); Schlußfolgerung', bes. in Philosophie, Mathematik und Logik als Bezeichnung für eine Denkweise und wissenschaftliche Erkenntnismethode […] früher im rechtshistorischen Bereich auch 'Ableitung, Herleitung (des Ursprungs) aus rechtlichen Voraussetzungen, Grundlagen.' Nortmeyer, Isolde: "Deduktion". In Schluz and Basler, "Deutsches Fremdwörterbuch," vol. 1, 67.

which contains arguments, but these arguments must live up to the same standards of validity as other arguments. In the *quid juris* metaphor Kant is referring to what is proven in these texts, namely the right to apply a concept to a state of affairs. This is a question of the content of the texts, not their structure. A legal deduction is not a single proof, but rather of string of arguments, which are aimed at settling a question of right.

Kant's use of deductions soon overshadowed the legal meaning of the term. By 1827, Krug's handbook of philosophical terminology reports that Kant's terminology had spread to the entire 'critical school', and deductions had become almost synonymous with transcendental deductions in which the conclusion is derived from the "original lawfulness of the human mind."[219] Krug mentions that the legal connotation of the term remained, but that some scholars were starting to use the term as synonymous with any kind of philosophical proof.

In the Wolffian school, 'deduction' was widely used as a term for a particular type of philosophical argument. As Manfred Kuehn shows in his "The Wolffian Background of Kant's Transcendental Deduction", Kant's use of the term 'deduction' as a proof based on the lawfulness of thinking builds on an established tradition in the Wolffian school.[220] However, Wolff's use of the term 'deduction' is also taken from a legal context, and Kant is thus drawing on the original meaning of the term which inspired Wolff's own philosophical deductions before 'deduction' became a technical term.[221]

Kant on legal proofs

Although Kant does not provide an explicit account of the validity of legal proofs, he mentions legal proofs several times in the first *Critique* but he never claims that legal proofs are held to

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[219] "Deduction (from deducere, to derivate) is actually the derivation of a proposition from one of more others. However, because one also derives something from something different or from something certain (or at least from something previously presupposed) when one makes proofs, proofs are often called deductions. Especially jurists usually call their proofs deductions, and, when these concern the facts of the case, *deductiones facti*, when they concern the question of right, *deductiones juris*. Philosophers, especially those of the critical school, also usually call their proofs out of the original lawfulness of the human mind deductions, namely transcendental deductions." ["*Deduction* (von deducere, ableiten) ist eigentlich Ableitung eines Satzes aus einem oder mehren andern. Weil aber beim Beweisen auch etwas aus einem Andern und Gewissern (oder doch als schon ausgemacht Angenommenen) abgeleitet wird: so nennt man auch oft die Beweise *Deductionen*. Besonderns pflegen die Rechtsgelehrten ihre Beweise so zu nennen, und zwar, wiefern dieselben auf die Thatsache gehn, *deductiones facti*, wiefern sie aber auf die eigentliche Rechtsfrage gehn, *deductiones juris*. Die Philosophen, besonders die aus der kritischen Schule, pflegen ebenfalls ihre Beweise aus der ursprünglichen Gesetzmäßigkeit der menschelichen Geistes *Deductionen* zu nennen, und zwar *transcendentale*."] Krug, *Handworterbuch der philosophischen Wissenschaften*, 567.

[220] Kuehn, "The Wolffian Background of Kant's Transcendental Deduction."

[221] Ibid.

a different standard of validity than other arguments. This becomes clear once we see that he distinguishes between deceitful 'lawyer's proofs' (*Advocatenbeweise*) and proper 'legal proofs' (*rechtliche Beweise*). 'Lawyer's proofs' are mentioned as mere rhetorical devices serving to persuade judges when the lawyer cannot present valid proofs.[222] In the Transcendental Dialectic, Kant emphasizes that although he uses a legal method of presenting arguments for conflicting claims, this method does imply that he is using invalid legal arguments:

> In these mutually conflicting arguments I have not sought semblances in order to present (as one says) a lawyer's proof, which takes advantage of an opponent's carelessness and gladly permits a misunderstanding of the law in order to build the case for his own unjust claims on the refutation of the other side.[223]

While deductions are not lawyer's proofs in this sense, they might be legal proofs. To interpret the *quid juris* metaphor, it might be helpful to look at how Kant defines deductions in general. To explain the purpose of a deduction, Kant refers to the image of the critique as a tribunal; because the critique is described as a tribunal, the transcendental deduction can be depicted as a legal deduction.[224] Kant connects the notion of a deduction to the type of account that is given at a tribunal, although we have seen that legal deductions were often presented to the general public directly and not just at tribunals. Here deductions are presented as weapons against dialectic illusions; a metaphysical deception can be unveiled by demanding a deduction of the principles that have been used to arrive at a certain conclusion. If the conclusion is not warranted by a law of reason then it can be rejected by the tribunal of reason. If we combine this characteristic with the description in the passage above, we see that the philosophical deduction proves that a concept is being used legitimately by indicating which laws it is derived from.

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[222] KrV, A 430/B 458. Krug's dictionary defines lawyer's proofs as "what logicians call a proof that relies on mere illusory grounds since dishonest advocates or lawyers often use such proofs." ["Advocaten-beweis nennen die Logiker einen Beweis, der auf bloßen Scheingründen beruht, weil unredliche Advocaten oder Sachwalter oft solche Beweise brauchen."] Krug, *Handworterbuch der philosophischen Wissenschaften*, 49. Hegel repeats Kant's insistence that the transcendental dialectic is not made up of lawyer's proofs in his own *Science of Logic* (Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline. Part 1, Science of Logic*, bk. 21.185.
In Kant's notes, we find a similar definition of lawyer's proofs as proofs that depend on an incomplete proof for the opposite claim. ["advocaten Beweis: der aus der schlechten Vertheidigung des andern und dem, was er übereilt zugiebt, vortheil zieht (pompadour)."] Ref 3474, AA 16, 858.

[223] KrV, A 430/B458, CPR, 472. ["Ich habe bei diesen einander widerstreitenden Argumenten nicht Blendwerke gesucht, um etwa (wie man sagt) einen Advokatenbeweis zu führen, welcher sich der Unbehutsamkeit des Gegners zu seinem Vorteile bedient und seine Berufung auf ein mißverstandenes Gesetz gerne gelten läßt, um seine eigene, unrechtmäßige Ansprüche auf die Widerlegung desselben zu bauen."] See also Grahl, *Die Abschaffung der Advokatur unter Friedrich dem Großen* on the general Prussian suspicion towards lawyers.

[224] KrV, A 786-787/B 814-815, CPR, 667. I quote the passage in section 1.5 above.

2.3. Quid facti

Kant wrote the first *Critique* in a time of great legal changes; legal reforms were being debated widely and were finally carried out in 1780. Reformists recommended codifying statutory laws in order to limit judicial discretion and make legal verdicts more predictable. The Prussian criminal code (*Preussische Kriminalordnung*), which was in use from 1717 to 1805, prescribed an inquisitory procedure for criminal trials. Unlike the accusatory process, the inquisitory process does not include the intervention of lawyers. Instead the judicial office is responsible both for discovering the facts and pronouncing the final verdict. In civil cases, the judge was presented with a written account of the case from both parties. In criminal cases, the public prosecutor would present an account first of the question of fact (*Thatfrage*) and second of the question of law (*Rechtsfrage*). The separation of these two questions was adopted from the English tradition via France into Prussian law and it was seen as an advantage in clarity of procedure. In Kant's time it was debated whether this separation ought to adopted in adjudication, too. Such a separation would allow a jury to determine the question of fact and leave the question of law to the judge. Kant's ideas of legal procedures and institutions was informed by his knowledge of the legal system in Prussia, but he was also well acquainted with debates on the differences between the Prussian, French and English systems, which informed the Prussian debate on the best way to conduct legal reform.[225]

The distinction between the question of fact and the question of law figured in many other contexts than legal deductions in the late 18th century. The distinction originally applied only to penal law. The distinction was highly problematized in Kant's time and was not widely in use in private law. As we have seen, civil deductions did not include a separate argument for the question of fact; it was either included as part of the general title, or, as Pütter recommends in his manual, the question was proved by attaching the relevant documents.[226] Among these documents, Pütter recommends including a family tree which shows the relationship between the original owner and a potential heir.

The idea that the question of fact is proved by means of a family tree seems to fit in with Kant's repeated references to genealogy. Could this mean that Kant thus provides proof for the

[225] Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege* and Küper, *Die Richteridee der Strafprozessordnung und ihre geschichtlichen Grundlagen*.
[226] Pütter, *Anleitung zur juristischen Praxi, wie in Teutschland sowohl gerichtliche als aussergerichtliche Rechtshändel verhandelt und in Archiven beygeleget werden*, §§ 95–116.

quaestio facti? Indeed, he describes the categories as the "ancestral concepts of pure understanding,"[227] which are contained in the "ancestral registry,"[228] and with their derivative a priori concepts the categories would form "the family tree of pure understanding fully illustrated."[229] In the Transcendental Dialectic, Kant frames the problem of metaphysics as whether there is such a thing as a "family tree of the concepts of reason"[230] which is analogous to the derivation of the concepts of understanding. The metaphor of a genealogy for a priori concepts is introduced already in the A-preface, where the purpose of the work is described as finding out whether metaphysics is the queen of the sciences by investigating her genealogy and finding the origin of her claims:

> although the birth of the purported queen was traced to the rabble of common experience and her pretensions would therefore have been rightly rendered suspicious, nevertheless she still asserted her claims, because in fact this genealogy was attributed to her falsely[231]

This false genealogy was attributed to metaphysics by Locke and the other empiricists, and Kant sees it as his task to investigate this genealogy in order to decide which metaphysical claims we can make legitimately. Note that all the genealogical metaphors also count as organic metaphors – the question of origin was the question of how the different branches of the family tree related to its trunk. However, the juridical connotations introduce the question of right and justification of claims into this genealogical approach.

The problem with the genealogical approach to the transcendental deduction is that merely proving the a priori origin of the categories does not prove that we are entitled to use them a priori. That we are in possession of *a priori* concepts does not show how we may use them, as becomes clear in the treatment of the ideas of pure reason. If we read the transcendental deduction as a proof of origin, we are still lacking an account of how the categories can successfully synthesize intuitions a priori. The point of the *quid juris* metaphor is not that the transcendental deduction proves an origin, but rather that the proof of origin is incomplete if it is not proven how these concepts can be used legitimately to synthesize intuitions into cognition.

Since the genealogical metaphors are found in the metaphysical deduction, which shows how the categories are presupposed by all types of judgment, one might wonder whether the metaphysical deduction could be read as the proof of the question *quid facti*. Such a reading

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[227] KrV, A 81/B 107.
[228] KrV, A 81/B 107, CPR, 213. ["Stammregister"]
[229] KrV, A 82/B 108.
[230] KrV, A 299/B 356, CPR, 387. ["Stammleiter"]
[231] KrV, A IX-X, CPR, 100. ["obgleich die Geburt jener vorgegebenen Königin aus dem Pöbel der gemeinen Erfahtung abgeleitet wurde und dadurch ihre Anmaßung mit Recht hätte verdächtig werden müssen, dennoch, weil diese Genealogie ihr in der That fälschlich angedichtet War, ihre Ansprüche noch immer behauptete".]

has been suggested by Ian Proops, who reads the metaphysical deduction as an empirical deduction proving the answer to the question *quid facti*.[232] Proops' interpretation places both the metaphysical and the transcendental deduction within the legal framework, but while the metaphysical deduction proves the acquisition of the possession, the transcendental deduction proves the rightfulness of this possession by proving its origin in the transcendental apperception. Proops suggests that Kant has at least two different notions of a deduction; the metaphysical deduction is a proof of the origin of the categories which presents itself as a chain of syllogisms, and the transcendental deduction is a proof of their validity which follows the model of a legal deduction in Henrich's sense.

The problem with this interpretation is that it turns the metaphysical deduction into an empirical one, and Kant does not recognize empirical deductions as proper deductions. Kant explicitly writes that the proof of the *questio facti* is a proof of the empirical circumstances under which a concept is acquired, and that this type of quasi-deduction is what is found in Locke's inadequate account of metaphysics:

> I will therefore call this attempted physiological derivation [i.e., Locke's theory of the acquisition of concepts], which cannot properly be called a deduction at all because it concerns a *quaestio facti*, the explanation of the *possession* of a pure cognition. It is therefore clear that only a transcendental and never an empirical deduction of them can be given, and that in regard to pure *a priori* concepts empirical deductions are nothing but idle attempts, which can occupy only those who have not grasped the entirely distinctive nature of these cognitions.[233]

If empirical deductions are mere idle attempts, the metaphysical deduction cannot be an empirical deduction.

On the other hand, the fact that Kant questions whether empirical deductions are deductions at all does fit his ambiguous appellation of the metaphysical deduction, which is only called a deduction on page B 159, where Kant writes:

> In the *metaphysical deduction* the **origin** of the *a priori* categories in general was established through their complete coincidence with the universal logical functions of thinking, in the *transcendental deduction*, however, their possibility as *a priori* cognitions of objects of an intuition in general was exhibited.[234] [my emphasis in bold]

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[232] Proops, "Kant's Legal Metaphor and the Nature of a Deduction."

[233] KrV, A 87/B 119, CPR, 221. [Diese versuchte physiologische Ableitung, die eigentlich gar nicht Deduktion heißen kann, weil sie eine *quaestionem facti* betrifft, will ich daher die Erklärung des *Besitzes* einer reinen Erkenntnis nennen. Es ist also klar, daß von diesen allein es eine transcendentale Deduction und keinesweges eine empirische geben könne, und daß letztere in Ansehung der reinen Begriffe a priori nichts als eitele Versuche sind, womit sich nur derjenige beschäftigen kann, welcher die ganz eigenthümliche Natur dieser Erkenntnisse nicht begriffen hat."]

[234] KrV, B 159, CPR, 261. ["In der *metaphysischen Deduction* wurde der **Ursprung** der Kategorien a priori überhaupt durch ihre völlige Zusammentreffung mit den allgemeinen logischen Functionen des Denkens dargethan, in der *transcendentalen* aber die Möglichkeit derselben als Erkenntnisse a priori von Gegenständen einer Anschauung überhaupt."]

According to this passage, the metaphysical deduction is a proof of an origin, as would be suitable for a deduction of the question of fact. While a proof of the *quaestio facti* would be an empirical deduction of how a concept is acquired, the metaphysical deduction is a proof that the categories correspond with the fundamental functions of logic, i.e., with the forms of all judgments. The difference between the metaphysical deduction and an empirical deduction, is that the latter is only concerned with what Kant calls the matter as opposed to the form of a priori cognition. The metaphysical deduction proves the *a priori* form of all thinking and as such it cannot be the empirical deduction which is the proof of *quid facti*.

According to this analysis, there can be no deduction of the *quaestio facti*. But pure cognition as the *facta* still plays a role in the transcendental deduction. Kant thus dismisses the failed deductions of Locke and Hume because they are "refuted by the fact"[235] of pure mathematics and general natural science. Here the fact is not our possession of the categories but rather our possession of pure a priori knowledge, whose rightfulness is to be proven by a transcendental deduction.

That the empirical derivation is refuted by the *Factum* of pure mathematics and general natural science, suggests that Kant takes these as the *Factum* rather than the possession of the categories. Since the empirical derivation cannot show how the sciences are possible, it is contradicted in the *factum*. This use of the notion of a *factum* shows that Kant is not excluding the facts from his investigation, instead he is specifying that a proof of the *quaestio facti* is not sufficient to prove our entitlement to use the categories a priori. Although Kant uses the *facta* to dismiss Locke and Hume, in other passages he argues that their derivation of concepts from experience is the *quaestio facti*, which is not a deduction but an illustration.[236]

Through the juridical metaphors, Kant associates the metaphysical deduction with the proof of a derived acquisition by means of a family tree. These images give the impression that the metaphysical deduction fits within the structure of a proof in succession law in which the derivation of a possession through a family tree is first provided (*quid facti*) and the rightfulness of the possession is then proved (*quid juris*). The problem remains that the language and images in which Kant describes the arguments do not fit with what is proven in the arguments; the

[235] KrV, A 95/B 128, CPR, 226. ["durch das Factum widerlegt."]
[236] KrV, A 94/B 126.

origin of the categories in the transcendental apperception is not proved in the metaphysical deduction, but instead in the transcendental one.

But why would Kant describe his arguments as something other than what they are? Why would he refer to family trees, ancestors, jurists and legal arguments if they do not fit in with the structure of his arguments? The answer is that the juridical metaphors do not tell us anything about argument structure but rather about the purpose of the argument. In fact, as we have seen, what Kant explicitly writes about the particular lawyerly way of arguing is blatantly dismissive.[237] Kant does not think that legal arguments ought to have different structures than other arguments. On the contrary, he specifies that what he calls 'legal proofs' is simply a synonym for ostensive or direct proofs. In order to understand the significance of the *quid juris* metaphor, we therefore need to understand Kant's own account of the legal distinction between the question of fact and the question of law.

2.4. Judicial imputation

Outside of the first *Critique*, Kant addresses the legal distinction between question of fact and question of law in his account of judicial imputation in the *Collins* and *Vigilantius* lecture notes on moral philosophy.[238] While the deduction writings and the *quid juris* metaphor concern civil law, this account of judicial imputation is aimed at criminal law. However, I will argue that the account of judicial authority found in these lectures is sufficiently general to apply to both civil and criminal law and that we can therefore use these insights to shed light on the distinction between *quid facti* and *quid juris* given in the transcendental deduction.[239]

Kant conceives of judicial imputation as divided into two steps; the judgment that an act falls under the law is kept separate from the application of the law. This distinction appears in both the *Vigilantius* and *Collins* lecture notes, but Kant does not include it explicitly in the *Metaphysics of Morals*, although he does mention the distinction between moral and judicial imputation briefly. He writes in the introduction to the *Metaphysics of Morals*:

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[237] KrV, A 430/B 458.

[238] The dating of the lectures behind the *Collins* set of lecture notes is only tentative, but similarities with other notes suggest that they report the content of Kant's lectures on moral philosophy in the period 1775-1784. The *Vigilantius* notes are tentatively dated 1793-1794. See Kant, *Vorlesung zur moralphilosophie*.

[239] On the historical background of this distinction, see M. Herberger, 'quaestio iuris/quaestio facti'. In: Ritter, Gründer, and Gabriel, "Historisches Wörterbuch der Philosophie," 1739–43.
Manfred Riedel argues that the *quid juris* metaphor should be read as a parallel imputation of an act in the practical deduction of the *Critique of Practical Reason*, focusing on the *factum* of reason in the practical case. Riedel, "Imputation der Handlung und Applikation des Sittengesetzes."

> Imputation (imputatio) in the moral sense is the judgment by which someone is regarded as the author (causa libera) of an action, which is then called a deed (factum) and stands under laws. If the judgment also carries with it the rightful consequences of this deed, it is an imputation having rightful force (*imputatio iudiciaria s. valida*); otherwise it is merely an imputation *appraising* the deed (*imputatio diiudicatoria*). – The (natural or moral) person that is authorized to imputate with rightful force is called a *judge* or a court (*iudex s. forum*).[240]

In the moral imputation, the idea is that an agent can only be held morally responsible for an event if he is its author, i.e., if he performed the act freely. This is also the minimal condition for an act to be a case falling under the law, but in the legal case, depending on the case, there might be other requirements for the act to be a case falling under the law. Here, Kant distinguishes between imputation in the moral sense and an imputation which also carries with it the rightful consequences of the deed. This incomplete account does not indicate that Kant changed his account of judicial imputation between the lectures on ethics and the publication of the *Metaphysics of Morals* since he does not discuss the topic in depth in the published work.[241] In the following, I base my account on the lecture notes because they contain a detailed description of judicial imputation and the related judicial authority, but it is quite possible that Kant held the same view on judicial imputation at the time he wrote the *Metaphysics of Morals*. I include passages from both the *Collins* and the *Vigilantius* lecture notes. In addition, the *Collins* lecture notes have the advantage of presumably being closer in time to when Kant wrote the first *Critique*, while the *Vigilantius* notes are closer in time to the *Metaphysics of Morals*.

In both sets of lecture notes, Kant gives an explicit account of a two-step judicial imputation in criminal law and he ties this to a two-step understanding of judicial authority. Following Baumgarten's textbook, Kant calls these two types of imputation 'the imputation of an act' (*imputatio facti*) and 'the imputation of the law' (*imputatio legis*).[242] The imputation of an act is the attribution of an act to an agent as its author. It is in other words a presentation of the fact

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[240] MS, AA 06, 227, *Practical Philosophy*, 381–82. ["Zurechnung (*imputatio*) in moralischer Bedeutung ist das Urtheil, wodurch jemand als Urheber (*causa libera*) einer Handlung, die alsdann That (*factum*) heißt und unter Gesetzen steht, angesehen wird; welches, wenn es zugleich die rechtlichen Folgen aus dieser That bei sich führt, eine rechtskräftige (*imputatio iudiciaria s. valida*), sonst aber nur eine beurtheilende Zurechnung (*imputatio diiudicatoria*) sein würde. Diejenige (physische oder moralische) Person, welche rechtskräftig zuzurechnen die Befugniß hat, heißt der Richter oder auch der Gerichtshof (*iudex s. forum*)."]

[241] On Kant's different accounts of imputation, see Hruschka, "On the Logic of Imputation in the Vigilantius Lecture Notes." Hruschka argues that Kant foregoes the topic of imputation in the *Metaphysics of Morals*, because he is operating with a broader conception of subsumption than the judicial one. In this later work, Kant is discussing general practical subsumptions of acts under rules and not only legally binding verdicts of whether an act was permitted or prohibited. Ibid., 182–83. On Kant's notion of moral imputation, see Timmermann, "Agency and Imputation"; and Blöser, *Zurechnung bei Kant*.

[242] Baumgarten, *Initia philosophiae practicae primae*, § 171. AA 19, 79. See also Hruschka, "On the Logic of Imputation in the Vigilantius Lecture Notes."

as having certain characteristics, which makes it suitable to be subsumed under the law. The imputation of the law is the subsequent application of a law to this act.

In the *Vigilantius* notes, Kant writes that the imputation of the act is the *quaestio facti*[243] and its answer is the *species facti*, which Baumgarten's textbook defines as a "list of the essential moments of a deed."[244] The *quaestio facti* is in other words a certain presentation of the fact which makes it subsumable under the law. What the relevant essential moments of a deed are, depends on an interpretation of the law which is to be applied to the deed; "In ascertaining the *circumstantiae in facto* it is already necessary, for finding the *momenta in facto*, to have regard to the law."[245] The term *factum* might be misleading here; it might be better translated as a deed rather than a fact. This imputation concerns the relationship between a state of affairs and an agent understood as their author. Kant mentions this according to the *Vigilantius* notes:

> When determining the *circumstantiae in facto* it is necessary to consider the law in order to find the *momenta in facto* since even though here the law is not yet imputed it contributes to a more complete determination of the *facti* itself.[246]

The subsumption of the fact under the law thus depends on a presentation of the fact which is influenced by the law. Even though the law is not imputed, it must be considered to determine whether the fact falls under the law. Kant's example in the *Collins* notes is the question whether a man who killed another has committed murder. The first imputation determines whether the deed was performed freely by the accused.[247] The second imputation determines whether the accused is guilty of murder.

The result of the judicial imputation is a legally binding sanction on condition that the judge has the authority to judge in the case. The conception of the double imputation corresponds to the two aspects of a legal deduction. The first presents an account of the relevant aspects of the fact which make it a case under the relevant law while the second aspect combines this representation of the fact with valid law to conclude a judicial syllogism. According to the *Vigilantius* notes, Kant gives the following example:

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[243] Vigilantius, AA 27, 562.
[244] Baumgarten, *Initia philosophiae practicae primae*, § 128. AA 19, 62. Translation from Hruschka, "On the Logic of Imputation in the Vigilantius Lecture Notes," 176.
[245] Vigilantius, AA 27, 317. The construction of the imputation of an act is a judicial version of the problem of schematism; epistemologically, the application of a concept to an intuition depends on a shaping of the intuition according to the schema of the concept; judicially, the application of the law to a fact depends on an account of the circumstances in the fact which makes it a case falling under the law.
[246] Vigilatius, AA 27, 563, *Lectures on Ethics*, 317. ["Bey Ausmittelung der circumstantiarium in facto ist es, um die momenta in facto zu finden, schon nöthig, auf das Gesetz Rücksicht zu nehmen, da, wenngleich hier das Gesetz noch nicht imputirt wird, es doch zur völligeren Bestimmung des facti selbst beyträgt".]
[247] In contemporary legal terminology, this would be the *actus reus*. In these notes, Kant does not mention the other part of today's notion of imputation, which concerns the *mens rea*, the intention of the perpetrator.

lex (major)	The abuser shall restore his honour to the abused.
imp. facti (minor)	He has abused me
∴	He must make amends[248]

Because the two imputations are separate, they require separate authorization for the judge to perform them. The judge must both be authorized to judge whether the accused has performed the act freely and whether he should be sanctioned for the deed:

> The office of magistrate therefore contains two parts: The authority [*Befugnis*] to judge with legal effect according to the law, whether a *factum certum* is a *casus datae legis*; but also the ability to apply a law *valide* to the *factum*; so he must have power to fulfil the law.[249]

Once it has been determined that the case falls under the law, the judge can continue with the application of the law (*imputatio legis*) to the act. While the imputation of the act is a simple judgment, the imputation of the law is the conclusion of a syllogism, which presupposes the imputation of the act. Kant's account is in accordance with Baumgarten's description of a "syllogismus imputatorius."[250] According to the *Collins* notes, judicial authority is what distinguishes a mere judgment from a sentence, which carries with it specific consequences:

> We can pass judgement on all men, and anyone may do so, but we cannot sentence them, since our *imputatio* is not *valida*, which is to say that my judgement does not have the authority to set in train the consequences *a lege determinata*.[251]

What distinguishes a sentence from the judgments of laymen is that an authorized judge has both the legal authority and the power to judge. This twofold authority depends both on whether the accused and the act belong under the jurisdiction of the judge or not. To pronounce a legally binding sentence, the judge must have legal authority to judge in a particular matter and the power to sanction the specific person.

In certain passages of the *Powalski* and *Vigilantius* lecture notes, Kant conflates the imputation of the law with the application of the law to the fact: "*Imputatio legis* is thus the *applicatio legis ad factum sub lege sumptum* [application of law to the fact subsumed under it]".[252] Kant

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[248] Vigilantius, AA 27, 562, *Lectures on Ethics*, 316. ["lex. pr. Maj. Der Beschimpfende soll dem Beschimpften seine Ehre wiedergeben. imp. facti. pr. min. Er hat mich beschimpft. Also muß er eine satisfaction leisten."]
[249] Collins, AA 27, 296, *Lectures on Ethics*, 87. ["Das richterliche Amt hält also 2 Stücke in sich: Die Befugniß rechtskräftig nach dem Gesetz zu urtheilen: ob ein factum certum casus datae legis sey? aber er muß auch valide ein Gesez [sic] aufs factum appliciren können; also Macht haben dem Gesetz ein Genüge zu leisten".]
[250] Hruschka, "On the Logic of Imputation in the Vigilantius Lecture Notes," 175.
[251] Collins, AA 27, 295-296, *Lectures on Ethics*, 87. [Wir können alle Menschen urtheilen, ein jeder kann urtheilen, aber nich richten, weil unsre imputatio nicht valida ist, das heißt: mein Urtheil hat nicht die Befugniß, die Folgen a lege determinate zu actuiren."]
[252] Vigilantius, AA 27, 562, *Lectures on Ethics*, 316. ["Die Imputatio legis ist also die applicatio legis ad factum sub lege sumtum."] See also Powalski, AA 27, 159. ["Die Imputatio legis ist also die applicatio legis ad factum sub lege sumptum."]

thus unites the decision that a deed is wrongful (*applicatio legis ad factum sub lege sumptum*) and the question of guilt (*imputation legis*). This has led Jan Joerden to argue that Kant cannot account for the different degrees to which an act can be wrongful. On this point, Kant differs from other contemporaries, such as Joachim Georg Darjes who keeps the two separate. Joerden argues that because the question of guilt is binary, the decision concerning the wrongfulness of the deed must be as well if the two are conflated.[253] However, Joerden overlooks the fact that Kant does separate the two further ahead in the *Vigilantius* notes:

> *Imputatio legis* requires at all times *subsumptio facti sub lege* […] the sentence itself consists in the conclusions of an *episyllogismus imputatorius*. It contains knowledge of two syllogisms, in which the law constitutes the major premise, the *factum* the minor, and the form of knowledge the conclusion. In the first inference we have: the law, the *subsumption facti*, and the decision, whether the *factum* belongs under the law, as an observance or transgression of the same. In the second, the law, the *factum*, and the consequences to be derived or applied from the law employed, and the determinations it contains.[254]

Here Kant accounts for the application of the law as one out of the two syllogisms that make up the verdict. The first syllogism concerns the application of the law to the deed, whereas the second syllogism concerns the sentencing in light of the application of the law to the deed. According to this more explicit account, Kant does not conflate the application of the law to the act with the question of guilt. Indeed, he keeps the two separate and accounts for them as two syllogisms which together lead to the verdict. The first syllogism leads to the conclusion whether the case can be subsumed under the law, whereas the second syllogism has the sentencing as its conclusion.

The two-fold structure of judicial imputation and authority resembles the metaphors in the *Critique of Pure Reason*. The division of authority in accordance with the division of imputation makes the structure of judicial authority follow the structure of adjudication. This is the reason why the authority to make judgments follows the structure of the judgments themselves. Because judicial authority is a meta-level account of adjudication, it must follow the types of

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[253] "Nach dieser Anwendung des Gesetzes auf die Tat folgt für Kant kein weiterer, davon getrennter Schritt mehr. Für ihn fällt damit die Kritik der Handlung anhand des vorausgesetzten normativen Maßstabes mit der Zurechnung des Verhaltens zum Verdienst bzw. zur Schuld in eins zusammen; oder in den Worten der traditionellen Terminologie: Die applicatio legis ad factum und die imputatio iuris (legis) sind ein und dasselbe." Joerden, "Zwei Formeln in Kants Zurechnungslehre," 536.

[254] Vigilantius*,* AA 27, 572-573, *Lectures on Ethics*, 324–26. ["Die Imputatio legis erfordert jederzeit subsumtionem facti sub lege […] Die Sentenz selbst bestehet nun in der conclusion eines episyllogismi imputatorii. Es enthält das Erkenntniß zwei syllogismos, wobey das Gesetz majorem, das factum minorem und die Form des Erkenntnisses conclusionem macht, nämlich der erste Schluß: das Gesetz, die subsumtio facti, und der Schluß, ob das factum als Erfüllung oder als Uebertretung des Gesetzes unter ihm gehöre. Der zweite Schluß: das Gesetz, das factum, und die Folgen, die aus dem angewandten Gesetz und den darin enthaltenen Bestimmungen abzuleiten oder anzuwenden sind."]

judgments for which authorization is required. If a legal verdict consists of a judgment of the fact and a judgment of the law, then the judge requires the authorization to pronounce both. Kant's account of the separation between the *quaestio juris et facti* thus follows his account of juridical imputation rather than the structure of actual legal deductions, which did not separate the two.

Most of Kant's account of judicial imputation concerns cases from criminal law; his core example is the difference between murder and manslaughter. Nevertheless, I think his account is sufficiently broad to apply to private law as well. In the *Collins* notes, the definition of imputation is: "the judgement of an action, insofar as it has arisen from personal freedom, in relation to certain practical laws."[255] This definition does not limit the concept to criminal law, but includes all free actions. Also in these notes, Kant uses the example of not paying one's debts, an infraction of private law, as an example of an imputable action. All the examples in the *Vigilantius* notes are examples of crimes, but there the account of imputation is also sufficiently broad to include law-abiding actions and their consequences.[256] Since Kant accounts for private law as the acquisition of rights through free actions, I believe that also these actions fall under his account of imputation.[257]

2.5. The transcendental deduction

As we have seen, there are two different backgrounds of the *quid juris*/*quid facti* distinction. The first are the deduction writings, which contain legal arguments concerning property and legal titles where the *quaestio facti* is the derivation of a possession from the first acquisition, and the second is the proof that the possession is lawful. Transferring this account to the transcendental deduction depends on the parallel between concepts and property, which I discuss further in section 2.6 below. The second source is Kant's account of judicial imputation, which adopts the perspective of the judge rather than one of the disputing parties. From this account, we learn that Kant conceives of judicial authority has having two parts; the authority to impute the fact, i.e., to decide whether a case falls under a certain law, and the authority to impute the laws, i.e., to apply the law and its sanctions to the case. Although Kant is explicitly discussing criminal law in the lectures, the distinction is general enough to apply in civil law as well.

[255] Collins, AA 27, 288, *Lectures on Ethics*, 80. ["das Urtheil von einer Handlung, sofern sie aus der Freyheit der Person entstanden ist, in Beziehung zuf gewiße practische gesetze."]
[256] Vigilantius, AA 27, 561.
[257] MS, AA 06, 258.

These two backgrounds are two different perspectives on the same distinction and should not be understood as mutually exclusive. While Kant separates the *quaestio facti* and the *quaestio juris* in his account of a deduction, his account of the judicial imputation shows that the two steps are united in the judicial imputation. It is this insight that I will use in my interpretation of the transcendental deduction from the judicial perspective. My account builds on the idea that the judicial imputation is an example of an inference in which it is judged that an instance falls under a general law and the law is applied to the instance. I take Kant's reference to the separations of *quid facti* and *quid juris* to imply that a priori cognition requires both proof that any object of experience falls under the categories and proof that the categories can be applied to any object of experience a priori in a judgment. This final step is then performed by the power of judgment, which I will leave out of the following account to focus on the proof that allows the subsumption rather than the subsumption itself.

In the first section of the transcendental deduction, which is the same for both editions, we learn that the transcendental deduction is 1) a legal proof of an authorization 2) a proof of lawfulness 3) a proof of a pedigree which is not in experience 4) not a mere derivation of empirical possession. As we have seen, Henrich argues that these remarks show that Kant understands the transcendental unity of the apperception as the origin of the lawfulness of the categories. This reading is confirmed by Proops, who adds that the metaphysical deduction is the proof of the *quaestio facti*.[258]

As an alternative to these accounts, I now offer my account of how we might read the structure of the two versions of the transcendental deduction in light of Kant's account of legal imputation. This account is intended as a confrontation with the juridical imagery and not as a complete account of the transcendental deductions. In this interpretation, I presuppose that the transcendental deduction is the proof of the legal foundation for judgments concerning the objects of experience in general. I thus read a priori cognition of experience in general as the contested possession whose legitimacy is proven by the transcendental deduction. This reading fits with Kant's indication that pure mathematics and general natural science are the *factum*, understood as an example of a priori cognition. The transcendental deduction then has to prove that this fact is a legitimate application of the law. First it is shown that experience is a case falling under the law, then it is shown that we can legitimately apply the laws to any experience. From this perspective, the transcendental deduction is a proof that the understanding provides

[258] Proops, "Kant's Legal Metaphor and the Nature of a Deduction" and Henrich, "Kant's Notion of a Deduction."

the foundation for the judgments performed by the power of judgment and reason as the faculty of inference. It is the proof that the understanding provides the legislative foundation of the two-fold authority required to make these judgments.

According to the schema of imputation, the first step is to show that the case falls under the law. In the B-deduction, I read § 20 as the conclusion of the imputation of the fact and § 26 as the conclusion of the imputation of the law. The first part shows that all objects of experience stand under the categories while the second part shows that we can legitimately use the categories to obtain knowledge a priori about possible objects of experience. First it is proven that the case (objects of possible experience) fall under the law (the categories) and secondly that judgments made about the case (objects of possible experience) provide cognition a priori (are legitimate).

In the first part, Kant shows that the categories apply to any experience because any experience presupposes the synthetic unity of the apperception, which ties all representations to an 'I think'.[259] To show that the categories necessarily apply to any experience, Kant contends that it is not enough to search for the origin of the categories in experience, instead we must show that the understanding is the originator (*Urheber*) of experience.[260]

The objects of experience conform to the categories because they are shaped by the apperception, which "is the understanding itself."[261] The objects "belong to one another *in virtue of the necessary unity* of the apperception in the synthesis of intuitions, i.e., in accordance with principles of the objective determination of all representations."[262] It is thus not possible to encounter an object which does not stand under the categories because such an object could never be an object for us. The objects of experience only become objects of experience because they are related to one another via the 'I think'.

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[259] The transcendental unity of the apperception is not to be confused with the category of unity which presupposes this more fundamental unity. KrV, B 131.
[260] KrV, B 127. The notion of being originator is Kant's definition of the *quaestio facti*: MS. AA 06, 227. "*Imputation* (*imputatio*) in the moral sense is the *judgment* by which someone is regarded as the author (*causa libera*) of an action, which is then called a *deed* (*factum*) and stands under laws." ["*Zurechnung* (*imputatio*) in moralischer Bedeutung ist das *Urtheil*, wodurch jemand als Urheber (*causa libera*) einer Handlung, die alsdann *That* (*factum*) heißt und unter Gesetzen steht, angesehen wird"]
[261] KrV, B 134.
[262] KrV, B 142, CPR, 252. ["Diese Vorstellungen (…) gehören *vermöge der nothwendigen Einheit* der Apperception in der Synthesis der Anschauungen zu einander, d. i. nach Principien der objectiven Bestimmung aller Vorstellungen".]

The conclusion of this part is: "Thus the manifold in a given intuition also necessarily stands under categories."[263] This is the proof that the categories as laws apply to any intuition. The transition between the two parts is the § 21 remark where Kant sums up the conclusion thus far and specifies that this is "the beginning of a *deduction* of the pure concepts of the understanding."[264] Now that Kant has proven that the a priori laws of experience, he can turn to the question of whether the understanding can apply them legitimately in judgments.

In §§ 22-26, Kant turns to the question of whether we can legitimately apply the categories a priori to possible experience. In other words, how we use can the categories in judgments to achieve cognition? This account depends on his definition of cognition in § 22 as consisting of "the concept, though which an object is thought at all (the category), and second, the intuition, though which it is given."[265] On this basis, Kant draws the limits for the legitimate application of the categories and concludes that the categories can only be used to achieve cognition about objects of possible experience.

> all appearances of nature, as far as their combination is concerned, stand under the categories, on which nature (considered merely as nature in general) depends, as the original ground of its necessary lawfulness[266]

This section thus shows that the understanding prescribes laws to nature and that any experience therefore conforms to its categories.[267] This requires a reformulation of the notion of a law, and Kant specifies that laws only exist in relation to the subject in so far as he has understanding.[268] When Kant makes laws relative to the subject, he intends them to be relative to *any* subject as specified in his understanding of the transcendental apperception as the synthetic unity of any identity of the subject. § 26 identifies the authority of the understanding to prescribe laws to nature, but only in the most general terms:

> The pure faculty of the understanding does not suffice, however, to prescribe to the appearances through mere categories *a priori* laws beyond those which rests a *nature in general*, as lawfulness of appearances in space and time. Particular laws, because they concern empirically determined appearances, *cannot* be *completely derived* from the categories, although they stand under them.[269]

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[263] KrV, B 143, CPR, 252. ["Also steht auch das Mannigfaltige in einer gegebenen Anschauung notwendig unter Kategorien"]
[264] KrV, B 144, CPR, 253. ["der Anfang einer *Deduction* der reinen Verstandesbegriffe"]
[265] KrV, B 146, CPR, 254. ["der Begriff, dadurch überhaupt ein Gegestand gedacht wird (die Kategorie), und zweitens die Anschauung, dadurch er gegeben wird"]
[266] KrV, B 165.
[267] KrV, B 159
[268] KrV, B 164.
[269] KrV, B 165, CPR, 263-264. ["Auf mehrere Gesetze aber als die, auf denen eine *überhaupt* als Gesetzmäßigkeit der Erscheinungen in Raum und Zeit beruht, recht auch das reine Verstandesvermögen nicht zu, durch bloße

The categories apply a priori to 'nature in general' (*Natur überhaupt*), whereas the application of particular laws to particular empirical appearances conform to the categories, but they cannot be derived from them. The categories are therefore not axioms or principles for determining an object, but general laws to which nature in general conforms. The categories only apply to objects of possible experience, which follows from Kant's definition of experience as consisting of the combination of a concept and an intuition.[270] The motivation for this is argument is that without an intuition, the synthetic unity of apperception has nothing to unite.[271]

Kant has thus argued that the understanding can legitimately use the categories in a priori judgments about nature in general. The first step proves that nature is a case falling under the categories because it is synthesized by the apperception. The second step proves that the understanding allows the legitimate application of the categories a priori to 'nature in general'. Because nature is a case falling under the law, we are authorized to apply the law to the case. Or, in natural right terms, because the object is already structured by the law, the application of a corresponding positive law is legitimate.[272]

The two parts of the argument in the B-deduction thus fit the separation between the authorization to judge that a case falls under the law and the authorization to apply the law. This interpretation does not assign any of the parts to be the argument *quid juris* or *quid facti*, but rather considers the judge's authorization to judge concerning these two questions.

The A-deduction is not as neatly structured, but still includes the arguments that nature in general falls under the categories and that we can legitimately apply the categories in judgments a priori about objects of possible experience. The A-deduction is split into two sections, the first of which contains four numbered subsections which are to teach the reader about the elements of the understanding. These elements are apprehension, reproduction and recognition and are intended as a presentation of the elements that are connected in the third section. Kant does not respect this division in the text itself, and part 4 of the elements contains many of the arguments for the final conclusion. Already here he concludes that "All appearances therefore stand in a thoroughgoing connection according to necessary laws, and hence in a *transcendental affinity*,

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Kategorien den Erscheinungen *a priori* Gesetze vorzuschreiben. Besondere Gesetze, weil sie empirisch bestimmte Erscheinungen betreffen, können davon *nicht vollständig abgeleitet* werden, ob sie gleich alle insgesammt unter jenen stehen."]

[270] KrV, B 146.

[271] KrV, B 148.

[272] For a different interpretation of the natural right perspective on the transcendental deduction, see Pollok, *Kant's Theory of Normativity: Exploring the Space of Reason*, 231.

of which the *empirical* affinity is the mere consequence."[273] In the third section, Kant concludes that "The understanding is thus not merely the faculty of making rules through the comparison of the appearances; it is itself the legislation for nature."[274] The A-deduction thus focuses on what I have called the first step; the proof that nature necessarily falls under the legislation of the understanding. This version of the argument focuses on the connection of intuitions through the imagination rather than in judgments. The second step of the application of the categories in judgments is presupposed in the definition of the activity of the understanding as "*recognition* in the concept".[275]

The term 'legitimate' is here a translation of the German '*rechtmäßig*', which might also be rendered as 'lawful' or 'rightful'. I suggest that Kant combines the two connotations of the term by arguing that the understanding 1) prescribes laws to objects of experience 2) makes judgments a priori concerning these objects possible. The first point proves the understanding's lawfulness by proving that it can be coherently legislative. The second point proves that this legislation is legitimate, because it results in judgments that apply to experience. The transcendental deduction is thus aimed at proving the legitimacy of the understanding's legislation and its application in judgments.

2.6. Property

The *quid juris* metaphor relies on an analogy between concepts and property; both can be acquired either originally or derivatively, the legitimacy of both depends on the acquisition's conforming with a general law, and once we possess them, the laws give us permission to use them in specific ways. Kant uses this metaphorical background to distinguish between legitimate and illegitimate possession of concepts as one does for property.[276] These images depict

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[273] KrV, A 113-114, CPR, 235-236. ["Also stehen alle Erscheinungen in einer durchgängigen Verknüpfung nach nothwendigen Gesetzen und mithin in einer *transcendentalen Affinität*, woraus die *empirische* die bloße Folge ist."]

[274] KrV, A 126, CPR, 242. ["Es ist also der Verstand nicht blos ein Vermögen, durch Vergleichung der Erscheinungen sich Regeln zu machen: er ist selbst die Gesetzgebung für die Natur".]

[275] KrV, A 97, CPR, 228. ["*Recognition* im Begriffe."]

[276] The KrV contains many references to the possessions and conquests of reason: A XX, B XIV-BXV, A 4, A 85/B 117, A 86-87/B 119, A 236/B 295, A 238/B 297, A 377-378, B 409-410, A 739/B 767, A 740/B 768, A 743/B 771, A 769/B 797, A 776-777/B 804-805, A 778/B 806. Christiane Tonn has argued that the parallel between property and consciousness is fundamental to the thinking of both Kant and Hegel. Tonn, "'Eigentum' und Selbstbewußtsein Untersuchung einer Metapher bei Kant und Hegel." Tonn connects Kant's conception of the innate right to freedom with the metaphorical description of the individual as self-legislative and as distinguishing between "mine and thine" in his understanding of himself. Tonn argues that Kant's property metaphors merely serve a didactic and expository function because they do not capture the relationship between self-consciousness and freedom adequately, which is seen by the fact that no conclusions about the freedom of the self can be drawn

reason as acquiring property both through peaceful transactions and through violent conquests. The exemplary type of property is land, as it is also the case in the account of private law in the *Doctrine of Right*.[277] Like land, concepts have to be acquired legitimately and once they have been acquired we can use them as a vehicle for other acquisitions. If reason is to be a judge, it first needs to have jurisdiction over a territory, and this jurisdiction presupposes the territory's being legitimately acquired.

Within this metaphorical framework, the controversies of metaphysicians are framed as disputes over territories for which the solution is to settle for a smaller but indisputable territory:

> But a complete overview of its [i.e., reason's] entire capacity and the conviction arising from that of the certainty of a small possession, even in case of the vanity of higher claims, put an end to all dispute, and move it to rest satisfied with a limited but undisputed property.[278]

This passage describes how the legitimate application of concepts to empirical phenomena is similar to the legitimation of property; both require a proof of their lawfulness which goes beyond empirical possession. Kant repeats this approach in the transcendental dialectic where he applies the legal maxim "*melior est conditio possidentis*" ("the position of the possessor is better") to allow pure reason to use its ideas in a regulative manner even though they are not constitutive of cognition.[279] In most cases, Kant does not mention property per se, but instead uses other types of possession as an image. The only mention of property (*Eigentum*) in the work is the one cited in this paragraph.

The move from mere possession to rightful possession is a change in status rather than a factual change. In this way, we might say that the transcendental deduction proves that reason's possession of the categories is legitimate because they can be derived from a rightful original acquisition. This interpretation is supported by Kant's own reference to the notion of original acquisition in *On a Discovery*, where he defends himself against Johann August Eberhard's claim that the content of the first *Critique* was already contained in Leibniz's philosophy. The core of Eberhard's criticism is that the forms of intuition and categories of understanding are

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from the image of self-consciousness as the possessor of representations. In Tonn's presentation, Kant's discrepancy between metaphor and theory is remedied in Hegel's more elaborate account of the relation between property and self-consciousness. Ibid., 70–71. In my view, the tensions that Tonn points out are created by an excessive attention to the property metaphor at the cost of the other juridical metaphors, such as the tribunal metaphor and the legislator metaphor.

[277] MS, AA 06, 261-262.

[278] KrV, A 768/B 796, CPR, 658. ["Ein völliger Überschlag aber seines ganzen Vermögens und die daraus entspringende Überzeugung der Gewißheit eines kleinen Besitzes, bei der Eitelkeit höherer Ansprüche, hebt allen Streit auf, und bewegt, sich an einem eingeschränkten, aber unstrittigen Eigentume friedfertig zu begnügen."]

[279] KrV, A 777/B 805.

just other names for Leibnizian innate ideas.[280] In response to this accusation, Kant explains that the conditions of the possibility of cognition are not innate but instead acquired through "an original acquisition (as the teachers of natural right call it)."[281] This explanation is founded on an analogy between knowledge and property, which allows Kant to use natural right theory to explain how the forms of intuition and the categories are originally acquired in a way which presupposes only the spontaneity of thought:

> Thus arises the formal *intuition* called space, as an *originally acquired representation* (the form of outer objects in general), the ground of which (as mere receptivity) is nevertheless innate, and whose acquisition long precedes the determinate *concepts* of things that are in accordance with its form; the acquisition of the latter is an *acquisition derivata,* in that it already presupposes universal transcendental concepts of the understanding, which are likewise acquired and not innate, though their *acquisition*, like that of space, is no less *originaria* and presupposes nothing innate save the subjective conditions of the spontaneity of thought (in conformity with the unity of apperception).[282]

That space is acquired originally means that it does not presuppose any existing cognitive structure. Instead the projection of space institutes a system, in which single concepts can be acquired through a derived acquisition and the derived acquisition of concepts presupposes the original acquisition of the forms of intuition. This explanation of how the transcendental conditions of cognition can be both presupposed and acquired rests on the natural right account of how property can be acquired originally. In Kant's own account of the state of nature, there is no such thing as original acquisition outside the civil state, only preemptive possession which can potentially be confirmed once the civil condition is established.[283] In the *Feyerabend* lecture notes, Kant treats original acquisition as one of the possible ways of acquiring an object and he adds that the legitimacy of any other acquisition must be derived from this first acquisition.[284] By referring to the original acquisition of the form of any representation, Kant implies

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[280] *Das philosophische Magazin*, vol. 4, 1787-95 and *Philosophisches Archiv*, vol. 2, 1793-95.
[281] ÜE, AA 08, 221, *Theoretical Philosophy after 1781*, 312 ["eine ursprüngliche Erwerbung (wie die Lehrer des Naturrechts sich ausdrücken)".]
[282] ÜE, AA 08, 222-223, *Theoretical Philosophy after 1781*, 313, my italics ["So entspringt die formale Anschauung, die man Raum nennt, als *ursprünglich erworbene Vorstellung* (der Form äußerer Gegenstände überhaupt), deren Grund gleichwohl (als bloße Receptivität) angeboren ist, und deren Erwerbung lange vor dem bestimmten Begriffe von Dingen, die dieser Form gemäß sind, vorhergeht; die Erwerbung der letzteren ist *acquisitio derivativa,* indem sie schon allgemeine transcendentale Verstandesbegriffe voraussetzt, die eben so wohl nicht angeboren, sondern erworben sind, deren *acquisitio* aber wie jene des Raumes, eben so wohl *originaria* ist und nichts Angebornes, als die subjectiven Bedingungen der Spontaneität des Denkens (Gemäßheit mit der Einheit der Apperception) voraussetzt."]
Also in the *Critique of Pure Reason*, Kant specifies that the categories of understanding are only "predispositions" that "lie ready" to be used in our understanding, but that the need to be activated by experience in order to become functional. (KrV, A 66/B 91).
[283] MS, AA 06, 262, on the original acquisition of land. See Sage, "Original Acquisition and Unilateralism: Kant, Hegel, and Corrective Justice" for an argument that the civil condition does not solve the problem of unilaterialism in original acquisition in Kant's *Rechtslehre*.
[284] In the *Feyerabend* lecture notes, there is an extensive explanation of the different ways of acquiring property. See Feyerabend, AA 27, 1343.

that representations are things that can be possessed by reason. However, the property image is not capable of capturing the productive aspect of Kant's transcendental idealism; it cannot represent how the cognitive faculties actively shape empirical appearances.

Kant does not use this metaphor in the *Critique of Pure Reason*. In his account of the acquisition of concepts, a concept can only be acquired in view of its applicability, which means that not even the categories of understanding are acquired before they are applied.[285] Since Kant's transcendental argumentation is aimed at showing which mental activities are necessary for any representation of an object, it does not make sense to speak of them independently of the representation of objects.[286] It is therefore likely that the notion of an original acquisition of concepts is Kant's attempt at explaining his epistemology in Leibnizian terms in order to prove Eberhard wrong.

Susan Meld Shell has argued that there is an extended parallel between theoretical and practical appropriation, and she argues that deductions are justifications of a claim to property.[287] Wolfgang Kersting has argued that Shell misrepresents the importance of property in Kant's legal philosophy. The foundation of right is not individual property, but the innate sphere of right.[288] Onora O'Neill is more sympathetic to Shell's account of the juridical community, but unconvinced of the extent of the parallel between theoretical right and property right: "However we read Kant's epistemology, the relationship between different knowers is not competitive and mutually exclusive in the way in which the relationship between different owners, whether individuals or not, must be."[289]

In my view, Shell's account of appropriation overlooks the point that concepts are not only like things; they are like laws. The lawfulness of a possession does not give the possessor the authority to apply laws to new cases. The transcendental deduction seeks to establish that any future object of experience must necessarily respect the laws of the understanding, which allows the power of judgment to legitimately apply the categories in judgments concerning possible experience. This authorization to judge on the basis of a natural lawfulness is lost if we

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[285] Ginsborg, "Lawfulness without a Law: Kant on the Free Play of Imagination and Understanding."
[286] Longuenesse, *Kant and the Capacity to Judge. Sensibility and Discursivity in the Transcendental Analytic of the Critique of Pure Reason*.
[287] Shell, *The Rights of Reason*.
[288] "Shells Behauptung, 'Kant's theory of right is substantially a theory pf [sic] property' (126) muß als Verzeichnung des Grundrisses der Kantischen Rechtslehre zurückgewiesen werden; sie mißachtet den Unterschied zwischen der angeborenen Rechtssphäre und dem Bereich der apriorischen Grundlagen der iura acquisita ebenso wie die geltungstheoretische Priorität des Rechtprinzips." Kersting, "Neuere Interpretationen der Kantischen Rechtsphilosophie," 295.
[289] O'Neill, "Critical Notice of Susan Meld Shell, 'The Rights of Reason' (Book Review)," 799.

think of the transcendental deduction as a proof of legitimate property. The transcendental deduction shows that the categories prescribe laws to nature and that we are therefore entitled to apply our laws to experience in judgments. A reading of the transcendental deduction as a claim to property overlooks these fundamental aspects of the argument.[290]

Conclusion

Although there are similarities between legal deductions and the transcendental deduction, there is one fundamental difference between the two: the transcendental deduction shows that the categories of understanding are constitutive of the objects of experience, and that they produce the regularity which they stipulate. This aspect of the argument is not captured in the *quid juris* metaphor, and the validity of this reasoning cannot be evaluated by referring to the legal proofs of the right to inherit a certain piece of land. The parallel to a legal deduction shows that the topic of the transcendental deduction is a justification of a right to perform a certain action legitimately in accordance with a law. It is the systematic legislation of the understanding which allows the transcendental deduction to be an answer to the question *quid juris*.

I rejected the reading of the transcendental deduction as a proof of an origin. This reading makes the validity of the categories depend on inheritance rather than a structuring activity. Instead, I used Kant's account of judicial imputation as a guide for interpreting the *quid juris* metaphor from the point of view of the judge rather than the defendant. This led to a two-step reading of the A and B transcendental deductions, which focused on first proving the applicability of the law to the objects and second the authorization to apply the law in judgments.

[290] Christiane Tonn has argued that the framework of property metaphors for theoretical conscience limits Kant's conception of individual conscience and that this imagery constrains Kant to think of theoretical consciousness as a type of container that holds representations. In my opinion this interpretation does not fit Kant's account of the individual as a moral agent who acts in the empirical world. See Tonn, "'Eigentum' und Selbstbewußtsein Untersuchung einer Metapher bei Kant und Hegel."

3. THE CRITIQUE AS THE TRIBUNAL OF REASON

We have already seen that Kant describes the critique of pure reason as a tribunal of reason. As a tribunal, the critique has the task of deciding whether reason's claim to legislative and judiciary power is legitimate. There are two versions of the tribunal metaphor; both the critique and reason in the broad sense are supposed to function as a tribunal. The critique's function as a tribunal emerges most clearly in the Transcendental Dialectic which scrutinizes the legal foundation of opposing claims.

In this chapter, I propose reading Kant's image of the critique as an inner tribunal as analogous to his description of moral conscience. Like the critical tribunal, moral conscience is also an example of a reflexive self-investigation, which, according to Kant, leads to an outcome that is objectively valid. In the judgments of moral conscience, the outcome is objective because the individual is split into two functions; the accused and the judge. This splitting allows the individual to judge himself in accordance with the objective structures of his own reason. Before exploring the parallel between the two inner tribunals, I will look at the different aspects of reason's inner tribunal with all its jurists, witnesses, and judges.

I begin with the image of the critique as a tribunal of reason and the way in which Kant presents the Transcendental Dialectic as a legal trial. I then present moral conscience as an inner tribunal as a possible guide to understanding the tribunal of reason. After this, I consider the Discipline of Pure Reason as the negative legislation that results from the critique.

3.1. The critique as tribunal

We saw in the first chapter that Kant introduces the notion of critique as a tribunal of reason in the A-introduction.[291] In the body of the work, he primarily uses the tribunal image to illustrate the internal conflicts of pure reason in the narrow sense. Conflicts over contradicting knowledge claims are brought before the critique as a tribunal of reason which ends the conflicts through a final verdict. Ending reason's inner conflicts is crucial because knowledge cannot be self-contradictory. Presupposing that reason can obtain knowledge, Kant argues that the ideas of pure reason cannot be contradictory in themselves, but can become contradictory when used wrongfully:

[291] The image of a tribunal is a traditional way of illustrating critique, which partly stems from the legal connotations of the Greek term. See Röttgers, *Kritik und Praxis*, 34.

> The ideas of pure reason can never be dialectical in themselves; rather it is merely their misuse which brings it about that a deceptive illusion arises out of them; for they are given as problems for us by the nature of our reason, and this highest court of appeals for all rights and claims of our speculation cannot possibly contain original deceptions and semblances.[292]

The argument goes as follows: If reason is the highest tribunal of all claims of knowledge it cannot be inherently self-contradictory. Since the ideas of reason are part of the nature of reason they cannot also be contradictory. Instead, it is their unauthorized use that renders them contradictory and creates the deceptions of reason's dialectic.

In a later passage from the Transcendental Doctrine of Method, Kant confesses that it is problematic that reason can be in conflict with itself because this undermines its ability to function as the highest tribunal for all disputes:

> It is worrisome and depressing that there should be an antithetic of pure reason at all, and that pure reason, though it represents the supreme court of justice for all disputes, should still come into conflict with itself. [293]

According to this passage it is not given that reason can be its own tribunal, instead Kant writes that it 'represents' its own highest court of justice. This uncertainty is due to the fact that reason cannot judge its own claims of knowledge before it resolves its own contradictions. Thus, the circularity of the critical project seems to have ended in a vicious circle.[294] Because there are no criteria for knowledge outside the boundaries of possible experience, reason cannot solve its internal conflicts:

> But if this is so, then because there is equal evidence on both sides, it is impossible ever to ascertain which side is right, and so the conflict drags on as before, even though the parties have been directed by the court of reason to hold their peace.[295]

What remains for reason is to call the litigants to order, but that does not settle the dispute. Still, the different versions of the tribunal metaphor are used to give different possible outcomes of reason's capacity to function as a tribunal. In the following passage, Kant writes that the critique of reason is the true court of justice for the disputes of reason since it can function as an impartial judge who is not involved in the disputes.

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[292] KrV, A 669/B 697, CPR, 605. ["Die Ideen der reinen Vernunft können nimmermehr an sich selbst dialektisch sein, sondern ihr bloßer Mißbrauch muß es allein machen, daß uns von ihnen ein trüglicher Schein entspringt; denn sie sind uns durch die Natur unserer Vernunft aufgegeben, und dieser oberste Gerichtshof aller Rechte und Ansprüche unserer Speculation kann unmöglich selbst ursprüngliche Täuschungen und Blendwerke enthalten."]
[293] KrV, A 740/B 768, CPR, 644. ["Es ist etwas Bekümmerndes und Niederschlagendes, daß es überhaupt eine Antithetik der reinen Vernunft geben und diese, die doch den obersten Gerichtshof über alle Streitigkeiten vorstellt, mit sich selbst in Streit gerathen soll."]
[294] Since this passage is taken from the Transcendental Doctrine of Method, which appears after Kant has given his solution to antinomies of pure reason, the suspense is only apparent at this point.
[295] KrV, A 501/B 529, CPR, 516. ["Ist aber dieses, so ist es, weil die Klarheit auf beiden Seiten gleich ist, doch unmöglich, jemals auszumitteln, auf welcher Seite das Recht sei; und der Streit dauert nach wie vor, wenn die Parteien gleich bei dem Gerichtshofe der Vernunft zur Ruhe verwiesen worden."]

> One can regard the critique of pure reason as the true court of justice for all controversies of pure reason; for the critique is not involved in these disputes, which pertain immediately to objects, but is rather set the task of determining and judging what is lawful in reason in general in accordance with the principles of its primary institution.[296]

It emerges from this passage that the task of the critique of reason goes beyond that of a tribunal. Before it can settle disputes concerning the ideas of reason, it first has to decide reason's *Rechtsame*, which, according to Adelung's dictionary, means an authority or entitlement founded on law.[297] The ambiguity of the word '*Rechtsame*' reflects the duplicity of the project: the critique of reason has the task of ensuring reason's authority to judge and to evaluate the claims of knowledge of pure reason in matters that go beyond any possible experience. The purpose of this confrontation is "to shock reason, by means of the resistance of an enemy, into raising some doubts about its pretensions and giving a hearing to the critique."[298]

Although Kant likens the critique to a tribunal, he is adamant that the arguments presented are not lawyer's proofs.[299] Looking at the structure of the Transcendental Dialectic, it becomes quite clear why Kant would feel the need to defend himself against the use of lawyer's proofs: This part of the work has the structure of a trial in which opposing sides present their arguments in front of a judge. In the Transcendental Dialectic, the opposing dogmatic sides attempt to make deductions, whereas the deductions of the categories and the forms of intuition are presented by critical reason itself.[300] While the transcendental deduction fits Kant's description of a proof which grounds a right, the deductions attempted in the transcendental dialectic rely on geometrical models of demonstration. In the following, I reconstruct the roles and procedures present in the transcendental dialectic seen as a trial, in order to see how far the analogy between the critique of pure reason and a court of law goes. All of the roles present are of course

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[296] KrV, A 751/B 779, CPR, 649. ["Man kann die Kritik der reinen Vernunft als den wahren Gerichtshof für alle Streitigkeiten derselben ansehen; denn sie ist in die letzteren, als welche auf Objecte unmittelbar gehen, nicht mit verwickelt, sondern ist dazu gesetzt, die Rechtsame der Vernunft überhaupt nach den Grundsätzen ihrer ersten Institution zu bestimmen und zu beurtheilen."]
[297] 'Die Gerecthsame' in Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, vol. 2, 582.
[298] KrV, A 757/B 785, CPR, 652. ["damit die Vernunft durch den Widerstand eines Feindes wenigstens nur stutzig gemacht werde, um in ihre Anmaßungen einigen Zweifel zu setzen und der Kritik Gehör zu geben."]
[299] KrV, A 430/B 458.
[300] Kant does not specifiy which faculty carries out the critique of pure reason. The possible candidates are: transcendental reflection, pure reason, or reason in the broad sense. However, Kant's definitions of the faculties of the mind is functional; they are defined in virtue of the cognitive activity that they perform, meaning that it is essential to identify the different activities of the mind rather than thinking of the faculties as different agents or institutions. To separate the faculties implies keeping their different tasks separate. This is what Jaakko Hintikka has called the "dynamic" element of the categories, which is reflected by the type of arguments that Kant call transcendental: "a transcendental argument is for Kant one which shows the possibility of a certain type of synthetic knowledge a priori by showing how it is due to those activities of ours by means of which the knowledge in question is obtained." Hintikka, "Transcendental Arguments," 275. See also Ameriks, "Kant's Transcendental Deduction as a Regressive Argument," 275.

different uses of reason and none of them are to be understood as personal or separate from a general use of reason.

By reconstructing the different parts of this image, I suggest reading the tribunal image as a model of evaluation of judgments, rather than a model of argument. In order to achieve this aim, I inspect the different roles and procedures mentioned presented in the juridical metaphors and see how they fit the different procedures in the Transcendental Dialectic. I untangle the notions of the records of the trial, the tribunal itself, the parties of the dispute, the witnesses, the legislators, the jurisdiction, the judge, the jury, and the audience. Kant mentions all these elements separately, but in the following I consider whether they fit together as a coherent model of judgment which can function as an interpretive tool when assessing the work's philosophical content.

The Transcendental Dialectic reverses the image of reason as a tribunal as we encountered it in the Transcendental Analytic. In the Analytic, reason in the broad sense is presented as legislator, judge and defendant. Now, due to the internal contradictions, reason's authority as judge is being scrutinized at by a "higher and judicial reason" [301] and reason is under accusation at the critical tribunal.

Kant does not make it completely clear which faculty performs the critique of pure reason. The ambiguity of the title, the genitive which can both indicate that pure reason performs the critique and that it undergoes the critique, suggests that it is pure reason that performs the critique, but in other passages Kant suggest that the critique is a result of transcendental reflection.[302] Since Kant describes critical reason as the *highest* tribunal, he suggests that there are other, lower instances of judgment which are examined in the critique of reason. When speaking of the Discipline of Pure Reason with Regard to its Polemical Use, Kant uses the image of the critique as the supreme court of reason to examine the dogmatists' claims. At this point, the examination has already given a negative result in the Transcendental Dialectic, but the idea of the critique as an examination of judicial authority remains:

> Pure reason in its dogmatic (not mathematical) use is not, however, so conscious of the most exact observation of its supreme laws that it can appear before the critical eye of a higher and judicial reason except with modesty, indeed with a complete renunciation of all pretensions to dogmatic authority.[303]

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[301] KrV, A 739/B 767, CPR, 643. ["vor dem kritischen Auge einer höheren und richterlichen Vernunft"]
[302] KrV, A 263/B 319.
[303] KrV, A 739/B 767, CPR, 643. ["Aber die reine Vernunft in ihrem dogmatischen (nicht mathematischen) Gebrauche ist sich nicht so sehr der genauesten Beobachtung ihrer obersten Gesetze bewußt, daß sie nicht mit Blödigkeit, ja mit gänzlicher Ablegung alles angemaßten dogmatischen Ansehens, vor dem kritischen Auge einer höheren und richterlichen Vernunft erscheinen müßte."] See also KrV, A 740/B 768.

Here it remains unclear which part of reason is higher or more supreme; in the first passage, pure reason appears before a "higher and judicial reason", which carries out a critical examination. In the second passage, pure reason itself "represents the supreme court of justice for all disputes". This discrepancy suggests that there is not a fixed hierarchy among the different uses of reason, but it is important to notice that although pure reason "represents" the supreme court for epistemological disputes, this does not mean that pure reason is the faculty that carries out the critique. Instead, it means that pure reason will function as the standard tribunal once the critique has been carried out and the validity of a priori laws has been proven. If we keep the standard tribunal and the critical tribunal separate, it is possible to give a coherent interpretation of these passages; pure reason is the highest tribunal in the standard scenario, but pure reason itself is put under investigation by the critique, which means that it is examined by a higher use of reason. Which function is highest thus depends on the situation. There is therefore no inherent hierarchy between the different uses of reason.

The juridical metaphors of the first *Critique* put reason and the critique in different roles in juridical institutions. The idea that the critique is a tribunal emphasizes the circularity of the critical project; the aim of the critique is to enable reason to become a tribunal, but at the same time, the critique itself has to become a tribunal.[304] This suggests that the critique is juridical in a different way than reason. The critique's stated aim of clarifying the sources, extent and boundaries of reason can be interpreted as the establishment of a legal system with settled laws, jurisdiction and boundaries. Once these are settled, reason becomes its own legal system; reason's authority has been consolidated as central authority, it has a list of laws of reason and when it judges in accordance with these laws within its jurisdiction, the area of possible experience, it can be assured that its judgments are valid.

The critique does not judge according to whichever laws have been posited by reason – instead it judges whether these proposed laws conform to its own "eternal and unchangeable laws."[305] The metaphors of the first *Critique* depict judges who refuse to judge in accordance with laws that give contradictory results, and revert such laws to the legislators urging a clarification. Critical reason functions as a tribunal at which the legality of reason itself is decided; it evaluates the validity of reason's judgments and proposed laws by comparing them with a more fundamental normative law.[306]

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[304] KrV, A XII.
[305] KrV, A XII, CPR, 101. ["nach ihren ewigen und unwandelbaren Gesetzen"]
[306] KrV, A 751/B 779.

The critique is thus an extraordinary instance, whose aim is to establish a philosophical system which provides the methodological structure for a future system of knowledge. Unlike a system of knowledge, a legal system does not contain a systematic account of all possible judgments. Instead, it is a normative account for how future judgments can be made from established laws and principles.[307] This is the structure which the critique as an extraordinary tribunal scrutinizes. In addition to this image, Kant also likens reason (understood as the faculty of inference) to a judge within a legal system. The critique is an extraordinary review, which scrutinizes whether reason is able to function as a judge on the basis of its own principles or as a legislator beyond the legislation provided by the understanding.

The trial

If we regard the Antinomy of Pure Reason as the proceedings of a trial, the arguments for the thesis and the antithesis are the arguments presented by the two disputing parties, both of whom Kant describes as dogmatists. Although the dogmatists represent the dogmatic tendencies of pure reason, the disputes also have an empirical side which is subject to empirical psychology:

> For now we will postpone this fundamental inquiry a little longer, and first take into consideration on which side we would prefer to fight if we were forced to take sides. Since in this case we would consult not the logical criterion of truth but merely our interest, our present investigation, even though it would settle nothing in regard to the disputed rights of both parties, will have the utility of making it comprehensible why the participants in this dispute have sooner taken one side than the other, even if no superior insight into the object has been the cause of it, and it likewise explains still other ancillary things, e.g., the zealous heat of the one side and the cold assurance of the other, and why they hail the one party with joyful approval and are irreconcilably prejudiced against the other.[308]

This is a vivid description of a public scholarly debate, whose outcome depends not only on valid arguments, but also prestige, pathos, and deception. In the assessment of this dispute,

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[307] This is what Kant promises in the introduction: "Transcendental philosophy is here only an idea, for which the critique of pure reason is to outline the entire plan architectonically, i.e., from principles, with a full guarantee for the completeness and certainty of all the components that comprise this edifice." KrV, A 13/B 27, CPR, 150. ["Die Transcendental-Philosophie ist die Idee einer Wissenschaft, wozu die Kritik der reinen Vernunft den ganzen Plan architektonisch, d. i. aus Principien, entwerfen soll, mit völliger Gewährleistung der Vollständigkeit und Sicherheit aller Stücke, die dieses Gebäude ausmachen."]

[308] KrV, A 465/B 493, CPR, 497. ["Wir wollen für jetzt diese gründliche Erörterung noch etwas aussetzen und zuvor in Erwägung ziehen: auf welche Seite wir uns wohl am liebsten schlagen möchten, wenn wir etwa genöthigt würden, Partei zu nehmen. Da wir in diesem Falle nicht den logischen Probirstein der Wahrheit, sondern bloß unser Interesse befragen, so wird eine solche Untersuchung, ob sie gleich in Ansehung des streitigen Rechts beider Theile nichts ausmacht, dennoch den Nutzen haben, es begreiflich zu machen, warum die Theilnehmer an diesem Streite sich lieber auf die eine Seite, als auf die andere geschlagen haben, ohne daß eben eine vorzügliche Einsicht des Gegenstandes daran Ursache gewesen, imgleichen noch andere Nebendinge zu erklären, z.B. die zelotische Hitze des einen und die kalte Behauptung des andere Theils, warum sie gerne der einen Partei freudliche Beifall zujauchuen und wider die andere zum voraus unversöhnlich eingenommen sind."]

Kant takes into account why people take different sides in metaphysical disputes, since he needs to explain why no-one has realized before him that the arguments on both sides are equipollent. After all, the tendency to answer metaphysical question and surpass the borders of possible experience is a "natural propensity"[309] of reason, which cannot be eradicated. To solve the resulting conflicts, Kant presents us with two different metaphors of conflict resolution: conflicts can either be ended violently by means of war or peacefully at a court of law. But in metaphysical disputes neither of these approaches has been successful. In the violent scenario, it varies who the strongest is and who can rally the most supporters. In the legal scenario, no-one can win because both sides present equally valid evidence:

> But if this is so, then because there is equal evidence on both sides, it is impossible ever to ascertain which side is right, and so the conflict drags on as before, even though the parties have been directed by the court of reason to hold their peace.[310]

Kant cannot use the same solutions as in the transcendental analytic to resolve these conflicts. There he metaphorically replaced the violent conflicts with a trial at which the transcendental deduction was carried as proof, but in the transcendental dialectic this solution does not work; either no deductions can be given or the deductions on both sides rest on equal evidence. Since critical reason cannot reach a verdict, its legitimacy as a tribunal is called into question. Reason is thus forced to evaluate the validity of its own laws and the legitimacy of its judgments:

> For as modest and as moderate as it may be for someone merely to refuse and deny the assertions of another, as soon as he would make these objections valid as proof of the opposite his claim would be no less proud and conceited than if he had seized hold of the affirmative party and its assertion.[311]

The opposing arguments are here presented by two different parties, as at a trial, but their claims are equally unfounded; neither can prove from which law their claim derives.

Kant often describes the conflicting parties as being on the borderline between combat and trial; in The Discipline of Pure Reason in Proofs, the apagogic proof is presented as the champion of the dogmatists who will challenge all objectors to battle.[312] To end this figurative violence, Kant proposes letting each party present a transcendental deduction, rather than an apa-

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[309] KrV, A 642/B 670, CPR, 590. ["einen natürlichen Hang"]
[310] KrV, A 501/B 529, CPR, 516. ["Ist aber dieses, so ist es, weil die Klarheit auf beiden Seiten gleich ist, doch unmöglich, jemals auszumitteln, auf welcher Seite das Recht sei; und der Streit dauert nach wie vor, wenn die Parteien gleich bei dem Gerichtshofe der Vernunft zur Ruhe verwiesen worden."]
[311] KrV, A 781/B 809, CPR, 664. ["Denn so bescheiden und gemäßigt es auch anzusehen ist, wenn jemand sich in Ansehung fremder Behauptungen bloß weigernd und verneinend verhält, so ist doch jederzeit, sobald er diese seine Einwürfe als Beweise des Gegenteils geltend machen will, der Anspruch nicht weniger stolz und eingebildet, als ob er die bejahende Partei und deren Behauptung ergriffen hätte."]
[312] KrV, A 793-794/B 821-822.

gogic proof. When no transcendental deduction is given, pure reason must "surrender its exaggerated pretensions" and "draw back within the boundaries of its proper territory."[313] The parallel is again between concepts and land; pure reason has occupied a territory to which it has no rightful claim of property and when its transcendental deduction fails, it must abandon its claim.

The witnesses

In the metaphorical staging of the Transcendental Dialectic as a trial, pure reason is required to prove its claims by presenting reliable witnesses drawn from either reason or experience. Part of Kant's rebuttal of the cosmological proof for God's existence lies in unmasking what he describes as the witnesses presented by speculative reason. He describes the undertaken investigation as a cross-examination of witnesses presented by transcendent reason in support of its unfounded claims:

> if charming and plausible prospects did not lure us to reject the compulsion of these doctrines, then of course we might have been able to dispense with our painstaking examination of the dialectical witnesses which a transcendent reason brings forward on behalf of its pretensions[314]

Dialectical reason thus brings forward witnesses to prove its claim that the laws of pure reason apply to possible objects of experience. However, the insurmountable problem for dialectical reason is that it has barred itself from using the only reliable witness: experience. Because pure reason is not limited by experience, it can invent whatever it pleases.[315] Without witnesses, reason might employ auxiliary hypotheses, but these also require external confirmation:

> they [i.e., the auxiliary hypotheses] arouse the suspicion of being a mere invention, since each of them requires the same justification which the underlying thought needed, and hence can give no reliable testimony.[316]

On this account, a reliable testimony is one which does not require any external confirmation. In the transcendental ideal, the proposed principle is that the cause is a testimony of the effect,

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[313] KrV, A 794/B 822, CPR, 671. ["die reine Vernunft nöthigen, ihre zu hoch getriebene Anmaßungen im speculativen Gebrauch aufzugeben und sich innerhalb die Grenzen ihres eigenthümlichen Bodens, nämlich praktischer Grundsätze, zurückzuziehen."]
[314] KrV, A 703/B 731, CPR, 622. ["wenn nicht reizende und scheinbare Aussuchten uns lockten, den Zwang der ersteren abzuwerfen, so hätten wir allerdings der mühsamen Abhörung aller dialektischen Zeugen, die eine transcendente Vernunft zum Behuf ihrer Anmaßungen auftreten läßt, überhoben sein können"]
[315] KrV, A 469/B 497.
[316] KrV, A 774/B 802, CPR 661. ["so geben sie den Verdacht einer bloßen Erdichtung, weil jede derselben an sich dieselbe Rechtfertigung bedarf, welche der zum Grunde gelegte Gedanke nötig hatte, und daher keinen tüchtigen Zeugen abgeben kann."].

but no effect is great enough to prove the existence of God as the first cause.[317] Reason cannot provide this for itself, not even through the use of auxiliary hypotheses since these face the same problems as the original hypotheses. Therefore, no reliable testimony is available in support of the ideas of pure reason.[318]

The cosmological argument also faces the problem of not having a reliable witness: Because the cosmological proof depends on reason alone, Kant compares this revelation as the discovery that the two witnesses are actually just two representations of the same thing: reason that had merely changed its voice and put on different clothes:

> In this cosmological argument so many sophistical principles come together that speculative reason seems to have summoned up all its dialectical art so as to produce the greatest possible transcendental illusion. We will put off examining it for a while, so as in the meantime to make plain only one ruse through which it sets up an old argument in disguised form as a new one, and appeals to the agreement of two witnesses, namely a pure rational witness and another with empirical credentials, where only the first is there all alone, merely altering his clothing and voice so as to be taken for a second.[319]

In this passage, as in the rest of the transcendental dialectic, the legal imagery is used to illustrate how the critique of pure reason overcomes the illusions presented by both conflicting parties. The proofs presented in the transcendental dialectic are examples of lawyer's proofs and snares and it is critical reason's task to unmask them. All the witnesses presented in the Transcendental Dialectic prove to be unreliable; the two witnesses presented in support of the cosmological proof turn out to be the same, and the transcendental hypotheses are refuted because they themselves would have to rely on other witnesses.[320]

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[317] "But even if one were allowed to leap over the boundary of experience by means of the dynamical law of the relation of effects to their causes, what concept can this procedure obtain for us? Far from any concept of a highest being, because for us experience never offers us the greatest of all possible effects (such as would bear witness to this as its cause)." KrV, A 637/B 665. ["Erlaubte man aber auch den Sprung über die Grenze der Erfahrung hinaus vermittelst des dynamischen Gesetzes der Beziehung der Wirkungen auf ihre Ursachen: welchen Begriff kann uns dieses Verfahren verschaffen? Bei weitem keinen Begriff von einem höchsten Wesen, weil uns Erfahrung niemals die größte aller möglichen Wirkungen (als welche das Zeugniß von ihrer Ursache ablegen soll) darreicht."]

[318] Part of the critical tribunal's task is to determine in which domains reason has the authority to judge. The image is not completely coherent; experience is both described as a territory and as a witness in the trial. As a witness, experience provides the fact that confirms the validity of the a priori laws. As territory, experience is the space within which reason can make valid judgments.

[319] KrV, A 606/B 634, CPR, 571. ["Wir wollen ihre Prüfung indessen eine Weile beiseite setzen, um nur eine List derselben offenbar zu machen, mit welcher sie ein altes Argument in verkleideter Gestalt für ein neues aufstellt und sich auf zweier Zeugen Einstimmung beruft, nämlich einen reinen Vernunftzeugen und einen anderen von empirischer Beglaubigung, da es doch nur der erstere allein ist, welcher bloß einen Anzug und Stimme verändert, um für einen zweiten gehalten zu werden."] On Kant's account of hypotheses, see Butts, "Kant on Hypotheses in the 'Doctrine of Method' and the Logic."

[320] "Hypotheses are therefore allowed in the field of pure reason only as weapons of war, not for grounding a right but only for defending it." KrV, A 777/B 805, CPR, 663. ["Hypothesen sind also im Felde der reinen Vernunft nur als Kriegswaffen erlaubt, nicht um darauf ein Recht zu gründen."]

The judges

Kant uses the judge to illustrate both the critical investigation and judgments in general. This figure emphasizes the importance of the power of judgment when applying general rules to single instances:[321]

> A physician therefore, a judge, or a statesman, can have many fine pathological, juridical, or political rules in his head, of which he can even be a thorough teacher, and yet can easily stumble in their application […] This is also the sole and great utility of examples: that they sharpen the power of judgment.[322]

Here the judge is among those professions which use examples to sharpen their power of judgment, which shows that the application of general laws is not mechanical but requires practical experience. This applies to all the judges we meet in the first *Critique*; their judgments are never determined by the laws. The metaphorical judges thus show the importance of the power of judgment in the application of laws, but their task is not limited to making judgments; they engage actively in the investigations. The judge at the critical tribunal investigates reason, whereas the one at the standard tribunal cross-examines nature, as we saw in the metaphor cited on p. 41.[323]

Cross-examining witnesses was not among a judge's tasks in 18th century Prussia, instead, this investigative approach is more typical in the common law system. The image combines a juridical image with a scientific one; reason as judge questions nature in order to apply reason's own laws to it.

In the Transcendental Dialectic, the critique as a judge has an active role and even mediates between the conflicting parties and attempts to find a solution that will satisfy both:

> now perhaps in the dynamical antinomy there is a presupposition that can coexist with the pretensions of reason, and since the judge may make good the defects in legal grounds that have been misconstrued on both sides, the case can be *mediated* to the satisfaction of both parties which could not be done in the controversy about the mathematical antinomy.[324]

The judge thus actively contributes to finding a solution to the antinomies of pure reason:

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[321] For an attempt at reconstruction Kant's account of a legal power of judgment, see Wieland, "Kants Rechtsphilosophie der Urteilskraft."

[322] KrV, A 134/B 173, CPR, 268-269. ["Ein Arzt daher, ein Richter, oder ein Staatskundiger, kann viel schöne pathologische, juristische oder politische Regeln im Kopfe haben, in dem Grade, daß er selbst darin gründlicher Lehrer werden kann, und wird dennoch in der Anwendung derselben leicht verstoßen [...] Dieses ist auch der einige und große Nutzen der Beispiele: daß sie die Urteilskraft schärfen."]

[323] KrV, B XIII.

[324] KrV, A 530/B 558, CPR, 531. ["jetzt, da vielleicht der dynamischen Antinomie eine solche Voraussetzung stattfindet, die mit der Prätension der Vernunft zusammen bestehen kann, aus diesem Gesichtspunkte, und, da der Richter den Mangel der Rechtsgründe, die man beiderseits verkannt hatte, ergänzt, zu beider Teile Genugtuung *verglichen* werden kann, welches sich bei dem Streite in der mathematischen Antinomie nicht tun ließ."]

> The duty to choose would here tip the indecisiveness of speculation out of balance through a practical addition; indeed, reason, as the most circumspect judge, could not find any justification for itself if, under the pressure of urgent causes though with defective insight, its judgment were not to follow these grounds, than which we at least know none better.[325]

At the critical tribunal, reason refuses to make judgments in accordance with laws that lead to contradictory results; the tribunal thus functions not only as a judge, but also as a scrutinizer of laws.

Toshihiro Hirata has suggested that the *Critique of Pure Reason* changes from a tribunal model to a police model through the work. Hirata's claim is that the tribunal model is so misleading that Kant himself replaces it with the police model since the police is "a much more suitable institution for the business of avoiding error."[326] That Kant should have adopted a police model of the critique seems highly incompatible with the fact that he only refers to the police once in the entire book. In the *Critique of Practical Reason*, Kant does connect the tribunal metaphor for conscience with the notion of the police, but he immediately notes that the police represents a mechanical application of the law.[327]

The juridical images do lend themselves easily to this type of police state interpretation; Kant even compares the critique's task to that of the police in the B-preface.[328] The idea that one person has the authority to judge all claims might come across as dictatorial or dogmatic, but this is the diametrical opposite of what Kant is striving to achieve. Kant conceives of juridical procedures as a countermeasure to arbitrary political power which is exercised through decrees. The motivation behind the judgeship of reason is that human reason has no judge outside itself.[329]

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[325] KrV, A 589/B 617 ["Die Pflicht zu wählen, würde hier die Unschlüßlichkeit der Spekulation durch einen praktischen Zusatz aus dem Gleichgewichte bringen, ja die Vernunft würde bei ihr selbst, als dem nachsehendsten Richter, keine Rechtfertigung finden, wenn sie unter dringenden Bewegursachen, obzwar nur mangelhafter Einsicht, diesen Gründen ihres Urteils, über die wir doch wenigstens keine besseren kennen, nicht gefolgt wäre."]

[326] Hirata, "Kants Modellwechsel im Hinblick auf die Kritik der reinen Vernunft. Vom Gerichtshofmodell zum Polizeimodell," 755. ["eine, für das Geschäft, Irrtümer zu verhüten, viel zutreffendere Instanz".]

[327] "(…) even if we sought to compensate ourselves for this mortification before the inner court by enjoying the pleasure that, in our delusion, we suppose a natural or divine law has connected with the *machinery of its police*, guided only by what was done without troubling itself about the motives from which it was done." KpV, AA 05, 152, *Practical Philosophy*, 261. (my italics) ["wenn wir uns gleich für diese Kränkung vor dem inneren Richterstuhl dadurch schadlos zu halten versuchten, daß wir uns an den Vergnügen ergötzten, die ein von uns angenommenes natürliches oder göttliches Gesetz unserem Wahne nach mit dem *Maschinenwesen ihrer Polizei*, die sich bloß nach dem richtete, was man thut, ohne sich um die Bewegungsgründe, warum man es thut, zu bekümmern, verbunden hätte."]

[328] KrV, B XXV. The metaphor is made explicit in a reflection: "Metaphysics is as it were the police of our reason with regard to the public security of morals and religion" Ref 5112, AA 18, 93. ["Metaphysic ist gleichsam die policey unsrer Vernunft in Ansehung der offentlichen Sicherheit der Sitten und Religion."]

[329] KrV, A 752/B 780, CPR, 650.

The jury

Intuitively, a jury seems more fitting to represent the undogmatic nature of the critical enterprise than the more frequent image of a judge.[330] Kant does not completely exclude the idea of a jury; even though he often likens the critique to a single judge, there is a passage in which the judge is replaced by a jury:

> But because mere honesty requires that a reflective and inquiring being should devote certain times solely to testing its own reason, withdrawing entirely from all partiality and publicly communicating his remarks to others for their judgment, no one can be reproached for, still less restrained from, letting the propositions and counter-propositions, terrorized by no threats, come forward to defend themselves before a jury drawn from his own estate (namely the estate of fallible human beings).[331]

This paragraph, from the section dealing with the interest of reason in the Transcendental Dialectic, discusses the way in which individual thinkers ought to test their own claims. The individual is encouraged to set prejudice and interest aside and test his claims before a jury of his own peers, i.e., of fellow human beings. While many of the juridical metaphors concern the way in which pure reason can become an authorized judge, this passage describes what happens when empirical individuals have to test the tenure of their claims.

The notion of a jury also appears in the *Doctrine of Right*, where Kant maintains that only juries can judge legitimately: "Hence only the *people* can give a judgment upon one of its members, although only indirectly, by means of representatives (the jury) whom it has delegated."[332] Also a judge is a delegate representative of the people, but in the parenthesis Kant specifies that he has a jury rather than a single judge in mind.

In these metaphors, Kant is not referring to Prussian legal practices. Juries were not used in Prussia when Kant wrote the first *Critique*; they were later introduced in the Rhineland when

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[330] Martin Sticker has made this point concerning the inner tribunal of moral conscience, arguing that moral conscience would be more fittingly represented by a committee than a judge in Sticker, "When the Reflective Watch-Dog Barks."

[331] KrV, A 475-476/B 503-504, CPR, 503. I have changed the translation which has "their own estate". ["Weil es aber doch einem nachdenkenden und forschenden Wesen anständig ist, gewisse Zeiten lediglich der Prüfung seiner eigenen Vernunft zu widmen, hiebei aber alle Parteilichkeit gänzlich auszuziehen und so seine Bemerkungen anderen zur Beurtheilung öffentlich mitzutheilen: so kann es niemanden verargt, noch weniger verwehrt werden, die Sätze und Gegensätze, so wie sie sich, durch keine Drohung geschreckt, vor Geschworenen von seinem eigenen Stande (nämlich dem Stande schwacher Menschen) vertheidigen können, auftreten zu lassen."]

[332] MS, AA 06, 317. ["Also kann nur das *Volk* durch seine von ihm selbst abgeordnete Stellvertreter (die Jury) über jeden in demselben, obwohl nur mittelbar, richten."] Elsewhere, Kant forwards the notion of a philosophical jury that can judge concerning contributions in science. *Über den Gebrauch*, AA 08, 179. In a moral context, Kant refers to a jury as an image of the making of a moral belief rather than knowledge since a jury, unlike a judge, has to make a judgment even if the single members are not completely certain. See Ref 2446, AA 16, 371 and Ref. 2454, AA 16, 375. In the moral images, the jury makes uncertain judgments in cases where no knowledge is possible. The image plays a different role in the cited passage from the *Critique of Pure Reason*, since judgment can be withheld in theoretical matters as we see in the Transcendental Dialectic.

it was occupied by the French in 1798 but not in the rest of Prussia. Jury trials were adopted in French law following the 1789 Revolution, inspired by English legal reforms.[333] Kant's reference to jury trials shows that the legal images are not exclusively drawn from Prussian legal practice but also from French and English procedures. Including a jury rather than an individual judge emphasizes the need to open up discussion and debate. In the concrete epistemological case, the best way to test one's claims is to present them to others. However, since Kant favors the image of a judge, especially when describing the scrutiny of pure reason, he shows that not all claims carry the same weight in the discussion and that pure reason is what enables individual thinkers to distinguish between right and wrong answers.

The audience

The juridical metaphors are counter balanced by metaphors of violence and combat to show that the critical trial is a peaceful alternative to open battle. Accordingly, Kant describes the audience at this trial as being similar to crowds at a duel. The spectators are described as quasi hooligans; they "hail one party with joyful approval and are irreconcilably prejudiced against the other"[334] and when there is no clear winner they "take the occasion to have skeptical doubts about the object."[335] Although these crowds seem ill informed and prejudiced about the dispute, the fact that the critical trial takes place in public is crucial: what is at stake are intersubjectively valid claims to knowledge, and the *Critique of Pure Reason* is carried out on behalf of all finite thinking agents. Because the written work constitutes the proceedings of the trial of reason it remains at the disposal of all thinkers.

The reader as judge

It is not enough for reason to appear before a "higher and judicial reason;"[336] the critical task is only complete if individual cognizers can adopt this stance; Kant must in other words show that it is possible for individuals to adopt the position of a judge and he makes this challenge explicit in his appeals to the reader.[337] The central idea is that anyone might take on the role of the judge. In the Discipline of Pure Reason in Polemical Use, Kant appeals to his readers not

[333] See Glaser, "Die geschichtlichen Grundlagen des neuen Deutschen Strafprozeßrechts," 460.
[334] KrV, A 465/B 493, CPR, 497. ["warum sie gerne der einen Partei freudigen Beifall zujauchsen und wider die andere zum voraus unversöhnlich eingenommen sind".]
[335] KrV, A 793/B 822, CPR, 670-671. ["die Zuschauer […] nehmen oftmals daraus Anlaß, das Object des Streits selbst sceptisch zu bezweifeln."]
[336] KrV, A 739/B 767. ["einer höheren und richterlichen Vernunft".]
[337] Kant already refers to specific readers as judges of his writings and of scholarship in general in the 1747 text *Thoughts on the True Estimation of Living Forces*, AA 01, 7-8.

as passive observers, but as potential judges: "I therefore presuppose readers who would not want a just cause to be defended with injustice."[338] In this passage, it sounds as if any reader of the book can act as the judge, and that the judge in the metaphors is merely a placeholder for any finite rational agent who wishes to takes his place. This impression is strengthened by the passage shortly after in which Kant appeals to the true judge of human reason as one in which "each has a voice",[339] but at the same time warns against calling "together the public, which understands nothing of such subtle refinements, as if they were to put out a fire."[340]

Although anyone can take the seat, the critical judgeship requires preparation; in the dedication of the first edition, Kant reveals that only an enlightened and competent judge can fill the role properly. The contrast between the reference to any reader as a judge of the work and the dedication to a specific enlightened and valid judge is stark. The dedication to Baron von Zedlitz reads:

> For someone who enjoys the life of speculation the approval of an enlightened and competent judge is, given his modest wishes, a powerful encouragement to toils whose utility is real, but distant, and hence it is wholly misjudged by vulgar eyes.
> To such a judge and to his gracious attention, I now dedicate this piece of writing[341]

If we interpret the dedication explicitly, it would seem that not all readers are immediately valid judges of the work; vulgar (the German '*gemeine*' could also be rendered as 'common') eyes might misjudge the critique. Indeed, only an enlightened and valid judge can properly judge the value of the work. One might argue that this dedication is merely flattery of the authorities in order to avoid censure.[342] This passage gives the impression that not all readers are equally fit to judge the content of the work, and that the true judges are those who are already enlightened and competent whereas common readers might misjudge the work. This first impression is modified in the ensuing preface where Kant appeals to any reader of the work as its judge:

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[338] KrV, A 750/B 778, CPR, 649. ["Ich setze also Leser voraus, die keine gerechte Sache mit Unrecht verteidigt wissen wollen."]
[339] KrV, A 752/B 781.
[340] KrV, A 746/B 774.
[341] KrV, A V, CPR, 95. ["Wen das speculative Leben vergnügt, dem ist unter mäßigen Wünschen der Beifall eines aufgeklärten, gültigen Richters eine kräftige Aufmunterung zu Bemühungen, deren Nutze groß obzwar entfernt ist und daher von gemeinen Augen gänzlich verkannt wird./Einem Solchen und Dessen gnädigem Augenmerke widme ich nun diese Schrift".]
[342] The risk of censure was relevant, and Kant later received a royal rescript for his writings on religion in 1794. See *Religion within the Boundaries of Mere Reason and Other Writings*, 39–54.

> Whether I have performed what I have just pledged in that respect remains wholly to the judgment of the reader, since it is appropriate for an author only to present the grounds, but not to judge about their effect on his judges.[343]

> Here [in the *Critique of Pure Reason*] I expect from my reader the patience and impartiality of a *judge*, but there [in the future *Metaphysics of Nature*] I will expect the cooperative spirit and assistance a *fellow worker*[344].

These passages temper the strong claim of the dedication which singles out a particularly well-suited reader as judge; here any reader of the work is encouraged to judge its arguments. Given this qualification, the dedication's flattery might be intended to help the work pass through the official censure rather than single out particular readers as more competent than others. In addition, there are no such references in the dedication and preface to the second edition of the work, presumably because the public had already had a chance to assess the work in its first edition.

In the preface to the second edition, Kant makes reference to the general public and remarks that the critique of pure reason is useful to them, even though it can never become popular.[345] He specifies that the purpose of the critique is to end the despotism of dogmatic schools through a "fundamental investigation of the rights of speculative reason"[346] and thereby also protecting the general public from the dangers of "*materialism*, *fatalism*, *atheism*, of freethinking *unbelief*, of *enthusiasm* and *superstition*, which can become generally injurious, and finally also of *idealism* and *skepticism.*"[347] In other words, the purpose of the *Critique of Pure Reason* is to serve and inform the general public, but only indirectly by removing the dangers of uncritical dogmatism at the root.[348]

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[343] KrV, A XV, CPR, 102. ["Ob ich nun das, wozu ich mich anheischig mache, in diesem Stücke geleistet habe, das bleibt gänzlich dem Urtheile des Lesers anheim gestellt, weil es dem Verfasser nur geziemt, Gründe vorzulegen, nicht aber über die Wirkung derselben bei seinen Richtern zu urtheilen."]

[344] KrV, A XXI, CPR, 105. ["Hier erwarte ich an meinem Leser die Geduld und Unparteilichkeit eines *Richters*, dort aber die Willfährigkeit und den Beistand eines *Mithelfers*".]

[345] KrV, B XXXIV, CPR, 118. ["Er bleibt immer ausschließlich Depositär einer dem Publicum ohne dessen Wissen nützlichen Wissenschaft, nämlich der Kritik der Vernunft; denn die kann niemals populär werden, hat aber auch nicht nöthig es zu sein".]

[346] KrV, B XXXIV, CPR, 118. ["gründliche Untersuchung der Rechte der speculativen Vernunft"]

[347] KrV, B XXXIV, CPR, 119. ["*Materialism*, *Fatalism*, *Atheism*, dem freigeisterischen *Unglauben*, der *Schwärmerei* und *Aberglauben*, die allgemein schädlich werden, zuletzt auch dem *Idealism* und *Scepticism*"]

[348] In my reading, Kant is here referring to any reader of the critique and any conversation partner of an enlightened person, I thus disagree with Kurt Röttgers, who reads Kant's account of critique as the building of a closed republic of letters "kontrafaktisch gedacht als eine freie Vereinigung aller aufgeklärter Menschen. Diese République des Lettres ist ein in sich geschlossenes System, das sich zunächst als absolut unpolitisch verstanden hatte. Die für sie als konstitutive begriffene Kritik ist immer systemare Kritik; jeder, der mit dem Anspruch, Mitglied der Gelehrtenrepublik zu sein, auftritt, willigt damit ein, grundsätzlich der Kritik aller und eines jeden unterworfen zu sein." Röttgers, *Kritik und Praxis*, 32.

The image of the reader as judge combines two common literary tropes; the tribunal and the theater.[349] The reader is spectator and judge of what he sees – he both observes and judges. The image of the reader as judge was often repeated in philosophical, scientific and literary works: Rousseau appeals to the reader's judgment in *Emile*, but his is a qualified appeal; he wishes his reader to take a certain approach to the task of judging Emile's education.[350] Adam Smith and David Hume vary this idea when they use a judicious spectator in their accounts of normative judgments.[351] In natural science, Kepler uses the judicial style in his *Defence of Tycho*, which is written as an apology for Tycho addressing the reader as a judge.[352] In literature, Henry Fielding's *Tom Jones*, which we know Kant read and admired, is constructed around the notion of the reader as a judge.[353]

In Kant's time, the image of the reader as judge was used frequently as a reference to the expanding reading public.[354] One example of this use is the journal *Teutscher Merkur*, in whose preface the editor Christoph Martin Wieland writes: "art critics are only attorneys, the audience alone is judge, but time will pronounce the final verdict."[355] The judicial metaphor even appears in dictionaries from the period where the term 'public' or '*Publikum'* is explained by means of the audience as judge image.[356] The people and the public are not one and the same since the reading public was a small albeit growing group in the 18th century. The society structure to which this metaphor refers, i.e., an audience which goes beyond those who are physically present at a play, only begins to take hold with the growing reading skills of the

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[349] On the history of the theater metaphor in philosophy and literature, see Demandt, *Metaphern für Geschichte*, 332–425.

[350] Rousseau, *Emile or On Education; Introduction, Translation, and Notes by Allan Bloom*, 343.

[351] Smith, *The Theory of Moral Sentiments*, 110-113, Hume, *A Treatise of Human Nature*, III.1. On Hume's notion of the judicious spectator, see Baier, *A Progress of Sentiments*.
The notion of a judging spectator is central in Hannah Arendt analysis of the third *Critique* and in her own theory of judgment. Arendt, *Lectures on Kant's Political Philosophy*. More recently, Martha Nussbaum elaborates on the notion of a judicious spectator in philosophy in Nussbaum, *Poetic Justice : The Literary Imagination and Public Life*. On the trope of the reader as a judge, see also Waldenfels, *Deutsch-Französische Gedankengänge*, 431 and Biet, "Law, Literature, Theatre: The Fiction of Common Judgment."

[352] Kepler, "Apologia Tychonis contra Ursum scripta," in *Gesammelte Werke*, vol. XX,1, 15-62. See also Gingerich, Westman, and Jardine, "Book-Review - the Wittich Connection."

[353] Fielding, Henry. *The History of Tom Jones*. Kant refers to Fielding's *Tom Jones* in his lectures on anthropology. (*Ant*, AA 07, 232) According to Kant's student Christian Friedrich Jensch, Kant counted Henry Fielding's books among those from which he had learned the most and thought especially highly of *Tom Jones*. Kuehn, *Kant. A Biography*, 130.

[354] Schütz, *Vernunft ist immer republikanisch*, 31–33.

[355] Wieland, "Vorrede des Herausgebers," 15. ["die Kunstrichter sind nur Sachwalter, das Publicum allein ist Richter, aber die Zeit spricht das Endurteil aus."] Kant was a reader of this journal and had several issues in his book collection. Warda, *Immanuel Kants Bücher*, 23.

[356] 'Das Publicum' in Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, vol. 3, 856–857. 'Public' in Richelet, "Dictionnaire françois." See also Hölscher, *Öffentlichkeit und Geheimnis: Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit*, 89.

general public. This reading public participates in public debate through journals and other popular writings.[357] The peculiar thing about this image is that the notion of the audience as judge becomes common at a time when trials are no longer public.[358] However, even though trials were no longer open to the public, the written accounts of trials and the deductions presented by each side were publicly available. The physical public space had been replaced with a written one.

Through the image of the reader as judge, Kant shows that this work also is an example of a public use of reason. The defense of reason against contradiction does not take place in a vacuum; it is addressed to a reader who will use his own reason to judge the arguments presented in the work. Kant addresses the idea of a public space in which a public use of reason is exercised in his article *Answering the Question: What is Enlightenment?* from 1784. Here he defines the public use of reason as approaching the entire reading public. This pronouncement presupposes that the work is accessible to different readers and thus implicitly links Kant's earlier image of the reader as judge to his notion of *Öffentlichkeit*.[359] What characterizes enlightenment is the public use of reason and the ability to discuss ideas freely in the public sphere. Being enlightened means daring to use one's own understanding (*sapere aude*),[360] but what does enlightenment mean in the context of the first *Critique*? Part of the answer can be found in Kant's description of how to teach critical thinking in academic education. Here the *Critique of Pure Reason* is fundamental in enlightening the students; critical instruction would enlighten the students and make them capable of seeing through dogmatic assertions:

> Exactly the opposite of that which has just been recommended [by the dogmatist] must take place in academic education, although, to be sure, only *under the presupposition of a thorough instruction in the critique of pure reason*. For in order to put the principles of the latter into practice as early as possible and to show their adequacy against the greatest dialectical illusion, it is absolutely necessary to direct the attacks that would be so fearsome for the dogmatist against the reason of the student, which is still weak but is enlightened by critique, and allow him to make the experiment of

[357] Hölscher, *Öffentlichkeit und Geheimnis: Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit*, 91.
[358] Ibid., 23.
[359] The term 'Öffentlichkeit' itself seems to be based on the 'knowledge is light' metaphor, since what stands in the open also stands in the light. Ibid., 124. On the notion of Öffentlichkeit in general, see Hölscher, *Öffentlichkeit und Geheimnis: Eine begriffsgeschichtliche Untersuchung zur Entstehung der Öffentlichkeit in der frühen Neuzeit*; Schütz, *Vernunft ist immer republikanisch*; and Wieland, "Vorrede des Herausgebers."
Mikalsen, "Testimony and Kant's Idea of Public Reason"; Gelfert, "Kant on Testimony"; and Shieber, "Between Autonomy and Authority."
[360] WA, AA 08, 35.

> examining the groundless assertions of his opponents one by one in light of those principles.[361] (My emphasis)

The critical enterprise thus teaches rational agents how to become proper judges of the validity of assertions. The first step is a thorough education in the critique of pure reason; once the students have studied the critique theoretically, they must learn to put its teachings into practice in their cognitive behavior. The teacher should direct attacks against the reason of the student and let him examine dogmatic claims in light of the principles of pure reason. Academic education in critical reasoning thus follows the structure of the first *Critique*; first the students are instructed in the principles and afterwards they learn to use these to examine different claims.

The verdict

In the concluding account of the regulative use of the ideas of pure reason, we learn that "the law of reason to seek unity is necessary, wince without it we would have no reason, and without that, no coherent use of the understanding."[362] However, reason's legislation turns out to consist of maxims rather than laws, which is Kant's term for "all subjective principles that are taken not from the constitution of the object but from the interest of reason in regard to a certain possible perfection of the cognition of this object."[363]

Kant concludes that he went through the "painstaking examination of the dialectical witnesses which transcendent reason brings forward on behalf of its pretensions" even though he knew from the start that the claims were "absolutely null and void."[364] The final verdict of the Transcendental Dialectic is therefore *non liquet*: it is not clear whether any law applies.[365]

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[361] KrV, A 755/B 783, CPR, 651. ["Gerade das Gegentheil von dem, was man hier anräth, muß in der akademischen Unterweisung geschehen, aber freilich nur unter der Voraussetzung eines gründlichen Unterrichts in der Kritik der reinen Vernunft. Denn um die Principien derselben so früh als möglich in Ausübung zu bringen und ihre Zulänglichkeit bei dem größten dialektischen Scheine zu zeigen, ist es durchaus nöthig, die für den Dogmatiker so furchtbaren Angriffe wider seine, obzwar noch schwache, aber durch Kritik aufgeklärte Vernunft zu richten und ihn den Versuch machen zu lassen, die grundlosen Behauptungen des Gegners Stück für Stück an jenen Grundsätzen zu prüfen."]

[362] KrV, A 651/B 679, CPR, 610. ["Denn das Gesetz der Vernunft, sie zu suchen, ist nothwendig, weil wir ohne dasselbe gar keine Vernunft, ohne diese aber keinen zusammenhängenden Verstandesgebrauch".]

[363] KrV, A 666/B 694, CPR, 603. ["alle subjective Grundsätze, die nicht von der Beschaffenheit des Objects, sondern dem Interesse der Vernunft in Ansehung einer gewissen möglichen Vollkommenheit der Erkenntniß dieses Objects hergenommen sind".]

[364] KrV, A 703/B 731, CPR, 622. ["schlechterdings nichtig".]

[365] KrV, A 742/ B 770 and A 786/B 814. Kant connects calls this a critical suspension of judgment in a reflexion: "The *suspensio iudicii* is either critical or sceptical (*renunciatio*); the former concerns the investigation, the later to judge nothing." ["Die *Suspensio Iudicii* ist entweder critisch oder sceptisch (*renunciatio*); iene zur Untersuchung, diese um nichts zu urtheilen. (Das *non liquet* des Richters.)"] Ref 2512, AA 16, 399. He also remarks that the judgment *non liquet* is made in case when nothing is determined by the data. Ref 2211, AA 16, 272.
Kant makes the same judgment about the use of the mathematical method in philosophy in the pre-critical *Attempt to Introduce the Concept of Negative Magnitudes in Philosophy*, AA 02, 167.

The purpose of this confrontation was to arrive at the root of the transcendental illusions and Kant accordingly advises the failed deductions of the pure reason to be stored in the archives of human reason as the *acta* or the legal dossier from the critical tribunal: "it was advisable to draw up an exhaustive dossier, as it were, of these proceedings and store it in the archives of human reason, so as to prevent future errors of a similar kind."[366]

After the *Critique*, this dossier can be referred to when someone attempts to make knowledge claims outside the boundaries of experience. While a deduction writing would contain the arguments of one party, legal dossiers contained all the presented arguments and evidence, but not the verdict. Since all trials in 18th century Prussia were carried out in writing, legal dossiers contained all the information that had been presented in court and they thus differ from today's written records of oral court proceedings.[367] The judge would pronounce his verdict on the basis of the proceedings, which is the reason why they do not contain the verdict.[368] In other words, Kant is not proposing to preserve only the conclusion of the Transcendental Dialectic in the archives of human reason; he suggests keeping the complete records of the arguments presented by both sides so that anyone can judge for himself. The intention to store the arguments of both sides and not the final solution shows that the first *Critique* is not a result but a process which any reader can scrutinize.

3.2. Moral conscience as the practical inner tribunal

In Kant's practical philosophy, we encounter another metaphorical tribunal: the inner forum of moral conscience. In theoretical endeavors, the critique is set up as the tribunal of reason but

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[366] KrV, A 704/B 732, CPR, 623. ["so war es rathsam, gleichsam die Acten dieses Prozesses ausführlich abzufassen und sie im Archive der menschlichen Vernunft zu Verhütung künftiger Irrungen ähnlicher Art niederzulegen."]

[367] Adelung defines *Acten* as "the conflictual writings presented to the court by the opposing parties." Adelung, Soltau, and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, vol. 1, 163. ["die von den streitenden Parteyen dem Gerichte übergebenen Streitschriften".]
In a letter from 1759, Hamann wrote to Kant that he knows the solution to philosophy better than any man because he has talked to the witnesses and read the *Acten* (as opposed to the summaries) himself. AA 10, 14. Also Kant makes metaphorical reference to a judge who keeps the *Acta* of past cases for future reference in a draft to a letter to Maria von Herbert. (Kant, AA 11, 551.)

[368] Kant also mentions the *Acta* which serve to decide the conflicts in metaphysics in his comments on Jakob's *Prüfung der Mendelssohn'schen Morgenstunden* from 1786: "The cases of metaphysics are already now in such a standing, the *Acta* to decide their conflicts are at hand to give a verdict, so that just a little patience and neutrality in judgment is necessary to perhaps experience that it for once is brought to clarity." *Einige Bermerkungen zu Lugwig Heinrich Jakob's Prüfung der Mendelssohn'schen Morgenstunden*, AA 08, 155 (my translation) ["Die Sachen der Metaphysik stehen jetzt auf einem solchen Fuße, die Acten zu Entscheidung ihrer Streitigkeiten liegen beinahe schon zum Spruche fertig, so daß es nur noch ein wenig Geduld und Unparteilichkeit im Urteile bedarf, um es vielleicht zu erleben, daß sie endlich einmal ins Reine werden gebracht werden."]
Also in the *Metaphysics of Morals*, Kant refers to the verdict of conscience as the inner judge as an act that happens after the *Acta* have been closed. MS, AA 06, 439.

for practical purposes, each individual has their own inner tribunal in moral conscience.[369] Both of these inner tribunals carry out a reflexive investigation; pure reason scrutinizes itself in order to determine whether it can achieve metaphysical knowledge, whereas moral conscience is the seat of moral self-scrutiny.

To some interpreters, the tribunal images draw attention to the risk of vicious circularity; for example Thomas Hobbes rejected moral conscience as a source of objectively valid judgments because its outcome depends on the accused's own reasoning.[370] The same type of criticism was raised against Kant's image of the critical tribunal by several of his contemporaries, most famously by Herder in what I have called Herder's dilemma.[371] Herder and others turned Kant's own metaphors against him to criticize the reflexive nature of the critical enterprise.[372] Although the tribunal image might appear as the emblem of vicious circularity, I believe that it can help us understand how the critique can avoid entering that vicious circle. In the following, I show that the tribunal image of moral conscience is an example of an internal self-assessment which reaches an objectively valid outcome.

Kant describes moral conscience in his published works, unpublished works and according to the student notes from his lectures on ethics. These different passages date from as early as 1774 to the unpublished *Opus Postumum*. The tribunal image remains the same through the years and it relies on a traditional visualization of moral consciousness with roots in Roman law, which left matters of conscience to the internal as opposed to an external tribunal. In Kant's adaptation, the individual as an empirical agent is the accused, the power of judgment

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[369] On Kant's account of moral conscience, see Vujošević, "The Judge in the Mirror" for a rejection of the understanding of Kant's conception of conscience as a feeling. Vujošević argues that conscience is a manifestation of practical reason which arouses moral feelings without conscience itself being emotional. She interprets the figure of the inner judge as an instance of *self-elevation*, which allows the individual to become an impartial spectator and judge himself as a moral agent. On Kant's theory of conscience, see also Esser, "The Inner Court of Conscience, Moral Self-Knowledge, and the Proper Object of Duty"; Kazim, *Kant on Conscience*; Moyar, "Unstable Autonomy" and Timmermann, "Kant on Conscience, 'Indirect' Duty, and Moral Error" in which Jens Timmermann argues that Kant's conception of judgment gives rise to a notion of 'indirect duty'.

[370] Hobbes, *Leviathan*, bk. I, 24. "Another doctrine repugnant to civil society is that whatsoever a man does against his conscience is sin; and it dependeth on the presumption of making himself judge of good and evil. For a man's conscience and his judgement is the same thing; and as the judgement, so also the conscience may be erroneous. Therefore, though he that is subject to no civil law sinneth in all he does against his conscience, because he has no other rule to follow but his own reason, yet it is not so with him that lives in a Commonwealth, because the law is the public conscience by which he hath already undertaken to be guided. Otherwise in such diversity as there is of private consciences, which are but private opinions, the Commonwealth must needs be distracted, and no man dare to obey the sovereign power farther than it shall seem good in his own eyes."
Karen S. Feldman has argued that Hobbes uses the example of conscience to warn against the dangers of metaphor by showing how the metaphor of the inner tribunal introduces an illusory objectivity. See Feldman, *Binding Words*.

[371] Johann Gottfried Herder, *Metakritik zur Kritik der reinen Vernunft*, 27.

[372] On other ways in which Kant's metaphors were used to defend, attack or summarize his philosophy, see Pietsch, *Topik der Kritik*.

or self-love is the agent's defense attorney, "but", Kant specifies in a note, "reason is the judge."[373]

The *Doctrine of Right* contains Kant's most elaborate account of conscience in his published works. In the section On the Human Being's Duty to Himself as His Own Innate Judge, Kant describes how a judgment is formed in moral conscience through the application of a law to an action. At this inner tribunal, the agent both accuses and defends himself, and he is also the one making the final verdict:

> But the internal imputation of a deed, as a case falling under a law (*in meritum aut demeritum*), belongs to the faculty of judgment (*iudicium*), which, as the subjective principle of imputing an action, judges with rightful force whether the action as a deed (an action coming under a law) has occurred or not. Upon it follows the conclusion of reason (the verdict), that is, the connecting of the rightful result with the action (condemnation or acquittal). All of this takes place before a tribunal (*coram iudicio*), which, as a moral person giving effect to the law, is called a court (*forum*). – Consciousness of an internal court in the human being ("before which his thoughts accuse or excuse one another") is conscience.[374]

Here we reencounter the distinction between the two types of imputation and their associated authority, which Kant also treated in his account of judicial imputation in the lectures on practical philosophy.[375] In moral conscience, the power of judgment performs the imputation of the act, whereas reason performs the imputation of the law, which takes the form of a verdict. Although the individual is enabled to judge his own actions, the different offices are assigned to his rational faculties. Still, this does not mean that moral conscience is completely abstract. As Kant writes, the moral person, and not the abstract faculties, gives effect to the moral law in this judgment. In this passage, moral conscience is not identical with the inner tribunal but rather the awareness of this tribunal. As we shall see, this allows Kant to claim that moral conscience is both an involuntary capacity and an ability that can be cultivated.

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[373] Ref 6815, AA 19, 170 ["Das Gewissen ist also ein Gerichtshof, in dem der Verstand der Gesetzgeber, die Urtheilskraft der Ankläger und Sachwalter, die Vernunft aber der Richter ist."]

[374] MS, AA 06, 438, *Practical Philosophy*, 560. ["die innere Zurechnung aber einer That, als eines unter dem Gesetz stehenden Falles, (*in meritum aut demeritum*) gehört zur Urtheilskraft (*iudicium*), welche als das subjective Princip der Zurechnung der Handlung, ob sie als That (unter einem Gesetz stehende Handlung) geschehen sei oder nicht, rechtskräftig urtheilt; worauf denn der Schluß der Vernunft (die Sentenz), d. i. die Verknüpfung der rechtlichen Wirkung mit der Handlung (die Verurtheilung oder Lossprechung), folgt: welches alles vor Gericht (*coram iudicio*), als einer dem Gesetz Effect verschaffenden moralischen Person, Gerichtshof (*forum*) genannt, geschieht. – Das Bewußtsein eines inneren Gerichtshofes im Menschen ('vor welchem sich seine Gedanken einander verklagen oder entschuldigen') ist das Gewissen."]
The quotation is from Paul's epistles to the Romans. The complete passage concerns the way in which Gentiles have direct access to the law through their conscience: "For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the work of the law written in their hearts, their conscience also bearing witness, and *their* thoughts the mean while accusing or else excusing one another." *Bible* Romans 2, 14-15, 210.

[375] See also the discussion of judicial imputation on p. 98 above.

The *Collins* lectures, which have been dated at around 1774-1779 and are thus the closest in time to the first *Critique*, report Kant as commenting extensively on the notion of conscience as an inner tribunal.[376] The notes give the following description of the similarities between conscience and a court of law:

> The inner tribunal of conscience may aptly be compared with an external court of law. Thus we find within us an accuser, who could not exist, however, if there were not a law; though the latter is no part of the civil positive law, but resides in reason, and is a law that we can in no way corrupt, nor dispute the rights and wrongs of it. Now this moral law underlies humanity as a holy and inviolable law. In addition, there is also at the same time in man an advocate, namely self-love, who excuses him and makes many an objection to the accusation, whereupon the accuser seeks in turn to rebut the objections. Lastly we find in ourselves a judge, who either acquits or condemns us.[377]

The inner tribunal of conscience has all the elements of a civil court; conscience contains a law, an accuser, a defense advocate, and a judge. These elements remain the same in all of Kant's accounts of moral conscience as an inner tribunal. They represent the procedural nature of conscience as an inner process that ends in a verdict. These different roles represent different approaches to the action within the same agent. Kant describes conscience as a splitting of the individual agent into the accused and the judge; this splitting represents the empirical person who is separated from the transcendental structures within him. Still, the accused is not merely regarded as an empirical phenomenon; he can only be held responsible for his actions if he is seen as their begetter, i.e., as an agent whose acts are the product of a free will.

This splitting of the moral agent allows moral conscience to reach an objectively valid outcome. In Kant's notes, he divides the roles in moral conscience between the cognitive faculties: "Conscience is thus a tribunal, in which understanding is law giver, the power of judgment is the accuser and lawyer, but reason is the judge."[378] This passage contradicts Allen Wood's interpretation of conscience as a trial carried out by different moral persons: If the different

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[376] The dating around 1774-1779 of the lecture behind the *Collins* lecture notes is based on the similarity between the *Collins* notes and the earlier *Kaehler* notes. Werner Stark has argued that the *Collins* notes must be a copy of the *Kaehler* notes. See Stark, *Nachwort* in Kant, *Vorlesung zur moralphilosophie*, 371–407. The textbooks for these lectures were Baumgarten's *Ethica Philosophica* and *Initia Philosophiae Practicae primae.* Baumgarten also refers to conscience as a tribunal, but he does not theorize on this expression (Baumgarten, *Initia philosophiae practicae primae*, § 203).

[377] Collins, AA 27, 354, *Lectures on Ethics*, 132–33. ["Wir können den innerlichen Gerichtshof des Gewissens füglich mit dem äußerlichen Gerichtshof vergleichen. Wir finden in uns also einen Ankläger, welcher aber nicht seyn könnte, wenn nicht ein Gesetz wäre, welches aber nicht zum bürgerlichen positiven Gesetz gehört, sondern in der Vernunft liegt, und welches wir gar nicht corrumpiren noch seine Richtigkeit und Unrichtigkeit läugnen können. Dieses moralische Gesetz nun liegt als ein heiliges und unanzutastendes Gesetz dem Menschen zum Grunde. Ferner so ist auch zu gleich ein Advocat in dem Menschen, nämlich die Eigenliebe, die entschuldiget ihn und wendet vieles wider die Anklage ein, da denn wieder der Ankläger die Einwürfe zu benehmen sucht. Zuletzt gefinden wir in uns einen Richter, der uns entweder losspricht, oder verurtheilt."]

[378] Ref 6815, AA 19, 170 ["Das Gewissen ist also ein Gerichtshof, in dem der Verstand der Gesetzgeber, die Urtheilskraft der Ankläger und Sachwalter, die Vernunft aber der Richter ist."] On the tribunal on moral conscience, see Ishikawa, "Das Gerichtshofmodell des Gewissens."

roles at the tribunal of conscience are performed by the cognitive faculties, they are the individual's use of his own different faculties and not separate moral persons.[379] Kant also mentions the reflexive character of conscience in the *Opus Postumum* where he emphasizes that the judgment takes place within a single agent:

> The categorical imperative is the expression of a principle of reason over oneself as a *dictamen rationis practicae* and thinks itself as law giver and judge over one, according to the categorical imperative of duty (for thoughts accuse or exonerate one another), hence, in the quality of a person.[380]

The categorical imperative as a test of universalizability allows the individual to access the non-personal structures present in his use of reason. Here the categorical imperative becomes the principle which allows conscience to make an internal judgment which can nevertheless amount to objective validity.[381] Because conscience characterizes an agent's relationship to himself, it would defeat its purpose to think of conscience as a judgment carried out by a separate moral person.[382]

At the inner tribunal, the individual is defended by a defense attorney, who tries to forward a more lenient interpretation of the action than the prosecutor. He interprets the incentive for the morally bad action as mere negligence rather than intentional wrongdoing. Through this self-deception, the individual tries to convince himself that his wrongful action was not performed freely, and that he was forced either by bad character, bad habits or simply by oversight to act in a certain way, so that his action was performed unintentionally. However, in the end, the agent "nevertheless finds that the advocate who speaks in his favor can by no means reduce to silence the prosecutor within him."[383]

The struggle between reason and self-deception concerns the proper interpretation of the deed. This tribunal has no fact-finding capacity because the agent already has direct knowledge

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[379] Allen Wood argues that the different persons in the inner tribunal are indeed different moral persons, but this does not correspond with the fact that conscience represents a free and autonomous adjudication. Wood, "Kant on Conscience," 7.

[380] OP, AA 22, 120, *Opus postumum*, 202–3. ["Der categorische Imperativ ist Ausspruch eines Vernunftprincips über sich selbst als *dictamen rationis practicae* und denkt sich als Gesetzgeber und Richter über sich selbst sich nach dem categorischen Pflichtimperativ da die Gedanken einander anklagen oder entschuldigen folglich in der Qvalität einer Person."]

[381] This passage implies that Onora O'Neill's interpretation of the categorical imperative as the highest principle of reason indeed applies to part of the *Opus Postumum*, whether it applies to the *Critique of Pure Reason* is, however, a very different question. See O'Neill, "Vindicating Reason."

[382] Thomas Sören Hoffman argues that moral conscience can be seen as the practical parallel to the transcendental apperception; it is the relationship to oneself, which establishes one's moral duty. (Thomas Sören Hoffmann, "Gewissen Als Praktische Apperzeption.")

[383] KpV, AA 05, 98, *Practical Philosophy*, 218. ["so findet er doch, daß der Advocat, der zu seinem Vortheil spricht, den Ankläger in ihm keinesweges zumVerstummen bringen könne."]

of the facts.[384] Within conscience, the power of judgment performs the role of the prosecutor and forwards a way in which the particular act can be subsumed under the moral law as morally reprehensible. Conscience might also interpret the act as morally permissible, but Kant only mentions cases of a guilty rather than an innocent conscience. In contrast to the prosecutor, self-deception or self-love defends the act by arguing that it was done unintentionally. Finally, reason in the narrow sense reaches a verdict as an inference from the moral law. This model of conscience fits Kant's account of the judicial power as the conclusion of a practical syllogism.[385] Because the judgment is the conclusion of a syllogism, it belongs to reason as the faculty of inference rather than the power of judgment as the faculty of judging.[386] Kant's comments that the outcome of moral conscience is not a judgment but a verdict is to be seen in this context. If the power of judgment were given the judicial power, the outcome would be a mere interpretation of the moral law rather than an irreproachable verdict which the individual can neither resist nor deny.[387]

The agent cannot silence the prosecutor because moral conscience is not subject to the individual's will; Kant emphasizes several times that moral conscience is not a cognitive faculty because it not only judges but sentences the moral agent.[388] Conscience is involuntary; it is active against the agent's choice, and its punishment is given through "pangs of conscience"[389], which can be felt years after the wrongful action. Even though it is involuntary, conscience

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[384] "Lastly we find in ourselves a judge, who either acquits or condemns us. There is no deceiving him". Collins, AA 27, 354, *Lectures on Ethics*, 133. ["Zuletzt finden wir in uns einen Richter, der uns entweder losspricht, order verurtheilt. Dieser ist nun gar nicht zu verblenden"]

[385] MS, AA 06, 313.

[386] Kant's definition of an inference of reason makes it synonomous to a syllogism consisting of two premises and a conclusion. See KrV, A 304/B 360.

[387] To a modern reader, the image of reason as a judge might evoke the notion of judicial discretion and the idea that judges interpret the law in their rulings. However, these specifications of the roles performed by the different faculties in the rulings of moral conscience show that the point of Kant's legal imagery is exactly the opposite: The final sentence is an irresistible inference given the premises, and it is not to be read as one possible interpretation of the laws among other possibilities.

[388] "*It is thus an instinct, and not merely a faculty of judgement.* Moreover, it is an instinct to direct and not to judge. The difference between a magistrate and one who judges is this: that the magistrate can judge *valide*, and actually put the judgement into effect according to the law; his judgement has the force of law, and is a sentence." Collins, AA 27, 351, *Lectures on Ethics*, 131. ["*Es ist also ein Instinkt und nicht bloß ein Vermögen der Beurtheilung.* Allein, es ist ein Instinkt zu richten und nicht zu urtheilen. Der Unterschied des Richters von dem welcher urtheilt, besteht darin: daß der Richter valide urtheilen kann; sein Urtheil nach dem Gesetz wirklich in Ausübung bringen kann, und das Urtheil nach dem Gesetz wirklich in Ausübung bringen kann; sein Urtheil ist rechtskräftig und eine Sentenz."] "If it were a voluntary capacity, it would not be a tribunal, since in that case it could not compel. If it is to be an inner tribunal, it must have power to compel us to judge our actions involuntarily, and to pass sentence on them, and be able to acquit and condemn us internally." Collins, AA 27, 297, *Lectures on Ethics*, 88. ["Wäre es ein willkührliches Vermögen, so wäre es kein Gerichtshof, indem es uns alsdenn nicht zwingen könnte. Sollte es ein innrer Gerichtshof sein, so muß er Macht haben uns zu zwingen, unwillkührlich über unsre Handlungen zu urtheilen, und dieselbe zu richten, und uns innerlich lossprechen und verdammen zu können."]

[389] MS, AA 06, 305, *Practical Philosophy*, 450. ["Gewissensbisse"]

does not limit the agent's freedom because it represents the agent's rational judgment of his own actions.[390] The conception of involuntary conscience marks a change from Baumgarten's distinction between natural and artificial conscience, against which Kant argues that conscience is necessarily natural, in fact it is an involuntary instinct. While natural conscience can be interpreted as the presence of an inner tribunal in every individual, moral conscience is the awareness of this inner capacity. It is because of this distinction that Kant can call moral conscience a duty even though natural conscience is an inborn instinct. To fulfill the duty of being one's own judge it is not enough to hear the voice of conscience in the back of one's head – proper moral conscience requires the conscious cultivation and awareness of this capacity, and this in turn presupposes a conscious and deliberate strengthening of one's power of judgment. Due to this distinction, Kant can both claim that conscience is always natural and that the awareness of conscience can be cultivated or neglected.

The distinction between conscience as a natural capacity and the agent's cultivated awareness of it allows Kant to exclude the possibility of an erring conscience. Instead he cites cases of moral self-deception as instances in which the process of moral conscience remains incomplete. Self-deception may be able to hinder conscience from reaching a judgment, but it cannot influence the final outcome.[391] Another effect of self-deception is the calculating regret that some agents feel if they have acted imprudently, but which Kant sees as a mere "analogue of conscience."[392] Apart from self-deception, agents can also use their conscience erroneously in general. This happens when an individual either places too many or too few actions under scrutiny. If he consults his conscience on trivialities, such as whether lying as part of an April fool's joke is morally bad, conscience becomes micrological and eventually loses its authority.[393] Kant warns that "[c]onscience should not be a tyrant within us."[394] However, there is also the opposite risk; the agent might use his conscience too little making it almost disappear "since nothing is any longer decided or carried out in the courtroom."[395]

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[390] In this sense, moral conscience differs from the critique of reason, since the critique is a voluntary enterprise that is not necessarily performed by all rational agents, even if they all have the capacities to perform it.
[391] MS, AA 06, 401.
[392] "So everyone has an impulse to flatter or blame himself by rules of prudence. This, however, is not yet conscience, but only an analogue of it, whereby a man apportions praise or blame to himself." Collins, AA 27, 352, *Lectures on Ethics*, 131. ["Jeder hat also einen Trieb sich selbst zu schmeicheln oder zu tadeln nach Regeln der Klugheit. Dieses aber ist noch kein Gewißen, sondern nur ein Analogon des Gewißens, nach welchem sich der Mensch Lob und Tadel ertheilt."]
[393] Collins, AA 27, 356-357.
[394] Ibid., 357, *Lectures on Ethics*, 135. ["Das Gewißen soll in uns kein Tyrann seyn."]
[395] Ibid., 356, *Lectures on Ethics*, 134. ["bey dem Gerichtshof nichts mehr entschieden und vollzogen wird."]

Kant held his lectures on ethics using Baumgarten's textbook, but his account of conscience is in many ways closer to Rousseau's. According to Rousseau, conscience is an instinct which must be cultivated; it is a direct way of knowing the moral law and the general will. Conscience provides a direct familiarity with religion and morality, which allows even uneducated people to evaluate the claims of authority in society. On Rousseau's account, we are not born with knowledge of the good, but conscience as an inborn capacity leads us to accompany our knowledge of the good with the appropriate feelings. While reason provides the content of the social contract, conscience gives the motivation to follow it.[396]

Like Rousseau, Kant maintains that conscience is a natural faculty, similar to an instinct, but although it is natural, conscience must be cultivated. For both authors, conscience leads to a feeling; if conscience finds the agent guilty, he is condemned by a feeling of guilt. However, in Kant's view this feeling is a consequence of the judgment concerning the agent's guilt. Kantian conscience combines features of Rousseau's emotional conscience with a rational approach; conscience is an infallible capacity, which is not subject to the agent's own will and which is necessarily accompanied by particular feelings. Although moral conscience makes judgments, it is not a cognitive faculty, but rather an involuntary capacity which is not subject to the agent's will. When an agent cultivates his conscience, he listens more to its guidance and understands which actions can be appropriately evaluated by it but he does not change the way conscience operates.

The description of moral conscience as an inner tribunal (*forum internum*) had been used by many authors before Kant. Saint Paul introduced a Christian adaptation of a Roman legal institution according to which matters of conscience were decided by an inner, as opposed to an outer, tribunal. In the Christian adaption, the individual accuses and defends himself within his own conscience, and the judgment reached is a reflection of God's judgment, not the individual's own.[397] We also find these Christian elements in Kant's account of conscience. According to the *Collins* notes, Kant explicitly admits that "Conscience is thus the representative of the *forum divinum.*"[398] Conscience represents the divine tribunal, because it can judge agents according to their inner dispositions, to which civil courts do not have access. Although moral conscience is an involuntary faculty, it functions as a projection of reason, which allows the

[396] Rousseau, *Emile*, IV 594-595 and *Social Contract and The First and Second Discourses*, III 30. See also Schneewind, *The Invention of Autonomy, A History of Modern Moral Philosophy*, 475–77.
[397] MS, AA 06, 235. For Pufendorf conscience as the inner forum is the realm of moral theology. Samuel von Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, vol. 1, 9.
[398] Collins, AA 27, 297, *Lectures on Ethics*, 89. ["Das Gewißen ist also der Repräsentant des fori divini."]

individual agent to judge his own actions in a way that is free of empirical interest. [399] In Kant's time, the description of moral conscience as an inner tribunal had become common place used in most descriptions of moral conscience. Because the image was used so frequently, it would have been familiar to the readers of the first *Critique*, who needed no explanation to associate the notion of an inner tribunal with the more common description of moral conscience. The crucial aspect of the inner tribunal is that it represents an inner splitting of the individual in which he both accuses and defends his own actions.

The two inner tribunals

The two inner tribunals are illustrated by the same metaphors. First of all, they both show an internal adversarial structure; in moral conscience, different thoughts accuse and defend an act, whereas in speculative reason, different theses contradict each other. They thus both have an internal debate. It is, however, a polarized debate, which Kant would term a polemic use of reason, rather than a constructive debate. This adversarial nature does not mean that the final decision is up to the parties; the figure of the judge has the final say after hearing both sides. However, there are also differences between the practical and the speculative judge: Moral conscience is not a cognitive capacity, but a natural instinct. While speculative reason can be mistaken, there is no such thing as a mistaken judgment in moral conscience. This difference is also due to the fact that individual cognizers can compare speculative judgments and engage in a public rather than internal debate about theoretical question. A public debate in matters on conscience is, on the other hand, impossible.[400]

The splitting of the individual in moral conscience emphasizes how the intersubjective structures of reason possess an authority that goes beyond that of the empirical individual. Although conscience is internal, its judgments are valid because they are the product of a valid

[399] The image of moral conscience as a tribunal is repeated in parts of the *Opus Postumum*. In some passages of this work, Kant explicates the conception of God as a postulate of pure practical reason rather than an independent entity. This conception fits with the idea that the voice of the judge in moral conscience represents an ideal projection of reason rather than a revelation of the divine judgment within us. OP, AA 22, 60. Paul Guyer has argued that these passages in the *Opus Postumum* imply that Kant conceives of God as a projection of reason. Guyer, *Kant on Freedom, Law, and Happiness*, 403. Against Guyer, Robert Louden has argued that since Kant only describes Gob as a projection of reason in some parts of the *Opus Postumum* and as an independent being in other passages, Guyer's conclusion is too hasty. Louden, "The End of All Human Action/the Final Object of All My Conduct: Aristotle and Kant on the Highest Good," 124–25.

[400] Thomas S. Hoffmann has argued that there is a difference between Kant's notion of conscience in the *Metaphysics of Morals* and in the Vigiliantius notes from Kant's lectures on ethics. In Hoffmann's interpretation, the conception of moral conscience that emerges from the lecture notes is distinctly more Kantian and shows how the individual relates to himself as a freely acting noumenal self in moral judgment. Thomas Sören Hoffmann, "Gewissen Als Praktische Apperzeption."

procedure. Despite the adversarial structure, the debate is not open-ended, nor does the image of the tribunal evoke an open-ended debate: Once the judge has heard the two sides, he has to make a final verdict, even if this verdict might be temporarily suspended by self-deception. In speculative judgment, discussing with other people makes it possible to correct mistakes, but in moral conscience there is no room for error.

The judgments of moral conscience are objectively valid to such a degree that Kant rejects the possibility of an erring conscience as an absurdity.[401] The individual is able to judge his own deeds objectively because there is an inner splitting of the accused into the accuser and the judge, which means that the empirical individual is not the judge in his own case.[402] Instead the judge in moral conscience is an idealized version of the individual's rational capacities, which is abstracted from any empirical aims and interests. Analogously, the critique of pure reason "is not in these disputes"[403] of metaphysics because it is carried out "in abstraction from all interest."[404] The critique is thus an abstraction even from pure reason in the narrow sense, since pure reason unlike the critique is guided by speculative interests.[405]

A significant difference between reason's inner tribunal and moral conscience as *forum internum* is that reason is compared to a civil court whereas conscience is likened a criminal court. A guilty verdict sentences the agent to pangs of conscience, whereas the wrongdoings of reason are not punished. On the contrary, pure reason is allowed to continue using its ideas for practical purposes under the maxim "*melior est conditio possidentis*"[406] without facing sanctions.

Although moral conscience is an involuntary instinct, Kant assigns its different parts to the higher cognitive faculties; the understanding is legislator, the power of judgment is prosecutor, self-love is defense attorney and reason is judge. If the legal functions of conscience are performed by the cognitive faculties, we might ask whether this division can be transferred to the

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[401] MS, AA 06, 401. In contrast, Herder's notes from Kant's lectures on ethics include two possible ways in which conscience can be mistaken: "The falsified conscience *adultera* is (1) *erronea*, when it is logically falsified; (2) *prave*, when it is morally so. The one goes astray, by intellectual error (*errores*); the other feels wrongly, by emotional defect (*depravitates*)." ["Das verfälschte Gewißen adultera: ist (1) erronea: waz logisch verfalscht ist Jenes irrt – Verstandesirrthum (errores) (2) praue : waz moralisch verfalscht ist. Dieses fühlt übel: Gefühlsfehler (deprauitates)".] PP-Herder, AA 27, 42.

[402] Kant refers to the same distinction between the empirical individual and his noumenal self in his discussion of Beccaria's argument against the death penalty; there the point is that only the noumenal self is co-legislative, not the empirical self.

[403] KrV, A 751/B 779, CPR, 649. ["nicht mit verwickelt"]

[404] KrV, A 747/B 775.

[405] KrV, A 466/B 495 and A 747/B 775.

[406] KrV, A 777/B 805.

notion of an inner tribunal of reason. Can we say that the understanding is lawgiver, the power of judgment is prosecutor, dogmatic reason is defense attorney and that reason in the narrow sense is the judge at the tribunal of reason?

The analogy between the legal roles and the cognitive faculty works to a certain extent. In the first *Critique*, Kant asserts that there are three higher faculties; understanding as the faculty of rules, the power of judgment as the faculty of judgment and reason as the faculty of inference.[407] Through the Transcendental Analytic, we learn that the understanding is the legislator of nature.[408] The power of judgment has the task of applying the categories of the understanding to appearances.[409] In legal terms, Kant specifies that the power of judgment decides whether an instance is a *casus datae legis* or not.[410] In Kant's account of judicial imputation, the subsumption of the case under the law is one of the tasks of the judicial power, and he argues in the *Doctrine of Right* that this task should be assigned to a jury. Indeed, Kant continues his description of the power of judgment by comparing its task to that of a judge who has learned the proper application of the law through examples.[411]

The point of the Transcendental Dialectic is to limit reason's ambitions of being legislative and instead assign it the role of a judge. As the faculty of inference, reason performs the task of a judge by inferring verdicts on the basis of a general law provided by the understanding, and the subsumption of a case provided by the power of judgment.[412] The tasks of each of the higher faculties are summarized in their roles in a syllogism:

> In every syllogism I think first a *rule* (the *major)* through the understanding. Second, I *subsume* a cognition under the condition of the rule (the by means of the *power of judgment*. Finally, I determine my cognition through predicate of the rule (the *conclusio),* hence through *reason*.[413]

This is the same scheme as the Kant's account of judicial imputation: "In a syllogism, the *imputatio facti* always constitutes the minor premise, and the law the major; the *imputatio legis* is then inferred from them".[414] In Kant's task division, this means that the understanding is

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[407] KrV, A 130/B 169.
[408] KrV, A 126.
[409] KrV, A 130/B 170.
[410] KrV, A 132/B 171.
[411] KrV, A 134/B 1743.
[412] KrV, A 330/B 386.
[413] KrV, A 304/B 360-361, CPR, 390. ["In jedem Vernunftschlusse denke ich zuerst eine *Regel* (*major*) durch den Verstand. Zweitens *subsumire* ich ein Erkenntniß unter die Bedingung der Regel (*minor*) vermittelst der *Urtheilskraft*. Endlich *bestimme* ich mein Erkenntniß durch das Prädicat der Regel (*conclusio*), mithin *a priori* durch die *Vernunft*."]
[414] Vigilantius, AA 27, 562, *Lectures on Ethics*, 316. ["Die imputatio facti macht bey einer Schlußform jederzeit minorem, sowie das Gesetz majorem propositionem aus, und die Imputatio legis concludirt hieraus"]

legislator, the power of judgment performs the imputation of the fact and reason performs the imputation of the law.

There are also limitations to the analogy; reason still has a legislation after its trial in the Transcendental Dialectic.[415] If we follow this scheme, the task of reason is compulsive; there is no application of the laws of the understanding without reason.

3.3. The discipline of pure reason

The Transcendental Dialectic allows for a positive legislation of reason in the narrow sense which applies to the understanding but not directly to objects. However, Kant clearly limits the boundaries of this claim and the negative legislation which comes with it. By negative legislation, Kant intends reason's ability to judge concerning its own limitations; the ability to unveil its own deceptions which result from the misuse of its legislation. This does not mean that reason can eradicate its illusions; the negative legislation merely concerns how reason reacts to these illusions to avoid the deception that might be connected with them.[416] The discipline takes the form of a list of operations that are illegitimate in the use of reason. Although often overlooked in the secondary literature, it is, in my view, a crucial part of the first *Critique*; it is here the system becomes concrete.

The idea to include a section on discipline within the considerations on method towards the end of a work is not Kant's own; it was a standard organization of treatises on logic. For example, Meier's *Auszug aus der Vernunftlehre*, which Kant used as a textbook for almost all his lectures on logic, contains sections on doctrine, discipline and science as part of the section 'Of the Method of Learned Cognition'.[417] The idea is that the discipline indicates the proper application of the principles given in the doctrinal part. Unlike Meier, Kant's does not understand discipline as a methodological refinement of the truths given in the Analytic. Instead, Kant defines discipline as the "negative legislation" of pure reason; it is a series of warnings against

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[415] KrV, A 701/ B 729.
[416] KrV, A 298/B 354. On the distinction between illusion and deception, see Grier, *Kant's Doctrine of Transcendental Illusion*, 179.
[417] Meier defines doctrine, discipline and science as three steps in the development of systematic knowledge. Doctrines are the sum of truths, which are understood methodically through discipline and when they are proven they become science. Meier, "Auszug aus der Vernunftlehre," § 434, 809–810. Like Meier, Kant understands the doctrine of method as "the determination of the formal conditions of a complete system of pure reason." KrV, A 708/B 736. ["die Bestimmung der formalen Bedingungen eines vollständigen Systems der reinen Vernunft."] On Meier's influence on Kant, see Pozzo, "Prejudices and Horizons: G. F. Meier's Vernunftlehre and Its Relation to Kant."

unauthorized uses of reason rather than an account of how to apply the transcendental principles which are proven in the Analytic. Its prohibitive laws are added to the permissive laws of the Analytic. To address the systematic "delusions and deceptions" of pure reason, which go deeper than mere individual error, Kant proposes the discipline of pure reason as a "system of caution and self-examination".[418] He considers the general errors that individuals are tempted to make in their use of pure reason because they are not guided and limited by empirical experience.

To illustrate the interplay between individual thought activity and objective, transcendental standards of knowledge, Kant frequently uses images from legal and political institutions in this part of the work. The question that Kant seeks to answer is; how can pure reason be authoritative and guiding for individual uses of reason, and what happens when different individuals claim that their respective, but opposite claims are rationally justified? This conflict is parallel to the situation in a civil court; two parties both argue that their opposing claims have legal grounding, but they cannot both be right. Instead, the judge must decide on the basis of valid laws. At this point of the critical investigation, the positive laws of reason have been proven, and Kant therefore turns to the guidelines and precautions for their practical application. Like a legal system, the systematic account of reason does not exclude future conflicts. Instead, the critique aims at establishing a procedure for resolving future conflicts rather than avoiding them.

Kant proceeds to give precautions for four different uses of pure reason; its dogmatic use, its polemical use, its use in hypotheses, and its use in proofs. All of these topics are meant to instruct the proper use of pure reason in philosophy. The dogmatic use of reason concerns the differences between philosophy and mathematics. Unlike mathematics, philosophy cannot use its principles as axioms to construct a system. As cognitions from concepts, axioms can by definition not be proven, their truth is supposed to be intuitively clear to any rational thinker. This is the reason why Kant's counterproof to the proposed axioms of pure reason are proofs from consequences, which infer contradictions from different proposed axioms of pure reason. Instead of using axioms, philosophers must proceed like jurists argue towards definitions rather

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[418] KrV, A 711/B 739, CPR, 629. ["ein ganzes System von Täuschungen und Blendwerken […] ein System der Vorsicht und Selbstprüfung".]
The discipline of pure reason has not received much attention in Kant scholarship. Norman Kemps Smith even claims that its content "has already been more or less exhaustively expounded in the earlier dividsions of the *Critique*." Smith, *A Commentary to Kant's Critique of Pure Reason*, 563. A notable exception is Chance, "Kant and the Discipline of Reason."

than departing from them.[419] Philosophical knowledge cannot depend on the use of axioms, because axioms merely explicate the knowledge already contained in the concepts. Philosophy cannot be an axiomatic system because it strives to provide the foundation of experience; whether synthetic a priori judgments, which are also valid for experience, are possible. Once this is established as the fundamental question that metaphysics needs to answer, the possibility of an axiomatic system of metaphysics is excluded since such a system cannot legitimate the use of its axioms in judgments relating to experience. Axiomatic reason remains self-contained and cannot bridge the division between reason and experience. Moreover, as becomes evident in the transcendental dialectic, it is incapable of establishing a coherent system of reason, and its axioms lead to contradictions.

Although reason is a system, pure reason only gives the structure of a system of knowledge, whose content must be filled by experience. Pure reason can thus only be used as a system for research:

> For our reason itself (subjectively) is a system, but in its pure use, by means of mere concepts, only a system for research in accordance with principles of unity, for which experience alone can give matter.[420]

While the transcendental categories of the understanding provide the logical form of any object of experience, the ideas of pure reason provide the structure for any system of knowledge, a topic which Kant leaves for a future system of transcendental philosophy.

The polemical use of reason is where we find the most juridical metaphors. Kant here considers the use of reason in discussions; what is the critically enlightened individual entitled to claim when he is arguing against a dogmatic counter-part? This use of reason in discussions, rather than in dogmatic monologues, is a hallmark of reason:

> The very existence of reason depends upon this freedom, which has no dictatorial authority, but whose claim is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed even his *veto*, without holding back.[421]

From this opening of the section, the reader may jump to the hasty conclusion that reason is a democratic enterprise in which truth is a matter of "the agreement of free citizens".[422] However,

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[419] KrV, A 731/B 759, note.
[420] KrV, A 737-738/B 765-766. ["Denn unsere Vernunft (subjektiv) ist selbst ein System, aber in ihrem reinen Gebrauche, vermittelst bloßer Begriffe, nur ein System der Nachforschung nach Grundsätzen der Einheit, zu welcher Erfahrung allein den Stoff hergeben kann."]
[421] KrV, A 738/B 766, CPR, 643. ["Auf dieser Freiheit beruht sogar die Existenz der Vernunft, die kein dictatorisches Ansehen hat, sondern deren Ausspruch jederzeit nichts als die Einstimmung freier Bürger ist, deren jeglicher seine Bedenklichkeiten, ja sogar sein *veto* ohne Zurückhalten muß äußern können."]
[422] Such an interpretation has been forwarded by O'Neill, *Constructions of Reason* and Gerhardt, "Die Disziplin der reinen Vernunft, 2. bis 4. Abschnitt."

such an interpretation would overlook that this is not a claim about the use of reason as such. It is the introduction to the section on the polemical use of reason, that is, the use of reason to argue against a dogmatic opponent. In addition, Kant is encouraging each citizen to express his reservations or veto, but does not make the claims of reason a question of direct democracy.

Conclusion

In this chapter I have pursued the idea that the Transcendental Dialectic presents an analogy between the critique and a civil trial in which reason in the narrow sense is challenged to prove that it can legitimately possess and use its ideas as if they were property. We have seen how different aspects of the critical investigation are described as the records, witnesses, judges, jury, audience, and verdict of this trial. Although Kant mentions the possibility of a jury once, he most often refers to either pure reason or the individual as an authorized judge. Unlike an individual judge, a jury would need to base its verdict on an internal vote, but Kant most often describes reason as an individual judge. The Transcendental Dialectic shows that reason in the narrow sense does not prescribe its laws directly to experience. The verdict of the dialectic trial is therefore *non liquet*; it is not clear whether any law applies to the ideas of pure reason. As a result, reason as the faculty of inference is given the office of judging in accordance with the understanding's legislation.

In accordance with the project of justifying reason's authority to judge, Kant provides guidelines for how an individual can take up this office: For an individual to qualify as judge, he must first be educated in the critique of pure reason and then learn to apply the critical procedure in order to unveil dogmatist claims. The individual development is the same as the one followed by reason; pure reason becomes an authorized judge through the critique of pure reason and the individual can take up this position by following the arguments of the critique and putting these into practice. The proof of reason's authority to judge is the topic of the next chapter.

4. "BUT REASON IS THE JUDGE"

So far, we have seen how the critique maps the understanding's legislation in a manner that emulates the role of legislators in a natural right framework; how the critique proves the validity of these laws when applied to experience, and how the critique reaches the verdict *non liquet* in the dialectic trial. All these are elements of a well-functioning legal system in the natural right tradition; philosophical systematicity thus becomes legal systematicity.

While the legislation of reason in the narrow sense is assigned a regulative function, reason as the faculty of inference is given the role of judge in the juridical metaphors. This role involves the authority (*Befugnis*) to judge on the basis of the understanding's legislation and the subsumption provided by the power of judgment. Crucially, this authority must allow for the freedom of critique.[423] Kant cautions, "reason has no dictatorial authority;"[424] its judgments must be reliable but not dogmatic. To distinguish critical from dogmatic authority, I argue that we must think of reason's critical authority as an authorization which guarantees a reliable outcome rather than an inscrutable ultimate authority. The analogy between reason's authority and judicial authority is informative because both are based on law. However, it is important to keep in mind that the word authority (*Autorität*) appears nowhere in the work. Instead Kant uses the term authorization (*Befugnis*) or regard (*Ansehen*) when discussing reason's ability to make valid judgments.

To understand reason's claim to authority as authorization, it is useful to compare it to how Kant describes the authority (*Ansehen* or *Autorität*) of revelation. Kant confronts the two in *The Conflict of the Faculties* (1798), in which he recommends separating the higher faculties at universities (theology, law and medicine) from the lower faculties (philosophy and logic). The rationale behind this separation is to reflect the different relationship that the two types of faculties have to authority; while the higher faculties depend on the authority of either government or Scripture, philosophy and logic are autonomous and only rely on the legislation of reason.[425] For this division to be effective, however, philosophers first need to prove that reason

[423] KrV, A 738/ B 766.
[424] KrV, A 738/B 766, *Critique of Pure Reason. Unified Edition*, 687. ["Auf dieser Freiheit [zu Kritik, SCM] beruht sogar die Existenz der Vernunft, die kein dictatorisches Ansehen hat".] The relative pronoun in this sentence is ambiguous; it might refer to either reason or the freedom of critique. Here I prefer Pluhar's translation, which translates the pronoun as referring to reason.
[425] SF, AA 07, 22-23.

can be autonomous, i.e., that it can distinguish between valid and invalid judgments. In this piece, Kant carefully avoids terming reason's claim to autonomy as a separate authority. Instead he refers to reason's claim to autonomy in virtue of its own legislation.[426] In the first *Critique*, Kant does not frame reason's freedom as autonomy, this term only appears in later works. Instead of autonomy, Kant refers to the "freedom of reason"[427] and warns against dogmatic authority. In the following, I investigate how the critique can claim authority without contradicting reason's claim to freedom. I argue that Kant accounts for what he later terms the autonomy of reason through the idea that reason's authority resembles judicial authority as a self-imposed limitation of freedom in accordance with laws which guarantee the validity of judgments.

4.1. Historical background on judicial authority

The late 18th century was a time in which judicial authority and its limits were much debated. Legal publications from the period combine considerations from natural right and positive law in discussing the proper role of judges, both in relation to the other powers of government and in relation to the ideal of justice as indicated by natural right. The debate was not contained within the borders of a single state; Prussian intellectuals were often inspired by ideas coming from especially Italy and France – countries in which legal scholars emphasized the virtues of the English legal system. A central question was whether legal reform was needed for the judicial power to function properly, and as a result of this discussion, Prussian law was codified in the General State Laws for the Prussian States in 1794.[428]

In the following, I disentangle two general views from this debate which might have inspired Kant's metaphorical judges: On the first account, judges are above positive law and are thus able to interpret it according to their own reason. I call this the interpretivist account since it lets the outcome depend on the judge's interpretation of the spirit rather than the letter of the law. In the other account, judges are bound by the law and serve as the "mouth that pronounces the words of the law," as Montesquieu phrased it.[429] I call this the reformist account because in most cases it presupposes a legal reform to realize its conception of justice.

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[426] On the difference between the authority of reason and that of revelation, see Enns, "Reason and Revelation."
[427] KrV, A 553/B 581, CPR, 543. ["diese ihrer Freiheit"]
[428] Hattenhauer and Bernert, *Allgemeines Landrecht für die preussischen Staaten von 1794*.
[429] "[T]he national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigour." Montesquieu, *The Spirit of Laws*, XI.6, 73.

In the interpretivist account, judges are licensed to interpret positive law on the basis of their own understanding of justice. This view departs from the discrepancy between the general idea of justice and actual statutory law before the Prussian legal reform of 1794, a situation which led numerous legal scholars and judges to argue in favor of broad judicial discretion. One proponent of this view was Karl Ferdinand Hommel – the German translator of Cesare Beccaria's influential *On Crimes and Punishments* – whose understanding of the judicial power was directly opposed to Beccaria's notion of the judge as bound by the law. Hommel served as a judge in Leipzig, where the criminal law was still the *Constitutio Criminalis Carolina*, which contained laws and procedures that were no longer in line with the 18th century understanding of justice. Examples of outdated parts of Prussian criminal law included punishment for witchcraft and the use of torture as the standard instrument of interrogation.[430] In *Rhapsodia quaestionum in foro quotidie obvenientium neque tamen legibus decisarum* (1766-1799), Hommel shows how a judge can interpret statutory law to make it better suited to his own enlightened reason by "supplementing, adapting, correcting, changing and amending" the law.[431] In Hommel's view, the role of the judge is to give a coherent interpretation of the law which corrects wrongful and outdated elements. Hommel's idea is that the continued effort of judges creates a gradual change of the interpretation rather than the letter of the law.

Another prominent defender of broad discretion was the judge and legal scholar, Christian Gottlieb Gmelin, who argues that a verdict concerns not just a single case but the validity of statutory law in general and it remains for the judge to decide how to interpret outdated laws in accordance with his understanding of justice. In this way, Gmelin maintains, individual judges make statutory law more rational through their interpreting verdicts.[432] In his view, excessively explicit laws limit judges unnecessarily and stand in the way of a rational interpretation of justice.

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[430] Kohler and Scheel, *Die peinliche Halsgerichtsordnung Kaiser Karls V. Constitutio Criminalis Carolina. Neudruch der Ausgabe Halle A.D.S. 1900*.

[431] ["supplendi, adiuuandi, corrigendi, mutandi et emandandi"] Hommel, Carl Ferdinand, *Rhapsodia Quaestionum In Foro Quotidie Obvenientivm Neque Tamen Legibus Decisarum* (Baruthi: Lubeccius, 1782), vol. 3, CCCCXXXIX, 37–38, see also Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*, vol. 1, 223.

[432] Gmelin assures "that I only extremely rarely have found myself forced to agree to a verdict against every principle and against my own inner feeling because of excessively explicit laws." ["daß ich nur äußerst selten mich durch allzudeutliche Gesetze in der Nothwendigkeit befunden habe, wider jene Grundsäze, oder wider mein inneres Gefühl einem Urtheil beizustimmen."] Gmelin, *Grundsätze der Gesetzgebung über Verbrechen und Strafen*, VI.

Opposers of this view held that the solution to unjust laws was judicial reform and codification rather than broad judicial discretion. This reformist view was furthered most famously by Beccaria and Montesquieu who both stressed that the judge is a mere servant of the law and ought not go beyond its explicit text. This conception of judicial power presupposes a legal codification which ensures that the law is applied consistently. The reformist view provides a description of how a judge works within an established state under the rule of law, and whose codified law is general enough to be applied to all possible cases. According to Beccaria's *On Crimes and Punishments*, the role of the judge is to construct "a perfect syllogism," in which the general law is the major premise, the deed is the minor premise, and the verdict is the conclusion ("freedom or punishment"). If the judge cannot unite the law with the act in a single syllogism and feels the need to include more syllogisms to reach his verdict, "then the door is opened to uncertainty."[433] The verdict is legitimate only if it follows from a single syllogism: intermediate syllogisms allow too much freedom of interpretation and put an interpretative layer between the law and the verdict. The reliance on the judicial syllogism was fundamental for the rebuttal of judicial discretion by those who promoted judicial reform. The notion of the judge as the performer of syllogism leaves no room for judicial discretion, but instead leaves the judge to construct syllogisms as determined by the given code.

The notion of judicial authority as *Befugnis*, as an authorization given from a higher authority, is part of this debate on the proper role of judges. Both sides of the debate promote a notion of judicial authority derived from a higher instance; the reformist view derives judicial authority from positive law whereas the interpretivist view derives it from natural right as a guide of rational interpretation. On both accounts, judicial authority follows from the legitimacy of the laws, whether positive or natural, and their correct application to single cases.

4.2. Kant on judicial authority

In section 2.4 above, we saw how Kant accounts for judicial authority as tied to the structure of legal imputation according to the *Moralphilosophie Collins*. In those passages, Kant accounts for judicial authority as the authority to impute an act to its author and apply the law

[433] Beccaria, *On Crimes and Punishments, and Other Writings*, § IV. ["In ogni delitto si deve fare dal giudice un sillogismo perfetto: la maggiore dev'essere la legge generale, la minore l'azione conforme of no alla legge, la conseguenza la libertà o la pena. Quando il giudice sia costretto, o voglia fare anche soli due sillogismi, si apre la porta all'incertezza." Beccaria, *Dei delitti e delle pene*.]

and its sanctions to an act through legal imputation. In accordance with this account of adjudication, he describes judicial authority as the two-fold authority to judge through the factual imputation and to sanction through the legal imputation.

In the published works, Kant does not account for adjudication as explicitly as he does according to the lecture notes. As we saw above, his discussion of imputation in the *Metaphysics of Morals* mainly concerns moral imputation in general and he includes neither a detailed discussion of legal imputation nor of adjudication. In the *Doctrine of Right* specifically, Kant is more concerned with the judicial office as one of the three branches of government, which he describes as the three parts of a practical syllogism:

> Every state contains three *authorities* within it, that is, the general united will consists of three persons (*trias politico*)*:* the *sovereign authority* (sovereignty) in the person of the legislator; the *executive authority* in the person of the ruler (in conformity to law); and the *judicial authority* (to award to each what is his in accordance with the law) in the person of the judge (*potestas legislatoria, rectoria et iudiciaria*)*.* These are like the three propositions in a practical syllogism: the major premise, which contains the *law* of that will; the minor premise, which contains the *command* to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the *verdict* (sentence), what is laid down as right in the case at hand.[434]

This structure is not a syllogism of adjudication like the legal syllogism, but a metaphorical description of the relationship between the three branches of government. The three powers of government stand in a justificatory relationship to each other which follows the structure of a syllogism. The legislative power gives the major premise in the form of general laws. The executive provides the principle of subsumption under the law, and the judicial power ties the two together by applying the law to individual cases.[435] This passage thus tells us how Kant conceives of the logical relationship between the powers of government, but it does not account for Kant's understanding of the structure of adjudication.

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[434] MS, AA 06, 313, *Practical Philosophy*, 457. ["Ein jeder Staat enthält drei Gewalten in sich, d. i. den allgemein vereinigten Willen in dreifacher Person (*trias politica*): die *Herrschergewalt* (Souveränität) in der des Gesetzgebers, die vollziehende Gewalt in der des Regierers (zu Folge dem Gesetz) und die *rechtssprechende Gewalt* (als Zuerkennung des Seinen eines jeden nach dem Gesetz) in der Person des Richters (*potestas legislatoria, rectoria et iudiciaria*) gleich den drei Sätzen in einem praktischen Vernunftschluß: dem Obersatz, der das Gesetz jenes Willens, dem Untersatz, der das *Gebot* des Verfahren nach dem Gesetz, d. i. das Princip der Subsumption unter denselben, und dem Schlußsatz, der den *Rechtsspruch* (die Sentenz) enthält, was im vorkommenden Falle Rechtens ist."]

[435] While I read this passage as explaining the logical relationship between the three powers of government, Byrd and Hruschka argue that this is the schema for the way in which the state guarantees a citizen's practical syllogism and not a schema of adjudication: "The three state functions of which Kant speaks when distinguishing the three state powers, however, do not themselves constitute a synthetic unity. Still each function is necessary for the citizen to construct a practical syllogism when acquiring land and thus exercising the moral capacity he has by virtue of the permissive law of practical reason." Byrd and Hruschka, *Kant's Doctrine of Right. A Commentary*, 160.

According to the *Doctrine of Right*, a legal syllogism can be performed by any citizen, making him capable of applying the law to an act. The difference between the common man's application and that of the judge is that the judge represents the entire commonwealth and as such his verdicts are final.[436] Kant does not take an explicit stand on the question of judicial discretion in the *Doctrine of Right* but his account of an ideal legal system is closest to what I term the reformist view. This is seen in the fact that according to the *Doctrine of Right*, there can be no court of equity because "a judge cannot pronounce in accordance with indefinite conditions."[437]

Although Kant does not explicitly account for a two-fold judicial imputation in the *Doctrine of Right*, his account of the separate tasks of juries and judges presuppose this schema of adjudication, which separates the imputation of fact from the imputation of law. According to the lecture notes, the same judge performs both inferences, whereas the *Doctrine of Right* assigns one to the jury and the other to the judge:

> But once the facts in a lawsuit have been established [by the jury, SCM], the court has judicial authority to apply the law, and to render to each what is his with the help of the executive authority. Hence only the *people* can give a judgement upon one of its members, although indirectly, by means of representatives (the jury) whom it has delegated.[438]

Here Kant does not use the same terms as the ones from the lectures notes, but he is clearly separating the same two aspects of judicial imputation. First the jury determines the facts, which in the terminology of the lecture notes would be the imputation of the fact, and second the court applies the law, which corresponds to the imputation of the law.[439] The two-fold authority to judge and to sanction is thus divided between the jury and the judge. This separation

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[436] "A people judges itself through those of its fellow citizens whom it designates as its representatives for this by a free choice and, indeed, designates especially for each act. For a verdict (a sentence) is an individual act of public justice (*iustitiae distributativae*) performed by an administrator of the state (a judge or court) upon a subject, that is, upon someone belonging to the people; and so this act is invested with no authority to assign (allot) to a subject what is his." MS, AA 06, § 49, 317. ["Das Volk richtet sich selbst durch diejenigen ihrer Mitbürger, welche durch freie Wahl, als Repräsentanten desselben, und zwar für jeden Akt besonders dazu ernannt werden. Denn der Rechtsspruch (die Sentenz) is ein einzelner Akt der öffentlichen Gerechtigkeit (iustitiae distributivae) durch einen Staatsverwalter (Richter oder Gerichtshof) auf den Untertan, d.i. einen, der zum Volk gehört, mithin mit keiner Gewalt bekleidet ist, ihm das Seine zuzuerkennen (zu erteilen)."]

[437] MS, AA 06, 234, *Practical Philosophy*, 391. ["ein Richter aber nach unbestimmten Bedingung nicht sprechen kann."]

[438] MS, AA 06, 317, *Practical Philosophy*, 461. ["auf welche Ausmittelung der That in der Klagsache nun der Gerichtshof das Gesetz anzuwenden und vermittlest der ausführenden Gewalt einem jeden das Seine zu Theil werden zu lassen die richterliche Gewalt hat. Also kann nur das *Volk* durch seine von ihm selbst abgeordnete Stellvertreter (die Jury) über jeden in demselben, obwohl nur mittelbar, richten."]

[439] Kant hints a general suspicion towards judges on Ref 7174, AA 19, 264: "Ein Gütiger Richter ist *contradictio in adiecto*."
Byrd and Hruschka argue that Kant separates the two parts of the verdict to protect the citizen against abuse from the state: "Kant assumes that the jury – in contrast to the sovereign, the executive, and the civil servant judge – can do no wrong to the parties to the trial. […] The role of the civil servant judge is marginalized because once

fits with the two-step account of imputation we found in the *Moralphilosophie Collins*. The separation of tasks between the jury and the judge is meant to ensure that the people judges itself. The judge is left with the task of carrying out the final sanction, which applies the law to the imputation of fact as performed by the jury. Adjudication is therefore split in two; the jury decides the question of fact to which the judge applies the law. Kant thus adheres to the reformist view since judges are left little room for discretion. Instead, their judgments are determined partly be the law and partly by the fact established by the jury. The part of the imputation which allows the largest margin for discretion is left to the jury rather than the judge to ensure that the people judges itself. Kant thus allows the judicial office a larger margin of discretion, while leaving little room for interpretation by the civil servant judge.

Hence, Kant appears to continue the scheme of judicial imputation found in the lecture notes, although he does not discuss judicial imputation in detail in the *Doctrine of Right*. But even though we can interpret Kant's account as a separation between the two imputations, a further complication arises from the *Vigilantius* notes, where Kant at one point adds a further step in his account of adjudication by separating the imputation of the law from, the application of the law to the fact, and the sentencing in accordance with the law:

> *Forum sive judex* (tribunal or judge), namely that physical or moral person having the authority to impute *leges* in a valid manner, to apply laws legitimately to the *factum*, and to impute the *effectus* connected therewith, or determined *a lege*.[440]

According to this passage, a judge needs to have the authority to perform three inferences: imputation of the law, application of the law to the fact and imputation of the effect of the law.[441] Here Kant separates the sentencing from the application of the law. However, he then goes on to account for judicial imputation as being an episyllogism consisting of two imputations. The lecture notes do in other words not provide a clear account of judicial imputation,

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the jury has determined the minor premise of the relevant practical syllogism, the judge must decide according to the law" Byrd and Hruschka, *Kant's Doctrine of Right. A Commentary*, 166.

[440] Vigilantius, AA 27, 572, *Lectures on Ethics*, 325. ["Forum sive judex ist diejenige physische oder moralische Person, der die Befugniß zusteht, leges valide zu imputiren, die Gesetze auf das factum rechtskräftig anzuwenden, und die damit verbundenen oder a lege determinirten effectus zu imputiren."]

[441] Jan Joerden argues that Kant cannot account for degrees of imputation because he does not distinguish the imputation of the law from the sentencing: "Nach dieser Anwendung des Gesetzes auf die Tat folgt für Kant kein weiterer, davon getrennter Schritt mehr. Für ihn fällt damit die Kritik der Handlung anhand des vorausgesetzten normativen Maßstabes mit der Zurechnung des Verhaltens zum Verdienst bzw. Zur Schuld in eins zusammen; oder in den Worten der traditionellen Terminologie: Die applicatio legis ad factum und die imputatio iuris (legis) sind ein und dasselbe." Joerden, "Zwei Formeln in Kants Zurechnungslehre," 536.

and the *Doctrine of Right* only hints at a separation of the imputation of fact from the imputation of the law, but provides no clear account of how these two relate to questions of sentencing and degrees of responsibility for the act.

4.3. Judgments and inferences

Syntheses

My interpretation of epistemic authority as judicial authority follows Kant's formulation of all cognition as judging: If cognizing is judging then epistemic authority is judicial authority. Kant contends that all cognition for finite discursive intellects assumes the form of judgments in which concepts are synthesized.[442] This structure is already evident in Kant's formulation of the central question in metaphysics as the question of how synthetic a priori judgments are possible.[443] Discursive intellects cognize by means of judgments and not by means of separate ideas, intuitioned in a clear or obscure manner, as it was conceptualized by rationalists such as Descartes or Leibniz.[444] No matter how clear and distinct an idea is, it can never be cognition if it is not expressed in a judgment. For Kant, clear and distinct ideas are simply shorthand for judgments which distinguish ideas from one another and clarify the nature of a single idea. Despite the rationalists' claims, clear and distinct ideas are clear and distinct because they are judgments.[445]

In the simplest case, a judgment is a combination of a concepts with the copula as the combining link. In Kant's account, the core activity of the higher cognitive faculties is to make judgments, either in the form of simple judgments or more complex inferences. Kant's insight is that there is no fundamental difference between judgments and inferences; they are both outcomes of the same act. The judgments made by the understanding are immediate combinations of concepts, whereas reason's judgments are combinations of simpler judgments in inferences. Inferences are mediate judgments because they combine concepts by means of other judgments.[446] Nevertheless, be it mediate or immediate, the act of judging is the same in both

[442] KrV, A 19/B 33.
[443] KrV, A 10/B 23.
[444] See Konstantin Pollok's reconstruction of Kant's Copernican turn as a change from reality of ideas to the validity of judgments, in Pollok, "From the Clarity of Ideas to the Validity of Judgments."
[445] KrV, A 44-45/B 61-62, cf. *On the false Subtlety*, AA 02, 58.
[446] KrV, A 303-305/B 359-361. Kantian inferences (*Schlüsse*) have the structure of syllogisms. In *The False Subtlety of Four Syllogistic Figures*, Kant defines a syllogism as a mediate judgment: "a syllogism is the comparison of a characteristic mark with a thing by means of an intermediate characteristic mark." AA 02, 48.

faculties: the entire human intellect is a judging faculty whose task it is to produce judgments. The first *Critique* needs to prove that reason can perform two tasks legitimately; that it can make valid judgments and distinguish between valid and invalid judgments.[447] This is the core of Kant's insistence that reason must learn to distinguish authoritatively between "rightful claims" and "groundless pretensions."[448]

The structure of the first *Critique* follows the construction of judgments; the work moves from intuition to concepts, from concepts to judgments and from judgments to inferences.[449] Neither intuitions nor concepts can amount to cognition on their own; their relation to experience can only be justified when the two are combined in judgments.[450] The cognitive process is thus a chain of syntheses, which has three links: first the synthesis of the manifold into intuitions, second the synthesis of intuitions into concepts, third the synthesis of concepts into judgments and fourth the synthesis of judgments into inferences. To prove that reason can make valid judgments, Kant sets out to prove that every link in the cognitive chain is legitimate by proving that it relates to objects of experience. The idea is that the proof is only performed once, and that future judgments of the same type can then be presumed legitimate. Presupposing that the cognitive chain remains the same, future uses of reason can rely on the justification given in the *Critique of Pure Reason*.

It is a much-debated issue whether these are different steps of the same synthesis or different syntheses altogether. Scholarly debate has focused on the role of concepts in the synthesis of intuitions; several scholars have challenged the traditional view that Kant's account of intuitions is non-conceptualist, meaning that concepts do not shape the synthesis of the manifold into intuitions.[451] The scope and context of this thesis does not allow for a thorough discussion of the role of concepts and schemas in syntheses, but because the legitimacy of reason's legislation depends on its being applicable to intuitions, I will briefly sketch my reading of the two-step synthesis. On my reading, the second synthesis depends on the schematization of concepts,

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[447] As I explain in the following, the evaluation is only needed if the judgments are held to be true, otherwise the judgment is subject to looser standards.
[448] KrV, A XI-XII, CPR, 100. ["gerechten Ansprüchen", "grundlose Anmaßungen"]
[449] Kant divides the process of synthesis into four levels, each of which builds on the previous: intuitions, concepts, judgments and inferences. In accordance with the usual division of logic books, the Transcendental Analytic is divided into an analytic of concepts and an analytic of principles for using these concepts. See e.g., Meier, *Vernunftlehre*.
[450] KrV, A 5l/B 75.
[451] See among others McDowell, *Having the World in View* and Ginsborg, "Was Kant a Nonconceptualist?".

while the first does not. There is no conceptual content in intuitions; it is only added in judgments. The lack of conceptual content in intuition is the reason why Kant refutes the possibility of intuitive cognition. Only in judgments are intuitions and concepts combined to create cognition. The common denominator for intuitions and concepts is not the conceptual content, but the unity of reason, which guides both syntheses. It is a mistake to think that the only possible shared feature is cognitive content. The guiding thread for the entire cognitive process is the transcendental unity of the apperception, not the unity of concepts. The steps of this process are not detached from one another; they all presuppose the transcendental unity of the apperception. Without this presupposition, the synthesized parts would not fit together.[452]

The critical task is similar to that of Hommel's judge who finds that positive law contradicts his understanding of natural right and who therefore amends positive law through his judgments.[453] From this description, it might seem that critical reason is capable of making its own judgments in accordance with the fundamental laws of reason and hence needs no statutory laws. However, this approach does not fit the idea that the work of the critique remains stored "in the archives of human reason"[454] and provides a standard for all later uses of reason. In this description, the critique is analogous to a legal codification intended to substitute the incoherent and outdated accounts of reason's laws, which have led to conflicts and uncertainty in metaphysics. The picture Kant paints of reason as a judge thus makes use of both sides of the debate; at the beginning of the critique, reason is a judge who is dissatisfied with the laws provided by metaphysics, but through the critique the laws are revised and made to accord with reason's own principles thus making it legitimate again for reason to make judgments in accordance with its own laws.

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[452] For a defence of a non-conceptual reading of Kant, see Tolley, "The Non-Conceptuality of the Content of Intuitions." In opposition to this argument, Lanier Anderson, among others, has argued that the three different syntheses of the A-deduction should be read as three steps of a single synthesis. Anderson's point is that the three levels of the synthesis are 'inseparably combined' (A 102) and are performed 'by means of the very same actions' (A 79/B 105). Anderson, "Synthesis, Cognitive Normativity, and the Meaning of Kant's Question, 'How Are Synthetic Cognitions a Priori Possible?"

[453] Because of Kant's influence on legal theory, there is a tendency for legal historians to interpret legal scholars using Kant's juridical metaphors. An example is found in how Eberhard Schmidt describes Gmelin's notion of judgeship: "The judge thus becomes a pacemaker of a more rationable legislation; he is no longer below but rather above positive statutory law and he daily draws it in front of the tribunal of his critical reason." Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*, 1:224. (my translation) ["Der Richter wird also zu einem Schrittmacher "einer vernünftigen Gesetzgebung"; er steht nicht mehr unter, sondern über dem positive Gesetzesrecht und zieht es täglich vor den Richterstuhl seiner kritisierenden Vernunft."] Wildred Küper cites this passage as an authoritative account of Gmelin's notion of judgeship, see Küper, *Die Richteridee der Strafprozessordnung und ihre geschichtlichen Grundlagen*.

[454] KrV, A 704/B 732, CPR, 623. ["im Archive der menschlichen Vernunft"]

In sum, the juridical analogies emphasize Kant's reformulation of all thinking as judging. The reasoning goes as follows: If the outcome of reason's activity is judgments, then an epistemological investigation must therefore ask whether reason is fit to be judge. The answer to this question depends on whether every step in the cognitive process is legitimate, whether it relates to the objects of experience. The formulation of cognition as judging makes the central question of epistemology one of legitimacy; proving which judgments thinkers can legitimately make.[455]

Illusions and errors

Authority in this sense is an authorization to claim that valid judgments are cognitions and to distinguish between valid and invalid knowledge claims. Framed in a legal language, the justification of the verdict depends on the legitimacy of the laws and the legality of the judicial process. If all the processes in the chain are justified, then the final judgment has been made correctly and we can be certain that it is valid. According to Kant, the validity of judgments depends on whether they are made in accordance with valid laws and whether these laws are applied to cases appropriately. This would seem to be a waterproof system. Nevertheless, there are pitfalls in the cognitive process – the authority of the process does not guarantee an infallible outcome. There is always the possibility that a perception is an illusion, that a concept has been applied to the wrong instance, or that an inference has been stretched beyond its domain of application. Because of the risk of misuse at all levels of cognition, there is a need for criteria that allow the individual cognizer to distinguish between valid judgments and cognitive illusions.

Since Kant provides a justification of the entire cognitive chain, he has to explain where the risk of error lies. If a judgment is always an application of the categories, how can we make mistakes; why is thought not always cognition? Between the two editions of the first *Critique*, in the *Prolegomena* (1783), Kant introduces the distinction between judgments of perception and judgments of experience to account for the difference between cognition and mere thought. But this distinction was not included in the second edition of the first *Critique*. In the time between the publication of the *Prolegomena* and the second edition of the *Critique of Pure Reason*, commentators questioned whether it was possible for judgments of perception to avoid using the categories, since they must surely depend on the schematization of intuitions and use

[455] On Kant's notion of epistemological legitimacy, see Rosenberg, *Accessing Kant*, chap. 2.

the forms of judgment.[456] In virtue of being judgments, judgments of perception depend on the use of the categories as rules of synthesis. Even a judgment of perception presupposes a synthesis of intuitions and concepts into judgments. The fact that Kant did not include this distinction in the second edition suggests that he gave up these two types of judgments as a solution to the problem. The distinction between judgments of perception and judgments of experience cannot account for the moment in which the categories are applied in our thought and we can make claims to having experience.

The laws of thought are prescribed by the understanding, but applied by the power of judgment, whose function is to apply concepts to intuitions and form simple judgments. In this respect, the cognitive process resembles a republican legal system in which the legislative and judicial powers are kept separate.[457] Although the power of judgment has the primary function of making judgments, Kant does not assign the judicial power to this faculty in the juridical metaphors. Instead, all judgments are the result of the united activities of the cognitive faculties, not just of one single faculty. They are syntheses made through the power of judgment. The evaluation of judgments depends on the cognitive attitude and thus presupposes an act carried out by an individual will rather than an idealized intellect. Judgments are the product of the entire intellect; hence Kant's legal analogy applies to all faculties in their joint application. It is reason in the broad sense, and not any of the individual faculties, which is given judicial power. As we shall we below, reason in the narrow sense is the judge in other images, because Kant, as well as his contemporaries, conceives of legal verdicts as inferences rather than simple judgments. This means that although the application of concepts to intuitions is a step in the process of judging, it is not the final outcome of the cognitive process. Because reason as such is a judging faculty, the task of epistemology in general, and of the *Critique of Pure Reason*, is to ensure that the power of judgment can make valid judgments both in the form of simple judgments and complex inferences. Ensuring that reason can legitimately make simple judgments is a step in the process of proving reason's ability to make valid judgments in general. Although Kant singles out the power of judgment as the faculty of judgment, it does not make its judgments in isolation: inferences of reason in the narrow sense are also judgments.

[456] See The Garve/Feder Reviews in *Kant's Early Critics*, 53-80.
[457] MS, AA 06, 313.

Kant's account of judgment in the first *Critique* has to mediate between two pitfalls; on the one hand, it should permit interpretation of a priori laws to avoid dogmatism, while on the other hand, it must limit this freedom to avoid cognitive illusions and abuse of metaphysical concepts. As a reflection of this dilemma, Kant includes a canon guiding the correct application of concepts, but he also writes that the power of judgment is not regulated by explicit law, rather, it is "a special talent that cannot be taught but only practiced."[458] Kant must account for how the power of judgment can remain an intangible talent but also be restricted by a canon indicating the correct application of concepts. As a special talent, the power of judgment is sharpened by experience and the use of examples rather than explicit rules. Still, the transcendental doctrine of the power of judgment includes an a priori account of the proper application of the pure concepts of the understanding. The canon is an attempt at taming the power of judgment as an ineffable talent and giving it explicit rules for the application of concepts, which is in apparent conflict with the idea that the power of judgment is not restricted by explicit rules for the application of concepts.[459]

The idea that the application of concepts can be restricted by logic is a property characteristic to transcendental logic. Unlike general logic, transcendental logic can give guidelines for the application of concepts because it takes the content of judgments as well as their form into account.[460] Because transcendental philosophy seeks to legitimize the content of cognition a priori, it also contains indications for how a priori concepts ought to be applied. It is Kant's aim to provide such a guideline for all the higher faculties of the intellect: understanding, power of judgment and reason in the narrow sense.[461] The faculties are distinguished from each other on the basis of their functions; the understanding is the faculty of concepts, the power of judgment that of judgment, and reason is the faculty of inference. The understanding supplies concepts, which contain rules for which intuitions can be subsumed under them. The act of subsuming intuitions under concepts in judgments is performed by the power of judgment. This is why reason and not the power of judgment is assigned the task of being the evaluating judge in some of Kant's juridical metaphors. Legal verdicts are inferences, not judgments, and they are therefore the result of a work of reason in the broad sense since inferences combine the work of all the individual faculties. Inferences have the form of syllogisms and are chains of

[458] KrV, A 133/B 172, CPR, 268. ["ein besonderes Talent sei, welches gar nicht belehrt, sondern nur geübt sein will."]
[459] KrV, A 133/B 172.
[460] KrV, A 135/ B175.
[461] KrV, A 131/B 169.

judgments that function as premises in support of a conclusion. The illusions of pure reason arise when these inferences are carried beyond the sphere of possible experience by following the rules of pure reason.

The normative aspect of cognition is a question of how beliefs that we hold to be true *ought* to comply with a priori laws, although they do not necessarily do so.[462] How can we conceive of the powers of the mind without reverting to psychologism as a causal description of how cognition is generated?[463] In the article "Synthesis, Cognitive Normativity, and the Meaning of Kant's Question, 'How Are Synthetic Cognitions a Priori Possible?", Lanier Anderson frames his inquiry within the normativity of cognition as a mediation between descriptive psychological laws and prescriptive normative laws. When framed in this way, Kant's description of the 'blind' synthesis of imagination seems to be at odds with the prescriptive features of a priori laws. Moreover, this interpretation introduces an unnecessary tension between descriptive and prescriptive laws, which is not present in Kant's account of the normative force of a priori legislation. Kant's references to normative laws as parallel to a priori laws are all references to civil laws as guided by natural right. This conceptual framework does not include a neat distinction between descriptive and prescriptive laws. Instead, it is a framework in which civil legislators endeavor to mirror natural right in their prescriptive laws. Although I am questioning the neat distinction between prescriptive and descriptive laws that Anderson applies to Kant's account of cognition, there is clearly a difference in how Kant conceives of necessary natural rights and contingent civil laws. Infringing civil law is wrong, but not impossible, whereas infractions of the laws of nature are impossible. However, Kant understands the normative force of just civil laws as grounded in their mirroring fundamental structures of reality.[464] Anderson sets up two possible readings of a priori laws as either descriptive or prescriptive, without realizing that both readings rely on a metaphorical account of laws. A priori laws are part of Kant's elaborate web of juridical metaphors, which combine structures from positive and natural right to paint an image of reason as the equivalent of a legal system. These metaphors do not divide laws into prescriptive and descriptive laws; they rely on an account of laws from the natural right tradition which observes no such distinction.

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[462] See Anderson, "Synthesis, Cognitive Normativity, and the Meaning of Kant's Question, 'How Are Synthetic Cognitions a Priori Possible?"

[463] Ferrarin, *The Powers of Pure Reason*.

[464] For a realist account of Kantian ethics, see Watkins and Fitzpatrick, "O'Neill and Korsgaard on the Construction of Normativity" in which the authors argue against O'Neill's and Korsgaard's constructivist readings of Kantian ethics.

Decrees and authorized judgments

Kant sets up two metaphorical alternatives for reason's activity; reason can either rule through authorized judgments or through decrees. Authorized judgments are applications of general laws, and derive their legitimacy from the validity of these laws. Decrees are specific commands that are not derived from a general law. The two types of authority mark the different types of judgments made by critical and dogmatic reason. Dogmatic reason exercises its authority through decrees; since its general laws lead to contradictions as is evident in the transcendental dialectic. A decree is a singular exercise of power, which is not founded in a general law. Decrees are not lawful; they are exceptions to the rule. While reason's authorized judgments draw their authority from general laws, the decrees of dogmatic reason are singular exercises of power. For this reason, dogmatic decrees cannot be given proper deductions. They are mere assertions, which do not depend on a general law. Deductions are proofs which show the validity of a judgment by referring to the general law on the basis of which it was made.[465] Since decrees are not lawful their validity cannot be proven by means of a deduction. The reliance on deductions means that the authority of reason does not depend on the authority of a person or an institution. Any authority in a judgment presupposes the validity of the law. The critique describes reason's authority as legality; judgments are valid if they are made in accordance with valid laws and evaluations of validity must take their legality into account.[466]

Dogmatic reason rules like a despot because it is incapable of forming a coherent philosophical system, which is based on general laws rather than singular cases. As a result, dogmatic reason cannot provide general guidelines for cognition. According to Kant, all cognition is general because it has to be mediated through concepts.[467] There can be no cognition of the particular, which is why dogmatic reason is depicted as a despot rather than a lawful ruler. As mentioned above, Hegel adopts this imagery in the *Phenomenology of Spirit* and uses the notion of legislative reason to accuse Kantian philosophy of being mere empty formalism. Hegel's criticism of legislative reason sets up both alternatives as unsatisfactory; critical reason can never say anything about the particular because all its laws are general, while dogmatic reason cannot organize its distinct claims into a coherent system of knowledge. However, Hegel is missing a step in the juridical nature of reason; Kant's juridical reason is not merely legislative, it is also judicial. It is the judicial nature of reason which allows it to apply its

[465] KrV, A 791/B 819.
[466] KrV, B 96.
[467] KrV, B 96.

general laws to particular cases without resorting to decrees. The notion of reason's authority concerns the entire system which allows general laws to be applied to individual cases. As in Kant's account of judicial authority, reason needs the authority both to claim that its laws are applicable to experience and to making these judgments effective. Hegel's objections to legislative reason only concern the first of these two parts of judicial authority; the authority to claim that facts fall under general laws. But that only the understanding is legislative and lacks the ability to synthesize intuitions and concepts into valid judgments, thereby making its legislation effective, but this activity is provided by reason and the power of judgment.[468]

4.4. Cognition from principles

The juridical metaphors do not merely present reason as a legislator; in the different metaphors, reason is legislator, judge and ruler; it holds all three offices of sovereign power. In the metaphorical account, reason is an entire state under the rule of law and possesses all the structures of a state under the rule of law: reason's *Rechtsstaat*. The accounts of reason's authority as critical or dogmatic are metaphors in which reason is also an executive and not merely a legislator. In accordance with the two different descriptions of how sovereign power is exercised, we are left with two competing metaphorical descriptions of reason as a state: the principality and the republic. On the one hand, reason derives its authority from a family tree (A 82/B 108), from ancestral concepts (A 81/B 107), from a birth certificate (A 86/B 119) or from a royal genealogy (A IX), but on the other hand reason as a republic is an authority within which everyone has a voice (A 752/B 781) and in which everyone can express their veto (A 738/B 766). Only the first of these metaphorical clusters fits with the successional reading of the transcendental deduction: If the transcendental deduction were merely a proof of the validity of the categories through their origin in the transcendental apperception, then reason would be a principality rather than a republic.[469] However, this reading leaves out the institutional aspect of reason's authority: Reason's authority is not based on the origin of its concepts – it is based on their systematicity as laws of experience which allows reason to make valid judgments about experience using the a priori concepts that are necessarily part of all thinking. Without the systematicity of reason's authority, the transcendental deduction becomes meaningless. If we read the juridical metaphors as indicators of argument structure rather than the function of an

[468] KrV, A 651/B 679.
[469] Against this reading one might argue that also the transcendental apperception remains the same for all finite rational beings, which would make reason republican anyway.

argument for the establishment of reason as a structure which is similar to a legal system, then the larger picture becomes lost. It tells us nothing about reason, only about philosophical method.

Kant repeatedly explains the difference between the critical and the dogmatic philosopher in legal terms: While the authority of the *Critique* is a legitimate authorization, the dogmatist's claim to authority is a mere pretension (*Anmaßung*), which has no legal foundation. This is the description from the point of view of the critique as judge. From the legislative point of view, the difference between the two approaches is also worded in legal terms: The critique bases its legislation on the rule of law (*rechtlicher Zustand*), while the dogmatists must resort to decrees because he is unable to create a coherent system.

The purpose of the system of pure reason is not to eradicate metaphysics or avoid cognitive illusions completely. Instead, its purpose is to set up procedures that allow us to identify and remedy mistakes made in wrongful uses of reason. The continued permission to use the ideas of pure reason regulatively shows that it is part of reason's activity to push against its own boundaries. What Kant is offering is not a system of knowledge, but a system that guides the acquisition of knowledge. Reason does not govern by means of decrees, meaning critical epistemology and metaphysics do not provide answers to specific questions isolated from experience. The *Critique of Pure Reason* can give procedures for good epistemic behavior, but it cannot indicate exactly which judgments make up cognition. This will depend on confirmation in experience, not on epistemology or metaphysics. This, again, is a parallel to a state under the rule of law. Here no judgments of particular cases are given in the law books, instead general rules, concepts and procedures are provided which ensure an outcome that is valid within that particular system. No verdicts on particular cases are given in the law.

The juridical metaphors point to the central question of the *Critique of Pure Reason*: Does reason broadly construed have competence to make valid judgments about empirical phenomena? The answer lies in the image of the establishment of a state under the rule of law: Just as it is meaningless for a civil authority to claim competence outside of the civil state, it is also meaningless for reason to claim authority before it has established a system within which this authority is legitimate. Authority as competence is only granted by virtue of the lawfulness of the system.

Reason's authority to judge must be proven for both simple judgments and more complicated inferences. Kant places both of these in the same category; inferences are merely a more elaborate type of judgment, not the result of a completely different act. Unlike simple judgments,

inferences are mediated judgments, but they depend on the same structure of synthesis. However, there is a difference in their validity. While there is a canon for the correct application of concepts and making of immediate judgments, there is no canon for inferences.[470] Inferences follow the structure of Aristotelian syllogisms, but Kant gives no separate proof that this structure provides valid judgments. This is partly because inferences are not valid by virtue of their structure alone, but by in virtue of their content. Transcendental logic is not a formal logic; it also takes the content into account in its proofs. The transcendental dialectic departs from syllogistic logic as a logic that brings with it the risk of cognitive illusion. These illusions arise when formal validity is conflated with the validity of content.

Kant had already published his criticism of the division of syllogisms into four distinct figures in his pre-critical treatise *On the False Subtlety of Four Syllogistic Figures* (1762). There he defines the ground of all affirmative syllogisms as "that which is universally affirmed of a concept, is also affirmed of everything subsumed under that concept."[471] Already in this treatise Kant defines syllogisms as mediate judgments and the human intellect as a judging faculty. "[A] *distinct* concept", he writes, "is only possible by means of a *judgment*."[472] Here Kant maintains that to recognize a difference between two things is to make a judgment, and concepts are only distinct when they are expressed in judgments. This is the line of thought that Kant continues in his account of judgment as the fundamental structure of cognition in his critical works. Kant argues that the rationalist account of clear and distinct ideas is merely judgment in disguise. An idea can only be distinct if it is judged to be different from other ideas. Distinguishing is consequently a form of judging and distinct ideas thus presuppose an act of judging.[473]

Although Kant argues that judgments and inferences are the results of the same activity of judging, inferences risk the mistakes that are documented in the Transcendental Dialectic.[474] The merely regulative use of the ideas of reason does not give precise instructions for how to proceed in inferences. There is no canon of pure reason in the narrow sense, meaning there is no correct way of applying the ideas of reason, but they are nevertheless permitted as a guide

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[470] KrV, A 131-132/B 170-171.
[471] *On the False Subtlety*, AA 02, 49, *Theoretical Philosophy, 1755-1770*, 91. ["Was von einem Begriff allgemein bejaht wird, wird auch von einem jeden bejaht, der unter ihm enthalten ist."]
[472] *On the False Subtlety*, AA 02, 58, *Theoretical Philosophy, 1755-1770*, 102. ["daß ein deutlicher Begriff nur durch ein Urtheil, ein vollständiger aber nicht anders als durch einen Vernunftschluß möglich sei."]
See also Vanzo, "Kant's False Subtlety of the Four Syllogistic Figures in Its Intellectual Context."
[473] KrV, A 11/B 14.
[474] The question of whether reason's inferences are valid is complicated by the regulative use of the ideas of reason, which guide the combination of judments in inferences but do not warrant their validity.

for inferences. Simple judgments are guided by laws which guarantee that there is a possible relation between the judgment and an object. However, it is not possible to give laws for inferences. They are guided by principles that suggest certain applications but do not give precise indication of whether or not an inference is valid. As a result, inferences are more prone to error than direct judgments and they easily lead us beyond the domain of possible experience.

Despite Kant's reservations regarding inferences, he does not reject their use. Inferences can bring new cognition and expand what is contained in simple judgments. In the *Doctrine of Right*, legal adjudication is an example of a valid inference that guarantees an outcome in accordance with civil laws. The judicial inference is a pronouncement of a verdict that absolves or convicts an accused which follows from the application of a law to a case.

In the introduction to the Transcendental Dialectic, Kant defines reason as the faculty that gives unity to the rules of the understanding by uniting them under principles.[475] This process falls into either a logical or a real use; it can either order the judgments of the understanding logically or attempt to relate to objects independently. Both the logical and the real use have the same form. In both, reason unites the judgments of the understanding under principles by means of inferences since "every syllogism is a form of derivation of a cognition from a principle."[476]

In the logical use, reason seeks to unify the cognitions provided by the understanding by uniting them syllogistically under principles. Kant describes this use of reason as a collaboration between the understanding, the power of judgment and reason:

> In every syllogism I think first a *rule* (the *major)* through the understanding. Second, I *subsume* a cognition under the condition of the rule (the *minor*) by means of *the power of judgment*. Finally, I determine my cognition through predicate of the rule (the *conclusio),* hence *a priori* through *reason*.[477]

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[475] "If the understanding may be a faculty of unity of appearances by means of rules, then reason is the faculty of the unity of the rules of understanding under principles. Thus it never applies directly to experience or to any object, but instead applies to the understanding, in order to give unity *a priori* through concepts to the understanding's manifold cognitions, which may be called "the unity of reason," and is of an altogether different kind than any unity can be achieved by the understanding." KrV, A 302/B 359, CPR 389. ["Der Verstand mag ein Vermögen der Einheit der Erscheinungen vermittelst der Regeln sein, so ist die Vernunft das Vermögen der Einheit der Verstandesregeln unter Principien. Sie geht also niemals zunächst auf Erfahrung oder auf irgend einen Gegenstand, sondern auf den Verstand, um den mannigfaltigen Erkenntnissen desselben Einheit *a priori*
durch Begriffe zu geben, welche Vernunfteinheit heißen mag und von ganz anderer Art ist, als sie von dem Verstande geleistet werden kann.]

[476] KrV, A 300/B 357, CPR, 388. ["So ist den ein jeder Vernunftschluß eine Form der Ableitung einer Erkenntniß aus einem Princip."]

[477] KrV, A 304/B 360, CPR, 390. ["In jedem Vernunftschlusse denke ich zuerst eine *Regel* (*major*) durch den *Verstand*. Zweitens *subsumiere* ich ein Erkenntniß unter die Bedingung der Regel (*minor*) vermittelst der *Urtheilskraft*. Endlich bestimme ich mein Erkenntniß durch das Prädicat der Regel (*conclusio*), mithin *a priori* durch die *Vernunft*."]

To explain this process we can consider Kant's example of an intermediate judgment to establish the conclusion that all scholars are mortal: The rule "All humans are mortal" is first thought through the understanding and functions are the major premise of the syllogism. Then a cognition is subsumed under the rule by the power of judgment to create the minor premise: "All scholars are human". Finally reason draws the conclusion "All scholars are mortal", which is a determination of the minor premise through the rule expressed in the major premise. In addition, Kant specifies that the syllogistic reasoning can also flow in the opposite direction when the conclusion is "given as a task" (*aufgegeben*) for which reason seeks a suitable rule among the cognitions of the understanding.[478]

4.5. Reason's legislation

We have seen that the understanding is legislative and that it prescribes laws to experience as is proved in the transcendental deduction. The transcendental validity of the categories means that judgments made in accordance with the categories have a real use, meaning that they relate to possible objects of experience. We have seen that Kant sets up the Transcendental Dialectic as an investigation of whether reason understood as the faculty of inference has a real use that applies to possible objects of experience. In the real use, reason attempts to generate concepts and refer directly to objects.

Already in the Introduction to the Transcendental Dialectic, Kant cautions against reason's use of principles pointing out that they do not relate to objects independently of the understanding. The problem with reason's inferences is that "such a principle does not prescribe any law to objects."[479] Through the Transcendental Dialectic, Kant shows that reason's three ideas of the soul, the world as a whole and God lead to contradictory judgments which falsify reason's claim to providing a coherent legislation for possible objects of experience.[480] Instead, reason is allowed to use its ideas regulatively to direct the understanding towards an ideal of a unity through which the cognitions of the understanding are ordered into a systematic whole rather than a mere aggregate.[481]

Kant describes this proper regulative use of reason in the Appendix to the Transcendental Dialectic, which I read as providing the principles for any use of the understanding and not

[478] KrV, A 304/B 361.
[479] KrV, A 306/B 362, CPR, 391. ["ein solcher Grundsatz schreibt den Objecten kein Gesetz vor".]
[480] A possible interpretation of this demand is that contradictory claims annul one another, thus leaving the proposed objects of a contradictory law as non-entities. I thank Eric Watkins for this observation.
[481] KrV A 644-645/B 672-673.

merely to scientific investigations, even though most of the examples in this section concern scientific experiments.[482] Kant here introduces three logical principles of systematic unity, homogeneity, specification and continuity, which can never be met in experience, but nevertheless guide any empirical investigation.[483] Through these principles, "[r]eason thus prepares the field for the understanding"[484] and guides the ways in which the understanding searches for regularity. These principles are consequently presupposed in any synthetic unity provided by the understanding, not merely in scientific endeavors, because the ideas of reason function as "a rule or principle of the systematic unity of *all use of the understanding*."[485] Reason thus turns out to be legislative not in regard to nature, but in regard to the understanding. Reason guides the understanding both by ordering its cognitions into a systematic unity and by challenging the understanding to investigate nature for new cognitions that would function as principles or conclusions for other cognitions.

Through the idea that reason guides the understanding, Herder's dilemma reemerges: if reason can be tricked by cognitive illusions, how can it reliably guide understanding in its search for systematic knowledge? But without the unification provided by pure reason, our thought activity would stop at isolated judgments without any connecting inferences. The purpose of the transcendental dialectic is to assign a proper place to the ideas of pure reason as driving forces of inferences rather than sources of cognition. Again, the understanding cannot function without inferences, since separate judgments do not form a coherent belief system. Simple judgments are tied together when they are synthesized into inferences by means of reason in the narrow sense. Although Kant sustains that the judging activity is the same in judgments and inferences, there are many more pitfalls in complex inferences than in simple judgments. Simple judgments are only a combination of a concept and an intuition, whereas inferences combine at least two different judgments to form a third one. However, the regulative use of the ideas of reason stays within the field of possible experience and any arising illusions can therefore be falsified by experience.

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[482] For readings of the appendix as concerned with scientific methodology, see Krausser, "Kant on the Hypothetical Employment of Reason in Science" and Wartenberg, "Reason and the Practice of Science." Wartenberg explains the use of theoretical ideas in science as a reformuation of Kant's account of cognition: "science without experimentation is empty, experimentation without ideas is blind." Ibid., 243.
[483] KrV, A 657/B 685.
[484] KrV, A 657/B 685, CPR, 598. ["Die Vernunft bereitet also dem Verstande sein Feld."]
[485] KrV, A 665/B 693, CPR, 603. (my emphasis) ["eine Regel oder Princip der systematischen Einheit alles Verstandesgebrauchs."]

4.6. Reason as judge

The thinking self

Kant claims that we can only know ourselves as phenomenal objects; our only access to our own being is by means of the inner sense. The transcendental strategy of the first *Critique* circumvents this opacity by showing the conditions of the possibility of our phenomenal experiences. The question I wish to raise in the following is whether the noumenal self can be seen as the judge at the critical tribunal? Answering this question requires a brief detour into Kant's philosophy of the mind and his account of the soul as it is presented in the paralogisms of pure reason and the transcendental deduction.

We have seen that reason has two different internal tribunals; critical reason is the speculative inner tribunal and moral conscience is the practical inner tribunal. In the juridical scheme of moral conscience, Kant specifies a task for each of the higher faculties: The understanding is the legislator, the power of judgment is the accuser and reason is the judge.[486] I understand the separation as indicating which part of the practical syllogism the different faculties are responsible for: The understanding prescribes the moral law as the major premise, the power of judgment subsumes the act under the moral law and reason finally judges whether the act was morally right or wrong. As we saw in section 4.2, we reencounter this same scheme in Kant's account of the three powers of government, but there they are not related to a judgment. Instead, they concern the logical relationship between the three branches of government.[487] Although Kant compares the intellect to a tribunal in the first *Critique*, he does not specify whether he conceives of the faculties as carrying out their tasks in accordance with this scheme. However, his account of the task of the three higher faculties in a syllogism fits the idea that the understanding is legislative, the power of judgment executive and reason is the judge.

Apart from the idea that the three higher faculties fit the scheme of a judicial syllogism, the parallel with moral conscience also raises the question of the individual thinker: Does the critique allow an individual thinker to evaluate his own thought activity objectively? In moral conscience, the noumenal self judges the phenomenal self and the distinction between the two ensures that the procedure is both internal and objective; the accused and the judge are two

[486] Ref 6815, AA19, 170. ["Das Gewissen ist also ein Gerichtshof, in dem der Verstand der Gesetzgeber, die Urtheilskraft der Ankläger und Sachwalter, die Vernunft aber der Richter ist."]
[487] MS, AA 06, 313.

separate aspects of the same person. The *homo phenomenon* performs the act and the *homo noumenon* judges as a natural instinct, not a cognitive faculty. Might this division also apply to the theoretical use of reason or it is limited to the application of practical reason to actions?

For reason to be a disinterested judge, it must be separate from the individual who makes judgments. The critique is based on this separation which allows pure reason to judge reason's claim to judicial authority in abstraction from particular interests. However, pure reason as we meet it in the *Critique of Pure Reason* does not make judgments since it is an impersonal rational structure which all uses of reason presuppose. Instead, judgments are made by individuals who make use of their rational faculties and also link judgments with cognitive attitudes. The activity of judging, and in particular the application of cognitive attitudes, can only take place at an individual level and not at the level of the intellectual faculties. Pure reason alone cannot make judgments and even less evaluate judgments that are held to be true. These processes are carried out by thinking individuals, who use their cognitive faculties to make judgments and take on different cognitive attitudes towards their judgments. Their rational faculties possess the a priori structures that are explicated in the *Critique of Pure Reason*.

Can we apply the noumenal/phenomenal distinction from moral conscience to the tribunal of reason? If we interpret the noumenal intellect as the judge, then the phenomenal intellect does the actual thinking which is under review. The idea would be that any rational thinker can take up the position of the judge and authoritatively distinguish between legitimate and illegitimate uses of reason.[488] The individual, phenomenal thinker cannot claim authority in judgment on his own account, and his claim to cognitive authority therefore depends on the shared structure of the noumenal self. An evaluation by a thinking noumenal self would entail a detachment from the interests and goals of the phenomenal self, much like the noumenal self detaches itself in order to evaluate the moral acts of the phenomenal self.

To understand whether this is a viable interpretation, we need to understand Kant's account of empirical thinking selves and their use of the cognitive faculties. In the practical case, the moral agent is separated into a phenomenal and a noumenal self. Transferring the separation of the noumenal and the phenomenal self to Kant's theoretical philosophy is not completely straightforward. Kant's explicit account of the different aspects of the thinking agent is found

[488] This section is a consideration of what it might mean to take up the standpoint of reason in Kant's juridical account. Konstantin Pollok has argued that "the standpoint of reason's legislation that we, as *homines noumena*, are able to grasp and, at the same time, are required to assume in order for our judgments to have objective validity." (Pollok, *Kant's Theory of Normativity: Exploring the Space of Reason*, 18) My analysis of the juridical metaphors agrees with this point, however, it shows that Pollok is missing an analysis of the many different ways in which a thinker might take up this standpoint.

in the paralogisms, but this account depends on the argument given in the transcendental deduction. Here the differences are between the transcendental unity of apperception, the noumenal self and the phenomenal thinking self as observed through the inner self. The notion of the inner sense is further complicated by Kant's struggle with whether observing one's own thoughts can be characterized as an empirical experience. The practical agent is present in the empirical world and can be observed by both the inner and the outer senses. In contrast, the phenomenal thinking self can only be observed though the inner sense and as part of an individual consciousness. The transcendental unity of apperception is not personal, it is not part of a particular self, but is rather the synthetic unity which is presupposed in any thought process.

Kant introduces the difference between the phenomenal self and the transcendental unity of apperception in the transcendental deduction. He argues that an accompanying "I think" ties all representations together as the representations of a single thinker. However, the accompanying "I" is not the phenomenal self as an object of experience nor a noumenal self. The transcendental apperception does not make judgments and cannot evaluate whether the judgments made by the phenomenal self are valid; it merely designates the conditions of possibility of any synthesis. Isolated from a thought process, the transcendental unity of apperception can neither judge nor evaluate judgments. The problem of reason's authority is a problem of rational individuals' authority to claim that their judgments are valid and that they can rightfully hold them to be true. If reason is authoritative, then other rational thinkers will recognize this claim and be able to make the same evaluation.

In the B-deduction, Kant distinguishes between the 'I think' of the transcendental unity of apperception and the 'I' that intuits itself. He thus reformulates the traditional notion of apperception, which denoted the intuition of one's own thoughts:

> But how the I that I think is to differ from the I that intuits itself (for I represent other kinds of intuition as at least possible) and yet be identical with the latter as the same subject, how therefore I can say that *I* as intelligence and *thinking* subject cognize myself as an object that is *thought* […] we cognize our own subject only as appearance but not in accordance with what it is in itself. [489]

The object and subject of representation are one and the same 'I' but they are distinguished as intuiter and intuited, active and passive, in the observation through the inner sense. This, however, is the only object of rational psychology. Once a content beyond "I think" is added to an

[489] KrV, B 155-156, CPR, 258-259. ["Wie aber das Ich, der ich denke, von dem Ich, das sich selbst anschauet, unterschieden (indem ich mir noch andere Anschauungsart wenigstens als möglich vorstellen kann) und doch mit diesem letzteren als dasselbe Subject einerlei sei, wie ich also sagen könne: Ich, als Intelligenz und *denkend* Subject, erkenne mich selbst als *gedachtes* Object […] unser eigenes Subject nur als Erscheinung, nicht aber nach dem, was es an sich selbst ist, erkennen."]

inner consciousness of one's own thought, the activity becomes that of empirical psychology: "The least object of perception (e.g., pleasure or displeasure), which might be added to the general representation of self-consciousness, would at once transform rational psychology into an empirical psychology."[490] Following this definition, the observation of one's own thinking self is the topic of empirical rather than rational psychology, the latter of which is the topic of the paralogisms of pure reason. On the other hand, the representation of the 'I think' is a thought rather than an intuition and is therefore not an affection through the inner sense. This means that we can only cognize ourselves as we appear to ourselves, not as we are.[491]

In the paralogisms, Kant discusses the idea of a thinking self in general; a self whose thought activity is limited to the "I think" and whose self-consciousness is not distracted by any other content. He then pushes the study of any other content and the awareness of this into the discipline of empirical psychology. However, the first *Critique* as any other epistemological investigation contains a reflexive approach to many other thought contents; they are studies of the thinking mind, whose thoughts go far beyond the "I think". [492] How these thoughts are combined is not merely a topic for empirical psychology, it is a problem for pure reason. The entire investigation circles around how different thought processes can be legitimate, but the endeavor collapses if it does not apply to actual thought processes. In fact, our awareness of the content of our own thoughts is not only an empirical experience; it is a transcendental awareness.[493] The study of our own thought is not only a question of empirical psychology; if it were, the critique would have no a priori validity.

Status of a priori laws

Since the first *Critique* treats the question of pure theoretical philosophy, it contains little about the relationship between the individual will and a priori laws.[494] As a priori structures, these laws do not depend on being instituted by an act of the will. I have therefore argued that it is only meaningful to liken a priori laws to natural right in a non-voluntarist conception, which

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[490] KrV, A 343/B 401, CPR, 442. ["Das mindeste Object der Wahrnehmung (z.B. nur Lust oder Unlust), welche zu der allgemeinen Vorstellung des Selbstbewutseins hinzu käme, würde die rationale Psychologie sogleich in eine empirische verwandeln."]
[491] KrV, B 157-158.
[492] I am here not using 'reflection' in Kant's terminology. In the *Critique of Pure Reason*, reflection is the ability to reflect on the similarities of different intuitions to form concepts. KrV, B 317. See also Liedtke, "Der Begriff der Reflexion bei Kant" for an overview of how this concept was used by Kant's rationalist predecessors.
[493] In Kant's reflections, he considers the question whether we experience our own thinking. Here he remarks that the awareness of a particular thought is not empirical experience, but rather transcendental consciousness. Ref 5661, AA 18, 318-320.
[494] On the relationship between pure reason and the thinking individual, see Falduto, *The Faculties of the Human Mind and the Case of Moral Feeling in Kant's Philosophy*.

does not allow the bindingness of natural right depend on the will of a superior. Kant's parallel is closer to the rationalist account of natural right, in which the bindingness of natural right depends on shared rational structures. We have seen that Kant adopts many points from the natural right tradition, but he also raises a number of critical objections against it, particularly against the conception of law it presupposes.[495] In the *Naturrecht Feyerabend*, he states that the point on which "all the teachers of natural right have erred"[496] is that actions which are determined by externally imposed laws are not free. When natural right theorists include the laws of human interaction among the laws of nature, they deny freedom of action. Kant therefore proposes to distinguish between two different types of lawful structures that bring about events in the world: laws of nature and laws of freedom.[497]

Given the distinction between laws of freedom and laws of nature, we may wonder which category a priori laws belong to: Are they laws of nature or laws of freedom? They do not determine thought; an individual can use his mental faculties to freely decide the content of his thoughts, he is free to make whichever logical fallacies and unjustified claims he pleases. However, once he holds his thoughts to be true, they must live up to a priori laws. A priori laws determine which judgments are valid and which are not. Unlike civil laws, which prescribe a certain type of behavior, a priori laws describe regularities that are present in all cognition, but not in all thought; it is possible to think without cognizing.

Epistemic authority is not just about how judgments are made, it is also relevant which cognitive attitudes the thinking individual attaches to his judgments. It is not sufficient for judgments to be valid; they must also be approached with the appropriate cognitive attitude. An epistemologically responsible individual is allowed to make judgments for which there is no objective warrant. He is, however, not allowed to claim that these judgments amount to cognition. He must, in other words, associate his judgments with the correct cognitive attitude

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[495] For a reading of Kant's account of law as operating within the natural right tradition, see Vigo, "Kant's Conception of Natural Right."

[496] Feyerabend, AA 27, 1322. ["Alle Lehrer des Naturrechts haben um den Punkt geirret".]

[497] Feyerabend, AA 27, 1322. See also Sadun Bordoni, "Some Notes on Law, Reason and Moral Sentiment in the Kantian Lectures on Natural Law," 203.
In the *Critique of Practical Reason*, Kant explains that laws of freedom follow the structure of the laws of nature; in fact, the laws of nature are the type whose form practical judgments follow: "Hence it is also permitted to use *the nature of the sensible world* as the *type* of an *intelligible nature*, provided that I do not carry over into the latter intuitions and what depends upon them but refer to it only the *form of lawfulness* in general (the concept of which occurs even in the most common use of reason, although it cannot be determinately cognized a priori for any purpose other than the pure practical use of reason." KpV, AA 05, 70, *Practical Philosophy*, 197. ["Es ist also auch erlaubt, die *Natur der Sinnenwelt* als *Typus* einer *intelligibelen Natur* zu brauchen, so lange ich nur nicht die Anschauungen, und was davon abhängig ist, und diese übertrage, sondern blos die *Form der Gesetzmäßigkeit* überhaupt (deren Begriff auch im gemeinsten Vernunftgebrauche stattfindet, aber in keiner anderen Absicht, als blos zum reinen praktischen Gebrauche der Vernunft *a priori* bestimmt erkannt werden kann) darauf beziehe."]

as indicated in Kant's typology of the different cognitive attitudes. Thinking without cognizing is not problematic; problems arise when we attach the wrong attitudes to our thinking. Kant classifies the possible cognitive attitudes as having an opinion (*meinen*), believing (*glauben*) and holding to be true (*fürwahrhalten*). These attitudes are a result of an individual's will in relation to his own judgments. They are not part of the *a priori* structures of pure theoretical reason, which does not include the will. The cognitive attitudes introduce a practical aspect into the edifice of speculative reason. A priori laws are only normative in the evaluation of judgments that are held to be true.[498] By criticizing reason, Kant intends to make single individuals into judges of judgments. The evaluated judgments are judged by different criteria depending on the cognitive attitudes attached to them. Judgments are in other words considered as the result of an individual intellect's cognitive activity which associates a cognitive attitude with the judgment.

Judgments are valid if they are made by means of a valid procedure, but the validity of a judgment does not guarantee that it makes up cognition. Instead, validity is a minimal requirement which makes the judgment a candidate for cognition. Whether an empirical judgment makes up cognition does not only depend on its being a valid combination of intuitions and concepts. In addition, they must accord with experience, either as verified by experience or as its a priori presupposition.

Cognitive attitudes emphasize the difference between the descriptive and the normative aspects of a priori laws. The laws have a descriptive aspect as the conditions of the possibility of experience; in their descriptive application, there is no possibility of disobeying a priori laws. From this perspective, understanding is the lawgiver of nature; it shapes the objects of experience by prescribing laws to which these necessarily conform. This shaping takes place independently of the individual will; no separate act is required from the individual cognizer beyond that of intuiting and thinking. The understanding thus functions as the legislation of nature as an object of experience. The *Critique* maps this descriptive legislation and thus determines the structures presupposed by all experience.

The details of this line of inquiry are left to the descriptive natural sciences which map the necessary laws of nature. The laws of experience are the laws of nature which we need to verify *a posteriori* through experiments. A priori laws are the principles that make it possible for the laws of nature to be discoverable rationally. They are general principles according to which

[498] Tolley, "Kant on the Nature of Logical Laws."

intuitions are synthesized first in objects of experience and secondly in judgments. But even though the a priori laws determine the features of experience, they do not determine our thoughts. Instead, the a priori laws indicate which parts of our thinking qualify as cognition, and they allow us to evaluate whether different uses of reason qualify as cognition. The a priori laws are not descriptive laws of rational activity; they are conditions of the possibility of having experience. It is possible to think without abiding by the a priori laws, which is why these are both constitutive and normative; they are constitutive of cognition and normative of thought.

Conclusion

Unlike the descriptive laws of nature, the legislation of reason can be broken, and the infractions lead to unreliable, invalid judgments. By justifying the application of the categories to experience, the first *Critique* introduces a distinction between judgments that comply with these justified regulations and those that do not. The latter are not prohibited; they are tolerated as long as they are associated with the correct cognitive attitude. The legislation of reason, in its normative application, allows us to distinguish between these cases and sanction the latter accordingly if they are associated with the wrong cognitive attitude. The only judgments that can legitimately be held to be true are valid judgments. If an individual makes invalid judgments, he must take them to be merely belief or opinion, not knowledge. Given the structures of pure reason, the task of the individual cognizer is to distinguish between valid and invalid judgments and approach them with the right cognitive attitudes.

It is thus not straightforward to transfer the model of moral conscience to the critique of reason. Nevertheless, the critique provides a procedure to scrutinize claims to knowledge and clarify the rational tenure of opposing claims. The purpose of the critique is thus not to eradicate conflict but rather to provide a decision procedure, a method to decide such conflicts. We have seen that the faculty responsible for reason's systematicity is reason as the faculty of inference. I have argued that the Appendix should be read as an account of all cognition and not merely scientific method. I have thus read the legislation of reason in the narrow sense as an active force in the understanding's creation of judgments. While the understanding achieves cognition through judgments, reason in the narrow sense provides the justification behind these judgments and decides which of the understanding's judgments are possible candidates for new cognition.

5. THE NOMOTHETICS OF PURE REASON

So far I have explored all the aspects of a legal system as a prism through which to understand Kant's account of the intellect; we have seen how the critique assesses proposed legislation and adjudication. Now the time has come to see how all these pieces fit together: I this chapter, I argue that the juridical metaphors form an account of philosophical systematicity as legal systematicity. By legal systematicity, I understand a structure which warrants inferences on the basis of general laws, and which contains a procedure to decide cases of inner conflict. All proposed new laws must fit the principles according to which this structure is organized and contradictions in adjudication nullify any proposed new laws. This structure determines which specific laws of nature can be ascribed to appearances, how the power of judgment can subsume new cases under these laws and how reason can draw inferences on the basis of the other two operations. If we understand a system of philosophy as a legal system, then the work of the critique consists in the nomothetics of pure reason.

In this chapter, I elaborate further on the idea of legal systematicity by reviewing Kant's account of systematicity in the Appendix to the Transcendental Dialectic and the Doctrine of Method. My claim is that the *Critique of Pure Reason*, understood as a treatise on the method provides the nomothetics of all future legislative attempts. In the first section, I account for Kant's three most common metaphors of systematicity: the organism, the edifice and the legal system, and I argue that the legal system encompasses more features of philosophical systematicity than the other two. In the second section, I relate the notion of systematicity to the critique's skeptical method. In the third section, I argue that the Appendix should not be read as a special account of scientific systematicity, but as an account of the systematicity of all cognition, in which the transcendental principles of reason have objective but indeterminate validity. In the final section, I argue that the critique of pure reason provides the nomothetics of pure reason by providing the principles to which all adjudication and legislation applying to the objects of experience must conform.

5.1. The organism, the edifice and the legal system

Kant distinguishes between a system of transcendental philosophy and a system of all empirical knowledge. While the systematicity of empirical knowledge is a regulative ideal which can

never be achieved, Kant strived to provide a complete system of philosophy, for which the first *Critique* would provide the methodological foundation.[499] A system of philosophy provides the a priori principles for all empirical knowledge, but these principles are not axioms from which cognition can be deduced. Instead, these a priori principles indicate the form of all empirical knowledge, and their content is given through intuition. Space and time indicate the a priori forms of all intuition, the categories give the a priori forms of all cognition, the power of judgment provides the a priori capacity of subsumption, and, as I argue in the section 5.2, reason gives the a priori principles of all systematic knowledge. A system of transcendental philosophy thus provides the structure of the whole system of knowledge but not its content.

Kant illustrates what he understands by systematic knowledge using three main images: the organism, the edifice, and the legal system.[500] All three images are dynamic; the organism develops from an embryo, the edifice is constructed from building material, and the legal system is constituted to replace the state of nature. All three develop in accordance with particular constitutive laws; the organism grows teleologically, the edifice is constructed respecting the laws of nature, and the legal system is instituted to incorporate and recognize natural right.[501] These three entities come into being and make up coherent unities because they are lawful; the embryo becomes a fully developed organism, the edifice proves sturdy and unyielding, and the legal system reliably ensures justice and peace for its citizens. These are qualities that are emphasized by all Kant's metaphors for systematicity. But separately, the three images also emphasize different properties of the notion of a system.

The organism metaphors emphasize the unity and completeness of a system whose parts are articulations of the whole, like the limbs of a body:

> The whole is therefore articulated (*articulatio*) and not heaped together (*coacervatio*); it can, to be sure, grow internally (*per intus susceptionem*) not externally (*per appositionem*), like an animal body, whose growth does not add a limb but rather makes each limb stronger and fitter for its end without any alteration of proportion.[502]

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[499] On Kant's account of philosophical method, see Kaulbach, "Dialektik und Theorie der philosophischen Methode bei Kant."

[500] Another common systemic metaphor is that of a science (*Wissenschaft*) but since Kant's explicit aim is to rethink philosophy as a science, I do not include science as an illustrative metaphor.

[501] Alfredo Ferrarin has pursued the tension between the presentation of reason as a naturally developing organism and as an edifice planned and pursued by an architect in Ferrarin, *The Powers of Pure Reason*. The relationship between Kant's notion of architectonic and systematic is explored in the volume Fulda and Stolzenberg, *Architektonik und System in der Philosophie Kants*.

[502] KrV, A 833/B 861, CPR, 691. ["Das Ganze is also gegliedert (*articulation*) und nicht gehäuft (*coacervatio*); es kann zwar innerlich (*per intussusceptionem*), aber nicht äußerlich (*per appositionem*) wachsen, wie ein thierischer Körper, dessen Wachstum kein Glied hinzusetzt, sondern ohne Veränderung der Proportion ein jedes zu seinen Zwecken stärker und tüchtiger macht."]

The organic metaphors emphasize the idea that a system is an articulated unity, to which nothing can be added or subtracted without compromising the whole.[503] The idea of systematic unity is repeated in both the images of law and architecture, but the organic metaphors emphasize the teleological character of this unity.[504]

In the Discipline of Pure Reason, Kant adds the example of a sphere as another image which illustrates the unity of reason in the broad sense:

> Our reason is not like an indeterminably extended plane, the limits of which one can cognize only in general, but must rather be compared with a sphere, the radius of which can be found out from the curvature of an arc on its surface (from the nature of synthetic *a priori* propositions), from which its content and its boundary can also be ascertained with certainty.[505]

Unlike an extended plane, a sphere is a complete whole with natural boundaries; the boundaries of a whole differ from artificial limits by being determinate.[506]

The image of the sphere enforces the idea of natural unity by showing how reason is kept within boundaries which are determined by its principles rather than artificial limits. However, the sphere cannot illustrate reason's development. This development is illustrated by the organic metaphor showing the development of reason, which ends up leading metaphysics astray. Kant illustrates this development in analogy with the development of a human being from reason's dogmatic childhood, through its skeptical adolescence to its critical maturity:

> The first step in matters of pure reason, which characterizes its childhood, is *dogmatic*. The just mentioned second step is *skeptical*, and gives evidence of the caution of the power of judgment sharpened by experience. Now, however, a third step is still necessary, which pertains only to the mature and adult power of judgment, which has at its basis firm maxims of proven universality, that, namely, which subjects to evaluation not the *facta* of reason but reason itself, as concerns its entire capacity and suitability for pure *a priori* cognitions; this is not the censorship but the *critique* of pure reason[507].

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[503] "in an organized body, every part exists for the sake of all the others as well the others exist for its sake, and no principle can be taken with certainty in *one* relation unless it has at the same time been investigated in its *thoroughgoing* relation to the entire use of reason." KrV, B XXIII, CPR, 113-114. ["in einem organisirten Körper um aller anderen und alle um eines willen dasind, und sein Princip mit Sicherheit in *einer* Beziehung genommen warden kann, ohne es zugleich in der *durchgängigen* Beziehung zum ganzen reinen Vernunftgebrauch untersucht zu haben."]

[504] For a discussion of the organic conception of reason, see Zöller, "Metaphor or Method. Jennifer Mensch's Organicist Kant Interpretation in Context."

[505] KrV, A 762/B 790, CPR, 655. ["Unsere Vernunft ist nicht etwa eine unbestimmbar weit ausgebreitete Ebene, deren Schranken man nur so überhaupt erkennt, sondern muß vielmehr mit einer Sphäre verglichen werden, deren Halbmesser sich aus der Krümmung des Bogens auf ihrer Oberfläche (der Natur synthetischer Sätze *a priori*) finden, daraus aber auch der Inhalt und die Begrenzung derselben mit Sicherheit angeben läßt."]

[506] KrV, A 761/B 789.

[507] KrV, A 761/B 789, CPR, 654. ["Der erste Schritt in Sachen der reinen Vernunft, der das Kindesalter derselben auszeichnet, ist *dogmatisch*. Der eben genannte zweite Schritt ist *sceptisch* und zeugt von Vorsichtigkeit der durch Erfahrung gewitzigten Urtheilskraft. Nun ist aber noch ein dritter Schritt nöthig, der nur der gereiften und männlichen Urtheilskraft zukommet, welche feste und ihrer Allgemeinheit nach bewährte Maximen zum Grunde hat: nämlich nicht die *Facta* Vernunft, sondern die Vernunft selbst nach ihrem ganzen Vermögen und Tauglichkeit zu

This metaphorical account accords with the sketch of the history of philosophy in the final chapter of the Transcendental Doctrine of Method. The development has three stages: dogmatism, skepticism, and critique.[508] In the organic metaphor, the dogmatists are children, who have not yet learned to use their reason in a mature manner.[509] The second step in this development is skepticism, which demonstrates the limits of pure reason but fails to draw determinate boundaries. This step is an example of what Kant calls the censure of pure reason, which merely tells reason what it cannot do without providing a systematic account of what it can do. An example of this type of censure is Hume's skepticism, which Kant describes as "subjecting the *facta* of reason to examination and when necessary to blame."[510] The implication is that the skeptic only censures reason's deeds, but does not provide general laws which determine the legal foundation of its prohibitions. The final step is critique, which is an evaluation of reason and its claims to a priori cognition.

While the organism emphasizes reason's systematic unity and organic development, the architectonic images indicate the importance of principles and the distinction between form and matter.[511] In non-metaphorical terms, a philosophical system is built proceeding from an idea of the whole and is based on a priori principles:[512]

> Hence the sum total of its cognition will constitute a system that is to be grasped and determined under one idea, the completeness and articulation of which system can at the same time yield a touchstone of the correctness and genuineness of the pieces of cognition fitting into it.[513]

A philosophical system comprises all possible cognition and is both complete and articulated, meaning that no divisions can be added nor subtracted. As 'a touchstone' the system has a normative dimension; it provides a test of any proposed cognition.

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reinen Erkenntnissen *a priori* der Schätzung zu underwerfen; welches nicht die Zensur, sondern *Kritik* der Vernunft ist".]

[508] KrV, A 855/B 883.

[509] Kant also draws this parallel earlier in the Discipline of Pure Reason: The dogmatist "can only step forward with ridicule and boasting, which can be laughed at like child's play." KrV, A 743/B 771, CPR, 645. ["Er kann nur mit Spott oder Großsprecherei auftreten, welches als ein Kinderspiel belacht werden kann."]

[510] KrV, A 760/B 788, CPR, 654. ["die *Facta* der Vernunft der Prüfung und nach Befinden dem Tadel zu unterwerfen"]

[511] KrV, A 13/B 27.

[512] KrV, A 64/B 89.

[513] KrV, A 65/B 90, CPR, 201. ["Daher wird der Inbegriff seiner Erkenntniß ein unter eine Idee zu befassendes und zu bestimmendes System ausmachen, dessen Vollständigkeit und Articulation zugleich einen Probierstein der Richtigkeit und Ächtheit aller hineinpassenden Erkenntnißstücke abgeben kann."]

The Architectonic of Pure Reason is so closely connected with the idea of a system that Paula Manchester has argued that is a technical term for the art of systems rather than a metaphor suggesting a parallel with architecture.[514] In line with Manchester's reading, Kant does connect the architectonic of reason with the notion of a system:

> Human reason is by nature architectonic, i.e., it considers all cognitions as belonging to a possible system, and hence it permits only such principles as at least do not render an intended cognition incapable of standing together with others in some system or other.[515]

According to this passage, architectonic is the idea that all parts fit together in a systematic whole. A systematic account of reason should accordingly only allow principles that permit cognitions to fit into a system. For Kant, architectonic is "the art of systems"[516] and he defines architectonic unity in opposition to technical unity as a system in accordance with principles.[517] All these are properties which Kant's understanding of a system share with architecture in a very abstract sense, but there are also other architectonic metaphors in the work. For example at the beginning of the Doctrine of Method, where Kant describes the results of the preceding Transcendental Doctrine of Elements as an estimate of materials needed to construct a building:

> It turned out, of course, that although we had in mind a tower that would reach the heavens, the supply of materials sufficed only for a dwelling that was just roomy enough for our business on the plane of experience and high enough to survey it[518]

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[514] Paula Manchester has argued for that it is a "mistaken assumption that what Kant means by architectonic is an architectural metaphor (…). What has been missed is that for Kant this means that any system prescribed by philosophy cannot be based on a kinship with architecture." Manchester, "Kant's Conception of Architectonic in Its Philosophical Context," 133–34. Manchester's point is that Kant is using *scientia architectonica* as a technical term in line with philosophical tradition, an argument which she pursues historically in Manchester, "Kant's Conception of Architectonic in Its Historical Context."
Hansmichael Hohenegger defends the opposite view of Manchester; through a parallel reading of the third *Critique*, he argues that the architectonic should be read as a metaphor indicating an analogy between systematicity and architecture. Hohenegger, *Kant, filosofo dell'architettonica*. Hohenegger has also studied Kant's geographical metaphors for critique in Hohenegger, "Kant geografo della ragione."

[515] KrV, A 474/B 502, CPR, 502. ["Die menschliche Vernunft ist ihrer Natur nach architektonisch, d.i. sie betrachtet alle Erkenntnisse als gehörig zu einem möglichen System und verstattet daher auch nue solche Principien, die eine vorhabende Erknenntniß wenigstens nicht unfähig machen, in irgend einem System mit anderen zusammen zu stehen."]

[516] KrV, A 832/B 860, CPR, 691. ["Kunst der Systeme"]

[517] KrV, A 833/B 861.

[518] KrV, A 707/B 735, CPR, 627. ["Freilich fand es sich, daß, ob wir zwar einen Thurm im Sinne hatten, der bis an den Himmel reichen sollte, der Vorrath der Materialien doch nur zu einem Wohnhause zureichte, welches zu unseren Geschäften auf der Ebene der Erfahrung gerade geräumig und hoch genug war, sie zu übersehen".]
See also the references to the foundation of a house (B 2, A 475/B 503), concepts a priori as building materials (A 707/B 735, A 738/B 766, A835/B 863), the construction of buildings (B 7, B 9, B 27, A 319/B 376, A 4747/B 502), the scholastic edifice (A 131/B 170), preparing the terrain for construction (A 319/B 376), destroying the houses of one's enemy (A 756/B 784), and previous accounts of metaphysics as old ruins (A 835/B 863, A 852/B 880).

The notion of architectonic shows that the construction of a system is led by principles, but that the construction work is limited by the lack of materials in the form of a priori principles and by the need to find stable terrain in the form of the possible experience.

Kant also uses these three images to illustrate that something has gone wrong in the history of philosophy; the innocent child turns into a liar, the house collapses because of its rickety foundations, and despotic dogmatists try to impose their views through decrees.[519] All three images thus illustrate the need for critique. However, only the juridical metaphors contain an institution of critique; neither organisms nor building sites contain institutions that allow them to systematically assess their own internal conflicts and the way in which they trespass against their own laws. The legal imagery thus captures both the way in which Kant conceives of a philosophical system and the way the notion of critique fits within this system.

5.2. Determining reason's legislation

The juridical metaphors illustrate the importance of laws in the critical investigation and in Kant's notion of systematic philosophy. Laws play a double role in the critique: the laws of the understanding legitimate single judgments, and reason's principles of systematicity guide the project of critique. The critique judges reason's claim to synthetic a priori knowledge "not by mere decrees but according to its own eternal and unchangeable laws"[520] and it is supposed to judge "in accordance with the principles of its primary institution."[521] The ambiguity of the term 'institution' represents the project's peculiar nature very well: the critique judges according to the very laws whose legitimacy it is questioning.

The critique is an extraordinary tribunal which investigates the intellect in order to determine whether its laws are constitutive of objects of experience; the critique thus acts like the "wise legislators"[522] who question the validity of laws that lead to contradicting verdicts, as is the case with the laws of reason in the narrow sense when used as constitutive of objects of

[519] KrV, A 554-555/B 582-583, B2, A 751/B 779.
[520] KrV, A XI-XII, CPR, 101. ["nicht durch Machtsprüche, sondern nach ihren ewigen und unwandelbaren Gesetzen"].
Peter Oesterreich has argued that this passage reveals a residue of dogmatic imagery in Kant's thinking: "Daß Kant die fiktive Richtergestalt der reinen Vernunft hier mit einem apriorischen, "ewigen und unwandelbaren Gesetze" ausstattet, bildet allerdings ein allegorisches Residuum, das an die iuridische Metaphorik der dogmatischen Metaphysik erinnert." Oesterreich, "Richten," 315.
[521] KrV, A 751/B 779, CPR, 649. ["nach den Grundsätzen ihrer ersten Institution"]
[522] KrV, A 424/B 452, CPR, 469. ["weise Gesetzgeber"]

experience. It functions as "a higher and judicial reason"[523] judging whether the understanding and reason's claims to being legislative for objects of experience can be justified a priori.[524]

The task of the critical investigator consequently lies somewhere between that of the scientist and that of the legislator, meaning that the critique is expected to provide a coherent account of a priori laws but also to prove that these laws correspond with experience, as Kant explains in his account of the skeptical method in regard to the principles of pure reason:

> For the skeptical method aims at certainty, seeking to discover the point of misunderstanding in disputes that are honestly intended and conducted with intelligence by both sides, in order to do as wise legislators do when from the embarrassment of judges in cases of litigation they draw instruction concerning that which is defective and imprecisely determined in the laws. The antinomy that reveals itself in the application of the law is for our limited wisdom the best way to test nomothetics, in order to make reason, which does not easily become aware of its false steps in abstract speculation, attentive to the moments involved in determining its principles.[525]

When acting as a "wise legislator", reason evaluates its own proposed laws. The critique's skeptical method is a test of nomothetics; it tests reason's claim to being legislative by confronting it with contradicting judgments. In this way, the Transcendental Dialectic shows that reason's principles cannot function as laws for objects of experience by showing that they lead to contradicting judgments, since the coherent unity of its claims is the only touchstone of transcendental reason, as Kant specifies on the following page.[526]

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[523] KrV, A 739/B 767, CPR, 643. ["einer höheren und richterlichen Vernunft"]

[524] If the *Critique of Pure Reason* can be regarded as the codification of a priori laws into a system that allows reason to enter into a rightful condition, the way in which the cases of mathematics and geometry are treated in the *Prolegomena* might be described as an elaboration of laws from precedents, meaning that the legal thinking of the first *Critique* is that of common law, while the reasoning of the *Prolegomena* is closer to a common law system. Compared to the first *Critique* there are very few juridical metaphors in the *Prolegomena,* but there are some references to witnesses presented by reason (Prol, AA 04, 277, 295, 327) and metaphysians as authorized judges that abuse the laws of reason in the narrow sense (Prol, AA 04, 293).

[525] KrV, A 424/B 451-452, CPR, 468-469. ["Denn die sceptische Methode geht auf Gewißheit, dadurch daß sie in einem solchen auf beiden Seiten redlich gemeinten und mit Verstande geführten Streite den Punkt des Mißverständnisses zu entdecken sucht, um, wie weise Gesetzgeber thun, aus der Verlegenheit der Richter bei Rechtshändeln für sich selbst Belehrung von dem Mangelhaften und nicht genau Bestimmten in ihren Gesetzen zu ziehen. Die Antinomie, die sich in der Anwendung der Gesetze offenbart, ist bei unserer eingeschränkten Weisheit der beste Prüfungsversuch der Nomothetik, um die Vernunft, die in abstracter Speculation ihre Fehltritte nicht leicht gewahr wird, dadurch auf die Momente in Bestimmung ihrer Grundsätze aufmerksam zu machen."]
See also Kant reference to nomothetics in the third *Critique*: "Thus there is certainly a moral teleology; and this is just as necessarily connected with the *nomothetic* of freedom on the one hand and that of nature on the other as civil legislation is connected with the question of where the executive power should be sought, and with the general question of how reason is to provide a principle of the reality of a certain lawful order of things that is possible only in accordance with ideas." KU, AA 05, 448, *Critique of the Power of Judgment*, 313. ["Folglich giebt es allerdings eine moralische Teleologie; und diese hängt mit der *Nomothetik* der Freiheit einerseits und der der Natur andererseits eben so nothwendig zusammen als bürgerliche Gesetzgebung mit der Frage, wo man die executive Gewalt suchen soll, und überhaupt in allem, worin die Vernunft ein Princip der Wirklichkeit einer gewissen gesetzmäßigen, nur nach Ideen möglichen Ordnung der Dinge angeben soll, Zusammenhang ist."]

[526] KrV, A 425/B 453.

The skeptical method is thus meant as a test of the determination of reason's principles; reason becomes aware of its mistakes when confronted with the contradictory judgments which can be derived from its proposed principles. The requirement of a coherent determination can be interpreted in two ways: either the critique must determine coherent principles to fit the objects of experience, or the requirement of coherence is a minimal requirement for a construction of a system. The first of these interpretations forces us to accept transcendental idealism as a fundamental feature of the critique of reason, while the second substitutes the commitment to transcendental idealism with a constructivist framework, an interpretation which might be supported by Kant's mentioning of "nomothetics" as the construction of laws.[527] I read the first of these options as the closest to Kant's project: . In this case the image of reason as a "wise legislator" can be somewhat misleading: as a legislator, reason is not free to impose any legislation it pleases. Reason can revise the systematic determination of its own laws and principles, but it cannot change the way its laws determine the objects of experience.[528] This passage concerns the second part of a priori legislation; from the Transcendental Analytic, we are familiar with the determination of appearances which structures the objects of experience according to the forms of intuition and the laws of the understanding. But here Kant is discussing the way reason gains insight into its own principles and determines these through the critique. The Transcendental Dialectic then shows that this determination is problematic for the principles of pure reason. By distinguishing between a metaphysical and an epistemic determination, Kant emphasizes that the critique's legislation is not a construction; instead, it is a recognition of the structures through which reason has structured the objects of experience. As he writes in the A-deduction, the application of the categories to experience is a recognition which finishes a three-fold synthesis of apprehension, reproduction and recognition.[529] In parallel, the critique's account of a priori laws is a recognition and not a construction of these.

[527] Apart from transcendental idealism and constructivism, Kenneth Westphal has suggested that one might also interpret the resulting metaphysical theory of the *Critique of Pure Reason* as realism. Westphal, *Kant's Transcendental Proof of Realism*.
[528] This corresponds to Kant's definition of the task of a critique of reason in the introduction. KrV, A 10/B 23. See also the B-deduction's § 23 where Kant specifies that the deduction determines the boundaries of the use of the categories, just as the Transcendental Aesthetic determined those of the pure forms of intuitions. (KrV, B 148).
[529] KrV, A 97.

5.3. Systematicity

The determination of reason's a priori rules and principles is part of the establishment of a system of philosophy whose articulation, content and boundaries are determined in accordance with a guiding idea.[530] In this section, I argue that all of these are elements of the way in which a legal system is established in accordance with a priori principles.[531] My point is that the juridical metaphors are the core illustrations of Kant's notion of systematicity. When taken as illustrations of systematicity, the juridical metaphors are to some extent synecdoches; the metaphysics of right would be a part of a system of philosophy and Kant thus makes the systematic structure of a part represent the systematic structure of the entire system. But the juridical metaphors are not complete synecdoches; Kant is not comparing the critique or reason to the metaphysics of right, but rather to different aspects of an empirical legal system. The juridical metaphors illuminate the way in which Kant endeavors to recognize the a priori principles of cognition and use these to establish a system of philosophy.[532]

Philosophy as the legislation of human reason

On the juridical interpretation, the task of philosophy is to determine the laws that structure all experience. Such a system is a humbler task than the complete "the system of all philosophical cognition,"[533] which is a regulative ideal for all philosophical investigations. While Kant often repeats his hopes to finish a system of philosophy, he understands the idea of a complete system of all philosophical cognition as a transcendent idea. This is the notion of philosophy as *Weltbegriff* (*conceptus cosmicus*), an archetype according to which all attempts of philosophizing should be judged.[534] This is a notion of philosophy as "unchangeable and legislative."[535] Kant likens the project of founding a philosophical system on a priori laws to the dream of simplifying civil legislation by establishing its rationally given principles.[536]

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[530] KrV, A 834/B 862.
[531] Apart from the systematic account of the metaphysics of right, Kant also conceives of the civil state as regulated by a system of laws (MS, AA 06, 311) and a republic as a system representing a people (MS, AA 06, 341).
[532] On the influece of Jacob Brucker's history of philosophy in the opposition between "systematic" and "rhapsodic" thinkers, see Catana, *The Historiographical Concept 'System of Philosophy', Its Origin, Nature, Influence, and Legitimacy*.
[533] KrV, A 838/B 866, CPR, 694. ["Das System aller philosophischen Erkenntniß"]
[534] Archetype is Kant's term for an idea in the Platonic sense; see KrV, A 313/B 370.
[535] KrV, A 847/B 875.
[536] KrV, A 301/B 358.

The critique, unlike previous philosophical attempts, follows this ideal of a legislative notion of philosophy.[537] Kant goes as far as to identify philosophy with the legislation of human reason, thereby linking the systematic organization of philosophy to the structure of the reason. At the same time, this wording hints at a more active role for the philosopher in the legislation of reason than what is implied in other passages.

> Now the legislation of human reason (philosophy) has two objects, nature and freedom, and thus contains the natural law as well as the moral law, initially in two separate systems but ultimately in a single philosophical system. The philosophy of nature pertains to everything that *is*; that of morals only to that which *should be*.[538]

Philosophy is only the "legislation of human reason" in the sense that it maps laws already determining the objects of experience, much like a rightful system of positive laws is one in which positive and natural law coincide.[539] Kant therefore specifies that "the philosopher is not an artist of reason but the legislator of human reason,"[540] an opposition which implies that the legislator is not someone who drafts laws *ex novo*. There are two levels of proposed laws of reason: Laws as the necessary features of all cognition is the deepest level. The laws proposed by philosophical systems are intended to mirror these laws and provide the justification of our use of these laws to justify our judgments concerning experience.

Philosophy is only legislative in so far as philosophers track and systematize the laws already present in all rational activity. In this way, the clarification and justification of a priori laws is the task of the philosopher. And it is according to this notion of a priori laws that the reader should assess the contribution made in the critique. It is intended as a justification of those rules that qualify as a priori laws. The critique is not merely a mapping of these but also their justification, which warrants using them when making knowledge claims. Synthetic a priori principles do not need to be justified in order to be presupposed in all proper cognitive behavior but in order to be recognized and applied in rational activity, they require the justification performed by the critique. Through the critique, the principles are given a rational justification which allows us to use them legitimately. The justification given in the critique is intended to prove the legitimacy of the a priori principles of all experience and to make the

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[537] KrV, A 850/B 878.
[538] KrV, A 840/B 868, CPR, 695. ["Die Gesetzgebung der menschlichen Vernunft (Philosophie) hat nun zwei Gegenstände, Natur und Freiheit, und enthält also sowohl das Naturgesetz, als auch das Sittengesetz, anfangs in zwei besonderen, zuletzt aber in einem einzigen philosophischen System. Die Philosophie der Natur geht auf alles, was da *ist*, die der Sitten, nur auf das, was da *sein soll*."]
[539] For an analysis of Kant's ethics as being within the natural right tradition, see Schneewind, "Kant and Natural Law Ethics."
[540] KrV, A 839/B 867, CPR, 695. ["der Philosoph ist nicht ein Vernunftkünstler, sondern der Gesetzgeber der menschlichen Vernunft."]

philosophical rules coincide with the constituent features of experience. The legislation provided by philosophy is legitimate when it overlaps with the a priori principles of all experience, just as civil law is legitimate only when it overlaps with natural right.

The idea of a philosopher corresponding to this system "is still found nowhere, although the idea of his legislation is found in every human reason."[541] This notion of a philosopher as the "legislator of human reason" is merely a "teacher in the ideal."[542] The idea of the complete legislator of nature is also part of the ideal of the complete legislative philosopher. This idea is the notion of an intellectual archetype which imposes the greatest systematic unity:

> The very same idea [of systematic unity], therefore, is legislative for us, and thus it is very natural to assume a corresponding legislative reason (*intellectus archetypus*) from which all systematic unity of nature, as the object of our reason, is to be derived.[543]

The two notions of legislation, the philosophical and the metaphysical, thus each have an ideal legislative intellect, which serves as a regulative ideal rather than a possible object of experience.[544] The metaphysical legislative role is taken over by the human intellect, which structures the objects of experience, and the philosophical legislative role is adopted by the critique, which serves as a propaedeutic for philosophical system. In this way, Kant replaces transcendent commands with immanent structures.

Systematicity in the Appendix

Apart from the account of philosophy as the legislation of human reason in the Architectonic, another important source for Kant's understanding of systematicity is the Appendix to the Transcendental Deduction. In the Transcendental Dialectic itself, Kant has shown that it is not possible to use the transcendent ideas of the soul, the world and God to achieve knowledge of possible objects of experience. This conclusion was reached because reason was unable to produce a witness for its claim to be legislative for objects of experience.[545] In the Appendix, Kant

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[541] KrV, A 839/B 867, CPR, 695. ["aber da er selbst doch nirgend, die Idee aber seiner Gesetzgebung allenthalben in jeder Menschenvernunft angetroffen wird".]
[542] KrV, A 839/B 867, CPR, 695, ["Lehrer im Ideal"]
[543] KrV, A 695/B 723, CPR, 618. ["Eben dieselbe Idee ist also für uns gesetzgebend, und so ist es sehr natürlich, eine ihr correspondirende gesetzgebende Vernufnt (*intellectus archetypes*) anzunehmen, von der alle systematische Einheit der Natur als dem Gegestande unserer Vernunft abzuleiten sei."]
[544] In the first *Critique*, the presupposition of God and a future life are necessary for the a priori principles of morality to be binding for us: "Thus God and a future life are two presuppositions that are not to be separated from the obligation that pure reason imposes on us in accordance with principles of that very same reason." KrV, A 811/B 839, CPR, 680. ["Gott also und ein künftiges Leben sind zwei von der Verbindlichkeit, die uns reine Vernunft auserlegt, nach Principien eben derselben Vernunft nicht zu trennende Voraussetzungen."]
[545] KrV, A 774/B 802.

is concerned with reason's legislation in a narrower sense; he is discussing whether the principles of pure reason might still have an immanent use as principles of systematicity.

A common interpretation of the Appendix is to read it as a guide for scientific methodology because Kant uses mainly examples from biology and chemistry in this section.[546] Some interpreters have argued that the principles in the Appendix serve as heuristic devices which organize the cognition provided by the understanding, which means that the principles of systematicity are not essential to achieve cognition.[547] As an alternative to these readings, I believe the principles of reason play a more active role in the shaping of cognition.[548] If the tribunal of reason is parallel to the critical tribunal, then there is a role for the judicial power of reason in the narrow sense to test the legislation provided by the legislative power. Kant's idea that wise legislators learn from judges also applies to his division of the different powers of government among the cognitive faculties.

The Appendix provides certain contradictory statements about the status of the principles of systematicity; Kant observes that the urge to search for unity is part of reason's legislation, but he also questions whether there is a cognitive use for this "natural propensity."[549] In his instructions on how to use reason's ideas regulatively, Kant describes how we are compelled to strive for a complete understanding of the world as part of reason's legislation:

> For although we may light on or reach only a little of this perfection of the world, yet it belongs to the legislation of our reason to seek for it and presume it everywhere, and it must always be advantageous for us, and can never become disadvantageous, to institute our consideration of nature in accordance with this principle.[550]

Here the "legislation of reason" refers to an approach to the investigation of nature to which we are all compelled. Kant seems to presuppose a general principle stating that if a power is found in us then there must be an advantageous use for it. Because the natural tendencies of reason are systematic, Kant therefore investigates whether reason can be legislative for systematic cognition.

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[546] This interpretation has for example been forwarded in Wartenberg, "Reason and the Practice of Science" and Krausser, "Kant on the Hypothetical Employment of Reason in Science."
[547] See for example Guyer, "Reason and Reflective Judgment."
[548] Examples of a transcendental reading of the principles of reason are Geiger, "Is the Assumption of a Systematic Whole of Empirical Concepts a Necessary Condition of Knowledge?" 273; O'Shea, "The Needs of Understanding" and Abela, "The Demands of Systematicity: Rational Judgment and the Structure of Nature."
[549] KrV, A 642/B 670, CPR, 590. ["einen natürlichen Hang"]
[550] KrV, A 700-701/B 728-729, CPR, 621. ["Denn wiewohl wir nur wenig von dieser Weltvollkommenheit ausspähen oder erreichen werden, so gehört es doch zur Gesetzgebung unserer Vernunft, sie allerwärts zu suchen und zu vermuthen; und es muß uns jederzeit vortheilhaft sein, niemals aber kann es nachteilig werden**,** nach diesem Princip die Naturbetrachtung anzustellen."]

Reason's principles concern cognition in its entirety rather than a specific object of experience. Kant does not exclude a possible objective validity of these principles, but he specifies that their purpose is comprehension rather than understanding:

> Concepts of reason serve for *comprehension*, just as concepts of the understanding serve for *understanding* (of perceptions). If they contain the unconditioned, then they deal with something under which all experience belongs, but that is never itself an object of experience; something to which reason leads through its inferences, and by which reason estimates and measures the degree of its empirical use, but that never constitutes a member of the empirical synthesis. If despite this such concepts have objective validity, then they can be called *conceptus ratiocinati* (correctly inferred concepts); but if not, they have at least been obtained a surreptitious illusion of inference, and so might be called *conceptus ratiocinantes* (sophistical concepts).[551]

The legislation of reason differs from the legislation of the understanding; while the understanding provides laws for the objects of experience, reason provides principles for the use of the understanding. In this passage, Kant leaves open the possibility of whether the concepts of reason might have objective validity as correctly inferred concepts.

Reason's regulative legislation is guided by the three logical principles of homogeneity, specification and continuity, and the three transcendental principles manifoldness, affinity and unity.[552] Kant writes on the use of these principles:

> What is strange about these principles, and what alone concerns us, is this: that they seem to be transcendental, and even though they contain mere ideas to be followed in the empirical use of reason, which reason can follow only asymptotically, as it were, i.e., merely by approximation, without ever reaching them, yet these principles, as synthetic propositions *a priori*, nevertheless have objective but indeterminate validity, and serve as a rule of possible experience, and can even be used with good success, as heuristic principles, in actually elaborating it, and yet one cannot bring about a transcendental deduction of them, which, as has been proved above, is always impossible in regard to ideas.[553]

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[551] KrV, A 311/B 367, CPR, 394. ["Vernunftbegriffe dienen zum *Begreifen*, wie Verstandesbegriffe zum *Verstehen* (der Wahrnehmungen). Wenn sie das Unbedingte enthalten, so betreffen sie etwas, worunter all Erfahrung gehört, welches selbst aber niemals ein Gegenstand der Erfahrung ist: etwas, worauf die Vernunft in ihren Schlüssen aus der Erfahrung führt, und wonach sie den Grad ihres empirischen Gebrauches schätzt und abmißt, niemals aber ein Glied der empirischen Synthesis ausmacht. Haben dergleichen Begriffe ungeachtet objective Gültigkeit, so können sie *conceptus ratiocinati* (richtig geschlossene Begriffe) heißen; wo nicht, so sind sie wenigsten durch einen Schein des Schließens erschlichen und mögen *conceptus ratiocinantes* (vernünftelnde Begriffe) gennant werden."]

[552] KrV, A 658/B 686 and A 662/B 690.

[553] KrV, A 663/B 691, CPR, 601-602. ["Was bei diesen Principien merkwürdig ist und uns auch allein beschäftigt, ist dieses: daß sie trasscendental zu sein scheinen, und, ob sie gleich bloße Ideen zur Befolgung des empirischen Gebrauchs der Vernunft enthalten, denen der letztere nur gleichsam asymptotisch, d. i. bloß annähernd, folgen kann, ohne sie jemals zu erreichen, sie gleichwohl als synthetische Sätze *a priori* objective, aber unbestimmte Gültigkeit haben und zur Regel möglicher Erfahrung dienen, auch wirklich in Bearbeitung derselben als heuristische Grundsätze mit gutem Glücke gebraucht werden, ohne daß man doch eine transscendentale Deduction derselben zu Stande bringen kann, welches, wie oben bewiesen worden, in Ansehung der Ideen jederzeit unmöglich ist."]

Kant here gives conflicting indications; he first writes that the principles of reason have objective yet indeterminate validity and that they serve as a rule of possible experience. This would amount to a possible use of the principles as applied to experience in general rather than to any determinate object of experience. But immediately after he adds that the principles are used as heuristic principles that can be used only by approximation and can never be given a transcendental deduction. It is thus clear why many interpreters have interpreted the principles of reason as heuristic devices that are helpful in expanding our cognition but have mere subjective validity. As legislation, we are told, the regulative principles are "maxims of speculative reason, which rest solely on reason's speculative interest, even though it may seem as if they were objective principles."[554]

Even though these principles cannot be given a transcendental deduction, they still guide the search for new empirical knowledge. Kant therefore maintains that "the parsimony of principles is not merely a principle of economy for reason, but becomes an inner law of its nature."[555] While the principles of systematicity might not determine objects of experience directly, they are constitutive of a coherent use of the understanding: "For the law of reason to seek unity is necessary, since without it we would have no reason, and without that, no coherent use of the understanding, and, lacking that, no sufficient mark of empirical truth."[556] This passage implies that reason's legislation is necessary for a coherent use of the understanding, which makes reason's legislation necessary for achieving cognition.

Kant reaches this conclusion because empirical knowledge presupposes an idea of a systematic whole, which is provided by the principles of systematicity. The notion of systematicity in nature is a thus an ideal which guides all empirical knowledge, not just scientific experiments. Although a complete system of cognition is a projected unity,[557] the notion of systematicity is necessary for a coherent use of the understanding. This is why Kant maintains that the principles of systematicity are commands that reason issue to the understanding.[558] The legislation of reason is not constitutive of experience directly, but it is constitutive of a use of the

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[554] KrV, A 666/B 694, CPR, 603. ["Maximen der speculativen Vernunft, die lediglich auf dem speculativen Interesse derselben beruhen, ob es zwar scheinen mag, sie wären objective Principien."]
[555] KrV, A 650/B 678, CPR, 594. ["die Ersparung der Principien nicht bloß ein ökonomischer Grundsatz der Vernunft, sondern inneres Gesetz der Natur wird."]
[556] KrV, A 651/B 679, CPR, 595. ["Denn das Gesetz der Vernunft, sie zu suchen, ist nothwendig, weil wir ohne dasselbe gar keine Vernunft, ohne diese aber keinen zusammenhängenden Vertandesgebrauch und in dessen Ermangelung kein zureichendens Merkmal empirischer Wahrheit".]
[557] KrV, A 648/B 676.
[558] KrV, A 653/B 681.

understanding through which experience is achieved. Reason's legislation consists in following an idea and comparing individual impressions to this idea.[559]

In the Discipline of Pure Reason, which provides a negative legislation for the use of reason, we learn that the hypothetical use of reason, which assumes a universal problematically from a given particular: "is only regulative, bringing unity into particular cognitions as far as possible and thereby *approximating* the rule to universality."[560]

In the division of the judicial tasks, reason proves to be a judge, but not a legislator; we learn from the Transcendental Dialectic that the ideas of reason have no objective reality. Still, in the Appendix Kant suggests a different immanent use of reason's legislation through the transcendental ideas of systematicity. These ideas give rise to the three principles of systematicity which provide a legislation for the coherent use of the understanding. Although the principles of pure reason are not constitutive of any particular object of experience, Kant suggests that they have an immanent use: The transcendental principles of reason are not constitutive of objects, but constitutive of laws. As we see in the idea that wise legislators learn from judges, inferences from a proposed law show whether it is a viable law or not. Any legislation has to fit with the idea of a complete system of laws, but that does not mean that we can proceed directly from the principle as one does in an axiomatic system. The tribunal of reason reviews proposed laws, and makes a priori laws intelligible by inserting them within a systematic understanding of experience. Reason is thus the tribunal that judges whether a proposed law is a viable source of cognition.

5.4. Nomothetics of pure reason

The Transcendental Doctrine of Method, which concludes the first *Critique*, is, along with the introductions, the richest in juridical metaphors. This is no coincidence, as a note in Kant's copy of Baumgarten's *Metaphysica* reveals: "The [law] nomothetics (legislation) of pure reason: 1. negative part, discipline; 2. positive part, canon. Finally architectonic."[561] Discipline,

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[559] KrV, A 839/B 867.

[560] KrV, A 647/B 675, CPR, 592. ["er ist nur regulative, um dadurch, so weit als es möglich ist, Einheit in die besonderen Erkenntnisse zu bringen und die Regel dadurch der Allgemeinheit zu *nähern*."]

[561] Ref 5039, AA 18, 70 (my translation). ["Die [Gesetz] Nomothetic (Gesetzgebung) der reinen Vernunft: 1. negativer Theil, disciplin; 2. positiver Theil, Canon. Zuletzt Architectonic."]
Paula Manchester also makes this observation, but does not pursue its implications further. "All of these conditions belong to a 'nomothetic', and all the parts of the transcendental doctrine of method take their meaning from that notion." Manchester, "Kant's Conception of Architectonic in Its Philosophical Context," 150. Manchester even uses Kant's juridical metaphors to explain her understanding of the architectonic, thus implicitly defending

Canon and Architectonic are the titles of the first three chapters of the Doctrine of Method, which ends with the very short History of Pure Reason. According to this early note (from around 1776-1778), the three parts of the Doctrine of Method together form the nomothetics of pure reason, which links the whole section to the legal vocabulary. The term 'nomothetics' suggests that the discipline is thus an account of the ways in which reason can be legislative; the first part concerns reason's negative legislation, the second part provides reason's positive legislation and the last part indicates how the two fit together in a system.[562] Earlier in the *Metaphysica* margins, Kant notes "Philosophy is the study of the laws (*Gesetzkunde*) of human reason. The artist of reason needs rules, the teacher of reason laws. *Leguleius. Est nomothetica rationis humanae.*"[563] If we understand philosophy as the study of laws, then philosophical method becomes the art of legislation, in other words nomothetics. This interpretation fits with Kant's terminology in a draft on public law, where he uses the term "jus nomotheticum" for the right to legislate.[564] In light of this definition, I believe that the most important illustration of Kant's understanding of systematicity is not the architectonic which many scholars focus on, but rather the juridical metaphors.[565]

Kant adopts the idea that philosophy is nomothetics from Baumgarten according to whom the philosopher is the jurist of nature.[566] But Kant changes the object of legislation; while Baumgarten's philosopher provides the laws of nature, Kant's philosopher provides the laws of nature through the presupposition of a priori laws. Most importantly, Kant's account of

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the primate of the juridical metaphors: "The artesans are like the witnesses and the teacher in the ideal, the appointed judge." Ibid., 145.

[562] In the third *Critique*, Kant uses the term as a synonym for legislation, which does not fit with the description Doctrine of Method as a type of nomothetics of pure reason. KU, AA 05, 585.

[563] Ref 5007, AA 18, 58. ["Die philosophie ist die Gesetzkunde der Menschlichen Vernunft. Der Vernunftkünstler bedarf Regeln, der Vernunftlehrer Gesetze. Leguleius. Est nomothetica rationis humanae."]
Zedler's encyclopedia defines *nomothetica* as the power to legislate. Zedler, *Universal-Lexicon*, vol. 24, 1227.

[564] AA 23, 339.

[565] See for example, Fulda and Stolzenberg, *Architektonik und System in der Philosophie Kants*; Guyer, "Reason and Reflective Judgment"; Ypi, "Practical Agency, Teleology and System in Kant's Architectonic of Pure Reason"; Gava, "Kant's Definition of Science in the Architectonic of Pure Reason and the Essential Ends of Reason"; Manchester, "Kant's Conception of Architectonic in Its Historical Context"; and Manchester, "Kant's Conception of Architectonic in Its Philosophical Context."
Alfredo Ferrarin reads the juridical metaphors as a type of political metaphors and argues that they are secondary to the architectonic images, since lawgivers "propose an organization meant to promote an idea through a civil religion, mores, and so on. Their decision is a *fiat*; their *will is law*. By contrast, and more like Kepler's laws, Kant's conception of reason's legislation is not directly related to politics or to arbitrary decisions. The focus is on the law a legislator issues, whether it brings order to what is given (nature) or to what must be instituted through freedom (right)." (Ferrarin, *The Powers of Pure Reason*, 39–40.) Ferrarin thus overlooks the fact that Kant is not likening reason's legislation to arbitrary political decisions, but to legislative efforts in the natural right tradition.

[566] Baumgarten writes: "*Nomothetics* consists of *right* and legislative *prudence*." ["IUS et PRUDENTIA legislatoris, qua talis sunt NOMOTHETICA."] Baumgarten, *Initia philosophiae practicae primae*, paras. 105, AA 19, 66. Compare Ibid., § 76 and 78. Where Baumgarten defines the philosopher as the jurist of nature.

nomothetics contains both a positive and a negative legislation, which determines the limits within which reason can be legislative.[567]

If the Doctrine of Method is the nomothetics of pure reason, then the Discipline of Pure Reason is its central chapter. Here, Kant uses an array of juridical metaphors to illustrate the ways in which reason ought to limit its own activity and mimic the activity of jurists rather than that of mathematicians. After explaining how philosophy arrives at definitions at the end rather than the beginning of its investigation, Kant adds that like philosophers, "Jurists are still searching for a definition of their concept of right."[568] Philosophers ought to behave like legislators who strive towards their principles rather than like mathematicians who depart from theirs. Unlike mathematics, philosophy cannot depart from axioms, but must instead strive after principles. Rather than providing geometrical proofs from principles, "[philosophy] must content itself with justifying their authority through a thorough deduction."[569]

The entire *Critique of Pure Reason* is "a treatise on the method, not a system of the science itself; but it catalogs the entire outline of the science of metaphysics, both in respect of its boundaries and in respect of its entire internal structure."[570] Since philosophical method is nomothetics, the *Critique of Pure Reason* as a treatise on the method thus becomes the nomothetics of pure reason. As such it provides the positive, negative and systematic legislation of reason which serve to construct a system of philosophy. In accordance with the understanding of philosophy as the study of laws, I have shown through this thesis how a philosophical system is analogous to a legal system.

Conclusion

Although the juridical metaphors are not the only metaphors of systematicity, I have argued that they are the most important. The reason is that they demonstrate how a systematic structure can grant validity to judgments and how this structure can review its own coherence and valid-

[567] A brief account of the juridical nature of reason is found in Kaulbach, "Das transzendental-juridische Grundverhältnis im Vernunftbegriff Kants under der Bezug zwischen Recht und Gesellschaft."
[568] KrV, A 731/B 759, note, CPR, 639. ["Noch suchen die Juristen eine Definition zu ihrem Begriffe vom Recht."]
[569] KrV, A 733-734/B 761-762, CPR, 641. ["sondern muß sich dazu bequemen, ihre Befugniß wegen derselben durch gründliche Deduction zu rechtfertigen."]
[570] KrV, B XXII, CPR, 113. ["Sie ist ein Tractat von der Methode, nicht ein System der Wissenschaft selbst; aber sie verzeichnet gleichwohl den ganzen Umriß derselben sowohl in Ansehung ihrer Grenzen, als auch den ganzen inneren Gliederbau derselben."]

ity. I have therefore argued that the juridical metaphors show that Kant conceives of systematicity as legal systematicity. Within this account, the critique of pure reason is a valid internal review of the legality of the entire cognitive system.

As the nomothetics of pure reason, the critique provides the positive and negative legislation for all uses of reason and the architectonic principles which combine these into a system. I have argued that Kant's account of a philosophical system shares many properties with his account of legal systems since both consist of permissive and prohibitive laws and are governed by three higher powers which are responsible for legislation, subsumption under the law and adjudication. In this chapter, we have seen how reason's principles of systematicity help the understanding identify valid judgments by organizing judgments into inferences. In parallel to a legal system, this corresponds with the way in which legislators ought to take judicial concerns into account in their proposals for future laws.

CONCLUSION

Beginning with Plato's *Republic*, there is a long philosophical tradition for describing the intellect as analogous to a state. The idea is that the lower cognitive faculties are governed and held in check by the higher faculties of which reason is the sovereign. This whole catalogue of analogies between reason and a state are no doubt part of the tradition which Kant intends to invoke in the *Critique of Pure Reason*. Kant's use of these metaphors is in this sense not unique or innovative and he makes no claim thereof. What is different about Kant's metaphors is that the lawfulness of reason provides the constitutive structure not just of the state but of all of experience. Because of this focus on lawfulness, the juridical metaphors prevail over the political ones.

Through the analysis of the juridical metaphors, we have seen how Kant escapes Herder's dilemma by referring to a natural right understanding of law and legislation. The analogy with natural right shows how the legislation of reason is to be understood in two ways; the first is the synthesis of experience according to the categories and the second is the epistemic laws which are justified by the critique. The aim of the critique is to ensure that the two correspond. This is the reason why philosophy becomes the nomothetics of reason; it provides both positive and negative legislation for the use of reason.

The positive legislation justifies the use of the categories in a priori judgments whereas the negative legislation forbids the use of the ideas of reason in claims to knowledge. In accordance with Kant's account of judicial imputation, I have argued that the purpose of the transcendental deduction is to provide the justification of a two-fold judicial authority. The two components of judicial authority are the authority to subsume an act under the law and the authority to apply the effects of the law to the case. For the transcendental deduction this amounts to proving that any object of experience falls under the categories and that any thinker can use the categories in valid a priori judgments about objects of experience. The transcendental deduction thus proves that understanding is legislative for experience and that reason in the broad sense can apply the categories in judgments about objects of experience.

The critique's function as a tribunal of reason emerges most clearly in the Transcendental Dialectic where opposing metaphysical claims are confronted with one another. The purpose of this exercise is not to eradicate reason's inner confrontations, but to provide a procedure for

determining future claims to metaphysical knowledge. Unlike the inner tribunal of moral conscience, the pure use of reason is not error proof; the individual thinker does not have direct access to the authoritative perspective of pure reason. Instead, this perspective is taken as an ideal which individual cognizers ought to strive after and which they can learn to approximate through education in critical thinking. Also on this point the juridical metaphors are instructive; just as civil states strive to recognize the principles of justice in their legal systems, the critique strives to recognize the a priori principles of reason and individual thinkers ought to strive towards these as well.

Kant's notion of a system of philosophy resembles a legal system in many ways: Reason legislates through exceptionless laws whose legitimacy stems from their correspondence to the constitutive features of the world. General laws are applied to single cases by means of judgments pronounced by an authorized judge in light of the evidence and in accordance with the instituted, general laws. The legitimacy of a single judgment can thus be proved by exhibiting the law with which it accords.

A complete system of cognition remains a regulative idea and as such it is something towards which we strive in our use of reason, not something that is established once and for all in the *Critique of Pure Reason*. Because reason's claim to authority rests on its conforming to the laws whose validity is proved in the first *Critique*, not all uses of reason present rightful claims of knowledge. The reader who has followed and internalized the critique of reason can function as a judge of these claims and distinguish between rightful and unfounded claims of knowledge in a manner that is similar to the office of a judge within a state under the rule of law, but this does not exclude error in the application of the laws.

Everyone has a voice within reason, but the use of this voice is restrained by the conditions of legality which have been established through the critique of reason. Although reason is the same for all finite rational agents, this does not mean that all are equally competent in their use of reason. The juridical metaphors show us how everyone has the potential to occupy the office of the judge, but they also teach us that there are certain constraints on the proper execution of this office. These constraints are the same as those on judges within a legal system: They need to judge in accordance with valid, publicly accessible laws and they need to make the reasons behind their judgments available for public scrutiny. By following the critique of pure reason, cognizers become similar to judges in this respect and can strive toward an authority in the evaluation of knowledge claims based not on dogmatic coercion but instead on the force of legality.

ABBREVIATIONS

AA	Akademie-Ausgabe
Anth	Anthropologie in pragmatischer Hinsicht (AA 07)
Collins	Moralphilosophie Collins (AA 27)
CPR	Critique of Pure Reason
Feyerabend	Naturrecht Feyerabend (AA 27)
GMS	Grundlegung zur Metaphysik der Sitten (AA 04)
PP-Herder	Praktische Philosophie Herder (AA 27)
Hufeland	Review of Hufeland's Versuch über den Grundsatz des Naturrechts (AA 08)
KpV	Kritik der praktischen Vernunft (AA 05)
KrV	Kritik der reinen Vernunft
KU	Kritik der Urteilskraft (AA 05)
MS	Die Metaphysik der Sitten (AA 06)
OP	Opus Postumum (AA 22)
Powalski	Praktische Philosophie Powalski (AA 27)
Prol	Prolegomena zu einer jeden künftigen Metaphysik (AA 04)
Refl	Reflection (AA 14-19)
Rel	Die Religion innerhalb der Grenzen der bloßen Vernunft (AA 06)
SF	Streit der Fakultäten (AA 07)
TP	Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis (AA 08)
ÜE	Über eine Entdeckung, nach der alle neue Kritik der reinen Vernunft durch eine ältere entbehrlich gemacht werden soll (AA 08)
Vigilantius	Die Metaphysik der Sitten Vigilantius (AA 27)
WA	Beantworung der Frage: Was ist Aufklärung? (AA 08)
ZeF	Zum ewigen Frieden (AA 08)

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