

REPUBLICITY. KANT'S LATE EXTENSION OF TRANSCENDENTALISM TO POLITICS AND RIGHT

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“The laws must be publicized.”²

The contribution examines Kant's systematic extension of the transcendental-philosophical thinking which he inaugurated and which was originally limited to the enterprise of a critique of purely theoretical, entirely speculative reason. In particular, the contribution explores the extension of the transcendental-philosophical project in Kant's late juridico-political philosophy, as contained in *Toward Perpetual Peace* (1795) and *The Metaphysics of Morals* (1797). The focus of the contribution lies on the transcendental ingredients of Kant's juridico-political thinking in general and on the status and function of the “transcendental concept” of publicity and the allied “transcendental principle” of publicity in particular.

The contribution maintains the conceptually and methodologically strict distinction between transcendental philosophy, which in Kant remains restricted to the principal grounding of *theoretical* philosophy, on the one hand, and critically grounded practical philosophy (*philosophia practica*) qua bipartite moral philosophy (*philosophia moralis*), composed of juridical right (*ius*) and ethics (*ethica*), on the other hand. Viewed against the background of the theoretico-practical double structure of critically revised philosophy, the pointed extension of transcendental features (“transcendental concept,” “transcendental principle”) to political and legal philosophy in late Kant is seen as not amounting to a complete transcendentalization of practical philosophy in the manner of a *philosophia transcendentalis practica*, but to the systematic grounding of practically (or “morally”) possible right and practically (or “morally”) possible politics in logically prior, enabling (“transcendental”) structures and functions in the manner of a *philosophia practica transcendentalis*.

The contribution tracks the transcendental grounding qua rendering possible of (juridical) right and politics in four steps and as many sections. The first section sketches the original project of transcendental philosophy in the *Critique of Pure Reason*. The second section

<https://doi.org/10.36311/2318-0501.2024.v12n1.p27>

presents the introduction of transcendental-philosophical features outside of transcendental philosophy proper beginning with the *Critique of the Power of Judgment*. The third section is devoted to the status and function of publicity as the “transcendental principle” of any politics that is in conformity with (juridical) right in *Toward Perpetual Peace*. The fourth section presents the distinction between private right and public right in the *Metaphysics of Morals* with regard to the key function of civil society of rendering public and permanent any property claims based on prior natural right.³

1. THE IDEA OF TRANSCENDENTAL PHILOSOPHY

At the first appearance of the *Critique of Pure Reason* in 1781, no second *Critique*, which would appear under the title *Critique of Practical Reason* in 1788, was planned, much less a third *Critique*, which eventually appeared under the title *Critique of the Power of Judgment* in 1790. Considered retrospectively from the second and third *Critique*, the previously sole and subsequently first *Critique*, the *Critique of Pure Reason*, becomes a critique of “pure merely speculative reason.”⁴ The three *Critiques* are distinguished from one another by their respective focus: on theoretical reason, especially the theoretical understanding; on practical reason, especially moral-practical reason; and on the power of judgment, specifically the reflective power of judgment. In addition, each of the three *Critiques* deals with the reason-theoretical founding of a human mental key capacity each: the faculty of cognition in the *Critique of Pure Reason*; the faculty of desire in the *Critique of Practical Reason*; and the capacity for feeling (“feeling of pleasure and displeasure”) in the *Critique of the Power of Judgment*. Finally, the first two *Critiques* refer to correlated subject areas under the guise of the doctrinal systems of nature and freedom, respectively (“metaphysics of nature,” “metaphysics of freedom”), while the third *Critique* in its two parts, which are concerned with aesthetic and logical purposiveness, respectively, knows no corresponding doctrine proper.⁵

The successive extension of the first *Critique*, first by a second *Critique* and finally by a third *Critique*, combined with the essentially analogous architectonic disposition and execution of all three *Critiques* (Doctrine of Elements – Doctrine of Method, Aesthetics – Logic, Analytic – Dialectic, Antimony – Solution), does not go together with a parallel extension of the program and project of transcendental philosophy, the latter being originally introduced in the first edition of the *Critique of Pure Reason*. Logically speaking, the actually provided critique of pure (speculative) reason and the merely projected transcendental philosophy are intensionally identical, while in extensional terms the *Critique of Pure Reason* offers only the, in itself complete, rational concept (“idea”) of the transcendental philosophy yet to be elaborated in its entirety. Notoriously, Kant never provided the *system* of transcendental philosophy corresponding to the latter’s initial *idea*, as detailed in the *Critique of Pure Reason*. To be sure, he also regarded the actual execution of the system of transcendental philosophy a relatively easy to accomplish undertaking—a scientific task deemed not really essential for his oeuvre, but merely meritorious. Kant’s unfinished final work from the last years of his life (*Opus postumum*; 1796-1803) contains, especially in the so-called First Convolute,⁶ the vestiges of his

equally insisting and failing attempts at achieving the architectonic completion of his critical philosophy through the crowning system of transcendental philosophy.⁷

In the *Opus postumum* then the emphatic extension of transcendental philosophy from its originally limited horizon in the *Critique of Pure Reason* to a fully integrated system of transcendental philosophy is more evoked than accomplished. Yet almost simultaneously with the first drafts of the *Opus postumum*, in two late publications of Kant's from the mid-to late 1790s, there is to be found, if not a formal extension of transcendental philosophy beyond the horizon of the first *Critique*, at least the systematic inclusion of transcendental elements ("transcendental concept," "transcendental principle") into practical or moral philosophy. The extended transcendentalism is to be found first in the Appendix of the occasional publication *Toward Perpetual Peace* from the year of the Basel peace accord between France and Prussia as well as between France and Spain from 1795 and subsequently in the first, originally separately published part (on legal philosophy) of Kant's two-part main work in moral philosophy, *The Metaphysics of Morals*, from 1797.⁸ The transcendental perspective on practical philosophy in the late Kant thus does not affect his entire moral philosophy, but exclusively the latter's juridical part ("doctrine of right"), at the exclusion of its ethics part ("doctrine of virtue"), and, moreover, only concerns the former's doctrine of principles ("metaphysical first principles of the doctrine of right"), together with the basic application of those principles to politics conceived as "applied doctrine of right."⁹

The pointed exclusion of ethics and the exclusive focus on right and politics in Kant's late transcendental grounding of practical philosophy has substantial reasons based on the strict system-architectonic conception of transcendental philosophy, as featured at the beginning and at the end of the *Critique of Pure Reason*, and resulting from the general concept of the transcendental, as formally featured in the Introductions to the first and second edition of the *Critique of Pure Reason*. A closer look at the definitional determination of the double concept of transcendentalism and transcendental philosophy in the *Critique of Pure Reason* (1781, 1787) and in the systematically associated and chronologically contiguous *Prolegomena to Any Future Metaphysics* (1783) reveals the reasons both for the exclusion of ethics and the inclusion of right (along with politics) in Kant's late project of a widened scope of transcendental-philosophical thinking.

At the historical origin and the systematic center of Kant's conception of transcendental philosophy stands the definition of the key term "transcendental" in the Introduction to the *Critique of Pure Reason*. In the slightly changed version of the second edition of the work, Kant's conceptual determination of this core concept of his mature philosophy reads:

"I call all cognition transcendental that is occupied in general not so much with objects but rather with our mode of the cognition of objects insofar as the latter is to be possible a priori. A system of such concepts would be called transcendental philosophy."¹⁰

Five things deserve to be highlighted in Kant's definition: the epistemic character of the transcendental ("cognition"), the objective character of transcendental cognition ("cognition of objects"), the non-empirical character of the transcendental kind of cognition ("a priori"),

the meta-theoretical character of the apriori-transcendental cognition of objects (“not so much with objects but rather with our mode of the cognition of objects”) and finally the possibilizing function of transcendental second-order cognition for the a priori first-order cognition of objects (“is to be possible”).

Rendered in post-Kantian— more precisely, neo-Kantian—terms, the conception of transcendental philosophy thus indicated involves an epistemology of a special kind: the a priori theory of the principal possibility of the a priori cognition of objects. Put in terms of the typology of judgments cultivated by Kant since the *Prolegomena* from 1783 and subsequently introduced into the second edition of the *Critique of Pure Reason* (“analytic”—“synthetic”; “a priori” —“a posteriori”), transcendental philosophy consists of a doctrine of synthetic a priori judgments concerning the conditions of the very possibility of (discursive) synthetic a priori judgments of all kinds. The meta-cognition of a priori objective cognition is transcendental in Kant’s technical sense of the term due to this meta-cognition exceeding (“transcending”) all the categorial divisions obtaining at the level of ordinary a priori objective cognition, in favor of the universal functional conditions of any possible (categorially differentiated) a priori judgments about objects.¹¹

Against the background of Kant’s subsequent exploration, in the *Critique of Pure Reason*, of the essential role of the forms of sensibility and the functions of the understanding for objective cognition (Transcendental Aesthetic and Transcendental Analytic, respectively), as well as the insufficiency of mere concepts of reason for objectively valid a priori cognition (Transcendental Dialectic), one may wonder about the absence of sensory and intuitive defining features and the lack of recourse to possible experience in Kant’s introductory definition of “transcendental.” But the comparatively abstract and neutral casting of the transcendental in the Introduction to the *Critique of Pure Reason* reflects the initially entirely generic conception of the yet to be created discipline of transcendental philosophy.

The point of Kant’s generic conception of the transcendental is the prior grounding of all a priori cognition of objects undertaken in the manner and functionality, if not the identical shape and substance, of ancient first philosophy (*prote philosophia, prima philosophia*). In Kant transcendental philosophy sets out to succeed, under specifically critical condition, traditional metaphysics. To be sure, over the further course of the *Critique of Pure Reason* it becomes clear that the a priori cognition of objects of all kinds to be warranted as to its very possibility by the new discipline of transcendental philosophy remains extensionally limited to objects of possible experience, at the exclusion of the trans-empirical (“transcendent”) objects of classical metaphysics (God, soul, world). Accordingly, the cognition grounded by transcendental meta-cognition may involve a priori objective determinations in the manner of traditional metaphysics. But those a priori objective determinations only pertain to empirically given, or at least giveable, objects located in space and time.¹² The a priori theory of objects, developed in the *Critique of Pure Reason* under the systematic conception (“idea”) of transcendental philosophy, thus is a metaphysics only in an attenuated, radically revised sense—a “metaphysics of experience” (H. J. Paton) or a “non-empirical theory of the empirical” (G. Prauss).¹³ To be sure, the manifold reminiscences of the metaphysical tradition in general and of Leibnizo-

Wolffian school philosophy in particular to be found throughout Kant's critical philosophy can create the impression of a substantial, rather than only functional, continuity, or even identity, between the pre-Kantian and the Kantian forms of first philosophy.¹⁴

The subsequently manifest implications of the concept of the transcendental first introduced at the beginning of the *Critique of Pure Reason* comprise not only the anti-metaphysical restriction of a priori-objective cognition to possible objects of experience *qua* transcendently constituted beings-for-us ("appearances"). Among the systematic consequences of the allied apriorism and objectivism that lies at the root of Kant's basic understanding of the transcendental is also the principal restriction of a priori objective reference to the *cognitive* reference to objects, at the exclusion of the voluntative reference to objects. To be sure, Kant recognizes a twofold kind of reference that a cognition may have to "its" object—"either merely *determining* the object and its concept" (the case of theoretical cognition), or "also *making* the object *actual*" (the case of practical cognition).¹⁵ But the activist and actualizing reference to objects brings in the mental capacity of willing, under the guise of the faculty of desire, and along with the latter affective factors and functions that, so Kant, prevent the supplementation of the apriorism of purely cognitive objective reference with an analogous apriorism of will-based cognitive objective reference ("practical cognition").

It is true that Kant concedes already in the first edition of the *Critique of Pure Reason* from 1781 (in particular, in the Canon of Pure Reason) and then maintains explicitly in his foundational works in moral philosophy from 1785 (*Foundation of the Metaphysics of Morals*) and from 1788 (*Critique of Practical Reason*) the possibility of a purely rational determination of human willing and acting, independent of any inclination and sensory desire. But even where inclination and desire, along with the empirical motivation they entail, do not enter into the reasons for willing and acting—namely, in moral willing and acting according to an unconditional ought ("categorical imperative")—inclinations and desires, along with the feeling of pleasure and displeasure, are involved, so Kant, as possible obstacles to purely moral willing and acting, which require to be overcome and which thereby, at least indirectly and negatively enter into the game. According to Kant, the indirect, albeit merely negative involvement of inclinations and desires even in moral willing and acting disqualifies critical moral philosophy, in spite of its apriorism and objectivism, which assures its metaphysical status ("metaphysics of morals"),¹⁶ from formal inclusion into transcendental philosophy:

"Hence, although the supreme principles of morality and the fundamental concepts of it are a priori cognitions, they still do not belong in transcendental philosophy, since the concepts of pleasure and displeasure, of desires and inclinations, of choice, etc., which are all of empirical origin, must there be presupposed."¹⁷

2. THE IDEA OF A PHILOSOPHIA PRACTICA TRANSCENDENTALIS

Kant adheres to the principal separation between transcendental philosophy, restricted to critical *theoretical* philosophy, and critical *practical* philosophy, identified as moral philosophy, well beyond his publications in critical philosophy from the 1780s and right up into his late print publications and the drafts of what was to become his *Opus postumum*

from the second half of the 1790s. But from the early 1790s on, there is to be found a more differentiated treatment of the term and concept of the transcendental, the affirmative use of which outside of transcendental philosophy proper occurs beginning with the *Critique of the Power of Judgment*. This change in terminological practice holds first of all for the systematic introduction of the “transcendental principle” of the (formal) purposiveness of nature for the power of (reflective) judgment in the Introduction to the third *Critique*.¹⁸ It then holds for the systematic introduction of the “transcendental concept” of public right in the Appendix to *Toward Perpetual Peace*.¹⁹ And it finally holds for the “transcendental deduction” of the contractual acquisition of property in the *Metaphysical First Principles of the Doctrine of Right* from the *Metaphysics of Morals*.²⁰

In these later writings Kant’s designation of a concept, principle or proof as “transcendental” takes up key features of the formal definition of “transcendental” in the *Critique of Pure Reason*, in particular the restriction to the a priori cognition of objects and the orientation toward the principal enabling of such a priori objective cognition. In addition, the extended usage of “transcendental” draws on the contrast, equally already employed in the *Critique of Pure Reason*, between a “transcendental” principle, which operates entirely a priori, and a “metaphysical” principle, which applies a priori determination to something given a posteriori.²¹ The paradigm case for specifically metaphysical (as opposed to transcendental) concepts, principles and proofs is the system of the principles of external nature (objects in space and time) with its recourse to the empirical base concept of matter as the movable in space, to be found in the *Metaphysical First Principles of Natural Science* from 1786.²²

In the *Critique of the Power of Judgment* Kant introduces a “transcendental principle” specifically for the constitution of nature in its basic suitability (“purposiveness”) for the human cognitive faculty, even and especially with regard to nature’s contingent particular lawfulness. As Kant argues in the third *Critique*, it is only by means of such a presupposed particular purposiveness of nature for human cognition that a cumulative cognition of natural things in their systematic connectedness becomes possible. Kant conveys the difference in status and function between a transcendental and a metaphysical principle for the cognition of objects as follows:

A transcendental principle is one through which the universal a priori condition under which alone things can become objects of our cognition at all is represented. By contrast, a principle is called metaphysical if it represents the a priori condition under which alone objects whose concept must be given empirically can be further determined a priori.²³

As regards the exclusion of extra-cognitive factors and functions, especially those involving desire, pleasure and displeasure, from the strict concept of the transcendental, as defined in the *Critique of Pure Reason*, the *Critique of the Power of Judgment* faces a principal problem though. As a cognitive capacity constitutively connected with the capacity for affectively undergoing states of pleasure and displeasure (“feeling of pleasure and displeasure”), the reflective power of judgment, at least in the first of its two manifestations, viz., the power of judgment reflecting in the medium of aesthetic feeling (“aesthetic power of judgment”), is essentially immersed in extra-cognitive capacities. Kant circumvents the empiricization and

psychologization thus threatening the third *Critique* in general and the critique of the faculty of taste in particular by means of the formalization and generalization of the relations between the various capacities involved. On the one hand, Kant focuses in the third *Critique*, rather than on particular manifestations of feeling (“feelings”), on the conditioning of cognitions at the level of the overall principles of the power of aesthetically reflecting judgment, thus solely concerning himself with the generally purposive interplay of the power of the imagination and the faculty of the understanding in the coming about of cognition in the first place (“cognition in general”).²⁴ On the other hand, Kant stresses, with regard to the power of logically reflecting judgment (“teleological power of judgment”) the latter’s strictly cognitive mode of operation, which systematically supplements the general function of the determinative power of judgment in making possible experience as such and in general (“transcendental power of judgment”).²⁵

Kant’s strategy of artificially isolating the transcendental dimension of cognitive functional processes from their surrounding non-cognitive (affective) horizon—by means of concerted formalization and generalization—becomes especially clear in his revised understanding of what a specifically “transcendental” definition involves. In the *Critique of Pure Reason* Kant had placed the presentation of definitions in transcendental philosophy at the very end of the latter’s systematic conceptual labor—as complete determination of a concept with respect to all its essential marks.²⁶ In the *Critique of the Power of Judgment*, by contrast, the conceptual determination marked explicitly as “transcendental” (“transcendental definition”) is introduced as an intentionally underdetermined and, to that extent, preliminary definition of a general kind that makes all subsequent pertinent differentiation possible, without though already anticipating, much less effectuating, such differentiation.

Kant illustrates the abstaining from the complete determination of a concept in favor of a definition deemed sufficient for purposes of identifying an object as falling under the concept in question—a procedure characteristic of a “transcendental definition”—with a comparison from mathematics. In arithmetic the value of a number in an equation may be intentionally left “undetermined,” in order to calculate the solution of the equation for all possible values of the unknown quantity and hence “in general.” Analogously, so Kant, a transcendental definition intentionally leaves “empirical data [...] undetermined,” whereby the definitional determination is “rendered general.”²⁷ As Kant further explains in the Introduction to the *Critique of the Power of Judgment*, the generalized, specifically transcendental definition of a concept operates “through pure categories,” hence still independent of the latter’s subsequent further determination by means of added temporal qualifications (“schemata”), “insofar as these [sc. pure categories] by themselves alone already sufficiently indicate the difference of the present concept from others.”²⁸

By way of example for a transcendental definition, Kant cites, in the *Critique of the Power of Judgment*, the conceptual determination provided two years earlier, in the *Critique of Practical Reason*, of the faculty of desire, which, however, at that point had not yet been formally labeled a “transcendental definition.” The minimalist definition of the faculty of desire from the *Critique of Practical Reason*, referred to as “transcendental” in the *Critique of the Power of Judgment*, identifies the faculty of desire as a “faculty to become, by means of its

representations, the cause of actuality of the objects of these representations.”²⁹ The definition in the transcendental mode of pointed formalization and generalization leaves it open, on principal grounds, whether the object-causative capacity of the respective representations is empirically mediated (“inclination”) or is owed to an entirely rational ground of action (“pure practical reason”). Strictly speaking, the transcendental definition of the faculty of desire should not even refer to a “cause” as a temporally specific, schematized relational category (rule-governed temporal succession), but only of an extra-temporal, purely logical relation of ground and consequent.³⁰

The concepts, principles and definitions introduced by Kant into practical philosophy on the basis of an extended conception of the transcendental, when considered in their entirety, constitute a foundational layer within a discipline, viz., moral philosophy, otherwise still strictly separated from transcendental philosophy as such. Rather than incorporating practical philosophy in its entirety into the transcendental project in the manner of a *practical transcendental philosophy* or *philosophia transcendentalis practica*, the newly identified transcendental features of practical philosophy amount to a *transcendental practical philosophy* or *philosophia practica transcendentalis* that provides the conceptual, principal and definitional basis of practical philosophy.

The transcendental grounding of practical philosophy by means of transcendental concepts, principles and proofs also is not to be confused with the traditional school-philosophical project of a “universal practical philosophy” or *philosophia practica universalis*.³¹ While the latter exhibits the most general features of each and every willing and acting, including empirical willing and acting, transcendental practical philosophy or *philosophia practica transcendentalis*, as intended by Kant, aims at the conditions of the possibility of an a priori determination of the will—of rendering possible pure (moral) willing. Kant hints at the parallel between the project of a priori foundations of morals and that of transcendental philosophy already in *Foundations of the Metaphysics of Morals* from 1785, though still without applying the designation “transcendental” to the founding of moral philosophy.³² By contrast, Kant’s eventual update of traditional *philosophia practica universalis*, undertaken in the “Preliminary Concepts for the Metaphysics of Morals” at the beginning of the *Metaphysics of Morals* from 1797,³³ which provides generic conceptual determinations of obligation, law, etc., does not satisfy the specific requirements of his late transcendental grounding project of ascertaining the basic concept and principles of the very possibility of a priori practico-moral cognitions in the manner of a *philosophia practica transcendentalis*.

3. THE TRANSCENDENTAL PRINCIPLE OF PUBLIC RIGHT

The extended employment of the concept “transcendental” beyond the narrow limitations of critically executed transcendental philosophy, which is first manifest in the *Critique of the Power of Judgment*, mainly shows in Kant’s two late print publications in practical philosophy from the mid-1790s. *Toward Perpetual Peace*, in an extensive two-part appendix on the relation of politic and morals, discusses the “transcendental concept of public right,” provides the

“transcendental formula of public right” and presents the “transcendental principle of public right.”³⁴ The *Metaphysics of Morals* in the first of its two parts, the *Metaphysical First Principles of the Doctrine of Right*, continues this development by introducing the principal requirement of publicity in the civil state (*status civilis*) defined by the institution of “public right” (*ius publicum*).³⁵ In addition, Kant’s late Doctrine of Right provides a “transcendental deduction” of the work’s central concept of contractual property acquisition situated at the architectonic and systematic transition from private right according to natural law to public right according to civil law.³⁶

The coalition of publicity and transcendentalism in Kant’s two writings in practical philosophy from the mid-1790s has its prehistory in the discussion of the public use of reason and the publicity of right in two of Kant’s texts from the mid-1780s: the journal article “Answer to the Question: What Is Enlightenment?” from 1784³⁷ and the *Natural Right Feyerabend*, which is the sole preserved transcript of Kant’s repeatedly presented lectures on natural right and was published for the first time only in 1979.³⁸ To be sure, neither the Enlightenment essay nor the lectures on natural right resort to the conceptuality of the transcendental. But both texts discuss the indispensable, outright enabling function of publicity—under the guise of the “public use” of reason, the writing and reading “public” and “public right”—for the coming about and the functionality of a commonwealth or *res publica*.³⁹

In particular, in the Enlightenment essay Kant specifies as the sole, at once necessary and sufficient principal condition for the spread of enlightenment the “freedom [...] to make public use of one’s reason in all its parts.”⁴⁰ The free publicity of reason, reminiscent of Spinoza’s *libertas philosophandi* in the *Tractatus theologico-politicus*,⁴¹ for Kant consists in the untutored-free employment that the individual human being as a “scholar” makes of his (or her) reason “in front of the entire public of the reading world.”⁴² The identification of the primary agent of enlightenment as a “scholar” and of the public involved as a “reading world” might seem to reduce the public use of reason propagated by Kant to a quantitatively small and qualitatively minor circle of academically trained persons. But the radical character and provocative stand of the learned public, declared by Kant to be the proper forum of enlightenment, is apparent from two circumstances both of which link Kant’s learned republic (*res publica doctorum*) to his conception of civil society in its basic juridico-political character (*res publica*).

For one Kant foresees enlightened discourse to ascend from its origins in the learned citizenry into the upper reaches of government and thereby, in the long run and mediately, become politically and juridically effective.⁴³ In addition, Kant understands the propagated public-free use of reason, which a person is entitled and even encouraged to exercise as a scholar, by contrast with the restrictions to which that same person might be subjected in his (or her) professional function within civil society (“private [in the sense of private] use of reason”).⁴⁴ In his (or her) capacity as a scholar, the otherwise juridico-politically regimented citizen is, according to Kant, free to critique state and society, under the explicit inclusion of “religious matters.”⁴⁵ Rather than involving the restriction to a small circle of scholars separated from broader society, Kant’s delegation of enlightenment to the “scholars” and to the “public in the proper sense” amounts to a maximal extension of the communicative process of mutual

enlightenment, in which every untutored-free citizen is to be regarded as a “member of an entire commonwealth, even of cosmopolitan society.”⁴⁶

The etymologically manifest close connection between the commonwealth *qua* republic in the broader sense (*res publica*) and publicity *qua* public sphere established in Kant’s Enlightenment essay receives its systematic deepening in his reflections on the relation between morals, right and politics in his late *opusculum* on long-lasting (“perpetual”) peace. Already in the *Natural Right Feyerabend* and in another preserved lecture transcript on moral philosophy from the same time period (*Moral Philosophy Mrongovius II*),⁴⁷ Kant had distinguished between the specifically different legislations of right (*ius*) and ethics (*ethica*) by assigning to ethics the formation and cultivation of an inward moral mind-set and to (juridical) right the outward regulation of conduct by means of lawful threats and through the exercise of legal sanctions.⁴⁸

In *Toward Perpetual Peace* Kant sharpens the separation of ethics *qua* ethics of moral consciousness from (juridical) right *qua* coercive right by explicitly subsuming the specifically different normative systems and functional modalities of right and ethics under a broad concept of morals and by further subsuming politics, not under ethics (as in traditional natural right), but under (juridical) right as the latter’s prudential application (“applied doctrine of right”).⁴⁹ Accordingly, a “moral politician”⁵⁰ for Kant is not an ethically conscientious statesman, but someone who employs the “principles of political prudence” in such a way that they agree with that part of morals which comprises the a priori doctrine of right.

In addition, *Toward Perpetual Peace* deepens the systematic connection between publicity and politics by stressing the eminently public character of the republicanly constituted polity (*res publica*)—a move that invites the coinage “republicity” for the thorough linkage of the publicity of right and the publicity of politics in Kant.⁵¹ For Kant in *Toward Perpetual Peace*, a specifically republican political set-up is not a distinct form of statehood (such as the “mixed constitution” traditionally attributed to republics ancient and modern) but a “mode of government” or a „*forma regiminis*“ that is defined by the personal and institutional separation of legislative and executive powers in a state.⁵² As a modality of government (rather than a state constitution), “republicanism,”⁵³ on Kant’s understanding, is not restricted to formal, self-declared republics in antiquity and modern times. More yet, for Kant (as for Montesquieu before him and for Hegel after him), a republican mode of government (“republicanism”) is even more likely to be realized in modern, “moderate” monarchies than in a classical republic (“free-state”),⁵⁴ in which the legislative and executive powers rest in the same hands, amounting to an outright unfree mode of government (“despotism”).⁵⁵

In *Toward Perpetual Peace*, the republicanly oriented juridico-political considerations of a principal kind are integrated into the sketch of a fictitious peace-political treatise. In addition to the preliminary and definitive articles for a *pax perpetua*, the work contains a substantial appendix in two parts (Appendix I, Appendix II),⁵⁶ in which Kant undertakes the systematic inclusion of publicity into politics in general and republican politics in particular. While the first part of the appendix treats “of the disagreement between morals and politics with a view to perpetual peace,” the second part treats “of the agreement of politics with morals in accord with

the transcendental concept of public right,” supplemented by the indication that this politico-moral harmony is to be established “according to the transcendental concept of public right.”⁵⁷

The subject of the Appendix of *Toward Perpetual Peace* is thus the relation between morals and politics in its essential ambiguity between rivalry and coalition. As Kant's parenthetical supplementation—“morals (as doctrine of right)”⁵⁸—indicates, “morals” here refers not to the ethical but to the juridical part of moral philosophy broadly conceived. In the Appendix, the principles of politics are placed in relation to the a priori principles of right (*ius*). It is the thesis of the Appendix that first and only the publicity of right (“public right”) renders possible the general as well as particular agreement between politics and morals *qua* right under the guise of a possibilizing (“transcendental”) principle. In the Appendix the principally required publicity of right is tied to the publicizing of the general conduct norms (“maxims”) of politics as actually practiced, rather than merely professed, by politicians. Those who have to shy away from publicizing their principles of political action for fear of undercutting their own plans, thereby alone establish that they act contrary to the a priori norms of (juridical) right. Those who, by contrast, require to publicize their political principles of action, in order to assure their implementation, act in principle in conformity to (juridical) right.

In the Appendix Kant presents the function of publicity as at once necessary and sufficient condition of the rightfulness of politics by means of two “transcendental formula[s] of public right.”⁵⁹ First Kant formulates the negative version of the transcendental principle of publicity, which excludes from the domain of legally permitted political measures all political maxims concerning the (external) right of human beings that cannot be publicized without undermining themselves: “All actions relating to the rights of others are wrong if their maxim is incompatible with publicity.”⁶⁰

Kant explicitly identifies the negative principle of rightful politics as “juridical” and understands the criterion of the publicity of political maxims (“capability of publicity”) as a testing procedure for the self-suspension of all principles of political action that involve a violation of rights (“injustice”) with reference to other persons.⁶¹ The testing procedure takes the form of the factual or fictional publicizing of the unrightful political principles to those persons who would be affected by the actions according to the political maxims in question. In *Toward Perpetual Peace* Kant illustrates the functioning of publicity as a negative criterion for the rightfulness of political principles through its exemplary application to state right, peoples' right and cosmopolitan right.⁶²

The second, positive formula of the transcendental principle of the publicity of right presented in the Appendix concerns those principles of political action that not only permit publicity, but also require it for their efficacy: “All maxims which need publicity (in order not to fail in their end) agree with right and politics combined.”⁶³

Just like the negative formula of the transcendental principle of the publicity of right previously presented, the positive formula is directed at general principles of action (“maxims”). Accordingly, the agreement of politics and (juridical) right to be assured by the two transcendental principles considered jointly does not provide a guarantee in each and

every case but only an overall assurance for political rightfulness in general. The specific transcendental principle of publicity claimed by Kant can be said to consist in the circumstance that the possible publicity of political principles provides the necessary as well as sufficient condition for the very possibility of politics coexisting with (juridical) right.

4. THE PUBLICITY OF CIVIL RIGHT

In *Toward Perpetual Peace* (1797) Kant places the rightful restriction of politics under the transcendental principle of publicity. Two years later, in the *Metaphysical First Principles of the Doctrine of Right* of his monumental *Metaphysics of Morals* (1797), he subsumes the entire institution of right (*ius*) in civil society (*societas civilis*) to principal publicity. Practically at the same time, in his short occasional publication “On an Supposed Right to Lie From Philanthropy” (1797), Kant interprets the general relationship between specifically juridical and specifically political principles as a relation of application between the a priori doctrine of right (“metaphysics of right”)⁶⁴ and rightfully regulated politics. At the center of Kant’s juridico-political considerations stands a categorical meta-rule: “Right must never be accommodated to politics, but politics must always be accommodated to right.”⁶⁵

In a reverse perspective—which runs, not from a priori right to its empirical application through politics, but from possible politics to the latter’s principal presuppositions in (juridical) right—the *Metaphysics of Morals*, following the pertinent reflections in *Toward Perpetual Peace*, treats the principles of right in general and those of public right in particular as conditions of the possibility for the political functionality of civil society under the latter’s basic guise as a juridical community constituted as statehood. Kant’s highly original reflections on the general publicity of right in the polity are based on the distinction between right in the pre-civil state, understood as “private right,” and right in the civil state, understood as “public right.”⁶⁶

Departing from the customary distinction in jurisprudential dogmatics between private right, essentially property right, and public right, essentially state right, Kant understands public right as being nothing but pre-civil, private right *qua* “natural right” having been brought under the juridico-political necessary condition of state-based publicity: “The sum of the laws which need a general publication in order to bring about a rightful condition is public right.”⁶⁷

In terms of content, public right in Kant is identical with the private right of natural law, to which, however, its add the political form of state-based and sanction-endowed publicity.⁶⁸ Still the substantial section labeled “Public Right” in the Doctrine of Right of the *Metaphysics of Morals*,⁶⁹ which follows the equally extensive section entitled “Private Right,” offers not a material repetition of the previously dealt with private right, but details the institutional and constitutional system of arrangements for the principal transposition of the rules and regulations of private, “natural” right into the publicity of juridically ruled statehood.

The contemporary context of Kant’s innovative distinction between the generic publicity of (juridical) right in the state (“public laws”)⁷⁰ and specifically public right (“state right”)⁷¹ is the construct of the social contract (*pactum sociale*) in early modern natural right theories, together with Kant’s critique of the latter. The natural right tradition up through Achenwall, on whose

textbook Kant based his regularly offered lecture course in natural right,⁷² had distinguished the state of nature (*status naturalis*) from the civil state (*status civilis*) and immediately identified the civil state with the social state.⁷³ Departing from this automatic identification, Kant considers the state of nature to be not essentially solitary, but entirely social and also already rightfully regulated, viz., by natural right. Accordingly, Kant replaces the traditional distinction between the state of nature and the social state with the alternative distinction between the natural state and the civil state.⁷⁴ For Kant the civil state, along with the civil society correlated with it, are defined by a special, juridico-political form of sociality—above all by the institution of publically propagated and coercively sanctioned right under the guise of “public justice.”⁷⁵

The eminently social character of the state of nature recognized by Kant further conditions the extensional identification of natural right with right in the natural state. Far from being a lawless state of fighting and warfare, the state of nature for Kant is the naturally existing state of a priori rights (“natural right”). To be sure, according to Kant’s diagnosis, the state of nature ruled by natural right essentially lacks an omnilaterally recognized arbitration authority for the adjudication and solution of conflicting rights claims. To that extent, natural right *qua* right in the state of nature is merely “private” right, with the deficient essential characteristic of juridical uncertainty in particular and the associated insecurity of social life in general.⁷⁶ First and only the civil state, with its introduction of a state-based and state-protected juridico-political community, ensures the public recognition of the pre-civil, already entirely valid (though merely private) right.⁷⁷

Kant casts the formal—more precisely, the modal— difference (combined with the material identity) between the social norms already prevailing in the state of nature under the guise of private right, on the one hand, and the juridical rules established in the civil state by means of public right, on the other hand, in temporally dimensioned terms: private right as such functions only for the time being and in a preliminary manner (“provisionally”), while public—publicized—right functions reliably and lastingly (“peremptorily”).⁷⁸ For Kant the formal relation between the necessary framing conditions for peremptory laws by means of public right, viz., a state constitution and a system of (public, rather than private) justice, on the one hand, and the pre-civil provisional regulations of private (natural) right, on the other hand, is one of principal or (quasi-)transcendental enabling. It is only through the public institutions of civil society that the a priori norms of naturally given private right receive lasting and omnilateral recognition, thus rendering possible a genuinely just societal order.

Kant illustrates the indispensable functionality of public right for private right by establishing the principal requirements for the very possibility of lasting and generally recognized contractually based property in an explicitly so termed “transcendental deduction.”⁷⁹ In it Kant moves beyond the general relationship of public right enabling lasting possession by tying the transcendentalism of publically rightful property to the transition from empirically manifest declarations of intent and consent of the contracting partners to the purely formal consideration of a communal formation of the will (“issuing from one unitary common will”).⁸⁰ When Kant explicitly identifies the rightful relation of contractual property acquisition as non-empirical (“purely intellectual,” “*possessio noumenon*”) and equally explicitly details the principal exclusion

of any empirical considerations (“under abstraction of [...] empirical conditions”),⁸¹ then the transcendently deduced a priori concept of possession entirely satisfies the formal criteria of a “transcendental definition,” as stipulated seven years earlier in the Introduction to the *Critique of the Power of Judgment*.⁸²

But even outside of the particular undertaking of “a transcendental deduction of the concept of acquisition through contract,”⁸³ Kant stresses the overall inclusion of the core arguments of his “pure doctrine of right” in the *Metaphysics of Morals* into the orbit of transcendently operating philosophy. In particular, on the occasion of defining a free human being capable of exercising rights (“person”) and in the context of the moral-philosophical concept of atemporal causality (“pure category [...] without an underlying schema”), Kant declares it an unconditional necessity that the “philosophical jurist” has to advance to the “first elements of transcendental philosophy in a metaphysics of morals.”⁸⁴ Kant’s pointed recourse to the formal features of a “transcendental principle” in the case of the publicity of right and to a “transcendental definition” in the case of the acquisition of property in *Toward Perpetual Peace* and the *Metaphysics of Morals* thus proves to be part of a more general enterprise to deepen political and legal philosophy to its ultimate foundations—foundations that are to be characterized as “transcendental” in a technical sense, even though the late Kant does not thereby attempt, much less accomplish, to extend transcendental philosophy to the point of including into it practical philosophy in its entirety.

Abstract: The contribution investigates Kant’s extension of transcendental-philosophical thinking from the critique of purely theoretical reason to his late political and legal philosophy. The focus lies on the transcendental ingredients of Kant’s juridico-political thinking in general and on the “transcendental concept” and the “transcendental principle” of publicity in particular. The first section outlines the original project of transcendental philosophy in the *Critique of Pure Reason*. The second section tracks the introduction of transcendental features outside of transcendental philosophy proper beginning in the *Critique of the Power of Judgment*. The third section is devoted to the role of publicity as the “transcendental principle” for a politics conforming to juridical right in *Toward Perpetual Peace*. The fourth section presents the distinction between private right and public right in the *Metaphysics of Morals* under the quasi-transcendental perspective of rendering permanent the previously provisional claims of private right by means of the institution of public right.

Key words: Kant, transcendental philosophy, publicity, right, politics

BIBLIOGRAPHY:

ACHENWALL, Gottfried: *Natural Law. A Translation of the Textbook for Kant’s Lectures on Legal and Political Philosophy*, ed. Pauline Kleingeld and transl. Corinna Vermeulen. With an Introduction by Paul Guyer. London/New York/Oxford/New Delhi/Sydney (Bloomsbury), 2020.

ADELUNG, Johann Christoph: *Grammatisch-kritisches Wörterbuch der hochdeutschen Mundart*, 4 vols.. Wien (Bauer), 1811.

BUSCH, Werner: *Die Entstehung der kritischen Rechtsphilosophie Kants 1762-1780*. Berlin/New York (de Gruyter), 1979.

BYRD, B. Sharon; HRUSCHKA, Joachim: *Kant’s Doctrine of Right. A Commentary*. Cambridge (Cambridge University Press), 2010.

de Boer, Karin: *Kant’s Reform of Metaphysics. The Critique of Pure Reason Reconsidered*. Cambridge (Cambridge University Press), 2020.

- FRIEDRICH, Rainer: *Eigentum und Staatsgründung in Kants Metaphysik der Sitten*. Berlin/New York (De Gruyter) 2004.
- GERHARDT, Volker: *Öffentlichkeit. Die politische Form des Bewusstseins*. Munich (C. H. Beck), 2021.
- HABERMAS, Jürgen: *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. With a Preface to the New Edition 1990. Frankfurt/M. (Suhrkamp), 2021.
- HEUSER, Martin: *Zur Positivität des Rechts in der kritischen Naturrechtslehre Immanuel Kants. Eine Studie zum metaphysischen Begriff des provisorisch-rechtlichen Besitzes*. Berlin (Duncker & Humblot), 2019.
- HIRSCH, Philipp-Alexander: *Freiheit und Staatlichkeit bei Kant. Die autonomietheoretische Begründung von Recht und Staat und das Widerstandsproblem*. Berlin/Boston (De Gruyter), 2017.
- HÜNING, Dieter; Stefan Klingner; Gianluca Sadun Bordoni (Ed.): *Auf dem Weg zur kritischen Rechtslehre. Naturrecht, Moralphilosophie und Eigentumstheorie in Kants „Naturrecht Feyerabend“*. Leiden (Brill), 2021.
- KANT, Immanuel: *Gesammelte Schriften*, ed. Prussian Academy of Sciences and successors. Berlin, later Berlin/New York (Reimer, later de Gruyter), 1900ff.
- KANT, Immanuel: *Practical Philosophy*, transl. and ed. Mary J. Gregor. General Introduction by Allen Wood. Cambridge (Cambridge University Press), 1996.
- KANT, Immanuel: *Critique of Pure Reason*, transl. and ed. Paul Guyer and Allen W. Wood. Cambridge (Cambridge University Press), 1998.
- KANT, Immanuel: *Lectures and Drafts on Political Philosophy*, ed. Frederick Rauscher and transl. Frederick Rauscher and Kenneth R. Westphal. Cambridge (Cambridge University Press), 2016.
- KANT, Immanuel: *Lezioni sul Diritto naturale (Naturrecht Feyerabend)*. German Original and Italian translation, ed. Norbert Hinske and Gianluca Sadun Bordoni. Milano (Bompiani), 2016.
- KANT, Immanuel: *Naturrecht Feyerabend*, ed. Gianluca Sadun Bordoni. Stuttgart-Bad Cannstatt (Frommann-Holzboog), 2024.
- KAULBACH, Friedrich: *Studien zur späten Rechtsphilosophie Kants und zu ihrer transzendentalen Methode*. Würzburg (Königshausen & Neumann), 1982.
- O'NEILL, Onora: "The Public Use of Reason." *Political Theory*, 14 (1986), p. 523-551.
- RITTER, Christian: *Der Rechtsgedanke Kants nach den frühen Quellen*. Frankfurt/M. (Klostermann), 1971.
- SCHEPELMANN, Maja: *Der senile Kant? Zur Widerlegung einer populären These*. Paderborn (mentis), 2018.
- SPINOZA, Benedict de: *Theological-Political Treatise*, ed. Jonathan Israel and transl. Michael Silverthorne and Jonathan Israel. Cambridge (Cambridge University Press), 2007.
- WOLFF, Christian: *Philosophia practica universalis methodo scientifica pertractata*, 2 Bde. Verona (Ramanzini), 1738-1739.
- ZÖLLER, Günter: *Theoretische Gegenstandsbeziehung bei Kant. Zur systematischen Bedeutung der Termini „objektive Realität“ und „objektive Gültigkeit“ in der „Kritik der reinen Vernunft“*. Berlin (de Gruyter), 1984.
- ZÖLLER, Günter: "Republicity. The Forensic Form of Life." *Yearbook for Eastern and Western Philosophy*, 1 (2016), p. 123-135.

ZÖLLER, Günter: “Conditions of Objectivity. Kant’s Critical Conception of Transcendental Logic.” *Yearbook of German Idealism/Jahrbuch des deutschen Idealismus*, 12 (2017), p. 3-28.

ZÖLLER, Günter: “Possibiliser l’expérience. Kant sur la relation entre le transcendantal et l’empirique.” In: Antoine Grandjean (Ed.): *Kant et les empirismes*. Paris (Garnier Classiques), 2017, p. 99-112.

ZÖLLER, Günter: “Weder Methode noch Disziplin. Zum historisch-systematischen Ort transzendentalen Philosophierens.” In: Marco Ivaldo; Hans Georg von Manz; Ives Radrizzani (Ed.): *Vergegenwärtigung der Transzendentalphilosophie. Das philosophische Vermächtnis Reinhard Lauths*. Würzburg (Königshausen & Neumann), 2017, p. 167-183.

ZÖLLER, Günter: “‘Metaphysik von der Metaphysik.’ Kants über theoretische, praktische und praktisch-theoretische Metaphysik.” In: François Calori; Raphaël Ehrsam; Antoine Grandjean; Inga Römer (Ed.): *Métaphysique et philosophie pratique chez Kant. Metaphysik und praktische Philosophie bei Kant*. Hamburg (Meiner), 2023, p. 205-227.

NOTAS / NOTES

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² Kant, V-NR/Feyerabend, AA, 28: 1384; Kant, Immanuel: *Lectures and Drafts on Political Philosophy*, ed. Frederick Rauscher and transl. Frederick Rauscher and Kenneth R. Westphal. Cambridge (Cambridge University Press), 2016, p. 167 (translation modified). In what follows, only quoted longer phrases or entire sentences by Kant are provided with references to modern English translations, while the translations of terms and short phrases cited from Kant are my own.

³ A German version of this article, under the title “*Philosophia practica transcendentalis. Die Publizität der Politik und die Öffentlichkeit des Rechts beim späten Kant*,” is forthcoming in *Rivista di Filosofia Neo-Scholastica*.

⁴ Kant, KrV, B 29.

⁵ On Kant’s retrospectively established comprehensive system architectonics, see Kant, KU, AA 5: 174-179 (Introduction, II. und III.). On Kant’s system idea within the horizon of the *Critique of Pure Reason*, see Kant, KrV A 840/B 868-A 849/B 877.

⁶ Kant, OP, AA 21: 3-158 (First Convolute).

⁷ For an audacious attempt at rehabilitating the *Opus postumum* in this regard, see Schepelmann, Maja: *Der senile Kant? Zur Widerlegung einer populären These*. Paderborn (mentis), 2018.

⁸ For an earlier discussion of Kant’s late doctrine of right in the context of transcendental philosophy, see Kaullbach, Friedrich: *Studien zur späten Rechtsphilosophie Kants und zu ihrer transzendentalen Methode*. Würzburg (Königshausen & Neumann), 1982.

⁹ On the older and the more recent controversy over the systematic status (whether critical, whether transcendental, whether neither) of Kant’s doctrine of right, see Ritter, Christian: *Der Rechtsgedanke Kants nach den frühen Quellen*. Frankfurt/M. (Klostermann), 1971; Busch, Werner: *Die Entstehung der kritischen Rechtsphilosophie Kants 1762-1780*. Berlin/New York (de Gruyter), 1979; Hüning, Dieter; Stefan Klingner; Gianluca Sadun Bordoni (Ed.): *Auf dem Weg zur kritischen Rechtslehre. Naturrecht, Moralphilosophie und Eigentumstheorie in Kants „Naturrecht Feyerabend“*. Leiden (Brill), 2021.

¹⁰ Kant, KrV, B 25 (in the original emphasis); Kant, Immanuel: *Critique of Pure Reason*, transl. and ed. Paul Guyer and Allen W. Wood. Cambridge (Cambridge University Press), 1998, p. 149 (translation modified). See also Kant, KrV, A 11f.

¹¹ On the status and function of transcendental philosophy in and after Kant, see Günter Zöllner, “Conditions of Objectivity. Kant’s Critical Conception of Transcendental Logic.” *Yearbook of German Idealism/Jahrbuch des deutschen Idealismus*, 12 (2017), p. 3-28 and Günter Zöllner, “Weder Methode noch Disziplin. Zum historisch-systematischen Ort transzendentalen Philosophierens.” In: Marco Ivaldo; Hans Georg von Manz; Ives Radrizzani (Ed.): *Vergegenwärtigung der Transzendentalphilosophie. Das philosophische Vermächtnis Reinhard Lauths*. Würzburg (Königshausen & Neumann), 2017, p. 167-183.

¹² On the status and function of experience qua “possible experience” and the “empirical in general” in Kant, see Günter Zöller, “Possibiliser l’expérience. Kant sur la relation entre le transcendantal et l’empirique.” In: Antoine Grandjean (Ed.): *Kant et les empirismes*. Paris (Garnier Classiques), 2017, p. 99-112.

¹³ For a systematic reconstruction of Kant’s critical transcendental philosophy as a theory of a priori cognitive objective reference, see Günter Zöller, *Theoretische Gegenstandsbeziehung bei Kant. Zur systematischen Bedeutung der Termini „objektive Realität“ und „objektive Gültigkeit“ in der „Kritik der reinen Vernunft“*. Berlin/New York (de Gruyter), 1984.

¹⁴ See de Boer, Karin: *Kant's Reform of Metaphysics. The Critique of Pure Reason Reconsidered*. Cambridge (Cambridge University Press), 2020.

¹⁵ Kant, KrV, BIXf. (original emphases).

¹⁶ On the practico-moral extension of originally purely theoretical metaphysics, see Günter Zöller, “Metaphysik von der Metaphysik.’ Kants über theoretische, praktische und praktisch-theoretische Metaphysik.” In: François Calori; Raphaël Ehram; Antoine Grandjean; Inga Römer (Ed.): *Métaphysique et philosophie pratique chez Kant. Metaphysik und praktische Philosophie bei Kant*. Hamburg (Meiner), 2023, p. 205-227.

¹⁷ Kant, KrV, A 14f.; Kant, *Critique of Pure Reason*, p. 134f. (translation modified). See also the slightly changed version of this passage in Kant, KrV, B 28f. and the corresponding pronouncements in the Canon of Pure Reason of the *Critique of Pure Reason*: “All practical concepts pertain to objects of satisfaction or dissatisfaction [...]. [...] the elements of our judgments, insofar as they are related to pleasure or displeasure, thus belong to practical philosophy, and not to the sum total of transcendental philosophy [...].” (Kant, KrV, A 801 note/B 828 note; Kant, *Critique of Pure Reason*, p. 675 note).

¹⁸ Kant, KU, AA 5: 181-186 (Introduction, V).

¹⁹ Kant, ZeF, AA 8: 381-386 (Appendix, II.).

²⁰ Kant, RL, AA 6: 272f. (§ 19).

²¹ See also the juxtaposition of “metaphysical elucidation” and “transcendental elucidation” in Kant, KrV, B 38 and B 40.

²² See Kant, MAdN, AA 4: 472-479 (Preface).

²³ Kant, KU, AA 5: 181 (Introduction, V.); Kant, Immanuel: *Critique of the Power of Judgment*, ed. Paul Guyer, transl. Paul Guyer and Eric Matthews. Cambridge (Cambridge University Press), 2000, p. 68.

²⁴ See Kant, KU, AA 5: 217 (§ 9).

²⁵ See Kant, KrV, A 132/B 171.

²⁶ See Kant, KrV, A 727/B 755-A 731/B 759. On Kant’s conception of definition as “real definition,” see Kant, KrV, A 241f. note.

²⁷ Kant, KU, AA 5: 177, note (Introduction, III.).

²⁸ Kant, KU, AA 5: 177, note (Introduction, III.); on the concept of “pure category,” see Kant, KrV, A 245-248.

²⁹ Kant, KpV, AA 5: 9, note (Preface) (in the original emphasis); quoted in Kant, KU, AA 5: 177 note (Introduction, III.).

³⁰ On the “schema of cause” as lawfully regulated temporal sequence, see Kant, KrV, A 144/ B 183.

³¹ See Christian Wolff, *Philosophia practica universalis methodo scientifica pertractata*, 2 vols. Verona (Ramanzini), 1738–1739.

³² See Kant, GMS, AA 4: 390 (Preface).

See Kant MS, AA 6: 221-228 (Introduction to the Metaphysics of Morals, III.).

³⁴ Kant, ZeF, AA 8: 381f. and 386 (Appendix, II.).

³⁵ Kant, RL, AA 6: 242. On the recent discussion of the complex relation between right, private right, public right and positive right in Kant, see Friedrich, Rainer: *Eigentum und Staatsgründung in Kants Metaphysik der Sitten*. Berlin/New York (De Gruyter), 2004; Hirsch, Philipp-Alexander: *Freiheit und Staatlichkeit bei Kant. Die autonomietheoretische Begründung von Recht und Staat und das Widerstandsproblem*. Berlin/Boston (De Gruyter), 2017; Heuser, Martin: *Zur Positivität des Rechts in der kritischen Naturrechtslehre Immanuel Kants. Eine Studie zum metaphysischen Begriff des provisorisch-rechtlichen Besitzes*. Berlin (Duncker & Humblot), 2019.

³⁶ Kant, RL, AA 6: 272f.

³⁷ Kant, WA, AA 8: 33-42.

- ³⁸ Kant, V-NR/Feyerabend, AA 27: 1317-1394; Kant, Immanuel: *Lezioni sul Diritto naturale (Naturrecht Feyerabend)*. German Original and Italian translation, ed. Norbert Hinske and Gianluca Sadun Bordoni. Milano (Bompiani), 2016; Kant, Immanuel: *Lectures and Drafts on Political Philosophy*, ed. Frederick Rauscher and transl. Frederick Rauscher and Kenneth R. Westphal. Cambridge (Cambridge University Press), 2016; Kant, Immanuel: *Naturrecht Feyerabend*, ed. Gianluca Sadun Bordoni. Stuttgart-Bad Cannstatt (Frommann-Holzboog), 2024.
- ³⁹ Kant WA, AA 8: 36f. and Kant, V-NR/ Feyerabend, AA 27: 1382, 1384 and 1390f.
- ⁴⁰ Kant, WA, AA 8: 36 (in the original emphasis).
- ⁴¹ Spinoza, Benedict de: *Theological-Political Treatise*, ed. Jonathan Israel and transl. Michael Silverthorne and Jonathan Israel. Cambridge (Cambridge University Press), 2007, p. 250-259 (Ch. XX.).
- ⁴² Kant, WA, AA 8: 37 (in the original emphasis).
- ⁴³ Kant, WA, AA 8: 41f.
- ⁴⁴ Kant, WA, AA 8: 37 (in the original emphasis). On the contemporary understanding of privacy as (de-)privation in a juridico-political regard, see the entry “private” (*privat*) in Adeling, Johann Christoph: *Grammatisch-kritisches Wörterbuch der hochdeutschen Mundart*, 4 vols. Vienna (Bauer), 1811, vol. 3, p. 841: „Nach einer andern Einschränkung ist die Privat-Person der befehlenden Person in einem gemeinen Wesen entgegen gesetzt, und da sind alle zum Gehorchen verbundene Glieder eines Staates in dieser Rücksicht Privat-Personen.“
- ⁴⁵ Kant, WA, AA 8: 41 (in the original emphasis).
- ⁴⁶ Kant, WA, AA 8: 37. On the early modern context of Kant’s joining of enlightenment and publicity, see Habermas, Jürgen: *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. With a Preface to the New Edition 1990. Frankfurt/M. (Suhrkamp), 2021.
- ⁴⁷ Kant, V-Mo/Mron II, AA 29: 595-642.
- ⁴⁸ Siehe V-NR/Feyerabend, AA 27: 1326-1328 and 1337f. and Kant, V-Mo/Mron II, AA 29: 630f.
- ⁴⁹ Kant, ZeF, AA 8: 370 (Appendix, I.).
- ⁵⁰ Kant, ZeF, AA 8: 372 (Appendix, I.) (in the original emphasis).
- ⁵¹ On the neologism, see Günter Zöller, “Republicity. The Forensic Form of Life.” *Yearbook for Eastern and Western Philosophy*, 1 (2016), p. 123-135. On the principally political dimension of the public use of reason in and after Kant, see O’Neill, Onora: “The Public Use of Reason.” *Political Theory*, 14 (1986), p. 523-551 as well as Gerhardt, Volker: *Öffentlichkeit. Die politische Form des Bewusstseins*. Munich (C. H. Beck), 2021.
- ⁵² Kant, ZeF, AA 8: 352 (First Definitive Article) (in the original emphasis).
- ⁵³ Kant, ZeF, AA 8: 352 (First Definitive Article) (in the original emphasis).
- ⁵⁴ On Kant’s occasional German rendition of “republic” as “free state” (*Freistaat*), see Kant, WA, AA 8: 41.
- ⁵⁵ Kant, ZeF, AA 8: 352 (First Definitive Article) (in the original emphasis).
- ⁵⁶ Kant, ZeF, AA 8: 370-380 and 381-386 (Appendix, I. and II.).
- ⁵⁷ Kant, ZeF, AA 8: 370 and 381 (Appendix, I. and II.); Kant, *Practical Philosophy*, p. 338 and p. 347.
- ⁵⁸ Kant, ZeF, AA 8: 384 (Appendix, II.); see also Kant, ZeF, AA 8: 370 (Appendix, I.).
- ⁵⁹ Kant, ZeF, AA 8: 381 and 386 (Appendix, II.) (in the original emphasis).
- ⁶⁰ Kant, ZeF, AA 8: 381 (Appendix, II.); Kant, Immanuel: *Practical Philosophy*, transl. and ed. Mary J. Gregor. General Introduction by Allen Wood. Cambridge (Cambridge University Press), 1996, p. 347.
- ⁶¹ Kant, ZeF, AA 8: 381 (Appendix, II.).
- ⁶² Kant, ZeF, AA 8: 382-384 (Appendix, II.)
- ⁶³ Kant, ZeF, AA 8: 386 (Appendix, II.) (in the original emphasis); Kant, *Practical Philosophy*, p. 351 (translation modified).
- ⁶⁴ Kant, VRML, AA 8: 429 (in the original emphasis).
- ⁶⁵ Kant, VRML, AA 8: 429; Kant, *Practical Philosophy*, p. 614.

⁶⁶ See Kant, RL, AA 6: 306 (§ 41). For a detailed commentary of the systematic transition from private right to public right in the *Metaphysics of Morals*, see Byrd, B. Sharon and Joachim Hruschka: *Kant's Doctrine of Right. A Commentary*. Cambridge (Cambridge University Press), 2010, p. 23-43.

⁶⁷ Kant, RL, AA 6: 311 (§ 43) (in the original emphasis); Kant, *Practical Philosophy*, p. 455 (translation modified). See also Kant, RL, AA 6: 242 (Introduction).

⁶⁸ See Kant, RL, AA 6: 306 (§ 41).

⁶⁹ Kant, RL, AA 6: 309-355 (§§ 41-62).

⁷⁰ Kant, RL, AA 6: 242 (Introduction).

⁷¹ Kant, RL, AA 6: 311-342 (§§ 43-52).

⁷² See the partial reprint of Achenwall's *Ius naturalis*, along with Kant's critical marginalia (*Reflexionen*) entered into his personal copy of the compendium, in Kant, HN, AA 19: 323-613. For an English translation of these materials, see Immanuel Kant, *Lectures and Drafts on Political Philosophy* sowie Achenwall, Gottfried: *Natural Law. A Translation of the Textbook for Kant's Lectures on Legal and Political Philosophy*, ed. Pauline Kleingeld and transl. Corinna Vermeulen. With an Introduction by Paul Guyer. London/New York/Oxford/New Delhi/Sydney (Bloomsbury), 2020.

⁷³ See Kant, RL, AA 6: 242 and 306 (Introduction and § 41).

⁷⁴ See Kant, RL, AA 6: 242 and 306 (Introduction and § 41).

⁷⁵ Kant, RL, AA 6: 306 (§ 41).

⁷⁶ See Kant, RL, AA 6: 256f., 264, 307f. und 312 (§§ 9, 15, 42 and 44).

⁷⁷ Kant, RL, AA 6: 306 (§ 41).

⁷⁸ Kant, RL, AA 6: 264 (§ 15) (in the original emphasis); see also Kant, RL, AA 6: 341 (§ 52).

⁷⁹ Kant, RL, AA 6: 272f. (§ 19).

⁸⁰ Kant, RL, AA 6: 273 (§ 19) (in the original emphasis).

⁸¹ Kant, RL, AA 6: 273 (§ 19).

⁸² See Kant, KU, AA 5: 177, note (Introduction, III.).

⁸³ Kant, RL, AA 6: 272 (§ 19).

⁸⁴ Kant, RL, AA 6: 280, note (§ 28).

Received: 08.02.2024

Accepted: 12.02.2024

