though not of his life and members. No one can bind himself to this kind of dependence, by which he ceases to be a person, by a contract, since it is only as a person that he can make a contract. Now it might seem that someone could put himself under obligation to another person, by a contract to let and hire (locatio conductio), to perform services (in return for wages, board or protection) that are permissible in terms of their quality but indeterminate in terms of their quantity, and that he thereby becomes just a subject (subiectus), not a bondsman (servus). But this is only a deceptive appearance. For if the master is authorized to use the powers of his subject as he pleases, he can also exhaust them until his subject dies or is driven to despair (as with the Negroes on the Sugar Islands); his subject will in fact have given himself away, as property, to his master, which is impossible. – Someone can therefore hire himself out only for work that is determined as to its kind and its amount, either as a day laborer or as a subject living on his master’s property. In the latter case he can make a contract, for a time or indefinitely, to perform services by working on his master’s land in exchange for the use of it instead of receiving wages as a day laborer, or to pay rent (a tax) specified by a lease in return for his own use of it, without thereby making himself a serf (glebae adscriptus), by which he would forfeit his personality. Even if he has become a personal subject by his crime, his subjection cannot be inherited, because he has incurred it only by his own guilt. Nor can a bondsman’s offspring be claimed as a bondsman because he has given rise to the expense of being educated; for parents have an absolute natural duty to educate their children and, in case the parents are in bondage, their masters take over this duty along with possession of their subjects.

6:331

On the right to punish and to grant clemency.

I.

The right to punish is the right a ruler has against a subject to inflict pain upon him because of his having committed a crime. The head of a state can therefore not be punished; one can only withdraw from his dominion. – A transgression of public law that makes someone who commits it unfit to be a citizen is called a crime simply (crimen) but is also called a public crime (crimen publicum); so the first (private crime) is brought before a civil court, the latter before a criminal court. – Embezzlement, that is, misappropriation of money or goods entrusted for commerce, and fraud in buying and selling, when committed in such a way that the other could detect it,
private crimes. On the other hand, counterfeiting money or bills of exchange, theft and robbery, and the like are public crimes, because they endanger the commonwealth and not just an individual person. – They can be divided into crimes arising from a mean character (indolis abiectae) and crimes arising from a violent character (indolis violentae).

Punishment by a court (poena forensis) – this is distinct from natural punishment (poena naturalis), in which vice punishes itself and which the legislator does not take into account – can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only because he has committed a crime. For a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The law of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaimonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantage it promises, in accordance with the Pharisaical saying, “It is better for one man to die than for an entire people to perish.” For if justice goes, there is no longer any value in human being’s living on the earth. – What, therefore, should one think of the proposal to preserve the life of a criminal sentenced to death if he agrees to let dangerous experiments be made on him and is lucky enough to survive them, so that in this way physicians learn something new of benefit to the commonwealth? A court would reject with contempt such a proposal from a medical college, for justice ceases to be justice if it can be bought for any price whatsoever.

But what kind and what amount of punishment is it that public justice makes its principle and measure? None other than the principle of equality (in the position of the needle on the scale of justice), to incline no more to one side than to the other. Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him, you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself. But only the law of retribution (ius talionis) – it being understood, of course, that this is applied by a court (not by your private judgment) – can specify definitely the quality and the quantity of punishment; all other principles are fluctuating and unsuited for a sentence of pure and strict justice because extraneous considerations are mixed into them. – Now it would indeed seem that differences in social rank would not allow the principle of retribution, of like for like, but even when this is not possible.

* Gleiches mit Gleichem
in terms of the letter, the principle can always remain valid in terms of its effect if account is taken of the sensibilities of the upper classes. — A fine, for example, imposed for a verbal injury has no relation to the offense, for someone wealthy might indeed allow himself to indulge in a verbal insult on some occasion; yet the outrage he has done to someone’s love of honor can still be quite similar to the hurt done to his pride if he is constrained by judgment and right not only to apologize publicly to the one he has insulted but also to kiss his hand, for instance, even though he is of a lower class. Similarly, someone of high standing given to violence could be condemned not only to apologize for striking an innocent citizen socially inferior to himself but also to undergo a solitary confinement involving hardship; in addition to the discomfort he undergoes, the offender’s vanity would be painfully affected, so that through his shame like would be fittingly repaid with like. — But what does it mean to say, “If you steal from someone, you steal from yourself”? Whoever steals makes the property of everyone else insecure and therefore deprives himself (by the principle of retribution) of security in any possible property. He has nothing and can also acquire nothing; but he still wants to live, and this is now possible only if others provide for him. But since the state will not provide for him free of charge, he must let it have his powers for any kind of work it pleases (in convict or prison labor) and is reduced to the status of a slave for a certain time, or permanently if the state sees fit. — If, however, he has committed murder he must die. Here there is no substitute that will satisfy justice. There is no similarity between life, however wretched it may be, and death, hence no likeness between the crime and the retribution unless death is judicially carried out upon the wrongdoer, although it must still be freed from any mistreatment that could make the humanity in the person suffering it into something abominable. — Even if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice.

This fitting of punishment to the crime, which can occur only by a judge imposing the death sentence in accordance with the strict law of retribution, is shown by the fact that only by this is a sentence of death pronounced on every criminal in proportion to his inner wickedness (even when the crime is not murder but another crime against the state that can be paid for only by death). — Suppose that some (such as Balmerino39 and others) who took part in the recent Scottish rebellion believed that by their uprising they were only performing a duty they owed the House of Stuart, while others on the contrary were out for their private interests;
and suppose that the judgment pronounced by the highest court had been that each is free to make the choice between death and convict labor. I say that in this case the man of honor would choose death, and the scoundrel convict labor. This comes along with the nature of the human mind; for the man of honor is acquainted with something that he values even more highly than life, namely honor, while the scoundrel considers it better to live in shame than not to live at all (animam praeferre pudori. Iuven.). Since the man of honor is undeniably less deserving of punishment than the other, both would be punished quite proportionately if all alike were sentenced to death; the man of honor would be punished mildly in terms of his sensibilities and the scoundrel severely in terms of his. On the other hand, if both were sentenced to convict labor the man of honor would be punished too severely and the other too mildly for his vile action. And so here too, when sentence is pronounced on a number of criminals united in a plot, the best equalizer before justice is death. – Moreover, one has never heard of anyone who was sentenced to death for murder complaining that he was dealt with too severely and therefore wronged; everyone would laugh in his face if he said this. – If his complaint were justified it would have to be assumed that even though no wrong is done to the criminal in accordance with the law, the legislative authority of the state is still not authorized to inflict this kind of punishment and that, if it does so, it would be in contradiction with itself.

Accordingly, every murderer – anyone who commits murder, orders it, or is an accomplice in it – must suffer death; this is what justice, as the idea of judicial authority, wills in accordance with universal laws that are grounded a priori. – If, however, the number of accomplices (correi) to such a deed is so great that the state, in order to have no such criminals in it, could soon find itself without subjects; and if the state still does not want to dissolve, that is, to pass over into the state of nature, which is far worse because there is no external justice at all in it (and if it especially does not want to dull the people’s feeling by the spectacle of a slaughterhouse), then the sovereign must also have it in his power, in this case of necessity (casus necessitatis), to assume the role of judge (to represent him) and pronounce a judgment that decrees for the criminals a sentence other than capital punishment, such as deportation, which still preserves the population. This cannot be done in accordance with public law but it can be done by an executive decree that is, by an act of the right of majesty which, as clemency, can always be exercised only in individual cases.

In opposition to this the Marchese Beccaria, moved by overly compassionate feelings of an affected humanity (compassibilitas), has put forward his assertion that any capital punishment is wrongful because it could not be contained in the original civil contract; for if it were, everyone in a
people would have to have consented to lose his life in case he murdered someone else (in the people), whereas it is impossible for anyone to consent to this because no one can dispose of his own life. This is all sophistry and juristic trickery.

No one suffers punishment because he has willed *it but because he has willed a punishable action; for it is no punishment if what is done to someone is what he wills, and it is impossible to will to be punished. – Saying that I will to be punished if I murder someone is saying nothing more than that I subject myself together with everyone else to the laws, which will naturally also be penal laws if there are any criminals among the people. As a colegislator in dictating the penal law, I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy). Consequently, when I draw up a penal law against myself as a criminal, it is pure reason in me (homo noumenon), legislating with regard to rights, which subjects me, as someone capable of crime and so as another person (homo phaenomenon), to the penal law, together with all others in a civil union. In other words, it is not the people (each individual in it) that dictates capital punishment but rather the court (public justice), and so another than the criminal; and the social contract contains no promise to let oneself be punished and so to dispose of oneself and one’s life. For, if the authorization to punish had to be based on the offender’s promise, on his willing to let himself be punished, it would also have to be left to him to find himself punishable and the criminal would be his own judge. – The chief point of error in this sophistry consists in its confusing the criminal’s own judgment (which must necessarily be ascribed to his reason) that he has to forfeit his life with a resolve on the part of his will to take his own life, and so in representing as united in one and the same person the judgment upon a right* and the realization of that right. 

There are, however, two crimes deserving of death, with regard to which it still remains doubtful whether legislation is also authorized to impose the death penalty. The feeling of honor leads to both, in one case the honor of one’s sex, in the other military honor, and indeed true honor, which is incumbent as duty on each of these two classes of people. The one crime is a mother’s murder of her child (infanticidium maternale); the other is murdering a fellow soldier (commilitonicidium) in a duel. – Legislation cannot remove the disgrace of an illegitimate birth any more than it can wipe away the stain of suspicion of cowardice from a subordinate officer who fails to respond to a humiliating affront with a force of his own rising above fear of death. So it seems that in these two cases people find themselves in the state of nature, and that these acts of killing (homocidium), which would then not have to be

* Rechtsbeurteilung

b Rechtsvollziehung
called murder (*homocidium dolosum*), are certainly punishable but cannot be punished with death by the supreme power. A child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law. It has, as it were, stolen into the commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not right that it should have come to exist in this way), and can therefore also ignore its annihilation; and no decree can remove the mother's shame when it becomes known that she gave birth without being married. — So too, when a junior officer is insulted he sees himself constrained by the public opinion of the other members of his estate to obtain satisfaction for himself and, as in the state of nature, punishment of the offender not by law, taking him before a court, but by a duel, in which he exposes himself to death in order to prove his military courage, upon which the honor of his estate essentially rests. Even if the duel should involve killing his opponent, the killing that occurs in this fight which takes place in public and with the consent of both parties, though reluctantly, cannot strictly be called murder (*homocidium dolosum*). — What, now, is to be laid down as right in both cases (coming under criminal justice)? — Here penal justice finds itself very much in a quandary. Either it must declare by law that the concept of honor (which is here no illusion) counts for nothing and so punish with death, or else it must remove from the crime the capital punishment appropriate to it, and so be either cruel or indulgent. The knot can be undone in the following way: the categorical imperative of penal justice remains (unlawful killing of another must be punished by death); but the legislation itself (and consequently also the civil constitution), as long as it remains barbarous and undeveloped, is responsible for the discrepancy between the incentives of honor in the people (subjectively) and the measures that are (objectively) suitable for its purposes. So the public justice arising from the state becomes an injustice from the perspective of the justice arising from the people.

II.

Of all the rights of a sovereign, the right to grant clemency to a criminal (*ius aggratiandi*), either by lessening or entirely remitting punishment, is the slipperiest one for him to exercise; for it must be exercised in such a way as to show the splendor of his majesty, although he is thereby doing injustice in the highest degree. — With regard to crimes of subjects against one another it is absolutely not for him to exercise it; for here failure to punish (*impunitas crinis*) is the greatest wrong against his subjects. He can make use of it, therefore, only in case of a wrong done to himself.
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(crimen laesae maiestatis). But he cannot make use of it even then if his failure to punish could endanger the people's security. – This right is the only one that deserves to be called the right of majesty.

On the relation with regard to rights of a citizen to his native land and to foreign countries.

§ 50.

A country (territorium) whose inhabitants are citizens of it simply by its constitution, without their having to perform any special act to establish the right (and so are citizens by birth), is called their native land. A country of which they are not citizens apart from this condition is called a foreign country. If a foreign country forms part of a larger realm it is called a province (in the sense in which the Romans used this word), which must respect the land of the state that rules it as the mother country (regio domina); for a province is not an integral part of the realm (imperii), a place of residence for fellow-citizens, but only a possession of it, a secondary house⁴ for them.

A subject (regarded also as a citizen) has the right to emigrate, for the state could not hold him back as its property. But he can take out of it with him only his movable belongings, not his fixed belongings, as he would be doing if he were authorized to sell the land he previously possessed and take with him the money he got for it.

2) The lord of the land has the right to encourage immigration and settling by foreigners (colonists), even though his native subjects might look askance at this, provided that their private ownership of land is not curtailed by it.

3) He also has the right to banish a subject to a province outside the country, where he will not enjoy any of the rights of a citizen, that is, to deport him, if he has committed a crime that makes it harmful to the state for his fellow citizens to associate with him.

4) He also has the right to exile him altogether (ius exilii), to send him out into the wide world, that is, entirely outside his country (in Old German, this is called Elend [misery]). Since the lord of the land then withdraws all protection from him, this amounts to making him an outlaw within his boundaries.

⁴ Unterhauses. Some editors suggest that this is a typographical error for Untertans, in which case the phrase would mean only that the mother country possesses the province as a subject. If Unterhauses is not a typographical error, Kant may mean that the citizens of the mother country are not, by birth, citizens of the province of the ruling state. See 6:338 and 6:348. A province is a “foreign country” (Ausland), as far as the “mother country” or ruling state is concerned.

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§ 51.

The three authorities in a state, which arise from the concept of a commonwealth as such (res publica latius dicta), are only the three relations of the united will of the people, which is derived a priori from reason. They are a pure idea of a head of state, which has objective practical reality. But this head of state (the sovereign) is only a thought-entity (to represent the entire people) as long as there is no physical person to represent the supreme authority in the state and to make this idea effective on the people's will. Now, the relation of this physical person to the people's will can be thought of in three different ways: either that one in the state has command over all; or that several, equal among themselves, are united in command over all the others; or that all together have command over each and so over themselves as well. In other words, the form of a state is either autocratic, aristocratic or democratic. (The expression monarchical, in place of autocratic is one who has the highest authority, whereas an autocrat, who rules by himself, has all the authority. The autocrat is the sovereign, whereas the monarch merely represents the sovereign.) – It is easy to see that the autocratic form of state is the simplest, namely the relation of one (the king) to the people, so that only one is legislator. The aristocratic form of state is already composed of two relations: the relation of the nobility (as legislator) to one another, to constitute the sovereign, and then the relation of this sovereign to the people. But the democratic form of state is the most composite of all, since it involves the following relations: first, it unites the will of all to form a people; then it unites the will of the citizens to form a commonwealth; then it sets this sovereign, which is itself the united will of the citizens, over the commonwealth.* It is true that, with regard to the administration of right within a state, the simplest form is also the best. With regard to right itself, however, this form of state is the most dangerous for a people, in view of how conducive it is to despotism. It is indeed the most reasonable maxim to simplify the mechanism of unifying a nation by coercive laws, that is, when all the members of the nation are passive and obey one who is over them; but in that case none who are subjects are also citizens of the state. As for the consolation with which the people is supposed to be content – that monarchy (strictly speaking here, autocracy) is the best constitution when the monarch is good (i.e., when he not only intends what is good but also has insight into it) – this is one of those wise remarks that are tautologous. It says nothing more than that the best constitution is the one by which the administrator of the state is made into the best ruler, that is, that the best constitution is that which is best. 6:339

*I shall not mention the adulterations of these forms that arise from invasion by powerful unauthorized people (oligarchy and ochlocracy), or the so-called mixed constitutions, since this would take us too far afield.
It is futile to inquire into the historical documentation of the mechanism of government, that is, one cannot reach back to the time at which civil society began (for savages draw up no record of their submission to law; besides, we can already gather from the nature of uncivilized human beings that they were originally subjected to it by force). But it is culpable to undertake this inquiry with a view to possibly changing by force the constitution that now exists. For this transformation would have to take place by the people acting as a mob, not by legislation; but insurrection in a constitution that already exists overthrows all civil rightful relations and therefore all right, that is, it is not change in the civil constitution but dissolution of it. The transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract on which the previous one (now annulled) has no effect. – But it must still be possible, if the existing constitution cannot well be reconciled with the idea of the original contract, for the sovereign to change it, so as to allow to continue in existence that form which is essentially required for a people to constitute a state. Now this change cannot consist in a state’s reorganizing itself from one of the three forms into another, as, for example, aristocrats agreeing to submit to autocracy or deciding to merge into a democracy, or the reverse, as if it rested on the sovereign’s free choice and discretion which kind of constitution it would subject the people to. For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage.

The different forms of states are only the letter (littera) of the original legislation in the civil state, and they may therefore remain as long as they are taken, by old and long-standing custom (and so only subjectively), to belong necessarily to the machinery of the constitution. But the spirit of the original contract (anima pacti originarii) involves an obligation on the part of the constituting authority to make the kind of government suited to the idea of the original contract. Accordingly, even if this cannot be done all at once, it is under obligation to change the kind of government gradually and continually so that it harmonizes in its effect with the only constitution that accords with right, that of a pure republic, in such a way that the old (empirical) statutory forms, which served merely to bring about the submission of the people, are replaced by the original (rational) form, the only form which makes freedom the principle and indeed the condition for any exercise of coercion, as is required by a rightful constitution of a state in the strict sense of the word. Only it will finally lead to what is literally a state. – This is the only constitution of a state that lasts, the constitution in which
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law itself rules and depends on no particular person. It is the final end of all public right, the only condition in which each can be assigned conclusively what is his; on the other hand, so long as those other forms of state are supposed to represent literally just so many different moral persons invested with supreme authority, no absolutely rightful condition of civil society can be acknowledged, but only provisional right within it.

Any true republic is and can only be a system representing the people, in order to protect its rights in its name, by all the citizens united and acting through their delegates (deputies). But as soon as a person who is head of state (whether it be a king, nobility, or the whole of the population, the democratic union) also lets itself be represented, then the united people does not merely represent the sovereign: it is the sovereign itself. For in it (the people) is originally found the supreme authority from which all rights of individuals as mere subjects (and in any event as officials of the state) must be derived; and a republic, once established, no longer has to let the reins of government out of its hands and give them over again to those who previously held them and could again nullify all new institutions by their absolute choice.

A powerful ruler in our time therefore made a very serious error in judgment when, to extricate himself from he embarrassment of large state debts, he left it to the people to take this burden on itself and distribute it as it saw fit; for then the legislative authority naturally came into the people’s hands, not only with regard to the taxation of subjects but also with regard to the government, namely to prevent it from incurring new debts by extravagance or war. The consequence was that the monarch’s sovereignty wholly disappeared (it was not merely suspended) and passed to the people, to whose legislative will the belongings of every subject became subjected. Nor can it be said that in this case one must assume a tacit but still contractual promise of the National Assembly not to make itself the sovereign but only to administer this business of the sovereign and, having attended to it, return the reins of government into the monarch’s hands; for such a contract is in itself null and void. The right of supreme legislation in a commonwealth is not an alienable right but the most personal of all rights. Whoever has it can control the people only through the collective will of the people; he cannot control the collective will itself, which is the ultimate basis of any public contract. A contract that would impose obligation on the people to give back its authority would not be incumbent upon the people as the legislative power, yet would still be binding upon it; and this is a contradiction, in accordance with the saying “No one can serve two masters.”*

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* Hemchegewalt
* Matthew 6:24

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As natives of a country, those who constitute a nation can be looked upon analogously to descendants of the same ancestors (congeniti) even though they are not. Yet in an intellectual sense and from the perspective of rights, since they are born of the same mother (the republic) they constitute as it were one family (gens, natio), whose members (citizens of the state) are of equally high birth and do not mix with those who may live near them in a state of nature, whom they regard as inferior; the latter (savages), however, for their own part consider themselves superior because of the lawless freedom they have chosen, even though they do not constitute states but only tribes. The right of states in relation to one another (which in German is called, not quite correctly, the right of nations, but should instead be called the right of states, ius publicum civitatum) is what we have to consider under the title the right of nations. Here a state, as a moral person, is considered as living in relation to another state in the condition of natural freedom and therefore in a condition of constant war. The rights of states consist, therefore, partly of their right to go to war, partly of their right in war, and partly of their right to constrain each other to leave this condition of war and so form a constitution that will establish lasting peace, that is, its right after war. In this problem the only difference between the state of nature of individual human beings and of families (in relation to one another) and that of nations is that in the right of nations we have to take into consideration not only the relation of one state toward another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole. But this difference from the rights of individuals in a state of nature makes it necessary to consider only such features as can be readily inferred from the concept of a state of nature.

The elements of the right of nations are these: 1) states, considered in external relation to one another, are (like lawless savages) by nature in a nonrightful condition. 2) This nonrightful condition is a condition of war (of the right of the stronger), even if it is not a condition of actual war and actual attacks being constantly made (hostilities). Although no state is wronged by another in this condition (insofar as neither wants anything better), this condition is in itself still wrong in the highest degree, and states neighboring upon one another are under obligation to leave it. 3) A league of nations in accordance with the idea of an original social contract
is necessary, not in order to meddle in one another's internal dissensions but to protect against attacks from without. 4) This alliance must, however, involve no sovereign authority (as in a civil constitution), but only an association (federation); it must be an alliance that can be renounced at any time and so must be renewed from time to time. This is a right in subsidium of another and original right, to avoid getting involved in a state of actual war among the other members (foedus Amphictyonum).

§ 55.
As regards the original right that free states in a state of nature have to go to war with one another (in order, perhaps, to establish a condition more closely approaching a rightful condition), the first question that arises is: what right has a state against its own subjects to use them for war against other states, to expend their goods and even their lives in it, or to put them at risk, in such a way that whether they shall go to war does not depend on their own judgment, but they may be sent into it by the supreme command of the sovereign?

It might seem that this right can be easily proved, namely from the right to do what one wants with what belongs to one (one's property). Anyone has an incontestable property in anything the substance of which he has himself made. — What follows, then, is the deduction, as a mere jurist would draw it up.

There are various natural products in a country that must still be consid­ered artifacts (artefacta) of the state as far as the abundance of natural products of a certain kind is concerned, since the country would not have yielded them in such abundance had there not been a state and an orderly, powerful government, but the inhabitants had been in a state of nature. — Whether from lack of food or from the presence of predatory animals in the country where I live, hens (the most useful kind of fowl), sheep, swine, cattle and so forth would either not exist at all or at best would be scarce unless there were a government in this country, which secures the inhabitants in what they acquire and possess. — This holds true of the human population as well, which can only be small, as it is in the American wilderness, even if we attribute to these people the greatest industry (which they do not have). The inhabitants would be very scarce since they could not take their attendants and spread out on a land that is always in danger of being laid waste by men or by wild and predatory beasts. There would therefore not be adequate sustenance for such a great abundance of human beings as now live in a country. — Now just as we say that since vegetables (e.g., potatoes) and domestic animals are, as regards their abundance, a human product, which he can use, wear out or destroy (kill), it seems we can also say that since most of his subjects are his own product, the supreme authority in a state, the sovereign, has the right to lead them into war as he would take them on a hunt, and into battles as on a pleasure trip.

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While such an argument for this right (which may well be present obscurely in the monarch’s mind) holds with regard to animals, which can be one’s property, it simply cannot be applied to human beings, especially as citizens of a state. For they must always be regarded as colegislating members of a state (not merely as means, but also as ends in themselves), and must therefore give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war. Only under this limiting condition can a state direct them to serve in a way full of danger to them.

We shall therefore have to derive this right from the duty of the sovereign to the people (not the reverse); and for this to be the case the people will have to be regarded as having given its vote to go to war. In this capacity it is, although passive (letting itself be disposed of), also active and represents the sovereign itself.

§ 56.
In the state of nature among states, the right to go to war (to engage in hostilities) is the way in which a state is permitted to prosecute its right against another state, namely by its own force, when it believes it has been wronged by the other state; for this cannot be done in the state of nature by a lawsuit (the only means by which disputes are settled in a rightful condition). – In addition to active violations (first aggression, which is not the same as first hostility) it may be threatened. This includes another state’s being the first to undertake preparations, upon which is based the right of prevention (ius praeventionis), or even just the menacing increase in another state’s power (by its acquisition of territory) (potentia tremenda). This is a wrong to the lesser power merely by the condition of the superior power, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate. Accordingly, this is also the basis of the right to a balance of power among all states that are contiguous and could act on one another.

As for active violations which give a right to go to war, these include acts of retaliation (retorsio), a state’s taking it upon itself to obtain satisfaction for an offense committed against its people by the people of another state, instead of seeking compensation (by peaceful methods) from the other state. In terms of formalities, this resembles starting a war without first renouncing peace (without a declaration of war); for if one wants to find a right in a condition of war, something analogous to a contract must be assumed, namely, acceptance of the declaration of the other party that both want to seek their right in this way.

awesome power
The greatest difficulty in the right of nations has to do precisely with right during a war; it is difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself (inter arma silent leges). Right during a war would, then, have to be the waging of war in accordance with principles that always leave open the possibility of leaving the state of nature among states (in external relation to one another) and entering a rightful condition.

No war of independent states against each other can be a punitive war (bellum punitivum). For punishment occurs only in the relation of a superior (imperantis) to those subject to him (suhditum), and states do not stand in that relation to each other. Nor, again, can any war be either a war of extermination (bellum internicinum) or of subjugation (bellum subiugatorium), which would be the moral annihilation of a state (the people of which would either become merged in one mass with that of the conqueror or reduced to servitude). The reason there cannot be a war of subjugation is not that this extreme measure a state might use to achieve a condition of peace would in itself contradict the right of a state; it is rather that the idea of the right of nations involves only the concept of an antagonism in accordance with principles of outer freedom by which each can preserve what belongs to it, but not a way of acquiring, by which one state's increase of power could threaten others.

A state against which war is being waged is permitted to use any means of defense except those that would make its subjects unfit to be citizens; for it would then also make itself unfit to qualify, in accordance with the right of nations, as a person in the relation of states (as one who would enjoy the same rights as others). Means of defense that are not permitted include: using its own subjects as spies; using them or even foreigners as assassins or poisoners (among whom so-called snipers, who lie in wait to ambush individuals, might well be classed); or using them merely for spreading false reports – in a word, using such underhanded means as would destroy the trust requisite to establishing a lasting peace in the future.

In war it is permissible to exact supplies and contributions from a defeated enemy, but not to plunder the people, that is, not to force individual persons to give up their belongings (for that would be robbery, since it was not the conquered people that waged the war; rather, the state under whose rule they lived waged the war through the people). Instead, receipts should be issued for everything requisitioned, so that in the peace that follows the burden imposed on the country or province can be divided proportionately.

1 In time of war the laws are silent. Cicero Pro Milone 4.10.
2 Knechtschaft
The right of a state after a war, that is, at the time of the peace treaty and with a view to its consequences, consists in this: the victor lays down the conditions on which it will come to an agreement with the vanquished and hold negotiations for concluding peace. The victor does not do this from any right he pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force. The victor can therefore not propose compensation for the costs of the war since he would then have to admit that his opponent had fought an unjust war. While he may well think of this argument he still cannot use it, since he would then be saying that he had been waging a punitive war and so, for his own part, committing an offense against the vanquished. Rights after a war also include a right to an exchange of prisoners (without ransom), without regard for their being equal in number.

A defeated state or its subjects do not lose their civil freedom through the conquest of their country, so that the state would be degraded to a colony and its subjects to bondage; for if they did the war would have been a punitive war, which is self-contradictory. - A colony or province is a people that indeed has its own constitution, its own legislation, and its own land, on which those who belong to another state are only foreigners even though this other state has supreme executive authority over the colony or province. - The state having that executive authority is called the mother state, and the daughter state, though ruled by it, still governs itself (by its own parliament, possibly with a viceroy presiding over it) (civitas hybrida). This was the relation Athens had with respect to various islands and that Great Britain now has with regard to Ireland.

Still less can bondage and its legitimacy be derived from a people’s being overcome in war, since for this one would have to admit that a war could be punitive. Least of all can hereditary bondage be derived from it; hereditary bondage as such is absurd since guilt from someone’s crime cannot be inherited.

The concept of a peace treaty already contains the provision that an amnesty goes along with it.

The right to peace is 1) the right to be at peace when there is a war in the vicinity, or the right to neutrality; 2) the right to be assured of the continuance of a peace that has been concluded, that is, the right to a guarantee; 3) the right to an alliance (confederation) of several states for their common defense against any external or internal attacks, but not a league for attacking others and adding to their own territory.

1 hybrid state
§60. There are no limits to the rights of a state against an unjust enemy (no limits with respect to quantity or degree, though there are limits with respect to quality); that is to say, an injured state may not use any means whatever but may use those means that are allowable to any degree that it is able to, in order to maintain what belongs to it. – But what is an unjust enemy in terms of the concepts of the right of nations, in which – as is the case in a state of nature generally – each state is judge in its own case? It is an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated. Violation of public contracts is an expression of this sort. Since this can be assumed to be a matter of concern to all nations whose freedom is threatened by it, they are called upon to unite against such misconduct in order to deprive the state of its power to do it. But they are not called upon to divide its territory among themselves and to make the state, as it were, disappear from the earth, since that would be an injustice against its people, which cannot lose its original right to unite itself into a commonwealth, though it can be made to adopt a new constitution that by its nature will be unfavorable to the inclination of war.

It is pleonastic, however, to speak of an unjust enemy in a state of nature; for a state of nature is itself a condition of injustice. A just enemy would be one that I would be doing wrong by resisting; but then he would also not be my enemy.

§61. Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely provisional. Only in a universal association of states (analogous to that by which a people becomes a state) can rights come to hold conclusively and a true condition of peace come about. But if such a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war. So perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual approximation to it, are not unachievable. Instead, since continual approximation to it is a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved.

Such an association of several states to preserve peace can be called a permanent congress of states, which each neighboring state is at liberty to
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join. Something of this kind took place (at least as regards the formalities of the right of nations for the sake of keeping the peace) in the first half of the present century, in the assembly of the States General at the Hague. The ministers of most of the courts of Europe and even of the smallest republics lodged with it their complaints about attacks being made on one of them by another. In this way they thought of the whole of Europe as a single confederated state which they accepted as arbiter, so to speak, in their public disputes. 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.

6:351 By a congress is here understood only a voluntary "coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved. – Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war.

"willkürliche
Public right  
Section III.  
Cosmopolitan right.

§ 62.
This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a globus terraqueus). And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand originally in a community of land, though not of rightful community of possession (communio) and so of use of it, or of property in it; instead they stand in a community of possible physical interaction (commercium), that is, in a thoroughgoing relation of each to all the others of offering to engage in commerce with any other, and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt. – This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called cosmopolitan right (ius cosmopolitanicum).

Although the seas might seem to remove nations from any community with one another, they are the arrangements of nature most favoring their commerce by means of navigation; and the more coastlines these nations have in the vicinity of one another (as in the Mediterraneaean), the more lively their commerce can be. However, visiting these coasts, and still more settling there to connect them with the mother country, provides the occasion for troubles and acts of violence in one place on our globe to be felt all over it. Yet this possible abuse cannot annul the right of citizens of the world to try to establish community with all and, to this end, to visit all regions of the earth. This is not, however, a right to make a settlement on the land of another nation (ius incolatus); for this, a specific contract is required.

The question arises, however: in newly discovered lands, may a nation undertake to settle (accoalatus) and take possession in the neighborhood of a people that has already settled in the region, even without its consent?

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* globe of earth and water
* Kant moves between Wechselwirkung, i.e., interaction, intercourse, or “commerce” in a very general sense, and Verkehr, which he used in his discussion of contracts to signify exchange of property, “commerce” in a more specific sense.
* right to inhabit
* dwell near, as a neighbor
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If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. This is true despite the fact that sufficient specious reasons to justify the use of force are available: that it is to the world's advantage, partly because these crude peoples will become civilized (this is like the pretext by which even Büsching tries to excuse the bloody introduction of Christianity into Germany), and partly because one's own country will be cleaned of corrupt men, and they or their descendants will, it is hoped, become better in another part of the world (such as New Holland). But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them. Someone may reply that such scruples about using force in the beginning, in order to establish a lawful condition, might well mean that the whole earth would still be in a lawless condition; but this consideration can no more annul that condition of right than can the pretext of revolutionaries within a state, that when constitutions are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all the more securely and make it flourish.

Conclusion

If someone cannot prove that a thing is, he can try to prove that it is not. If (as often happens) he cannot succeed in either, he can still ask whether he has any interest in assuming one or the other (as an hypothesis), either from a theoretical or from a practical point of view. An assumption is adopted from a theoretical point of view in order merely to explain a certain phenomenon (such as, for astronomers, the retrograde motion and stationary state of the planets). An assumption is adopted from a practical point of view in order to achieve a certain end, which may be either a pragmatic (merely technical end) or a moral end, that is, an end such that the maxim of adopting it is itself a duty. — Now it is evident that what would be made our duty in this case is not the assumption (suppositio) that this end can be realized, which would be a judgment about it that is merely theoretical and, moreover, problematic; for there can be no obligation to do this (to believe something). What is incumbent upon us as a

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1 Rechtsbedingung
1 Kuns zweck
THE METAPHYSICS OF MORALS

duty is rather to act in conformity with the idea of that end, even if there is not the slightest theoretical likelihood that it can be realized, as long as its impossibility cannot be demonstrated either.

Now morally practical reason pronounces in us its irresistible veto: there is to be no war, neither war between you and me in the state of nature nor war between us as states, which, although they are internally in a lawful condition, are still externally (in relation to one another) in a lawless condition; for war is not the way in which everyone should seek his rights. So the question is no longer whether perpetual peace is something real or a fiction, and whether we are not deceiving ourselves in our theoretical judgment when we assume that it is real. Instead, we must act as if it is something real, though perhaps it is not; we must work toward establishing perpetual peace and the kind of constitution that seems to us most conducive to it (say, a republicanism of all states, together and separately) in order to bring about perpetual peace and put an end to the heinous waging of war, to which as their chief aim all states without exception have hitherto directed their internal arrangements. And even if the complete realization of this objective always remains a pious wish, still we are certainly not deceiving ourselves in adopting the maxim of working incessantly toward it. For this is our duty, and to admit that the moral law within us is itself deceptive would call forth in us the wish, which arouses our abhorrence, rather to be rid of all reason and to regard ourselves as thrown by one’s principles into the same mechanism of nature as all the other species of animals.

It can be said that establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of mere reason; for the condition of peace is alone that condition in which what is mine and what is yours for a multitude of human beings is secured under laws living in proximity to one another, hence those who are united under a constitution; but the rule for this constitution, as a norm for others, cannot be derived from the experience of those who have hitherto found it most to their advantage; it must, rather, be derived a priori by reason from the ideal of a rightful association of human beings under public laws as such. For all examples (which only illustrate but cannot prove anything) are treacherous, so that they certainly require a metaphysics. Even those who ridicule metaphysics admit its necessity, though carelessly, when they say for example, as they often do, “the best constitution is that in which power belongs not to human beings but to the laws.” For what can be more metaphysically sublimated than this very idea, which even according to their own assertion has the most confirmed objective reality, as can also be easily shown in actually occurring cases? The attempt to realize this idea should not be made by way of revolution, by a leap, that is, by violent overthrow of an already existing defective constitution (for there would then be an intervening moment in which any rightful
condition would be annihilated). But if it is attempted and carried out by gradual reform in accordance with firm principles, it can lead to continual approximation to the highest political good, perpetual peace.

Appendix

Explanatory remarks

on

The metaphysical first principles of the doctrine of right

I take the occasion for these remarks chiefly from the review of this book in the Göttingen Journal (No.28, 18 Feb. 1797). In this review the book was examined with insight and rigor, but also with appreciation and “the hope that those first principles will be a lasting gain for the science.” I shall use this review as a guide for my criticism as well as for some elaboration of this system.

My astute critic takes exception to a definition at the very beginning of the Introduction to the Doctrine of Right. What is meant by the faculty of desire? It is, the text says, the capacity to be by means of one’s representations the cause of the objects of these representations. – To this exposition he objects “that it comes to nothing as soon as one abstracts from the external conditions of the result of desire. – But the faculty of desire is something even for an idealist, even though the external world is nothing for him.” I reply: but are there not also intense but still consciously futile longings (e.g., Would to God that man were still alive!), which are devoid of any deed but not devoid of any result, since they still work powerfully within the subject himself (make him ill), though not on external things? A desire, as a striving (nisus) to be a cause by means of one’s representations, is still always causality, at least within the subject, even when he sees the inadequacy of his representations for the effect he envisages. – The misunderstanding here amounts to this: that since consciousness of one’s capacity in general is (in the case mentioned) also consciousness of one’s incapacity* with respect to the external world, the definition is not applicable to an idealist. Since, however, all that is in question here is the relation of a cause (a representation) to an effect (a feeling) in general, the causality of a representation (whether the causality is external or internal) with regard to its object must unavoidably be thought in the concept of the faculty of desire.

1 Vermögen
* seines Vermögen überhaupt . . . seines Unvermögens
THE METAPHYSICS OF MORALS

I.

LOGICAL PREPARATION FOR A RECENTLY PROPOSED CONCEPT OF A RIGHT.

If philosophers versed in right want to rise or venture all the way to metaphysical first principles of the doctrine of right (without which all their juridical science would be merely statutory), they cannot be indifferent to assurance of the completeness of their division of concepts of rights, since otherwise that science would not be a rational system but merely an aggregate hastily collected. For the sake of the form of the system, the topic of principles must be complete, that is, the place for a concept (locus communis) must be indicated, the place that is left open for this concept by the synthetic form of the division. Afterwards one may also show that one or another concept which might be put in this place would be self-contradictory and falls from this place.

Up to now jurists have admitted two commonplaces: that of a right to things and that of a right against persons. By the mere form of joining these two concepts together into one, two more places are opened up for concepts, as members of an a priori division: that of a right to a thing akin to a right against a person and that of a right to a person akin to a right to a thing. It is therefore natural to ask whether we have to add some such new concept and whether we must come across it in the complete table of division, even if it is only problematic. There can be no doubt that this is the case. For a merely logical division (which abstracts from the content of cognition, from the object) is always a dichotomy, for example, any right is either a right to a thing or not a right to a thing. But the division in question here, namely the metaphysical division, might also be a fourfold division; for besides the two simple members of the division, two further relations might have to be added, namely those of the conditions limiting a right, under which one right enters into combination with the other. This possibility requires further investigation. – The concept of a right to a thing akin to a right against a person drops out without further ado, since no right of a thing against a person is conceivable. Now the question is whether the reverse of this relation is just as inconceivable or whether this concept, namely that of a right to a person akin to a right to a thing, is a concept that not only contains no self-contradiction but also belongs necessarily (as given a priori in reason) to the concept of what is externally mine or yours, that of not treating persons in a similar way to things in all

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*Rechtswissenschaft. See 6:229, where Kant seemed to say that only systematic knowledge of natural right is a true science. When coupled with that passage, his use here of erhäben oder versteigen, which I have translated as "rise or venture," might be a suggestion that some philosophic jurists have got out of their element in attempting to discuss the issues at hand.
respects, but still of possessing them as things and dealing with them as things in many relations.

2. JUSTIFICATION OF THE CONCEPT OF A RIGHT TO A PERSON AKIN TO A RIGHT TO A THING.

Put briefly and well, the definition of a right to a person akin to a right to a thing is this: “It is the right of a human being to have a person other than himself as his own.” I take care to say “a person”; for while it is true that someone can have as his own another human being who by his crime has forfeited his personality (become a bondsman), this right to a thing is not what is in question here.

We must now examine whether this concept, this “new phenomenon in the juristic sky,” is a *stella mirabilis* (a phenomenon never seen before, growing into a star of the first magnitude but gradually disappearing again, perhaps to return at some time) or merely a *shooting star*.

3. EXAMPLES.

To have something external as one’s own means to possess it rightfully; but possessing something is the condition of its being possible to use it. If this condition is thought as merely physical, possession is called holding. — That I am legitimately holding something is not of itself sufficient for saying that the object is mine or for making it mine. But if I am authorized, for whatever reason, to insist upon holding an object that has escaped from my control or been torn from it, this concept of a right is a sign (as an effect is a sign of its cause) that I consider myself authorized to treat this object and to use it as what is mine, and consider myself as also in intelligible possession of it.

What is one’s own here does not, indeed, mean what is one’s own in the sense of property in the person of another (for a human being cannot have property in himself, much less in another person), but means what is one’s own in the sense of usufruct (*ius utendi fruendi*), to make direct use...
of a person as of a thing, as a means to my end, but still without infringing upon his personality.

But this end, as the condition under which such use is legitimate, must be morally necessary. A man cannot desire a woman in order to enjoy her as a thing, that is, in order to take immediate satisfaction in merely animal intercourse with her, nor can a woman give herself to him for this without both renouncing their personalities (in carnal or bestial cohabitation), that is, this can be done only under the condition of marriage. Since marriage is a reciprocal giving of one's very person into the possession of the other, it must first be concluded, so that neither is dehumanized through the bodily use that one makes of the other.

Apart from this condition carnal enjoyment is cannibalistic in principle (even if not always in its effect). Whether something is consumed by mouth and teeth, or whether the woman is consumed by pregnancy and the perhaps fatal delivery resulting from it, or the man by exhaustion of his sexual capacity from the woman's frequent demands upon it, the difference is merely in the manner of enjoyment. In this sort of use by each of the sexual organs of the other, each is actually a consumable thing (res fungibilis) with respect to the other, so that if one were to make oneself such a thing by contract, the contract would be contrary to law (pactum turpe).

Similarly, a man and a woman cannot beget a child as their joint work (res artificialis) and without both of them incurring an obligation toward the child and toward each other to maintain it. This is, again, acquisition of a human being as of a thing, but only formally so (as befits a right to a person that is only akin to a right to a thing). Parents have a right against every possessor (ius in re) of their child who has been removed from their control. Since they also have a right to constrain it to carry out and comply with any of their directions that are not contrary to a possible lawful freedom (ius ad rem), they also have a right against a person against the child.

Finally, when their duty to provide for their children comes to an end as they reach maturity, parents still have a right to use them as members of the household subject to their direction, for maintaining the household, until they leave. This is a duty of parents toward them which follows from the natural limitation of the parents' right. Up until this time children are indeed members of the household and belong to the family; but from now

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on they belong to the service of the family (famulatus), so that the head of the house cannot add them to what is his (as his domestics) except by contract. — In the same way, the head of a house can also make the service of those outside the family his own in terms of a right to them akin to a right to a thing and acquire them as domestics (famulatus domesticus) by a contract. Such a contract is not just a contract to let and hire (locatio conductio operae), but a giving up of their persons into the possession of the head of the house, a lease (locatio conductio personae). What distinguishes such a contract from letting and hiring is that the servant agrees to do whatever is permissible for the welfare of the household, instead of being commissioned for a specifically determined job, whereas someone who is hired for a specific job (an artisan or day laborer) does not give himself up as part of the other’s belongings and so is not a member of the household. — Since he is not in the rightful possession of another who puts him under obligation to perform certain services, even if he lives in the other’s house (inquilinus), the head of the house cannot take possession of him as a thing (via facti); he must instead insist upon the laborer’s doing what he promised in terms of a right against a person, as something he can command by rightful proceedings (via iuris). — So much for the clarification and defense of a strange type of right which has recently been added to the doctrine of natural law, although it has always been tacitly in use.

4.

ON CONFUSING A RIGHT TO A THING WITH A RIGHT AGAINST A PERSON.

I have also been censured for heterodoxy in natural private right for the proposition that sale breaks a lease (The Doctrine of Right, 31, p. 129 [AK. 6:290]).

It does seem at first glance to conflict with all rights arising from a contract that someone could give notice to someone leasing his house before the period of residence agreed upon is up and, so it seems, break his promise to the lessee, provided he grants him the time for vacating it that is customary by the civil laws where they live. — But if it can be proved that the lessee knew or must have known, when he contracted to lease it, that the promise made to him by the lessor, the owner, naturally (without its needing to be stated expressly in the contract) and therefore tacitly included the condition, as long as the owner does not sell the house during this time (or does not have to turn it over to his creditors if he should become bankrupt), then the lessor has not broken his promise, which was already a conditional one in terms of reason, and the lessee’s

1 let and hire of a work
2 let and hire of a person

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right was not encroached upon if he was given notice before the lease expired.

For the right a lessee has by a contract to lease is a right against a person, to something a certain person has to perform for another (ius ad rem); it is not a right against every possessor of a thing (ius in re), not a right to a thing.

A lessee could, indeed, secure himself in his contract to lease and produce a right to a thing as regards the house; he could, namely, have this right only to the lessor's house registered (entered in the land registry), as attached to the land. Then he could not be turned out of his lease, before the time settled upon had expired, by the owner's giving notice or even by his death (his natural death or also his civil death, bankruptcy). If he does not do this, perhaps because he wanted to be free to conclude a lease on better terms elsewhere or because the owner did not want to encumber his house with such an onus, it may be concluded that, as regards the time for giving notice, each of the parties was aware that he had made a contract subject to the tacit condition that it could be dissolved if this became convenient (except for the period of grace for vacating, as determined by civil law). Certain rightful consequences of a bare contract to lease give further confirmation of one's authorization to break a lease by sale; for if a lessor dies, no obligation to continue the lease is ascribed to his heir, since this is an obligation only on the part of a certain person and ceases with his death (though the legal time for giving notice must still be taken into account in this case). Neither can the right of a lessee, as such, pass to his heir without a separate contract; nor, as long as both parties are alive, is a lessee authorized to sublet to anyone without an explicit agreement.

5.
FURTHER DISCUSSION OF THE CONCEPT OF THE RIGHT TO PUNISH.

The mere idea of a civil constitution among human beings carries with it the concept of punitive justice belonging to the supreme authority. The only question is whether it is a matter of indifference to the legislator what kinds of punishment are adopted, as long as they are effective measures for eradicating crime (which violates the security a state gives each in his possession of what is his), or whether the legislator must also take into account respect for the humanity in the person of the wrongdoer (i.e., respect for the species) simply on grounds of right. I said that the ius talionis is by its form always the principle for the right to punish since it alone is the principle determining this idea a priori (not derived from experience of which measures would be most effective for eradicating

right of retaliation
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crime).* – But what is to be done in the case of crimes that cannot be punished by a return for them because this would be either impossible or itself a punishable crime against humanity as such, for example, rape as well as pederasty or bestiality? The punishment for rape and pederasty is castration (like that of a white or black eunuch in a seraglio), that for bestiality, permanent expulsion from civil society, since the criminal has made himself unworthy of human society. – *Per quod quis peccat, per idem punitur et idem.* – The crimes mentioned are called unnatural because they are perpetrated against humanity itself. To inflict whatever punishments one chooses⁴ for these crimes would be literally contrary to the concept of punitive justice. For the only time a criminal cannot complain that a wrong is done him is when he brings his misconduct⁶ back upon himself, and what is done to him in accordance with penal law is what he has perpetrated on others, if not in terms of its letter at least in terms of its spirit.

6.

ON A RIGHT FROM PROLONGED POSSESSION.

“A right based on prolonged possession (Usucapio) should, according to p. 131 ff. [AK. 6:291 ff.], be established by natural right. For unless one admits that an ideal acquisition, as it is here called, is established by possession in good faith, no acquisition at all would be conclusively secured. (Yet Kant himself admits only provisional acquisition in the state of nature, and because of this insists on the juristic necessity of a civil constitution. – I assert that I am the possessor of something in good faith, however, only against someone who cannot prove that he was possessor of the same thing in good faith before me and has not ceased by his will to be its possessor.)” – This is not the question here. The question is whether I can also assert that I am the owner even if someone should come forward claiming to be the earlier true owner of the thing, but where it was abso-

* In every punishment there is something that (rightly) offends the accused’s feeling of honor, since it involves coercion that is unilateral only, so that his dignity as a citizen is suspended, at least in this particular case; for he is subjected to an external duty to which he, for his own part, may offer no resistance. A man of nobility or wealth who has to pay a fine feels the loss of his money less than the humiliation of having to submit to the will of an inferior. Punitive justice (justitia punitiva) must be distinguished from punitive prudence, since the argument for the former is moral, in terms of being punishable (quia peccatum est) while that for the latter is merely pragmatic (ne peccetur) and based on experience of what is most effective in eradicating crime; and punitive justice has an entirely different place in the topic of concepts of right, locus iusti; its place is not that of the conducibilis, of what is useful for a certain purpose, nor that of the mere honesti, which must be sought in ethics.
⁴ One who commits a sin is punished through it and in the same way.
⁵ Willkürlich Strafen
⁶ Übeliat