

Katrin Flikschuh

Kant

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KANT AND MODERN POLITICAL PHILOSOPHY

In this book Katrin Flikschuh examines the relevance of Kant's political thought to major issues and problems in contemporary political philosophy. She advances and defends two principal claims: that Kant's philosophy of Right endorses the role of metaphysics in political thinking, in contrast to its generally hostile reception in the field today, and that his account of political obligation is cosmopolitan in its inception, assigning priority to the global rather than the domestic context. She shows how Kant's metaphysics of freedom as a shared idea of practical reason underlies the cosmopolitan scope of his theory of justice, and she concludes that, despite the revival of 'Kantianism' in contemporary thinking, his account of justice is in many respects very different from dominant approaches in contemporary liberal theory. Her study will be of interest to political philosophers, political theorists, and historians of ideas.

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Contents

<i>Acknowledgements</i>	page vii
<i>List of Kant's works and abbreviations</i>	ix
Introduction	i
1 Kantian metaphysics in contemporary liberalism	12
2 The metaphysics of freedom as an idea of reason	50
3 The morality of external freedom	80
4 The <i>Lex Permissiva</i> : property rights and political obligation in the <i>Rechtslehre</i>	113
5 The general united will and cosmopolitan Right	144
6 The metaphysics of Kant's cosmopolitanism	179
<i>Select bibliography</i>	206
<i>Index</i>	214

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As I mention in the Introduction, many of the ideas in this book were originally conceived during time spent in West Africa, especially in Burkina Faso and Ghana. Africa has long had a bad reputation for its political turbulence, humanitarian

disasters, and chronic underdevelopment. At least on a personal level, my experience of Africa does not match this picture: despite the innumerable and seemingly never-ending hardships endured by the individuals and their families I met, their warmth, their grace, their hospitality, and their sheer perseverance have left me with an enduring impression of what we might mean when we speak of human dignity. This book is dedicated to them.

Kant's works and abbreviations

Major works:

The Critique of Pure Reason (CPR)

Groundwork of the Metaphysics of Morals (Groundwork)

The Critique of Practical Reason (CprR)

The Metaphysics of Morals (MM)

MM, Part 1: *The Metaphysical Elements of Justice* (Rechtslehre)

MM, Part 2: *The Metaphysical Elements of Virtue* (Tugendlehre)

Rechtslehre (RL)

Tugendlehre (TL)

Political and historical essays:

Idea for a Universal History with a Cosmopolitan Purpose (Universal History)

On the Conjectural Beginnings of Human History (Conjectural Beginnings)

An Answer to the Question: What is Enlightenment? (Enlightenment)

On the Common Saying: 'This may be true in theory but it does not apply in practice' (Theory and Practice)

Towards Perpetual Peace (Perpetual Peace)

Translations used:

The Critique of Pure Reason, trans. Norman Kemp Smith, London, Macmillan, 1933, second impression (1990 reprint).

Groundwork of the Metaphysics of Morals, trans. H. J. Paton, New York, Harper Torchbooks, 1964.

The Critique of Practical Reason, trans. Lewis White Beck, New York, Macmillan, 1956 (1993 reprint).

The Metaphysics of Morals (Parts 1 and 2), trans. Mary Gregor, Cambridge University Press, 1991.

Kant's Political Writings, trans. H. B. Nisbet, edited by Hans Reiss, Cambridge University Press, 1970.

Page references to Kant's works in the footnotes refer to the relevant volumes of the Prussian Academy edition, and are reprinted in the margins of all translations used, with the exception of Reiss, ed., *Kant's Political Writings*. References to the *Critique of Pure Reason* will be to the pagination of the first and second editions, indicated by the letters 'A' and 'B' respectively.

Unless stated otherwise, all translations from German of secondary literature are my own.

Introduction

I KANT AND CONTEMPORARY LIBERALISM

The ideas behind this book initially emerged in 1987, when I was walking through the Sahel zone of Burkina Faso – though I did not then know that I was going to write a book on Kant’s political philosophy. In fact, the Sahelian undertaking was rather fortuitous. When I arrived at Ouagadougou airport my luggage had been lost in transit. Although airport staff assured me that I would have it back within a week, it never showed up again. The loss turned out to be a good thing, however, in so far as it gave me the confidence to set out on the road bound northwards, towards Niger. The Sahel was not what I had expected. I had imagined something more like a ‘proper’ desert. The Sahel is a semi-arid transitional region between savannah and desert. It consists of stony ground and low-growing, thorny shrubs with a few stunted trees in-between and the odd enormous baobab-tree here and there. There is the occasional mount that rises abruptly from the ground, but for the most part the Sahel is flat, vast, hot, and silent. At first I was reluctant to ask people’s help, but I quickly realised that in an environment like this everyone depends on the co-operation of everyone else. My memory of overnight stays is of an unquestioning hospitality that always followed the same basic pattern: first you were welcomed with a drink of water, then sat down and questioned about your ‘mission’, and eventually led outdoors to bathe over a bucket of water. Finally you were invited to your evening meal, usually alone, because others should not watch you eat. I was amazed by the grace and sophistication of the people, whose survival within the conditions around them seemed to me to depend on a delicate balancing act between themselves and nature.

It might seem inappropriate to begin a book on Kant’s political

philosophy by recounting travel anecdotes. However, there are three aspects about my experience of the Sahel that have shaped my reading of the *Rechtslehre*. The first concerns the importance of the constraints of nature in relation to human agency. The second revolves around the notion of human finitude and the unavoidable interdependence between individuals as agents. The third aspect is less tangible, and concerns the role of metaphysics in political thinking. All three themes – the constraints of nature, human finitude, and the role of metaphysics – form focal points of the ensuing interpretation of the *Rechtslehre*. To these, I should add a fourth, namely the idea of freedom. Unsurprisingly, the idea of freedom is central to Kant's political philosophy. Unsurprising, not only because Kant was an Enlightenment thinker for whom the idea of human freedom formed the 'keystone' of his entire critical philosophy, but also because the idea of freedom is given special emphasis in the current reception of Kant within liberal political philosophy. After years of neglect, Kant now ranks among – or even outranks – other great thinkers of the liberal tradition, such as Hobbes, Locke, Rousseau, and John Stuart Mill. Within the Anglo-American world, the assimilation of Kant into mainstream liberalism is due almost entirely to John Rawls' *Theory of Justice*.¹ In Germany, and perhaps within the continental tradition more generally, Kant's re-entry into the liberal political fold has been less dramatic because the neglect was never complete, if only for historical reasons. Kant has always had a place in the social and political writings of Jürgen Habermas, for example (though Habermas' assessment of Kant's political philosophy has arguably shifted over the years). Besides, the Kantian idea of the *Rechtsstaat* is well entrenched within the canons of liberal thinking in Germany.

It is a central claim of this book that the absorption of Kant's political thought into contemporary liberalism is partial at best. In many respects, Kant's departures from contemporary liberalism are more interesting philosophically and more instructive politically than are the points of convergence between them. The idea of freedom is a case in point. It is true that Rawls' Kantian conception of the free and equal moral person has had a major impact on the traditional liberal understanding of individual freedom, especially regarding its function in relation to political justification. If classical

¹ John Rawls, *A Theory of Justice* (Oxford University Press, 1973).

liberalism tended to view individual freedom as a natural right of each against each to unconstrained choice and action, Rawls' use of Kant affirms a strong connection between freedom, practical reasoning, and political justification (I shall clarify what I mean by 'classical liberalism' and its relation to contemporary liberalism in chapter 1). Liberals now think of individual freedom as a moral capacity rather than as a natural right; instead of construing it narrowly in terms of the rationality of individual choice, individual freedom is regarded as a prerequisite to possible social co-operation between individuals. This shift from a predominantly antagonistic, political conception of freedom to a predominantly co-operative, moral account is Kantian up to a point. Two qualifications are, however, in order. The first is that the current absorption of Kant into mainstream liberalism is based almost exclusively on Kant's *ethical* writings, i.e. on the *Groundwork* and, to a lesser extent, on *CprR*. Kant's political writings, especially the *Rechtslehre*, continue to be neglected by contemporary liberals. Secondly, current receptions of Kant are premised on an explicit rejection of Kant's practical metaphysics. The emphasis is on Kantian moral philosophy without Kantian metaphysics.

Although there is nothing wrong in principle with adopting or adapting aspects of Kant's philosophy while neglecting or rejecting others, doing so can encourage a distorted perception both of Kant's political thought and of contemporary liberalism's relation to it. One consequence of the focus on Kant's moral conception of freedom to the exclusion of his account of political freedom, is the resulting tension within current liberalism between what are, in effect, two incompatible theories of freedom. This can be illustrated with reference to Rawls' two principles of justice as fairness. Rawls' specifications of his first principle of justice, which is concerned with the equal standing of individuals as citizens, broadly coincide with what he characterises as his Kantian conception of the moral person. However, the second principle, which is concerned with distributive justice, is premised on an account of free agency and of the rationality of individual choice that is deeply un-Kantian. While the moral conception of the person as free and equal adopts a broadly Kantian view of reasonableness and public deliberation, at least within the confines of the individual state,² the account of

² For a critique of the limited scope of Rawls' Kantianism, see Onora O'Neill, 'Political

economic freedom that drives the difference principle accepts the motivational assumptions of standard economic theory, which are ‘Hobbesian’ in their basic orientation.³ The tension between these two motivational aspects of Rawls theory – one moral the other self-interested – has often been noted. The question here is whether a Kantian conception of moral freedom can sustain Hobbesian assumptions about economic freedom. As will become evident in subsequent chapters, I believe that the answer to this has to be ‘no’. In that case, much liberal theorising about social and distributive justice today might be less Kantian than it takes itself to be.

The consequences of neglecting Kant’s political and economic conception of individual freedom of choice and action bring me to the second point mentioned, i.e. the rejection of Kantian metaphysics. Of course, this is nothing new. Admiration for Kant’s moral theory has always been tempered by discomfort regarding its underlying metaphysical presuppositions. Again, it is the idea of freedom as an idea of pure practical reason which is responsible for the discomfort felt. Kant’s distinction between the noumenal and the phenomenal standpoints of practical reasoning in his moral philosophy has met the same degree of resistance as his distinction between appearances and things-in-themselves in his theory of knowledge. Indeed, Kant’s transcendental idealism has long had the effect on many philosophers that a red rag is said to have on a bull. But the current liberal rejection of metaphysics is more general and not directed at Kant’s transcendental idealism exclusively. In contrast to the revival of interest in metaphysics within many other branches of contemporary philosophy, its rejection within political philosophy has, if anything, intensified. I believe this to be mistaken, not only with regard to Kant’s political thought, but also with regard to the tasks of political philosophy more generally. One reason why I believe the hostility towards metaphysics mistaken is indicated in the noted tension within contemporary liberalism between two

Liberalism and Public Reason: A Critical Notice of John Rawls, *Political Liberalism*, *The Philosophical Review*, 106 (1997), 411–28.

³ I use the term ‘Hobbesian’ hesitantly, meaning to refer to the current reception of Hobbes’ political thought rather than to Hobbes himself. Like Kant, Hobbes’ thought is often interpreted in a more one-sided manner than it arguably deserves to be. Although contemporary rational choice and decision-making theory takes itself to be departing from Hobbesian assumptions about individual agents’ motivations, its psychologistic assumptions about agents’ desire-pursuit and satisfaction are arguably just as much influenced by Benthamite utilitarianism as by Hobbes’ materialist metaphysics.

incompatible conceptions of freedom. If Kantian moral freedom is incompatible with, say, Hobbesian assumptions about the individual rationality of political and economic choice, one should ask what makes it so. If aspects of two different theories cannot be combined at will, this suggests that each forms part of a wider theoretical framework which constrains it in certain respects such that it cannot, without distortion, be lifted from that framework. The incompatibility of Kantian moral freedom with Hobbesian political and economic freedom suggests that the former is constrained by underlying assumptions and presuppositions not recognised by the latter, which is therefore not constrained by them. This line of reasoning might amount to a negative defence of metaphysics as unavoidable. Anyone engaged in theory-building is constrained to depart from *some* assumptions and presuppositions about their object of inquiry without which theory-building could not get off the ground, and commitment to which unavoidably constrains what can coherently be included in the theory. To that extent, even those who disavow metaphysics cannot avoid helping themselves to some metaphysical assumptions, at least in the initial stages of theory-building. A positive formulation of essentially the same line of defence is to say not just that metaphysical assumptions are unavoidable, but that they are also indispensable. On this positive line of defence, metaphysics *facilitates* coherent theorising about, for example, the problem of justice. It does so by offering an underlying conceptual and normative framework within the constraints of which consistent practical theorising can proceed.

This book adopts the positive line of defence: one of the features that sets Kant's political philosophy apart from contemporary liberalism is his explicit endorsement of metaphysics. However, I shall avoid both the complexities of transcendental idealism as well as its contested status by adopting the more general, though recognisably Kantian, conception of metaphysics recently offered by Stephan Körner in terms of the notion of a 'categorical framework'.⁴ Körner's notion of a categorical framework enables me to emphasise those aspects of Kant's metaphysics that are central to his political philosophy without committing me to an unqualified endorsement of transcendental idealism. In sum, chapter 1 introduces and develops Körner's notion of a categorical framework in relation to political

⁴ Stephan Körner, *Metaphysics: Its Structure and Function* (Cambridge University Press, 1984).

thinking in general. Chapter 2 applies this notion to Kant's metaphysics of freedom as an idea of pure practical reason. Chapter 3 examines the implications of Kant's general metaphysics of freedom for his account of political freedom. Here I shall do no more than refer back to the constraints of nature and to the notion of human finitude, which I mentioned above in recounting my Sahelian experience. Kant's metaphysics of justice is based on the initial juxtaposition between the claims to freedom and the constraints of nature, and their eventual reconciliation by means of an act of practical political judgement which reflects Kant's positive conception of human finitude. In other words, the idea of freedom, the constraints of nature, and a particular conception of human finitude in relation to practical political reasoning inform the underlying categorial framework of Kant's *Rechtslehre*. It is the presence of this underlying categorial or metaphysical framework which shapes Kant's political thought and renders it, ultimately, very different from that of contemporary liberalism.

2 THE 'RECHTSLEHRE'

The foregoing remarks should have given some indication of the reasons behind the title of the present book, *Kant and Modern Political Philosophy*. My engagement with Kant's *Rechtslehre* in the following chapters is influenced by what strikes me as a central failing of contemporary liberalism, namely its refusal to take seriously the indispensable and positive role of metaphysics in political thinking. I have indicated some of the negative practical implications of this anti-metaphysical attitude with reference to Kant's conception of freedom as an idea of pure practical reason, which is different from, and arguably incompatible with, more traditional accounts of individuals' natural right to freedom. In a sense, the line of argument pursued in the first three chapters of the book is preparatory to the central claims advanced and defended in the final three chapters concerning the relation between freedom, individual property rights, and political obligation. (More properly, chapters 1 and 2 are preparatory: they deal with the current reception of Kantian metaphysics in contemporary liberalism and with Kant's metaphysics of freedom in *CPR* respectively. They do not touch on the *Rechtslehre* directly. Chapter 3 is transitional: it focuses on the contrast between Kant's account of moral freedom in his ethical writings and

his conception of political freedom in the *Rechtslehre*.) That much 'stage-setting' may come as a disappointment to readers who might have expected a more comprehensive treatment of the many themes and topics to be found in Kant's late political work. My approach to the *Rechtslehre* is highly selective: I focus almost exclusively on divisions 1 and 2 of Section I, which is entitled 'On Private Right'. I bypass entirely the first division of Section II, which is entitled 'On Public Right', and which deals with the divisions of governmental authority within individual states. On the other hand, division 3 of Section II, which deals with 'cosmopolitan Right', is of great importance to the line of interpretation pursued in this book.

One obvious reason for this selective approach is space. The *Rechtslehre* is not a thick book – in fact, it is quite thin – but it is a rich and complex work. Its argument is also extremely obscure, a point I shall return to in a moment. In any case, reasons of space rule out a more inclusive treatment of the text. The second reason is choice: it actually seems to me preferable to cover less rather than more, but to cover it more thoroughly. This is partly because of my conviction that it is impossible to appreciate the distinctiveness of Kant's political thought without at least some awareness of the distinctiveness of his philosophical thinking in general – hence the necessity of a certain amount of preliminary stage-setting. There are a number of commentaries on the *Rechtslehre* that offer surveys of Kant's political thought. Many of these are highly informative as introductions to Kant's political writings, and as historical interpretations that locate Kant's thought within the traditions of Western political theory. However, many also tend to be quite state centred in their outlook; they tend to spend most of their time on Kant's account of the internal political organisation of the individual state. Part of the reason for this has to do with the obscurity of the argument in Section I, 'On Private Right', which has struck many readers over the last two hundred years as misguided and confused. The neglect of Kant's cosmopolitanism is more difficult to explain, though it may be due to historical reasons: the problem of global justice has never been, until recently, an important issue in Western political theory. This brings me to the third reason for my selective approach, which is significance. Although I focus on only a few sections in the *Rechtslehre*, I claim to be focusing on the most significant ones. The section on cosmopolitan Right is significant for obvious, political reasons – though again, contemporary mainstream liberalism often

shows itself to be strangely myopic on that count. The section on Private Right, and especially Kant's property argument, is significant for exegetical reasons, and here I need to say a little more about the reasons for the general neglect, until recently, of the *Rechtslehre* as Kant's last major philosophical work.

I have mentioned twice now the obscurity of Kant's line of argument in the *Rechtslehre*, especially as regards Section I, 'On Private Right'. That obscurity expresses itself at several levels. Certainly the argument is obscure in part because of the complexity of the subject-matter it deals with – a complexity which is not helped by Kant's austere, almost clipped style of presentation that makes his better-known major works seem almost discursive by comparison. However, complexity of subject-matter forms the smaller part of possible explanations. In fact, the originally published text has struck generations of Kant scholars not only as obscure, but also as downright confused. Particularly in the section pertaining to the so-called 'deduction' of the concept of rightful possession, confusion reigns, revealing a lack of logical sequence between individual paragraphs, the inclusion of material irrelevant to the subject-matter at hand, even the complete absence of any argument which might so much as approximate to a deduction. In short, Kant's manner of argument has struck many a patient reader as frustratingly undisciplined, confused – even as incoherent. The famous 'senility thesis', and the consequent virtually complete neglect of the *Rechtslehre*, have their origins in these textual distortions and resulting sense of frustration. The reason why the text was 'spoilt', so the growing general consensus, was because of Kant's waning intellectual powers and increasing senility. Unfortunately, the senility thesis not only gave an explanation for the state of the text; it also offered a reason for ignoring Kant's argument in it.

Despite individual attempts at rehabilitation,⁵ the senility thesis stuck for a long time, gaining endorsement from specialists in Kant's political philosophy.⁶ It is only during the last couple of decades, which have seen an astounding revival of interest in the *Rechtslehre*, that alternative explanations to the senility thesis began to be sought

⁵ See especially Gerhard Buchda, 'Das Privatrecht Immanuel Kants. Ein Beitrag zur Geschichte und zum System des Naturrechts' (Unpublished dissertation, Jena, 1929).

⁶ See, for example, Christian Ritter, *Der Rechtsgedanke Kants nach den frühen Quellen* (Frankfurt, 1971); also Hannah Arendt, *Lectures on Kant's Political Philosophy*, Ronald Beiner, ed. (University of Chicago Press, 1982), 7–8.

to explain the sorry state of the text. One influential if not uncontentious such alternative was advanced by Bernd Ludwig in his 1986 revised edition of the *Rechtslehre*.⁷ According to Ludwig, the textual distortions are not a reflection of Kant's state of mental health at the time of writing, but are the product of editorial errors at the printing stage, over which Kant had no control. On Ludwig's thesis, it is the text's editor and its printers who bear principal responsibility for the work's poor textual organisation. There is no space to discuss the plausibility of Ludwig's (well-researched) historical claims.⁸ The important point in the present context is that Ludwig combined his historical findings with his philosophical thesis that Kant's 'Postulate of Practical Reason with Regard to Right' in §2 of Section I constitutes the 'critical novum' of the *Rechtslehre*: it offers an entirely new approach to the problem of individual property rights. The result of this claim was to shift the section on property rights from near oblivion to centre stage. The interpretation of Kant's justification of individual property rights in chapter 4 of the present book is based on Ludwig's relocation of §2 (the original place of the postulate) into §6 (the place of the missing deduction) in his revised edition of Kant's *Rechtslehre*.⁹ However, my interpretation goes beyond that of Ludwig in claiming a direct connection between Kant's justification of individual property rights and his cosmopolitan conception of individuals' ensuing obligations of justice. Thus, while chapter 4 focuses on the problem of individuals' claims to property rights as the ground of political obligation, chapter 5 argues that the obligations of justice themselves are cosmopolitan in scope, and that they are so as a direct consequence of Kant's particular approach to property rights. Chapter 6, finally, examines some of the implications of Kant's metaphysical and cosmopolitan conception of Right for contemporary thinking about global justice, focusing on global distributive justice in particular.

⁷ Bernd Ludwig, ed., Immanuel Kant, *Metaphysische Anfangsgründe der Rechtslehre* (Hamburg, Felix Meiner Verlag, 1986).

⁸ But see Bernd Ludwig, *Kants Rechtslehre*, especially the contribution on the history of Kant's text by Werner Stark (Hamburg, Felix Meiner Verlag, 1988), 7–28.

⁹ In addition to the relocation of §2, subsections 4–8 of the original §6 are omitted in accordance with the findings of Buchda (see footnote 5). Interested readers may wish to compare Part I of Mary Gregor's 1991 translation of the *Metaphysics of Morals* (Cambridge University Press), which is based on the originally published text, with her 1996 translation of the *Metaphysical Elements of Justice* (Cambridge University Press), which follows Ludwig's revised edition.

3 KANTIAN TERMINOLOGY

Every book has an intended primary audience. Readers will probably suspect by now that in this regard the present book falls between two stools: political theorists and philosophers on the one hand, and Kant scholars on the other. This is indeed the case, and the danger of such an approach is that one manages to satisfy neither side. One side may feel that the book focuses too heavily on detailed textual exposition which, though perhaps of interest to Kant scholars, has no bearing on practical political problems. Those on the other side may find textual exposition insufficiently detailed to qualify as a convincing account of what Kant said and meant when and where. Again, those on one side may find themselves overburdened with unfamiliar Kantian terminology, while those on the other side may feel irritated by the fact that familiar Kantian terms and ideas are being laboured over at unnecessary length.

I am aware of these difficulties. If I could have written a different book, I might have done so. However, the present book is virtually designed to fall between two stools. As I said, my own reading of the *Rechtslehre* is influenced by issues in current political philosophy whose salience for political thinking seems to me ignored, but which yet do make Kant's work especially relevant today. Moreover, despite the breath-taking flurry of revived interest in the *Rechtslehre* among Kant scholars, Kant's political work continues to be passed over even by political philosophers who profess a version of Kantian liberalism. I think the latter has much to do with the apparent inaccessibility of the text, including its unusual approach to the question of political justification when compared with the more obviously classical texts in Western political theory. It is a principal aim of this book to reduce this feeling of the text's remoteness from contemporary concerns by relating the former explicitly to the latter, and by showing that the text does, in fact, speak to contemporary concerns.

I have tried, so far as possible, to avoid heavy use of technical Kantian terminology. Of course, this is not entirely avoidable, and I have helped myself without special explanation to widely familiar Kantian terms, such as his conception of the 'a priori validity' of principles of 'pure practical reason'. While the precise meaning of these terms is itself a subject of inquiry among Kant scholars, most readers will associate the a priori status of principles of pure practical

reason with Kant's claim of their independence from contingently given empirical considerations, their groundedness in rational beings' capacity for reason, and hence their universal validity and authority for all finite rational beings as such. Other Kantian terms, such as 'intelligible possession', 'phenomenal possession', or 'the postulate of practical reason with regard to Right', are explained contextually with reference to the argument in the *Rechtslehre* rather than by way of cross-referencing with Kant's other works. My hope is that, in keeping special terminology to a necessary minimum, those less familiar with Kant's philosophy will not feel put off his political thought.

There is one terminological convention which I should clarify at the outset, namely the capitalisation of 'the concept of Right' instead of its replacement with the more familiar 'concept of justice'. The German term *Recht* is notoriously difficult to translate into English, not least because, in contrast to the Anglo-American tradition, the philosophy of law in Germany is shaped by Roman law rather than by common law. The term *Recht* has connotations of a mathematical exactitude missing from the common-law tradition, with its reliance on precedent and interpretation. *Recht* is that which gives each their due (which can be determined with exactitude) – it is fully captured neither by *Gesetz*, which in common parlance refers to positive law, nor by *Gerechtigkeit*, which is more or less synonymous with justice (and usually associated with social justice). In contrast to *Gesetz* or *Gerechtigkeit*, both of which are amenable to contextual modification, the exactitude of *Recht* gives it a claim to context-independent, a priori validity. Since the claim to a priori validity distinguishes Kant's *Rechtsbegriff* from current conceptions of justice, I follow Mary Gregor's convention of translating *Recht* as *Right* rather than as justice. Finally, while I use Right when referring to the 'concept of Right', or to 'principles of Right', 'right' and 'rights' refer to individuals' particular rights as derived from the concept of Right.