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ARTICLE

Permissive Laws and Teleology in Kant's Juridical and Political Philosophy

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Abstract

In this article I argue that the current readings of permissive law fall into hermeneutical difficulties and do not completely explain Kant's complex use of the concept. I argue that the shortcomings of these interpretations can only be overcome by relating permissive law to practical teleology. That teleological thinking has a role in Kant's moral thought by way of history is not new. Here, however, I argue that the system of rights itself is in some manner teleologically situated. This interpretation allows us to understand that Kant's Doctrine of Right plays the role of a realist utopia.

Keywords: permissive law; right; teleology; postulate; system

The concept of a permissive law of reason is absolutely central to understanding Kant's juridical and political enterprise. I propose here a new interpretation that relates the concept of permissive law to that of practical reflective teleology and therein opens up an interpretation of juridical rights and duties as teleologically situated. The article comprises three sections. In the first I present and criticize the three most common readings of permissive law; in the second, I argue for seeing permissive laws as determined by reflective teleological judgement. I end with a discussion of the advantages of my proposal over current readings.

1. The state of the art regarding Kant's concept of permissive laws

Readings of permissive law in Kant's political and legal philosophy can be organized into at least three main strands. In roughly chronological order, the first was proposed by Brandt, who designated it an 'exception to a prohibition'. Next, Tierney stressed the systematic-conceptual unfitness of permissive laws. The third approach, by Hruschka, sees permissive law as a 'power conferring norm'. In this section I present the main aspects and respective shortcomings of these interpretations.

1.1 Permissive laws as 'an exception to a prohibition' or as 'an obscure preliminary judgement'

Brandt (2004) argues that permissive laws of reason do not authorize an agent to perform morally neutral acts, that is, actions that could be considered indifferent (*adiaphora*). Rather, since compulsory actions would already necessitate authorization, it follows that permissive laws are *only* used to authorize acts that are to a certain extent *prohibited* (Brandt 2004: 71). Using Kant's account in *Perpetual Peace* of a 'systematically classifying reason', he introduces the concept of permissive law by drawing a parallel between practical and theoretical judgements. In particular, commandments (laws dictating the performance of an action) are equivalent to affirmative judgements. Prohibitions (laws forbidding an act) are equivalent to negative judgements, while *permissive laws should be related to infinite judgements* (cf. p. 73). Similarly, from the perspective of modality, permissive laws should be labelled as problematic practical judgements since they lack sufficient foundation to support their certainty, which is, in turn, exactly what distinguishes provisional duty in the state of nature from peremptory right in a civil one (p. 76).

According to Brandt, 'the systematic place of legal permissive laws clearly is in the mediation between commandments and prohibitions: *it is a question of provisionally permitting something that is "in itself" forbidden and thus compelling the claim that there is no right to oppose this transgression*' (Brandt 2004: 74; emphasis added). Kant would be speaking, then, in *Perpetual Peace* of a permission to maintain possession of something that was *illegitimately* acquired. Or alternatively, the permissive law *establishes a juridical mode of connivance* with inevitable forms of power that have already been institutionalized (p. 76). Thus, Brandt argues, the function of this provisional connivance regarding a prohibition is to serve, as in the case of the teleology of nature and culture, as a bridge between the abyss of nature and morality (p. 79). Its function is to mediate between prescriptive and descriptive issues, between moral law and phenomenal reality (p. 83).[1]

Flikschuh also puts this interpretation forward, designating permissive law as an 'obscure preliminary judgment' that in politics 'appl[ies] to actions which, though they are strictly speaking unlawful, must be regarded as provisionally lawful on the grounds that political circumstances leave open no other option' (Flikschuh 2000: 138).

This interpretation faces a structural problem in the Doctrine of Right, namely, that the prospect of an exception to a prohibition would conflict with the imperative '*do not wrong anyone (neminem laede)* even if, to avoid doing so, you should have to stop associating with others and shun all society *(Lex iuridica)*' (*MM,* 6: 236).[2] So, 'whereas Brandt claims an authorization to commit a wrong in order to enter into a condition in which one can associate with others rightfully, Kant's explicit position is that one must refrain from wrongdoing even if it means that one cannot associate with others at all' (Weinrib 2014: 111).

1.2 Permissive law as an unfit concept

After historically reconstructing the notion of permissive law in the philosophical tradition and comparing it with Kant's use of it, Tierney asserts that 'one is left with

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the impression that Kant was trying to make the idea of permissive law perform *more tasks than it had ever been fitted for*' (Tierney 2001a: 312; emphasis added). His argument is that, in case permissive laws give an actual permission, then the idea of an original contract that grounds public law would be irrelevant, but since this idea seems to be also necessary, then permissive laws do not really give a permission after all. Either permissive laws give permission, or they do not, and Kant seems to be constantly shifting between these two contrasting positions. Tierney does not attribute this contradiction to Kant's senility, but he does state that 'one has the impression of a very powerful mind searching, with every refinement of skill and subtlety, for the solution of a problem that was insoluble within the parameters that Kant had set for himself' (Tierney 2001b: 399).[3] So, according to him, the concept of permissive law does not provide a viable way of relating the *a priori* level with that of empirical and historical contingency.

In my view, this criticism is misplaced because Tierney sees Kant's system of right as static and working within a sort of Manichaean logic. Therefore, his sceptical conclusions are grounded in the view that a claim is *either fully legitimate or fully illegitimate*, or that there is either a complete claim of right or there is none. As I shall argue, the processual role played by permissive laws is not grasped by his interpretation because it overlooks the systematic role performed by reflective teleological judgement.

1.3 Permissive law as a 'power conferring norm'

Hruschka argues for abandoning any attempt to construct a unitary reading of Kant's uses of the notion of permissive law. He argues that, in the *Metaphysics of Morals*, Kant rejected his previous positions, i.e. those recorded in the *Metaphysics Vigilantius* notes (1793–4) and *PP* (1795). Thus, the discussion of permissive law must be interpreted strictly in its final version in the 1797 *MM* (cf. Hruschka 2004: 46).

From a historical and philological reconstruction of the use of the concept, particularly according to Achenwall and Thomasius, Hruschka proposes to interpret permissive law as a 'power conferring norm' (Hruschka 2004: 47). In this case, permissive laws are rules that allow their beneficiaries to place others under obligation simply by performing an allowable action. They establish that even merely allowed actions have legal significance.[4]

Hruschka's analysis of the passage at *MM*, 6: 223, assumes that there are two kinds of allowed actions: those which are indifferent (*adiaphoron*) and those with juridical implications ('merely allowed' actions). Drinking milk is an example of the former, while acquiring external objects is an instance of the latter (Hruschka 2004: 48–9). The theoretical consequences of this reading are particularly relevant for the character of property, both in the context of private and public law. He argues that permissive law introduces and establishes legal institutions that provide the foundation for rights to objects of human choice. 'These rights do not depend on social approval, but follow an *a priori* extension of practical reason. Thus the state is obliged to introduce and protect them' (p. 47). In other words, Hruschka sees permissive law as having perfect legal status and the function of the state being simply to create institutions to safeguard what was rightly acquired within the state of nature. However, Hruschka's reading raises the following concerns:

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a) It is unlikely that Kant had changed his position without any indication between 1795 and 1797 regarding such an important matter. Moreover, no indications of such a radical change in Kant's view regarding Achenwall's concept of permissive laws exist, for these would imply that Kant had either failed to recognize the importance of Achenwall's concept in 1795 or that he disagreed with it at that moment. In short, the lack of a unitary theory of permissive law is not sufficient for disqualifying it, but it surely does speak against it, especially due to the proximity between the two works.
b) Hruschka tries to distinguish between 'allowed actions' and 'merely allowed actions'. Therefore, any equivalence with Achenwall's concepts of *actio licita* and *actio permissa* is textually fragile. He himself has to force his reading onto Kant's text in a footnote by proposing a specific reading of the German word *allemal* (Hruschka 2004: 50, n. 16). This alone highlights the artificiality of his position. Kant's statement is: 'Wenn dieses ist, so würde die Befugniß nicht allemal eine gleichgültige Handlung (*adiaphoron*) betreffen; denn zu einer solchen, wenn man sie nach sittlichen Gesetzen betrachtet, würde kein besonderes Gesetz erfordert werden' (*MM*, 6: 223). Unlike Hruschka's reading, this is much more easily interpreted as simply pointing out that among the group of indifferent actions, not all are absolutely indifferent. However, those that are not absolutely indifferent are not necessarily called 'merely indifferent'. There is nothing either in this passage or in the text that speaks clearly in favour of this suggestion.[5]
c) Hruschka's reading naturally leads to the assumption that permissive laws justify perfect juridical acts. But this would erase the difference between prescriptive and permissive laws of reason. It would mean that the state's function is *simply* to protect and safeguard the property that has been unilaterally established in the state of nature. In short, it seems that this interpretation ultimately turns Kant into a Locke-style liberal who even considers the establishment of property on a one-sided model like the Lockean, something that Kant strongly criticized.
d) Finally, Hruschka's central thesis that permissive laws are 'power conferring norms' is, in a sense, both correct and irrelevant. Every law or right of reason presupposes, in one way or another, an authorization to use power or take action in some way, even if only through second-order norms. While a prescriptive law orders something, it is already authorizing something, just as a prohibitive law already presupposes authorization to use counter-force if someone does not comply. Even the right of freedom as the only innate right can be seen as a power conferring norm, as it gives rise to the right of self-defence. In short, considering permissive laws as involving authorization means only that they have the status of law.

2. Permissive law and reflective teleological judgement

All the current positions lead to considerable hermeneutical difficulties. In this section I point out the overlap – although Kant himself did not make it explicit – between the conceptual content of permissive law and reflective teleological judgement, while showing how my interpretation avoids those difficulties.

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My argument comprises four moments. First, I discuss the peculiar aspect of permissive law as a postulate of practical reason that brings about a particular kind of normativity. Secondly, I employ the notion of symbolic schematism to show how both permissive laws and reflective teleological judgements achieve a function of mediation between theoretical and practical contexts. I then take up, in the third moment, the theoretical status of permissive laws and reflective teleological judgements, arguing that both are essentially necessary yet also problematic. This arises from the nature of our discursive reason which has to deal with complex empirical situations. In the fourth moment, I address two consequences that are inherent to permissive laws and can be traced throughout Kant's Doctrine of Right: the reformative and progressive requirements in politics and law; and the justification of juridical provisional rights and duties that come to bear in issues of juridical casuistry.

2.1 Permissive law as a postulate of practical juridical reason

In the Doctrine of Right Kant calls permissive law a postulate.[6] This greatly increases the thorniness of the issue, and it is no surprise that most scholars prefer to remain silent or only tangentially mention it. The most extensive treatment of postulates is found in the Dialectic of the second *Critique*, but most scholars resist accepting this relation. Kersting (1993: 247, n. 32), for example, rejects this connection completely, arguing that it would undermine the normative character of the Doctrine of Right.[7] He prefers to explain the concept of a postulate by way of analogy with those of geometry. In fact, Kant does refer to geometry in the Introduction to the Doctrine of Right, but this is insufficient to prove a specific connection between the geometrical and juridical postulates. In the first place, one of Kant's basic theses is that philosophy should not emulate the mathematical method (cf. *CPR*, A725/B753ff.). Secondly, Kant's reference to geometry concerns the relation between right and coercion (cf. *MM*, 6: 232), rather than the concept of postulate (cf. 6: 231). So, in my view, Kant's intention with the geometrical analogy is much more to argue for a legal system in which we could know clearly, precisely and in advance which kind of punishment one would receive in case of breaking the law than to explain the concept of a postulate.[8]

In the *Critique of Practical Reason*, Kant defines a postulate as a 'a *theoretical* proposition, though one not demonstrable as such', which is attached 'inseparably to an *a priori* unconditionally valid *practical law*' (*CPrR*, 5: 122). In other words, a postulate is a judgement that links a theoretical predicate to the concept of a subject without following the transcendental conditions of the theoretical use of reason. The relation between subject and predicate is grounded on a practical interest of reason (cf. 5: 119ff.). According to Kant, 'one cannot require pure practical reason to be subordinate to speculative reason and so reverse the order, since all interest is ultimately practical and even that of speculative reason is only conditional and is complete in practical use alone' (5: 121). Therefore, the postulate 'there is a god' is a theoretical judgement grounded in practical interest. Practical reason requires theoretical elements such as God's existence, which does not ground practical reason but is grounded by it. So, in order to ensure that practical reason might have the most extended and coherent use, speculative reason has to accept certain propositions affirmatively, '*as soon as these same propositions belong inseparably to the practical interest* of pure reason … – indeed

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as something offered to it from another source, which has not grown on its own land but yet is sufficiently authenticated' (5: 121). Two points are key here: first, despite being a theoretical judgement, its utility and use is exclusively practical (cf. 5: 141); and second, there is an important distinction between practical objective necessity that is grounded directly in moral law and practical *subjective* necessity, which is related to pure practical reason in a more extended way. Kant stresses this subjective aspect with the concept of a need of practical reason (*praktishes Bedürfnis*) (cf. 5: 142–3 and 143n.).[9]

While the interest of theoretical reason, and therefore its need, consists in the '*cognition* of the object up to the highest *a priori* principles', that of practical reason 'consists in the determination of the *will* with respect to the final and complete end' (*CPrR*, 5: 120), which means the idea of highest good or the systematic union of virtue and happiness. By idea Kant understands 'a perfection to which nothing adequate can be given in experience' and by practical ideas 'archetypes of practical perfection, [that] serve as the indispensable rule of moral conduct and also as the *standard of comparison*' (5: 127n.). In the specific case of practical reason in its *juridical* use, the archetype is the idea of *respublica noumenon*.[10] This idea, with its theoretical elements, occupies three decisive moments in the Doctrine of Right: in the formulation of the postulate of practical juridical reason, in the formulation of the postulate that grounds private right, and thirdly in the grounding of public right. We will look into all three.

As I mentioned, postulates have two aspects. They are grounded in moral law, while they also require theoretical elements, so they are theoretical propositions with practical purposes. The normative aspect of the first juridical postulate is derived from the 'universal law of right, so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law'. However, the *theoretical* element of the postulate is present in the assumption that 'reason says only that freedom *is* limited to those conditions in conformity with the idea of it and that it may also be actively limited by others' (*MM*, 6: 231). Kant insists on the theoretical aspect (assertion) that 'freedom *is* limited', which is constitutive to the idea of a republic, in which *there is* an equal system of mutually limiting spheres of freedom. I suggest that Kant's argument works as follows: in order to present the *metaphysical principles* of right, we must already assume the *real possibility* of the idea of a system of acquired rights, which means *presuming the existence of a system* of equal spheres of freedom in relation to things. This is a very abstract movement from juridical law to the assertion of an existing system of right.

Now, in order to delineate the *extension* of these spheres of freedom, new and more specific postulates must be added, namely, the postulates of private and public right. It is by way of this specification that the postulates take on the status of permissive laws of reason. In other words, it is precisely because the intention is to give more determination to the limit of the spheres of freedom of a *respublica noumenon*, according to the empirical conditions of human life on earth, that the postulates of private and public right become permissive laws. Since the second *Critique*'s postulates remitted the problem of the realization of the highest good to *another world*, there was no need to explain how the system of highest good could come into place. There was no need to introduce more determination into the postulates of the existence of God and the immortality of the soul. This issue arises only when the question

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is how to build a system of rights concerning the phenomenal world; it is only then that postulates have to become permissive laws.

So, the passage from the categorical imperative of right to the postulate of practical juridical reason arises from the combination of a strict normative aspect with a theoretical one. It is only then that we can think the conditions for the possibility of a system of acquired rights that necessitates the intersubjective relation between people regarding *sensible things*. This postulate enables a transition from a strict *a priori* normative level to one that is situated or more determined: one that might be labelled a 'metaphysical' normative level.

In the case of *the postulate of private right*, the normative aspect requires that there be no contradiction between the innate right of freedom and the empirical conditions of its realization. Therefore, it 'is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to *belong to no one (res nullius)* is contrary to rights'. Otherwise, 'freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting *usable* objects beyond any possibility of being *used*' (*MM*, 6: 246). The *theoretical* aspect is expressed by the *beati possidentes* formula, by which the claim of first occupants/possessors is accepted, so that they 'put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession' (6: 247). 'Taking first possession has therefore a rightful basis *(titulus possessionis),* which is original possession in common; and the saying "Happy are those who are in possession" *(beati possidentes),* because none is bound to certify his possession, is a basic principle of natural right' (6: 251). Now, 'being the first' is part of what I have called the theoretical aspect of the postulate. It is only thereby that reason 'extends itself *a priori* by this postulate of reason' (*MM*, 6: 247). With this extension, elements foreign to practical reason as such are introduced. However, the theoretical aspect is not assumed for the sake of theoretical cognition:

> No one need be surprised that *theoretical principles* about external objects that are mine or yours get lost in the intelligible and represent no extension of cognition, since no theoretical deduction can be given for the possibility of the concept of freedom on which they are based. It can only be inferred from the practical law of reason (the categorical imperative), as a fact of reason. (*MM*, 6: 252)

Thus, the transition from the general postulate of practical juridical reason to that of private right requires two elements of theoretical 'determination': not only *is there a system* of acquired rights, but it *began* with the first occupancy.

In the case of the *postulate of public right*, the strict normative element is stated as follows: 'you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice' (*MM*, 6: 307). The theoretical aspect is made explicit when human nature is assumed to be endowed with unsocial sociability, which means that 'it is not necessary to wait for actual hostility; one is authorized to use coercion against someone who already, by his nature, threatens him with coercion' (6: 306). So, violence is authorized for the sake of creation of states

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(6: 339). From these premises, people occupying their current territories are assumed to be the descendants of the first occupants. Historically speaking, this is false in a great majority of cases, but *for practical purposes, it is assumed to be true*. This theoretical proposition is not only distinct from that made by historiography, but it has also another function.[11] Kant acknowledges that, whether a state 'began with an actual contract of submission as a fact, or whether power came first and law arrived only afterwards, or even whether they should have followed in this order: for a people already subject to civil law these subtle reasonings are altogether pointless' (6: 318). This means that the saying 'All authority is from God' 'is not an assertion about the *historical basis* of the civil constitution; it instead sets forth an idea as a practical principle of reason: the principle that the *presently existing* legislative authority ought to be obeyed, whatever its origin' (6: 319, emphasis added). There is thus an important consequence for cosmopolitan right, namely, assuming that the present territories are still being occupied by the rightful descendants of the first occupants obliges states to respect the rights of the societies that have yet to be organized as states.

If we compare the postulates of private and public right, we find contrasting elements. First, the postulate of public right assumes the theoretical premise of unsociability, with selfish and disruptive consequences. However, the postulate of private right assumes the theoretical premise of juridical honesty. These conflicting assumptions are jointly mobilized in order to build a system of right capable of both preserving the *respublica noumenon* as the valid archetype while legitimizing existing states as an intermediate step to that end. Kant dealt with a similar concern in the *Critique of Judgement* regarding how to reconcile mechanical and teleological causality. His solution was to show that they are not contradictory because both are only maxims of reason.

From a juridical point of view this means that, regarding right, subjects are simultaneously related to the intelligible and empirical levels. Kant states this complex relation in the following way: rightful possession 'is not an empirical concept (dependent upon conditions of space and time) and yet it has practical reality, that is, it must be applicable to objects of experience, cognition of which is dependent upon those conditions' (*MM*, 6: 252–3). This mediation is done by permissive law, which can only be understood in the light of reflective teleological judgement.

2.2 *Permissive law and teleological judgement*

As noted by Kersting (1993: 258), the transition from the categorical imperative of right to the *system* of right implies a kind of schematism without precedent in the first *Critique*. I argue that in the Doctrine of Right we find *a symbolic schematism typical of reflective judgement*.

Kant uses symbolic and analogical procedures in order to introduce content into ideas, so that we may use them to think of pure practical relations. Thus, with the 'discovery' of the faculty of judgement as one of the higher faculties with its own principle, symbolic hypotyposis becomes a task of reflective judgement, where 'a concept which only reason can think, and to which no sensible intuition can be adequate, an intuition is attributed with which the power of judgment proceeds in a way merely analogous to that which it observes in schematization' (*CPJ*, 5: 351).

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Kant insists that the action of 'making something sensible' in the case of an idea is a task of reflective judgement, which 'is a principle not of the theoretical determination of what an object is in itself, but of the practical determination of what the idea of it ought to be for us and for the purposive use of it' (5: 353). A symbolic hypotyposis is at work when Kant distinguishes the despotic state from a republic, comparing the former to a machine, like a hand mill, while the latter is like a 'body with a soul' (5: 352).

The social contract is a symbolic hypotyposis within the Doctrine of Right. The literature has long debated the superfluous nature of this idea, since Kant does not justify the state in voluntaristic terms as do Hobbes, Locke and Rousseau, but rather as a command of reason.[12] As I see it, the idea of the contract performs a symbolic function by lending content to the idea of a republic. It allows us to represent autonomous agents capable of entering freely into juridical relations, and already in possession of some unalienable rights acquired prior to that civil state. The idea is produced by reflective judgement to guide our understanding of the *exeundum e statu naturali* as a command of practical reason. Thus, it *extends* practical reason and theoretically complements the pure normative aspect.

How does this work in the case of permissive law? 'Being the first' (*MM*, 6: 247) is the theoretical moment that has to be incorporated in order to create a more determined normativity. The complexities of this schematism can be seen in the following passage:

> Original acquisition of an external object of choice is called *taking control* of it (*occupatio*), and only corporeal things (substances) can be acquired originally. When it takes place, what it requires as the condition of empirical possession is priority in time to anyone else who wants to take control of the object (*qui prior tempore potior iure*). As original, it is only the result of a *unilateral* choice, for if it required a bilateral choice the acquisition would be derived from the contract of two (or more) persons and so from what is another's. – It is not easy to see how an act of choice of that kind could establish what belongs to someone. – However, if an acquisition is *first* it is not therefore *original.* For the acquisition of a public rightful condition by the union of the will of all for giving universal law would be an acquisition such that none could precede it, yet it would be derived from the particular wills of each and would be *omnilateral,* whereas original acquisition can proceed only from a unilateral will. (*MM*, 6: 259)

The statement that 'if an acquisition is *first* (*die erste*) it is not therefore *original* (*die ursprüngliche*)' may seem to contradict the condition that original acquisition requires 'priority in time'. This difficulty can only be overcome by way of reflective teleological judgement, which is, after all, the theoretical instrument Kant developed to deal with seeming contradictions in our understanding of organisms. Kant needed a category of causality in the third *Critique* that worked in two directions: first, one that might explain how parts worked for the whole and, second, how the whole makes the parts possible. The teleology provides just this conceptual instrument. Now, returning to the passage just quoted, I suggest that this teleological scheme may also shed some light there. From one point of view (the one that proceeds from cause to effect), the

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first occupation is the way a system of property right may start, but from another point of view (going from the effect to the cause), the first occupation is only original insofar as it is seen as a *symbol* of the idea of intelligible possession, which already presupposes a system of equal freedom and the notion of an omnlilateral will.

Even if sensible possession is merely a symbol of intelligible possession, it enables us to think of how to start building a system of property. There is no direct and simple connection between sensible and intelligible possession, rather a complex mediation is made possible by symbolic reflection in accordance with the requirements of pure practical reason. In other words, reflective judgement is the theoretical instrument capable of conceptualizing the complex situation in which, on the one hand, 'there must be some original acquisition or other of what is external, since not all acquisition can be derived' (*MM*, 6: 266); while, on the other hand, 'a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws' (6: 256). Therefore, the claim that something is mine 'involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his [in a similar proportion – *einer gelichmässige Enthaltung*]; for the obligation here arises from a universal rule having to do with external rightful relations' (6: 255, emphasis and correction in translation added).

Being the first to acquire something requires the acceptance of the universality and reciprocity that is intrinsic to universal law. But how can these requirements be put to work in an empirical and historical context? The permissive law of practical reason allows for unilateral acquisition, with all its indeterminateness, *only as a means to a higher end*, namely, the construction of a system of right with equal spheres of freedom and with equal spheres of property. So, first acquisition is accepted as such only as means to the end of a system of right based on the idea of omnlilateral will. The provisional rights of possession in the state of nature are thus only legitimized in the light of a reflective teleological judgement that provides a symbolic and procedural way of thinking those rights.

There are two mutually related types of teleology in the Doctrine of Right.[13] On the one hand, *practical constitutive* teleology points to the aim of an action required by the categorical imperative of right. On the other hand, *practical reflective* teleology is intended to mediate the juridical categorical imperative and empirical relations in order to create a *feasible system* of right.

Practical constitutive teleology is a way to represent an important dimension of moral action, analysable from two different perspectives: one focuses on the determinant principle and the other on the action's aim. Even if Kant's practical theory centres mainly on the principle, or the categorical imperative, moral actions can also be considered from another point of view, namely, that of their goals. So, all agency, even moral agency, can be looked at from a teleological point of view. In the second *Critique*, Kant qualifies this perspective with the concept of the object of practical reason, expressed as good and evil (*CPrR*, 5: 57–8). Good is the end of an action realized by moral law, evil the end of that carried out by self-love. In other words, *constitutive* practical teleology is justified by a deontological moral theory. Similarly, in the Doctrine of Right, the *respublica noumenon* represents the complete end of a juridical deontological right and is an idea constructed through constitutive practical

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teleology.[14] The principle and the end are two sides of the same coin. In the same way that all events contain a cause and an effect, every action is made up of a principle and an end.

These considerations enable us to respond to the objection that 'the *Doctrine of Right* does not concern action pertaining to the realization of an obligatory end' (Weinrib 2014: 110–11; cf. *MM*, 6: 381), because law giving that 'does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical*' (6: 219). This claim must be contextualized, otherwise it leads to a misunderstanding of Kant's theory of right. The statement that law neither aims at nor requires any particular end, as is the case with a positive law that should not require moral motivation, is different from the statement that the *system* of right as a whole does not aim at an end. The first is true, while the second is not. From the perspective of metaphysical right, which works as an archetype for positive right, right itself has an end, a normative idea that should motivate action. This becomes clear when Kant explains that the sovereign has a duty, *independently of possible external coercion*, to reform positive right according to the idea of a republic (cf. 6: 340), or that states, without any relevant system of reciprocal coercion, should build a federation of states (6: 350).

Therefore, the view that the republic is the *end* of the system of right is present throughout critical philosophy. '[*T*]*hat union which is in itself an end (that each ought to have)* and which is therefore the unconditional and first duty in any external relation of people in general ... is to be found in a society only insofar as it ... constitutes a commonwealth' (TP, 8: 289; emphasis added; see also *MM*, 6: 354–5, *CPR*, A316/B373).

Now let us turn to practical *reflective* teleology and its relation to the Doctrine of Right. In the third *Critique*, Kant points to the difference between transcendental and metaphysical principles. While the former are concerned with the way of knowing objects in general, the later represent 'the *a priori* condition under which alone objects whose concept *must be given empirically* can be further determined *a priori*' (*CPJ*, 5: 181, emphasis added). At the metaphysical level, therefore, 'we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to show in it what can be inferred from universal moral principles', which means that the 'metaphysics of morals cannot be based upon anthropology but can still be applied to it' (*MM*, 6: 217). The issue, then, is how to define adequate norms capable of, on the one hand, determining empirical human nature and, on the other hand, starting a process of gradual improvement. Kant employs reflective teleology to resolve this issue. Its logical structure provides a way for building a system of means and ends. The concept of *end* is established by *constitutive* practical teleology, which grounds the idea of a *respublica noumenon* as a *maximum* or *the complete object* of juridical reason. The concept of *means* is established by *reflective* practical teleology and creates rules that work as well as possible, starting with intermediate steps toward the creation and improvement of a system of law with that aim. As a means, these rules have to consider the point of view of human anthropology and the contingency of the empirical context, but they must also retain consideration of the final end.

According to Kant, the power of judgement 'makes possible the transition from the domain of the concept of nature to that of the concept of freedom' (*CPJ*, 5: 197). Reflective teleological judgment is 'an intellectual judging in accordance with

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concepts which gives us distinct cognition of an objective purposiveness, i.e., serviceability for all sorts of (infinitely manifold) purposes' (5: 366). This concept of purposiveness has both an internal and external use. The first concerns organisms, while the second deals with nature as a system and 'is called usefulness (for human beings) or advantageousness (for every other creature), and is merely relative; while the former is an internal purposiveness of the natural being' (5: 367). The system of relative purposiveness is not defined by happiness, but according to the concept of prudence already subordinated to morality.[15] In this sense, therefore, the concept of an ultimate end is determined by the concept of a final end in sections 83 and 84 of the third *Critique.*[16]

Similarly, if natural teleology assumes culture and juridical relations as means for the development of morality (cf. *CPJ*, 5: 432–3), then contingent and problematic juridical relations can be conceived in a purposeful relation to the idea of a *republic*. If we conceive permissive laws of reason as means, then what is permitted should be seen simultaneously as means and end. In other words, what is allowed by permissive laws of reason is at once rightful, but not completely rightful, because it is also a means to another end, which entails the final justification. The relative status of the means does not strip away all its legitimacy, nor does it confer an *absolute and complete* legitimacy. This kind of conditionality is precisely that present in the transition from the state of nature to the civil state and from the civil state to a republican one. All rights legitimate in the state of nature were rights in themselves, but not perfect rights, because they have to be seen also as means, i.e. as conditional rights in regard to the juridical state that should continuously develop towards realization of the idea of a republic.

Therefore, there is a teleological permission in the permissive law of reason that implies a demand for reform towards a specific end. The idea of a republic is this focal point where all our efforts for reform should aim. It is not found in any historical experience, but only *a priori* in reason. So, the idea of a republic and an eternal peace is 'no empty idea but a task that, gradually solved, comes steadily closer to its goal' (*PP*, 8: 386). Not only is this reformist character present in Kant's 'minor works' but it is also central in the Doctrine of Right:

> 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. (*MM*, 6: 340, cf. 6: 355)

The reformist feature is also immanent in the transition from private to public right. For example, in the state of nature, each subject can enter into a marriage contract, but civil law is allowed to regulate it by creating criteria like minimal or maximal age

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or the rules about how and what constitutes a legal marriage contract. This process of regulation is not limited to protecting rights acquired in the state of nature, but it can and should lead to an improvement of rights according to principles required by the categorical imperative of right (freedom, equality and independence), as well as the juridical and institutional criteria of positive right. Kant demonstrates the shift from private to public right with four examples: (1) a contract to make a gift (*pactum donationis*); (2) a contract to lend a thing (*commodatum*); (3) recovering something (*vindicatio*); and (4) oathtaking (*iuramentum*) (*MM*, 6: 297–305). Therefore, when Kant states that public right 'contains no further or other duties of human beings among themselves than can be conceived in the state [of nature]; the matter of private right is the same in both' (6: 306), what he has in mind is that the state has no right to extinguish those rights. If someone had the right to get married in the state of nature, then no state has legitimacy to extinguish this right completely. However, this does not mean that the state has no legitimacy to qualitatively change that right by establishing criteria like minimum and maximum age, or even to create new rights and duties that were not present in the state of nature, such as the case of taxes to support the poor (cf. 6: 325–6).

Whether in *Perpetual Peace* or the Doctrine of Right, there is an implicit *teleological reflection* in all permissions granted by permissive law. They lend legitimacy to some fact or situation not as an end in itself, nor as a final end, but as a means toward a higher juridical one. Kant's intent is not to outline a system of perfectly just right (a utopia, a right for purely rational moral beings), but rather to delineate a system of right that could do both: justify existing states, keeping in mind the features and the influence of human nature and human history, and serving as a parameter and a normative demand for improvement. A right designed neither for angels nor for demons,[17] but for sensible rational beings. In this vein, Kant's juridical and political project could be called a *realist utopia*.[18] The utopic aspect is related to the idea of *respublica noumenon* that follows from a moral *constitutive* teleology grounded in the categorical imperative of right, while the realist aspect deals with Kant's deflationary concerns, in which he sets that idea in a dynamic process by way of a reflective teleology expressed by permissive laws.[19] Therefore, Kant's objective with the Doctrine of Right is to embrace also *a right of transition*, one capable of being empirically contextualized, so that imperfect institutions may be considered legitimate at the same time that the requirements for continuous reforms are in place.

2.3 The theoretical status of permissive laws

The theoretical status of reflective judgement converges with the status of rights grounded in permissive laws. The first feature related to this status is that it does not determine any objective content in nature. It is an idea that 'serves as a principle, for reflecting, not for determining' (*CPJ*, 5: 180). It is a principle by which 'we acquire only a guideline for considering things in nature' (5: 379) and it is not required when we represent objects as such. Even so, the 'subjective principle of reason for the power of judgment which, as regulative (not constitutive), is just as necessarily valid for our *human power of judgment* as if it were an objective principle' (5: 404).

We can argue *mutatis mutandis* that permissive laws do not determine a constitutive and objective right but still put forward an indispensable form of thinking

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regarding the system of law. In this vein, permissive law works 'as if it were an objective principle'. However, the regulative character cannot be lost sight of, and this means that all rights grounded in permissive law are still problematic and, therefore, cannot be confused with completely objective rights.

Both reflective teleological judgement and permissive law allow us to approach complex problems in which normal 'mechanical' procedures fail. Grounding a system of right and justifying the first possession of land are just such complex issues, in the same way that understanding organic life is.

Permissive laws work as heuristic principles that are subjectively necessary, but still unjustified as constitutive of the object, i.e. insufficient to justify an objective right. The teleological judgement must be gradually complemented with a mechanical one in order to advance our knowledge of the object (see *CPJ*, 5: 421–2). Thus, the rights problematically justified by permissive law must be complemented and gradually replaced by the objective requirements of the juridical categorical imperative, whose criteria of necessity and universality can only be fully met in a republic.[20] The republican institutions should rearrange the idiosyncrasies of private rights into a *system of equal freedom*. Therefore, new objective and constitutive criteria are put forward in order to turn problematic rights derived from permissive law into definitive ones.

Those criteria are the following: (1) rights must be positivized, i.e. they must become objects of distributive justice; (2) they must be reinterpreted so that they might fulfil the requirements of an omnilateral will that ensures a system of equal spheres of freedom (in constant approximation to the idea of *respublica noumenon*); and (3) this system must achieve a cosmopolitan perspective, otherwise 'such acquisition will always remain only provisional unless this contract extends to the entire human race' (*MM*, 6: 266). This last requirement leads naturally to the topic of a world republic as the normative horizon of the realization of the noumenal republic.[21]

This complementing and correction of private by public right is central in several moments of the Doctrine of Right, especially in the passage from the state of nature to the civil state, both for individuals and states. The regulative aspect, which makes it simultaneously legitimate and unsatisfactory, which means only *subjectively* legitimate, is set out by Kant as follows:

> Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is *provisionally rightful* possession, whereas possession found in an *actual* civil condition would be *conclusive* possession. (*MM*, 6: 257)

So, in the state of nature someone who claims possessions

> at least has the advantage of being compatible with the introduction and establishment of a civil condition. – In summary, the way to have something external as one's own *in a state of nature* is physical possession which has in its favor the rightful *presumption* that it will be made into rightful possession through being united with the will of all in a public lawgiving, and in anticipation of this holds *comparatively* as rightful possession. (*MM*, 6: 257)

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Qualifying provisionally rightful possession as possession *in anticipation* has in its favour *merely an advantage, or a rightful presumption*. This implies, *mutatis mutandis,* the same status as the regulative aspect of reflective teleological judgement. There is no complete or positively objective deduction of rights by permissive law. The argument is only grounded in a *subjective practical interest* or in the *need* for practical juridical reason, in the same way that teleological reflection is grounded in the subjective need of our *discursive* reason. Thus, it is not surprising that Kant concludes the Doctrine of Right with this *methodological* reflection:

> *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*. (*MM*, 6: 354; emphasis added)

Now, since for Kant it 'is itself a duty to have such a metaphysics [of morals]' (*MM*, 6: 216), then we are dealing with a *practical interest of reason*. Returning to the issue of possession, all private rights can be said to be assumed to be legitimate only as *means* for starting a process that should be continuously corrected and improved by satisfying the objective criteria of the categorical imperative of right, according to the idea of omnilateral will and a republic. Kant's Doctrine of Right is bound by a reflective teleological guideline.

Another example of this transition and complementarity between the teleological (reflective) and determinant (constitutive) levels is found in the issue of war between states. From an exclusively determinant point of view, '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' (*MM*, 6: 354). From a regulative point of view, however, reason must deal with complex empirical circumstances in which states are still in the state of war, and then reason must justify a problematic right *of*, *in* and *after* war (cf. 6: 344–51). These rights are only legitimate in case we interpret them *as a means to the end of peace*, namely, to the end established by the determinant point of view of practical reason. In other words, reflective juridical reason concedes a claim of right to preventive war against a *potentia tremenda* (cf. 6: 345); or even against an *unjust enemy* (cf. 6: 349), *only in case those rights are defined as means for creating civil right among states*. The way to reconcile those apparently contrasting positions into a single coherent theory is by reading them as two different maxims of reason: the practical *reflective* teleological maxim (which serves to reflect on complex empirical situations and has only a preparatory and problematic validity); and the practical *constitutive* teleological maxim (which is a determinant element identifying the end for the full development of right). Despite Kant's failure to mention it explicitly, it is hard to overlook that there is also a permissive law at work at the level of international right.[22]

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2.4 Teleological permission: latitude and casuistry in the Doctrine of Right

'The power of judgment in general is the faculty for thinking of the particular as contained under the universal'; the *determining* power of judgement subsumes the particular to the universal given, while the *reflecting* power of judgement deals with the particular given 'for which the universal is to be found' (*CPJ*, 5: 179). For the practical use of reason, however, the reflecting power of judgement works in the opposite order, since the universal is given, but the particular is not. This is because we already have the normative concept of *respublica noumenon* (the universal) and we must find the particular, in this case the means or the intermediate norms, to begin an approximation towards it. Permissive laws of reason play this intermediate role, allowing us to recognize the legality of some norms, not for themselves and in an absolute manner, but as procedural and temporary steps in direction of the normative idea of a republic.

The thesis of *beati possidentes* fits precisely into this scheme, insofar as it deals with a particular and contingent situation, in which individuals or groups take possession of one specific piece of land. There is no particular *a priori* reason to justify the possession of this land and not another (cf. Ypi 2012). Besides, if Kant had attributed some objective legitimacy to the *beati possidentes* (as suggested by Hruschka), he would have ended up with a theory similar to that of Nozick, in which only a principle of transmission is added to the first rightful acquisition.[23] In this case, in order to justify the validity of an actual possession, all we would have to do is trace the legitimacy of transmissions back until we find the first possession. Kant's objective, however, was never to justify the history of empirical possession as a way to ground the legitimacy of noumenal possession. If we look back into history, we will probably find only the history of violence (*MM*, 6: 339), and despite this fact, or perhaps because of it, we should not investigate the past in order to determine the actual legitimacy of property. So, *beati possidentes* was never meant to actually legitimize present property, but merely to consider our present condition of distribution of property as a *legitimate starting point toward creating a future system of equal freedom*, which implies a rightful system of distribution of property. Kant's philosophy of right is not grounded on a retrospective project for the foundation of rights, but rather on a *prospective* one.

This reflective teleological point of view is not intended to make concessions to the principle of the political moralist namely, '*fac et excusa*' (*PP*, 8: 374). On the contrary, it tries to simultaneously recognize the incompleteness of present juridical relations in regard to the juridical categorical imperative without undermining the stability of the juridical state. Permissive law sets up a perspective by which political and juridical reforms can be started. Thus, Kant allocates the task of interpreting permissive law to the moral politician, who has the art of combining prudence with morality (cf. *PP*, 8: 370).

This teleological feature allows Kant's Doctrine of Right to embrace some casuistry and latitude. One might argue that Kant rules out casuistry and latitude in the doctrine of right (cf. *MM*, 6: 411).[24] I propose to understand his restriction as referring only to the doctrine of right when the issue is the creation of positive law. This is one of the main reasons why Kant denies the legitimacy of the right of equity, even though he acknowledges that there is a legitimate claim to it. 'One who demands

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something on this basis stands instead upon his *right*, except that he does not have the conditions that a judge needs in order to determine by how much or in what way his claim could be satisfied' (6: 234). Therefore, in the process of creating positive law, each crime must have a previously fixed and clear sentence, since enlightenment law holds to the principle *nulla poena sine lege*.

In favour of the teleological and reflective interpretation of the Doctrine of Right, it is worth looking into some other examples of Kant's openness to latitude in his derivation of juridical rights and duties:

a) The cases of murdering a fellow soldier in a duel and a mother's murder of her own child born outside of marriage. On the one hand, murder requires a severe penalty. However, Kant acknowledges that 'the legislation itself (and consequently also the civil constitution), as long as it remains barbarous and undeveloped, is responsible for the discrepancy'; therefore, 'public justice arising from the state becomes an *injustice* from the perspective of the justice arising from the people' (*MM*, 6: 337). In other words, while the legislation remains barbaric, 'these acts of killing (*homicidium*), which would then not have to be called murder (*homicidium dolosum*), are certainly punishable but cannot be punished with death by the supreme power' (6: 336). So, while 'the categorical imperative of penal justice remains (unlawful killing of another must be punished by death)', on the other hand, as long as the legislation remains barbaric (in case of some contingent historical circumstances), those acts should not be punished. The principle that grounds this latitude is teleological reflective judgement, since only then the fellow soldier might have some justice and the mother will not fall into disgrace before society.
b) According to public right, uprisings and revolutions or any use of force against the sovereign are always illegitimate (6: 320). However, once a revolt becomes successful and turns into a revolution, then all subjects have to obey the new constitution (6: 323). But what to do about the former monarch if he tries to regain power? 'But if he prefers the latter course, his right to do so cannot be challenged since the insurrection that dispossessed him was unjust.' (6: 323). But then, Kant concedes that 'killing him would not be an enactment of punitive justice but merely a dictate of self-preservation', so it would *be better for right* itself just to kill the former king on an alleged right of self-preservation rather than bring him to public trial (6: 321n.). In other words, the presumption of a legitimate judgement of the king is 'still worse than murder, since it involves a principle that would have to make it impossible to generate again a state that has been overthrown' (6: 322n.). Moreover, Kant stretches this reflective movement quite far when he suggests interpreting the French Revolution not as a revolution, but as a reform, since the King gave up his right to be the people's representative when he called for the general assembly (6: 341–2).
c) On the one hand, the categorical imperative of right stands in opposition to any hereditary nobility. However, once one is created, then there is a 'provisional right to let these titled positions of dignity continue until even in public opinion the division into sovereign, nobility and commoners has been replaced by the only natural division into sovereign and people' (6: 329).

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What are the criteria to decide if public opinion is ready for change? Following the definition of politics as an 'ausübender Rechtslehre' (*PP*, 8: 370), we might conclude that the moral politician needs to have an *exercised faculty of judgement and to allow some latitude in taking the decision*.

d) An unjust enemy is the one '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' (6: 349). We must of course ask: what are these actions and who would be the judge? But since in the state of nature each state is judged on its own terms, here again we become entangled in a conundrum that allows latitude.
e) The spherical shape of earth (6: 352) is also a contingent element that establishes the fact that humans cannot separate from each other indefinitely. This calls for some latitude when considering building new settlements. According to Kant, the new settlement must be so far from other people that 'there is no encroachment on anyone's use of his land' (6: 353). But what about shepherds and hunters? The contingency cannot be determined *a priori* and what may be valid in one situation might not be so in another.

The contingent situations and latitude present in the metaphysical principles of right are not incidental. They appear in important moments of the work. The knot regarding the mediation between the categorical imperative of right and empirical circumstances can be untied only with the help of practical reflective teleology, which, as I have argued, lies at the essence of the notion of a permissive law of reason. Kant recognized the difficult circumstances of his time and refrained from delving into more contentious questions. As he warns in the Preface, he worked less thoroughly over some sections, especially regarding public right, because they 'are currently subject to so much discussion, and still so important, that they can well *justify postponing a decisive judgment* for some time' (*MM*, 6: 209, emphasis added). This admission at the beginning already points to the need for reflection about the uncertainties of the present and its complex relation with the derivation of the metaphysical principles of right, and it speaks quite against an alleged objective deduction of right that would have been done in analogy with a mathematical postulate.

3. Final considerations

'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' (*MM*, 6: 355, emphasis added). Kant's philosophy of law does have an intrinsically moral end (contrary, as noted above, to Weinrib), which is encompassed within the idea of a republic, that 'must be derived *a priori* by reason from the ideal of a rightful association of human beings under public laws as such' (*MM*, 6: 355). This end is not merely achieved with the advent of a state protecting relations of mine and yours that had been established in the state of nature. For Kant, the juridical state must be improved to the end of a 'perfect just civil constitution' (IUH, 8: 22), which, in turn, requires even a reformulation of the rights acquired in the state of nature (contrary to Hruschka). Therefore, acquisitions

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in the state of nature do not run against the principle of *neminem laede* (contrary to Brandt), and they are morally incomplete and require reform and improvement (contrary to Hruschka). Putting together a system of equal freedom also requires a systematic manner for relating the *a priori* right of freedom in general to the contingencies of human existence. As I have argued, the only way that permissive laws could perform all these functions is by being interpreted in close relation to the concept of reflective judgement, or to what I have called a practical reflective teleology. Thus, in the third *Critique* Kant developed a theoretical instrument to deal with contingent and complex circumstances, which is implicitly mobilized throughout the Doctrine of Right (contrary to Tierney).

Another advantage of this interpretation is that it does not introduce a category alien to the system of transcendental philosophy, but instead mobilizes a conceptual framework set out by Kant in one of his major critical works. Moreover, it enables us to explain the distinction between the different spheres of private and public right, seeing right as dynamic and capable of dealing with contingent circumstances. This processualism has profound implications for the Doctrine of Right. At the very least, as I have argued, it provides for an intelligible link between the justification of possession from within the realm of private right and the different spheres of public right.

Finally, one might wonder why Kant fails to speak explicitly of this teleological dimension in the Doctrine of Right. This might be due to the fact that his intention was merely to present the system of rights and not to stress the prudential and teleological considerations underlying his method of derivation. In this way, the teleological moment is not only tacitly incorporated, but transformed by the practical normativity required by the categorical imperative of right. Kant states that, due the fact that teleological judgement is subordinated to practical reason, it constitutes 'no *technically practical* doctrine but only a *morally practical* doctrine' (*MM*, 6: 218). Moreover, the principles of the power of judgement 'may not constitute a special part of a system of pure philosophy, between the theoretical and the practical part, but can occasionally be annexed to either of them in case of need' (*CPJ*, 5: 168). Therefore, the transition from the categorical imperative of right to the anthropological conditions of application requires the subordination of teleological judgement to practical reason. It is due to this subordination that the reflective features of teleological judgement are incorporated throughout the Doctrine of Right. Even though this explanation is somewhat vague, the kernel of my argument still stands, namely, that, without recognizing this practical teleological moment, we cannot thoroughly understand *how* a derivation of rights is possible and *how* such contrasting and different parts might be integrated into one coherent system.[25]

Notes

1 This reading has found acceptance by Flikschuh (2000), Kersting (1993), Ypi (2012), Kleingeld, (2012), Horn (2014) and Loriaux (2017).

2 All translations follow the Cambridge Edition of the Works of Immanuel Kant (Kant 1996–), with pagination in standard format from Kant (1900–) or, for *CPR*, in standard 'A/B' format. The abbreviations used are: (*PP*) *Zum ewigen Frieden*; (TP) *Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*; (IUH) *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht*; (*CPrR*) *Kritik der praktischen Vernunft*; (*CPR*) *Kritik der reinen Vernunft*; (*CPJ*) *Kritik der Urteilskraft*; (*MM*) *Metaphysik der Sitten*; (CF) *Streit der Fakultäten*.

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3 See Szymkowiak (2009) for a similar reading.
4 With some variation, Hruschka's reading has found acceptance by Kaufmann (2005) and Weinrib (2014: 115).
5 Szymkowiak (2009: 576, n. 11) poses a similar critique.
6 Throughout the Doctrine of Right, Kant explicitly speaks of a 'postulate' nineteen times and only three times of 'permissive' right or law. In this case, it seems safer to assume that not all postulates are permissive laws, but that all permissive laws are postulates. A compete analysis of this topic is beyond the scope of this article.
7 Guyer (2002: 37) also stresses the theoretical aspect of postulates and makes reference to the second *Critique*. However, he also seems to take Kant to be making an analogical reference to mathematical postulates in the deduction of postulates of right (2002: 41).
8 This position is related to the thesis that Kant defended as legal positivism (see Klein 2021b).
9 I have analysed the concept of highest good in the *CPrR* in Klein (2016) and the concept of a *need* of pure reason in Klein (2014).
10 Regarding the concept of republic, see Zöller (2015, 2020).
11 Regarding the difference between object, methodology and validity in Kant's notions of *Historie* and *Geschichte*, see Klein (2018).
12 Cf. Ludwig (1993), Kersting (1994), O'Neill (2012: 38).
13 I am grateful to Günter Zöller for calling my attention to this distinction.
14 As I understand it, there are two concepts of highest good, because there are two different answers to the question 'What may I hope?': one from the point of view of the individual, the other from the perspective of humankind; the first is ethical-religious, the second juridical-political (cf. Klein 2017a). The concept of *respublica noumenon* corresponds to the concept of *supreme political* good, which is the normative part of the concept of the *highest* political good. However, when dealing with the concept of *respublica noumenon* as a normative ideal for constructing a system of rights, practical reflective judgement works differently than when approached from the perspective of the philosophy of history. (I have developed some thoughts about the latter in Klein 2013, 2014, 2016 and 2019). In the case of the Doctrine of Right, practical and reflective teleological judgement work as a means for the philosophy of right and therefore have a practical normative status, while in the case of the philosophy of history, practical teleological judgement grounds an independent theory with a different validity. In the first case teleological judgement helps to construct duties and rights, while in the second it may ground only belief or faith. (Both uses are coherently integrated in Kant's system, but they are not the same.) Considering the *respublica noumenon* as a task and as involving normative reference to duties and rights is different from considering it as an object of faith, although for Kant the first is the condition for the second. Using Kant's terminology in the *CPJ*, in the first case practical reflective teleology works heteronomously (under the directive of the categorical imperative of right), while in the second heautonomously (only in accordance with the moral law).
15 For a detailed analysis of the relation between prudence and morality, see Klein (2021a).
16 For a detailed analysis of the relation between paragraphs 83 and 84 in the *CPJ*, see Klein (2013).
17 In this sense I read the (in)famous passage regarding a nation of demons in *PP* (8: 366), namely, that if demons can build a state, then human beings, who are neither demons nor angels, but can and must count on *moral politicians*, may build a republic.
18 See Rawls (2001: 11ff.). Regarding the notion of a realist utopia and the distinction between ideal and non-ideal theory, see (Rawls 1971).
19 Kant was careful to differentiate his proposal from what he called a sweet dream of utopia in CF, 7: 92n.
20 An anonymous referee raised the important question whether the notion of *replacement* would involve too strong a claim and whether we could ever get a peremptory or definitive 'mechanical' system of cosmopolitan law. From the point of view of the totality, we will never reach a perfect system of cosmopolitan law, and so mechanical judgement will never completely *replace* teleological judgement, but this does not mean that, from the perspective of particular parts or specific sets of laws, we cannot reach it. So, the perspective of a *continuous replacement* does not exclude the point of view that we will never reach a full replacement (in analogy with how Kant understands the role of the ideas of reason in *CPR*, A317/B374).

21 I assume here a proceduralist reading of the federation of nations, in the sense that it is an intermediate step toward the world republic, therefore a means to an end.
22 There is no permissive law, however, that allows states to use force against each other in order to build a federation of nations (against Byrd and Hruschka 2010: 195–6). This lack of permission is related to teleological and prudential concerns grounded in the fact that the relation between means and ends is different on the level of individuals and that of states (cf. Klein 2021c).
23 This line of argument is followed by Nozick (1974). Concerning the differences between Kant's and Nozick's theory of justice, see Klein (2017b).
24 I am grateful to an anonymous referee for raising this important question. In this section I will point out some examples, but due the limits of this article I will not be able to examine them in much detail, in particular the way in which Kant distinguishes his position from that of his predecessors.
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