

The Construction of Juridical Space: Kant's Analogy of Relation in *The
Metaphysics of Morals*

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In his Metaphysics of Morals, Kant likens the juridical relation among subjects to the physical interaction of bodies in space. "The law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, at it were, the *construction* of that concept, that is, the presentation of it in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of *the equality of action and reaction*."¹ The construction of the concept of right (laying it out in spatial terms,² unlike schematism which relates the concept to time) requires the notion of equal, reciprocal constraint under general laws. Constraint, here understood as the limitation on the action of a subject effected by the free will of another (Ak. VI, 231-232), defines the juridical space and the general conditions of the motion of bodies within it. The antinomy of constraint and free motion is resolved under the idea of mutual limitation. According to Alexis Philonenko, however, this mechanistic analogy remains unexploited in Kant's account of the juridical sphere: "les exposés kantien ne comprennent aucune notion de structure mathématique."³ Philonenko argues that unlike Fichte, Kant does not employ the analogy to demonstrate a mathematico-physical basis for juridical relations. I wish to examine the extent to which the analogy that Kant proposes does explain his construction of the juridical relation; and also to show where it does not apply to the movement of juridical subjects. I will also follow up Philonenko's

comparison with Fichte, arriving, however, at a different conclusion. While construction is like the procedure of mathematics, which also exposes concepts in spatial terms, the fundamental categories here are not those which Kant names mathematical, but dynamical, especially relation.⁴ The Kantian analogies of experience in the Critique of Pure Reason will be of central importance, as will their fuller exposition in The Metaphysical Foundations of Natural Science.

The juridical relation has a double dimension in the Metaphysics of Morals. It is at once a relation of subject and object, and of subject and subject. Kant defines right as a rational concept of choice under the laws of freedom. Its content is the legitimate intelligible possession of an object which is distinct from the subject. Kant stresses that rightful possession is synthetic (Ak. VI, 250), since the object is spatially separable from the subject; it thus differs from merely empirical possession or holding, which is analytic. Right abstracts from the empirical properties of the thing possessed, which appears simply an object of choice and of possible use by the free will. It also abstracts from the empirical properties and needs of the subject, and is related exclusively to the subjective capacity for choice. It is a manifestation of freedom, and not of happiness; because its justification is transcendental, and not teleological, the principle of right cannot be overridden by appeals to welfare, though these may have their place in morality. At the same time, the juridical relation is not a direct connection of person to thing, but is a relation of exclusion which holds between persons with respect to things. The doctrine of right must show why such constraint is legitimate. The primary meaning of constraint is exclusion through manifestation of the will, and not physical force. This exclusion is ultimately sanctioned by the civil constitution, which authorises a second level of constraint, that of the state.

The justification of constraint which Kant offers must permit him to sustain the distinction between right and morality. This problematic relation had long preoccupied the Kantian school.⁵ Although, in Perpetual Peace (1795),⁶ Kant insists on the difference

between morality and law, it had not been consistently recognised by his followers. G. Hufeland, for example, in Lehrsätze des Naturrechts (1790; second edition 1795), derives the right of coercion from the moral law of perfectibility. In the Metaphysics of Morals, Kant seeks a new basis for the distinction. He employs the analogies of experience, which he had worked out in The Critique of Pure Reason, to illustrate the juridical relation, constructing space in terms of interacting forces operating with the necessity of mechanical laws. Earlier, in 1796, Fichte had also employed the Kantian analogies to describe the juridical relation, but in a less mathematical or mechanical sense. Kant's procedure in this respect is closer to Schelling's in System of Transcendental Idealism (1800). Like Schelling, Kant conceives the law to permit the harmonisation of individual actions, in their external aspect, through a mechanism of constraint which operates as a law of causality or of nature, despite its origin in the will.⁷ Right is based in pure and not empirical practical reason, and thus ultimately in the moral will, so that the distinction of right and morality is not absolute; but unlike Hufeland, Kant does not justify the use of coercion by its direct contribution to moral perfection. The idea of perfection belongs exclusively within the domain of virtue, from which external coercion is excluded. In the juridical realm, subjects constitute, through coercion, a system of actions, independent of intentions and moral outcomes, by the simultaneous production of limits. The mechanical analogy shows how subjects effect the division of space, so that what belongs to each can be determined. Kant's analysis of the category of relation underlies this construction.

In the table of categories in the Critique of Pure Reason (A 80, B 106),⁸ Kant treats community or reciprocity as a logical concept under the category of relation. It is the mutually determining causality of one substance upon another (B109-112). Implying an interaction between active and passive substances, the concept corresponds to the disjunctive judgement. Kant elaborates the category of relation through the three analogies of experience (A 177-181, B 218-224). These proceed from substance as duration, or time in general, to cause and effect, or succession in time; and finally to

reciprocity as co-existence in time, or the simultaneity of cause and effect which two substances exert on each other. As the scheme of reciprocity shows (A 144, B 183-84), substances must occupy different spaces as a condition of our experience of their temporal co-existence. The third analogy treats the determination of the position of objects relative to each other in space. The concept of reciprocity now describes the condition of bodies which constitute a unified space by their interaction, and which co-exist at a point in time (A 211-218; B 256-65). They mutually determine their limits by simultaneous exclusion. This involves three important features. First, unlike the Leibnizian community of monads existing in pre-established harmony, but without mutual relations, against which Kant had argued in the amphiboly (A 267-68, 275; B 322-34), reciprocity involves real interaction among bodies existing in space, and given in intuition. Leibniz recognises only multiplicity, but not reciprocity. For Kant, however, the interaction of bodies cannot be explained by the category of quantity alone, but requires a distinct category, that of relation.⁹ Kant places the category in close connection, however, with the qualitative concept of limitation. Relation now shows how a system of limits is produced. Secondly, the third analogy describes this system of limits as a unified space, within which the law of action and reaction operates to distribute bodies spatially. Finally, the analogy invokes the principle of mutual causality. In the note on the system of principles (B292, 293), Kant specifies further how the mutual causality of interacting substances is to be understood: here the concept of community explains how a property of A produces an effect in B, which is not explicable internally from B. A fixes B's relative position by excluding B from a determinate area of space. The concept of force, whereby this determination occurs, is thematised in The Metaphysical Foundations of Natural Science.

The analogies of relation can be understood in two different dimensions, under freedom or under necessity. Fichte adopts the first option. In the first part of his Foundations of Natural Right, which appeared in 1796, Fichte seeks to reveal the

specificity of right through an original use of the Kantian analogies of experience. He applies to the juridical relation the extensive analysis of the category of relation, and of the concept of reciprocity, which he had developed in the Wissenschaftslehre of 1794.¹⁰ He distinguishes law and morality by showing that the sphere of right is the precondition for knowledge of the moral law and autonomy, since law establishes the possibility of self-conscious freedom through interaction. In his concept of Aufforderung or elicitation, he now renders the idea of influence, deriving from the second analogy of experience: it is a type of causality through freedom, which is not necessitating, but enabling. Fichte expresses the second analogy as a condition of possibility of the third. One subject communicates to another the idea of free causality in the formulation and execution of ends. The subject who receives the elicitation is not determined to act, as in natural causality, but is invited to respond by positing a free act in turn.¹¹ The subject thus accedes to the consciousness of freedom. Fichte designates the response to this call as Anerkennung or recognition.¹² This concept is, on the one hand, a juridical formulation of the moral principle of Achtung, of which Kant speaks in Religion within the Bounds of Reason Alone;¹³ on the other, it is a restatement of the third Kantian analogy of reciprocity. It is this principle which, for Fichte, constitutes the strictly juridical relation: subjects consciously impose limits on their own activity in recognition of the free activity of others. As a result, each is confirmed in the possession of a particular sphere. The activity of each subject remains unimpeded and free within the spheres thus determined. For Fichte, the juridical domain appears under the mode of freedom, and not necessity. The relation to other subjects is a self-imposed limitation arising from freedom, and not a repulsion based in constraint. This does not mean that coercion is absent from the developed juridical relation in Fichte, but simply that constraint is not foundational to right. When constraint is subsequently admitted into the juridical relation in Fichte's text, it is as one of the consequences of right, rather than as its basis. It is at the level of consequences that the mathematical construction which Philonenko notes in Fichte is

most apparent.¹⁴ In Fichte's later work, after 1800, the coercive aspect (especially exercised by the state) becomes more apparent, since his new conception of history up to the present as a process of alienation leads him to doubt that the juridical relation can provide an effective education in freedom.

The second option, conceiving relation under the modality of necessity, is that chosen by Kant. In discussing the universal principle of right (Ak. VI., 231), Kant tacitly declines to follow Fichte's construal of the juridical relation based upon a self-conscious and self-imposed limitation.¹⁵ In Kant's account, freedom manifests itself in relation to the object chosen; while the relation to other subjects is one of exclusion, whose operation through necessity is akin to a natural law. The general system of right thus produced is again a manifestation of liberty, as the compossibility of individual freedoms. This is the juridical space, the totality of individual proprietary spheres. Kant might argue that despite Fichte's intention, the latter's procedure again confuses right and morality by making right dependent on a moral recognition of juridical obligation. Instead, Kant contends that we must limit the scope of right to the external aspects of actions which are subject to coercion by others. Hence we may invoke the third analogy construction of space as an illustration of the compossibility of movements or actions under law, established by mutual limitation or coercion.

To understand more clearly the mechanical metaphor which Kant proposes in The Metaphysics of Morals, we must turn to The Metaphysical Foundations of Natural Science.¹⁶ Here Kant introduces the idea of force, which is not treated in the Critique of Pure Reason. The resistance or impenetrability of matter is related to motion and force.¹⁷ Matter is not inert, as in Descartes, but dynamic. Force is constitutive of matter itself, and not a synthetic appendage.¹⁸ Kant holds that bodies exert a field of force, which, even if retractable, never permits contact between them. This impenetrability through mutual exclusion defines the concept of limit, the point of collision between fields of force surrounding bodies. Repulsive force increases as distance diminishes, so that bodies

never actually touch. Kant also admits attractive forces between bodies; otherwise limits would not be congruent, and no unified space would be possible.¹⁹ The idea of force, as Kant uses it here, corresponds to Roger Joseph Boscovich's conception of the dynamic constitution of matter.²⁰ The possible connection of Kant and Boscovich does not appear to have attracted much attention in the literature,²¹ but Kant may well have been familiar with this theory, which had become well established in German university culture. This relation among bodies is not simply a formulation of Newton's law of action and reaction, but refers to interactions in space, in which bodies resist penetration by others up to their limits, and are equally repelled from other bodies. The unity and continuity of space are constituted by this mutuality, or the congruity of limits.²²

The idea of limit as an attribute of juridical intersubjectivity is illuminated in this context. Bodies inserted into their force fields correspond to subjects in intelligible possession of external objects. Each subject excludes all others from access to these objects, thus demarcating a system of limits through constraint, or mutual repulsion. This interaction of bodies at their limits is the substance of the juridical relation. At its limit, the activity of one subject encounters the passivity of the other, as the disjunctive form of reciprocity requires. The limits of the property of all subjects conjoin the forces of attraction and repulsion, thus constituting the juridical space within which the external world is divided into distinct segments. This system can be accounted for purely with reference to external actions, and their compossibility through the establishment of exclusive proprietary spheres. The construal of the juridical relation through the idea of constraint thus concretises the third analogy of experience. The general framework of constraint establishes the possibility of universal liberty by reciprocal limitation. The intentions of subjects, and their consciousness of freedom, are here irrelevant.

At the same time, if the relation between subjects can be grasped through the idea of limit, the relation between the subject and the object possessed by right offers a more problematic analogy to the body and its field of force. In Metaphysical Foundations of

Natural Science, the force field appertains directly (analytically) to the body. Not its qualitative existence, but only its quantitative extension is conditioned by interaction with other bodies. In contrast, Kant's exposition of the juridical relation is intended to show how subjects can synthetically attach properties to themselves. The mechanistic analogy cannot apply to the domain of freedom, where each subject exercises liberty of choice with regard to objects; it does not explain the possibility of a synthetic link between subject and object. The acquisition of an external sphere is not identical to the interaction of such spheres as already constituted. To justify appropriation in its qualitative sense, Kant points beyond the sphere of strict right. He contends that the reciprocal exclusion from things reposes upon an idea of reason (Ak. VI, 251, 262: the original possession of the land in common), and that a postulate of practical reason permits each subject to oblige others to refrain from using objects in which he has invested his choice (Ak. VI, 247).

Kant also proposes an immanent solution. When he stresses that the concept of right can be constructed only through the idea of coercion (Ak. VI, 232-233), he contends that the relation of exclusion toward other subjects is at the same time the establishment of the subject's relation to the object (Ak. VI, 245-247); the latter is analytically implied in the former. It is by means of this argument, identifying appropriation and interaction, that an apparently intersubjective account of right, as a relation between persons with respect to things, can be assimilated to a natural science account of the collision of bodies in space.

I conclude that, unlike Fichte, the mechanistic construal of juridical space is fundamental to Kant's distinction of right and morality; but that the mechanistic model applies only in part. From the third analogy of experience, Kant can depict a unified space in which bodies interact to set limits to each other's activity. From the Metaphysical Foundations of Natural Science, he can illustrate the operation of forces whereby bodies collide and repel each other, and thus determine themselves as a dynamic system. But the

justification of the synthetic relation of subject and object cannot be contained in this mechanism.

NOTES

¹ Immanuel Kant, Metaphysik der Sitten, Ak. VI, 232; the English version cited is The Metaphysics of Morals, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991), 58. [emphasis in original]

² Immanuel Kant, Metaphysische Anfangsgründe der Naturwissenschaft (1786), Werke, Bd. IV (Berlin: de Gruyter, 1968), Vorrede.

³ Alexis Philonenko, Théorie et praxis dans la pensée morale et politique de Kant et de Fichte en 1793 (Paris: Vrin, 1968), 35.

⁴ Kant's procedure of construction applies particularly to the mathematical categories. In the context of right, the elements of the constructed juridical space are dynamic relations.

⁵ Alain Renaut, Le système du droit. Philosophie et droit dans la pensée de Fichte (Paris: Presses universitaires de France, 1986), 227-29; Xavier Léon, Fichte et son temps, tome 1 (Paris: Armand Colin, 1954), 474-89.

⁶ Immanuel Kant, "Perpetual Peace," in Hans Reiss (ed.), Kant's Political Writings (London: Cambridge University Press, 1970), 116-30.

⁷ F.W.J. Schelling, System des transzendentalen Idealismus, Sämtliche Werke, Bd. III (1858), 581-93.

⁸ Immanuel Kant, Kritik der reinen Vernunft, Ak. III (B) and IV (A). All bracketed references in the text in the form (A, or B,...) are to this edition.

⁹ Gerd Buchdahl, Metaphysics and the Philosophy of Science (Oxford: Blackwell, 1969), 585.

¹⁰ Douglas Moggach, "Reciprocità, invito, riconoscimento: Tematiche dell'intersoggettività nel primo Fichte," Annali della Scuola Normale Superiore di Pisa, 1996, No. 1.

¹¹ J. G. Fichte, Grundlage des Naturrechts, Gesamtausgabe, Bd. I/3 (Frommann: Stuttgart, 1966), §3, 30-40.

¹² J. G. Fichte, Grundlage des Naturrechts, §4, 41-56.

¹³ Immanuel Kant, Religion innerhalb der Grenzen der reinen Vernunft (1793), Ak. VI, 64 ff.

¹⁴ Philonenko, Théorie et pratique, 35.

¹⁵ For a critique of Fichte's procedure from a different Kantian perspective, stressing not freedom but contingency, see Wolfgang Bartuschat, "Zur Deduktion des Rechts aus der Vernunft bei Kant und Fichte," in M. Kahlo et al., (eds.), Fichtes Lehre vom Rechtsverhältnis (Frankfurt/M.: Klostermann, 1992), 173-93.

¹⁶ Kant, Metaphysische Anfangsgründe der Naturwissenschaft, 465-565.

¹⁷ Kant, Metaphysische Anfangsgründe der Naturwissenschaft, 496-503.

¹⁸ Kant, Metaphysische Anfangsgründe der Naturwissenschaft, 502.

¹⁹ Kant, Metaphysische Anfangsgründe der Naturwissenschaft, 498.

²⁰ Rogerius Josephus Boscovich, Theoria philosophiae naturalis (Venice, 1763); new edition with English translation: Roger Joseph Boscovich, A Theory of Natural Philosophy (Chicago: Open Court, 1922), §266-§279 (pp. 204-213), § 360-§372 (pp. 266-273), §476 (pp. 334-337). On limit, §410-412 (pp. 294-297). See also Supplementa §1. (pp. 392-403). I am grateful to Piers Bursill-Hall for referring me to Boscovich. On Boscovich, see K.D. Stiegler, "Zur Entstehung der Idee der räumlich unausgedehnten Atome von Zenon bis Boscovich," Philosophia naturalis 18 (1981), 348-354.

²¹ For the suggestion that Kant may have been influenced by Boscovich, see Ivan Supek, "Boscovich's Philosophy of Nature," Poznan Studies in Philosophy 2 (1976), 114; and Ernst Cassirer, Kant's Life and Thought, trans. James Haden (New Haven: Yale University Press, 1981), 42.

²² See Margaret Morrison, "Space, Time, and Reciprocity," in Hoke Robinson (ed.), Proceedings of the Eighth International Kant Congress (Milwaukee: Marquette University Press), 1995, Vol II, Part 1, 187-195.