Chapter 4

Immanuel Kant, from *The* Metaphysics of Morals (1797)

Introduction to the Theory of Right

§Α

Definition of the Theory of Right

The sum total of those laws which can be incorporated in external legislation is termed the theory of right (Ius). If legislation of this kind actually exists, the theory is one of positive right. If a person who is conversant with it or has studied it (Iuriconsultus) is acquainted with the external laws in their external function, i.e. in their application to instances encountered in experience, he is said to be experienced in matters of right (Iurisperitus). This body of theory may amount to the same as jurisprudence (Iurisprudentia), but it will remain only the science of right (Iuriscientia) unless both its elements are present. The latter designation applies to a systematic knowledge of the theory of natural right (Ius naturae), although it is the student of natural right who has to supply the immutable principles on which all positive legislation must rest.

§В

What Is Right?

The *jurist*, if he does not wish to lapse into tautology or to base his answer on the laws of

a particular country at a particular time instead of offering a comprehensive solution, may well be just as perplexed on being asked this as the logician is by the notorious question: 'What is truth?' He will certainly be able to tell us what is legally right (quid sit iuris) within a given context, i.e. what the laws say or have said in a particular place and at a particular time: but whether their provisions are also in keeping with right, and whether they constitute a universal criterion by which we may recognise in general what is right and what is unjust (iustum et iniustum), are questions whose answers will remain concealed from him unless he abandons such empirical principles for a time and looks for the sources of these judgements in the realm of pure reason. This will enable him to lay the foundations of all possible positive legislations. And while empirical laws may give him valuable guidance, a purely empirical theory of right, like the wooden head in Phaedrus' fable, may have a fine appearance, but will unfortunately contain no brain.

The concept of right, in so far as it is connected with a corresponding obligation (i.e. the moral concept of right), applies within the following conditions. *Firstly*, it applies only to those relationships between one person and another which are both external and practical, that is, in so far as their actions can in fact influence each other either directly or indirectly. But *secondly*, it does not concern the relationship between the will of one person and the *desires* of another (and hence only the latter's needs, as in acts of benevolence or hardheartedness); it concerns only the relationship between the will of the first and the will of the second. And thirdly, the will's material aspect, i.e. the end which each party. intends to accomplish by means of the object of his will, is completely irrelevant in this mutual relationship; for example, we need not ask whether someone who buys goods from me for his own commercial use will gain anything in the process. For we are interested only in the *form* of the relationship between the two wills, in so far as they are regarded as free, and in whether the action of one of the two parties can be reconciled with the freedom of the other in accordance with a universal law.

Right is therefore the sum total of those conditions within which the will of one person can be reconciled with the will of another in accordance with a universal law of freedom.

§C The Universal Principle of Right

'Every action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is *right*.'

Thus if <u>my action or my situation in general</u> can <u>co-exist with the freedom of everyone in</u> acc<u>ordance with a universal law, anyone who</u> hinders me in either does me an injustice; for this hindrance or resistance cannot co-exist with freedom in accordance with universal laws.

It also follows from this that I cannot be required to make this principle of all maxims my own maxim, i.e. to make it the maxim of my own actions; for each individual can be free so long as I do not interfere with his freedom by my external actions, even although his freedom may be a matter of total indifference to me or although I may wish in my heart to deprive him of it. That I should make it my maxim to *act* in accordance with right is a requirement laid down for me by ethics.

Thus the universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law. And although this law imposes an obligation on me, it does not mean that I am in any way expected, far less required, to restrict my freedom *myself* to these conditions purely for the sake of this obligation. On the contrary, reason merely says that individual freedom *is* restricted in this way by virtue of the idea behind it, and that it may also be actively restricted by others; and it states this as a postulate which does not admit of any further proof.

If it is not our intention to teach virtue, but only to state what is *right*, we may not and should not ourselves represent this law of right as a possible motive for actions.

§D Right Entails the Authority to Use Coercion

Any resistance which counteracts the hindrance of an effect helps to promote this effect and is consonant with it. Now everything that is contrary to right is a hindrance to freedom based on universal laws, while coercion is a hindrance or resistance to freedom. Consequently, if a certain use to which freedom is put is itself a hindrance to freedom in accordance with universal laws (i.e. if it is contrary to right), any coercion which is used against it will be a hindrance to a hindrance of freedom, and will thus be consonant with freedom in accordance with universal laws - that is, it will be right. It thus follows by the law of contradiction that right entails the authority to apply coercion to anyone who infringes it.

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§Е

In its 'Strict' Sense, Right Can also Be Envisaged as the Possibility of a General and Reciprocal Coercion Consonant with the Freedom of Everyone in Accordance with Universal Laws

This proposition implies that we should not conceive of right as being composed of two elements, namely the obligation imposed by a law, and the authority which someone who obligates another party through his will possesses to coerce the latter into carrying out the obligation in question. Instead, the concept of right should be seen as consisting immediately of the possibility of universal reciprocal coercion being combined with the freedom of everyone. For just as the only object of right in general is the external aspect of actions, right in its strict sense, i.e. right unmixed with any ethical considerations, requires no deters minants of the will apart from purely external ones; for it will then be pure and will not be confounded with any precepts of virtue. Thus only a completely external right can be called right in the strict (or narrow) sense. This right is certainly based on each individual's awareness of his obligations within the law; but if it is to remain pure, it may not and cannot appeal to this awareness as a motive which might determine the will to act in accordance with it, and it therefore depends rather on the principle of the possibility of an external coercion which can coexist with the freedom of everyone in accordance with universal laws.

Thus when it is said that a creditor has a right to require the debtor to pay his debt, it does not mean that he can make the latter feel that his reason itself obliges him to act in this way. It means instead that the use of coercion to compel everyone to do this can very well be reconciled with everyone's freedom, hence also with the debtor's freedom, in accordance with a universal external law: thus right and the authority to apply coercion mean one and the same thing.

The law of reciprocal coercion, which is necessarily consonant with the freedom of everyone within the principle of universal freedom, is in a sense the construction of the concept of right: that is, it represents this concept in pure a priori intuition by analogy with the possibility of free movement of bodies within the law of the equality of action and reaction. Just as the qualities of an object of pure mathematics cannot be directly deduced from the concept but can only be discovered from its construction, it is not so much the *concept* of right but rather a general, reciprocal and uniform coercion, subject to universal laws and harmonising with the concept itself, which makes any representation of the concept possible. But while this concept of dynamics (i.e. that of the equality of action and reaction) is based upon a purely formal concept of pure mathematics (e.g. of geometry), reason has taken care that the understanding is likewise as fully equipped as possible with a priori intuitions for the construction of the concept of right.

Immanuel Kant, *The Metaphysics of Morals*, from H. Reiss (ed.), *Kant's Political Writings* (Cambridge: Cambridge University Press, 1970), pp. 132–5.