

# The Philosophy of Law

An Exposition of the  
Fundamental Principles of Jurisprudence  
as the Science of Right



Immanuel Kant

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FUNDAMENTAL PRINCIPLES OF JURISPRUDENCE

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THE SCIENCE OF RIGHT.



Translated from the German

BY

W. HASTIE, B.D.

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***'But next to a new History of Law, what we most require is a  
new Philosophy of Law.'*—Sir HENRY SUMNER MAINE.**

## TRANSLATOR'S PREFACE.



KANT'S *Science of Right*<sup>1</sup> is a complete exposition of the Philosophy of Law, viewed as a rational investigation of the fundamental Principles of Jurisprudence. It was published in 1796,<sup>2</sup> as the First Part of his *Metaphysic of Morals*,<sup>3</sup> the promised sequel and completion of the *Foundation for a Metaphysic of Morals*,<sup>4</sup> published in 1785. The importance and value of the great thinker's exposition of the Science of Right, both as regards the fundamental Principles of his own Practical Philosophy and the general interest of the Philosophy of Law, were at once recognised. A second Edition, enlarged by an

<sup>1</sup> Rechtslehre.

<sup>2</sup> It appeared soon after Michaelmas 1796, but with the year 1797 on the title-page. This has given rise to some confusion regarding the date of the first Edition, which is now usually quoted as 1796-7. (Schubert, *Kant's Werke*, Bd. ix. viii., and *Biographie*, p. 145.)

<sup>3</sup> Die Metaphysik der Sitten. Erster Theil. Metaphysische Anfangsgründe der Rechtslehre. Königsberg, 1797.

<sup>4</sup> Grundlegung zur Metaphysik der Sitten. Translated by Willich (1798), Sempke (1836), and Abbott (1873).

Appendix, containing Supplementary Explanations of the Principles of Right, appeared in 1798.<sup>1</sup> The work has since then been several times reproduced by itself, as well as incorporated in all the complete editions of Kant's Works. It was immediately rendered into Latin by Born<sup>2</sup> in 1798, and again by König<sup>3</sup> in 1800. It was translated into French by Professor Tissot in 1837,<sup>4</sup> of which translation a second revised Edition has appeared. It was again translated into French by M. Barni, preceded by an elaborate analytical introduction, in 1853.<sup>5</sup> With the exception of the Preface and Introductions,<sup>6</sup> the work now appears translated into English for the first time.

Kant's *Science of Right* was his last great work of an independent kind in the department of pure Philosophy,

<sup>1</sup> These Supplementary Explanations were appended by Kant to the *First Part* of the work, to which most of their detail more directly apply; but they are more conveniently appended in this translation to the whole work, an arrangement which has also been adopted by the other Translators.

<sup>2</sup> *Initia Metaphysica Doctrinæ Juris. Immanuelis Kantii Opera ad philosophiam criticam. Latine vertit Fredericus Gottlob Born. Volumen quartum. Lipsiæ, MDCCLXXXVIII.*

<sup>3</sup> *Elementa Metaphysica Juris Doctrinæ. Latine vertit G. L. König. Amstel. 1800, 8.* (Warnkönig and others erroneously refer it to Gotha.)

<sup>4</sup> *Principes Métaphysiques du Droit, par Emm. Kant, etc. Paris, 1837.*

<sup>5</sup> *Éléments Métaphysiques de la Doctrine du Droit, etc. Paris, 1853.*

<sup>6</sup> The Preface and the Introductions (*infra*, pp. 1-58, 259-265) have been translated by Mr. Semple. See *The Metaphysic of Ethics* by

and with it he virtually brought his activity as a master of thought to a close.<sup>1</sup> It fittingly crowned the rich practical period of his later philosophical teaching, and he shed into it the last effort of his energy of thought. Full of years and honours he was then deliberately engaged, in the calm of undisturbed and unwearied reflection, in gathering the finally matured fruit of all the meditation and learning of his life. His three immortal Critiques of *the Pure Reason*<sup>2</sup> (1781), *the Practical Reason*<sup>3</sup> (1788), and *the Judgment*<sup>4</sup> (1790), had unfolded all the theoretical Principles of his Critical Philosophy, and established his claim to be recognised as at once the most profound and the most original thinker of the modern world. And as the experience of life deepened around and within him, towards the sunset, his

*Immanuel Kant*, translated by J. W. Semple, Advocate. Fourth Ed. Edited with Introduction by Rev. Henry Calderwood, LL.D., Professor of Moral Philosophy, University of Edinburgh. Edin. : T. & T. Clark, 1886.—These are indispensable parts of the present work, but they have been translated entirely anew.

<sup>1</sup> He ceased lecturing in 1797; and the only works of any importance published by himself subsequent to the *Rechtslehre*, were the *Meta-physische Anfangsgründe der Tugendlehre* in 1797, and *Der Streit der Facultäten* and the *Anthropologie* in 1798. The *Logik* was edited by Jäsche in 1800; the *Physische Geographie* by Rink in 1802, and the *Pädagogik*, also by Rink, in 1803, the year before Kant's death.

<sup>2</sup> Kritik der reinen Vernunft. Translated anew by Max Müller (1881).

<sup>3</sup> Kritik der praktischen Vernunft. Translated by Abbott.

<sup>4</sup> Kritik der Urtheilskraft. Translated into French by M. Barni.



interest had been more and more absorbed and concentrated in the Practical. For to him, as to all great and comprehensive thinkers, Philosophy has only its beginning in the theoretical explanation of things; its chief end is the rational organization and animation and guidance of the higher life in which all things culminate. Kant had carried with him through all his struggle and toil of thought, the cardinal faith in God, Freedom, and Immortality, as an inalienable possession of Reason, and he had beheld the human Personality transfigured and glorified in the Divine radiance of the primal Ideas. But he had further to contemplate the common life of Humanity in its varied ongoings and activities, rising with the innate right of mastery from the bosom of Nature and asserting its lordship in the arena of the mighty world that it incessantly struggles to appropriate and subdue to itself. In the natural chaos and conflict of the social life of man, as presented in the multitudinous and ever-changing mass of the historic organism, he had also to search out the Principles of order and form, to vindicate the rationality of the ineradicable belief in human Causation, and to quicken anew the lively hope of a higher issue of History. The age of the Revolution called and inspired him to his task. With keen vision he saw a new world suddenly born before him, as the blood-stained product of a motion long toiling in

the gloom, and all old things thus passing away ; and he knew that it was only the pure and the practical Reason, in that inmost union which constitutes the birthright of Freedom, that could regulate and harmonize the future order of this strongest offspring of time. And if it was not given to him to work out the whole cycle of the new rational ideas, he at least touched upon them all, and he has embodied the cardinal Principle of the System in his *Science of Right* as the philosophical Magna Charta of the age of political Reason and the permanent foundation of all true Philosophy of Law.

Thus produced, Kant's *Science of Right* constituted an epoch in jural speculation, and it has commanded the homage of the greatest thinkers since. Fichte, with characteristic ardour and with eagle vision, threw his whole energy of soul into the rational problem of Right, and if not without a glance of scorn at the sober limitations of the 'old Lectures' of the aged professor, he yet acknowledges in his own more aerial flight the initial safety of this more practical guidance.<sup>1</sup> In those early days of eager search and high aspiration, Hegel, stirred to the depths by Kant, and Fichte, and Schelling, wrote his profound and powerful essay on the Philosophy of

<sup>1</sup> Fichte's *Nachgelassene Werke*, 2 Bd. *System der Rechtslehre* (1804), 498, etc. (Bonn, 1834.) Fichte's *Grundlage des Naturrechts* (1796), as he himself points out, was published before Kant's *Rechtslehre*, but its principles are all essentially Kantian. (Translated by Kroeger, Philadelphia, 1870.)

Right, laden with an Atlantean burden of thought and strained to intolerable rigidity and severity of form, but his own highest achievement only aimed at a completer integration of the Principles differentiated by Kant.<sup>1</sup> It was impossible that the rational evangel of universal freedom and the seer-like vision of a world, hitherto groaning and travailing in pain but now struggling into the perfection of Eternal Peace and Good-will, should find a sympathetic response in Schopenhauer, notwithstanding all his admiration of Kant; but the racy cynicism of the great Pessimist rather subsides before him into mild lamentation than seeks the usual refuge from its own vacancy and despair in the wilful caustic of scorching invective and reproach.<sup>2</sup> Schleiermacher, the greatest theologian and moralist of the Century, early discerned the limitations of the *a priori* formalism, and supplemented it by the comprehensive conceptions of the primal dominion and the new order of creation, but he owed his critical and dialectical ethicality mainly to Kant.<sup>3</sup> Krause, the leader of the latest and largest

<sup>1</sup> Hegel's Werke, Bd. i. Philosophische Abhandlungen, iv. *Ueber die Wissenschaftlichen Behandlungsarten des Naturrechts* (1802-3); and the Grundlinien der Philosophie des Rechts, oder Naturrecht und Staatswissenschaft im Grundrisse (1821). Werke, Bd. viii. (*passim*). Dr. J. Hutchison Stirling's *Lectures on the Philosophy of Law* present a most incisive and suggestive introduction to Hegel's Philosophy of Right.

<sup>2</sup> Die beiden Grundprobleme der Ethik (1841), pp. 118-9.

<sup>3</sup> Grundlinien einer Kritik der bisherigen Sittenlehre (1803). Entwurf

thought in this sphere—at once intuitive, radical, and productive in his faculty, analytic, synthetic, and organic in his method, and real, ideal, and historic in his product—caught again the archetypal perfectibility of the human reflection of the Divine, and the living conditions of the true progress of humanity. The dawn of the thought of the new age in Kant rises above the horizon to the clear day, full-orbed and vital, in Krause.<sup>1</sup> All the continental thinkers and schools of the century in this sphere of Jurisprudence, whatever be their distinctive characteristics or tendencies, have owned or manifested their obligations to the great master of the Critical Philosophy.

eines Systems der Sittenlehre, herausg. von A. Schweizer (1835). Grundriss der philosophischen Ethik, von A. Twisten (1841). Die Lehre vom Staat, herausg. von Ch. A. Brandes (1845).

<sup>1</sup> Grundlage des Naturrechts (1808). Abriss des Systems der Philosophie des Rechts oder des Naturrechts (1828). Krause is now universally recognised as the definite founder of the organic and positive school of Natural Right. His principles have been ably expounded by his two most faithful followers, Ahrens (*Cours de Droit Naturel*, 7th ed. 1875) and Röder (*Grundzüge des Naturrechts o. der Rechtsphilosophie*, 2 Auf. 1860). Professor J. S. del Rio of Madrid has vividly expounded and enthusiastically advocated Krause's system in Spanish. Professor Lorimer of the Edinburgh University, while maintaining an independent and critical attitude towards the various Schools of Jurisprudence, is in close sympathy with the Principles of Krause (*The Institutes of Law: a Treatise of the Principles of Jurisprudence as determined by Nature*, 2nd ed. 1880, and *The Institutes of the Law of Nations*). He has clearly indicated his agreement with the Kantian School, so far as its principles go (*Instit.* p. 336, n.).

The influence of the Kantian Doctrine of Right has thus been vitally operative in all the subsequent progress of jural and political science.<sup>1</sup> Kant, here as in every other department of Philosophy, summed up the fragmentary and critical movement of the Eighteenth Century, and not only spoke its last word, but inaugurated a method which was to guide and stimulate the highest thought of the future. With an unwonted blending of speculative insight and practical knowledge, an ideal universality of conception and a sure grasp of the reality of experience, his effort, in its inner depth, vitality, and concentration, contrasts almost strangely with the trivial formalities of the Leibnitzio-Wolfian Rationalists on the one hand,<sup>2</sup> and with the pedantic

<sup>1</sup> This applies to the latest German discussions and doctrines. The following works may be referred to as the most important recent contributions, in addition to those mentioned above (such as Ahrens and Röder, xi. n.):—Trendelenburg, *Naturrecht auf dem Grunde der Ethik*, 2 Auf. 1868. Post, *Das Naturgesetz des Rechts*, 1867. W. Arnold, *Cultur und Rechtsleben*, 1865. Ulrici, *Naturrecht*, 1873. Zoepfl, *Grundriss zu Vorlesungen über Rechtsphilosophie*, 1878. Rudolph von Ihering, *Der Zweck im Recht*, i. 1877, ii. 1883. Professor Frohschammer of Munich has discussed the problem of Right in a thoughtful and suggestive way from the standpoint of his original and interesting System of Philosophy, in his new volume, *Ueber die Organisation und Cultur der menschlichen Gesellschaft*, *Philosophische Untersuchungen über Recht und Staat, soziales Leben und Erziehung*, 1885.

<sup>2</sup> Leibnitz, *Nova Methodus discendæ docendæque Jurisprudentiæ*, 1767. *Observationes de principio Juris. Codex Juris Gentium*, 1693–1700.

Wolff, *Jus Naturæ Methodo Scientifica pertractatum*, Lips. 8 Tomi.

tediousness of the Empiricists of the School of Grotius on the other.<sup>1</sup> Thomasius and his School, the expounders of the Doctrine of Right as an independent Science, were the direct precursors of the formal method of Kant's System.<sup>2</sup> Its firm and clear outline implies the substance of many an operose and now almost unreadable tome; and it is alive throughout with the quick, keen spirit of the modern world. Kant's unrivalled genius for distinct division and systematic form, found full and appropriate scope in this sphere of thought. He

1740-48. *Institutiones Juris Naturæ et Gentium*, Halæ, 1754. (In French by *Luzac*, Amsterdam, 1742, 4 vols.) *Vernünfftige Gedanken*.

*Vattel*, *Le Droit des Gens*, Leyden, 1758. Edited by *Royer-Collard*, Paris, 1835. English translation by *Chitty*, 1834. [For the other works of this school, see *Ahrens*, i. 323-4, or *Miller's Lectures*, p. 411.]

<sup>1</sup> *Grotius*, *De Jure Belli ac Pacis*, lib. iii. 1625. Translated by *Barbeyrae* into French, 1724; and by *Whewell* into English, 1858.

*Pufendorf*, *Elementa Juris Universalis*, 1660. *De Jure Naturæ et Gentium*, 1672. [English translation by *Kennett*, 1729.]

*Cumberland*, *De Legibus Naturæ Disquisitio Philosophica*, London, 1672. Translated into English by *Towers*, Dublin, 1750.

*Cocceji*, *Grotius illustratus*, etc., 3 vols. 1744-7. [See *Miller*, 409.]

<sup>2</sup> *Christian Thomasius* (1655-1728) first clearly distinguished between the Doctrine of Right and Ethics, and laid the basis of the celebrated distinction of Perfect and Imperfect Obligations as differentiated by the element of Constraint. See Professor *Lorimer's* excellent account of *Thomasius* and of Kant's relation to his System, *Inst. of Law*, p. 288; and *Röder*, i. 240. The principal works of this School are: *Thomasius*, *Fundamenta juris naturæ et gentium ex sensu communi deducta*, 1705. *Gerhard*, *Delineatio juris naturalis*, 1712. *Gundling*, *Jus Naturæ et gentium*. *Koehler*, *Exercitationes*, 1728. *Achenwall*, *Prolegomena Juris naturalis*, and *Jus Naturæ*, 1781.

had now all his technical art as an expounder of Philosophy in perfect control, and after the hot rush through the first great Critique he had learned to take his time. His exposition thus became simplified, systematized, and clarified throughout to utmost intelligibility. Here, too, the cardinal aim of his Method was to wed speculative thought and empirical fact, to harmonize the abstract universality of Reason with the concrete particularities of Right, and to reconcile the free individuality of the citizen with the regulated organism of the State. And the least that can be said of his execution is, that he has rescued the essential principle of Right from the debasement of the antinomian naturalism and arbitrary politicality of Hobbes<sup>1</sup> as well as from the extravagance of the lawless and destructive individualism of Rousseau,<sup>2</sup> while conceding and even adopting what is substantially true in the antagonistic theories of these epochal thinkers; and he has thereby given the birthright of Freedom again, full-reasoned and certiorated, as 'a possession for ever' to modern scientific thought. With widest and

<sup>1</sup> Hobbes, *De Cive*, 1642. *Leviathan seu de civitate ecclesiastica et civili*, 1651. On Hobbes generally, see Professor Croom Robertson's Monograph in 'Blackwood's Philosophical Classics.'

<sup>2</sup> *L'origine et les fondements de l'inégalité parmi les hommes*, Dijon, 1751. *Contrat social*, 1762. Rousseau's writings were eagerly read by Kant, and greatly influenced him. On Rousseau generally, see John Morley's *Rousseau*, Lond. 1878.

furthest vision, and with a wisdom incomparably superior to the reactionary excitement of the great English Orator,<sup>1</sup> he looked calmly beyond 'the red fool-fury of the Seine' and all the storm and stress of the time, to the sure realization of the one increasing purpose that runs through the ages. The burden of years chilled none of his sympathies nor dimmed any of his hopes for humanity; nor did any pessimistic shadow or murmur becloud his strong poetic thought, or disturb 'the mystical lore' of his eventide. And thus at the close of all his thinking, he made the Science of Right the very corner-stone of the social building of the race, and the practical culmination of all Religion and all Philosophy.

It is not meant that everything presented here by Kant is perfect or final. On the contrary, there is probably nothing at all in his whole System of Philosophy—whose predominant characteristics are criticism, initiation, movement—that could be intelligently so regarded; and the admitted progress of subsequent theories of Right, as briefly indicated above, may be considered as conceding so much. It must be further admitted of Kant's *Science of Right* that it presents

<sup>1</sup> Burke is assigned to the Historical School of Jurisprudence by Ahrens, who not inaptly designates him 'the Mirabeau of the anti-revolution' (i. 53). See the *Reflections on the French Revolution* (1790). Stahl gives a high estimate of Burke as 'the purest representative of Conservatism.'



everywhere abundant opening and even provocation for 'Metacriticism' and historical anticriticism, which have certainly not been overlooked or neglected. But it is meant withal that the Philosophy of Jurisprudence has really flourished in the Nineteenth Century only where Kant's influence has been effective, and that the higher altitudes of jural science have only come into sight where he has been taken as a guide. The great critical thinker *set* the problem of Right anew to the pure Speculative Reason, and thus accomplished an intellectual transformation of juridical thought corresponding to the revolutionary enthusiasm of liberty in the practical sphere. It is only from this point of view that we can rightly appreciate or estimate his influence and significance. The all-embracing problem of the modern metamorphosis of the institutions of Society in the free State, lies implicitly in his apprehension. And in spite of his negative aspect, which has sometimes entirely misled superficial students, his solution, although betimes tentative and hesitating, is in the main faithful to the highest ideal of humanity, being foundationed on the eternity of Right and crowned by the universal security and peace of the gradually realized Freedom of mankind. As Kant saved the distracted and confused thought of his time from utter scepticism and despair, and set it again with renewed youth and enthusiasm on its way, so his spirit