Kant’s legal and political philosophy is very much like an iceberg: more than two thirds of it is hidden from view. What is often invisible when we focus on its detail such as its account of property; the theory of punishment; the definition of citizenship and the theory of the state is the underlying framework provided by Kant’s novel undertaking in the critical philosophy. My first objective here is to bring that underlying framework into view by looking at the *Critique of Pure Reason* from the standpoint of its prodigious influence on the presentation of Kant’s practical philosophy and so his legal and political philosophy.

Of course the picture that Kant provides of the condition of metaphysics in his time at the beginning of the *Critique* cannot inspire much enthusiasm for the role that philosophy might play in our social and political lives. He finds it in a pitiful condition of disarray, rightly disowned by the ordinary person as a source of any kind of inspiration. Historically for him metaphysics is at an all-time low, it can be justly seen as far too ambitious and leading contradictory results. Political reformers might seemingly be better off looking outside philosophy for new insights as to how the human condition might be improved. However disappointing this condition Kant believes he can explain and, ultimately, remedy it. Although ‘human reason has the peculiar fate in one species of its cognitions that it is burdened with questions it cannot dismiss’ and is not able properly to answer (Avii/99) we can none the less hope that a thoroughly cleansed and suitably limited metaphysics may again seek to play a key part in realizing the ‘necessary and essential ends of humanity.’ (A850/B878; 701)

From the perspective of the political philosophy, presented in the first part of the *Metaphysics of Morals, Toward Perpetual Peace* and various other writings, what the *Critique of Pure Reason* provides is an extraordinarily original background to a wholly novel enterprise. The principal focus of the first part of the critical philosophy is the question ‘what can we know?’ The answer that Kant provided to this question was to change the course of philosophy entirely. The marked division that Kant was to make between theoretical and practical philosophy was not of course new, but the manner in which he separated the two, giving ultimate priority to the practical over the theoretical represented a revolutionary step. Kant proposed very severe limits to the traditional philosophical undertaking of metaphysics on the basis of his answer to the epistemological question of what can we know, since our scientific knowledge has to be limited to what we can take in from experience through our sense awareness and understanding. Although political philosophy for Kant must pay
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some regard to what we can attest from experience it primarily falls within the realm of practical philosophy.

Transcendental thinking in the theoretical realm shapes the material that is furnished by our senses and our understanding to form a unity that is constitutive of the objective world we experience. We are able to claim knowledge of this objective world because our thinking plays a key part in shaping it but we cannot claim that this is a knowledge of things in themselves. We are only able to know through our intuition. We shape what comes into our consciousness. With the practical realm things are different. Our practical reasoning deals with our awareness of ourselves as active beings that can frame objectives for themselves. Practical reasoning is about our own process of thinking as we are engaged in action.

The critical philosophy as outlined in CPR gives us Kant’s basic understanding of the human being and the human being’s condition. We learn from it what finite rational beings can know and how they might conceive of their acting. CPR presents a view of the human individual as a being that is to be grasped from two distinct standpoints:

a) The standpoint of experience of the understanding. This is the standpoint of scientific observation where the human individual is viewed as just one other appearance in the phenomenal world. This first, passive standpoint leads unavoidably to a causal analysis of the human individual. Our actions here can be understood as subject to natural laws.

b) The standpoint of action or freedom. Here we can also see our actions from an alternative standpoint, as brought about through our own volition. From the theoretical perspective it is impossible to prove that we are legitimately to be seen as uncaused causes that initiate events in the world, however from the outlook of practical reason we have to present ourselves as such. Without such a possibility we should not be able to attribute our actions to our own initiative. Neither praise nor blame would be possible since the events we observe as associated with the lives of human individuals would have to be seen as fully determined.¹

The distinction that Kant presents here between these two ways of conceiving the human individual is admittedly very difficult to grasp and express. Also the distinction at one level appears wholly contradictory. How can we both regard human actions as free or independent but also legitimately seen as caused? The one standpoint seems to negate the other. However Kant is trying to present to us very complex relations that lie at the heart of human existence. Capturing these relations in words (even if this is in expertly crafted philosophical concepts) is very difficult. It is not easy to

¹ ‘A faculty of choice that is merely animal which cannot be determined other than through sensible impulses, i.e., pathologically. However one which can be determined independently of sensory impulses, through motives that can only be represented by reason, is called free choice.’ (802/B830; 675)
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avoid the impression of complexity and occasional contradiction. However, my view is that the relations – or very close to them – pertain. Political philosophy is about the freely acting human individual, which is the second of the standpoints highlighted by the critical philosophy and its results. But as the human individual is both natural and rational (or, put differently) capable of freedom we have also to take into account both human individuals observed empirically as a phenomenon and human individuals seen from the perspective of action as the originators of their actions. Political philosophy has then to consider both the considered rational free decisions of human individuals and their historically observed accomplishments and failures. The potential for free, rational action has to be the first point of departure but the weighing up of the potentialities for action has to be set against our historical context.

Despite the doubts that the Critique raises about the limits of human knowledge and our need to rein in the speculative use of reason, there is none the less a strong vindication of the deployment of reason it its practical regard. The deployment of reason in our knowledge and actions is not, from Kant’s perspective, a merely optional matter. Reason, notwithstanding its over ambition, none the less provides a coherent structure to our awareness. CPR demonstrates how to a great extent the objective world which arises in our everyday awareness is a product of our thinking faculties. This is the Copernican Revolution Kant recommends in the comprehension of our knowledge. We are not to see the problem of knowledge as how our thought can encompass the object, but rather how the object is already itself a product of our forms of comprehension. As the difficulties posed by human understanding and reason lead to contradictions (as we see in the antinomies) we have to restrict their scope and ambitions to the knowledge of appearance. We are required to do this since we are aware that our very own thinking capacities lie behind what we experience and so know.

The marked differences in the capabilities of pure and practical reason which CPR shows leads to a clear difference in the spheres of efficacy of the two and in the tasks they can undertake. A critical pure reason reins in our claims to knowledge, but a critical practical reason can help legitimate our attempts to lead better and fuller lives. In a paradoxical manner Kant proposes a greater objectivity to practical reason than pure reason may ever claim. The First Critique therefore provides a powerful underpinning for practical reason and so a dimension within which reason can come into play in our social and political lives. Reason is both chided for its theoretical over ambition but at the same time it is exulted for its practical potential. Reason strives for totality. Reason seeks to provide an architectonic structure both for our knowledge and our actions. Although we cannot expect the ‘thing in itself’ to correspond to the architectonic structure we put forward none the less we can seek to govern our actions in the rule governed way that reason demands. The architectonic
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structure which reason generates for practical philosophy – centering on the moral law – sets the example for the legal and political spheres. Just as metaphysics in general should not present a rhapsody i.e. an elegant combination of insights for our edification and delight alone, so in political philosophy we need a systematic general structure that determines the whole. Just as there has to be a metaphysics which precedes a successful natural science, there has also to be a metaphysics of morals which sets the tone for legal and political decisions and action.

The Importance of open, critical enquiry

Reason for Kant is not a personal matter solely. We have indeed to rely on our own reason in developing our capacity to think clearly, however, what we infer from the use of our reason we cannot take to a conclusion that we infer for ourselves alone. Reason involves an engagement with others and, more explicitly, with a public sphere in which all thinking human individuals may join. The interpersonal quality of reason, as Kant comprehends it, is made clear when he speaks of the necessity for rational argument to submit itself to the judgment of others: ‘reason must subject itself to critique in all its undertakings, and cannot restrict the freedom of critique through any prohibition without damaging itself and drawing upon itself a disadvantageous suspicion.’ (A738/B766; 643) Reason cannot be expressed in the form of a personal opinion which can be held to be subjectively valid, and so not open to the scrutiny of others. For ‘there is nothing so important because of its utility, nothing so holy, that it may be exempted from this searching review and inspection, which knows no respect for persons.’ (A738/B766; 643) The proper deployment of reason presupposes an open debate in which each individual is free to express their doubts or affirm their agreement. For without that freedom of expression and respect for the views of others how are we ever to judge the validity of our claims. ‘The very existence of reason depends upon this freedom, which has no dictatorial authority, but whose claim is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed even his veto, without holding back.’ (A738/B766; 643)

Kant seeks to sustain a tolerant attitude amongst philosophers and the public at large. Falsity and error in thinking cannot emerge as a result of decrees from external authorities, be they religious or political. Indeed all such attempts to control our beliefs are destined to fail since no one can fully know our internal thought processes nor give them a precise direction. Kant though is concerned not only that no one should seek to control our beliefs from outside, he seeks more positively to encourage our confident expression of our own views. For ‘if you grasp at means other than uncoerced reason, if you cry high treason, if you call together the public, which understands nothing of such subtle refinements, as if they were to put out a fire, then you make yourself ridiculous.’
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(A746/B774; 647) Political authority has to stand to one side when it is a matter of the beliefs that individuals form and the conclusion they draw from philosophical debates. Philosophy should not simply be judged from the standpoint of public utility since many of its arguments may have no direct impact on the welfare of the public, and where they do they can only contribute to informed debate. Kant was aware of the temptation that might arise in members of the public authority to put to rest controversy in matters of knowledge and belief. But such interference represents a mistake. Indeed Kant claims that allowing open discussion and the freedom of thought in general can work to the benefit of rulers. ‘Thus instead of charging in with a sword, you should instead watch this conflict peaceably from the safe seat of critique, a conflict which must be exhausting for the combatants but entertaining for you, with an outcome that will certainly be bloodless and advantageous for your insight.’ (A746/B774; 647) For Kant it is ‘quite absurd to expect enlightenment from reason and yet to prescribe to it in advance on which side it must come out.’ (A747/B775; 647)

There is a highly progressive and optimistic side to the principal doctrines of the *Critique of Pure Reason*. The doctrines presuppose the emergence of a tolerant and pluralistic society which permits the expression of a variety of points of view. Kant is fully aware that this may lead to dissent and differences. But Reason ‘also very much needs such a conflict, and it is to be wished that it had been undertaken earlier’ than his own *Critique* and ‘with unlimited public permission.’ (A746/B774; 647) ‘Thus let your opponent speak only reason, and fight him solely with weapons of reason.’ (A744/B772; 646) Kant provides the most eloquent defence of democratic discourse, despite himself working in a still autocratic, monarchical society. As he puts it, we enjoy a ‘freedom to exhibit the thoughts and doubts which one cannot resolve oneself for public judgment without thereupon being decried as a malcontent and a dangerous citizen. This lies in the original right of human reason, which recognizes no other judge than universal human reason itself, in which everyone has a voice; and since all improvement of which our condition is capable must come from this, such a right is holy, and must not be curtailed.’ (A752/B270; 650)

**The Limits of Psychology**

One of the key lessons of the *Critique of Pure Reason* is that psychology is an unreliable discipline in seeking to discover systematic (coherent) principles on which to ground knowledge and morality. Kant divides psychology into rational psychology and empirical psychology. Rational psychology deals with the doctrine of the soul and it is given the closest attention by Kant in his discussion of the paralogisms. (A341-2/B399-400; 411-12) There are important lessons to be learned from rational psychology, but they are not at all what the previous proponents of the doctrine believed
them to be. Indeed Kant believes that rational psychology unavoidably leads to a dialectical illusion which ‘rests on the confusion of an idea of reason (of a pure intelligence) with the concept, in every way indeterminate of a thinking being in general. I think of myself, in behalf of a possible experience, by abstracting from all actual experience, and from this conclude that I could become conscious of my existence even outside experience and its empirical conditions. Consequently I confuse the possible abstraction from my empirically determined existence with the supposed consciousness of a separate possible existence of my thinking Self, and believe that I cognize what is substantial in me as a transcendental subject, since I have in thought merely the unity of consciousness that grounds everything determinate as the mere form of cognition.’ (B426-7; 455)

Thus for Kant we can conclude from rational psychology neither that the soul persists eternally nor that it subsists independently of the body. Indeed the rational psychology of previous metaphysicians relied upon importing too readily into empirical psychology inferences that had significance only from a reflective transcendental point of view. We need to presuppose from a transcendental standpoint that our experience is drawn together into one thinking subject. But for Kant this thinking self is not necessarily experientially accessible to us. It is indeed a precondition for our experience but it is an intellectual precondition and not an empirical one. ‘That the I of apperception, consequently in every thought, is a single thing that cannot be resolved into a plurality of subjects, and hence a logically simple subject lies already in the concept of thinking, and is consequently an analytic proposition; but that does not signify that the thinking I is a simple substance, which would be a synthetic proposition.’ (B407-8; 446)

Empirical psychology deals with our own immediate perception of ourselves through our senses and our understanding. In Kant’s view ‘empirical psychology must’ be ‘entirely banned from metaphysics, and is already excluded by the idea of it.’ By this Kant means that empirical psychology cannot be relied upon to supply any a priori principles of cognition, rather it has always to be combined with such principles to provide any knowledge whatsoever. For Kant empirical psychology can play a part only ‘on the side of applied psychology.’ (A848/B877; 700) What we observe about human beings and their thinking cannot then for Kant form a basis for consistent reasoning about the kind of knowledge we may gain, the kind of action we may be involved in, and the kind of expectations we should form of ourselves and the human species as a whole.

This is a very powerful conclusion to draw and one which has many important implications for how political philosophy might proceed. We cannot, first, look to psychology to provide us with dependable generalizations upon which to build a political theory. Quite clearly Kant’s critical system rules out the approach adopted by those political philosophers such as Hobbes and Locke who seek to begin their enquiries by determining precisely the nature of the human individual.
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Niccolo Machiavelli argues in a similar vein from his direct experience of politics in the Italian peninsula in the fifteenth century.² From Kant’s perspective no such precise determination is possible simply by observing our own inner experience and the experiences of other human individuals, even if this is the experience of the human species as a whole. The nature of the human individual cannot be prescribed from what we discern of our own inner lives and the lives of others we observe. Secondly, if psychology is to be admitted to political philosophy, it can only be so after the main principles have been set out from the standpoint of human reason. The nature we observe and so also the human society we apprehend are from a Kantian perspective already the products of the structuring process of the mind or the ‘I think’ – unity of apperception. To construct a political philosophy we must step out of the theoretical mode of philosophy into the sphere of practice (moral philosophy). The a priori principles of political philosophy must be drawn from pure moral theory. Now this moral theory of politics cannot at all disregard the results of the enquiries of those who engage in empirical psychology nor in the observation of the human species in general. In seeking to put into effect the requirements that practical reason places upon us as legal and political beings we have to take into account what is already (albeit incompletely) known of human individuals and society.

The Importance of the Practical Point of View

Kant thinks it a humiliating turn of events for pure reason to discover that in its theoretical use it is led into contradictions. These contradictions (the antinomies and the paralogisms) may leave it with a sense of impotence. The outcome of the Critique of Pure Reason might appear to be entirely negative. All that can be drawn from it seemingly is a discipline which ‘serves for the determination of boundaries, and instead of discovering truth it has only the silent merit of guarding against errors.’ (A795/B823; 672)

It would be a mistake though to give up at this point. For ‘nevertheless, there must be somewhere a source of positive cognitions that belong in the domain of pure reason, and that perhaps give occasion for errors only through misunderstanding, but that in fact constitute the goal of the strenuous effort of reason.’ (A795/B823; 672) How otherwise are we to explain the ambitions of philosophers over the ages? ‘For to what cause should the unquenchable desire to find a firm footing beyond all bounds of experience otherwise be ascribed? Pure reason has a presentiment of objects of great interest to it. It takes the path of mere speculation in order to come closer to these; but they flee before it.’ (A796/B824; 672) The ambitions of philosophers are not, for Kant, mere

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² He famously concludes that one can make this ‘generalization about men: they are ungrateful, fickle, liars, and deceivers, they shun danger and they are greedy for profit.’ The Prince Harmondsworth, Penguin, 1968, 96

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inventions or the product of overactive imaginations. On these grounds reason ‘may hope for better luck on the only path that still remains to it, namely that of its practical use.’ (A796/B824; 672)

The tensions in Kant’s thought that lead him to emphasize the primacy of the practical in the *Critique of Pure Reason* are brought out very well by Allen Wood when he says that ‘no philosopher has laid more stress than Kant did on the importance for human beings for keeping in mind the limited capacity of their reason in all the affairs of life, especially in the conduct of enquiry and formation of beliefs. Yet no philosopher asserted more ardently the absolute title of reason to govern human thought and action, or gave us sterner warnings concerning the inherent badness and the disastrous consequences of permitting human passions, enthusiasms, or inspirations, or the supernatural deliverances of authority or tradition to usurp the authority of reason.’

Kant advocates a moral theology which does not rest upon a proof of the existence of God but rather on the necessity for the existence of such a highest being if we are going to be true to morality. ‘This systematic unity of ends in this world of intelligences, which though as mere nature it can only be called the sensible world, as a system of freedom can be called an intelligible, i.e., moral world (*regnum gratiae*), also leads inexorably to the purposive unity of all things that constitute this great whole, in accordance with universal laws of nature, just as the first does in accordance with universal and necessary moral laws, and unifies practical with speculative reason. The world must be represented as having arisen out of an idea if it is to be in agreement with that use of reason without which we would hold ourselves unworthy of reason, namely the moral use, which depends throughout on the idea of the highest good.’ (A815-6/B843-4; 682) We cannot expect to find empirical proof of the existence of God but we have to suppose such an existence from a moral point of view in order to underpin our attempts at moral action. For if we were to think from the outset that all such attempts would fail we would thoroughly undermine our moral motivation. We have to believe that the outcomes of our attempts at moral behaviour contribute to the happiness of the species even though we should not take that happiness (especially our own) as the aim of our moral action.

‘I call the idea of such an intelligence, in which the morally most perfect will, combined with the highest blessedness, is the cause of all happiness in the world, in so far as it stands in exact relation with morality (as the worthiness to be happy), the ideal of the highest good.’ (A810/B838; 680) In this way the epistemological enquiries of the First *Critique* prepare the way for Kant’s practical philosophy and so his doctrine of right in a manner that it is intended to give us confidence in the attempt to bring rationality and so morality to our existing social and political world.

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The central precepts of Kant’s Political Philosophy

We have seen how Kant’s legal and political philosophy is powerfully grounded in the critical system that he develops first in the *Critique of Pure Reason*. Now we have to consider how that influence expresses itself in the political philosophy which is presented in his occasional writings such as the essay ‘What is Enlightenment?’ and the short book *Toward Perpetual Peace* and most comprehensively in his Doctrine of Right which appears as the first part of the *Metaphysics of Morals* (1797).

A key question which confronts us first as we look in to Kant’s legal and political philosophy is the nature of the relationship between Kant’s pure moral theory - outlined most strikingly in the *Groundwork to the Metaphysics of Morals* (1785) - and the theory of right on which is legal and political philosophy is based. There is no doubting that this is a complex relationship and it is not always clearly expressed by Kant himself. Indeed it is possible to argue that there are different accounts of the relationship that Kant gives which do not wholly coincide with each other. What I shall argue for here is a view that I take to predominate in Kant’s writings on politics and law and the account I believe to be the most coherent.

We have always to begin with the pure moral theory. This is spelled out in the *Groundwork* and the *Critique of Practical Reason*. Systematicity for Kant within philosophy has to be gained by adopting a metaphysical approach that abstracts from all direct experience. We have seen already that Kant does not put too much faith in psychology as a basis for generalising about human awareness and conduct. Legal and political philosophy has to depart from a priori ideas. The pure moral philosophy offers a very clear starting point in that it sets out the principles we should adopt if we are to conduct ourselves decently in our relationships with others and in regard to ourselves. This implies that the categorical imperative has to play a foundational role in political philosophy. In politics and legal affairs we cannot simply abandon our moral selves. The requirements of the categorical imperative, particularly as exemplified by the formulas of the universal law and humanity, should provide a framework for our reasoning about law and politics. But how is this delicate relationship between morality and law to be spelled out? It is not possible that rules that are deemed appropriate for our individual conduct (ethics) can be carried over wholly unaffected into rules that are necessary to our social and collective conduct (right). Indeed the principles that govern pure moral deliberation have to do with our motivation or disposition in acting, and in the
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sphere of legal and political deliberation we have need of rules that will regulate our actual actions
and their effects. The rules of the *Groundwork* are wholly metaphysical: they are concerned with
our motivations as rational intellectual beings. The rules of the Doctrine of Right have to do with
the external, phenomenal world even though they take their origins in our intellectual existence. The
rules of right have to be conditioned by the a priori reflections of pure moral philosophy but they
have also to take into account matters encountered in experience. There is an impure element to
moral theory to moral theory as it is deployed in right and politics.4

One striking way of putting this is to say that the moral theory of the *Groundwork* has to do with
the conditions of human freedom in general whereas the Doctrine of Right has to do with the
conditions our external freedom, as beings of sense and intellect in a phenomenal world amongst
other similar beings. The *Groundwork* outlines the moral law which provides the metaphysical
basis for our freedom in general. The moral law assumes the possibility that each rational human
individual has the power to determine its choices in acting. Moral laws are ones that are appropriate
for beings that have this power of choice. But moral laws (which are the laws of freedom)
can be of two kinds: ‘As directed merely to external actions and their conformity to law they are
called juridical laws; but if they also require that they (the laws) themselves be the determining
grounds of actions, they are ethical laws, and then one says that conformity with juridical laws is
the legality of an action and conformity with ethical laws is its morality.’ (MM 6: 214/375)

Kant distinguishes between the two kinds of moral laws in a further and significant way. The two
kinds of law differ in the incentives on which they depend in being obeyed. With an ethical law the
incentive to obey is provided solely by the individual’s own sense of duty. With ethical and external
juridical laws coercion in obeying the law - in response to the powerful pull of our inclinations and
self-interest – is required. But the coercion takes on a different form with each. With external
juridical laws this coercion is provided through the threat of punishment, but with ethical laws the
coercion is provided by our sense of duty alone.

As I see it then the relation between the moral and the legal in Kant is this. Within the framework of
the categorical imperative we see that the human individual is the kind of being who belongs both
to the sphere of the intelligible and natural world. So the human being is capable of acting
according to the moral law, however in belonging also to the natural world it is drawn by its senses
and inclinations to aims and actions that run contrary to moral law. Thus when it comes to external

4 Robert Louden, Kant’s Impure Ethics, Oxford, Oxford University Press, 2002
actions the incentive to comply with law which is provided by our freedom, has to be supplement by a natural (physical) incentive. Kant puts it in this way: ‘all lawgiving can therefore be distinguished with respect to the incentives … That lawgiving which makes an action a duty also makes this duty the incentive is ethical. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is juridical.’ (MM 6: 218-19/383) With juridical law the incentive that is not drawn from duty has to be ‘drawn from pathological determining grounds of choice, inclinations and aversions, and among these from aversions; for it is a lawgiving which constrains, not an allurement, which invites.’ (MM 6: 219/383)

Although external law making introduces this pathological incentive to do our duty it is not as a result removed from the sphere of moral theory. For as Kant makes evident, we retain the ethical duty to obey the law for its own sake - even with coercive external law - but should we not find that constraint sufficient we assent to the additional incentive of the possibility of pathological coercion. The possibility of the application of coercion to ensure that we obey juridical laws has for Kant to be seen as an integral part of a metaphysics of morals and not additional condition that is derived from a standpoint wholly external to the teaching of the categorical imperative. The ethical and the legal spheres are indeed distinct but they are not wholly separate from each other. The doctrine of the categorical imperative, and the condition it implies, never to use other individuals solely as means but always also as ends, applies also to external lawgiving or right.

**Property and Contract**

Kant’s interpretation of property right is thoroughly imbued by the approach that he takes in the foundational works of his critical philosophy. The right to property is justified in manner that is neither historical nor empirical. Although the concepts of the state of nature and the social contract appear in his political theory in helping derive our rights to things, they are not dealt with in the same manner as his precursors in political theory, such as Thomas Hobbes, John Locke and Jean-Jacques Rousseau. They are not conditions that we are to imagine as a presupposition of a story that leads to the establishment of property ownership, rather they are concepts that are necessarily required if we are to act as property owners. Just as the categories of the transcendental logic are required so that we can constitute an objective world for our understanding, so we have to presuppose the concept of property ownership (of a ‘mine and thine’) if we are to inhabit a settled social world. We are able to exchange property because there are fellow human beings that grasp
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the idea of property ownership and are prepared to conduct themselves in relation to others in a manner that realizes it.

To grasp property rights as Kant apprehends them we have first to understand his ‘universal principle of right’ or his depiction of our external freedom. Social and political freedom are only possible through the acceptance of this general principle. ‘Any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law.’ (MM 6: 230/387)

Such external freedom is thoroughly reciprocal. We cannot grant to ourselves more freedom than we are prepared to grant others. It presupposes our equality. We do not have the right to subject others to any coercive restraints on their actions which we will not accept ourselves. Such freedom presupposes the legislative standpoint in which each has the right to participate in making the laws to which we are all subject. In practice Kant accepts it is impossible for each person to act as a co-legislator, but those who legislate must be seen and see themselves as representatives of each and every person. For Kant we have ideally to see ourselves as co-participants in making the laws to which we are subject.

This is implied by our innate freedom which we cognise as rational beings who are also natural beings. We recognise that we have to subject ourselves to the possibility of coercion if we are live in a society with other beings like ourselves. ‘Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.’ (MM 6: 237/393)

Kant’s political philosophy draws upon a priori ideas in setting out its foundational themes. I have always found this a very difficult approach to express in words that the person starting in philosophy might correctly follow. Any attempted explanation is not helped by the fact that Kant deploys the idea in a variety of senses. Broadly, however, one might say that are two distinct senses which predominate.5 In the first place, we can say he uses the term in an analytic sense to mean that an a priori idea abstracts from all experience. In other words, it is an idea we use in discourse which has to do with our thought and not at all with our senses and observation. An analytic idea is for instance A is A and cannot be not-A. In the second sense the idea of the a priori is used to describe

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5 Here I follow the useful discussion by Reinhard Hilscher in Marcus Willaschek, Juergen Stolzenberg et.al Kant-Lexikon Band 1 Berlin, De Gruyter, 2015, 1-3
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a generalization which though abstracting from any particular experience may none the less refer to experience in general. In this sense a priori ideas can provide a structure for our experience. The principal concepts of political theory which Kant uses, such as the state of nature, the original contract, the original common ownership of the earth’s surface, are all a priori concepts. He regards them as necessary to allow us to conceive of a civil society. They are metaphysical propositions that have to be generally accepted if we are to be part of a rightful society with others. For Kant ‘all propositions about right are a priori propositions, since they are laws of reason (dictamina rationis).’ (MM 6: 250/404) Kant thinks that the need for us to use a priori teachings comes particularly to the fore in the deduction of our right to own property. We cannot, he thinks, argue that we have a right to a thing merely upon the basis of our happening to hold it in our experience. Rather we require that others recognize that entitlement to ownership and so we can maintain a thing is ours even if we are not at the time physically holding it. Kant calls possession which is merely the holding of a thing ‘empirical possession.’ And it is then ‘only possession in appearance.’ (MM 6: 249/403) What is needed to form an effective society with others is a rational possession. This is a ‘proposition about the possibility of possessing a thing external to myself, which puts aside any conditions of empirical possession in space and time (and hence presupposes the possibility of possession noumenon), goes beyond those limiting conditions; and since it affirms possession of something even without holding it, as necessary for the concept of something external that is mine or yours, it is synthetic.’ (MM 6: 250/404)

Here for Kant a remarkable superiority for practical philosophy over theoretical philosophy comes to light. ‘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 laws of reason (the categorical imperative), as a fact of reason.’ (6: 252/406) In his view there is no possibility of deducing our right to own property merely from observation and seeking to draw generalizations with it. Anyone can testify that we cannot know from observation who owns what. Use does not confer right. However from the perspective of practical philosophy, ownership can potentially be established through the deduction and recognition of the a priori possibility of an ownership which persists even in the absence of our presence to hold it. As Kant puts it, ‘the concept of merely rightful possession is not an empirical concept (dependent on 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. … Since the concept of a right is simply a rational concept, it cannot be applied directly to objects of
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experience and to the concepts of empirical possession, but first must be applied to the understanding’s pure concept of possession in general. So the concept to which the concept of right is directly applied is not that of holding, which is an empirical way of thinking possession, but first must be applied to the understanding’s pure concept of possession in general.’ (6: 253/407) The general recognition of this aspect of the doctrine of right is a vital step in making possible a settled human society.

Kant accepts that the presence in our minds of the idea of property: a personal ownership that can be asserted in the absence of our being there, is not enough to bring property into being in the world. Historically the first property rights were established by force and had to be maintained primarily by force.6 However, what makes property possible in a more secure and persistent way is the existence of the kind of society where the mutual recognition of property rights is an established rule in the minds and actions of individuals. Given that we are both rational and natural beings the actual maintenance of property rights in a society requires the combination of the rational acceptance of the normative standing of property rights and external power to enforce those rights where they are (for whatever reason) violated. Thus ‘something can be acquired conclusively only in a civil constitution; in a state of nature it can also be acquired, but only provisionally.’ (MM 6: 264/416) A civil condition comes into existence with the coincidence of the existence of a general coercive authority and the recognition by all of the a priori conditions of right. The general coercive authority has to be bound by the conditions of right if it is legitimately to enjoy full effectiveness. It may then legitimately punish those who fail to abide by the conditions of right. All this has to be present if we are to enjoy property rights. ‘When you cannot avoid living side by side with all others, 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: 307/451-2) In a condition of distributive justice the law says what objects ‘are capable of being covered externally by law, in terms of their matter, that is, what way of being in possession is rightful.’ (MM 6: 306/450)

But even then the property we own within in a particular national civil society is only provisionally so. ‘The indeterminacy, with respect to quantity as well as quality, of the external object that can be acquired (of the sole, original external acquisition) the hardest of all to solve.’ No matter how we suppose it might be resolved for one people by referring to a social contract they may presume to have agreed to, this still leaves the matter unfinished. For ‘even if it is resolved through the original

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contract, such acquisition will always remain only provisional unless this contract extends to the entire human race.’ (MM6: 266/418) A reciprocal recognition of property rights which pertains to one state alone will not do to establish one’s property right in a fully peremptory way. This argument is more or less explicit in the case Kant puts for the support and establishment of the national state; ‘it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. – But the condition of being under a general external (i.e. public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours.’ (MM 6: 256/409) If the contract is viewed as being for the one people alone it will neither give rise to a ‘will putting everyone under obligation’ nor to one ‘general external lawgiving accompanied with power.’ Implicitly therefore the establishing of a fully effective system of property ownership requires a worldwide civil society. Kant’s idea of an original (problematic) worldwide community of ownership – ‘possession of an external object can originally be only possession in common’ (MM 6: 258/411) - would seem to go side by side with the ultimate goal of a global civil society.

And ‘this rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a globus terraqueus.’ (MM 6: 352/489)

The Social or the original Contract

Kant was a deep admirer of Rousseau’s philosophy and it is very likely that he was familiar with Rousseau’s The Social Contract (1762) which provides a defence of popular sovereignty.⁷ Rousseau was deploying a term that had wide currency in political philosophy. The notion of an original contract figures prominently in the writings of Thomas Hobbes and John Locke who were significant influences upon political thinking in the seventeenth and eighteenth centuries. Just as these writers deploy the term in different senses, in Locke and Rousseau’s case to argue for the possibility of resistance and, if necessary, overthrow of unjust governments and in Hobbes’s case for the absolute authority of rulers, so Kant deploys the idea in his own distinct sense to convey an understanding of the idea of an original contract which is somewhat mid-way between the uses of Locke and Rousseau on the one hand and Hobbes upon the other. With Kant the concept of an original contract provides the basis for the criticism of unjust governments (as it does with Locke

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and Rousseau) but not for their overthrow. In the manner of Hobbes, Kant argues that the power of
the sovereign should not be resisted, and so even when the sovereign acts badly it should be obeyed.

Kant sees the original contract as providing a popular foundation to sovereignty, but since it is an
idea which we derive from philosophical thinking about right it is not an idea that subjects can
themselves apply directly to politics. The reforms that might be required if a society is measured by
the ideal of a social contract have to be carried out by the already existing sovereign. Reform has to
be from the top down and not from the bottom up. Another way of putting it is to say that the
original contract is a model that all genuine civil societies have to follow and one we have to
assume if we are to act lawfully. It is also a rule for those in government to follow, but since their
task is partly also to enforce (with coercion if necessary) the laws of the society they cannot be
coerced into acting according to the ideal of the social contract.

The idea of the original contract falls in with the a priori standards of reasoning Kant has already
applied to the emergence of property as an institution. Just as with property to exist for it to come
into being we have to suppose there is a synthetic a priori proposition which permits individuals to
regard things as their own even when they are not physically holding them, so for a rightful society
to come about we have to assume that the terms of the original contract have been accepted by all
sides. ‘Now this is an original contract, on which alone a civil and hence thoroughly rightful
constitution among human beings can be based and a commonwealth established. But it is by no
means necessary that this contract (called contractus originarus or pactum sociale), as a coalition of
every particular and private will within a people into a common and public will (for the sake of a
merely rightful legislation), be presupposed as a fact.’ (TP 8: 297/296)

This is ‘only an idea of reason, which, however, has its undoubted practical reality, namely to bind
to bind every legislator to give his laws in such a way that they could have arisen from the united
will of a whole people, and to regard each subject, insofar as he wants to be a citizen, as if he has
joined in voting for such a will. For this is the touchstone of any public law’s conformity with right.
In other words, if a public law is so constituted that a whole people could not possibly give its
consent to it (as, e.g., that a certain class of subjects should have hereditary privilege or ruling rank),
it is unjust.’ (TP 8: 297/297-8) It is very clear from this that the original contract represents from a
Kantian perspective a normative standard by which to measure, accept or criticize the laws of a
state and the policies of its rulers. That the normative standard is not wholly met does not of itself
serve to undermine the authority of the laws or rulers. Rather it can provide an opportunity for laws
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to be improved and rulers to increase the effectiveness of their administration. Government and rulers have to submit themselves to the authority of reason in public debate, but in permitting and heeding that public debate they reinforce rather than undermine their authority. For Kant ‘the people too has its inalienable rights against the state, although these cannot be coercive rights.’ (TP 8:304/302) Subjects must be allowed to speak up in the hearing of their ruler. ‘A citizen must have, with the approval of the ruler himself, the authorization to make known publicly his opinions about what it is in the ruler’s arrangements that seems to him to be a wrong against the commonwealth.’ (TP 8: 304/302) It appears that Kant is placing a very severe restriction here upon the power of rulers (not as absolute of course as Rousseau would wish by always leaving final authority in the power of the people). They are presented at first blush as the servants of the public. However, Kant interprets the scope for the fallibility of rulers in a civil society, in a very wide sense. Some might argue that he lets them off the hook entirely when he remarks that if it is at all possible ‘a people could agree to’ a law ‘it is a duty to consider the law just, even if the people is at present in such a situation or frame of mind, if consulted about it, it would probably refuse its consent.’ (TP 8: 298/297) Here Kant takes the non-empirical nature of the idea of an original contract to very great lengths. The interpretation of the idea of the possible consent of the people to a policy of law is apparently left almost entirely to the discretion of rulers. However, he does think there are limits to the case that rulers might make for advancing a new rule. For instance, Kant does not think a ruler can institute a law that would permit the creation of a caste of people that would enjoy a privileged inherited status.(TP 8: 297/297) Kant’s saving grace is that he does not allow rulers wholly to regard their role as pragmatic enforcers or prudential operators. They have always to pay heed to the ‘public well-being (Heil des Staates)’ and what first must ‘taken into account is precisely that lawful constitution which secures everyone his freedom by laws.’ (TP 8: 298/297)

Thus Kant’s interpretation of the social contract does favour popular sovereignty, but in a highly cautious way. The people should never interpret the original contract in a manner such that it threatens the irresistible power of the executive in carrying out the laws. Change should be effected by alterations in the law which authorize the executive to act in a different manner. And ‘if the existing constitution cannot be well reconciled with the idea of the original contract,’ the sovereign should be allowed to change it ‘so as to allow to continue in existence that form which is essentially required for a people to constitute a state.’(MM 6: 340/480) Effective law making and the proper execution of laws have to be permitted to continue uninterrupted within a state, even as it may change its own constitution. In championing change to bring an existing society more in to line with the idea of the original contract Kant much prefers the model of metamorphosis to the model of
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revolution. The latter metaphor implies the very dangerous possibility of the death of the state at the same time as it is supposed to transform itself radically.\(^8\)

**Republicanism and cosmopolitanism**

Kant has a very wide ranging understanding of the role of the social contract as a normative standard by which to measure the performance of a state. Adhering to the original contract requires a good deal more than simply adhering to the principle of popular sovereignty. Popular sovereignty has to comply with the innate freedom that each individual should enjoy. Kant defines our innate freedom as ‘independence from being constrained by another’ individual’s arbitrary will. (MM 6: 237/393) Kant puts this definition in a more striking and radical form a few lines later when he says that this independence also implies ‘a human being’s quality of being his own master (sui generis), as well as being a human being beyond reproach (justi), since before he performs any act affecting rights he has done no wrong to anyone.’ (MM 6: 238/394) What is most remarkable in this statement of the implications of our innate right is its universality. In principle Kant’s critical philosophy of right makes no distinctions of race, gender and nationality. Of course Kant does not always follow through this universalist dimension in his own more empirical discussions of European and world politics, but it is there always in the background as a measure of legal and political advance.

It is implicit in the idea of right itself that we should obey only those laws to which we could give our consent. Only this form of legislation conforms to the idea of freedom which requires that should be free from the arbitrary constraining will of any other. Now, the ‘only constitution that accords with right’ is ‘a pure republic’. This is ‘the kind of government suited to the idea of the original contract.’ (MM 6:340/480) A republic is the only form of government ‘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: 340/480) The gradual metamorphosis that brings this about is essential. ‘Only it will finally lead to what is literally a state.’ It is ‘the constitution in which law itself rules and depends on no particular person.’ (MM 6: 340/481)

Kant’s short book *Toward Perpetual Peace* (1795) sees him at the height of his powers as a political philosopher. The book draws together the main strands of his practical philosophy as it relates to politics and right. It is not a utopian treatise but rather an attempt to draw out carefully the

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\(^8\) Howard Williams *Kant’s Critique of Hobbes* Cardiff, University of Wales Press, 2003, 160-174
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implications of thinking in a manner inspired by his critical metaphysics to politics and right. And despite the occasional area of discontinuity between the two works Perpetual Peace is remarkably at one in its approach with the Doctrine of Right which appears two years later as the first part of the Metaphysics of Morals. The idea of the state, as Kant presents it, plays a key part in the argument of TP. The republic as the embodiment of the idea of the state is highlighted in the first definitive article of the essay as one of the principal means of establishing world peace. Kant argues that all constitutions should gradually transform into republican ones. In such republican states the laws will be made by the people’s representatives, carried out by their representatives and implemented by independent judges in the courts. Neither of these three powers should interfere with the power of their partners. Kant believes that states with republican constitutions will be predisposed towards peace since the people who carry the main burden (both financially and in combat) of prosecuting a war will themselves be asked to give their verdict on the possible declaring of war.

Since these republics will be founded upon right they will see the need to join up with other republics to create a federation of peace. Thus the second definitive article of Perpetual Peace requires all states to enter such a federation, even if they are not already republics. This alliance ‘does not look to acquiring any power of a state but only to preserving and securing the freedom of a state itself and of other states in league with it, but without there being any need for them to subject themselves to public laws and coercion under them (as people in a state of nature must do). The practicability (objective reality) of this idea of a federalism that should gradually extend over all states and so to perpetual peace can be shown.’ (PP 8: 356/327) As themselves agents of law states do not in principle require coercion. Certainly sovereign states cannot be coerced to act as good international citizens they must learn to do so guided by the principles of morality and law informed by reason.

What sets the seal however for the realization of the practical goals of Kant’s critical system in politics and right is the emergence of a third layer of law which Kant calls cosmopolitan right. Cosmopolitan right is law for the world-citizens who must inevitably emerge through the growth of republican rule and the dissemination of the rule of law. Kant tries to define cosmopolitan right in a very simple way by saying in the third definitive article of PP that such a right ‘shall be limited to conditions of universal hospitality.’ (PP 8: 357/328) By hospitality Kant means that we should not necessarily always treat visitors to our borders or shores with generosity but rather that we should accept every person’s right, regardless of their origins to present themselves as possible visitors and
that we should not turn down their request of entry if it should lead to their destruction. Kant anticipated the contemporary right to refugee status that exists since the founding of the United Nations, its Charter and its various declarations though his main purpose was more likely to criticize the excessive force and violence through which the European powers had seized and exploited other parts of the world. Kant found more compatible with right (as dictated by reason) the manner in which China and Japan had restricted the incursions of European people, confining their entry and allowing them (in China’s case) to settle only in enclaves on their coast. (8: 359/330)

In terms of the breach of the third definitive article requiring hospitality the ‘civilized, especially commercial, states in our part of the world, the injustice they show in visiting foreign lands … goes to horrifying lengths. (PP 8: 358/329) Kant demonstrates with his right of hospitality the thoroughgoing nature of his grasp of law: as an interrelated, interdependent system from the ground up. The innate right of freedom which all human individuals enjoy under practical reason translates itself inexorably into a cosmopolitan right to be treated with the dignity befalling a human being on all parts of the globe. ‘Since the (narrower or wider) community of the nations of the earth has now gone so far that a violation of right on one place of the earth is felt in all, the idea of cosmopolitan right is no fantastic and exaggerated way of representing right; it is, instead a supplement to the unwritten code of the right of a state and the right of nations necessary for the sake of any public rights of human beings.’ (TP 8: 360/330) Here the radical dimension of Kant’s idea of our innate right comes to the fore.

It is only to be expected that Kant should be drawn into contemporary disputes about international relations. His comprehensive view of politics and law makes his philosophy particularly applicable to today’s globalized world. He sees law as in three interconnected, mutually dependent spheres: domestic law (which includes both private and public right); international law (both public and private); and cosmopolitan right. With his notion of cosmopolitan right Kant is able to provide for the presently burgeoning sphere of individual rights that go beyond the borders of states a thorough philosophical foundation.

Kants’s political philosophy has been drawn into contemporary debates in international relations, notably about just war. Some writers advocate his views as a subtle and advanced account of just war theory.⁹ Others – including the present author¹⁰ – believing themselves to be closer to the original vision lying behind Kant’s political philosophy emphasize his systematic dislike for war.

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¹⁰ Williams, Howard Kant and the End of War Basingstoke, Palgrave, 2012
At best, they argue, war is for Kant only a dire expedient when all else fails. War signifies a failure of justice rather an area of its best application. There is value in both sides of the debate. A war that is pursued with Kant’s injunctions in mind (both those of right and morality) is likely to be more humanly fought. The thoroughly anti-war position brings out the moral and legal dangers of resorting to war at any time. Generally Kant’s view is that war is more suited to animals as a way of resolving disputes. Indeed we reduce ourselves to a level beneath animals by engaging in war in that we have the capacity to know and to act better. The critical philosophy teaches epistemological humility and moral courage in the face of the apparently never ending complexities and misfortunes of today’s world.