CHAPTER 1

The Critique of Pure Reason *as the Establishment of Reason's Lawful Condition*

Throughout the history of philosophy, philosophers have used the term 'law' to refer to an array of regularities. There are laws of nature, a priori laws, moral laws, laws of logic and divine laws in different philosophical texts. Today, the term 'law' is used in many contexts without carrying a legal connotation. In Richard Rorty's words, we might say that the law metaphor has faded into literalness.[1] When Kant uses the term 'law' in a variety of ways, he is stretching the term in a manner that was common in his time.[2] The terminology in itself is thus not innovative. However, the first *Critique* promotes a new understanding of laws in philosophy which is emphasised by Kant's frequent use of legal images. His account of the understanding as the legislator of nature is central to his account of the objectivity of epistemology, and he adopts lawfulness as a criterion of objectivity, in both practical and theoretical philosophy. The legal images connect this innovation to preceding thinkers and make Kant's approach easier to understand.

Although the legal images are central and frequent in the first *Critique*, they are often overlooked, perhaps because the notion of law has gained a technical meaning also in Kant scholarship. Borrowing Kant's phrasing, today's Kant scholars describe the categories as constitutive of natural laws or the understanding as prescribing laws to nature without associating these terms with legislators or judges. Also in practical philosophy, the moral law is not conceived as a metaphor but rather as a particular understanding of moral obligation. Many interpreters simply read both theoretical and practical laws as shorthand for 'objectively valid rules', which is

[1] Richard Rorty writes on the metaphorical origin of many neologisms that 'Old metaphors are constantly dying off into literalness, and then serving as a platform and foil for new metaphors' ('The Contingency of Language', p. 16). Eric Watkins, among others, argues that this is also the case for Kant's laws: they are not metaphors but explicit terms, because they are all instances of the same type. See Watkins, 'What Is, for Kant, a Law of Nature?'

[2] For an overview, see Pietsch, *Topik der Kritik*, p. 201.

Kant's explicit definition of the term (A 126). However, this narrow reading fails to consider the cluster of terms from the legal sphere with which Kant describes not just the understanding but all the higher cognitive faculties as well as the critique of reason. Although no single legal metaphor can capture the way in which reason imposes laws on itself and experience, I argue that through association with the legal metaphors, Kantian laws maintain a metaphorical connotation.

The interpretive aim of this chapter is to show the way Kant's conception of laws is ingrained in an extensive legal framework. I pursue this aim by focusing on two images: the one portraying the critique of pure reason as the tribunal of reason and the other depicting the critique as the establishment of a rightful condition which is analogous to the establishment of a civil state. These images show that Kant's account of a priori laws is not merely a colourful way of expressing a new philosophical approach; he is building an entire framework around a legal structure. A priori laws fit into a larger ratio-juridical framework whose foundation is laid in the first *Critique*. If we restore the sense of metaphor to the term 'law', Kant's engagement with the natural right debate emerges more clearly and we gain a better understanding of how reason's legislation creates a normative structure, as I argue in the final chapter of this book.

To be clear, my aim is not to show that Kantian laws are mere metaphors. Instead, I claim that the distinction between explicit technical terms and metaphors is porous. Many technical terms are born as metaphors, and as they gain a specific meaning, their metaphorical origins are slowly forgotten.[3] By associating Kant's conception of laws with the legal metaphors of the first *Critique*, I aim to recover their metaphorical origin and reinsert the notion of laws within the legal framework.

The *Critique of Pure Reason* as a Review of Laws

The tribunal of reason is Kant's legal metaphor for the critique of pure reason. This metaphor is already introduced in the introduction to the A edition, where Kant gives the first description of the critical enterprise:

> [The indifference to metaphysics] is evidently the effect not of the thoughtlessness of our age, but of its ripened *power of judgment*, which will no longer be put off with illusory knowledge, and which demands that reason take on

[3] One can account for this development by saying that the metaphor had become so pervasive that it had become one we live by rather than an independent metaphor. This is the account offered by Lakoff and Johnson in *Metaphors We Live By*.

> anew the most difficult of all its tasks, namely, that of self-knowledge, and to institute a court of justice, by which reason may secure its rightful claims while dismissing all its groundless pretensions, and this not by mere decrees but according to its own eternal and unchangeable laws; and this court is none other than the *critique of pure reason* itself. (A xi–xii)

Kant connects the image of a tribunal with four central aspects of the critique of pure reason: the reflexive nature of the critical project in which reason is judged not through decrees but according to 'its own eternal and unchangeable laws', the distinction between 'rightful claims' and 'groundless pretensions',[4] the notion of a 'ripened power of judgment' and the image of the critique of pure reason as establishing a tribunal. While these expressions might not carry a legal meaning in isolation, here they are given central roles in Kant's description of the critique of pure reason as a tribunal. The tribunal thus becomes a framing narrative in which the central aspects of the critique of pure reason are assigned a legal role. I discuss this image in detail in Chapter 5, but for now these four aspects are a helpful introduction to the legal imagery of the critique. The idea that reason is judged according to its own laws reflects the inherently circular nature of the critique of pure reason. This circularity is emphasised further by the fact that reason carries out all of the different roles at the tribunal, and this image was quickly picked up by both defenders and critics of Kant's philosophy.[5] We have already encountered a viciously circular version of the tribunal in Herder's dilemma. An example of a favourable adaptation is found in Karl Leonhard Reinhold's *Letters on Kant's Philosophy*, in which Reinhold contrasts the 'petty tribunals of superstition and nonbelief' with the 'seat of judgment of reason'.[6]

The aim of the critique of pure reason as a tribunal is to distinguish between 'rightful claims' (*gerechte Ansprüche*) and 'groundless pretensions' (*grundlose Anmaßungen*), both of which were terms for legal claims in Kant's time.[7] These two types of claim appear consistently throughout the legal metaphors and they provide a legal formulation of the very core of

[4] We encounter this distinction again in the Discipline of Pure Reason, where Kant points out that David Hume 'does not know the difference between the well founded claims of the understanding and the dialectical pretensions of reason' (A 768/B 796).

[5] For a survey of how Kant's legal metaphors influenced philosophical terminology, see Pietsch, *Topik der Kritik*, pp. 193-209.

[6] Reinhold, *Letters on the Kantian Philosophy*, p. 64.

[7] According to Adelung's dictionary, *anmaßen* generally means claiming a title without foundation, and in legal vocabulary it can simply mean making a claim. See Adelung, Soltau and Schönberger, *Wörterbuch der Hochdeutschen Mundart*, Vol. 1, p. 339. *Anspruch*, in the legal sense, means a claim to something and the dictionary specifies that this term designates 'both the statement of the right and the claim made in virtue of this' (Ibid., Vol. 1, pp. 375–6).

the critical project. The difference between the two is that rightful claims are based on laws while pretensions have no foundation. The critique of pure reason uncovers the conditions of making this distinction; it connects the notion of evaluating claims with that of a law. If a claim to knowledge is to be understood as a legal claim, then justification is understood as legal foundation. The aim of the critique is to show that the distinction between founded and unfounded claims can be made in a manner which is governed by law rather than arbitrary. The search for laws is therefore a search for a regularity that justifies a procedure.

The reference to a 'ripened power of judgment' shows that the critique of pure reason is not carried out in isolation from its intellectual context; it depends on previous developments in the history of philosophy which have paved its way. The critique of pure reason is only capable of establishing itself as a tribunal of reason because it rests on a power of judgement which has developed historically. This point connects the introduction of the first *Critique* to its last chapter, in which Kant situates his account of reason within the history of philosophy.[8] This broader understanding of a power of judgement is clearly different from the technical term of the Transcendental Doctrine of the Power of Judgement, which is the alternative title of the Analytic of Principles. Still, it is significant that the critique of pure reason rests on a faculty of subsumption and distinction which has been honed over the course of history.

The image of the critique of pure reason as an institution which needs to be established emphasises the change from pre-critical to post-critical reason. This image also shows a disanalogy between the critique of pure reason and civil law tribunals, since legal proceedings presuppose an established and recognised legal system. The image thus has a closer affinity to equity courts in common law systems, which judge according to principles of justice that are not established through positive law. However, there is also a disanalogy with courts of equity. Unlike legal proceedings, the critical investigation is twofold; it examines the legality of individual claims as well as the laws which supposedly make up their legal foundation. As an investigation of the laws as well as the legality of a claim, the critique of pure reason takes its approach both from legal proceedings and the role of legislators.[9] The dilemma entailed in this double role as legislator and judge will be central throughout this book.

[8] Kant is thus merely the carrier of this ripened power of judgement; this impersonal attitude is indicated in the Baconian motto to the B edition: '*De nobis ipsis silemus*' ('Of our own person we will say nothing') (B ii).

[9] Alongside the legal metaphors, metaphors from the natural sciences also illustrate Kant's methodology in the work. See Chapter 2.

The Natural Right Tradition and the *Naturrecht Feyerabend*

The previous section made clear that the natural right metaphor is key to understanding how lawfulness can help resolve philosophical conflicts. My interpretation follows the assumption that the legal metaphors were meant to be understood by the readers of the work. Even if we assume that Kant had already developed his own views on natural right in the 1780s, these views would not have been accessible to the readers of the first *Critique*. Instead, readers would have been familiar with the natural right tradition preceding Kant. Therefore, to understand the natural right metaphors, we need to understand the natural right tradition as Kant and his contemporaneous readers knew it.

Natural right was a dominant topic in eighteenth-century academic debates; discussions of law and obligation reached across faculties, including those of law, theology and philosophy. At Prussian universities, future lawyers and philosophers had to follow a course in natural right, which means that Kant could assume that many of his educated readers would have at least a basic knowledge of it.[10]

Kant himself offered a course on natural right twelve times in the period 1767–88, and he was lecturing on natural right four times a week for most of the period in which he wrote the A edition of the *Critique of Pure Reason*.[11] The textbooks indicated in the lecture descriptions were Achenwall's *Ius Naturae* and *Prolegomena*.[12] These works had a great influence on Kant's understanding of law, and his *Doctrine of Right* (1797) contains many similarities with Achenwall's work on natural right. Kant even includes many of his objections to Achenwall in this work.[13]

Apart from Achenwall's textbooks, Kant was familiar with many other theories of natural right, which influenced his later account of legal and

[10] Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg (1720–1804)*, xxx–xxxiii; von der Pfordten, 'Kants Rechtsbegriff'. On the distinction between natural law and natural right, see Haakonssen, *Natural Law and Moral Philosophy*; Tuck, 'The "Modern" Theory of Natural Law'.

[11] According to Kühn's biography, Kant wrote the final edition of the A edition between May and September 1780 (Kühn, *Kant*, p. 240). In the summer semester of that year (starting 10 April), he taught natural right four times a week. See Naragon, 'Kant in the Classroom'; Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg*.

[12] Achenwall, *Prolegomena* and *Jus Naturae in Usum Auditorum*. The second part of the fifth edition of *Jus Naturae* is partly reprinted in the Academy edition, 19:325–442, along with Kant's marginal notes. See Schröder, 'Gottfried Achenwall, Johann Stephan Pütter und die "Elementa Iuris Naturae"', p. 335; Byrd and Hruschka, *Kant's Doctrine of Right*, pp. 15–19; Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg*.

[13] See Byrd and Hruschka, *Kant's Doctrine of Right*; von der Pfordten, 'Kants Rechtsbegriff'; Ritter, 'Der Rechtsgedanke Kants nach den frühen Quellen'.

political philosophy.[14] The extent of Kant's knowledge of natural right is evident in his 1786 review of Gottlieb Hufeland's *Essay on the Principle of Natural Right* (1785). In this review, which he wrote while preparing the second edition of the *Critique of Pure Reason*, Kant focuses on Hufeland's account of obligation in natural right as stemming from perfection as the highest end of rational beings.[15] Kant objects to this account, arguing that the quest for perfection could not be delegated to the state and, in addition, that the command to perfect oneself is so vague that no specific principles of right can be concluded from it.[16] This text shows that Kant was already engaging actively in the natural right debate in this period.

Although we know that Kant was teaching natural right while he was writing the A edition of the first *Critique*, no notes from his lectures on natural right in this period are available today. The only set of student notes from Kant's lectures on natural right available today is the so-called *Naturrecht Feyerabend*, a collection of notes taken during Kant's summer semester lectures of 1784.[17] In this period, Kant was writing the *Groundwork of the Metaphysics of Morals* (1785) and there are many points of contact between this work and the lecture notes.[18] In the *Naturrecht Feyerabend*, Kant generally

[14] Rousseau's *Social Contract* influenced Kant's legal and political thought, but Hobbes's writings also influenced his account of natural right in general and the state of nature in particular, as we shall also see in the metaphors from the first *Critique*. See Tuck, *The Rights of War and Peace*, pp. 207–25; Williams, 'Natural Right in Hobbes and Kant'. These studies have challenged the idea that Kant's notion of the foundation of a civil condition is only taken from Rousseau. The first idea is found, for example, in Schmucker, *Die Ursprünge der Ethik Kants in seinen vorkritischen Schriften und Reflektionen*, p. 396.

[15] Achenwall and Pütter also begin from a perfectionist understanding of obligation. See their *Anfangsgründe des Naturrechts*, § 9, p. 18: 'Hinc lex animae humanae generalissima: *Perfice te*'.

[16] 'Yet that even the authorization to coerce must always have as its ground an obligation laid on us by nature itself – to the reviewer this does not seem to be clear, chiefly because the ground contains more than what is necessary for that consequence. For it seems to follow from it that one *can cede nothing* of one's right as permitting coercion, because this permission rests on an inner obligation in every case to obtain the contested perfection for ourselves, if necessary with force' (Hufeland, 8:128–9).

[17] The manuscript mistakenly indicates the winter rather than the summer semester. See Pozzo and Oberhausen, *Vorlesungsverzeichnisse der Universität Königsberg*, Vol. 2, p. 500. On the history of these notes, see the helpful introduction to the Italian translation *Lezioni sul diritto naturale*; Sadun Bordoni, 'Kant e il diritto naturale'; Delfosse et al., *Stellenindex und Konkordanz zum 'Naturrecht Feyerabend'*. On the period in which Kant wrote the second edition of the first *Critique*, see Kühn, *Kant*, p. 309.

[18] The *Naturrecht Feyerabend* begins with general moral considerations on human beings as the end (*Zweck*) of creation. The notes state: 'A human being is an end so it is contradictory to say that a human being should be a mere means' (Feyerabend, 27.2,2:1319) This finality presupposes freedom: 'The inner value of a human being is based on the freedom that he has a will of his own. Because he should be the final end his will must be dependent on nothing else' (Ibid.). On the connections between the *Naturrecht Feyerabend* and the *Groundwork*, see also Guyer, 'Stellenindex und Konkordanz zum Naturrecht Feyerabend', p. 111.

follows the structure of Achenwall's *Ius Naturae*, which is divided into four main sections: natural right in the narrow sense (*Ius Naturale strictissime dictum*), universal social right (*Ius Sociale Universale*), universal civil right (*Ius Civitatis Universale*) and universal law of nations (*Ius Gentium Universale*). Of these, the last is only treated briefly, with the justification that 'This right has still not yet been brought to universal principles' (Feyerabend, 27.2,2:1392).[19] Kant later includes all four topics in the *Doctrine of Right*, but treats natural right and social right under the common title 'Private Right', and civil right and the right of nations together under the title 'Public Right'.[20] This division reflects the distinction between '*natural right*, which rests only on a priori principles and *positive* (statutory) right, which proceeds from the will of a legislator' (MS, 6:237). In the *Naturrecht Feyerabend*, we find this division in Kant's objection to Achenwall's account of the state of nature. For Achenwall, the state of nature is opposed to the social condition, to which Kant objects that there is already sociality in the state of nature and that the state of nature ought instead to be opposed to the civil condition (Feyerabend, 27.2,2:1381).[21] Kant had thus already included social right under natural right in the *Naturrecht Feyerabend*.

The *Critique of Pure Reason* as a Lawful Solution to Conflicts

One common feature of the image of the state of nature in the natural right tradition is its lawlessness and general insecurity. Kant uses this reference to show how the critique of pure reason provides lawful stability and a peaceful way of resolving conflicts among philosophers. According to the state of nature metaphor, the pragmatic motivation for the critique of pure reason is to end quarrels among metaphysicians by establishing a procedure to resolve epistemological conflicts. Without such a procedure, there can be no certainty in metaphysics and no way of avoiding the illusions of pure reason which lead to contradictory judgements. Kant affirms that without the critique of pure reason, 'reason is as it were in the state of nature, and it cannot make its assertions and claims valid or secure them except through *war*' (A 751/B 779). This image associates pre-critical reason with a state of nature in which there is no objective procedure for deciding legal disputes. Just as the civil condition replaces an uncertain and unjust state of nature, 'the endless controversies of a merely dogmatic reason finally make it

[19] Kant nevertheless recommends Vattel's *The Law of Nations* as the best book on the subject.
[20] For Achenwall, private and public right are subdivisions of civil right. See *Jus Naturae, Pars Posterior*, § 87, 19:364.
[21] This objection is also included in the *Doctrine of Right*, MS, 6:242.

necessary to seek peace in some sort of critique of this reason itself' (A 752/B 780).

The problem of the state of nature described in these images is the uncertainty of possession. According to the metaphor, conflicts in the state of nature arise when two parties make property claims which are mutually exclusive. Outside of a rightful condition, these claims cannot be settled in a conclusive manner, which leads to war and violent conflict. This description has both similarities and differences to Kant's own account of the injustice of the state of nature as it appears in the *Doctrine of Right*. In this work, Kant describes possession in the state of nature as mere physical possession, which only holds until intelligible possession is established in a rightful condition (MS, 6:257). All possession is merely provisional in the state of nature and only in the civil state can there be a confirmed right to property. Normatively, the state of nature as such is wrongful even if it is not necessarily a state of war. In Kant's own account of the state of nature, it would be impossible to make legal claims as he describes them in the state of nature metaphor since there is no civil right in the state of nature.

In the *Doctrine of Right*, Kant accounts for both a moral obligation and a prudential motivation for the establishment of a civil state, although the moral obligation to leave the state of nature has priority.[22] In the *Naturrecht Feyerabend*, the right to coerce others to leave the state of nature differs from the account in the *Doctrine of Right*. In the notes, this right comes partly from the presupposition that human beings are just by nature and partly from the lack of security in the state of nature. The notes state that: 'E.g. I have a right to seek security consequently I can coerce each to enter the state where each is secure' (Feyerabend, 27.2,2:1381–2). Here the right to seek security is the grounds for coercing others to leave this state of nature. In the philosophical image in the first *Critique*, the critical state of nature offers no way of securing cognition and no secure procedure for defending one's claims against opposing claims.

The state of nature is central to the legal metaphors as an illustration of the need for critique. However, the account of the state of nature appears to differ from the one Kant later presented in the *Doctrine of Right*. Does this mean that Kant changed his view of the state of nature or does the metaphor represent a version of the state of nature which is not his own? In Kant's copy of Achenwall's textbook, he remarks in a marginal note: 'The *status naturalis*

[22] 'Given the intention to be and to remain in this state of externally lawless freedom, men do *one another* no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent (*uti partes de iure suo disponunt, ita ius est*.) But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence' (MS, 6:307–8).

(state of nature) is a condition of freedom without law, and so freedom to do wrong' (Refl 7708, 19:497).[23] The *Naturrecht Feyerabend* contends that the state of nature is not necessarily a state of unease but always a state of injustice (Feyerabend, 27.2,2:1383). What makes it necessary to leave the state of nature is not the sense of insecurity – although this might be a subjective motivation – but the fact that the state of nature is a state of injustice, which makes the establishment of the civil condition morally obligatory. Even if human beings were sufficiently virtuous to live in peace in the state of nature, this would not justify the state of nature morally.[24] Kant later repeats this argument in the *Doctrine of Right*, but the *Naturrecht Feyerabend* and Kant's marginal notes in the textbook suggest that his position was already developed in the late 1770s (MS, 6:306). This suggests that the metaphorical state of nature is not a presentation of Kant's own views but rather a repetition of those common in the natural right tradition.

Kant's accounts of the state of nature in the *Doctrine of Right* and the *Naturrecht Feyerabend* both serve to describe the obligation to leave this condition and establish a civil state. This transition is also found in the metaphorical account. After describing disputes over conflicting claims, the state of nature metaphor continues with a parallel between the need to exit the state of nature and the need to leave pre-critical reason behind to ensure peace:

> And the endless controversies of a merely dogmatic reason finally make it necessary to seek peace in some sort of critique of this reason itself, and in a legislation grounded upon it; just as Hobbes asserted, the state of nature is a state of injustice and violence, and one must necessarily leave it in order to submit himself to the lawful coercion which alone limits our freedom in such a way that it can be consistent with the freedom of everyone else and thereby with the common good. (A 752/B 780)

The passage suggests a parallel between the legislation of 'some sort of critique' of reason and a 'lawful coercion' which replaces 'the endless controversies' of dogmatic reason, which is analogous to the 'injustice and violence' of the state of nature. The part of the quote introduced by 'just as Hobbes asserted' contains no indication of how much of what follows also applies to the critique of pure reason; it is not specified whether 'lawful coercion' and the 'promotion of the common good' are limited to Hobbes's description or whether we are to

[23] Note tentatively dated 1773–5 or 1769.

[24] In the *Anthropology,* Kant discusses Rousseau's description of how human beings are weakened by leaving the state of nature to form a civil state. He remarks that this account of the state of nature should not be read as an encouragement to leave the civil state and return to the state of nature but rather as an account of the possible challenges that face people living together in a civil condition (Anth, 7:326–7).

understand them as part of the metaphorical description of the critique of pure reason. Kant explicitly writes elsewhere that the critique of pure reason is performed by reason, which is shared by all finite discursive intellects and that it does not rely on a conception of the common good. Instead, the critique of pure reason is an investigation of whether this shared notion of reason can obtain cognition in abstraction from empirical experience.[25] This, thus, makes it unlikely that the critique of pure reason should promote coercion on the basis of a notion of the common good.

Kant repeats several times that perpetual philosophical peace is the aim of the critique of pure reason. He refers to an order for quarrellers to 'hold their peace' (A 501/B 529), to the 'peace of a state of law' (A 751/B 779), and to 'perpetual peace' (A 751/B 779, A 777/B 805). Kant later uses this expression in the titles of the essays on perpetual peace in the political and the philosophical spheres.[26] In *Toward Perpetual Peace* (1795), Kant proposes a federation of republican states which is intended to end all war. This proposal relies on the internal justice of the states to avoid interstate conflicts. The idea is that once the citizens of each state are co-legislators under a republican constitution, states will have more to lose than to win by entering a state of war. Republican constitutions ensure that states are governed in the interests of the well-being of the people, and war worsens rather than improves the condition of the people as a whole. For this reason, Kant argues, republics do not start wars. The internal rightful condition of each state makes coercive international law superfluous, but Kant remarks in the *Doctrine of Right* that within a voluntary congress of states disputes are decided 'in a civil way, as if by a lawsuit' (MS, 6:351). The treaty does not rely on any kind of external enforcement; instead, it places its trust in the internal constitutions of each republic. Kant argues that once a people has become politically autonomous and self-legislating, it has no interest in starting wars against other autonomous peoples. This is why the treaty is only made among republics. Although the text suggests that the federation should be akin to a republican state, there is some interpretive controversy as to whether the federation itself should be a republican state or the individual states should retain their sovereignty within the federation.[27]

[25] 'For the issue is not what is advantageous or disadvantageous to the common good in these matters, but only how far reason can get in its speculation in abstraction from all interest, and whether one can count on such speculation at all or must rather give it up altogether in favor of the practical' (A 746–7/B 774–5).

[26] The phrase 'perpetual peace' and the joke connected with it (that perpetual peace is only reached in the cemetery) is also present in Leibniz's correspondence as a comment on Abbé de St-Pierre's project for perpetual peace in Europe. See Leibniz, *Political Writings*, p. 183.

[27] See e.g. Pinheiro Walla, 'Global Government or Global Governance?'; Kleingeld, 'Approaching Perpetual Peace'.

In *Perpetual Peace*, states provide a rightful condition internally but not externally. Kant consequently describes international politics as analogous to a state of nature among individuals, and he goes on to argue that reason, as the 'highest morally legislative power', demands that states institute a pact for perpetual peace.[28] Although the *Critique of Pure Reason* and the political treaty *Perpetual Peace* were written at different times, we might consider whether Kant's idea for perpetual peace in the philosophical community fits the same scheme as his solution for political peace in the international community. In *Perpetual Peace*, the idea is that politically autonomous communities will not start wars with one another because of the risks to their inhabitants' lives. In the state of nature metaphor, perpetual peace among philosophers is ensured by each being capable of autonomous judgements that agree with the judgements of others. The image of the state of nature consequently has two levels: it establishes a domestic analogy between individual cognisers and persons in the state of nature but also an international analogy between individual cognisers and states in a rightful condition. In the international analogy, the establishment of an inner rightful condition within each individual state, as well as within each rational agent, is a necessary condition of lasting peace among individual states or persons. In analogy with republican peace, peace among metaphysicians is guaranteed by their inner observance of valid laws rather than by an external coercive authority.

Kant returns to the topic of perpetual peace in philosophy in the essay *Proclamation of the Imminent Conclusion of a Treaty of Perpetual Peace in Philosophy* (1796), in which he describes philosophical conflicts using metaphors of warfare in a manner that is similar to the descriptions of bellicose conflicts in the first *Critique*. In this essay, Kant describes philosophy as arising gradually from a physical need which starts out as an urge to use one's rationality in disputes and then escalates the point when the conflicting parties use their rational powers 'united in masses against one another (school against school, as contending armies) to *wage* open *warfare*' (VNAEF, 8:414). The violent tendencies of the philosophical schools are thus associated with physical urges to make use of one's rational powers and the sentiments that arise from these urges. This description of the

[28] Kant writes: 'The way in which states pursue their right can never be legal proceedings before an external court but can only be war; but right cannot be decided by war and its favorable outcome, *victory*; . . . yet reason, from the throne of the highest morally legislative power, delivers an absolute condemnation of war as a procedure for determining rights and, on the contrary, makes a condition of peace, which cannot be instituted or assured without a pact of nations among themselves, a direct duty' (ZeF, 8:355–6).

conflicts between philosophical schools is similar to what we find in the two editions of the first *Critique*, fifteen and nine years earlier.

Another similarity with the metaphors lies in the role that critical philosophy plays in ensuring philosophical peace (VNAEF, 8:416). However, the means to achieve this end differ; while the imagery of the first *Critique* suggests the establishment of a civil condition, *Perpetual Peace in Philosophy* proposes the signing of a treaty (VNAEF, 8:419). The latter solution is the same as one Kant proposes for international law in the other *Perpetual Peace* essay, which was published a year earlier. While the solution in the first *Critique* is borrowed from domestic law, the idea of a treaty among philosophers is borrowed from international law.

In *Perpetual Peace in Philosophy*, Kant does not propose an explicit treaty, but he announces that such a treaty will be concluded in the near future. He specifies that critical philosophy renders possible a condition of perpetual peace in philosophy which is not an inactive 'sleep of death' but rather a dynamic condition in which philosophers remain prepared for future attacks.[29] This description of philosophical peace is similar to the metaphor in the first *Critique*, where critical philosophy allows for a verdict on all conflicts but does not promise to eradicate philosophical conflicts. Still, the perspective of the two metaphors is different: the first *Critique* promises to establish peace through laws whereas a treaty of perpetual peace would establish general rules among participants but offers no guarantee that these will be respected. However, both approaches to peace in philosophy show that peace is not the same as lack of conflict but rather a condition in which there is a procedure for their peaceful resolution.

Establishing a Rightful Condition

Although the critique of pure reason does not end all conflicts, it does generate a transformation which is so extensive that Kant distinguishes between pre-critical and post-critical reason. He likens pre-critical reason to a state of nature and post-critical reason to the civil condition, which he calls a state of law (*gesetzlicher Zustand*):[30]

[29] Kant writes: 'a peace having the further advantage of constantly activating the powers of the subject, who is seemingly in danger of attack, and thus of also promoting, by philosophy, nature's intention of continuously revitalizing him, and preventing the sleep of death' (VNAEF, 8:416).

[30] In other writings, Kant refers to the state of law as a civil condition (Feyerabend, 27.2,2:1372) and a rightful condition (TP, 8:290).

> Without this [i.e. the critique of pure reason], reason is as it were in the state of nature, and it cannot make its assertions and claims valid or secure them except through *war*. The critique, on the contrary, which derives all decisions from the ground-rules of its own constitution, whose authority no one can doubt, grants us the peace of a state of law, in which we should not conduct our controversy except by *due process*. What brings the quarrel in the state of nature to an end is a *victory*, of which both sides boast, although for the most part there follows only an uncertain peace, arranged by an authority in the middle; but in the state of law it is the *verdict*, which, since it goes to the origin of the controversies themselves, must secure a perpetual peace. (A 751/B 779)

Without the critique of pure reason, there can be no authoritative answer to metaphysical questions, since there are no recognised criteria according to which metaphysical claims can be evaluated. The critique of pure reason justifies the use of certain laws as criteria of knowledge and thereby institutes reason's rightful condition within which the rules of due process allow reason to reach a conclusion which possesses the same authority as a verdict pronounced by a court of law.[31] This finality only applies in metaphysical cases; pure reason must be able to answer the questions it puts to itself, but this does not apply to empirical questions (A 695/B 723).

The 'constitution' (*Einsetzung*) mentioned above refers to reason's ground rules as constitutive of knowledge rather than the political constitution of a state (*Verfassung*).[32] In order to pass from the preliminary authority of force in pre-critical reason to the consolidated authority of post-critical reason, the critique of pure reason needs to legitimise its own authority. According to the metaphor, the critique of pure reason derives its authority from the evident authority of its own ground rules. Thus, the self-evidence of reason's ground rules ensures the authority of the critique of pure reason even though it operates before the establishment of reason as a state of law. The implication is that once the laws have been discovered, no rational person can doubt their authority.

The image shows that metaphysical disputes can be settled through the critique of pure reason and that this account of reason's claims can function as a final verdict. The verdict (*Sentenz*) on pure reason's metaphysical ambitions is discussed in the Doctrine of Method, especially in the section dealing with the Discipline of Pure Reason with Regard to its Polemical Use, where this

[31] On the notion of critique as a tribunal, see also Röttgers, *Kritik und Praxis*, pp. 31–9; Kaulbach, 'Der Herrschaftsanspruch der Vernunft in Recht und Moral bei Kant'; Kersting, *Wohlgeordnete Freiheit*, pp. 216–17.

[32] See also Stentzler, *Die Verfassung der Venunft*, in which the author analyses the legal metaphors as part of a political constitution of reason.

metaphor appears.[33] In this section, Kant discusses the possibility of a polemic of pure reason as an antagonistic approach to philosophical disputes, in which a proposition must only be defended against its negation in order to be considered valid. Kant rejects this approach as mere sophistry, but also declines a sceptical suspension of judgement. The problem with these approaches is that they grant merely preliminary conclusions, whereas Kant aims to provide a final verdict on pure reason's ability to achieve synthetic a priori cognition. In his description of why finality in judgement is necessary, Kant combines the legal images with metaphors of war and battle: the aim of the verdict is to secure peace since the alternative to the verdict is lawlessness.

Although Kant explicitly mentions Hobbes's notion of the state of nature as a state of war, his use of the notions of the state of nature and the state of law is sufficiently general to fit almost any treatment of natural right in the period. In the legal metaphor, Kant adds that human freedom can only be guaranteed in a civil condition. Although Kant's account of the passage from a state of nature to the civil condition is in many ways similar to Hobbes's, the added notion of innate right adds a dimension of preliminary right to Kant's account of the state of nature.[34] Although Kant refers to Hobbes's version of the social contract, which institutes an absolute sovereign, he goes on to specify that the authority of reason is not dogmatic. Indeed, by focusing on laws, the critique of pure reason is aimed at limiting the dogmatic use of reason (see A 739–40/B 767–8). The state of nature metaphor shows that Kant expects his readers to be familiar with this vocabulary and the theories associated with it, and the key image of the state of nature allows Kant to create a legal metaphor by drawing on the repertoire created by theories of natural right.

In opposition to Achenwall, Kant emphasises that there is sociality in the state of nature (Feyerabend, 27.2,2:1381; MS, 6:242). The state of nature has all the structures of private law; people have possessions and relations with other people, in particular with members of their family. But all of these relations are juridically provisional because they are not assured by any civil authority. In the state of nature there is no way to distinguish property from possession, since property presupposes that one can claim a right to objects outside of one's immediate reach. Although the state of nature might de facto be a peaceful state in which people organise

[33] Zedler lists *Sentenz* and *Urteil* as synonyms (*Universal-Lexicon*, Vol. 37, pp. 141–7). Krug defines *Sentenz* as a type of short judgement (*Handwörterbuch der philosophischen Wissenschaften*, Vol. 3, p. 730).

[34] Hobbes, *Leviathan*, I.xiii–xiv, pp. 110–30. See also Tuck, *The Rights of War and Peace*, pp. 212–13; Zagorin, *Hobbes and the Law of Nature*.

themselves in small family groups, this still does not make it a rightful condition. This peacefulness is merely a token of luck, which might turn into conflict since no rights are protected by a civil state. Any civil state is better than the state of nature, because the civil state ensures a condition in which there is a systematic application of the law and establishes a condition of right. In the rightful civil state, positive laws converge with natural right, and the convergence between positive law and the a priori principles of right is what characterises a rightful civil state. In the *Doctrine of Right*, Kant explicitly states that 'When people are under a civil constitution, the statutory laws obtaining in this condition cannot infringe upon *natural right* (i.e., that right which can be derived from a priori principles for a civil constitution)' (MS, 6:256). Kant reinterprets the notion of natural right as a priori principles for any rightful civil constitution, although he rejects many of the traditional tenets of natural right.[35]

In the *Naturrecht Feyerabend* we find a description of the difference between the solution of conflicts in the state of nature and the civil condition that is similar to the one used in the state of nature metaphor: 'In *statu civili* this [i.e. the conclusion of conflicts] happens through trial, in *statu naturali bello* through war' (Feyerabend, 27.2,2:1372).[36] This description of the state of nature as a state in which the resolution of conflicts is uncertain mirrors the metaphorical description found in the first *Critique*. In both accounts it is the certainty in the adjudication of conflicts which distinguishes the civil state from the state of nature. Kant keeps this view of the state of nature in all his accounts of legal philosophy; people in the state of nature have a duty to establish a civil state because it will allow for the establishment of rights.

In the *Doctrine of Right*, the provisional physical possession in the state of nature becomes conclusive intelligible possession when entering the civil condition in accordance with the formula '*Happy is he who is in possession* (*beati possedentes*)' (MS, 6:257; emphasis original). This same formula is applied to the ideas of pure reason in the first *Critique*, where Kant phrases the maxim *melior est conditio possidentis* ('the position of the possessor is better') to allow pure reason to use its ideas in a regulative manner even

[35] See Krieger, 'Kant and the Crisis of Natural Law'. My account is in opposition to Reimann's claim that 'Kant's critical philosophy had destroyed the faith in the premises and methods of natural law that had dominated the previous centuries' ('Nineteenth Century German Legal Science', p. 843). On the interpretation of Kant as the undertaker of the natural law tradition, see also Sadun Bordoni, 'Kant e il diritto naturale', pp. 214–15.

[36] Kant also describes the state of nature as a state of war in his *Doctrine of Right*, 6:344.

though they are not constitutive of cognition (A 777/B 805). However, unlike the passage into the rightful condition, the possession of the ideas of reason is not justified via the critique of pure reason. However, since pure reason is already in possession of its ideas, their continued use is allowed, although it is not confirmed as cognition.

The state of nature metaphor captures the way the critique of pure reason provides a framework in which claims of knowledge can be justified. This framework connects the notion of a priori laws with structures from natural right theory. The next chapter focuses on the normativity of a priori laws in light of this presentation.