WILLEM van der KUIJLEN
(University of Nijmegen)

The Legal Metaphor in Kant's Kritik der reinen Vernunft: its Structure and Meaning

1. Introduction

Right at the beginning of the first introduction to the Kritik der reinen Vernunft[1] Kant describes the institution which judges all claims and pretensions of reason as the tribunal of reason («Gerichtshof», KrV, Axi; cf. B529, 697, 768, 779, 815). Although Kant acknowledged that examples and illustrations like this are needed for an intuitively clear presentation of the contents of KrV he presented the text of his major philosophical work in a «dry, purely scholastic fashion» in order not to enlarge it beyond the extensive proportions it had already reached (KrV, Axvii-xviii; cf. B293: «um Weitläufigkeit zu vermeiden»). Nevertheless, many illustrations or metaphors, the proper means to bring about this intuitive clearness[2], are present throughout KrV.

Not only does KrV contain a large amount of metaphors, it also contains a great variety of metaphors. For example, one could refer to predominant metaphors drawn from: politics (KrV, Aix, Bxxv, B372), military science and warfare (KrV, B450f., B779f, B783ff.), seamanship (KrV, B294f., A395f.), architecture (KrV, B735f., B784, B862f.), flying (KrV, B9, B878; cf. Tarbet 258f.). Metaphors

like these have been discussed by Rudolf Eucken and David Tarbet. With reference to their studies these metaphors can be characterized as «illustrative» (Tarbet 257); they perform «nur die Rolle eines Begleiters» (Eucken 57), or an «important supporting role» (Tarbet 257). To some of these, however, a more substantial role may be attributed, because Kant continuously employs them to characterise his own philosophical method. Thus they become «treue Diener besonderer prinzipieller Überzeugungen und methodologischer Richtungen» (Eucken 57). Tarbet deals with them as «metaphors of analogy» and the most telling are those taken from science (physics, chemistry, mathematics, astronomy) (Tarbet 263f.; cf. Eucken 66-68).

In addition to descriptions of specific metaphors and to an evaluation of their (methodological) function special attention should be given to metaphors representing instances of legal discourse. Clear examples of these are to be found throughout KrV. Following Tarbet I will use the term «legal metaphor» as the common denominator of all of these particular instances (Tarbet, 265; cf. Eucken 73 and Saner 279). Ishikawa's notion of «das Gerichtshof-Modell» is the appropriate, corresponding term in German.

Several authors have drawn attention to the exceptional and important function of the legal metaphor. More than a century ago, in 1881, Vaihinger remarked: «Dieses bild des Processes liegt der ganzen Kritik zu Grunde» (Vaihinger 107; cf. Saner 239, 279f.). He continues by pointing to the most important aspects of this image in KrV: the tribunal, the lawbook, the parties involved, the object of dispute, witnesses, documents and proof, and the records of the lawsuit. At the begining of this century Eucken stated that Kant's far-reaching and radical application of the idea of right is characteristic for his theoretical enterprise (Eucken 78). He also acknowledged the importance of the legal metaphor in other writings of Kant (Eucken 77-78; cf. Stoddard 245, 248). Regarding the legal metaphor, Tarbet claimed that it is the «metaphor around which the entire work is constructed» (Tarbet 265) and that «There is justice in calling the legal metaphor the main structural metaphor of the Critique» (Tarbet 270). More recently, Henrich has pointed to the methodological and argumentative structure of the legal metaphor:

«The Critique is not just permeated by juridical metaphors and terminology. Its major doctrines are related to one another by means of the theory of legal disputes presented by Pütter and Achenwall»[3]. Küsters (27-37), in view of a survey of Kant's philosophy of right, maintains the plausibility of the juridical character of Kant's concept of reason, but he does not seem to be able to appreciate its significance because he is unaware of the proper function of metaphors (33, 36): «Es besteht die Gefahr einer vorschnellen Analogisierung und damit implizit einer Fehldeutung» (31). However, even greater problems arise if an assessment of the metaphorical or analogical character is postponed.

Although there seems to be considerable agreement as to the methodological importance of specific instances of legal discourse in KrV as well as to the extent of the legal metaphor itself, a systematic account of the legal metaphor as a whole is still lacking. The main purpose of this paper is to provide this account, primarily by presenting and examining most if not all of the literature dealing with particular instances of the legal metaphor in KrV (§§ 3, 5,7,9). With reference to the common opinion about the important function of the legal metaphor with respect to the structure and methodology of KrV, it is necessary to make additional remarks regarding certain aspects of the metaphor that have been neglected in the literature on KrV, so as to make possible a reconstruction of the metaphor in its entirety. This will be done in §§ 4,6, 8 and 9. The result is a comprehensive overview of the legal metaphor throughout KrV. To substantiate the claim that this metaphor has a significant function within the critical project of KrV, the meaning and function of «metaphor» in a Kantian sense will have to be determined in §2.

2. Kant on analogy

In the previous section «metaphor» referred to illustrations and figurative speech in quite a general way. In the present section a short overview of the Kantian sense of «metaphor» is presented in order to determine the relevance and significance of the use of metaphor in KrV. According to A. Nuyen «It seems reasonable to suggest that what Kant calls 'symbol' we call 'metaphor'.» (Nuyen

98). A symbol, according to Kant, is an intuition related to a concept. This is only one of the possible relations between concept and intuition. Right at the begining of «Transcendental Logic» Kant states his well-known formula about the necessary relation between intuitions and concepts:

«Gedanken ohne Inhalt sind leer, Anschauungen ohne Begriffe sind blind. Daher 1st es eben so notwendig, seine Begriffe sinnlich zu machen (d.i. ihnen den Gegenstand in der Anschauung beizüfugen), als, seine Anschauungen verständlich zu machen (d.i. sie unter Begriffe zu bringen)»[4].

In fact, this statement implies that it should be possible to provide a corresponding intuition to every concept and vice versa. If not, the knowledge expressed in the concept (or intuition) lacks aesthetic, intuitive clarity (or logical, discursive clarity) and should not be regarded as knowledge at all.

The process of providing intuitions corresponding to given concepts, is what Kant calls proving or showing the reality of our concepts[5]. Because there are different concepts, there are also different corresponding intuitions. If the concepts are empirical, the intuitions are called examples[6]. In the case of pure concepts of understanding they are called schemata (see §4 below). In the case of a concept of reason, however, it is not possible to provide for the corresponding intuition, since by definition such a concept cannot be linked to something sensible. It is a concept «den nur die Vemunft denken, und dem keine sinnliche Anschauung angemessen sein kann» (KU, B255; cf. ib. B193, 240)[7]. However, one may symbolically link a concept of reason to an intuition, in which case it is called a symbol of that concept. Therefore, Kant states: «Alle Anschauungen, die man Begriffen a priori unterlegt, sind also entweder Schemate oder Symbole» (KU, B256). Kant's example of a symbol is the living body representing the monarchial state (KU, B257f.; cf. Nuyen 96-98). A living body symbolises a monarchial state not because there are similarities between both objects, but because there is an analogy between the way we reflect on the object of intuition (a living body) an the way we reflect on a monarchial state. More precisely, the rules guiding our reflexion in case of a living body are analogous to those guiding our reflexion in the case of a monarchial state which makes it possible to represent this

state symbolically by a living body. To some extent philosophical language in general is symbolic. In this respect Kant points to notions such as «ground» and «substance» (KU, B257) which remind us of the categories.

Apart from schema and symbol there is yet another relation between intuition and concept which might be regarded as the reverse of symbolisation. An aesthetic idea is a representation to which there is no adequate concept (KU, B193, 240). Nuyen (100-105) argues that the process of providing such a concept may be compared to symbolisation. The difference between symbolising an idea of reason and symbolising an aesthetic idea is that the former process is «objective», and the latter is «subjective» (Nuyen 101; cf. KU, B198, 242).

In Prolegomena § 58 Kant assigns knowledge involving symbols a separate status and refers to it as knowledge by analogy. This kind of knowledge enables us to transcend the limits of possible experience, without running the risk of getting caught up in a dialectical, illusory situation[8].

In KrV, B222 Kant defines «analogy» in philosophy by comparing it to «analogy» in mathematics[9]. In mathematics analogy is the equality of two quantitative relations. It is constitutive in regard of the objects (quantities) involved. Thus, the following analogy of relations ((3: 4) = (6: x)) allows us to construct the fourth quantity (x = 8). In philosophy, however, analogy is the equality of two qualitative relations, which does not allow us to construct the missing member, but only enables us to determine the relation in respect of a fourth member, which is not known and remains unknown. Analogy in this sense is regulative, because it serves as a rule of thinking[10], not as a constitutive principle. In Prolegomena (§58) Kant gives a definition of analogy: «eine vollkommene Ähnlichkeit zweier Verhältnisse zwischen ganz unähnlichen Dingen». He also gives the following, clarifying example. We may determine the relation between the unknown loving God (x) and the well-being of the human species (c), if, by analogy, we compare this relation to the relation between the happiness of children (a) and parental love (b). Thus, the analogy (a: b) = (c: x) does not determine object x in any sense, but it expresses the analogy (com-

plete similarity) between both relations. In addition, Kant determines this relation with the help of the category of causality. Thus, analogy allows us to think of the relation between objects which cannot be objects of possible experience (the transcendent object of God, and the situation of mankind as a whole) as if they were such objects, on the basis of the regulative application of «causality»[11].

With reference to Kant's ideas about the relation between concept and intuition, symbol and analogy, some important conclusions can be drawn about the significance of the legal metaphor. Apparently, a critique of pure reason is in need of symbols or metaphors since «pure reason» and its «critique» are pure and abstract notions lacking intuitive clarity.This lack of clarity would seriously hamper or even prevent any sensible discussion on the subject. Metaphors provide for this clarity. If the legal metaphor turns out to be the predominant image in KrV, it may well be indispensable to Kant's critical project since its predominance expresses Kant's constant awareness of the necessity to supply for the intuitve clarity needed.

If we take «metaphor», like Nuyen, in the sense of «symbol», then the pithy statement «The critique of pure reason is the true tribunal»[12] is an expression of the fact that the critique can be symbolised by the image of the tribunal. In that case there has to be an analogy between the tribunal and critique, or rather between the way we think about a tribunal and its proceedings, on the one hand, and the way we think about pure reason and its critical actions which are initially unknown to us, on the other hand. Because the metaphor seems necessary to carry out the critique, we may assume, in accordance with the authors mentioned, its pervasive presence throughout KrV. The extent of the analogy and the systematic relations between its various parts will be determined in the following sections.

3. The questions «Quidfacti?» and «Quid iuris?»

Apart from occasional references to terms like «Anspruch», «Besitz», «Anmaßung», which apparently stem from a juridical context, the first systematic account of a legal metaphor is to be found right at the beginning of the chapter on the deduction of the

pure concepts of understanding. Strangely enough Stoddard does not even mention the well-known distinction between quid facti and quid iuris, although she claims that «legal language plays a major role in this section»[13]. The beginning of this section, introducing the quaestiones facti et iuris, runs as follows:

«Die Rechtslehrer, wenn sie von Befugnissen und Anmaßungen reden, unterscheiden in einem Rechtshandel die Frage über das, was Rechtens ist (quid iuris), von der, die die Tatsache angeht (quid facti), und indem sie von beiden Beweis fordern so nennen sie den ersteren, der die Befugnis, oder auch den Rechtsanspruch dartun soll, die Deduktion» (KrV, Bl 16).

It is important to see that answers to both questions require some kind of proof («indem sie von beiden Beweis fordern») legitimizing a certain competence to use (philosophical) concepts. The problem Kant faces here, is the case in which there is no legal title to be found in experience, since the concepts in question are «marked out for pure a priori employment, in complete independence of all experience; and their right to be so employed always demands a deduction.» (B 117). In line with Kant's project of transcendental philosophy the quaestio iuris as to pure concepts may be paraphrased as the search not just for any legitimization, but for the ground for legitimization «überhaupt». The search carried out in the transcendental deduction results in this very concise dictum about the «I think»:

«Das: Ich denke, muß alle meine Vorstellungen begleiten können» (B131).

The representation «I think» itself is an act of spontaneity and is also called «pure apperception», «original apperception» or «transcendental unity of self-consciousness» (B132).

Kaulbach suggested a specific reading of this «I think» in relation to «die juridische Physiognomic der theoretischen Vernunft» (263). Instances of juridical discourse, like this one, do not just have a «metaphorical function». Kaulbach assumes: «daß sich in ihnen vielmehr die Figuren gedanklichen Handelns darstellen, die den tranzendental-philosophischen Ansatz von seinem Ursprung her eigentümlich sind.» (264). Both theoretical and practical reason share a «common root» which may serve as the reason why examples from the field of practical reason (i.e. the legal metaphor) perform a function at the level of theoretical reason.

This «common root» or «eine gemeinsame und identische Wurzel von Erkenntnisvernunft und Rechtsvernunft» (265), which Kaulbach also calls «Konstellation» (269), «Grundverhältnis» (277) or «transzendentaljuridische Wurzel» (278), is described as:

«die transzendentaljuridische Konstellation zwischen der Person als dem Herrn der Sache und dieser als den Träger von Brauchbarkeit und Verfügbarkeit sowie zwischen den in ihrer Herrschaft über die Sachen einander anerkennenden Personen» (268; cf. 277).

Here «transcendental» means «daß die Konstellation erstens die Bedingung der Möglichkeit für das Recht der Person auf gebrauch der Sache darstellt und daß sie zweitens eine auch in der theoretischen Vernunft eigentümliche Selbstgesetzgebung des Denkens – hier des praktischen Denkens – enschließt» (268). On the one hand Kaulbach describes the implications of this root for Kant's philosophy of right, but he also draws conclusions as regards theoretical reason:

«Das in die theoretische Vernunft eingehende transzendentaljuridische Grundverhältnis erweist meine Stellung als die der Freiheit gegenüber der Gegenständlichkeit der Gegenstände. Erkennbarkeit ist eine Art von theoretischer Verfügbarkeit über die Gegenstände. «Ich denke» setzt nur die Sache in ein transzendentales Verhältnis, damit die Ausübung der Erkenntnishandlungen an ihr möglich wird.» (279).

He also draws explicit comparison between «I want» in practical philosophy and «I think» («'ich denke', welches in der theoretischen Philosophic dem praktische 'Ich will' entspricht» (278; cf. 280)). In addition he states that «I think» also represents some kind of decision, by means of which I declare representations of the object (Gegenstand) to be mine.

In the sense of Kaulbach's analysis «I think» is the decision which makes possible the theoretical availability of objects, which is based on the transcendental-juridical root and which justifies the applicability of the categories that constitute specific knowledge of objects (279f.).

Kaulbach's reconstruction of the function of «I think» seems to be confirmed in a more recent article by Henrich on Kant's notion of a deduction[14]. In this article Henrich points to the historical background that enables us to determine the function of the deduction in KrV. Deductions or the use of deduction writings («Deduk-

tionsschriften») were common juridical practice in The Holy Roman Empire between the fourteenth and nineteenth century. They served to justify claims which were the object of legal controversies. Apart from these deduction writings there were also methodological studies on the best way to write a deduction. Henrich (33f.) compares Kant's composition of the transcendental deduction to these writings.

Theorists of natural law (Wolff, Pütter, Achenwall) distinguished innate (absolute) rights from acquired (hypothetical) rights which originate in a fact or action, and they maintained that only in the case of the latter a deduction could be provided. This deduction justifies the claim to the possession or usage of something by tracing it back to its origin. Thus, the argumentative structure of a deduction would have to relate a claim to an original fact, so as to make clear the legitimacy of the claim (cf. KrV, B285f.).

Henrich (35-37,39f.) links this methodological notion and the argumentative structure to the epistemological notion of the origin of knowledge in KrV. The deduction of the pure concepts of understanding is intended to discover an origin which would account for the legitimacy of their usage. This factual origin is the «I think»: «the unity of apperception is the origin of the system of the categories and the point of departure for the deduction of the legitimacy of their usage.» (Henrich 45f.).

Although the «I think» is a fact[15], it is not to be confused with the fact of an empirical deduction and the quaestio facti. An original fact grounds legitimacy[16], whereas an approach in accordance with the Quid facti? merely yields a physiology of understanding (Henrich 35-37). There is yet another sense of the unity of apperception which makes it possible to link the methodological notion of a deduction to other philosophical deductions carried out by Kant, especially the deduction of the concepts «space» and «time» and the deduction of the second Critique (Henrich 30, 37,45). Because this «I think» in the second sense has the property of accompanying every case of reflexion, it holds a central position in our system of knowledge, a position which may count as «original» with respect to the various fields which are subject to reflexion.

Henrich's analysis of «reflexion» (42-46) supports his claim of the general methodological role of a deduction.

Apart from the phrase quoted above (§ 1) in which Henrich expresses the relevance of the theory of legal disputes for KrV, he also refers to the methodological importance «for which Kant refers to the juridical paradigm, and [the reasons] why he could and did structure the first Critique in its entirety around constant reference to juridical procedures.» (Henrich 32).

4. Transcendental Judgment

To my knowledge there is no piece of literature On Kant's work explicitly dealing with the second book of the Transcendental Analytic, viz. The Transcendental Doctrine of Judgment (KrV, B 169-349), in the context of the legal metaphor. However, if this metaphor is the main methodological paradigm and argumentative structure of KrV, the introduction and first chapter of this book (KrV, B 171-187) seem to be especially crucial for a coherent reading of KrV in terms of the legal metaphor. Transcendental judgment serves a particular indispensable function within KrV.

The proper function of judgment is decribed in relation to the function of understanding:

«Wenn der Verstand überhaupt als das Vermögen der Regein erklärt wird, so ist Urteilskraft das Vermögen unter Regeln zu subsumieren, d.i. zu unterscheiden, ob etwas unter einer gegebenen Regel (casus datae legis) stehe, oder nicht.» (KrV, B171).

If we regard the concepts of understanding as «rules» transcendental judgment has to distinguish whether empirical intuitions stand under the categories or not. Adequate subsumption under the categories is also called the application of categories to appearances (KrV, B 176f.) and the subsumption of an object under a concept (KrV, B 176). Transcendental judgment itself stands under no rule, but it is a «particular talent which can be practised only» (KrV, B172). However, there are particular conditions making the proper employment of judgment possible. These conditions are transcendental schemata, which serve as justifications for the application of categories. Thus Kant secures the legitimacy (cf. «befugt sein» in

KrV, B 188) of the use of transcendental judgment like he did in the case of the transcendental deduction.

The function of judgment corresponds to one of the most important activities of a judge, viz. determining whether, and if so, to what extent a given case stands under a certain rule or law[17]. Both activities consist in the application of rules. Kant refers to juridical terminology (casus datae legis, KrV, B 171) and mentions the example of a judge («Richter», KrV, B 173)[18]. In both cases this application of rules itself is not guided by rules. Therefore, transcendental judgment cannot be taught; it can only be practised. The result of a correct application of judgment is what Kant calls an example, or concrete representation of something abstract. The great benefit of examples or exemplary applications is the fact that they sharpen the faculty of judgment (KrV, B173f.). In the case of jurisdiction this function of examples can be compared to the function of jurisprudence. Because there are no general rules to guide the application of judgment – in fact, that is just what it means to employ or to pass judgment – schemata, examples or jurisprudence serve as guidelines. They also serve an educational purpose to «train» the exercise of judgment: «Dieses ist auch der einige und große Nutzen der Beispiele: daß sie die Urteilskraft schärfen», and «So sind Beispiele der Gängelwagen der Urteilskraft»[19].

Thus we can see that knowledge by analogy (see § 2 above) is in fact the result of the application of judgment and at the same time the concrete example (the legal metaphor) of something abstract (pure reason) serving to instruct and train judgment, a faculty which is indispensable in any exercise of the faculty of knowledge in general. If the legal metaphor is an appropriate image to represent the critique of pure reason, thereby compensating the lack of any other means to represent or express what this critique is about, it would be a token of Kant's own «mature judgment» (but then again, the rules to determine whether this is the caseare not available). The legal metaphor, if consistently developed in the rest of KrV as an instructive example for judgment, would also provide a framework to determine what rules could qualify as valid rules where the rules governing experience are no longer applicable, i.e as soon as the field of possible experience is transcended (see § 6-8 below)[20].

5. An example of judgment: ius praetensum in R3357

The claim in the previous section about the important role of judgement can be supported by an elaborate article by Hans Kiefner. Kiefner (317-318) maintains that Kant's use of metaphors taken from civil law is not insignificant because his knowledge of contemporary Prussian civil law («Zivilrecht») and «Zivilproceßrecht» was quite precise and sophisticated and he applied this knowledge in a philosophical context. This thesis is founded upon an extensive analysis of Reflexion 3357 (AA XVI, 797) which is compared to juridical practices in Kant's time (Kiefner 289f., 294-298, 304f.). Based on this comparison Kiefner reconstructs a fictitious case which, in its basic features, resembles the original one Kant is presumably referring to in R3357 (Kiefner 299)[21].

For our present purpose two specific features of this Reflexion need our attention here, for, according to Kant, the judge performs two distinct activities: «Der Richter soll 1. als inquirent analytisch verfahren... 2. als Richter muß er synthetisch verfahren» (R3357). Both activities, however, require judgment in the sense of subsumption or comparison of the aspects involved. In this case these aspects are: the law or right that has been appealed to, and the facts relevant to this law. On this basis the judge can (synthetically) make a decision.

As to the first, analytical activity of the judge, Kiefner maintains that this is in fact an answer to a quaestio facti (300). In order to determine what is the case (the relevant facts) it should be clear to the judge what is required to make up a relevant whole of facts given the law under consideration (ius praetensum). In other words, he has to determine what has to be presupposed in order to make up a case at all, given some law: «Also muß er doch das ius praetensum vorher erwägen, um a priori zu bestimmen, was dazu erforderlich ist.... Dies muß vorher allgemein beym Richter ausgemacht seyn» (R3357)[22]. Thus, the judge has to determine which aspects of the law in general are relevant in the present case. These relevant aspects are called momenta in iure, constituting the juridical «fact» («der rechtliche/gesetzliche Tatbestand», Kiefner 302, 313). According to Kiefner (313f.) this is the first application of judgment.

In view of these momenta in iure the parties involved have to supply factual evidence in support of their claims and the judge has to examine to what extent these momenta in facto are relevant to the momenta in iure, i.e. with regard to all possible facts (varia facti) he has to determine which facts matter in the present case. Therefore, to every momentum in iure there has to be a corresponding momentum in facto. This requires subsumption of momenta facti under momenta in iure in view of all varia facti (Kiefner 302f., 305f.). Thus the judge determines what is the case: «Unter den Tatbestand ist dann der konkrete Sachverhalt zu subsumieren, der sich aus den 'momenta in facto' zusammensetzt. Genauer: Für jedes momentum in iure muß sich ein ihm entsprechendes momentum in facto feststellen lassen.» (302f.). Taken together the momenta in facto constitute an idea facti, a picture or representation of what is the case (Kiefher 309,313).

Thus far the method of inquiry has been analytical. Now that it is clear which law applies and what is the case, the judge proceeds to a synthetic activity: passing judgment, i.e. determining the concrete consequences of the application of the law (in general) to this specific case (idea facti), which again requires subsumption (Kiefner 307f., 314-317). The proper function of judgment is thus exemplified in the task of a judge as described in R3357 and as summarised by Kiefner as the mediation between what is empirical and right (313f.).

On the basis of Kiefner's reconstruction and his analysis of R 3357 he concludes that Kant knew very well what he was talking about when he referred to the judge and the lawsuit. Hence, one should not assume «dass es sich bei der Verwendung zivilprozessualer Vorstellungen in nicht rechtsphilsophischen Texten nur um wenig aussagekraftige Metaphern handelt» (Kiefner 317). Kant's knowledge of juridical practices was such that his references should not be regarded as purely accidental or «just» metaphorical.

6. Transcendental Dialectic – Paralogisms

Two basic elements have been dealt with in our preceding examination of the legal metaphor in the Transcendental analytic: 1)

the transcendental deduction of the categories and 2) their application by means of transcendental judgment. As far as these elements serve to justify claims of knowledge they can only do so if «knowledge» is understood in the sense of «experience». The categories are constitutive to experience. They are the rules that all rational endeavours have to comply with if claims of knowledge are to be valid. Notwithstanding this example of «philosophical legislation» (KrV, B867) or «constitution» (Stenzler DI-iii) reason has a natural disposition to break these laws and to extend knowledge beyond the limits of (possible) experience. This dispositon is called «metaphysics» (KrV, Avii, B21). Especially claims regarding the objects of what is called the metaphysica specialis, the soul, the world, and the existence of God, will thus inevitably lead to dialectical illusions, i.e. paralogisms, antinomy and proofs of the existence of God respectively. The Transcendental Dialectic of KrV is aimed at discovering the illusory features of this kind of metaphysical knowledge.

While exposing the dialectic of pure reason Kant himself cannot fall back on a pretension of having better knowledge of the soul, the world and God's existence, for any claim about these objects is transcendent and its validity can never be determined. Kant's purpose, therefore, is to discredit the claims of rational psychology, cosmology and theology as far as they intend to represent (theoretical) knowledge. To do so, he employs a specific argumentative strategy to examine these claims. The importance of the legal metaphor in the Transcendental Dialectic consists in the fact that it supplies typically juridical modes of argumentation which are used in this strategy. Kant's arguments aim to assess the validity of the proofs supporting the claims of the metaphysica specialis in line with the framework of juridical argumentation. We will examine this in case of the paralogisms (this section), antinomy (§ 7) and proofs of the existence of God (§8).

As to the paralogisms chapter one should carefully distinguish the A-version (A341-405) from the B-version (B399-432)[23]. The beginning of the chapter (A341-348) remained unaltered in the second edition (B399-406). The remaining 58 pages of the A-version were cut back to 26 pages (B406-432).

The A-version presents each paralogism and its critical evaluation according to the table of the categories (A 344f. = B402f, 406). The end of the chapter is quite an extensive «Consideration of Pure Psychology as a whole, in view of these Paralogisms» (A381-405). Basically, all four critical evaluations of the paralogisms maintain that the «I» as a thinking being cannot be dealt with in the way sensual objects and concepts are dealt with in experience. Any such attempt in rational psychology to extend knowledge will necessarily fail, since the conditions of any possible experience are transcended[24]. Apart from these considerations concerning content Kant makes formal or methodological remarks in the extensive «Consideration of Pure Psychology...». Only «the sobriety of a critique, at once strict and just» will prevent reason from psychological illusions (A 395). «Critique» or «critical evaluation» is described in A 388: «der kritische [Einwurf], der wider den Beweis eines Satzes gerichtet ist.», and: «der kritische Einwurf, weil er den Satz in seinem Werte oder Unwerte unangetastet läßt, und nur den Beweis anficht, bedarf gar nicht, den Gegenstand besser zu kennen, oder sich einer besseren Kenntnis desselben anzumaßen; er zeigt nur, daß die Behauptung grundlos, nicht, daß sie unrichtig sei»[25].

Kant's awareness of the methodological strength of critique in this sense is, in my opinion, the most important reason for the substantial reduction of the paralogisms chapter in the B-edition. For, if we assume Kant had written down the paralogisms chapter in the A-version before he started writing the texts of the following chapters, which clearly elaborate on this conception of critique and practical interest, his work on the B-version of the paralogisms could benefit a great deal from the methodology of critical objections, especially insofar as they are related to a practical interest (cf. esp. B503, B825ff.). This is exactly what seems to be the case, for not only did Kant restrict his considerations concerning content to a brief summary (B406-413) and a refutation of Mendelssohn's proof (B413-422), but he also phrased his methodological remarks in closer connection to the transcendental doctrine of methods (§ 9 below). For example, he refers to rational psychology as a discipline, setting limits to speculative reason in view of the practical employment of reason (B421, B430f.; cf. B769) and he mentions

the practical advantage of critique (B424f.). My claim in this respect would be that the B-version could be cut down to more than half the size, since the function of critical objections (in relation to practical employment) could be emphasised more easily, because it is dealt with more extensively in following parts of KrV. Although considerations concerning the philosophical content of the paralogisms did matter, they did not deserve the attention drawn to them in the A-version and so the argumentative strategy, which had already been prepared in the A-version, could be stressed at the expense of qualifications regarding the contents. Emphasis on the mode of argumentation confirms an evaluation of Kant's arguments in terms of the legal metaphor, for, as we shall see in § 8, the method of critical objection (as presented in the chapter on the discipline of pure reason) is typically juridical.

7. Transcendental Dialectic – Antinomy

The chapter on the antinomy of pure reason represents the clearest and most important example of the legal metaphor. In fact, the specific metaphor occurring in this chapter is quite detailed and due to its characteristics it may be labelled «the image of a tribunal» corresponding to Ishikawa's German notion of «das Gerichtshof-Modell». This image constitutes the core of the legal metaphor. The occurrence of this metaphor at this point in the KrV need not come as a surprise. Transcendental analytic provided for the basic (a priori) concepts and principles of the legislation of reason (B350), on which basis an assessment of the validity and legitimacy of the pretensions of reason is possible. Once legislation has taken place reason is able to employ a judiciary function. Both these perspectives on reason are present in the antinomy chapter, but attention shall be focused on the judiciary function.

The presence of many references to juridical discourse point to an increasing significance of the legal metaphor: granting a fair hearing and doing justice («Gehör und Gerechtigkeit») to the arguments for the counter-position (KrV, B434); «Verlegenheit der Richter bei Rechtshändeln» (B452); legislation (ib.); «Advokatenbeweis» (B458; cf. R3474); pretensions and legal claims (B490f.);

contested rights (B493); the jury in a trial (B504); knowledge of right and wrong (B504f); tribunal of reason (B529); rightly («mit Recht») (B529, 539); pretension of reason and the judge (B558).

A more specific indication for the image of the tribunal is the description of the antinomy itself: the conflict of (the laws of pure) reason (B434f.)[26]. This is also called «antithetic» (B433) and «the conflict of the doctrines of seemingly dogmatic knowledge (thesis cum antithesi) in which no one assertion can establish superiority over another.» (B448). Kant specifies three options to avoid or solve the antinomy: 1) dogmatic assertion (like the thesis in either antinomy) of either thesis or antithesis, 2) sceptical denial (antithesis) and, eventually, refusal to take the antinomy seriously resulting in indifference with regard to its outcome, and 3) critical evaluation. The first two options mark the «death of sound philosophy» (B434)[27], since they are not compatible with the purpose and need of reason, i.e. unity, and the application of the laws of reason. Kant propagates the third option of critical evaluation (Axff.), like he had already done in the paralogisms chapter: «The critical path alone» (B884) is «a path to certainty» (B449) that brings reason and its conflict to a conclusion.

In the case of the antinomy the method of evaluation is described as the sceptical method, which is altogether very different from scepticism (B451, 514, 79 If., 797) and the sceptical refusal mentioned above.

«Diese Methode, einem Streite der Behauptungen zuzusehen, oder vielmehr ihn selbst ze veranlassen,..., kann man die skeptische Methode nennen. Sie ist vom Skeptizismus gänzlich unterschieden.... Denn die skeptische Methode geht auf Gewißheit, dadurch, daß sie, in einem solchen, auf beide Seiten redlichgemeinten und mit Verstande geführten Streit, den Punkt des Mißverständnisses zu entdecken sucht, um, wie weise Gesetzgeber tun, aus der Verlegenheit der Richter bei Rechtshändeln für sich selbst Belehrung... zu ziehen.» (KrV, B451f.).

From this quotation it is clear that in Kant's own opinion antinomy and the sceptical method are linked to juridical practice, which is expressed by the references to legislators, judges, antinomy and nomothetic (KrV, B452). According to Ishikawa (1990,9-11) sceptical method is defined in juridical terms, which led Kant to identify the antinomy with a conflict in court. Both the image of the tribunal

and the sceptical method are characteristic of Kant's philosophy throughout its development (Ishikawa, 16-26; cf. Stenzler). However, sceptical method and critical evaluation should not be identified tout court. Such an identification would neglect specific features of each. Sceptical method as a mode of investigation is applied within a judiciary context to figure out what laws apply and to what extent they apply or fail to apply. Critical examination and the formulation of critical judgment resulting from it are carried out in view of legislation (of reason). This double perspective is also offered in the above quotation. For both these perspectives, however, the legal metaphor provides the comprehensive framework.

Application of the sceptical method is possible only if there is a third position apart from the two alternatives offered in each antinomy (thesis or antithesis)[28]. In view of these alternatives there has to be an impartial position from which the sceptical method may be applied. Secondly, there has to be a typical kind of judgment fit to express the results of the sceptical method from an impartial standpoint. This kind of judgment is called «infinite judgment». Impartiality and infinite judgment should be understood in terms of the legal metaphor.

For a start, it is necessary to consider the antinomy from an impartial viewpoint since the common procedure to construct proofs in support of either thesis or antithesis is not sufficient to come to a conclusive solution. We need another perspective because dogmatic assertions and sceptic denials regarding the cosmological ideas leave the matter unsettled. In principle, the possibility of impartiality with respect to the antinomy is based on the legislation of reason as presented in the Transcendental Analytic. This legislation provides the point of reference to determine the validity of (dogmatic or sceptic) claims of cosmological knowledge. Thus, the impartial position has been made possible by critique, which, on its turn, enables Kant to adopt the sceptical method to assess the validity of dogmatic and sceptic claims regarding cosmological ideas and to present the results according to the particular lay-out of the antinomy (KrV, B454-489).

This critical impartiality is determined in terms of the legal metaphor. It is the position of an «impartial umpire» (KrV, B451;

cf. KrV, B503f.). Kant also appeals to this kind of impartiality on the part of his readers in sofar as they are allies, i.e. insofar as they subscribe to scientific metaphysicsand he calls them «judges» (KrV, Axv, xxi; Bxl-xli, xliv). The link between impartiality and the legal metaphor is more clearly expressed in Kant's comparisons to political ideas. Legislation in the case of reason is compared to political legislation marking the transition from a state of nature to the status civilis. Kant explicitly mentions this comparison KrV, B779f: «Man kann die Kritik der reinen Vernunft als den wahren Gerichtshof für alle Streitigkeiten derselben ansehen... Ohne dieselbe ist die Vernunft gleichsam im Stande der Natur...». Antinomy offers an example of reason in its natural state. Kant also adopts the image of chivalrous fights (KrV, B450f.) and the image of (the history of) metaphysics as the battle-field of endless controversies (KrV, Avii-x).

Legislation puts an end to ongoing strugles and controversies and it «verschafft uns die Ruhe eines gesetzlichen Zustandes» (KrV, B780). In the case of reason this state of rest[29] is called «indifference». Reason is indifferent with respect to what is at stake in the antinomy so long as thesis and antithesis claim theoretical knowledge. Its purpose is not to assign theoretical validity but to discover the source of dialectical illusion. On the other hand, an impartial approach seems impossible because reason, claiming impartiality, is not indifferent by nature: «Es ist namlich umsonst, Gleichgültigkeit in Ansehung solcher Nachforschungen [sc. in metaphysics] erkünstein zu wollen, deren Gegenstand der menschlichen Natur nicht gleichgültig sein kann.» (KrV, Ax). Again, in the antinomy chapter Kant states that there is no excuse for avoiding the antinomy (e.g. by claiming sceptic ignorance); reason is inevitably forced to solve the problem (KrV, B505f.). Therefore, Kant determines «the interest of reason» immediately after his presentation of the antinomy. Reason has specific interests which are quite demanding. There is a practical interest (KrV, B492, 496, 769, 772, 832) and an architectonic interest (KrV, B502f). Moreover, the thesis of every antinomical conflict represents these interests (KrV, B495, 503). The interest of reason seems to endanger a succesful appeal to impartiality. In other words, Kant's impartial approach by

means of the sceptical method depends on the possibility to formulate a critical alternative to the dialectical illusion of the antinomy which is compatible to both legislation and the interest of reason. This brings us to the second point mentioned above; infinite judgment.

After the presentation of the antinomy, and the determination of the interest of reason, Kant stresses once more the necessity to come to a solution (KrV, B504-512) and summarises the cosmological questions in a sceptical presentation of the matter. Having done so, Kant is able to come to a critical conclusion with the help of the principles of transcendental idealism (the distinction between appearance and thing in itself, KrV, B518-525; cf. Ishikawa (1990), 101-110). Like a juridical sentence this critical conclusion, or rather «decision»[30], settles the conflict of reason. This decision is reached with the help of an analysis of the (first) antinomy in terms of an infinite judgment and it is expressed in the form of an infinite judgment. Infinite judgment, which had already been introduced at the begining of Transcendental Logic (KrV, B95-98) is an affirmative judgment containing a negative predicate, as in Kant's example «The soul is non-mortal.». Because of this negative predicate infinite judgment cannot be reduced to a simple affirmation, nor to a negation, since the latter would require a negative copula. Therefore, infinite judgment offers the possibility of expressing something different than simple affirmation or negation. This specific characteristic makes it possible to formulate an alternative to the thesis (affirmation) and the antithesis (negation) of the antinomy. This alternative reflects impartiality and indifference regarding the antinomy.

The contribution of infinite judgment to achieving this result is twofold. Firstly, Kant employs an infinite reading of the predicate «finite» («endlich») in the sense of «non-infinite» («nichtunendlich») (KrV, B532). By this application of infinite judgment Kant is able to discover the source of dialectical illusion in the first antinomy and to unmask the first antinomy as a dialectical opposition (cf. Ishikawa, o.c., 89-100). Secondly, the sentence expressing the critical decision about this dialectical opposition also takes the form of an infinite judgment, since it declares both statements in the (first

antinomical) opposition to be untrue[31]. Ishikawa regards this function of infinite judgment as the most significant example of the presence and importance of the image of the tribunal:

«In diesem Sinne kann man zu Recht sagen, daB es das unendliche Urteil ist, das die TiefenscMcht des ganzen Prozesses der Vemunftkritik, insbesondere die der Antinomienlehre, beherrscht. Jene «hohere und richterliche Vemunft» kann deswegen mit Recht als der Trager des unendlichen Urteils, ja sogar als dieses Urteilsmoment selbst, charakterisiert werden in dem Sinne, daB sie bei der Prasentation und der Priifung der antinomic sich aufden dritten Standort setzt und am Ende ein drittes Urteil fallt.» (Ishikawa, o.c., 82).

In addition to this presentation, which is primarily based on Ishikawa's study, one could add yet another consideration regarding infinite judgment in terms of the legal metaphor. In fact, infinite judgment creates the possibility of making assertions which are neither purely affirmative, nor negative. Against the background of the Transcendental Analytic one could say that neither the legitimacy (validity), nor the illegitimacy of an infinite judgment can be proven, which makes this kind of judgment not-invalid (understood in an infinite sense). In a juridical context it is not uncommon to refer actions or statements in terms of non-invalidity, or non-illegitimacy. This does not imply, however, any validity or legitimacy. As shall be indicated in § 9 below, Kant employs this argumentative strategy for practical purposes, referring to the legal metaphor explicitly.

8. Transcendental Dialectic – Proofs of the Existence of God

There are no explicit references to the legal metaphor in commentaries and interpetations of the third chapter of the Transcendental Dialectic, «The Ideal of Pure Reason»[32]. However, the terminology of the legal metaphor turns up again at the beginning and towards the end of this chapter and also in the appendix to the Transcendental Dialectic[33]. Tarbet (257) made this observation about the position of metaphors in general.

As to the ontological, cosmological and physico-theological proofs of the existence of God (KrV, B619), Kant concludes that

any such proof is impossible, since speculative reason is not fit to claim and justify knowledge about the existence of things transcending the possibility of experience. His arguments are in line with the preceding cases of dialectical illusions.

The reason why juridical terminology turns up again at the end of this chapter and the Transcendental Dialectic as a whole, is that it supplies the appropriate terms to sum up the main result of (this part of) the Transcendental Dialectic in line with the general framework of the legal metaphor. Although knowledge of a highest being and proofs of its existence are not possible, transcendental theology may be employed negatively, i.e. to prevent speculative reason from transcending experience, while at the same time it is clear that there is no proof to the contrary (the non-existence of God) either. This negative employment is called the permanent censorship of our reason. Lack of proof to the contrary causes Kant to speak of the regulative use of ideas, as opposed to the constitutive use leading to dialectical situations, in the concluding part of the Dialectic on the final purpose of the natural dialectic. The very last paragraph of this part of KrV provides a short summary of the results thus far. The investigation of the dialectical illusion is called a «laborious interrogation of all dialectical witnesses» and a «lawsuit», the records of which are to be deposited in the archives of human reason (KrV, B73 If.).

9. Transcendental Doctrine of Methods

In this part of KrV the notion of a tribunal («Gerichtshof») occurs three times (KrV, B768, 779, 815). Discussion of these passages in connection with the legal metaphor is absent in secondary literature. Perhaps this is due to a relative neglect of this part of KrV in Kant scholarship[34], but there is good reason not only to stress the importance of this part of KrV in regard to the project of critique, but also to regard the doctrine of methods as crucial as far as the legal metaphor is concerned. In the doctrine of methods the function and significance of the legal metaphor reach their full extent, esp. as regards the tribunal. I will not examine this point in extenso, but I will restrict this section to a presentation of the main points.

In the introduction the transcendental doctrine of methods is defined as «die Bestimmung der formalen Bedingungen eines vollständigen Systems der reinen Vernunft» (KrV, B735f.) and Kant compares it to what is called «practical logic» in the schools. This doctrine comprises a discipline, a canon, an architectonic and a history of pure reason (ib.). In KrV the former two constitute the major part of the transcendental doctrine of methods (sc. B736-859); only 24 pages deal with the latter two. The chapters on discipline and canon deal with two points that have been mentioned above: the negative function of critique (discipline) and the practical relevance (canon). We will concentrate on the first of these.

Discipline is «the compulsion, by which the constant tendency to disobey certain rules is restrained and finally extirpated» (KrV, B737). Given the natural tendency of reason to transcend the limits of possible experience, it is in need of negative instruction preventing itself from errors. As such it is the «natural» and more systematic continuation of censure (safeguarding us from particular errors) and critique (ridding us of their causes, as Kant did in the three case studies of the Transcendental Dialectic) (KrV, B739). If we regard the Transcendental Analytic as the legislation of reason (pure understanding), discipline is a negative legislation providing systematic instructions against systematic errors (ib.). Thus, discipline of pure reason serves formal and methodological purposes regarding the way reason should be employed (discipline regarding objects is contained in the Transcendental Dialectic); it supplies «negative instruction»(KrV, B737) and «admonitory negative teaching» (KrV, B740)[35]. Kant distinguishes between discipline of pure reason in its dogmatical, polemical, hypothetical and demonstrative employment.

Discipline in respect of the dogmatical employment of reason is intended to show the inapplicability of the mathematical method in philosophy. Discipline with regard to hypotheses is to prevent us from improper use of hypotheses (i.e. if they are not part of the practical employment of reason, KrV, B804). As to the discipline of pure reason with regard to its proofs, Kant directly refers to the legal metaphor: «Ein jeder muß seine Sache vermittelst eines durch transzendentale Deduktion der Beweisgründe geführten rechtlichen Beweises, d.i. direkt, führen» (KrV, B822). The part on discipline

regarding the polemical employment of reason, however, deserves more attention, for here the metaphor is present right from the beginning and the relevance of this section stretches over other sections as well (it is used in KrV, B424, cf. § 6, and in KrV, B804-810).

The possibility of the polemical employment of reason may come as a surprise to any reader of KrV who is familiar with the results achieved sofar. In the course of the critique legislation, application of the rules, and negative legislation have been provided for in order to render impossible any situation that would be polemical, i.e. a situation where opposing parties put forward claims, each of which denies the claim of the other. In fact, Kant states: «Auf solche Weise gibt es eigentlich gar keine Antithetik der reinen Vernunft» (KrV, B771), and: «There is [...] no polemic in the field of pure reason.» (KrV, B784). By now, it should be clear that the critique of pure reason supplies the means for deciding about claims of knowledge in every possible case of conflict: «Man kann die Kritik der reinen Vernunft als den wahren Gerichtshof für alle Streitigkeiten derselben ansehen» (KrV, B779). This reference to the tribunal is part of a larger passage where Kant compares the function critique to political legislation, marking the transition from a status naturalis into a status civilis as described by Hobbes. Conflicts in the state of nature are wars, which can only be ended by victory of one party over another leaving both in an insecure state of peace. Conflicts in a status civilis have to be submitted to the tribunal and then the conflict has the form of a legal process, which ends in a judicial sentence (making possible perpetual peace, KrV, B779f.).

Subjection to the jurisdiction of the tribunal of pure reason therfore implies the impossibility of polemic conflicts. Yet, Kant describes a kind of polemical employment of reason which is still open for consideration. This description explores the meaning of the legal metaphor to its furthest reaches. By «polemical employment of pure reason» Kant means: «die Verteidigung ihrer Sätze gegen die dogmatische Verneinungen derselben.» (KrV, B767f.). This defense is carried out by pointing out the fact that any such dogmatic denial cannot be demonstrated. On the other hand there is

also no proof available in support of its own assertions, which are, presumably, dogmatic affirmations (cf. KrV, B767,769). But this lack of proof does not affect any affirmative claim as long as it is made in view of the (practical) interest of reason (KrV, B769f., 772; cf. § 6 and note 24 above). If these affirmative claims were speculative, they would have to be repudiated right away, just like dogmatically negative claims. Hence, reason is employed polemically in defense of dogmatic assertions with respect to the practical interest, if it points to the fact that the opposite denials are indemonstrable. As long as (or rather: precisely because of the fact that) there is no proof to the contrary, reason is entitled to assert its practical-dogmatic standpoint; the burden of proof rests with the party challenging this position: «Der Gegner soll also beweisen.» (KrV, B805). This kind of justification in support of a claim is characterised as «kat' anthroopon», and is further described in juridical terms: «eine Rechtfertigung κατ' ανθρωπου [...], die wider alle Beeintrachtigung sichert, und ein titulierten Besitz verschafft» (KrV, B767)[36]. Kant mentions similar justifications in case of the discipline with regard to hypotheses (KrV, B804-806; cf. MS, AA VI, 354) summarising the main point in the phrase «melior est conditio possidentis»[37]. In §6 above we pointed to a similar line of argument.

If we regard legislation, negative legislation and the application of both to be aspects proper to the legal metaphor, polemical employment seems to take advantage of the possibility of taking a position which is incompatible neither with legislation, nor with negative legislation. In its polemical employment reason tries to make the most of the opportunity to do what is allowed, i.e. what is neither prohibited, nor obligatory. This kind of employment, however, extends the meaning of the legal metaphor. It is no longer the legal metaphor, but also the political connotation that becomes relevant here[38]. This shift of perspective is introduced by Kant when he states:

«Ganz anders ist es bewand, wenn sie [die reine Vernunft] es nicht mit der Zensur des Richters, sondern den ansprüchen ihres Mitbürgers zu tun hat, und sich dagegen bloß verteidigen soll» (KrV, B767).

While the legal metaphor in its strict sense is limited to (negative) legislation polemical employment transcends these limits. This, however, does not diminish the importance of the metaphor. It rather stresses its function once more, since polemic in this sense can only be understood against the political background Kant provides. This political background in its turn, only makes sense if it is founded upon legislation provided for in terms of the legal metaphor. Kant made this clear in his comparison with the Hobbesian state of nature. Therefore, legal discourse remains present in this part of KrV. If we were to characterise the general background from which the legal metaphor derives its expressiveness, we should say that in the case of the transcendental doctrine of methods it is civil law which provides the context to deal with conflicts (cf. Kiefner 293). In the case of the transcendental doctrine of elements, on the other hand, it is rather criminal law which provides the framework to employ the legal metaphor in order to describe the purifying, corrective and censoring functions of critique.

10. Conclusion

The discussion and detailed evaluation of literature on specific occurrences of the legal metaphor and the additional presentation of neglected but characterstic aspects of this metaphor in KrV show that the legal metaphor is indeed a pervasive and predominant metaphor in KrV. Once this comprehensive overview has been reconstructed, it is clear that the most significant function of the metaphor is to determine the argumentative or methodological structure of KrV (Tarbet, Henrich). This is no superficial similarity, since influence from juridical discourse is demonstrable at highly specific levels, viz. in the transcendental deduction (Henrich), the solution to the antinomy (Ishikawa). There is no reason to assume that Kant dealt with juridical metaphors in a general sense only, since his knowledge of specific juridical procedures was highly sophisticated (Kiefner). Kant knew what he was talking about. The possibilities of this argumentative strategy are put to the utmost test in the Transcendental Doctrine of Methods.

Kant's own views on the relation between concept and intuition and the function of analogy account for the necessary predominance of the metaphor. It completes the Critique. Without it, Kant would not have succeeded in complying with his own standard of philosophical clearness. Due to a consequent application of the metaphor, Kant is able to develop his critical project at points where other (conceptual) means are not available. By employing the metaphor he puts into practice the results of his theoretical endeavours thereby creating some sort of «strange loop», since a meaningful application of the metaphor would require the results of critique which could only have been achieved with the help of a persistent application of the metaphor in the first place. Therefore, the relation between the metaphor and KrV is twofold: on the one hand the metaphor serves to make our concept of pure reason sensible, while on the other hand the critique of pure reason serves to make our intuition intelligible. If meaning and function of the metaphor are understood in this sense, one could also counter the common objection of Hegel and others about the uncritical and therefore insufficient basic assumption of KrV, viz. insofar as the text of KrV itself represents knowledge (sc. about pure reason) it is not subjected to the principles of knowledge carefully spelled out in KrV, although it should be so. The metaphor offers a way out of this difficulty, since it represents an image instead of conceptual, discursive knowledge.

Of course, the succes of Kant's strategy should be judged by its result, but apparently, in Kant's view, the use of the legal metaphor would not have been succesful if there was no analogy to begin with. Kant tried his best to draw as many conclusions from this analogy as possible. This significance of the legal metaphor may once more point to the primacy of practical reason in Kantian philosophy, since the legal metaphor derives its meaning from a practical Context and it is applied in view of the practical employment of reason. The legal metaphor is also present in other works of Kant, esp. in the notion of conscience as «Das Bewußtsein eines inneren Gerichtshofes im Menschen ('vor welchem sich seine Gedanken einander verklagen oder entschuldigen')»[39] and in his essay «Über das Mißlingen aller philosophischen Versuche in der Theodicee» which is deliberately composed so as to represent the proceedings

of a trial before the tribunal of reason[40]. Further research into cases like this would clarify the relation between the legal metaphor and practical philosophy and its significance within Kant's philosophy as a whole.

References

Bien, Günther, «Das Geschäft der Philosophie, am Modell des juristischen Prozesses erläutert» in: 9. Deutscher Kongress für Philosophie Düsseldorf 1969. Philosophie und Wissenschaft (hrsg. v. Ludwig Landgrebe), Meisenheim am Glan 1972, 55-77.

Buck, Günther, «Kants Lehre vom Exempel», in: Archiv für Begriffsgeschichte 11 (1967), 148-183.

Burg, Peter, «Der politische Gehalt der 'Kritik der reinen Vernunft'«, in: Akten des 5.

Internationalen Kant-Kongresses Mainz 1981 (Teil 1.2), Bonn 1981, 898-908.

Derrida, Jacques, Du droit la philosophie, Paris 1990.

Doublet, David Roland, Die Vernunft als Rechtsinstanz. Die Kritik der reinen Vernunft als Reflexionsprozeß der Vernunft, Oslo/Paderborn 1989.

Eucken, Rudolf, «Über Bilder und Gleichnisse bei Kant», in: Beiträge zur Einführung in die Geschichte der Philosophie, Leipzig 1906 (zweite umgearbeitete und erweiterte Auflage), 55-82.

Heidemann, Ingeborg, «Die Funktion des Beispieles in der kritischen Philosophie», in: F. Kaulbach and J. Ritter (hrsgs.), Kritik und Metaphysik. Studien Heinz Heimsoeth zum achtzigsten Geburtstag, Berlin 1966, 21-39.

Heimsoeth, Heinz, Transzendental Dialektik. Ein Kommentar zu Kants Kritik der reinen Vernunft (4 Bde.), Berlin/New York 1966, 1967, 1969, 1971.

Henrich, Dieter, «Kant's Notion of a Deduction and the Methodological Background of the First Critique», in: Eckart Förster (ed.), Kant's Transcendental Deductions. The Three Critiques and the Opus postumum, Stanford 1989, 29-46.

Hoenen, Maarten, «Analogie», in: G. Ueding (hrsg.), Historisches Wörterbuch der Rhetorik Band 1, Tübingen 1992, 498-514.

Horstmann, Rolf-Peter, «Kants Paralogismen», in: Kant-Studien 84 (1993), 408-425.

Ishikawa, Fumiyasu, Kants Denken von einem Dritten. Das Gerichtshof-Modell wid das unendliche Urteil in der Antonomienlehre (Studien

zur Philosophie des 18. Jahrhunderts, hrsg. von N. Hinske, Band 2), Frankfurt am Main/Bern/New York/Paris 1990 (diss. Trier 1987).

Ishikawa, Fumiyasu, «Das Gerichtshof-Modell des Gewissens», in: Aufklärung 7 (1992), 43-55. Kang, Young Ahn, Schema and Symbol. A Study in Kant's Doctrine of Schematism, Amsterdam 1985. (diss. VU Amsterdam 1985).

Kaulbach, Friedrich, «Das transzendental-juridische Grundverhältnis im Vernunftbegriff Kants und der Bezug zwischen Recht und Gesellschaft» in: F. Kaulbach und W. Krawietz (hrsgs.),

Recht und Gesellschaft (Festschrift für Helmut Schelsky zum 65. Geburtstag), Berlin 1978, 263-286.

Kiefner, Hans, «Ius praetensum. Preuszisches Zivil- und Zivilprozeszrecht, richterliche Methode und Naturrecht im Spiegel einer Reflexion Kants zur Logik» in: F. Kaulbach und W. Krawietz (hrsgs.), Recht und Gesellschaft (Festschrift für Helmut Schelsky zum 65. Geburt stag), Berlin 1978, 287-318.

Küsters, Gerd-Walter, Kants Rechtsphilosophie (Erträge der Forschung, Band 256), Darmstadt 1988.

Lyotard, Jean-Francois, L' Enthousiasme, Paris 1986.

Nuyen, A. T., «The Kantian Theory of Metaphor», in: Philosophy and Rhetoric 22 (1989), 95-109.

O'Neill, Onora, «Vindicating reason», in: P. Guyer (ed.). The Cambridge companion to Kant, Cambridge 1992, 280-308.

O'Neill, Onora, «Reason and politics in the Kantian enterprise», in: Constructions of Reason. Explorations of Kant's Practical Philosophy, Cambridge 1994 (1989), 3-27.

O'Neill, Onora, «The Power of Example», in: Constructions of Reason. Explorations of Kant's Practical Philosophy, Cambridge 1994 (1989), 165-186.

Saner, Hans, Widerstreit und Einheit. Wege zu Kants politischem Denken (Kants Weg vom Krieg zum Frieden, Band 1), München 1967. (Cf. English translation by E. B. Ashton, Kant's Political Thought. Its Origins and Development, Chicago 1973).

Stenzler, Friedrich, Die Verfassung der Vernunft, Berlin 1984.

Stoddard, Eve W., «Reason on Trial: Legal Metaphors in the Critique of Pure Reason», in: Philosophy and Literature 12(1988), 245-260.

Takeda, Sueo, Kant und das Problem der Analogie. Eine Forschung nach dem Logos der Kantischen Philosophie, Den Haag 1969.

Tarbet, David W., «The Fabric of Metaphor in Kant's Critique of Pure Reason», in: Journal of the History of Philosophy 6 (1968), 257-270.

Tonelli, Giorgio, Kant's Critique of Pure Reason within the Tradition of Modern Logic (Studien und Materalien zur Geschichte der Philosophie Band 37), Hildesheim/Zürich/New York, 1994.

Vaihinger, Hans, Commentar zu Kants Kritik der reinen Vernunft (Band 1), Stuttgart, 1881.

---

[1] Standard references to the second edition (1787) of this work contain the abbreviation "KrV, B" and page number. References to the first edition of 1781 (KrV, A) indicate that the page(s) referred to are not present or were altered in KrV, B. Translations were taken from: Immanuel Kant, Critique of Pure Reason, translated by Norman Kemp Smith, New York 1965 (1929). "KU, B" refers to the second edition of the Kritik der Urteilskraft (1793). "AA" refers to the standard edition of Kant's works, the Akademie-Ausgabe, and is followed by volume and page number. Secondary sources are referred to by the name of their author and are listed alphabetically in the bibliography at the end of this paper.

[2] Kemp Smith offers an inaccurate translation of KrV, Axviii. "Deutlichkeit, durch Anschauungen,..., in concreto" does not mean "concrete illustrations", but rather "clearness in concreto, by means of intuitions".

[3] Recently, the legal metaphor in KrV has also come to the attention of philosophers from outside the field of strict Kant scholarship, cf. Derrida (89-102); Lyotard, part 1.

[4] KrV, B75. Here Kant elaborates on the distinction between intuitive and discursive knowledge, cf. KrV, Axvii-xviii, B33, 74, 92f., 376f.; KU, B256n..

[5] "Die Realität unserer Begriffe darzutun werden immer Anschauungen erfordert." (KU, B254). As to "proving" and "showing", cf. KU, B240.

[6] Several extensive studies deal with the meaning and significance of "example", "symbol" and "schema" in Kant's philosophy, cf. Y. A. Kang; I. Heidemann; G. Buck; and O'Neill ("The Power of Example").

[7] Cf. also: "Vernunftidee ..., welche ... ein Begriff ist, dem keine Anschauung (Vorstellung der Einbildungskraft) adäquat sein kann." (KU, B193) and: "Eine Vernunftidee kann me Erkenntnis werden, weil sie einem Begriff (vom Übersinnlichen) enthält, dem niemals eine Anschauung angemessen gegeben werden kann." (KU, B240), cf. KrV, B384f..

[8] Knowledge by analogy, inference by analogy or analogous reasoning is also a major characteristic of legal reasoning, esp. in the case of the precept to treat similar cases similarly. By means of judgment (see § 4 below)

a judge has to determine whether cases are similar or not, i.e. whether there is an analogy between different cases.

[9] Cf. M. Hoenen.

[10] KrV, B222f. Cf. KU, B448n.. As to "analogy" in KrV, cf. Takeda, 45-97.

[11] The reference to "causality" occurs also in the example of the despotic state and the hand mill: "Denn, zwischen einem despotischen Staate und einer Handmühle ist zwar keine Ähnlichkeit, wohl aber zwischen der Regel, über beide und ihre Kausalität zu reflektieren." (KU, B256; emphasis added). Cf. also KU, B448n.. Kant also describes and exemplifies knowledge by analogy in: Religion innerhalb der Grenzen der bloßen Vernunft, AA VI, 64n.; and in: Preisschrift uber die Fortschritte der Metaphysik, AA XX, 279f..

[12] KrV, B779 (slightly modified), cf. KrV, Axi, B529, 697, 768, 815. Cf. G. Bien on the more general points of agreement between philosophy and a juridical procedure.

[13] Stoddard, 254. Doublet (65) recognizes the importance of juridical discourse in this respect. He assigns judicial authority to reason, but the purpose of his-examination of KrV is rather to determine the viewpoint and process of reflexion, which constitutes this authority, than to pay systematic attention to (the relation between) the legal metaphor and critique.

[14] Cf. Henrich, "Kant's Notion of a Deduction ...". In footnote 4 of this article (p. 252) he makes a quite astonishing remark about an earlier article-which initiated a debate on the transcendental deduction that is still going on: "When I wrote the paper [sc. "The Proof Structure of the Transcendental Deduction" of 1969], I had no idea what a deduction consists in".

[15] "Fact" in the sense of "action" (Henrich l.e., 35), cf. "... ein Actus seiner Selbsttätigkeit.... Man wird hier leicht gewahr, daß diese Handlung ursprünglich einig,... sein müsse" (KrV, B130).

[16] Henrich (36) refers to "original acquisition", cf. Die Metaphysik der Sitten (MS), in: AA VI, 258-260 regarding the distinction facto, pacto, lege.

[17] In fact, determining whether a case stands under a law or not is a kind of preliminary activity before judgment can be passed. It is necessary in order to decide whether a claim should be allowed or declared inadmissable.

[18] Other occurrences of "Richter" are: KrV, Axv, xxi, Bxiii, 27, 452, 558, 617, 767, 780, 817.

[19] KrV, B173f, cf. KrV, B789.

[20] Of course, the relation between judgment, schema and example also points to the relevance of Kant's Kritik der Urteilskraft which deals with reflective judgment (as distinguished from determining judgment in the case of KrV). We need to adopt the standpoint of reflection in order to figure out what rules apply when determining whether Kant adopted the appropriate metaphor. Lyotard (in: L'enthousiasme, part 1) discusses this relevance by pointing to the analogy between critique and politics and by mentioning the tribunal and the judge.

[21] Kiefner's reconstruction need not bother us here. He stresses that it has been "'erfunden". Sie enthält aber in ihrem verfahrens- und materiell-rechtlichen Grundgefüge, auf das allein es ankommt, nichts, was nicht auch Kants Reflexion, im Kontext des zeitgenössischen Zivil- und Zivil-proceßrechts gelesen, enthält." (Kiefner 299).

[22] Still a prior consideration would have had to determine whether the case was admissable or not. Kant was aware of the need to do so in court (cf. R454), but does not deal with it here (Kiefner 301f.).

[23] Detailed discussion of this point is offered by R. P. Horstmann.

[24] However, a crucial reservation should be made here. One is allowed to claim the substantiality of the soul in the idea (as opposed to reality) (KrV, A350f.) in view of practical employment (A365, B166n., B431f.). The same applies to the existence of God (KrV, B662).

[25] In A389 Kant states again: "Der kritische [Einwurf] ist allein von der Art, daß, indem er bloß zeigt, man nehme zum Behuf seiner Behauptung etwas an, was nichtig und bloß eingebildet ist, die Theorie stürzt, dadurch, daß sie ihr die angemaßte Grundlage entzieht, ohne sonst etwas über die Beschaffenheit des Gegenstandes ausmachen zu wollen.". Cf. "Beweisart" in KrV, Bxxxix n.

[26] Stenzler (ffl-v) deals with the antinomy as the lawsuit of reason. The dialectical illusion of the antinomy is inevitable and necessary since it originates in a natural inclination of reason to unify knowledge of understanding (experience). Antinomy arises because of the need to unify knowledge (by reason and by means of ideas) on the basis of the rules of understanding. However, this unity will be either too small for reason (due to the conditions of empirical knowledge) or too large for understanding (due to the conditions of rational knowledge), which is exactly the conflict in question.

[27] These three options remind us of the very beginning of KrV where Kant depicts the "prehistory" of reason: despotic dogmatism, anarchist and nomadic scepticism, and indifference (KrV, Avii-xi). The dogmatic approach in (speculative) philosophy is refuted (KrV, B740-766) as is unsatisfactory sceptical indifference (KrV, B786-797).

[28] That is why Ishikawa (1990) refers to "Kants Denken von einem Dritten", cf. also "ein Drittes" mentioned in KrV, B 177.

[29] Cf. "ein dauerhaft ruhiges Regiment der Vernunft" (KrV, B493); "wenn die Parteien ... zur Ruhe verwiesen worden" (KrV, B529); "Ruhestand" (KrV, B785); "Ruhe" (KrV, B825).

[30] Kemp Smith translates "Entscheidung" (KrV, B525) into "solution", whereas "decision" is more appropriate since it reflects the legal connotation of "Entscheidung" (cf. also "Sentenz" in KrV, B780).

[31] KrV, B532, 559; cf. Ishikawa, o.c., 96ff., 117f.. In the case of dynamic antinomy both statements may be true (KrV, B560, 590).

[32] Heimsoeth (Bd. III, 643n.) only mentions it in a footnote.

[33] Cf.: "nichts ... was ... einen gegründetern Anspruch machen könnte." (KrV, B614); "Gunst, um den Mangel seiner Rechtsansprüche zu ersetzen" (B615); "die Vernunft würde bei ihr selbst, als dem nachsehendsten Richter, keine Rechtfertigung finden" (B617); "justify" ("mit Recht... postulieren") (B662); "Rechtfertigung" (B663); "rechtfertige(n)" (B666f., 698); "eine-beständige Zensur unserer Vernunft" (B668); "unaufhörliche Zensur einer ... Vernunft" (B669); "Vernunft.... dieser oberste Gerichtshof aller Rechte und Ansprüche unserer Spekulation" (B697); "(transzendentale) Deduktion" (B697ff.); "Gesetzgebung unserer Vernunft" (B728); "Anmaßung(en)" (B729, 731); "Abhörung aller ... Zeugen" (B730); "die Akten dieses Prozesses" (B732).

[34] A recent exception is O'Neill's "Vindicating reason".

[35] As to "discipline", "canon" and "critique" cf. Tonelli, 98-105, 116-118.

[36] Cf. KrV, B768: "Denn wir sind alsdenn doch nicht bittweise in unserem Besitze, wenn wir einen, obzwar nicht hinreichenden, Titel derselben vor uns haben, und es völlig gewiß ist, daß niemand die Unrechtmäßigkeit dieses Besitzes jemals beweisen könne."

[37] KrV, B805. Cf. "Besitz" and "titulus possessionis" in MS, AA VI, 251. The formula "Beati possidentes!" is a principle of natural right, cf. ib.; AA VI, 257; AA Vffl, 395.

[38] Cf. Stenzler expresses this view right from the beginning (and refers to the legal metaphor continuously, but does not evaluate it expressis verbis). As to the political implications cf. P. Burg; and O'Neill, "Reason and politics in the Kantian enterprise", and "Vindicating reason".

[39] Cf. MS, AA VI, 438. Also ibidem, 400f. where conscience is represented as an "Ästhetischer Vorbegriff. As to conscience and the tribunal cf. Fumiyasu Ishikawa (1992).

[40] Cf. AA VIII, 255. In line with this juridico-political model of the theodicy the three features of divine wisdom are conceived in correspondence with the trias politica (ib. 257).