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A COMMENTARY ON KANT'S INTRODUCTION OF THE CONCEPT OF TRANSCENDENTAL DEDUCTION

Abstract. The aim of this paper is to show the place of legal analogy in Kant's introduction of the concept of transcendental deduction. After remarks on Kant's use of the term "deduction," transcendental deduction is characterised as the method justifying necessary statements about objects. It is argued that this method has normative elements. This leads to asserting similarities between epistemic obligation and legal obligation in the framework of transcendental philosophy.

Keywords: *quid facti*, *quid juris*, logic, deduction, obligation, validity, knowledge

KOMENTARZ NA TEMAT WPROWADZENIA POJĘCIA DEDUKCJI TRANSCENDENTALNEJ PRZEZ KANTA

Streszczenie. Celem artykułu jest pokazanie miejsca analogii prawniczej przy wprowadzeniu przez Kanta pojęcia dedukcji transcendentalnej, rozumianej jako metoda uzasadniająca konieczne twierdzenia o przedmiotach i zawierające element normatywne. To prowadzi do stwierdzenia, że, w perspektywie filozofii transcendentalnej, zachodzą podobieństwa pomiędzy powinnością epistemiczną a powinnością prawną.

Słowa kluczowe: *quid facti, quid juris*, logika, dedukcja, powinność, obowiązywanie, poznanie

My further remarks concern Immanuel Kant's *Critique of Pure Reason*, Chapter *A*, Section 1, § 13 (A85–B17) – "The Principles of Any Transcendental Deduction" (Kant 1933).

> When speaking of rights and claims, jurists distinguish in a legal action the question of right (*quid juris*) from the question of fact (*quid facti*), and they demand that both be proved. They entitle the proof of the former – which has to state the right or the legal claim – as *deduction.* Many empirical concepts are employed without anyone questioning them. Since experience is always available for objective reality, we believe – even without deduction – that we are justified in appropriating to them a meaning, an ascribed significance. However, there are also usurpatory concepts, such as *fortune* or *fate*, which, though allowed to circulate by almost

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> universal indulgence, are yet from time to time challenged by the *quod juris* question. This dormant form of deduction involves a considerable perplexity; it is not clearly legal or sufficient to justify their employment, being obtainable either from experience or from reason.
> Among the manifold concepts which form the highly-complicated web of human knowledge, there are some which are marked as pit for pure *a priori* employment, in complete independence of all experience; and their right to be so employed always demands a deduction. For since empirical proofs it does not suffice to justify this kind of employment; we are faced by the problem of how these concepts can relate to objects which they yet do not obtain from any experience. I entitle the explanation of the manner in which concepts can relate *a priori* to objects as their transcendental eduction, and from it, I distinguish empirical deduction, which shows the manner in which a concept is acquired through experience, and which, therefore, concerns not its legitimacy, but only its *de facto* mode of origination.

The German text (Kant 1926) runs as follows:

> Die Rechtslehrer, wenn sie von Befugnissen und Anmassungen reden, unterscheiden in einer Rechtshandel die Frage über das, was Rechtens ist (*quid juris*) von der, die die Tatsache angeht (*quid facti*) und indem sie von beiden Beweis fordern, so nenen sie den ersteren, der die Befugnis, oder auch den Rechtsanspruch dartun soll, die *Dedudukion*. Wir bedienen un seiner Menge empirischer Begriffe ohne jemandes Widerrede, und halten uns auch ohne Deduktion berechtigt, ihnen einen Sinn und eingebildete Bedutung zuzueignen weil wir jederzeit die Erfahrung bei *der* Hand haben, ihre objective Realität zu beweisen. Es gibt indessen auch usurpierte Begriffe, wie etwa *Glück*, *Schicksal*, die zwar mit fast allgemeiner Nachsicht herumlaufen, aber doch bisweieln durch die Frage: *quid juris*, in Anspruch genommen warden, da man alsdann wegen der Deduktion derselben in nicht geringe Verlegenheit great, inden man keinen deutlichen Rechtsgrund weder aus der Erfahrung, noch der Vernuft anführen kann, dadurch die Befugnis seines Gebrauch deutlich würde.
> Unter den mancherlei Begriffen aber, die das sehr vermischte Gewebe der menschilien Erkenntnis ausmachen, gibt es einige, diem auch zum reinen Gebrauch a priori (völlig unanhängig von aller Erfarhung bestimmt sind, und dieser ihre Befugnis bedarf jederzeit einer Deduktion; weil zu derm Rechtmässigkeit eines solches Gebrauchs Beweise aus der Erfahrung nicht hinreichend sind, man aber doch wissen muss, wie diese nBegriffe sich auf Objekte beziuehen können, die sie doch aus keiner Erfahrung hernehmen. Ich nenne daher die Erklärung der Art, wie sich Begriffe a priori auf Gegenstände beziehen können, die *transzendentale Deduktion* derselben, und untercheiden sie von der *empirische Deduktion*, welche die Art anzeigt, wie ein Begriff durch Erfahrung und Relexion über dieselbe erworben worden, und daher nicht die Rechtmässigkeit, sondern das Faktum betriift der Besitz entsprungen.

The first two sentences of the quoted text from the *Critique of Pure Reason* refer to the distinction between *quid juris* and *quid facti* as understood by jurists, and are usually regarded as explaining Kant's usage of the term *Deduktion*. Referring to Heinrich (1989), Henry E. Allison, a leading contemporary Kantian scholar summarises the issue in the following way (Allison 2015, 10):

> (…) Kant's use of the term "deduction" was borrowed from the legal system of the Holy Roman Empire, where *Deduktionschriften* were writings issued by the parties involved in legal disputes, most of which involved territorial claims. In short, understood by deduction not a deductive argument, but rather, an argument (of whatever form) that endeavors to justify

> a right to possess and use something, which in the case of Transcendental Deduction is a set of pure concepts of the understanding or categories.

This explanation alludes to German legal vocabulary employed in the Holy Roman Empire (of German Nation). However, the story is longer. As classical Latin (see Lewis 1879) explains (*inter alia*, because there are other meanings of "deduction" as well), "*deductio* (…) A putting out of possession, ejection, expulsion (…) *ex hac deductione rationis* from this course of reasoning."

Thus, we have two senses of *deductio*, namely (a) legal (or proto-legal), under which someone is removed from the possession; and (b) logical (rhetorical), i.e. one referring to an argument (more specifically, the reasoning replacing a wider issue with something more specific). A Latin dictionary for lawyers and historians (see Sondel 1997) lists, among other things, the following meanings of *deductio*: (i) lead out; (ii) reasoning; (iii) inference from the general to the particular; and *deduco ad iudicium* (translated as "present the case before court.") This last use is related to the distinction between *quid facti* and *quid iuris.* Thus, a party presenting a case *ad iudicium* should mention facts as well as elaborate the legal ground of the claim in question. *Deductio* covers both these components.

Due to the present meaning of deduction as a reasoning (inference) in which its conclusion logically follows from its premises, it is interesting to find historical sources of this usage. Unfortunately, at least according to my knowledge, we have only very general accounts of this problem. Ritter (1972; more precisely its 2nd volume, published in 1972), who produced the most comprehensive historical and systematic dictionary of philosophical concepts, mentions deduction in formal logical sense only. Eisler (1901) outlines the history of deduction from Plato to Kant (except the latter) in 9 lines without informing the reader who used the term *deductio* as the first one. Certainly, this label occurs in medieval scholastic writers. Goclenius in his *Lexicon, Philosophicum, quo tanquam clave philosophiae fores aperiuntur* (1613) says: "Deductio plurimis conuenit. Grammatica, Logica, Mathematica, Historica, Politica quaedam est. (…). Deductio logica est Concreto ab abstraction casuum a themata. (…). Logica etiam est rationis alicuius Deductio." This definition of logical deduction concurs with its understanding as the inference from the general to particular – Goclenius did not mention the legal meaning of deduction. All this data suggests that Kant actually employed the word *Deduktion* as it had occurred in the legal discourse. In fact, he did not speak on deduction as inference in his logical works (he used the word *Ableitung*). The terminological situation changed after Kant. As Wilhelm T. Krug (see Krug 1832; he was Kant's successor in Königsberg as the professor of logic and metaphysics) explains:

> Deduction (von deducere, ableiten) ist eigentlich Ableitung eines Satzes aus einem oder mehren andern. Weiss aber meim Beweisen auch etwas asus einen Andern und Gewissern (aber doch als schon ausgemacht Angenommenen) abgeleitet wird: so nennt man auch oft die Beweise

> *Deductionen.* Besonders pflegen die Rechtsgelehrten ihre Beweise so zu nennen, und zwar wiefern dieselben auf die Tatsache gehn, deductiones facti, wiefern sie aber auf die eigentliche Rechtsfrage gehn, deductiones juris. Die Philosophen, besonders die aus kritischen Schule, pflegenebenfalls ihrer Beweise aus der unspruglichen Gesetzmässigkeit des menschichen Geistes *Deductionen* zu nenen, und zwar *transzendentale.*

Thus, Krug distinguishes logical deduction, legal deduction, and transcendental deduction. Although he mentions proofs (*Beweise*) produced by jurists, he completely ignores Kant's link with jurisprudence and stresses that transcendental deduction is a speciality of critical (that is, Kantian) philosophy. Further development resulted in setting logical deduction as the standard – legal deduction is presently considered as the so-called practical (legal) syllogism of the form "if *A*, then ought to be that *B*, *C* happened, *C* falls under *A*, then *B* should apply with respect to *C*[1]."

The above remarks supplement Allison's conclusion about the legal genesis of Kant's usage of the concept of deduction. The reasons for this interpretation have very considerable evidence. Firstly, the logical usage was not yet established in philosophy and logic at the turn of the 18th and 19th centuries – this meaning, as Krug's dictionary documents, began to be dominant in the 19th century[2]. Secondly, the legal way of understanding Latin *deductio* and German *Deduktion* (or *Deduction*) had been fairly popular before Kant, although more in the medieval language and later among jurists rather than in the vocabulary of philosophy. Legal analogies support Allison's point that transcendental deduction provides the second-order warrant to first-order cognition. As he writes (see Allison 2015, 10):

> For Kant this second order-warrant is conferred by the categories and securing their normative status, which would also eliminate the spectre, is the task of the Transcendental Deduction. (…). Expressed in present-day philosophical parlance, Kant's Transcendental Deduction may be described as an endeavor to establish a "warranted assertibility" with regard to a unique set of concepts, which determines the grounds and boundaries of their legitimate use.

As Allison earlier says, a warrant "is required for (…) epistemic ought." This observation seems interesting and I will follow it to some (perhaps even a considerable) extent.

Most commentators see legal analogy in Kant's *Critique of Pure Reason* as merely a historical and terminological curiosity, accidental at most[3]. Yet, its

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[1] This is a very simplified schematisation. By the way, practical syllogism was already analysed by Aristotle.

[2] Yet the story is more complicated. The full title of John Stuart Mill's *Logic* (published in 1843) reads *A System of Logic, Ratiocinative and Inductive*, whereby "ratiocinative" means "deductive."

[3] See Messer (1922, 74); Eisler (1930, 83–84); Baum (1986, 52–53); Caygill (1995, 151–152); Gardner (1999, 136). Since I am not a Kantian scholar, the list in this footnote should be considered as a sample composed by an amateur – this remark concerns the next footnote as well. Nevertheless,

eventual substantial import is not taken into account[4]. I would like to propose a different insight – not a solution of the problem, but, rather, a suggestion of its setting in a different conceptual framework, more related to legal (more generally – normative issues) than traditional (even Allison's) hermeneutics. What is also noted by several commentators is that Kant also applied other legal terms, namely *Rechtsgrund* (legal foundation), *Rechtmässigkeit* (legal legitimacy), and *Besitz* (possession, but considered in the context of *quid facti* – as something factual, and *quid juris* – as something legally justified). Moreover, the sense of the word *Recht* seems to be relevant. In the German juristic language (like in many other, e.g. *droit* and *lois* in French or *ustawa* and *prawo* in Polish, but not in English; Latin words *lex* and *jus* are prototypes), the difference between *Gesetz* and *Recht* expresses an opposition between "what is stated by an authority" and "what possesses a justification in valid law"[5]. Thus, the word *Recht* has obvious links with *quid juris* and with the justification (*Rechtfertigung*) of our beliefs, not necessarily normative.

I do not suggest that Kant attributed a major importance to the legal distinction between *quid facti* and *quid juris.* Perhaps it was only a convenient heuristic device for him. However, let us take Allison's concept of epistemic obligation as providing a good starting point for my further considerations. He contrasts Hume as a proponent of relying only on an epistemic empirical warrant with Kant who demanded something (or rather much) more for the successful justification of our assertions. More specifically, although the former regarded empirical deduction as sufficient (and, of course, necessary) for epistemic warrant, transcendental deduction (I consciously do not use capitals) was indispensable for the latter. In other words, Hume reduced the epistemic warrant to collecting empirical data, but Kant argued against such a reductive step. Two additional remarks are in order here. Firstly, expressing the problem in terms of empirical and transcendental deduction dresses the issue in the Kantian language, because Hume could not use these categories; for him, deduction concerns relations between ideas, not matters of facts. Secondly, because Hume denied that obligation is derivable from it, he would probably reject the concept of epistemic obligation, or he could extend his thesis to the statement that is-sentences on epistemic warrant do not entail

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I am inclined to think that my picture of the Kantian scholarship is correct in this respect. Perhaps it is worthy to add in this place that the discussed issue provides an interesting case of the influence of law on philosophy.

[4] Except works mentioned in the previous footnote, one can inspect the following: Cohen (1907); Kemp Smith (1918); Paton (1936); Swing (1969); Howell (1992); Ingarden (2021). Even Allison's remarks suggest that the legal analogy had at most a heuristic significance to Kant.

[5] I neglect various aspects of this distinction related to the controversy between legal positivism and natural law theories, associated with the distinction between *Gesetz* and Recht, because they are not relevant to the topics discussed in the present paper. Hence, the word *Recht*, as I use it, has no moral connotations.

such obligation-containing-sentences. When generalising the legal analogy, we should distinguish between *quid facti* and *quid juris* epistemic assertions. For a Hume-like thinker, our first-order epistemic assertions constitue *quid facti* – one can alternatively consider *quid juris* problems, e.g. the problem of justification of induction, but such considerations are distinctively different from direct statements about facts. Kant also strongly separated *Sein* (being, reality, actuality) from *Sollen* (oughtness, what should be), but was looking for the legitimacy (*Rechtmässigkeit*) of our knowledge. For him, to use Allison's vocabulary, first-order assertions must be valid on the base of second-order settings.

We can assume that Kant accepted the thesis on the non-derivability of 'ought to' from 'is'. However, due to his general claims of knowledge, he was looking for a method of proving its legitimacy. Empirical deduction, whatever it is, cannot here help, because it answers questions of the *quid facti* type, i.e. produces synthetic *a posteriori* statements. Logical deduction (*Ableitung*) is also useless, because the status of premises is transformed to that of their conclusions – if (to simplify, I only consider reasoning in which there occurs one premise and one conclusion) the premise is analytic, synthetic *a priori*, synthetic *a posteriori*), the conclusion has the same character, respectively. For Hume, since knowledge is expressed by analitycals or syntethicals *a posteriori*, logical deduction and empirical deduction are sufficient, but Kant claimed that we need transcendental deduction (more generally, transcendental logic) in order to deal with syntheticals *a priori.* For instance (see Stuhlmann-Laeisz 1991), one of transcendental arguments has the following form:

(*) (A is *a priori* $\square$ *a priori* ($\Diamond A \rightarrow B$)) $\rightarrow$ *a priori* B

This formula means "if A is *a priori* and if possibility of A *a priori* implies B, then B is *a priori.*" Now, (*) is not a theorem of logic. Since, for Kant, if a sentence is *a priori*, it is also necessary, (*) implies ($\Box$ – it necessary that)

(**) ($\Box A$ $\square$ $\Box(\Diamond A \rightarrow B)) \rightarrow \Box B$.

Thus, transcendental logic allows deducing a necessary statement from possible and factual premises, like ($\Diamond A \rightarrow B$). More specifically, necessity (apriority) of B is concluded from necessity of A supplemented by necessary implication "if A is possible, then B." Although (**) can be introduced as a new modal axiom, the resulting system is more a formal theory of modality rather than a genuine modal logic.

According to Allison (see one of the quotations above), categories in Kant have a normative status. I agree with this opinion, but I think that it can be generalised to the entire transcendental logic, understood as the collection of arguments falling under the schemes of transcendental deduction (like (**)) and explaining how universal and necessary statements about objects are possible. It is another wording of Kant's famous question: how possible are propositions synthetic *a priori*? If we ascribe a normative character to transcendental logic, we can say that rules, like (**), concern the epistemic *Sollen*, an autonomous

region of thinking, not only independent from *quid facti*, but also conditioning our assertions of facts. This leads to a reinterpretation of the legal analogy. Take the term *Rechtmässigkeit*, which means legitimacy as legality. Correspondingly, the typical attribution of legality concerns our actions as conforming standards generated by legal rules, and Kant used the term in question just in this meaning. His interests concerning the concept of legality were limited to the question of relation between law and morality, e.g. the role of the former as a guarantee freedom of people living together in society. This situation did not force a deeper analysis of legality. This radically changed in post-Kantian legal philosophy, particularly related to Neo-Kantianism. Debates in this camp used the term *Rechtsgeltung* – legal validity[6]. Kelsen's pure theory of law with the idea of *Grundnorm* as a necessary condition of the validity of every system of positive law is perhaps the most clear example of the application of transcendental logic to the domain of *Rechtssollen*.

The last section suggests a stronger version of legal analogy in Kant. We have the realm of facts on which we make various syntheticals *a posterior.* However, they are possible, because we are equipped with the ability to use transcendental logic, a property of the mind as such. This explains why our knowledge of objects depends on transcendental elements and why epistemic questions *quid juris* are not reducible to responses concerning *quid facti.* If we inspect Heinrich Rickert's account of knowledge (see Rickert 1892; I use the paraphrase in Ajdukiewicz 1937), truth is generated by transcendental epistemic norms. The term "norms" is crucial in this context, because they organise the transcendental realm of knowledge, i.e. epistemic *Sollen.* Neo-Kantians went a step forward from Kant and separated *Sein* und *Sollen* more sharply than their master had. Yet, full consequences of the distinction between *quid facti* and *quid juris* in the frameworks of transcendental philosophy can be derived by appealing to Neo-Katnianism, especially Kelsen's legal theory. Thus, legal analogy, independently from its scope according to Kant's original account, shows a fundamental analogy between legal philosophy and epistemology, if both follow the idea of transcendental thinking. It is well-illustrated by a typical characterisation of epistemology (*Erkenntnistheorie*) made under the influence of Neo-Kantianism (Eisler 1925, 1):

> Theory of knowledge (…) asks for the essence and validity of knowledge as such. It founds common sense and scientific concepts and propositions, which are used "naively" or "dogmatically" as well as its concerns consists in proving these assumption for showing, whether and to which extent their *validity-claim* is justified.

If we replace "theory of knowledge" with "transcendental logic," we obtain an account of the second under Kantianism *sensu largo*, i,e. including

[6] I do not suggest that the term *Rechtsgeltung* had been unknown earlier, but only that its use had no particular theoretical import. Yet, the difference between *quid facti* and *quid juris* is important in every understanding of legal validity.

Neo-Kantianism as well. Clearly, commonsensical and scientific concepts employed naively or dogmatically deal with questions *quid facti* and must be supplemented by researches intended to prove *quid juris* claims. Thus, epistemic and legal *Sollen* share the same main problem of the relationship between 'is' and 'ought to', namely the epistemological and ontological grounding of the obligation as being *a priori* with respect to facts[7]. Kelsen considered the concept of the *Grundnorm* as the *a priori* (of pure normative reason) postulate for validity of legal systems. Thus, if we look at the relation between *quid juris* and *quid facti* in concrete legal cases, as it was observed by Kant, the former functions are *a priori* with respect to the latter.

Since Professor Tomasz Bekrycht investigated relations between legal theory and philosophy intensively and successfully, I think that the topic discussed in this paper is suitable for commemorating this distinguished scholar.

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[7] In order to avoid possible misunderstandings, I note that in my personal views, I am closer to Hume than to Kant. Although I accept that this does not imply obligation, I reject transcendental logic.

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