

Laws for which an External Legislation is Possible

Peter Niesen, Darmstadt

Outline

I. Juridical Laws are Laws for Which an External Legislation is Possible

External legislation ties external incentives (external legislation¹: **motive**) to the performance of external duties, i.e. duties that govern external action (external legislation²: **scope**).

a) While an external legislation is possible for juridical laws and duties, it is impossible for ethical laws or duties.

b) Natural law equals possible external legislation, while positive law equals actual external legislation.

b) but not a) entails that external legislation displays its results externally (external legislation³: **site**).

II. Senses of Possibility

Possible¹ external legislation: conceivability

Possible² external legislation: feasibility

Possible³ external legislation: capacity to be made public

III. Are International Laws Juridical Laws?

a) The public international law of a federation of states, for Kant, is non-coercive, i.e. it lacks actual external legislation¹. Claim: it is nevertheless made up of laws for which external legislation is *possible*¹⁻³ and therefore constitutes juridical law.

b) Some natural international laws (international law in the state of nature) are not juridical laws because they cannot be externally legislated. They fail the possibility³ of external legislation (publicity test of *Perpetual Peace*). Example: a right to wage preventive war.