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THE NOTEBOOK CORNER

I am pleased to have in this “Notebook Corner” an article by Thomas Mautner discussing the peculiar development of the concept of “right.” Also, Jan Wolenski reviews Gerald Postema’s Volume 11 of A Treatise of Legal Philosophy and General Jurisprudence, and Postema replies.

E.P.

How Rights Became “Subjective”

THOMAS MAUTNER*

Abstract. What is commonly called a right has since about 1980 increasingly come to be called a subjective right. In this paper the origin and rise of this solecism is investigated. Its use can result in a lack of clarity and even confusion. Some aspects of rights-concepts and their history are also discussed. A brief postscript introduces Leibniz’s Razor.

Subjective rights, together with unmarried bachelors and female vixens, form a merry threesome of redundant pleonasms—except that this sentence now contains four. Each of them contains an expletive that ought to be deleted.

Rights cannot but be subjective. They cannot exist unless someone has them. So, necessarily, rights cannot but be subjective and no rights are non-subjective. Also necessarily, all bachelors are unmarried, all vixens are female, and all pleonasms are redundant. As a formidable lady exclaimed

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1 exasperatedly: “I could never have used the term intrinsic essence—for
2 what is an essence if it is not intrinsic?” (Seth 1993, 404). So *subjective right*
3 is a solecism. The simple “right” is enough.¹

4 The fact that this solecism has appeared with increasing frequency over
5 the last few decades and that it is a source of confusion gave the impulse
6 to the present investigation, the result of which is an intriguing story of its
7 origin, its past and its recent spread.

8 9 **1. How *Ius* Became Subjective**

10 Since the end of the 1970s, the expression “subjective right” has appeared
11 with increasing frequency in writings dealing with problems in, or the
12 history of, moral, legal, political and social philosophy. Before then, it was
13 hardly ever encountered in such writings. It emerged in certain recent
14 scholarly investigations of the rights-concepts used by mediaeval and
15 early-modern authors such as Aquinas, Ockham, Gerson, Suárez, Grotius
16 and many others. Their works were almost without exception in Latin and
17 the key term signifying a right was *ius* (recommended pronunciation: like
18 the noun “use”).

19 It was always well understood that *ius* was polysemous (Justinian,
20 *Digest*, 1.1.11: “*Ius pluribus modis dicitur*”). As noted by Brian Tierney, a
21 leading authority in this field of inquiry, some mediaeval authors vied with
22 each other in their efforts to discern different meanings (Tierney 1997, 40).
23 One of them, Johannes Monachus in 1310 jestingly even included *ius* in the
24 sense of broth, as if this homonymy (a relation between *two* words) was yet
25 another equivocation. The joke, incidentally, was already to be found in
26 Plautus.

27 An important distinction was that between *ius* in the sense of *lex* or
28 *complexus legum* (a law, or the Law, i.e. a system of norms) and *ius* in the
29 sense of *potestas* or *facultas* (power or ability or capacity; see Suárez 1973,
30 2.17.2). In the latter sense, but not in the former, a *ius* was something that
31 a rational agent has, and in virtue of which the agent can do or may do
32 certain things, or in virtue of which other rational agents can or cannot or
33 must or must not do certain things. Briefly, *ius* in the former sense is a law
34 or a system of law, but in the latter sense it is a right.

35 A salient difference between these two concepts of *ius* is that rights have
36 bearers, and laws and the Law do not. A right belongs to someone or
37 something: a person, an individual, a body corporate—it belongs to a
38 subject.

39 The core meaning of *ius* in ancient Rome was roughly what we would
40 think of as “the Law.” It is a system in virtue of which actions are lawful
41 or unlawful, with sanctions attached. Other terms with meanings of a
42

43 ¹ This is not to say that every occurrence of a pleonasm is a solecism.

1 similar character are *language* and *custom*. Like *ius*, such terms do not
2 designate something that any particular individual possesses and is in a
3 position to control or decide upon. But the *ius* of the tribe could in
4 appropriate circumstances empower an individual. A person could become
5 king *iure* by a decision of the people and ratification by the senate. But in
6 the absence of this, Tarquin had no *ius regni* (right to be king) other than
7 brute force (Livy, *Ab urbe condita*, 1.49.3)—that is, he had none. *Ius regni* is
8 determined by the Law.

9 Different from this was a later conception: by sheer usurpation or by
10 some formality, a king or an emperor could come to have all of *ius* as his
11 own. This would generate a new concept of *ius*. The Law would now
12 belong to the sovereign—it would be his. *Ius* could then be understood in
13 the sense of jurisdiction.² The sovereign would be above the law and have
14 full power to determine what is lawful.

15 The attribution of (normative) power to a person in this way engendered
16 a distinctively “modern” and new sense of *ius*. When combined with
17 ancient, especially Stoic, ideas of natural freedom and equality, it follows
18 that in the state of nature every individual is a sovereign. The creative
19 faculty, attributed to the emperor or the king, is no longer monopolized.
20 Within his realm, every individual can, by means of an act of will, bring
21 obligations into being (see Hägerström 1965, 82–4). On agreeing with
22 others to become a citizen, the individual in the state of nature surrenders
23 parts of his natural sovereignty—though not all of it, according to most
24 writers on natural law.

25 What has now been outlined points to a plausible explanation of how
26 *ius*, the Law, could come to be attributed to individuals and in that sense
27 be subjective. So when it comes to terminology, one might tentatively
28 suppose that in the old texts the impersonal conception of the Law could
29 be styled *ius* understood *obiective* (objectively) and the personal one of a
30 right as something that a person has, a power to create (or extinguish)
31 obligations, would be styled *ius* understood *subiective* (subjectively). One
32 could, further, tentatively suppose that present-day scholars, immersing
33 themselves in these texts and becoming influenced by them, would have
34 allowed these Latin expressions to immigrate and be assimilated, in
35 keeping with the entrenched spirit of hospitality characteristic of the
36 English language. This would explain how the solecism emerged.

37 But these tentative hypotheses, designed to explain how *subjective* might
38 have come to qualify *right*, are untenable. Mediaeval authors (Lullus, Scotus,
39 Ockham, Nicholas of Cusa et al.) did use the non-classical adjectives
40 *subiectivus* and *obiectivus* and their cognates in other contexts, but neither
41 they nor later early-modern authors use those words to distinguish the two
42 senses of *ius*—indeed, they could not. Those adjectives (and cognates) did
43

44 ² Downer 1972, 320 indicates places in the text where *ius* has this sense.

1 not then have the meaning that we now assign to them, and could therefore
2 not have been used to mark the difference between rights and laws. From the
3 early scholastics up to the mid-seventeenth century when a change was
4 underway, an *obiectum* was in the mind, and a *subiectum* was a bearer of
5 properties and in that capacity a part of the real world out there (see Sainati
6 2006; Guzzo and Mathieu 2006; Lalande 1988; Kible 1998). As late as 1686,
7 " 'objectively' was used to mean 'in the mind' and not 'in reality' " (Bayle,
8 2005, 235; cf. also editor's [John Kilcullen] note at 578). Almost four centuries
9 earlier, Ockham *denied* the reality of universals by insisting that they have
10 objective existence only (Guzmán 2003, n. 103)!

11 12 2. "*Ius*" Said to Have a Subjective Sense

13 So, when present-day scholars who have immersed themselves in these
14 mediaeval and early-modern Latin works combine *subjective* and *right*, it
15 cannot be due to an influence from a corresponding Latin combination in
16 those works. It is of interest to establish when that combination first
17 emerged. Early occurrences can be found in Gottfried Achenwall's *Ius*
18 *naturae* and his shorter *Prolegomena iuris naturalis*, both from the mid-1750s,
19 with many later editions. He wrote:

20
21 A person's physical faculty, insofar as it is not contrary to any moral law, is a moral
22 faculty, and, in a word, a (moral) *ius* taken broadly and subjectively or as an
23 attribute of a person. (Achenwall 1781a, 14)³

24
25 A precursor of those two works was *Elementa iuris naturae* 1750, co-
26 authored with his colleague in Göttingen, Johann Stephan Pütter. This,
27 incidentally, was rare indeed, as the authors note in their preface. Their
28 explanation was that in this discipline philosophers hardly ever agreed. In
29 this work, the expression was introduced as follows: "The moral faculty to
30 coerce another person is called *ius* understood subjectively, as a quality of
31 a person" (Pütter and Achenwall 1750, 47).⁴

32 This earlier formulation is too narrow and does not cover the authors'
33 intended sense. They cannot have believed that all rights we have are rights
34 to coerce others. What they meant is that coercive measures are permissible
35 only in case of violation of a right properly so called. This is also how Kant's
36 formulation, that right and the permissibility of coercion "mean the same,"
37 ought to be understood (Kant 1797, 232).⁵ The inadequate formulation does
38

39 ³ The Latin original: "Facultas hominis physica, quatenus nulli legi morali adversatur, est
40 facultas moralis, et uno verbo ius (morale) late et subiective sive pro affectione personae
41 sumtum."

42 ⁴ The Latin original "Facultas moralis cogendi alterum dicitur ius subiective seu pro qualitate personae sumtum."

43 ⁵ The German original: "Recht und Befugnis zu zwingen bedeuten also einerlei." This should
44 not be taken too literally: cf. Kant 1797, 231.
45

1 not reappear in Achenwall's later, revised, statement, which is inadequate
2 for a different reason, since it explicitly defines a right as a *physical* faculty
3 (to act, or possess or receive). This would make one's rights depend on what
4 one is physically able to do, have or receive, and does not correctly explain
5 his—and our—concept of a right.

6 Still, the subject/object terminology was now used to distinguish two
7 senses of the word *ius*. *Ius* can be taken in two different ways, subjectively
8 or objectively: *ius subiective sumtum* and *ius obiective sumtum*. (In classical
9 Latin, the preferred spelling was *sumptum*.)

10 Many other writers at the time, following Grotius, noted the same
11 distinction, though not in these terms. For example, "the word *ius* may be
12 taken to mean either a law or an ability to act (or, as Grotius says, an
13 attribute of a person)" (Fleischer 1730, 1.5.1).⁶ Similar Grotius-inspired
14 □ statements were common (Pufendorf 1684, 1.1.20; Thomasius 1720, 1.1.82;
15 Thomasius 1718, 1.5.1; Gundling 1715, §57, §58 in a later edition).⁷

16 Grotius's definition (Grotius 1625, 1.1.4.–1.1.5) was indeed the main
17 point of reference in the literature. He recognised three senses of *ius*. In the
18 sense of a right or power, the one relevant here, a *ius* was a *qualitas moralis*
19 *personae competens ad aliquid iuste habendum vel agendum*—a moral quality
20 belonging to a person to have or do something lawfully.

21 As for the translation of this clause, it is to be noted that *competens* means
22 belonging to. There should be no comma after the dative *personae*. The
23 constructions *facultas ad*, *aptitudo ad* were in use, as the following quota-
24 tions show, and by analogy, *qualitas ad* (used by Grotius to cover both)
25 would be easily understood. "Lawfully" preserves the ambiguity of *iuste*.
26 It can mean either validly (with legal effect) or justly (rightly, not contrary
27 to law). The former refers to what one *can* do, the latter to what one *may*
28 do. Grotius was aware of the distinction.⁸ Many eighteenth-century authors
29 who adopted his definition were not. They inclined towards the latter
30 sense and failed clearly to distinguish powers from permissions.

31 For Grotius, a *ius proprie aut stricte dictum*—a *ius* properly so called—is
32 a *qualitas moralis perfecta*, and *facultas nobis dicitur*—a perfect moral quality
33 which we call a faculty (ability, power, capacity). Grotius, using the very
34 same words as Suárez (see Suárez 1973, 1.2.5) —*proprie, stricte, facultas*
35 *moralis*—distinguished this perfect moral quality, properly called a *facultas*,
36 from worth or merit (*αξία*). Pufendorf and most later writers called it
37 imperfect right. Coercive sanctions are attached only to rights properly so
38 called, i.e. perfect rights.

40 ⁶ The Latin original: "Vocabulum juris—vel pro lege, vel pro facultate agendi (sive, ut Grotius
41 loquitur, pro attributo personae) sumatur."

42 ⁷ Works by a large number of other authors could be added to this list.

43 ⁸ "Sunt enim diversa, prohibere & irritum quid facere" (to prohibit and to declare invalid are
44 not the same thing). (Grotius 1625, 2.5.16.1).

1 Grotius was by no means alone in noting that *ius* could denote some-
2 thing that a person has. Molina defined one sense of *ius* as a *facultas aliquid*
3 *faciendi sive obtinendi*, a faculty to do or to receive something, and wrote:
4 “Altero modo dicitur aliquis habere ius ad aliquid, non quod sit ei aliquid
5 debitum, sed quod facultatem habeat ad aliquid” (in another sense it is
6 said that someone has a right to something not because it is owed to him,
7 but because he has the faculty in respect of it).⁹ And Suárez wrote: “Ius
8 enim interdum significat moralem facultatem ad rem aliquam” (*Ius* some-
9 times signifies a moral faculty in respect of a thing). (Suárez 1973, 2.17.2).

10 Achenwall and Pütter were not, however, the first to combine *subiectivum*
11 and *ius* to distinguish *ius* in the sense of a right from *ius* in the sense of a
12 law or the Law. Alejandro Guzmán, who seems to have been the first to
13 investigate this matter (Guzmán 2003) has found the combination in works
14 published in the late 1740s by Joachim Georg Darjes (1714–1791, Professor
15 in Jena and later Frankfurt a.d.O.) and David Nettelblatt (1719–1791,
16 Professor in Halle). Guzmán (2003, n. 59, 60) cites passages from Darjes
17 *Institutiones jurisprudentiae universalis* (Darjes 1748) and mentions also
18 *Discours über sein Natur- und Völkerrecht*, published in 1762 (not “1726”!).
19 He also quotes Nettelblatt, *Systema elementare universae iurisprudentia natu-*
20 *ralis* (1767; 1st ed.1749) As for Darjes *Institutiones*, the first three editions
21 came in 1740, 1745 and 1748.¹⁰ Guzmán locates the passages he cites to the
22 1745 edition, but they seem in fact to appear for the first time in the revised
23 “editio tertia” of 1748. Important are also his *Observationes iuris naturalis*,
24 2 vols, (Darjes 1751), which comment on his earlier textbook, reply to
25 objections and provide ample guidance to the relevant literature.

26 The number of authors of works on natural law used in the German
27 universities was great indeed. Those of Achenwall and Darjes were, together
28 with Wolff’s, the ones most widely used in the period 1750–1790. Kant used
29 Achenwall’s in his lecture course on natural law. My own sampling of early
30 eighteenth-century authors like Buddeus, Gundling, Wolff, and Köhler has
31 so far not revealed any earlier linking of *ius* with the adjective *subiectivum* or
32 the adverb *subiective*. Until further notice, Darjes can claim priority.

33 Guzmán gives a useful survey of the radical change of meaning of
34 *subiectum*, *obiectum* and their cognates, adverted to above, which was well
35 under way by the late seventeenth century and for the first time, made it
36 possible for *subiectum* and cognates to be used in this way. As he observes,
37 there had been previous links with the noun. Leibniz had described a
38 person who has a right (*jus*) or an obligation as a *subjectum qualitatis*
39 *moralis*—a bearer of a moral quality. A *subjectum juris* is a personal being
40 who has a right or power. Thus he writes, “Deus est subjectum juris summi
41 2 in omnia”—God possesses the highest right over everything (Leibniz 1667,
42

43 ⁹ Molina, *De justitia et jure*, 1.15–1.16. The quotation is drawn from Tierney 1997, 220.

44 ¹⁰ Darjes 1776, 22 has the incorrect dates 1740, 1743 and 1745.

1 2.15; 1990b, 301). In his textbook, Darjes mentions *iura* which are taken to
2 exist in a certain subject (in *subiecto quodam*), and to be a quality of a person
3 3 (*qualitas personae*) (see Darjes 1745, sec. 9).

4 Expressions combining *ius* with the adverb *subiective* appear in a new
5 preface that Darjes wrote for the third edition of his textbook in 1748, in
6 reply to a radical and quite colourful attack on mainstream natural law
7 theory by Johann Jacob Schmauss (1690–1757), Professor in Göttingen, who
8 maintained that whatever instincts nature has implanted in us are in
9 accord with the law of nature, to be distinguished from inclinations or
10 aversions due to the influence from nurture, convention and positive law
11 (Schmauss 1748). Darjes opposed this, claiming that Schmauss had over-
12 looked, or denied, the radical difference between, for example, drinking to
13 slake one's thirst and drinking to get drunk, or between *concubitus* and
14 *stuprum*. Only the first in these pairs accord with nature. Some instincts
15 and propensities are unnatural. He relied on a conception of natural
16 tendencies, inherent in the nature of each kind of being. We have knowl-
17 edge of ours in our inward experience. He explained this more fully a few
18 years later.¹¹ First, the general concept of *ius*, with reference to a person, is:
19 *facultas, ea, quae sibi bona sunt, agendi* (a faculty to do that which, for the
20 agent, is good) (Darjes 1751, 2.3 also e.g. 2.6, 2.9, 3.1). Secondly, the
21 particular concept of *ius naturae*, understood *subiective* (subjectively), is the
22 *ius* that by nature inheres in the person. Our essence, actualised, has by
23 nature *conatus* (strivings) or *stimuli* (promptings). These direct us to what
24 is appropriate to our nature, or, in other words, *quod nobis bonum est* (what
25 is good for us). *Ius naturae* in this sense he will call *ius naturae subiective*
26 *sumtum* (*ius* of nature taken subjectively).

27 Darjes used this Aristotelian-Stoic teleological account of human nature to
28 oppose what he saw as Schmauss's indiscriminate acceptance of natural
29 instincts. A full account of Darjes's view on this is ruled out for reasons of
30 space, but a strikingly similar account can be found three centuries later in
31 Maritain (see Maritain 1961, 84–89). This may seem surprising, but the
32 common, ultimately Aristotelian, background explains the similarity.

33 Darjes's account is far from clear. On the one hand, the natural *ius*,
34 subjectively understood, is defined as something manifested in inwardly
35 felt propensities that are part of our actualised essence. On the other hand,
36 this *ius* is defined in the standard way, as a faculty (ability, power,
37 capacity). Perhaps Darjes thought that it can be defined as a faculty to act
38 in accordance with the human good. If so, his proposal could be inter-
39 preted as an alternative to Achenwall's faculty to act morally licitly, and to
40 Grotius's faculty to act *iuste*.

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42
43
44 ¹¹ He refers to Aristotle (Aristotle, *Physics*, 2.1 and *Metaphysics*, 1.7), deplores the obscurity of
Brucker's account in *Historia philosophicae*, in Brucker 1742, 1.2 sec. 2.7.8, and praises the clarity
of Cudworth's in *Systema intellectuale* (see Cudworth 1733, 1115ff).

1 [4] But along with this, Guzmán attributes to Darjes (2003, §§6–7) the view
2 that the subjectivity of *ius* consists in a person’s ability to act in a manner
3 which the person believes or knows to be good, and this is construed as
4 an instance of the contrast between appearance and reality, between what
5 is subjectively perceived and what is objectively the case.
6

7 Given the particular way in which Darjes took *ius* to be an ability to do what is
8 good, but only insofar as it is understood or known [by the agent] to be good, he
9 thought that for this reason it could be said that one looks at *ius* subjectively. since,
10 according to this new language, to regard things as they are known or thought, is
11 indeed *subiective* [subjectively] in the same sense as belief can be taken to be that
12 which is for everyone what he understands it to be [. . .] subjectively it is true for
13 me insofar as and as long as it seems so to me.[. . .] In contrast, the law is *ius*
14 *objective sumto* insofar as it is something external to the understanding or
15 conception.¹²
16

17 Whether such a theory of the nature of a right—implausible as it is—is
18 actually in Darjes is doubtful. But a detailed analysis of this must await
19 another occasion.

20 It appears, then, that it was by the mid-eighteenth century that the
21 subjective/objective terminology was first used to distinguish *ius* in the
22 objective sense of *law* or *the Law* from *ius* in the subjective sense of *a right*.

23 The only Latin variant—not without merit—which has come to my
24 notice is one in A. van Hove (van Hove 1928, n.2). He uses adjectives to
25 qualify *ius*, retains the meaning of *ius subiectivum*, but gives a new name,
26 *ius normativum*, for what would otherwise be known as *ius obiectivum*,
27 and reserves *ius obiectivum* for the *suum*, i.e. that which is a person’s
28 own, typically including, as in Locke, life, liberty health, limb and goods,
29 but not necessarily limited to these. The importance of this distinctive
30 concept of one’s own is often neglected in the literature (cf. Olivecrona
31 2010).
32

33 3. “Recht” Said to Have a Subjective Sense

34 Later in the eighteenth century, the vernacular was increasingly preferred
35 to Latin, and in German, *Recht*, which has the same ambiguity as *ius*, could
36 accordingly be understood either *im subjektiven Sinn(e)* (in a subjective
37

38 ¹² The Spanish original: “[. . .] Ahora bien, puesto que la especial manera en que Darjes lo
39 [i.e. *ius*] consideraba era como facultad de actuar cosas buenas, pero en cuanto se las
40 entiende o sabe como buenas, por esto último estimó del caso decir que se mira subiective
41 al *ius*, porque, según el nuevo lenguaje, una consideración que tome como punto de vista
42 a las cosas tales cuales son conocidas o pensadas, es precisamente subiective, en el mismo
43 sentido en que se considera así a la fe como lo que cada cual entiende por cual [. . .]
44 subjetivamente es verdad para mí en cuanto me parece y mientras me parezca [. . .] La ley,
45 en cambio, es *ius obiective sumto* [sic] en cuanto ella es algo externo a la comprensión o
46 concepción” (Guzmán 2003, §7).

1 sense) or *im objektiven Sinn(e)* (in a subjective sense). (*Bedeutung* was also
2 used, but *Sinn* has prevailed.) An alternative pair of expressions emerged
3 later: *subjektives Recht* and *objektives Recht*. It can be taken as a harmless
4 variant which has the virtue of brevity (four words instead of eight). When
5 it came in, the use of Latin was in decline, so *ius subiectivum / obiectivum*
6 would be rare. What is said here about German later applied to many other
7 languages.

8 However, the shorter expressions make it sound as if the distinction was
9 between two kinds or instances of *Recht*, rather than two senses of “*Recht*”.
10 This is not necessarily misleading. Given certain assumptions about the
11 nature and source of obligatory force (or “normativity”), the shorter
12 expressions may have been so intended. To illustrate the point: assume that
13 all law expresses the will of a sovereign authority. English law and French
14 law would be two instances of the same feature, since the sovereign
15 authority is not the same. It would be incorrect to say that “law” in those
16 expressions was used in two different senses. In a similar way, the two
17 kinds or instances of *Recht* we are discussing would differ in that one
18 would flow from the will of an autonomous person, the other from the
19 will of an entity external to the individual (the sovereign, the people,
20 nature, God). This outlook found striking expression in the following
21 statement:

22
23 In virtue of human personhood, the essence of which is self-causality and self-
24 reflexivity, this realm, bestowed on man by the moral power of Law, becomes
25 necessarily his own, a moral power intrinsic to himself over against others. The
26 others are morally obliged towards him—not only towards God, or their consci-
27 ence, or the legal system. He is not merely the party to whom they owe a duty,
28 but he is the ground of their duty. This is the nature of the rights which belong to
29 a person. (Stahl 1845, 218)¹³

30
31 Rights in this sense mark a realm of individual sovereignty, a conception
32 that had come to expression in Grotius, Pufendorf, Locke and a host of
33 writers of natural law and on politics since. To this conception pertains the
34 view that the person is the ground of others’ obligations. In this spirit,
35 leading authors in nineteenth-century Germany defined a right as a
36 *Willensmacht* (a power inherent in a person’s will). What was then added,
37 under the influence of Rousseau and Kant, was the idea of the sacredness
38 and absolute value of personhood: unconditional respect was its due.

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40
41 ¹³ The German original: “Kraft der Persönlichkeit des Menschen, deren Wesen ja Selbstursäch-
42 lichkeit und Konzentrierung (Rückbeziehung) auf sich ist, wird diese Sphäre, welche ihm
43 durch die sittliche Macht des Rechts angewiesen ist, notwendig zu seiner eignen, ihm selbst
44 inwohnenden sittlichen Macht gegen die andern. Diese sind ihm —nicht bloss Gott, oder
45 ihrem Gewissen oder der Rechtsordnung in Beziehung auf ihn— sittlich gebunden, er ist nicht
46 blosser Gegenstand ihrer Pflicht, sondern Ursache derselbe. Dies ist das Recht im subjektiven
Sinne oder die Rechte.”

1 "Human personhood is holy and inviolable."¹⁴ It is the basic principle of
2 all rights (see Ahrens 1871, 19–20).

3 The central place of personhood as the ultimate source of people's rights
4 in the theories by the early nineteenth century has been well described in
5 an article by Diethelm Klippel (1995, 287).

6 This way of thinking contains a "tension" that defies clear explanation:
7 the individual's sovereign realm is granted him by the Law, and yet the
8 same realm is also said to be intrinsic to him, flowing from his being a
9 person with an essential claim to respect.

10 Still, leaving aside such theoretical frameworks, the pair of terms can be
11 understood to distinguish senses of "*Recht*" rather than kinds of *Recht*.

12 It took some time for the new terminology to be fully established as part
13 of the standard vocabulary in legal or moral theory. It is not mentioned
14 even in the revised second edition of Krug's encyclopedia (Krug 1833,
15 1838). As late as 1897 Amira writes *das sog.* [= so-called] *subjektive Recht*
16 (Amira 1897, 7).¹⁵ However, "German lawyers today use *objektives Recht* to
17 mean 'law,' and *subjektives Recht* to mean a 'right' someone has" (Byrd and
18 Hruschka 2010, 28).

19 We saw that the solecism we are tracing could not have been due to
20 present-day scholars' immersion in medieval and early-modern Latin texts,
21 since the corresponding Latin expression did not exist. Could it have been
22 inspired by a close engagement with eighteenth-century German *Ius*
23 *naturae*, where the Latin neologism emerged, or with its continuations as
24 *Naturrecht*, *Rechtsphilosophie* or *allgemeine Rechtslehre*? This is most unlikely.
25 Its origin should be sought elsewhere.

26 27 **4. Other Languages**

28 The equivalents to *ius* and *Recht*, with the same ambiguity, are present in
29 most European languages. One reliable source names six Romance, six
30 Germanic, and eight Slavic languages. Even Lithuanians and Letts have it,
31 not to mention the Finns.¹⁶ Scholars writing in those languages also began
32 similarly to disambiguate. Examples are *droit subjectif / objectif* in French
33 and *diritto soggettivo / oggettivo* in Italian. The same source also notes that
34 (apart from modern Greek) English is the great exception.

35 At this point, a simple table may help (see Mautner 2006, *s.v.* "right"):

36
37
38 ¹⁴ The German original: "Die menschliche Persönlichkeit ist heilig und unverletzlich." In the
39 same spirit see Dernburg 1911, I.5.33, p. 65: "The individual personality of man alone has
40 intrinsic and ultimate worth." Cf. also Barker 1942, 15–6. Similar sentiments appear frequently
41 in more recent literature.

42 ¹⁵ On the other hand, in the late 1800s, treatises on *subjektives Recht* announcing this in their
43 title were not uncommon (Hölder, Jellinek, Schuppe, et al.).

¹⁶ And other speakers of Uralic languages. See Gasparri and Di Lucia 2006, 2980–2981.

| English | German | French | Latin |
|--|--------------------------------------|--------------------------------|---|
| LAW in the sense of a body of law, e.g., Civil Law, Roman Law, Natural Law, private law, the law of torts, administrative law, etc. | <i>Recht (objektives Recht)</i> | <i>droit (droit objectif)</i> | <i>ius (ius obiective sumptum)</i> |
| A RIGHT of a person, to do something or to have something or to receive something, etc.) | <i>Recht (subjektives Recht)</i> | <i>droit (droit subjectif)</i> | <i>ius (ius subiective sumptum)</i> |
| A LAW a rule, a statute, an ordinance | <i>Gesetz</i> | <i>Loi</i> | <i>lex</i> |

5. English

In English, *law* cannot replace *right*. Human laws are not the same as human rights. (Except that poor translation and editorial non-intervention have allowed “law” and “subjective law” to be used instead of “right” in two major articles in a leading scholarly journal (Zarka 1999a, 1999b). Elsewhere, *subjektives Recht* has become “Law in a Subjective Sense” (see Kelsen 1960, 130; 1967, 129), although the English word “law” does not have a subjective sense.

Nor can *right* replace *law*. Consider *Roman Law*, the *law of torts*, *criminal law*, replace *law* with *right*, and note the result. Nor is a natural right the same as a natural law. Obviously, English does not need the disambiguation.

These remarks have the support of authority: neither Samuel Johnson’s dictionary of 1755, nor the OED include *law s.v. “right, n.”* In the 1780s, Bentham took it for granted that in English *right* does not have the sense of *law*—and regretted the fact. He noted that *law* was ambiguous and that long ago, *right* had been used like *Recht* and regretted that this was no longer the case:

In most of the European languages there are two different words for distinguishing the abstract and the concrete senses¹⁷ of the word law: [lex for the concrete sense, jus for the abstract]. [. . .] In the Anglo-Saxon, there was the word right, answering to the German recht, for the abstract [sense] [. . .]. But the word right having long ago lost this sense, the modern English no longer possesses this advantage. (Bentham 2010, 16ff.)¹⁸

The foremost of Bentham’s followers, John Austin, agreed that “right” had lost the sense of Law (see Austin 1954, 285–8), but did not consider it a disadvantage. He noted that in Latin the name which signifies right as

¹⁷ The two senses are discussed in Salmond 1966, 48.

¹⁸ See also Bentham 1970, 17.23.

1 meaning faculty, also signifies law: "*jus* [. . .] denoting indifferently either
2 of these two" (Austin 1954, 287), and complained that the German writers,
3 like Kant and many of his followers, often blurred the two meanings, and
4 that when they distinguished *objektives* from *subjektives Recht*, they erred in
5 taking *Recht* to signify one genus divided into "two species or sorts," in
6 spite of the fact that "law" and "faculty" cannot be so understood.¹⁹

7 The confusion of law and right, he continued (see Austin 1954, 288), is
8 avoided by our writers because commonly the two things denoted have
9 these clearly different words to denote them. Austin's commitment to the
10 theory that all moral and legal duties are commands from a superior able
11 to enforce them made it difficult for him to make sense of the notions of
12 the obligation-creating power of autonomous willing and of the intrinsic
13 value of personhood.

14 Nevertheless, "right" in an objective sense is perhaps not entirely extinct.
15 First, some inherited phrases are indeterminate between the two: e.g. "by
16 right of nature." Secondly, although the ancient Germanic usage is absent
17 from Samuel Johnson's dictionary in the mid-1750s, Thomas Rutherford
18 states at that time in his lectures on Grotius that it occurs, though "very
19 seldom" (Rutherford 1754, 1.24). Contrary to Bentham, Austin concedes
20 that it appears, albeit rarely. Thirdly, deviations from correct usage occur
21 because of foreign-language influences. Hegel's *Philosophie des Rechts*
22 should of course be *Philosophy of Law*.²⁰ Leo Strauss's influential work about
23 theories of natural law and political justice would, but for political devel-
24 opments in 1930s Germany, no doubt have been published as *Naturrecht*
25 *und Geschichte*, which indeed became the title of the later German edition
26 (1956) of his misnamed *Natural Right and History* (1953). Maybe he rejected
27 friendly advice, maybe none was offered. One recent author, obviously
28 under French influence, treats *natural law* and *natural right* as fully inter-
29 changeable.²¹ None of the above, however, creates any need for the
30 continental-style disambiguation.

31 32 **6. The Rise of the Solecism**

33 Austin, like Bentham, as we have seen, saw no need to adjoin *subjective* to
34 *right*. During the next 150 years almost everyone in the human and social
35 sciences who wrote on legal, moral or political subjects agreed.

36 It was not until about 1980 that a change set in. It is illustrated by the
37 quotations that follow. Earlier examples are rare. The ones that follow are
38 a minute random selection from quite a large collection. They illustrate a
39 lexical point, so the comments on content are few and brief.

41 ¹⁹ This is also the view of Jean Dabin: The second elements in *droit-règle* and *droit-prérogatif*
42 do not qualify a *notion univoque* (see Dabin 1952).

43 ²⁰ Ernest Barker (1934, xxii, liii) agrees.

44 ²¹ Edelstein (2009, 33, 34, 36) offers clear examples.

1. “[Sixteenth-century Thomists began to] take over the ‘subjective’ view of rights which had originated with Ockham and his followers [. . .]” (Skinner 1978, vol. 2, 176).
2. “[Premediaeval writings] contained no explicit sense of what we would now understand by ‘a subjective right’ ” (Kingsbury and Roberts 1990, 31).
3. “Grotius’ theory of natural or subjective rights” (Kingsbury and Roberts 1990, 51). (Here, as elsewhere, “subjective” can be omitted. The “or” is puzzling.)
4. “In the early sixteenth century, [. . .] Vitoria revived Aquinas’s theory [. . .] with no mention of subjective rights” (Miller et al. 1991, 508).
5. “The new approaches to physical science, moral, religious and epistemological scepticism, the vocabulary of subjective rights” (Hampsher-Monk 1992, xii).
6. “A doctrine of what we would later call subjective rights was already [in the thirteenth century] implicit in marriage law” (Coleman 1996, 16).
7. “Subjective rights, as they would now be called” (Haakonssen 1998, 1324).
8. “Right for Grotius is entirely “subjective right” [. . .] something to be exercised (or not) at the discretion of the right-holder; it is no longer objective right, a rightful state of affairs. [. . .] In reserving the term *jus* for subjective rights, Grotius innovated” (Zuckert 1998, 141). (The statement is not correct. Grotius did not reserve the term *jus* in this way: he recognised and used different senses of the word. See in this regard Grotius 1625, 1.1.3–6 and 1.1.9).
9. “Yet, within limits we have the subjective right to do what is objectively wrong” (Zuckert 2001, 125).
10. “[In Grotius] the duty to respect the subjective rights of others becomes paramount” (Harvey 2006, 35).
11. “[W]hat present-day scholars and theorists have termed subjective rights in the sense that they are thought to inhere in each individual person by nature” (Zagorin 2009, 23). (A mistake: the rights need not be natural.)
12. “It is true that subjective rights have, historically, been associated with rights as *dominium*” (Waldron 2010, 229).²²

The quoted statements are all recent. Many of them indicate that what they refer to has only recently come to be called “subjective right.” What it was called earlier is left unexplained. It is notable that in most of them “subjective” as an adjective to “right” can simply be deleted (in some cases with slight re-phrasing) without any change of meaning. For example: “A

²² In contrast, the expression does not appear in Waldron 1986.

1 right to do wrong” omits nothing from item 9 and is more elegant (see
2 Waldron 1981).

3 What inspired this neologism? It is not needed for disambiguation. We
4 saw earlier that it could not have been inspired by mediaeval and early-
5 modern writings. An influence on terminology from eighteenth-century *Ius*
6 *naturae* and *Naturrecht* or subsequent nineteenth-century legal or political
7 theory is unlikely. It would have manifested itself much earlier. We have
8 to look elsewhere.

9 10 **8. A Theory of the Origin of Rights-Concepts**

11 Among those who in the post-war period devoted themselves to a study
12 of the history of moral and political thought, Michel Villey came to play
13 quite a significant part (see Villey 1964, 1968, 1969 and many other
14 writings). He maintained—rightly—that the historiography of rights-
15 concepts had to look back beyond Grotius. A central thesis of his was that
16 the modern concept of a right had its origin in the writings of William of
17 Ockham, and that it was shaped in the course of the polemic against Pope
18 John XXII that began in 1321, on the question of evangelical poverty.²³ The
19 Franciscan position, defended by Ockham, was that having taken a vow of
20 poverty, they had no property and nothing was their own. They *made use*
21 *of* basic necessities (food, raiment, shelter) but they did not *own* anything.
22 It was, according to Villey, in this context that the concept of property
23 rights and other real rights came to be defined. As the possessor of a right
24 in this sense the person is in control and decides what is lawful and
25 unlawful, right and wrong. The characterisation of the conception of a *droit*
26 *subjectif* that Villey spells out in some detail is rather similar to Stahl’s,
27 quoted above.²⁴ But his attribution of such a full-blown conception to
28 Ockham is no doubt an anachronism. It is all the more doubtful since there
29 is a transition in Villey’s argument that may not have received sufficient
30 critical examination in the literature. The transition is from rights of
31 ownership or use of goods, debated in the context of Franciscan poverty,
32 to rights of the kinds belonging to a ruler, a master, a parent, a creditor, or
33 a free and autonomous person. It is rights of these kinds, rather than rights
34 in things, that are central to the modern individualism that Villey went on
35 to attack. Therefore, Ockham’s disquisitions on matters of interest only to
36 mendicant friars would hardly be relevant for the emergence of the concept
37 of a right as a *potestas* or *facultas moralis*. When later writers on natural law
38

39 ²³ John Kilcullen gives a clear and informative account of the background and content of the
40 controversy: see Kilcullen 2001.

41 ²⁴ “This kind of right which in the last analysis would be derived from the very being of the
42 subject, his essence, his nature” (Villey 1969, 145). The French original is as follows: “[C]ette
43 espèce de droit qui serait en dernière analyse tiré de l’être même du sujet, de son essence, de
44 sa nature.”

1 mentioned Ockham, it was hardly ever in relation to this, but to the
2 voluntarism usually attributed to him. (Whether the attribution was rea-
3 sonable has been disputed: "It would seem that Ockham's theory is not
4 voluntarist." Kilcullen 2001, vol. 2, 882).

5 Villey had not found any "subject"-expressions before the 1660s
6 (Leibniz), but did not raise the question why it took hundreds of years for
7 the new conception to be so labelled. He writes that the sense of *subjektiv*
8 in the Pandectists is inherited from the old scholastic usage and seems
9 unaware of the change in meaning of which Guzmán's survey serves as a
10 reminder (Villey 1969, 144-5).

11 As with most histories, there is an ulterior motive. Villey wanted to
12 convey a message. We should realise, he argued, that the new conception
13 of rights was the first step on the downhill road to modernity, individu-
14 alism, egoism, and neglect of social solidarity and the common good, away
15 from the superior conception of an overall objective and just order which
16 was given a classical statement by Thomas Aquinas (Villey 1969, 141). The
17 mediaeval Aristotelian synthesis of Aquinas had been the high point of
18 philosophy, from which later scholastics such as Duns Scotus and Ockham
19 had fallen away. The path of modern philosophy had been further down-
20 ward. Hobbes, Spinoza, Gassendi, Locke, Wolff were among those who
21 contributed to the *déformation*. Villey did not agree that, as asserted e.g. by
22 Jacques Maritain (1961, 84), it was Grotius who began deforming the
23 genuine idea of natural law. The decline had begun earlier.²⁵

24 A sketch as brief as this cannot do full justice to Villey's account of
25 rights-concepts and their history. Insightful expositions and criticisms are
26 made in writings by Brian Tierney from the 1980s onward (Tierney 1997).
27 They are a rich source of information about mediaeval thought and contain
28 significant objections to many of Villey's theses (Tierney 1997, 13). He
29 shows that concepts claimed to have originated with Ockham were current
30 much earlier.

31 In the 1970s, Cambridge scholars with an interest in the history of moral
32 and political thought had become acquainted with Villey's work. Impor-
33 tant parts of his account of the origin of the concept of a right found
34 acceptance in Quentin Skinner's *The Foundations of Modern Political Thought*
35 (Skinner 1978) and in Richard Tuck's *Natural Rights Theories* (Tuck 1979).
36 Since then, Villey's thought, "always interesting, sometimes idiosyncratic"
37 has become "widely and uncritically accepted" (Tierney 1997, 14). There
38 were earlier admirers also. Orestano wrote enthusiastically of "the impor-
39 tant and brilliant contribution of Villey" (Orestano 1960, 3). More recently
40

41 ²⁵ The same perspective has been re-affirmed by Edward Feser in his *The Last Superstition*
42 (Feser 2008). Anthony Kenny's review (Kenny 2011) describes and criticises his view of an
43 epochal decline, from the high point reached in the medieval Aristotelian synthesis of St
44 Thomas Aquinas, via a sequence of intellectual disasters, to the unhealthy philosophical
45 condition of our times.

1 Yves-Charles Zarka mentions with approval the “classic” works of Lagarde
2 and Villey (Zarka 1999a, 16).

3 4 **9. Aetiology and Diffusion**

5 Up to this point, we have considered, first, how *ius* was conceived as a
6 power, *potestas*, an attribute of a subject, i.e. a person, and secondly, how,
7 centuries later “*ius*” first could be said to be *subiective sumptum* and *ius*,
8 soon after, to be *subiectivum*. It is now time to turn to the final question:
9 how did the superfluous *subjective* come to be added to *right*?

10 The answer to that question is simple: *Villey wrote in French!*

11 It was natural, indeed necessary, for Villey to write *droit subjectif*. What
12 is astonishing is that the adjective was not cut adrift and left to perish in
13 the waves when his ideas crossed the Channel and found a welcome in
14 Cambridge. Left behind on the quay, however, and not conveyed on “that
15 one and twenty miles sailing” was the conservative message of decline that
16 Villey associated with his historical analysis. Skinner put *subjective* within
17 inverted commas in some places, but omitted them elsewhere,²⁶ and in
18 Tuck’s book *subjective right* appeared many times, though mainly (or only?)
19 in the sections which deal with Villey’s views. Because of the influence of
20 their works, of which, with respect to this particular lexical development,
21 the latter has probably played a greater part, it is not only Villey’s
22 debatable theory that has gained wide acceptance, but also the pleonastic
23 expression which, coined somewhat carelessly, is an unidiomatic calque.

24 It is puzzling that this new solecism has continued to spread widely,
25 albeit not uniformly. “Academic life is not marked only by fashion but also
26 by its uneven diffusion” (Hall 2010, 128). Could the wide uptake in part be
27 due to a fear of appearing to be out of touch, a readiness “deferentially to
28 submit to the fashion at present prevailing”? (Thackeray 2001, 747).

29 No such suspicion could possibly be entertained about Tierney. It is
30 therefore strange indeed that he would use the redundant expression and
31 even more mystifying that it appears frequently only in chapters 1, 5, 9,
32 and 11 and sparingly or not at all in chapter 3, 4, 6, 7, 8 and 10 of *The Idea*
33 *of Natural Rights*, even though they all deal with the same range of subjects.
34 Particularly baffling is the later insertion of “subjective” into the well-
35 formulated sentence “The concept of individual rights has become central
36 to our political discourse [. . .]” (Tierney 1988, 5).²⁷

37 It seems, then, that this meme (*sit venia verbo*), which has proliferated in
38 the recent literature on moral and political thought and its history, began
39 with the Cambridge reception of Villey at the end of the 1970s.

40
41 ²⁶ Likewise Geoffrey Samuel in Samuel 1989.

42 ²⁷ The insertion is in the revised version which became Chapter 1 of Tierney 1997.

1 In some cases, however, a direct influence from another language will be
2 discernible, especially when an author whose mother tongue is not English
3 is let down by anglophone helpers and editors. Also, beyond moral and
4 political thought and its history, in disciplines such as international law
5 and international private law, many instances of the pleonasm appear in
6 reports, papers and treatises, be they poorly translated or of local origin.
7 The same applies to what is produced by non-governmental organisations,
8 transnational enterprises and other international bodies. Christian Tams's
9 apt comment on this will be quoted below.

10 11 10. Harmful Consequences

12 Many lexical aberrations are only that. The reason why the one here
13 exposed requires special attention is that its use creates obscurity and
14 confusion and is spreading into textbooks.

15 In French, and similarly in other continental languages, *droit subjectif*/
16 *droit objectif* are technical terms. They are unknown even to persons whose
17 command of the language is unquestionable but who are unfamiliar with
18 the more specialised literature on law and justice in which these expres-
19 sions are explained. In contrast, although *subjective right* enters discourse as
20 a technical term,²⁸ it is explained inadequately or left unexplained.

21 If it is left unexplained, the innocent reader will be led to believe that he
22 is ignorant of a concept that he ought to be familiar with, but he will
23 assume that "subjective" adds something to "right". Failure is guaranteed,
24 since a "subjective right" is nothing but a *subjektives Recht*, *droit subjectif*,
25 etc., that is—a right.

26 Some authors do, however, define the expression. Their definitions will
27 let "subjective" add something to "right" and, again for the same reason,
28 failure is guaranteed. It is like letting "female" add something to "vixen."

29 One attempt is by defining subjective rights as those which belong to a
30 particular individual. "Such rights are often therefore referred to as 'sub-
31 jective rights', meaning that they apply to particular subjects" (McKinnell
32 2010). The implied contrast is with rights that belong to authorities or
33 corporations or other non-individuals. But in the literature, so-called
34 subjective rights are, like rights, commonly attributed also to the latter. For
35 example: "[. . .] giving students, parents, and relative authorities subjective
36 rights in shaping religious instruction" (Dromgold and Schneider 2010).
37 See also the statement in Tams 2005, quoted below.

38 Given the terminological/conceptual fog surrounding this ill-defined
39 expression, it is not surprising that an author can come to endorse both of
40 these contrary standpoints. On the one hand he writes of "the subjective
41

42 ²⁸ *Collins Wordbanks Online: English* (August 2011) confirms this strongly.

1 rights of government [. . .] and the subjective rights of the individual", and
2 on the other hand he gives the impression that they belong to individuals
3 only: "The classical liberal model [. . .] conceives these to be rights vested
4 in individuals (ie subjective rights) against government" and "Subjective
5 rights are rights that are possessed by an individual in right of [*sic*] their
6 status as a person [. . .]" (Loughlin 2010, 406, 369, 367).

7 Another attempt is this:

8
9 A subjective right is an individual's good-faith belief about his rights; this belief
10 gives him title to coerce others to keep off his property or to allow him bodily
11 inviolability. But it does not yet place other people under a correlative duty. (Stilz
12 2009, 47–8)

13
14 This means that a "subjective right" is not something that a subject *has*, but
15 something which a subject *believes that he has*. This has unfortunate impli-
16 cations. A person who is unaware of the fact that he is an inheritor would
17 have no "subjective right" to the inheritance. If, on the other hand,
18 someone wrongly believes that he is an inheritor, his belief would give him
19 title to coerce others.

20 An expression like "subjective right" naturally calls for a contrasting
21 expression. The obvious candidate is "objective right." Some authors avoid
22 using the latter, and some who do use it wisely refrain from explaining it.
23 Others are braver. In their struggle to make sense of this contrast between
24 "subjective right" and "objective right," they propose that "right" in the
25 first is a noun, and in the second an adjective, and that this is made explicit
26 by the words "subjective" and "objective" (see Edmundson 2004, 8–9;
27 Ivison 2007, 7ff.; Vincent 2010, 13, 33, 56)! This evidently will not do. For
28 one thing, as an adjective, "right" has to be qualified by an adverb. To add
29 to the confusion, it is also suggested that "the 'object' in objective right is,
30 if anything, the global object of moral assessment or prescription"
31 (Edmundson 2004, 9).

32 33 **11. Reactions and Protests**

34 Material examined for this paper suggests that some authors feel uncom-
35 fortable with the neologism, and if asked to explain might feel slightly
36 embarrassed. When in November 2010, a scholar (no personal acquaint-
37 ance) circulated a paper to be presented at a seminar, an inquiry about it
38 received a gracious answer by e-mail. It reads in part:

39
40 You are quite right to pull me up about subjective rights: the term is most
41 unsatisfactory, in part, I suspect, because it is wrenched from its original context in
42 nineteenth-century German political thinking (but I read German only very slowly
43 and haven't yet investigated this important point). Most Anglo-American writers at
44 some point use the term, but few give any clear account of the criterion by which
45 they distinguish "objective" from "subjective."

1 Explicit misgivings about this solecism are rare. Martin Golding writes, "I
2 do not particularly care for this terminology" (Golding 1984, 126). Christian
3 Tams's statement (truncated for lack of space) is the only more fully
4 articulated protest found so far:
5

6 Some of the discussion about [subjective rights] seems to be based on the assump-
7 tion that the circle of subjective rights were narrower than that of other rights. This
8 assumption is unfounded [. . .] In fact, whether subjective rights can be meaning-
9 fully distinguished from other types of rights, may be open to doubt. [. . .]
10 "subjective right" appears to be used as a direct translation from other languages,
11 in which the notion of "droit subjectif" or "subjektives Recht" is indeed very
12 common. [. . .] These languages use the same expression (*droit, Recht*, etc.) in order
13 to describe (i) the sum total of legal rules (i.e. "law"), and (ii) claim that enjoys legal
14 protection ("right"). [. . .] where (as in the English language) the two mentioned
15 above are expressed by entirely different words, such as "law" and "right", the
16 attributes seem superfluous. (Tams 2005, 33)
17

18 Similarly, "There is no trace in the Anglo-American tradition [of describ-
19 ing] rights as being 'subjective' " (Campbell 2011).
20

21 12. Concluding Remark

22 It would seem that the tautological expression is not needed. The inquiry
23 into its emergence has however, brought to view parts of a terminological/
24 conceptual history which help elucidate features of current concepts of
25 rights.
26

27 Postscript

28 What has been said suggests that terminological novelties should be
29 treated with circumspection. So, as a counterpart to Ockham's razor, we
30 could also have the principle: "Avoid technical terms as far as possible."²⁹
31 It is easier to memorise if we give it a name, so let it be called Leibniz's
32 razor.
33

34 ²⁹ In Leibniz's words: "[Ostensum est] terminis technicis abstinendum esse, quoad eius fieri
35 potest" (Leibniz 1990b, 418, line 6). Other statements that technical terms should be shunned
36 also at p. 411, line 8 and p. 412, line 8. They are all in the prefatory dissertation to Nizolius
37 1670 (Leibniz 1990b). Leibniz himself seems to have thought of this principle as a counterpart
38 to Ockham's razor, which he formulated *entia non esse multiplicanda praeter necessitatem* (ibid.,
39 428). It is of interest to note that this form of words emerged in the seventeenth century, and
40 is alluded to, e.g., in § 223 of Bayle's *Pensées diverses* (see Bayle 1683, 681). A remarkably
41 informative account of the principle and why it came to be associated with Ockham comes
42 from William M. Thorburn (1918, 345–53). His account makes it likely that Leibniz found the
43 formulation in Clauberg's *Elementa philosophiae* (Groningen 1647) or in his *Logica vetus et nova*
44 (Groningen 1654) or possibly in Poncius's (John Ponce) commentary of 1639 on Scotus's *Opus*
45 *Oxonienae*.

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