[277] **§23.**

In terms of the object, acquisition in accordance with this principle is of three kinds: A *man* acquires a *wife;* a *couple* acquires *children;* and a *family* acquires *servants.* Whatever is acquired in this way is also inalienable and the right of possessors of these objects is the *most personal* of all rights.

On the Right of Domestic Society
Title I:
Marriage Right
§24.

Sexual union (*commercium sexuale*) is the reciprocal use that one human being makes of the sexual organs and capacities of another (*usus membrorum et facultatum sexualium alterius*). This is either a *natural* use (by which procreation of a being of the same kind is possible) or an *unnatural* use, and unnatural use takes place either with a person of the same sex or with an animal of a nonhuman species. Since such transgressions of principle, called unnatural (*crimina carnis contra naturam*) or also unmentionable vices, do wrong to humanity in our own person, there are no limitations or exceptions whatsoever that can save them from being repudiated completely.

Natural sexual union takes place either in accordance with mere animal *nature* (*vaga libido, venus volgivaga, fornicatio*) or in accordance with *principle.* Sexual union in accordance with principle is *marriage* (*matrimonium*), that is, the union of two persons of different sexes for lifelong possession of each other's sexual attributes. The end of begetting and bringing up children may be an end of nature, for which it implanted the inclinations of the sexes for each other; but it is not *requisite* for human beings who marry to make this their end in order for their union to be compatible with rights, for otherwise marriage would be dissolved when procreation ceases.

Even if it is supposed that their end is the pleasure of using each other's sexual attributes, the marriage contract is not up to their dis-
[278] cretion but is a contract that is necessary by the principle of humanity, that is, if a man and a woman want to enjoy each other's sexual attributes they *must* necessarily marry, and this is necessary in accordance with pure reason's principles of Right.

§25.

For the natural use that one sex makes of the other's sexual organs is *enjoyment,* for which one gives itself up to the other. In this act a human

being makes himself into a thing, which conflicts with the Right of humanity in his own person. There is only one condition under which this is possible: that while one person is acquired by the other *as if it were a thing*, the one who is acquired acquires the other in turn; for in this way each reclaims itself and restores its personality. But acquiring a member of a human being is at the same time acquiring the whole person, since a person is an absolute unity. Hence it is not only admissible for the sexes to surrender to and accept each other for enjoyment under the condition of marriage, but it is possible for them to do so *only* under this condition. That this *right against a person* is also *akin to a right to a thing* rests on the fact that if one of the partners in a marriage has left or given itself into someone else's possession, the other partner is justified, always and without question, in bringing its partner back under its control, just as it is justified in retrieving a thing.

§26.

For the same reasons, the relation of the partners in a marriage is a relation of *equality* of possession, equality both in their possession of each other as persons (hence only in *monogamy*, since in polygamy the person who surrenders herself gains only a part of the man who gets her completely, and therefore makes herself into a mere thing), and also equality in their possession of material goods. As for these, the partners are still authorized to forgo the use of a part, though only by a separate contract.

For this reason it follows that neither concubinage nor hiring a person for enjoyment on one occasion (*pactum fornicationis*) is a contract that could hold in Right. As for the latter, everyone will admit that a person who has concluded such a contract could not [279]
rightfully be held to the fulfillment of her promise if she regrets it. So, with regard to the former, a contract to be a *concubine* (as *pactum turpe*) also comes to nothing; for this would be a contract to *let* and *hire* (*locatio-conductio*) a member for another's use, in which, because of the inseparable unity of members in a person, she would be surrendering herself as a thing to the other's choice. Accordingly, either party can cancel the contract with the other as soon as it pleases without the other having grounds for complaining about any infringement of its rights. The same considerations also hold for a morganatic marriage, which takes advantage of the inequality of Estate of the two parties to give one of them domination over the other; for in fact morganatic marriage is not different, in terms of natural Right only, from concubinage

and is no true marriage. If the question is therefore posed, whether it is also in conflict with the equality of the partners for the law to say of the husband's relation to the wife, he is to be your master (he is the party to direct, she to obey): This cannot be regarded as conflicting with the natural equality of a couple if this dominance is based only on the natural superiority of the husband to the wife in his capacity to promote the common interest of the household, and the right to direct that is based on this can be derived from the very duty of unity and equality with respect to the *end.*

§27.

A marriage contract is *consummated* only *by conjugal sexual intercourse* (*copula carnalis*). A contract made between two persons of opposite sex, either with a tacit understanding to refrain from sexual intercourse or with awareness that one or both are incapable of it, is a *simulated contract,* which institutes no marriage and can also be dissolved by either of them who pleases. But if incapacity appears only afterwards, that right cannot be forfeited through this accident for which no one is at fault.

[280] *Aquisition* of a wife or of a husband therefore takes place neither *facto* (by intercourse) without a contract preceding it nor *pacto* (by a mere marriage contract without intercourse following it) but only *lege,* that is, as the rightful consequence of the obligation not to engage in sexual union except through *possession* of each other's person, which is realized only through the use of their sexual attributes by each other.

Title II: Parental Right

§28.

Just as there arose from one's duty to oneself, that is, to the humanity in one's own person, a right (*ius personale*) of both sexes to acquire each other as persons *in the manner of things* by marriage, so there follows from *procreation* in this community a duty to preserve and care for its *offspring;* that is, children, as persons, have by their procreation an original innate (not acquired) right to the care of their parents until they are able to look after themselves, and they have this right directly on the basis of principle (*lege*), that is, without any special act being required to establish this right.

For the offspring is a *person,* and it is impossible to form a concept of the production of a being endowed with freedom through a physi-

cal operation.* So from a *practical* point of view it is a quite correct and even necessary Idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can. They cannot destroy their child as if he were something they had *made* (since a being endowed with freedom cannot be a product of this kind) or as if he were their property, nor can they even just abandon him to chance, since they have brought not merely a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to concepts of Right. [281]

§29.

From this duty there must necessarily also arise the right of parents to *manage* and develop the child, as long as he has not yet mastered the use of his members or of his understanding: the right not only to feed and care for him but to educate him, to develop him both *pragmatically,* so that in the future he can look after himself and make his way in life, and *morally,* since otherwise the fault for having neglected him would fall on the parents. They have the right to do all this until the time of his emancipation (*emancipatio*), when they renounce their parental right to direct him as well as any claim to be compensated for their support and pains up till now. After they have completed his

*No concept can be formed of how it is possible for *God to create* free beings, for it seems as if all their future actions would have to be predetermined by that first act, included in the chain of natural necessity and therefore not free. But that such beings (we men) are still free the categorical imperative proves for morally practical purposes, as through an authoritative decision of reason without its being able to make this relation of cause to effect comprehensible for theoretical purposes, since both are supersensible. All that one can require of reason here would be merely to prove that there is no contradiction in the concept of a *creation of free beings,* and it can do this if it shows that the contradiction arises only if, along with the category of causality, the *temporal condition,* which cannot be avoided in relation to sensible objects (namely, that the ground of an effect precedes it), is also introduced in the relation of supersensible beings. As for the supersensible, if the causal concept is to obtain objective reality for theoretical purposes, the temporal condition would have to be introduced here too. But the contradiction vanishes if the pure category (without a schema put under it) is used in the concept of creation with a morally practical and therefore non-sensible intent.

If the philosophic jurist reflects on the difficulty of the problem to be resolved and the necessity of solving it to satisfy principles of Right in this matter, he will not hold this investigation, all the way back to the first elements of transcendental philosophy in a metaphysics of morals, to be unnecessary pondering that gets lost in pointless obscurity.

education, the only obligation (to his parents) with which they can charge him is a mere duty of virtue, namely the duty of gratitude.

[282] From a child's personality it also follows that the right of parents is not just a right to a thing, since a child can never be considered as the property of his parents, so that their right is not alienable (*ius personalissimum*). But this right is also not just a right against a person, since a child still belongs to his parents as what is theirs (is still in their *possession* like a thing and can be brought back even against his will into his parents' possession from another's possession). It is, instead, a right to a person *akin to a right to a thing.*

From this it is evident that, in the doctrine of Right, there must necessarily be added to the headings rights to things and rights against persons the heading *rights to persons akin to rights to things;* the division made up till now has not been complete. For when we speak of the rights of parents to children as part of their household, we are referring not merely to the children's duty to return when they have run away but to the parents' being justified in taking control of them and impounding them as things (like domestic animals that have gone astray).

Title III: Right of a Head of the Household

§30.

The children of a household, who together with their parents formed a *family,* reach their *majority* (*maiorennes*) without any contract to withdraw from their former dependence, merely by attaining the ability to support themselves (which happens partly as a natural coming of age in the general course of nature, partly in keeping with their particular natural qualities). In other words, they become their own masters (*sui iuris*) and acquire this right without any special act to establish it and so merely by principle (*lege*). Just as they are not in debt to their parents for their education, so the parents are released in the same way from their obligation to their children, and both children and parents acquire or reacquire their natural freedom. The domestic society that was necessary on principle is now dissolved.

[283] Both parties can now maintain what is actually the same household but with a different form of obligation, namely, as the connection of the head of the household with servants (male or female servants of the house). What they maintain is the same domestic society but it is now a society *under the head of the household* (*societas herelis*), formed by a contract through which the head of the household establishes a domestic society with the children who have now attained their majority or, if the family has no children, with other free persons (members