*Debates, Controversies, and Prices. Philosophy in the German Enlightenment*. Edited by Tinca Prunea-Bretonnet and Christian Leduc. London: Bloomsbury, 2024, 11–30.

**The Presumption of Goodness and the Controversy over Christian Wolff’s Cosmopolitanism**

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Wolff’s cosmopolitanism derived from the idea every people must contribute as much as is possible and necessary to the perfection of other peoples because doing so contributes to their own perfection. One of the reasons why his cosmopolitanism never became influential can be found in the controversy about the concept of a world-encompassing citizenry (*civitas maxima*) during the decade after the publication of the *Law of Nations* (1749). Whereas thinkers such as Emer de Vattel rejected the concept, thinkers such as Michael Christoph Hanov and Hermann Friedrich Kahrel contested Wolff’s suggestion that the *civitas maxima* should be regarded as a fiction. This article focuses on a particular aspect of this controversy. Kahrel eliminated the concept of fiction by assigning a central role to the presumption of goodness that was prominent in the early modern legal tradition and that can also be found in Wolff. I will use Kahrel’s work as a point of comparison that helps to bring to light that Wolff’s conception of cosmopolitan obligations is grounded in his views concerning the rationality of presumptions rather than in his problematic views about the role of fictions in natural law.

1. Introduction

Christian Wolff’s cosmopolitanism did not share the fate of Immanuel Kant’s. While Kant’s political thought has turned out to be a major source of inspiration for late twentieth and early twenty-first century forms of cosmopolitanism, nothing comparable can be said of Wolff’s concept of an all-encompassing political community called the *civitas maxima* (greatest citizenry). In contrast to Kant, who proposed an exceedingly short list of cosmopolitan rights and obligations, Wolff proposed an exceedingly long list of such rights and obligations. His list derives from the requirement that every people must contribute as much as is possible and necessary to the perfection of other peoples because doing so contributes to their own perfection.[[1]](#footnote-1) If we suppose that the world would become infinitely better if the rights and obligations proposed by Kant were respected, would this not be much more the case if the rights and obligations proposed by Wolff were heeded? One of the reasons why the cosmopolitanism of Wolff did not gain traction can be found in the not-very-extensive controversy that his notion of *civitas maxima* stirred over the few years that followed the 1749 publication of his *Jus gentium methodo scientifica pertractatum* (JG) (The Law of Nations Treated According to a Scientific Method). It is a controversy for which the outright rejection of the notion of *civitas maxima* was coupled with attempts to adopt it while rejecting Wolff’s suggestion that the *civitas maxima* should be regarded as a fiction.

Let me clarify from the outset that I am not using the concept of controversy in the narrow sense of a theoretical debate with a particular structure (for instance, that something counts as a controversy when a proponent makes a claim, an opponent objects, the proponent replies to the objection and the opponent offers a rejoinder to the reply). No such structure can be found in the case of the reactions to Wolff’s concept of *civitas maxima* for the simple reason that Wolff passed away shortly after the publication of the JG. Hence, certain questions cannot be asked here, such as the question of how the dynamics of the controversy led both proponents and opponents to modify their positions. Rather, I use the concept of controversy in the looser sense of a field of diverging responses to a theoretical claim. These responses articulate a field of diverging theoretical possibilities, and thinking about how Wolff’s work relates to these possibilities may clarify aspects of his argumentative strategy that otherwise may go unnoticed.

Francis Cheneval has used such an approach in his attempt to rehabilitate Wolff’s cosmopolitanism, an approach I will take up in the present article. I will not go over the entire range of the relevant controversy because I find much of Cheneval’s discussion illuminating and persuasive. Cheneval focuses less on the more familiar and dismissive attitude toward Wolff’s cosmopolitanism that is found in Emer de Vattel (1714–1764)[[2]](#footnote-2) than he does on the work of two less well-known contemporaries, Michael Christoph Hanov (1695–1773), the rector of the Academic Gymnasium in Danzig, and Hermann Friedrich Kahrel (1719–1787), who had studied with Wolff and became a professor of philosophy at the University of Marburg. Hanov combined the notion of the *civitas maxima* with two elements that are foreign to Wolff’s thought: a voluntarist theology and an adoption of the Augustinian conception of a *civitas Dei* (city of God) (Hanov 1756-1759, I, iii, §232). I will not go into these matters because I agree with Cheneval that Hanov did cosmopolitanism a bad service by burdening it with assumptions about the metaphysical status of the *civitas maxima* (supreme state) and with the well-known problems that voluntarism brings with it for the question of divine justice (Cheneval 2001, 137–8). I am less convinced by Cheneval’s treatment of Kahrel’s response to Wolff. Kahrel took up many of Wolff’s cosmopolitan ideas but, contrary to Wolff’s intention, eliminated the concept of fiction by assigning a central role to an idea that was prominent in the early modern legal tradition and that can also be found in Wolff: the idea that some legally binding obligations can, in the absence of either explicit or tacit consent, be derived from the *praesumptio bonitatis* (presumption of goodness). This presumption was understood to concern the willingness to accept obligations that derive from natural law.

Cheneval has tried to rehabilitate Wolff’s cosmopolitanism by placing the notion of legal fiction at the center of his interpretation. According to Cheneval, what does the crucial work in Wolff’s theory of a *civitas maxima* is “a normative fiction of a presumed rational consensus” of individuals and states around the globe (Cheneval 2001, 125). As Cheneval puts it, Wolff’s basic methodological intention consists in forming a “fictive, normative hypothesis” (Cheneval 2001, 126).[[3]](#footnote-3) Wolff regarded the consensus underlying the *civitas maxima* to fall under the Roman law category of quasi-contracts (such as tutelage), which he unambiguously described as fictions. And, as Wolff notes, quasi-contracts were grounded on the presumption that an individual A would consent to those actions of an individual B, which B performed for the sake of protecting the interests of A, even in situations where A has no knowledge of these actions or where A is not capable of offering reasoned consent. Taking up this line of thought, Cheneval understands the presumed consent to the decisions of the majority of peoples that protect the interest of the peoples who do not give explicit or tacit consent as a fiction of the law of peoples. As Cheneval argues, Kahrel’s adoption of Wolffian ideas cannot be on the right track because he regarded the *civitas maxima* to be something actual, and he thereby overlooked that Wolff understood fictions in the law of peoples as normative prescriptions that articulate what reason demands (Cheneval 2001, 139).

The early modern controversy over the *civitas maxima* thus raises the question of how facts, fictions, and presumptions relate to each other in Wolff’s cosmopolitanism. This is an interesting question because Wolff’s position may be more confused than is evident at first sight. While the strand of thought concerning fictions is certainly present both in *Jus naturae* *methodo scientifica pertractatum* (JN)(The Law of Nature Treated According to a Scientific Method) and JG, there is also a strand of thought that does not seem to be adequately integrated with the former. According to the latter strand of thought, the *civitas maxima* is grounded on real obligations of natural law, on the presumption that rational beings will be ready to fulfill their natural obligations, and on the view that it is, therefore, legitimate to transform imperfect duties of natural law into the perfect duties of the voluntary law of peoples. Wolff thus uses both the concept of fiction and the concept of presumption to characterize the *civitas maxima*.

These notions were clearly distinguished in legal humanism. For instance, Andrea Alciato (1492–1550) maintains that a legal fiction is “a disposition of the law that goes against the truth in a possible situation and is introduced for a just cause” (Alciato 1551, 8).[[4]](#footnote-4) For instance, Roman law introduces the fiction that an infant has consented to the acceptance of a heritage despite the fact that an infant cannot form the intention to do so. The justification of this law is that it thereby prevents situations where infants lose their inheritance rights (Alciato 1551, 11). By contrast, in his view, all presumptions are “based on the truth” (*fundantur in veritate*), in the sense that the presumption takes something to be true while one does not know whether it is true (Alciato 1551, 8). For instance, presumptions about the mental states of others are assumptions that could be the case, even though we cannot be certain (Alciato 1551, 53). This is why it makes a difference whether the *civitas maxima* is understood as fiction or as something that is grounded in assumptions concerning the mental states of others. The puzzles concerning Wolff’s use of fictions and presumption result from the fact that Wolff does not seem to have drawn such a sharp distinction. This will be the topic of the second section.

Kahrel’s treatment of the presumption of goodness may draw attention to how the non-fictionalist aspects of Wolff’s cosmopolitanism were meant to function. This is so because Kahrel bundles together ideas that occur in much more scattered form in Wolff’s work. Using Kahrel’s cosmopolitanism as a point of comparison will clarify that the normative aspects of Wolff’s cosmopolitanism derive from this treatment of the presumption of goodness, not from his treatment of legal fictions. Kahrel makes use of a conception of the presumption of goodness that includes both legal and ethical aspects. Such an understanding of the presumption of goodness can be found in the work of the legal humanists, whose writings continued to be consulted and cited throughout the seventeenth and eighteenth centuries. In the third section, I will draw from some of their work to elucidate some aspects of Kahrel’s treatment of the presumption of goodness. In the fourth, finally, I will use this background to draw attention to the presence of closely analogous elements in Wolff’s thought that provide a foundation for the normative aspects of his conception of a *civitas maxima* that does not invoke fictions.

2. Some Puzzles about Wolff’s Use of Fictions and Presumptions

It may be helpful to start by considering why an investigation of the non-fictionalist strands in Wolff’s cosmopolitanism is worthwhile. There seem to be tensions inherent in Wolff’s use of fictions, and these tensions may indicate that fictions are not integrated as well into his natural law theory as Cheneval assumes. One tension derives from an evident, but inconsequential, blunder on Wolff’s part; the other tension derives from a deep layer of Wolff’s conception of the connection between obligation and presumption.

As to the former tension, Wolff advises us to form the fiction of a regent (*rector*) of the *civitas maxima* (JG, §21). To persuade us, he draws an analogy with the usefulness of fictions in astronomy, such as the fiction of circular movements of heavenly bodies. As Wolff explains, astronomic fictions work using the “equivalence of cases.” The basic idea is that some imaginary situations are easier to understand. These situations help us analyze aspects of reality that are more difficult to understand because they allow us to explore similarities between imaginary and real situations (Wolff 1737, §193). The analogy with astronomic fictions indicates that the fiction of the regent of the *civitas maxima* is a heuristic device, not a suggestion concerning the constitutional structure of the *civitas maxima*.[[5]](#footnote-5) But is the fictional regent of the *civitas maxima* a useful heuristic device that allows us to approximate the future institutional structure of the global order? The answer must be negative because the “equivalence of cases” is missing here. Wolff argues that the constitution of the *civitas maxima* is essentially democratic because different peoples stand in a relation of natural equality with each other (JG, §19). Yet if this is the case, then the idea of armchair legislation based on thought experiments will not lead to any significant insight. The concrete contents of the voluntary law of peoples cannot be anticipated by using the fiction of a regent of the *civitas maxima* precisely because these contents have to be the outcome of a democratic process of deliberation. Furthermore, Wolff never comes back to this thought experiment (in contrast to many of his other ideas that make countless appearances in JG). Quite possibly, the fiction of the regent of the *civitas maxima* does not do any useful work here and could have been eliminated without loss.

To the latter tension, Wolff compares the presumed consent to forming a universal human society with the presumed consent that is constitutive of “quasi-contracts” (such as tutelage) (JG, §9).[[6]](#footnote-6) As he explains:

A pupil is rightly presumed to consent to tutelage in so far as he should consent, and in fact, would have consented had he understood his advantage; in the same way, peoples that, due to a defect of acuity, do not understand how useful being a member of this greatest society would be, are nevertheless presumed to consent to this association. (JG, §9)[[7]](#footnote-7)

Wolff holds that the effect of obligations that are constitutive of the *civitas maxima* could be compared with the effect of civil obligation in quasi-contracts. What motivates the comparison is the idea that in both cases, “the consent is understood to have been wrought even, as it were, from the one who is unwilling” (JG, §9).[[8]](#footnote-8) He also unambiguously characterizes quasi-contracts as legal fictions (JN V, §538). More generally, he holds that all moral persons, including the *civitas maxima*, “have something fictitious” (JG, §21).[[9]](#footnote-9) Following his explanation in the *Philosophia moralis sive ethica* (PM) (Moral or Ethical Philosophy), moral persons are fictions in the exclusive sense that a multitude of real persons “is conceived as a unity that possesses separate existence and that possesses no other qualities than those that are ascribed to it” (PM V, §294).[[10]](#footnote-10) By contrast, Wolff regards the rights and obligations that are ascribed to a moral person to be something that does not deviate from the truth— that is, they are not fictional (PM V, §294).

Wolff takes a people to not only be a moral person but also a multitude of individuals who are bearers of emotions and acts of the will (JG, §35).[[11]](#footnote-11) This dual character of his notion of a people explains why there are non-fictitious elements in his conception of the *civitas maxima*. He maintains “that peoples are driven toward this society [*civitas maxima*] by some natural impulse, is evident from their actions, for instance when they form confederations for the sake of commerce and war, or also for the sake of friendship” (JG, §9).[[12]](#footnote-12) He is not blind to the fact that political leaders cause conflicts because they let themselves be carried away by emotions (JG, §12). Still, Wolff grounds the presumed consent of the members of the *civitas maxima* on the concept of obligation when he writes that “because they are obliged to consent, they are presumed to have consented” (JG, §12).[[13]](#footnote-13) These obligations are described as non-fictional: “Humans should not be made up to be what they are not when they are maximally obliged to be such and such” (ibid.).[[14]](#footnote-14) The non-fictional nature of obligations also comes to the fore when Wolff discusses an analogy that is made between the voluntary law of peoples and civil law. As he puts it, the voluntary law of peoples “cannot be said to be a gratuitously made up fable” (JG, §887),[[15]](#footnote-15) and he compares the status of the voluntary law of peoples with civil laws that, “insofar as they recede from the rigor of natural law, need not be taken to be figments” (JG, §887).[[16]](#footnote-16) What does Wolff have in mind here: the contrast between fables without a purpose and fictions with a purpose or the contrast between fictions and what is not fictional? I think it is the latter because he goes on to explain that “the consent of peoples that is demanded by natural law cannot be taken to be fictitious, for when it is in the highest degree absent it is supplemented by natural law” (ibid.).[[17]](#footnote-17) Presumed consent here is characterized as non-fictional.

Of course, the sense in which consent can be understood to be “supplemented by natural law” still needs to be explained. However, given that the *civitas maxima* is constituted by the obligations of the voluntary law of peoples in Wolff’s view, several passages imply that there is something non-fictional about the *civitas maxima*. It is thus hard to avoid the conclusion that there is a disconcerting confusion in Wolff’s treatment of fictions. He seems to be affirming that the *civitas maxima* is a fiction while simultaneously denying that itis a fiction. This is reason enough to ask whether Wolff’s practical philosophy offers resources to support a conception of the *civitas maxima* that does not depend on the concept of fiction. Having Kahrel’s version of cosmopolitanism in mind, it will be easier to see that Wolff’s treatment of the presumption of goodness could fulfill this task.

3. The Presumption of Goodness in Kahrel’s Cosmopolitanism

3.1. Presumptions and the Causal Structure of Reality

What makes Kahrel’s considerations interesting is that they draw attention to some connections between assumptions concerning human nature and forming presumptions in the early modern legal tradition. This reading seems to be in tension with Cheneval’s interpretation. According to Cheneval, Kahrel came to the view that peoples and their regents have actually established a *civitas maxima* because he identified the presumed consent of peoples and their regent with tacit consent (Cheneval 2001, 130–1)—which, according to a standard view shared by Wolff in the *Philosophia practica universalis* (PPU) (Universal Practical Philosophy), is a form of actual consent (PPU I, §660). If so, then Kahrel’s view that the *civitas maxima* exists actually would seem to rest on an obvious conceptual confusion. However, that Kahrel distinguished tacit from presumed consent becomes clear in his *Recht der Natur* (RN) (Right of Nature) of 1747, an eight-hundred page overview of the central themes in natural law. There, he describes the differences between *voluntas expressa*, *voluntas tacita*, and *voluntas praesumta* as follows:

The free will of someone else can only be known through words or other equivalent signs and external actions or omissions. This is why one calls the will an explicit will when it is signaled with sufficient words; one calls a tacit will a will that, based on actions or omissions, one knows with certainty…; the latter is a true will, too. However, when one must infer based on signs or other reasons only with probability, it is a presumed will. Accordingly, the same difference shows itself in consent and dissent. (RN I, iii, §58)[[18]](#footnote-18)

What distinguishes tacit will from presumed will is that in the former case, the will is known with certainty, while in the latter, knowledge about the will remains uncertain. This, however, is exactly the purpose of presumptions: presumptions are assumptions that are taken to be true unless and until contrary evidence becomes available. Such assumptions were understood to be cognitive tools that help us deal with uncertainty in a rational manner.[[19]](#footnote-19) Rationality demands that presumptions are based on reasons, even if these reasons cannot confer certainty on the assumptions that we make. Kahrel describes the reasons underlying presumptions concerning the will as follows: “One always presumes that one who remains silent when he can and must speak consents with what the other or others want… For in this case, there is no obstacle for revealing the opinion of his heart if he did not want the same as the other or others” (RN I, v, §14).[[20]](#footnote-20) Drawing from the view that a reason is what enables us to understand why something is the case (RN I, ii, §16), Kahrel explains:

A reason is sufficient when we can perfectly grasp the truth through it. But the particular reasons that constitute the sufficient reason, if they are taken separately, are of such a quality that one cannot yet grasp the truth perfectly but only probably. Hence, probability consists essentially in the knowledge of some of the particular reasons that, taken together, constitute the sufficient reason. (RN I, v, §16)[[21]](#footnote-21)

Certainly, there are situations where the expectation that someone who disagrees will articulate dissent is so strong that their unanticipated silence is taken with certainty to be a sign of consent. In such situations, all particular reasons that together form a sufficient reason for knowing the tacit will are given. In other situations, we cannot be certain that all particular reasons are given that, together, form a sufficient reason for knowing a tacit will. This is why these are cases of presumed will.

The act of grounding presumptions in particular reasons implies that presumptions can be stronger or weaker depending on how many particular reasons are known: “The presumption is called stronger where there is a greater probability; weaker, where one finds a smaller probability. The more particular reasons enter the realm of our knowledge, and the more of them one knows with certainty, the stronger is the presumption” (RN, I, v, §17).[[22]](#footnote-22) Weighing presumptions also implies that there can be competing presumptions: “When some of the reasons are given that belong to the sufficient reason for knowing the truth of some proposition, but also other reasons for knowing the truth of its contrary…, it is said that the presumptions are contrary to each other” (RN I, v, §19).[[23]](#footnote-23) The question, of course, is how a decision between competing presumptions can be reached. Kahrel holds that relative frequencies of events are relevant for forming presumptions. At the same time, he takes relative frequencies to be indicative of the causal structure of reality:

What happens most frequently, has more cases in the world where the reasons can be found that give birth to actuality than what happens more rarely. For the reason that nothing is known of these reasons, one has to direct presumptions toward what has the most instances and reasons for actuality in the world, rather than toward what has fewer. (RN, I, v, §7)[[24]](#footnote-24)

Thus, higher relative frequencies are a sign of the more frequent occurrence of reasons for certain types of events. Using *Gründe* (reasons)instead of *Ursachen* (causes) indicates that Kahrel has both epistemological and ontological aspects in mind. Reasons in the world are the causes that contribute to actualizing an event, whereas reasons in the mind are what we know about the reasons in the world. On this basis, Kahrel formulates this rule for deciding between competing presumptions:

The presumption that agrees more with the essence and nature of a thing is stronger than the one that agrees less with the essence and nature of this thing… For one sees even with dim attention that the presumption that agrees more with the essence and nature of a thing carries with it more of the particular reasons that belong to the sufficient reason, through which the entire truth can be known. (RN, I, v, §22)[[25]](#footnote-25)

Presumptions based on what belongs to human nature are ubiquitous in early modern legal discourse. One rule discussed by Alciato states that “the quality that naturally is in human beings is presumed to be always present” (Alciato 1551, 34).[[26]](#footnote-26) This rule is based on an understanding of what the natural qualities of humans are—for instance, an understanding of emotional states—as well as an understanding of qualities that are essential to human beings, such as sensation and natural reason (Alciato 1551, 108).[[27]](#footnote-27) To mention some of the examples that Alciato gives: fathers are presumed to love their sons and vice versa (Alciato 1551, 34); fathers are presumed to have more fear about their sons than about themselves (ibid.); brothers are not presumed to hate each other but “it rather has verisimilitude that brothers like each other” (ibid., 69);[[28]](#footnote-28) and “sense and natural reason are presumed in each human being unless the contrary is proven” (ibid., 108).[[29]](#footnote-29) Presumptions of this kind were understood as grounded in the distinction between essential and accidental qualities. Alciato notes that, concerning the thematic realm to which such revisable legal presumptions could be applied, two seemingly contradictory rules were often quoted. The first rule maintains that “a presumption relates only to the realm of the factual since only in this realm do conjectures have their place” (Alciato 1551, 30). The second rule maintains that “regularly, facts are not presumed but have to be proven” (ibid.). As Alciato explains, the second rule holds especially for accidental facts—those that do not derive from the essence of things—because “extrinsic accidents are not presumed” (Alciato 1551, 32).

3.2. The Presumption of Goodness and the Causal Structure of Action

The idea that there should be a presumption that is not only in favor of juridical goodness, but also of ethical goodness, was understood to be a special case of this argumentative pattern. It is a special case that makes clear that there was a concept of probability that did not coincide with the notion of relative frequency in the juridical tradition. Both aspects are taken into consideration by Aimone de Cravetta (1504–1569), who discusses a case where the captain of an old vessel refused to transport some heavy goods through stormy weather, a discussion which starts with a presumption based on an assumption concerning a natural quality: “The desire for money, without which we cannot live, is natural to all humans; therefore, absence of bad faith should be presumed in someone whose act does not result in any pleasurable result for the agent” (Cravetta 1605, 1:64). This is why it should be presumed that the captain’s refusal is motivated by the intention to avoid shipwreck. Cravetta uses the concept of verisimilitude to express this thought: “Because this cause possesses verisimilitude, it should be presumed. […] When something possesses verisimilitude, it is said to be in accordance with natural law, because verisimilitude is said to be cognate with nature” (ibid.). Here, “being cognate with nature” is characterized as what is in accordance with natural law. Moreover, accordance with natural law is understood as a criterion for the rationality of a presumption.[[30]](#footnote-30) The presumption of ethical goodness can be understood as an instance of arguing from verisimilitude: persons should be presumed to recognize what is naturally good for them. This sense of verisimilitude, understood as what is in agreement with the demands of natural law, is found in Jacopo Menochio (1532–1607):

It has to be presumed that each person and each thing and each action is according to its nature and as nature requires… A presumption is derived from nature itself, as when each person is presumed to be good, and hence not ungrateful unless it is argued for and proved. (Menochio 1608, 1:23)[[31]](#footnote-31)

Kahrel borrows some of the basic ideas articulated by legal humanists. His understanding of the presumption of goodness includes the presumption of non-delinquency but goes beyond it. As to the presumption of conformity to laws, he states that “everyone is presumed to be good in the *forum externum* until the contrary is proven” (RN I, v*,* §13). Since this kind of presumption relates to court cases, it would not be of much help for understanding the sense in which the *civitas maxima* could be grounded on presumed consent. This is because, before the *civitas maxima* hascome into being, the idea of a court in international relations does not make sense. This raises the question of what the causes for consent to the *civitas maxima* could be before the voluntary law of peoples had been formed.

In Kahrel’s view, what matters for the presumption of ethical goodness are not relative frequencies (about which we know nothing), but our knowledge concerning the reasons that would support the presumption:

In a doubtful case, one presumes that someone has lived according to his duty, … as long as no particular reasons for the contrary overrule this presumption… For presumption relates to what is probable. But what has more reasons for being possible is more probable. What obligation demands is not only naturally possible but also ethically possible; what is contrary to obligation, is naturally possible but not ethically possible. This is why in the former case there is more reason for possibility, and hence more probability. (RN I, v, §12)[[32]](#footnote-32)

As Kahrel explains, “ethically possible is called what can exist together with the rightness of an action; but what cannot exist together with an unviolated rightness of an action, is used to be called ethically impossible” (RN I, ii, §3).[[33]](#footnote-33) As he defines it, “that is ethically necessary whose contrary is ethically impossible” (RN I, ii, §4),[[34]](#footnote-34) which is crucial for his definition of one kind of obligation: “passive obligation consists in the ethical or moral necessity to do or to omit something” (RN I, ii, §6). Ultimately, however, he holds that passive obligation is grounded in active obligation:

The essence and nature of ourselves and the things and humans we encounter oblige us to do what is good and to omit what is bad… For the representation of what is good… is a motivation for the will… This is why the essence and nature of ourselves and the things and humans we encounter have connected motivations with the actions that are good and bad in themselves. (RN I, ii, §10)[[35]](#footnote-35)

Because thinking about what is good for beings of our kind is a motivation for wanting it, and thinking about what is bad for beings of our kind is a motivation for avoiding it, the obligations that arise from human nature are reasons for acting. This chain of reasoning underlies Kahrel’s claim that ethical goodness should be presumed because this presumption has more reasons than the presumption of badness—reasons that correspond to the causal structure of reality.

3.3. Cosmopolitanism and the Presumption of Goodness

Kahrel’s account of the presumption of goodness provides grounds for forming the presumption of consent to the *civitas maxima*. The actuality of the *civitas maxima* thus does not derive from the actuality of tacit consent but, rather, from a basic feature of presumptions: they concern matters of fact, even if these facts are not known with certainty. This is exactly how Kahrel makes use of presumptions in his *Völcker-Recht* (VR) (Law of Peoples)(1750), a comprehensive academic treatise on the various aspects of the law of peoples. What matters is the presumption that individuals will be ready to fulfill a particular kind of natural obligation. These obligations derive directly from the purpose of political communities: the attempt to foster general wellbeing, tranquility, and security. Given the global interconnectedness of peoples, this purpose cannot be achieved by any single people without cooperating with other peoples. Rather, the attempt to realize these goals independently from all other peoples would be a destabilizing factor in the international order. Thus, Kahrel argues, regents and peoples “are obliged to limit the condition of their natural freedom to strive for general well-being, tranquility, and security with conjoined forces” (VR, §497).[[36]](#footnote-36) He regards customs and laws introduced with this purpose to form the *willkürliches Völcker-Recht* (voluntary law of peoples) (ibid.). As he claims, the voluntary law of peoples belongs not only to the realm of possible things but also to the realm of actual things (VR, §500). Accordingly, he holds that “all regents and free peoples of the earth have actually built up together a big world-state” (VR, §498).[[37]](#footnote-37) This is so because “one always presumes that someone wants and has wanted what is in accordance with his obligation and most useful for him” (ibid.).[[38]](#footnote-38)

This is why Kahrel holds that if the voluntary law of peoples “has a reason in the essence and nature of all regents who constitute the big world-state, then all regents are obliged to the voluntary law of peoples” (VR, §503).[[39]](#footnote-39) The presumption of consent to the *civitas maxima*, in turn, gives rise to further presumptions, which includes the presumption that no one would like to be excluded from the world-state and that the regent of the world-state would not want a member to be excluded from the world-state (VR, §499). Despite his seemingly royalist terminology, Kahrel does not regard the regent of the world-state to be any single individual. Rather, he characterizes “all regents and people or their majority” as the regent of the world-state (VR, §496). In this sense, the regent of the world-state is always a multiplicity of individuals that comprises the majority of mankind. But once the voluntary law of peoples has been established through decisions of the majority, these decisions create obligations even for those who disagree. As Kahrel argues, it is possible to presume that all members of the world-state want to adhere to the voluntary law of peoples because everyone is presumed to want what is in accordance with his obligation (VR, §505).

The presumption of ethical goodness also plays a crucial role in Kahrel’s account of the customary right of peoples (*Gewohnheits-Völcker-Recht*). As he defines it, “the customary right of peoples is the law that deals with the obligations and rights that belong to the regents and peoples on the earth as members of the big world-state on the basis of customs” (VR, §519).[[40]](#footnote-40) And he holds that “a customary law is nothing but a voluntary law that is given through mere custom” (VR, §522).[[41]](#footnote-41) In this sense, he takes the customary law of peoples to be a part of the voluntary law of peoples (VR, §523). Because the customary law of peoples, in Kahrel’s view, is part of the voluntary law of peoples, the role of presumptions for the customary law of peoples is instructive for the role of presumptions in the constitution of the *civitas maxima*. As Kahrel puts it: “if a custom is to acquire the force of a customary law of peoples, one must have a reason to presume the actual will of all or at least the largest parts of regents of the earth” (VR, §529).[[42]](#footnote-42) Thus, what Kahrel has in mind are presumptions concerning the actual motivational situation of political decision-makers. But one can presume consent to a custom only if there is a connection between the custom in question and the goal of political communities: “Customary law of peoples can arise from a custom only if it has a sufficient reason in general well-being, tranquility and security of the great world-state” (VR, §525).[[43]](#footnote-43) Only from such a perspective is it possible to form presumptions concerning those who accept a particular custom. For instance, one can presume that an individual would want customs that help avoid wars, bring ongoing wars to an end, and protect civilians to become part of the customary law of peoples (VR, §537). And it is this presumption that, in Kahrel’s view, indicates the sense in which the customary law of peoples should be taken to be something actual:

One rightly presumes that those who constitute the regent of the great world-state want that a custom that promises a quick end to negotiations should be part of the customary law of peoples, and because the actuality of the customary law of peoples depends only on this will, the custom thereby becomes the actual customary law of peoples. (VR, §538)[[44]](#footnote-44)

As Kahrel notes, this sense of the actuality of the customary law of peoples directly derives from the view that one always presumes that someone wants what corresponds to his obligation (VR, §537). Specifically, “in so far as it corresponds to the obligation of the regent of the great world-state that such customary laws of peoples be introduced, one rightly presumes that the regent wants such a custom to become the customary law of peoples.” (VR, §539)[[45]](#footnote-45)

4. Wolff’s Cosmopolitanism and the Presumption of Goodness

In their versions of cosmopolitanism, Wolff and Kahrel use commonplaces that derive from the early modern legal tradition. This is why it is not surprising that there be substantial parallels between their treatments of the presumption of goodness. Having the argumentative function of the presumption of goodness in Kahrel’s version of cosmopolitanism in mind will make it easier for us to see the presence of a similar argumentative pattern in Wolff’s natural law theory. Considerations concerning relative frequencies do play a role in Wolff’s account of presumptions—he regards the presumption that the possessor is also the owner as a presumption in favor of what happens more frequently—but so do considerations about natural obligations (JN III, §1033). For instance, Wolff holds that “in a doubtful case, someone… is presumed to have said something that is morally true when he is obliged to say something that is morally true, for the sake of the certainty of human interactions” (JN III, §1018).[[46]](#footnote-46) The case is the same for the presumption of truthfulness in situations where there is an obligation to be truthful (JN III, §1018). Again, Wolff argues that since there is a duty not to act without careful deliberation, one should presume that the actions of others follow careful deliberation (JN V, §563).

Something analogous holds for the figure of *restitutio indebiti*—the duty of restituting goods received by someone who erroneously believed them to be owed. Wolff holds that we should presume that everyone has the intention of restituting these goods as soon as the error becomes evident (JN V, §585). Since this is a case of quasi-contracts, Wolff’s considerations show that the presumptions underlying quasi-contracts should be regarded as non-fictional, even if the quasi-contract should be regarded as fiction. Wolff’s argument is not only based on considerations concerning natural obligations, such as the duty not to want to become wealthier to the detriment of others, but also the self-related obligation to uphold a good reputation (JN V, §585). The presumption that someone is ready to restitute a good that was not owed is thus grounded in an assumption about human nature: everyone will be motivated to avert consequences that are naturally bad for our social lives. This is a presumption about an actual state of mind. One can never be certain about this state of mind and, therefore, one could always be wrong. But we do not invoke any fictions while making such a presumption—we do not suppose something to be the case while knowing it not to be the case.

Like the legal humanists and Kahrel, Wolff thus makes use of the maxim that presumptions should be based on human nature and the nature of certain actions. Consequently, he includes ethical aspects in his understanding of the presumption of goodness:

Humans most often judge the virtues of others only based on external actions, which they ascribe to virtue if they agree with natural law; and in a doubtful case, when dissimulation cannot be discovered, the correspondence between external and internal action is rightly presumed, following the commonplace: Everyone is presumed to be good until the contrary is proven. (PM V, §608)[[47]](#footnote-47)

Forming assumptions not only about external conformity with positive law but also about internal states of mind that closely correspond to how legal humanists understood the presumption of goodness.

In Wolff’s view, such an understanding of the presumption of goodness is grounded in Roman law. As he interprets it, the concept of justice articulated by the Roman jurist Domitius Ulpianus (c. 170–223/228) involves not only certain qualities of external actions but also certain qualities of states of mind:

When Ulpianus defines justice as a kind of will, he does so to indicate that someone who concedes to someone else his right when a legal title is presented is not yet just; rather, what is required is that he wants to do this even in the absence of all external reasons, with no other motivations than those deriving from the action itself, because it is just. (Wolff 1730, 232)[[48]](#footnote-48)

As Wolff argues, this understanding of justice has the consequence that the presumption of goodness, too, is not restricted to the presumption of lawful external action but also includes a presumption concerning a state of mind:

Even if in court only the conformity between the external deed and the law has to be taken into account, someone is not just in the juridical sense because his action has those external requisites that are characteristic of just action but because from this conformity a consensus between action and the internal law is also presumed, because everyone is presumed to be good until the contrary is proven. (Wolff 1730, 232–3)[[49]](#footnote-49)

Wolff accepts such an inclusive understanding of the presumption of goodness despite that he was by no means unaware of the widespread occurrence of stupidity. For instance, he notes that “stupidity governs more persons than wisdom,” (PM IV, §116)[[50]](#footnote-50) that “the most stupid persons are those who do not want to recognize their stupidity,” (PM IV, §263)[[51]](#footnote-51) that “no one is wise in all matters,” (RP, §692)[[52]](#footnote-52) and that “we see daily that men of good will act imprudently and less than rightly, and not rarely stupidly” (PM II, §119).[[53]](#footnote-53) Still, he did not suppose stupidity to be an obstacle to the presumption of goodness. The reasons for this can be sought in his insight that “*stupidity makes humans unhappy*” (PM I, §459).[[54]](#footnote-54) Thereby, he identified an experience that could motivate us to overcome the problem arising from stupidity. Wolff argues as follows:

For a stupid person sometimes acts for the sake of an illicit goal, sometimes uses illicit means, and sometimes means through which the goal cannot be pursued. When he uses means through which the goal cannot be pursued, he will regret his action because the outcome will not correspond to his wishes. When he acts for the sake of an illicit goal or uses illicit means, he does what is prohibited by the law of nature, hence he transgresses it. Because regret makes the mind troubled and sad, in such a way that discontent predominates in it, this most unpleasurable effect contributes much to unhappiness. And because the transgression of natural law makes humans unhappy, it is evident that stupidity makes humans unhappy. (PM I, §459)[[55]](#footnote-55)

This argument draws on background assumptions that are central to Wolff’s practical philosophy: the assumption that the obligations of natural law derive from considerations concerning what makes the condition of beings of our kind more perfect (PPU I, §125–9); the assumption that perfection consists in the congruence between acts of our will and our natural needs (JN I, §201; JN I, §§ 335–6); and the assumption that, therefore, the violation of the obligations of natural law leads to a less perfect condition in which our natural needs are not satisfied (PPU I, §405). This, Wolff points out, is a state of persisting discontent, which is nothing other than unhappiness (ibid.). Wolff does not deny that humans often act stupidly; he rather maintains that, insofar as they act stupidly, they are made unhappy. And unhappiness is a state that humans have a strong motivation to avoid. As Wolff puts it in his *Psychologica empirica* (PE) (Empirical Psychology), “from discontent arises aversion” (PE, §519).[[56]](#footnote-56)

This is why it is not surprising that Wolff connects presumptions of consent with obligations deriving from natural law in a way that is akin to the connection established by Kahrel. As Wolff argues, “because someone is obliged to consent to something to which he is already obliged naturally, and everyone is presumed to consent to what he is already obliged naturally; the consent of someone else is presumed in what he is obliged naturally concerning ourselves” (JN V, §507).[[57]](#footnote-57) This pattern of thought can also be particularly applied to the presumption that peoples and their rulers have consented or will consent to the voluntary law of peoples because this law contributes to the fulfillment of the natural goals of political communities. Understanding the presumption of consent to the *civitas maxima* as a particular case of the presumption of goodness substantiates Wolff’s view that “the consent of peoples that is demanded by natural law cannot be taken to be fictitious, too, for when it is in the highest degree absent it is supplemented by natural law” (JG, §887).[[58]](#footnote-58) And it could explain why Wolff describes the obligations that give rise to the presumption of consent to the *civitas maxima* as something non-fictional: “Humans should not be made up to be what they are not when they are maximally obliged to be such and such” (JG, §12).[[59]](#footnote-59)

Thereby, the presumption of consent to the *civitas maxima* is characterized as a special case of the presumption that humans will be inclined toward fulfilling their natural obligations. In this sense, the consent to the *civitas maxima* can be subsumed under Wolff’s concept of intrinsically good actions. Wolff defines intrinsically good actions as actions that are caused by the same final causes as natural actions (PPU I, §125). Intrinsically good actions, therefore, are actions that contribute to our perfection (PE, §554). Intrinsic goodness leads to natural obligations. As Wolff explains, “the essence and nature of humans and things has connected a motivation with the intrinsically good and bad actions” (PPU I, §127).[[60]](#footnote-60) This is why there is an obligation to perform actions that contribute to our perfection (PPU I, §128). This is the obligation that Wolff describes as a natural obligation, that is, an obligation that has a sufficient reason in human nature (PPU I, §129). Recall Wolff’s view that each people has the obligation to contribute as much as possible and necessary to the perfection of other peoples because doing so contributes to their own perfection.[[61]](#footnote-61) Since the fulfillment of these cosmopolitan obligations is a necessary condition for the self-perfection of peoples, cosmopolitan obligations belong to natural obligations. This is why the presumption of consent to the *civitas maxima* does not pretend that individuals are other than what they actually are. Rather, this presumption is based on the assumption that the motivation for intrinsically good actions derives from human nature, together with the assumption that consent to the *civitas maxima* belongs to these intrinsically good actions.

5. Conclusion

This article has explored a specific aspect of the controversy over Wolff’s cosmopolitanism. Kahrel adopted Wolff’s theory of the *civitas maxima* without taking up Wolff’s scattered remarks about fiction. I trust that pointing out the parallels between Kahrel’s and Wolff’s argumentative strategies has made the importance of non-fictionalist strands of thought in Wolff more visible than they would be otherwise. Wolff’s use of fictions was not only an obstacle to the reception of his cosmopolitanism by his contemporaries. Of course, their reluctance could be explained by their failure to capture the subtlety of Wolff’s views. Wolff’s use of fictions was also fraught with internal tensions. To be sure, there is nothing wrong with ascribing a normative conception of fictions to Wolff—that is, a conception that uses fictions to articulate what would be reasonable for political agents to do. But does his use of fictions contribute much to how Wolff establishes the existence of cosmopolitan obligations? Wolff’s remarks concerning the non-fictional nature of the obligations that provide grounds for the presumption of consent to the voluntary law of peoples seem to point in a different direction. For both Kahrel and Wolff, presumptions concerning the will of political agents are based on an account of what natural obligations consist in.

Because both Wolff and Kahrel believe that natural obligations are grounded in the actual motivational structure of humans, the presumption in favor of consent to the voluntary law of peoples follows a rule prominent in early modern legal thought: the rule that one should always form presumptions in favor of what lies in the nature of agents and their acts. For Wolff, the *civitas maxima* is not yet fully realized, but it is also not fictional. This is so because presumptions concerning human nature concern something factual about which there can be no certainty. This approach fits uneasily with the fictionalist strand of thought because uncertainty is not fictionality. But, as we have seen, this corresponds to a basic insight of early modern legal thought. If this line of interpretation is on the right track, then it turns out that the normative dimension of Wolff’s cosmopolitanism does not derive from his use of fictions but rather from his use of a conception of the presumption of goodness that includes both juridical and ethical aspects.

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1. See JG, §166. [↑](#footnote-ref-1)
2. On Vattel’s response to Wolff, see Greenwood Onuf 1994. [↑](#footnote-ref-2)
3. For detailed discussion, see Cheneval 1999; Cheneval 2002, 132–202. Nokkala 2021, 13–4, follows this interpretation. [↑](#footnote-ref-3)
4. “Fictio est legis adversus veritatem in re possibili ex iusta causa dispositio.” On early modern theories of legal fictions, see Maclean 1992, 101–3; König 1998, 144–55. [↑](#footnote-ref-4)
5. Contrary to Ben Holland’s interpretation, which takes this passage to indicate a commitment to enlightened absolutism on the level of the *civitas maxima*. See Holland 2017, 120. [↑](#footnote-ref-5)
6. See JN V, §504. [↑](#footnote-ref-6)
7. “Quemadmodo vero in tutela recte praesumitur consentire pupillus, quatenus consentire deberet, immo consensurus esset, siquidem commoda sua intelligeret; ita non minus Gentes, quae defectu acuminis non perspiciunt, quantae utilitatis sit esse membrum civitatis illius maximae consentire in hanc consociationem praesumuntur.” [↑](#footnote-ref-7)
8. “consensum extorquere intelligatur etiam quasi ab invito.” [↑](#footnote-ref-8)
9. “aliquid fictitii habet.” [↑](#footnote-ref-9)
10. “fictio tantummodo in eo est, quod id concipiatur per modum entis separatam existentiam habentis, & quod eidem non alia insint, quam quae eidem tribuimus.” [↑](#footnote-ref-10)
11. See also JN VIII, §§ 4–5. [↑](#footnote-ref-11)
12. “Quod enim in istam societatem Gentes naturali quodam impetu ferantur, ex earum factis apparet, veluti dum foedera ineunt commerciorum & belli causa vel etiam amicitiae gratia.” [↑](#footnote-ref-12)
13. “quia consentire debent, in eandem consensisse praesumantur.” [↑](#footnote-ref-13)
14. “Neque enim fingendi sunt homines, quales non sunt, si vel maxime tales esse deberent.” [↑](#footnote-ref-14)
15. “dici non potest, esse fabulam gratis confictam.” [↑](#footnote-ref-15)
16. “dici nequit leges civiles, quatenus a rigore Juris naturae recedant necesse est, pro figmentis habendas esse.” [↑](#footnote-ref-16)
17. “Gentium quoque consensus, quam Jus natura imperat, pro ficto haberi nequit, quippe quem, si is vel maxime deficiat, ipsum jus naturae supplet.” [↑](#footnote-ref-17)
18. “Der freye Wille eines andern aber kan unmöglich anders erkannt werden, als durch Worte, oder andere denenselben gleichgültigen Zeichen und äusserliche Handlungen, oder deren Unterlassungen. Daher kommt es, daß man den Willen einen ausdrücklichen Willen nennt, wann er mit zureichenden Worten angedeutet wird; einen schweigenden Willen aber, den man aus den Handlungen und deren Unterlassung … gewiß erkennen kan; und ist derselben also auch ein wahrer Wille. Allein wann man denselbigen aus einigen Anzeigungen oder Gründen nur wahrscheinlich schliessen muß, so ist es muthmaßlicher Wille. Ein gleicher Unterscheid thut sich demnach auch unter der Inwilligung und Widriggesinnetheit herfür.” [↑](#footnote-ref-18)
19. On presumptions in early modern argumentation theory, see Blank 2019. [↑](#footnote-ref-19)
20. “Man muthmasset allzeit, daß derjenige, welcher schweiget, wann er reden kan und muß, in das was der andere will oder die andern wollen, willige … Dann in diesem Fall hindert nichts, warum er nicht seines Hertzens Meynung an den Tag legte, wann er nicht eben dasselbe wollte, was der andere will oder die andern wollen.” [↑](#footnote-ref-20)
21. “und zwar ist dieser Gund zureichend, daß man dadurch die Wahrheit vollkommen begreifen kan. Die besonderen Gründen aber, woraus dieser zureichende Grund besteht, sind demnach einzeln so beschaffen, daß man daraus die Wahrheit noch nicht vollkommen verstehen kan, sondern nur wahrscheinlich. Die Wahrscheinlichkeit besteht also eigentlich in der Erkänntniß einiger von den besonderen Gründen, welche zusammen genommen den zureichenden Grund ausmachen.” [↑](#footnote-ref-21)
22. “Die Muthmassung wird stärkcker genannt, wo eine grössere Wahrscheinlichkeit vorhanden ist; schwächer aber, wo man eine kleinere Wahrscheinlichkeit antrifft. Je mehr also von den besondern Gründen in den Bezirck unserer Erkänntniß treten, und je mehr man mit Gewißheit davon erkennt, je mehr stärker ist die Muthmassung.” [↑](#footnote-ref-22)
23. “Wann einige von den Gründen, die zu dem zureichenden Grunde, wodurch die Wahrheit einer Sache erkannt werden muß, gehören, vohanden sind; es sind aber auch andere von den Gründen da, wodurch die Wahrheit des Gegentheils, and also auch die Unwahrheit des erstern erkannt werden muß, so sagt man, die Muthmassungen lauffen gegen einander.” [↑](#footnote-ref-23)
24. “Was aber am öfftern geschieht, das hat mehr Fälle in der Welt, in welchen die Gründe anzutreffen sind, die die Würcklichkeit gebähren als das, was seltner sich eräugnet. Derowegen, da von diesen Gründen nichts bekannt ist, so muß man die Muthmassung vielmehr auf das gehen lassen, was die meisten Fälle und Gründe der Würcklichkeit in der Welt hat, als auf das, wo weniger sind.” [↑](#footnote-ref-24)
25. “Diejenige Muthmassung, die dem Wesen und der Natur eines Dinges gemässer ist, ist stärcker, als die, welche dem Wesen und der Natur desselben nicht so gemäß ist. Beweis: Dann man sieht mit halbstumpffer Aufmercksamkeit, daß die Muthmassung die dem Wesen und der Natur eines Dings gemässer ist, mehr von den besonderen Gründen mit sich führe, die zu dem zureichenden Grunde, wodurch die völlige Wahrheit erkannt werden muß, gehören.” [↑](#footnote-ref-25)
26. “qualitas quae naturaliter inest homini, semper adesse praesumitur.” [↑](#footnote-ref-26)
27. “Sensus & ratio naturalis praesumuntur in quolibet homine, nisi probetur contrarium … Probatur autem quis furiosus per signa extrinseca, puta quia loquitur verba more furiosorum.” [↑](#footnote-ref-27)
28. “imo est verisimile quod alter alterum diligat.” [↑](#footnote-ref-28)
29. “Sensus & ratio naturalis praesumuntur in quolibet homine, nisi probetur contrarium.” [↑](#footnote-ref-29)
30. On this sense of verisimilitude in sixteenth-century legal theory, see Blank 2017. [↑](#footnote-ref-30)
31. “Praesumendum est, quod quaelibet persona & quaelibet res, & quilibet actus sit secundum suam naturam sicut eius requirit natura… Sumitur praesumptio ex ipsa natura, ut quilibet bonus esse praesumatur, atque ita non ingratus nisi arguatur & probetur.” [↑](#footnote-ref-31)
32. “Man muthmasset in einem zweiffelhafften Fall, es habe einer seiner Pflicht nachgelebt, … wofern keine besondere Gründe vor das Gegentheil diese Muthmassung zu Schanden machen … Dann die Muthmassung geht auf das, was wahrscheinlich ist. Es ist aber das wahrscheinlicher, was mehr Grund zur Möglichkeit. Das, was die Verbindlichkeit will, ist nicht allein natürlich, sondern auch sittlich-möglich; was aber wider dieselbe ist, das ist zwar natürlich, aber nicht sittlich-möglich. Derowegen ist in dem ersten Fall mehr Grund vor die Möglichkeit, und also mehr Wahrscheinlichkeit.” [↑](#footnote-ref-32)
33. “Sittlich- oder moralisch-möglich heißt dasjenige, mit welchem die Richtigkeit einer Handlung bestehen kann; das aber, womit solche nicht bestehen oder unverletzt bleiben kan, pflegt man sittlich-unmöglich zu nennen.” [↑](#footnote-ref-33)
34. “Sittlich-notwendig ist das, dessen Entgegengesetztes sittlich-unmöglich ist.” [↑](#footnote-ref-34)
35. “Das Wesen und die Natur unserer selbst und anderer Dinge und Menschen verbindet uns, das Gute zu thun und das Böse zu lassen … Dann die Vorstellung des Guten … ist ein Beweg-Grund des Willens … Derowegen so hat selbst das Wesen und die Natur unserer selbst und anderer Dinge und Menschen, mit denen an sich guten und bösen Handlungen, Beweg-Gründe verknüpft.” [↑](#footnote-ref-35)
36. “sie sind verpflichtet dergestalt den Stand ihrer natürlichen Freyheit einzuschränken, daß sie eine Gesellschafft ausmachen, in welcher sich ein jeder von ihnen denen übrigen zusammen genommen, zulänglich verbindet, mit vereinigten Kräfften sich zu ihrer allgemeinen Wohlfahrt, Ruhe und Sicherheit hindurch zu arbeiten.” [↑](#footnote-ref-36)
37. “Alle Regenten und freye Völcker der Erden haben würcklich mit einander einen grossen Welt-Staat errichtet.” [↑](#footnote-ref-37)
38. “Man muthmasset aber allemal, daß einer das wolle und gewollt habe, was seiner Verbindlichkeit gemäß und ihm am nützlichsten ist.” [↑](#footnote-ref-38)
39. “einen Grund in dem Wesen und in der Natur aller Regenten hat, aus welchem der grosse Welt-Staat besteht, so sind alle Regenten auf dem Creyß der Erden zu demselbigen verbunden.” [↑](#footnote-ref-39)
40. “Das Gewohnheits-Völcker-Recht ist, welches die Verbindlichkeiten und Rechte, welche denen Regenten und Völckern der Erden, als Mitgliedern des grossen Welt-Staats, aus denen Gewohnheiten erwachsen, zum Vorwurff hat.” [↑](#footnote-ref-40)
41. “Ein Gewohnheits-Gesetz ist nichts anders, als ein willkührliches Gesetz, welches durch die blosse Gewohnheit gegeben ist.” [↑](#footnote-ref-41)
42. “Solchergestalt muß man…, wann eine Gewohnheit die Krafft eines Gewohnheits-Völcker-Gesetzes erlangen soll, einen Grund haben, den wircklichen Willen aller oder doch der mehresten Regenten der Erden zu muthmassen.” [↑](#footnote-ref-42)
43. “Es kan aus keiner Gewohnheit ein Gewohnheits-Völcker-Gesetz erwachsen, es muß dann einen zureichenden Grund in der allgemeinen Wohlfahrt, Ruhe und Sicherheit des grossen Welt-Staats haben.” [↑](#footnote-ref-43)
44. “So muthmasset man auch mit Recht, daß diejenigen, welche den Regenten des grossen Welt-Staats ausmachen, wollen, daß eine solche Gewohnheit die denen Händeln einen baldigen Ausgang verheißt, ein Gewohnheits-Völcker-Gesetz seye; und weil von dieser Willen die Würcklichkeit der Gewohnheits-Völcker-Gesetzen allein abhängt; so wird sie dadurch zum würcklichen Gewohnheits-Völcker-Gesetze.” [↑](#footnote-ref-44)
45. “in so weit es der Verbindlichkeit des Regenten des grossen Welt-Staats gemäß ist, daß dergleichen Gewohnheits-Völker-Gesetze eingeführet werden; So steht richtig zu muthmassen, daß derselbe wolle, daß eine solche Gewohnheit zum Gewohnheits-Völcker-Gesetze werde.” [↑](#footnote-ref-45)
46. “praesumitur, quando in casu dubio certitudo haberi nequit, in gratiam certitudinis negotiorum humanorum, eum verum moraliter loqui, quando ad moraliter verum loquendum obligatur.” [↑](#footnote-ref-46)
47. “Homines plerumque de virtute aliena saltem judicant ex actionibus externis, quae si legi naturae conformes sunt, ad virtutem adscribuntur, & in casu dubio, quando simulatio detegi nequit, convenientia actionis externae cum interna recte praesumitur, juxta illud pervulgatum: quilibet praesumitur bonus, donec probetur contrarium.” [↑](#footnote-ref-47)
48. “Justitia… ab *Ulpiano* definitur per voluntatem, ut significatur, nondum justum esse, qui alia quacunque de causa adductus alteri tribuit jus suum; sed id potissimum requiri, ut quis id facere velit, absentibus licet omnibus rationibus extrinsecis, non aliunde desumptis motivis nisi ab ipsa actione, quatenus justa est.” [↑](#footnote-ref-48)
49. “Etsi enim in foro non attendenda sit nisi actionis externae cum lege conformitas, non tamen ideo quis justus est in sensu juridico, quia actio ejus externa ea habet requisita, quae actioni justae conveniunt, sed quia ex hac conformitate actionis externae cum lege praesumitur consensus ejusdem cum interna, propterea quod tamdiu aliquis praesumatur bonus, donec probetur contrarium.” [↑](#footnote-ref-49)
50. “Plures stultitia regit, quam sapientia.” [↑](#footnote-ref-50)
51. “stultissimi vel hoc nomine, quod stultitiam suam agnoscere nolint.” [↑](#footnote-ref-51)
52. *Psychologia rationalis* (RP) (Rational Psychology). “Hominum nullus in omnibus est sapiens.” [↑](#footnote-ref-52)
53. “Indies quoque videmus, homines bonae voluntatis imprudenter & minus recte, immo haud raro stulte agere.” [↑](#footnote-ref-53)
54. “*Stultitia homines reddit infelices*.” (Wolff’s italics.) [↑](#footnote-ref-54)
55. “Stultus enim nunc agit propter finem illicitum, nunc utitur mediis illicitis, nunc mediis, quibus finem consequi nequit. Quodsi utatur mediis, quibus finem consequi nequit, cum eventus non respondeat votis, eum facti poenitet. Si vero agit propter finem illicitum, aut mediis utitur illicitis, quod lege naturali prohibitum facit, consequenter eandem transgreditur. Quamobrem cum poenitentia animum inquietum reddat, ac tristitia impleat, ut taedium in eo praedominetur; effectus hic molestissimus plurimum ad infelicitatem confert. Cumque transgressione legis naturalis homo fiat infelix, stultitiam homines reddere infelices manifestum est.” [↑](#footnote-ref-55)
56. “ex taedio ortum tandem trahit aversatio.” [↑](#footnote-ref-56)
57. “Quamobrem cum in id consentire debeat alter, ad quod tibi iam naturaliter obligatus est, quilibet autem consentire praesumatur in id, in quod consentire debet; consensus alterius recte praesumitur in eo, ad quod alter nobis jam obligatus est naturaliter sine ulla restrictione.” [↑](#footnote-ref-57)
58. Quoted above; see footnote 30. [↑](#footnote-ref-58)
59. Quoted above; see footnote 27. [↑](#footnote-ref-59)
60. “nos obligat ad actiones committendas, qui motivum volitionis cum iisdem connectit.” [↑](#footnote-ref-60)
61. See footnote 1. [↑](#footnote-ref-61)