

KANT AND THE IN(TER)DEPENDENCE OF RIGHT AND VIRTUE

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ABSTRACT

This paper aims to clarify how Kant understood the relation between the two spheres of morals (Right and virtue). Did he, as O'Neill claims, acknowledge the need for civic virtue as necessary for maintaining a liberal state? Or did he take the opposite view (shared by many contemporary liberals) that citizens' virtuous dispositions are irrelevant and that all that matters is the justice of institutions? Though *The Metaphysics of Morals* gives the impression that Kant shared the latter position, I will argue that, in fact, Kant held a position somewhere between the Rousseauian view (which O'Neill believes Kant endorsed) that the essential difficulty of politics concerns the cultivation of civic duty in citizens, and contemporary liberals' exclusive focus on the justice of institutions, by arguing that it is the laws themselves that foster respect for the laws. In short, Kant views virtue as the felicitous by-product of legality.

Keywords: Kant; Right; virtue; legality; morality; Onora O'Neill; Metaphysics of Morals

In her text *The Great Maxims of Justice and Charity* Onora O'Neill argues that contemporary liberals have nothing to say about the good, and therefore remain silent about virtue as well: 'They seek principles for building institutions rather than characters. Plato had hoped that good men would need no laws; deontological liberals hope that good laws will work without good men or women' (O'Neill 1990, p. 220). O'Neill, by contrast, wishes to promote 'a tradition that insists that the practice of civic virtue is the condition of maintaining liberties. Rousseau and Kant both argue for justice *and* virtue. Modern deontological liberals surely ought to explain fully why they cannot or should not any longer be concerned with virtue' (O'Neill 1990, p. 227; cf. O'Neill 1996, p. 140).

It is not my intention to prove or disprove O'Neill's claim concerning contemporary liberals' supposed lack of interest in virtue. Nor will I provide an exposition of the tradition she refers to that insists on the equal importance of justice and virtue. Instead, I will ask whether or not it is indeed the case that Kant belongs to the tradition she has in mind. Is it not the case, rather, that as far as justice is concerned, Kant (like the liberals O'Neill criticizes) is not interested in the goodness of men and women? Indeed, I will argue that, within the scope of *The Metaphysics of Morals*, this question must be answered affirmatively. Yet, in some of his

other political writings (most notably *Toward Perpetual Peace*) Kant *does* seem to be aware of the reciprocal dependence of law and morality (or, in Kant's own terms, Right² and virtue). My final conclusion will be that, though this latter work does demonstrate Kant's recognition of the importance of virtue for Right, as well as their reciprocal dependence, the manner in which Kant believes virtue is formed (namely, I will argue, as a felicitous by-product of legality), is nonetheless clearly distinct from, for example, Rousseau's understanding of the formation of virtue (with whom O'Neill seems to equate Kant regarding this matter). It would therefore seem that Kant is neither focused exclusively on the justice of institutions and laws, as the liberals derided by O'Neill, nor can he be equated with thinkers as Rousseau or Aristotle, as O'Neill does, for whom virtue is the starting point.

Accordingly, I will proceed as follows: In Part I, I will briefly frame the problem. In Part II, I will provide an elaborate account of the strict division in Kant's legal philosophy between Right and virtue, as well as their respective duties. The conclusion here will be that *The Metaphysics of Morals* provides no account of the interdependence of Right and virtue, presenting them as two strictly separate spheres. Subsequently, in Part III, I will expound Kant's understanding of the interdependence of law and morality, i.e. of Right and virtue, based on a reading of several passages from *Toward Perpetual Peace*. It will become apparent that Kant views the formation of civic virtue (understood as respect for the law) as the by-product of the simple performance of legal duties, irrespective of the motive involved. Finally, I will end with some concluding remarks concerning Kant's understanding of the relation between Right and virtue.

I – Right Detached from Virtue

O'Neill argues that contemporary liberal philosophers are solely focused on the justness of institutions, and thus pay no mind to the goodness of characters or to civic virtue. Indeed, it appears to be a valid point that, at least since Rawls, it has become quite a common claim that justice concerns basic structures, rather than the actions (let alone the dispositions) of individuals. The main reason why this claim is often made is that the basic structure profoundly influences the life plans of people, far more so than the actions of individuals. Consequently, so it is argued, principles of justice should apply to institutions rather than to individual actions. By contrast, O'Neill maintains, earlier thinkers such as Rousseau and Kant insisted on the interdependence of justice and virtue: just laws rely on good men and women for their preservation and good characters rely (in part) on just laws for their cultivation. This insight is

neglected, she argues, by contemporary liberals. But is she correct in attributing this position to Kant? This will be the main question of the present paper.

In the case of Rousseau, I do not think there can be any doubt concerning his awareness of the interdependence of good laws and good morals. Rousseau recognized that it is not enough for there to be just laws that are obeyed merely from fear of punishment or for other prudential reasons. Instead, all must feel a sentiment of obligation: obligation must not merely be a matter of prudence, but also a *sentiment* by which citizens feel themselves bound to *respect* (and not merely outwardly obey) the laws. In Rousseau, it is the civil religion that must ensure that all hear and heed the voice of the general will. The civil religion must establish sentiments of sociability, which are to guarantee a respect for the law and for obligation in general. For Rousseau, the essential difficulty of politics is not how to set up just institutions, but rather how to awaken in the heart of each member of the commonwealth these sentiments of sociability, without which no social bond can last.

But is O'Neill correct that Kant recognized this interdependence between just institutions and civic virtue as well? Would Kant have agreed that Right depends on the virtuous disposition of its subjects for its stability? I will argue that in Kant's main work on Right and virtue – *The Metaphysics of Morals* – no such connection between Right and virtue is to be found. Rather, Kant attempts to strictly separate the two realms of morals from one another.³

II – Kant's Strict Separation of the Legal and Moral Spheres

The goal of this section is to trace, throughout Kant's major works on practical philosophy, the development of the strict distinction he seeks to make between law and morality. In Section II.i we will start with the distinction between acting in conformity with duty and acting from duty developed in the *Groundwork*, which in the second *Critique* is equated with the difference between legality and morality, which, in turn, is further elaborated upon in *The Metaphysics of Morals*. In both cases Kant bases this distinction on a difference in the *disposition* of the subject with regard to a prescribed action: Does the subject comply with duty from the motive of duty (as required by morality) or is the subject motivated by some alternative incentive (such as self-interest)?

In accordance with the two main parts of *The Metaphysics of Morals* (the *Doctrine of Right* and the *Doctrine of Virtue*), Kant comes to speak more of the distinction between Right and virtue and less of the distinction between legality and morality. As will be shown in Section II.ii, Right may only demand *legality* from its subjects (i.e. it may only demand compliance of

our *external* actions with its commands), whereas virtue in addition demands that we fulfill our duties from the motive of duty (in other words, it requires *morality*). Crucially, the fact that Right is limited to regulating external actions insofar as they may influence the freedom of choice of others, allows it to employ external coercion in order to secure compliance with its prescriptions. The demands of virtue (such as making duty the maxim for our actions, or adopting ends that it is a duty to have) are instead of an internal nature, and can thus only rely on free inner necessitation.

II.i – Legality and Morality

As early as 1785, in the *Groundwork*, Kant discusses a distinction that in later works will take on the form of the pivotal contrast between legality and morality. The first part of this work starts with the bold statement that the only thing in this world that is good without limitation is the good will. Subsequently, it becomes clear that the good will is somehow related to acting from duty and that only actions done from duty possess *moral worth*. In order to discover, therefore, what a good will consists in, Kant discusses four examples in which the agents are acting *in conformity with duty* (*pflichtmäßig*), but not, as Kant will maintain, *from duty* (*aus Pflicht*) (GMS, AA 04: 397.11ff.⁴). It is this distinction that allows us to determine whether a particular action possesses true moral worth or is ‘merely’ in conformity with duty.

In the first of these examples Kant presents us with a merchant who treats all his customers equally without attempting to take advantage of particularly naïve customers by charging them more than others. His actions are clearly in conformity with duty, yet they are not done *from duty*, as his motive for not overcharging is simply that it might, if it were discovered, harm his reputation as an honest dealer and consequently his business. His motive for acting in conformity with duty is thus one of *self-interest* (i.e. maintaining his good reputation in order to retain his customers). In this case, Kant argues, the merchant only has an *indirect* inclination to act in conformity with duty, as he views his honest behavior in business simply as a means to a further end. The merchant’s actions are for this reason easily distinguishable from actions done from the motive of duty:

For in this case it is easy to distinguish whether an action in conformity with duty is done *from duty* or from a self-seeking purpose. It is much more difficult to note this distinction when an action conforms with duty and the subject has, besides, an *immediate* inclination to it. (GMS, AA 04: 397.17-21)

Accordingly, the three remaining cases – concerning the duty of self-preservation, beneficence and the indirect duty to secure one’s own happiness – are all examples in which the agents act in conformity with duty from a *direct* inclination. Even in these cases, however, Kant will argue that their actions do not possess true moral worth. An assessment of his example dealing with the duty of beneficence should clarify how he comes to this conclusion.

There are people who find satisfaction in helping others, not because it helps them achieve some ulterior end, but because they enjoy spreading joy to others. These sympathetic givers simply have an immediate inclination to act in accordance with morality’s commands (in this case the duty to be beneficent). But do their actions possess true moral worth? In some respects the sympathetic giver is quite similar to the person who is beneficent from duty. For instance, they both have the same purpose in mind, namely to help others. Even the outcome of their actions may very well be the same: for instance, the fulfillment of a particular need of the recipient of aid, which, in turn, causes feelings of satisfaction and joy in the generous giver. Kant even states that the actions of the sympathetic giver ‘conform with duty’, are ‘amiable’ (GMS, AA 04: 398.13-14), and deserve ‘praise and encouragement’ (GMS, AA 04: 398.17-18). Why then does he ultimately conclude that beneficence from sympathy, i.e. acting in accordance with duty from inclination, does not possess true moral worth?

Kant explains that ‘an action from duty has its moral worth *not in the purpose* to be attained by it but in the maxim in accordance with which it is decided upon’ (GMS, AA 04: 399.35-37). The difference thus lies in the *maxims* or, in other words, in the grounds for choosing a particular action. Whereas the sympathetic giver makes beneficence his end, because he considers it a source of joy to himself and to those he helps, the person who helps others from duty makes beneficence his end because he views it as something that one *ought to do*.⁵ In other words, when one acts *from duty* the reason why one performs an action, and the reason why that action is (morally) right, are the same, whereas when one acts merely *in conformity with duty* there is no such coincidence between the motive for and the normativity of one’s actions (Korsgaard 1996, p. 60).

Three years later, in the *Critique of Practical Reason*, Kant returns to this distinction when he comes to speak of the incentives of pure practical reason:

And on this [i.e. whether or not subjective respect for the moral law is the sole determinant of the will] rests the distinction between consciousness of having acted *in conformity with duty* and *from duty*, that is, respect for the law, the first of which (*legality*) is possible even if the inclinations alone have been the determining grounds of the will whereas the second (*morality*), moral worth, must be placed solely in this: that the action takes place from duty, that is, for the sake of the law alone. (KpV, AA 05: 81.13-19. Third emphasis added)⁶

As becomes clear from this passage, Kant equates *legality* with acting in conformity with duty and *morality* with acting from duty. The distinction between legality and morality thus refers to the determining ground (*Bestimmungsgrund*) of the will. Legality merely requires conformity of our actions with the duties that practical reason prescribes – whereby it is irrelevant whether our will is determined by duty itself or by inclination or interest – whereas morality places an additional claim on us, namely that the moral law alone be the incentive for our actions, that we act not only in accordance with the law, but also from respect for the law, that is, from duty.

Due to our imperfect nature as human beings, our free choice (*Willkür*) does not comply with duty of its own accord. We are thus in need of something that will keep our selfish inclinations in check and ‘strike down’ self-conceit (*Eigendünkel*) (KpV, AA 05: 73.18-19). Given that we ‘can never be altogether free from desires and inclinations which [...] do not of themselves accord with the moral law’ (KpV, AA 05: 84.04-07) we thus remain in need of self-constraint and inner necessitation. The incentive of the moral law itself provides precisely such a constraint by demanding compliance.

Morality, understood as acting from duty, is thus characterized by self-constraint and inner necessitation realized by the incentive of the moral law, which arouses in us the moral feeling of respect (*Achtung*). Legality, on the other hand, does not seem to have its own characteristic incentive. Instead, Kant gives the impression that any incentive will do; as long as one’s actions are in conformity with duty, one has met legality’s demands. However, as Kant will make clear in his final work on practical philosophy (*The Metaphysics of Morals*), if one is not inclined to comply with one’s legal duties, Right does have an incentive of its own, namely *external constraint*.

In the *Introduction to the Metaphysics of Morals* Kant immediately returns to the question of legality and morality:

The mere conformity or nonconformity of an action with law, irrespective of the incentive to it, is called *legality* (lawfulness); but that conformity in which the idea of duty arising from the law is also the incentive to the action is called its *morality*. (MS, AA 06: 219.12-16)

This formulation of the distinction between legality and morality appears to be quite similar to the distinctions we found in Kant’s earlier texts discussed above. Mere conformity with the law constitutes an action’s legality, whereas morality places the additional requirement of acting in accordance with the law from the motive of duty. The difference thus still lies in our *attitude* toward the law in question.

Some scholars have argued, however, that the distinction between legality and morality offered in *The Metaphysics of Morals* is in fact quite different from the distinction in Kant's earlier works. Marcus Willaschek, for example, has held that the earlier definitions of this distinction separated legality from morality according to the *aspect* under which they were performed, i.e. the mere conformity of an action with the law irrespective of the incentive involved, or the performance of a dutiful action from the motive of duty. In *The Metaphysics of Morals*, by contrast, 'the difference is defined with regard to the *laws* an action conforms with. Let's call this the "distinction-of-laws" between legality and morality as opposed to the earlier "distinction-of-aspects"' (Willaschek 1997, p. 210. Emphasis added). Willaschek bases this claim on the distinction Kant provides between *ethical* and *juridical* lawgiving:

That lawgiving which makes an action a duty and also makes this duty the incentive is *ethical*. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is *juridical* (MS, AA 06: 219.02-06).

From this Willaschek concludes that a lawgiving is ethical if 'the incentive of duty is *included* in the *law*' (Willaschek 1997, p. 209. Second emphasis added). Though this passage does indeed seem to warrant such a conclusion, I would argue that such a reading is incompatible with Kant's use of the term 'law' when he speaks of the two elements of all lawgiving. As Bernd Ludwig has pointed out, any conception of law that includes the incentive to abide by it is incompatible with Kant's use of the term 'law' in this crucial passage (Ludwig 1988, p. 90):⁷

In all lawgiving (whether it prescribes internal or external actions, and whether it prescribes them a priori by reason alone or by the choice of another) there are two elements: *first*, a law, which represents an action that is to be done as *objectively* necessary, that is, which makes the action a duty; and *second*, an incentive, which connects a ground for determining choice to this action *subjectively* with the representation of the law. (MS, AA 06: 218.11-17)

As becomes clear from this passage, Kant considered a law and an incentive to be two distinct things, which together constitute a lawgiving. To conclude therefore, as Willaschek does, that morality refers to laws that contain the incentive of duty and legality refers to laws that accept any incentive – that, in short, the distinction between the two refers to what is included in the *laws* – is to ignore this twofold aspect that characterizes all lawgiving. Such an interpretation would, furthermore, lead to other misconceptions of Kant's views. For instance, the laws prescribed by juridical lawgiving and the laws prescribed by ethical lawgiving may at times, pace Willaschek (Willaschek 1997, pp. 209–10), very well have the same content. The content

of the laws, however, is only one of the two elements belonging to every lawgiving (as the passage quoted above shows). It is thus not the *content* of the duties that gives rise to the distinction between juridical and ethical lawgiving, but rather the other element of all lawgiving, i.e. the *incentive* for action (cf. Kaulbach 1970, p. 49). For example, juridical and ethical lawgiving both prescribe the duty to respect the life of others and to therefore not arbitrarily take the life of another. The difference between the two types of lawgiving must therefore, as the content of the prescribed duties is the same, lie in the incentive for performing the duty. Whereas juridical lawgiving does not require duty to be the incentive for action, ethical lawgiving ‘makes an action a duty and also makes this duty the incentive’ (MS, AA 06: 219.02-03).

One can easily see how this difference in incentive can have consequences for the manner in which laws are enforced. Immediately following his distinction between the two types of lawgiving Kant goes on to say that, given that juridical lawgiving cannot rely on the incentive of duty, its incentive ‘must be drawn from *pathological* determining grounds of choice, inclinations and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not an allurements, which invites’ (MS, AA 06: 219.07-11). Here we arrive at the central point of the difference between ethical and juridical lawgiving: whereas the former requires compliance with its laws from the incentive of duty or what Kant elsewhere calls free self-constraint (MS, AA 06: 383.20), the latter cannot require its subjects to adopt a particular *attitude* towards the law, but can, instead, only demand the performance of certain actions (or the abstaining therefrom), whereby it can depend on *external* constraint to ensure compliance: ‘All that ethics teaches is that if the incentive which juridical lawgiving connects with that duty, namely external constraint, were absent, the idea of duty by itself would be sufficient as an incentive’ (MS, AA 06: 220.02-05).⁸

What does all this mean for the distinction between legality and morality? Whereas the main difference between juridical and ethical lawgiving concerns the incentive attached to the prescribed duty (either any incentive whatsoever or specifically the incentive of duty), the difference between legality and morality concerns the *attitude* of the *subject* with respect to its prescribed duties (cf. Kersting 1984, p. 73).⁹ As Kant explains in the *Doctrine of Virtue*, in the case of morality the disposition of the subject is of fundamental importance – i.e. whether or not one performs the duty from the motive of duty, from respect for the law – whereas legality only sees to compliance, irrespective of one’s disposition (MS, AA 06: 393.04-05). The distinction is thus still in line with the earlier version found in the second *Critique*, but phrased in the language of *The Metaphysics of Morals* we could conclude, with Ludwig (Ludwig 1988,

p. 90), that compliance with the juridical lawgiving (whereby the incentive for our adherence to the law is irrelevant) is called *legality*, whereas compliance with the ethical lawgiving (whereby duty is the incentive for our dutiful actions) is called *morality*. Yet legality, as Wolfgang Kersting has so aptly put, is ‘nichts Rechtsspezifisches’ (Kersting 1984, p. 73), for one may also comply with *ethical* laws from an incentive other than duty. Therefore we can add that any compliance with ‘laws of freedom’ (MS, AA 06: 214.13) – be they juridical or ethical laws – is legal. Only when our compliance meets the additional demand of complying from duty may it be called moral.¹⁰

II.ii – Right and Virtue

Following the *Introduction to the Metaphysics of Morals* Kant comes to speak less of the distinction between legality and morality, and instead focuses more on the central distinction of *The Metaphysics of Morals*, i.e. the separation of *Right* from *virtue* (or *ethics*). In general we could say, somewhat prematurely, that *Right* is mainly concerned with securing our *outer* freedom by bringing it under laws, whereas *virtue* is concerned with our *inner* freedom. In order to clarify this distinction, as well as understand how Kant arrives at it, we will first provide an explanation of Kant’s concept of *Right*. Throughout this subsection, I will be at pains to clarify the distinction in the manner *Right* and *virtue* obligate us. It will be shown that *Right* is intimately connected to external coercion, which (in the case of *Right*) replaces inner necessitation as the typical incentive for action.

Right, Kant explains in §B of the *Introduction to the Doctrine of Right*, is only concerned with (1) the *external* relations between persons, insofar as their actions¹¹ can influence one another, whereby (2), the relevant relation is a strictly formal, reciprocal relation between the freedom of *choice* (*Willkür*¹²) of one person and the freedom of choice of another; the relation between the choice (*Willkür*) of one person and the mere *wish* (which includes needs) of another is thus not regulated by *Right*, as mere wish does not constitute an external action of one person against another, but is rather an internal matter.¹³ Finally (3), within this reciprocal relation of choice, the *matter* of choice – i.e. what one wishes to accomplish with one’s actions – is irrelevant. Again, the reason for this is that the end one has in acting is an internal act of the mind (*Gemüt*) (MS, AA 06: 239.10-11) and can therefore not be regulated by external laws, but is instead a matter of *virtue*. For *Right*, the *form* alone of one’s actions is of any import, that is, the only relevant question is whether one’s actions are compatible with the freedom of others in accordance with a universal law (MS, AA 06: 230.20-23). *Right* does, in

other words, not give a material evaluation (i.e. concerning the content of one's actions) of the manner in which *Willkür* is exercised by the individual; it hereby excludes state paternalism. The content of your use of freedom of choice is irrelevant, provided it allow for an equal measure of freedom of choice for everyone else. These three stipulations lead to Kant's formulation of the concept of Right: 'Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (MS, AA 06: 230.24-26).

Accordingly, any action that conforms to this definition of Right will itself, in turn, be deemed right, as Kant explains in his *universal principle of Right*: 'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law' (MS, AA 06: 230.29-31). It follows that if my action is indeed compatible with the external freedom of each, no one may rightfully deter me from pursuing said action lest they do me *wrong* (*Unrecht*), as their hindrance of my rightful action is clearly not compatible with freedom in accordance with a universal law.

Perhaps the mention of maxims in Kant's universal principle of Right comes across as rather odd. After all, on the preceding page Kant had limited the scope of Right to our external behavior, thus seemingly excluding the maxims on which we act. As Ludwig explains however, the maxim in question is not the maxim of the *agent*, but rather of the *action* (Ludwig 1988, p. 95).¹⁴ Kant comes back to this point in the *Introduction to the Doctrine of Virtue*, stating that the end one pursues with one's actions (in the sphere of Right) is a matter of free choice, but that the maxim of those actions is determined a priori, 'namely that the freedom of the agent could exist with the freedom of every other in accordance with a universal law' (MS, AA 06: 382.14-16).

I pause to elaborate on this point, because Kant means to emphatically exclude inner 'actions' (such as setting ends, or acting from the motive of duty) from his definition of Right, as he explains on the very next page following his exposition of the universal principle of Right: 'it cannot be required that this principle of all maxims be itself in turn my maxim, that is, it cannot be required that *I make it the maxim* of my action' (MS, AA 06: 231.03-05). In other words, Right only demands that the subject's actions comply with the universal principle of Right; it does not additionally demand a particular disposition on the part of the subject to accompany that compliance. I do not diminish the freedom of another even if I secretly wish to do so, as long as my *external actions* do not detract from his or her freedom. Right does thus not require me to respect the freedom of another from the motive of duty; this is rather a matter

of ethics. These thoughts lead to Kant's formulation of the *universal law of Right* in §C: 'so act *externally* that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law' (MS, AA 06: 231.10-12. Emphasis added). The difference with the categorical imperative should be clear. Whereas it commands the subject to make his or her *maxims* comply with a universal law, the universal law of Right merely requires the subject's *actions* to be in accordance with a universal law.

Above we saw that limiting another's freedom by preventing the performance of a rightful action is wrong. In §D of the *Introduction to the Doctrine of Right* however, Kant does justify certain limitations of freedom – which coercion always is – in particular cases. He argues that when someone acts in a manner incompatible with the rightful freedom of another, his action is deemed a hindrance to freedom and thus wrong. It follows that coercing someone to refrain from such an unlawful act would itself be lawful, as such a limitation of that person's freedom renders it once more compatible with the freedom of everyone else, thus bringing it back in line with the universal law of Right. Or, as Kant puts it: a 'hindering of a hindrance to freedom' is 'consistent with freedom in accordance with universal laws' (MS, AA 06: 231.30-32). Hence, Right carries within it the authorization to coerce (*zwingen*) someone who violates it. In fact, Kant concludes in §E that 'Right and authorization to use coercion [...] mean one and the same thing' (MS, AA 06: 232.29).

Right does not demand of us to act in accordance with its laws from the motive of duty. It limits itself to prescribing only *external* actions. Ethics, on the other hand, also requires us to perform an *internal* action, viz. to make the idea of duty the incentive for our actions. As becomes clear from §D, the incentive characteristic of Right is not duty, but rather external *coercion*. The incentive for action thus ceases to be insight into and respect for the law – motives on which virtue must rely – and is replaced by the incentive to avoid being coerced, resulting in behavior in conformity with Right. The first reason for this distinction of incentives between these two realms of morals (*Sitten*) is clear: as it is impossible to force someone to act from a particular incentive (as that is an internal affair), the only constraint possible in the case of virtue is free self-constraint (*Selbstzwang*) (MS, AA 06: 383.20; cf. 379.17, 381.16).¹⁵ Right, however, in contrast to virtue, does not require us to act from a particular incentive, but only that our external behavior comply with its laws.¹⁶ Contrary to internal motives, the external actions prescribed by Right may therefore very well be externally coerced within the context of a juridical (and thus external) lawgiving. As Kant puts it:

The doctrine of right dealt only with the *formal* condition of external freedom (the consistency of outer freedom with itself if its maxim were made universal law), that is, with *right*. But ethics goes beyond this and provides a *matter* (an object of free choice), an *end* of pure reason, which it represents as an end that is also objectively necessary, that is, an end that [...] it is a duty to have. (MS, AA 06: 380.19-25)

Such an end that is at the same time a duty can only be the object of ethics. As setting ends is necessarily an internal matter, it cannot be enforced by external, physical coercion (as in the case of Right). For this reason, ethics is not characterized by the possibility of external coercion, but instead by ‘*self-constraint* in accordance with (moral) laws’ (MS, AA 06: 381.16-17).

A second reason why Right may use external coercion in order to ensure compliance with its prescriptions and virtue may not, can be found in Kant’s comment that the doctrine of Right wishes to determine ‘with mathematical exactitude’ what belongs to each whereas such exactitude is not to be expected from the doctrine of virtue, which necessarily allows some room for exceptions (MS, AA 06: 233.21-23). It is precisely this precision, generally lacking¹⁷ in the doctrine of virtue, which renders the prescriptions of Right enforceable.

Consider the difference between the ethical duty of beneficence and the duty of Right to refrain from infringing upon the property of another. The latter duty is perfectly clear about what one must do (not infringe upon the property of another), and to whom one owes this duty (everyone). In the case of the former duty, by contrast, it is unclear how much we should give and to whom we should give it. This duty thus allows for some wiggle room concerning how one will fulfill one’s duty to promote the happiness of others by means of beneficence. As it is not entirely clear which actions are necessary to fulfill the duty, the duty itself cannot be coerced by an external lawgiving. This does not mean, incidentally, that ethical duties are somehow weaker or less binding than duties of Right: ‘a wide duty is not to be taken as permission to make exceptions to the maxims of actions but only as permission to limit one maxim of duty by another (e.g., love of one’s neighbor in general by love of one’s parents). (MS AA 06: 390.09–12)’ It does mean, however, that they are not as easily enforced externally.

Thirdly, given that virtue does not prescribe (or proscribe) particular *actions* (as Right does), but only sets *ends* that it is a duty to have (in the manner of fulfillment of which one is relatively free), its duties cannot be the object of an external lawgiving, according to Kant. Right, on the other hand, only concerns the *formal* aspect of choice, which is to be limited in its external relations in accordance with laws of freedom (so that it may be compatible with an equal amount of freedom of choice for everyone else) without regard for any *end*, which is the *matter* of choice. Accordingly, its prescriptions are both sufficiently clear and concern only external actions (as opposed to setting ends), rendering it possible to actually enforce them.

Not only is it not *possible* to enforce the commands of virtue, it is also not *necessary*. In order to understand this fourth point, it must be clarified that, for Kant, Right is necessarily social, whereas virtue is not. Willaschek rightly points out that, according to Kant, ‘it is possible [...] to live like an angel in a society of devils. However, it is impossible to exercise one’s rights independently of what others are doing, since others can interfere with my rights in a way they cannot interfere with my will’ (Willaschek 2009, p. 65). Due to the fact that others may exert such a detrimental influence on my rights, Right must necessarily be relational. Its main value, external freedom, must be secured socially if it is to be secured at all. Note that nothing similar is true of ethics. Though some of its duties are directed towards others, ethics is never concerned with ‘the *social* regulation of individual conduct. It is entirely about enlightened individuals autonomously directing their own lives’ (Wood 2002, p. 9). One’s autonomous will is not, contrary to one’s rights, dependent on others performing their duties. In ethics I am therefore only concerned with my own will, whereas in Right I am concerned with the will of all others as well as my own (MS, AA 06: 389.03-06). Ethics is thus independent from the wills of others (in a way that Right is clearly not) and therefore not in need of external coercion.¹⁸

The importance of not externally enforcing duties of virtue has to do, fifthly and lastly, with the wish to ward off paternalism. As Kersting points out, the demarcation between Right and virtue also functions as an indication of the limits of state power. Having the state enforce compliance with duties of virtue, as if they were duties of Right, runs contrary to Kant’s very intention in separating the two realms from each other: ‘die Tugend ist nicht Sache des Staates’ (Kersting 2004, p. 221n).¹⁹ The function of Kantian Right is to ensure spheres of individual freedom, within which each is free to realize his or her own conception of the good life. On Kant’s account, whenever the state goes beyond its task of securing its citizens’ *rights*, and proceeds to concern itself with their *good*, or *happiness*, that state is on the verge of becoming paternalistic: ‘The sovereign [who] wants to make the people happy in accordance with his concepts [...] becomes a despot’ (TP, AA 08: 302.10-11).²⁰

At the end of the *Introduction to the Doctrine of Right*, in §E, Kant introduces a new concept, namely that of Right *sensu stricto*. He describes this *strict* Right as the possibility of a thoroughgoing, ‘reciprocal use of coercion that is consistent with everyone’s freedom in accordance with universal laws’ (MS, AA 06: 232.02-04). Strict Right is thus understood as a realm of Right that is fully independent from virtue, ‘not mingled with anything ethical’, requiring ‘only external grounds for determining choice’, and that is ‘completely external’ (MS, AA 06: 232.13-17).

It follows from this ‘emancipation’ from the disposition of the subject (Höffe 1990, p. 81)²¹ that strict Right requires no ethical motivation at all and can therefore rely solely on external coercion that will indeed need to be thoroughgoing (*durchgängig*). Whereas ethical coercion consists in constraining oneself through the idea of duty, juridical coercion is instead characterized as *pathological* (MS, AA 06: 219.07), by which Kant means that juridical coercion appeals to *aversions*. In his lectures on ethics, Kant further describes pathological coercion as the means by which ‘we are trying by the idea to engender in the agent that degree of inclination [or rather *aversion*] of which we believe that his freedom will not have power enough to counter it’ (V-MS/Vigil, AA 27: 521). Kant here seems to imply that compliance with the law is not a matter of choice; it is rather coerced in such a manner that human freedom cannot but obey.

We might add that by substituting free self-constraint by external coercion (or rather by the incentive to avoid external coercion), it would appear that the process of autonomous decision making we know from Kant’s moral writings has become superfluous in the case of compliance with the laws of Right. Recall that in the *Groundwork* and the second *Critique* true moral worth was said to reside only in actions performed from the motive of duty, and not in those performed merely in conformity with duty. By dropping this requirement, Right, in contrast with virtue, allows for a *heteronomous* determination of choice. Right, understood as the protection of individual spheres of external freedom by means of reciprocal coercion, realizes its own preservation through heteronomous regulation (Kersting 1984, p. 12; Höffe 1990, p. 80).

We are thus presented, in *The Metaphysics of Morals*, a picture of Right that is meant to be completely independent from citizens’ inner motivations for complying with its prescriptions. Whereas morality requires autonomy – i.e. requires that the subject perform his duties from respect for the moral law – Kant seems to say that for the sphere of Right a mere heteronomous subject will suffice, a subject who acts strictly from self-interest and whose sole reason for not violating his duties is simply to evade coercion (or perhaps some other prudential reason). But is a state containing solely such heteronomous subjects tenable? Can we expect a legal system to last that relies exclusively on the external coercion of its subjects for compliance with its laws? Does not rather every *Rechtsstaat* depend on its citizens being motivated to act in accordance with its laws even when the incentive characteristic of juridical lawgiving, i.e. external coercion, is absent?²²

If all citizens would decide to not abide by the law whenever a punishment is likely to remain absent, the rule of law would not be ensured. In other words, any legal system would be

in a precarious state if the majority of the people do not act in accordance with the law from the inner motivation of duty. If this is true, it follows that Right depends on something, which it may not demand, namely compliance motivated by duty. Right depends on good character, on virtue, yet may not demand it.

It seems Kant has overlooked Right's dependence on virtue in *The Metaphysics of Morals*. In his attempt to clearly distinguish Right from virtue he has not considered if and how they interrelate. It is clear why he would want to prevent duties of virtue from being enforced externally, but the problem remains that without citizens complying from their own free will, and not from fear for punishment, any juridical system remains flawed.

As said, any legal system depends on its subjects performing their duties of Right even in the absence of coercion, solely from the idea of duty. *Even* legitimate legal norms by themselves are not enough; a correct *disposition* is needed. The problem is that Right cannot itself bring about such virtue by means of coercion. We are thus presented a catch-22. On the one hand, if citizens act solely from the incentive of external coercion and not from respect for the law, any juridical system remains unstable. After all, as O'Neill rightly points out, given that our institutions are never perfect, we will always remain dependent on virtue: 'if institutions are not knave-proof, it helps to have not too many knaves around. Just political and economic institutions and social traditions can easily be perverted by cultures of corruption' (O'Neill 1996, p. 187).

On the other hand, the state can and may not coerce its citizens to adopt a particular maxim. External coercion cannot bring about inner motivations and the attempt to do so is sheer paternalism. We should therefore not desire to realize either of these options. Our question thus becomes: Is there a way in which acting in accordance with Right from the motive of respect can be encouraged (not coerced) without sliding into paternalism? We have seen that this question is fully absent from *The Metaphysics of Morals*. There, Kant seems to think that a strict separation of Right and virtue is both possible and desirable. Hence, if we are to find an answer to this question within Kant's own writings, we must look elsewhere.

III – The Cultivation of Virtue Through Law

If we restrict our inquiry solely to *The Metaphysics of Morals*, we would have to conclude that, contrary to O'Neill's affirmation, Kant would not have agreed that Right depends on the virtuous disposition of its subjects for its stability. Nowhere in this work does he discuss the interdependence of the two spheres of morals (*Sitten*). Furthermore, in an even later work,

containing a discussion of the moral progress of the human race, Kant maintains that such progress would not yield ‘an ever-growing quantity of *morality* with regard to intention,’ but rather ‘an increase of the products of *legality* in dutiful actions *whatever their motives*’ (SF, AA 07: 91.22-25. Second emphasis added). The moral progress that concerns Kant here does thus not hinge upon people becoming good human beings, but merely upon their performance of dutiful actions as obedient subjects. The end of this progress – the highest political good which consists in the establishment of a cosmopolitan society – does not in the least, Kant seems to believe, depend on the expansion of the ‘moral foundation in humanity’ (SF, AA 07: 92.04-05), and relies instead solely on people performing their (legal) duties increasingly often. What Kant does not explain, however, is how it comes about that human beings’ dutiful actions ‘become better and better and more and more numerous’ (SF, AA 07: 91.25-26).

Thus it seems that Kant’s latest works on practical philosophy consistently minimize the importance of virtue and respect for the law, and instead insist that the moral progress of humankind consists solely in an increase in legality, simply in subjects performing their legal duties, whatever their motivation may be. Nonetheless, in some earlier works we can find signs that Kant *was* aware of our problem, that is, that he was aware that law without morality – Right without virtue – constitutes an unstable state of social life. Thus, for example, in *Idea for a Universal History from a Cosmopolitan Point of View* he alludes to the necessity of the attainment of not merely a civilized, but a truly moral order: ‘For such an end [i.e. the realization of a moral order], a long internal working of each political body toward the education [*Bildung*] of its citizens is required. Everything good that is not based on a morally good disposition [like, say, a constitutional state divorced from virtue], however, is nothing but pretense and glittering misery’ (IaG, AA 08: 26.30-33). Any good state of affairs, divorced from a morally good disposition, thus appears to be worthless. But how is the education [*Bildung*] of the citizens Kant speaks of here, which is to lead to the necessary morally good disposition, to come about? Kant argues that we must not perform our duties of Right from compulsion, ‘for they are but rascals who observe rights from fear of punishment’ (V-Mo/Collins, AA 27: 433). Yet, it is clear that the law cannot force us to not be rascals. So what *can* be done? How *can* virtue be cultivated? Kant’s answer appears to be that the laws themselves educate and form the people.

In *Toward Perpetual Peace* Kant famously argues that even ‘a nation of devils,’ guided solely by selfish inclinations, is capable of establishing a state (ZeF, AA 08: 366.15-16). This passage initially seems to present yet another example of the independence of Right and virtue, for Kant seems to argue that, with regard to the founding of a State, it is irrelevant whether or not one is a morally good human being; all that is needed is the realization that one’s own selfish

incentives and those of others are to be arranged in such a manner that constant violent collisions between them – which, after all, could be disadvantageous to oneself – are avoided. However, Kant does not seem to think that a system of Right, consisting merely in the prevention of selfish inclinations coming into conflict with one another by means of coercive force, is the highest we can achieve. A people of devils, aided solely by enlightened self-interest, can indeed *found* a State, but in order to slowly work towards the higher goal of ‘the best constitution in accordance with laws of right’ (ZeF, AA 08: 372.26-27), it is necessary that ‘the people gradually [become] susceptible to the influence of the *mere idea* of the authority of law’ (ZeF, AA 08: 372.30-31. Emphasis added). The *idea* of law, and not merely its coercive force, must influence our behavior, ‘just *as if* it possessed physical power’ (ZeF, AA 08: 372.31. Emphasis added).

Here, Kant appears to provide us with a first clue. The problem we face is that, though any legal system factually depends on the good will of its subjects, it may only rightfully *demand* external compliance with its laws. In *Toward Perpetual Peace* Kant proposes a solution to this problem by arguing that the very fact of living in a *Rechtsstaat* profoundly influences not only our *external behavior* – by means of external coercion – but also our *internal motives for* that behavior.

Further clues can be found in a relatively extensive footnote where Kant argues as follows: Citizens’ immoral way of thinking (*Denkungsart*), a result of their remaining in an uncultured state, could lead to unlawful acts. This not-yet-moral disposition is *veiled*, however, by coercive civil laws, ‘for the citizens’ inclination to violence to one another is powerfully counteracted by a greater force, namely that of the government’ (ZeF, AA 08: 375n). On the outside, it would thus appear as if all citizens had become virtuous, but in reality they merely act justly from compulsion, not from duty; their immoral predisposition is simply veiled, but still present beneath the cloak of legal coercion. These devils might still each privately wish to pursue their own selfish interests at the cost of others, but within the state their malevolent dispositions ‘so check one another that in their public conduct the result is the same as if they had no such evil dispositions’ (ZeF, AA 08: 366.21-23).²³ This is, essentially, Glaucon’s point in Plato’s *Republic*: we merely act justly from compulsion, but as soon as we get the chance to act in whichever way we wish (when the threat of legal coercion disappears) – as in the case of the shepherd-become-king Gyges – we will take it and obey the law no longer (Plato 1937, 2.359a–360d). Kant leaves Glaucon behind, however, when he adds the twist that the veil itself – ‘the coercion of civil laws’ – greatly contributes to the forming of a moral disposition, thus

rendering itself no longer strictly necessary (as it would, one imagines, eventually no longer have an immoral disposition to conceal).

Kant assumes that we all believe that we would abide by Right's prescriptions, if only we could be assured others would do likewise. The government provides precisely this assurance by compelling those who would not do so willingly to comply with the law. All can thus *trust* that their lawful actions will not be taken advantage of by others. This mutual trust constitutes 'a great step [...] *toward* morality [...], toward being attached to this concept of duty *even for its own sake*, without regard for any return [*Erwiderung*]' (ZeF, AA 08: 376n. Emphasis added). In short, Kant's point is that the maxim to act from respect for the law, which is crucial for any legal system, is cultivated by the rule of law itself. In other words, by preventing 'the outbreak of unlawful inclinations [which is the work of Right] the development of the *moral predisposition* to immediate *respect for right* is actually greatly facilitated' (ZeF, AA 08: 375–6n. Emphasis added).²⁴

Interestingly, Rawls (one of the contemporary liberals criticized by O'Neill for ignoring the importance of virtue) has argued in a similar manner that just institutions (as defined by justice as fairness) instill a *sense of justice* in those who live under these arrangements. Rawls agrees that even when fully just principles are in place, first-person and free-rider egoism may still threaten the stability of the social system. Therefore, '[t]o insure stability men must have a sense of justice or a concern for those who would be disadvantaged by their defection, preferably both. When these sentiments are sufficiently strong to overrule the temptations to violate the rules, just schemes are stable' (Rawls 1999, p. 435).²⁵ Just laws and institutions are therefore in need of a widespread sense of justice among the citizenry, if they are to be stable. Rawls's solution for the development of this sense of justice is the benign influence of those very laws and institutions that were in need of a sense of justice in the first place.

This may appear to be a circular argument (as it may in Kant's formulation of it), but for Rawls it functions instead as a criterion for the laws and institutions that are to be set up: the basic institutions of a stable constitutional regime ought to be set up in such a manner that they 'encourage the cooperative virtues of political life' (Rawls 2001, p. 116). When just institutions function well over time, Rawls assumes that these virtues will thereby be encouraged. Rawls's point here appears to be one of moral psychology. He maintains that it is a psychological law that our recognition of the benefits of living under enduring laws and institutions – provided they respect the two principles of justice of course –, 'not only encourages mutual trust among citizens generally but also nurtures the development of *attitudes* and *habits of mind* necessary for *willing* and fruitful social cooperation' (Rawls 2001, p. 117).

Emphasis added; cf. Rawls 1999, p. 414–5). Such laws and political institutions generate their own support, in the sense that ‘those who grow up in the well-ordered society in which that conception [i.e. a stable conception of justice] is realized normally develop *ways of thought* and judgment, as well as *dispositions* and *sentiments*, that lead them to support the political conception for its own sake’ (Rawls 2001, p. 125. Emphasis added). In this manner, just laws and institutions, themselves in need of civic virtue in order to be stable, actually generate the desired virtuous disposition on their own.

Though Kantian Right and virtue may at times prescribe the same actions, most of Kant’s efforts in *The Metaphysics of Morals* are dedicated to strictly distinguishing the one from the other, whereby the chief difference concerns the *incentive* that is to motivate the agent’s behavior. Whereas duties of Right may be coerced externally, duties of virtue can rely on inner self-constraint alone. Consequently, Right may not demand that agents fulfill their duties of Right from the motive of duty. Nonetheless, any legal system does *de facto* rely on at least the majority of its subjects acting from the motive of duty, and thus in accordance with Right even when coercion is absent.

In *The Metaphysics of Morals* Kant does not address this dependence of Right on virtue. On the contrary, he appears to be at great pains to develop a system of Right that has severed any and all ties to virtue (with regard to incentives for actions), that is, he wishes to render Right fully independent from ethical motives for actions, leaving his conception of Right open to the threat of instability. Given that Right may not demand virtue from its subjects, but nonetheless does depend on it for its own stability, we needed to find a way in which virtue could be cultivated, but not coerced. It seems we have found a solution to this problem in the slightly earlier text *Toward Perpetual Peace*. Kant argues there that the very act of living in a good constitutional state develops our virtue by instilling respect for the law in us: ‘it is not the case that a good state constitution is to be expected from inner morality; on the contrary, the good moral education²⁶ of a people is to be expected from a good state constitution’ (ZeF, AA 08: 366.33-35²⁷). A morally educated people can, in turn, legislate better, resulting in a constitutional state that moves ever closer to the desired end, namely ‘the best constitution in accordance with laws of right’ (ZeF, AA 08: 372.26-27). This improved constitutional state, in turn, can ameliorate its people’s moral education even further, resulting in that particular people being able to improve their state further still, and so on. This exchange between the objective order – the *Rechtsstaat* – and the subjective ethical development of the people is Kant’s answer to the problem that confronted us in *The Metaphysics of Morals*.

Yet, there is something more this answer shows us. We started out with O'Neill's statement that Right depends on virtue (that is, on people acting from the virtuous motive of duty) for its own stability. Now, after a brief discussion of *Toward Perpetual Peace*, it turns out that the virtue on which it must rely, is cultivated by Right itself. In other words, not only does Right need virtue, but virtue is also dependent on Right for *its* development, entwining both in a relation of reciprocal dependence.²⁸ Right may not *demand* that we act in accordance with its laws from the motive of duty, but a good legal system can *cultivate* in us a respect for the law. This *Rechtsachtung* can ensure we obey the law even when external coercion is absent.

IV – Conclusion

According to O'Neill, Kant (like Rousseau) is part of a tradition that, contrary to contemporary liberalism, emphasizes the necessity of virtue for the preservation of just laws and institutions. Contrary to her assertion, however, we initially found, basing ourselves on a reading of *The Metaphysics of Morals*, that this is not the case. In his main work dealing both with Right and virtue, we found that, far from arguing for the interdependence of these two spheres of morals (*Sitten*), Kant sets out to strictly separate Right from virtue. Subsequently, however, we found that in *Toward Perpetual Peace* Kant was concerned not only with the keeping in check of the selfish inclinations of devils, but also with the formation of respect for the law. The description of this trajectory – from devils in need of forceful state coercion, to (ideally) angels for whom, as Madison put it, no government would be necessary (Madison 1987. No. 51, p. 319) – shows that Kant was indeed aware of the necessity of supplementing justice with virtue, as O'Neill maintains. Yet, the process by means of which this virtuous character comes about requires, according to Kant, merely legality. In other words, whereas an author like Rousseau relies explicitly on such means as censorship, a wise Lawgiver and a civil religion in order to ensure respect for the law in the heart of each citizen, Kant relies instead solely on legality, that is, on the felicitous effects of outward compliance with the law. Living under (just) laws is all that is required in order to eventually end up with citizens who comply with the law's prescriptions not from fear, nor from prudence, but from respect for the law itself.

A concern for civic virtue is thus not the starting point for Kant, as it is for Rousseau (and as it seems to be for O'Neill), but rather the end point. O'Neill ignores this difference. Thus, though we found in *Toward Perpetual Peace* – despite all the evidence to the contrary in *The Metaphysics of Morals* – that Kant was indeed concerned with the question of the interdependence of Right and virtue, the manner in which Kant *arrives* at virtue (i.e. solely by

means of legality) is clearly distinct from, say, the path to virtue expounded by Rousseau, or by contemporary (and past) virtue theorists. Kant thus appears to find himself between, on the one hand, those liberals, dismissed by O'Neill, that focus *exclusively* on the justice of the basic structure and, on the other hand, thinkers as Rousseau or Aristotle, for whom virtue is the starting point. By ignoring this difference, and lumping him together with Rousseau, O'Neill misrepresents Kant and his account of the relation between justice and virtue.

In closing, we can sum up this middle ground Kant occupies by complementing the passage from O'Neill quoted at the outset of this paper: 'Plato had hoped that good men would need no laws; deontological liberals hope that good laws will work without good men or women;' and Kant hoped that (good) laws would *bring about* good men and women.

Notes

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² Here and in the remainder of the paper I will use 'Right' with a capital 'R' when I refer to the juridical realm as such, whereas I speak of 'right(s)' with a lowercase 'r' when speaking of specific subjective rights. In Kant's German both are termed *Recht*.

³ It must be noted here that when I speak of the strict distinction between Right and virtue (or between duties of Right and duties of virtue), I am *not* engaging in the debate concerning the question whether or not Kant's doctrine of Right can be derived from the categorical imperative, as this debate does not pertain to the question at hand. For even if Kant's universal principle of Right *is* derived from the categorical imperative (a position I tend to agree with), the fact remains that he clearly wishes to separate Right from virtue. Most importantly, Kant does not wish to bring duties of virtue (as imperfect duties) under the sphere of an external lawgiving (i.e. of Right); moreover, whereas Right can rely on external coercion, virtue can rely on internal self-constraint alone. Thus, even if the categorical imperative is the source of the universal principle of Right, the point still remains valid that the *Rechtslehre* provides a strict separation of these two realms of morals (Right and virtue) from one another.

Those that argue that Kant's *Doctrine of Right* is independent from his moral philosophy include: Pogge 2002; Wood 2002; Willaschek 2009; Flikschuh, K. (2010) *Justice without virtue*. In L. Denis (Ed.), *Kant's 'Metaphysics of Morals': A Critical Guide* (pp.51-70). Cambridge: Cambridge University Press. The opposing view, holding that Kant's principles of Right do ultimately derive from the categorical imperative, is presented by, among others, the following scholars: Kersting 1984; Ludwig 1988; Guyer 2002; Nance 2012.

⁴ All references to Kant's work are to the Prussian Academy pagination. The translations provided throughout the text, if available, are (with one exception) from The Cambridge Edition of the Works of Immanuel Kant (Ca) (Cambridge: Cambridge University Press, 1992–). I will use the following abbreviations:

- G Grundlegung zur Metaphysik der Sitten, Ak 4
Groundwork of The Metaphysics of Morals, Ca Practical Philosophy
- Idee Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht, Ak 8
'Idea for a Universal History from a Cosmopolitan Point of View', in L.W. Beck (Ed. and trans.), *Kant: On History* (pp.11-26). New York: Macmillan, 1963.
- KpV Kritik der praktischen Vernunft, Ak 5
Critique of Practical Reason, Ca Practical Philosophy
- MS Die Metaphysik der Sitten, Ak 6
The Metaphysics of Morals, Ca Practical Philosophy
- RGV Die Religion innerhalb der Grenzen der blossen Vernunft, Ak 6
Religion Within the Boundaries of Mere Reason, Ca Religion and Rational Theology
- SF Der Streit der Fakultäten, Ak 7
The Conflict of the Faculties, Ca Religion and Rational Theology
- TP Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis, Ak 8
On the Common Saying: That May Be Correct in Theory, But It Is of No Use in Practice, Ca Practical Philosophy
- VARL Vorarbeiten zur Rechtslehre, Ak 23
- VATL Vorarbeiten zur Tugendlehre, Ak 23
- VE Vorlesungen über Ethik, Ak 27
Lectures on Ethics, Ca Lectures on Ethics
- ZeF Zum ewigen Frieden. Ein philosophischer Entwurf, Ak 8
Toward Perpetual Peace. A Philosophical Project, Ca Practical Philosophy

⁵ This allows us to disprove the popular misconception that, according to Kant, acting morally requires a complete disregard for one's natural inclinations and feelings of sympathy, which can induce one to help others. It does not matter whether or not one enjoys performing one's duties. Kant is by no means opposed to feelings of joy in helping others. What is important to him is that those feelings of joy are not the reason why one is beneficent. Instead one should act from duty, i.e. from respect for the moral law.

⁶ Kant introduces the distinction between legality and morality for the very first time a few pages earlier: 'If the determination of the will takes place *conformably* with the moral law but only by means of a feeling [...], so that

the action is not done *for the sake of the law*, then the action will contain *legality* indeed but not *morality*' (KpV, AA 05: 71.30-34).

⁷ The distinction between a law prescribing a particular duty and the incentive to perform that duty lies, furthermore, at the basis of the whole structure of *The Metaphysics of Morals*. After all, the main difference between the two constitutive parts of this work – i.e. between Right and virtue – lies not in a difference of duties, but rather in the different *incentive* that accompanies the fulfillment of duties: 'The doctrine of right and the doctrine of virtue are therefore distinguished not so much by their different duties as by the difference in their lawgiving, which connects one incentive or the other with the law' (MS, AA 06: 220.15-17).

⁸ This connection between the juridical sphere and the use of external coercion (*Zwang*) to ensure compliance will be dealt with more extensively in Section II.ii.

⁹ '[D]er Unterschied zwischen Moralität und Legalität hingegen thematisiert die *Einstellungsweise* des Subjekts dem Vernunftgesetz gegenüber und erfaßt die beiden dem Subjekt möglichen *Pflichterfüllungshaltungen*'.

¹⁰ This reading of the distinction between legality and morality is confirmed by another passage in the *Introduction to the Doctrine of Right*: 'The conformity of an *action* with the law of duty is its *legality* [*Gesetzmäßigkeit*] (*legalitas*); the conformity of the *maxim* of an action with a law is the *morality* [*Sittlichkeit*] (*moralitas*) of the action' (MS, AA 06: 225.31-34. First and fourth emphases added). As becomes clear from the *Vorarbeiten* to the *Doctrine of Right* and the *Doctrine of Virtue*, Kant equates *Maxime* with *Gesinnung* (cf. VARL, AA 23: 258.22; VATL, AA 23: 379.18, 384.32), thus bringing this passage in line with the other passages in which Kant distinguishes between legality and morality. Again, legality simply requires the conformity of our *action* with duty, whereas morality places an additional claim on us. Not only our action, but also the *maxim*, i.e. the disposition or attitude, guiding our action must conform with the law.

¹¹ Kant hereby specifies that these actions are to be understood as *Facta*, which are those actions that one has freely brought about and of which one may therefore be regarded as the author (*cause libera*) (MS, AA 06: 227.21-23).

¹² Only *Willkür* is of any concern for Right, that is, the faculty of desire (*Begehrungsvermögen*) of the *homo phaenomenon* directed toward empirical actions. *Wille*, by contrast, or the practical reason of the *homo noumenon*, does not enter Right's purview.

¹³ Most scholars have taken this point to exclude any kind of welfare rights in Kant. This *minimalist* reading argues that by excluding wishes and needs, Kant also excludes their fulfillment, i.e. *happiness*. There are, however, other passages in the *Doctrine of Right*, such as the following, where Kant explicitly recognizes the right of the state to redistribute wealth through taxes: 'To the supreme commander there belongs *indirectly* [...] the right to impose taxes on the people for its own [*des Volkes*] preservation, such as taxes to support organizations providing for the *poor, founding homes and church organizations*' (MS, AA 06: 325.34–326.02). Yet, proponents of the minimalist position will point to passages from *Theory and Practice* where Kant appears to refute, quite vehemently, any kind of welfare state. He argues, for example, that a 'government established on the principle of benevolence toward the people like that of a *father* toward his children – that is, a *paternalistic government* [...] – is the greatest *despotism* thinkable (a constitution that abrogates all the freedom of the subjects, who in that case have no rights at all)' (TP, AA 08: 290.33–291.05). But in this passage Kant merely wishes to clarify why happiness can neither be a juridical principle, nor a principle for state policy. He argues that happiness is too indeterminate and variable to form a basis for public laws, as the understanding of happiness differs from person to person, which seems to be a rather convincing argument. To infer from this however, as the minimalists do, that Kant therefore forbids social welfare legislation is an erroneous conclusion. For all that Kant says in this passage, and others similar to it, is that the state may not impose its conception of happiness upon its citizens, which is an argument against the threat of paternalism: 'No one can coerce me to be happy in his way' (TP, AA 08: 290.27-29). He says nothing about providing citizens with a minimum of means needed to be able to formulate and pursue one's *own* conception of happiness. The matter is therefore not quite as straightforward as it is often made out to be by ignoring crucial passages in which Kant actually supports the redistribution of wealth and by the misreading of others. Some examples of the minimalist position can be found in the following works: O'Neill 1989; Kersting 1992; Höffe 1999; Pogge 2002. For an alternative reading of Kant, one more favorable to the welfare state: Van der Linden 1988; Rosen 1993. Particularly Chapter 5; Kaufman 1999.

¹⁴ 'Maxime der *Handlung* und nicht des *Handelnden*'. Cf. VATL, AA 23: 379.10-14 for a similar distinction: 'Die erste Nöthigung enthält das Princip: handle so als ob deine Maxime einer allgemeinen Gesetzgebung zum Grunde

gelegt werden sollte [a requirement of *Right*]. Die zweyte Nöthigung sagt: Mache es dir zur Maxime so zu handeln als ob du durch dieselbe allgemein gesetzgebend wärest [a requirement of *virtue*].

¹⁵ Even if it *were* possible to coerce someone into having a certain disposition, one could never ascertain with any certainty whether or not that person performed a duty from the motive of duty or from some other incentive. This follows from Kant's argument that even the agent herself cannot be completely sure of her own disposition in performing a moral duty: 'For a human being cannot see into the depths of his own heart so as to be quite certain, in even a *single* action, of the purity of his moral intention and the sincerity of his disposition' (MS, AA 06: 392.30-33).

¹⁶ Of course, the incentive *can*, even in the case of Right, be of import. Kant recognizes this when he distinguishes *fault* from *crime*: 'An *unintentional* transgression which can still be imputed to the agent is called a mere *fault* (*culpa*). An *intentional* transgression (i.e. one accompanied by consciousness of its being a transgression) is called a *crime* (*dolus*)' (MS, AA 06: 224.04-07). Thus, in the case of a transgression of the law it may indeed matter a great deal what one's incentive was (whether one *meant* to break the law or did so unintentionally), as is recognized, for instance, in the distinctions between murder, voluntary manslaughter and involuntary manslaughter. However, in the case of behavior in compliance with the law, the incentive for compliance is irrelevant.

¹⁷ I say 'generally lacking', because the duties of virtue to oneself would indeed seem to be quite precise. The duty to refrain from killing oneself, from defiling oneself by lust, and from eating and drinking excessively are prohibited with no exception, and may therefore be considered narrow and perfect duties. Furthermore, these duties prescribe external, not internal actions. Yet, whereas it has these characteristics in common with duties of Right, they are at the same time duties of virtue as they concern the subject's relation to itself. The fact that these duties are assumed by the subject in light of the ultimate *end* of promoting one's own perfection, finally, also places them squarely in the sphere of virtue.

¹⁸ A similar point is made by Arthur Ripstein when he argues that the categorical imperative is concerned with 'what I do' (which is non-relational) whereas the universal principle of Right is concerned with 'what I do to you' (which is relational): Ripstein 2009, p. 381. Willaschek has further pointed out how my duties of Right depend on the rights of others whereas nothing analogous is true of the duties of virtue: Willaschek 2012, p. 560.

¹⁹ Cf. Wood 2002, p. 10: 'any use whatever of social coercion in any form to *enforce* ethical duties [...] must be regarded as a wrongful violation of individual freedom by corrupt social customs'.

²⁰ Cf. RGV, AA 06: 96.01-02: 'But woe to the legislator who would want to bring about through coercion a polity directed to ethical ends!'

²¹ Cf. Kersting's remarks on the 'Gesinnungsindifferenz' of Right (Kersting 2004, p. 221).

²² Indeed, this intuition is confirmed by studies in the field of social sciences, concerned with compliance with legal norms, such as Tom R. Tyler's classic *Why People Obey the Law*. He distinguishes *instrumental* reasons for complying with the law, which amount to a weighing of the probability that one will be punished if one does not comply, from *normative commitments*. These, in turn, can be divided between *personal morality* (obeying the law, because one considers it just) and *legitimacy* (obeying the law, because one retains that the law enforcing authority has the right to prescribe actions). Tyler's research clearly points out that relying on coercive measures alone (and thus on instrumental reasons) is not at all conducive to the stability of a State. His findings are backed up by an entire body of existing research indicating 'that in democratic societies the legal system cannot function if it can influence people only by manipulating rewards and costs' (Tyler 2006, p. 22). Such societies are, furthermore, under constant threat of instability. This point is also commonly made in legal theory, as exemplified by H.L.A. Hart when he maintains that the legal system will be most stable when people conceive of themselves as *morally* bound to accept the legal rules voluntarily: Hart 1994, p. 203, cf. p. 201. Similarly, John Rawls argues that a well-ordered society requires not only just institutions, but also a sense of justice to maintain these institutions, if the well-ordered society is to be stable: Rawls 1999, pp. 397-401. Indeed, given that a great deal of Part III of *A Theory of Justice* is dedicated to the relation between justice and the good, it would seem Rawls was not as dismissive of the good as O'Neill believes him to be.

²³ Cf. ZeF, AA 08: 366.29-33: 'It can be seen even in actually existing states, still very imperfectly organized, that they are already closely approaching *in external conduct* what the idea of right prescribes, *though the cause of this is surely not inner morality*' (emphasis added). Similarly, Kant argues that the problem the nation of devils wishes

to solve by founding a state is not the moral improvement of people. Each is merely forced to become a good *citizen* (which Kant here interprets narrowly as simply obeying the law), ‘even if not a morally good *human being*’ (Zef, AA 08: 366.13-14. Emphasis added).

²⁴ Though Kant explicitly argues that the founding of the state is not geared towards the end of the moral improvement of human beings, this improvement nonetheless does seem to be a felicitous (even if perhaps unintended) side-effect of being constrained by laws.

²⁵ Rawls understands a ‘sense of justice’ to be ‘a settled disposition to adopt and to want to act from the moral point of view’ (Rawls 1999, p. 430). It may therefore be viewed as akin to our usage of ‘civic virtue.’

²⁶ The German word translated here as ‘education’ is, again, *Bildung*. The German is not entirely captured by the English ‘education.’ It has many connotations, such as upbringing, breeding, formation. One who is *gebildet*, is not only educated, but could also be understood to be civilized, or cultured. In this case, as well as in the quoted passage from *Idea for a Universal History*, where Kant spoke of an ‘innere Bildung der Denkungsart,’ he seems to refer to the formation, or cultivation, of an inner, moral disposition, of a moral way of thinking. In this sense, I feel it is warranted to compare the *Bildung* of which Kant speaks here with the cultivation of a Rawlsian sense of justice.

²⁷ Cf. TP, AA 08: 304.17-18, where Kant argues that the ‘subjects’ liberal way of thinking’ is instilled in them by the constitution itself.

²⁸ One could argue that Kant places himself in the republican tradition here. The dynamic between the people and the state is reminiscent of the republican ideal, here expressed by Machiavelli: ‘Just as good customs [or mores] require laws in order to be maintained, so laws require good customs [mores] in order to be observed’ (Machiavelli 1996, Bk. 1, Ch. 18, p. 68). Contemporary republicans similarly stress the productive role the laws and institutions can play in cultivating civic virtue: see, e.g., Pettit 1997, p. 251; Peterson 2011, pp. 88–90.

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