

“Only one obligation”:

Kant on the Distinction and the Normative Continuity of Ethics and Right

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Abstract: I suggest that looking at how Kant’s arguments relate to the stand of the discussion on the relationship between right and ethics in his times contributes to a better understanding of his own position in this matter. I contrast the terms of the pre-Kantian debate with Kant’s take on the matter, in order to point out how Kant gains a new perspective concerning the relationship between ethics and right. While the most prominent pre-Kantian view construed right and ethics as either resulting from the application of a general principle to different domains or reciprocally independent, Kant’s own account centres on the difference between outer and inner freedom. I argue that Kant thereby only differentiates two relations of freedom to different hindrances, without implying any separation. This distinction allows him to construe right and ethics as sharing the same normative force of moral obligation. Therefore I suggest that Kant’s view understands the relationship between right and ethics neither as dependence nor as independence, but highlights the normative continuity throughout morals.

1. An unanswered question

The various interpretations of Kant’s view on the relationship between morals and right can be roughly classified into two categories: those maintaining that right is dependent on morals and those maintaining that right is independent from morals.¹ The contrast between the Independence Thesis and the Dependence Thesis, especially if stated in so general terms, oversimplifies the matter, of course, and is in need of qualification. It not always clear, for

¹ See e.g. the helpful general survey on the stand of the research in R. MOSAYEBI, *Das Minimum der reinen praktischen Vernunft. Vom kategorischen Imperativ zum allgemeinen Rechtsprinzip bei Kant*, Berlin–Boston, DeGruyter, 2013. See now also the detail critical remarks in CHR. HORN, *Nichtideale Normativität. Ein neuer Blick auf Kants politische Philosophie*, Berlin, Suhrkamp, 2014, chap. 1.

instance, on or *from what exactly* right is meant to be dependent or independent, as it is sometimes forgotten or ignored that Kant rather consistently keeps a distinction between morals broadly understood (*Moral* or *Sittenlehre*), i.e. as encompassing the whole of practical philosophy, and ethics in a narrow sense (*Ethik*) as a specific treatment of ethical, i.e. non-judicial duties. If these simple terminological and systematic coordinates are not taken into account, it cannot become clear if right is supposed to be independent from the theory of specific moral demands in the current sense (i.e. Kant's ethics) or from the general theory of moral demands, or moral normativity (roughly, Kant's "morals").

With this *caveat* in the background, I would like to focus on a different, yet connected issue concerning Kant's view on the relationship between right and ethics. Both the Independence and the Dependence Thesis often refer to a "traditional conception" with which Kant's view would have some connection. Allen Wood, for instance, argues that "Kant rejects the common idea that the sphere of right, including the philosophy of law and politics, consists merely in an application of general moral principles to the specific circumstances of law or the political state".² Especially some variants of the Independence Thesis stress that Kant's account of the relationship between right and ethics is characterised by the presence of elements of both the "traditional conception" and of a new, different conception. Kant's position would thus represent a transition from the traditional understanding of right and ethics to a new one.³

It is quite clear what the interpreters suggesting this account hold the traditional view to be: the thesis that right is dependent from morals (in which sense?) or from general moral principles.⁴ It is not clear at all, though, how this reading should square with the state of the discussion that Kant was reacting to. It is not clear, namely, which traditional conception we are talking about. In fact, at least two very different views were opposed, before Kant: the Wolffian and the Thomasian. On the Wolffian interpretation, all the parts of practical philosophy build a systematic unity governed by one and the same principle, while the Thomasian interpretation centers on a strict separation between right and ethics. So we would

² A. WOOD, "The Independence of Right from Ethics", in A. Wood, *The Free Development of Each. Studies on Freedom, Right, and Ethics in Classical German Philosophy*, Oxford, Oxford University Press, 2014, 70-89: 72.

³ See especially M. WILLASCHEK, "Why the Doctrine of Right Does not Belong in the *Metaphysics of Morals*. On Some Basic Distinctions in Kant's Moral Philosophy", *Jahrbuch für Recht und Ethik/ Annual Review of Law and Ethics* 5 (1997), 205-227, and M. WILLASCHEK, "Right and Coercion. Can Kant's Conception of Right be Derived from his Moral Theory?", *International Journal of Philosophical Studies* 17 (2009), 49-70.

⁴ Cf. WILLASCHEK, "Right and Coercion".

have either no real distinction, or a quite sharp one, in fact stronger than the Independence Theorists maintain. More importantly, if we simply refer to a(n undisputed?) traditional view, we do not see any reason why Kant should engage with the issue in the first place. If a generally accepted “traditional conception” would be in place, it would appear that Kant’s transition to a new view would take place as a sort of side effect of his new position in moral philosophy in general, especially if you consider that he officially holds to the traditional view, as the Independence interpretation has it. It would appear, in other words, that, while Kant works in continuity with the official conception, developing his new philosophical perspective leads him to a different conception. This picture does not strike me as much plausible.

Now, even if they sometimes mention Thomasius and his separation between ethics and right, the interpreters who put forward some variant of the Independence Thesis might reply that their aim is not to provide an historically adequate picture of the discussions in practical philosophy prior to Kant, so that the accuracy of what they take the “traditional conception” to be is ultimately not essential to their interpretive arguments — essential is rather to point out a tension, or a transition, in Kant’s thought between two different, incompatible conceptions, which might as well be labelled “conception 1” and “conception 2”, to set aside any historical implication or any reference to Kant’s philosophical context. This defence might help the inner consistency of the Independence interpretation, but thereby we would lose, I believe, an important clue for the understanding of Kant’s view. Indeed, if we do consider what conceptions Kant was confronted with, we can obtain a more accurate picture of his own position. We would see that in fact in Kant’s times there was no “traditional view” to endorse or reject, and that there was rather an issue that Kant aimed to solve.

Precisely because, in the last decades of the eighteenth century, the distinction was not acknowledged as stable and clear many German writers strongly felt the urgent need for a clarification of the relationship between right and morals. The terminological difference between ethics and right had meanwhile become familiar, but had never been properly defined.⁵ Indeed, one of the elements of the general crisis of natural law at the end of the 18th century consists in the lack of clarity on this fundamental issue.⁶ Kant shares this general

⁵ See for instance the examples mentioned by D. VON DER PFORDTEN, “Kants Rechtsbegriff”, *Kant-Studien* 98 (2007), 431-442.

⁶ See D. KLIPPEL, “Ideen zur Revision des Naturrechts: Die Diskussion zur Neubegründung des deutschen Naturrechts um 1780”, *Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics* 8 (2000), 73–90: 75 ff.; D. KLIPPEL, “Das deutsche Naturrecht am Ende des 18. Jahrhunderts”, in V. Fiorillo, F. Grunert (eds.), *Das Naturrecht der Geselligkeit. Anthropologie, Recht und Politik im 18. Jahrhundert*, Berlin, Duncker & Humblot, 2009, 301-325, e.g. footnote 37.

feeling and explicitly mentions the open issue as one prominent reason to deal with the topic: “One does not as yet know how to determine from principles the place for *jus naturae* in practical philosophy on the basis of principles and to show the border between *jus naturae* and morals” (AA XXVII 1321).⁷ According to the Vigilantius notes, still in the 1790s Kant insists that “the determination of the supreme principle of distinction [...] has never till now been worked out” (AA XXVII 539).⁸

The issue is not merely systematic or ‘architectonic’, but has obvious practical implications, e.g. in the justification of the juridical practices and in determining their contents, as well as philosophical consequences. The effects of the lack of a proper distinction between right and ethics can be seen, for instance, in Mendelssohn’s view that the normative validity of contracts is founded on a duty of love.⁹ Such an example shows that any continuity between some “traditional view” and Kant’s own is in fact unlikely. In fact, the previous conceptions determine the state of the discussion that Kant *rejects* and aims to correct, by putting forward a different view.

Looking at how his arguments relate to that state of the discussion in his times contributes to a better understanding of Kant’s own position in this matter. A look at the philosophical background provided by the main competing views Kant had before him should help to put his view in the right perspective and to assess how he construes the relationship between right and ethics. I shall contrast the terms of the pre-Kantian debate with Kant’s take on the matter, in order to point out how Kant gains a new perspective concerning the relationship between ethics and right, which cannot be regarded as corresponding to the previous ones, not even in the general outline. While his contemporaries, after waiting for Kant’s doctrine of right for a long time, were disappointed and thought that Kant ultimately did not go beyond the early modern natural law theories, I suggest that it is important to highlight, on the contrary, the main features with which his view re-defines the terms of earlier debates.

⁷ Pace M. BAUM, “Recht und Ethik in Kants praktischer Philosophie”, in J. Stolzenberg (ed.), *Kant in der Gegenwart*, Berlin–New York, De Gruyter, 213–226: 213, these remarks cannot be referred only to the limits of the Wolffian position, but to a limit shared also by the other conceptions. (I thank Fred Rauscher for making his translation of these and other passages from the *Naturrecht Feyerabend* available to me in advance to the publication of the corresponding volume of the Cambridge Edition.)

⁸ The translation of the passages from Kant’s writings are taken from the corresponding volumes of the Cambridge Edition of the Works of Immanuel Kant, where available.

⁹ On this, see H. DEDEK, “Duties of Love and Self-Perfection: Moses Mendelssohn’s Theory of Contract”, *Oxford Journal of Legal Studies* 32 (2012), 713–739.

2. Kant's middle way between competing conceptions

The need of a clear account of the relationship between right and ethics arises from the limits of the main positions in natural law prior to Kant. The complexity of the issue is apparent in the Wolffian view. (The differences among Wolff and the Wolffians on this matter are of rather scarce relevance as to general outline.) Following a tradition going back to the late Scholastics, Wolff acknowledges many different meanings of the notion of natural law. Aside from natural law in the broadest sense, that Wolff and the Wolffians take to embrace the whole of reality as an order created by God,¹⁰ two meanings of 'natural law' are relevant here. The natural law in the broad sense (*ius naturale late dictum*) is the complex of all obligations (at least those cognisable through mere reason), and in fact embraces the entire practical philosophy. In this sense *ius* is synonymous with 'morals' or 'moral philosophy' (*Sittenlehre*),¹¹ which would suggest a dependence of ethics on right rather than the other way around, as ethics would merely belong in the broader field of natural right in the more comprehensive sense. Some unclarity arises especially when Wolff introduces the new discipline of universal practical philosophy: The official Wolffian view is that, the function of natural law in the broader sense is to present a general "theory of practical philosophy", but it is not very clear how this should relate to universal practical philosophy, since the latter should provide a general foundation for the entire practical philosophy, encompassing, among other topics, a theory of the law of nature and of the corresponding obligation or bindingness.¹² On the lower level, natural law in the strict sense (*ius naturale stricte dictu*) is specifically the doctrine of external obligations.¹³ In this sense, *ius* is on the same level as the doctrine of internal obligations, i.e. ethics,¹⁴ as they both depend on the general principles set out in natural law in the broad sense.

¹⁰ Cf. e.g. A. G. BAUMGARTEN, *Initia philosophiae practicae primae*, Halle 1760 (reprinted in AA XIX 7-91), § 65: "Jus naturae latissimum leges naturales omnes complectitur".

¹¹ Cf. e.g. G. ACHENWALL, *Ius naturae*, editio septima, Göttingen 1774, § 26: "scientia legum naturalium appellatur ius naturale (naturae) latius et obiective sumtum; atque hoc significato Iuris Naturalis synonymum est Philosophia Moralis". See also M. SCATTOLA, "Die Naturrechtslehre Alexander Gottlieb Baumgartens und das Problem des Prinzips", *Aufklärung* 20 (2008), 239–265.

¹² On this compare CHR. WOLFF, *Ratio praelectionum Wolfianarum in Mathesin et Philosophiam universam*, Halle 1735, reprint Hildesheim, Olms, 1972, VI § 1 and § 5. Remarkably, Wolff's *Ausführliche Nachricht* does not even mention natural law as a separate discipline.

¹³ Cf. BAUMGARTEN, *Initia*, § 65.

¹⁴ Cf. A. G. BAUMGARTEN, *Ethica philosophica*, editio tertia, Halle 1763, reprint Hildesheim, Olms, 1969, § 1.

For Wolff and the Wolffians, therefore, the distinction between right and ethics is not really problematic. In applying to specific matters to generate a doctrine of duties, moral philosophy branches out in two directions, according to the sphere of application: the individual or society. The special practical philosophy thus differentiates in ethics (*philosophia specialis moralis*) and politics, or “civil practical philosophy” (*philosophia specialis civilis*).¹⁵ The very same rational and natural principle (“Do what makes you and your condition more perfect, and omit what makes you and your condition less perfect”)¹⁶ simply applies to both domains. The dissatisfaction — not only on Kant’s part — with such a framework is understandable. A Wolffian position seems unable to make sense of the issue of a clear distinction between the two spheres that does not merely amount to distinguishing two fields of application. This weakness leaves unexplained many significant differences between ethics and right. In fact, the Wolffian position seems unable to even acknowledge the problem. Interestingly, the author of the textbook used by Kant in his natural law courses, Achenwall, is probably, among the Wolffians, the most acutely aware of the issue.¹⁷

However, Kant shares with Wolff and the Wolffians a crucial point. For Wolff, in the specific sense, *ius*, ‘right’, primarily means a moral power, that is, a *facultas moralis*, that is, it means not a complex of laws, but a *subjective* right. In this respect, he follows a tradition going back at least to Suárez, but stresses this aspect quite strongly, and holds that subjective right is the only proper meaning of *ius*. (He even complains about the ambiguity between *ius* and law in the vernacular languages.)¹⁸ Wolff maintains that a subjective right derives from a prior natural obligation.¹⁹ More specifically, on his account, a right derives from a permissive law

¹⁵ WOLFF, *Ratio praelectionum*, VI § 25.

¹⁶ CHR. WOLFF, *Vernünfftige Gedancken von der Menschen Thun und Lassen (Deutsche Ethik)*. Vierte Auflage, Frankfurt–Leipzig 1733, reprint ed. by H. W. Arndt, Hildesheim–Zürich–New York, Olms, 1996 (*Gesammelte Werke*, I Abt., Bd. 4). (Translation in J.B. Schneewind (ed.) *Moral Philosophy from Montaigne to Kant*, Cambridge, Cambridge University Press, 2003, 335.)

¹⁷ See also K. BÄRTHLEIN, “Die Vorbereitung der Kantischen Rechts- und Staatsphilosophie in der Schulphilosophie”, in H. Oberer, G. Seel (eds.), *Kant: Analysen-Probleme-Kritik*, Würzburg, Königshausen & Neumann, 1988, 221-271. On Achenwall’s influence on Kant see B. S. BYRD, J. HRUSCHKA, *Kant’s Doctrine of Right. A Commentary*, Cambridge, Cambridge University Press, 2010, 15 ff.

¹⁸ See on this B. TIERNEY, *Liberty and Law. The Idea of Permissive Natural Law, 1100-1800*, Washington, D.C., The Catholic University of America Press, 2014, 313.

¹⁹ Cf. CHR. WOLFF, *Jus naturae methodo scientifica pertractatum*, I, Halae 1740, reprint Hildesheim, Olms, 1972, §§ 23, 25, 26.

that gives a subject a moral power.²⁰ In this respect, Kant's view is rather close to Wolff's. For Kant, too, the dimension of right is primarily the dimension of subjective right, not of *specific* laws that constitute the juridical domain as such.²¹ Duties of right are only derivative, as they originate from a right in this sense.²² Kant expresses the same relation speaking of a "duty corresponding to the right [*dem Recht correspondirende Pflicht*]" (AA XXIII 258). For this reason, according to Kant's clarification in the *Doctrine of Right*, "the moral concept of right" indicates a "right, *insofar as it is related to an obligation corresponding to it*" (AA VI 230). Analogously, in ethics, duties derive only from objective ends, and not the other way around. With the very same formulation, Kant speaks of a "duty corresponding to the end [*dem Zweck correspondirende Pflicht*]"²³ Furthermore, like Wolff, Kant maintains that the subjective right derives from a prior obligation, which in Kant's view is understood as the fundamental obligation imposed by the moral law logically prior to any specific duties: right (specifically strict right) "is indeed based on everyone's consciousness of obligation in accordance with a law" (AA VI 232).

Here a major difference with respect to Wolff is that the right arises from obligation *not directly*, i.e. not as a result of a permission, but via the faculty of freedom: "we know our own freedom (from which all moral laws, and so all rights as well as duties proceed) only through the moral imperative, which is a proposition commanding duty, *from which the capacity for putting others under obligation, that is, the concept of a right, can afterwards be explicated [entwickelt]*" (AA VI 239). The obligation imposed by the moral law provides through the fundamental constraint on actions the foundations for right, as well as for any other normatively relevant status. The concept of right has actual normative force only if it draws on the moral law as law of freedom. This fundamental connection marks a crucial feature of

²⁰ Cf. CHR. WOLFF, *Jus naturae*, § 55; CHR. WOLFF, *Philosophia practica universalis, methodo scientifica pertractata, Pars prior [...]*, Francofurti et Lipsiae 1738, reprint Hildesheim–New York, Olms, 1971, §§ 156, 159.

²¹ See J. HRUSCHKA, "Kants Rechtsphilosophie als Philosophie des subjektiven Rechts", *Juristenzeitung* 59 (2004), 1085-1092, and also Th. MAUTNER, "How Rights Became 'Subjective'", *Ratio Juris* 26 (2013), 111-132.

²² For this reason it might be misleading to focus on the difference between *doctrine of right* and *doctrine of virtue* as theories and systems of duties; see e.g. MOSAYEBI, *Das Minimum der reinen praktischen Vernunft*. The primary – or, at any rate, the most significant – difference is between right and ethics. The other ones belong to secondary levels and depend on it.

²³ Note that this also suggests that Kant never means to carry out a direct derivation of specific duties from the fundamental principle, but that they are developed only through forms of freedom like the subjective right or the objective ends.

Kant's account, which shall prove essential to his view on the relation between right and ethics.

By considering the similarities between Kant's and Wolff's views ((1) in the primacy of the subjective sense of right, and (2) in the justification of right through moral obligation), we can rectify some interpretive remarks. Some interpreters have stressed that Kant conceives of right in terms of a faculty, which they take to entail that Kant does not conceive of right in terms of duties, and this would in turn show that for him 'right' does not depend on any moral obligation, so that the right as a power, or authorisation, is not properly moral.²⁴ Indeed, Kant does think of right primarily in terms of a subjective right, and does not derive juridical duties *directly* from a moral obligation, but from the subjective right.²⁵ Contrary to the Independence interpretation, though, the primacy of subjective right does not *ipso facto* cut off any link between right and moral obligation. That happens only if we disregard that, for Kant, right does derive from a prior obligation, which he understands as the obligation imposed by the fundamental moral law. The base for any subjective right lies in the status of being subject to the moral law, which makes them aware of being free, and that is precisely what makes it a *moral* status ('moral' in the broad sense), as for Kant, much more clearly than for Wolff, any moral status is determined only by the moral law (cf. AA IV 436).²⁶

The essential link between subjective right and the moral law explains the connection between the subjective right(s) of different subjects, that is based on their equal moral status, given that they are all subjects to the moral obligation in the same way. The Independence reading suggests that which rights the other has depends on which rights I have.²⁷ But this makes the connection between the rights of different persons empirical. In the same way, we could say that I can know to whom I have to be grateful only once it is established who my benefactor is. This does not explain that such a relation must hold in the first place, that is, that, as soon as someone benefits me, I must be grateful to him or her. Analogously, the connection between subjective rights holds not empirically, but on principle, that is, on the

²⁴ Th. POGGE, "Is Kant's *Rechtslehre* a 'Comprehensive Liberalism'?", in M. Timmons (ed.), *Kant's Metaphysics of Morals. Interpretative Essays*, Oxford, Oxford University Press, 2002, 133-158: 133 f.; WILLASCHEK, "Right and Coercion".

²⁵ See e.g. J. HRUSCHKA, "Kants Rechtsphilosophie als Philosophie des subjektiven Rechts".

²⁶ On how the principle of right presupposes the concept of person see B. LUDWIG, "Sympathy for the Devil(s)? Personality and Legal Coercion in Kant's Doctrine of Law", *Jurisprudence* 6 (2015), 25-44.

²⁷ See M. WILLASCHEK, "The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance", *International Journal of Philosophical Studies* 20 (2012), 557-564.

basis of the moral law that determines the right. In Kant's view, it is the moral law that explains the connection between rights of different individuals.

While Kant further develops the broadly Wolffian idea of the connection between right and moral obligation in general, a major difference between their views lies in the fact that Kant does *not* hold that such connection entails a *direct reduction to the very same principle* of the ethical realm. Wolff simply applies what he calls the fundamental law of nature ("Do what makes you and your condition, or that of others, more perfect", etc.) throughout, maintaining that not only the same normative force, but also the same normative content hold for all aspects of moral life, both in ethics and in right. On Kant's view, beside several further issues and the fundamental problems with material principles of morality, the serious weakness of Wolff's view with regard to this issue is that it is unable to account for a difference between right and ethics that does not lie in a mere qualification of the material content of the principle, i.e., in Wolff's case, the perfection of a society.

By distinguishing different principles of right and ethics, Kant holds to a clear-cut conceptual division between the two spheres, which, in contrast to the Wolffians, puts him rather in the wake of Thomasius and of those who, following him, maintained a strict distinction between right and ethics. However, the main difference between Kant's view and theirs is of still greater importance. In Kant's eyes, the main disadvantage of such a position is not simply that it lacks a single principle encompassing the entire practical domain, but that, *lacking such a principle, their view is not able to acknowledge a common normativity in right and ethics*. On a Thomasian view, there is not (nor can be) any normative homogeneity between the two spheres, since only the juridical realm contains precepts that enjoy full prescriptive force, that is, only the juridical realm contains genuine commands, while ethics merely contains counsels.²⁸

Kant, of course, cannot accept this implication of a distinction between right and ethics, which would violate the fundamental assumption of the categorical nature of moral demands (moral in the broad sense), that in the *Groundwork* led to distinguishing them from the imperatives of prudence (cf. AA IV 415). Since right and ethics must enjoy the same normative validity, they must be grounded in the same fundamental principle. Along this line, the comparison with Thomasius also highlights a weakness of the Independence reading, namely that it implies that the same domain — the practical domain, to which both right and ethics *e suppositione* belong — contains more than one fundamental principle with the same

²⁸ Cf. CHR. THOMASIIUS, *Grundlehren des Natur- und Völcker-Rechts*, Halle 1709, reprint Hildesheim–New York, 2003, I, IV, §, 86.

normative force, since according to the Independence Thesis, it holds both that (a) right and ethics do not rely on the same principle and that (b) they both enjoy categorical normative force.²⁹ On the contrary, on Kant's view, the same normative force of juridical and ethical demands requires a *common* normative ground — if they are to belong to the same practical domain, not only on an assumption that Kant is not willing to deny, but primarily in virtue of the distinction between different uses of reason, through which Kant explains the unity of the entire practical realm in contrast to the domain of validity of epistemic claims. All categorical practical demands are to be understood as laws of freedom, which Kant conceives of as unified in a system. Therefore, right and ethics cannot be separated in a way that makes them depending on different fundamental principles.

3. Internal and external hindrances: Unity and difference within the realm of freedom

By considering the essential background provided by the main previous competing views, we can see the features that make Kant's account innovative. The comparison with the other views highlights some basic *desiderata* that Kant's new solution must meet. An adequate account of the distinction between right and ethics should: (a) base both on one fundamental principle, on which the entire moral philosophy (the *Sittenlehre* as such) rests, (b) secure the normative homogeneity of the two spheres, (c) explain how the same principle with its categorical normative force branches out into different principles developed on the same basis. The key for Kant's solution lies in some conceptual innovations that fully emerge only in the *Metaphysics of Morals*.

Kant's main innovation in this respect lies in the introduction of the distinction between inner and outer freedom, which he takes to be providing the decisive clue to clarifying the relationship between ethics and right. While referring to freedom was not new in this respect, Kant here stresses its foundational role, trying to find there the path to a solution. A first attempt in this direction is recorded in the Feyerabend notes, where, in opposition to the usual accounts of right, Kant explains: "Here neither happiness nor a command of duties but *freedom is the cause of right*" (AA XXVII 1329; cf. AA XXVII 1337). Accordingly, "[c]oercion

²⁹ On Willaschek's reading, one of the weaknesses, or the unsolved tensions, of Kant's doctrine of right lies precisely in that it cannot adhere to the assumption of the categorical character of juridical demands, so that "juridical laws cannot find expression in categorical imperatives" (WILLASCHEK, "Why the Doctrine of Right", 205). See on that the critical remarks in B. LAURENCE, "Juridical laws as moral laws in Kant's *The Doctrine of Right*", in George Pavlakos, Veronica Rodríguez Blanco (eds.), *Reasons and Intentions in Law and Practical Agency*, Cambridge, Cambridge University Press, 2015, 205–227.

[*Zwang*] is rightful, when it advances universal freedom” (AA XXVII 1328).³⁰ This perspective squares well, of course, with Kant’s fundamental conception of moral demands as laws of freedom. The main problem with such an attempt, however, is that it seems to differentiate between right and ethics only because one concerns universal, or collective, freedom and the other concerns individual freedom, which sounds not so different from the Wolffian distinction between moral and civil practical philosophy, as if the only relevant factor would be the extension of each domain to which the general moral principle is applied.

While employing the difference between inner and outer in related contexts (mainly with reference to actions) was nothing unusual (an example close to Kant lies in Baumgarten’s distinction between internal and external obligations, that I mentioned before), understanding the distinction between inner and outer as two aspects of *freedom* was not as usual prior to Kant. He borrows it from Achenwall,³¹ making it especially significant for his own view. That this is the case is suggested by the role that the notions of inner and outer freedom come to play in the *Metaphysics of Morals*,³² while they were almost completely absent from earlier writings. In fact, Kant already deployed it previously, but never in published texts. A few passages from his private notes and from the lectures show that he experimented with the distinction between inner and outer freedom as a key to clarify the difference between right and ethics. For instance, already at the time of the *Groundwork* he observed: “The conformity to law [*Gesetzmäßigkeit*] of an action is legality [*Legalität*]. The legality of our actions in relation to external freedom is juridical legality; in relation to the use

³⁰ See also a parallel, more detailed remark in the coeval *Moral Mrongovius II* (AA XXIX 631): “Constraint is a hindrance to freedom [...]. Resistance to a hindrance to universal freedom advances universal freedom and is therefore right. Now, wrong is a hindrance to universal freedom, constraint a hindrance to this hindrance or the removal of it; and thus an advancement of freedom.” (I thank Jens Timmermann for making his revised text and translation of the Mrongovius II notes available to me.)

³¹ Cf. G. ACHENWALL, *Ius naturae*, I, § 70: “libertas consistit in independentia a potestate alterius [...]. Distinguenda haec libertas a libertate psychologica seu *libertate mentis* (§ 7), tamquam interna, indeque appellatur etiam *iuridica et externa libertas*”.

³² Cf. AA VI 396, 405-408, 418, 420 (and AA XXIII 246). The novelty of the distinction between inner and outer freedom in the *Metaphysics of Morals* is also pointed out by S. ENGSTROM, “The Inner Freedom of Virtue”, in Timmons (ed.), *Kant’s Metaphysics of Morals*, 289-316: 302, and K. FLIKSCHUH, “Kantian Desires. Freedom of Choice and Action in the *Rechtslehre*”, in Timmons (ed.), *Kant’s Metaphysics of Morals*, 185-208: 191.

of our internal freedom it is ethical legality” (AA XXIX 630).³³ When he came to present his final view on the subject, in the *Metaphysics of Morals*, he needed that distinction to state his position in the proper terms. As a matter of fact, the most explicit statement of the crucial role of the distinction inner vs outer freedom only occurs later on in the Introduction to the *Doctrine of Virtue* (§ XIV):

“This distinction, *on which the main division of the doctrine of morals as a whole also rests*, is based on this: that *the concept of freedom, which is common to both, makes it necessary to divide* duties into duties of *outer freedom* and duties of *inner freedom*, only the latter of which are ethical” (AA VI 406).

The relevance of this statement is underscored by an incidental remark in the *Anthropology*, which similarly mentions as *the* essential characteristic of the concept of right that “it follows directly from the concept of outer freedom” (AA VII 270). As Kant remarks in the Amphiboly of the concepts of reflection in the first *Critique*, the opposition inner vs outer can be ambiguous. In this case, though, the difference cannot be taken to refer to the addressees of the actions as self- or other-regarding, since ethically relevant choices can well concern the relations of the agent with other subjects.³⁴ The distinction bears, instead, on the two different relations within which freedom as capacity of self-determination faces correspondingly different hindrances.³⁵ Inner freedom of a subject is the capacity to determine himself or herself independently from the hindrances given by inclinations and impure motives.³⁶ Outer freedom is a subject’s capacity to determine himself or herself

³³ See also a note from the *Nachlaß*, that the editors consider rather early, though: “The practical laws from the mere idea of freedom are moral. Those from the idea of inner freedom pertain to all actions and are ethical; those merely from the idea of outer freedom are [*crossed out*: moral] juridical and pertain merely to outer actions” (AA XIX 236; according to the editors of the Academy edition, the note probably stems from the years 1776-1778). Significantly, the difference is always employed precisely in the same context and to formulate a view quite close to that of the *Metaphysics of Morals*.

³⁴ The difference between right and ethics, thus, is not construed as depending on whether, or how, both are social or not. For an interpretation focusing on this theme see H. PAUER-STUDER, “A Community of Rational Beings: Kant’s Realm of Ends and the Distinction between Internal and External Freedom”, *Kant-Studien* 107 (2016), 125–159: 130 ff.

³⁵ On this see the more detailed discussion in B. LUDWIG, “Die Einteilungen der Metaphysik der Sitten im Allgemeinen und die der Tugendlehre im Besonderen”, in A. Trampota, O. Sensen, J. Timmermann (eds.) *Kant’s “Tugendlehre”. A Comprehensive Commentary*, Berlin–Boston, De Gruyter, 2013, 59-84, and PFORDTEN, “Kants Rechtsbegriff”.

³⁶ Cf. AA V161: “[...] an inner capacity not otherwise correctly known by himself, the inner freedom to release himself from the impetuous importunity of inclinations so that none of them, not even the dearest, has any influence on a resolution for which we are now to make use of our reason”. Cf. also AA VII 235. See also ENGSTROM, “The Inner Freedom of Virtue”.

independently from the influence of any other subject, or from any other will, as Kant sometimes says, deploying a more traditional formulation (cf. AA VI 237).

Kant's clarification of the concept of 'right' in the *Metaphysics of Morals* focuses precisely on the distinction between these two dimensions of freedom. In fact, there he spells out the meaning of the concept of outer freedom without mentioning it: "The concept of right, insofar as it is related to an obligation corresponding to it (i.e., the moral concept of right), has to do [...] only *with the outer and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other*" (AA VI 230). Although the formulation does not explicitly mention outer freedom as distinct from inner freedom, the correspondence with it is confirmed by several passages from the *Doctrine of Virtue*, where Kant writes, for instance: "When, instead of constraint from without, inner freedom comes into play, the capacity for self-constraint not by means of other inclinations but by pure practical reason (which scorns such intermediaries), the concept of duty is extended beyond outer freedom, which is limited only by the formal provision of its compatibility with the freedom of all" (AA VI 396). On Kant's view, thus, there is a fundamental difference between right and ethics, which lies, however, not in their alleged derivation from distinct principles or in their application to distinct domains of application, but in the different *respect* within which the subject's freedom is concerned. The distinction between inner and outer freedom points out that what is ultimately relevant, in distinguishing right and ethics, is the mode of the relation to the moral faculty of the subjects as a capacity of self-determination, that is, "insofar as their actions, as deeds, can have (direct or indirect) influence on each other". If the capacity to act morally is concerned in all its aspects, a behaviour is ethically as well as juridically relevant. If only the independence of choices from the will of others is concerned, a behaviour is juridically relevant.

In the sphere of ethics the obligation is such that it applies to the *individual* will as its *own* law, while this is not the case within right. In Kant's wording, "ethics adds only that this principle [i.e. the "principle of duty", the categorical imperative] is to be thought as the *law of your own will* and not of will in general, which could also be *the will of others*; in the latter case the law would provide a duty of right, which lies outside the sphere of ethics" (AA VI 389). This is another formulation, yet equivalent with the ones I already considered. Right and ethics must be differentiated because in the latter the obligation is recognised as grounded *within* the obligated will, while in the former the obligation has its basis in *another* will. However, right and ethics can be distinguished as spheres belonging to the same domain, since in both cases the authority of the obligating will is warranted by its status of co-legislator

of the fundamental moral law. The distinction between right and ethics is thus derivative with respect to the foundations provided by the autonomy of the rational will.³⁷ All this is encapsulated in the distinction between inner and outer freedom.

On my reading, the distinction between inner and outer freedom justifies and summarises the other differences between right and ethics that Kant spells out. When Kant states that ethical demands apply to maxims, while juridical demands only apply to actions (cf. *TL*, Einl. § VI), he is simply making the core of the distinction between inner and outer freedom explicit. From the distinction between inner and outer freedom arise the most characteristic features of Kant's account of the distinction between ethics and right within practical philosophy: the reference to an *end* of the choice, or absence thereof, the reference to the moral *incentive*, or the abstraction from it, especially connected with this last point, the difference of *legislation*, including a reference to the incentive or the absence of such a reference (cf. AA VI 218).

The main issue with Kant's way of accounting for the distinction between right and ethics in terms of the difference between inner and outer freedom is that he thereby makes the relationship between the two aspects of freedom crucial. Some interpreters have also stressed the role of outer freedom as determining the boundaries of right, but have also argued on that basis that right must thus be regarded as independent of the moral law, because on that account "right is not grounded on any end".³⁸ Such a reading, however, obscures that, for Kant, outer freedom does not enjoy separate existence from inner freedom, as freedom in general, both in outer and inner respect, is intrinsically connected with the moral law. The awareness of obligation through the moral law provides the ground for believing to be free in either respect (cf. AA VI 238). Thereby the moral law does provide the fundamental content of the basic subjective right from which the specific postulate of right and any other juridical demands are derived, insofar the status of moral subject as able to determine his or her own actions independently from hindrances constitutes the whole content of that basic right (cf. AA VI 375).³⁹

³⁷ Kant's differentiation should *not* be taken to mean, therefore, that only ethics is based on the self-legislation of the will, as has been suggested by K. FLIKSCHUH, "Justice without Virtue", in L. Denis (ed.) *Kant's "Metaphysics of Morals". A Critical Guide*, Cambridge, Cambridge University Press, 2010, 51-70.

³⁸ WOOD, "The Independence of Right from Ethics", 72.

³⁹ Against WOOD, "The Independence of Right from Ethics", 72 f., I thus suggest that outer freedom has not to do with humanity as opposed to personality, that is, with the capacity of moral subjects to set end for themselves.

Furthermore, Kant's point about ends not being directly involved in matters of right is sometimes taken to mean that right would secure the outer freedom of a subject in order to let him be free to pursue *his, or her*, ends, thereby indirectly contributing to his, or her, pursuing of ends (at a formal level, as Kant says).⁴⁰ But such a reading breaks the continuity both of the obligation and of the practice of freedom, which seem to be the primary focus of Kant's remarks on the matter. In fact, Kant seems to construe the relation between the juridical and the ethical perspective in a quite different way than that. The ends that are formally relevant in a relationship under juridical laws are, for him, not the ends of *the right holder*, that is, of the person potentially affected by the acts at issue, but primarily the ends of the subject whose outer freedom is constrained by a juridical obligation corresponding to the right of the other, that is, the ends of the moral subject whose acts are at issue. Complying with a duty corresponding to the right of another person is not so much an indirect contribution to his, or her, pursuit of ends, as to the agent's own moral space, because only once the obligated has complied with the duty is free to pursue his, or her, ends. As a remark in the lecture notes makes explicit,

“the first condition of all ethical duties is this, that requital is first given to the juridical obligation. The obligation which arises from the right of the other must first be satisfied, for if I am also under juridical obligation I am not free, since I am subject to the other's choice. But if I now wish to perform an ethical duty, I wish to perform a free duty; if I am not yet free from the juridical obligation, I must first discharge it by fulfilling it, and only then can I perform the ethical duty” (AA XXVII 282).

The freedom of the same subject is thus constrained by the same normativity in two respects: with regard to the right of other subjects, or with regard to his, or her, own objective ends. The distinction between the outer and inner freedom focuses precisely on the difference between those two relations and their different normative bearing on the subject's determination of his, or her, conduct.

Kant's view of the relation between right and ethics, that is, of juridical and ethical demands revolves, therefore, around the continuity of obligation throughout both and grounds on the corresponding unity of the freedom of the moral subjects. Kant construes the distinction between right and ethics as primarily relevant from the standpoint of the first person. Juridical and ethical demands have bearing as constraints on the subject's freedom and can adequately be distinguished only by drawing on that standpoint, as they address different hindrances to the subject's freedom. A distinction between right and ethics which

⁴⁰ See WOOD, “The Independence of Right from Ethics”, 75.

amounts to construe them as different “spheres”⁴¹ is, for Kant, too close to the Thomasian view, as it separates two domains which in fact share the same fundamental assumptions, as they affect the choices of persons, even if in different respects. The basic priority of the perspective of obligation combined with the distinction between outer and inner freedom allow Kant to provide a more adequate account.

4. Conclusion

This complex elaboration of the distinct, yet profoundly linked, spheres of right and ethics represents Kant’s transition from the discussion opposing the previous conceptions to a new, original view capable of accommodating both the differences between, and the unity of, right and ethics within the realm of morals in the broader sense. What characterises Kant’s view on the relationship between ethics and right is primarily a special attention to the complexity of the relationship, which motivates the aim of accounting for both the unity of practical philosophy as a whole and the diversity of its aspects. In other words, Kant’s view does contain both elements of a traditional view and elements of a new view, but they do not bring about any fundamental tension. On the contrary, they join in an original account. The novelty and the philosophically interesting core of Kant’s view lie in the combination of traditional theses with radically new elements. This allows Kant to construe right not as a sort of ‘applied ethics’⁴² resulting from a derivation from general ethical principles, as the Wolffians did, but also to keep it linked with the foundations provided in the general account of moral obligation developed in the *Groundwork for the Metaphysics of Morals* and in the second *Critique*.

The main clue for developing such an account lies in the priority of the concept of obligation. Thus, in his mature, fully elaborated distinction between right and ethics, Kant’s general idea seems to go roughly as follows: The awareness of moral obligation, i.e., of the bindingness of the moral law, guarantees the freedom of moral subjects, granting them the status of persons. On this basis, two dimensions of freedom can be differentiated, *without* merely separating two perfectly distinct realms or “uses” of freedom. Only two *relations* of freedom are distinguished: a relation to the subject’s own capacity of rational self-determination, and a relation to other agents as sources of possible hindrance of the subject’s

⁴¹ See e.g. WOOD, “The Independence of Right from Ethics”, 79.

⁴² Against interpreting Kant’s conception of right in terms of ‘applied ethics’ see also A. RIPSTEIN, *Force and Freedom: Kant’s Legal and Political Philosophy*, Cambridge, Harvard University Press, 2009.

conduct. Yet, in spite of this distinction, freedom is under laws that share the same normative force, the one *Verbindlichkeit* based on the one moral law. As a passage from the preliminary notes for the *Metaphysics of Morals* reads, “[t]here are various duties though *only one obligation overall* in regard to the totality of duty. *This latter has no plural*” [es giebt verschiedene Pflichten[,] aber *nur eine Verbindlichkeit überhaupt* in Ansehung ihrer aller. *Letzere hat kein plurale.*]” (AA XXIII 250) In fact, it is in virtue of that distinction of aspects of freedom that Kant could point to the common ground uniting right and ethics.⁴³ It is the categorical imperative that “as such only affirms what obligation [*Verbindlichkeit*] is” (AA VI 225).⁴⁴ Right *and* ethics are equally dependent on the preliminary account of moral obligation in general. This common ground provides at the same time the key to clarifying their mutual relation as different aspects of moral obligation.

In this respect, Kant’s view on the relation between the various aspects of practical life is firmly rooted in a radically new, wide-ranging elaboration of the hint provided by Baumgarten’s distinction between the doctrine of external obligations and the doctrine of internal obligations, both depending on common general principles of obligation.⁴⁵ Kant importantly construes the difference between inner and outer relations in much different terms, namely, as different relations within the use of freedom as capacity of self-determination. As in Baumgarten’s scheme, however, the unity of practical philosophy is determined by the underlying concept of obligation. If Kant holds, from the beginning of his work on these topics, that the concept of obligation determines the most fundamental issue around which the whole project of practical philosophy revolves (cf. AA II 298, AA IV 453), the entire development of that project deals with the different levels and modes of moral obligation. An account of right and ethics must consider them as both providing valid moral

⁴³ In earlier lectures, Kant seems to separate a “juridical obligation [*Verbindlichkeit*]”, which does not coincide with the ethical or generally moral: cf. *V-Mo/Kaehler(Stark)*, 77 f.

⁴⁴ For a reading that underscores that the bindingness is the same in right and ethics, see B. LUDWIG, “Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant’s *Doctrine of Right*”, in Timmons (ed.), *Kant’s Metaphysics of Morals*, 159-184, and Ludwig, “Die Einteilungen der Metaphysik der Sitten”. Cf. also BAUM, “Recht und Ethik”.

⁴⁵ Cf. BAUMGARTEN, *Initia*, § 65 and *Ethica*, § 1. On the importance of the emphasis put on obligation in Baumgarten’s moral philosophy for Kant’s view see S. BACIN, “Kant’s Lectures on Ethics and Baumgarten’s Moral Philosophy”, in Lara Denis, Oliver Sensen (eds.), *Kant’s Lectures on Ethics. A Critical Guide*, Cambridge, Cambridge University Press, 2015, 15-33.

demands on the basis of the general source of moral bindingness, while highlighting how the same normative force can be regarded in different respects.⁴⁶

Moral normative force in general has no independent reality from its actual validity in ethical and juridical demands, but on Kant's view the authority of these demands depends on the source of their normative force, which he had accounted for in the complex foundational inquiry presented before the system of juridical and ethical duties. When the main interpretive options centre on the alternative between dependence or independence views, they thereby obscure that the relation that Kant meant to clarify was more complex. The whole outline of his view is meant to highlight that two relations combine. On a first level, right and ethics are to be regarded as mutually independent, insofar the issue is whether their demands are complied with. On the second level, right and ethics are to be regarded as depending from a common source of normativity, on which authority they both rely for the binding force of their demands. Therefore I suggest that Kant's view understands the relationship between right and ethics neither as dependence nor as independence, but highlights the *normative continuity throughout morals* instead, in order to stress that the normative force of moral demands is one and the same and enjoys the same validity in right as well as in ethics. On Kant's view, moral bindingness holds in every aspect of moral life and differentiates itself according to the different aspects of freedom.⁴⁷

⁴⁶ Kant's project, therefore, cannot allow for an account of the relation between right and ethics entailing that proper bindingness belongs to only one of them. Oddly enough, this is what seems to be suggested in G. ZÖLLER, "Without Hope and Fear': Kant's *Naturrecht Feyerabend* on Bindingness and Obligation", in R. Clewis (ed.), *Reading Kant's Lectures*, Berlin-Boston, De Gruyter, 2015, 346-362. According to Zöller, "bindingness (*Verbindlichkeit*) is separated from juridically justified constraint and from any other constraint, and identified with purely moral necessitation" (358). In fact, this not only counters the whole structure and the entire development of Kant's practical philosophy, but also the very passages of the *Naturrecht Feyerabend* which Zöller refers to. Kant's definition of obligation in AA XXVII 1326 does not belong to his discussion of the difference between ius and ethics, but is preliminary, as it concerns a basic concept common to both branches of practical philosophy (as was already in the Wolffian universal practical philosophy as well as still in Kant's *Metaphysics of Morals*: cf. AA VI 222). Accordingly, the very next page of the *Feyerabend* notes reports a use of the concept of obligation (*Verbindlichkeit*) with regard to a juridical case, namely the obligation regarding a contract (cf. AA XXVII 1327).

⁴⁷ I should like to thank Alice Pinheiro Walla for her very helpful comments on a previous version of my paper, presented in Keele in December 2014, as well as Sorin Baiasu, Adrian Piper, Jens Timmermann and other audience at that conference for their observations. I also thank two anonymous reviewers for their helpful remarks on the final version of the paper.