

Draft

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Kant and the notion of a
juridical duty to oneself¹

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Abstract:

In the *Doctrine of Right*, Kant holds that the classical Ulpian command “*honeste vive*” is a juridical duty that has the particular feature, in contrast to the other juridical duties, of being *internal* (RL, AA 06: 236). In this paper, I explore the reasons as to why Kant denies that the duty to be an honorable human being comprises an ethical obligation (as, for example, Pufendorf and Achenwall thought) and conceives it as a *juridical duty to oneself*. I will argue that, despite the conceptual problems that the systematical incorporation of this type of duty into the doctrine of morals might entail, these reasons are coherent. The fulfillment of the duty *honeste vive* involves a coercion to the self but, at the same time, does not necessarily imply the adoption of a moral end.

In the *Doctrine of Right*, Kant holds that the classical Ulpian command “*honeste vive*” is a juridical duty that has the particular feature, in contrast to the other juridical duties, of being *internal* (i.e. a duty to oneself) (RL, AA 06: 236). According to Kant, what distinguishes juridical from ethical duties is the possibility of external coercion (TL, AA 06: 394), and hence, the (moral) possibility of having a range of motives for complying with them. On the contrary, ethical obligations demand that we act according to duty but also from duty, i.e. out of respect for the moral law. This characterization of juridical duties, along with the very concept of right as a concept that “has to do, first, *only* with the external and indeed practical relation of one person to another” (RL, AA 06: 230),² pose a paradox when considering the first Ulpian duty. *Qua* juridical duty, the duty “*honeste vive*” should admit the possibility of an external coercion; however, since this

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² English quotations are taken from the *Cambridge Edition of the Works of Immanuel Kant*. I have indicated the cases where I have found it necessary to amend the translations.

command expresses an obligation to oneself, no one but myself can coerce me to fulfill it. Other problems arise when we take into account the content of this duty. If “*honeste vive*” means to constitute ourselves as juridical subjects, and to act externally “asserting one’s worth as a human being” and, therefore, as an end in itself (RL, AA 06: 236), it is quite difficult to think of a *motive* for complying with it other than the respect for right and the one’s own humanity. My aim in this paper is to explore the reasons as to why Kant denies that the duty to be an honorable human being comprises an ethical obligation (as, for example, Pufendorf and Achenwall thought) and conceives it as a *juridical duty to oneself*.³ I will argue that, despite the conceptual problems that the systematical incorporation of this type of duty into the doctrine of morals might entail, these reasons are coherent. The fulfillment of the duty *honeste vive* involves the condition of the possibility of juridical relations between persons, with the motivation and the adoption of moral ends playing no role in it.

i. Ethical duties and juridical duties

Before analyzing the idea of a *juridical duty to oneself*, we should briefly examine the division between juridical duties and ethical duties, and then the distinction between internal and external juridical duties. I shall begin with the first division, focusing on three main concepts that Kant uses to distinguish right and ethics: incentive [*Triebfeder*], end [*Zweck*], and coercion [*Zwang*]. I will later return to these elements in order to give a coherent account of the duty *honeste vive*.

³ Kant’s interpretation of the Ulpian duties has not been sufficiently explored in the secondary literature. Höffe 2001, Oberer 2004, Pinzani 2005, Brandt 2016 examine the three classical formulae regarding their systematic place in the *Rechtslehre* (Otfried Höffe, „Kategorische Rechtsimperative nach Ulpian“ in „*Königliche Völker*“. *Zu Kants kosmopolitischer Rechts- und Friedentheorie*, ed. O. Höffe (Frankfurt a. M.: Suhrkamp, 2001), pp. 147-160; Hariolf Oberer, “Honeste vive. Zu Immanuel Kant, Die Metaphysik der Sitten, AA 06, 236. 20-30” in *Metaphysik und Kritik. Festschrift für Manfred Baum zum 65. Geburtstag*, ed. S. Doyé, M. Heinz, U. Rameil, (Berlin-New York: Walter de Gruyter, 2004), p. 203-213; Alessandro Pinzani, „Der systematische Stellenwert der pseudo-ulpianischen Regeln in Kants Rechtslehre“, *Zeitschrift für philosophische Forschung* 59 (2005): 71–94; Reinhard Brandt, „Kants erste Rechtspflicht ‚Sei ein rechtlicher Mensch (honeste vive)‘“ in *Die Marburger Gelehrten-Gesellschaft. Universitas litterarum nach 1968*, ed. V. Mammitzsch, S. Föllinger, H. Froning, G. Gornig, H. Jungraithmayr, (Berlin- New York: Walter der Gruyter: 2016), pp. 4-34. More recently, Mohr 2018 analyzes the role of the notion of a legal-internal duty in the foundation of human rights (Georg Mohr, „Kants Begriff der inneren Rechtspflicht als Prinzip einer Begründung von Menschenrechten“ in *Kant Und Menschenrechte*, ed. R. Mosayebi (Berlin- New York: Walter de Gruyter: 2008), pp. 49-62). Here, I will try to give a different approach to the discussion of the first Ulpian command, focusing on the moral category of a juridical duty to oneself.

The first relevant remark about the division of juridical and ethical duties is to be found in the “Introduction to the Metaphysics of Morals”. There Kant draws a distinction between these two types of duties, by considering the relationship between the law that makes an action a duty and the *incentive* that connects that action with the choice (RL, AA 06: 218). Juridical laws express the necessity of an action but do not include a requirement regarding the incentive. By contrast, ethical lawgiving “makes an action a duty and also makes this duty the incentive” (RL, AA 06: 218). Thus, juridical duties admit different motives (for example, respect, fear or inclination; cf. V-NR/Feyerabend, AA 27: 1327), but ethical duties admit only one: the idea of duty itself or respect for the moral law. From this, Kant argues that “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” (RL, AA 06: 220). For example, the duty to keep promises is originally commanded by a juridical law, but it can be regarded as an ethical one if we fulfill it as a result of the mere idea of duty. In both cases, the action prescribed by the duty is the same (i.e. to keep promises), but in the latter the law is related to a moral motive to perform that action.

In the “Introduction to the Doctrine of Virtue”, Kant does not base the division between ethics and right on the notion of incentive but rather on the notion of *end*: “[e]nds and duties distinguish the two divisions of the doctrine of morals in general” (TL, AA 06: 381). We can think about the relation between end and duty in two different ways: “one can begin with the end and seek out the *maxim* of actions in conformity with duty or, on the other hand, one can begin with the maxim of actions in conformity with duty and seek out the end that is also a duty. - The *doctrine of right* takes the first way” (TL, AA 06: 382). Right departs from any end in order to determine a priori if a maxim or an action is *correct* [recht] (RL, AA 06: 230). The universal law of right is not concerned with the end of actions but only with the external interaction between choices. It commands us to act externally so that our use of external freedom does not hinder the freedom of others (ibid.). Kant argues that, in ethics, we proceed the other way around: “the *concept of duty* will lead to ends and will have to establish *maxims* with respect to ends we *ought to* set ourselves, grounding them in accordance with moral principles” (TL, AA 06: 382). Every free action presupposes an end, which is adopted depending on our inclinations, desires and intentions (TL, AA 06: 389).⁴ But pure practical reason opposes to those subjective ends “an objective end”, that

⁴ In the *Doctrine of Virtue*, Kant holds that an *end* is “is an object of the choice (of a rational being), through the representation of which choice is determined to an action to bring this object about” (TL, AA 06: 381).

is, “an end that is also a duty” (ibid.).⁵ This objective end is actually twofold: one’s own perfection and the happiness of others. In this way, the doctrine of virtue adds to the general formulation of duty⁶ the requirement of subordinating the subjective ends to the ends of pure reason (TL, AA 06: 389). The supreme principle of the doctrine of virtue (“act in accordance with a maxim of *ends* that it can be a universal law for everyone to have”) demands the universalizability of one’s maxims, and also, by including the obligation to adopt humanity as an end, “establishes a law for them” (TL, AA 06: 389-395).

In addition to what is stated in both introductions regarding the notions of incentive and end, Kant distinguishes ethical and juridical duties through the consideration of an essential element of the concept of duty, namely, *coercion* [*Zwang*]. He says:

All duties involve a concept of *coercion* through a law. *Ethical* duties involve a coercion for which only internal lawgiving is possible, whereas duties of right involve a coercion for which external lawgiving is also possible. Both, therefore, involve coercion, whether it be *self-coercion* or *coercion by another* (TL, 06: 394, translation amended, emphasis added).

Juridical duties are those duties for which an *external* coercion is *also* possible. That means that these duties can be fulfilled through a free self-coercion and respect for the moral law, or through an external coercion (exerted by another person). This means that I can fulfill a juridical duty motivated by respect for the law, turning this duty into an ethical one. That is why Kant holds that “all duties, just because they are duties, belong to ethics” (RL, AA 06: 219). Juridical duties are, thus, *indirect* ethical duties. On their part, ethical duties only admit an internal legislation. An external will can neither coerce me to adopt some end (or maxim) nor interfere in my motives for fulfilling a duty. Now, it is important to note here that the concept of self-coercion [*Selbstzwang*] that Kant uses in the *Doctrine of Virtue* does not merely imply the adoption of an end above others, but the pursuit of a moral end out of respect for the law. This coercion occurs “in accordance with a principle of inner freedom, and so through the mere representation of one’s duty in accordance

⁵ Kant shows the existence of such ends by a *reductio ad absurdum*: if every end served as means for other ends, and none of them was, at the same time, an end in itself “a *categorical* imperative would be impossible, and this would do away with any doctrine of morals” (TL, AA 06: 385). Cf. GMS, AA 04: 428-429: “if, then, there is to be a supreme practical principle and, with respect to the human will, a categorical imperative, it must be one such that, from the representation of what is necessarily an end for everyone because it is an *end in itself*, it constitutes an *objective* principle of the will and thus can serve as a universal practical law.”

⁶ The universal principle of the doctrine of morals, that holds both for ethics and right, says: “act on a maxim which can also hold as a universal law” (RL, AA 06: 226).

with its formal law” (TL, AA 06: 394). Kant argues from this that, in comparison to the doctrine of right, “an extension of the concept of duty” (TL, AA 06: 396) takes place in the doctrine of virtue. Whereas the concept of juridical duty is formed by the combination of the notion of external freedom and coercion through the law, the concept of a duty of virtue entails two additional elements: an end “that is also a duty” and the notion of self-coercion (or of inner legislation).

ii. Internal and external juridical duties

Kant uses the terms internal/external [*innere/äußere*] regarding the classification of duties and rights with at least three different meanings.⁷ In the first place, the distinction may refer to the division between ethical and juridical duties. A juridical duty is *external*, “since this lawgiving does not require that the idea of this duty, which is *internal*, itself be the determining ground of the agent’s choice” (RL, AA 06: 219). In this sense, ethical duties are always internal. In the second place, Kant uses the internal/external distinction to distinguish innate and acquired right. “What is innately mine and yours” [*das angeborne Mein und Dein*] can be called “what is *internally* mine and yours” [*das innere Mein und Dein*], and “what is acquired” can be called “what is *externally* mine and yours” [*das äußere Mein und Dein*] (RL, AA 06: 237, translation amended). In the third place, these terms can refer to the distinction between duties to oneself and duties to others: the former are *internal* in the sense that involve a moral relation to the self, and the latter *external* in the sense that involve a moral relation to others.

Each branch of the doctrine of morals is divided into duties to oneself and duties to others. According to the “objective relation of law to duty” (RL, AA 06: 240), juridical duties are classified into those that arise from the right of humanity in our own person and those that arise from the right of human beings (*ibid.*). The first ones consist in juridical duties to oneself (or *internal* juridical duties), and the second ones in juridical duties to others (or *external* juridical duties) (cf. V-MS/Vigil AA, 27: 581-2). Ethical duties, on their part, are divided into those that arise from the end of humanity in our own person and those that arise from the end of other human beings. The first ones consist in ethical duties to oneself, and the second ones in ethical duties to others (RL, AA 06: 240).⁸

⁷ See also Bernd Ludwig, „Die Einteilungen der Metaphysik der Sitten im Allgemeinen und die der Tugendlehre in Besondere“ in *Kant’s “Tugendlehre”. A comprehensive commentary*, ed. A. Trampota, O. Sensen, J. Timmermann (Berlin-New York: Walter de Gruyter, 2016), p. 64f; Hariolf Oberer, “Honeste vive. Zu Immanuel Kant, Die Metaphysik der Sitten, AA 06, 236. 20-30”, p. 204f.

⁸ Cf. TL, AA 06: 398.

By contrast with duties toward others, duties to oneself do not derive from the rights or welfare of other human beings.⁹ Kant states that the foundation of this type of duty is the concept of humanity, not the idea of the human being as an *empirical* or *phenomenal* being but as a *noumenal* being.¹⁰ In the *Doctrine of Virtue*, humanity is defined as “the capacity to set oneself an end” (TL, AA 06: 392) and described as a dignity, “for a human being cannot be used merely as a means by any human being (either by others or even by himself) but must always be used at the same time as an end; it is just in this that his dignity (personality) consists” (TL, AA 06: 462). While the *right* of humanity in our own person generates internal *juridical* duties, the *end* of humanity in our own person generates internal *ethical* duties. In the *Metaphysics of Morals*, Kant offers no explanation of internal duties of right, but we can find some relevant remarks in the *Vigilantius* lecture notes:

assuming there are duties to oneself, *the duties of right in that regard are the highest duties of all*. They relate to the corresponding right of humanity in our own person [...]. Any transgression is thus a violation of the right of humanity in our own person; we thereby make ourselves unworthy of the possession of our person that is entrusted to us, and become worthless, since the preservation of our own worth consists solely in observing the rights of our humanity. We lose all inner worth, and can *at most* be regarded as an instrument for others, whose chattel we have become (V-MS/Vigil AA, 27: 604).

Juridical duties are characterized by having a relation of correspondence with a right (TL, AA 06: 383). For example, that I have an innate right to freedom (i.e. a moral capacity to put others under the obligation to not infringe, with their action, on my freedom) means that others have the duty not to infringe on my freedom. This duty is formulated by the second Ulpian formula (“do not wrong anyone” (RL, AA 06: 236)) and the universal principle of right (RL, AA 06: 230). Conversely, the innate right of others corresponds to my duty to not wrong them. But Kant claims that the right of other human beings is not the only source of my juridical duties, since there is also a duty arising from the right of humanity in myself. To my freedom as the only innate right corresponds an internal juridical duty. When I do not fulfill this duty, I do not wrong other human beings but myself, putting at risk my moral worth as an end in myself in my practical relation to others.

⁹ Cf. Jens Timmermann, “Duties to the Self, Explained and Defended”, *Philosophy* 81 (2006): 507.

¹⁰ Cf. Heiner Klemme, „Das *angeborene Recht der Freiheit*. Zum inneren Mein und Dein in Kants *Rechtslehre*“ in *Akten des IX Internationalen Kant Kongresses*, ed. V. Gerhardt, R. Hontmann, R. Schumacher (Berlin- New York: Walter de Gruyter, 2001,) p. 182; Rainer Friedrich, *Eigentum und Staatsbegründung in Kants Metaphysik der Sitten* (Berlin- New York: Walter der Gruyter, 2004), p. 63.

At first sight, the idea of a *relation of juridical obligation to myself* is somewhat baffling because it seems to be left out of the normative realm defined by the very concept of right. According to the latter, right “has to do, *first*, only with the external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other” (RL, AA 06: 230). But before analyzing the conceptual problems posed by this, let us see what this internal juridical duty is. In the *Doctrine of Right*, Kant states that there is only one duty of this type and identifies it with the classical Ulpian’s formula *honeste vive*.

iii. *Honeste vive*

In the natural law tradition, Ulpian’s formulae (*honeste vive*, *neminem laede* and *suum cuique tribue*)¹¹ were used in order to explain the principles of practical philosophy.¹² In the *Doctrine of Right*, Kant also mentions these three classical commands and claims that they serve as “principles for dividing the system of duties of right into *internal* duties, *external* duties, and duties that involve the derivation of the latter from the principle of the former by subsumption” (RL, AA 06: 237). Let us concentrate in the first Ulpian duty (the only internal one). It says:

1) *Be an honorable human being (honeste vive)*. *Rightful honor (honestas iuridica)* consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying, “do not make yourself a mere means for others but be at the same time an end for them.” This duty will be explained later as obligation from the *right* of humanity in our own person (*lex iusti*) (RL, AA 06: 236).

Among natural law theorists, there was no consensus on what type of duty the first Ulpian formula constitutes. Some authors, such as Achenwall and Pufendorf, considered this command to be an ethical duty, and held that the second formula (*neminem laede*) was tantamount to the first duty (and principle) of right.¹³ Some other authors, such as Baumgarten and Wolff, maintained that the duty

¹¹ The Ulpian’s formulae belong, in turn, to the roman law: “iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere”.

¹² Friedrich, *Eigentum und Staatsbegründung in Kants Metaphysik der Sitten*, p. 57; cf. V-NR/Feyerabend, AA 27: 1336.

¹³ Cf. Gottfried Achenwall & Johann Stephan Pütter, *Elementa iuris naturae/ Anfangsgründe des Naturrechts*, ed. and transl. By J. Schröder (Frankfurt a.M.-Leipzig: Insel Verlag, 1995), p. 73f; Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, trad. Michael Silverthorne (Cambridge: Cambridge University Press, 1991), p. 56.

“*honeste vive*” was juridical.¹⁴ If we take the fragments, lecture notes and drafts of published works into account, we can observe that Kant seems to change his mind when interpreting this duty. In a reflection from the pre-critical period (Refl 7078, AA 19:243), in the lecture notes *Naturrecht Feyerabend* (V-NR/Feyerabend, AA 27: 1336), *Mrongovius II* (V-Mo/Mron II AA, 29: 631) and *Vigilantius* (V-MS/Vigil AA, 27: 527; 587), and in the drafts to the *Doctrine of Virtue* (VATL AA, 23: 386), he explains the duty “*honeste vive*” as an ethical command and presents the formula “*neminem laede*” as the first juridical duty. Furthermore, it is worth pointing out that in the *Vigilantius* lecture notes, Kant discusses (and defends) the idea of a juridical duty to oneself but he does not relate it to the first Ulpian command.

In the first part of the *Metaphysics of Morals*, Kant glosses the first Ulpian formula as “be an honorable human being” and says two things about it: first, it has to do with the obligation to assert oneself as an end in itself in the practical relation to others, and, second, it arises from the right of humanity in our person. Internal duties, in general, emerge from humanity in ourselves, and they have to do with the preservation of our dignity as an end in itself.¹⁵ In particular, the *right* of humanity in our person brings about a duty to assert our moral value in the *juridical sphere*, that is, in the practical and external relation to others. There is no further explanation or reference to this principle in the *Doctrine of Right*, and it is not used (at least not explicitly) in any other argument there. However, in the *Doctrine of Virtue*, Kant speaks about honor [*Ehrbarkeit*], and distinguishes the *honestas interna* from the *honestas externa*.¹⁶ Honorability as an *ethical* virtue consists in opposing the vices that “adopt principles that are directly contrary to his character as a moral being (in terms of its very form), that is, to inner freedom, the innate dignity of a human being” (TL, AA 06: 420). These vices (lying, avarice, and false humility) violate a duty to oneself from the perspective of the human being as a noumenal being, namely, the “prohibition against depriving himself of the *prerogative* of a moral being, that of acting in accordance with principles, that is, inner freedom, and so making himself a plaything of the mere inclinations and hence a thing” (ibid). In sum, Kant believes that the human being regarded as a noumenal or intelligible being (i.e. as “the subject of a morally practical reason” (TL, AA 06: 434)) has a duty to recognize his dignity and to affirm his

¹⁴ Cf. *Initia*, AA 19: 45; Christian Wolff, *Grundsätze des Natur- und Völkerrechts, worinn alle Verbindlichkeiten und alle Rechte aus der Natur des Menschen in einem beständigen Zusammenhange bergeleitet werden* (Halle: Renger, 1754), p. 30.

¹⁵ In the *Groundwork of the metaphysics of morals*, Kant states that “the rational nature exists as an end in itself” and then introduces the so called formula of humanity (“so act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means”) (GMS, AA 4: 429).

¹⁶ TL, AA 06: 420; TL, AA 06: 464.

worth as an end in itself. The idea of honorability refers to this duty and seems to have both an ethical and a juridical version. Whereas the *honestas interna* requires to assert our character as a moral being in the sphere of the *Gesinnung* or the internal use of freedom, the *honestas externa* does so in the intersubjective sphere or the external use of freedom.

Now we have some elements to alleviate the tension between the idea of a juridical obligation to oneself and the definition of right. I claimed before that this idea was in some way puzzling because the doctrine of right only deals with the conditions under which the coexistence of the external use of freedom of human beings is possible. Since the doctrine of right concerns duties analytically connected to external coercion, the juridical duty “*honeste vive*” is not a subject of this doctrine. Nevertheless, this duty serves as the condition of possibility of the doctrine itself: if there were not juridical subjects, there would not exist any right to be infringed nor even juridical relations between persons.¹⁷ The internal juridical duty commands us to respect our own dignity and to constitute ourselves as moral-juridical subjects. Because, *in the first place*, human beings are juridical subjects, it makes sense to speak about, *in the second place*, a relation among them in terms of rights and juridical obligations.

Even if we find this account of the duty *honeste vive* satisfactory and we consider its content to be clear, it is still necessary to explain how a juridical duty to oneself is possible.¹⁸ One might think it more plausible that a duty to assert oneself as a moral subject, even in relation to others (i.e. in the juridical sphere), is an ethical duty. If no external will can coerce me to fulfill the duty *honeste vive*, why does Kant conceive it as a juridical command? This is the question that I will to address in the next section.

iv. *The idea of a juridical duty to oneself*

The idea of a juridical duty to oneself is to be found in the natural law tradition, for example in the doctrines of Pufendorf and Wolff. According to Pufendorf, the fundamental law of nature, under which “every man ought to do as much as he can to preserve and cultivate sociality”,¹⁹ involves the

¹⁷ Cf. Reinhard Brandt, „Kants erste Rechtspflicht ‚Sei ein rechtlicher Mensch (honeste vive)‘“, p. 19; Georg Geismann, *Kant und kein Ende* (Würzburg: Königshausen & Neumann, 2012), p. 15; Otfried Höffe, “Kant’s Innate Right as a Rational Criterion for Human Rights” in *Kant’s Metaphysical of Morals*, ed. L. Denis, (Cambridge: Cambridge University Press, 2010), p. 86; Hariolf Oberer, “Honeste vive. Zu Immanuel Kant, Die Metaphysik der Sitten, AA 06, 236. 20-30”, p. 205.

¹⁸ Giving a coherent account of the first Ulpian duty and explaining the possibility of a juridical duty to the self are indeed two different issues; cf. Philipp- Alexander Hirsch, *Freiheit und Staatlichkeit bei Kant. Die autonomietheoretische Begründung von Recht und Staat und das Widerstandsproblem* (Berlin- New York: Walter der Gruyter: 2017), p. 175.

¹⁹ Samuel Pufendorf, *On the Duty of Man and Citizen According to Natural Law*, p. 36.

fulfilment of certain duties (*officia*). These duties are divided into three categories: duties to God, duties to oneself and duties to others. Pufendorf argues that human beings are endowed with gifts given by God, and therefore they are “bound so to conduct [themselves] as not to permit the Creator’s gifts to perish for lack of use, and to contribute what [they] can to human society”.²⁰ Note here that for him the foundation of an obligation to oneself is not hard to explain: it is grounded on the will of God, i.e. on the will of a superior with the power to enforce a law. This kind of justification is obviously not available for Kant, as it is not compatible with his principle of autonomy. For his part, Wolff holds that there are juridical duties to oneself that are bound up with rights.²¹ For instance, the duty to perfect one’s own soul is connected to the right to what is needed for using the powers of the soul.²² In his view, having a right means having “the capacity, or the moral faculty, to do or to omit something”.²³ The law of nature entitles us to do any action without which we could not fulfil our natural obligation to seek perfection. Since this law puts us under the obligation to seek an end, we have a right to the means to achieve it.²⁴ Now, Kant understands by the concept of right something different than Wolff, and this very definition is, to my mind, what makes conceiving a juridical duty to oneself problematic. According to Kant, right, as a moral capacity (i.e. as a *facultas* or *potestas*), does not mean a mere power to act but a power to coerce. Right is, in effect, a “moral capacity for putting others under obligations” (RL, AA 06: 237). Consequently, the concept of juridical duty is analytically connected to the power to coerce others, and this is one of its defining conditions:

To every duty there corresponds a right in the sense of an *authorization* to do something (*facultas moralis generatim*); but it is not the case that to every duty there correspond *rights* of another to coerce someone (*facultas iuridica*). Instead, such duties are called, specifically, *duties of right* (TL, AA 06: 383).

The first problem that arises when examining the concept of an internal juridical duty has to do, then, with the concept of coercion. As we saw in the first section, this concept plays a key role in the differentiation between juridical and ethical duties: only the former include the possibility of an external coercion. However, in the case of a juridical duty to oneself there is no such possibility: it forbids *me* to treat myself as a mere means. Other human beings certainly have the obligation not to wrong me. This duty refers to the second Ulpian formula (“*neminem laedere*”) and is equivalent to

²⁰ Ibid., 46.

²¹ Christian Wolff, *Grundsätze des Natur- und Völkerrechts*, p. 63.

²² Ibid., pp. 64-65.

²³ Ibid., p. 28.

²⁴ Ibid.

the universal principle of right.²⁵ According to these principles, I can put others under the obligation to not infringe on my freedom, and this moral power is based on my innate right. But how is it possible that I oblige *myself* to respect the right of humanity in *me*? Kant discusses the problem of self-obligation in the section of the *Doctrine of Virtue* that deals with ethical duties to oneself, posing it in the form of an antinomy. If I am the person imposing an obligation on myself, I could exonerate myself from fulfilling it. But if I can be excused from an obligation to myself, this obligation would not be an obligation, thus generating a contradiction (TL, AA 06: 417). The antinomial conflict is resolved, as might be expected, by turning to transcendental idealism. In this case, the distinction between *phenomena* and *noumena* is applied to the way in which human beings can consider themselves. It is possible to regard oneself as a natural being, determined by reason to perform certain actions in the sensible world. But it is also possible to regard oneself “as a being endowed with inner freedom”, that is, “as a being that can be put under obligation and, indeed, under obligation to himself” (TL, AA 06: 418). When we take into account this double perspective, the apparent contradiction posed by the idea of a duty to oneself is dissolved: the human being, as *homo phaenomenon*, is subject to the obligation (*subiectum obligationis*), and, at the same time, as *homo noumenon*, is the author of that obligation (*auctor obligationis*). The binding self is identified with the intelligible nature, and the bound self with the sensible nature of a human being. As I mentioned above, the possibility of an obligation to oneself thus rests on the noumenal aspect of humanity.²⁶

We now see that the main problem with the command “*honeste vive*” does not exactly concern its internal character, but rather the fact that it is an internal *and* a juridical duty. If this duty does not admit the possibility of an external coercion, why does Kant conceive it as a juridical and not as an ethical duty (as he did in his lectures)? In order to answer this question, I will next

²⁵ The second Ulpian duty “*neminem laede*” (do not wrong anyone) serves as the principle of external duties (i.e. juridical duties to others). This command corresponds to the first and fundamental juridical obligation to “so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law” (RL, AA 06: 231). Hence, if we take the doctrine of right in its strict sense (i.e. as the system of externally coercive duties), the first juridical principle would be “do not wrong anyone” (i.e. do not infringe on the freedom of others). Previous natural law authors (as Achenwall and Pufendorf) also present Ulpian’s formula as the principle of external coercive duties, but Kant is the first one to connect it to (juridical) freedom.

²⁶ Kant claims that this explanation is also valid for the case of duties to others: “for I can recognize that I am under obligation to others only insofar as I at the same time put myself under obligation, since the law by virtue of which I regard myself as being under obligation proceeds in every case from my own practical reason” (TL, AA 06: 417f). For a complete commentary of the antinomy of the *Doctrine of Virtue*, see Jens Timmermann, “Duties to Oneself as Such (TL 06: 417–420)” in *Kant’s „Tugendlehre“: A comprehensive commentary*, ed. A. Trampota, O. Sensen, J. Timmermann (Berlin-New York: Walter de Gruyter, 2013), pp. 207- 220.

return to the three elements that, according to the analysis of section (i), distinguish juridical from ethical duties: *coercion*, *incentive* and *end*.

In the *Doctrine of Virtue*, Kant argues that every duty implies a coercion: either a *self-coercion* or a *coercion by another*. If the first Ulpian duty only admitted a self-coercion, then it would be a duty of virtue. We should recall here that the notion of “self-coercion” does not merely mean a coercion to the self, but a coercion that involves the adoption of a moral end from respect for the law (TL, AA 06: 394). However, the duty “*honeste vive*”, *qua* juridical, neither demands setting a moral end nor requires that it is fulfilled from duty. Therefore, the type of coercion that is at play in this duty does not fit into the scheme of definitions that Kant uses: it does not accept an external coercion, nor necessarily implies a self-coercion (in the specific sense of the term).²⁷ It has to do rather with an internal coercion that does not necessarily involve a moral motive to act. Kant neither discusses nor further explains this type of coercion, but seems to refer to a capacity of self-obligation that is a condition for having rights and juridical obligations in general.²⁸ Because I can put myself under the obligation to be a juridical subject, I can have the moral capacity to oblige others (i.e. to have rights) and be reciprocally obliged by them.²⁹

When we take the other two elements (*incentive* and *end*) into account, it becomes clearer why Kant typifies the first classical formula as a juridical duty. As we saw in section (i), Kant draws a distinction between duties considering the relation between law and incentive. In the case of juridical duties, the incentive out of which the action is performed is not morally relevant. The idea of *Triebfeder* refers to a sentiment, a subjective impulse to determine the will, that only exists in the case of rational beings whose will does not always follow reason (v.g. human beings) (cf. KpV, AA 05: 72). Respect is the only sentiment that arises a priori from reason, that is, the only *moral* incentive that connects the human will to the law (KpV, AA 05: 73- 76). We may ask here what reasons or motives we could have to fulfil a duty to “assert our own worth as a human being in relation to other”. Because of the content of this duty, we could assume that only a moral incentive can be

²⁷ As I see it, the fact that the duty “*honeste vive*” does not admit the possibility of an external coercion is what previously made Kant believe that this duty was ethical. Cf. V-Mo/Mron I AA, 27: 1431: “the first proposition *honeste vive* can be considered as the general *principium* of ethics, because the motive to comply with its obligation is not to be obtained from coercion but from an internal motive” (translation is mine) [„der erste Satz *Honeste vive*, kann als ein gemein Principium der Ethic angesehen werden, denn der Bewegungs-Grund seine Verbindlichkeit zu erfüllen ist nicht aus dem Zwange sondern aus den innern Bewegungs-Gründen hergenommen“].

²⁸ Cf. TL, AA 06: 418: “*nevertheless, a human being has duties to himself*. For suppose there were no such duties: then there would be no duties whatsoever, and so no external duties either.”

²⁹ Cf. Georg Mohr, „Kants Begriff der inneren Rechtspflicht als Prinzip einer Begründung von Menschenrechten“, p. 55f.

connected to it. In other words: what makes us comply with this duty would be precisely the sentiment of respect for the moral law, or for humanity in ourselves. However, we can also conceive of prudential or egoistic reasons to fulfil the duty to be an honorable human being. For example, I could want to be regarded as a moral-juridical subject because I expect to obtain security from the state, or to acquire ownership rights. If my reasons to not undermine my juridical capacity are related to the benefits that I could receive from a juridical relation under public coercive laws, my motive to fulfill this duty is not moral but *prudential*. In any case, the point is that Kant considers the duty “*honeste vive*” to be juridical because the action prescribed by it must not be performed from duty.³⁰ From the perspective of right, the motives or reasons by which I respect myself as an end in itself are not relevant. What is at stake here is that I am regarded as a being capable of rights and obligations (by myself, in the first place, and then by others). In the preparatory drafts to the *Doctrine of Virtue*, Kant argues:

The right of humanity in our own person does not belong, therefore, to the doctrine of virtue, because it does not require the idea of duty to oneself to be, at the same time, the incentive of the action. It is, however, the supreme condition of all laws of duties, because otherwise the subject would renounce to be a subject of duties (a person), and should be regarded as a thing (VATL, AA 06: 390, translation is mine).³¹

With regard to the notion of end, we saw that duties of virtue demand setting ends given by pure practical reason. On their part, juridical duties do not involve any normative connection with the end of an action. According to this, if we wish to determine whether the duty “*honeste vive*” is ethical or juridical, we should consider how it is related to the adoption of humanity as an end. This is the line of thought that Kant seems to follow in the lecture notes from 1793-1794:

I. *honeste vive*. This is the principle of ethics, which can determine affirmative acts of duty, since it is directed to ends; e.g., promote the happiness of others according to your powers, seek to perfect yourself. But the rightness of all such acts rests only on

³⁰ Contrary to what he previously claimed, as can be seen from the lectures. For example, in the *Feyerabend* lecture notes, he says: “*honeste vive* is virtuous, indicating morality [...]. Virtue is the ruling maxim of actions solely from duty. There can be actions in conformity with duty not done from duty. Virtuous actions must be done not out of fear or coercion but from duty” (V-NR/Feyerabend, AA 27: 1336).

³¹ „Das Recht der Menschheit in unserer eigenen Person gehört also noch nicht in die Tugendlehre weil sie auch nicht verlangt dass die Idee der Pflicht gegen sich selbst zugleich die Triebfeder der Handlungen sey: Es ist aber die oberste Bedingung aller Pflichtgesetze weil das Subject sonst aufhören würde ein Subject der Pflichten (Person) zu seyn und zu Sachen gezählt werden müsste.“

this, that we cannot be externally coerced to them, and that therefore an inner coercion alone occurs in them (V-MS/Vigil AA, 27: 527, translation amended).

In this lecture, Kant holds that since the duty “*honeste vive*” is directly related to the promotion of ends, it does not admit an external but only an internal coercion. Hence, it is an ethical duty. In the *Metaphysics of Morals*, Kant still holds that the first Ulpian command is not susceptible of external coercion, but he now argues that it does not require the adoption of moral ends. *Honeste vive* is not a duty raised by the *end* of humanity but the *right* of humanity (in ourselves). This means that the duty to assert ourselves as an end in itself in relating to others does not entail the duty to adopt humanity as an end. It may sound paradoxical, but once again, what this duty demands is that we respect ourselves as moral beings in the juridical sphere (i.e. in the external and practical interaction with others). The end we may pursue in doing so is not relevant at all (at least from the point of view of right). Nevertheless, it is always possible to convert this juridical duty into an ethical one. “There is nothing meritorious in the conformity of one’s actions with right (in being an honest human being)” (TL, AA 06: 390), says Kant, because one can have prudential reasons or motives to do so. However, one can also choose to be an honest human being from “*respect for right*” itself, “for one thereby *makes* the right of humanity, or also the right of human beings, one’s *end* and in so doing widens one’s concept of duty beyond the concept of what is *due (officium debiti)*” (TL, AA 06: 390-391).

In conclusion, in the *Doctrine of Right* Kant uses the notion of an internal juridical duty in order to characterize a duty that involves a coercion to the self but, at the same time, does not necessarily imply the adoption of a moral end. The only juridical duty to oneself corresponds to the first Ulpian formula “*honeste vive*”. This formula aims to express the supreme condition of practical-external interaction: in relation to others, we ought to regard ourselves as beings capable of having rights and juridical obligations. Renouncing this capacity is not morally allowed. Furthermore, in the natural law tradition, it was disputed whether *honeste vive* was a juridical or an ethical duty. In his final and definitive system of duties, Kant claims this duty to be juridical, but as such, it is also indirectly ethical: it is always possible to comply with it *from duty*, and to adopt the right of humanity as one’s own end.