

Kant
The Metaphysics of Morals

Preface

6:205-210

Preface

The critique of *practical* reason was to be followed by a system, the metaphysics of **morals**, which falls into metaphysical and first principles of the *doctrine of right*^a and metaphysical first principles of the *doctrine of virtue*. (This is a counterpart of the metaphysical first principles of *natural science*, already published.)^b The Introduction that follows presents and to some degree makes intuitive the form which the system will take in both these parts.

For the **doctrine of right**, the first part of the doctrine of morals, there is required a system derived from reason which could be called the *metaphysics of right*. But since the concept of right is a pure concept that still looks to practice (application to cases that come up in experience), a *metaphysical system* of right would also have to take account, in its divisions, of the empirical variety of such cases, in order to make its division complete (as is essential in constructing a system of reason). But *what is empirical* cannot be divided completely, and if this is attempted (at least to approximate to it), empirical concepts cannot be brought into the system as integral parts of it but can be used only as examples in remarks. So the only appropriate title for the first part of *The Metaphysics of Morals* will be *Metaphysical First Principles of the Doctrine of Right*; for in the application of these principles to cases the system itself cannot be expected, but only approximation to it. Accordingly, it will be dealt with as in the (earlier) *Metaphysical First Principles of Natural Science*: namely, that right which belongs to the system outlined a priori will go into the text, while rights taken from particular cases of experience will be put into remarks, which will sometimes be extensive; for otherwise it would be hard to distinguish what is metaphysics here from what is empirical application of rights.^b

Philosophic treatises are often charged with being obscure, indeed deliberately unclear, in order to affect an illusion of deep insight. I cannot

^a On the term “right” (*Recht*) see Translator’s Introduction. As for “doctrine,” Kant concludes his Preface to the *Critique of Judgment* by noting that this critique concludes the critical part of his enterprise and that he will now proceed to the doctrinal [*doktrinal*] part, i.e., to the application of the principles established in the first two critiques in a metaphysics of nature and a metaphysics of morals (5:170). Compare *Groundwork of the Metaphysics of Morals* (4:387).

^b *Rechtspraxis*

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better anticipate or forestall this charge than by readily complying with a duty that Garve, a philosopher in the true sense of the word, lays down for all writers, but especially for philosophic writers. My only reservation is imposed by the nature of the science that is to be corrected and extended.

This wise man rightly requires (in his work entitled *Vermischte Aufsätze*, page 352 ff.)² that every philosophic teaching be capable of being made *popular* (that is, of being made sufficiently clear to the senses to be communicated to everyone) if the teacher is not to be suspected of being muddled in his own concepts. I gladly admit this with the exception only of the systematic critique of the faculty of reason^c itself, along with all that can be established only by means of it; for this has to do with the distinction of the sensible in our cognition from that which is supersensible but yet belongs to reason. This can never become popular – no formal metaphysics can – although its results can be made quite illuminating for the healthy reason (of an unwitting metaphysician). Popularity (common language) is out of the question here; on the contrary, scholastic *precision* must be insisted upon, even if this is censured as hair-splitting (since it is the *language of the schools*); for only by this means can precipitate reason be brought to understand itself, before making its dogmatic assertions.

But if *pedants* presume to address the public (from pulpits or in popular writings) in technical terms that belong only in the schools, the critical philosopher is no more responsible for that than the grammarian is for the folly of those who quibble over words (*logodaedalus*). Here ridicule can touch only the man, not the science.

It sounds arrogant, conceited, and belittling of those who have not yet renounced their old system to assert that before the coming of the critical philosophy there was as yet no philosophy at all. – In order to decide about this apparent presumption, it need but be asked *whether there could really be more than one philosophy*. Not only have there been different ways of philosophizing and of going back to the first principles of reason in order to base a system, more or less successfully, upon them, but there had to be many experiments of this kind, each of which made its contribution to present-day philosophy. Yet since, considered objectively, there can be only one human reason, there cannot be many philosophies; in other words, there can be only one true system of philosophy from princi-

^c *Vernunftvermögens*. In such compounds as *Vernunftvermögen*, *Erkenntnisvermögen*, *Begehrungsvermögen*, and so forth, *Vermögen* is translated as “faculty.” In the present introductory material a note indicates where the word *Vermögen* by itself has been translated as “capacity” or “ability.” Within the two parts of the *The Metaphysics of Morals*, where a right as well as a virtue is a *Vermögen*, the standard translation of *Vermögen* is “capacity” or “ability.” In a different but related sense, usually made clear by the context, *Vermögen* is translated by “wealth” (or “resources” or “means”).

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ples, in however many different and even conflicting ways one has philosophized about one and the same proposition. So the *moralist* rightly says that there is only one virtue and one doctrine of virtue, that is, a single system that connects all duties of virtue by one principle; the *chemist*, that there is only one chemistry (Lavoisier's);³ the *teacher of medicine*, that there is only one principle for systematically classifying diseases (Brown's).⁴ Although the *new system* excludes all the others, it does not detract from the merits of earlier moralists, chemists, and teachers of medicine, since without their discoveries and even their unsuccessful attempts we should not have attained that unity of the true principle which unifies the whole of philosophy into one system. — So anyone who announces a system of philosophy as his own work says in effect that before this philosophy there was none at all. For if he were willing to admit that there had been another (and a true) one, there would then be two different and true philosophies on the same subject, which is self-contradictory. — If, therefore, the critical philosophy calls itself a philosophy before which there had as yet been no philosophy at all, it does no more than has been done, will be done, and indeed must be done by anyone who draws up a philosophy on his own plan.

The charge that one thing which essentially distinguishes the critical philosophy is not original to it but was perhaps borrowed from another philosophy (or from mathematics) would be *less* important but not altogether negligible. A reviewer in Tübingen⁵ claims to have discovered that the definition of philosophy which the author of the *Critique of Pure Reason* gives out as his own, not inconsiderable, discovery had been put forth many years earlier by someone else in almost the same words.* I leave it to anyone to judge whether the words *intellectualis quaedam constructio* could have yielded the thought of *the presentation of a given concept in an a priori intuition*, which at once completely distinguishes philosophy from mathematics. I am sure that Hausen⁶ himself would not have allowed his words to be interpreted in this way; for the possibility of an a priori intuition, and that space is an a priori intuition and not (as Wolff explains it)⁷ a juxtaposition of a variety of items outside one another given merely to empirical intuition (perception), would already have frightened him off, since he would have felt that this was getting him entangled in far-reaching philosophic investigations. To this acute mathematician the presentation *made as it were by means of the*

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* *Porro de actuali constructione hic non quaeritur, cum ne possint quidem sensibiles figurae ad rigorem definitionem effungi; sed requiri cognitio eorum, quibus absolvitur formatio, quae intellectualis quaedam constructio est.* C. A. Hausen, *Elem. Mathes.*, Pars I, p. 86A (1734). [Moreover, what is in question here is not an actual construction, since sensible figures cannot be devised in accordance with the strictness of a definition; what is required is, rather, cognition of what goes to make up the figure, and this is, as it were, a construction made by the intellect.]

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understanding meant nothing more than an (empirical) *drawing* of a *line* corresponding to a concept, in which attention is paid only to the rule and abstraction is made from unavoidable deviations in carrying it out, as can also be perceived in equalities constructed in geometry.

As far as the spirit of the critical philosophy is concerned, the *least* important consideration is the mischief that certain imitators of it have made by using some of its terms, which in the *Critique of Pure Reason* itself cannot well be replaced by more customary words, outside the *Critique* in public exchange of thoughts. This certainly deserves to be condemned, although in condemning it Nicolai⁸ reserves judgment as to whether such terms can be entirely dispensed with in their own proper field, as though they were used everywhere merely to hide poverty of thought. – Meanwhile it is more amusing to laugh at an *unpopular pedant* than at an *uncritical ignoramus* (for, in fact, a metaphysician who clings obstinately to his own system, heedless of any critique, can be classed as an uncritical ignoramus, even though he willfully⁹ ignores what he does not want to let spread since it does not belong to his older school of thought). But if it is true, as Shaftesbury asserts,⁹ that a doctrine's ability to withstand *ridicule* is not a bad touchstone of its truth (especially in the case of a practical doctrine), then the critical philosophy's turn must finally come to laugh *last* and so laugh *best* when it sees the systems of those who have talked big for such a long time collapse like houses of cards one after another and their adherents scatter, a fate they cannot avoid.

Toward the end of the book I have worked less thoroughly over certain sections than might be expected in comparison with the earlier ones, partly because it seems to me that they can be easily inferred from the earlier ones and partly, too, because the later sections (dealing with public right) are currently subject to so much discussion, and still so important, that they can well justify postponing a decisive judgment for some time.

I hope to have the *Metaphysical First Principles of the Doctrine of Virtue* ready shortly.¹⁰

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*TABLE
of the Division of the Doctrine of Right*

Part I

Private Right with Regard to External Objects

(The Sum of Laws that Do Not Need to Be Promulgated)

Chapter I

How to *Have* Something External as One's Own

Chapter II

How to *Acquire* Something External

⁸ *willkürlich*

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Division of External Acquisition

Section I

Property Right

Section II

Contract Right

Section III

Domestic Right

Episodic Section

Ideal Acquisition

Chapter III

Acquisition that Is Dependent Subjectively on a Court of Justice

Part II

Public Right

(The Sum of Laws that Need to Be Promulgated)

Chapter I

The Right of a State

Chapter II

The Right of Nations

Chapter III

Cosmopolitan Right

Kant

The Metaphysics of Morals

Introduction, Section I

6:214-218

*Introduction
to the metaphysics of morals*

I.^e

ON THE IDEA OF AND THE NECESSITY FOR A
METAPHYSICS OF MORALS

It has been shown elsewhere that for natural science, which has to do with objects of outer sense, one must have a priori principles and that it is possible, indeed necessary, to prefix a system of these principles, called a metaphysical science of nature, to natural science applied to particular experiences, that is, to physics. Such principles must be derived from a priori grounds if they are to hold as universal in the strict sense. But physics (at least when it is a question of keeping its propositions free from error) can accept many principles as universal on the evidence of experience. So Newton assumed on the basis of experience the principle of the equality of action and reaction in the action of bodies upon one another, yet extended it to all material nature. Chemists go still further and base their most universal laws of the combination and separation of substances^f by their own forces entirely on experience, and yet so trust to the universality and necessity of those laws that they have no fear of discovering an error in experiments made with them.

But it is different with moral laws. They hold as laws only insofar as they can be *seen* to have an a priori basis and to be necessary. Indeed, concepts and judgments about ourselves and our deeds and omissions signify nothing moral if what they contain can be learned merely from experience. And should anyone let himself be led astray into making something from that source into a moral principle, he would run the risk of the grossest and most pernicious errors.

If the doctrine of morals were merely the doctrine of happiness it would be absurd to seek a priori principles for it. For however plausible it may sound to say that reason, even before experience, could see the means for achieving a lasting enjoyment of the true joys of life, yet every-

^e The following section was number II in AK. See above, Translator's Note to the text of *The Metaphysics of Morals*.

^f *Materien*

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thing that is taught a priori on this subject is either tautological or assumed without any basis. Only experience can teach what brings us joy. Only the natural drives for food, sex, rest, and movement, and (as our natural predispositions develop) for honor, for enlarging our cognition and so forth, can tell each of us, and each only in his particular way, in what he will *find* those joys; and, in the same way, only experience can teach him the means by which to *seek* them. All apparently a priori reasoning about this comes down to nothing but experience raised by induction to generality, a generality (*secundum principia generalis, non universalis*) still so tenuous that everyone must be allowed countless exceptions in order to adapt his choice^e of a way of life to his particular inclinations and his susceptibility to satisfaction and still, in the end, to become prudent only from his own or others' misfortunes.

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But it is different with the teachings of morality.^h They command for everyone, without taking account of his inclinations, merely because and insofar as he is free and has practical reason. He does not derive instruction in its laws from observing himself and his animal nature or from perceiving the ways of the world, what happens and how we behave (although the German word *Sitten*, like the Latin *mores*, means only manners and customs). Instead, reason commands how we are to act even though no example of this could be found, and it takes no account of the advantages we can thereby gain, which only experience could teach us. For although reason allows us to seek our advantage in every way possible to us and can even promise us, on the testimony of experience, that it will probably be more to our advantage on the whole to obey its commands than to transgress them, especially if obedience is accompanied with prudence, still the authority of its precepts as *commands* is not based on these considerations. Instead it uses them (as counsels) only as a counterweight against inducements to the contrary, to offset in advance the error of biased scales in practical appraisal, and only then to insure that the weight of a pure practical reason's a priori grounds will turn the scales in favor of the authority of its precepts. If, therefore, a system of a priori cognition from concepts alone is called *metaphysics*, a practical philosophy, which has not nature but freedom of choice for its object, will presuppose and require a metaphysics of morals, that is, it is itself a *duty* to *have* such a metaphysics, and every human being also has it within himself, though as a rule only in an obscure way; for without a priori principles how could he

^eWahl

^h mit den *Lehren der Sittlichkeit*. In 6:219 Kant distinguishes between the legality of an action and its *Moralität* (*Sittlichkeit*); drawing the same distinction in 6:225 he uses *Sittlichkeit* (*moralitas*). In the present context, however, it would seem that he continues to discuss what he has been calling *Sittenlehre*, i.e., the "doctrine of morals" or of duties generally. In 6:239 he refers to the metaphysics of morals in both its parts as *Sittenlehre (Moral)*.

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believe that he has a giving of universal law within himself? But just as there must be principles in a metaphysics of nature for applying those highest universal principles of a nature in general to objects of experience, a metaphysics of morals cannot dispense with principles of application, and we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to *show* in it what can be inferred from universal moral principles. But this will in no way detract from the purity of these principles or cast doubt on their *a priori* source. – This is to say, in effect, that a metaphysics of morals cannot be based upon anthropology but can still be applied to it.

The counterpart of a metaphysics of morals, the other member of the division of practical philosophy as a whole, would be moral anthropology, which, however, would deal only with the subjective conditions in human nature that hinder people or help them in *fulfilling* the laws of a metaphysics of morals. It would deal with the development, spreading, and strengthening of moral principles (in education in schools and in popular instruction), and with other similar teachings and precepts based on experience. It cannot be dispensed with, but it must not precede a metaphysics of morals or be mixed with it; for one would then run the risk of bringing forth false or at least indulgent moral laws, which would misrepresent as unattainable what has only not been attained just because the law has not been seen and presented in its purity (in which its strength consists) or because spurious or impure incentives were used for what is itself in conformity with duty and good. This would leave no certain moral principles, either to guide judgment or to discipline the mind in observance of duty, the precepts of which must be given *a priori* by pure reason alone.

As for the higher division under which the division just mentioned falls, namely that of philosophy into theoretical and practical philosophy, I have already explained myself elsewhere (in the *Critique of Judgment*) and explained that practical philosophy can be none other than moral wisdom. Anything that is practical and possible in accordance with laws of nature (the distinctive concern of art)¹ depends for its precepts entirely upon the theory of nature: only what is practical in accordance with laws of freedom can have principles that are independent of any theory; for there is no theory of what goes beyond the properties of nature. Hence philosophy can understand by its practical part (as compared with its theoretical part) no *technically practical* doctrine but only a *morally practical* doctrine; and if the proficiency of choice in accordance with laws of freedom, in contrast to laws of nature, is also to be called *art* here, by this would have to be understood a kind of art that makes possible a system of freedom like a

6:218

¹ *Kunst*. In the *Groundwork of the Metaphysics of Morals* (4:415) Kant called such precepts those of “skill” (*Geschicklichkeit*).

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system of nature, truly a divine art were we in a position also to carry out fully, by means of it, what reason prescribes and to put the idea of it into effect.

II. ^j

6:211

ON THE RELATION OF THE FACULTIES OF THE HUMAN MIND TO MORAL LAWS

The *faculty of desire* is the faculty to be, by means of one's representations, the cause of the objects of these representations. The faculty of a being to act in accordance with its representations is called *life*.

First, pleasure or displeasure, susceptibility to which is called *feeling*, is always connected with desire^k or aversion; but the converse does not always hold, since there can be a pleasure that is not connected with any desire for an object but is already connected with a mere representation that one forms of an object (regardless of whether the object of the representation exists or not). *Second*, pleasure or displeasure in an object of desire does not always precede the desire and need not always be regarded as the cause of the desire but can also be regarded as the effect of it.

The capacity^l for having pleasure or displeasure in a representation is called *feeling* because both of these involve what is *merely subjective* in the relation of our representation and contain no relation at all to an object for possible cognition of it* (or even cognition of our condition). While even sensations, apart from the quality (of e.g., red, sweet and so forth) they have because of the nature of the subject, are still referred to an object as elements in our cognition of it, pleasure or displeasure (in what is red or sweet) expresses nothing at all in the object but simply a relation to the subject. For this very reason pleasure and displeasure cannot be explained more clearly in themselves; instead, one can only specify what results they have in certain circumstances, so as to make them recognizable in practice.

6:212

* One can characterize sensibility as the subjective aspect of our representations in general; for it is the understanding that first refers representations to an object, i.e., only it *thinks* something by means of them. What is subjective in our representations may be such that it can also be referred to an object for cognition of it (either in terms of its form, in which case it is called pure intuition, or in terms of its matter, in which case it is called sensation); in this case sensibility, as susceptibility to such a representation, is *sense*. Or else what is subjective in our representations cannot become *an element in our cognition* because it involves *only* a relation of the representation of the *subject* and nothing that can be used for cognition of an object; and then susceptibility to the representation is called *feeling*, which is the effect of a representation (that may be either sensible or intellectual) upon a subject and belongs to sensibility, even though the representation itself may belong to the understanding or to reason).

^j This section was numbered I in AK.

^k Begehrn

^l Fähigkeit

Kant
Critique of Pure Reason

On the ideas in general (to "or to want to limit it to
that")

A312/B368 - A319/B375

IMMANUEL KANT

*Critique of
Pure Reason*

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Section I. On the ideas in general

ences, we will not take account of it yet, but just as we called the concepts of understanding "categories," we will ascribe a new name to the concepts of pure reason and call them "transcendental ideas," which term we now elucidate and justify.

First book of the transcendental dialectic

A 312

First section

On the ideas in general.

In the great wealth of our languages, the thinking mind nevertheless often finds itself at a loss for an expression that exactly suits its concept, and lacking this it is able to make itself rightly intelligible neither to others nor even to itself. Coining new words is a presumption to legislate in language that rarely succeeds, and before we have recourse to this dubious means it is advisable to look around in a dead and learned language to see if an expression occurs in it that is suitable to this concept; and even if the ancient use of this expression has become somewhat unsteady owing to the inattentiveness of its authors, it is better to fix on the meaning^a that is proper to it (even if it is doubtful whether it always had exactly this sense) than to ruin our enterprise by making ourselves unintelligible.

B 369

For this reason, if there perhaps occurs only one single word for a certain concept that, in one meaning already introduced, exactly suits this concept, and if it is of great importance to distinguish it from other related concepts, then it is advisable not to be prodigal with that word or use it merely as a synonym or an alternative in place of other words, but rather to preserve it carefully in its proper meaning; for it may otherwise easily happen that when the expression does not particularly occupy our attention but is lost in a heap of others having very divergent meaning, the thought which it alone can preserve may get lost as well.

A 313

Plato made use of the expression *idea* in such a way that we can readily see that he understood by it something that not only could never be borrowed from the senses, but that even goes far beyond the concepts of the understanding (with which Aristotle occupied himself), since nothing encountered in experience could ever be congruent to it.¹¹ Ideas for him are archetypes of things themselves, and not, like the categories, merely the key to possible experiences. In his opinion they flowed from the highest reason, through which human reason partakes in them; our reason, however, now no longer finds itself in its original state, but must call back with toil the old, now very obscure ideas through a recollection (which is called philosophy).¹² I do not wish to

B 370

^a *Bedeutung*; for the remainder of Book I of the "Dialectic," "meaning" will translate this word; *bedeuten*, however, will continue to be translated "signify."

A 314

go into any literary investigation here, in order to make out the sense which the sublime philosopher combined with his word. I note only that when we compare the thoughts that an author expresses about a subject, in ordinary speech as well as in writings, it is not at all unusual to find that we understand him even better than he understood himself, since he may not have determined his concept sufficiently and hence sometimes spoke, or even thought, contrary to his own intention.

B 371

Plato noted very well that our power of cognition feels a far higher need than that of merely spelling out appearances according to a synthetic unity in order to be able to read them as experience, and that our reason naturally exalts itself to cognitions that go much too far for any object that experience can give ever to be congruent, but that nonetheless have their reality and are by no means merely figments of the brain.

A 315

Plato found his ideas preeminently in everything that is practical,* i.e., in what rests on freedom, which for its part stands under cognitions that are a proper product of reason. Whoever would draw the concepts of virtue from experience, whoever would make what can at best serve as an example for imperfect illustration into a model for a source of cognition (as many have actually done), would make of virtue an ambiguous non-entity, changeable with time and circumstances, useless for any sort of rule. On the contrary, we are all aware that when someone is represented as a model of virtue, we always have the true original in our own mind alone, with which we compare this alleged model and according to which alone we estimate it. But it is this that is the idea of virtue, in regard to which all possible objects of experience do service as examples (proofs of the feasibility, to a certain degree, of what the concept of reason requires), but never as archetypes. That no human being will ever act adequately to what the pure idea of virtue contains does not prove in the least that there is something chimerical in this thought. For it is only by means of this idea that any judgment of moral worth or unworth is possible; and so it necessarily lies at the ground of every approach to moral perfection, even though the obstacles in human nature, as yet to be determined as to their degree, may hold us at a distance from it.

A 314 / B 371

* Of course he also extended his concept to speculative cognitions, whenever they were pure and given wholly *a priori*, and even to mathematics, even though mathematical cognitions have their object nowhere except in possible experience. Now I cannot follow him in this, just as little as I can in the mystical deduction of these ideas or in the exaggerated way in which he hypostatized them, as it were; although the lofty language that served him in this field is surely quite susceptible of a milder interpretation, and one that accords better with the nature of things.

Section I. On the ideas in general

The **Platonic republic** has become proverbial as a supposedly striking example of a dream of perfection that can have its place only in the idle thinker's brain; and Brucker¹³ finds it ridiculous for the philosopher to assert that a prince will never govern well unless he participates in the ideas. But we would do better to pursue this thought further, and (at those points where the excellent man leaves us without help) to shed light on it through new endeavors, rather than setting it aside as useless under the very wretched and harmful pretext of its impracticability. A constitution providing for the **greatest human freedom** according to laws that permit **the freedom of each to exist together with that of others** (not one providing for the greatest happiness, since that would follow of itself) is at least a necessary idea, which one must make the ground not merely of the primary plan of a state's constitution but of all the laws too; and in it we must initially abstract from the present obstacles, which may perhaps arise not so much from what is unavoidable in human nature as rather from neglect of the true ideas in the giving of laws. For nothing is more harmful or less worthy of a philosopher than the vulgar appeal to allegedly contrary experience, which would not have existed at all if institutions had been established at the right time according to the ideas, instead of frustrating all good intentions by using crude concepts in place of ideas, just because these concepts were drawn from experience. The more legislation and government agree with this idea, the less frequent punishment will become, and hence it is quite rational to assert (as Plato does) that in perfect institutional arrangements nothing of the sort would be necessary at all.¹⁴ Even though this may never come to pass, the idea of this maximum is nevertheless wholly correct when it is set forth as an archetype, in order to bring the legislative constitution of human beings ever nearer to a possible greatest perfection. For whatever might be the highest degree of perfection at which humanity must stop, and however great a gulf must remain between the idea and its execution, no one can or should try to determine this, just because it is freedom that can go beyond every proposed boundary.

A 316

B 373

A 317

B 374

But Plato was right to see clear proofs of an origin in ideas not only where human reason shows true causality, and where ideas become efficient causes (of actions and their objects), namely in morality, but also in regard to nature itself.¹⁵ A plant, an animal, the regular arrangement of the world's structure (presumably thus also the whole order of nature) – these show clearly that they are possible only according to ideas; although no individual creature, under the individual conditions of its existence, is congruent with the idea of what is most perfect of its species (as little as a human being is congruent with the idea of humanity that he bears in his soul as the archetype of his actions), nevertheless these ideas are in the highest understanding individual, unalterable,

A 318

B 375

thoroughly determined, and the original causes of things, and only the whole of its combination in the totality of a world is fully adequate to its idea. If we abstract from its exaggerated expression, then the philosopher's spiritual flight, which considers the physical copies^a in the world order, and then ascends to their architectonic connection according to ends, i.e., ideas, is an endeavor that deserves respect and imitation; but in respect of that which pertains to principles^b of morality, legislation and religion where the ideas first make the experience (of the good) itself possible, even if they can never be fully expressed in experience, perform a wholly unique service, which goes unrecognized precisely because it is judged according to empirical rules, whose validity as principles^c should be cancelled by those very ideas. For when we consider nature, experience provides us with the rule and is the source of truth; but with respect to moral laws, experience is (alas!) the mother of illusion, and it is most reprehensible to derive the laws concerning what I ought to do from what is done, or to want to limit it to that.

A 319

But instead of these matters, the prosecution of which in fact makes up the proper dignity of philosophy, we now concern ourselves with a

B 376

labor less spectacular but nevertheless not unrewarding: that of making the terrain for these majestic moral edifices level and firm enough to be built upon; for under this ground there are all sorts of passageways, such as moles might have dug, left over from reason's vain but confident treasure hunting, that make every building insecure. It is the transcendental use of pure reason, of its principles^d and ideas, whose closer acquaintance we are now obligated to make, in order properly to determine and evaluate the influence and the worth of pure reason. Yet before I conclude this provisional introduction, I entreat those who take philosophy to heart (which means more than is commonly supposed), if they find themselves convinced by this and the following discussion, to take care to preserve the expression **idea** in its original meaning, so that it will not henceforth fall among the other expressions by which all sorts of representations are denoted in careless disorder, to the detriment of science. We are not so lacking in terms properly suited to each species of representation that we have need for one to encroach on the property of another. Here is their progression:^e The genus is **representation** in general (*repraesentatio*). Under it stands the representation with consciousness (*perceptio*). A **perception**^f that refers to the subject as a modification of its state is a **sensation** (*sensatio*); an objective percep-

^a von der *coeplichen Betrachtung des Physischen*

^b *Principien*

^c *Principien*

^d *Principien*

^e *Stufenleiter*

^f *Perception*

Kant

*Groundwork of the Metaphysics of
Morals*

Preface (from "All trades" to "in the conduct of his
life")

4:388-89 and 4:411 footnote

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of nature and a *metaphysics of morals*. Physics will therefore have its empirical part but it will also have a rational part; so too will ethics, though here the empirical part might be given the special name *practical anthropology*, while the rational part might properly be called *morals*.^c

All trades, crafts, and arts have gained by the division of labor, namely when one person does not do everything but each limits himself to a certain task that differs markedly from others in the way it is to be handled, so as to be able to perform it most perfectly and with greater facility. Where work is not so differentiated and divided, where everyone is a jack-of-all-trades, there trades remain in the greatest barbarism. Whether pure philosophy in all its parts does not require its own special man might in itself be a subject not unworthy of consideration, and it might be worth asking whether the whole of this learned trade would not be better off if a warning were given to those who, in keeping with the taste of the public, are in the habit of vending the empirical mixed with the rational in all sorts of proportions unknown to themselves, who call themselves "independent thinkers,"^d and others, who prepare the rational part only, "hair-splitters":^e the warning not to carry on at the same time two jobs which are very distinct in the way they are to be handled, for each of which a special talent is perhaps required, and the combination of which in one person produces only bunglers. Here, however, I ask only whether the nature of science does not require that the empirical part always be carefully separated from the rational part, and that a metaphysics of nature be put before physics proper (empirical physics) and a metaphysics of morals before practical anthropology, with metaphysics carefully cleansed of everything empirical so that we may know how much pure reason can accomplish in both cases and from what sources it draws this a priori teaching of its own^f – whether the latter job be carried on by all teachers of morals (whose name is legion) or only by some who feel a calling to it.

Since my aim here is directed properly to moral philosophy, I limit the question proposed only to this: is it not thought to be of the utmost necessity to work out for once a pure moral philosophy, completely cleansed of everything that may be only empirical and that belongs to anthropology? For, that there must be such a philosophy is clear of itself from the common idea of duty and of moral laws. Everyone must grant that a law, if it is to hold morally, that is, as a ground of an obligation, must carry with it absolute necessity; that, for example, the command "thou

^c *eigentlich Moral*, perhaps, "morals strictly speaking." *Moral* and *Sitten* are translated as "morals," *Moralität* and *Sittlichkeit* as "morality," *sittliche Weltweisheit* and *Moralphilosophie* as "moral philosophy," and *Sittenlehre* as "the doctrine of morals." Kant occasionally uses *Moral* in the sense of "moral philosophy."

^d *Selbstdenker*

^e *Grübler*

^f sie selbst diese ihre Belehrung a priori schöpfe

GROUNDWORK OF THE METAPHYSICS OF MORALS

“shalt not lie” does not hold only for human beings, as if other rational beings did not have to heed it, and so with all other moral laws properly so called; that, therefore, the ground of obligation here must not be sought in the nature of the human being or in the circumstances of the world in which he is placed, but *a priori* simply in concepts of pure reason; and that any other precept, which is based on principles of mere experience – even if it is universal in a certain respect – insofar as it rests in the least part on empirical grounds, perhaps only in terms of a motive,^g can indeed be called a practical rule but never a moral law.

Thus, among practical cognitions, not only do moral laws, along with their principles, differ essentially from all the rest,^h in which there is something empirical, but all moral philosophy is based entirely on its pure part; and when it is applied to the human being it does not borrow the least thing from acquaintance with him (from anthropology) but gives to him, as a rational being, laws *a priori*, which no doubt still require a judgment sharpened by experience, partly to distinguish in what cases they are applicable and partly to provide them with accessⁱ to the will of the human being and efficacy for his fulfillment of them;^j for the human being is affected by so many inclinations that, though capable of the idea of a practical pure reason, he is not so easily able to make it effective *in concreto* in the conduct of his life.

A metaphysics of morals is therefore indispensably necessary, not merely because of a motive to speculation – for investigating the source of the practical basic principles^k that lie *a priori* in our reason – but also because morals themselves remain subject to all sorts of corruption as long as we are without that clue^l and supreme norm by which to appraise them correctly. For, in the case of what is to be morally good it is not enough that it conform with the moral law but it must also be done *for the sake of the law*; without this, that conformity is only very contingent and precarious, since a ground that is not moral will indeed now and then produce actions in conformity with the law, but it will also often produce actions contrary to the

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^g *Bewegungsgründe*. Kant subsequently (4:427) distinguishes this from an “incentive” (*Triebfeder*), and the force of some passages depends upon this distinction. However, he does not abide by the distinction, and no attempt has been made to bring his terminology into accord with it. He occasionally uses *Bewegursache*, in which case “motive,” which seems to be the most general word available, has been used.

^h Here, as elsewhere, the difference between German and English punctuation creates difficulties. It is not altogether clear from the context whether the clause “in which there is something empirical” is restrictive or nonrestrictive.

ⁱ Or “entry,” “admission,” *Eingang*

^j *Nachdruck zur Ausübung*

^j *Grundsätze*. Kant does not draw a consistent distinction between *Grundsatz* and *Prinzip* and often uses one where the other would seem more appropriate. *Prinzip* is always, and *Grundsatz* often, translated as “principle.”

^l *Leitfaden*

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ity, since there is no art in being commonly understandable if one thereby renounces any well-grounded insight; it also produces a disgusting hodge-podge of patchwork observations and half-rationalized principles, in which shallow pates revel because it is something useful for everyday chitchat, but the insightful, feeling confused and dissatisfied without being able to help themselves, avert their eyes – although philosophers, who see quite well through the deception, get little hearing when they call [moralists] away for a time from this alleged popularity, so that they may be rightly popular only after having acquired determinate insight.

4:410 One need only look at attempts at morality in that popular taste. One will find now the special determination^h of human nature (but occasionally the idea of a rational nature as such along with it), now perfection, now happiness, here moral feeling, there fear of God, a bit of this and also a bit of that in a marvellous mixture, without its occurring to them to ask whether the principles of morality are to be sought at all in acquaintance with human nature (which we can get only from experience) and, if this is not the case – if these principles are to be found altogether a priori, free from anything empirical, solely in pure rational concepts and nowhere else even to the slightest extent – instead to adopt the planⁱ of quite separating this investigation as pure practical philosophy or (if one may use a name so decried) as metaphysics of morals,* of bringing it all by itself to its full completeness, and of putting off the public, which demands popularity, pending the outcome of this undertaking.

4:411 But such a completely isolated metaphysics of morals, mixed with no anthropology, theology, physics, or hyperphysics and still less with occult qualities (which could be called hypophysical), is not only an indispensable substratum of all theoretical and surely determined cognition of duties; it is also a desideratum of utmost importance to the actual fulfillment of their precepts. For, the pure thought of duty and in general of the moral law, mixed with no foreign addition of empirical inducements, has by way of reason alone (which with this first becomes aware that it can of itself also be practical) an influence on the human heart so much more powerful than all other incentives,^j which may be summoned from the

*One can, if one wants to, distinguish pure philosophy of morals (metaphysics) from applied (namely to human nature), (just as pure mathematics is distinguished from applied, and pure logic from applied). By using this name one is also reminded at once that moral principles are not based on what is peculiar to human nature but must be fixed^k a priori by themselves, while from such principles it must be possible to derive practical rules for every rational nature, and accordingly for human nature as well.

^lI have a letter from the late excellent Sulzer^l in which he asks me what the cause might be that the teachings of virtue, however much they contain that is convincing to reason, accom-

^hBestimmung

ⁱden Anschlag zu fassen

^jbesteheud sein müssen

Ripstein
Force and Freedom

Chapter 1

Kant on Law and Justice: An Overview

POLITICAL PHILOSOPHY is often thought of as an application of general moral principles to the factual circumstances that make political institutions necessary. For example, John Stuart Mill seeks to justify liberal institutions by showing that they will produce the best overall consequences, given familiar facts about human nature and circumstances; for John Locke, institutions can only be justified by showing that they are the results of individuals exercising their natural prepolitical rights in response to the “inconvenience” of a state of nature.

Kant might be expected to adopt a parallel strategy, applying the Categorical Imperative to questions of political legitimacy, state power, punishment, or taxation, or perhaps viewing the state as a coordinating device that enables people to carry out their moral obligations more effectively. Alternatively, Kant might be expected to stand back from such questions, and recommend indifference to worldly matters of politics. Kant is often taken to understand morality exclusively in terms of the principles upon which a person acts. As such, it might be thought to depend contingently or not at all on the kind of society in which the agent found herself.

Such expectations quickly lead to disappointment: Stuart M. Brown’s assessment is harsher than many, but representative both in its conception of Kant’s project and in the criteria of its success:

For all Kant needs to do in order to complete his program in philosophy of law is to show how the Categorical Imperative may be used to test the moral status of the rules in a body of positive law. If the test is met, the law is what it ought to be. If the test is failed, the law is morally defective and ought to be changed. At this point in the argument, Kant's task seems almost certain of accomplishment. . . . But in fact, the argument is never advanced beyond this point. Instead of showing how the Categorical Imperative may be applied to test the rules of positive law, Kant introduces a number of different principles which range in degree of generality between the extremes of the Categorical Imperative and the rules of positive law. Many of these principles have no discernible logical relationship to the Categorical Imperative and no clear application to positive law.¹

Brown summarizes his disappointments: "The difficulty with Kant is not that he lacks opinions on these matters or that he fails to affirm ideals to which we are strongly committed; the difficulty is that his opinions neither are nor can be justified and elucidated by using the principles to which his moral philosophy commits him. Because of this difficulty, Kant fails to accomplish the task he set himself and has no philosophy of law."²

Kant not only denies that political philosophy is an application of the Categorical Imperative to a specific situation; he also rejects the idea that political institutions are a response to unfortunate circumstances. He insists on a sharp divide between the *metaphysics* of morals he will provide and an *anthropology* of morals that focuses on human nature,³ and argues that law and justice are morally required "no matter how well-disposed

1. Stuart M. Brown, Jr., "Has Kant a Philosophy of Law?" *Philosophical Review* 71 (1962): 36.

2. Ibid., 33.

3. Immanuel Kant, *The Doctrine of Right*, Part I of the *Metaphysics of Morals* in *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:217. Because the work exists in so many different editions and translations, and even the Gregor translation in multiple editions and paginations, all references are to the Prussian Academy pagination appearing in the margins. References to the *Doctrine of Right* are by academy pagination only; others works included in the *Practical Philosophy* volume are by title and academy pagination.

and right-loving human beings might be.”⁴ He denies that need generates direct enforceable obligations of aid, dismissively treating it as no different from “mere wish.”⁵ He formulates many of his arguments in terms of coercion, which most recent philosophers assign a secondary role in law and politics.

Most striking of all from the perspective of contemporary readers, he denies that justice is concerned with the fair distribution of benefits and burdens. None of the principles he articulates are formulated in terms of them. The distinctiveness of his approach can be brought out by contrasting it with the broadly Kantian political philosophy developed in John Rawls’s theory of justice. Rawls employs Kantian concepts to address a question about social cooperation that is posed in terms of the benefits it provides and the burdens it generates. Rawls describes his account of justice as “overcoming the dualisms”⁶ inherent in Kant’s views, and recasting them “within the canons of reasonable empiricism.”⁷ The moves from the metaphysical to the empirical, the abstract to the concrete, and the universal to the historical enable Rawls to provide a broadly Kantian perspective on a set of questions that have their roots less in Kant than in the empiricist and utilitarian tradition of Bentham and Mill.⁸ For that tradition, the use of state power and the ability of some people to make rules that others must follow are ultimately to be assessed in terms of the benefits they provide and the burdens they create. Rawls rejects the utilitarian approach to the distribution of benefits and burdens on recognizably Kantian grounds, but in its place offers an alternative principle for thinking about the same basic questions: given the benefits that all can

4. 6:312. Mary Gregor translates Kant’s “*rechtliebend*” as “law-abiding” and John Ladd as “righteous.” Each is misleading in different ways. I am grateful to Helga Varden for suggesting “right-loving.”

5. 6:230.

6. Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, 2 (1977): 165.

7. Rawls, “Kantian Constructivism in Moral Theory,” in his *Collected Papers* (Cambridge, Mass.: Harvard University Press, 1999), 304.

8. See, for example, the remarks about the importance of psychological assumptions in any normative theory in the concluding discussion of J. S. Mill in Rawls, *Lectures on the History of Political Philosophy*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2007), 313.

expect from social cooperation, and the burdens that it generates, what terms of cooperation are acceptable to persons considered as free and equal?⁹

Kantian answers to questions about benefits and burdens are not the same as Kantian answers to Kant's own questions.¹⁰ The focus of this book is on defending Kant's answers, but in so doing I will provide an indirect defense of his questions, and thereby of the presuppositions of those questions. Kant's critics often accuse him of being driven by architectonic concerns, or committed to an outdated "foundationalist" methodology that prefers *a priori* answers to empirical ones. Although architectonic and methodological factors shape Kant's presentation of his arguments, his grounds for rejecting empirical and anthropological starting points in political philosophy rest on the simple but compelling *normative* idea that, as a matter of right, each person is entitled to be his or her own master, not in the sense of enjoying some form of special self-relation, but in the contrastive sense of not being subordinated to the choice of any *other* particular person. This starting point is explicit in Kant, but it also animates many of the familiar questions of political philosophy. The nature and justification of authority, the authorization to coerce, the significance of disagreement, political obedience, democracy, and the rule of law arguably acquire their interest against some version of the assumption that each person is entitled to be his or her own master. Any real or claimed entitlement of a person or group of persons to tell another what to do, or force him to do as he is told, is potentially in ten-

9. I believe that there is a more Kantian way of understanding the entire Rawlsian enterprise, focused on his conception of persons as free and equal, and on his emphasis on the coercive structure of society. If such a reading of Rawls is possible, it is certainly not the dominant one, and this is not the place to develop it.

10. Even contemporary "rights-based" accounts of justice frame their questions in terms of benefits in burdens in a way that Kant rejects. For example, after invoking Kant's idea that people are never to be treated as mere means in pursuit of the purposes of others, Robert Nozick proceeds to frame his account of rights in terms of benefits and burdens. His theory of property rests on the claim that appropriation does not disadvantage others, and his theory of the state rests on a theory of compensation which makes the negative experience of fear the basis of prohibition, and the disadvantage of being prohibited from doing as you wish as generating a basis of compensation. Each of these is measured in terms of its welfare effects. See Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 32–33, 178–182, 71–87.

sion with the latter person's entitlement to be his own master. Again, normative questions about how to manage disagreement or the pluralism that is a feature of modern societies are pressing because all parties to the disagreement and diversity are each their own master, so none is entitled to force a particular resolution on others. The same point applies to questions about what it is for people to rule themselves through institutions, or to be ruled by laws rather than individual persons.

Kant's full explanation of what it is for each person to be his or her own master rather than the servant of another will take up most of this book. For now I merely want to indicate why this normative starting point leads Kant to reject anthropological and empirical factors in general, and benefits and burdens in particular. Both the empirical peculiarities of human inclinations and vulnerabilities and the consideration of where benefits or burdens fall can only be brought in insofar as they can be shown to be consistent with a condition in which every person is his or her own master as against each of the others. The systematic implications of that right have to be worked out first, before any "principle of politics" incorporating information based on experience can be introduced.¹¹ This sequenced way of framing the issues limits the ways in which benefits and burdens can be relevant to either the formulation or the application of any basic normative principle. Your right to be your own master entails that no other person is entitled to decide for you that the benefits you will receive from some arrangement are sufficient to force you to participate in it. You alone are entitled to decide whether a benefit to you is worth the burdens it brings. Nor can others justify authority over you, or use force against you, on the ground that the restrictions thereby placed on you will generate greater benefits for others. The same fundamental idea blocks the appeal to the sort of value pluralism according to which competing political values rather than interests must be "balanced" against one another. The authority of any person or institution's mandate to balance competing values must itself be reconciled with each person's right to be his or her own master. That does not mean that political authority or justified coercion is impossible, or even that institutions are never compe-

11. Kant, "On a Supposed Right to Lie from Philanthropy," in Gregor, *Practical Philosophy*, 8:429.

tent to balance competing values, only that the authority to make or enforce decisions needs to be established by showing it to be consistent with each person's right to freedom before competing interests or values can be considered.

My aim in this introductory chapter is to give a broad overview of Kant's position and the arguments he gives for it. The argumentation here will, of necessity, be sketchy. My main purpose is to lay out his conclusions, and, in so doing, preempt certain recurrent misunderstandings. Before doing so, I will identify some of those misunderstandings, each of which reflects some version of an “applied ethics” reading of Kant. Some arise because of Kant's mode of argumentation; others because Kant refuses to separate an action from its effects; still others because of the familiarity of other aspects of Kant's broader project in practical philosophy.

Mode of Argumentation. First, Kant approaches the question of the legitimate use of force through a sequence of arguments, rather than by attempting to reconcile each stage of the argument with the considered judgments of his readers. Not all of Kant's conclusions will accord with the judgments of contemporary readers, but some conflicts between his arguments and those judgments are only apparent. As the argument proceeds, new legal actors are introduced, so that, for example, although no private person has the right to tax or punish, the state has the power to do both. By identifying these arguments at the outset, I hope to preempt any impression that everything a legitimate state does must be a *direct* application of Kant's starting point in the idea of equal freedom (as Brown expects a direct application of the Categorical Imperative).

Kant's mode of argumentation reflects his attitude toward examples. He develops many examples in the course of his argument, but rejects the idea that examples can replace arguments, or that philosophy is charged primarily with accounting for examples. Instead, he remarks that “all examples (which only illustrate but cannot prove anything) are treacherous, so that they certainly require a metaphysics.”¹² The metaphysics he speaks of is not a catalogue of claims about what is most real; it is a *practical*

metaphysics, an articulation of the limits that each person's claim to be his or her own master impose on the conduct of others.¹³

But to say that Kant does not regard examples as dispositive is not to say that his arguments lead to conclusions that cannot survive reflection. The direct implications that Kant draws from the Universal Principle of Right—each person's right to be his or her own master, to be presumed innocent, and to speak in his or her own name—sit well enough with considered judgments. Other, less direct implications are neither unfamiliar nor foreign. Kant understands ordinary moral thought as the exercise of practical reason, and as such, the broad structural features of familiar legal institutions will, unsurprisingly, be understandable in terms of the broad structure of practical thought. Even the less familiar aspects of Kant's arguments need to be understood in light of their relation to his austere starting point. Kant's view does conflict with what have become entrenched philosophical commonplaces, both about the anthropological nature of questions of justice and, more generally, about the appropriate concepts for practical thought. How much weight to attach to *those* disagreements depends at least in part on whether the familiar views turn out to be in tension with the equally well-rooted idea that no person is the master of another.

The Normative Status of Rules and Institutions. A second aspect of the applied ethics approach to political philosophy supposes that law and the state are instruments for approximating underlying factors that really matter. Bentham's utilitarianism provides a particularly stark example of this idea. He argues that the purpose of legal and political institutions, and indeed even the purpose of general rules in morality, is to approximate a moral result—the greatest happiness of the greatest number—which could in principle be specified without any reference to institu-

13. Against the “two worlds” reading of Kant's distinction between the realm of freedom and the realm of nature, in favor of the view that they constitute different standpoints, one theoretical and the other practical, see, for example, Henry Allison, *Kant's Transcendental Idealism* (New Haven: Yale University Press, 1983); Onora O'Neill, “Reason and Autonomy in *Grundlegung III*,” in her *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989); Christine Korsgaard, “Morality as Freedom,” in her *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996).

tions or rules. Legal and political institutions interest Bentham because he believes that over the long run, in human circumstances as we know them, making rules and assigning rights to people is most likely to conduce to happiness overall. Many contemporary egalitarian theories have a similar structure: society should be arranged so as to bring about an equal distribution, or one that is sensitive to the choices people have made but not the circumstances in which they find themselves, or, in another version, to properly measure the costs that one person's choices impose on another.¹⁴ On these views, rules are appropriate because reliable, but imperfect, tools for producing morally desirable outcomes. The only basis for setting up legal institutions is that they are likely to produce the right results, as identified by external criteria, more often than they get the wrong ones.

The alternative to consequentialist and egalitarian theories is sometimes thought to be some sort of deontological theory that identifies moral value in a way that makes no reference to the state. Such theories may speak of rights or rules in specifying their moral ideals, but they make no direct reference to institutions or law. Examples include desert-based theories of distributive justice that suppose that benefits and burdens should track moral merit or individual choices, desert-based theories of punishment, and Lockean "natural rights" theories that claim that persons have fully formed moral rights in a state of nature, and that the only legitimate purpose of legal institutions is to solve problems of self-preference or insufficient knowledge in the application of those rights to particulars. For both the utilitarian/egalitarian and the Lockean or deontologist, public legal rules are justified by the likelihood that they will bring about better results than could be achieved in their absence, where success is measured in terms of tracking the preinstitutional values. On these views, if people knew more, cared more about the moral considerations that apply independently of institutions, or were more fair-minded in their judgments about particulars, legal institutions would not be required at all.

¹⁴. G. A. Cohen gives a clear formulation of this idea: "My concern is *distributive justice*, by which I uneccentrically mean justice (and its lack) in the distribution of benefits and burdens to individuals." *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, Mass.: Harvard University Press, 2000), 130.

If institutions are tools for the indirect pursuit of something that can be fully specified without reference to them, Kant’s focus on coercion is also bound to seem misplaced. The question of what results the state should aim to produce is prior to any question about the most effective means of producing it. So, too, with Kant’s focus on rules. If rules or institutions are supposed to produce results that matter apart from them, then their normative significance is limited to the cases in which they tend to produce those results.

Kant rejects the suggestion that legal norms or institutions are instruments for achieving results that can be specified apart from them. As we shall see in more detail in Chapters 7, 10, and 11, the utilitarian/egalitarian and the Lockean/deontologist are caught up in what Kant would characterize as an “antinomy.” The source of their intractable differences is a shared premise about the nature of morality. Both the utilitarian and Lockean or desert-based theories presuppose the idea that the way people should behave in any particular situation is fully determinate, though perhaps unachievable or unknown. Thus they suppose that what morally matters to social life is a result that could be specified without reference to legal institutions and, at least in principle, that in a better world with better people, the morally desired result could be achieved without them. They disagree about what the desirable result is, but share the view that the question has a completely determinate answer in every case, and it is the job of legal and political institutions to arrange things so as to increase the likelihood of achieving it.

Kant’s opposing idea is that each person’s entitlement to be his or her own master is only consistent with the entitlements of others if public legal institutions are in place. Much of this book will take up the task of explaining this idea in detail. The important point for now is that for Kant, both institutions and the authorization to coerce are not merely causal conditions likely to bring about the realization of the right to freedom, or even prudent sacrifices for individuals to make if they are concerned to secure their freedom. Instead, the consistent exercise of the right to freedom by a plurality of persons cannot be conceived apart from a public legal order.

This noninstrumental conception of the right to freedom gives Kant his distinctive view about the significance of coercion. If legal institutions

and political power are understood as tools for realizing moral results that are in principle achievable without them, the familiar claim that the use of state power faces a special burden of justification¹⁵ invites an obvious line of objection: other factors, including both individual choices and natural contingencies, also make a significant difference to people's lives along almost any dimension. Why focus on the state, let alone on its coercive actions, rather than on individual actions?¹⁶ As we shall see, Kant's non-instrumental account of the system of equal freedom provides a principled basis for making the legitimate use of force a self-contained issue.

Kant's rejection of the instrumental conception of legal rules and institutions does not commit him to the view that the normative principles he does develop are sufficient to resolve all issues of right. Kant's critics have often read him to be making such a claim in moral philosophy, and sometimes characterized his emphasis on moral rules as the product of a fear of going "off the rails."¹⁷ It is not surprising that similar criticisms have been directed at his political philosophy.¹⁸ The principles of right that Kant introduces are highly abstract, and require the exercise of judgment to apply them to particulars. Although some, such as Henry Sidgwick, have thought that any concept that did not classify particulars in a fully determinate way must be suspect,¹⁹ Kant's view is that moral concepts are ab-

15. See, for example, Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1999), 447–462; John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), 40; Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), chap. 4.

16. See, for example, G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008); Liam Murphy, "Institutions and the Demands of Justice," *Philosophy & Public Affairs* 27, 4 (1998), 251–291.

17. See, for example, John McDowell, "Virtue and Reason," in his *Mind, Value, and Reality* (Cambridge, Mass.: Harvard University Press, 1998), 50–73. For discussion of why these criticisms fail to engage Kant's ethical philosophy, see Barbara Herman, *The Practice of Moral Judgment* (Cambridge, Mass.: Harvard University Press, 1993), and Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), 77–89.

18. The standard site of this misreading is Hannah Arendt, *Lectures on Kant's Political Philosophy*, trans. Ronald Birener (Chicago: University of Chicago Press, 1982). For discussion, see Otfried Hoffe, *Kant's Cosmopolitan Theory of Law and Peace* (Cambridge: Cambridge University Press, 2006), chap. 3.

19. Sidgwick, *The Methods of Ethics* (Indianapolis: Hackett, 1981), 421.

stract because they are normative. As such, they require judgment to apply them to particular circumstances. As we shall see, Kant does not provide detailed formulae for the resolution of private disputes or the content of public legislation. His argument shows how those issues must be framed, consistent with each person's right to be his or her own master, and also why public institutions must be set up to resolve them.

The Categorical Imperative. The most direct version of the applied ethics reading looks, as Brown does, to Kant's moral philosophy. The moral philosophy has had a significant impact on post-Kantian political philosophy, through the work of Hermann Cohen²⁰ in the nineteenth century and John Rawls in the twentieth. The lesson that many have taken from Cohen and Rawls, whether rightly or wrongly, is that Kantians suppose that the autonomous life is the best one, and political institutions must be designed to promote autonomy.²¹ This conception of the “Kantian” position places it squarely in the instrumentalist camp. Whatever its appeal, it is not Kant's view. The first task in this chapter will be to lay out the basic distinctions between right and ethics, deferring to later chapters the detailed arguments for them.

I. Right and Ethics: Why Kant Does Not “Apply” the Categorical Imperative

Kant draws a series of sharp divisions between right and ethics. Ethical conduct depends upon the maxim on which an action is done; rightful conduct depends only on the outer form of interaction between persons. The inner nature of ethical conduct means that the only incentive consis-

20. Hermann Cohen, *Kants Begründung der Ethik*, 2d ed. (Berlin: Bruno Cassirer, 1910). At 394, Cohen acknowledges the influence of Paul Johann Anselm Feuerbach, *Kritik des natürlichen Rechts als Propädeutik zu einer Wissenschaft der natürlichen Rechte* (Altona: Bei der Veringsgesellschaft, 1796).

21. See, for example, Jeffrie G. Murphy, *Kant: The Philosophy of Right* (New York: St. Martin's, 1970), and Patrick Riley, *Kant's Political Philosophy* (Totowa: Rowman & Littlefield, 1983), 98–99. For criticism of these and other assimilations, see Onora O'Neill, “Kant's Justice and Kantian Justice,” in her *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 65–80.

tent with the autonomy at the heart of morality must be morality itself; rightful conduct can be induced by incentives provided by others. Other persons are entitled to enforce duties of right, but not duties of virtue. Each of these differences precludes any direct appeal to the Categorical Imperative. Yet the vocabulary that typically surrounds the Categorical Imperative in Kant's other works can be found at various pivotal points in the argument: right is only possible "under universal law"; you must never allow yourself to be "treated as a mere means," and the people must "give laws to themselves."

Each of these differences between right and ethics turns on Kant's representation of principles of right as governing persons represented as occupying space. The basic case for thinking about your right to your own person is your right to your own body; the basic case for thinking about property is property in land, that is, a right to exclude others from a particular location on the Earth's surface; the basic case for thinking about contract is the transfer of an object from one place to another; the basic case for thinking about a state involves its occupation of a particular region of the Earth's surface.

Space is more than a useful metaphor for Kant. Its normative significance arises from the ways in which separate persons who occupy space can come into conflict in the exercise of their freedom, depending on where they are doing their space-occupying activities and what others happen to be doing in the same location. This basic normative structure is different from the normative structure contained in the idea of a rational will being in conflict with itself on the basis of its principle of action. As we shall see in the appendix, Kant's own characterization of the relation between inner and outer freedom grows out of his more general philosophical understanding of the difference between monadic and relational properties. Those differences help explain why Kant characterizes the Universal Principle of Right as a "postulate incapable of further proof." But his normative arguments both for the Universal Principle of Right and for extending it as he does do not depend on those broader philosophical grounds. The normative arguments work out the implication of free persons whose movements of their bodies can come into conflict. They are of interest even to those who remain unconvinced by other aspects of Kant's broader critical project.

Before turning to those normative arguments, it is also worth contrasting the arguments of the *Doctrine of Right* with the interpretation of the Categorical Imperative according to which it provides a test for conduct based on general features of the human situation. On this interpretation, the question of whether a maxim could be a universal law depends on the likely effects of its widespread adoption. This “teleological” interpretation has motivated many of Kant’s most prominent critics, including Hegel and Sidgwick, and has generally been rejected by Kant’s defenders.²² The teleological approach may indeed be what Brown expects to see applied in the *Doctrine of Right*, that is, a formula that could be “applied to test the rules of positive law,” presumably by determining whether they could pass a test of generality. His disappointment reflects the fact that Kant attempts nothing of the sort. Any principle that depended on the effects of adopting this or that legal rule would have to be what Kant characterizes as a “material” principle, that is, one that depends on the ends that persons happen to (or are likely to) have. As we shall see in Chapter 7, a material interpretation of the Universal Principle of Right can only generate rules that are both material and conditional, and so inconsistent with a system of equal freedom in which each person is his or her own master and none is the master of another.

II. The Stages of Kant’s Argument

The Universal Principle of Right says that “an action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with universal law.”²³ The universal principle generates each person’s “one innate right” to “Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law,” which “is the only original right belonging to every human being by virtue of his humanity.”²⁴ This innate right leads to private right, which governs the inter-

²². Korsgaard, *Creating the Kingdom of Ends*, 87–92.

²³. 6:230.

²⁴. 6:237.

actions of free persons, and then to public right, which requires the creation of a constitutional state. The idea of independence carries the justificatory burden of the entire argument, from the prohibition of personal injury, through the minutiae of property and contract law, on to the details of the constitutional separation of powers. Kant argues that these norms and institutions do more than enhance the prospects for independence: they provide the only possible way in which a plurality of persons can interact on terms of equal freedom. Kant's concern is not with how people should interact, as a matter of ethics, but with how they can be forced to interact, as a matter of right.²⁵

The core idea of independence is an articulation of the distinction between persons and things. A person is a being capable of setting his or her own purposes, while a thing is something that can be used in pursuit of purposes. Kant follows Aristotle in distinguishing choice from mere wish on the grounds that to choose something, a person must take himself to have means available to achieve it.²⁶ You can wish that you could fly, but you cannot choose to fly unless you have or acquire means that enable you to do so. In this sense, having means with which to pursue purposes is conceptually prior to setting those purposes. In the first instance, your capacity to set your own purposes just is your own person: your ability to conceive of ends, and whatever bodily abilities you have with which to pursue them. You are independent if you are the one who decides which purposes you will pursue.

It may seem misleading to conceive of your own bodily powers as a means that you have, if this suggests that they are somehow external to your ability to set and pursue purposes, or that they only matter insofar as you are actively using them. Kant makes the different claim that you are independent if your body is subject to your choice rather than anyone else's, so that you, alone or in voluntary cooperation with others, are entitled to decide what purposes you will pursue. You are dependent on an-

25. The German word *recht* and its cognates have no exact English equivalent. It covers both law and the more general idea of a legitimate power. Recent translators have used the word "right," which has the merit of preserving some of this ambiguity in a way that neither "law" nor "justice" does. In Kant's usage, right refers to the domain of enforceable obligations.

26. 6:213; Aristotle, *Nicomachean Ethics*, 1111a 25.

other person's choice if that person gets to decide what purposes you will pursue. The person who uses your body or a part of it for a purpose you have not authorized makes you dependent on his or her choice; your person, in the form of your body, is used to accomplish somebody else's purpose, and so your independence is violated. This is true even if that person does not harm you, and indeed, even if he benefits you.

This recasting of the familiar Kantian distinction between means and ends provides a distinctive understanding of the ways in which one person can interfere with the independence of another, either by drawing that person into purposes that she has not chosen or by depriving her of her means. Literally forcing or fraudulently luring another person into helping you pursue your purposes generates familiar examples of the first type of interference, bodily injury a familiar example of the second. In doing either, a wrongdoer fails to respect another person's capacity to set her own purposes, treating her instead either as a means to be used in pursuit of his own purposes, or as a mere obstacle to be gotten around.

Interference with another person's freedom creates a form of dependence; *independence* requires that one person not be subject to another person's choice. Kant's account of independence contrasts with more robust conceptions of autonomy, which sometimes represent it as a feature of a particular agent. On this conception, if there were only one person in the world, it would make sense to ask whether and to what extent that person was autonomous. Kantian independence is not a feature of the individual person considered in isolation, but of relations between persons. Independence contrasts with dependence on another person, being subject to that person's choice. It is relational, and so cannot be predicated of a particular person considered in isolation. The difference is important from two directions. First, in principle a slave with a benevolent master and favorable circumstances could be autonomous in the contemporary technical sense. A slave could never be independent, because what he is permitted to do is always dependent on his master's choice or grace. Second, autonomy can be compromised by natural or self-inflicted factors no less than by the deeds of others; Kantian independence can only be compromised by the deeds of others. It is not a good to be promoted; it is a constraint on the conduct of others, imposed by the fact that each person is entitled to be his or her own master.

Independence is the basic principle of right. It guarantees equal freedom, and so requires that no person be subject to the choice of another. The idea of independence is similar to one that has been the target of many objections. The basic form of almost all of these focuses on the fact that *any* set of rules prohibits some acts that people would otherwise do, so that, for example, laws prohibiting personal injury and property damage put limits on the ability of people to do as they wish. Because different people have incompatible wants, to let one person do what he wants will typically require preventing others from doing what they want. Thus, it has been contended, freedom cannot even be articulated as a political value, because freedoms always come into conflict, and the only way to mediate those conflicts is by appealing to goods other than freedom. As I will explain in more detail in Chapter 2, such an objection has some force against freedom understood as the ability to do whatever you wish, but fails to engage Kant's conception of independence. Limits on independence generate a set of restrictions that are by their nature equally applicable to all. Their generality depends on the fact that they abstract from what Kant calls the "matter" of choice—the particular purposes being pursued—and focus instead on the capacity to set purposes without having them set by others. What you can accomplish depends on what others are doing—someone else can frustrate your plans by getting the last quart of milk in the store. If they do so, they don't interfere with your independence, because they impose no limits on your ability to use your powers to set and pursue your own purposes. They just change the world in ways that make your means useless for the particular purpose you would have set. Their entitlement to change the world in those ways just is their right to independence. In the same way, your ability to enter into cooperative activities with others depends upon their willingness to cooperate with you, and their entitlement to accept or decline your invitations is simply their right to independence.

Kant aims to show that independence, understood in this way, comprises a self-contained domain of reciprocal limits. The idea of a system of equal freedom both poses the problem and gives him the resources to provide a principled account of the most striking features of political life. Those who imagine that political powers can be used whenever doing so will bring about beneficial consequences see no need to draw a principled

line around them. The Kantian commitment to freedom requires a principled account. Both the power to displace individual judgment, by having institutions and officials empowered to make decisions binding on everyone, and the power to enforce those decisions appear to be in tension with the idea that individuals are free to set their own purposes according to their own judgment. Kant aims to do no less than show that the existence of such powers are not only consistent with but in fact required by individual freedom.

Kant develops the idea of independence in three stages. He first articulates the relation of independence in its simplest form as a constraint on interactions between persons. He calls this “the innate right of humanity” in one’s own person, because it does not require any act to establish it. Instead, people are entitled to independence simply because they are persons capable of setting their own purposes. This form of independence is incomplete, and needs to be extended to take account of the possibility that people could have entitlements to things other than their own bodily powers. Those entitlements fall under private right, and cover the traditional categories of Roman private law, relations of property, contract, and status, which govern rights to things, to performances by other persons, and, in special cases, rights *to* other persons. These categories provide a complete specification of independence between interacting persons, but can only be consistently enjoyed by all in a condition of public right with legislative, executive, and judicial branches. Each of these branches in turn has further powers grounded in its role in providing a rightful condition.

Innate Right

Kant formulates the innate right of humanity from two directions. First, each person has the right to independence from each of the others. None is born either a master or a servant. Each enjoys this right to juridical equality innately, prior to any affirmative act to establish it.²⁷ Your right to your own person guarantees that you are entitled to use your own powers as you see fit, consistent with the freedom of others to do the same. Innate

²⁷ 6:237.

right also includes the right to be “beyond reproach,”²⁸ to have only your own deeds imputed to you, and to be assumed innocent unless you have committed a wrong.

From the other direction, innate right carries with it the imperative of rightful honor. Kant interprets the Roman jurist Ulpian’s precept *honeste vive* (“living honorably”) as the requirement not to allow yourself to be a mere means for others.²⁹ He also characterizes rightful honor as an “internal duty,” something that might at first appear to have no place in a doctrine of external freedom. It is an internal duty because no other person can enforce it; it is a duty of right because it creates the boundary within which freedom can be exercised, and thereby governs the arrangements that a person can enter into as a matter of right. So your entitlement to make your own voluntary arrangements with others is limited to arrangements that are consistent with the Universal Principle of Right. As a result, you cannot give another person a right to treat you as a mere means by binding you in ways in which you cannot bind them. These limits on the ways in which you can exercise your freedom have important implication for the *Doctrine of Right* as a whole. At the level of private right, you cannot sell yourself into slavery; at the level of public right, the state lacks the power to make arrangements for you requiring you to advance another person’s private purposes.

Innate right governs interactions between free persons, but does so in a way that is incomplete. Each of Kant’s subsequent extensions of the idea of a right of humanity in one’s own person is required because of the human capacity for choice. The extensions also show how the two striking inequalities of political life are consistent with the equal freedom required by innate right. *Private right*—the areas of law governing property, contract, and other legal relationships between private parties—explains how inequalities in material wealth, including holdings of property, contractual obligations, and employment and familial relationships, can be consistent with the equality of innate right. *Public right*—the areas of law governing the lawmaking powers of the state, including constitutional law, criminal law, and the public functions falling under the state’s police

28. 6:238.

29. 6:236.

power—explains how differentiated offices are both consistent with and required by innate right.

Private Right

Innate right is an incomplete account of independence, because it regulates only a person's entitlement to his or her own person and reputation. This opens the possibility that there could be other means available that a person might use in setting and pursuing purposes. This possibility requires a further “postulate,” an extension consistent with but not contained in innate right.³⁰ Kant argues that it would be inconsistent with right if usable things could not be rightfully used. The ability to use things for your purposes could be satisfied through a system of *usufruct*, in which things are borrowed from a common pool for particular uses. However, because of the way that Kant conceives of the relation between having means and setting ends, permissibly using things is not enough to extend your freedom; it would merely enable you to succeed at some particular purpose or other. Freedom requires that you be able to have usable things fully at your disposal, to use as you see fit, and so to decide which purposes to pursue with them, subject only to such constraints imposed by the entitlement of others to use whatever usable things *they* have. Any other arrangement would subject your ability to set your own ends to the choice of others, since they would be entitled to veto any particular use you wished to make of things other than your body. The innate equality of all persons entails that nobody could have standing to limit the freedom of another person, except to protect his or her own independence. Nobody else is deprived of *his* means simply because you have external things as *yours*. At most, your use of what is yours deprives him of things that he might *wish* for, but frustrating the wishes of others is not inconsistent with their freedom, because nobody is entitled to have others organize their pursuits around his or her wishes. So it must be possible to have external means as your own. All persons are symmetrically situated with respect to innate right; private right introduces the space for

30. 6:246. (Because of the recent discovery of a printing error in earlier German editions, the postulate appears after 6:250 in recent editions, but still has its academy pagination.)

an asymmetry, because it allows different people to have different claims. You and I can own different things, and we can stand in different contractual and status relations.

Kant presents private right through an analysis of the categories of Property, Contract, and Status, which form the backbone of all Western legal systems. They provide an exhaustive specification of the possible types of interaction consistent with freedom. Property concerns rights to things; contract, rights against persons; and status contains rights to persons “akin to” rights to things. Kant remarks that applying the person/thing dichotomy to itself generates four possibilities, but that the fourth, rights to things akin to rights to persons, is empty, because a thing could not owe a contractlike obligation.³¹ The intuitive idea is that free persons can only interact in three basic ways. They can interact independently, each pursuing his or her separate purposes. This is the structure of innate right. Property has a corresponding structure, because as a proprietor, I possess property that is subject to my purposes and nobody else’s. I can be wronged with respect to property in the same two ways that I can be wronged with respect to my person: by having my property used on behalf of another, or by being prevented from using my property on my own behalf. I have both possession and use of my property. If you use my horse without my permission, you use it on your behalf, not mine; if you damage it, you prevent me from using it on my own behalf. Contract covers the case in which parties interact interdependently and consensually. If I invite you into my home, you do not wrong me; if I agree to do something for you, my powers to do so are now at your disposal, and you are entitled to use them as specified in our agreement. If I fail to do what I have agreed to do, I wrong you, by depriving you of means that you were entitled to.

For Kant, a contract is not understood as a narrow special case of the more general moral obligation of promise keeping,³² but as a specifically legal institution through which the parties vary their respective rights and

31. 6:358.

32. Most enforceable contracts involve promises because they concern future arrangements. On Kant’s analysis, the consensual change of rights is fundamental to a contract, whether it is a present transfer or a future one expressed through a promise.

obligations.³³ Making an agreement is something that the two parties must do together; neither can vary his or her rights against the other unilaterally. The powers that can be created include the entitlement to transfer property, compel services, or undertake responsibility for the deeds of another.

Relations of status are the mirror image of contractual relations, because in relations of status one person has possession of but *not* the use of another person. Such relationships are possible when people interact interdependently but nonconsensually. The structure of this relationship parallels the situation when one person is in possession of another's property: if I am repairing your car, I am allowed to take it for a drive to see if it is working properly, but not to take it to visit friends. To do so would be to use what is yours in pursuit of my purposes rather than your own. Kant recognizes that there is a limited class of cases in which one person can be in possession of another, in a way that the latter is not in a position to consent to the ways in which his or her affairs are managed. Of the examples that Kant considers, the most familiar is the relationship between parents and children. Kant notes that parents bring children into the world "without the consent of the children and on their own initiative,"³⁴ and takes this to entail that parents have both a duty to act on behalf of their children and a right to "manage and develop"³⁵ them. In such circumstances, the only way their interaction can be rendered rightful is if the parents act on behalf of their children. Once again, the intuitive idea is familiar in a wide variety of contexts. Teachers are not allowed to take advantage of their students, because their asymmetrical relationship undermines the ability of the students to give genuine consent. Because teachers are precluded from acting for their own purposes, the relationship can only be rightful if they act on behalf of their students.

This analysis of the basic types of rightful interaction makes no use of any conception of harm. It is possible for one person to harm another without wronging her—as when I open a competing business that lures away your customers, or use my property so that you no longer have the

33. 6:271.

34. 6:280.

35. 6:281.

pleasant view you once did. It is also possible to wrong someone in each of the three ways without doing that person any harm. If I touch you without your consent while you sleep, or use your property without your consent while you are absent, I draw you into my purposes and wrong you, even if, as it turns out, you never learn of my action, and your body or property suffers no identifiable harm. If I breach a contract with you, I wrong you, even if, as it turns out, you had not yet done anything in reliance on it, and the expectation I deprived you of was purely prospective. The person in possession of another in a status relation who takes advantage of the relationship does wrong even if the ward of the relationship suffers no loss. This is not to say that Kant's analysis has no explanation of when or why harm is significant—it is significant when it wrongfully diminishes a person's powers, and so her freedom. But it is not significant merely because it diminishes either welfare or wealth.

The relations of right that Kant focuses on are initially introduced as ways in which free persons can interact consistent with each being independent of all the others. Kant devotes a separate discussion to the question of how a person can *come to have* a right to a particular thing, whether a piece of property or another person's performance, or to have another person act on his or her behalf. If recent political philosophers have considered property at all, they have tended to follow John Locke in assuming that the starting point for understanding property is an explanation of how acquisition of property differentiates the owner from all others in relation to a thing. Kant sees that this strategy cannot work. He rejects it as the "guardian spirit" theory of property, noting that property is a relation between persons, not a relation between a person and a thing.³⁶ Kant's theory of property explains the nature of that relationship, before explaining how persons can come to stand in that relationship with respect to a specific previously unowned thing. It also explains why property can be had "provisionally" in a "state of nature" without institutions of public law, but only conclusively in a civil condition.

³⁶ 6:260.

From Private Right to Public Right

Early in his discussion of private right, Kant writes that “it is possible to have something external as one’s own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition.”³⁷ Kant characterizes the need for a rightful condition in a numbers of places and a number of seemingly distinct ways, appealing to each of assurance, indeterminacy, and a problem about unilateral judgments. The three arguments are each supposed to show that a system of private right without a public authority is morally incoherent, because the conceptual requirements of private right—the security of possession, clear boundaries between “mine and thine,” and the acquisition of property—cannot be satisfied without a public authority entitled to make, apply, and enforce laws.

The first two types of argument have a long history in political philosophy: Hobbes speaks of assurance, Locke about problems of judgment, and Aquinas about the need for positive law to make normative concepts determinate. Yet Kant does not simply borrow from these traditional views: he develops each in a distinctive way. Assurance is characterized in these terms: “I am therefore not under an obligation to leave objects belonging to others untouched unless everyone provides me with an assurance that we will behave in accordance with the same principle with regard to what is mine.”³⁸ The point about determinacy is also familiar: Kant characterizes the “indeterminacy, with respect to quality as well as quantity, of the external object that can be acquired” as the “hardest of all to solve,” and notes that it can only be solved in a civil condition.³⁹ Later he notes that parts of natural right—including inheritance by bequest and the possibility of prescriptive acquisition by long possession—require positive legislation to make them determinate.

Kant subordinates these two familiar lines of argument to a broader argument, which is supposed to show that the acquisition of property

37. 6:255.

38. 6:256.

39. 6:266.

raises the basic issue of political authority, because it is an instance of one person's discretionary act changing the normative situation of others. By passing a law, a legislature purports to place citizens under an obligation that they would not be under had the law not been passed. The acquisition of unowned property shows that private right presupposes such public authority relations. One person, acting on his or her own initiative, unilaterally places others under a new obligation to stay off the property. Such a unilateral act could only be consistent with the freedom of others provided that it has a more general, omnilateral authorization. The omnilateral authorization is only possible in a rightful condition. Any other legal act, including that of resolving a private dispute or enforcing a binding resolution, requires legal authorization for just the same reasons.

Kant's detailed development of each of these arguments will be considered in Chapter 6. The key to his appeal to seemingly disparate grounds for entering a civil condition is that each of them is required to establish one of the branches of government under the separation of powers as he conceives it. The argument about unilateral judgment introduces the basic principle of public law, and provides an argument for a single legislative authority, capable of making laws from the standpoint of what he calls an "omnilateral will." The argument about assurance establishes the need for an executive branch, charged with enforcing law. The determinacy argument introduces the need for a judiciary, charged with applying the law to particular cases. Both executive and judicial powers are subject to law, because omnilateral law is the condition of acting together.

The functions of the three separate powers are distinct because only the legislature has the power to make law. It does so as the voice of the people, so that they rule themselves. The executive branch does not make general rules, but takes up means to give effect to them. The judiciary resolves particular disputes and calls upon the executive to "render to each what is his."⁴⁰ Together the divided powers preserve independence by putting people under common rules governing their interactions, and common procedures enforcing them so that no person is subject to the power or judgment of others.

Public Right

To the modern reader, Kant's list of public powers looks like a grab bag of eighteenth-century examples: the role of "supreme proprietor of the land," including the power to tax and overturn perpetuities in land ownership;⁴¹ a separate duty to impose taxes in support of the poor; the right to distribute offices; the right to punish and grant clemency. Underlying this apparent miscellany is a principle that Kant articulates both in the *Doctrine of Right* and in the essay *Theory and Practice*, according to which the sovereign may not give a people laws that it could not give to itself, and its corollary that the people must give to itself laws that are the preconditions of its own continued lawgiving.⁴²

This general way of framing the issue generates the catalogue of the powers that the state must have, as well as a set of limits on the ways in which those powers may be used. The broad range of powers included in the category of Police Power, as well as the general power to tax in support of those activities, depend upon the fundamental claims that each person has as a member of the public, rather than as a private citizen. As we shall see in Chapter 8, these powers include the maintenance of public roads and the guarantee of public spaces.

The requirement that the state support those who are unable to support themselves follows from the need for the people to be able to share a united will, as a precondition of their giving themselves laws together. As a matter of private right, nobody has a right to means that are not already his or her own, and, as Kant coldly remarks, "need or wish" is irrelevant. The duty to support the poor is not a way of coordinating efforts to discharge prior obligations to support those in need. There are no enforceable private obligations to do so. The only private obligation to support the needy is an obligation of charity, which does not dictate specific actions, but requires only that each person make the needs of (some) others one of her ends.⁴³ The state's duty to support the poor enters in a different way. A rightful condition makes property rights, especially the right to

41. 6:233.

42. *Theory and Practice*, 8:297. See also 6:329.

43. *Doctrine of Virtue*, 6:390.

exclude others, conclusive. In a state of nature, a person does others no wrong by taking from them; in a rightful condition, such forms of self-help are prohibited, and the person who takes what is needed to survive wrongs those from whom it is taken. Such a person is subject to the grace of those who have more. Kant's argument is that such a condition of dependency is inconsistent with the rightful honor of the dependent person. Citizens lack the rightful power to bind themselves to such a situation; as a result, enforceable private property is only rightful under a law that precludes that possibility.⁴⁴ The only way in which the right to exclude can be made the object of the general will is to guarantee public support for those unable to support themselves.

The state may not create classes or ranks of citizens, because, as Kant remarks, “talent and will” cannot be inherited. Kant is not making an empirical observation about who is likely to be most able at which jobs, but rather a normative claim about the basic entitlement to use whatever powers you have as you see fit. Hereditary classes or ranks of citizens would prevent people from using whatever abilities they had. Thus people concerned to protect their freedom—the sole concern that leads them to enter a rightful condition—could not consent to such a possibility, for they would be “throwing away their freedom.”

Kant's use of “the idea of the original contract” contrasts with contractualist thought that has been prominent in more recent political philosophy. As a matter of private right, for Kant, only actual agreement matters. As a matter of public right, the state is under a positive obligation to take steps to secure, maintain, and improve a rightful condition. This positive obligation in turn generates a right on the part of officials to make and implement judgments about how best to do this. They cannot make arrangements for the people that those people could not make for themselves. Instead, the only factor relevant to determining whether citizens could give themselves a certain law is the question of whether it is consistent with their entitlement to exercise their freedom consistent with the entitlement of others to do so. The idea of people giving themselves laws constrains legislation in two directions. It carries with it a specification of properly public purposes—those of creating, sustaining, and improving a

44. 6:326.

rightful condition—which are the only purposes a state may rightfully pursue. How exactly they are best pursued—whether, for example, the best way of providing for the poor includes job training or public health insurance against debilitating illnesses—is a question for a principle of politics to decide. From the other direction, the idea of people giving laws to themselves also restricts a possible means that can be used in pursuing properly public purposes to those that are consistent with each person's innate right of humanity. Even if it could be shown that a hereditary bureaucracy would be more efficient than a system that left careers open to talents, Kant's argument shows that citizens concerned to stay in a rightful condition would have to forgo those benefits, because their power to give themselves laws is restricted to those things that are required by or implied in their interest in protecting their freedom. The principle of public right thus does not seek to generate a specific answer to every question of politics, only to show that having public bodies reach decisions which could have been different is consistent with each person's right to be his or her own master.

Kant's approach to punishment also focuses on the requirements of maintaining a rightful condition. Kant's approach is broadly retributive, in that he supposes the seriousness of the wrong provides the appropriate measure of punishment. This commitment to retributivism does not, however, reflect any belief that it is good for people to suffer in proportion to their inner wickedness, but rather a distinctive interpretation of the preconditions of the rule of law. The underlying idea is simple, even if its application is complex: whenever someone acts in a way contrary to right, others are entitled to constrain the wrongdoer's conduct. Such constraint is not an interference with freedom; it is the hindering of a hindrance to freedom. In the analytically simpler case of private damages, the person who pays compensation is required to "preserve undiminished" what the aggrieved party already had.⁴⁵ As we shall see in Chapter 10, punishment provides a further application of the same idea. Punishment upholds the supremacy of law by upholding the state's entitlement to direct conduct, both prospectively and retrospectively. Prospectively, it provides an incentive to conformity with law by announcing that the state will see to it

⁴⁵ 6:271.

that wrongs have no legal effect. Retrospectively, it upholds the supremacy of law even in the face of its violation.

Kant also argues that the idea of the original contract precludes a right of revolution.⁴⁶ These notorious arguments are better known than other parts of the *Doctrine of Right*. As we shall see in Chapter 11, they turn on a simple and powerful idea: the revolutionary does not claim to be speaking for himself, but rather to be acting on behalf of “the people.” Yet the idea that there is such a thing as a people only has application in a rightful condition. A rightful condition solves the problem of unilateral choice and action by creating institutions through which the people can act as a collective body. The most that the revolutionary can claim to do is speak unilaterally for some end or other. His unilateral claim, however, could never authorize the use of force. Thus, the revolutionary has no right, that is, no title to coerce.

Understood in this way, Kant’s arguments against revolution do not, however, lead to the conclusion that some of the horrible regimes that the world has seen must not be resisted. To the contrary, the most egregious of these are not even candidates for a united will, because their founding principles, such as slavery or genocide, do not create a rightful condition in which all can be secure in their rights. They are, in Kant’s technical sense, conditions of barbarism, that is, not defective versions of an ideal republican system of government, but rather defective versions of a state of nature. In a state of nature, everyone is authorized to use force to bring others into a rightful condition.

The Right of Nations and Cosmopolitan Right

The *Doctrine of Right* concludes with the claim that “universal and lasting peace” is not a part but “the entire final end of the doctrine of right.” As a final end, it is internal to the doctrine of right, rather than outside it; the full realization of rightful relations is a condition in which every claim is defended through law rather than violence. The requirement that interaction be subordinated to law has led many readers to expect Kant to endorse some form of a world government, but he explicitly rejects that possibility.

46. 6:320.

Relations between states differ from relations between persons in two fundamental respects, each of which enters into Kant's unwillingness to generalize his argument for entering a state to an argument for a single world government. First, as a condition of public right, a state is only entitled to act for public purposes, rather than for the private purposes of its rulers or officials. Second, states do not have acquired rights to things outside their boundaries. Based on these contrasts, an association to guarantee peace requires neither a sovereign legislature nor the power of enforcement. States need only to agree to accept the decisions of a body like the court so as to settle their differences peacefully.

Although contemporary writers often regard Kant's emphasis on the state as a holdover from a very different historical period, his restriction of state powers and obligations in light of each state's borders reflects his underlying account of the basis for enforceable obligations. As we will see in Chapter 10, foreigners have only the right to visit, except when they have no place else to go.

III. Conclusion

Kant's legal and political philosophy starts with a simple but powerful conception of freedom as independence from another person's choice. The idea of freedom provides him with a systematic answer to the most basic questions of political philosophy. It explains how (and when) inequalities in wealth and power are consistent with the innate equality of all persons. It also shows that giving special powers to officials is consistent with equal freedom for all. It shows why some people must be given the power to tell everyone (including themselves) what to do by making laws, and why others must be empowered to force people to do as they are told. The answer is distinctively Kantian: political power is legitimate and enforceable because freedom requires it.