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978-0-521-89871-3 - Kant's Moral and Legal Philosophy

Edited by Karl Ameriks and Otfried Höffe

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Introduction

Karl Ameriks and Otfried Höffe

I. Background

The widespread influence of Immanuel Kant's moral and legal philosophy is a striking exception to the division that can often be found between the approaches of modern European philosophy and the Anglophone analytic tradition. Although Kant's system as a whole exhibits a deeply cosmopolitan orientation even in its general foundations, his philosophy has become especially relevant in our time primarily because of the numerous practical implications of its central ideal of autonomy, which still determines the dominant liberal views of history, law, and politics.¹

The international reception of Kant's practical philosophy has become so enthusiastic that it has tended to stand in the way of an appreciation of the distinctive contributions of contemporary German Kant scholarship. This development is in one sense a compliment to the openness of German scholars to the outstanding achievements of earlier Anglophone Kantians such as H. J. Paton, Lewis White Beck, and John Rawls. In another sense, however, it may also be a testimony to the perplexing fact that for more than two centuries, Kant's ethics has often been displaced from a central position within Germany itself – even though, from the outside, it

¹ See, for example, *Rechtsphilosophie der Aufklärung*, ed. R. Brandt (Berlin, 1982); *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy*, eds. J. Kneller and S. Axinn (Albany, 1998); and Katerina Deligiorgi, *Kant and the Culture of the Enlightenment* (Albany, 2005).

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can appear to be nothing less than the obvious shining glory of German thought.²

Even though Kant's views had an enormous influence on figures such as Schiller, Fichte, Hegel, Jean-Paul, and Kleist, these views were also quickly regarded as surpassed by the avant-garde in his homeland.³ Most of the first German idealists, positivists, and naturalists mocked Kant's ethics even as they borrowed from and radicalized his stress on human autonomy. The development of neo-Kantianism at the end of the nineteenth century and the beginning of the twentieth century did not bring about a fundamental reversal of this tendency. Whatever the intrinsic distinction of their work, the influence of first-rank neo-Kantians such as Hermann Cohen and Ernst Cassirer was minimized by the distressing (to say the least) developments that led to the fall of the Weimar republic. Isolated works on Kant's ethics by figures such as Leonard Nelson, Julius Ebbinghaus, Gerhard Krüger, and Hans Reiner are interesting exceptions that only prove the rule of the marginal status of Kantianism in mid-twentieth-century Germany.⁴ In the bestselling works of Nietzsche, Heidegger, and the other influential thinkers of the era, the main features of Kant's thought – when they were highly influential – became more often a target of criticism than a model to be followed. For decades even after World War II, Kantianism was eclipsed in many circles by movements such as critical theory, existentialism, philosophy of language, hermeneutics, structuralism, and revivals of later idealist approaches.

In the Continental tradition in general (in contrast, still, with much work in the analytic tradition), Kant's ethics is not treated in isolation but tends to

² There are, of course, exceptions. In addition to the authors in this volume, see, for example, Hermann Krings, *System und Freiheit: Gesammelte Aufsätze* (Freiburg, 1980) and, more recently, the series of “cooperative commentaries” on Kant's main works in practical philosophy, ed. by O. Höffe: *Grundlegung zur Metaphysik der Sitten* (Frankfurt, 1989); *Zum Ewigen Frieden* (Berlin, 1995); *Metaphysische Anfangsgründe der Rechtslehre* (Berlin, 1999); and *Kritik der praktischen Vernunft* (Berlin, 2002).

³ Matters got worse later on. One of the Nazis' first decisions in power was to eliminate the state of Prussia. This act, combined with the Cold War and the situation of “Kaliningrad” (Kant's renamed birthplace in an isolated part of present-day Russia), has left Kant without even a German chamber of commerce that can provide him with the usual local institutions for preserving the memory of a first-rank historical figure.

⁴ Leonard Nelson, *Critique of Practical Reason* (Scarsdale, NY, 1957); Julius Ebbinghaus, *Gesammelte Aufsätze, Vorträge, und Reden* (Darmstadt, 1956); Gerhard Krüger, *Philosophie und Moral in der kantischen Ethik* (Tübingen, 1931, 2nd ed. 1969); Hans Reiner, *Duty and Inclination: The Fundamentals of Morality Discussed and Redefined with Special Regard to Kant and Schiller* (Hingham, MA, 1983). (If a German book has an English translation, the translated edition is the one listed in this Introduction.)

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be approached from the outset as a component of his Critical Philosophy as a whole and as a culmination of the mainstream of modern philosophy after Descartes. Although leading exponents of this tradition take note of Kant's idea that there is a "primacy of the practical," they are sensitive to the way in which Kant's ethics remains embedded in a very complex epistemological and metaphysical system. They also stress the fact that Kant's views arise in a historical context that involves an appropriation of ideas from earlier viewpoints such as stoicism, rationalism, pietism, the Newtonian revolution, and the Rousseauian enlightenment. All this understanding of the background of Kant's position does not necessarily lead, however, to a widespread advocacy of it; on the contrary, its entanglements with the philosophical tradition have often been a cause of its rejection. For a long time, Continental philosophy was dominated by figures who were sharply critical of Kant precisely to the extent that his work appeared to epitomize the character of earlier modern philosophy in general. These figures approached Kant's systematic views through the lens of their own allegiance to one of the main schools that followed in the wake of the Critical Philosophy and that aimed at reversing the overall trajectory of the modern "Cartesian" approach. Followers of Hegel, Romanticism, Marx, Nietzsche, phenomenology, and pragmatism all became well-known for their outright rejection of many of the general features most commonly associated with Kant's thought such as formalism, rigorism, and anti-naturalism. The common presumption of these followers was that Kant's own ethical position – that we should will only in accordance with maxims whose form is consistent with "pure" practical rationality – was so clearly wrong-headed that the only question remaining was exactly what kind of "material" alternative should be developed in opposition to it. For this reason, not only Nietzsche and Heidegger, but also such diverse leading thinkers as Max Scheler, Nicolai Hartmann, Theodor Adorno, Hans-Georg Gadamer, and Jürgen Habermas all argued vigorously that a fundamentally new starting point was needed in practical philosophy, one that would overcome what they took to be severe limitations in Kant's own moral theory.

In more recent German philosophy, as throughout philosophy in the rest of the world, anti-Kantian tendencies have remained popular, flourishing in a variety of guises such as broadly Aristotelian virtue theory, broadly Humean "quasi-realism," and broadly Nietzschean "anti-theory" approaches.⁵ At the same time, however, a steady stream of significant

⁵ See, for example, Ernst Tugendhat, *Vorlesungen über Ethik* (Frankfurt, 1993); Ursula Wolf, *Die Philosophie und die Frage nach dem guten Leben* (Hamburg, 1999); Rüdiger Bittner, *Doing Things for Reasons* (Oxford, 2001).

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new Kant scholarship has been produced by contemporary German philosophers who appreciate the systematic and stylistic advances of analytic approaches even as they manifest the historical and interpretive skills that are distinctive of the Continental tradition. While maintaining a broadly sympathetic attitude toward much of the Critical Philosophy, the scholars of this era have focused on developing extremely careful interpretations of Kant's arguments in a way that does not shrink from offering significant criticisms of his theory. Instead of trying to resurrect a unified "neo-Kantian" school, or orienting themselves in terms of a traditional post-Kantian movement, they have concentrated on particulars and on the fact that many of the crucial elements of the background and logical structure of Kant's main arguments still deserve much closer analysis.⁶ In addition, German scholars have made significant progress recently in publishing new material concerning lectures by Kant on ethics, law, and anthropology.⁷ This development is especially relevant for practical philosophy in general now that leading Anglophone ethicists have also placed a new emphasis on understanding contemporary arguments against the background of little-known details in the development of modern ethical thought.⁸

The continuing relevance of Kant's work, and hence of the latest German scholarship on it, thus rests on a wide variety of tendencies. Philosophers who are oriented toward close conceptual analysis, or at least to the challenge of a rigorous system that aims to parallel the achievement of modern science, cannot help but be intrigued by Kant's classical texts – their striking innovations as well as their bold architectonic. Similarly, philosophers who have taken a "historical" turn, or are interested primarily in phenomenology, hermeneutics, or politics, cannot help but be interested in the rich data provided by Kant's system and its

⁶ An exception is the strong interest in Rawlsian ideas. See *Zu Idee des politischen Liberalismus: John Rawls in der Diskussion*, ed. W. Hinsch (Frankfurt, 1997); Otfried Höffe, *Politische Gerechtigkeit. Grundlegung einer kritischen Philosophie von Recht und Staat* (Frankfurt, 2002, 3rd ed.); and *Kants Ethik*, eds. K. Ameriks and D. Sturma (Paderborn, 2004).

⁷ See Reinhard Brandt, *Kritischer Kommentar zu Kants Anthropologie in pragmatischer Hinsicht: 1798* (Hamburg, 1999); G. Felicitas Munzel, *Kant's Conception of Moral Character: The Critical Link of Morality, Anthropology, and Reflective Judgment* (Chicago, 1999); Manfred Kuehn, *Kant: A Biography* (New York, 2001); and *Essays on Kant's Anthropology*, eds. B. Jacobs and P. Kain (Cambridge, 2003). See also n. 10.

⁸ See, for example, Jerome Schneewind, *The Invention of Autonomy* (Cambridge, 1998), and the contributions – all in English and several on historical issues – by Anglophone and German scholars in *Kant's Metaphysics of Morals: Interpretive Essays*, ed. M. Timmons (Oxford, 2002).

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widespread impact. Despite its detractors, Kant's persuasive stress on the deep interconnections between autonomy-oriented concepts such as reason, lawfulness, duty, respect, rights, and self-determination has made his ethics a central and irreversible feature of modernity.

II. Kant's Moral Philosophy

The contributions in this volume fall into four parts. They have been selected with the aim of covering central but relatively unexplored themes in Kant's major works while providing a representative, but by no means comprehensive, sampling of works from both older and newer generations of scholarship.

Part I contains two essays illuminating the historical background of Kant's ethics and the fact that, years before he had taken his Critical turn, Kant was already trying to develop a unique synthesis of the most valuable ideas in the practical philosophies of his empiricist and rationalist predecessors.

Part II contains four essays on Kant's best known text in this area, the *Groundwork of the Metaphysics of Morals* (1785), presented in approximately the same order as the four-part structure of the *Groundwork*, which contains a preface and three main sections. These essays take up themes that tend to be neglected in the Anglophone literature on Kant's ethics, which has concentrated primarily on issues such as the various formulations of the Categorical Imperative in the *Groundwork*'s second section.

Part III contains four essays devoted to the *Critique of Practical Reason* (1788) and themes that also have not been the main focus of typical analytic work, such as the dialectic and the postulates of pure practical reason. Part II and III also each contain an essay on Kant's central notion of a maxim, and these contributions illustrate the wide range of opinion that is typical of current literature on this controversial subject.

Part IV contains four essays that explore some of the main themes of works from Kant's practical philosophy that go beyond his two best-known texts. This part concerns the broader sphere covered by the German term *Recht*, which includes not only legal "duties of justice" (in contrast to "duties of virtue," the topic of the other half of Kant's most extensive work in ethics, the two-part *Metaphysics of Morals*, 1797), but also the whole range of social considerations bearing on economic and political relations within and between modern states. Unfortunately, there is not enough space to include samples of work on the significant

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value implications of important texts by Kant that focus on related areas such as religion, history, and aesthetics.

Chapter 1 in this collection is the first English version of one of Dieter Henrich's seminal early essays on Kant. Among postwar specialists, Henrich is recognized as the leading expert on classical German philosophy in general. In recent years, he has become especially well-known for his research on developments in philosophy immediately after Kant,⁹ but his interpretation of this period in many ways presupposes the broad and nuanced perspective that he developed on Kant's practical philosophy in earlier essays such as this treatment of Hutcheson and Kant. Henrich's discussions typically have a complex systematic structure combined with an original and subtle historical hypothesis. In this essay, he distinguishes four basic themes in Kant's ethics, all intended to have a pure meaning rather than an empirical meaning: "universality," "binding character,"¹⁰ "transcendental grounding," and "the content of ethical consciousness."

These themes correspond, in order, to what could also be called Kant's answers to the fundamental questions of the content, authority, possibility, and motivation of morality. The issue of "possibility," or "transcendental grounding," involves the metaphysical question of how it is that Kantian morality, especially with its strong features of normativity and freedom, can be thought of coherently at all. Kant's eventual answer to this question rests largely on his doctrine of transcendental idealism.¹¹ This question is a major concern in all of Kant's Critical ethics, especially the final section of the *Groundwork*, and it is a principal theme of some of Henrich's most extensive and significant later work on Kant.¹² In Kant's early reflections on ethics, however, and especially with respect to the

⁹ See, for example, Dieter Henrich, *Between Kant and Hegel: Lectures on German Idealism* (Cambridge, MA, 2003).

¹⁰ Henrich thus claims that already by the 1760s, Kant had grasped the notion of the categorical character of morality. See, however, *Immanuel Kant: Vorlesung zur Moralphilosophie*, ed. W. Stark, with an Introduction by Manfred Kuehn (Berlin, 2004). Kuehn's Introduction disputes whether at this point Kant had yet clearly settled on the view that we need an imperative that goes beyond our sensory interests altogether.

¹¹ Under this heading, Henrich also discusses some motivational issues that are entangled in Hutcheson's peculiar teleological account of how God governs our affections; these discussions might also be placed under the heading of Henrich's fourth concern, the proper determination of "ethical consciousness."

¹² See, especially, Henrich, *The Unity of Reason: Essays on Kant's Philosophy*, ed. R. Velkley (Cambridge, MA, 1994); and "The Deduction of the Moral Law: The Reasons for the Obscurity of the Final Sections of the *Groundwork* of the *Metaphysics of Morals*," in *Kant's Groundwork of the Metaphysics of Morals: Critical Essays*, ed. P. Guyer (Lanham, MD, 1998), pp. 303–341.

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relationship to Hutcheson that Henrich emphasizes, Kant's discussion focuses instead on the issue of motivation and moral consciousness: how can we explain the peculiar fact that even though morality essentially requires a clear recognition of what is right and wrong, this merely judgmental attitude is not by itself sufficient for moral commitment?

Kant calls this problem the "philosopher's stone," the mystery of explaining how it is that we might "know" what is right and still not have the kind of distinctive action-guiding "insight" that occurs in a moral consciousness genuinely willing to act for the sake of duty. Henrich argues that the posthumously published "Reflections" reveal that a consideration of Hutcheson's position played a key role in Kant's coming to an appreciation of the great difficulty of this problem. Kant did not take over Hutcheson's notion of moral sense, but he did take over Hutcheson's point that genuine moral consciousness requires more than mere "kind affection." It requires a distinctive second-level attitude of approval, which is rooted in something that can be found even in the "humblest" uneducated person, and is based in something other than mere theoretical reason and an abstract recognition of the difference between right and wrong. It is not difficult to see that these reflections prefigure Kant's later doctrine of the distinctive feeling of moral respect and his Critical account of the non-reducible "interest" that reason, as pure will, has in morality.

Henrich also stresses that even in this early context, Kant's work already reveals an overriding concern with the value of justice (as opposed to mere benevolence) and with the need to find a more complex moral psychology and theory of subjectivity than that provided by the empiricist tradition.¹³ Hutcheson went so far as to argue that intellect alone is not enough for morality, but although he called the extra factor that was needed "will," he still tended, as did others in the British tradition, to conflate this factor with the domain of "feeling" or "drive" rather than recognizing it as an irreducible third faculty.

In his early period, Kant studied not only the empiricists but also (as Henrich notes) the rationalists, and it is well-known that he also contested Wolff's idea that moral consciousness can be explained through the intellectual representation of perfection. Clemens Schwaiger's essay (Chapter 2) picks up on this point and then goes so far as to argue that the

¹³ Henrich's thought that Kant "developed his own specific conception of morality in terms of the rational structure of the will" and as a "kind of self-relation" corresponds to a theme of Prauss's essay, Ch.5 in the present volume.

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early Kant might be best understood in terms of his reaction to the rationalists in general. Schwaiger shows how Kant's early teaching was strongly influenced by discussions of obligation in Pufendorf, Leibniz, Wolff, and Baumgarten. He argues that these figures, rather than any British thinkers, or pietists such as Crusius, are the key to Kant's special emphasis on duty as the fundamental notion of ethics. Wolff took a first step by following Leibniz and insisting, against Pufendorf, that acts are moral only when they are acknowledged as intrinsically right (that is, involving a "natural" obligation and not merely a "civil" obligation) and not merely commanded by an external authority. Wolff also went on to argue that a genuine sense of obligation requires not mere passive obedience but an active process of acceptance on our part. Baumgarten, whose texts Kant always used as a basis for his own ethics lectures, took a further step by defining morality entirely in terms of obligation, and placing discussions of happiness under the heading of religion. In addition, Baumgarten was innovative in stressing that morality involves not only necessity but also necessitation – that is, the constraint of the human will because it, unlike the divine will, is not intrinsically in accord with reason. Precisely because of this complex combination of religious concerns and pure moral considerations regarding obligation, Schwaiger concludes that it is best to understand Kant's ethical teaching as being indebted to Baumgarten above all (even if Kant also departed from Baumgarten in many ways). At the very least, Schwaiger establishes the premise that anyone trying to understand the origins of Kant's practical philosophy must pay close attention to the extensive "scholastic" sources that are documented here.

Ludwig Siep's essay (Chapter 3) focuses critically on Kant's argument in the preface of the *Groundwork* that ethics requires a purely metaphysical foundation. Siep notes that the pre-Critical reflections of the 1760s already show that Kant was committed to the view that the highest practical principle must be *a priori*. Given that the first *Critique* (1781) and the *Metaphysical Foundations of Natural Science* (1786) remain transcendental even while making use of general empirical features, such as the fact of dynamic motion, it might seem that there could also be a Critical ethics that begins by incorporating so-called "anthropological" but still very general features, such as the existence of a dynamic plurality of dependent and embodied persons. The works of the Critical era, however, clearly emphasize the need to develop a metaphysics of morals that is completely independent of anthropological considerations.¹⁴

¹⁴ This point is noted (with regret) in Kuehn's "Introduction"; cf. the essays in Jacobs and Kain (2003).

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Siep argues that although the *Groundwork's* preface offers both “speculative” and “practical” arguments for this project, they are not clearly convincing. The speculative considerations focus on the possibility of establishing a basic principle that is valid for a rational will as such and that ignores factors specific to the human will. Kant often employs this kind of general and stipulative notion of a pure core meaning to “morality” even in his later work,¹⁵ but it is striking that he hardly keeps to it even within the *Groundwork* itself. As Siep notes, the preface glosses over the fact that a central part of morality consists of legal duties of right, which necessarily involve external relations of human beings, and examples from this realm (for example, concerning a bank deposit) play a central role in the *Groundwork's* arguments. Even the notion of “virtue” is defined by Kant in terms of the constraints and difficulties that a finite will like ours must face, and so it does not fit the notion of metaphysics in its purest sense. This is also true of the “imperative” aspect of the Categorical Imperative, for although the moral law as such can be stated in purely rational terms that make no mention of the inclinations of a finite will, an imperative is something directed toward beings who need to overcome tendencies to be less than fully rational.

All of this suggests that Kant's call for a pure metaphysics of morals should be understood in terms of a number of different meanings,¹⁶ and that Kant's main concern may not always be absolute purity, but at times simply a perspective that at least is not dependent on variable and highly contingent features of the human situation. This position may seem to be all that is required by Kant's own “practical” arguments for a metaphysics of morals, which stress that moral life requires certainty, stability, and strict obligation. These features correspond to the claims about authority, motivation, and content that were noted earlier as central to Kant's rationalist ethics. As Siep notes, however, what is striking about the preface and the beginning of the first section of the *Groundwork* is that Kant contends not only that the practical perspective of “everyday” moral consciousness acknowledges the need for these features, but also that these features demand an unconditional grounding of their possibility in the pure metaphysical notion of a rational will. Siep argues that even if one grants the internal consistency of Kant's project, there may

¹⁵ See, for example, Kant's *Religion*, preface to the first edition, “since its maxims bind through the mere form of universal lawfulness...morality...needs no end” (6: 3f). Translation from *Religion within the Boundaries of Mere Reason*, eds. A. Wood and G. di Giovanni, with an Introduction by Robert M. Adams (Cambridge, 1998).

¹⁶ See Dieter Schönecker's essay, ch. 4 in the present volume.

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be theories that are not purely metaphysical in Kant's strict sense and can nonetheless undergird an ethics with commands that are universal in content, motivated by a respect for freedom, and rest on an authority rooted in rationality. In other words, an adequately demanding morality might exist without being independent of human nature altogether and without being focused entirely on the concepts of pure lawfulness and unconditional value that Kant stresses.¹⁷

Dieter Schönecker's contribution (Chapter 4) provides a detailed analysis of the logical relationship between the first two sections of the *Groundwork* and the endpoints of the "transitions" between them. At first sight, it can certainly seem that in accord with the three-part title, *Groundwork of the Metaphysics of Morals*, Section I is concerned with ordinary moral consciousness, Section II with the philosophical or "metaphysical" determination of the formula of its supreme principle, and Section III with the grounding of the possibility of this kind of morality in an account of transcendental freedom. Matters are complicated, however, by the fact that Kant makes not only transitions between these sections but also within them, and that the end point of an earlier transition need not be exactly the same as the starting point of the next transition. In particular, Section I moves from "common rational" to "philosophical rational moral knowledge," whereas Section II moves from "popular moral thought (that is, philosophy) to the metaphysics of morals." In other words, the "philosophical rational" knowledge at the end of Section I is not quite the same as the "popular moral thought" at the beginning of Section II.

Schönecker shows how this distinction is by no means trivial, but reveals the very different concerns of the two sections. Section I starts at a popular and sound level, and in revealing the concept of good will and duty, it reaches a sound philosophical position, albeit one that still has to be developed much further. Section II can then be understood as beginning from a standpoint that is already philosophical but "popular" in a mixed and unsound sense because it is based on heteronomous principles, and these principles create an obstacle to our holding true to the sound notion of duty that has just been made explicit. Kant's criticism of these principles reflects his long-term concern with the history of ethical theory as well as his belief that these principles arise from a common and corrupt

¹⁷ It may be that Kant could acknowledge this point by distinguishing between unconditional and conditional goods within his own system; see Prauss's essay, ch. 5 in the present volume.