> 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 of the laws too. (CPR, A 316/B 373)[1]

1 Is Kant's Doctrine of Right Part of His Moral Philosophy?

In the Western tradition there have been two basic justifications for the existence of the state as a form of social organization with the right to use coercion to control the behavior of its members. On the one hand, there is the idea that acceptance of rule by a state is recommended by prudence, and should be governed by considerations of prudence, whether that is the prudence of the governed, as Thomas Hobbes assumed in his argument that the state should be like a powerful Leviathan in order to prevent conflict among its subjects, or the prudence of those who govern, what they need to do in order to hold on to their power, as Niccolò Machiavelli advised princes. On the other hand, there is the view that submission to the rule of law is part of the moral obligation – and therefore corresponding right – of human beings, however moral obligation is understood, whether as divinely commanded, as in John Locke, or not. Immanuel Kant clearly thought of submission to the rule of a state as part of morality, which for him is grounded not in divine command but in the nature of reason itself, fully accessible to human beings with their own resources. The goal of prudence is happiness, but Kant is emphatic that providing for the happiness of its members is *not* the proper object of the state, and any thought otherwise can only lead to what he despises as "paternalism" (TP, 8:290). Since for Kant all practical reasoning reduces to either prudence or morality, if the necessity of submission to the rule of a state is not grounded solely in prudence then it can be grounded only in morality.[2] This is why Kant's first published presentation of his political philosophy, the section "On the Relation of Theory to Practice in the Right of a State" in his 1793 essay "On the Common Saying: That May Be Correct in Theory but It Is of No Use in Practice," is subtitled

[1] The list of abbreviations for Kant's works precedes the References. Passages from the *Critique of Pure Reason* are cited by the pagination of its first ("A") and second ("B") editions; all passages from other Kant's works by volume and page numbers from Kant (1900–). Translations are generally from the volumes of the Cambridge Edition of Kant cited in the Bibliography, which reproduce these forms of pagination. In citations from Kant, boldface reproduces his emphasis, in *Fettdruck* in the original text, italics his use of Roman type for what he regarded as foreign words, and the occasional underlining for my added emphasis. In my own text, italics are used for emphasis.

[2] On Kant's exclusive and exhaustive contrast between prudence and morality, see, among many others, Gregor (1963, pp. 35–6); Mulholland (1990, pp. 2–3); and Ripstein (2009, pp. 3–5).

nothing other than "Against Hobbes" (TP, 8:289).[3] The project for this Element is to demonstrate that Kant's political philosophy is indeed grounded in his moral philosophy.

Kant addressed political philosophy chiefly in three texts published in the 1790s, namely, the 1793 essay "Theory and Practice" just mentioned, the pamphlet in the form of a mock treaty *Toward Perpetual Peace* (1795), and the first half of his treatise on *The Metaphysics of Morals* (*Metaphysik der Sitten*) of 1797, namely, the *Metaphysical Foundations of the Doctrine of Right* (*Metaphysische Anfangsgründe der Rechstlehre*). The *Rechtslehre* or *Doctrine of Right*, as it is usually called in English, was published in January of 1797, followed in August by the companion *Metaphysical Foundations of the Doctrine of Virtue* (*Metaphysische Anfangsgründe der Tugendlehre*). The two parts were published together as a single book later that year although the Introduction to the book as a whole had already been published with its first part, followed in 1798 by a second edition with an Appendix of replies to one of the first reviews of the *Doctrine of Right*. Kant had previously lectured on the topic of *Naturrecht*, or "natural right," using as his textbook the *Ius Naturae* (*Law of Nature*)[4] by the Göttingen professor of philosophy and law Gottfried Achenwall, a dozen times, for the last time in 1788 (or maybe 1790); one set of student notes from the offering of that course in the summer semester of 1784 is known, which has been published under the title *Naturrecht Feyerabend*, named after the student who took or at least owned the notes.[5] In addition to these student notes, many notes in Kant's own hand, apparently made in preparation for drafting the *Doctrine of Right*, also survived, at least until World War II, and these have also been published. These are the materials that we have for interpreting Kant's political philosophy.

Kant himself did not call his doctrine of Right "political philosophy."[6] As we will see, Kant himself did speak of "politics" (*Politik*) and "politicians" (*Politiker*) in an important Appendix in *Towards Perpetual Peace*, in which he distinguishes between "moral politicians," who take "the principles of

[3] On Kant's attitude toward Hobbes, see Williams (2003) and Guyer (2012).

[4] This work was originally published as *Elementa Iuris Naturae* by Achenwall and Johann Stephan Pütter in 1750. Achenwall took over sole authorship with the third edition of 1763, which was what Kant used. Achenwall and Pütter 1995 is a Latin-German edition of the original work, and Achenwall (2020a) and (2020b) are English translations of Achenwall's solo editions.

[5] The *Naturrecht Feyerabend* was originally published in Kant (1900–), edited by Gerhard Lehmann, in volume 27.2.2 (1978), pp. 1317–94, and in a much more accurate version, edited by Heinrich P. Delfosse, Norbert Hinske, and Gianluca Sadun Bordoni, in Kant (2010–14). Frederick Rauscher's translation in Kant (2016) is based on the latter.

[6] I will use the italicized name "*Doctrine of Right*" to refer to Kant's text from 1797, and the nonitalicized phrase "doctrine of Right" to refer to the contents of this and the other texts mentioned. I explain the capitalization of "Right" in what follows and in Section 2.

political prudence in such a way that they can coexist with morals [*mit der Moral*]," and mere "political moralists," who frame their "morals to suit the statesman's advantage" (TPP, 8:372). But he never referred to his doctrine of Right as political philosophy, and perhaps we should not either. For by "a right" Kant meant an obligation that morally could and should be coercively enforced, and by "Right" he meant the totality of such appropriately coercively enforceable rights. In Kant's view the principles of Right should ground both the legitimacy and the limits of politics, but politics – and therefore political philosophy – concerns the implementation of Right in real-life circumstances, and may also include social goals at the subnational, national, and supranational levels that go beyond what we might think of as properly coercively enforced. So what we mean by politics and political philosophy may be broader than what Kant means by Right. Kant always uses the permissibility and necessity of coercive enforcement as the criterion of what belongs in the domain of Right,[7] and therefore construes the doctrine of Right more narrowly than we might now conceive of political philosophy, although as its indispensable foundation.

But if not as "politics" and "political philosophy," then how should we translate Kant's terms *Recht* and *Rechtslehre*? After all, we – speakers of contemporary English – are familiar with the use of "right" as an adjective, meaning correct or appropriate from any number of normative standpoints, whether scientific, mathematical, aesthetic, social, moral, or political, as well as with the use of "a right" to refer to a particular moral or political entitlement, but we do not use "right" in the singular to refer to the totality of coercively enforceable obligations, and Kant's usage of "right" in that way – *Recht* – can seem strange to us. So people have sought other translations of Kant's term. Some have tried "law," since we do associate coercive enforcement with "law" in its juridical sense.[8] But Kant has another word for "law," namely, *Gesetz*, and it would only cause confusion to translate both *Recht* and *Gesetz* by "law," especially since Kant, like anyone else, assumes that there are laws in force in any actual state that are *not* right or properly part of *Recht*. (For Kant there also laws of nature, for example Newton's laws of motion, that have nothing to do with human conduct, let alone with the coercive enforcement of norms of human conduct; but this is true in ordinary English as well, and is not a source of confusion.) "Justice" has also been suggested as a translation of

[7] See Guyer (2016b) and (forthcoming).

[8] For example, the first English translation of Kant's text was entitled *The Philosophy of Law* (Hastie 1887, cited at Mulholland 1990, p. xvi), and Günter Zöller proposes "(juridical) law" in Zöller (2020, pp. 40, 42–3).

Recht; thus, Kant's *Rechtslehre* has been translated as "Doctrine of Justice."[9] But by "justice" we may mean more than what may properly be enforced by human juridical and penal institutions, thus when we call someone "just" we may mean more than just that he abides by codified and enforceable laws,[10] and some people are happy to speak of divine justice. Further, while we might think that justice includes equity, such as paying a servant more than originally agreed to if there has been significant inflation since the agreement was made, Kant argues that this is not an enforceable obligation and thus is not part of *Recht* (DR, Introduction, Appendix I, 6:234–5). Since neither "law" nor "justice" will work, there seems to be no alternative to translating *Recht* as "right." However, to forestall one possible source of confusion, when *Recht* refers collectively to the totality of coercively enforceable obligations rather than to any particular coercively enforceable obligation, that is, *a* right, it will be capitalized as "Right." Thus, the topic of this Element is the moral basis of Right.

This terminological issue out of the way, we can now turn to our central question: Is Right a proper part of morality for Kant? Or does it have some form of normativity distinct from that of morality? Is there some reason other than morality why we should conform our politics to the principles of Right? The definition of "moral politicians" from *Towards Perpetual Peace* says only that for such politicians the principles of political prudence must be able to *coexist* with morals, which could be true as long as one thinks that morality is a supreme or overriding norm, to which any other norms of conduct, whether from aesthetics, etiquette, or politics, must be subordinated, but it does not actually say that Right is *part* of morality. Nevertheless, the answer to this question should be obvious. After all, Kant's *Doctrine of Right* is the first part of his larger *Metaphysics of Morals*, so how could Right *not* be part of morality? Moreover, all of Kant's modern predecessors had thought of Right as part of morality, namely, the coercively enforceable part of morality, that is, the part of morality that morality itself says can and should be coercively enforced if and when that is necessary[11] – and while Kant typically makes it

[9] Thus the distinguished Kant scholar John Ladd, who taught at Brown University a generation before I did, translated Kant's *Metaphysische Anfangsgründe der Rechtslehre* as "Metaphysical Elements of Justice"; see Kant (1999).

[10] See Pufendorf (2003, Book I, chapter II, section XII, p. 49). Samuel Pufendorf's *Whole Duty of Man*, first published in 1672 (Pufendorf 2003 reproduces its first English translation from 1691) was a foundational text for both moral and political theory throughout the eighteenth century in both Germany and Britain.

[11] In Pufendorf, for example, all human duties may be divided into duties to God, to self, and to others, and while the first two classes of duty are subject to enforcement by God, only the last is subject to enforcement by human agencies; for example, Pufendorf (2003, Book I, chapter III, section XIII, pp. 59–60). In Achenwall, as in many others, there is a distinction between "perfect" obligations and laws and imperfect ones that is the distinction between coercively

clear to us when he thinks that he is making a significant innovation in the history of philosophy, he offers no suggestion that he is departing from tradition in this regard. However, several distinguished recent commentators have argued that on Kant's account Right is *not* a straightforward part of morality, or is "independent" from it – thus their view is called the "independence" thesis about Kant's doctrine of Right.[12] I think that this independence thesis is false, and that for Kant Right *is* obviously part of morality, namely, the coercively enforceable part of it. I also think, pardon the pun, that Kant was right about this, that is, that we should think of the underlying principles of law and politics as part of morality in general, but here I will attempt to prove only that this is what Kant believed.

Right must be part of morality for Kant given his conception of the foundation of morality itself. This is that the freedom of human beings to set their own ends is the fundamental value that is to be *preserved* and *promoted* in all of morality (see G, 4:430), and that Right is at bottom the requirement that in their actions in pursuit of their own ends – "their external use of their power of choice" in Kant's language – people should leave others as free to set and pursue their own ends as they are themselves, that is, *preserve* freedom for all. Right is simply that part of morality that governs those of our actions that could potentially interfere with the freedom of others. It is certainly not the whole of morality, for it does not include *promoting* freedom in the form of developing our own abilities or assisting others in the pursuit of their own ends, but it is an indispensable part of it, the framework for the preservation of the freedom of all involved in our interactions with each other.[13] After I have laid out Kant's basic idea, I will argue that several points in Kant's political philosophy more broadly understood – his accounts of our duty to leave the

enforceable obligations and noncoercively enforceable ones, but always within the class of moral obligations: "A *natural obligation* that, if it is violated, is connected to another man's moral ability to coerce the violate is called a PERFECT OBLIGATION; so an IMPERFECT OBLIGATION is one that is not linked to such a natural right to violence, i.e., that cannot be enforced (exacted by force)"; Achenwall (2020a, §34, p. 13). For more examples, see Guyer (forthcoming).

[12] Leading proponents of the "independence" thesis have included Thomas Pogge (Pogge 2002), Marcus Willaschek (Willaschek 1997, 2002, and 2009), and Allen Wood (2008 and 2014). I have criticized their arguments in Guyer (2002) and (2016b); other important criticisms are Nance (2012), Baiasu (2016), and Pauer-Studer (2016). Here I will focus on my version of the alternative, "dependence" view. Herman (2021, p. 102n42), incorrectly places me on the side of the "independence" theorists.

[13] My approach will thus be closest to those of Gregor (1963), Mulholland (1990), Ripstein (2009), and Pauer-Studer (2016), but I will point out some differences in due course. In saying that Right is indispensable for the realization of morality, however, I do not mean that it is any function of the state, which secures the condition of Right, to itself otherwise actively promote morality (see also Rossi 2005, pp. 63–4).

state of nature and enter into the civil condition, of the duties of rulers, and of the duties of citizens – make sense only on the assumption that for Kant Right is part of morality, not just a matter of prudence.

2 Kant's Definitions of Right

Kant's terminology can be confusing, so let's start with some definitions. We can begin with Right. Borrowing one of his favorite distinctions, we can distinguish between his formal and material definitions of Right, or, using other terms, between nominal and real definitions. The formal definition of Right distinguishes it from what Kant calls Ethics in a narrow sense – the capitalization here will distinguish this narrow sense from the broader sense in which Kant sometimes uses "ethics" (*Ethik*), and in which everyone uses it now, in which it is simply equivalent to morals or morality as a whole. The material definition makes explicit the substance or specific content of Right on which, as it turns out, the formal and/or nominal definition of Right is ultimately based. This formal and/or nominal definition amplifies the one already used in the previous section. This was that Right is the sum of our coercively enforceable obligations, more precisely the sum of the types of our coercively enforceable obligations, or even better the sum of the conditions of possibility of our coercively enforceable obligations. Kant's own statements of this definition make explicit that Right is the sum of the types of our coercively enforceable *moral* obligations, thus define Right as part of morality. Only a part of our moral obligation to others is appropriate for coercive enforcement by others, namely, that part that prohibits limiting their freedom of action more than we limit our own. Ethics, conversely, is that part of morality that cannot be coercively enforced, in the dual sense that it is not possible to coercively enforce the setting of ends and ultimate motivation with which Ethics, but not Right, is concerned, and also that no one has the moral standing to enforce ethical requirements on anyone else. Kant explicates the formal and/or nominal distinction between Right and Ethics as the coercively and noncoercively enforceable parts of morals as a whole in the Introduction to the *Metaphysics of Morals*.[14]

[14] This is in what was numbered as Section III of the Introduction in the editions published in Kant's lifetime and in Kant (1900–), but renumbered as Section IV in Bernd Ludwig's 1986 edition of the *Rechtslehre* (Kant 1986), and following him in Mary Gregor's 1996 translation in Kant (1996a) and in John Ladd's second edition of his translation (Kant 1999). Ludwig reorganized the text at a number of points based on the premise that Kant's printer had received a faulty fair copy and that Kant had not, or not carefully, read the proofs. This is clearly right for several passages but controversial for others, including Ludwig's rearrangement of the four sections of the Introduction to the whole *Metaphysics of Morals*. But it makes no difference in what follows whether the material about to be cited is regarded as Section III or Section IV.

> Kant begins by stating that
> In all lawgiving [*Gesetzgebung*] (whether it prescribes internal or external actions, and whether it prescribes them *a priori* by reason alone or by the choice of another) there are two elements: **first**, a **law** [***Gesetz***] which represents the action that ought to be done **objectively** as necessary, i.e., which makes the action a duty; and **second**, an **incentive** [***Triebfeder***], which **subjectively** connects a ground for determining the power of choice [*Willkühr*][15] to this action with the representation of the law; hence the second element is this: that the law makes the duty into the incentive. By the first the action is represented as a duty, which is a merely theoretical cognition of the possible determination of the power of choice, i.e., of practical rules; through the second the obligation to act is combined in the subject with a determining ground of the power of choice in general. (MMI, 6:218)

In any case of "lawgiving" there are two elements, one the law that is the content of the lawgiving and the other the incentive or motivation for acting in accordance with the law. Thus there might be more than one possible incentive for complying with one and the same law: "All lawgiving can therefore be distinguished with respect to the incentive (even if it agrees with another kind with respect to the action that it makes a duty)." Kant then exploits this possibility. On the one hand, as indeed he had already anticipated with his remark that "the second element" is "that the law makes the duty into the incentive," "That lawgiving which makes an action a duty and also makes this duty the incentive is **ethical** [***ethisch***]," but on the other hand "that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is **juridical** [***juridisch***]." In case the incentive for compliance with the law need *not* be duty itself, that is, respect for duty or for the moral law that underlies all duty, Kant continues, "the incentive must be drawn from **pathological** determining grounds for the power of choice," that is, not sick or aberrant ones ("pathological" in the contemporary sense), but simply from the domain of "inclinations and aversions" (*Neigungen und Abneigungen*), because on Kant's psychology, or "anthropology" as he calls it, there *are* only two possible ultimate sources of motivation, pure reason on the one hand, which produces both moral law and respect for it as a motivation, and the inclinations and aversions of our sensible nature on the other. Kant then takes the further step of insisting that in the case of nonethical, that is, juridical lawgiving, the incentive must actually be "aversions; for it should be a lawgiving, which constrains, not an allurement, which invites" (6:218–19). In other words, in Ethics, our incentive must be respect for duty or the moral law itself, but in the case of juridical obligation – the domain of Right – our incentive can be aversion, that is,

[15] Gregor typically translates *Willkühr* as "choice," which can suggest a particular act of choice or choosing; but for Kant, *Willkühr* connotes the faculty or ability to choose rather than an individual act of choosing, so I will always translate it as "power of choice."