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Right, Morals and the Categorical Imperative

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Abstract: In this paper I examine the relationship between the principle of right and the principle of morals [*Sitten*] in Kant's *Metaphysics of Morals*. My interpretation denies that the principle of right is derived from the categorical imperative, but neither does it adhere to the independence thesis. I present a third way of understanding the relationship between the law of right and the universal law of morals: the latter is needed in order to formulate the former, but it is not sufficient. The principle of right is obtained by applying the categorical imperative to the concept of right. I highlight the discussion on the subject within the late eighteenth-century German natural law tradition and similar arguments found in Achenwall.

Keywords: Right, Morals, Categorical Imperative, Principle of right

1 Introduction

Towards the end of the eighteenth century, German natural law theorists were especially concerned with the foundations of *Naturrecht* and its relation to moral philosophy.¹ This debate was expressed in a concrete question, namely whether the universal law of right [Rechtsgesetz] can be derived from the universal law of morals [Sittengesetz]. In the *Metaphysics of Morals* of 1797, Kant did not offer an explicit answer to this question, and his position in this regard has been open to discussion since the early reception of the text.² A review of the *Metaphysics of Morals* published in the *Neue allgemeine deutsche Bibliothek* in 1799, for example, argues that “the supreme principle of the doctrine of morals [Sittenlehre] is, therefore: act on a maxim which can also hold as a universal law. We understand this

1 Cf. Klippel, Diethelm: “Ideen zur Revision des Naturrechts. Die Diskussion zur Neubegründung des deutschen Naturrechts um 1780”. *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 8, 2000, 73–90.

2 See Hüning, Dieter: “Kants Rechtslehre und ihre Rezeption in den zeitgenössischen Rezensionen”. In *Rezensionen zu Kants Metaphysischen Anfangsgründe der Rechtslehre*. Eds. Diethelm Klippel, Dieter Hüning and Jens Eisfeld. Berlin/New York 2020, 297–316.

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according to other assertions from critical philosophers, so that both the principle of natural right [Naturanrecht] and the principle of ethics have to be derived from this proposition, and that both sciences have a common foundation”.³ Some other early reviewers deny that Kant derives the principle of right from the categorical imperative, as expressed for instance in the review published in the *Oberdeutsche allgemeine Litteraturzeitung* (1797): “therefore, one can sufficiently see from this formula [i. e. the universal principle of right, FT] that the author does not in any way derive the universal principle of the doctrine of right from the moral law [Sittengesetz]. They are of a completely heterogenous nature, and it is impossible for one to be the source of the other”.⁴

In this paper, I wish to explore the widely debated topic of the relationship between right and morals in Kant’s practical philosophy, taking up the question of the relationship between the *Rechtsgesetz* and the *Sittengesetz*. In order to do so, I shall i) situate Kant’s *Metaphysics of Morals* as part of a debate within the late eighteenth-century German natural right tradition, and ii) focus on the final form of Kant’s moral philosophy and the definitive formulation of its principles. With regard to i), I shall present the position of the so-called *frühe Kantianer*, such as Gottlieb Hufeland and Theodor Schmalz, who aim to derive the law of right from (some version of) the moral law. I shall argue that Kant does not follow the strategy vastly explored by the early Kantians, and that in order to illuminate his position we have to go back to his sources. In a similar fashion to Achenwall, whose *Ius Naturae* served as a basis for his regular lectures on the discipline, Kant conceives of the doctrine of right as pertaining to a broader system, i. e. the doctrine of morals [Sittenlehre], without appealing to a derivation of the supreme principle of the former from the supreme principle of the latter. Yet, for both authors, these principles are logically or normatively related. With regard to ii), I shall first identify the formula of the categorical imperative as presented in the *Metaphysics of Morals* as the relevant moral principle that is to be analyzed in connection with the principle of right. I shall then contend that the principle of right includes maxims, not only actions, within its scope and that this key feature indicates its relation to the universal principle of morals [Sitten].

In the last decades, the relationship between right and ethics in Kant’s moral thought has been widely discussed. In this debate, we can identify two general positions: on the one hand, the claim that Kant’s theory of right presupposes, or is based on, his moral philosophy, and on the other hand, the thesis that right is independent of it. Some interpreters focus on the concept of right’s dependence/inde-

³ *Rezensionen zu Kants Metaphysischen Anfangsgründe der Rechtslehre*. Eds. Diethelm Klippel, Dieter Hüning and Jens Eisfeld. Berlin/New York 2020, 133.

⁴ *Rezensionen zu Kants Metaphysischen Anfangsgründe der Rechtslehre*, 172–173.

pendence on fundamental elements of Kant's moral philosophy (such as autonomy, obligation, freedom, etc.). Julius Ebbinghaus, for example, holds that the concept of negative freedom (on which the *Rechtslehre* rests) is independent of moral autonomy,⁵ whereas Wolfgang Kersting, Bernd Ludwig, and Heiner Klemme claim that the doctrine of right relies not only on Kant's moral philosophy but also on the doctrine of transcendental idealism.⁶ Other authors center their analysis on the relationship between the universal principle of right and (some formula of) the categorical imperative, arguing in favor of or against the possibility of deriving the former from the latter. Marcus Willaschek, Allen Wood, and Arthur Ripstein, for instance, adhere to Ebbinghaus's general thesis (i. e. Kant's theory of right does not ultimately presuppose his moral theory) but also emphasize that the universal principle of right (and the permissibility of coercion) cannot be derived from the categorical imperative.⁷ In opposition to this, Mary Gregor holds that the universal principle of right is derived from the categorical imperative, and Paul Guyer argues in favor of a derivation of this principle from "freedom and its unconditional value".⁸ My interpretation engages with this debate in the following way: I

5 Ebbinghaus, Julius: *Die Strafen für Tötung eines Menschen nach Prinzipien einer Rechtsphilosophie der Freiheit*. Bonn 1968, 21. Georg Geismann similarly argues that the empirical concept of practical freedom is sufficient to ground Kant's doctrine of right (Geismann, Georg: "Recht und Moral in der Philosophie Kants". *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 14, 2006, 37–124; 6).

6 Kersting, Wolfgang: *Wohlgeordnete Freiheit*. Berlin 1984, 27–41; Ludwig, Bernd: "Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant's Doctrine of Right". In *Kant's Metaphysics of Morals: Interpretative Essays*. Ed. Mark Timmons. Oxford 2002, 159–183; 170; Klemme, Heiner F.: "Der Transzendente Idealismus und die Rechtslehre: Kant über den Zusammenhang von moralischer Verbindlichkeit, Recht und Ethik". In *Probleme der Rechtslehre Kants*. Eds. Werner Euler, Burkhard Tuschling. Berlin 2013, 447–457.

7 Willaschek, Marcus: "Why the Doctrine of Right Does Not Belong in the Metaphysics of Morals". *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 5, 1997, 222; Willaschek, Marcus: "Right and Coercion. Can Kant's Conception of Right be Derived from his Moral Theory?". *International Journal of Philosophical Studies* 17, 2009, 49–70; Wood, Allen: "The Final Form of Kant's Practical Philosophy". In *Kant's Metaphysics of Morals: Interpretative Essays*. Ed. Mark Timmons. Oxford 2002, 1–21; 7; Ripstein, Arthur: *Force and Freedom: Kant's Legal and Political Philosophy*. Cambridge 2009, 388.

8 Gregor, Mary: *Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the Metaphysik der Sitten*. Oxford 1963, 30–31, 40; Guyer, Paul: "Kant's Deduction of the Principle of Rights". In *Kant's Metaphysics of Morals: Interpretative Essays*. Ed. Mark Timmons. Oxford 2002, 23–64; 26. The view that the law of right can be obtained solely from the categorical imperative is also held by Seel, Gerhard: "How Does Kant Justify the Universal Objective Validity of the Law of Right?". *International Journal of Philosophical Studies* 17, 2009, 71–94; Oberer, Hariolf: "Noch einmal zu Kants Rechtsbegründung". *Kant-Studien* 101, 2010, 380–393. Ludwig, Bernd: "Sympathy for the Devil(s)? Personality and Legal Coercion in Kant's *Doctrine of Law*. Personality and Legal Coercion

will focus my analysis on the relationship between the universal principle of right and the universal principle of morals, as presented in the *Metaphysics of Morals*. The formula of the categorical imperative as stated in 1797 has not received sufficient (if any) attention from interpreters who defend the dependence of right on morality, since they relate the foundations of right either to the general outcome of the critical philosophy (e. g. Wolfgang Kersting, Bernd Ludwig, Heiner Klemme) or to one of the formulas of the categorical imperative found in the *Groundwork* (e. g. Mary Gregor, Paul Guyer).⁹ I will claim that the principle of right is not obtained by means of a derivation, but I will not endorse Ebbinghaus's independence thesis either. The principle of right does not stand on its own. I will argue that the fact that the universal principle of right cannot be derived from the universal principle of morals does not imply that the two are not related at all. The *Rechtsgesetz* is the result of the application of the *Sittengesetz* to the concept of right. Thus, it presupposes the categorical imperative.

The paper proceeds as follows. In section 2, I offer a few remarks on the context of the debate on the relationship between natural right and morals and present the positions held by the *frühe Kantianer* and Achenwall. In section 3, I first discuss the universal principle of morals [*Sitten*] and the categorical imperative within the *Metaphysics of Morals* (3.i) and then proceed to examine the principle of right (3.ii). I indicate that right restricts maxims, not only actions, and maintain that this does not generate a paradox regarding the externality of *ius*. I then analyze the relationship between these two normative principles in light of the results of the previous sections (3.iii). Section 4 contains a brief conclusion.

2 The context of the debate

In this section, I present the views held by the early Kantians, who aimed to derive the principle of *ius* from the principle of morals. Consideration of this debate on the foundations of *ius naturae* will show that Kant did not in fact adopt the strategy proposed by the *frühe Kantianer*. Instead, he seems to have followed a chain of

in Kant's Doctrine of Law". *Jurisprudence* 6, 2016, 25–44; Bacin, Stefano: "Only One Obligation: Kant on the Distinction and the Normative Continuity of Ethics and Right". *Studi kantiani* 29, 2016, 77–90; Hirsch, Philip-Alexander: *Freiheit und Staatlichkeit bei Kant*. Berlin 2017.

⁹ Note that I am not claiming that Kant's formulation of the principle of the *Sittenlehre* in the *Metaphysics of Morals* does not presuppose the results of critical philosophy (as set out in the first two *Critiques* and the *Groundwork*). I am only saying that this line of interpretation lacks an explanation of the internal structure of the *Sittenlehre* and its supreme principles, and this is the (narrower) issue that I want to address here.

reasoning similar to that found in Achenwall's doctrine of right. Looking into Kant's sources on natural right will help to clarify his final position on the relationship between the universal law of morals and the law of right.

2.1 The early Kantians

Following the publication of the *Groundwork of the Metaphysics of Morals* in 1785, many German natural law theorists acknowledged that Kant's moral philosophy strongly challenged the then dominant account of *ius naturae*, which was based on Wolffian principles, and thus believed that the discipline needed a new foundation. Many of them, such as Gottfried Hufeland, Wilhelm Tafinger, Theodor Schmalz, and Karl Heydenreich, went even further and sought to develop a Kantian doctrine of natural right via a concrete strategy, namely deriving the concept of right (and the fundamental *Rechtsgesetz*) from a Kantian conception of the moral law.¹⁰ In his *Essay on the Principle of Natural Right* (1786), for instance, Hufeland holds that juridical obligations "nevertheless must not be merely borrowed from morals [*Moral*], but derived for themselves from the universal principle of morality [*Sittlichkeit*], and must be considered in connection with the whole system of remaining principles". Accordingly, Hufeland aims to "present [his] own system of morality and then to derive the principle of natural right from it".¹¹ Another example can be found in *Das reine Naturrecht* (1792), written by Theodor Schmalz, a professor of law in Königsberg. Like Hufeland, Schmalz pursues a derivation of the law of right from the moral law, but he disagrees with him on the formulation of the relevant principles. He argues that Hufeland's and Tafinger's books "cannot really be considered an application of Kantian principles to natural right" because both authors make use of material principles (instead of formal ones).¹² Schmalz claims that the correct method for grounding natural right by appealing to critical philosophy is to first analyze the concept of freedom in order to establish the principle of morality

¹⁰ Hufeland, Gottfried: *Versuch über den Grundsatz des Naturrechts*, Leipzig 1785; Tafinger, Wolfgang: *Encyclopädie und Geschichte der Rechte in Deutschland zum Gebrauch bey Vorlesungen*, Tübingen 1789; Schmalz, Theodor: *Das reine Naturrecht*, Königsberg 1792; Heydenreich, Karl Heinrich: *System des Naturrechts nach kritischen Prinzipien*, Leipzig 1794. On the *frühe Kantianer*, see Kersting, Wolfgang: "Sittengesetz und Rechtsgesetz. Die Begründung des Rechts bei Kant und den frühen Kantianern". In *Rechtsphilosophie der Aufklärung*. Ed. Reinhardt Brandt. Berlin 1982, 148–177.

¹¹ Hufeland 1785, 218–225.

¹² Schmalz 1792, 6.

(which, on his account, resembles Kant's formula of humanity)¹³ and then derive the principle of natural right from it.

When Kant published *Perpetual Peace* in 1795 and the definitive and systematic version of the *Rechtslehre* in 1797, some authors immediately remarked on the fact that the Kantian textbooks on natural right were a far cry from Kant's own vision of the discipline. Such was Fichte's claim in the Introduction to the *Foundations of Natural Right*, for instance, where he refers to Kantian works and the "usual way of dealing with natural right", namely the strategy of deriving the law of right from the moral law. He suggests that Kant had questioned "the usual way of dealing with things" and that he provides another kind of deduction in *Perpetual Peace*, one that agrees with the deduction in the *Foundations*.¹⁴ This divergence between Kant and the early Kantians is also mentioned by Gustav Hugo, one of the founders of the *Historical School of law* and a devoted reader of the *Metaphysics of Morals*, who in his *Lehrbuch des Naturrechts* (1798) writes: "his *metaphysische Anfangsgründe der Rechtslehre* (1797) were, in many parts, precisely opposite to what has been taught in his name until now".¹⁵

Kant was presumably aware of the discussion on the possibility of deducing the *Rechtsgesetz* from a Kantian version of the moral law and thus giving *ius naturae* a new foundation with the resources of critical philosophy. In 1786, he wrote a review of Hufeland's *Essay* for the *Jenaer Allgemeine Literaturzeitung*. He met Fichte and was acquainted with his work and had Schmalz's *Das reine Naturrecht* in his own library, among other books on law written by Schmalz.¹⁶ However, Kant never gave a statement on the subject and, most importantly, did not introduce the universal law of right in terms of a derivation from the universal principle of morals [*Sitten*] or a formulation of the categorical imperative in the *Metaphysics of Morals*. At the same time, however, he held that the *Rechtslehre*, together with the *Tugendlehre*,

13 Schmalz 1792, 23.

14 Fichte suggests that, according to Kant, right follows from a permissive law, and a permissive law, in turn, cannot be derived from the moral law: "it is absolutely impossible to see how a permissive law should be derivable from the moral law, which commands unconditionally and thereby extends its reach to everything" (GNR, 324; the English translation is taken from Fichte, Johann Gottlieb: *Foundations of Natural Right*. Trans. Michael Baur, ed. Frederick Neuhouser. Cambridge 2000). On Fichte's deduction, see Kersting, Wolfgang: "Die Unabhängigkeit des Rechts von der Moral (Einleitung). Fichtes Rechtsbegründung und 'die gewöhnliche Weise, das Naturrecht zu behandeln'". In *Johann Gottlieb Fichte: Grundlage des Naturrechts*. Ed. Jean-Christophe Merle. Berlin 2001, 2–37.

15 Hugo, Gustav: *Lehrbuch des Naturrechts als eine Philosophie des positiven Rechts*. 2nd Edition. Berlin 1799, 32; cf. Blühdorn, Jürgen: "Kantianer und Kant. Die Wende von der Rechtsmetaphysik zur 'Wissenschaft' von positivem Recht". *Kant-Studien* 64, 1973, 363–394.

16 Warda, Arthur: *Immanuel Kants Bücher*, Berlin 1922, 41.

belong to the *Sittenlehre*. As such, both moral doctrines share fundamental moral concepts (e. g. freedom, obligation, duty, categorical imperative, imputation) and are ruled by the universal principle of the *Sittenlehre*.¹⁷ In other words, although Kant does not talk about a deduction of the *Rechtsgesetz* from the *Sittengesetz*, he *does claim* that the latter law holds both for right and for ethics.

2.2 Achenwall

This claim is not unexpected if we take into consideration the context of the discussion on *ius naturae* before the emergence of Kant's (and the early Kantians') doctrine of right – a context that was dominated by Wolffian principles. For Wolff and Wolffian authors such as Achenwall and Baumgarten (whose textbooks on natural right and practical philosophy were very popular and used by Kant as a basis for his lectures), right was part of a broader discipline (i. e. natural right in a broader sense, or moral philosophy) that comprehends the totality of duties and obligations.¹⁸ Moral philosophy as a systematic discipline was built, in turn, on a first fundamental principle (or practical law). According to both Baumgarten and Achenwall, this first principle of practical philosophy, or universal moral law, was the principle “Commit the good and omit the bad”, which amounts to the Wolffian precept “perfect yourself”.¹⁹

Achenwall conceived his doctrine of natural right as part of a broader system of moral principles without introducing the principle of *ius* in terms of a direct derivation of the universal principle of morals. In the *Prolegomena*, his argument to ground the universal law of right runs as follows: i) there is a fundamental obligation to preserve oneself and to preserve “each and all of [one's own] perfections”;²⁰ ii) the obligation to preserve oneself, in particular the obligation to preserve one's life and body, generates a “moral ability” (i. e. a subjective right) to coerce others not to hinder one's preservation;²¹ iii) from i) and ii) it follows that there is a natural obligation, corresponding to the natural right to coerce, not to infringe on the life

¹⁷ MS, RL, AA 06: 225–227.

¹⁸ Cf. Baumgarten, Alexander: *Initia philosophiae practicae primae acroamaticae*. 1760, § 65; Achenwall, Gottfried: *Ius naturae*. 5th edition. Göttingen 1763, § 26. It is interesting to note here that the aforementioned Kantian doctrine of right developed by Hufeland, Tafinger, Schmalz and Heydenreich preserves this idea.

¹⁹ Baumgarten *Initia* §§ 39–43, Achenwall: *Prolegomena* §§ 23–24.

²⁰ Achenwall, Gottfried: *Prolegomena Iuris Naturalis*. 2nd edition. Göttingen 1763, §§ 23–24. English quotations are taken from Achenwall, Gottfried: *Prolegomena to Natural Law*. Trans. Corinna Vermeulen; Ed. Pauline Kleingeld. Groningen 2020.

²¹ Achenwall: *Prolegomena*, §§ 102–104.

and body of others. This perfect natural law (i. e. “Do not go against another man’s preservation”) is the universal principle of right *in a strict sense*, and from it one can obtain other perfect laws, rights or obligations.²² In this way, according to Achenwall, the fundamental law of right is not *completely* contained in, or subsumed under, the universal law of morals. This means that it cannot be obtained by means of a derivation. Further premises (or definitions), such as right as a moral capacity to coerce, must be introduced in order to establish the universal principle of right. Thus, the fundamental law of right presupposes the universal law of morals, without the former being directly deduced from the latter. As I shall argue below, this resembles the way in which the *Rechtsgesetz* and the *Sittengesetz* relate to each other in Kant’s *Metaphysics of Morals*.

3 *Rechtsgesetz* and *Sittengesetz* in Kant’s *Metaphysics of Morals*

In the *Metaphysics of Morals*, Kant presents his definitive system of juridical duties, or duties of right, as part of a broader moral doctrine, i. e. the *Sittenlehre*. The fact that the *Rechtslehre* belongs to the *Sittenlehre*, as I will argue in section 3.iii, does not imply that the universal principle of right is to be derived solely from the universal principle of morals. Moreover, I will advance the thesis that the principle of right is obtained once the principle of morals is applied to the concept of right. Before this, I will discuss the principles separately. I will begin with the universal principle of morals (*Sitten*) and point out that the relevant formulation for analyzing the relationship between the principle of right and the categorical imperative is the one that Kant himself presents as holding for both ethics and right (3.i). I will then continue with the universal principle of right and indicate that this practical principle applies not only to actions but also to maxims (3.ii). I will show that the claim that maxims are relevant to the domain of right is not at odds with right’s being, by definition, external. Taking into consideration the definitive form of the categorical imperative and the presence of maxims in the formulation of the principle of right will put us in a better position to clarify the relationship between the two universal laws.

²² Achenwall: *Prolegomena*, § 103.

3.1 The universal principle of the *Sittenlehre*

Let us begin with a brief clarification of the idea of the *Sittenlehre*. The doctrine of morals consists of a system of laws of freedom, or moral laws, that proceed from pure practical reason. “*Morals* is the name for the use of freedom according to the laws of reason [Sitten nennt man den Gebrauch der Freiheit nach den Gesetzen der Vernunft]”²³ and thus involves the possibility of *Willkür*’s being determined by reason regarding both the internal and the external use of freedom. Here we find an important terminological remark: the terms *Sitten* and *Moral* (which I here render in English as “morals”) encompass both right (*Recht, ius*) and ethics (*Ethik, ethica*); correspondingly, the doctrine of morals or moral philosophy (*Sittenlehre, philosophia moralis*) comprehends both the *Rechtslehre* and the *Tugendlehre*. The latter is also called “ethics” (*Ethik* or *ethica*). The term *Sittlichkeit*, on the other hand, is quite misleading, for Kant sometimes uses it as a synonym for *Moralität* or *moralitas* (morality),²⁴ and thus as a feature related to ethical duties that opposes mere legality (*Gesetzmäßigkeit* or *legalitas*), and sometimes as a synonym for *Sitten* (morals).²⁵

Kant speaks not only of a *doctrine* of morals but also of a *metaphysics* of morals. This (original) idea that *metaphysics* has a moral part, and that first principles [Anfangsgründe] are *metaphysical*, has to do with the type of cognition that a *Sittenlehre* entails, including its origin. Moral philosophy involves not only rational cognition (as classical rationalism thought) but *pure* rational cognition, i. e. principles and moral concepts that have their origin in pure reason.²⁶ Accordingly, the metaphysics of morals is a “system of *a priori* cognition from concepts alone [System der Erkenntniß *a priori* aus bloßen Begriffen]” that has freedom as its object.²⁷ As I have already indicated, laws of freedom, or moral laws, can refer to the external or to the internal use of the freedom of *Willkür*. Kant maintains that in the former case moral laws are called juridical, whereas in the latter they are called ethical.²⁸ Furthermore, moral laws give rise to duties, and therefore morals [*Moral* or *Sitten*] can be regarded as a “system of duties in general [System der Pflichten überhaupt]”.²⁹ Duties arising from juridical lawgiving are juridical duties,

²³ V-MS/Vigil AA, 27: 480.09–10. English quotations are taken from the *Cambridge Edition of the Works of Immanuel Kant*. I have indicated the cases where I have found it necessary to amend the translation.

²⁴ E.g., RL, AA 06: 219.16.

²⁵ E.g., RL, AA 06: 216.07.

²⁶ Cf. GMS, AA 04: 411.08–12; GMS, AA 04: 388.04–10.

²⁷ RL, AA 06: 216.28–30; KrV, A 841/B 869.

²⁸ RL, AA 06: 214.13–17.

²⁹ RL, AA 06: 242.03–04.

or duties of right, and duties arising from ethical lawgiving are ethical duties, or duties of virtue. Considering that the main division of the metaphysics of morals is based on the internal and external uses of freedom, a distinction can also be drawn between “duties of external freedom” (as equivalent to *Rechtspflichten*) and “duties of internal freedom” (as equivalent to *Tugendpflichten*).³⁰ As the two moral doctrines that contain a system of laws of freedom and duties, the *Rechtslehre* and the *Tugendlehre* share their main concepts, such as freedom, obligation, duty, categorical imperative, and imputation.³¹ Moreover, both right and ethics fall under the universal principle of the *Sittenlehre*, and indeed they *must do so* if they are to be conceived of as *moral* doctrines.

The principle of morals is a practical law because it grounds duties.³² For beings that possess both the capacity to act according to principles and a sensibly affected *Willkür*, the moral law is experienced as a constraint [necessitatio], and thus it takes the form of a command. Kant calls the formula of a command an “imperative” and holds that an imperative is categorical when it represents an action as objectively necessary.³³ In other words, for rational beings who also possess a sensuous nature, an objective practical principle takes the form of a categorical imperative that, by making certain actions necessary, establishes duties and obligations.

Let us now turn to the universal principle of *Sitten*. As expected, in the *Metaphysics of Morals* Kant presents the universal principle of the *Sittenlehre* as the categorical imperative (although there are in fact many moral laws, and each is formulated, in turn, as a categorical imperative).³⁴ This principle says: “act on a maxim which *can also hold* as a universal law [handle nach einer Maxime, die zugleich als allgemeines Gesetz gelten kann]”.³⁵ This formula parallels the general formula of the categorical imperative introduced in the *Groundwork*, but they are not identical. In the *Groundwork*, the principle says: “act only in accordance with that maxim through which *you can at the same time will* that it become a universal law [handle nur nach derjenigen Maxime, durch die du zugleich wollen kannst, dass sie ein allgemeines Gesetz werde]”.³⁶ Whereas the formula of the categorical imperative in the *Metaphysics of Morals* only requires that the maxim qualify as a universal law [“gelten kann”], the formula in the *Groundwork* also demands that,

30 TL, AA 06: 406.30–34.

31 These *Vorbegriffe* are discussed in Section IV of the Introduction to the MS.

32 RL, AA 06: 225.01–02.

33 GMS, AA 04: 413.09–11. RL, AA 06: 222.05–26.

34 Cf. Kleingeld, Pauline, & Willaschek, Markus: “Autonomy Without Paradox: Kant, Self-Legislation and the Moral Law”. *Philosophers' Imprint* 19 (6), 7 f.

35 RL, AA 06: 226.01–02 (italics are mine).

36 GMS, AA 04: 421.06–08 (italics are mine).

simultaneously, *one be able to will* [“du wollen kannst”], through the adoption of the maxim, that it become a universal law. Many commentators overlook this and refer to the formulas of the 1785 text when discussing the relationship between the universal principle of right and the categorical imperative, making no reference to the formula that Kant explicitly presents in the *Metaphysics of Morals* as the general practical law of both right and ethics.³⁷ It is beyond the aim of this paper to analyze the extent to which the formulas of the categorical imperative differ from each other or to determine the exact respects in which they vary. It is safe to affirm, however, that the relevant formula for giving a coherent explanation of the logical structure of the metaphysics of morals and its two doctrines is the one that Kant *himself* presented in 1797 as the supreme principle of the discipline.

The principle of morals as the formal principle of obligation

In the *Metaphysics of Morals*, Kant argues that the universal principle of the doctrine of morals, the categorical imperative, “only affirms what obligation is [überhaupt nur aussagt, was Verbindlichkeit sei]”.³⁸ This reflects the claim that pure reason is able to become *practical* (i. e. to establish obligations) precisely because reason, by itself, demands something about the subjective principles of action: that maxims should qualify for the universality of a practical law.³⁹ Therefore, the universal law of morals, for both inner and outer actions, says that a maxim, “the rule that the agent himself makes his principle on subjective grounds [das subjective Princip zu handeln, was sich das Subject selbst zur Regel macht]”,⁴⁰ is morally permissible when it is suitable to be a law. The *Sittengesetz*⁴¹ does not *positively* command the adoption of *certain* maxims (as the principle of the *Tugendlehre* does); rather, it serves as a negative principle that states that any maxim that is not universalizable is “contrary to morals”. Nor does it require a specific motive to act, or the pursuit of a certain end.⁴² If this were the case, it could not be applied to the moral domain

37 E.g. Guyer and Gregor, but also advocates of the independence thesis, for instance Wood 2002, 6, and Pogge, Thomas: “Is Kant’s *Rechtslehre* a Comprehensive Liberalism?”. In *Kant’s Metaphysics of Morals: Interpretative Essays*. Ed. Mark Timmons. Oxford 2002, 141.

38 RL, AA 06: 225.06–07.

39 RL, AA 06: 225.

40 RL, AA 06: 225. 34–35.

41 Strictly speaking, when introducing the universal law of morals in the *Metaphysics of Morals*, Kant does not use the term *Sittengesetz* but the expression “*der oberste Grundsatz der Sittenlehre*”. He does use the term in the second *Critique*, however: “pure reason is practical for itself alone and gives (to the human being) a universal law which we call the *Sittengesetz*” (KpV, AA 05: 31.36–37).

42 Cf. RL, AA 06: 225; VAMS, AA 23: 257.

of right (since *ius* does not make demands on our reasons for acting or our setting of ends).⁴³

Furthermore, the universal principle of *Sitten*, as presented in 1797, does not include any reference to the volitions of the agent. Recall that the general formula of the categorical imperative of the *Groundwork* states that the agent should be able to *will* that the maxim become a universal law. When discussing the principle of autonomy, Kant also argues that acting on maxims that are consistent with universal laws implies “that the will could regard itself as at the same time giving universal law through its maxim [dass der Wille durch seine Maxime sich selbst zugleich als allgemein gesetzgebend betrachten könne]”.⁴⁴ The idea is that the principle of *morality* tells us not only to act on maxims that we can at the same time *will* as universal laws, but also to think of our *own will* as giving universal laws through its maxims.⁴⁵ By contrast, the formula of the categorical imperative of the *Metaphysics of Morals* only says that our maxim *should be able to hold* as a universal law. It does not tell us to (necessarily) *will* the maxim as a universal law or to regard our *own will* as giving laws to itself. Note here that in the *Vorbe-grieffe* section, where Kant defines the main concepts and principles that must be made clear in order to proceed with the development of the doctrine of morals as a whole, the principle of autonomy is not mentioned at all.⁴⁶ The main point to note is that, according to the principle of the *Sittenlehre*, I can consider not only *my own will* but also *a will in general* (and thus a will other than my own) as giving universal laws. Moreover, I can conceive of a lawgiving general will under which the freedom of one can coexist with the freedom of others. This is indeed what Kant seems to argue in the *Doctrine of Virtue*, where, after describing the universal principle of the *Sittenlehre* as “the formal principle of duty”, he claims that “ethics adds only that this principle is to be thought as the law of *your own will* and not of a *will in general*, which could also be the will of others; in the latter case the law would provide a duty of right”.⁴⁷

43 RL, AA 06: 219.17–21; RL, AA 06: 230.15–17.

44 GMS, AA 04: 434.12–14.

45 Cf. Kleingeld and Willaschek 2019, 8.

46 The term *Vorbegriff* has a precise meaning that is not clearly retained in the English translation. According to Jacob and Wilhelm Grimm’s *German Dictionary*, a *Vorbegriff* is, “in the strict sense, a concept on which one must have a clear understanding in order to be able to comprehend what is followed from it or what is connected to it” (*Deutsches Wörterbuch von Jacob Grimm und Wilhelm Grimm*, digital version in the Wörterbuchnetz des Trier Center for Digital Humanities, version 01/21).

47 “in der Ethik dieses als das Gesetz deines eigenen Willens gedacht wird, nicht des Willens überhaupt, der auch der Wille Anderer sein könnte: wo es als dann eine Rechtspflicht abgeben würde” (TL, AA 06: 389.02–06, italics are mine).

Finally, the *Sittengesetz* does not establish substantive duties by itself.⁴⁸ As the formal principle of morals, it only indicates when a maxim is permissible or impermissible (“contrary to morals”).⁴⁹ In order to obtain substantive duties (duties of right and duties of virtue), the supreme principles of each particular doctrine must first be established by adding further conditions to which the general formula of the moral law is to be applied. In the case of the doctrine of virtue, it will be crucial to consider the concept of objective ends (i. e. ends established by pure reason).⁵⁰ In the case of the doctrine of right, it will be crucial to consider the concept of right. Before considering how the transition from the *Sittengesetz* to the *Rechtsgesetz* is effected, however, I will introduce the principle of right and briefly discuss its external character.

3.2 The universal principle of the *Rechtslehre* and the externality of right

After having defined the concept of right in § C of the Introduction to the *Doctrine of Right*, Kant establishes the universal principle of right: “any 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 the *Willkür* of each can coexist with everyone’s freedom in accordance with a universal law”.⁵¹ This practical principle equates to the universal law of right [das allgemeine Rechtsgesetz]. Kant claims that this normative principle “is indeed a law that lays an obligation on me”, an obligation that commands me to “so act externally that the free use of [my] *Willkür* can coexist with the freedom of others according to a universal law”.⁵²

I find it important to first highlight that the universal principle of right refers not only to actions but also to maxims (“*die [Handlung] oder nach deren Maxime*”). It does not require us to act on a particular maxim, as the universal principle of the doctrine of virtue does, but rather tells us which set of maxims (and actions) are

48 Cf. Baum, Manfred: “Prior Concepts of the Metaphysics of Morals”. In *Kant’s Tugendlehre: A Comprehensive Commentary*. Eds. Andreas Trampota, Oliver Sensen, Jens Timmermann. Berlin/New York 2013, 127.

49 RL, AA 06: 226.03.

50 TL, AA 06: 396 f.

51 “Eine jede Handlung ist recht, die oder nach deren Maxime die Freiheit der Willkür eines jeden mit jedermanns Freiheit nach einem allgemeinen Gesetze zusammen bestehen kann” (RL, AA 06: 230.29–31, translation amended).

52 “Handle äußerlich so, dass der freie Gebrauch deiner Willkür mit der Freiheit von jedermann nach einem allgemeinen Gesetze zusammen bestehen könne” (RL, AA 06: 231.10–14).

permissible from the perspective of right.⁵³ The reference to maxims' qualifying as universal laws in the general law of right is a relevant feature that indicates its connection to the universal principle of *Sitten*.⁵⁴ Many commentators who support some version of the 'independence thesis', such as Arthur Ripstein, Thomas Pogge, Allen Wood and Marcus Willaschek, neglect the role of maxims in the sphere of right and hold that *ius* only gives laws for actions.⁵⁵ Other interpreters such as

53 Kant says in § C: "to make it my maxim to act according to right is a demand that ethics makes on me [das Rechthandeln mir zur Maxime zu machen, ist eine Forderung, die die Ethik an mich thut]" (RL, AA 06: 231. 8–9, translation amended). One could take this to mean that right includes actions, and only actions, to the exclusion of maxims. This sentence instead says, however, that right does not command us to *adopt any particular maxim*, not even one that states "act rightfully". Right *restricts*, but does not *prescribe*, maxims of action. Accordingly, "it cannot be required that this principle of all maxims be itself in turn my maxim [daß nicht verlangt werden kann, daß dieses Princip aller Maximen selbst wiederum meine Maxime sei]" (RL, AA 06: 231.04–05) (note that Kant calls the principle of right the *Princip aller Maximen*). Only ethics, or an ethical obligation, can demand that the principle of right be adopted as one's own maxim of action.

54 Note that the juridical postulate of practical reason also refers to maxims. This postulate is introduced to authorize possession in general and says: "a maxim by which, if it were to become a law, an object of the *Willkür* would in itself (objectively) have to *belong to no one* (*res nullius*) is contrary to rights [eine Maxime, nach welcher, wenn sie Gesetz würde, ein Gegenstand der Willkür an sich (objectiv) herrenlos (*res nullius*) werden müßte, ist rechtswidrig]" (RL, AA 06: 246.05–08). In the *Doctrine of Virtue* there is further textual evidence that maxims of actions are *restricted* by the principle of right. See for instance the title of Section VI of the Introduction: "Ethics does not give laws for actions (*ius* does that), but only for maxims of actions" (TL, AA 06: 389.03–06). This sentence is often assumed to imply that right *only* gives laws for action; however, what it denies is not that *ius* governs maxims but *only that ethics provides laws for actions*. In the course of this section, Kant describes the universal principle of the *Sittenlehre* as "the formal principle of duty" and holds, as I mentioned above (see supra 3.i), that "ethics adds only that this principle is to be thought as the law of *your own will* and not of a will in general, which could also be the will of others; in the latter case the law would provide a duty of right" (TL, AA 06: 389.02–06, italics are mine). In this latter case, he goes on to say: "maxims are regarded as *subjective principles which merely qualify for a giving of universal law*, and the requirement that they so qualify is only a negative principle (not to come into *conflict* with a law as such) [Die Maximen werden hier als solche subjective Grundsätze angesehen, die sich zu einer allgemeinen Gesetzgebung bloß qualificiren; welches nur ein negatives Princip (einem Gesetz überhaupt nicht zu widerstreiten) ist]" (TL, AA 06: 389.07–09). This passage reaffirms that the scope of the principle of right includes maxims of action, not only actions. It also says that, with regard to maxims, this principle is not *positive* (i. e. it does not tell us which maxims we should adopt) but *negative* (i. e. it tells us which maxims are "contrary to morals").

55 See for instance Ripstein 2009, 374: "the Universal Principle of Right abstracts from the maxim on which a person acts, focusing instead on the purely external relation between agents. As a principle of inner determination, a person's maxim is fundamental. But it has no bearing on the outer obligations that one embodied person owes another." Cf. Pogge 2002, 156; Wood 2002, 6; Willaschek 2009.

Manfred Baum, Mary Gregor, Onora O'Neill, and especially Marie Newhouse have pointed out the relevance of maxims to the sphere of external actions.⁵⁶ If right indeed left maxims out of its scope, this would provide a strong basis for the claim that the *Rechtsgesetz* is independent of the *Sittengesetz*, for these laws would not have any elements in common (or maybe just the idea of universality). It is not my aim here to explain how the principle of right functions with regard to maxims; this topic deserves a paper of its own, including a discussion of contested issues such as what a maxim is,⁵⁷ what constitutes a wrong, and what it means to act on a wrongful maxim in a legal or juridical sense.⁵⁸ For present purposes, I wish only to

56 Cf. Gregor, 1963, 41; O'Neill, Onora: "Enactable and Enforceable: Kant's Criteria for Right and Virtue". *Kant-Studien* 107, 2016, 117; Baum, Manfred: "Freiheit und Recht bei Kant". In *Kant und die Philosophie in weltbürgerlicher Absicht: Akten des XI. Kant-Kongresses*. Eds. Margit Ruffing, Claudio La Rocca, Alfredo Ferrarin, Stefano Bacin. Berlin/New York 2013, 73–92. For an exhaustive discussion of the topic, see Newhouse, Marie: "Two Types of Legal Wrongdoing". *Legal Theory* 22, 2016, 59–75.

57 Just what a maxim *is* remains unsettled in the literature; still a matter of dispute, for instance, is whether maxims include a description of the action, a description of the circumstances, or, crucially, purposes and intentions (see e. g. O'Neill, Onora: *Acting on Principle*, Cambridge 2013, 2nd edition; Kitcher, Patricia: "What is a Maxim?". *Philosophical Topics* 31, 2003, 215–243); what kinds of practical rules involve maxims (see e. g. Bittner, Rudiger: "Maximen". In *Akten des 4. Internationalen Kant-Kongresses: Mainz. 6.–10. April, 1974*. Ed. Gerhard Funke. Berlin-Boston 2018, 485–498; Timmermann, Jens: "Kant's Puzzling Ethics of Maxims". *The Harvard Review of Philosophy* 8, 2000, 39–52); and whether every action presupposes a maxim (see Nyholm, Steven: "Do We Always Act on Maxims?". *Kantian Review* 22, 2017, 233–255), among other related issues. A relevant point for the present discussion is whether maxims contain ends or not. Here, I can only indicate that Kant holds that every free action involves an end and seems to suggest that agents can only set ends through maxims (see e. g. TL, AA 06: 389.20–21, where maxims of action are described 'as means to ends' [Maxime der Handlungen als Mittel zu Zwecken], and TL, AA 06: 395.28–29: "every maxim of action contains an end"). One might object that if the principle of right prescribes maxims and maxims contain ends, then the principle of right prescribes ends. However, right does not *prescribe* maxims, i. e. it does not require us *to act on a certain maxim*. Right only *restricts* actions and maxims of action to those that are compatible with the idea of everyone's freedom in accordance with a universal law (cf. Newhouse 2016, 63; Baum 2013, 90). In the *Doctrine of Virtue*, Kant says the following, referring to the doctrine of right: "what end anyone wants to set for his action is left to his free choice. *The maxim of his action, however, is determined a priori*, namely, *that the freedom of the agent could coexist with the freedom of every other* in accordance with a universal law [es wird jedermanns freier Willkür überlassen, welchen Zweck er sich für seine Handlung setzen wolle. *Die Maxime derselben aber ist a priori bestimmt: daß nämlich die Freiheit des Handelnden mit Jedes anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen könne*]" (TL, AA 06: 382.13–15, italics are mine). I thank an anonymous reviewer for pressing me to clarify this point.

58 An insightful examination of the latter two issues can be found in Newhouse 2016. Newhouse analyzes the distinction between formal and material wrongs (RL, AA 06: 308) and holds that whereas material wrongs are somewhat 'empirical', formal wrongs are 'conceptual' and thus reflected in the maxim of the action.

underline that the principle of right refers to maxims and *not only* to actions. I take this as evidence that the general law of right presupposes a central element of the general law of morals.

One might object at this point that a restriction on maxims of action established by the principle of right cannot be squared with the external character of right, for it is often assumed that the act of adopting a maxim is *internal*, in the sense that it “takes place” in the realm of *Gesinnung*.⁵⁹ Hence, a few points on the externality of right are in order before turning to the relationship between the principle of morals and the principle of right.

The externality of right

As I see it, Kant’s claim regarding the externality of right has a precise meaning that is not equivalent to those aspects of action to which we have empirical access (that “we can see or hear”), such as the movement of bodies or the handling of objects.⁶⁰ The external character of right means that juridical duties and obligations tell us nothing about our motives for action or our ends when we are acting or shaping our maxims. Hence, that the principle of right restricts maxims of action poses no paradox with regard to the externality of right. Let me explain.

Kant uses the terms “internal-external [innere-äußere]” in several senses. In the *Metaphysics of Morals*, he makes use of them with regard to the distinction between juridical duties and duties of virtue,⁶¹ with regard to the distinction between innate right and acquired rights,⁶² and with regard to the distinction between duties to oneself and duties to others.⁶³ Here, we are concerned with the first use of the term “external”, namely as a key feature of right and its conceptual elements.

In the Introduction to the *Metaphysics of Morals*, Kant talks not only about “external duties” but about “external actions [äußere Handlungen]”,⁶⁴ “external lawgiving [äußere Gesetzgebung]”,⁶⁵ “external relation [äußeres Verhältniß]”

59 E.g. Ripstein 2009, 374.

60 Cf. Ludwig, Bernd: *Kants Rechtslehre*, Hamburg 1988, 88. For a complete discussion of this position, see Von der Pfordten, Dieter: “Kant’s Rechtsbegriff”, *Kant-Studien* 98, 2007, 431–442.

61 E.g. RL, AA 06: 219.17–21.

62 E.g. RL, AA 06: 237.24–26.

63 E.g. RL, AA 06: 237.09–12; Cf. V-MS/Vigil, AA 27: 581 f. Cf. Ludwig, Bernd: “Die Einteilungen der Metaphysik der Sitten im Allgemeinen und die der Tugendlehre in Besondere”. In *Kant’s Tugendlehre: A comprehensive Commentary*. Eds. Andreas Trampota, Oliver Sensen, Jens Timmermann. Berlin/New York 2013, 59–84: 64–65.

64 Cf. RL, AA 06: 214.14.

65 Cf. RL, AA 06: 219. 26–27.

between persons,⁶⁶ and “external coercion [äußerer Zwang]”.⁶⁷ Duties are external when they arise from juridical lawgiving, “since this lawgiving does not require that *the idea of duty, which is internal*, itself be the determining ground of the agent’s *Willkür*”.⁶⁸ Accordingly, ethical lawgiving, “just because it includes within its law the internal incentive to action (the idea of duty) [...] cannot be external”.⁶⁹ Therefore, a form of lawgiving and its corresponding duties are external when they do not command a particular incentive or motive to act. Juridical laws are thus “directed merely to external actions and their conformity to law [sie nur auf bloße äußere Handlungen und deren Gesetzmäßigkeit gehen]”,⁷⁰ namely, to the aspects of actions that exclude, or are not related to, motivation. In other words, that right deals with the external sphere of action thus far only means that, by definition, juridical principles do not put the agent under an obligation to act from duty, or to act on maxims adopted from duty.

Let us now turn to the notion of external coercion. In the Introduction to the *Doctrine of Virtue*, Kant contrasts this notion with that of self-coercion [Selbstzwang],⁷¹ while also referring to the distinction between external and internal freedom.⁷² In Section I of the Introduction, he defines the concept of duty as being “already in itself the concept of a necessitation (coercion) of the free *Willkür* through the law [ist an sich schon der Begriff von einer Nöthigung (Zwang) der freien Willkür durchs Gesetz]”.⁷³ This coercion can be external or self-coercion. Kant argues that the notion of *äußere Zwang* corresponds to the doctrine of right, since it “deals only with the *formal* condition of external freedom (the consistency of external freedom with itself if its maxim were made universal law)”.⁷⁴ But ethics, he goes on to say, “goes beyond this and provides a *matter* (an object of the free *Willkür*), an end of pure reason”.⁷⁵ By considering ends established by reason, “from which right

66 Cf. RL, AA 06: 230.09.

67 Cf. RL, AA 06: 220.04.

68 “[...] weil diese Gesetzgebung nicht verlangt, daß die Idee dieser Pflicht, welche innerlich ist, für sich selbst Bestimmungsgrund der Willkür des Handelnden sei” (RL, AA 06: 219.18–02, italics are mine).

69 “[...] die innere Triebfeder der Handlung (die Idee der Pflicht) in ihr Gesetz mit einschließt, [...] so kann die ethische Gesetzgebung keine äußere [...] sein” (RL, AA 06: 219.24–38).

70 RL, AA 06: 214.14–15.

71 Cf. TL, AA 06: 379, 383, 396.

72 Cf. TL, AA 06: 380, 396.

73 TL, AA 06: 379.15–17 (translation amended).

74 “[...] hatte es bloß mit der formalen Bedingung der äußeren Freiheit (durch die Zustimmung mit sich selbst, wenn ihre Maxime zum allgemeinen Gesetz gemacht wurde” (TL, AA 06: 380.19–21).

75 “Die Ethik dagegen giebt noch eine Materie (einen Gegenstand der freien Willkür), einen Zweck der reinen Vernunft [...] an die Hand” (TL, AA 06: 380.22–25).

abstracts altogether”, the doctrine of virtue introduces the notion of *Selbstzwang*, that is, “the capacity for self-coercion not by means of other inclinations but by pure reason”.⁷⁶

The coercion involved in the case of duties of virtue (internal coercion or self-coercion) is thus a kind of constraint of the self (which by definition cannot be exerted by an external will) through which one sets an end of pure reason “against the end arising from sensible impulses”.⁷⁷ This act of constraint implies not merely the adoption of an end above empirical or subjective ends but the pursuit of a moral end from respect for the law. Self-coercion, Kant writes, occurs “in accordance with a principle of inner freedom, and so through the mere representation of one’s duty in accordance with its formal law”.⁷⁸ What makes coercion *external*, in contrast to what makes coercion *internal*, is, once again, the absence of normative requirements on motives, incentives and ends within the notion of duty (of right). When Kant argues that duties of virtue involve *Selbstzwang*, he is not merely saying that a constraint of the self is at play, but also that these duties are based on objective ends that are set from the idea of duty itself. Accordingly, the claim that duties of right involve an *äußere Zwang* does not merely mean that there is a constraint that can be exerted by a will other than one’s own at play, but mainly that these duties do not bind us to adopt moral ends or to comply with them from mere recognition of the law.

Thus, the reason why right is *external* is neither that it gives laws to actions (instead of maxims) nor that it *only* affects interactions between persons. The *externality* of right seems to refer to the fact that it does not require us to act on maxims that are adopted from duty and that incorporate ends of pure reason. Of course, right is *not only* external, but it is also concerned with reciprocal and practical relations between persons. It requires that actions, or maxims of action, be compatible with the sphere of action of others, that is, that one’s use of external freedom not infringe on the freedom of others. Therefore, the claim that the universalizability of maxims can be relevant to the moral (or normative) realm of right is not at odds with right’s being, by definition, external.⁷⁹

76 TL, AA 06: 396.20–21.

77 TL, AA 06: 381.13–14.

78 “[...] nach einem Princip der innern Freiheit, mithin durch die bloße Vorstellung seiner Pflicht nach dem formalen Gesetz derselben” (TL, AA 06: 394.21–23).

79 More should be said on the notion of external freedom. One consequence of this (negative) characterization of the *externality* of right is that the notion of external freedom is not only concerned with the setting and pursuit of private ends (cf. Ripstein 2009, 77). Paraphrasing Ripstein, external freedom is also a matter of being able to act on maxims (which may be adopted on subjective grounds in order to pursue one’s own ends).

3.3 *Rechtsgesetz* and *Sittengesetz*

In section 3.i, I argued that the *Sittengesetz* is a merely formal principle that does not ground substantive duties by itself; it only says what obligation is in general. In other words, the principle of morals demarcates the normative realm (or the moral domain) within which the supreme principle of each doctrine (the *Rechtslehre* and the *Tugendlehre*) is to be formulated and its corresponding duties established. After all, Kant does not talk about “moral duties” but classifies them into duties of right [Rechtspflichten] and duties of virtue [Tugendpflichten], and each branch depends on its general corresponding law. The supreme principle of each brand of pure morals, the universal principle of right and the universal principle of virtue, is not gained by means of a derivation. If this were the case, these principles would be *completely contained in*, and could be subsumed under, the principle of morals. But the principle of right and the principle of virtue contain elements that are not present in the principle of morals (such as interactions between agents, in the first case, and ends, in the second). Put differently, from the universal law of morals *alone* we can obtain neither a fundamental law of right nor a fundamental law of ethics. Hence, the principle of *Sitten*, i. e. *the categorical imperative*, must be combined with further conceptual elements in order to formulate the supreme practical principles of each part of the *Sittenlehre*. In the case of the *Rechtslehre*, the *Sittengesetz* is applied to the concept of right. In the case of the *Tugendlehre*, the *Sittengesetz* is applied to the concept of a duty of virtue and therefore incorporates the notion of an “end that is at the same time a duty [ein Zweck, der zugleich Pflicht ist]” (which is a “concept that belongs exclusively to ethics”).⁸⁰

In the *Doctrine of Right*, Kant introduces the concept of right in §B, precisely when addressing the question “What is right?” and before establishing the supreme principle of right in §C. There, he holds that the concept of right only affects external and reciprocal interactions among persons and considers “the *form* in the relation of the *Willkür*”, not the matter (the ends of actions). More precisely, right is concerned with the question of “whether the action of one can be united with the *Willkür* of another in accordance with a universal law of freedom”.⁸¹ After indicating its relevant features, Kant defines it as “the sum of the conditions under which the *Willkür* of one can be united with the *Willkür* of another in accordance with a

⁸⁰ TL, AA 06: 389.12–13.

⁸¹ “[...] ob durch die Handlung eines von beiden sich mit der Freiheit des andern nach einem allgemeinen Gesetze zusammen vereinigen lasse” (RL, AA 06: 230.19–21).

universal law of freedom”.⁸² Thus far, right is described as dealing with the relationship between agents and the compatibility of their external spheres of action under universal laws. Nothing is said about the universality of maxims. But then, in §C, Kant establishes the principle of right, which, as we saw in the previous section, refers not only to actions but also to maxims. This principle is in turn a practical law that tells us how we ought to act and therefore takes the form of a categorical imperative.⁸³

The presence of maxims in the universal law of right indicates that this principle presupposes the general law of morals. But this formal law, which tells us that our maxims must be able to serve as universal laws, is now applied to the concept of right, which introduces an important normative element: the necessary coexistence of the sphere of external freedom of all under universal law. As a result, the principle of morals gains substantive content and a particular meaning. From the point of view of right, a maxim is universalizable (and thus *recht*) if acting on it is compatible with the external freedom of all in accordance with a universal law. Note here that this is not to say that right only (or primarily) concerns maxims. Since the concept of right mainly has to do with reciprocal relationships between agents, the principle of right takes *both actions and the maxims of actions* into account when establishing how agents ought to relate. The main distinction when defining the scope of right is therefore not between actions and maxims but between the internal and the external use of *Willkür*. As we have seen, the fact that right is concerned with the external aspect of actions means that, when considering the reciprocal interactions of *Willkür*, it abstracts from ends and incentives.

Let us now return to Achenwall and the similarities between his and Kant’s understanding of the relationship between the universal moral law and the universal law of right. Like Achenwall, Kant holds that the universal law of right is part of a broader system of moral laws (although he understands these laws as laws of freedom rather than natural laws). For both authors, this system has a fundamental moral law, and the doctrine of right, as a particular subset of moral laws, has its own supreme principle or general law (which only pertains to its corresponding branch of moral philosophy). Neither Achenwall nor Kant claims that the universal law of right derives from the universal law of morals, but neither do they regard the former principle as completely independent of the latter. Their doctrines of right (the *Ius Naturae* and the *Rechtslehre*) share the view that, if the moral law is to define the scope of obligation in general, it must somehow be contained or

82 “[...] der Inbegriff der Bedingungen, unter denen die Willkür des einen mit der Willkür des andern nach einem allgemeinen Gesetze der Freiheit zusammen vereinigt werden kann” (RL, AA 06: 230.24–26).

83 RL, AA 06: 231.12–13.

reflected in the law of right, since this is the practical principle from which juridical duties and obligations are to be gleaned. Of course, the similarity ends there. Kant and Achenwall offer markedly different accounts of how the law of right includes elements of the general formula of the moral law. According to Achenwall, the fundamental natural law (like natural laws in general) is conceived in a teleological manner, in the sense that it obtains its normative content from an end (i. e. the perfection of the self). The universal principle of right presupposes this normative claim, i. e. human beings should pursue their natural ends, but it also depends on the introduction of additional premises or definitions (e. g. the idea of a moral capacity to coerce). In the case of Kant's doctrine of morals, the presence of the supreme principle of morals in the principle of right is evidenced by the fact that it contains the general view that maxims of action must be capable of universalization if they are to be morally permissible. The principle of right presupposes the principle of *Sitten*, but it also depends on the introduction of the concept of right and its normative features.

Finally, I would like to suggest that in the *Metaphysics of Morals*, the relationship between the principle of *Sitten* and the universal principle of right parallels the relationship between the principle of *Sitten* and the universal principle of the doctrine of virtue. As I see it, whereas in the *Rechtslehre* the categorical imperative is applied to the concept of right, in the *Tugendlehre* this general principle is applied to the concept of a duty of virtue.⁸⁴ I will now give a rough outline of how the relationship between the universal principle of morals and that of ethics may be understood.

Kant introduces the supreme principle of the doctrine of virtue in the section titled "What is a duty of virtue? [Was ist Tugendpflicht?]" Before introducing the principle, he discusses the notion of *Tugendpflicht* and distinguishes it from the notion of *virtue* [Tugend]. Virtue is the "strength of a human being's maxims in fulfilling his duty [die Stärke der Maxime des Menschen in Befolgung seiner Pflicht]".⁸⁵ He holds that this notion is merely a formal one, in the sense that it has to do with the *form* of one's maxims and the "conformity of the will with every duty

⁸⁴ A similar explanation of the second relationship can be found in Trampota 2013: "the supreme principle of virtue, which is a law for having maxims concerning ends, is a direct consequence of the supreme principle of the doctrine of morals, if this principle is applied to the determination of ends by means of my own choice" (Trampota, Andreas: "The Concept and Necessity of an End in Ethics". In *Kant's Tugendlehre: A comprehensive Commentary*. Eds. Andreas Trampota, Oliver Sensen, Jens Timmermann. Berlin/New York 2013, 139–158; 150). This notwithstanding, Trampota takes the concept of "one's own will", rather than "ends that are at the same time a duty", to be decisive for the formulation of the principle of virtue.

⁸⁵ TL, AA 06: 394.15–16.

[Übereinstimmung des Willens mit jeder Pflicht].⁸⁶ By contrast, a *duty of virtue* concerns the *matter* of one's maxims, and hence "the end that is at the same time a duty [Zweck, der zugleich als Pflicht gedacht wird]."⁸⁷ Kant maintains that there must be such ends and identifies them as *one's own perfection* and the *happiness of others*.⁸⁸ He goes on to argue that the concept of an "end that is at the same time a duty" is the only one that "establishes a law for maxims of actions [ein Gesetz für die Maximen der Handlungen begründet]", precisely "by subordinating the subjective end (that everyone has) to the objective end (that everyone ought to make his end)."⁸⁹ Accordingly, not only does ethics require that a maxim be able to serve as a universal law, but it also demands, given that a maxim of action is a "means to ends",⁹⁰ that *we pursue ends set by pure reason through the adoption of maxims of ends*. A duty of virtue can thus be defined as an "*obligation to the maxims of such an end*" (i. e. an objective or obligatory end).⁹¹

Having explained the notion of a duty of virtue, Kant introduces the supreme principle of the doctrine of virtue: "act in accordance with a maxim of *ends* that it can be a universal law for everyone to have [handle nach einer Maxime der Zwecke, die zu haben für jedermann ein allgemeines Gesetz sein kann]."⁹² This principle seems to result from the application of the principle of *Sitten* to the concept of a duty of virtue, namely, the duty to adopt maxims of ends. When the categorical imperative, which requires us to act on maxims that could qualify as universal laws, is applied to the notion of duties of virtue (or "obligatory ends"), the outcome is a law (a principle of *internal* legislation) that prescribes acting on maxims of ends that can be the object of universal legislation. Put otherwise, by means of the notion of ends that we have a duty to adopt, the universal principle of morals can be converted into a principle of *internal* willing (i. e. a law for *my own will* and not for *a will in general*), and hence into a principle of ethics.⁹³ Whereas the principle

86 TL, AA 06: 395.89–10 (translation amended).

87 TL, AA 06: 394.35–395.01.

88 TL, AA 06: 395.08. On Kant's argument for the existence of obligatory ends, see e. g. Allison, Henry: "Kant's Doctrine of Obligatory Ends". *Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics* 1, 1993, 7–23; Baum, Manfred: "Recht und Ethik in Kants praktischer Philosophie". In *Band 2: Arbeiten zur praktischen Philosophie Kants*. Ed. Dieter Hüning. Berlin/Boston 2020, 148–149.

89 "[...] indem der subjective Zweck (den jedermann hat) dem objectiven (den sich jedermann dazu machen soll) untergeordnet wird" (TL, AA 06: 389.14–15).

90 TL, AA 06: 389.16–17.

91 "[...] die Verbindlichkeit zu der Maxime desselben [i. e. des Zwecks, der zugleich Pflicht ist] heißt Tugendpflicht" (TL, AA 06: 395.13–14).

92 TL, AA 06: 395.15–16.

93 Cf. Baum 2013, 91; Trampota 2013, 151, Geismann 2006, 40.

of right was only able to *restrict* maxims of actions (and actions), the principle of ethics, by taking recourse to ends of reason, *commands us to act on certain maxims* and thus to promote certain ends.⁹⁴ As a result, the notion of obligatory ends plays a key role in delimiting the realm of ethics within morals and thus in distinguishing right from ethics; Kant affirms that ethics “can also be defined as the system of the ends of pure practical reason. End and duty distinguish the two divisions of the doctrine of morals in general [allgemeine Sittenlehre]”.⁹⁵

A third way

Before concluding, I would like to briefly return to the current debate in the literature on law and morality in Kant and say a few words on how my reading relates to it. For ease of comparison, I will restate it here: the categorical imperative is necessary in order to formulate the principle of right, but it is not sufficient; the latter is obtained once the universal principle of morals is applied to the concept of right. In a nutshell, my interpretation offers a third way of explaining the relationship between the principle of right and the categorical imperative – one that differs from ‘derivationist’ and ‘independentist’ readings.

As I mentioned above, Gregor (1965) and Guyer (2002) argue that the universal principle of right is derived from the categorical imperative (or from the fundamental principle of morality). In a similar vein, other commentators, such as Seel (2009), Oberer (2010), Ludwig (2015), and Hirsch (2017), maintain that the law of right can be obtained solely from the categorical imperative, although they do not hold that this procedure involves, or must involve, a derivation. For example,

94 Cf. Wood, Allen. *Kantian Ethics*. Cambridge 2008, 167. One could point out that the *Tugendlehre* also includes perfect duties (such as the duty to refrain from ending one’s own life) and thus duties that involve the commission or omission of an act rather than the promotion of ends. The distinction between perfect and imperfect duties is complex; it certainly does not map onto the distinction between duties of right and duties of virtue, and it is unclear whether it can be identified with the distinction between narrow and wide duties (cf. O’Neill 2013, 120). I shall not discuss the category of perfect duty, but it is safe to affirm that all duties of virtue fall under some end that it is a duty to have (cf. O’Neill 2013, 129). The obligation to promote certain ends also includes the obligation to refrain from setting ends that oppose objective ends (i. e. ends that we have a duty to adopt) and, as Wood puts it, to refrain from adopting “any end of *decreasing* one’s own perfection (or doing anything that makes you less worthy of your humanity)” (Wood 2008, 68). The duty to refrain from ending one’s own life, for instance, is a necessary condition of being able to promote one’s own perfection (cf. O’Neill 2013, 129).

95 “[...] kann die Ethik auch als das System der Zwecke der reinen praktischen Vernunft definiert werden. – Zweck und Pflicht unterscheiden die zwei Abtheilungen der allgemeinen Sittenlehre” (TL, AA 06: 381.18–20, translation amended).

Ludwig (2015) holds that “there is no need for any ‘derivation’ of the principle of right from the categorical imperative at all since the former is just a special version of the latter”.⁹⁶ They all agree, however, on a central tenet: the categorical imperative is *both a necessary and a sufficient* condition for obtaining the universal principle of right.⁹⁷ My interpretation denies not only that the principle of right is derived (solely) from the categorical imperative but also that the universal law of morals is *sufficient* to formulate the universal law of right. My claim is that the categorical imperative is *a necessary principle but not a sufficient* one: it has to be applied to the concept of right. Put otherwise, the necessary coexistence of the sphere of external freedom of all under universal laws is a normative element that is not present in the principle of morals, and thus it must be added to it.

The interpretation advanced in this paper does not endorse the so-called independence thesis either. Supporters of this thesis contend that the categorical imperative is *not necessary* to formulate the principle of right. Some of them, e. g. Pogge (2002) and Ripstein (2009), seem to hold that the principle of morals is *not necessary* (but may be sufficient) for formulating the concept of right. This means that even though the categorical imperative is not necessary for obtaining the general law of right, one may find a way to justify the latter by appealing to the former.⁹⁸ Some others, e. g. Willaschek (1997), Wood (2002), and Geismann (2006), argue that the categorical imperative is *neither necessary nor sufficient* for establishing the universal principle of right; that is to say, they maintain that the latter does not presuppose the former.⁹⁹ Therefore, advocates of the ‘independence thesis’ may

96 Ludwig 2016, 25; cf. 35. Cf. Bacin 2016, 80: “on Kant’s view, thus, there is a fundamental difference between right and ethics, which lies, however, not in their alleged derivation from distinct principles or in their application to distinct domains of application, but in the different *respect* within which the subject’s freedom is concerned.” An account of the principle of right as a special version of the categorical imperative can also be found, e. g., in Hirsch 2017, 78–19, 81 and Seel 2009, 76. Note that these commentators present different and complex arguments regarding how the doctrine of right is dependent on Kant’s moral philosophy (and its main notions, such as autonomy, transcendental freedom, and moral personality, etc.), which I cannot discuss here. As I indicated above, I am only concerned in this paper with a narrower problem in this debate, namely the relationship between the principle of morals and the principle of right.

97 Although Gregor (1968) and Hirsch (2017) claim that the formula of humanity, as reflecting the idea of the human being as an end in itself, is the main version of the principle of morality under which the principle of right is to be subsumed.

98 Cf. Willaschek 2009, 56; Pogge 2002, 149.

99 Cf. Willaschek 2009, 57. See e. g. Geismann 2006, 4: “Die Frage, welche Zwecke sich der Mensch setzen und wie er also sein Wollen bestimmen soll oder darf oder nicht darf, betrifft ausschließlich den einzelnen Menschen selber. Die Frage hingegen, wie er äußerlich handeln soll oder darf oder nicht darf, betrifft auch andere Menschen und kann demzufolge nur unter Berücksichtigung des Verhältnisses zu diesen anderen Menschen beantwortet werden”; “das oberste Prinzip der

disagree about the possibility, or impossibility, of deriving Kant's concept of right from his moral theory, but they all regard the categorical imperative *as unnecessary* for formulating the general law of right. By contrast, I contend that Kant views the universal principle of the *Sittenlehre* as grounding both right and ethics, and thus *as necessary* for establishing the general law of right and the general law of ethics. I agree, however, that the categorical imperative *is not sufficient* to establish the principle of right, for important normative elements of the realm of right are simply missing from it. As Willaschek (2009) and Geismann (2006) have already pointed out, the idea of the necessary coexistence of the external freedom of all under universal laws cannot be extracted from the universal principle of morals.

4 Conclusion

Kant never specifies how the *Rechtsgesetz* and the *Sittengesetz* relate to each other, and because of this the possibility (or impossibility) of a deduction of the former from the latter has been a matter of discussion since the very early reception of the text. This lacuna has raised all kinds of questions on the relationship between law and morality, and both early readers and current interpreters of Kant's work disagree on whether right belongs to the metaphysics of morals. In this paper, I have argued that Kant did not pursue the strategy proposed by the early Kantians and that he never presented the *Rechtsgesetz* in terms of a derivation from a formula of the categorical imperative. However, even if we accept that the principle of right is not derived from a more general moral principle, it does not follow that it should be regarded as completely independent. As in Achenwall's view, the fundamental law of right presupposes the universal moral law and is obtained once the latter general principle is combined with additional conceptual elements. Accordingly, I have argued that the universal principle of right in the *Metaphysics of Morals* follows from the application of the principle of morals to the concept of right, thus offering a third way to understand the relationship between the categorical imperative and the principle of right.

If this article is convincing, it will contribute to our understanding of the relationship between right and morals in Kant. More remains to be said on the development of the general formula of the categorical imperative between the *Groundwork* and the *Metaphysics of Morals* and on the general dependence of Kant's theory of

Rechtslehre ergibt sich rein analytisch aus dem Begriff der äußeren Freiheit in Beziehung auf die äußere Freiheit Anderer" (Geismann 2006, 32). At a recent conference (Göttingen 2022), Willaschek presented a modified account that is similar to mine.

right on his moral theory, as outlined in the *Groundwork* and the second *Critique*. Also worth exploring are related issues such as the changes that his moral philosophy and its main concepts (autonomy, obligation, freedom, etc.) had to go through in the 1790s in order to accommodate right as part of a doctrine of pure morals.

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