

## 5 *Honeste Vive*

# Dignity in Kant's Theory of Juridical Obligation

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### 5.1 Dignity in the Doctrine of Right

Kant is considered one of the founders of the modern idea of moral dignity, as a rejection of the traditional notion of honor based on social hierarchy or status, and exemplified by the morality of nobility and guilds in 18th-century Germany.<sup>1</sup> In Kant's conception of dignity, respect is owed to all persons by virtue of their autonomy and consequently their unconditional worth as rational beings.<sup>2</sup> While the traditional conception of honor as *dignitas* belonged to the social (in Kant's terminology: *phenomenal*) realm and was purely external, dignity in Kant's account becomes a property of all persons because it is based on their rational (*noumenal*) nature. One could thus assume that Kant rejected all forms of honor if not as barbaric practices (as illustrated by honor killings), then at least as conventional and morally worthless social codes. However, as some commentators pointed out, dignity as internal "worth beyond price" and honour as outwardly conduct are neither mutually exclusive nor always unrelated in Kant's philosophy.<sup>3</sup>

In the Doctrine of Virtue, Kant identifies ethical duties to oneself to behave in such a way as to maintain one's own dignity externally. He seemed aware of the "social bases of self-respect" and the way one's self-esteem is affected by the way one is judged by others in society.<sup>4</sup> In the Doctrine of Right, he regards the social stigma (*Schmach*) that leads unmarried mothers to commit infanticide and the damage to the reputation of soldiers who refrain from dueling to preserve their honor in war (*Kriegsehre*) as extenuating circumstances against capital punishment for such crimes (MS 6: 336). Kant also identifies a fundamental *juridical* duty not to let oneself be treated by others in ways that are incompatible with one's worth as a human being. This duty, which Kant associates with the Ulpian formula *honeste vive* and with the concept of juridical honour (*honestas iuridica iurechtliche Ehrbarkeit*), can be regarded as the "juridical counterpart" of moral dignity. *Honeste vive* is interesting not only because it is a puzzling "internal juridical duty," but also because it reconciles the idea of dignity as expressing the unconditional value of

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human beings with the requirement to assert this worth in our external relations with other persons, thereby bridging the gap between intrinsic worth and outward conduct. Further, *honeste vive* also helps us better understand the overall project of the Doctrine of Right, namely, a theory of juridical obligation.

In the Introduction of the Doctrine of Right,<sup>5</sup> Kant provides a general division of *duties of right* (*Rechtspflichten*)<sup>6</sup> and *rights* (*Rechte*). In his division of duties of right, Kant uses three maxims from the *corpus iuris civilis*, also known as the *Code of Justinian*, to refer to each of the three juridical duties he identifies. These principles are traditionally attributed to the Roman jurist Ulpian.<sup>7</sup> Since these “Ulpian maxims” have played an important role in the history of jurisprudence, this is probably why Kant chose them to illustrate his division of legal duties: “one can follow Ulpian in making this division if a sense is ascribed to his formulae which he may not have thought distinctly in them but which can be explicated from them or put into them.”

Be an honorable human being (*honeste vive*). Rightful honor (*honestas iuridica*) consists in asserting one’s worth (*Werth*) as a human being in relation to others, a duty expressed by the saying, “Do not make yourself a mere means for others but be at the same time an end for them.” This duty will be explained later as obligation from the right of humanity in our own person (*Lex iusti*).<sup>8</sup>

Kant renders the Ulpian maxim *honeste vive* as the imperative “be an honorable human being!” (*sei ein rechtlicher Mensch!*), whereas the duty is called rightful honour (*honestas iuridicalrechtliche Ehrbarkeit*) in affirming one’s dignity in relation to other persons. One should not *make oneself* a mere means for others but be at the same time an end for them.

There is a striking similarity between *honeste vive* and the second formulation of the categorical imperative, the “Formula of Humanity” of Kant’s *Groundwork*: “so act that you use humanity, in your own person as well as in the person of any other, always at the same time as an end, never merely as a means” (GMS IV: 429). Several questions arise: why is *honestas iuridica* necessary if we already have a duty not to treat ourselves and others as a mere means, but always also as ends? When others already have an ethical duty to regard us as an end, having to *make* ourselves an end for others seems superfluous. Secondly, making ourselves an end for others seems impossible, since from an ethical perspective ends must always be freely adopted as a condition for genuine moral worth. I must voluntarily make your person into an end for myself, but it doesn’t make sense for you to force me to adopt that end. No one else cannot do “the willing” for me. Although I may very well *try* to make myself an end for someone, for example, by persuasion or reminding them of their duties, it’s ultimately their free choice to adopt this end. Thirdly, in the

*Groundwork* we have the reference to the *end of humanity* in our person, while in *honeste vive*, the ground of the obligation lies in the *right* of humanity in our person. What is the difference between the end of humanity and the right of humanity? Are these two notions interrelated? Finally, *honestas iuridica* also refers to the idea of the worth (*Werth*) of a human being, which is strongly reminiscent of the idea of dignity (*Würde*) of the *Groundwork*. Is Kant appealing to the same notion (the dignity of human beings) in both cases, and, if so, is there a difference between the two?

Dignity is important for both ethics and right. It epitomizes the idea that persons have a special status that prohibits treatment that befits only *things*. However, Kant does not simply apply the notion of moral dignity of his ethical works to his legal writings. The way he uses the idea of dignity in the Doctrine of Right is evidence against what can be called “applied ethics” interpretations of that work, namely, the assumption that Kant’s legal-political thought is a mere extension of his ethical theory, as opposed to a related, and yet to a certain extent independent, area of his thought.

Central for Kant’s theory of obligation in general is the idea that all obligation is ultimately *self-imposed*. We first encounter this idea in Kant’s moral theory. “Self-legislation” is the fundamental tenet of Kant’s theory of autonomy. The binding force of our moral duties stems from the fact that their underlying principle, the moral law, arises from our own law-giving reason. My argument is that Kant seeks for the domain of external laws something *analogous* to the structure of self-legislation in the moral domain in order to account for the possibility of juridical obligation. Juridical obligation must also qualify as self-imposed, albeit in a different way as ethical obligation. For juridical obligation to qualify as “self-imposed” we need public institutions and representative government that enable what I will call “omnilaterality.” Omnilaterality is the juridical analogue of universality in the ethical domain. As I will explain later, the role of omnilaterality is to enable the second-order legal relations that are absent in innate right and private rights in the state of nature. These second-order legal relations are the authority (power) to interpret rights and coerce in a *binding* manner and the corresponding duty (liability) to bear what is imposed by the authority. Only then we have full-fledged juridical obligation.

The juridical domain adopts an *external* perspective on freedom; therefore, it also requires an external perspective on dignity, which leads us to the idea of the *right* of humanity in our person and of rightful honour. External freedom concerns the principles regulating our conduct in regard to others, more specifically, what we can rightfully impose on them (or not) and they have a duty to bear (or not). The agent’s motive is secondary in that case. As we will see, the right of humanity in our person expresses the idea that no one has the authority to impose a juridical

obligation on another unless a legally relevant deed has been performed that creates such an obligation. A positive juridical obligation creates an asymmetry between individuals that is only morally possible if they have voluntarily agreed to enter such legal relations with each other. The idea is thus that, as a starting position, we are free from positive juridical obligations towards others.

In contrast, internal freedom *additionally* requires a specific attitude from the agent. This is why ethical duties refer to the *end* of humanity in our person. Only the agent can bring herself to adopt a principle internally. The formula of humanity of the *Groundwork* commands us not to treat humanity in ourselves and others as mere means but at all times also as ends in themselves. *Honeste vive*, in turn, requires not to make oneself a mere means *to others* but to make ourselves *also an end for them*. Because *honeste vive* is a duty of right and concerned with external actions, primarily relevant is not the quality of the maxims of those we interact with (which is always beyond our control), but their actions towards us.<sup>9</sup>

One could object that when I strive to make myself an end for someone, I expect not merely a certain external treatment, but also the *attitude* of someone who genuinely regards me as among her ends. This internal commitment would be reflected in the person's overall external behavior towards me and seems therefore more desirable than merely aiming at external actions.<sup>10</sup> Because the formula of humanity is a purely internal principle of willing,<sup>11</sup> that is, it concerns the quality of our maxims and the voluntary adoption of morally required ends, it cannot be externally imposed on the agent without dissipating its ethical value. In contrast, one can very well demand respectful treatment from others, regardless of their motives for compliance.

Although it is an internal principle, *honeste vive* has a clear reference to our external interactions with others: the subject must assert her own worth in relation to others and provide them with an incentive to treat her as an end in herself. There is no mention that the agent always must do this from an ethical motive; her exercise of self-assertion or boundary setting is sufficient for satisfying the duty. Compliance with a juridical duty from the awareness that it is a duty to do so would add an additional, ethical dimension to the performance, and moral worth from *an ethical perspective*.

One could argue that when complying with *honeste vive* does not involve an ethical motive, the action has no moral worth.<sup>12</sup> This is misleading. "No moral worth" is the moral valence Kant attributes to the failure to act from the correct motive in the case of ethical duties. However, a duty is juridical when the agent is *permitted* to act from a motive other than respect for the moral law without compromising her obligation. If so, the evaluative standard for successful compliance with juridical duties must be different from ethical ones. To interpret the lack of a moral motive as a "failure" only makes sense from a purely ethical

perspective, which rules out any motives other than the moral motive. I will call the worth characteristic of compliance with juridical duties “the dignity of rightful honour.” Our status as persons also requires that we uphold dignity externally, regardless of whether we do so from an ethical motivation. If so, there is a sense in which external conduct can be “dignified” and we can and indeed should externally signal our dignity to others. Later, I will explain the compliance with the duty of rightful honor as the affirmation of the content of the only innate right.

Kant’s remarks on *honeste vive* are strongly reminiscent of his discussion of self-respect in the doctrine of virtue.<sup>13</sup> There, he suggests that the consciousness of one’s moral personhood leads not only to the consciousness of a worth beyond our mere animal nature, but also of one’s equality with all other rational beings. The awareness of one’s equality with other persons insofar as we are all subject to moral-practical reason is also the source of the positive requirement to demand respect (*Achtung*) from others. It also gives rise to a duty of self-esteem, which prohibits servile, self-abasing behavior as a means of gaining favor in the eyes of others. Here the ethical motive of the agent (“the consciousness of one’s sublime moral predisposition”) is crucial for satisfying the moral requirement (MS 6: 434–5).

The difference between self-esteem as an ethical duty and rightful honor as an internal juridical duty is what I will call their “direction of fit,” for lack of a better term. While the form of one’s maxims is the locus of ethical duties, juridical duties have to do with whether a certain external action can be rightfully imposed on the subject, who then has a juridical duty to bear it. In ethical duties the moral necessity of the action is located internally, in the form of one’s maxim (whether it qualifies for universal law-giving). In juridical duties, the moral necessity of the action arises from an interpersonal legal relation (someone or an institution with the power to bind and a person who has the corresponding duty to bear). The internal juridical duty *honeste vive* expresses a *lack* of an external authority to bind and consequently the *absence* of one’s juridical duty to bear.

The maxim of a servile, self-abasing agent could be formulated as “I will minimize my own worth when necessary to please others.” A servile person has adopted a maxim of subordinating her dignity to a non-moral end; she is *instrumentalizing* herself. However, such a maxim cannot be universalized without contradiction; a rational agent cannot *will* to throw away her inner worth for the sake of some inclination. The agent is thus morally prohibited from making such use of her own person as a means to gain the favor of others. This entails the positive requirement to adopt a maxim that logically *contradicts* the impermissible maxim of servility, i.e., *a maxim of self-esteem*. Therefore, the ethical duty of self-esteem arises as a “response” to an impermissible maxim of action. The ethical requirement “fills in” the normative space of the immoral maxim we ought to reject.

In contrast, *honeste vive* is a juridical duty because it presupposes a conception of *what one has the authority to impose on another*. The duty of rightful honor requires the agent to resist treatment she has no juridical duty to accept. The “lack of obligation” is thus the basis of the agent’s demand for respectful treatment from others. The idea is that one’s dignity as a juridical person, one’s *honestas iuridica*, is a person’s deontological “default position.” All things equal, one has no juridical duty to endure treatment from others that negates one’s juridical dignity. This entails the requirement to adopt an external conduct that asserts one’s juridical personality, that is, to *signal* to others that one is neither a mere thing nor guilty of conduct that would warrant external impositions from others. Therefore, *honestas iuridica* is a condition of “juridical blamelessness.” In order to understand why, we must have a closer look at the correlate notion to rightful honor, namely, the only innate right (section 5.2).

*Honeste vive* is an internal juridical duty because it is the correlate duty of the only innate right. Kant calls innate right the “internal mine,” because it belongs to me originally. Unlike all other external things I can call mine, innate right has not been acquired. We are born with it. My view is that Kant understood innate right negatively, not as a positive “right to freedom” but instead as a *lack of juridical obligation*, i.e., a *liberty*. This lack of obligation does not lead to a Hobbesian “right to everything,” because the limiting condition of my liberty-right is the equal liberty-right of all other persons, whom in turn I also lack the power to bind.<sup>14</sup>

Although *honeste vive* is a duty of right, it only binds *internally*, that is, it obligates the person herself. But this is precisely **its great advantage**. Imagine a scenario devoid of public authority in which all persons equally possess innate right and have not yet performed any legally relevant deeds (*Fakta*) that create further legal obligations. We are thus considering persons in that juridical default position, without any additional acquired rights. In such a scenario no one has the authority to bind, that is, to impose an external obligation on another (that they would be obliged to bear) just by virtue of one’s innate right. Since there is yet no external obligation proper (only liberty)<sup>15</sup> juridical obligation can only be internal at this stage, binding only the innate right-holder *herself*. Therefore, there are very good methodological reasons for starting with an internal juridical duty as a normative starting point.

The interpersonal juridical obligation *vacuum* of this original rights scenario, which Kant associates with *lex iusti*, only allows persons to appeal to their innate right to demand independence from the constraints of others when they overstep their authority. To appeal to this innate right amounts to demanding treatment in accordance with the worth of a human being from a juridical perspective, that is, to satisfy the duty of rightful honor.<sup>16</sup> The internal duty to oneself expressed by innate right is none other than what is already included in the only original right. “To live honorably” in a juridical sense is thus to affirm one’s own status

as a subject of rights in regard to others. As it will become clear in the course of my discussion, *honeste vive* plays a crucial methodological role for understanding juridical obligation in general, the specific normative problems arising from acquired rights, and ultimately the need for a condition of public justice.

In the next section, I will analyse the relationship between *honeste vive* and the only innate right in more detail. Understanding why Kant associates innate right with juridical blamelessness (*Unbescholtenheit*) will make clear why innate right should be understood as a liberty-right, and not as a claim-right against others. Consequently, it will also help us understand why rightful honour should be understood as the affirmation of the content of innate right.

## 5.2 The Only Innate Right as Juridical Blamelessness (*Unbescholtenheit*)

Kant defines the only innate right as follows:

Freedom (independence from the necessitating choice (*nötigender Willkür*) of another) in so far as it can coexist with the freedom of every other in accordance with a general law (*allgemeines Gesetz*), is this sole original right which every one has by virtue of their humanity. (...) Innate equality, that is, the independence not to be bound by others to more than they can mutually bind each other; hence the quality to be one's own master (*sui iuris*), similarly to that of a blameless person (*eines unbescholtenen Menschen, iusti*), because he, before any legal act, has done no one wrong (*weil er, vor allem rechtlichen Akt, keinem Unrecht getan hat*).

(MS 6: 237–8, my translation)

Why does Kant compare the only original right with the quality of a blameless person (*eines unbescholtenen Menschen, iusti*)? *Unbescholten* is someone who has committed no wrong from a juridical perspective. It presupposes the idea that one must be regarded as innocent until proven guilty.<sup>17</sup> Innate right is therefore connected with the idea of “the right to a good name,” as the quality of being *beyond reproach* from a legal perspective. We are all born blameless: no one's mere existence in this world constitutes in itself a wrong. Therefore, one must be considered blameless until it can be proven that one has done something that warrants losing one's default blamelessness. For this reason, the burden of proof (*onus probandi*) lies not with the accused, but with her accuser, and in this matter the accused can appeal to her innate right (MS VI: 238). That every person has an innate right to be deemed honorable until the contrary has been proven was not generally accepted in Kant's time. One could be considered “infamous” due to one's birth, for instance, if one was born

“out of wedlock” or was an illegitimate child.<sup>18</sup> The concept of infamy itself goes back to Roman Law.<sup>19</sup> Gottfried Achenwall, a leading jurist in Kant’s lifetime whose textbook Kant used in his lectures on natural law theory,<sup>20</sup> considered infamy already in the state of nature (which he calls the “absolute condition”) as resulting from actions that violate perfect duties. According to Achenwall, a person can be made infamous through the contempt of another,<sup>21</sup> although he rejected the view that one’s birth can be a violation of perfect duties independently from one’s deeds.<sup>22</sup>

There is an important link between the original right to be considered juridically blameless and independence from the constraining choice of others. This connection consists in the idea that in the state of nature only a legally relevant *deed* of the agent can create a *positive* legal obligation (*Verbindlichkeit*).<sup>23</sup> Kant associates *honeste vive* with *lex iusti*, that is, the modality of right that corresponds to the category of possibility (*Möglichkeit*).<sup>24</sup> In the *Critique of Pure Reason*, the three categories of modality (possibility, reality and necessity) “add nothing to the concept to which they are attached as predicates to specify the object, but instead express only the relation to the capacity of cognition” (KrV III:186/B 266), in other words, they refer to the *mode of cognition*. In the doctrine of Right, the categories of modality correspond to the three *leges* or conditions of right (*lex iusti*, *lex iuridica* and *lex iustitiae distributivae*). Kant’s use of the categories of modality in the Doctrine of Right expresses the way a right is able to impose a corresponding juridical obligation on other persons.<sup>25</sup>

My view is that the only innate right is best understood as a *liberty right*. In the lack of legally relevant deeds it is not possible to impose a juridical obligation on another, since no one can positively bind another person on the basis of innate right alone. All we have is *independence* from the arbitrary choice of another in the sense of “no duty” to defer to their judgment about what one should do (the limiting constraint is that one’s choice does not violate **other’s** equal “no duty” to abide). *Lex iusti* is thus a condition of right characterized by radical liberty, that is, the mutual lack of authority to impose a positive obligation on one another. As a *default* position, I have *no duty of right not to act* as I see fit, as long as my action is externally compatible with the equal innate right of others, in accordance with a general law. “Compatible with the equal innate right of others” is any action that does not diminish or take away what is theirs (whether they like the action or not). This is a purely negative criterion. For instance, Kant stresses that on the basis of innate right, one is allowed as a matter of right (but not always as a matter of ethics) to communicate one’s thoughts to others, to tell them something or even promise something to them regardless of whether it is false or insincere, since it is up to them whether to believe one or not (MS 6: 238). Kant’s deliberate choice of ethically contentious actions as examples of authorizations implicit in innate right highlights that the relevant criterion of



juridical permissibility is purely *external*: these actions do not deprive others of what is theirs. This side constraint itself is an implication of radical equal liberty: if you cannot bind me, neither can I bind you. The reciprocity is purely negative and expresses no more than the equal lack of authority to *asymmetrically* obligate another person juridically.

A voluntary deed is like moving the first piece on the chessboard. It initiates the juridical obligation game. This is why no one can bind me (i.e., impose a positive duty of right on me) independently of any legally relevant deeds on my part, i.e., until I voluntarily enter an agreement with another person that creates a duty towards that specific person. A legally relevant deed is an external action that creates a claim against another person or that puts me under obligation towards another person. This legal relation introduces an asymmetry that did not exist in a purely innate right scenario: I now owe you something you can rightfully claim from me. Your right and my corresponding obligation must be thus *acquired* and are not things we are born with. We have thus left behind the domain of “mere” innate right, in which acquired rights were merely *possible*, and have entered the domain of acquired rights,<sup>26</sup> where a concrete constellation of subjective rights will emerge from individuals’ voluntary interactions with each other.<sup>27</sup>

### 5.2.1 Innate Right and Honeste Vive

In this section, I will explain how innate right relates to *honeste vive*, the internal juridical duty of rightful honor. How can a right that entails a mere liberty in regard to others bind the subject who has the right of humanity in her person to live honorably, that is, not to let herself become a mere means to others but also an end to them?

As the table of the “division of the objective relation between law and duty” (MS 6: 240) shows, the right of humanity in our own person corresponds to a *perfect* duty and a duty *against oneself*; this means that it primarily binds the right-holder herself. This sounds at first like an unnecessary complication. Why not say that the right of humanity in my person binds all others to treat me not as a mere means but also as an end for them? Why do we need to posit an internal juridical duty to *oneself* in order to demand a certain behavior from others, while all other juridical duties are external? There are good reasons for postulating an internal duty of right. *Honeste vive* is a duty arising from the right of humanity in our person. This right is none other than the only innate right. Let us thus go back to innate right for a moment.

Consider the normative implications of overstepping the boundaries of another person’s liberty. For the sake of the argument, let us assume that there are no acquired rights involved. All we have is the original liberty right not to be bound by the necessitating choice of others. Imagine that you are going on a walk and that I block your way and refuse to let you

pass. I am acting in a way that is incompatible with your innate right since I am imposing a constraint on your external freedom that I have no authority to impose and you have no juridical duty to accept. However, is it the case that *your* innate right binds me not to infringe on your liberty to move as it pleases you? Not quite. All it provides us is the idea that I have *no authority* to impose that constraint on you.<sup>28</sup>

One could object that if I impose an action on you I have no authority to impose, you are entitled to coerce me to protect your rights. After all, rightful coercion can be logically understood as “a hindrance to a hindrance to freedom” (MS 6: 231) or the negation of a negation of freedom. If so, one would always be authorized to coerce anyone who oversteps their authority or violates rights. However, innate right only authorizes doing to others what does not diminish or take away what is theirs. I may prevent you from curtailing the scope of my original liberty, but just because you did not have that right in the first place, not because I have the authority to coerce you.

This is the main difference between Kant’s and Locke’s accounts of the right to coerce in the state of nature. For Locke, whoever has the law of nature on their side (is “in the right”) is entitled to coerce whoever violates the law of nature. Private persons are entitled to do justice with their own hands in the Lockean account. In contrast, for Kant “being in the right” does not give one the authority to coerce another. Genuine authority entails that those liable to it have a *duty of right* to subject themselves to the verdicts of that authority. Authority is thus a second-order ‘power’ or special moral capacity to impose legal obligations. No individual can *unilaterally* bind another in this way given our radical equality as persons, even though individuals can have legitimate claims against each other already in the state of nature. Although claim-rights in the state of nature can also be understood as a “power” of right-holders, as individuals they still lack the second-order power to coerce and interpret rights in a binding way for other persons. They have a first order power, but lack the second-order moral power I called authority.

My argument is that in a purely innate right scenario there is no positive interpersonal juridical obligation. There *is only a mutual lack of authority to bind*, as an implication of the radical innate equality of all persons. You overstep the boundary of your original innate right when you encroach on my liberty because imposing such an asymmetric constraint on me requires a moral power to obligate that is inconsistent with our equal juridical status. The authority to bind and constrain another person cannot be derived from innate right. Full-fledged legal obligation, that is, legal obligation that is *determined* by an omnilateral public authority, is only possible in a condition of public law.

Kant conceived *honeste vive* as a juridical duty against oneself, that is, an *internal* juridical duty because the conditions for a first-order power to impose a duty of right on others (interpersonally) do not yet obtain in a

purely innate right scenario. External freedom in the context of the only original right is only negative external freedom: it is mere liberty (“no duty of right not to x”). However, precisely because *honeste vive* is internal it can bind the subject who has the right of humanity in her person to insist upon her innate right, i.e., on her liberty from necessitation by another person.

This also explains why innate right belongs in the *prolegomena* of the Doctrine of Right.<sup>29</sup> Juridical obligation proper and the question of the authority to coerce only arise within the context of acquired rights in the state of nature. Only once the “external Mine and Thine” enters the picture do positive juridical duties emerge (albeit with no second-order power to coerce and interpret rights). Although the problem of authority becomes acutely pressing in a condition in which we have acquired rights but are still in the state of nature, it can only be solved through a *different modality of right*.

*Honeste vive* is a juridical duty that arises from the right of humanity in my person, i.e., it is the juridical duty that corresponds to the only innate right. One could interpret this internal duty as a requirement to resist the instrumentalization of one’s own person. At the same time, the agent must affirm her own worth *externally* in regard to others. Although the juridical duty itself is internal (it binds the person who has the right of humanity in her own person), it is directed at other persons externally,<sup>30</sup> in the form of resistance to their behaviour. Because it is a juridical duty, the motive of the duty bearer for resisting instrumentalization is secondary. Motivation by an ethical motive is not required from a juridical perspective; motives such as pride, prudence, or fear equally satisfy *honeste vive*. One’s *external compliance* is crucial for satisfying the duty.<sup>31</sup> Therefore, even though *honeste vive* is an internal duty, its internal character refers to whom is bound by the duty. Compliance with the duty is nevertheless external, like all juridical duties. The requirement does not concern the quality of one’s maxims, but only one’s external actions in regard to others.<sup>32</sup> *Honeste vive* is thus an internal juridical duty not because it lacks a reference or relation to other persons, but because as the correlate duty of innate right, it is also *original* (i.e., not acquired). Since nothing external is originally mine (MS 6: 258), only the internal *mine* is original. *Honeste vive* is therefore the duty to live up to innate right (the right of humanity in our person) and the only juridical obligation possible prior to the introduction of acquired rights (before the legal deeds of persons).

### 5.3 How Is External Juridical Obligation Possible?

The role of *honeste vive* in Kant’s legal theory becomes clearer once we bear in mind which legal relations are absent from it and from the next modality of right, which is expressed by the second Ulpian formula *nemi-nem laede* (“wrong no one!”). In this section, I will provide an interpretation of the Doctrine of Right as spelling out the conditions under

which the normative incompleteness of *lex iusti* and *lex iuridica* can be resolved.<sup>33</sup> By “normative incompleteness” I mean the moral impossibility of binding others unilaterally, as private persons. The different modalities of right we find in the Doctrine of Right illustrate the transition from the abstract idea of an initial state of mutual liberty from external duty (the *possibility* of legal obligation), through a condition of provisional acquired rights (the reality of first-order claim-rights with identifiable, but non-coercible corresponding juridical duties), and finally towards a condition in which fully-fledged external juridical obligation is morally possible (the *necessity* of legal obligation).

The second Ulpian principle of Kant’s division of legal duties is *nemi-nem laede*: “do not wrong anyone even if, to avoid doing so, you should have to stop associating with others and shun all society” (MS 6: 236). A wrong (Läsion, MS 6: 249) is a violation of the right of another. Not all kinds of immoral behavior towards another person amount to a wrong. To wrong someone *is to take away what is theirs* (without the entitlement or authority to do so).<sup>34</sup> What we are taking away from someone does not need to be a material object. It could be some other entitlement such as access to an opportunity that is arbitrarily denied to her while granted to others, but it must be something that is *external* and consequently *acquired*. Our first *external* juridical duty is thus *not to deprive others of what is externally theirs, i.e., their acquired rights*.

Kant’s elucidation of the second principle involves a disjunction: either *do not harm others in ways that wrong them* (when interacting with them) or avoid associating with them altogether. This disjunction plays an important role for the next Ulpian principle of the division, *suum cuique tribue* (“give each what is theirs”). Assuming that we cannot avoid interaction with others altogether,<sup>35</sup> merely continuing in a state of nature *constitutes in itself* a wrong in a formal sense (MS 6: 307fn). But what is a formal wrong?

Given the intention to be and to remain in this state of externally lawless freedom, men do one another no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent (*uti partes de iure suo disponunt, ita ius est*). But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence. (MS 6: 307-8)

Because there is no authority of interpretation in the state of nature, there is no unified, binding standard for determining what constitutes a material wrong (*materialiter*). A material wrong is the violation of a subjective right, that is, the right of a particular person. The only wrong one can identify that is not subject to disagreement in interpretation is a formal wrong, that is, it is a wrong *in general* (*überhaupt*) and in the highest degree to remain in the state of nature. No particular person is thereby wronged, but we do wrong in general by not entering a state in

which material wrongs can be determined for everyone. Our duty is thus to “enter a condition in which what belongs to each can be secured to him against everyone else.”<sup>36</sup>

This distinction between what is merely formally wrong and what is also materially wrong has many applications in the doctrine of right. An enemy who, instead of honorably carrying out his surrender agreement with the garrison of a besieged fortress, mistreats them as they march out or otherwise breaks the agreement, cannot complain of being wronged if his opponent plays the same trick on him when he can. But in general they do wrong in the highest degree, because they take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of human beings as such. (6: 308n)

It is significant that the wrong one can unequivocally identify in the state of nature is a *formal* wrong while material wrongs (violations of subjective rights) remain undetermined. The problem is not that it is not possible to recognize when someone violates my acquired right or when I violate someone else’s right. We can recognize rights and their violations through reason. Although it may be *objective* (that is in accordance with reason), the problem is that this is nevertheless a *private* judgment.<sup>37</sup> This explains the normative shortcoming of private rights in the state of nature: the fact that, as a private person, no one has the authority to bind others to accept her interpretation of material wrongs, even if her judgment about rights is *correct*. The problem is therefore not epistemic, but about the possibility of imposing a duty of right on another to follow my private judgment.<sup>38</sup> *Legal certainty*, which becomes possible only in a condition of public justice, that is, in the next modality of right, is not primarily about “getting rights right” but about making rights *public* and consequently omnilaterally binding. Legal certainty thus solves primarily the problem of authority and juridical obligation, and not an epistemic problem about the correct interpretation of rights and of rights violations. Indeed, Kant gives several examples where the verdict of a public court of justice departs from what we would deem objectively just, by following our reason.<sup>39</sup> It is significant that Kant does not regard this discrepancy as a reason not to obey the law or as undermining the legitimacy of the legal system.

The third Ulpian formula commands *to give each what is theirs*. It should not be confused with “distributive justice” as understood in contemporary political philosophy. Distributive justice in Kant’s legal theory is a condition under which it is possible to *determine* what belongs to each in case of rights disputes as *juridically binding* for all parties. For this we must subject ourselves to common public laws under a public authority that *represents* each one of us, since only public institutions have authority of interpretation and of enforcement.<sup>40</sup> Representation is thus crucial for the possibility of juridical obligation. The idea of representation presupposes

equality before the law, which “replicates” the radical equality of the original innate right in the public condition. The law binds us all equally when we are all symmetrically subject to the law and no one is above the law (see TP 8:290, MS 6:314). This is why Kant has been identified as one of the pioneers of the idea of **rule of law or *Rechtsstaatlichkeit***.<sup>41</sup>

While the civil condition should indeed “secure” the rights of everyone, Kant’s argument for the duty to enter a condition of public right is not primarily the protection or the provision of rights. Although some of Kant’s formulations support the security argument, my view is that the primary function of the civil condition is the fact that it provides the *omnilaterality* required for the authority to determine what is lawful and to enforce that interpretation. This omnilaterality is achieved through political representation and publicity.

### 5.3.1 A Modal Theory of Juridical Obligation

So the above three classical formulae serve also as principles for dividing the system of duties of right into *internal* duties, *external* duties, and duties that contain (*enthalten*) the derivation of the latter from the principle of the former by subsumption. (MS VI: 237)

The above passage seems to indicate that “to give each what is theirs” follows as a conclusion from the former two Ulpian principles. This passage has led to much confusion, accentuated by the view that *honeste vive* is an ethical principle.<sup>42</sup>

By internal duties, Kant clearly refers to *honeste vive*; by external duties, to *neminem laede*. The question is: what are “duties that involve the derivation of the latter from the principle of the former by subsumption”? From the order of Kant’s enumeration, it is clear that the duties in question are the ones of *lex iustitiae distributivae* (*sum cuique tribue*). A condition of public justice *contains* the duties of *lex iuridica* (external duties), which are derived from the principle of the former (internal duty). However, these external duties are brought under a condition of public justice *by subsumption*.

In the interpretation I am proposing, “by subsumption” refers to the “inclusion” of external duties under the third category of duties, and not to their derivation (*Ableitung*) from the principle of internal duties. “Ableitung” and “Subsumption” are two distinctive moments concerning external duties: first they are derived and then subsumed. How are external duties derived from the principle of internal duties? And how are external duties then subsumed under public right (*lex iustitiae distributivae / sum cuique tribue*)?

“Subsumption” means bringing a particular under a more general concept or rule. This leads to a greater degree of unity and systematicity in knowledge (KrV A 304/B 360 f). “By subsumption” the external duties of private right (which are possible already before a condition of public justice

is implemented) are brought under public right, that is, they are “imported” or taken over from the pre-civil condition into the civil condition. Private right is not created through public right; private rights are prior to a condition of public justice.<sup>43</sup> When subsumed under public right, private rights are *determined* by the statutes of a given historical (empirical) legal order. Unlike what one may assume, it is not reason itself that *determines* rights; although we can know through reason already in state of nature what is *objectively* right, the problem is that what is objectively right is not yet externally or interpersonally binding; this can only be achieved by an empirically given system of public laws (which is from the perspective of reason merely *subjective*).<sup>44</sup> Paradoxically, only a positive system of laws, as long as it is public and representative, can bind all those subject to it. Its *omnilateral character* (the fact that only the law rules and no one is above the law) functions as a proxy for the consent of all (the legal order can be regarded as genuinely arising from “the united will of all”).

My “modal” interpretation of the transition to public right is an alternative to “instrumentalist” positions which regard public right as a *means* to avoid domination, disagreements or conflict concerning rights. My argument is that a public condition is required for altering the modality of rights we already have in the state of nature (although new rights may be created and only exist in a public condition). This modality of rights (*necessity* as opposed to mere *reality*) is achieved through omnilaterality, which is the necessary condition for full-fledged juridical obligation.

Julius Ebbinghaus interpreted subjection to a common authority with the power to impose laws as a condition for reconciling two aspects implicit in external freedom, which he formulates as a two-fold precept: “do not reduce yourself to an object of another men’s arbitrary power, nor other men to objects of your own.” However, Ebbinghaus notes that someone who restricts her own liberty and does not make others mere objects of her arbitrary power may easily become vulnerable to the arbitrary power of others, which would contradict the very principle she is acting on.<sup>45</sup> Therefore, subjection to state power is necessary to ensure that someone who respects the rights of others will not have her own rights disrespected as a consequence. Ebbinghaus’ argument for public justice is that state power provides assurance that it is not irrational to respect rights and that no one is unreasonably sacrificing herself for doing so. This “assurance argument” is strongly evocative of Hobbes, for whom the Leviathan ensured that laying down one’s natural right to everything was not incompatible with self-preservation. Arthur Ripstein argued that Kant’s version of the assurance argument is different from Hobbes’:

The Hobbesian argument focuses on a strategic problem: nobody wants to be played for a sucker; absent assurance, nobody will ever perform and contracts will be factually impossible. The Kantian argument focuses on a moral one: nobody can rightfully be compelled to serve the

purposes of another unilaterally. Absent assurance, first performance of contracts is an instance of a much more general moral problem: any act done on the basis of another person's claim to an external object is an instance of serving the purposes of another. It is permissible to serve the purposes of another, but each person is entitled to decide whom to cooperate with, so there can be no obligation to do so.<sup>46</sup>

Assurance arguments for political obligation presuppose the idea that discharging one's duty is conditional on the conduct of others. Reciprocity is required to avoid a contradiction of the principle with itself. For Hobbes, compliance without guarantee of reciprocity violates prudential rationality and enlightened self-interest. In contrast, Ripstein argues that for Kant the problem of assurance has a *moral* dimension. Assurance is necessary because "all obligations of right must be within a system of right 'in accordance with universal law'". This means that

the only obligation of right you can owe to another person must be part of the system of reciprocal limits; they have no right to compel you to do what you would have had an obligation to do had such a system been in place.<sup>47</sup>

Without equal assurance, one's respect for the acquired rights of another would be none other than an instance of instrumentalization. Unless we all respect rights, we open the door to the possibility of domination and exploitation of one's rightful conduct. Genuine obligation is only morally possible in a system in which everyone is reciprocally bound.

Ripstein is correct to stress that the problem for Kant is a moral, not prudential one. However, is the source of the problem indeed a lack of mutual assurance? In the interpretation I am proposing here, the problem lies instead in the mutual *lack of authority* to impose an obligation on each other. This is what gives rise to the moral problem Ripstein describes.

The problem is not that we need a guarantee that others will reciprocate in respecting rights; the problem is that none of us has the authority to bind each other in the way described by Ripstein. Our very equality as private persons morally precludes such legal relations. The second-order power to determine rights in an omnilaterally binding fashion can only be achieved through a public legal order, which provides a binding standard for adjudication, albeit an imperfect one in existing legal orders. This is why only a condition of public justice can change the *modality* of the rights already existing in the state of nature by turning the "reality of rights" (provisional rights) into the "necessity of rights" (peremptory rights, although only relative to that specific legal order).<sup>48</sup>

## 5.4 Conclusion

An obligation cannot arise for anybody, however, except what he himself incurs (*omnis obligatio est contracta*). Thus nobody can acquire through unilateral will.<sup>49</sup>



All obligation, whether ethical or juridical, must be understood as *self-imposed* in order to be genuinely binding (*omnis obligatio est contracta*). However, the way in which external juridical obligation can be regarded as self-imposed is different from the way ethical obligation is self-imposed, although transcendental freedom and moral personhood, i.e., the possibility of being under an obligation, is the common basis of ethical and juridical duties alike. The juridical domain concerns freedom from an *external* perspective, as opposed to the internal freedom which is the concern of ethics and the domain of individual moral autonomy. Although Kant himself does not establish this analogy explicitly, I argued that the *rule of law* in the juridical domain can be understood as the correlate of individual autonomy in the ethical domain. In other words, the rule of law is the “external version” of moral self-legislation.

Some commentators have suggested that the idea of a Kingdom of Ends should be understood as a form of political association or as involving political aspects.<sup>50</sup> This suggests that the legal and political domain is a different application of the moral law as presented in Kant’s *Groundwork to the Metaphysics of Morals*. I think this is misleading. The Kingdom of Ends formula illustrates the idea of the will of every rational being as a universally legislating will (GMS IV: 431). Because the moral law is objective and universal for all rational wills, when I give myself the moral law (when I “self-legislate”), I can be regarded as *ipso facto* legislating for everyone else and *with* all others. The idea of determining one’s own will according to a universally rational principle allows us to imagine all possible rational wills as systematically united with each other in a system of rational ends that is analogous to a system of nature (GMS IV:433f). Despite the image of a commonwealth, the Kingdom of Ends is neither a prototype nor meant to regulate a legal-political association. The Kingdom of Ends is instead an attempt to bring an abstract moral idea closer to our senses and also to show that Kant’s theory of autonomy can accommodate the intuitions from the moral theories before him, in this case, Leibniz’s “kingdom of grace.”<sup>51</sup> The problem of right and the question of politics only arises for a plurality of embodied rational beings in space and time; they do not arise for rational beings regarded as mere noumena, as in the Kingdom of Ends.

The Kingdom of Ends generates the idea of a community by multiplying the same rational being and realizing that if their wills are determined by the moral law, their subjective ends will be co-possible, as in a system of natural ends; the difference between these rational beings is only numerical. Their systematic union is possible because intrapersonal autonomous law-giving is also valid interpersonally, provided only autonomous beings are involved. Mutual legislation in this sense requires neither external laws nor politics. To legislate for myself is already to legislate for and with all other rational beings. Despite the image of a systematic union with other rational beings, one is not legislating with others but always on one’s own.

Public laws in a civil condition are the necessary conditions for the moral possibility of imposing positive external juridical duties on others, just as subordinating our wills to the moral law is the necessary condition for moral autonomy. But the question of bindingness requires different solutions in the internal and external scenarios, respectively.

The task of Kant's legal theory is to spell out the conditions under which one can impose duties on others *externally*. One may think that there is something *intrinsic* about rights that justify the duties of others to respect them. Although this is correct both from a juridical and from an ethical perspective, the question of my unilateral authority to bind you is not exhausted by the content of my right or by my correct judgment about rights. It is not a mere epistemic question.

Ethical obligation is only possible if we determine our wills by the moral law (our maxims must satisfy certain formal constraints to qualify as universalizable). We must be able to will such maxims of our own accord, through "self-necessitation." In contrast, imposing obligations *externally* on others must be possible independently of the quality of their volition and yet not be mere violence. If duties of right are to be *genuine* obligations they must somehow also qualify as "self-imposed." The argument I developed in this chapter was an attempt to explain how Kant's theory of legal obligation "replicates" the structure of his theory of autonomy in the juridical domain, in order to account for the possibility of external juridical duties.

*Honeste vive* tells us that our first juridical duty is to live up to the requirements of the right of humanity in our persons. At the same time, it contains *in nuce* the monumental task of the Doctrine of Right.

## Notes

- 1 Kuehn (2004, 324).
- 2 There are debates in the literature whether being worthy of dignity must be "earned" by living up to the standards set by the moral law or if already the mere moral *capacity* to determine one's will in accordance with the moral law suffices to establish one's status as a bearer of dignity. In my discussion, I will assume the second interpretation, in the sense of a minimal respect owed to every person, even a morally evil one, although I will not be able to develop this view here. For a proponent of the "enactment view" of dignity see Sensen (2009). For the "moral capacity view," see Wood (1999, 118), and the discussion in Bayefsky (2013, 821).
- 3 Bayefsky (2013).
- 4 As Bayefsky (2013) notes, stigmatization can severely impact one's sense of self-respect and consequently one's moral practice. For instance, permanently stigmatizing criminal offenders can encourage them "to turn to sub-groups in which breaking the law is not considered shameful in order to derive various goods, including esteem" (830). Kant's concern about individuals' place in the social world denotes a sensitivity to the social conditions required for living with dignity, which also takes into account the way we are perceived and valued by others. Bayefsky (2013, 823).

- 5 References to Kant's writings give the volume and page number(s) of the Royal Prussian Academy edition (Kants gesammelte Schriften). I use the following abbreviations: GMS = Grundlegung zur Metaphysik der Sitten/ Groundwork to the Metaphysics of Morals; KpV = Kritik der praktischen Vernunft/Critique of Practical Reason; KrV = Kritik der reinen Vernunft/Critique of Pure Reason; MS = Die Metaphysik der Sitten/The Metaphysics of Morals (which includes the Doctrine of Right and the Doctrine of Virtue); TP = Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis/'On the Common Saying: That May Be Correct in Theory, But it is of No Use in Practice'; ZeF = Zum ewigen Frieden/Towards Perpetual Peace. I use the Mary Gregor and Jens Timmermann German–English edition and translation of the Groundwork (Kant 2011), and follow Bernd Ludwig's edition of the Doctrine of Right (Kant 2018).
- Unless stated otherwise, all other English translations are from the Cambridge Edition of the Works of Immanuel Kant.
- 6 I will use “duties of right”, “juridical duties” and “legal duties” interchangeably.
- 7 Pinzani (2005).
- 8 This “later moment” in which *honeste vive* is explained as obligation from the right of humanity in our own person is Kant's discussion of the only innate right (MS VI: 237) immediately after his taxonomy of juridical duties and rights.
- 9 “Externally” refers to actions regarded as phenomena or *facta* in the world (cf. MS 6: 230). Kant differentiates between the outward conformity of an action with the moral law (*legality*), from its morality, which also involves the motives of the agent. KpV 5: 71, 81, 118, 151–2. See also MS 6: 214, 225).
- 10 I would like to thank Adam Cureton for pressing me to elucidate this point.
- 11 An internal principle of willing is one that must be adopted freely by the agent herself. It cannot be imposed from outside without undermining its own rationale. Lawgiving that requires motivation from duty as the determining ground of the agent's choice is thus always internal (MS 6: 219).
- 12 I would like to thank Jan-Willem van der Rijt for pressing me to clarify my argument on this point.
- 13 Thanks again, Jan-Willem.
- 14 Another difference is that Hobbes' conception of rights is based on the natural law notion of self-preservation. Since each person has a right to preserve herself and there is no guarantee in the state of nature that others will not attack her, Hobbesian subjects have a right to do whatever they believe is necessary for their self-preservation. In contrast, for Kant self-preservation cannot be the basis of obligations, since no necessity can be derived from human nature, only from reason.
- 15 External obligation “proper” amounts to the capacity of person A to impose an obligation on person B on the basis of a right that A has. I will argue that this presupposes legal deeds from at least one of the involved parties.
- 16 Anything originally acquired must also be internal in Kant's theory of acquisition. Since *honeste vive* is the duty associated with innate right, as the only original right, it also makes sense that *honeste vive* should be an internal juridical duty.
- 17 This is the idea of the “Unschuldsvermutung”. See Hruschka (2000).
- 18 Being an illegitimate child usually meant that one was born in a state of ‘lawlessness,’ although one was not considered a criminal or outlaw for that matter. It constituted a social stigma associated with legal disabilities. Kant thus seems to contradict innate *honestas iuridica* in his discussion of infanticide in MS 6:336 when he affirms that children born out of wedlock find themselves ‘in the state of nature’ and are thus outside state protection upon the occasion

- of their birth, at least. However, Kant does not deny wrongdoing in the case of infanticide. He only denies the state right to inflict *the death penalty* on an unmarried mother who kills her newborn infant to preserve her honor in 18<sup>th</sup>-century Prussian society, given the ‘barbaric’ state of public opinion concerning women’s reputation, and the status of the child. The argument is thus about legal punishment, and not about whether infanticide is a crime.
- 19 von Poten (2018).
  - 20 Kant used Achenwall’s *ius naturae* (in the 1763 edition) in his lectures on natural law. The surviving student notes from these lectures are the so-called “Naturrecht Feyerabend,” after the student’s name, who took the notes. For a translation, see Achenwall (2020).
  - 21 §255, 2. *Datur contemptus, quo alter infamatus*.
  - 22 Cf. Achenwall (2020): “*Hinc quilibet nascitur iustus, nemo infamis*” (Therefore, everyone is born just, and no one infamous). *Elementa Iuris Naturae*, §258. Note that Achenwall also uses the latin “*iustus*” for someone who hasn’t committed a wrong.
  - 23 One could object that there are some positive legal obligations that do not arise from our deeds. For instance, monarchs might have certain duties even if their ascent to the throne was not a deed of theirs; citizens must pay their taxes even if they did not participate in an original contract, etc. However, the first duty has to do with a public rule (being a monarch) and the second with being a citizen (or subject) of a certain political society. Both examples presuppose a condition of public justice, with the authority to impose these obligations. The juridical duties which *exclusively* presuppose deeds of the agent are thus juridical duties in the state of nature.
  - 24 I owe this reading of the three *leges* as expressing the modalities of right to Boyd and Hruschka (2010, 58–62). The idea of different modalities of right is expressed in the three *leges*: *lex iusti*, *lex iuridica* and *lex iustitiae*. The content of a law or of a right may remain the same across different *leges*. But they acquire a different modality. The modality of law accounts for the specific way it is binding (or fails to be binding) and the source of its normativity.
  - 25 Different modalities of right should not be confused with different stages in legal history (some ‘immemorial time’ in which human beings had only innate right and no acquired rights yet, or before people began appropriating land). The different modalities of right refer to the capacity of right-holders to bind others. The bindingness of legal obligation in the Doctrine of Right can be compared to the modality of the different imperatives in the *Groundwork* (GMS IV: 412–20).
  - 26 Kant’s separation between innate right and acquired rights is only methodological. His account of rights in the state of nature (prior to the implementation of a civil condition) corresponds to the private right section of the Doctrine of Right, while innate right is discussed in the “prolegomena” of the Doctrine of Right.
  - 27 For the sake of simplicity, I am setting aside those status relations that do not fit this pattern of voluntary agreements such as parental rights. Here the idea is rather that of a fiduciary duty and its corresponding rights. For Kant’s account of the rights of parents and children see Kersting (2007) Kersting, *Wohlgeordnete Freiheit*, Teil B chap. III (*Das auf dingliche Art persönliche Recht*), p. 248, and Ripstein (2009), *Private Right I: Acquired Rights*, pp. 72–3.
  - 28 “No authority” is ambiguous and can mean two things: 1) I am not permitted to x (I would be overstepping my authority if I x; and 2) I am permitted to x, but my x-ing does not generate any obligation on your part. “No authority” actually means 1. For instance, I have no authority to kidnap you and keep your life under my control, because I think I am better at decision-making

- than you are. The authorizations implicit in innate right (see MS 6: 238) correspond to 2. For instance, I am permitted to tell you some fake story, but it is up to you to believe me or not. I would like to thank Jan-Willem van der Rijt for making me aware of that ambiguity.
- 29 In contrast to my interpretation, Ludwig (1988, 101) argues that the internal “Mine and Thine” actually belongs in the Private Right section of the DoR since it counts as “natural right” in the sense described in MS 6: 241. Kant’s reason for including it in the prolegomena would be to avoid the asymmetry of a higher division of the doctrine of right (MS 6: 238). However, placing it in the prolegomena also obscures the systematic role of innate right.
  - 30 See Davies (2020).
  - 31 Kant recognizes an indirect ethical duty to satisfy one’s duties of right from duty (MS 6: 220–1). However, this obligation arises from an ethical perspective and is not required by right.
  - 32 She can of course choose to satisfy this duty (as any juridical duty) also from an ethical motive. In this case the moral merit comes from her ethical motivation and is a “moral plus” which is however not required from the perspective of right.
  - 33 The problem is actually only comparatively solved in a condition of public justice, since all peoples on the surface of the earth must be brought under public laws.
  - 34 Do we wrong ourselves by violating *honeste vive*? One could argue that *volenti non fit iniuria* (those acting of their own accord do themselves no wrong). If I want to dispose of the internal mine in such a way that others treat me disrespectfully, I would also have the *authority* to do so. However, if one has a *duty* of rightful honor, it seems that we cannot dispose of the internal mine as one could choose to dispose of what is externally mine (which are *things* and not *persons*). The internal mine coincides with my legal personality. Therefore, to throw away my innate right would amount to negating my status as a subject of rights, which is a presupposition of my exercise of external freedom.
  - 35 Since we cannot scatter ourselves indefinitely in the spherical surface of the planet and will impact each other externally at some point in time.
  - 36 This formulation has been used to support the “assurance” interpretation of the duty to enter the civil condition, which I will reject in the following.
  - 37 In contrast, the verdict of a court of justice is public and yet *subjective*, in the sense that it is bound by empirical principles (the positive laws of a given public order, procedural rules, etc.)
  - 38 Pinheiro Walla (2014).
  - 39 See, for instance, the “four cases” in RL 6: 297–308, “On Acquisition that is dependent subjectively upon the decision of a public court of justice”: “So the question is here not merely what is right in itself, that is, how every human being has to judge about it on his own, but what is right before a court, that is, what is laid down as right. And here there are four cases in which two different and opposing judgments can result and persist side by side, both of which are true: one in accordance with private right, the other in accordance with public right.”
  - 40 A republican constitution follows the principle of separation of powers, so that the plenary power of the state is constituted in such a way as to serve the public will, and not the private will of privileged individuals. The form of a state is thus either republican (representative) or despotic. *Tertium non datur*: “Any form of government that is not *representative* is, strictly speaking, without form, because the legislator cannot be in one and the same person also executor of its will” (Zef 8: 352).

- 41 Hruschka (2015, 13–14).  
 42 See Davies (2020).  
 43 The source of this misunderstanding is possibly Kant’s claim that rights are provisional in the state of nature. See for instance Waldron (1996): “At its most general, the phrase “provisional acquisition” connotes the idea of some individual’s best effort to figure out – unilaterally – what he is entitled to. But what people need is a system of property rights that reflects a single community determination of what each is entitled to.” I would like to thank Ruhi Demiray for a discussion on this problem.  
 44 For an account of the distinction between objective and subjective judgments about rights and the conditions for juridical obligation see Pinheiro Walla (2020).  
 45 Ebbinghaus (1953).  
 46 Ripstein (2009, 165).  
 47 Ripstein (2009, 160).  
 48 Although “peremptory” is relative to the public system of laws in question, multiple public orders require international coordination and bilateral agreements for domestic rights to be valid transnationally.  
 49 Preparatory works to the Doctrine of Right, 23:219.  
 50 See for instance Jeremy Waldron, “All Kings in the Kingdom of Ends.” NYU School of Law, Public Law Research Paper No. 13-39, July 3, 2018; Andrews Reath, ‘Legislating for a Realm of Ends: the Social Dimension of Autonomy,’ in Andrews Reath, *Agency and Autonomy*, Oxford University Press, 2006, pp. 173–96, and Monique Hulshof, “Political Aspects of Kant’s Concept of ‘Kingdom of Ends.’” *Natur und Freiheit*, edited by Violetta L. Waibel, Margit Ruffing and David Wagner, Berlin, Boston: De Gruyter, 2018, pp. 1877–84. For a criticism of semi-political interpretations of the Kingdom of Ends, see Katrin Flikschuh, ‘Kant’s Kingdom of Ends, metaphysical, not political,’ in Jens Timmermann (ed.), *Kant’s Groundwork of the Metaphysics of Morals. A Critical Guide*, CUP 2009, pp. 119–39.  
 51 See Jens Timmermann’s commentary in Kant (2004, 132, note 62).

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