

Kant on Strict Right

Ben Laurence

University of Chicago

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One of the profound appeals of Kant's mature practical philosophy lies in his systematic arguments that right and ethics are formally distinct departments of a single morality of reason and freedom. These arguments locate Kant in a venerable tradition, according to which justice is, although a genuine part of morality, formally distinct from the (other) virtues.¹ According to this tradition, while all vicious action involves wrongdoing, unjust action is a species of wrongdoing that is relational in a special sense. For injustice is wrongdoing that is essentially and primarily doing wrong *to another*. Kant's philosophy of right is, arguably, the most profound attempt in the tradition to systematically develop this insight into a division of moral duties.

Kant follows this tradition in his assertion that right is part of morality. According to *The Metaphysics of Morals*, the doctrine of morality (*philosophia moralis*) is properly divided into two parts: the doctrine of right (*Ius*), and the doctrine of virtue (*Ethica*). Kant associates each of the subdivisions of morality with a distinct form of lawgiving, juridical, on the one hand, and ethical, on the other. As parts of the doctrine of morality, both juridical and ethical lawgiving issue in moral laws, having their source in practical reason, and resulting in

¹ Kant differs from the tradition in arguing that right (justice) is not itself one of the virtues. This claim flows from his distinction between duties of virtue and duties of right, and his use of the former to individuate the virtues. Note, however, that although right is not a virtue, Kant nonetheless maintains that doing what right requires from duty is virtuous conduct. Doing what is right is thus part of virtue as a whole, although right is not itself a distinct virtue. See Immanuel Kant, *The Metaphysics of Morals in Practical Philosophy*, trans. Mary J. Gregor (Cambridge: Cambridge University Press 1996) at 6:220 and 6:383. (Hereafter, *MM*.)

categorical imperatives.² These imperatives place us under moral obligations, which Kant defines as the necessity of an action under a categorical imperative of reason.³

When it comes to distinguishing juridical lawgiving from ethical lawgiving, Kant links the former but not the latter to coercion. When one acts in violation of a law that is given by right, one's wrongdoing is rightly liable to constraint by other agents. In §E of the introduction to the *Doctrine of Right*, Kant seeks to clarify the relationship of coercion to the Universal Principle of Right, the first of the juridically given laws that he presents. Kant does so by developing a conception of "strict right", right that has been rigorously separated from anything ethical. Kant argues there that strict right is to be identified with the authorization to coerce. Indeed, Kant argues that (pathological) aversion to such external constraint serves as the distinctive incentive of juridical laws.⁴ While ethically given laws are (only) connected with the incentive of duty, familiar from Kant's earlier practical writings, juridically given laws are connected with an incentive that is pathological in Kant's technical sense.⁵

While this account of strict right certainly distinguishes right from ethics, it seems hard to square with Kant's equally dramatic insistence that right is a genuine department of morality, on all fours with ethics. For Kant, moral laws are laws of freedom, the self-legislation of pure practical reason. They are distinct from conditional practical principles in issuing in categorical imperatives that obligate agents regardless of their sensible desires, including their pathological aversions. Their moral character is revealed in the fact that they serve to place an unconditional inner obligation on moral agents to act. Furthermore, Kant thinks, we can know a priori that the representation of this inner obligation is sufficient to determine our faculty of desire through a non-pathological incentive. Whatever the

² *MM* 6:213.

³ *MM* 6:222. Kant is explicit that this definition of moral obligation applies to both right and ethics.

⁴ *MM* 6:28-6:219.

⁵ *MM* 6:219.

normative character of principles of right licensing justified coercion, one might think, they cannot amount to morality as Kant of all people conceives of it. Indeed, there is a prominent line of interpretation that embraces precisely this conclusion.⁶

In this paper, I argue to the contrary that the distinctive character of right, as Kant conceives it, flows from the fact that juridical obligation has a different formal structure than ethical obligation.⁷ Picking up on Kant's language, I call this formal structure the mine-and-yours structure. I argue that this structure explains both the relation of right to coercion and how a categorical imperative can be known *a priori* to issue in *both* a pathological and non-pathological incentive. Thus the justification of coercion and its special role as incentive are rooted in the relational character of juridical obligations, and so ultimately, in categorical imperatives of reason.

Since this pathological incentive has a moral basis in the structure of juridical obligations, and so ultimately, in a representation of moral laws, I argue that Kant's discussion of the juridical incentive is more continuous with his main discussion of moral incentives in the *Critique of Practical Reason* than it might at first appear. I illustrate the consequences of this reading by discussing the propensity to injustice, as Kant understands it, and the unique way in which the juridical incentive undermines it. As it turns out, even the pathological incentive of external coercion plays a role in paving the way for virtue by working to subvert the juridical manifestation of self-conceit, one of the sources of evil in humanity. I argue that this is connected with Kant's consistent representation of public right

⁶ Thomas Pogge and Marcus Willaschek have been led by these features of the text to deny that juridical laws are categorical imperatives that lay moral obligations on us. I discuss the Pogge-Willaschek reading in §1 below as a foil for my own reading. See Thomas Pogge, "Is Kant's Rechtslehre a Comprehensive Liberalism?" in *Kant's Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons (Oxford: Oxford University Press 2002), 133-158; Marcus Willaschek, "Which Imperatives for Right?" in *Kant's Metaphysics of Morals: Interpretative Essays*, 65-87.

⁷ Kant says explicitly that ethics and right are distinguished by the different forms of obligation each involves at *MM* 6:220.

as a great moral achievement, the source of good *bildung* in itself, and the foundation for further ethical development beyond right.

Before proceeding further, it is also worth saying what I do not do in this paper. I do not attempt to directly answer what is, arguably, the central interpretative issue concerning the *Doctrine of Right*: the relationship of the Categorical Imperative to the Universal Principle of Right.⁸ As I conceive it, my argument here is a necessary propaedeutic to the development of such an answer. For, seeing how the Universal Principle of Right relates to what Kant calls in the *Metaphysics of Morals* “the supreme principle of morality” requires having a clear view of two things. The first is the sense in which right is, for Kant, indeed a part of morality. The second is the sense in which right is formally distinct from the rest of morality (ethics). If my reading is correct, there are two corresponding pitfalls to be avoided. The first is to fail to see how Kant includes right itself directly under morality. The second pitfall is to fail to appreciate the formal difference between juridical and ethical obligation.⁹ It is only when we have both the unity and difference of right with the rest of morality clearly in view that we can hope to say how the most fundamental principle of right is related to the supreme principle of morality. I will be happy here if I can prepare the ground for such an investigation. In any case, the question I do pursue is of great intrinsic interest, in so far as

⁸ For a sampling of approaches to this problem see, Allen Wood, “The Final Form of Kant’s Practical Philosophy” in *Kant’s Metaphysics of Morals: Interpretative Essays*, 1-22; Paul Guyer, “Kant’s Deduction of the Principles of Right”, in *Kant’s Metaphysics of Morals: Interpretative Essays*, 23-64; Katrin Flikschuh, ‘Kant’s Indemonstrable Postulate of Right: A Response to Paul Guyer’ in *Kantian Review*, 12(1) (2007); Marcus Willaschek, “Right and Coercion: Can Kant’s Conception of Right be Derived from his Moral Theory?” in *International Journal of Philosophical Studies*, 17(1) (2009), pp. 49–70; Arthur Ripstein, *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge: Harvard University Press 2009), 355-388; and Michael Nance, “Kantian Right and the Categorical Imperative: A Response to Willaschek” in *The International Journal of Philosophical Studies*, 20:4 (2012), 541-556.

⁹ The first might be seen as naturally motivating the view that the Universal Principle of Right is an entirely distinct principle from the Categorical Imperative. The second might be thought to suggest the conclusion that the Universal Principle of Right can be derived as a simple application of the Categorical Imperative given only some auxiliary premises.

we care about understanding the relationship of justice to the rest of morality, and insofar as we might take Kant as a source of understanding for this topic.

This essay proceeds in the following way. In §1 I first very briefly situate §E in the context of the sections that precede it (§§B-D) in the introduction to the *Doctrine of Right*.¹⁰ I next introduce §E and present the related interpretations of this passage provided by Thomas Pogge, Kyla Ebels-Duggan, and Marcus Willaschek. Their readings give especially lucid expression to the impression that Kant's discussion of §E is apt to convey, where Kant is most stridently contrasting right with ethics. For, they each find Kant affirming a radical discontinuity of (strict) right not only with ethics, but with morality as Kant understands it. §E naturally conveys this impression, which is internally related to the real conceptual difficulty of understanding how right and ethics might both fall under a unitary concept of morality, while nonetheless being formally distinct. The puzzles and problems this reading introduces set the stage for my alternative reading.

I present this reading in §2, developing a more textually grounded and philosophically attractive account that connects strict right to the form of juridical obligation. In §3 I turn to the thorny issue of the juridical incentive, providing an interpretation of the juridical incentive that both builds on the account of §2 and is continuous with Kant's other discussions of incentives. Finally, in §4 I explore the consequences of this understanding of the juridical incentive by exploring the way in which it opposes the juridical manifestation of self-conceit. It is here that the continuities and differences of right with the rest of morality are on the most direct display.

¹⁰ These sections are the subject of considerably scholarly controversy. I try not to prejudge difficult interpretative questions in my presentation of them, although some light is shed on §§C-D by the reading I provide in §2.

§1: *Strict Right as Dispensing with Juridical Obligations*

After some opening remarks in §A of the introduction to the *Doctrine of Right*, Kant turns in §B to present “the moral concept of right”, right insofar as it is related to obligation.¹¹ Kant tells us that the moral concept of right concerns the external relations of one person to another, insofar as their actions can have direct or indirect influence on one another. Unlike beneficence, which asymmetrically relates the choice of one agent (the giver of aid) to the wish of another agent (the receiver), Kant tells us that right symmetrically relates the choice of one agent to the choice of another. The question with regard to right, he tells the reader, is whether the chosen “action of one [each] can be united with the freedom of the other in accordance with a universal law.”¹²

In §C Kant immediately extracts from the concept of right a law that he calls the Universal Principle of Right (hereafter, UPR).¹³ This principle says that an action (or condition) is right if and only if it can be united with everyone’s freedom in accordance with universal law.¹⁴ The UPR, just by being a moral principle, already specifies a kind of wrongdoing, i.e. morally impermissible action. But not all morally impermissible action involves doing wrong to another, not even all violations of the UPR.¹⁵ Kant next uses the UPR to define wronging another.¹⁶

¹¹ *MM* 6:230.

¹² *Ibid.*

¹³ *MM* 6:231. By calling the UPR a law, I diverge from commentators who distinguish “the universal law of right” from the “universal principle of right”. See Katrin Flikschuh, “Justice Without Virtue” in *Kant’s Metaphysics of Morals: A Critical Guide*, ed. Lara Denis (New York: Cambridge University Press 2010), 51-70 at 60-61; Marcus Willaschek, “Which Imperatives for Right?”.

¹⁴ Kant does not refer to being in a “condition” in the formulation of the principle. But his immediate gloss on the UPR at *MM* 6:230 makes clear that he intends it to cover conditions as well as actions.

¹⁵ See Kant’s discussion of those who refuse to exit the state of nature. Kant says that since each is acting wrongly, the agents in question do not wrong one another by choosing to remain in this

Suppose a subject X chooses to perform an action (or remain in a condition) that is right, and so is authorized under the UPR. If another subject Y hinders X's chosen action or condition, the choice of Y cannot be combined with the freedom of everyone in accordance with a universal law, and so is wrong under the UPR. But the general incompatibility of Y's action with the freedom of everyone springs in this case from the fact that it is incompatible with the freedom of X *in particular*. What explains the wrongness of Y's action is the fact Y wrongfully hinders X's rightful use of her freedom. Kant thus defines wronging another this way: Y wrongs X if and only if Y hinders X in an action or condition that is right.¹⁷

§D builds on the analysis of right developed in the preceding sections by introducing the theme of coercion. As we have seen, according to Kant, an action that wrongs another is a hindrance to her freedom. Kant now argues that an action that hinders such a hindrance to freedom is compatible with the freedom of everyone, and so is right.¹⁸ Since actions that hinder the choice of another are acts of coercion, Kant concludes that right is connected with an authorization to coerce those who infringe it.

The argument of this passage is elliptical and I cannot address it in full. For now, I will only make a couple of observations. The first is that it depends as necessary background on the definition of wronging another provided in §C.¹⁹ According to that definition, to wrong another I must hinder her in an action or condition that she is authorized to choose. It follows from this that if I hinder a wrongful action I do not thereby wrong the

lawless condition. But they “do wrong in the highest degree” by violating the Postulate of Public Right. *MM* 6:307-308.

¹⁶ *MM* 6:230-231.

¹⁷ *Ibid.*

¹⁸ *MM* 6:231.

¹⁹ See the instructive discussion of this point in Marcus Willaschek, “Right and Coercion: Can Kant’s Conception of Right be Derived from his Moral Theory?”, 63 ff.

wrongdoer.²⁰ This point address what one might have thought was the main obstacle to affirming the authorization to constrain wrongdoing, viz. that it would wrong the one coerced. But it is not sufficient by itself rule out the possibility that coercion might violate the UPR without wronging anyone. Kant seems to close this distance with the claim that “resistance that counteracts the hindering of an effect promotes this effect and is consistent with it”.²¹ Since a wrong action is itself a hindrance to freedom, Kant tells us, resistance to this action is consistent with freedom. Indeed, Kant goes so far as to say that this follows in some way from the UPR “by the principle of contradiction”.²² (I will make some suggestions about how to understand this last claim in §2.)

But for now, with sufficient context in place, let us turn to our central passage. §E carries forward the argument of §D by exploring the nature of the connection between right and coercion in greater detail. Given the importance of §E for our topic, let me quote it at length.

A Strict Right Can Also be Represented as The Possibility of a Fully Reciprocal Use of Coercion That is Consistent with Everyone’s Freedom in Accordance with Universal Laws

This proposition says, in effect, that right need not be conceived as made up of two elements, namely an obligation in accordance with a law and an authorization of him who by his choice puts another under obligation to coerce him to fulfill it. Instead, one can locate the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone. That is to say, just as right generally has as its object only what is external in actions, so strict right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice; for only then is it pure and not mixed with any precepts of virtue. Only a completely external right can therefore be called *strict* (right in the narrow sense). This is indeed based on everyone’s consciousness of obligation in

²⁰ The “thereby” here is crucial, for my manner of hindering her may, in addition to hindering her wrongful action, also hinder her in various *other* actions and conditions that she is authorized to be in.

²¹ *MM* 6:231.

²² What he means by this has been the subject of much scholarly controversy. An instructive discussion can be found in Paul Guyer, “Kant’s Deductions of the Principles of Right”. (In §2 I depart from some aspects of Guyer’s reading.)

accordance with a law; but if it is to remain pure, this consciousness may not and cannot be appealed to as an incentive to determine his choice in accordance with this law. Strict right rests instead on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws...Right and authorization to use coercion therefore mean one and the same thing.²³

The heading of the passage suggests that it will defend some kind of identity between (strict) right and the authorization to coerce; this suggestion is confirmed by the final sentence of the passage announcing the conclusion of the argument. To understand the passage we must understand the identity that is being proposed. I wish to work towards this task by considering the related interpretations of this passage presented by Thomas Pogge, Kyla Ebels-Duggan, and Markus Willaschek.

Thomas Pogge draws on a provocative statement Kant makes at the end of §C to help with this task. After having presented the UPR in §C, and provided his account of what it is to wrong someone, Kant argues there that juridical laws do not require that duty be the incentive of my action, since right concerns external relations between persons. Elaborating on this point, he continues,

Thus the universal law of right, so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, is indeed a law that lays an obligation on me, but it does not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead reason says only that freedom *is* limited to those conditions in conformity with the idea of it and that it may also be actively limited by others; and it says this as a postulate that is incapable of further proof.—When one's aim is not to teach virtue but only to set forth what is *right*, one need not and should not represent that law of right as itself the incentive to the action. (6:231)

²³ *MM* 6:232.

Pogge reads this striking passage as denying that juridical laws serve as categorical imperatives laying obligations on those subject to them. After all, if they were categorical imperatives, then as expressions of unconditional practical principles, they would surely demand that those subject to them limit their freedom “just for the sake of this obligation”. To the extent that they address any subjects, juridical laws do so in a different way: by granting *permissions* to agents to force one another to act in a way consistent with the freedom of everyone. Pogge thus writes,

What looks like an imperative addressed to me turns out then to be a permission addressed to my fellows, who may force me to act externally so that the free use of my choice can coexist with the freedom of everyone according to a universal law.²⁴

So Pogge argues that the UPR is not an imperative addressed to the agents that fall under it at all, but rather a set of permissions for agents to externally constrain one another. It is, as he says a little later, “a permission rather than an imperative”.²⁵

Kyla Ebels-Duggan’s reading of §E is close to Pogge’s on this point. She argues that although Kant begins the introduction with a “moralized” concept of right that fuses reasons of virtue with juridical reasons, in §E Kant turns to the task of separating moral obligation from the properly juridical obligations that are the correlates of juridical rights.²⁶

²⁴ Thomas Pogge, “Is Kant’s Rechtslehre a Comprehensive Liberalism?”, 141-142.

²⁵ Ibid.

²⁶ This idea of a moralized concept of right sets Ebels-Duggan reading apart from that of Pogge. Unlike Pogge, she insists, for example, that the UPR has a moral backing that flows from ethical grounds to do what I am also under a juridical obligation to do. It is, however, a severe problem for a view like Ebels-Duggan’s that Kant is explicit that a duty can have only one ground of obligation (*MM* 6:403) and that there cannot be an ethical ground for fulfilling a juridical obligation (*MM* 6:219-200). We thus must understand Kant’s talk of an “indirect ethical obligation” to do what right requires in a different way. I provide an alternative understanding and discuss the more general issues connected with this at length in (author citation omitted). See Kyla Ebels-Duggan, “Moral Community: Escaping the Ethical State of Nature” *Philosopher’s Imprint*, Vol. 9 No. 8 (2009), fn.5 and fn.10, pp. 2 and 3.

Such juridical rights, she argues, consist solely in permission to coerce. She infers from this that

To say that I have an obligation not to use a thing without your permission is, in this [juridical] context, to say neither more nor less than that you would be justified in forcing or coercing me to refrain from doing so.²⁷

In other words, to say that I am under a juridical obligation is to say nothing more than that someone else has a permission to coerce me to do something. Thus, Pogge and Ebels-Duggan both affirm that the juridical obligation to do X of one agent consists solely in the permission of others to coerce that agent to do X.

Now, as we have seen, obligation, as Kant defines it, is the necessity of a free action under a categorical imperative of reason. When we represent ourselves as obliged to perform an action, we thus represent an action as necessary to do in light of a categorical imperative. If juridical laws are not imperatives at all, as Pogge thinks, then they cannot lay obligations on us, at least according to Kant's definition. Furthermore, if they consist in permissions of to externally constrain an agent rather than in requirements on that agent's action, as both Pogge and Ebels-Duggan claim, then they possess modality of the wrong sort to be obligations. So, although neither Pogge nor Ebels-Duggan explicitly draw this conclusion, it appears to follow from their readings of this passage that Kant is really committed to denying that there are juridical obligations, at least strictly speaking.

Marcus Willaschek boldly draws the consequence just sketched. He supports this argument with a detailed reading of §E. Willaschek concurs with Pogge and Ebels-Duggan that the passage asserts that *there is nothing more* to being under a juridical obligation to do X

²⁷ Kyla Ebels-Duggan, "Moral Community", 3.

than the fact that other agents have a right to coerce me to do X.²⁸ He reasons that if there is “nothing more” to A’s being under a juridical obligation to do X than others possessing the authorization to coerce A to do X, then to speak of “juridical obligations” is really just a roundabout way of referring to rights to coerce.²⁹ Thus Willaschek understands the passage to be arguing that a right, strictly speaking, need not be made up of two elements of obligation and authorization to coerce, precisely because right is identified with *only one* of these two elements. This is how he understands Kant’s claim that a right and the authorization to coerce “mean one and the same thing”. Willaschek thus says that this passage represents the realm of Right “not as a realm of rights *and obligations*, but merely as a realm of rights, conceived of as authorizations to coerce.”³⁰ The message of §E is that strictly speaking there are no juridical obligations.

Willaschek connects this interpretation with Kant’s remarks about the juridical incentive.³¹ Moral laws determine the inner disposition of the subject in the manner discussed in *The Critique of Practical Reason* by placing us under an inner obligation. However, when it comes to strict right, Kant tells us, we may not appeal to the consciousness of the moral law as incentive. If right is to remain pure we may only appeal to external coercion. Just as juridical laws are not, strictly speaking, categorical imperatives that place us under obligations, so they do not, strictly speaking, give rise to a moral incentive capable of reforming our inner disposition through the affect of the representation of the law on our faculty of desire. This explains the contrast Kant draws between stating what is right, and cultivating virtue in the passage from §C.

²⁸ Willaschek, “Which Imperatives?”, 80.

²⁹ Ibid.

³⁰ Willaschek, “Which Imperatives?”, 79. Emphasis in original.

³¹ Willaschek, “Which Imperatives?”, 78-82. See also Ebels-Duggan, “Moral Community”, fn.5 p. 2.

It is worth noting that despite its many merits, Willaschek's interpretation of §E, as well as the preceding passage from §C, is strained. First, note that §E *itself* refers at three different points to obligations of right. It even contains the assertion that juridical laws are “based” on everyone's consciousness of the obligations the laws specify. This is true also of the passage from §C, where Kant goes out of his way to stress that juridical laws do indeed “lay an obligation on me”. On the face of it, it thus seems strange to read these passages as denying that, strictly speaking, there are any juridical obligations.³²

The reading becomes more strained when we consider the broader context in which §E is situated. Looking backwards to earlier parts of the text, obligation is a technical term that Kant takes the trouble of defining explicitly in the introduction to the *Metaphysics of Morals*. He defines obligation as the necessity of an action under a categorical imperative of reason, and goes out of his way to explicitly assert that obligation as defined there is a concept that belongs to both parts of *The Metaphysics of Morals*.³³ He goes so far as to say at one point that what differentiates juridical from ethical lawgiving is precisely the form of obligation associated with each.³⁴ Furthermore, when we look forward to the rest of the introduction to the *Doctrine of Right*, the strain increases. For, just a little bit later in the introduction, Kant gets around to explicitly defining “rights” in the sense relevant to Willaschek's claims.³⁵ If he was correct about the passages in question, we would expect Kant's definition of a right to eschew any reference to obligations in favor of a mention of

³² Willaschek responds to this feature of the passage by asserting that this obligation, unlike (real) obligations that flow from genuine categorical imperatives, “does not have any prescriptive force”. He bases this claim on Kant's assertion that the obligation in question cannot be appealed to as an incentive, if we are speaking of strict right. In §3, I provide an alternate explanation of what Kant means by this comment. Willaschek, “Which Imperatives?”, 80.

³³ See Footnote 25 above.

³⁴ *MM* 6:220.

³⁵ Kant explains in the relevant passage that we may speak of rights in the plural in two senses: (1) as systems of doctrines, as in natural right and positive right, and (2) as the moral powers of individuals. Willaschek clearly intends (2) in speaking of rights, 6:237.

authorizations to coerce. However, his definition of a right is that it is a capacity to put others under a juridical obligation.³⁶ Rights are thus defined by Kant in text following shortly on the heels of §E in terms of juridical obligations. It's jarring to conclude that his message is that under juridical principles, strictly speaking, there are rights but no obligations.

However, it should be stressed that this is in no way decisive evidence against Willaschek's interpretation. For Willaschek holds that there are genuine tensions in Kant's account, with which Kant was struggling when he composed the *Doctrine of Right*.³⁷ It is part of the honesty and force of his reading that he is ready and willing to acknowledge these tensions throughout the text. Furthermore, his reading does the service of capturing in a dramatic form the impression that the rhetoric of §E and surrounding materials are apt to convey. For, details of interpretation aside, it *seems* that here Kant is in some way affirming the picture of right as exhausted by principles licensing agents to push each other around from outside.

To make genuine headway, we must thus provide an alternative reading of §E that is philosophically persuasive while better fitting the details and context of the passage. Only in this way can we respond to Willaschek's incisive interpretation. What we need is a way of understanding the UPR as a moral law that is compatible with the spirit and the letter of §E and surrounding passages. Such a reading will, ideally, also help understand how Kant can both affirm that right is a part of morality, while nonetheless maintaining its formal distinctiveness from ethics.

³⁶ *MM* 6:237; see also 6:383

³⁷ See Marcus Willaschek, "Why the *Doctrine of Right* Does Not Belong in the *Metaphysics of Morals*" in *Jahrbuch für Recht und Ethik* (Duncker und Humboldt: Berlin 1995), 205-227. One might think that Ebels-Duggan is committed to a similar view insofar as, on her view, Kant seems to move (slide?) back and forth between a "moralized" and non-moralized concept of right.

§2: *Strict Right as One Power with Two Acts*

Let us start with the thesis of §E, announced in the section heading: “A Strict Right Can Also be Represented as The Possibility of a Fully Reciprocal Use of Coercion That is Consistent with Everyone’s Freedom in Accordance with Universal Laws”. When Kant explicates this thesis, he glosses it as saying that right “need not be conceived as made up of two elements”: (1) obligation in accordance with a law, and (2) an authorization of “him who by his choice puts another under obligation” to constrain the subject of this obligation to its fulfillment.³⁸

Kant has very carefully prepared the way for the statement of this thesis in the material leading up to §E. The characterization of the obligation in question as flowing from the choice of the agent to whom the obligation is owed echoes his analysis of the moral concept of right—the concept of right insofar as it is related to *juridical obligation*—presented in §B. According to this analysis, right involves the relations of the choice of each subject to the choice of the other. This relational analysis was then developed into a principle in the form UPR, and elaborated into an account of wronging another in §C.

The account of what it is to wrong someone has a crucial consequence that it is easy to miss, but that is highly relevant to understanding the thesis of §E. To say that an action is right is to say that a subject is authorized under the UPR to perform the action. Suppose the agent chooses to act on this authorization. As we’ve seen, hindering a right action is wrong. It is a violation of the UPR, and so a failure to fulfill the juridical obligation that the UPR places us under. It follows that the choice to perform a right action necessarily puts others under the juridical obligation not to hinder the chooser. To say that an action is right is thus

³⁸ *MM* 6:232.

to say *both* that the subject is authorized to perform the action, and that in doing so she is authorized through her power of choice to put others under an obligation.

Kant draws this consequence explicitly when a little later in the introduction he defines rights as moral powers (*Vermögen*) conferred as lawful titles by a juridically given law to put others under obligations.³⁹ Thus, all authorizations to act under the UPR are simultaneously lawful titles to bind others through our power of choice. Although there are important exceptions, generally speaking, the juridical obligations that one agent is under are thus acts of the power of choice of other agents.⁴⁰ Like the moral concept of right, juridical obligation is, in the basic case, relational in form: the practical necessity that one agent is under has its source in the power of choice of another agent. My juridical obligation *is* your right actualized.

This relational analysis of juridical obligation accounts for a distinctive feature of right that Kant emphasizes in the introduction and throughout the *Doctrine of Right*. The juridical obligations the UPR puts me under are owed to other agents whom I wrong by failing to fulfill them. As we've seen, I wrong another by hindering a chosen action or condition of hers that is right. It follows that so as long as I choose not to influence her in this freedom-impairing way, I do her no wrong. Kant points out that this is true even if I am morally indifferent to her freedom in my heart, and make this choice on some ground other than respect for the juridical law that has bestowed a lawful title on her to put me under the obligation.⁴¹ When we put others under juridical obligations, although we require them to act rightly towards us, we do not also require them to do so because it is right. It is thus

³⁹ *MM* 6:237.

⁴⁰ To say that juridical *obligations* are acts of another is not to say that the *laws* that confer these titles to obligate are also acts of another. Indeed, they cannot be, since a rational being can only be subject to laws she has given herself, either alone or along with others, *MM* 6:223.

⁴¹ *MM* 6:231. Emphasis in original.

possible for the external action of one to be united with the freedom of choice of another in accordance with a universal law, without the agent performing this action because of this fact.

The relational analysis of right also explains a pervasive feature of Kant's discussion of right. Kant describes right as functioning to determine what belongs to each.⁴² He characterizes that to which I have a right as "mine", and treats right throughout as concerned with determining the different sense in which something can be rightfully "mine and yours". While these uses might suggest that Kant views right as concerned primarily with private property, in fact Kant uses "mine and yours" in a dizzyingly abstract sense, of which private property is only one of many special cases.⁴³ For example, Kant uses these formulations to describe the rights I have to my own person (innate right),⁴⁴ to acquired rights including the right to a thing (property right), to the actions of others (contract right), and to people, as I can have certain rights with respect to my child or spouse (status right).⁴⁵

What underwrites this characterization of right in terms of mine-and-yours is not an analogy to property rights, but rather the relational structure of right and juridical relations. To possess a right is to possess a power to place others under an obligation. Thus, when it comes to right, the authorization of one person is simultaneously a potential restriction on others. Every right exercised by one is the obligation of another. Thus, my right to be (and remain) alive is simultaneously a constraint on your right to perform actions that would deprive me of this condition. To say that my life is mine is to say that it is not yours to take. To determine what belongs to one is simultaneously to determine what does not belong to

⁴² *MM* 6:233.

⁴³ Although his discussion of what is mine and yours is otherwise very illuminating, I think Arthur Ripstein is wrong to associate the mine-and-yours structure with acquired right in particular. See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, 57-85.

⁴⁴ *MM* 6:237.

⁴⁵ *MM* 6:245 ff.

others. I call this the mine-and-yours structure of juridical obligation. This is what makes the geometrical and dynamic metaphors of which Kant is fond, although potentially so misleading, almost irresistible.⁴⁶ To occupy a position in the space of right is simultaneously to exclude others from this position. Right is a kind of moral dynamics of moving solids.

With this background in view, let us return to our question. In light of this analysis, what would it be to conceive of right as “made up of” obligations and the authorization to coerce as two elements? We are now in a position to see that both elements are the actualization of moral powers flowing from the UPR. Juridical obligations are acts of a moral power (authorization) to put other agents under juridical obligations. §D has argued that rightful coercion is the act of a moral power to constrain the violation of such obligations, also possessed as a lawful title under the UPR. To think of these as two separate elements would thus be to analyze possessing a right in terms of possessing a compound of two distinct powers: a first moral power to act rightly and so put people under obligations, and a second moral power to constrain them to fulfill those obligations. To say that these are *separate* powers that come together in a compound is to say that to attribute the one is not yet, conceptually speaking, to attribute the other. If in general they travel together, we will need a substantive argument that wherever an agent is justified in exercising the first capacity, she will also (tend to) be justified in exercising the second. For, the power to place others under and obligation will not in and of itself suffice to justify coercion.

One might naturally have thought that §D provided precisely such a substantive argument. By saying that it need not, and indeed, should not, be conceived this way, Kant is steering us away from this understanding of the argument of §D. He is telling us that he

⁴⁶ They are misleading because “place” is itself an external object of choice, indeed the basic primary case of property. As a result, the spatial metaphor tends to encourage the conflation of right with the special case of property. (The dynamic analogies also attract speculative and ambitious readings.)

does not mean to be providing an argument that two separate powers (tend to) travel together in a compound that is called “having a right”.

But what is the alternative?⁴⁷ If we wish to avoid the textual strains of denying the reality of one of these powers, the alternative must involve instead rejecting the picture of two distinct elements in a compound. My proposal is that we view Kant as suggesting instead that there is a deeper unity, an underlying identity of these powers. We should see him as claiming that putting others under an obligation and constraining their violation of this obligation are acts of the very same power. Just as the authorization to perform a right action is simultaneously the authorization to put others under an obligation, so too it is simultaneously the authorization to constrain others to the fulfillment of this obligation. In that case, we can “locate” right “directly” in the possibility of coercion, because like putting others under an obligation, coercion is an act of this (single) moral power conferred as a lawful title under the UPR.

Here is a way to think about this claim. For Kant, a right is a moral power, a title conferred by a juridically given law to act or be in a condition. A title is an authorization, a standing under a principle that one can appeal to in order to justify one’s action to others. It’s one of the morals of §C that the very same title that justifies acting also licenses putting others under obligations not to hinder the relevant act or condition. So if someone wants to know under what authority you impose this obligation on her, you may appeal to the very same right that licenses your action or condition. In §E, Kant tells us that this is how we are to understand the argument of §D regarding coercion. The very right that authorizes action and justifies the imposition of obligation also licenses the constraint of wrongdoing. When one is justified by right in resisting a wrongdoer, one appeals to the very right that the

⁴⁷ My sense of the alternative was crucially influenced by Arthur Ripstein, “Authority and Coercion”, *Philosophy and Public Affairs* 32 (2004).

wrongdoer infringes as the lawful title for exercising the constraint.⁴⁸ We thus do not need a mediating element to get us from the attribution of the right to the authorization to constrain others. For, where coercion is justified, the same title suffices for both.⁴⁹

This sheds some light on Kant's claim in §D that the authorization to constrain follows from the principle of contradiction.⁵⁰ To represent an agent as authorized by the UPR to perform an action (and so *a fortiori* to will the action) is to represent the agent as authorized to produce the action as an effect. When the agent resists a wrongful countervailing action, Kant argues she merely carries forward with her authorized action without wronging anyone.⁵¹ The original authorization under the UPR to perform an action already gives an agent the standing to perform the action in the face of wrongful countervailing resistance. Since it is the very same title that licenses both the action and the resistance to injustice, to deny the latter while affirming the former is to both grant and deny the lawful title of the agent.

When it comes to right, to say what someone is permitted to do is simultaneously to say what she may require of others and constrain them to do. Thus, what might appear to someone to be an unconnected series of actions—choosing a right action, putting someone under an obligation not to hinder the action, demanding fulfillment of the obligation, hindering the agent's subsequent violation of the obligation—each requiring a separate moral justification, should instead be seen as unfolding actualizations of a single power. When

⁴⁸ Note that in many cases third parties may appeal to the same title to aid the wronged individual in resisting the injustice.

⁴⁹ There can certainly be considerations pertaining to the wronging subject's rights that render different varieties of otherwise legitimate constraint morally impermissible in some context. But in the basic case where constraint is justifiable, Kant claims nothing more is required for the authorization to constrain than the attribution of the original right.

⁵⁰ *MM* 6:231 and 6:396. Note that I do not take myself to be elucidating all aspects of the argument of §D. This argument is quite difficult and a full discussion would take us further afield.

⁵¹ My reading here has been influenced by the very valuable discussion in Marcus Willaschek, "Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory?", 49-70.

Kant says that right and the power to coerce “mean one and the same thing”, he is not somehow boiling juridical obligation down to the authorization to coerce. He is, instead, saying that the power to put others under obligations and the power to hinder violations of these obligations are in fact one moral power, a single lawful title conferred by a juridical law.⁵²

We are now in a position to return to the section heading and understand it anew. We have seen that in §B Kant initially describes right as a reciprocal relation between choosers who are symmetrically related to one another. Now, as we have just seen, right is a power, one actualization of which is the rightful external constraint of wrongful action. Since a power can be represented through its acts, it follows that strict right can be represented as the possibility (authorization) of coercion. Since such authorizations are reciprocal and flow from a universal law, we arrive at the claim of the heading: a strict right may be represented as the possibility of fully reciprocal coercion in accordance with a universal law.

We would do well to note that the section heading claims that strict right “can *also* be represented” as the possibility of reciprocal coercion. This implies that the possibility of reciprocal coercion is not the only way that right can be represented. We can now see why.

⁵² This understanding of §E has consequences for the reading of the *Doctrine of Right* as a whole. Kant’s analysis moves through successive moments of right: innate, private, civil, international, and cosmopolitan. Each moment of the analysis could be viewed as introducing distinct moral powers (rights) under the UPR to act or remain in a condition, powers that when actualized place others under juridical obligations. Since on the reading of §E I am proposing, the same moral power is also a title to resist injustice, these new moments must simultaneously specify new forms of wrongful actions that violate the corresponding obligations, and underwrite new modes of resisting injustice. We can thus view the doctrine of right as introducing an ordered sequence of suites of inter-defined rights, wrongs, and forms of justified resistance.

Suppose further that we follow Arthur Ripstein in understanding Kant’s account of external freedom in normative terms, such that to be externally free is to have and be able to deploy in the pursuit of your ends what is *yours*. Then we can also represent this as a sequence through which external freedom acquires increasing determinacy. (Note that although I find it attractive, nothing in my argument hinges on adopting this normative conception of external freedom.) For the contrast between normative and non-normative conceptions of external freedom and some skeptical remarks about the former, see Kyla Ebels-Duggan, “Force and Freedom: Kant’s Legal and Political Philosophy”, *Canadian Journal of Philosophy* 41:4 (2100), 549-573.

For, if a power has more than one actualization, it will be possible to represent it in more than one way. As we have seen, right is also a power to act and to put others under a juridical obligation. The power can thus be represented through these acts as well, as Kant himself does when defining “right” explicitly later in the introduction as the power to place others under an obligation.

§3: *External Constraint as the Incentive in Strict Right*

This reading provides an understanding of §E that seems to fit well with the context of the passage. It understands the passage as the warranted conclusion of a single and sustained line of argument beginning in §B with the relational analysis of the concept of right. It also accords with the many appearances of the word “obligation” both inside and outside the passage, and with the earlier definitions Kant provides of obligations and categorical imperatives, as well as his later definition of rights as powers to put others under an obligation. It is grounded in the details of the text and escapes the contextual strain of the Willaschek/Ebels-Duggan/Pogge reading.

However, while initially appealing, so far it does not address one striking feature of §E. This is Kant’s claim that if strict right is to “remain pure” and “not be mingled with anything ethical” it requires only “external grounds of choice”, and that the consciousness of obligation cannot be appealed to as an incentive.⁵³ This is connected to the remark in §C that the UPR “does not expect, far less demand, that *I myself* should limit my freedom just for the sake of the juridical obligations it lays on me.”⁵⁴ Any reading of the passage that does not

⁵³ *MM* 6:232.

⁵⁴ *MM* 6:231.

address these claims is, at best, incomplete, all the more so, given that it is precisely this feature of the passage that most attracts the attention of our three authors.

Now, this is not the first discussion of incentives in Kant's practical philosophy, or the first appearance of the idea of a special incentive for juridical law in *The Metaphysics of Morals*. To understand these passages requires taking a wider view. I will do so briefly. In the *Critique of Practical Reason*, Kant devotes the third part of the analytic of the work to a discussion of the incentive (*Triebfeder*) of pure practical reason.⁵⁵ Kant defines an incentive as “the subjective determining ground of the will of a being whose reason does not by its nature necessarily conform with the objective law”.⁵⁶ In the first part of the analytic, Kant takes himself to have identified the objective law of pure practical reason and to have shown it to be identical with the moral law that we recognize ourselves as bound by in our practical consciousness.⁵⁷ Given that Kant holds that the theoretical cognition of freedom is impossible, he claims that we can have no insight into *how* this practical law can determine the will itself. So he does not seek to shed light on this question. Rather, assuming that it *can* determine the will, the topic of the section is what can be said *a priori* about the effect of such determination on the faculty of desire.⁵⁸ In particular, Kant is concerned to specify the effects that representations of the moral law must be able to have on the hindrances to its operation arising from our sensible inclinations. What must be true for the moral law to be capable of becoming the subjective determining ground of the will, ultimately developing into that inner strength that Kant calls “virtue”?⁵⁹

⁵⁵ My understanding of Kant's discussions of incentives draws on Stephen Engstrom, “The *Triebfeder* of Pure Practical Reason” in *Kant's Critique of Practical Reason: A Critical Guide* (Cambridge: Cambridge University Press 2010), 90-118

⁵⁶ Immanuel Kant, *Critique of Practical Reason* in *Practical Philosophy* at 5:72. (Hereafter, *CPrR*.)

⁵⁷ *CPrR* 5:31 ff.

⁵⁸ *CPrR* 5:72.

⁵⁹ *Ibid.*

Admittedly, we must be very careful in drawing on the discussion of incentives in the *Critique of Practical Reason* to shed light on Kant's remarks about the incentive of strict right. This is so for two reasons. The first is that Kant reserves his division of duties for the *Metaphysics of Morals*. In the *Critique of Practical Reason*, he has not yet introduced the division between juridical and ethical lawgiving that is the basis of (part) of that division. So the topic of juridical incentives is not so much as in view. Furthermore, insofar as the incentive under discussion in the third part of the analytic lines up with an incentive from the *Metaphysics of Morals*, it is the incentive belonging to ethical rather than juridical lawgiving. For the incentive discussed in the analytic of *The Critique of Pure Practical Reason* is duty or respect for the moral law.

However, having acknowledged these points, I think that it is a reasonable interpretative hypothesis that Kant is thinking of incentives in the *Metaphysics of Morals* in a way that is at least continuous with his earlier discussion. If so, we can expect the discussion of juridical incentives in *The Metaphysics of Morals* to concern what we can know *a priori* about the effect that consciousness of a juridically given law must be capable of having on the faculty of desire, and especially on the hindrances to its operation lying in our sensible nature, so that we can come to be capable of fulfilling our juridical obligations. With this interpretative hypothesis in mind, let us turn to the discussion of incentives in the introduction to the *Metaphysics of Morals*.

The *Metaphysics of Morals* introduces the systematic division of duties in Kant's practical philosophy. At the top of this division, Kant identifies two forms of lawgiving, and two associated forms of obligation: juridical and ethical. It is precisely in terms of the incentive that Kant distinguishes ethical and juridical lawgiving in the introduction to the

work as a whole. He tells us there that all lawgiving involves two elements.⁶⁰ The first element is the moral law that represents the action as necessary, and so serves as the objective ground making the action a duty. The second element is an incentive. He says the incentive connects two things: (1) a representation of the law requiring an action, and (2) a subjective ground for determining choice to perform this action. Of the two elements of all lawgiving, namely the law and the incentive, Kant locates the difference in forms of lawgiving with the incentive.⁶¹

He tells us that the subjective ground or incentive in ethical lawgiving is duty.⁶² For duty to serve as the subjective ground of choice is thus for an agent to act from the recognition that the action she performs is necessary under a moral law. In this case, the subjective ground of the agent's action is the same as the objective ground making the action a duty, namely the law itself.⁶³ So, in ethical lawgiving, the law itself is represented as requiring that one perform an action falling under the law from the recognition that *the action is required by this very law*. Therefore, ethical lawgiving represents a law as requiring an identity between the maxim that expresses the subjective ground of my choice and the practical law that is the objective ground of the necessity of the action to be performed.

Unlike ethical lawgiving, juridical lawgiving does not include the incentive of duty in the law. In addition to duty, Kant says, juridical lawgiving admits other incentives. About these other incentives, he says only that they must be drawn from pathological (sensible) determining grounds of choice, and from aversions in particular.⁶⁴ These initial remarks are

⁶⁰ *MM* 6:218.

⁶¹ *MM* 6:218-19.

⁶² *Ibid.*

⁶³ Kant thus moves freely between describing duty, obligation and the law itself as what ethical lawgiving makes the incentive, e.g. at *MM* 6:231. For talk of the law as incentive, see also, *CPrR* 5:71-72.

⁶⁴ *MM* 6:219.

cryptic. For example, Kant does not explain there how acting from a pathological incentive could satisfy the obligation that a categorical imperative lays on us. And even if such action could fulfill juridical obligations, Kant does not explain there how we could know *a priori* that a representation of a juridical law is capable of giving rise to an aversion that hinders opposing inclinations. This question is especially pressing, since one of Kant's central claims in the *Critique of Practical Reason* is that pathological grounds of choice (inclinations and aversions) can only be known *a posteriori* through pleasure and pain in experience of the object.⁶⁵

These puzzling remarks about juridical lawgiving are, however, explained and defended in the introduction to the *Doctrine of Right*. We have already seen Kant argue in §C, on the basis of the relational analysis of right, that it is possible to satisfy the juridical obligations we owe to others without acting from the incentive of duty. By the end of §E, Kant is in a position to clear up the rest of the mystery by showing how we can know *a priori* that juridical lawgiving, unlike ethical lawgiving, give rise to an aversive incentive. When the UPR authorizes an agent to act, it thereby confers on her a lawful title to put others under an obligation and constrain them to fulfill it. As Kant points out, the fact that an authorization to act is at the same time an authorization to constrain is a feature that sets laws given juridically apart from laws given ethically.⁶⁶ Putting others under an obligation and externally constraining them are two acts of the same moral power conferred on an agent by a law of right. As Kant understands it, this claim follows from the very form of juridical lawgiving and the associated juridical obligations. It is thus intended as an *a priori* claim developed from the concept of right. The feature in question is thus both unique to right and knowable *a priori*, according to Kant.

⁶⁵ *CPtR*, 5:21.

⁶⁶ *MM* 6:383.

Note also that the representation of each of these distinct acts can potentially have an effect on the faculty of desire, serving as an incentive that checks hindering inclinations. If an agent fulfills a juridical obligation out of consciousness of the first of these acts, she does so out of recognition that she has been put under an obligation by the moral power of another. Since juridical lawgiving lays obligations on us primarily by conferring such lawful titles, by acting for the sake of fulfilling the obligation, she acts from respect for the authority of the law. So in this case she acts from the incentive of duty, and fulfills not only the juridical obligation, but the ethical obligations that juridical laws lay on as well. Since juridically given laws are moral laws, showing up as categorical imperatives for human agents, this possibility is crucial.⁶⁷ On Kant's view, as moral laws they are capable of limiting the influence of the inclinations through respect for the law. However, this does not distinguish juridically given laws from ethically given laws.

So let us turn to consciousness of the second act—the lawful title to coerce. This second act is distinctively juridical. There is nothing that corresponds to it in ethical obligation. If, in representing strict right, we set aside anything ethical, then insofar as we can say anything *a priori* at all, it is precisely this second act that we must focus on. How might the consciousness of this second act be connected with aversion? I think it is not so hard to make out the connection that Kant has in mind. For, we would do well to bear in mind that the source of wrongful action lies in our exposure to sensible inclinations. It is part of Kant's account that exposure to such inclinations explains the possibility of practical error for human beings, and that they arise through pleasing experiences of the object of the inclination.⁶⁸ So Kant thinks that lawful coercion opposed to wrongful conduct will

⁶⁷ I explore the sense in which laws given through juridical lawgiving lay ethical obligations on us at length in [omitted author citation].

⁶⁸ *MM* 6:212.

necessarily give rise to pain by limiting the pleasing pursuits that are the inducement to wronging others. Furthermore, we are capable of anticipating this pain in prospect; the representation of a juridical law already contains a reference to such a potentially painful limitation.⁶⁹

So a representation of a law is capable of affecting the faculty of desire by giving rise to an anticipatory aversion to lawful coercion. Such an aversion is capable of hindering the wrongful pursuit of our other inclinations. So we can know *a priori* that juridically given laws are capable of determining the faculty of desire through a pathological incentive. And since I can fulfill a juridical obligation without acting from duty, acting on such an aversion is sufficient to meet my juridical obligations. Strange as it might initially have sounded, Kant thinks that we can after all know *a priori* that juridically given laws are connected with a pathological incentive to the fulfillment of juridical obligation.

So let us suppose that an agent acts from this incentive, and so from the consciousness that another agent has a lawful title to externally constrain her. Does our interpretation fit the relevant passages in which Kant describes the operation of this incentive? Recall that Kant says—in an awkward passage for Willascheck—that strict right is based on everyone’s consciousness of obligation under a juridical law, without this consciousness being the incentive of the action. This is a puzzling thing to say: how can strict right be based on the consciousness of obligations under a juridically given law without the consciousness of being under the obligation serving as the incentive to action? But this is exactly the right way to describe the case before us. For, when an agent acts from the juridical incentive, she acts from consciousness of the other’s lawful title to externally constrain her failures to fulfill her obligation. Such consciousness certainly involves an

⁶⁹ Compare Stephen Engstrom, “The *Triebfeder* of Pure Practical Reason”, 99-100.

awareness that she is under a juridical obligation. Yet, instead of being moved directly by the consciousness of the obligation, she is instead moved by the anticipation of the lawful coercion. So she does not act from the incentive of duty, for it is not the fact that the action is a duty that moves her, but rather the fact that she is liable to lawful coercion if she does not do it.

Note that this interpretation also fits well the passage from §C that Willaschek and Pogge emphasize as a sort of proof text for their interpretation. If you recall, that passage says that the UPR does not demand that we ourselves limit our action just for the sake of the obligations the UPR lays on us. Instead, when we set aside ethical questions relevant to the teaching of virtue, reason says only that our action *is* so limited and that others may actively limit us. We may interpret this passage as saying that when I act from the juridical incentive, I am conscious of the limitation set by the law, as well as the lawful title this limitation confers on others to constrain me. Although reason tells me that my action is so limited, I do not myself represent the “law of right as itself the incentive to the action”, since it is the liability to lawful coercion rather than duty that moves me.

While this interpretation fits the details of Kant’s text, I anticipate a lingering sense that there is something incoherent in the attitude I attribute to someone who acts from the juridical incentive. For, my reading takes quite seriously the idea that the juridical incentive is an effect of the representation of a moral law on the faculty of desire. The aversion to coercion that constitutes the juridical incentive is essentially an aversion to *lawful* coercion. It involves representing another as possessing a lawful title to constrain my wrongful conduct. But in that case, acting from a juridical incentive combines consciousness of a juridically given law with an unwillingness to act from this consciousness. But a juridically given law is, of course, a practical law, and this is how we must be conscious of it if we are to view it as

giving another a lawful title. So acting from the juridical incentive seems to involve both granting that one is subject to a juridically given law and denying it.

The answer is that this is true, and it is indeed incoherent. In a way this unsurprising. On Kant's view there is a practical contradiction in any action that is contrary to the moral law. Since Kant holds that we are always at least obscurely conscious of the moral law, which is, after all, the form of practical knowledge, there is always a kind of deep instability in the attitude of one who acts immorally. Now, someone who acts from the juridical incentive does not act immorally, since she fulfills her juridical obligation in so acting. But, nonetheless, by failing to be moved by the fact that she is under a juridical obligation, she fails to respond to the law as the practical law that it is. In recognizing the lawful title to coerce that the law confers on the one to whom she owes the obligation, her consciousness is practical, but the practicality, we might say, comes too late, and in the wrong way. Indeed, the whole thing has something of the flavor of the reaction of child who has externalized the moral law into the parental authority figure, and does what is right from the fear of her righteous anger rather than from the principle that confers righteousness on her imagined reaction.

Indeed, we can see the distinctive character of the incentive of strict right if we locate it in a range of possible cases of lawful action that correspond to different levels of practical maturity. At one limit, we have a case where a subject acts in accordance with a juridical law out of an aversion to coercion, but where the consciousness of the lawfulness of the coercion plays no role at all. The rightfulness of the source of the constraint does not figure in the subject's practical thought, and she treats the incentive as no different from that provided by the anticipation of any force that might oppose our inclination. Such a subject is not yet moved by the juridical incentive of strict right, since she does not connect the

incentive to the consciousness of a law.⁷⁰ However, that such a case is possible reveals a significant truth about right, for the force of law here can extend further than the recognition of the legitimacy of that force. It is this feature of right that allows Kant to sardonically note that the problem of civil right is soluble even for a nation of devils.⁷¹

Moving along the range we next come to a subject whose incentive for rightful action is the lawful constraint that she views as flowing from a juridical law. Although her action is based on consciousness of a juridical law, the practical authority that the law confers on the one to whom she owes the obligation is not what moves the subject. Her incentive is an aversion that flows from anticipation of the lawful coercion to which she is subject if she deviates from what duty requires. Here we have the incentive of strict of right as Kant discusses it, since the subject connects the constraint to the representation of a law, but is not moved directly by the law.

Next we come to cases where the subject is moved to *some* extent by the practical authority conferred by a law belonging to right, but the representation of this authority is not yet a sufficient incentive to action. The subject's rightful conduct depends as well on an admixture of the aversion to coercion. This is a case of what Kant calls "impurity" in the *Religion*, the second of three grades of evil he there distinguishes.⁷² In cases of impurity, the incentive of duty is present, but is intermingled with further pathological incentives upon which the agent depends to do her duty. Since the authority of the title is coming to play a direct if insufficient role, this is a step forward beyond the incentive of strict right.

⁷⁰ Since Kant holds that we are always obscurely conscious of the moral law, viewing things this way will involve a self-deceptive rebellion against its authority. Perhaps we should say about this limit case that the subject responds practically to the coercion as *though* its lawfulness was neither here nor there.

⁷¹ *TPP* 8:366.

⁷² *R* 6:30.

As the sufficiency of the incentive of duty increases, we approach the other limit of the range, at which the recognition of the lawfulness of the title conferred by a juridically given law blossoms into a full-fledged practical recognition of rightful authority. The lawfulness of the title is now the sufficient ground for the agent's dutiful action, and the anticipation of coercion plays no practical role. At this limit, the juridical incentive vanishes, flowering into the ethical incentive, and the action is done for the sake of duty.⁷³ It is finally here that the subject acts from the law, and her inner disposition is now, for the first time in our range, *good*.

What this range of cases reveals is that the juridical incentive is a formally distinct but practically immature way for the representation of a moral law to serve as the spring of action. It differs from the depraved starting point in the range in that the representation of the law does play a role in determining the subject to lawful action. But it is set apart also from the later more perfect stages in that the representation does so in a deficient way, by appeal to the pathological aversion connected with the law. As a defective case, the juridical incentive presupposes for its intelligibility the possibility of a non-defective determination of the faculty of desire through a practical representation of a juridically given law. For, Kant's account of the rightfulness of coercion depends on his relational analysis of juridical obligation. It thus presupposes that juridically given laws are categorical imperatives placing us under genuine obligations. And according to Kant, we can know a priori that categorical imperatives can determine the faculty of desire through the incentive of duty.⁷⁴ So the

⁷³ Kant's favorite example of sublime action from the incentive of duty is someone who refuses to commit an injustice by falsely testifying against an innocent person even under threat of execution from a tyrant. For such a hero, the lawful title (right) of the victim is a sufficient ground for action when the aversive incentive has been removed from falsely testifying, and has been attached instead to the performance of duty. See R 6:3-6:4 and *CPrR* 5:156-5:157.

⁷⁴ *CPrR* 5:75.

juridical incentive presupposes the more perfect ethical incentive that lies at the far end of our range.

This naturally raises the question why Kant insists that when representing strict right we must not represent subjects as acting from the incentive of duty. Why would he think that we must narrow our gaze solely to a defective case in order to achieve a representation of strict right? The key to answering this question lies in understanding the function of the operator “strict”. On my reading, the operator “strict” is *not* best understood as restricting us to the ideal, or essential, or properly juridical case. “Strict” functions rather to effect an abstraction by representing right through those elements that distinguish it from ethics. This is what it means to “expunge” everything ethical from our representation of right: to leave out of consideration in the representation of right what is common to right and ethics. Since the incentive of duty is common to both, we set it aside. What is left in the realm of incentives is then the liability to lawful coercion, which is, indeed, uniquely juridical, flowing from the mine-and-yours structure of juridical obligation. So understood, strict right presupposes that from which it is an abstraction, namely, right in a broader sense. For right shares features with ethics in virtue of the fact that both are moral laws, including the possibility of action from the incentive of duty.⁷⁵ Without these shared features, the distinctive element through which strict right is defined would itself be unintelligible.

What motivates this abstraction is the intellectual project of the *Metaphysics of Morals*.⁷⁶ For, it is in this late work that Kant, after decades of promissory notes, finally attempts to

⁷⁵ *MM* 6:214.

⁷⁶ Indeed, it would be possible to argue that a similar abstraction characterizes each stage of Kant’s argument *within* the *Doctrine of Right*. Kant’s discussion of each stage of right specifies what is distinctive about the stage initially by abstracting from the later stages of right, as for example, innate right is discussed in abstraction from private right, and private right from public right. But Kant then argues that innate right must be extended to include private right if freedom is not to be in contradiction with itself, and that private right in turn must be subsumed under public right if it is to

present his system of duties. Here the division between different aspects of morality is his central concern. In this context, the distinguishing features setting right apart from ethics are especially salient and important. Strict right is an abstraction that is designed to highlight precisely these distinguishing features.

§6: The Juridical Incentive and Self-Conceit

We can explore the consequences of this interpretation of the juridical incentive if we bring into view a more determinate conception of the internal hindrances that Kant thinks oppose the operation of juridically given laws. This will allow us to understand more fully the continuities and discontinuities of Kant's treatment of the juridical incentive with his wider discussion of incentives and moral psychology.

In the *Critique of Practical Reason*, Kant groups the hindrances to the moral law under the heading of self-seekingness. He locates under this broad heading two propensities, self-love and self-conceit.⁷⁷ He characterizes self-love as a well wishing, or benevolence, towards oneself. He also describes it as the propensity to treat one's subjective determining grounds (inclinations) as objective determining grounds (reasons). Since agents do indeed have duties of beneficence to further my ends, Kant says that the moral law merely limits self-love by extending to the ends of others the same status one accords one's own ends. Thus, self-love,

escape contradiction. Thus, there is an abstraction involved in the division of duties of right that involves setting aside a broader context which Kant thinks is essential to the phenomena he is discussing for the sake of specifying what is distinctive about each stage. (Thanks to an anonymous referee for suggesting that this kind of abstraction could be seen operating more widely in Kant's discussion of right.)

⁷⁷ *CPrR* 5:73. In my discussion I follow the penetrating treatments of self-love and self-conceit by Andrews Reath and Stephen Engstrom. See Andrews Reath, "Kant's Theory of Moral Sensibility" in his *Agency and Autonomy in Kant's Moral Theory* (New York: Oxford University Press 2002), 8-33; Stephen Engstrom, "The *Triebfeder* of Pure Practical Reason".

while a source of possible practical error, can take a rational form, and so be made good, when limited by the moral law.⁷⁸

Self-conceit is a different story. Kant describes self-conceit as growing out of self-love. It involves not just treating the subjective grounds of one's choice (inclinations) as objective grounds, but elevating them into the place of the unconditional practical principle, the moral law.⁷⁹ Self-conceit thus involves viewing my inclinations as lawgiving for others, indeed as the ultimate law for their practical reason. We can understand why Kant describes self-conceit as a form of self-esteem or arrogance.⁸⁰ Unlike self-love, which can in principle be extended to others when properly limited, self-conceit is predicated on denying to the will of others the same status one accords one's own will as the source of unconditional goodness. As Stephen Engstrom has put it, "The judgment of self-conceit is, in effect, the opening proposition of the Groundwork, but modified to read: 'Nothing at all in the world can be regarded without qualification as good, except my will.'"⁸¹ Since self-conceit involves this privileging of the self, and this denial of the same status to other rational beings, it cannot be merely limited by the moral law and made good, for it stands in opposition to this law.⁸²

Kant also describes self-conceit as resting on an illusion.⁸³ According to Kant, the moral law is the form of practical cognition. In self-conceit, one lays claim to the validity of practical cognition, treating one's inclinations as deserving lawful deference from others. But in denying the same status to other rational beings, one rejects the universal form of practical cognition, and so too the idea of humanity, and that of a kingdom of ends. We might say

⁷⁸ Ibid.

⁷⁹ 5:74.

⁸⁰ Ibid.

⁸¹ Engstrom, "The *Triebfeder* of Pure Practical Reason", 26.

⁸² *CPrR* 5:74.

⁸³ *CPrR* 5:75. See the illuminating discussion in Reath, "Kant's Theory of Moral Sensibility".

that in self-conceit, one acts under the illusion that one is the sovereign legislating for subjects as a kingdom of means. This illusion is incompatible with respect for the moral law, which humiliates self-conceit, deprives it of its illusion, and strikes it down.

Since Kant's main discussion of self-conceit occurs in the *Critique of Practical Reason*, written before Kant had developed his division of duties presented in the *Metaphysics of Morals*, Kant does not make explicit how self-conceit relates to right and ethics. Since self-conceit hinders the moral law quite generally, it will presumably hinder our fulfillment of both ethically and juridically given laws. However, if we focus on self-conceit as it opposes juridical lawgiving in particular, I think that we can see that it takes a distinctive form, corresponding to the relational form of right and the mine-and-yours structure of juridical obligation.

As we have seen, right concerns the relation of choosers to one another, insofar as their choices can influence one another by constraining external freedom. Kant tells us, in the introduction to the *Doctrine of Right* that the UPR confers on us the right to be constrained by others no more than one constrains them in turn. Self-conceit, however, places oneself and one's inclinations in the position of the lawgiver, while denying that status to others. Self-conceit in the juridical context thus amounts to the propensity to unilaterally subject others to the constraint of one's choice without being similarly constrained by the choices of others. Self-conceit in the juridical sphere is thus the propensity to exercise a dominion over the choice and persons of others.

Kant also thinks of the UPR as securing a certain status or standing for everyone. By setting reciprocal and equal constraints on our action, right establishes the conditions of our independence and equality. Kant calls this reciprocal and equal standing "being one's own

master”.⁸⁴ Juridical self-conceit, by contrast, seeks to secure the independence of one at the expense of the dependence of others. And it does so by a supposed right that these dependent others are allegedly bound to recognize. It is thus a propensity to secure a recognized status of mastery that depends on the denial of such status to others. For self-conceit in the juridical sphere is essentially the perversion of the status provided by the innate right to freedom. It says: I am by right the master of everyone.⁸⁵

As we have seen, right for Kant can also be characterized in terms of what belongs to each, and so in terms of the mine-and-yours structure. By delimiting spheres of each agent’s permissible action, right determines what belongs to each. To say that I have a lawful title that limits what you can rightfully do is to say what is mine and so what is not yours. Self-conceit, however, views others as unilaterally constrained by my choice. Although my freedom delimits their permissible action, my permissible action is not so limited. This is equivalent to the view that what is mine is, by right, without limit. Self-conceit thus involves a denial of the juridical reality of others through which one lays claim by right to what is (in reality) theirs.⁸⁶ We might say that it replaces the mine-and-yours structure with a mine-and-mine structure.

⁸⁴ *MM* 6:237-6:238.

⁸⁵ Commentators have recognized that self-conceit involves the will to dominate. But they have not tended to consider how self-conceit might relate to Kant’s system of duties, and especially to the division between right and ethics. They have thus not tended to inquire whether self-conceit might take a special form in the juridical sphere. See, for example, Reath, “Kant’s Theory of Moral Sensibility”, 16.

⁸⁶ Juridical self-conceit thus comes very close, perhaps is identical with, *pleonexia*, the characteristic motivation to injustice as conceived by Plato and Aristotle. *Pleonexia* is a disposition that involves a denial of equality, and a striving to place oneself above others, as well as a failure to recognize and abide by the limits of what belongs to each. Like juridical self-conceit, it opposes justice not only *per accidens*, but essentially. Note that Aristotle is the historical originator of the relational tradition of theorizing about (particular) justice through his famous relational reinterpretation of the doctrine of the mean. His use of ratios to isolate the different forms of particular justice introduce something akin to the mine-and-yours structure into his theory, since what belongs to each in a ratio determines and is determined by what belongs to the other(s). This correspondence between Aristotle and Kant on the motive to injustice is no accident, for once justice is conceived through the mine-and-yours

We can find substantial textual support for my proposal in Kant's discussion of the passions in his work *Anthropology from a Pragmatic Point of View*. For it is in this late work, published after the *Metaphysics of Morals*, that Kant expands on the remarks about the sources of internal opposition to duty that are scattered across both *The Doctrine of Right* and *Doctrine of Virtue*. Kant's most extended discussion of the relationship of injustice to evil in that work occurs in the context of his account of the passions. Kant develops the concept of a passion in contrast with the concept of an affect. Both are sensible conditions that interfere with the operation of reason. Virtue involves overcoming each, through self-mastery and self-governance, respectively.⁸⁷ An affect is a fleeting condition of practical feeling that temporarily precludes rational reflection, as, for example, anger over a perceived slight can cloud our judgment, preventing us from seeing what action is mandated by our considered principles.⁸⁸ Passions, by contrast, are standing dispositions of the subject. They involve the taking up of inclinations that oppose the moral law into our maxims. The passions are thus the root of vice, and so evil, in the proper sense.⁸⁹

As we would expect, Kant's discussion of passions is shot through with the language he uses to describe self-conceit. The passions presuppose a subject with practical reason, but function to "shut out the sovereignty of [that] reason"⁹⁰ by usurping reflection and making it serve the sensible inclinations of the subject. Furthermore, their implicit subject matter is the relationship of their subject to other rational beings, and so the inclinations they involve can

structure, *pleonexia* becomes the natural formal description of the motive to injustice. For a dramatic expression of *pleonexia* and its link to injustice in Plato, see especially Thrasymachus' speech at *Republic* 343b1-344e3. For Aristotle's treatment, see especially *Nicomachean Ethics*, 1229b1-10 ff.

⁸⁷ *MM* 6:407-408.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *A* 7:251.

only be satisfied by the activity of other rational beings.⁹¹ In particular, they involve taking up inclinations into our maxims that make others a mere means to our ends.⁹² They thus have an implicitly relational and asymmetric form. Finally, Kant describes them as shot through with practical illusions.⁹³ They are “enchancements”⁹⁴ that bewitch our intelligence, illnesses⁹⁵ that abhor medicine, “manias”⁹⁶ for the object of inclinations, and some of them he calls “inclinations of delusion”.⁹⁷ They are “cancerous sores on practical reason”⁹⁸, the entrenched fruit of self-conceit that has brooded on and deeply entrenched inclinations that are opposed to the moral law.⁹⁹

Interestingly, the three passions Kant gives their own section headings all appear to involve the distortion of justice. The first is the passion for external freedom that substitutes a sensible impression of external freedom for the rational concept of external freedom under laws. Since such sensible impressions will not distinguish legitimate from illegitimate authority, this passion involves an anarchic opposition to the establishment of civil right, and a willingness to persist in a lawless state of violence.¹⁰⁰ The second is the passion for vengeance. This substitutes for the laudable desire for justice a brooding hatred of the one who has wronged us that grows out of our injured self-love.¹⁰¹

⁹¹ *A* 7:268.

⁹² *A* 7:270.

⁹³ There is a highly illuminating discussion of the illusory nature of the passions in Allen Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press 1999), 259-269. My whole interpretation has been influenced by his discussion.

⁹⁴ *A* 7:266.

⁹⁵ *A* 7:265.

⁹⁶ *A* 7: 266.

⁹⁷ *A* 7:274-275.

⁹⁸ *A* 7:266.

⁹⁹ *MM* 6:408.

¹⁰⁰ *A* 7:267-269. This passion is what underlies the love of a lawless freedom that Kant often attributed to hunter-gatherer and nomadic societies, as well as, in the international arena, to the princes of European states.

¹⁰¹ *A* 7:270-271. Kant describes the desire for justice as a desire for a state where each has what has been allotted to her by justice. It thus a desire for everyone to have secured to them what is theirs.

But it is the third passion that is most relevant for our purposes. This is the inclination for having influence in general over other human beings. It seeks to make use of the inclinations of others to direct and determine them according to one's choices. Kant remarks, tellingly, that to have such a power over others is like possessing them as mere tools for one's will. Of course, to possess someone as a mere tool for one's choice is to be his master.¹⁰² Kant views the power to direct others in general as having three general objects, each of which allows for the manipulation of the inclinations of another: esteem, authority, and money.¹⁰³ He describes the passion for each of these things as a corresponding form of mania: the mania for honor, the mania for domination, and the mania for possession.

Kant tells us that the mania for honor is to be distinguished from a love of honor that seeks an esteem that a subject is permitted to expect from others because of his inner moral worth. It is rather a form of arrogance: an unjustified (normative) demand on another that he despise himself, or more precisely, a demand that he think little of himself in comparison with me.¹⁰⁴ This recalls in no uncertain terms Kant's discussion of self-conceit, which he glosses with the Latin term *Arrogantia*, and tells us that the moral law strikes down self-conceit since all claims to esteem for oneself that precede accord with the moral law are "null and quite unwarranted".¹⁰⁵ But it also connects directly with Kant's discussion of right,

¹⁰² This is Aristotle's definition of slavery: a slave is a living tool for the will of the master. Aristotle, *Politics* 1254a13-17.

¹⁰³ It is one of the most fascinating themes of Kant's discussion of this three-fold passion that it can only succeed to the extent that others have inclinations for the same objects that make them susceptible to such manipulation. Thus having the passion in general is a form of weakness, since it opens one up to the same sort of influence that one seeks to exercise over others. It follows from this that there is a crucial social dimension to the passions, since they can develop and flourish only in a social world where they have developed and flourished in others. Indeed, Kant represents some of them as originating in a urge to defend oneself against the similar passion in others—as one wishes to become feared in order to free oneself from the despotism of those one fears. For the mutual corruption of human beings through the passions, see especially R 6:93-6:94. See also the discussion in Wood, *Kant's Ethical Thought*, 283-296.

¹⁰⁴ *A* 7:272-273.

¹⁰⁵ *CP*rR 5:73.

since the mania for honor is an overweening desire to have power over others, making them tools of my choice, through their granting a status to me by supposed right that they deny to themselves.

The mania for domination is a desire to have unilateral authority over others. Such a desire works through the aversions of others, i.e. through their fear of coercion. The link between this mania and injustice is as clear as could be, indeed, Kant describes this passion as *intrinsically* unjust because it is opposed to freedom under law, to which he says everyone can lay claim on reciprocal and equal terms.¹⁰⁶ This passion is the developed form of the propensity to “lord it over others as their master” that Kant claims in the *Doctrine of Right* we are all familiar with from our own case.¹⁰⁷

Finally, the mania for possession is the desire to employ the choices of others through the possession of wealth. Kant thinks of such a passion as directed particularly to the universal, and so all-purpose, form of wealth: money.¹⁰⁸ Of course, all wealth is property, one of the three external objects of choice—what is externally “mine”—discussed in the section on private right in the *Doctrine of Right*. And it is important to note that others will only be susceptible to my influence through wealth to the extent that they lack it. Since the mania for possession is a smoldering desire to control others, it is a desire to have what is externally mine in the sense of property while others lack. In other words, it is a desire for external objects of choice to be mine-and-mine rather than mine-and-yours.

We thus find here the same three-fold structure of a propensity for unequal status, domination, and possession that I claimed would characterize juridical self-conceit, being explicitly affirmed by Kant in the context where he seems to be especially focused on

¹⁰⁶ A 7:273.

¹⁰⁷ MM, 6:307.

¹⁰⁸ A 7:274.

injustice. There is thus strong evidence that Kant holds self-conceit to have a juridical manifestation, constituting a propensity to injustice, a propensity that can if left unchecked develop into a passion.

Now, let us consider how the incentive of strict right opposes this propensity to injustice. If the operation of a juridically given law is hindered by self-love rather than self-conceit, all that is called for is a limitation of my choice to conditions compatible with the freedom of your choice. We have already seen how such limitation can come through the anticipation of the pain of external constraint. But insofar as the internal obstacle to fulfilling juridical obligation springs from self-conceit, the juridical incentive has a more interesting role to play. For, as we have seen, self-conceit in the juridical sphere involves an illusion of a specifically juridical kind. To use Kant's own dynamic metaphor, we could say that maintaining our self-conceit requires us to shield ourselves from the moral equivalent of Newton's third law. I must somehow maintain that I can exert a lawful force on others—dominating them by right—without them exerting an equal and opposite lawful force on me. I must thus convince myself that what is in fact the mine-and-yours structure that limits my rightful claims by the juridical reality of others is in fact the mine-and-mine structure. And I must arrogantly conceive of myself as having a juridical status of mastery that others lack.

Suppose self-conceit is checked by the juridical incentive. In that case, I represent the agent whom I wish to lord it over as someone who is capable of constraining me by opposing the very domination I seek to exercise over her. Furthermore, this is not the opposition of a natural force, say the way a high cliff or a grizzly bear might frustrate my attempts to satisfy my inclination. For, in this case I represent the agent I wish to dominate as potentially resisting me in virtue of a title conferred on her by a juridical law. I thus represent her as resisting me *by right*. In so doing, in meeting my wrongful force with a

countervailing lawful force, she gives the lie to my pretensions. How can I have the right to unilaterally constrain her choice through coercion, when she possesses *by right* the title to resist my coercion with a countervailing lawful force? Or again, when I represent her as constraining my choice through the possession of a title conferred by a juridical law, I represent her as having a standing under that law, a standing that is reciprocal and equal to mine. But how can I be her master if *she* has a lawful title to constrain *me*? Finally, the anticipation of lawful constraint shows there to be, by right, limits to what is mine, limits that lie precisely in what is another's.

Thus, although it is pathological, the incentive of strict right appears capable of checking the illusions of *pleonectic* self-conceit. It does so by virtue of the fact that it depends on consciousness of obligation under a juridical law. Of course, as we have seen, the incentive of strict right is both imperfect and even contradictory in this consciousness. For it involves being moved by the fact that someone has a lawful title to constrain me without being moved directly by the fact that I am under a juridical obligation to her. It thus involves representing her as both having and lacking a juridically equal standing towards me, since such a standing is also a title to place me under juridical obligations, obligations that should move me directly to act. For this reason, although it may limit, and to some extent expose, the illusions of self-conceit, its imperfection prevents it from striking it down—extirpating it root and branch—in the way that only the incentive of duty can. It thus can at most check self-conceit without fully unmasking it, perhaps preventing it from developing into stable passions that are opposed to justice. In doing so, it can also lay the ground for the possibility of moral development of a fuller ethical kind.

This role for the juridical incentive in checking the propensity to injustice is presumably what leads Kant to say that a good civil constitution is not the product of good

inner morals, but rather provides a good moral *bildung* for a people, i.e. helps to make them good.¹⁰⁹ It is also what leads him to remark that is the foundation without which the higher forms of ethical community necessary for cultivating goodness are impossible.¹¹⁰ Indeed, it is what leads him to represent public right as overcoming the greatest obstacle to morality, and making possible the progress towards an ever more perfect condition of inner morality.¹¹¹

On this path to virtue, we can, of course, acknowledge the same continuum of cases discussed above. The continuum will start from a case where my fulfillment of a juridical obligation out of anticipation of coercion does not register the lawfulness of that coercion. Here, frustrated as I might be, the illusion of my juridical self-conceit will be intact. The continuum will end with a case where my experience of the juridical obligation humiliates my self-conceit, striking it down before the law as Kant describes in the *Critique of Practical Reason*. In that case, the law itself serves as the spring of my action, and we are speaking of the ethical incentive of duty. As we travel along the continuum, the hallucinatory royal trappings of my tyrannical self-conceit will come to look increasingly threadbare until I arrive at the point where I can finally see them aright as the plain and wholesome clothes of the citizen, one among many, all equally real. At that point I will have moved beyond the horizon of strict right and have arrived at virtue.

¹⁰⁹ *Perpetual Peace*, 8:366.

¹¹⁰ R 6:94.

¹¹¹ *The Conflict of the Faculties*, 7:93.