Introduction

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Aim of the Volume

Research on Kant's legal philosophy has flourished in recent years. This applies both to exegetical research on Kant and to practical philosophy, which pursues normative theorizing in Kant's wake. In view of this enormous interest in Kant's legal philosophy, there is surprisingly still no unified discussion of the fundamental questions of his legal thought. There are two reasons for this: on the one hand, there are contributions to the debate that tend to concentrate on Kant's legal philosophy[1] or his moral philosophy[2] and thus sometimes fail to take the 'other side' sufficiently into account. On the other hand, there is a methodological divergence between more exegetical approaches coming from the history of philosophy[3] and more analytical approaches trying to give a 'Kantian' answer to philosophical problems of law and morality.[4] It is therefore not surprising that there is, first, a need for a philosophical-historical account of the relationship between law and morality in Kant; and secondly, there is a need to clarify the related problem of which path normative theorizing based on Kant can or must take today. This volume takes up these two desiderata in contributions that address these questions from systematic

[1] For instance, Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Cambridge, MA: Harvard University Press, 2009.

[2] For instance, Allen W. Wood, *Kantian Ethics*, Cambridge: Cambridge University Press, 2008, and *The Free Development of Each: Studies on Freedom, Right, and Ethics in Classical German Philosophy*, Oxford: Oxford University Press, 2014.

[3] For instance, Mary J. Gregor, *The Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the 'Metaphysik der Sitten'*, Oxford: Basil Blackwell, 1963, and B. Sharon Byrd and Joachim Hruschka, *Kant's* Doctrine of Right*: A Commentary*, Cambridge: Cambridge University Press, 2010.

[4] For example, Christine M. Korsgaard, *Creating the Kingdom of Ends*, Cambridge: Cambridge University Press, 1996, and *The Sources of Normativity*, Cambridge: Cambridge University Press, 1996, and John Rawls, *A Theory of Justice*, Cambridge, MA: Harvard University Press, 1971, and *Political Liberalism*, New York: Columbia University Press, 1993.

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and exegetical perspectives. It provides a comprehensive treatment of law and morality in Kant and also sheds new light on Kant's practical philosophy more broadly.

In doing so the volume centres on the fundamental issue that affects almost all debates revolving around Kant's legal and political philosophy: how do law and morality relate to each other? Is legal philosophy to be understood merely as the application of general moral principles to the particular factual circumstances that make law and legal institutions necessary? Or does law have its own normativity that cannot be traced back to that of morality? Scholars generally accept that the *Doctrine of Virtue* (1797), which comprises Kant's ethical doctrine, depends upon the critical foundation of his moral philosophy developed in the *Groundwork for the Metaphysics of Morals* (1785) and the *Critique of Practical Reason* (1788). However, it is very controversial whether Kant's *Doctrine of Right* (1797), too, presents an embodiment or derivation of this critical moral philosophy, or if it rests on an independent foundation. According to the classical reading, Kant's concept of law can be derived from the categorical imperative. Law, like Kant's ethics, is therefore based on the notion of autonomy: legal precepts are categorical imperatives and as such presuppose the transcendental freedom of the subjects of law. According to this view, the doctrine of right and the doctrine of virtue can only be understood as equal parts of a unified, critical practical philosophy. However, some scholars claim that Kant's provisions of right are at odds with central tenets of his moral philosophy: While the categorical imperative prescribes acting upon certain *inner* maxims, rightful conduct depends only on the *outer* form of interaction between persons. While autonomy of pure reason seems to call for the idea of duty itself as the only incentive consistent with it, rightful conduct can be induced by incentives provided by others, such as the political legislator. Such differences are said to preclude any direct appeal to the autonomy of pure reason and the categorical imperative as the grounding principle of the principle of right, so that the latter must have an independent justification.

This 'great divide' in Kantian research is as old as the *Doctrine of Right* itself, in fact, even older, if we take into account Johann Gottlieb Fichte's *Grundlage des Naturrechts* from 1796 which tries to separate radically the normativity of law from the demands of morality. It is not surprising, therefore, that initially there was a lively debate in Germany about the status of Kant's legal philosophy. On the one hand, there was a 'moral-teleological' view of law, particularly held by legal scholars, according to which law has only a serving function vis-à-vis ethics (i.e. that law should

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merely enable moral development within the framework of ethics).[5] As an opposing position, Julius Ebbinghaus, in particular, developed an 'independentist' reading of Kant's legal philosophy, according to which a derivation of any kind of law from the rest of critical moral philosophy is possible, but not necessary. Kant's legal philosophy could also be explained and justified independently of the rest of moral philosophy.[6] In particular, Ebbinghaus (and other authors such as Georg Geismann and, to a lesser extent, Manfred Baum, who follow him in this[7]) argues that Kant's philosophy of law arises solely from the concept of a general-law compact of external freedom of action. It is therefore independent of the concept of transcendental freedom and thus, in normative terms, also independent of the theory of autonomy. As a reaction to this, a middle position developed – advanced especially by Wolfgang Kersting[8] and Bernd Ludwig[9] – according to which law and ethics represent different areas of morality, but have a common foundation in terms of normative validity, meaning that they necessarily refer to the autonomy and thus the transcendental freedom of the subjects of law.

As we entered the new millennium, this 'great divide' reappeared internationally. Arthur Ripstein, for example, argued in his groundbreaking book *Force and Freedom* that Kant's philosophy of law has a rationale of its own, independent of Kant's moral philosophy. The upshot of his interpretation is that the normativity of law exclusively rests on the conditions of the possibility of external freedom: because people strive for external freedom (i.e. the possibility of making their own decisions independently of restrictions by others), the law and legal institutions (i.e. the

[5] For example, Werner Haensel, *Kants Lehre vom Widerstandsrecht: Ein Beitrag zur Systematik der Kantischen Rechtsphilosophie*, Berlin: Heise, 1926; Karl Larenz, 'Sittlichkeit und Recht: Untersuchungen zur Geschichte des deutschen Rechtsdenkens und zur Sittenlehre', in Karl Larenz (ed.), *Reich und Recht in der deutschen Philosophie*, Stuttgart and Berlin: W. Kohlhammer, 1943, 169–402, and Fiete Kalscheuer, *Autonomie als Grund und Grenze des Rechts: Zum Verhältnis zwischen dem kategorischen Imperativ und dem allgemeinen Rechtsgesetz Kants*, Berlin: De Gruyter, 2014.

[6] See for instance Julius Ebbinghaus, 'Die Strafen für Tötung eines Menschen und Prinzipien einer Rechtsphilosophie der Freiheit', in *Gesammelte Schriften*, vol. 2: *Philosophie der Freiheit: Praktische Philosophie 1955–1972*, ed. by Georg Geismann and Hariolf Oberer, Bonn: Bouvier, 1988, 283–380, and 'Kant und das 20. Jahrhundert', in *Gesammelte Schriften*, vol. 3: *Interpretation und Kritik: Schriften zur theoretischen Philosophie und zur Philosophiegeschichte 1924–1972*, ed. by Georg Geismann and Hariolf Oberer, Bonn: Bouvier Verlag, 1990, 151–74.

[7] See Georg Geismann, 'Recht und Moral in der Philosophie Kants', *Jahrbuch für Recht und Ethik* 14 (2006), 3–124, and Manfred Baum, 'Freiheit und Verbindlichkeit in Kants Moralphilosophie', *Jahrbuch für Recht und Ethik* 13 (2005), 31–43.

[8] Wolfgang Kersting, *Wohlgeordnete Freiheit: Immanuel Kants Rechts- und Staatsphilosophie*, Berlin: De Gruyter, 1984.

[9] Bernd Ludwig, *Kants Rechtslehre*, Hamburg: Meiner, 1988.

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state) that make this possible are practically necessary. Kant's philosophy of law is thus independent of his critical *moral* philosophy, especially the categorical imperative and the autonomy of pure practical reason presupposed by it. While this is a controversial interpretation of Kant's works, it is precisely Ripstein's renunciation of these highly metaphysical presupposition of Kant's moral philosophy that makes his interpretation an attractive point of reference for contemporary normative theorizing in the wake of Kant. For instance, Japa Pallikkathayil,[10] Ariel Zylberman,[11] and George Pavlakos[12] build on a non-metaphysical notion of relational and empirically demonstrable freedom, while Louis-Philippe Hodgson[13] and Rafeeq Hasan[14] draw on an innate claim to legal independence as the basis of Kantian approaches to legal and political philosophy. In recent years, Ripstein's and other independentist readings of Kant have increasingly gained traction.[15]

Other scholars, however, reject this idea of a justificatory independence of Kant's legal philosophy from his critical moral philosophy. Instead, Kant's philosophy of law, they claim, can only be understood as a particular application of his moral philosophy: Kant's law of right can and must be derived from the categorical imperative[16] and its normativity can only be justified by recourse to the autonomy of pure practical reason and its underlying doctrine of transcendental freedom.[17] It is not merely external freedom, but rather individual autonomy and moral personality, which

[10] Japa Pallikkathayil, 'Persons and Bodies', in Sari Kisilevsky and Martin Stone (eds.), *Freedom and Force: Essays on Kant's Legal Philosophy*, Oxford: Hart Publishing, 2017, 35–54.

[11] Ariel Zylberman, 'The Public Form of Law: Kant on the Second-Personal Constitution of Freedom', *Kantian Review* 21 (2016), 101–26.

[12] George Pavlakos, 'The Relation between Moral and Legal Obligation: An Alternative Kantian Reading', in George Pavlakos and Veronica Rodriguez-Blanco (eds.), *Reasons and Intentions in Law and Practical Agency*, Cambridge: Cambridge University Press, 2015, 228–43.

[13] Louis-Philippe Hodgson, 'Kant on the Right to Freedom: A Defense', *Ethics* 120 (2010), 791–819.

[14] Rafeeq Hasan, 'Freedom and Poverty in the Kantian State', *European Journal of Philosophy* 26 (2018), 911–31.

[15] For influential contributions cf. Marcus Willaschek, 'Right and Coercion: Can Kant's Conception of Right Be Derived from His Moral Theory?' *International Journal of Philosophical Studies* 17 (2009), 49–70, and Christoph Horn, *Nichtideale Normativität: Ein neuer Blick auf Kants politische Philosophie*, Berlin: Suhrkamp, 2014. For a nuanced account of different possible kinds of (in)dependence of right on (from) morals, cf. Marcus Willaschek's contribution to this volume (Chapter 1).

[16] For instance, Paul Guyer, 'The Twofold Morality of *Recht*: Once More unto the Breach', *Kant-Studien* 107 (2016), 34–63, and Byrd and Hruschka, *Kant's Doctrine of Right*.

[17] For example, Bernd Ludwig, 'Die Einteilungen der "Metaphysik der Sitten" im Allgemeinen und die der "Tugendlehre" im Besonderen', in Andreas Trampota, Oliver Sensen, and Jens Timmermann (eds.), *Kant's 'Tugendlehre': A Comprehensive Commentary*, Berlin: De Gruyter, 2013, 59–84.

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constitute the basis of Kant's legal and political philosophy. The binding nature of law arises from the moral requirement not to treat persons as mere means.[18] If according to Kant the '[a]utonomy of the will is the sole principle of all moral laws and of duties in keeping with them' (*Critique of Practical Reason*, 5:33) and if right is 'a universal law [. . .] that lays an obligation on me' (*Metaphysics of Morals*, 6:231), then the latter must be grounded in Kant's critical moral philosophy.[19] Such a reading, which insists on a dependence of law on morality, has far-reaching implications for present-day Kantian conceptions of law that attempt to eschew such commitments. On this view, a Kantian legal and political philosophy that is decoupled from moral philosophy and its metaphysical presuppositions is incomplete, particularly in terms of the normative bindingness and content of law.[20]

This long-running dispute over the normative basis of Kant's philosophy of law naturally has weighty spillover effects regarding both the interpretation of Kant and current theorizing in the wake of Kant. To the first point, central Kantian theorems, such as the concept of duty and imputation, as well as legal coercion or the criminal law, will be conceptualized differently depending on whether one assumes a derivational link between law and morality or one assumes instead that law has a normativity of its own. To the second point, the question arises as to how philosophically viable current Kantian approaches whose nucleus is the individual claim to external freedom really are. Do they hinge on the normative independence of law from morality? And if so, on what kind of independence? How apt are they for providing conceptual solutions for current challenges in legal and political philosophy?

Overview of the Volume

The contributions in this volume pick up on these and related questions, beginning with a series of essays that examine the issue at the heart of

[18] For instance, Philipp-Alexander Hirsch, *Freiheit und Staatlichkeit bei Kant: Die autonomietheore tische Begründung von Recht und Staat und das Widerstandsproblem*, Berlin: De Gruyter, 2017, and J. P. Messina, 'The Paradox of Outer Necessitation in (and after) Kant's 1784 Course on *Naturrecht*', in Margit Ruffing, Annika Schlitte, and Gianluca Sadun Bordoni (eds.), *Kants Naturrecht Feyerabend: Analysen und Perspektiven*, Berlin: De Gruyter, 2020, 169–83.

[19] For example, Kersting, *Wohlgeordnete Freiheit*; Ludwig, *Kants Rechtslehre*; Gerhard Seel, 'How Does Kant Justify the Universal Objective Validity of the Law of Right?', *International Journal of Philosophical Studies* 17 (2009), 71–94; Byrd and Hruschka, *Kant's Doctrine of Right*; and Hirsch, *Freiheit und Staatlichkeit bei Kant.*

[20] Cf. Katrin Flikschuh, *Kant and Modern Political Philosophy*, Cambridge: Cambridge University Press, 2000.

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Kant's understanding of law and morality: does Kant's legal philosophy present an embodiment or derivation of this critical moral philosophy, or does it rest on an independent foundation?

In Chapter 1, **Marcus Willaschek** defends a 'non-derivationist' reading of the relation between morals and right that nevertheless tries to capture the central insight behind 'derivationist' interpretations by arguing that Kantian right instantiates the idea of moral universality, which it shares with ethics. Kantian right and morals both presuppose the idea of universality according to which rights and duties are the same for all. However, this idea – which is captured in the 'supreme principle of morals' of the *Metaphysics of Morals* – must be distinguished from the categorical imperative (CI) as introduced in the *Groundwork for a Metaphysics of Morals*. According to Willaschek the debate so far has failed to do so and thus overlooked the fact that Kantian right (with its supreme principle, the 'Universal Principle of Right', UPR), can be understood as the result of bringing the idea of moral universality to bear on the concept of subjective rights. The supreme principle of morals *alone*, however, is according to Willaschek not sufficient to derive juridical rights and duties. Rather, the normative validity of juridical rights must be presupposed and cannot be derived from anything more fundamental.

In Chapter 2, **Bernd Ludwig** sets out to show that 'non-derivationist' interpretations of Kant have missed the simplicity and brevity of Kant's derivation of right from morals. For Kant, all moral obligation is solely based on the pure legislative will of the free being itself ('autonomy', KpV § 8), and the general formula of obligation is the categorical imperative. Since Kant understands right as a relationship of persons (RL § B), and since personality is the 'freedom of a reasonable being under moral laws' (RL, Intr. IV), the supreme principle of *legal* obligation must be derived directly from the categorical imperative as the origin of *all* obligation. According to Ludwig, it would be wrong to take the externality of right as a proof for its independence from morals. He argues that the provisions of the concept of law from RL §§ A+B taken together with the further insight (which is a commonplace in modern natural law tradition) that there are actions that 'cannot possibly be done in good faith' ('fornication' is the traditional standard example), help us to understand Kant's reference to the externality of right in RL § C ('Every *action* is right that . . .'): It just says that no action is right for which there is no maxim at all that is compatible with the categorical imperative (traditionally: 'for which there is no good intention at all'). But if for any action there is no maxim *at all* compatible with morality, then no moral agent can possibly act according

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to such a maxim. Consequently, the agent acts (*tertium non datur*) according to a maxim that is contrary to morality, and the action is therefore – as Ludwig argues – simply morally forbidden.

Christoph Horn, in Chapter 3, defends the view that Kant develops a type of legal and political normativity that can neither be satisfactorily characterized on the basis of a 'derivationist reading' (i.e. the interpretation that legitimate legal and political rules must be derived from the moral law) nor on that of a 'separation' or 'independentist' reading (i.e. legitimate political legal rules are *sui generis*, viz. they form a separate kind of normativity). Instead, Horn claims that valid laws and political rules are justified, in Kant, as a significantly non-ideal version of what the categorical imperative (CI) imposes on us. In his essay Horn calls the procedure proposed by Kant the 'General Will Test' (GWT) and highlights the similarities and differences between the CI and GWT. In view of the large debate among scholars on the question of whether or not the CI is present in Kant's description of legitimate juridico-political normativity, Horn tries to highlight a simple, but forceful, observation of a deep ambiguity: on the one hand, Kant says that, ideally, legitimate law (*Recht*) should be based upon a test procedure, while, on the other hand, his concrete procedure – namely GWT – is considerably different from the universalization test (or the humanity-as-end-in-itself test) as we know it from the *Groundwork* or the *Critique of Practical Reason*. Horn goes on to argue that the CI and GWT are related to one another precisely in the sense of ideal and non-ideal normativity. In order to further underpin this claim, Horn refers to and discusses several key passages in Kant's political writings, in particular the 'transcendental formula of Public Right' in *Perpetual Peace*.

In Chapter 4, **Sorin Baiasu** considers and rejects a strategy for defending an independentist interpretation of Kant's legal philosophy. This strategy is based on a particular view of the Universal Principle of Right (UPR) according to which the UPR amounts to two distinct and mutually irreducible normative standards, one concerning formal and the other one identifying material wrongs. Any interpretation which holds that Kant's politico-legal philosophy is dependent on his moral philosophy is thereby faced with the challenge of deriving not just one but two legal principles from the categorical imperative (CI). In fact, as Baiasu goes on to show, the two-standards interpretation makes it impossible to derive the UPR from the purely formal principle of the CI. However, by drawing on Kant's theory of imputation Baiasu argues that this strategy cannot properly track Kant's distinction between formal and material wrongdoing and therefore has to be rejected. This, Baiasu argues, provides indirect support

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for an alternative, complex dependentist interpretation that can retain the view of Kant's politico-legal philosophy as ethics-sensitive. According to this interpretation, the UPR cannot be derived normatively in an immediate way from the CI, but it can be derived from an intermediary principle.

The volume continues with two contributions that pick up on a topic closely linked to the previous discussion: how can the fact that lawful behaviour can be enforced – and unlawful behaviour punished – be explained against the background of Kant's moral philosophy? In Chapter 5, **Philipp-Alexander Hirsch** tackles the first question. He argues that without grounding right in morality we cannot even understand coercion as a normative problem. The reason is that for Kant coercion becomes problematic only vis-à-vis persons, because they – being ends in themselves – can legitimately claim not to be coerced. Hence, law formulates the necessary conditions for the coexistence of autonomous rational beings and thereby defines equal, relational freedom as a sphere of non-domination, beyond which coercion is morally unproblematic and requires no justification at all. However, proponents of the so-called *independence thesis*, who try to explain coercion as an analytical implication of the idea of equal, relational freedom, fail to provide a *Kantian* justification for the normative bindingness of that very idea and thus for restrictions on the permissibility of coercion. Tracing back coercion to the limits of autonomy, however, does not only explain why coercive force is 'deducible' from moral autonomy (and the categorical imperative as its principle). Even more, this requires us to reconsider whether Kant can consistently argue against the external enforceability of internal perfect duties (e.g. the prohibition of suicide).

In Chapter 6, **Kate Moran** and **Jens Timmermann** take legal punishment as a starting point to address the question whether Kant's legal philosophy is reliant on his mature ethics of autonomy and respect. On the face of it, Kantian law seems to be independent from ethics. Kant holds that law must be externally enforced by coercive measures. The threat that transgressions will be punished acts as a deterrent and thereby ensures compliance with the law. Insofar as law is concerned with external actions only, the state does not concern itself with why citizens break or comply with the law. In this sense, compliance with the law does not depend on the inner motive of duty and respect for the law. However, agents must face a meaningful choice to be responsible for their actions and subject to just punishment. It is at this stage, Moran and Timmermann argue, that the law of land cannot do without the foundations of Kantian ethics: the meaningful choice between right and wrong

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can only be secured by respect for the law (of ethics), which supports actions required by the law of the land as indirectly ethical. Without the availability of the ethical motive of respect, agents would be exposed to prudential considerations only. But arguably, those who break the law take their criminal act to be prudentially justified – they would not do it otherwise. According to Moran and Timmermann (unsuccessful) criminals might miscalculate in discounting the possibility of being caught and punished. However, it would be absurd to punish them for that. To make what the law prohibits properly illegal thus requires an ethical foundation after all.

The next four chapters deal with particular aspects of the relationship between morality and right in Kant's practical philosophy that are often perceived as puzzling. The first is the issue of moral luck, which is approached by **Ralf M. Bader** in Chapter 7. Kant is often read as being motivated by the idea that morality is something that is within our control, leading him to develop an ethical theory in which there is no room for moral luck. Luck is supposedly excluded by developing an ethical theory that is focused on the maxims of our actions rather than on their consequences. From this perspective a significant chasm opens up between ethics and right. Insofar as right is concerned with external actions, in particular with their effects on the freedom of others, there seems to be plenty of room for luck to come in. If ethics and right were to differ in this way, then it would be hard to see how right could be derived from ethics and how both of them could be integrated into a unified theory based on a single supreme principle. Against this, Bader argues that the role that luck plays in motivating Kant's project needs to be reconceived. His essay develops an account of the morality and legality of actions on which there is no difference in terms of the way in which resultant luck affects ethics and right. In particular Bader sets out to show that Kant is not concerned with resultant luck regarding the consequences of our actions and that the focus on maxims is not motivated by and in fact is not even sufficient for avoiding moral luck. Instead, to the extent that Kant is concerned with moral luck, he is interested in avoiding certain forms of circumstantial and constitutive moral luck. The resulting interpretation, Bader submits, allows for a unified account of morality and legality.

In Chapter 8 **Martin Brecher** discusses Kant's controversial notion of permissive law (*Erlaubnisgesetz*), which comes into play in several key passages of Kant's writings on legal philosophy. Many scholars, such as Reinhard Brandt and Christoph Horn, argue that Kant conceives of permissive laws as suspending moral demands, thus 'permitting' morally

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wrong actions. In opposition to this view, Brecher proposes another interpretation of Kant's concept of permissive law that takes it to be a kind of moral licence. Brecher lays the foundation of his interpretation through a close reading of Kant's discussion of permissive law in *Towards Perpetual Peace*. As Brecher argues, Kant follows Achenwall and Baumgarten in taking permissive law to be a kind of prohibitive law, developing the concept of a law that specifies under which conditions certain actions are allowed that are otherwise prohibited by it. In this sense, a permissive law *licenses* certain actions with respect to certain conditions. In the sphere of this licence, the actions are not merely tolerated, but genuinely permitted. Brecher then sets out to show that – contrary to Joachim Hruschka's influential interpretation – this concept of permissive law is also at work in the *Doctrine of Right*. He argues that the permissive laws invoked in RL §§ 2, 16, and 22 denote legal capacities to put other agents under enforceable obligations, which capacities are subject to specific conditions that arise from the fundamental prohibition of unilaterally placing obligations on others. These permissive laws, Brecher submits, are thus not invoked to suspend certain legal or moral requirements, but in fact denote how certain actions (in particular, to acquire and possess external objects of one's choice) can be in full conformity with the law of pure practical reason.

Alice Pinheiro Walla, in Chapter 9, addresses the issue of 'provisionality' in Kant's legal writings. She begins by highlighting the problematic status of duties of right in the absence of political institutions, which renders them *inconclusive*, which in turn is what Kant means by *provisional* rights. Against this background, Pinheiro Walla first analyses the need to discharge juridical duties as a matter of personal virtue in the case of lacking or imperfect juridical institutions, which would be the primary duty holders. This introduces – she argues – complications in Kant's account and thus gives rise to additional *ethical* arguments for Kant's *exeundum*: firstly, addressing legal wrongs as a matter of beneficence is incompatible with the dignity of the right holders; secondly, a civil condition is needed in order to avoid overburdening morally responsible agents and thus reconcile moral agency and the human need for happiness. Building on this, Pinheiro Walla criticizes current approaches in Kantian scholarship that take 'provisionality' in Kant as a theory of 'transitionality', able to guide us through messy political developments in the manner of non-ideal theory. In contrast, she argues that the way Kant connects provisional rights and permissive laws has little to do with non-ideal theory, and follows entirely from Kant's apagogical argument for acquired rights in the state of nature.

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The next two chapters revolve around the concept of external freedom, which is central to Kant's legal and political philosophy, attempting to reveal the systematic potential of Kantian philosophizing. In Chapter 10, **George Pavlakos** opens this discussion by tackling the long-standing debate between legal non-positivism and legal positivism with a novel Kantian account of radical non-positivism. After highlighting the positivist commitments of contemporary legal non-positivism in giving explanatory priority to institutional rules over legal relations in the account of legal obligation, he uses a Kantian account of legal relations to explore the possibility of a radical non-positivism that gives explanatory priority to legal relations over legal practices. In doing so, he proposes to read Kant's Universal Principle of Right (UPR) as a pre-institutional moral principle that grounds omnilateral demands of rightful action. At the core of this approach is the thesis that freedom as independence does not only generate different normative reasons for individuals but already constitutes a distinct layer of interdependent agency. Hence, Pavlakos argues, we have to take external freedom as requiring the presence of a collective subject. According to Pavlakos, this conception will allow us to better understand the Kantian idea of omnilateral will and it will also demonstrate how relations of justice are not grounded on institutions, for they already constitute an interpersonal structure of normative reasons, to wit a system of 'natural public law'.

In light of the prevalent disagreement of Kantians as to how our external freedom and the corresponding innate right are to be understood, **Japa Pallikkathayil**, in Chapter 11, puts forth a particular concept of external freedom as independence that involves at its core a normative component. According to this conception, one is independent from being constrained by another's choice insofar as one has an effective right against being constrained by them. The innate right to freedom is therefore essentially the right to have a secure place in a system of equal rights. On this basis, Pallikkathayil then demonstrates how this conception of external freedom provides an attractive starting place for present-day thinking about the justification of the state. She argues, first, that the idea of an innate right to external freedom so understood not only provides the basis for an attractive argument for the necessity of the state. It also results, second, in imposing constraints on the state in that the innate right to freedom requires democratic governance and entails certain constitutional requirements which in turn constrain the laws legislators enact. This understanding, she concludes, avoids some powerful objections faced by other approaches proceeding from similar conceptions of external freedom, such as one recently defended by Arthur Ripstein.

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The last three chapters bring another perspective to the previous debate, drawing on the foundational elements of Kant's moral philosophy and stressing their importance for his legal and political thinking. In Chapter 12, **J. P. Messina** argues that one cannot have Kant's political theory without his concept of autonomy. He proceeds from the famous puzzle regarding the normative basis of Kant's politics: why did Kant, apparently, not build his politics around the notion of moral autonomy familiar from his moral philosophy, but on the notion of external freedom instead? Messina submits that this question in fact rests on a faulty premise in consequence of conflating two notions of 'external freedom': while the first notion, 'freedom in the external use of choice', refers for Kant to an aspect of the broader capacity for choice, namely that by means of which it is directed towards external objects, the second, 'freedom as independence', describes a normative *status* to which all human agents are entitled, simply insofar as they are free and rational. By drawing attention to this second type of freedom and the place it occupies in Kant's politics, Messina purports to show that, in a real and underappreciated sense, Kant's mature political treatise is grounded in his notion of autonomy.

In Chapter 13, **Pauline Kleingeld**, in turn, considers the positive conception of external freedom in Kant's political philosophy. According to her, scholarly discussion of Kant's republicanism focuses heavily on his 'negative' conception of freedom: independence or not being subject to another master. Much less attention has been paid to Kant's 'positive' conception of freedom: being subject to one's own legislation. Kleingeld argues that Kant's positive conception of external freedom plays a crucial role in his *Doctrine of Right*: external freedom in the negative sense (mutual independence) requires and is realized by freedom in the positive sense (joint self-legislation). After first discussing the 'innate right to freedom', she argues that, on Kant's account, this fundamental right is only fully realized when external freedom is realized in both senses and in all three spheres of public law. Kleingeld concludes that any satisfactory account of Kant's republican theory must complement the focus on independence with an emphasis on citizenship and self-legislation.

In the closing chapter of the volume, **Paul Guyer** completes the circle by picking up the initial debate over the dependence of right on morals and highlighting its implications for the political domain. He argues that any 'independentist' reading of Kant would have to revert to the position that right is founded only on self-love or prudence. But that would be Hobbes, not Kant, and Kant clearly means to dissociate himself from Hobbes at the foundational level of his doctrine of right. Juridical duties

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are, as Guyer argues, just the subset of moral duties that may be coercively enforced, if the incentive of respect for the moral law is not forthcoming, but they *can* be fulfilled out of respect for the moral law if that is forthcoming. And this is possible just because juridical duties are grounded in the moral law just as much as ethical duties. What is more, only such a foundation of right makes sense of Kant's account of the moral obligations of citizens to enter into and maintain a state and rulers to administer the state in the way that he demands that they must. The existence of a state cannot be compelled, that is, forced on others, out of mere prudence, by people motivated merely by prudence, but must be brought into being by the internally – morally – motivated action of some body of agents. And *rulers* may be seen as having what is essentially an ethical duty, enforceable only by their own respect for the moral law, to rule justly. Politicians must be, as Guyer puts it, moral politicians.

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