CHAPTER 14

Morality, Right, and Responsibility

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Throughout the volume, especially but not just in Part I, it has been debated whether Right, that is, public law enforced by the coercive juridical and penal instrumentality of the state, is part of morality for Kant, thus whether its basic principle, the Universal Principle of Right, can and must be derived, in some way or other, from the fundamental principle of morality in general. Most of the contributions to the volume have defended the dependence of the principle of Right on the principle of morality in general, while recognizing the distinction between Right and Ethics, that is, the non-coercive part of morality in general, although several, notably Marcus Willaschek, have defended the independence of Right from morality. In this chapter, which has been placed in the position of a conclusion to the volume, I will not get further into the trenches of this debate than I have previously done.[1] Instead, I will frame the debate with two general points. First, I argue that Kant recognizes only two forms of practical reason, namely pure practical reason, based on the fundamental principle of morality, and empirical practical reason, based upon the principle of prudential self-love (see especially RGV 6:35–6), so if the necessity of Right does not depend upon the latter, it must derive in some way from the former; and since Kant makes it clear that his philosophy of Right is fundamentally opposed to that of Hobbes (TP, 8:289), it is clear that he intends it to be grounded in pure practical reason and derived from its principle.[2] Whatever the details of Kant's derivation of Right from

[1] I have previously discussed this issue in 'Kant's Deductions of the Principles of Right', in Mark Timmons (ed.), *Kant's Metaphysics of Morals: Interpretative Essays*, Oxford: Oxford University Press, 2002, 23–64, reprinted in Paul Guyer, *Kant's System of Nature and Freedom*, Oxford: Clarendon Press, 2005, 198–242, and 'The Twofold Morality of *Recht*', *Kant-Studien* 107 (2016), 34–63.

[2] I thus agree with the conclusion of Philipp-Alexander Hirsch (*Freiheit und Staatlichkeit bei Kant: Die autonomietheoretische Begründung von Recht und Staat und das Widerstandsproblem*, Berlin: De Gruyter, 2017) when he writes that 'Kant's *Rechtslehre* can be sensibly interpreted only as an equally justifiable part of a unitary critical moral philosophy under the categorical imperative as supreme practical principle' (p. 69).

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morality, they must be consistent with this premise. In the second part of this chapter, I turn from this foundational question to the question of the role of individual morality in the actual practice of law and politics. Here I argue that although Kant's conception of justice places moral burdens on individuals in the state of nature and on both subjects and rulers in existing states, Kant is particularly concerned to argue that the operations of the juridical and penal institutions of the state, indeed of the state as a whole, are dependent upon the free acts of individual human beings in positions of power, thus that there are no mechanisms that can guarantee the realization of justice through the state apart from the moral conduct of such individuals. All of this makes no sense unless the necessity of the institution and maintenance of the state is a moral duty, that is, the duty of both citizens and rulers to institute and maintain a system of juridical duties is itself a moral duty.

14.1 The Morality of Right

All parties to the debate acknowledge Kant's distinction between duties of Right and Ethics as respectively coercively enforceable or not, and thus that '[a]ll lawgiving can [. . .] be distinguished with respect to the incentives' (*Triebfedern*) for compliance with it: in the case of *ethical* duty, at least if moral worth is at stake, the moral law that makes an action a duty must also be the incentive for compliance with it; but *juridical* duty 'does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself' (MS, Introduction, section IV, 6:218–19).[3] Or, '*ethical* laws' 'require that they (the laws) themselves be the determining grounds of action' in compliance with them, while '*juridical* laws', which define the duties of Right, are, first, 'directed merely to external actions and their conformity to law' (MS, Introduction, section II, 6:214), and, second, permit of other, external incentives, that is, '*pathological* determining grounds of choice, inclinations and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not an allurement, which invites' (MS, Introduction, section IV, 6:219). More precisely, ethical duties *require* an internal incentive (*Triebfeder*) or determining ground of choice (*Bestimmungsgrund der Willkür*), in part

[3] I follow Marcus Willaschek (Chapter 1) in capitalizing 'Right' as the translation of *Recht* when it refers to the whole body of coercively enforceable rights rather than to a particular right, and then correspondingly capitalizing 'Ethics' when it refers to the whole body of our non-coercively enforceable duties. Our difference is whether *Recht* is a proper part of morality in general.

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because some of them, the duties of virtue properly speaking,[4] involve the adoption of an end rather than the performance of specific actions in specific circumstances, and the adoption of an end always is or at least begins with a mental act, an internal matter,[5] and in part because Ethics aims at moral worth and is thus concerned with the character of our motivation (e.g. TL, Introduction, section XVII, 6:410); juridical duties, however, *allow* the application of coercion as an external incentive or determining ground of choice because they are not concerned with moral worth. 'Ethical lawgiving (even if the duties might be external), is that which *cannot* be external; juridical lawgiving is that which *can* also be external' (MS, Introduction, section IV, 6:220, second emphasis added). But while making this contrast, Kant does not suggest that juridical duties have some ultimate ground different from that of ethical duties, or that the content of juridical duties, what it is that they require of us, is any less derived from the fundamental principle of morality than is the content of ethical duty. Rather, he says, 'The doctrine of right and the doctrine of virtue are [. . .] distinguished not so much by their different duties as by the difference in their lawgiving, which connects one incentive or the other with the law', and an 'obligation is assigned to ethics not because the duty is of a particular kind (a particular kind of action to which one is bound)' – for there are external duties in ethics as well as in right – but rather because the lawgiving in this case is an internal one and can have no external lawgiver. It is because of this that an act required by juridical legislation *can* be performed out of respect for the moral law, and it is morally worthy to do so, although there is no virtue or merit in performing the act in the face of an external incentive, namely a threatened coercive sanction (TL, Introduction, section VII, 6:390–1), while an ethical duty cannot be coercively enforced.[6] Thus Kant writes: 'It is no duty of virtue to keep

[4] Some duties that are not coercively enforceable according to Kant, such as the perfect duties to oneself to avoid suicide and self-mutilation or the duties of respect to others to avoid arrogance, defamation, and ridicule, are therefore ethical duties, and part of what it is to treat oneself and others as ends not merely as means, but they are not part of what it is to adopt the two ends that are also duties, namely self-perfection and the happiness of others, so they are not duties of virtue. See TL, Introduction, section II, 6:383.

[5] Although it could be argued that the adoption of an end begins with a mental act, the formation of an intention, but is not complete without at least the effort to perform some external action designed to realize this end, whether that action is successful or not.

[6] To be sure, outward compliance with ethical duties can be motivated by 'external' incentives such as a concern for one's reputation or even unjustified legislation of what should be ethical duties, but in such cases the agent's motivation will presumably be prudence rather than respect for the moral law, and the end adopted will not be self-perfection or the happiness of others per se, but one's own happiness, or avoidance of unhappiness.

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one's promises, but a duty of right, to the performance of which one can be coerced. But it is still a virtuous action (a proof of virtue) to do it even where no coercion may be *applied*', and even though 'it is an external duty to keep a promise made in a contract [. . .] the command to do this merely because it is a duty, without regard for any other incentive, belongs to *internal* lawgiving alone' (MS, Introduction, section IV, 6:220). Juridical duties are just the subset of moral duties that may be coercively enforced, indeed on moral grounds themselves *must* 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, for example the duty to fulfil contracts, are grounded in the moral law just as much as ethical duties, such as the duties of beneficence and gratitude.[7] Of course one may not have to enter into any contracts at all, but if one does, then it is a moral obligation to fulfil them, but an obligation that may be coercively enforced if the motivation of respect for the moral law is not forthcoming.[8]

One of the strongest proponents of the 'independence' thesis that juridical duties are *not* grounded on the fundamental principle of morality was Allen Wood, but in my opinion he undermined his position in his most recent discussion of the issue when he stated that:

> The universal principle of right [. . .] cannot possibly be based on or derived from the supreme principle of morality [. . .] because a categorical imperative is one that carries the incentive to its obedience with itself, rather than borrowing the incentive from elsewhere. That is what makes the moral law governing ethics a principle of inner self-government, rather than a principle of external constraint.[9]

[7] I argue that this was the standard approach to the distinction between moral duties in general and duties of right in particular, from which Kant shows no signs of departing, in 'Enforcing the Law of Nature: 'The Background to Kant's Conception of the Relation between Morality and *Recht*', in Mark Timmons and Sorin Baiasu (eds.), *Kantian Citizenship. Grounds, Standards and Global Implications*, New York: Routledge, 2025, 15–42. It might also be argued that juridical duties *must* be fulfilled out of the motive of respect for the moral law if the external incentives of a public juridical and penal system are *not* available; see Hirsch, *Freiheit und Staatlichkeit*, 119–20, and Bader in this volume (Chapter 7). However, Kant's insistence that our fundamental *moral* obligation in the state of nature is to institute the state or 'civil condition' obviates this concern.

[8] That is, it is both morally permissible to enter into contracts under certain conditions, and both morally necessary and legally enforceable to satisfy them under appropriate circumstances. 'Permissive' laws, such as laws that certain sorts of contracts (but not all, for example a contract of self-enslavement) may be entered into under certain conditions, thus do not grant exceptions to other moral or legal laws, but simply specify that certain obligations may be undertaken within the law. On the character of permissive law, see Brecher (Chapter 8).

[9] Allen W. Wood, *The Free Development of Each: Studies on Freedom, Right, and Ethics in Classical German Philosophy*, Oxford: Oxford University Press, 2014, 82–3, 93–4.

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On the contrary, the fact that we *can* fulfil duties of right from respect for the moral law show that the content of these duties *are* grounded in that law, which presents itself to us in the form of the categorical imperative, and it is the moral law itself that permits and requires the use of coercion to fulfil some of its duties when respect for it will not do the job, and that indeed requires the institution of the state to make sure that this external incentive is available when needed. But I am not going to rehash the detailed objections that I have made to earlier arguments by Wood and other proponents of the 'independence' thesis such as Thomas Pogge and Marcus Willaschek here.[10] Instead, I want to make one simple point on this general issue, and then turn to what I think is the now more interesting and more timely issue of the need for individual morality – virtue – in the actual practice of justice.

My general point is that Kant recognizes only two kinds of practical rationality, namely self-love, including prudent self-love, and morality, so that if Right were not derived from the fundamental principle of morality in general, it could be 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.[11] Clear evidence for Kant's view that there are only two possible kinds of practical rationality comes from his *Religion within the Boundaries of Mere Reason*, an indispensable work for all interpretation of Kant's thought in the 1790s (and one which Allen Wood, the editor of *Religion and Rational Theology* in the Cambridge edition of Kant as well as of a current commentary on it, knows as well as anyone).[12] Here Kant states that there are only two fundamental dispositions or maxims in human beings, the moral law and self-love, and that evil consists in subordinating morality to self-love:

> The human being (even the worst) does not repudiate the moral law, whatever his maxims, in rebellious attitude [. . .] The law rather imposes itself upon him irresistibly, because of his moral predisposition; and if no other incentive were at work against it, he would also incorporate it into his supreme maxim as sufficient determination of his power of choice, i.e., he would be morally good. He is, however, also dependent on the incentives of his sensuous nature because of his equally innocent natural predisposition,

[10] See again my 'Kant's Deductions of the Principles of Right' and 'The Twofold Morality of *Recht*'.
[11] See also TP, section II. For commentary, see my '"Hobbes is of the opposite opinion": Kant and Hobbes on the Three Authorities in the State', *Hobbes Studies* 25 (2012), 91–119; and Howard Williams, *Kant's Critique of Hobbes*, Cardiff: University of Wales Press, 2003.
[12] Allen W. Wood, *Kant and Religion*, Oxford: Oxford University Press, 2020.

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> and he incorporates them too into his maxim (according to the subjective principle of self-love).

However,

> If he took them into his maxim *as of themselves sufficient* for the determination of his power of choice, without minding the moral law (which he nonetheless has within himself), he would then become morally evil. [. . .] Hence the difference, whether the human being is good or evil, must not lie in the difference between the incentives that he incorporates into his maxims (not in the material of the maxim) but in their *subordination* (in the form of the maxim): *which of the two he makes the condition of the other*. (RGV, Part I, 6:36)

The form of evil is to subordinate morality to self-love, whatever particular form self-love takes (always favouring oneself, favouring one's own children, etc.); the form of good is to subordinate self-love to morality, whatever morality happens to require (a large sacrifice, or not).[13]

This is not to say that juridical duties founded on self-love would be evil; they would be evil only if so founded they were also allowed to override all conflicting moral obligations. But it does show that for Kant there are only two fundamental sources of motivation, self-love and morality, and that if he rejects the foundation of juridical duties in self-love, as he clearly does, then there is no alternative foundation in practical rationality for them other than morality. There is no third kind of practical rationality.

This is also clear in Kant's earlier, foundational works in moral philosophy. Going back first to the *Critique of Practical Reason*, we see that Kant commences the argument of the book with the division of 'practical principles' into 'material' and 'formal' ones. Material practical principles are those 'that presuppose an *object* (matter) of the faculty of desire as the determining ground of the will' (KpV 5:21), and Kant asserts that 'All material practical principles as such are, without exception, of one and the same kind and come under the general principle of self-love or one's own happiness' (5:22). A formal practical principle, in contrast, is one that contains 'the determining ground of the will not by [its] matter but only by [its] form', and there is only one candidate for such a principle: 'all that

[13] Kant notoriously distinguishes 'three different grades of [the] natural propensity to evil', frailty, impurity, and depravity (RGV 6:29–30). We might understand this distinction as establishing a range of frequency, from occasionally allowing oneself to subordinate morality to self-love to always doing so, but the underlying principle of allowing oneself to subordinate morality to self-love is the same in all cases.

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remains of a law if one separates from it everything material, that is, every object of the will (as its determining ground), is the mere *form* of giving universal law' (5:27), in other words, the 'Fundamental Law of Pure Practical Reason', 'So act that the maxim of your will could always hold at the same time as a principle in a giving of universal law' (5:30). In other words, there are two kinds of practical principles, material and formal, the principle of self-love and the moral law, and if the foundation of the Universal Principle of Right, as a practical principle, is not to be simply a matter of enlightened, prudent self-interest, as in Hobbes, then it can only be, whatever the precise details, the moral law.

We get the same result if we consider Kant's division of imperatives in the *Groundwork for the Metaphysics of Morals*. There of course Kant first divides all imperatives into two classes, hypothetical and categorical, the first those that represent an action as "good merely as a means *to something else*", the latter those that represent an action 'as *in itself good*, hence as necessary in a will in itself conforming to reason' (GMS 4:414). Kant then divides the class of hypothetical imperatives into two practical principles, 'problematic' and 'assertoric', the first of which say only that 'an action is good for some *possible*' purpose and the second of which say that an action is good for some '*actual*' purpose. The former, which Kant also calls 'imperatives of *skill*' (4:415) and 'technical' imperatives (4:416), prescribe means to ends that someone may or may not want to adopt, such as 'If you want to cure this patient, use this medicine', but also 'if you want to kill that patient, use that poison'. The latter, which Kant also calls 'pragmatic' (4:416), are general rules of 'prudence' for 'one's own greatest well-being' or happiness, 'a purpose that can be presupposed surely and *a priori* in the case of every human being, because it belongs to his essence' (4:415–16). However, as Kant makes clear in the *Critique of the Power of Judgment*, technical imperatives are just 'corollaries of theoretical philosophy' (KdU, Introduction, section I, 5:172) – theoretical propositions like 'This chemical causes these effects' are the basis for hypothetical imperatives like 'If you want to cure this patient, use this medicine' – so there is a sense in which these are not imperatives of practical reason at all; and we might also observe that we will need such 'corollaries of theoretical philosophy' in properly moral cases as well, like 'If you are to be beneficent to these persons, this is the (or the most) effective way to do it.' So these technical imperatives, while they are not by themselves sufficient for any principle of practical reason, are necessary for the exercise of pure as well as empirical practical reason, or we need them for purposes of either prudence or morality, and once again we end up with only those as the two main

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kinds of practical reason. But then, Kant also argues that pragmatic imperatives are not really 'determinate principles for the sake of being happy, but only [. . .] empirical counsels', or recommendations for happiness that depend on contingent circumstances, including any particular person's desires, since the same-sounding goal of 'happiness' is in fact nothing but the global satisfaction of any particular person's desires, which of course vary from person to person, from time to time even for the same person, and so on. Happiness is not really a single thing at all, thus there cannot be a single technical imperative stating how to achieve it. So although the ultimate moral choice for any person remains that between prudence or happiness on the one hand and morality on the other, this is not really a choice between two imperatives; it is a choice between a mere counsel or rule of thumb on the one hand and the only genuine imperative, the moral, categorical imperative, on the other. And this means that any recommendation of laws or a juridical condition based on prudence will be merely that, a mere recommendation dependent on particular circumstances, and not a genuine universal principle of Right at all, something that one might honour as long as it seems prudent but that one can violate if doing that seems prudent. A genuine universal principle of right can be founded only on the fundamental principle of morality.[14]

So when Kant says, in the Preface to the *Metaphysics of Morals*, that 'For the *doctrine of right*, the first part of the doctrine of morals, there is required a system derived from reason which could be called the *metaphysics of right*' (MS 6:205), he can only mean that the doctrine of Right, as part of morality, is derived from pure practical reason, thus from the fundamental principle of morality in some form. The only alternative would be that it is derived from prudence, but that is not an alternative for Kant. To be sure, as Kant goes on to explain, the 'concept of Right' – in this just like the concept of ethical obligation that will follow – 'is a pure concept that still looks to practice (application to cases that come up in experience', so a '*metaphysical system* of Right [will] also have to take

[14] Some 'independence' theorists have taken Kant's notorious remark that 'The problem of establishing a state, no matter how hard it may sound, is *soluble* even for a nation of devils (if only they have understanding)' (ZeF, First Supplement, 8:366) as evidence for their claim that Right need not be grounded on morality. But I take this remark to mean only that while a population of purely self-interested agents can figure out, like good Hobbesians, what the laws of a state should be ('as long as they have understanding'), they would be, severally, motivated to institute and maintain a state to enforce those laws only when they thought, severally, that it would be in their own interest – and that they would all always think so could never be relied upon. See Hirsch, *Freiheit und Staatlichkeit*, 156ff., and Ludwig (Chapter 2) and Hirsch (Chapter 5) in this volume.

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account, in its divisions, of the empirical varieties of such cases', or as he says later, in the Introduction, 'a metaphysics of morals', which we have just seen must include the doctrine of Right as well as the doctrine of virtue, 'cannot dispense with principles of application, and we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to *show* in it what can be inferred from universal moral principles' (MS, Introduction, section I, 6:217). More fully, the doctrine of Right must apply the universal principle of morality in light of certain empirical but basic facts about the conditions of human interaction, such as that human beings need to have access to land and its products on the finite surface of a terraqueous globe populated by other human beings with similar needs, while the doctrine of virtue must apply the universal principle of morality in light of certain basic but still only empirically known facts about human natures, such as that humans need to perfect their physical, intellectual, and other mental capacities, for these are hardly developed at birth, and can rarely survive and flourish solely on their own resources and thus can need aid from others and must be prepared to extend aid to others. But the present point is just that in both cases these derivations of the juridical and ethical duties of human beings begin with the *same* 'universal moral principles' or more precisely principle.

Having said this, I will not delve into the details of the derivation of the Universal Principle of Right from the fundamental principle of morality beyond saying that Kant's category of the innate right to freedom, on which the further categories of private right and public right depend – private right because our innate right to freedom of action means that we all have an equal right to acquire land, goods, and services from others on mutually agreeable terms, and public right as the mechanism for making both the innate right to freedom and the acquired rights that we can acquire through the exercise of the former under appropriate conditions (as specified by permissive laws) determinate and secure[15] – can most readily be seen as derived from the formulation of the categorical imperative as the demand always to treat the humanity in every person, oneself and everyone else, as an end and never merely as a means (GMS 4:428, 429). Kant states that '*Freedom* (independence from being constrained by another's choice),

[15] See Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy*, Cambridge, MA: Harvard University Press, 2009, especially 145–81, and Guyer, 'Kant's System of Duties', in *Kant's System of Nature and Freedom: Kant's System of Nature and Freedom*, Oxford: Clarendon Press, 2005, 242–74, especially 258, and Guyer, *Kant*, 2nd ed., London: Routledge, 2014, 303–51, especially 315.

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insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every person [*Menschen*] by virtue of his humanity' (RL 6:237), and this innate right is just the correlative of our fundamental moral obligation to treat every instance of humanity, which is itself the capacity of human beings to set their own ends (TL, Introduction, 6:387, 392), as an end and never merely as a means.[16]

So much for the general framework within which Kant argues for the dependence of Right upon morality. What I now want to emphasize is, first, that in Kant's view the moral foundation of the principle of Right places every human being under the obligation, in conditions in which contact with other cannot be avoided, to enter into and maintain a civil condition or state with those others, and even gives anyone the moral right to *compel* others to enter into and maintain a state with them – certainly nothing that could be derived from the foundation of Right upon mere prudence – and, second, that in Kant's view, those in positions of authority and power in a state, who have no one *else* to *coerce* them into instituting, maintaining, and when need be improving the condition of justice, *must* be, because they *can only* be, motivated by their own respect for the *moral* law to rule justly. Or in other words, although *subjects* in an extant state can be seen as having a juridical duty, enforceable by external, aversive incentives, that is, coercion in the form of the threat and when necessary the application of sanctions, to act justly, *rulers* may be seen as having what is essentially a moral duty, enforceable only by their own respect for the moral law and in that sense an ethical duty, to rule justly.

Human beings in a state of nature who cannot avoid contact with each other, and who thereby cannot avoid threatening each other with an abridgement of their freedom, have a moral duty to enter into the civil condition, or a state. But human beings rarely if ever actually exist in a state of nature, so this duty translates into a moral duty to maintain the existence of the state in which they find themselves (along with the right to move to another), which in turn entails a duty not to return their state to a

[16] My position is thus close to that of Hirsch in *Freiheit und Staatlichkeit*, e.g. pp. 70ff. and 227ff., and to those developed in this volume by, for example, Ludwig (Chapter 2) and Kleingeld (Chapter 13). Willaschek in this volume (Chapter 1) objects to my foundation of all Right on the innate right to freedom and on the respect due to humanity as an end in itself that it entails that there would be juridical rights and obligations in the state of nature, which is a contradiction. My response is that the 'right of humanity' does exist in the state of nature: that is precisely what obligates us to exit the state of nature in order to make both innate and acquired right determinate and secure. More on this in Section 14.2.

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condition of anarchy – Kant's famous denial of a right to rebellion. Rulers have a moral obligation to maintain the civil condition, but since historically rulers tend not to be duly elected officials but people who by some historical chain of events find themselves in positions of power, that translates into a duty to transform their less just states into more just ones. Both citizens and rulers may be considered to have juridical duties within extant states, but the duties to institute and maintain just states, in other words to institute and maintain a legitimate system of coercive enforcement, cannot themselves be juridical duties, on pain of infinite regress. They are moral duties that must be motivated, at some point, simply by respect for the moral law. They are not *duties of virtue* to realize either of the two ends that are also duties, self-perfection and promotion of the happiness of others – Kant's forceful rejection of paternalistic government makes that clear for the case of rulers (TP 8:290–1). But they are *ethical duties* that require motivation by respect for the moral law.

Let us now look at the steps of this argument in a little more detail.

14.2 Crooked Timber and Moral Politicians

Kant is famous for the metaphor that trees growing 'in freedom, and separated from one another, [. . .] put forth their branches as they like, [and] grow stunted, crooked, and awry', while 'trees in a forest, precisely because each of them seeks to take air and sun from the other, are constrained to look for them above themselves, and thereby achieve a beautiful straight growth' (IaG, Fifth Proposition, 8:22):[17] that is, humans whose internal incentives would not suffice for them to act justly can nevertheless be coerced into acting justly by a properly constituted and administered state. Thus they can act justly without being motivated morally, that is, by respect for the moral law. True enough, perhaps, allowing for that degree of criminality, let us hope relatively low, that persists even in the best-run state. True enough, also, only within a properly constituted and maintained state. But when such a state does not exist, its existence is morally demanded and can even be compelled, and it 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. This is why a nation of devils can solve the problem of a just state intellectually, but cannot actually will one into existence (see again ZeF

[17] Kant uses the metaphor again at RGV, Part III, Division One, section IV, 6:100.

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8:366). But also, once such states have been brought into existence, even with the properly constituted division of powers among lawmakers, executives, and magistrates demanded by Kant's conception of republican government (RL, §45, 6:313), there will be nobody who can coerce *them* in into correctly carrying out their obligations and maintaining the state in a condition of justice. Politicians must be, in Kant's term, moral politicians.

14.2.1 The Moral Duties of Citizens

First, then, the obligation of human beings who cannot avoid interaction with one another to enter into and maintain just states is a moral obligation.[18] This is the import of the 'postulate of public right' that is placed at the transition from Private Right to Public Right. The transition begins with the statement that 'A rightful condition is that relation of human beings among one another that contains the condition under which alone everyone is able to *enjoy* his rights, and the formal condition under which this is possible in accordance with the idea of a will giving laws for everyone is called public justice' (RL, §41, 6:305–6). This is a restatement of the Universal Principle of Right including an allusion to the rights that by this point in Kant's exposition have been established, namely the innate right to freedom of every individual and the rights to acquisition of property rights, contract rights, and rights to persons akin to rights of things that are the consequences of the innate right to freedom. Everyone's innate right to freedom, as we saw, is the correlative of everyone's obligation to respect the humanity in everyone, and so is clearly grounded in morality not prudence; thus when Kant goes on to describe the formal condition under which the rightful condition as 'accordance with the idea of a will giving laws for everyone', this too must derive from the categorical imperative, in this case from the first formulation of the categorical imperative which states that requirement of universal validity (GMS, section I, 4:402, section II, 4:421; KpV 'Fundamental Law of Pure Practical Reason', 5:30). Kant then states that the 'condition of public Right' 'contains no further or other duties of human beings among themselves than can be conceived in' private Right, rather 'the matter of private Right is the same in both' and 'The laws of the condition of public

[18] I have previously discussed the duties of citizens in the Kantian state in 'Civic Responsibility and the Kantian Social Contract', in Herta Nagl-Docekal and Rudolf Langthaler (eds.), *Recht – Geschichte – Religion: Die Bedeutung Kants für die Gegenwart*, Berlin: Akademie Verlag, 2004, 27–48.

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Right [. . .] have to do only with the rightful form of [. . .] association (constitution), in view of which these laws must necessarily be conceived as public' (6:306); that is, public Right is the enforcement of conceptually prior rights of 'association' by the instruments of a state.[19] That is misleading in one, minor way: since the division of powers in a genuine condition of public right, that is, a properly constituted republic, creates certain rights of officeholders against one another and rights of subjects against their rulers as well as obligations to them, the 'laws of the condition of public right' have to include those rights and obligations. Further, the rights of 'association' that the state is instituted to secure must include innate as well as acquired Right. If the state exists to enforce rights that are conceptually antecedent to public Right, then it has to enforce innate as well as acquired rights, or to make innate as well as acquired rights determinate and secure[20] – for example, what precisely will count as working for another without violating one's right to be one's own master, or what will count as permissible free speech, needs to be legally defined and enforced just as much as property lines need to be. But the main point here is that if innate Right is grounded in the fundamental principle of morality and the possibility of acquired, private Right is grounded in innate right and is therefore also derived from the fundamental principle of morality, although with one extra step, then, as Kant next makes clear, the necessity of public Right is also morally grounded, and it is a moral obligation as well as permission to bring it about. This is what Kant makes clear with the 'postulate of public Right': 'when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition' (RL, §42, 6:307). This is not a juridical 'ought' entailed by the laws of an extant state, but a moral 'ought', obligatory for those who find themselves in a state of nature with other people – and for any in an extant state who might want to undermine or destroy that state. It is not a matter of prudence. Kant states that the 'ground of this postulate can be developed analytically from the concept of *right* in external relations, in contrast with *violence*', but this does not mean that this postulate is independent of the fundamental principle of morality, because the concept of Right itself has been grounded on the fundamental principle of morality, beginning with innate Right.

[19] Kant resolves the tension between Hobbes, who held that there are no rights in the state of nature, and Locke, who held that there are and that the state is instituted to protect them, by means of his distinction between 'provisional' and 'conclusive' claims to rights. I will explain this shortly.

[20] See note 9.

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Only a moral foundation can explain how individuals in the state of nature are under an *obligation* to institute a state and have the *right* to compel others who would resist the institution of a state to join them. Kant states that 'No one is bound to refrain from encroaching on what another possesses if the other gives him no assurance that he will observe the same restraint toward him' (RL 6:307). This may sound like a matter of mere prudence, or a natural right grounded in self-preservation, as in Hobbes or Achenwall.[21] But Kant continues in moral terms. First he states that 'No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint toward him', and further 'it is not necessary to wait for actual hostility; one is authorized to use coercion against someone who already, by his nature, threatens him with coercion'. This might still sound like mere prudence, and it may be from the point of view of prudence that Kant further states that 'Given the intention to be and to remain in this state of externally lawless freedom, men do *one another* no wrong at all when they feud among themselves' (6:307). But he then takes the moral point of view when he adds that 'in general they do wrong in the highest degree* by willing to be and to remain in a condition that is not rightful' (6:307–8), and adds the note at the asterisk that this is a distinction between what is 'materially wrong' and what is 'formally wrong'.[22] The latter is, of course, an indication of *moral* wrong, so what Kant means is that while refusing to enter into the juridical condition and thereby exposing oneself to the preventative measures of others may be imprudent or not, depending upon the circumstances, refusing to enter into a state is always morally wrong, therefore all who cannot avoid contact with others altogether have a duty to enter into the judicial condition. This could not be so if entering into this condition were merely a matter of prudence.

Kant raises the question how one person can rightfully acquire property when rightful acquisition requires that the division and acquisition of land or other assets concerned could be the subject of an 'omnilateral will', that is, the possible agreement to the division among all who could lay any

[21] See Thomas Hobbes, *De Cive: The English Version*, ed. by Howard Warrender, Oxford: Clarendon Press, 1983, ch. I, paragraphs VII–IX, p. 47, and *Leviathan*, ed. by Noel Malcolm, Oxford: Clarendon Press, 2012, English text, vol. 2, ch. XIV, p. 214: 'A Covenant not to defend my selfe from force, by force, is always voyd.' Or Gottfried Achenwall, *Natural Law*, ed. by Pauline Kleingeld, trans. by Corinna Vermeulen, with an introduction by Paul Guyer, New York and London: Bloomsbury, 2020, Part I, §37: 'Because I am naturally obliged to preserve my body and life, I have the natural right, as a moral ability, to remove obstacles to my preservation' (p. 14). See also Hirsch, *Freiheit und Staatlichkeit*, 214ff.

[22] On this distinction, see Hirsch in this volume (Chapter 5).

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claim to the property, when the rightful condition does not yet exist. His answer to this is his distinction between 'provisional' (*provisorisch*) and 'conclusive' (*peremptorisch*) acquisition or possession (following Achenwall's concept of 'conditional' obligation).[23] His idea is that the acquisition of property is not in fact determinate, secure, and rightful in the absence of an omnilateral will and its expression in a juridical condition, but that antecedent to the realization of that condition individuals can rightfully acquire property if they do so with the *intention* of establishing a juridical condition and in a way that is compatible with the emergence of such a condition and can lead to it: 'something external can be *originally* acquired only in conformity with the idea of a civil condition, that is, with a view to it and to its being brought about, but prior to its realization [. . .] Hence *original* acquisition can be only *provisional*. – *Conclusive* acquisition takes place only in the civil condition' (RL, §15, 6:264). In a state of nature, prudence requires that you take as much but only as much as you reasonably think you can get away with, given whatever forces you possess. Only morality requires that your acquisitions even in a state of nature be subject to the constraint of the *idea* of the possibility of an omnilateral will, and that you indeed attempt to bring about the actual juridical or civil condition that will make your possession conclusive. Only morality can justify the 'principle of private right, in accordance with which each is justified in using that coercion which is necessary if people are to leave the state of nature and enter into the civil condition, which can alone make any acquisition conclusive' (6:264). Prudence would allow and indeed require you to take as much property as you can and defend it with whatever means you can; only morality requires you to take only as much property as is compatible with an omnilateral will and then allows or even requires you to compel others to enter into a juridical condition in which the possessions of all are conclusive. (Of course Kant does not think that an omnilateral will must be established by the actual consent of everyone affected to every particular property claim; it is established by a system of laws concerning property to which everyone could freely consent.)

Thus Kant argues that individuals in a state of nature have a moral obligation to exit that state and enter into a civil condition and have a moral right and even an obligation to compel others to join them in that condition. He also argues that once in a civil condition, that is, once they are subjects of a state, individuals have a moral obligation to maintain the

[23] Achenwall, *Natural Law*, Part I, §109, p. 39.

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existence of that state and avoid relapse into a state of nature. This is evident in Kant's denial of the possibility of a right to rebellion against an existing government.[24] Kant has several specific arguments against a right to rebellion. One is that a rebellion in the hope of greater *happiness* than under a current regime would be unjustified because the business of government is not to promote happiness (TP, section II, 8:298); the hope for greater happiness is no more a justification for rebellion than it is for paternalistic government. But this argument seems irrelevant to the case in which people would rebel against the *injustice* of an existing government. More plausible is Kant's constitutional argument that a right of rebellion against the designated supreme authority in a state would be incoherent because then the supreme authority would not be the supreme authority after all, but neither would be the people, so there would be no supreme authority, and therefore really no state at all (TP, section II, 8:299–300; RL, General Remark A, 6:319–20). But Kant's main idea is simply that rebellion exchanges a juridical condition, however imperfect, for a condition of lawlessness or anarchy – a return to the state of nature – and that if it is wrong to *remain* in the state of nature, then it is also wrong to *return* to the state of nature – morally wrong, that is, just as it is morally wrong to refuse to leave the state of nature in the first place. Even if a better state might emerge from a rebellion, a happier or even a more just state, the *process* of rebellion necessarily includes a phase of anarchy when the old state has been destroyed and the new one not yet created: 'the previously existing constitution has been torn up by the people, while their organization into a new commonwealth has not yet taken place. It is here that the condition of anarchy arises with all the horrors that are at least possible by means of it'. Thus Kant holds that the people do 'wrong in the highest degree by seeking their rights in this way; for this way of doing it (adopting it as a maxim) would make every rightful constitution insecure and introduce a condition of complete lawlessness (*status naturalis*), in which all rights cease, at least to have effect' (TP, section II, 8:301–2 and note). Again, Kant's use of the phrase 'wrong in the highest degree' indicates that this is not a matter of prudence, but of morality. So individuals have an obligation to enter into the civil condition, and once in it to remain in it.

[24] There is of course an extensive literature on this subject. For a few items, see Ripstein, *Force and Freedom*, 325–52; B. Sharon Byrd and Joachim Hruschka, *Kant's* Doctrine of Right*: A Commentary*, Cambridge: Cambridge University Press, 2010, 181–4; Reidar Maliks, *Kant's Politics in Context*, Oxford: Oxford University Press, 2014, 112–43l; Wood, *Free Development*, 79–9; and Hirsch, *Freiheit und Staatlichkeit*, 337–421.

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They should of course have the right to petition the authorities in an imperfect civil condition to reform and improve it (*TP*, section II, 8:30304), and perhaps they even have a moral obligation to petition for reform. But the moral obligation to reform an existing civil condition in the direction of a more ideally just one falls primarily on the shoulders of those who are in a position of power in such a state. Individuals in a state of nature and subjects in an existing state have the moral obligation to enter into and maintain such a state. But authorities – politicians – have the obligation to reform it, or as Kant puts it, to be moral politicians.

14.2.2 *The Moral Obligations of Rulers*

The granddaddy passage on this subject is the Sixth Proposition of Kant's 1784 'Idea for a Universal History with a Cosmopolitan Aim'.[25] After having argued in the Fifth Proposition that the solution to potentially wayward *subjects* is a 'perfectly *just civil constitution*' that will if necessary subdue their 'wild freedom' with coercion and make them grow straight like trees in a forest (IAG 8:22), Kant raises a problem in the Sixth, namely that 'the *master*, who breaks [the subject's] stubborn will and necessitates him to obey a universally valid will with which everyone can be free', *must himself be found* in 'such crooked wood as the human being is made', from 'which nothing entirely straight can be fabricated', and 'who has no authority over *him* to exercise authority over him in accordance with the laws' (8:23, emphasis added). On pain of an infinite regress, at some point the chain of authority must stop with an actual human being or group of humans (a 'natural' or 'moral person' in Hobbes's terminology) who have no one to exercise coercion over *them*, and who are subject to the same temptation to misuse their freedom as is any other human being. So if a prudent regard for coercion will not restrain rulers from exploiting their own authority, what can? Only morality. Thus, although a 'perfect solution' to this problem 'is impossible [. . .] the approximation to this idea is laid upon us by nature'. Writing in his teleological voice, Kant is disposed to attribute our moral end to nature itself, but this is definitely not an appeal to prudence. On the contrary, the solution is morality on the part of

[25] I have previously discussed this passage in 'The Crooked Timber of Humankind', in Amelie Rorty and James Schmidt (eds.), *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide*, Cambridge: Cambridge University Press, 2009, 129–49. On the moral obligations of rulers, see also my 'Kant and the Moral Politicians', in Kyriakos N. Demetriou and Antis Loizides (eds.), *Scientific Statesmanship, Governance, and the History of Political Philosophy*, London: Routledge, 2015, 116–36, and Wood, *Free Development*, 90–118.

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rulers: 'it requires correct concepts of the nature of a possible constitution, great experience practiced through many courses of life, and beyond this a good will that is prepared to accept' that constitution (8:23). We may regard each of these as a necessary condition, with their conjunction a sufficient condition for the approximation to an ideally just civil condition; the list makes it clear that a *good will*, that is, respect for the moral law, is among the necessary conditions for 'masters', authorities, or politicians to realize and maintain justice. Since there is no one to force them into acting as morality requires, only their own respect for morality can make them do so – and if it is only their good will, or respect for the moral law, that can lead them to improve the civil condition, then their doing so must itself be a requirement of morality, not a mere matter of prudence for themselves or anyone else.

A decade later, Kant reiterates the moral burden on rulers to improve the justice of their states in an Appendix to his pamphlet *Towards Perpetual Peace*.[26] This work is written in the form of a proposed treaty to bring about perpetual peace among states accompanied by recommendations to their rulers in the Appendix. Perpetual peace is a moral requirement for human beings, as Kant says in the *Metaphysics of Morals* 'the entire final end of the doctrine of right within the limits of mere right" (RL, Conclusion, 6:355), which is to say pure practical reason. The treaty itself is divided between 'preliminary' and 'definitive' articles, the former stating conditions that must be observed during the current and usual condition of warfare among states to make eventual peace even possible and the latter those conditions that will make it actual. It might be noted that this structure mirrors the distinction between provisional and conclusive acquisition of property in Kant's theory of the latter. Chief among the definitive articles is that each state must become a republic, for Kant holds the (empirical) view that republics responsive to the genuine interests of their citizens will be loath to make war upon one another (ZeF, 8:350). In the Appendix, Kant then holds that the transition of present states to genuine republics is the responsibility of 'moral politicians', who 'take the principles of political prudence in such a way that they can coexist with morals', in other words who subordinate self-interest and prudence to morality, just as demanded by Kant's *Religion* two years before *Towards Perpetual Peace*, rather than 'political moralists', who frame their 'morals to suit the statesman's interest'. Kant then writes:

[26] Again, there is a vast literature on this work. For my own interpretation, see 'The Possibility of Perpetual Peace', in Luigi Caranti (ed.), *Kant's Perpetual Peace: New Interpretative Essays*, Rome: LUISS University Press, 2006, 161–81.

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> A moral politician will make it his principle that, once defects that could not have been prevented are found within a state or in the relations of states, it is a duty, especially for heads of state, to be concerned about how they can be improved as soon as possible and brought into conformity with natural right, which stands before us as a model in the idea of reason, even at the cost of sacrifices to their self-seeking. [. . .] it can be required of the one in power that he at least take to heart the maxim that such an alteration is necessary, in order to keep constantly approaching the end (of the best constitution in accordance with laws of right). A state can already *govern* itself in a republican way even though, by its present constitution, it possesses a despotic *ruling power* [*Herrschermacht*] [. . .] (ZeF, Appendix, 8:372)

Kant's language is moral throughout: the goal of republican government is a requirement of natural right, itself an idea of reason; the burden of transforming a state from a despotism into a republic falls on the head or heads of state; and it requires them to be moral politicians 'who take to heart the maxim that such an alteration is necessary', not mere political moralists who might or might not undertake such a transformation, depending on what they think is in their self-interest – giving a little to their subjects if they think that will allow them to keep their crown (as Louis XVI wrongly thought), or toughing it out if they think that will let them keep their crown (as Charles I wrongly thought). Of course the burden of the transformation of existing states must fall on their rulers rather than on their subjects, since the subjects have been deprived of the right to do that by the means of rebellion; but in the absence of the possibility of coercion either by their subjects or by anyone over them, Kant uses his most moralistic language to stress that nothing but their own moral will, or the determination of their will by the moral law, can force rulers to undertake this transition even when they might not see it as in their personal interest: they must 'take to heart the maxim that such an alteration is necessary', that is, morally necessary.

What does this mean in practice? The essay on that subject, which was clearly present in Kant's mind as he wrote the Appendix to *Towards Perpetual Peace*[27] – the Appendix begins with the statement that 'Morals is of itself practical in the objective sense, as the sum of laws commanding unconditionally, in accordance with which we *ought* to act, and it is patently absurd, having granted this concept of duty its authority, to want to say that one nevertheless *cannot* do it. [. . .] (hence no conflict of practice with theory)' (ZeF, Appendix, 8:370) – makes it clear that rulers must

[27] See also Wood, *Free Development*, 91–2.

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fulfil their duty by extending to their subjects the right to criticize the government and petition for reform. The *Metaphysics of Morals* then makes it clear that rulers also have the moral obligation to *act* upon such criticisms and petitions and actually reform their governments. First, there is Kant's explication of the right to criticize and petition – which implies the obligation of governors to extend this right – in 'Theory and Practice':

> A nonrecalcitrant subject must be able to assume that his ruler does not *want* to do him any wrong. Accordingly, since every human being still has his inalienable rights [. . .] a citizen must have, with the approval of the ruler himself, the authorization to make known publicly his opinions about what it is in the ruler's arrangements that seems to him to be a wrong against the commonwealth. [. . .] Thus *freedom of the pen* – kept within the limits of esteem and law for the constitution within which one lives by the subjects' liberal way of thinking [. . .] – is the sole palladium of the people's rights. For to want to deny them this freedom is not only tantamount to taking from them any claim to a right with a respect to the supreme commander (according to Hobbes), but is also to withhold from the latter – whose will gives order to the subjects as citizens only by representing the general will of the people – all knowledge of matters that he himself would change if he knew about them and to put him in contradiction within himself. (TP 8:304)

This is a rich passage. It is one of the places where Kant makes clear his distance from Hobbes, who not only holds that transferring one's power to a ruler is an act of prudence but also holds that this grant of power must be absolute, exempting only the right to self-defence against the ruler which is simply a natural disposition that the subject cannot give up. (At the same time, Kant aligns himself instead with Rousseau by stating that the ruler properly gives orders to the people only as a representative of the general will).[28] Rather, Kant holds that the right to make their opinions known is a right that the people retain against a ruler, and, as a right, it implies that the ruler has an obligation to recognize this right. Although of course the people themselves must exercise their right 'within the limits of esteem (*Hochachtung*) and love for the constitution', that is, within the limits of their *own* juridical obligations, and the limits of morality more generally, of which their juridical obligations are part – Kant's term *Hochachtung*, a variation of his basic term *Achtung* for the virtuous attitude to the moral law, links the political obligations of the people to morality. Finally, Kant's phrase that the ruler will be *in contradiction* with himself suggests that his obligation to grant the people the right to bring to his attention defects in

[28] See Hirsch, *Freiheit und Stattlichkeit*, 17–21.

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his constitution or administration also suggests that this is a moral obligation, for Kant's basic idea is that immorality is a self-contradiction of pure practical reason, a state in which one denies one's own and others' purely rational will even as one must admit it.[29]

As I said, in the *Metaphysics of Morals* Kant then makes clear that rulers have the obligation to respond to the proper calls for reform by their subjects. After rejecting the right to rebellion in that work, Kant then states that 'A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through *reform* by the sovereign itself, but not by the people, and therefore not by *revolution*; and when such a change takes place this reform can affect only the *executive authority*, not the legislative' (RL, General Remark A, 6:321–2). If the people cannot reform their government by rebellion, it must be reformed by the government itself; and if, as *Towards Perpetual Peace* has made clear, it is a moral obligation to reform the government, in the direction of a genuinely republican regime, then it is not just the right but also the obligation of the government to undertake this reform. Kant assigns this right and obligation to the executive rather than the legislative authority because while the legislature can write laws, it is the executive who puts them into effect; and in particular, if there is going to be any coercion involved – as there inevitably will be, because in any reform there are going to be some who will see their own interests as being harmed and will be disposed to resist the change – then it must be the executive which exercises that coercion, because the division of powers in a Kantian republic reserves the coercive enforcement of law to the executive (RL, §49, 6:316–17).[30] But Kant also emphasizes that the people, in the person of their duly representative legislature or parliament, have the "negative" right of refusal 'to accede to every demand the government puts forth as necessary for administering the state' (where here 'government' must mean the executive) (RL, General Remark A, 6:322), and here one could add that even though only the executive can enforce the laws necessary for an improvement in justice, it must be the prerogative of the legislature to write those laws. Without worrying about the details, perhaps we can

[29] For further development of this approach, see Paul Guyer, *Kant on the Rationality of Morality*, Cambridge: Cambridge University Press, 2019.

[30] On Kant's approach to the division of powers in republican government, see Ripstein, *Force and Freedom*, 173–6; Byrd and Hruschka, *Commentary*, 143–67; and Guyer, 'Achenwall, Kant, and the Division of Governmental Powers', in Margit Ruffing, Annika Schlitte, and Gianluca Sadun Bordoni (eds.), *Kants Naturrecht Feyerabend: Analysen und Perspektiven*, Berlin: De Gruyter, 2020, 201–28.

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simply conclude that for the purposes of approximating the ideal of justice in the civil condition, the people have the right to criticize the state, in the form of all three of its authorities (legislature, executive, and judiciary; see RL, §45, 6:313), the state must recognize that right, and the state must act to address those criticisms and resolve them. These are rights of the citizens that may be considered juridical rights, grounded in moral obligations, while the obligations of the rulers, since no one can coerce them, can only be ethical obligations, again grounded in their moral obligations.

Kant grounds the demands of Right on the fundamental principle of morality, not prudence; and only such a foundation of Right makes sense of his 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. By way of conclusion, this passage from *The Conflict of the Faculties*, Kant's own concluding work,[31] sums up his position very nicely:

> The idea of a constitution in harmony with the natural right of human beings, one namely in which citizens obedient to the law, besides being united, ought also to be legislative, lies at the basis of all political forms [. . .] Consequently it is a duty to enter into such a system of government, but it is provisionally the duty of the monarchs, if they rule *as autocrats*, to govern in a *republican* (not democratic) way, that is, to treat people according to principles that are commensurate with the spirit of laws of freedom (as a nation with mature understanding would prescribe them for itself), although they would not be literally canvassed for their consent. (SF 7:90–1)

To be sure, Kant's claim that even in the absence of an ideal system of government an actual government should rule in a republican but not democratic way, and in anticipation and in the direction of an actual republican but not democratic will, sounds jarring to a contemporary ear – but what Kant meant by a 'democratic' government is straightforward rule by a majority on all possible issues, with none of the constitutional guard rails provided by the division of powers and a bill of rights to be found in a genuine republic, whereas what *we* mean by a 'democratic' government is precisely what he meant by a 'republic', that is, a government with a representative legislature expressing the sovereignty of the people but with the guard rails of a division of governmental powers and a guarantee of the components of the innate Right to freedom.[32]

[31] Except perhaps for the textbook on anthropology that he edited out of older notes and the textbooks on pedagogy and physical geography that Rink edited from the same sort of materials.

[32] See Guyer, 'Achenwall, Kant, and the Division of Governmental Powers' and 'Is Sovereignty Divided Still Sovereignty? Kant and *The Federalist*', *University of Pittsburgh Law Review* 83 (2021), 365–96.

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