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Michael Nance<sup>a</sup>

<sup>a</sup> University of Pennsylvania, United States

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## Discussion

# Kantian Right and the Categorical Imperative: Response to Willaschek\*

*Michael Nance*

### Abstract

In his 2009 article ‘Right and Coercion,’ Marcus Willaschek argues that the Categorical Imperative and the Universal Principle of Right are conceptually independent of one another because (1) the concept of right and the authorization to use coercion are analytically connected in Kant’s ‘Doctrine of Right’, but (2) the authorization to coerce cannot be derived from the Categorical Imperative. Given that the principle of right just is a principle of authorized coercion, the fact that the authorization to coerce cannot be derived from the Categorical Imperative implies that the Principle of Right cannot be derived from the Categorical Imperative. Against this claim, I first argue that a satisfactory deduction of the concept of right can be constructed out of the Categorical Imperative, the fact that we are embodied, and the fact that we act from motives other than duty. I then argue that the insufficiency of the Categorical Imperative, by itself, to generate the Principle of Right does not prevent us from interpreting the Principle of Right as a specification of the Categorical Imperative. I develop this point by means of an analogy with Kant’s discussion of the moral law and the Categorical Imperative in the *Groundwork*.

**Keywords:** Kant; right; ethics; morality; Willaschek; deduction

What is the relationship between Kant’s fundamental principle of morality, the Categorical Imperative (CI), and his fundamental principle of right, the Universal Principle of Right (UPR)? This question has been the topic of considerable discussion over the last dozen years of scholarship on Kant’s ‘Doctrine of Right’.<sup>1</sup> One school of thought, the ‘independence’ school, argues that the UPR does not, and cannot, follow from the CI.<sup>2</sup> Rather, the domain of right is based on its own principle, the UPR, which does not depend on the CI for its justification. Others have argued that the UPR does follow, in some way, from the CI, and that Kant’s system of right is therefore closely connected to his broader

moral theory.<sup>3</sup> This debate is important for at least two reasons. First, an argument that demonstrated that the UPR follows from the CI would vindicate Kant as a systematic thinker. For Kant clearly *intends* that the UPR should be part of his complete moral system that flows from the CI. Second, if the UPR flows from the CI, that would provide a moral foundation for Kant's 'Doctrine of Right'. Since the 'Doctrine of Right' has drawn renewed attention in recent years from legal and moral philosophers as a plausible framework for answering normative questions about law and the state, morally justifying its most basic principle would be an important contribution to contemporary legal and political philosophy. On the other hand, if the UPR does not follow from the CI, that would appear to leave it without a foundation. My own view, which I argue for in this paper, is that Kant's theory of right, based on the UPR, is systematically connected to the CI.

I develop my argument as a response to a recent article by Marcus Willaschek.<sup>4</sup> Willaschek argues that the CI and the UPR are conceptually independent of one another because (1) the concept of right and the authorization to use coercion are analytically connected in Kant's 'Doctrine of Right', but (2) the authorization to coerce cannot be derived from the CI. Given that the principle of right just is a principle of authorized coercion, the fact that the authorization to coerce cannot be derived from the CI implies that the principle of right cannot be derived from the CI. Contrary to Willaschek, but in agreement with Bernd Ludwig, Paul Guyer, Katrin Flikschuh, and others, I argue that Kant is warranted in thinking of the UPR as a specification of the CI.<sup>5</sup> In the first section of the paper, I provide a brief survey of relevant passages in Kant's 'Doctrine of Right'. The textual evidence for Kant's view of the CI/UPR relation proves inconclusive, which means the debate about that relation must be settled on other grounds. In section 2, I set forth my view of how Kant could have provided a 'deduction' of the UPR from the CI. The UPR is necessary because we have a duty to respect humanity as an end in itself, and part of respecting humanity is ensuring that each person is free from physical domination by other persons. On the basis of this interpretation, I respond in the later sections of the paper to Willaschek's objections to any attempt to deduce the UPR from the CI. Section 3 considers the objection that, on my view, all duties of Kantian morality can be coercively enforced, which is a consequence that neither I nor Kant want. I respond by arguing that Kant has a principled way to distinguish between duties that should be coercively enforced and those that should not be coercible. In section 4 I point out that my interpretation concedes to Willaschek that the CI is not *by itself* sufficient to generate the UPR. But I argue that the insufficiency of the CI, by itself, to generate the UPR does not prevent us from interpreting the UPR as a specification of the CI. I develop this point by means of an analogy with

Kant's discussion of the moral law and the CI in the *Groundwork*. The upshot of my interpretative approach is that the UPR is a specification of the CI that is a necessary element of Kant's system of morality. But this result does not depend on the claim that the CI *entails* the UPR. In section 5 I take up Willaschek's objection to the view that the authorization to coerce can be derived from the CI in conjunction with non-normative facts. Again I use the example of the *Groundwork* to argue against Willaschek's view. Overall, I aim to show that there is a way of understanding the UPR such that it follows from the CI, and that my argument can answer Willaschek's objections to such an account.

## 1

There is textual evidence on both sides of the debate regarding the independence of Kant's theory of right. Willaschek summarizes the conflicting evidence in his article, and I will briefly do the same to set up my argument. On the one hand, the architectonic of the *Metaphysics of Morals* (*MM*), of which the 'Doctrine of Right' constitutes the first part, strongly suggests that Kant intends the CI to be the 'master principle' that unifies and necessitates his separate discussions of right and virtue in *MM*. The evidence for this reading comes primarily in the introductory material to *MM*. For example, in the Preface to *MM*, Kant begins with this statement: 'The critique of *practical* reason was to be followed by a system, the metaphysics of *morals*, which falls into metaphysical and first principles of the *doctrine of right* and metaphysical first principles of the *doctrine of virtue*' (6:205).<sup>6</sup> Given that one of the main functions of the *Critique of Practical Reason* is to establish the CI as the supreme principle of morality, and that the metaphysics of morals is supposed to follow the *Critique of Practical Reason* as part of a system, it is natural to suppose that *MM* is an elaboration of consequences that follow from Kant's fundamental moral principle, both in the domain of right and in the domain of virtue.

One gets a similar impression from the general Introduction to *MM*. At 6:225 Kant writes,

The categorical imperative, which as such only affirms what obligation is, is: act upon a maxim that can also hold as a universal law ... The simplicity of this law in comparison with the great and various consequences that can be drawn from it must seem astonishing at first...

This passage suggests in two ways that the principle of right follows from the CI. First, Kant says that the CI 'as such only affirms what obligation

is'. Given that the principles of right are obligatory, then, their obligatory nature must follow from the CI. Second, Kant's reference to the 'great and various consequences that can be drawn' from the CI reinforces the impression that the CI is the master principle of *MM*, and that the 'Doctrine of Right' and 'Doctrine of Virtue' are supposed to spell out these 'great and various consequences'.

Furthermore, Kant's first mention of juridical laws, the domain of right, comes in the Introduction to the *MM* in a passage that immediately follows a discussion of the CI:

... as a faculty of principles (here practical principles, hence a law-giving faculty), there is nothing it [pure reason] can make the supreme law and determining ground of choice except the form, the fitness of maxims of choice to be universal law. And since the the maxims of human beings...do not of themselves conform with those objective principles, reason can prescribe this law only as an imperative that commands or prohibits absolutely.

In contrast to laws of nature, these laws of freedom are called *moral* laws. As directed merely to external actions and their conformity to law they are called *juridical* laws; but if they also require that they (the laws) themselves be the determining grounds of actions, they are *ethical* laws ... The freedom to which the former laws refer can be only freedom in the *external* use of choice, but the freedom to which the latter refer is freedom in both the external and the internal use of choice...

(6:214)

In this passage Kant first reviews his argument for why the CI is the basic principle of morality.<sup>7</sup> He then distinguishes between two kinds of 'lawgiving': 'juridical lawgiving', which is the topic of the 'Doctrine of Right', and 'ethical lawgiving', which is the topic of the 'Doctrine of Virtue'. A juridical lawgiving is any lawgiving for which external legislation is possible (6:219). This delineates the domain of the 'Doctrine of Right'. The fact that Kant first describes the CI and the law that it prescribes, and then immediately begins to describe and subdivide 'these laws of freedom', implies that the 'laws of freedom' are consequences of the CI, the most basic law of freedom. Since juridical laws are included among the laws of freedom, the text implies that juridical laws are part of the laws of freedom that follow from the CI.

The last piece of evidence that supports the hypothesis that the UPR is a version or consequence of the CI is the apparent similarity between the two principles themselves. The CI, as Kant states it at 6:225, is: 'act upon a maxim that can also hold as a universal law'. The UPR, which is

introduced at 6:230, states: ‘Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law’. The fact that both principles involve universalizability tests suggests that they are related.

Now I turn to the evidence that supports Willaschek’s contrary view, that the UPR is conceptually independent of the CI. Willaschek grants my preceding points, namely that the apparent similarity between the CI and the UPR, in conjunction with the architectonic of the *Metaphysics of Morals*, suggests that Kant intends the UPR to be a specific version of the CI.<sup>8</sup> But he points out that Kant does not provide an explicit deduction linking the CI to the UPR. If the UPR follows from the CI, we would expect to find an argument in *MM* that proves that, given that we are governed by the CI, we must also be governed by the UPR. But Kant’s text does not seem to include such an argument. Instead, Kant introduces his principle of right immediately following an analysis of the concept of right. Kant lists three characteristics of the normative concept of right at 6:230, and apparently the UPR is supposed to follow immediately from these three facts about the concept. Kant’s explication of the concept of right emphasizes that right (1) concerns only practical relations between persons, (2) applies to relations of choice, not wish, and (3) abstracts from the matter of choice, instead focusing only on the form of the interaction (6:230). Immediately following this analysis of the 3 aspects of the concept of right, Kant states the UPR: ‘Any action is *right* if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law’ (6:230). Willaschek argues that the fact that Kant merely analyses the concept of right instead of deriving or arguing for his conception of right from anything more basic means that Kant’s theory of right is normatively *sui generis*.<sup>9</sup> Kant’s ‘Doctrine of Right’, in Willaschek’s view, thus has little connection with the rest of his moral system, despite appearances to the contrary.<sup>10</sup>

The results of this survey of textual evidence are inconclusive with respect to the CI/UPR relation. There is some evidence on the side of those who think that the UPR is derived or deduced, in some sense, from the CI. But there is also evidence for Willaschek’s view that the principle of right is not derived from anything more fundamental. Willaschek responds to this textual impasse by arguing that it is impossible, as a matter of principle, that the UPR could follow from the CI due to problems with deducing the permissibility of coercion from the CI. According to Willaschek, Kant probably initially aimed to provide such a deduction, which explains his remarks in the Preface and Introduction to *MM*, but found it impossible to carry out, which explains the absence of any deduction of right in the ‘Doctrine of Right’.<sup>11</sup> Thus Willaschek

argues for a systematic thesis, that it is in principle impossible to deduce Kant's conception of right from his conception of morality, that is meant to explain Kant's textual ambivalence in the *Metaphysics of Morals*.

## 2

Unlike Willaschek, I think that there is a way for Kant to justify his inclusion of the UPR as part of his moral system based on the CI. Such a justification would need to show two things: (1) why the 'Doctrine of Right' is a necessary part of Kant's moral system, and (2) why it must contain all and only those duties that it contains. In this section I focus primarily on the first of these two questions. I further subdivide the question of the necessity of right into two more specific questions: (1) why is it necessary to protect external freedom, and (2) why is it necessary to do so *in abstraction from individual motives*?

I offer an argument Kant *could* have made, not a direct interpretation of his text, although I do think that the argument I sketch here is hinted at at some points in the 'Doctrine of Right'. The basic idea is that the necessity of right follows from the fact that we are governed by the CI in conjunction with two further facts about us: the fact that we have physical bodies, and the related fact that our acting from a moral motive is contingent.<sup>12</sup> This is in keeping with Kant's remarks regarding the nature of a 'metaphysics of morals':

a metaphysics of morals 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.  
(6:217)

In my view, Kant's introduction of the concept of right can be justified by just such a procedure. We start with universal moral principles, namely the CI in two formulations, then add in some facts about human beings, in particular the fact that we occupy bodies that take up space, and that we do not always act from a sense of duty. Supposing that a deduction could be constructed out of these materials, two consequences would follow straight away. First, it would follow that there is a close relationship between the CI and the UPR. But second, it would follow that that relationship would not be one of strict entailment. The CI *by itself* would not be a sufficient condition for the deduction of right. It would be our specific nature in conjunction with the CI that makes right necessary for us. In other words, we could conceive of rational beings governed by the moral law for whom the theory of right would be

unnecessary.<sup>13</sup> In this section, I attempt to make good on the suggestion that a satisfactory deduction of the concept of right can be constructed out of the CI, the fact that we are embodied, and the fact that we act from motives other than duty.

The curious thing about the UPR is that it applies to external actions in isolation from agents' motives.<sup>14</sup> If we ask why Kant thinks it important to protect external freedom regardless of the moral motivation of the parties involved, an intuitively plausible answer is this: morally-motivated action is the best-case scenario, but some duties are so important that we cannot rely on personal goodwill to make sure that they are carried out. For example, take the obvious case of murder. People ought not murder each other as a matter of personal morality. But given the fact that the prevention of murder is so important, it would be irresponsible to leave this up to personal morality alone. That is why we think it is morally acceptable, and (perhaps) morally required, that there should be a system of coercively-backed laws that prevent people from murdering each other. Generalizing this point, the fact that people do not, as a matter of fact, always conform to the moral law means that we need to institute some system for protecting people's external freedom from people who do not act in accordance with the moral law. I think that Kant has the resources in the 'Doctrine of Right' to justify the principle of right along these grounds. In what follows, I lay out this argument more formally.

The Kantian argument from the CI to the UPR starts from the fact that we are governed by the CI, which tells us (1) that we must act according to universal laws,<sup>15</sup> and (2) that humanity must be treated as an end in itself.<sup>16</sup> In the *Groundwork* Kant describes 'humanity' as 'rational nature', which I take to mean, at a minimum, the capacity for setting ends (4:228–9).<sup>17</sup> The latter phrase is ambiguous. If we construe the capacity for setting ends as a noumenal property of agents, then given Kant's moral psychology, no one can possibly infringe on anyone else's capacity to set ends. But as Kant recognizes, morality is not concerned only with the performance of inner acts of will; that would be a strange conception of morality.<sup>18</sup> Rather, we are supposed to act in the physical world to realize those ends. What matters, from the standpoint of morality, is that we have the capacity to set, *pursue*, and *realize* ends. Thus it does not make sense to say that one respects someone as an end in herself if one at the same time forces her, via fraud or physical violence, to conform to one's ends.<sup>19</sup>

The overall point here is that the CI requires us to respect each person's capacity to set and pursue ends, but we cannot set and pursue ends unless we are free from domination by other persons. Our being permitted to do *x* and forbidden from doing *y* presupposes physical non-domination, for commanding me to do something, or not to do something, presupposes that I have control over what I do. Such control,

for Kant, requires both metaphysical *and physical* freedom. Kant takes himself to have shown in the *Critique of Practical Reason* that we have the relevant kind of ‘inner’ metaphysical freedom.<sup>20</sup> The project of the ‘Doctrine of Right’ is to establish the conditions for *external*, physical freedom. Both kinds of freedom are part of human agency. And both kinds of freedom are necessary conditions for forming and pursuing ends. The point is not that external freedom as non-domination is merely instrumentally valuable for the sake of the abstract property called ‘humanity’. Rather, a person’s ability to do what she pleases with her body, within the confines of universal laws, is part of the capacity for humanity itself. This is one way of understanding what Kant means by the phrase ‘freedom in the *external* use of choice’ (6:214).

So far, I have explained why it is necessary to protect external freedom, namely because protecting external freedom is part of respecting humanity as an end in itself. But I have not established that we need a principle for regulating external freedom *alone*, apart from individual motivation.<sup>21</sup> That is the second task for this section. To see the issue at stake, consider this question: why not simply add the duty to refrain from dominating others to the standard Kantian duties from the *Groundwork*? There is something to this strategy, for Kant does think that, as a matter of personal virtue, we ought not dominate others.<sup>22</sup> But for a number of reasons, freedom as non-domination cannot be satisfactorily achieved for everyone by relying on virtuous individual action *alone*. For one thing, individual action from a sense of duty is, in Kant’s terms, objectively necessary but subjectively contingent. That is: acting according to the CI is normatively necessary but, as experience teaches us, factually contingent.<sup>23</sup> Now, non-domination is a necessary condition for effective human agency. But it is factually contingent that human beings respect each others’ external freedom from good will alone. We cannot rely on a contingent mechanism to perform a morally necessary function. Thus, to discharge our duty to respect humanity as an end in itself, we must devise some way of maintaining the external freedom of human beings in all cases of interaction with other persons,<sup>24</sup> irrespective of the subjective motivations of the individuals involved in interactions.<sup>25</sup> And given that we need a way to regulate the interactions of rational beings, on Kant’s presuppositions we need a universal principle, i.e., one that applies to everyone equally and without exception.<sup>26</sup> Kant provides such a principle by restricting the CI in its Universal Law formulation to the domain of external freedom. The result is the UPR, a principle for regulating the practical interaction of embodied free agents without regard for their subjective motivations. Kant’s system of right aims to protect external freedom in all cases by using universal coercion, or ‘external constraint’, to enforce conformity with the UPR (6:232). A properly functioning system of right protects freedom both prospectively,

by providing external incentives to respect peoples' right to freedom, and retrospectively, by restoring people's freedom when it has been violated. It is therefore a more reliable way to protect external freedom than relying on personal good will alone.

## 3

That, in a nutshell, is how Kant might have justified the UPR as part of his moral system based on the CI. In the final three sections of the paper I use this line of argument to respond to three of Willaschek's objections. The first objection is this: of all the humanity-respecting behaviors we can engage in, what is it about respecting external freedom that sets it apart and means we cannot rely merely on good will in its case?<sup>27</sup> There are, after all, a number of ways in which we can fail to respect the humanity of others. For example, we can lie to them. But Kant seems to think that it is acceptable to rely on good will to motivate people not to lie, since telling the truth is not a duty of right.<sup>28</sup>

Here I think a number of responses are available. Kant sometimes argues that it is *impossible* coercively to enforce duties of virtue. According to this line of thought, the duty to tell the truth is a duty to adopt a certain kind of maxim; but because adopting a maxim is an inner act, it cannot be externally enforced. This response, however, is unsatisfactory in the present context. For although we cannot coerce someone into adopting a maxim, we can certainly coercively enforce a prohibition on the external action of lying to others.

A more promising line of response might be the following. Louis-Philippe Hodgson argues in a recent paper that coercion can be justified by appeal to freedom. According to Hodgson, 'a rational agent cannot object to being coerced for the sake of freedom itself – that is, for the protection of her or another person's rational agency – since she is committed to recognizing the authority of rational agency simply by virtue of acting'.<sup>29</sup> According to this line of argument, the only universally acceptable justification for coercing a rational agent is one that is based on the conditions of rational agency itself. After all, the argument goes, if an agent wants a justification for the coercion exercised against her, she must already value her freedom. Otherwise she would have no problem with her freedom being infringed upon and would not be asking for a justification. Thus, if coercion can be justified *by appeal to freedom*, no agent will have rational grounds for rejecting the justification, and the use of coercion will be justified. Applying this line of argument to the objection at hand, the response would be that force and fraud deprive others of freedom, but merely lying to others does not. That is why coercion against force and fraud can be justified to anyone who might ask

for a justification, but coercion against lying cannot. And in fact this seems to be Kant's view. He writes that each person is

authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it – such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere . . . for it is entirely up to them whether they want to believe him or not.

(6:238)

In other words, merely lying to someone leaves her free to believe one's claims or not. Since the other's freedom is not infringed upon by the lie, there is no license to coerce the liar into telling the truth, for that would amount to limiting the liar's freedom of expression for a reason other than preserving the equal freedom of all.

This argument is supported by our intuitions about specific cases and by Kant's texts. For example, suppose I tell a little white lie that has no practical effect at all on anyone else – I tell a friend I like her new haircut, when in fact I preferred it the way it was before. Suppose further that we had a law against little white lies and that the state coerced me into paying a fine or compensating my friend for the lie. In that case, the state's use of coercion against me would be wrong. For the state would be coercing me for a reason other than protecting freedom, for by hypothesis my lie had no material consequences for anyone else's freedom to form and pursue ends. Contrast that with a case where we coerce someone into fulfilling a contract. In that case, there has presumably been *reliance* on the terms of the contract. So when one party backs out, the ability of the other party to pursue its ends in the world is affected. That is just to say that in the latter case external freedom is at issue, but in the former case it is not. That this is Kant's view is confirmed in his essay 'On a Supposed Right to Lie from Philanthropy'. There Kant distinguishes between lies 'in a jurist's sense', for which a specific harm to another is required, and lies that do not harm others, even if they harm 'humanity in general' because they undermine general truthfulness in human interactions (8:426–7). Only the former kind of lie can be coercively prohibited.<sup>30</sup>

#### 4

At this point, and this is the second objection, Willaschek could say that I have already conceded his point: that the CI by itself does not entail the UPR. Willaschek's main argument is that the UPR cannot be a spec-

ification of the CI because the concept of right is analytically connected with the authorization to coerce, but the authorization to coerce cannot be derived from the CI. In other words, the CI is not a sufficient condition for the concept of right and its principle, the UPR. And Willaschek seems to suppose that if the CI does not *entail* the UPR, then the UPR cannot be a version of the CI. It is this last claim that I deny. In this section I argue that the insufficiency of the CI, by itself, to generate the UPR does not prevent us from interpreting the UPR as a specification of the CI. I develop this point by means of an analogy with Kant's discussion of the moral law and the CI in the *Groundwork*.

In Part II of the *Groundwork*, Kant lays out his basic understanding of a rational will, which he defines as 'the capacity to act *in accordance with the representation of laws*' (4:412). According to Kant,

If reason infallibly determines the will, the actions of such a being that are cognized as objectively necessary are also subjectively necessary, that is, the will is a capacity to choose *only that* which reason independently of inclination cognizes as practically necessary, that is, as good.

(4:412)

In other words, if reason always determines the will, then the will always chooses what is good because it always acts on objective moral laws. Kant describes a will that necessarily acts from the moral law a 'holy will'. For such a will,

no imperatives hold ... the 'ought' is out of place here, because volition is of itself necessarily in accord with the law. Therefore imperatives are only formulae expressing the relation of objective laws of volition in general to the subjective imperfection of the will of this or that rational being, for example, of the human will.

(4:414)

What Kant says here is that the moral law, the 'objective law of volition', is not presented to a holy will as an imperative. The imperative form is only necessary if there is the possibility that the agent will not conform to the law, but that possibility is absent in the case of the holy will. For human beings, on the other hand, it is possible to act from motives other than the moral law, namely inclinations. Therefore, we give ourselves the moral law as a categorical imperative. My point in bringing this up is that we would surely want to call the CI a specific version of the moral law, namely the version of the moral law appropriate for rational beings with inclinations. But the CI does not follow from the moral law by analysis. The derivation of the CI from the pure moral law (which is not an imperative) requires

the additional premise that we are beings affected by inclinations, and therefore do not conform to the moral law of necessity.

I want to suggest that the relation between the CI and the UPR in the *Metaphysics of Morals* is analogous to the relation between the moral law and the CI in the *Groundwork*. Just as the CI is a more specific version of the moral law, so the UPR is a more specific version of the CI. But just as the CI cannot be derived from the moral law alone, so the UPR cannot be derived from the CI alone. For both derivations to work, additional empirical premises about human nature are required. In the case of the derivation of the CI from the moral law, the extra premise is that we are affected by inclinations. In the case of the derivation of the UPR from the CI, the extra premise is that we are embodied in space.

## 5

At the end of his article, Willaschek considers the kind of position I have argued for in this paper. He discusses the possibility that ‘Kantian right, although it cannot be derived from Kant’s moral theory alone, *can* be derived from it in conjunction with further normative (and perhaps non-normative) resources’.<sup>31</sup> But Willaschek objects to such a strategy on the grounds that

Since ... the key problem is that the *legitimacy* of coercion cannot be derived from the Categorical Imperative alone, it seems that adding non-normative assumptions (such as the spatiality of human beings: see Ripstein, forthcoming) will not help. What is needed is an additional *normative* principle...<sup>32</sup>

Here I do not quite follow Willaschek’s reasoning. In particular, I do not see why the introduction of a factual premise cannot have normative implications for Kant’s moral system.<sup>33</sup> It seems to me that Kant’s account of the relation between the moral law and the CI provides a perfect example of the normative implications of facts about human beings. For it is only once we introduce the fact that human beings have inclinations that sometimes determine their wills that we get a *norm*, an ‘ought’ statement, at all. Therefore, Willaschek’s premise, that non-normative assumptions cannot have normative implications in Kant’s moral theory, is false. When it comes to Kant’s system of duties, our particular nature matters a great deal.

Willaschek’s most fundamental objection to any attempt to derive the UPR from the CI is that the permissibility of coercion cannot be derived from the CI. I agree. But my approach allows for this fact. The authorization to coerce can, on Kant’s view, be derived analytically from the

principle of right itself.<sup>34</sup> The principle of right, in turn, can be derived from the CI plus the empirical premises that we are embodied and affected by inclinations. Thus the CI plays an *indirect* role in the justification of coercion. Coercion cannot be directly justified by the CI itself in any of its formulations, as Willaschek argues persuasively.<sup>35</sup> But I see no reason to conclude from this fact that the UPR is normatively independent of the CI. On the contrary, I have argued that the principle of right is a more specific version of the CI that is appropriate for us as embodied rational beings who act from a moral motive only contingently. This result provides Kant's 'Doctrine of Right' with a moral foundation, and demonstrates that the 'Doctrine of Right' does indeed belong to Kant's system of duties that flow from the fundamental principle of morality, the CI.

*University of Pennsylvania, United States*

### Notes

\* A distant ancestor of this paper was presented at the XI International Kant Congress in Pisa in May 2010, and is forthcoming in the Kant Congress proceedings as "The Categorical Imperative and the Universal Principle of Right." The argument I present here is almost entirely different from the argument in the earlier paper and should be regarded as the proper statement of my view. Thanks to audience members at the Kant Congress for their comments and criticisms. Thanks also to Paul Guyer, Alice Pinheiro Walla, Jeppe von Platz, and Chris Melenovsky. Lastly, I wish especially to thank Marcus Willaschek for his challenging article, for his helpfulness in correspondence, and for his willingness to respond to my remarks.

1 Recent papers on this topic include Marcus Willaschek, 'Why the Doctrine of Right does not Belong in the *Metaphysics of Morals*', *Jahrbuch für Recht und Ethik*, Vol. 5 (1997), pp. 205–27; 'Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory?', *International Journal of Philosophical Studies*, 17(1) (2009), pp. 49–70; Gerhard Seel, 'How Does Kant Justify the Universal Objective Validity of the Law of Right?', *International Journal of Philosophical Studies*, 17(1) (2009), pp. 71–94; Paul Guyer, 'Kant's Deductions of the Principles of Right', in Mark Timmons (ed.) *Kant's Metaphysics of Morals: Interpretive Essays* (Oxford: Oxford University Press, 2002), pp. 23–64; Allen Wood, 'The Final Form of Kant's Practical Philosophy', in Timmons, *Kant's Metaphysics of Morals*, pp. 1–22; Thomas Pogge, 'Is Kant's *Rechtslehre* a Comprehensive Liberalism?', in Timmons, *Kant's Metaphysics of Morals*, pp. 133–58; and the appendix to Arthur Ripstein's *Force and Freedom* (Cambridge: Harvard University Press, 2009).

2 The most prominent 'independence' theorists are Willaschek and Wood.

3 Different versions of this claim are advocated by Guyer, Seel, and Ripstein, among others.

4 Willaschek, 'Right and Coercion'.

5 Cf. Flikschuh, 'Kant's Indemonstrable Postulate of Right: A Response to Paul Guyer', *Kantian Review*, 12(1) (2007), pp. 5–6; Bernd Ludwig, *Kants*

*Rechtslehre: Kant-Forschungen II* (Hamburg: Meiner, 1988), pp. 92–102, and Paul Guyer, ‘Kant’s Deductions of the Principles of Right’, in Timmons, *Kant’s Metaphysics of Morals*.

- 6 Kant passages are quoted from Kant, *Practical Philosophy*, ed. and trans. Mary Gregor (Cambridge University Press, 1996). Parenthetical citations refer to the volume and page number in the *Akademie Ausgabe*.
- 7 Cf. *Groundwork*, 4: 420–1.
- 8 Willaschek, ‘Right and Coercion’, pp. 50–1.
- 9 *Ibid.*, p. 66: ‘When he introduces the ‘concept of right’ and the ‘universal principle of right’ (6:230), the Categorical Imperative is never mentioned. Indeed, no derivation and no deduction of the concept and universal principle of right from something more fundamental are given at all. Rather, Kant mentions three features of the concept of *right* (externality, practicality, formality; see *ibid.*) from which he immediately derives his definition of right’. See also Wood, ‘The Final Form of Kant’s Practical Philosophy’, in Timmons, *Kant’s Metaphysics of Morals*, p. 7. Guyer has pointed out that the mere fact that a principle is analytic does not mean it does not require a deduction or derivation. Cf. Guyer, ‘Kant’s Deductions of the Principles of Right’, pp. 203–8.
- 10 Willaschek, ‘Why the Doctrine of Right does not belong in the *Metaphysics of Morals*’, *Jahrbuch für Recht und Ethik*, vol. 5 (1997), pp. 205–27.
- 11 Willaschek, ‘Right and Coercion’, p. 52.
- 12 My argument is thus similar to Ripstein’s view that ‘the Universal Principle of Right is the unique moral principle for rational beings who occupy space’. See Ripstein, *Force and Freedom*, p. 371. Ripstein develops a complex analogy between Kant’s justification of the UPR and Kant’s account of spatial intuitions in the first *Critique*. My argument is different from his in that I emphasize the contingency of morally motivated action as an important premise in demonstrating the necessity of right.
- 13 In a footnote Willaschek denies this point. He says that, even if we were not embodied, we would still need some aspects of *Recht*, such as contract law. This seems to me to be a mistake. For *Recht* deals entirely with external objects that we can *possess*, including the ‘choice of another’. *Recht* is thus necessary only for being who need to use external objects in order to be free, which is the point of the ‘postulate of practical reason with regard to rights’ (6:250). A being that was not embodied in physical space would have no use for external possessions and thus no need for a *Doctrine of Right*. Indeed, the whole notion of ‘external’ freedom depends on a *spatial* metaphor that would have no meaning absent our embodiment in space. Noumenal possession must be *postulated* as a condition of the possibility of rightful possession in the empirical world. The postulate would not be necessary if there were no question of the possibility of rightful *empirical* possession. Cf. Ripstein, *Force and Freedom*, pp. 364–5, 368–9.
- 14 Kant is very clear about this: the UPR ‘does not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom *is* limited to those conditions. . .’ (6:231).
- 15 The CI in its universal law formulation as Kant states it at *MM* 6:225, is: ‘act upon a maxim that can also hold as a universal law’.
- 16 See *Groundwork* 4: 228–431 where Kant introduces the ‘formula of humanity’. Kant says the various formulae of the CI are equivalent.

- 17 He also refers to humanity at 6:237 of the ‘Doctrine of Right’ in introducing the innate right to freedom. Thus there are textual grounds for supposing that the concept of humanity plays a role in right.
- 18 As Kant makes clear in the *Critique of the Power of Judgment*, the domain of freedom that he discusses in the *Groundwork* and 2nd *Critique* should have an effect our shared physical world: ‘the concept of freedom should make the end that is imposed by its laws real in the sensible world’ (5:176). In other words, the human subject should be able to realize the moral ends that it sets in the domain of freedom in the sensible world, the domain of the concepts of nature.
- 19 As Arther Ripstein argues, this conception of the right to freedom can be aptly characterized as *republican freedom*, or freedom as non-domination. One person dominates another just in case she, via physical force or fraud, usurps the other’s freedom of choice. See Ripstein, *Force and Freedom*, p. 15.
- 20 The *Groundwork* and the *Religion* are relevant here as well.
- 21 Interpretations such us that of Bernd Ludwig, in his *Analytischer Kommentar* to Kant’s *Rechtslehre*, fail to address this second question.
- 22 Freedom as non-domination is the core of Kant’s system of duties of right, and he says that all duties of right are also duties of virtue. Cf. *MM* 6:219.
- 23 As beings affected by inclinations we do not necessarily conform to the CI. Cf. *Groundwork* 4: 412–14. Kant repeats the same claim in the Introduction to *MM* (6:214).
- 24 Or, if it is not possible to protect external freedom in all cases, we should try to get as close as possible to that goal.
- 25 This way of putting it might give rise to Arthur Ripstein’s objection to thinking of the ‘Doctrine of Right’ as a work in ‘applied ethics’. For the objection, see Ripstein, *Force and Freedom*, pp. 11–12 My response is that subjects are not thinking of the principles of right as ways of complying with something else. The fact that the concept of right ultimately gets its validity from some more fundamental principle does not mean that within the system of right, that more fundamental principle plays an explicit or primary role. And my argument is consistent with the fact that right generates new duties, such as the duty to exit the state of nature, that could not be derived directly from the CI.
- 26 Cf. *Groundwork* 4:412.
- 27 Willaschek writes: ‘there are many things the moral law demands of us that we are not juridically required to do even ‘externally’, such as telling the truth (see 6: 238). So we need not only to restrict the Categorical Imperative to external actions by abstracting from motivation, but also to limit the range of duties in a principled but not question-begging way’. ‘Right and Coercion’, p. 62.
- 28 Except for the case of contract.
- 29 Louis-Philippe Hodgson, ‘Kant on the Right to Freedom: A Defense’, *Ethics*, 120 (July 2010), p. 799.
- 30 Passages like this one count against Gerhard Seel’s claim that within Kant’s theory of right, all promises agreed upon are coercively enforceable. See Seel, ‘The Universal Objective Validity of the Law of Right’, pp. 78–9. Unlike Seel, I concede Willaschek’s basic point: that there is a difference between the ethical duty of promise-keeping and the juridical duty of contract-keeping. My argument also does not rely on the premise, advocated by Seel, that imperfect duties do not properly belong in Kant’s system of duties.
- 31 Willaschek, ‘Right and Coercion’, p. 66.

- 32 Ibid. The Ripstein reference is to 'A Priori Intuitions for Constructing the Concept of Right', forthcoming in *International Journal of Philosophical Studies*.
- 33 This is Kant's point at 6:217.
- 34 At 6:231, in the Introduction to the 'Doctrine of Right', Kant writes: 'there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it'.
- 35 Willaschek, 'Right and Coercion', pp. 59–65.