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Discussion

The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance*

Marcus Willaschek

Can Kant's Universal Principle of Right (UPR) be derived from the Categorical Imperative (CI)? In a paper published in this journal, I have argued that it cannot. My reasoning was that according to Kant, the UPR analytically implies the legitimacy of legal coercion, which cannot be derived from the CI. Although in his response to my paper, Michael Nance agrees that the UPR cannot be derived from the CI *alone* (551; 552), he does claim that it can be derived from the CI in conjunction with 'additional empirical premises about human nature', in particular with the premise 'that we are embodied and affected by inclinations' (553; cf. 547, 552). In my paper, I had dismissed this possibility (too hastily it now seems) by saying that if the legitimacy of coercion cannot be derived from the CI alone, then adding factual (non-normative) premises won't allow you to derive it either. Nance is surely right to point out that this claim needs further argument and elaboration. He himself proposes that the UPR (including the legitimacy of coercion) can be derived from the CI in conjunction with the empirical premise about human nature cited above. Although I agree with much of what Nance says and find many of his observations helpful and illuminating (in particular his analogy between the moral law and the CI on the one hand, and the CI and the UPR on the other), in the end I find myself unconvinced by his proposed derivation of the UPR. I've divided this brief response to Nance's response into five sections: first, I will rehearse (and restate) the reasons why the legitimacy of legal coercion *cannot* be derived from the CI (1); second, I explain how it *can* be derived from the UPR (2); next, I will try to explain more fully why I think that adding factual premises to the CI does not allow for a derivation of the legitimacy of coercion (3); after that I say where I believe Nance's proposal fails (4); and

finally, I close with some short remarks on the general structure of Kant's moral theory (5).

1

The main reason why the UPR cannot be derived from the CI *alone* is that, according to Kant, the UPR implies an authorization to enforce people's rights coercively and this authorization is not itself entailed by the CI. Let me briefly explain why. In doing so, I will not repeat the arguments I have given in earlier publications, but try to present my point from a more general perspective.

Coercion, as such, is morally problematic. As a rule, it's morally wrong to coerce others into doing something they don't want to do. This can be argued for, if an argument is needed, on the basis of the 'formula of humanity', which requires us to respect every person's 'humanity', which means that we should treat others only in ways to which they can rationally consent (cf. 4:429 f.).¹ Now coercion, by definition, consists in treating others in a way to which they, as a matter of fact, do *not* consent. Hence, coercion is morally wrong unless there is a special reason why the coerced person *would* have consented if only they had been rational. For instance, the person might be a child, or insane, or in some other way incapable of judging what is good for them or unable to determine what is morally admissible. In such cases, coercion may well be justified and compatible with the coerced person's 'humanity'. But if we restrict ourselves to adults who are fully accountable for their actions and if we make use of Kant's fundamental (and presumably exhaustive) division of moral ends into moral perfection and happiness (6:385), it seems clear that coercion can neither be justified by the moral perfection nor by the happiness of the *coerced person*, since (i) their moral perfection cannot be furthered by coercive means and (ii) they themselves are the best judges of what their happiness consists in. But as long as we exclude legal rights from consideration, neither the moral perfection nor the happiness of *others* can justify coercion, since this would mean treating the coerced person as a mere means to other people's ends. So it would seem that there can be no *moral* justification of coercion.

To this argument it may be objected that for Kant moral perfection and happiness are not the only moral ends, since human freedom is the fundamental value in Kant's ethics. Protecting the freedom of others (either as an end in itself or as a means to happiness) is therefore a necessary end of human beings. And protecting one person's freedom by limiting the freedom of others is sometimes justified – if necessary, by coercive means (cf. Nance 549). I do not want to object to this line of reasoning, since I think that it is basically correct. In fact, the protection of the widest possible sphere of external freedom for everyone, which is

compatible with an equal sphere of external freedom for everyone else, is precisely Kant's point in introducing the UPR. Here I only wish to point out that this idea cannot be derived from the CI alone unless we already presuppose a concept of right that authorizes the use of coercion. After all, not *all* exercises of external freedom are worthy of protection, but only rightful exercises thereof – those that do not violate other people's *rights*. So in order to know what protections of the exercise of freedom justify coercion (given the general presumption that coercion is morally wrong), the UPR, which tells us which actions are rightful and which are not, must already be present. It is therefore impossible to derive the authorization of the use of coercive force from the CI without already presupposing the UPR (which alone is sufficient to derive the legitimacy of coercion; see below).

To be sure, limiting people's freedom in accordance with the UPR is *compatible* with the CI; but the legitimacy of coercion cannot be based on the CI alone. The CI requires that I limit my *own* freedom so as to respect my own humanity and that of all others. It is addressed to the individual agent and requires her or him to abstain from certain kinds of behavior. Its impact is purely negative – it issues in prohibitions (and only indirectly, by prohibiting omissions, does it result in positive commands). Neither the universalizability test nor the formula of humanity as such authorize us to limit the freedom of *others*; quite to the contrary, as we have just noted, the formula of humanity prohibits coercion unless there is some special justification for it. Since the CI as such creates a presumption *against* coercion, any justification which overrules this presumption must originate from some other source (such as the status of the coerced person i.e. their being a child, or insane, and hence not fully autonomous). According to Kant, protecting equal external freedom for all is such a justification, but, as I have indicated, it is not one that can be extracted from the CI alone.

2

Let me now explain why the UPR *does* imply an authorization to use coercion. The main reason is what I have called, in the paper to which Nance responds, the *impossibility of conflicting rights*: for any pair of persons A and B, if A has a legal right to do F, B cannot have a legal right to do anything incompatible with A's doing F. For instance, if I have the right to read this book, you cannot have the right to take it away from me. This aspect of the logic of legal rights explains why the legally protected sphere of external freedom has to be *limited* in the first place, since it means that one person's legally protected sphere of external freedom ends where another person's sphere begins. In this

sense, legal rights are empirically interdependent: what rights *I* have depends in part on what *your* rights are and vice versa. (Whether I have the right to read a particular book depends, in part, on the empirical question whether I am its owner or someone else is.) Note that nothing analogous is true about moral obligations based on the CI: each person's obligations are independent of empirical facts about any other person's obligations; for instance, my obligation not to keep my promise to you does not depend in any way on your obligations to me.

Now the impossibility of conflicting rights immediately implies an authorization to use coercion against those who try to prevent us from exercising our legal rights. If I have the right to do F, and you try to prevent me from exercising this right but I exercise it anyway even in the face of your resistance (physical or otherwise) without thereby violating any of your rights, I have coerced you (by overcoming your resistance), but I have still only exercised my right to do F. Given Kant's definition of 'authorization' (6:222), I am authorized (permitted by law) to exercise my right provided I do not violate the rights of others. If exercising my right happens to require me to overcome your resistance – a resistance to which you are necessarily unentitled, given the principle of non-conflicting rights – the authorization to exercise my right includes the authority to use coercion. I take this to be the point of Kant's argument in §D of the Introduction to the Doctrine of Right according to which coercion is legally permissible if it is 'a hindering of a hindrance of freedom' (cf. 6:231). Kant concludes: 'Hence, there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it [i.e. right]' (6:231). Since the UPR defines what is *right*, it includes an authorization to use coercion against those who violate other people's rights.

3

So far, I have tried to explain why the UPR does, whereas the CI does not, include the legitimacy of legal coercion. Michael Nance grants that the legitimacy of coercion cannot be derived from the CI alone, but questions my further claim that it cannot be derived from the CI in conjunction with non-normative, merely factual premises such as the spatiality of human beings. Although I did not make it explicit, my reasoning here was based on the idea that normative conclusions cannot be derived from non-normative premises – a principle Kant himself seems to accept (cf. 3:371) and one that I will take for granted here. From this principle it follows that you can't derive a normatively 'stronger' conclusion from a normatively 'weaker' premise simply by adding non-normative facts. (A statement S1 is normatively 'stronger' than a statement S2 if S1 has

normative implications – e.g. permissions, obligations – that S2 does not have and that are not just special instances of normative implications of S1. Note that according to this definition, S1 can be stronger than S2 with respect to one normative implication, but weaker with respect to a different implication.) For example, alone from the principle that one ought to keep one's promises it does not follow that you ought to help me paint my office; but it does follow if we add the premise that you promised to do so (assuming that no other moral obligations interfere). But here, the conclusion is not normatively stronger than the general premise since the fact that you ought to keep your promise to me just is a particular case of the general principle that one ought to keep one's promises. By contrast, from this general principle plus the premise that you promised to help me paint my office, we cannot derive the conclusion that you ought to pay for the paint (assuming you didn't explicitly promise to do so). Maybe you ought to pay for the paint (perhaps because you are rich and I am poor), but this cannot be derived from the principle that one ought to keep one's promises. Neither can it be derived from this principle in conjunction with the factual premise that you have much more money than I do. What is required is an additional normative premise such as the principle that the rich ought to help the poor.

Now I think that the general principle that you can't derive normatively stronger conclusions from normatively weaker premises just by adding *non-normative* premises also applies to the relation between the CI and the UPR. Nance and I agree that the CI alone does not imply the legitimacy of coercion, while the UPR does. So the UPR is normatively stronger (with regard to the legitimacy of coercion) than the CI: The UPR has normative implications – it authorizes us to do things – which the CI alone does not have. But then, adding non-normative premise about the embodiedness of human beings and their being affected by inclinations cannot provide the CI with the normative force required for deriving the UPR, particularly if we keep in mind that the normative force we are talking about must be such that it outweighs the moral presumption against coercion that arises from the formula of humanity.

4

Let me now turn to Nance's proposed derivation of the UPR from the CI. As indicated above, Nance thinks that the UPR can be derived from the CI in conjunction with two empirical facts about human beings: 'the fact that we have bodies, and the related fact that our acting from a

moral motive is contingent' ([11]). Here are what I take to be the central steps of this derivation:

- (i) The Formula of Humanity requires us to respect rational nature (547).
- (ii) Rational nature includes the ability to decide upon, and pursue, ends (ibid.).
- (iii) Pursuing ends, in embodied rational beings, requires *external* freedom (freedom from domination by others) (548).
- (iv) Therefore – because of steps (i)–(iii) – the formula of humanity requires us to protect external freedom (ibid.).
- (v) Because human beings are not always sufficiently motivated to act morally, their respecting other's external freedom, although morally necessary, is factually contingent (ibid.).
- (vi) In order to protect the external freedom of human beings effectively (if possible 'in all cases of interactions with other persons', ibid.), we cannot rely on people's good will (because of step v), but need a system that protects external freedom independently of people's contingent motivation, that is, a system that protects freedom, where necessary, by coercion (ibid.).
- (vii) Since this system is meant to regulate the actions of rational beings, it must do so according to universal laws, which is just what the UPR says (ibid.).

So the basic idea is that the CI requires us to *respect* humanity, and that this – given the beings we are – requires us to *protect* external freedom by a system of coercively enforceable rights in accordance with the UPR. What I find questionable about this derivation is the move from 'respect' to 'protect'. That we are morally required to respect humanity means that we ourselves *abstain* from actions that would treat others merely as means to our own ends. Let us grant that this includes abstaining from actions that would infringe upon other people's external freedom. But it does not follow that we are morally required to protect everyone's external freedom if this means infringing upon some other person's external freedom. The mere requirement to *respect* each other's humanity (and thus external freedom) does not seem to give us a basis to *restrict* anyone's external freedom.

That something has gone wrong with Nance's ostensible derivation can also be seen if we consider the case of non-enforceable moral obligations such as the obligation to keep one's promises. (Nance grants that there is a difference between 'the ethical duty of promise-keeping and the juridical duty of contract-keeping'; cf. his fn. 30.) Now respect for humanity requires us to keep our promises, but, alas, we sometimes do not. According to Nance, in order to 'discharge our duty to respect

humanity' with regard to external freedom, we must ensure, as far as possible and by coercion if necessary, that external freedom is maintained in each and every human exchange (cf. 548). By parity of reasoning, with respect to promise-keeping, the *moral* requirement to respect humanity would lead to the demand to ensure that, as far as possible and if necessary by coercion, all promises are kept. But that would be absurd and, in any case, it's not Kant's view. Part of what has gone wrong here is that Nance, in his proposed derivation, seems to move from the claim *that every person is morally required to respect humanity* to the quite different claim *that there is a moral requirement to ensure that every person respects humanity*. If the latter claim were correct, it would not just follow (given Nance's argument) that we are required to protect everyone's external freedom, but also that we are required to enforce all promises. Of course there is no such requirement; nor is there a *moral* requirement to protect everyone's external freedom.

6

Let me close with some remarks on the structure of Kant's moral theory and the place of the UPR in it. Nance takes me to hold that the UPR, and the whole Doctrine of Right, 'has little connection with the rest of Kant's moral system' (545), and I surely contributed to this misunderstanding by the title of an earlier essay of mine ('Why the Doctrine of Right does not belong in the *Metaphysics of Morals*'). But the point of that essay was not that the Doctrine of Right has little connection to Kant's moral system as a whole, but rather that it does not fit into the official architectonic of the book called *Metaphysics of Morals*. In my view, the Doctrine of Right is an integral part of Kant's moral system, if we take 'moral' to denote the sphere of human agency governed by laws of practical reason. I take the UPR to be on a par with the CI – both are fundamental (i.e. non-derivable) expressions of the demands of pure practical reason. Just as the CI cannot be derived from anything else, but is the most fundamental principle that governs the will of individual finite rational beings, the UPR cannot be derived from the CI, but is the most fundamental principle governing the external interactions between rational finite embodied beings. Both principles express the same fundamental feature of practical reason, namely that it *enables* freedom by *limiting* it through normative universal laws. But while the CI does so for the will of each individual person, the UPR articulates this feature of practical reason for a society in which human beings interact. While the CI is constitutive of 'moral' freedom (freedom understood here as moral autonomy), the UPR is constitutive of 'legal' freedom (the legally protected sphere of rightful agency). Both applications of pure practical

reason, the moral and the legal, share many structural features and are interdependent in various ways. For one thing, according to Kant we are *morally* obligated to obey *juridical* laws (6:220). For another, Kant limits the categorical imperative ‘Obey the authority that has power over you’ to those cases which do not ‘conflict with inner morality’ (6:371). This points to the interdependence between the legal sphere governed by the UPR and the sphere of ‘inner’ morality governed by the CI. (Note that on this reading, the latter sphere includes what Kant, in the *Metaphysics of Morals*, calls ‘ethics’; but it is broader than ethics, since it also includes all non-juridical perfect duties). Both spheres together form what Kant calls ‘morals’ (‘Sitten’). So even though the UPR cannot be derived from the CI, the Doctrine of Right (and the UPR with it) is an integral part of Kant’s moral system as a whole.

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Notes

- * I would like to thank Michael Parker for revising my English.
- 1 References to Kant’s works will be given by volume- and page-number of the Academy Edition: Kants Schriften, hg. von der Preußischen Akademie der Wissenschaften, Berlin: de Gruyter 1900 ff.