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# On the Kantian distinction between Ethics and Right: Linearity and Mediation

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**Abstract**

The aim of this paper is to provide an original account of the distinction between the spheres of *Sitten* that goes beyond the traditional one based on the nature of incentives, since this underestimates some of their characteristics. First, the paper identifies in *obligatio* a common source between Ethics and Right. Then, it explores how in the *Metaphysics of Morals* the *connection* between law and incentive constitutes a more relevant criterion to distinguish ethical lawgiving from juridical lawgiving. Specifically, it demonstrates that such connection: (a) to be ethical should be *linear*, understood as a necessary self-determined process of connecting law to incentive; (b) to be juridical should be *mediated*, namely it comprises an inclusive disjunction between two modalities of connecting law to incentive: a non-necessary linear and a divergent one. It concludes by exploring the implications of such perspective on the notions of internalisation and externalisation associated to each lawgiving.

**Key words**

Ethics, Right, obligation, incentive, lawgiving

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## Introduction

Much has been discussed about the respective nature and relationship between Kantian conception of right and his ethical theory. The main aim of this paper is to show how and to what extent Kant gives a more detailed account of ethical and juridical lawgiving and their respective duties, compared to the one that has been often associated to them.

As a matter of fact, the consideration of *Sitten* has basically been subdivided into two distinct tracks. On the one hand, the ethical lawgiving has been widely associated to a totally inner matter, whose concern lies exclusively on formal features, rather than their content. On the other hand, the juridical lawgiving has been often associated to a totally outer matter, whose concern lies exclusively on the performance of external acts.

However, Kant is neither focused exclusively on external elements when he analyses the juridical lawgiving, nor he can endorse an ethical lawgiving completely detached from a material and concrete side. Therefore, this paper derives its arguments from a textual analysis, by giving a more comprehensive account of the theoretical framework articulated by Kant. Specifically, it provides an original account of the distinction between the two normative processes that goes beyond the more traditional distinction based on the nature of incentive, understood as internal in the case of ethical lawgiving and as external in the case of juridical lawgiving.

The paper is divided as follows. First, we explore Kant's complex understanding of obligation (*obligatio*) as a common source between the two spheres of *Sitten*. Second, we demonstrate that the presence of the internal incentive does not constitute the only valid criterion able to distinguish ethical lawgiving from juridical one. As a matter of fact, we argue that a predominant focus on the nature of incentives risks neglecting two other distinct features of lawgivings: the possible *agreement* between them, and what we may call their *indirect sharing*.

Then, we focus on the introduction of the *Metaphysic of Morals.* This allows us to identify in the nature of the *connection between law and incentive* a more relevant and meaningful criterion to distinguish Kant's conception of ethical lawgiving from that of juridical lawgiving. Indeed, this paper claims that such peculiar *discrimen* between ethical and juridical lawgiving requires for the former a linear connection between law and incentive, understood as a necessary self-determined process, while for the latter a mediated connection.

With the term "mediated" we imply that the juridical lawgiving comprises an inclusive disjunction between two modalities of connecting law to incentive: a non-necessary linear and a divergent one. We conclude by raising some open issues and by exploring the implications of such proposed perspective on the two notions of internalisation and externalisation when referring to the normative spheres of *Sitten*.

## 1. *Obligatio*. A common source for ethical and juridical lawgiving

To discover the common root between *Tugendpflichten* and *Rechtspflichten* it is necessary to shift our attention to the work which was at the very basis of the *Metaphysics of Morals*. We are of course alluding at *Groundwork of the Metaphysics of Morals* (1785), which was intended as an exposition of the general underlying principles of that work as a whole. To hark back to the definition provided in the *Architecture of Pure Reason*, the "metaphysics of morals" contains "the principles that predetermine and necessitate *deeds and omissions* [*Tun und Lassen*]". It is therefore "a purely isolated metaphysics of morals, mixed with no anthropology [i.e., an empirical condition]" (*KrV*, B 869-870).[1]

In accordance with the author's intentions, therefore, two main theses should be derived from those preliminary statements. First, the *Grundlegung* should be regarded as a metaethical work, namely as a "foundation" for the philosophical domain which he considers the science of the «laws of liberty» (*GMS*, IV 387). Second, the *Groundwork* constitutes a preliminary theoretical stage to the *Metaphysics of Morals*, a project which Kant would only manage to complete in 1797 though the idea itself had originated in the mid-1760s and is evidenced in many of Kant's correspondences.[2]

Putting aside the various reasons for this postponement[3], we shall focus on the theoretical links between the *Groundwork of the Metaphysics of Morals* and the *Metaphysics of Morals* itself. As we known, the *Metaphysics of Morals* is composed of two parts dealing respectively with the *Metaphysical principles of the doctrine of right* and the *Metaphysical principles of the doctrine of virtue*. Whilst the first part discusses the application/fulfilment of the same "laws of freedom" in those institutions that govern the coexistence of rational beings, the latter part deals with the application of the same principles in the subject agent through the establishment of fundamental behaviours and attitudes such as virtues.

Concerned as it is to determine the structures in which reason manifests itself in practice, the *Groundwork* moves beyond the distinction between *right* and *ethics* that is so explicitly drawn up in the *Metaphysics of Morals*, concentrating instead on the definition and elaboration of those principles that would apply in both spheres of pure practical reason.

By highlighting the peculiarity of the 1785 work, we are not arguing that Kant had not yet conceived of the distinction between *morality* and *legality*, between "internal

[1] For what concerns Kant's use of the expression «*Tun und Lassen*»: implicit referring to Christian Wolff, *Vernüfftige Gedancken von der Menschen Thun und Lassen, zu Beförderung ihrer Glückseligkeit* [1720] – now in Ch. Wolff, *Gesammelte Werke*, 1976, Vol. IV, I.

[2] See the following letters by Kant: to Johann Heinrich Lambert (31. December 1765; Ak. X, 56); to Johann Gottfried Herder (9. May 1768; *Briefe*, Ak. X, 74); again, to Lambert (2. September 1770; Ak. X 97); to Marcus Herz (7 June 1771; Ak. X, 123 and another one datable around end 1773 (Ak, X 145); to Moses Mendelssohn (16. August 1783; Ak. X, 346-347); to Heinrich Jung-Stilling (datable after 1. March 1789; Ak. XXIII 495).

[3] On this point see first Beck, 1960, pp. 5-18; Ludwig, 1998[2] (1986), pp. xiii-xxvi.



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legislation" and "external legislation", and ultimately between ethics and right, which would lie at the heart of the *Metaphysics of Morals*.

This distinction, in fact, is already apparent in the notebook relating to the *Course on natural law (Naturrecht Feyeraben)*, which was held by Kant in the summer term of 1784, that is at exactly the time when he was completing the *Groundwork* (whose production lasted from the autumn of 1783 to the summer of 1784). The same distinction is also made in the 1775-1780 *Course on ethics*, where Kant differentiates *obligations internae* and *obligations externae* whilst commenting on the idea of the *obligatio* in relation to the Baumgarten manual (*VE*, 41; *Collins*, XXVII 272).[4]

Indeed, such a distinction is present in the *Groundwork* as well, where moral actions intentionally undertaken for the sake of duty (*aus Pflicht*) are distinguished from actions that conform to duty (*Pflichtmäßig*), which are actions undertaken only for the sake of external conformity to the law and based either on a subject's natural inclination or fear of punishment (*GMS*, IV 390, 397-398).

But besides outlining the distinction between ethics and the law, the 1775-80 *Course on ethics* also explicitly underscores their affinity:

> The difference between the law and ethics does not lie in the nature of the obligation, but in the motives adopted for its accomplishment […] Ethics takes into consideration all obligations as long as their motive is internal; it considers them, in other words, on the basis of duty, […] paying no attention to their coercive aspect. The law, on the other hand, considers the fulfilment of an obligation not in terms of its dutiful motivation, but insofar as it depends on coercion (*VE*, 40; *Collins*, XXVII 271-272; Kant 1997, p.63).

Ethics and Right differ in terms of the motivation that underlies the same actions, be it pure intention or coercion. Nevertheless, the "nature of the obligation" remains identical in the case of both juridical and virtuous duties.

Moreover, the idea of the obligation (*Verpflichtung*) makes an important reappearance in the *Introduction to the Metaphysics of Morals.* Here Kant resumes and develops also the meta-ethical line of reasoning inaugurated in the *Groundwork*. In Section IV of the Introduction, whilst discussing those "concepts <that are> common to both parts of the metaphysics of morals", Kant defines an obligation as "the necessity of a free action under the categorical imperative of reason" (*MS*, VI 222).

It is worth highlighting three considerations in this regard. *First*, in his *Introduction* Kant reiterates the point that the idea of the obligation is common to both ethical and juridical spheres, to which the *Metaphysics of Morals* devotes ample space. *Secondly*, it must also be pointed out that Kant discusses obligations in terms of the categorical imperative, which renders an otherwise free action – namely an action that is the product of subjective choice – necessary and therefore obligatory. As a *third* consideration, we can assume that the categorical imperative, which is extensively treated in the *Groundwork* and

[4] See also Kant's courses on Moral Philosophy: *Mrongovius II*, XXIX 611-619; *Powalski*, XXVII 131-133, *passim*. Furthermore: *Feyerabend*, XXVII 1326.

subsequently in the *Critique of Practical Reason*, justifies its application on both an ethical and juridical level.

Accordingly, the *categorical imperative*, which is the formal reshaping of the *obligatio* in Kantian terms, is an unconditional obligation which transcends any distinction between internal and external legislation. Just like ethics then, the law "commands categorically" and does so in a way that is not "technical" or "pragmatic", although it differs from ethics insofar as it holds up the threat of coercion. The duties that the law imposes on me as a man and citizen of the state do not allow me to evaluate the usefulness of obedience and to weigh up the advantages that I could gain from it. Rather, they command in an absolute manner, for they are *laws* in the more common sense of the word.

It is worth drawing attention to Kant's remarks concerning the syntactic formulation of the imperative in the *Introduction to the doctrine of right* (that forms part of *the Metaphysics of Morals)*, and, in particular, to his definition of the "universal law of right": "Act externally in such a way that the free exercise of thy will may be able to coexist with the liberty of all others according to a universal law" (*MS*, VI 231).[5] It should also be stressed that one can find at least three explicit references to the juridical role of the categorical imperative in the 1797 work.[6]

By focussing on the categorical imperative, the *Groundwork for a Metaphysics of Morals* furnishes Kantian thought with a key idea, which the author himself would implement in both an ethical and juridical context. This characterisation of the *Groundwork* and its important position within Kant's moral system remains a point of reference, even if the work deals almost exclusively with the moral dimension and even if it appears to lose sight of its original preliminary intention when read alongside the second *Critique*, which was written a mere three years later.

## 2. An indirect sharing: duties of Right as indirectly ethical and duties of Virtue as indirectly juridical

The concept of obligation in the foundational sphere of Morality allows to conceive Ethics and Right as complementary parts, even if formally distinct. Then, one way to describe the nature and the scope of the distinction between Ethics and the Right is to focus on the different kind of motivation they imply in their respective lawgiving. Indeed, as Kant states in the *Metaphysics*, both ethical and juridical lawgiving (*Gesetzgebung*) comprises two elements: the objective element of law (*Gesetz*), and the subjective and motivational element of incentive (*Triebfeder*). The former is defined by Kant as the representation of dutifulness of an action, while the latter is described as a subjective element that unites the ground of determining the choice of the agent with the

[5] On this topic see: Goyard-Fabre, 1996, pp. 17-60; Id., 2004, pp. 64-70; pp. 120-149.
[6] See *MS*, AA 06, pp. 318; 336-337; 371.



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representation of the law (MS AA 6:218; Kant 1996, p. 19). The incentive is the motivational part of each lawgiving, it is what enforces the law subjectively.

The term *Triebfeder* was already present in the *Critique of Practical Reason*, as "the subjective determining ground of the will of a being whose reason does not by its nature necessarily conform with the object law" (KpV 5:72).[7] Thus, the receptivity to duty, namely to an object law, requires for the human will the presence of a subjective element as source of moral action: the incentive.

Compared to the text of *Critique of Practical Reason*, where the term *Triebfeder* is often equivalent to ethical incentive, in the *Metaphysics* there is the further distinction between *Wille* as practical reason and *Willkür* as power of choice, and the term *Triebfeder* is declined in a twofold sense: as an internal and ethical one, or as an external and juridical one.

In the *Metaphysics*, the ethical *Triebfeder* is the one that implies a direct relation to practical reason as *Wille* and moral law, and thus it is characterised as intrinsic because of the same nature of the law. In fact, it derives its inner nature from the self-motivating force of law: the unconditionality of the categorical imperative as *Gesetz* is also the source of action in Ethics.[8] Ethical lawgiving requires that duty constitutes the incentive.

The ethical incentive is intrinsically related to law, rather than stems from externally coercive sources the law can make use of. The latter can be the case for juridical incentives, that can be considered external and contingent rather than intrinsic.[9]

To sum up, the constraint expressed by law can be described as an internal one, where internal means self-imposed; or, conversely, as coercively and externally grounded.[10] On the one hand, the ethical lawgiving involves a self-constraint (*Selbstzwang*, MS 6:381), exercised upon one's choice by one's own will with the idea of duty; on the other hand, the juridical lawgiving involves an external-constraint or coercion (*äußere Zwang*, MS 6:220). We can summarise this distinction in this way: ethical norms require to be internally enforced by the incentive of duty, while juridical norms admit to being externally enforced by coercion.

[7] The term *Triebfeder* was already present in the *Groundwork*, where Kant describes it as the subjective ground of desire, in opposition to motive (*Bewegungsgrund)*, that is the objective ground of will. As such, it is a distinction between subjective ends that rest on incentives, and objective ends that depends on motives, which hold for every rational being (GMS AA 4:427; Kant 1998a, p. 36). Then Kant changed the denotation of *Triebfeder* in the KpV, intending with this term not only a purely sensuous interest, but also a practical one.

[8] It is what Potter (2002, p. 374) called the "identity of justifying and motivating reasons" in ethical lawgiving.

[9] Nonetheless, there is an intrinsic character in juridical lawgiving as well, that is the law's necessitating and unconditional character as *Gesetz*. This holds independently of the nature of incentives that enforce it (internal or external). On this point, see next paragraphs.

[10] "Obligatio externa est necessitatio moralis per arbitrium alterius. Obligatio interna est necessitatio per arbitrium proprium." *Vorlesung*, AA 27, p.270; Kant, 1997, p. 62. Apart from the distinction between external or internal obligation, what emerges is a distinction between another choice (*arbitrium alterius*), and own choice (*arbitrium proprium*). The distinction between the two different ways of intending the constraint [*Zwang*] by law goes in the same direction: self- constraint for ethical lawgiving, or constraint by another for the juridical ones [*Selbstzwang oder Zwang durch einen Andern*], *MS*, AA 06, p. 394; Kant, 1996, p. 156.

The distinction between different incentives is without doubt a useful criterion for differentiating ethical lawgiving from the juridical one, because it helps to conceptualize them through the intension of their definitions.[11] Indeed, such distinction encompasses one of the properties that constitute the definition of duties as ethical or juridical and their respective lawgiving, namely the presence of internal or external incentive.

However, the distinction between incentives is not the only valid criterion able to define the two normative processes. Such distinction grasps one of the differences between them, but arguably does neglect two other distinct features of ethical and juridical lawgiving: the possible *agreement* between them, and what we may call their *indirect sharing*.

First, the fact that ethical and juridical lawgiving can *reach an agreement* (*übereinkommen*) is described by Kant in this way:

> All lawgiving can therefore be distinguished with respect to the incentive (even if it agrees with another kind with respect to the action that it makes a duty [*sie mag auch in Ansehung der Handlung, die, sie zur Pflicht macht, mit einer anderen übereinkommen*], e.g., these actions might in all cases be external)" (*MS*, AA 6: 218-219; Kant, 1996, p. 20)".

The incentive is only the subjective element, but there is also an objective element in lawgiving. The latter is law as *Gesetz*, that provides a representation of "an action that is to be done as objectively necessary" (MS, AA 6: 218; Kant, 1996, p. 20).[12] Both ethical and juridical lawgiving can prescribe to keep a promise, and thus the representation of an action to be done could coincide.[13] The dutifulness to "keep a promise" can be the same, even it is enforced by an internal incentive, or alternatively by an external incentive.

Second, in a more fundamental way, a distinction based on incentives has the disadvantage of neglecting another point, that we may call the *indirect sharing* between lawgivings. Such term implies that Ethics and Right can share in certain cases the same area of obligation. But what does it mean exactly? Such sharing is often implicit in the Kantian text, but in a passage from the *Metaphysics of Morals* Kant states that juridical lawgiving is not only external, but also internal, in full accordance with the ethical lawgiving:

> Ethical lawgiving (even if the duties might be external) is that which *cannot* be external; juridical lawgiving is that which can also be external [*die juridische (Gesetzgebung) ist, welche auch äußerlich sein kann*] (*MS*, AA 6:220; Kant 1996, p.22).

[11] This distinction proves to be unsatisfactory if we consider its *extension*, the things to which it applies: ethical and juridical duties, as also Kant notes: "The doctrine of right and the doctrine of virtue are therefore 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" (MS AA 6: 119). There are duties in common between the two spheres: "*Die Ethik […] hat (Pflichten) doch auch mit dem Rechte Pflichten*" (MS, AA 6: 220).

[12] "die Handlung, die geschehen soll, objective als notwending vorstellt".

[13] This aspect of *Gesetz* is recognised also by Boot, 2017.



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This statement makes the distinction between the two lawgivings more complex, because the conditionality of the verb "*sein kann* (*äußerlich*)" provides a case in which the juridical lawgiving may turn out to be internal. A further signal to reinforce this thesis is provided by the presence of the "also (*auch*)" conjunction. Such internal side is then specified:

> It is an external duty to keep a promise made in a contract; but the command to do this merely because it is a duty, without regard for any other incentive, belongs to *internal* lawgiving alone […] while there are many *directly ethical* duties, internal lawgiving makes the rest of them, one and all, *indirectly ethical* (*MS,* AA 6:220; Kant 1996, p. 22. Italics is ours).

To define a duty as a duty of right is irrelevant the presence of an inner incentive [*Triebfeder*]. Even in those cases in which the incentive is internal and based on the idea of duty itself, this does not change the duty's characterization, because it is the fulfilment or omission of an action to constitute its juridical nature.

When the internal incentive is present, it is considered irrelevant by juridical lawgiving because it has nothing to do with the assessment of a good action, namely its conformity with right. Sharing a feature – as the internal incentive based on the idea of duty itself – with duties of virtue is not essential to the definition of duties of right.

However, the irrelevance of an inner incentive does not mean that this inner incentive (*innere Triebfeder*) cannot exist in juridical lawgiving. Thus, duties of right can be enforced by the inner incentive of duty and be "indirectly ethical", providing an example of indirect sharing between ethical and juridical lawgiving that allows them to occupy the same area of obligation. Moreover, one may wonder whether some duties of virtue can be conceived as "indirectly juridical" as well.

Kant never mentions such term, but the further distinction he draws between *Moralität* and *Legalität* can be useful here. These two terms refer to different conformities of an action to a normative standpoint or a law:

> The mere conformity or nonconformity of an action with law, irrespective of the incentive to it, is called its *legality* (lawfulness); but that conformity in which the idea of duty arising from the law is also the incentive to the action is called its *morality* (MS AA 6: 219; Kant 1996, p. 20).[14]

In indirectly ethical duties of right what is *indirect* is the *Moralität*, the fact that they show a "conformity with ethical laws", which requires that the law be also the subjective ground of determination. In other words, these duties can be compliant to *Moralität.*

Similarly, if we want to investigate the possibility for "indirectly juridical" duties of virtue, the term *indirect* can be referred to the possible *Legalität* of these duties. Possible

[14] On *Moralität* and *Legalität* see also MS AA 6:225; KpV AA 5:81.

candidates are meritorious duties (*verdienstliche Pflichten*), duties that "goes beyond the law of duty for actions and makes the law itself also the incentive". These are duties of virtue that implies a respect for Right [*Achtung für das Recht*]. This kind of duties goes beyond the concept of juridical duty and presupposes it[15], or in Kant's words "widens one's concept of duty beyond the concept of what is *due (officium debiti)"* (MS, AA 06: 391; Kant, 1996, p. 153).

Meritorious duties and indirectly ethical duties of right are two sides of the same coin. While in the case of indirectly ethical duties of right the law as incentive is present but implicit (as *Moralität*), in meritorious duties the implicit element is the action in conformity with law (as *Legalität*). Thus, meritorious duties can be labelled under the term "indirectly juridical" in the sense that they require duties of right as their precondition, even if those are not considered a necessary aspect of their definition as ethical duties. "Ethical lawgiving […] does take up duties which rest on another, namely an external, lawgiving by making them, *as duties*, incentives in its lawgiving" (MS, AA 6: 219, Kant 1996, p. 20). In this sense, ethical lawgiving can imply *Legalität*.[16]

Meritorious duties and indirectly ethical duties of right are examples of the fact that juridical and ethical lawgiving can develop a relation of *indirect sharing*, which occurs when they occupy the same area of obligation. The distinction between incentives proves to be unsatisfactory since it fails to grasp implicit but important features of ethical and juridical lawgiving: their agreement and their indirect sharing. Therefore, in the next sections this paper aims to provide a comprehensive and more detailed account of the whole process that Kant calls lawgiving (*Gesetzgebung*) and its specification in ethical or juridical.

## 3. Linearity and Mediation

In the introduction of the *Metaphysics of Morals*, Kant analyses the main differences between the ethical and juridical lawgiving:

> That lawgiving which makes an action a duty and also makes this duty the incentive is *ethical [welche eine Handlung zur Pflicht und diese Pflicht zugleich zur Triebfeder macht, ist ethisch*]. But that lawgiving which does not include [*nicht im Gesetze mit einschließt*] the incentive of duty in the law and so admits an incentive other than the idea of duty itself [*andere Triebfeder als die Idee der Pflicht selbst zuläßt*] is *juridical [juridisch]*. It is clear that in the latter case this incentive which is something other than the idea of duty must be drawn from *pathological* determining grounds of choice,

[15] This is what Höffe has called the *Moralität* as "*Überbietung*" of *Legalität*, see Höffe, 1983, p. 185; see also Höffe, 2001, p. 111.
[16] There is neither full identification of Legality with Right, nor full identification of Morality with Ethics. On this point, see also Höffe, 2001, pp. 105-118; Ponchio, 2011, pp. 141-148.


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> inclinations, and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not an allurement, which invites (*MS*, AA 06, 219; Kant, 1996, p. 20).

The specific nature of each lawgiving is given not so much by the incentive, but more specifically by the *connection* between law (*Gesetz*) and incentive (*Triebfeder*). As Kant states in another passage: "The doctrine of right and the doctrine of virtue are distinguished […] by the difference in their lawgiving, which connects one incentive or the other with the law [*Triebfeder mit dem Gesetze verbindet*]" (*MS*, AA 06: 220, Kant 1996, p. 20).

In ethical lawgiving objective and subjective ground of determination must have a necessary connection, which Kant describes in the shape of a coincidence. The ethical incentive is characterised by the idea of duty as subjective ground of determination of our choice. Duty requires a self-motivating force and Kant defines "the cultivation of morality" [*Cultur der Moralität*] as the ability "to do his duty *from duty* (for the law to be not only the rule but also the incentive [*die Triebfeder*] of his actions)".[17]

On the contrary, the description of juridical lawgiving seems to imply that in its process there is no such necessary coincidence between duty as a subjective incentive and objective law. Kant describes as a *non-inclusion* – Kant uses the verb *nicht einschließt* – the connection between law and the idea of duty as internal *Triebfeder*.

Indeed, as the passage above states, juridical lawgiving admits (*zuläßt*) different incentives, those derived from pathological determining grounds. The verb "admits" regarding juridical lawgiving implies the same possibility suggested by the verb "may be (external)" regarding duties of right. The juridical lawgiving can have the idea of duty as inner incentive, but it also implies a broader range of incentives, that stem from a non-exhaustive list of sources, even inclinations and aversions, whose common attribute is to be considered pathological.

In summary, the ethical lawgiving is described as a linear process, which directly unites duty to action. Duty becomes incentive, which is in turn the principle upon which the agent chooses to act and whose linear effect is logically represented by the action. We call this process *ethical linearity*. With this term, we imply necessary coincidence, namely a direct and straight connection, between the subjective principles of action in the agent and the objective law.

Conversely, the juridical lawgiving gives rise to an "inclusive disjunction", as even Baiasu (2016, p. 38) has pointed out recently. The disjunction implies two alternatives: a linear process, that directly connect duty to incentive and action, or a different and divergent process in the connection of *Gesetz* and incentive and action. However, it is inclusive: the disjunction is true when either or both of its constituent modalities are true.

Thus, it involves a meta-enforcement process that we call *juridical mediation*, which can consist in either or both of two different modalities of enforcement for the law.

[17] In ethical lawgiving "the law makes duty the incentive [*daß das Gesetz die Pflicht zur Triebfeder macht*]" implies an identification of duty as *law* and duty as *incentive*, in the sense that the ethical categorical imperative displays its self-motivational force (see *MS*, AA 06, p. 218; Kant, 1996, p.19).

It leads to the possibility of non-coincidence and dissimilarity between the subjective principles of action in the agent and the objective law, resulting in a divergent process between those two. When this happen, the representation of the law is mediated and enforced by incentives that are a *datum* – they must be drawn (*hergenommen sein müsse*) – for the agent, who receives them from an external source. Fig. 1, below, shows the differences between the two lawgivings:

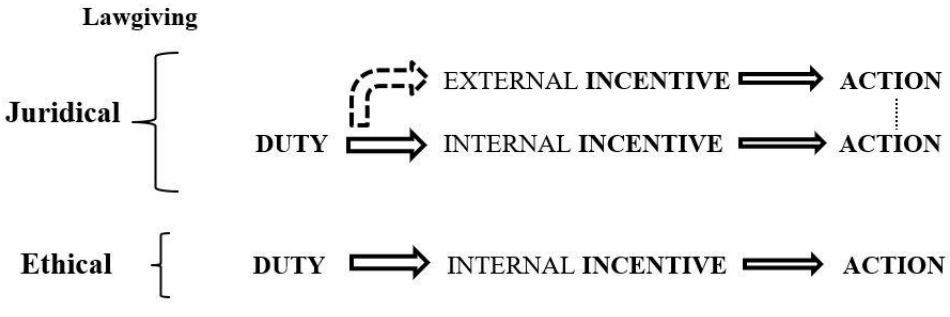


Diagram showing the differences between juridical and ethical lawgiving starting from MS, AA VI 219.

**Fig.1**

The element of law [*Gesetz*], as the objective element of representation of a law, is present in both processes. Thus, we can find a connection between law – represented in the concept of duty in the diagram above – and incentive also in the process of juridical mediation. In this scenario, the distinction in internal or external is applied to the incentive, to the subjective principle in lawgiving. And the incentive is also the changing element between a linear form and a divergent form.

However, the notions of mediation and linearity that we are proposing in this paper have the advantage of individuating a peculiar difference between ethical and juridical lawgiving. Such difference lies in the fact that the ethical is a necessary self-determined and direct modality of lawgiving (linearity), whereas the juridical can involve a divergent modality. Namely, it is a partially self-determined modality of lawgiving, in which external elements can be introduced to facilitate and direct the process (mediation).

Nonetheless, this does not imply that the juridical lawgiving excludes a linear form between law and incentive. Indeed, such linear connection between law and incentive can take place in the juridical lawgiving, but without being characterised by the same necessary nature that is inherent in the ethical lawgiving. The notions of linearity and mediation emphasize also that the peculiar difference (*die Verschiedenheit*) between ethical and juridical lawgiving is described as a *connection* (*MS*, AA 06: 220, Kant 1996, p.20), and does not merely rely on the nature (internal or external) of the incentive.

From a normative perspective, what we call "juridical mediation" is a term that allows two modalities of enforcement that are not excluding to one another: a linear form with an internal incentive or a divergent one with external incentives. The strict linearity is



***CON-TEXTOS KANTIANOS***
**International Journal of Philosophy**
**N.º 13, June 2021, pp. 344-364**
**ISSN: 2386-7655**
**Doi: 10.5281/zenodo.4899269**

necessary in the case of ethical lawgiving, which requires the law to be coincident with the incentive. Instead, juridical lawgiving can conform its process to either a linear or divergent form, or both. The coincidence between law and incentive (i.e., linearity) is a non-inclusive property in a strict juridical divergent form, but this does not mean that it is an excluding property in juridical lawgiving as such.

One might be tempted, according to the distinction between internal or external subjective principles or incentives, to conclude that the whole process and the other elements in each lawgiving are thus characterised as internal or external. Kant himself seems to admit that.[18] Such a distinction is just one of the available perspectives to describe these two modalities, or these two forms of obligation (*Art der Verpflichtung*) as Kant calls them (*MS*, AA 06: 220; Kant 1996, p. 22). According to such specific perspective, Kant is then authorized to distinguish between an *internal* or *external* obligation.[19]

However, even if the distinction between internal or external in relation to incentives does constitute a valid criterion to understand the functioning of each lawgiving, it risks neglecting some of their peculiar aspects. Kant's insistence on incentive has been often mistaken in the literature for a claim that Right excludes inner elements *per se*, while Ethics excludes external elements *per se*.

This relevance of the incentive is also one of the core assumptions in the debates on the relation between the universal law of Right and the categorical imperative. In fact, much has been discussed on the possibility or impossibility of grounding coercive external incentives – as the juridical ones – on the unconditionality and necessity of the categorical imperative. The most interesting positions are divided between pro-independence perspectives, such as those of Willaschek (1997; 2002; 2009; 2012), Wood (2002) and others, and pro-dependence perspectives, such as those sustained by Höffe (1989), Guyer (2002), Baiasu (2016) and others. In the last part of the paper, we specify the nature of this relation according to our perspective and clarify the complex relation between juridical lawgiving and "internalisation" on the one side, and ethical lawgiving and "externalisation" on the other.

## 4. Internalisation and Juridical Lawgiving

The incentive in juridical lawgiving is mainly a pathological one, where choice can be affected through *stimulus*, sensible impulses.[20] However, with this statement Kant does

[18] *MS*, AA 06:220; Kant, 1996, p. 21. However, in this passage Kant claims that "Ethical lawgiving (even if the duties might be external) is that which *cannot* be external; juridical lawgiving is that which can also be external". Accordingly, there is neither a *full identification* of ethical lawgiving with internal, nor of the juridical with external.

[19] *VE*, 41; *Collins*, XXVII 272.On this point, see the first paragraph. See also Kant's courses on Moral Philosophy: *Mrongovius II*, XXIX 611-619; *Powalski*, XXVII 131-133, *passim*. Furthermore: *Feyerabend*, XXVII 1326.

[20] *MS*, AA 06:213; Kant 1996, p. 13. See also *KrV*, A 534/B 562. Punitive prudential incentives and other natural [*physisch*] means are present in juridical lawgiving, *MS*, AA 06:381; Kant, 1996, p. 146.

not want to reduce the juridical sphere to a mechanism, whose laws are similar with the laws of nature. Juridical and ethical are both normative processes of freedom, they are both laws of freedom (*Gesetze der Freiheit*).[21]

Instead, the term "pathological" describes a modality through which the representation of the law becomes mediated and not considered a spontaneous activity of the agent. In other words, the universal law of right, that is the norm governing the juridical sphere, admits to being mediated: it may be enforced in its proper activity by instrumental elements that are outside it, as pathologically determined incentives.

Nonetheless, the coercive aspect in juridical lawgiving does not lead us to conceive the juridical as dependent upon those instrumental and external elements. In fact, the juridical lawgiving has its own inner objective validity, i.e., its rightness, due to the presence of law, *Gesetz.* This latter in the juridical sphere is the universal law of Right, that is in turn grounded on obligation, on law that commands categorically before any distinction.

The *Gesetz* does not provide mere rules of skills (*Regeln*) or counsels of prudence (*Ratschläge*), but the unconditionality, necessity and universality of the categorical imperative (GMS 4:416; Kant 1997, p. 27). Thus, even if accompanied and enforced by external incentives, it provides to the juridical sphere its inner and objective normative status. Both juridical and ethical spheres are expressions of autonomy and pure practical reason, and the distinction between incentives is still only a subjective distinction between two objective moral lawgiving.[22]

Moreover, the specification of juridical lawgiving as a *mediation* provides the possibility of alignment. In fact, this alignment is given in all those cases in which the universal law of Right is not followed out of external incentives, but for the sake of its own normative status. To put it in concrete terms, from a juridical perspective, agents can conform their incentives to duty, adopting the same linearity of ethical lawgiving. However, in this way the juridical process is not simply turned into an ethical one. This is the thesis sustained by Willascheck (1997, p. 86; 2009, p. 49), who argues that the prescriptive and normative character of juridical lawgiving can be considered only from an ethical perspective. There are two reasons for rejecting such thesis.

First, as we have seen in the case of indirectly ethical duties of right, the legal compliance is still the most relevant aspect, even if the presence of the internal incentive makes these duties a matter of *indirect sharing* between ethical and juridical lawgiving.[23]

Thus, from a perspective on action [*Handlung*], there is not an identification of juridical linearity with ethical linearity *tout court*. Indeed, these kind of duties does not lose

[21] *MS,* AA 06:214; Kant, 1996, p. 14. On this point, see also the first paragraph.
[22] See also Baiasu, 2016, who raises this point addressing the limited scope of independentist accounts of Right.
[23] However, this is not equivalent to say that an overlapping of lawgivings occurs in all cases. There is a space where "it does not follow that the *lawgiving* for them (duties of right) is always contained in ethics: for many of them it is outside ethics" (*MS,* AA 06: 219; Kant, 1996, p. 20). This is the case of strict right, on which we return later.


***CON-TEXTOS KANTIANOS***
**International Journal of Philosophy**
**N.º 13, June 2021, pp. 344-364**
**ISSN: 2386-7655**
**Doi: 10.5281/zenodo.4899269**

what Right is supposed to ensure in the first place: *Legalität,* the conformity of external actions with law, irrespective of the incentive (internal or external).

The *Legalität* remains in indirectly ethical duties of right; beyond this, the perspective of the *Moralität* is added. In the case of keeping a promise 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 AA:220; Kant 1996, p. 22). Kant does not use the attribute ethical, but *internal*.

The element that allows an *indirect sharing* between ethical and juridical lawgiving is the common ground they have in common: Morality, in the shape of moral obligation. This latter is the peculiar feature of an *internal* lawgiving as such. Thus, a second way to criticise the thesis according to which the normative nature of juridical lawgiving can be such only from an ethical perspective is to show how the juridical lawgiving has its own prescriptive nature. The subjective modality of enforcement of the categorical command *admits* to being mediated in the juridical sphere, but this does not change the objective nature of the juridical sphere.

What we define as "juridical linearity" is not equivalent to "ethical linearity", because within the former it is normatively contained the character of contingency in relation to its subjective modality of enforcement: its linearity is not necessary, because there is always the possibility that incentives can be drawn from the outside and its law can be mediated. However, this does not imply that the law loses its own normative and prescriptive force.

By contrast, ethical linearity implies a necessary subjective modality of enforcement, that does not contain the character of mediation. What we call "strict juridical divergent form" is what Kant defines as *strict right*, that requires only external grounds for determining choice and is "not mingled with anything ethical" and "any precepts of virtue" (MS, AA 6:232, Kant 1996, p. 25). Strict right depends upon coercion, which seem at first incompatible with the categorical imperative and its prescriptive nature.

This argument is often used to ground a full independence of the universal law of Right from the categorical imperative (Wood, 2002), or also a relative dependence (Ripstein 2009; Guyer 2002; Habermas 1996), which relies on the assumption that the categorical imperative must be limited or extended in its scope in the case of juridical lawgiving, due to the coercive and external nature of the latter. However, in those theories on the relation between the two spheres of *Sitten* there is often an undue identification between moral obligation and ethical obligation, where the latter requires necessarily to be enforced by the inner incentive of duty, i.e., the ethical incentive (Willascheck 1997).

Instead, in Kant "internal obligation" as moral obligation is not an equivalent to "ethical obligation" *tout court*, because the latter is just a sub-part of the former, that we have called *ethical linearity* and requires that the internal obligation constitutes necessarily also the internal incentive. Thus, from the necessary character of ethical linearity does not stem an ethical account of obligation and its normativity.[24] As a matter of fact, the juridical

[24] On this point, see also Pauer Studer, 2016, who argues that there is a motivational internalist account of first-personal ethical obligation but not for normative validity in general.

lawgiving remains an internal one, even if it is accompanied and mediated by external incentives, because in Kant there is an internalist account of obligation. The external obligation of the juridical lawgiving is larger than internal, because it is at the same internal (v-Mo/Collins, AA 27:271; Kant 1997, p. 62).[25]

The internal obligation for each lawgiving is given by *Gesetz*, the objective law, that provides the representation of dutifulness of an action (MS, AA 6: 218; Kant 1996, p. 19). These laws are respectively the universal law of Right and the ethical categorical imperative, and both stem from moral obligation, whose formal reshaping is the categorical imperative.[26]

The Universal law of Right and the ethical categorical imperative involve the same constraint (*Zwang*) of moral obligation, and they differ from each other regarding the different subjective modalities of enforcement. The ethical categorical imperative commands that the incentive is necessarily characterised as a *Selbst-Zwang*; the universal law of Right commands that the incentive is an *äußere Zwang*. However, this does not exclude the possibility of a *Selbst-Zwang*.[27]

When this happen, the self-modality of constraint is considered contingent and silent. Nonetheless, this is still an option on the table because juridical lawgiving stems from the moral internal obligation. The inner character related to *Zwang* is present in both modalities of enforcement for the universal law of Right. Thus, the coercive and external nature of the juridical lawgiving is not in contrast with moral obligation, rather it is one of its possible modalities of enforcement.

## 5. Externalisation and Ethical Lawgiving

Ethical lawgiving is devoted to "laws for maxims and not for actions" (*MS*, AA 06:389; Kant 1996, p. 152). Actions in ethical lawgiving are internal, where internal means that they deal with the dynamics between will and choice, between law and maxims. In ethical actions there is a kind of *Legalität*, as a conformity with law, even if this legality is not a conformity of external actions with law as in juridical lawgiving. It is indeed a

[25] "External obligations are greater than internal, for they are simultaneously internal, whereas the latter are not simultaneously external. Obligatio externa already presupposes that the action as such is subordinated to morality and is therefore interna; for the obligatio externa is an obligation because the action is already one in the internal sense. For in that the action is a duty, that makes it an internal obligation, but because I can still compel a man to this duty at my own behest, it is also an obligatio externa" (V-Mo/Collins 27:270; Kant 1997, p. 62).

[26] Höffe identifies the relation of Right and Ethics as a juxtaposition and introduces a general categorical imperative from which the two can be derived. See also Bacin 2016; Ludwig 2002 on such relation of normative continuity between the two. On the notion of a categorical imperative of Right (*Kategorische Rechtsprinzipien*) as promoted by Höffe, see Höffe 1990 and for a comprehensive overview on such notion and Höffe's works see Pirni 2005 (pp. 27-80) and 2020.

[27] See on this point MS AA 6:381; MS AA 6:220.



*CON-TEXTOS KANTIANOS*
**International Journal of Philosophy**
**N.º 13, June 2021, pp. 344-364**
**ISSN: 2386-7655**
**Doi: 10.5281/zenodo.4899269**

lawfulness that is related to one of the two aspects of law: the letter of the law as legality, rather than to the spirit of the law as morality.[28]

From a normative perspective, the legality as conformity (*Gesetzmäßigkeit)* is a presupposition to morality (MS AA 6:219). The legality of ethical actions consists in "the immediate representation of the law and the objectively necessary observance (*Befolgung*) of it as duty" (KpV AA 5:151; Kant 2015, p. 121). An agent can act ethically according to a law (*Gesetz*) that gives the representation of the dutifulness of an internal or also of an external action, even if this representation remains inner: "Ethical lawgiving, while it also makes internal actions duties, does not exclude external actions, but applies to everything that is a duty in general" (*MS*, AA 06, p. 219; Kant, 1996, p. 20).[29]

The law represents an action as objectively necessary and it can be "a possible determination of choice" (MS AA 6:218; Kant 1996, p. 19), as Kant states in the introduction to the *Metaphysics*. As we already noted, in ethical lawgiving this possibility must be turned into a necessity: objective and subjective ground of determination must have a necessary connection, that Kant describes in the shape of a coincidence.

Nonetheless, this does not lead to endorse the objective necessity of the action and, thus, a normative and consequentialist interpretation of the ethical process.[30] In Ethics laws are of wide obligation and leaves a *latitudo* for the choice in observing and fulfilling duties (MM 6: 390). Laws of wide obligation determine only the type of obligation to the action, not its degree (*Vigilantus*, 27:536).

Exercising latitude in performing a duty does not exclude the normative significance of ethical actions. [31] We have rationally optional "good" actions that stems from the incentive of duty, and whose representation is objectively necessary. However, the ethical necessity does not rely on the output of the process but rather on the form this process has. The distinction between the output and the form is also the distinction between many *Tugendpflichten* as the material and concrete side of the incentive based on duty, and the *Tugendverpflichtung*, "as the subjective ground of determination for fulfilling all one's duties" (*MS,* AA 06: 410). This latter must be supported by a direct and straight

[28]This point is also highlighted by Ponchio (2011, p. 142), who individuates three possible meaning of legality in Kant.

[29] For example, as Kant states, benevolent maxims have the possibility to result in an act of beneficence, with "physical results [*physische Folgen*]" (MS AA 06:455; Kant 1996, p. 203). On beneficence [*Wohltun*] as beneficent action or deed, see Moran, 2017, p. 323.

[30] This interpretation is endorsed for example by Cummiskey, 1990, who claims that the starting point of ethical lawgiving are some given ends and that there is no role for agents in the prioritization of some ends in respect to others.

[31] We argue that the action as *Tugendpflicht* is rationally optional *and* is performed by the motive of duty. We agree with Lockhart, 2017, when she claims that an action can be necessary and rationally optional at once, so the latitude of ethical duties is not in conflict with the cognition of the objective necessity of the law, given by the incentive of duty. Lockhart relies on an *a priori* conception of rational necessity, according to which "necessary actions are those that can be justified (cognized as good) without reference to a contingent *motivational source* on the part of the agent" (Lockhart, 2017, p. 28). This latter is expressed in the concept of negative freedom of the *Willkür*, but in this paper we rather prefer to give relevance to the positive conception of freedom of the *Willkür*- i.e., choice can be determined ["*bestimmt werden kann*", *MS*, AA 06: 213] by pure practical reason- and identify in it the reason why a rational necessity of moral action could follow. This serves us to strengthen the conception of ethical lawgiving as an activity.

connection between the representation of the law in the will, and the adoption of duty as incentive in the maxims by the power of choice.

In the possible connection between incentive and law, agents have "no way to measure the degree [*Grad*] of a strength [*Stärke*] except by the magnitude of the obstacles [*Größe der Hindernisse*] it could overcome (in us, these are inclinations) [*in uns die Neigungen sind*]" (*MS*, AA 06:396-397; Kant 1996, pp. 157-158). Agents cannot measure the grade of their external actions but can experience the magnitude of obstacles inside them. These obstacles are inclinations that stem from sensible impulses, from pathologically and externally determined incentives. There may be an opponent [*Gegner*] that is experienced inside the dynamics of choice (*Willkür*) and that leads to a conflict between two sources of determination: inclinations and reason (MS AA 06: 380; Kant, 1996, p. 45). The adoption of a *Triebfeder* requires in its *a priori* process an external dimension inside its own inner perspective.[32]

What we call *ethical linearity* must be always informed by an autonomous and self-determined choice from within, in every moment.[33] The possibility of deviating from ethical linearity is an inner nemesis that can never be eliminated completely. Therefore, with the term "externalisation" in relation to ethical lawgiving we are referring to two different issues.

First, there are external incentives that are experienced even inside the dynamics of human will, in the connection of incentive to law. This is a negative perspective on externalisation when we refer it to ethical lawgiving.

Second, there may be a positive perspective on externalisation in ethical lawgiving. This implies that the ethical lawgiving has a material and concrete side in its normative process when the representation of the objective necessity of law – its cognition and awareness – becomes self-imposed through its adoption as an inner incentive. This self-imposition of the observance (*Befolgung*) of law is decided within choice (*Willkür*), independently from any inclinations and external incentives and determined by pure practical reason alone.[34]

Thus, the *externalisation* of this observance does not refer to the nature of its source, but in the fact that it requires a proper *activity* to carry out its content: the *making* of duty also the incentive, and the formulation of maxims that are in conformity with duty. As sustained in the paper, such activity constitutes the process of ethical linearity.

Ethical linearity gives a normative indication: the advance and progress of the ethical process is given and conditioned by the form it has. If a deviation occurs, it happens because the connection between law and incentive is not anymore self-imposed exclusively

[32] See on this point also Pirni, 2006, pp. 145-155. Virtue consists in "the capacity and considered resolve to withstand [*Widerstand zu thun*]" obstacles, *MS*, AA 06:380; Kant, 1996, p. 145. The resolve to withstand [*Widerstand*] in opposition to obstacles [*Hindernisse*] can be found also in the juridical sphere, see *MS*, AA 06:231; Kant, 1996, p. 24.

[33] See also *MS*, AA 06:383; Kant, 1996, p. 147 on this point.

[34] This is the positive conception of freedom of the *Willkür*- i.e., choice can be determined ["*bestimmt werden kann*", *MS*, AA 06:213] by pure practical reason. On this point, see also Pirni 2006, p. 147.



***CON-TEXTOS KANTIANOS***
**International Journal of Philosophy**
**N.º 13, June 2021, pp. 344-364**
**ISSN: 2386-7655**
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within the agent's own will but is instead a form that is accompanied in its functioning by other sources outside the agent's will. Formally regarded, actions in the ethical lawgiving are the material and concrete side of practical reason's activity, whose direction is given and established by the inner and straight relation between the agent's will and choice. Ethical lawgiving relies on the possibility of "drawing a line"[35] and on the capacity to autonomously exercise rational self-determination.

## Conclusions

According to the analysis carried out, we have seen how the distinction between ethical and juridical lawgiving can be re-described, starting from a thorough analysis of the Kantian text. In the first paragraph we showed how the ethical and the juridical lawgiving stem from a common source identified in the concept of *obligatio* (§1).

Then we demonstrated how and to what extent the distinction between the two lawgivings cannot be conceived as a distinction based exclusively on the nature of their incentives, since in this way there is the risk to neglect two of their fundamental characteristics: (a) lawgivings can *reach an agreement* (*übereinkommen*) and, thus, the representation of an action to be done could coincide in ethical and juridical lawgiving; (b) lawgivings can have an *indirect sharing*, namely they can share the same area of obligation, as happens in the cases of indirectly ethical duties of right and meritorious duties (§2).

Subsequently, we recognised the peculiar *discrimen* between ethical and juridical lawgiving in the different *connection* they establish between law and incentive. We described the form of ethical connection as *linearity*, understood as a necessary self-determined process between law and incentive. Conversely, we called *mediation* the juridical form of connection, defining it as a partially self-determined process between law and incentive (§3).

Indeed, juridical lawgiving allows an inclusive disjunction between two possibilities of enforcement: a non-necessary self-determined form between law and incentive (*juridical linearity*) or a divergent form between law and incentive (*strict juridical divergent form*). This led us to explore whether and in which ways the juridical

[35] In a passage of the *Critique of Pure Reason* Kant explicitly uses the analogy of "drawing a straight line", when at stake is the relation between reason's ideas as ideas of totality on one hand, and phenomena in the sensible world at the other. Kant states that the indefinite progress is the kind of progress in which the idea of the totality is not a presupposition, a *datum*, but something that is capable of being given, *dabile*. We can compare this passage to our conception of ethical linearity, whose advance does constitute an indefinite line, with no quantifiable and precise content, and in which the representation of the law is not mediated, a *datum*, namely it is not received as a presupposition from an external source (as in the case of juridical mediation). In the ethical sphere, there is not the prescription of a precise phenomenal content (i.e., "to stop extending"), but the possibility for a latitude in free and self-legislated actions (i.e., "as far as you want"). The predominant focus is on the form that agents may give - as lawgivers - to this positive space. See Kant *KrV*, A510-12/B 538-40; Kant, 1998b, pp. 521-523. See also Munzel, 1999, p. 171 on this point, who analyses such passage in the Kantian text and relates it to the progress of moral character.

lawgiving comprises an element of internalisation, understood as an own inner normative validity that does not depend upon instrumental and external elements. Indeed, even if juridical lawgiving involves the possibility of being enforced and mediated by external incentives, we showed how it still has its own inner and normative force in the objective principle of law (*Gesetz*), in the shape of the universal law of Right that derives its normativity from the inner moral obligation (§4).

Similarly, even if the ethical lawgiving does not allow an external and pathological incentive, we asked whether there was an element of externalisation in such lawgiving. We identified such element in the self-imposition of the observance (*Befolgung*) of law as incentive, that we understood as the activity of the faculty of the will as a whole (§5).

In conclusion, we decided to describe the distinction between the two normative processes as a distinction of forms of moral obligation (*Art der Verpflichtung*, MS 6:220) in the connection between law and incentive, and we individuated such forms in the two notions of linearity and mediation. The traditional distinction between the nature of incentives is merely a subjective distinction between two objective moral lawgivings, whose respective nature and peculiarities stand in need of a thorough re-consideration starting from the moral obligation they share.

## References

Bacin, S. (2016), "«Only one obligation»: Kant on the Distinction and the Normative Continuity of Ethics and Right", *Studi Kantiani*, 29, no.1, pp. 77–90.

Baiasu, S. (2016), "Rights' Complex Relation to Ethics in Kant: The Limits of Independentism", *Kant-Studien*, 107, no.1, pp. 2–33.

Beck, L. W., (1960), *A Commentary on Kant's Critique of Practical Reason*. University of Chicago Press, Chicago and London.

Boot, E., (2017), "Kant and the In(ter)dependence of Right and Virtue", *Ethic@. An International Journal for Moral Philosophy*, 16, no. 3, pp. 395-422.

Cummiskey, D., (1990), "Kantian consequentialism", *Ethics*, 100, no. 3, pp. 586–615.

Goyard-Fabre, S., (2004), *Philosophie critique et raison juridique*, PUF, Paris.

Goyard-Fabre, S., (1996), *La philosophie du droit de Kant*, Vrin, Paris.

Guyer, P., (2002), "Kant's Deductions of the Principles of Right" In: M. Timmons (ed.), *Kant's Metaphysics of Morals. Interpretative Essays*. Cambridge University Press, Cambridge, pp. 23–64.



***CON-TEXTOS KANTIANOS***
**International Journal of Philosophy**
**N.º 13, June 2021, pp. 344-364**
**ISSN: 2386-7655**
**Doi: 10.5281/zenodo.4899269**

Habermas, J., (1996), *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*. Cambridge University Press, Cambridge.

Höffe, O., (2001), *»Königliche Völker« - Zu Kants kosmopolitischer Rechts- und Friedenstheorie*, Suhrkamp, Frankfurt a.M.

Höffe, O., (1990), *Kategorische Rechtsprinzipien. Ein Kontrapunkt der Moderne*, Suhrkamp, Frankfurt a.M.

Höffe, O., (1989), "Kant's Principle of Justice as Categorical Imperative of Law". In: Y. Yirmiyahu (ed.), *Kant's Practical Philosophy Reconsidered*. *Papers Presented at the Seventh Jerusalem Philosophical Encounter*, Kluwer Academic Publishers, Dordrecht, pp. 149–167.

Höffe, O., (1983), *Immanuel Kant*, Beck, München.

Kant, I., (2015), *Critique of Practical Reason*. Translated and edited by M. J. Gregor. Revisited edition. Cambridge University Press, Cambridge.

Kant, I., (1998a), *Groundwork for The Metaphysics of Morals*. Translated and edited by M. J. Gregor. Cambridge University Press, Cambridge.

Kant, I., (1998b), *Critique of Pure Reason*. Translated and edited by P. Guyer and A. W. Wood. Cambridge University Press, Cambridge.

Kant, I., (1997), *Lectures on Ethics*. Translated and edited by P. Heath, J. B. Schneewind. Cambridge University Press, Cambridge.

Kant, I., (1996), *The Metaphysics of Morals*. Translated and edited by M. J. Gregor. Cambridge University Press, Cambridge.

Ludwig, B., (2002), "Whence Public Right? The Role of Theoretical and Practical Reason in Kant's Doctrine of Right", In: M. Timmons (ed.), *Kant's Metaphysics of Morals. Interpretative Essays*. Cambridge University Press, Cambridge, pp. 159–184.

Ludwig, B., (1998[2)] (1986), "Einleitung", in B. Ludwig (ed.), *Immanuel Kant: Metaphysische Anfangsgründe der Rechtslehre*. *Metaphysik der Sitten. Erster Teil.*, Felix Meiner Verlag, Hamburg, pp. xiii–xxxvi.

Moran, K., (2017), "Demandingness, Indebtedness, and Charity: Kant on Imperfect Duties to Others", In M. C. Altman (ed.), *The Palgrave Kant Handbook*, Palgrave, London, pp. 307–329.

Munzel, G. F., (1999), *Kant's Conception of Moral Character. The "Critical" Link of Morality, Anthropology and reflective Judgement*, University of Chicago Press, Chicago and London.

Lockhart, J. R., (2017), "Kant on the Motive of (imperfect) Duties", *Inquiry*, 60, no. 6, pp. 1–41.

Pauer Studer, H., (2016), "A community of rational beings: *Kant's* Realm of Ends and the Dinstinction between Internal and External Freedom", *Kant Studien*, 107, no. 1, pp. 125–159.

Pirni, A., (2020), "Le perenni 'forzi motrici' della filosofia pratica kantiana. Discutendo di un recente contributo di Otfried Höffe", *Studi Kantiani*, 33, no. 1, pp. 163–171.

Pirni, A., (2006), *Kant filosofo della comunità.* ETS, Pisa.

Pirni, A., (2005), *Filosofia pratica e sfera pubblica: percorsi a confronto. Höffe, Geertz, O'Neill, Gadamer, Taylor*, Diabasis, Reggio Emilia.

Ponchio, A., (2011), *Etica e diritto in Kant. Un'interpretazione complessiva della morale kantiana,* ETS, Pisa.

Potter, N. (2002), "Duties to onelself, Motivational Internalism, and Self-deception in Kant's Ethics", In M. Timmons (ed.), *Kant's Metaphysics of Morals: Interpretative Essays.* Oxford University Press, Oxford, pp. 371–389.

Ripstein, A. (2009), *Force and Freedom. Kant's Legal and Political Philosophy*. Harvard University Press, Cambridge, MA.

Willascheck, M., (2012), "The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance", *International Journal of Philosophical Studies,* 20, pp. 557–564.

Willascheck, M., (2009), "Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory*?", International Journal of Philosophical Studies*, 17, pp. 49–70.

Willascheck, M., (2002), "Which imperatives for Right? On the Non-Prescriptive Character of Juridical Laws in Kant's Metaphysics of Morals", In M. Timmons (ed.), *Kant's Metaphysics of Morals: Interpretative Essays.* Oxford University Press, Oxford, pp. 65-88.

Willascheck, M., (1997), "Why the Doctrine of Right does not belong in the Metaphysics of Morals", *Jahrbuch für Recht und Ethik,* 5, pp. 205–227.

Wolff, C., (1976) [1720]. "Vernüfftige Gedancken von der Menschen Thun und Lassen, zu Beförderung ihrer Glückseligkeit", In: C. Wolff, *Gesammelte Werke*, hg. von J. École, J.E. Hoffmann, M. Thomann, H.V. Arndt. Hildesheim, Olms, New York, Vol. IV, I.

Wood, A., (2002), "The Final Form of Kant's Practical Philosophy". In M. Timmons (ed.), *Kant's Metaphysics of Morals: Interpretative Essays*, Oxford University Press, Oxford, pp. 1–22.