

## Between Derivation and Independence: Testing the Moral Roots of Kantian Right

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Few questions in Kantian scholarship have proven as enduring and contested as that concerning the relationship between law and morality in Kant's practical philosophy. Does the *Doctrine of Right* (*Rechtslehre*) constitute a mere application of general moral principles, derived from the categorical imperative and the doctrine of autonomy, to the external realm of inter-personal interaction? Or does it rest upon an autonomous normative foundation irreducible to Kant's ethics? This fundamental question, which shapes nearly every substantive debate in Kant's legal and political philosophy, receives a sustained, multi-faceted treatment in *Law and Morality in Kant*, edited by Martin Brecher and Philipp-Alexander Hirsch. The volume assembles fourteen original essays by leading scholars in the field, offering what is arguably one of the most comprehensive and methodologically diverse treatments of this topic currently available in the English-language literature.

The editors identify two main desiderata that motivate the volume. First, despite the flourishing of research on Kant's legal philosophy in recent decades, represented by landmark monographs such as Arthur Ripstein's *Force and Freedom* (2009) and Allen W. Wood's various ethical studies, there has been no unified discussion of the fundamental normative questions of Kant's legal thought. Contributions have tended to concentrate either on legal philosophy or on moral philosophy, without adequately bridging the two sides of this divide. Second, a methodological divergence persists between more exegetical, historically oriented approaches and more analytically oriented contributions aimed at developing a normative Kantian theory for contemporary practical problems. The present volume takes up both tasks simultaneously. The essays range from close textual analysis of Kant's words to systematic, analytically rigorous engagements with the independence and derivation theses that have come to structure the literature.

The volume is organized into five thematic parts. The first part addresses the central question head-on, with four essays arguing for different positions along the spectrum between full derivationism and full independence. The second part examines legal coercion and punishment in light of the morality/law divide. The third part deals with three specific and often underexplored topics: moral luck, permissive law, and the provisional status of rights in the state of nature. The fourth part focuses on the concept of external freedom and its implications for legal non-positivism and political philosophy. The fifth and final part returns to the normative foundations of Kant's politics, with three essays on freedom, autonomy, and moral responsibility in the political domain. The result is a genuinely unified volume, even if it naturally reflects the productive disagreements among its contributors.

The volume opens with Marcus Willaschek's contribution, "Kant on Moral Universality and the Normative Foundations of Right", which sets the philosophical stage for what follows. Willaschek's central claim is that the debate between derivationist and non-derivationist interpretations has been consistently hampered by terminological confusion, in particular, by the failure to distinguish the Supreme Principle of Morals (SPM) that appears in the *Metaphysics of Morals* from the Categorical Imperative (CI) as introduced in the *Groundwork*. Willaschek argues that the Universal Principle of Right (UPR) can be understood as the result of bringing the idea of moral universality, shared between Right and Ethics, and captured in the SPM, to bear on the concept of subjective rights. Crucially, however, the SPM alone is not sufficient to derive juridical rights and duties: the normative validity of juridical rights must be additionally presupposed and cannot be derived from any more fundamental principle. Willaschek thus defends a "non-derivationist" position that is nonetheless attentive to the genuine moral credentials of Kantian Right. His essay is notable for its analytical precision in mapping the

logical space of possible independence/dependence relations between Kantian Morality and Right, a taxonomy that recurs, implicitly or explicitly, in several subsequent chapters.

Bernd Ludwig's contribution, "Kant's Direct Route from the Categorical Imperative to the Universal Law of Right", argues in pointed disagreement with Willaschek (and with the broader non-derivationist tradition) that derivationist readings have been systematically overlooked because they underestimate the simplicity and directness of Kant's own derivation of Right from Morals. For Ludwig, «[...] [a]ny obligation is ultimately based solely on the pure legislative will of the free being itself» (p. 38). That is, on autonomy, and the universal formula of obligation is the categorical imperative. Since Kant understands Right as a relationship of persons, and since personality is the «freedom of a reasonable being under moral laws» (*RL*, Intr. IV), the supreme principle of legal obligation follows directly from the CI. Ludwig's argument turns on a careful reading of *RL* §§ A and B together with the natural law tradition's concept of actions that cannot be done fulfilled in good faith (p. 40). His interpretation is bold and parsimonious, but raises the question of whether the derivation is genuinely *normative* or whether it merely shows that Right does not contradict morality.

Christoph Horn's essay, "Kant on the General Will Test and the Categorical Imperative Procedure", offers a subtly different approach. Horn argues that Kant's legal and political normativity is neither straightforwardly derivationist nor fully independent, but embodies a middle-ground that he calls the "General Will Test" (GWT): a non-ideal analogue of the categorical imperative that applies where ideal CI-compliance is not to be expected. The GWT and the CI are connected to non-ideal and ideal normativity respectively, a relation Horn illustrates through key passages in Kant's political writings, notably the Transcendental Formula of Public Right in *Toward Perpetual Peace*. This intermediate position is philosophically compelling, or at least attractive, but one might ask whether it achieves genuine conceptual clarity or merely relocates the explanatory problem: what, precisely, is the normative source of the obligation to comply with a "non-ideal" moral standard?

Sorin Baiasu's chapter, "Kant's Right as Normatively Independent", completes the first part by critically examining a specific strategy for defending the independence interpretation, leading to its rebuttal. The strategy relies on the claim that the UPR contains two mutually irreducible normative standards, one formal and another material, from which it would follow that derivationism faces the impossible task of deriving both from the purely formal CI. Baiasu argues that this two-standards interpretation cannot properly track Kant's own distinction between formal and material wrongdoing, since it fails to account for Kant's theory of imputation. The rejection of this independentist strategy provides, Baiasu suggests, indirect support for a «complex dependentist positions» (p. 90): one on which the UPR is not derived immediately from the CI, but from an intermediary principle.

The fifth chapter, Philipp-Alexander Hirsch's "Legal Coercion as a Moral Problem?", tackles the question of legal coercion directly. Hirsch's central argument is that, without grounding Right in Morality, coercion cannot even be understood as a normative problem. The reason is that for Kant, coercion becomes problematic only with respect to *persons*: beings who, as ends in themselves, have a legitimate claim not to be coerced. Law thus formulates the necessary conditions for the coexistence of autonomous rational beings and defines equal, relational freedom as a sphere of non-domination. Proponents of the independence thesis, Hirsch argues, cannot fully account for the normative bindingness of the very idea of equal relational freedom, since they sever the very moral roots from which that bindingness derives. Hirsch further argues that tracing coercion back to the limits of autonomy requires reopening the question of whether Kant can consistently oppose the external enforcement of internal perfect duties such as the prohibition of suicide, a question that the essay leaves productively open.

The sixth chapter, co-authored by Kate Moran and Jens Timmermann, "Should Criminals Be Punished for Their Folly?", takes legal punishment as its entry point. The central philosophical puzzle is this: if lawful behaviour can be induced by any motive, including prudence, then why does meaningful *responsibility* (and, thus, just punishment) presuppose that the agent had access to the ethical motive of respect for the law? Moran and Timmermann argue that, to make what the law prohibits properly illegal, an ethical foundation is required: agents who break the law must be capable of respecting it for its own sake, not merely as a prudential calculation. The essay advances a provocative claim: that punishing a criminal who acted purely out of miscalculated prudence would be as absurd as punishing someone for a mistake. While this argument has undeniable force, its dependence on a controversial picture of the relationship between legal deterrence and moral psychology deserves further scrutiny.

Ralf M. Bader's essay, "Morality, Legality, and Luck", addresses the thorny and somewhat underappreciated issue of moral luck. The standard reading holds that Kant's focus on maxims rather than consequences is motivated by the desire to insulate morality from the contingencies of luck; and that, precisely in this respect, legality opens a significant gap between Ethics and Right, since law is inevitably concerned with the external effects of actions. Bader challenges this picture by arguing that Kant's focus on maxims is not motivated by, and more significantly, is not even sufficient for, the avoidance of all moral luck. The kinds of luck Kant seeks to exclude are *circumstantial* and *constitutive* luck, not *resultant* luck regarding the consequences of actions. On this reading, there is no fundamental asymmetry between Ethics and Right with respect to luck, which in turn supports the possibility of a unified account of morality and legality. The essay presents itself as one of the most conceptually inventive in the volume, and Bader's finely grained taxonomy of types of moral luck incites a careful study.

Martin Brecher's contribution, "Kant on Permissive Law", offers a meticulously argued reinterpretation of one of the most contested and philosophically challenging concepts in Kant's legal philosophy: the *Erlaubnisgesetz* (permissive law). Against the dominant reading, according to which permissive laws

suspend moral demands, Brecher argues that Kant's permissive law should be understood as a kind of *moral licence*: not a permission to do what is otherwise morally wrong, but a specification of the conditions under which certain otherwise-prohibited actions are, genuinely, allowed. Through close readings of *Toward Perpetual Peace* and the *Doctrine of Right* (§§ 2, 6, and 17), Brecher argues that permissive laws denote legal *capacities* to place others under enforceable obligations, subject to conditions arising from the fundamental prohibition of omni lateral will-imposition. This reinterpretation has significant consequences for our understanding of property acquisition, contract, and the transition from the state of nature to civil society.

Alice Pinheiro Walla's chapter, "Bridging the Juridical Gap", examines the concept of *provisionality* in Kant's legal writings. She begins by foregrounding the problematic status of rights in the absence of political institutions: such rights are necessarily provisional, in the sense that they cannot be conclusively established without a public legislator. Pinheiro Walla first analyses the need to discharge juridical duties through personal virtue when political institutions are absent, arguing that this introduces complications overlooked by readings that treat Kant's theory of provisionality as a form of non-ideal theory or "transitionality". On her account, addressing legal wrongs through mere benevolence is incompatible with the dignity of right-holders, and the civil condition is required not as a regulative ideal but as a genuine moral necessity, a strong argument has direct implications for contemporary debates on global justice and stateless persons.

George Pavlakos's chapter, "The Kantian Legal Relation as Radical Non-Positivism", introduces a novel Kantian approach to the debate between legal positivism and non-positivism. Pavlakos argues that contemporary legal non-positivism retains a positivist commitment insofar as it assigns explanatory priority to institutional rules over legal relations. Drawing on Kant's UPR as a pre-institutional moral principle, grounding *omnilateral* demands of rightful action, Pavlakos defends a "radical non-positivist" account in which legal relations enjoy explanatory priority over legal practices. The key thesis is that freedom as independence already constitutes a layer of *interdependent agency*, a collective subject, essentially, prior to any institutional mediation, which means that relations of justice are not grounded in institutions but already constitute an interpersonal structure of normative reasons, what Pavlakos calls a «natural public law» (p. 219). The argument is ambitious and illuminating, though readers may wonder whether the appeal to a pre-institutional omni lateral will can be sustained without covertly relying on the very institutional forms it purports to explain.

Japa Pallikkathayil's contribution, "What is External Freedom?", develops a specific conception of external freedom as independence with an irreducibly normative core: one is independent from being constrained by another's choice insofar as one has an effective *right* against being constrained by them. The innate right to freedom is therefore, at its core, the right to have a secure place in a system of equal rights. This normative conception of independence, Pallikkathayil argues, not only grounds the necessity of the State but also imposes substantive constraints on what the State may do: it requires democratic governance and entails constitutional requirements that constrain legislative action. The essay engages in direct dialogue with Ripstein's account, demonstrating that the normative conception of external freedom avoids certain objections that afflict his more relational-empiricist formulation.

J. P. Messina's essay, "Two Conceptions of Freedom in Kant's Political Philosophy", revisits a typical puzzle: why did Kant build his politics on the concept of *external* freedom rather than on the moral autonomy, already familiar from the *Groundwork* and the second *Critique*? Messina argues that this question rests on a conflation of two distinct notions of external freedom: «freedom in the external use of choice» (p. 244), which refers to a faculty directed toward external objects; and «freedom as independence» (p. 252), which denotes a normative status to which all rational agents are entitled simply in virtue of being free and rational. By attending to this distinction, Messina argues that Kant's political philosophy is genuinely grounded in his concept of autonomy, even if its overt terminology is that of external freedom. This is a subtle and valuable contribution that helps to resolve what might otherwise appear as a troubling bifurcation within Kant's practical philosophy.

Pauline Kleingeld's chapter, "Independence and Kant's Positive Conception of Freedom", puts forth that scholarly attention to Kant's "negative" conception of freedom: independence from external constraint, has obscured the equally fundamental role of his "positive" conception: being subject to one's own legislation. Kleingeld argues that in the *Doctrine of Right*, negative external freedom (mutual independence) both requires and is realized through positive external freedom (joint self-legislation). The fundamental innate right to freedom is only fully realized when both dimensions are secured across all three spheres of public law (private, public, and cosmopolitan). The essay makes a compelling case that satisfactory accounts of Kantian republicanism must complement the emphasis on independence with a rigorous analysis of citizenship and democratic self-legislation.

The concluding chapter, Paul Guyer's "Morality, Right, and Responsibility", completes the arc of the volume by returning to the foundational debate and drawing out its implications for the political domain. Guyer argues that any coherent independence interpretation of Kant would have to root legal obligation in prudence or self-love, which would make it, in effect, *Hobbesian* rather than Kantian. Juridical duties are, for Guyer, the subset of moral duties that may be coercively enforced when the incentive of respect for the moral law is absent, but which can also be fulfilled for the right moral reasons. This is possible only because juridical duties are grounded in the moral law in the same way as ethical duties. Guyer further argues that this view explains why the existence of a State cannot be compelled by mere prudence but must ultimately be brought into being by internally motivated moral action, and why rulers bear what is essentially an ethical duty to govern justly.

The volume's core philosophical debate, that between derivationist and non-derivationist readings of Kant's Philosophy of Right, is conducted at a high level of analytical rigour, and the editors deserve credit for assembling contributors who defend positions across the full spectrum. Yet reading the essays in sequence inevitably generates the impression of an argumentative *aporia*: each position is criticized by its neighbours, and no consensus emerges. This is not a defect peculiar to this volume; it reflects a genuine and deep problem in the interpretation of Kant's practical philosophy. What the volume does accomplish, and accomplishes well, is to make the terms of the debate considerably clearer. Willaschek's taxonomy of independence and dependence relations in the opening chapter, in particular, constitutes a methodological contribution that should help future debates to avoid the terminological confusions that have characterized much of the literature since Ebbinghaus.

Horn's intermediate position between derivationism and separationism is well-grounded in underexplored Kantian texts, and contemplates a self-criticism regarding the GWT's underdetermination, leaving it to the reader to further reflect on a possible exit. Baiasu's contribution is methodologically sophisticated: by reconstructing and refuting a specific independentist strategy, he advances the debate with precision and rigour, calling for a deepening of the complex dependency thesis. Taken together, the two chapters engage in a fruitful dialogue – both reject the idea of an absolute separation and advocate nuanced forms of interdependence between law and morality.

One recurrent tension in the volume concerns what might be called the *explanatory* versus *normative* dimensions of the derivation problem. Several contributors conflate the question of whether Kant *historically* derived the UPR from the CI with the question of whether Kant's legal philosophy *normatively requires* such a derivation. Ludwig's contribution exemplifies this risk: his elegant exegesis of the textual route from the CI to the UPR does not by itself settle whether the UP's normative validity stands or falls with its derivability from the CI. This distinction matters greatly for contemporary neo-Kantian theorizing, since authors like Ripstein or Pallikkathayil can coherently maintain that Kant's *legal* philosophy provides a *sufficient* normative basis for political authority even if Kant himself held that ultimate justification required grounding in moral autonomy.

The essays on coercion and punishment (Hirsch, and Moran & Timmermann) are among the most thought-provoking in the volume precisely because they push the derivation debate into applied territory. Hirsch's argument that legal coercion is only intelligible as a normative problem against the background of Kantian moral personality is philosophically potent, though it invites the objection, not fully addressed in the essay, that one could reconstruct the normativity of the prohibition on coercion from the concept of relational freedom alone, without the full apparatus of transcendental freedom and moral personality. The Moran & Timmermann essay raises an equally challenging question: if the ethical motive of respect for the law is necessary for criminal responsibility, does this not risk making legal punishment dependent on facts about inner moral states, facts that, *by Kant's own insistence*, are in principle inaccessible to any external adjudicator? This difficulty deserves more sustained attention than the essay affords it.

Bader's essay on moral luck extends beyond the confines of Kantian exegesis into contemporary moral philosophy. His argument that Kant is primarily concerned with circumstantial and constitutive luck, rather than resultant luck, is both novel and well-supported. However, the essay would benefit from a fuller engagement with the objection that any legal system is structurally dependent on the outcomes of actions, precisely the dimension of resultant luck, and that the proposal for a "unified account" of morality and legality needs to account for this structural feature rather than simply set it aside.

Brecher's reinterpretation of permissive law is among the most textually scrupulous contributions, and his reading of the *Erlaubnisgesetz* as a moral licence rather than a moral exception is convincing at the level of the texts examined. The question it leaves open, however, is whether Kant's notion of provisional rights, rights that are in some sense morally deficient until confirmed by public legislation, can be fully accommodated within a model that treats permissive law as grounded in the full demands of pure practical reason. Pinheiro Walla's essay addresses precisely this tension, and the two chapters together constitute a productive dialogue on one of the most pressing topics in Kant's political philosophy. The disagreement between them over the relationship between permissive laws and non-ideal theory is one that future scholarship will need to resolve.

The essays by Pavlakos and Pallikkathayil on external freedom represent two distinct strategies for making Kant's philosophy of law productive for contemporary legal and political theory. Pavlakos's radical non-positivism is systemically ambitious, but the claim that a pre-institutional omni lateral will constitutes a natural public law remains underspecified: it is not clear how such a will can generate concrete normative demands without already presupposing some degree of institutional mediation. Pallikkathayil's contribution is more carefully circumscribed and analytically precise, and her normative reconceptualization of external freedom as the right to a place in a system of equal rights offers a fruitful alternative to Ripstein's more metaphysically neutral approach.

The final trio of essays (Messina, Kleingeld, and Guyer) collectively advance the important thesis that Kant's practical philosophy is genuinely unified at the level of its foundational principles, even where it diverges at the level of applied normative standards. Kleingeld's recovery of Kant's positive conception of freedom as self-legislation is a significant corrective to the predominantly negative focus of much republican and liberal-Kantian theorizing, and it has direct implications for debates about democratic legitimacy and constitutional design. Guyer's closing essay is characteristically clear and forceful, and his insistence that "moral politicians" are not merely a regulative ideal but a structural necessity of any Kantian account of political authority is a point that resonates with questions about political responsibility in contemporary democratic theory.



*Law and Morality in Kant* is a significant and welcome contribution to the literature on Kant's practical philosophy. Its most important achievement is bringing the derivation debate into sustained dialogue with a range of specific topics (coercion, punishment, moral luck, permissive law, external freedom, and republican politics) that are usually treated in relative isolation. The result is a volume that is greater than the sum of its parts: even where individual contributors reach incompatible conclusions, the juxtaposition of their arguments illuminates the structural features of the problem in ways that individual essays rarely can.

At the same time, the volume has a characteristic limitation that follows necessarily from its ambitious scope. The sheer breadth of topics covered means that some arguments are developed more fully than others, and certain pivotal issues, such as the relationship between Kant's transcendental idealism and his practical philosophy, or the precise role of the Universal Principle of Right in Kant's theory of acquisition, receive only tangential treatment. The volume does not aim to resolve the derivation debate, and readers seeking a definitive answer will not find one here (if anywhere). What they will find, however, is a set of carefully articulated positions with the conceptual tools needed to evaluate them.

The methodological diversity of the volume (with historical-exegetical, analytically systematic, and constructively neo-Kantian approaches appearing side by side), is both a strength and a potential source of friction. Some contributors are primarily interested in what Kant *actually* argued; others are equally or more interested in developing a viable Kantian position for contemporary problems. The editors navigate this tension thoughtfully in their introduction, but readers may occasionally feel that the essays are not always speaking the same philosophical language. This is, nonetheless, a difficulty more endemic to the field rather than a peculiarity of the present collection.

From the perspective of current scholarly debates, the volume arrives at a particularly propitious moment. The independence and derivation theses, which have structured the literature since at least the work of Julius Ebbinghaus and which received renewed impetus from Ripstein's *Force and Freedom*, remain unresolved and live issues. For researchers working on Kant's legal and political philosophy, on the broader question of the relationship between Law and Morality in post-Enlightenment philosophy, or on contemporary neo-Kantian approaches to legal and political theory, *Law and Morality in Kant* is an essential reading. It will be particularly valuable for graduate students approaching the field for the first time, since the editors' introduction, which maps the historical development of the debate from Fichte and Ebbinghaus through Kersting, Ludwig, and Ripstein to the present, provides an exceptionally clear orientation to a complex and often confusing literature.

In conclusion, Brecher and Hirsch have produced a volume that is at once timely, philosophically rigorous, and genuinely generative of new perspectives. It does not close the debate between derivation and independence, probably no single volume could, but it substantially clarifies the stakes of that debate and models the kind of sustained, pluralistic engagement that such a fundamental question demands.