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DO WE NEED A METAPHYSICS OF MORALS? ON THE ACTUALITY OF KANT'S PROJECT OF GROUNDING *A PRIORI* PRACTICAL PRINCIPLES

ABSTRACT

This paper argues that Kant's project of a metaphysics of morals represents a normative ideal grounded on the core ideas of Enlightenment. In the first section, it analyzes Kant's concept of metaphysical principles of morals by establishing a connection between a metaphysics of morals and Kant's concept of metaphysics in general and of metaphysics of nature in particular. It then discusses what is metaphysical in the *Doctrine of Right* and the *Doctrine of Virtue*. In its last section, it tackles the question of whether a non-metaphysical reading of Kant's doctrines of right and of virtue is desirable if we want to remain faithful to Kant's Enlightenment project.

Keywords: Kant, metaphysics of morals, doctrine of right, doctrine of virtue, Enlightenment.

1. METAPHYSICS AND ENLIGHTENMENT IN KANT'S PHILOSOPHY

Some readers and interpreters of Kant's *Doctrine of Right* (1797) and *Doctrine of Virtue* (1798) seem to forget that they constitute the two parts of a work called *The Metaphysics of Morals* and that their full titles are respectively *Metaphysical Principles of the Doctrine of Rights* and *Metaphysical Principles of the Doctrine of Virtue*. Reading these writings as if they were merely discussing juridical and ethical questions respectively (e.g., the foundation of private property or the prohibition of suicide) would mean overlooking the metaphysical character that Kant attributes to the principles he introduces to tackle such issues. The idea of grounding both law and ethics on metaphysical principles is clearly part of Kant's project to found morality on practical reason—a project that is deeply rooted in the spirit of Enlightenment. Kant's attempt to construct

metaphysical theories of nature, right and ethics represents his most daring and radical effort to build a purely rational system of philosophy. After clearing out the field and laying the groundwork for this enterprise in the first two *Critiques*, he then proceeds to erect the metaphysical scaffolds to support our knowledge of nature and of morals.[1] Practical reason demands that the central issues of human life be decided by recurring to steady principles and that central moral questions find concrete answers.

Nowadays, however, such attitudes present us with considerable doubt. The idea that our knowledge of natural facts is grounded on a steady and unchangeable basis (in Kant's case this would be transcendental apperception) can still look appealing, even if contemporary epistemologists are more skeptical on the issue. But the idea that we can rely on a similar steady and unchangeable basis when it comes to our knowledge of moral principles appears utterly anachronistic in our "post-metaphysical age" (cf. Habermas, 1994). Nevertheless, we might feel uncomfortable renouncing it entirely because, as the core of the Enlightenment project, it is part of our self-understanding as members of Western culture. We may have become suspicious of universalism, but we still cling onto the conviction, which Kant defended, that all humans have the same dignity and moral worth because they share the same practical reason. Kant also believed that practical reason provides humans with the same normative principles when it comes to organizing both their political and their individual lives. This is, of course, contentious if one considers it to be a factual assertion. But when taken as a normative ideal worth pursuing, it still holds sway as it did in Kant's time.

In this paper, I defend the latter reading and suggest that we should not so easily dismiss the normative ideal of a shared human rationality. I aim to make sense of Kant's claim that he is offering us metaphysical moral principles to discuss juridical and ethical problems (2). Furthermore, I will try to answer the question of whether a non-metaphysical reading of Kant's doctrines of right and of virtue is desirable. That is, if we want to remain faithful to Kant's Enlightenment project, can we give up the above-mentioned claim on the metaphysical nature of the doctrines (3)?

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[1] It is not that the *Metaphysics of Morals*, for instance, has as its object the contents of this knowledge. Rather, it "just" offers the guiding principles of that knowledge, that is, the rational principles that tell us how legal order should be organized and which general ethical ends we should pursue. In both cases (i.e., in the case of right and of ethics), however, Kant does not tell us what concrete content positive laws should have or what we should actually do to reach ethical perfection or to help others to achieve happiness for this would be tantamount to dealing with empirical, contingent issues that cannot possibly be objects of metaphysics.

2. WHAT IS A METAPHYSICS OF MORALS SUPPOSED TO BE?

In this section I analyze Kant's project of identifying the metaphysical principles of morals. To do so, I will establish a connection between a metaphysics of morals and Kant's concept of metaphysics in general and of metaphysics of nature in particular, and I will discuss his distinction between science and doctrine (2.1). Furthermore, I will set out what is metaphysical in the *Doctrine of Right* and in the *Doctrine of Virtue*. I will pay special attention to the metaphysical principles of right, since they are the most contentious (2.2).

2.1. Metaphysical principles of natural science vs. metaphysical principles of morals

Metaphysics designates for Kant "a system of *a priori* cognition from concepts alone" (RL, 06: 216). Concerning natural objects, such knowledge is of course only partially possible. Kant shows this in the *Critique of Pure Reason*, where his main aim is to criticize traditional dogmatic metaphysics and to establish the groundwork on which a new kind of theoretical metaphysics could be built. However, in the *Prolegomena* (1783), Kant admits that a metaphysics of nature as knowledge of the unconditioned is possible only through analogy (Prol, 04: 357f.). On the other hand, in the *Critique of Practical Reason* (1786), Kant establishes a well-grounded *practical* metaphysics thanks to his *Faktum der Vernunft*, the fact of reason.[2] In 1786 (i.e., in the same year as the publication of the second *Critique*), Kant published the *Metaphysical Foundations of Natural Science*, whose German title is *Metaphysische Anfangsgründe der Naturwissenschaft* (MANW). This anticipates the titles of the two parts of the *Metaphysics of Morals* (MS), namely, *Metaphysische Anfangsgründe der Rechtslehre* (RL) and *Metaphysische Anfangsgründe der Tugendlehre* (TL), which are usually translated as *Metaphysical Principles of the Doctrine of Law* and *Metaphysical Principles of the Doctrine of Virtue*, respectively. Although there is some justification for translating the word "*Anfangsgründe*" differently, since it could sound strange to talk about *principles* of natural science, it is nevertheless worth noting that Kant uses it both for his writing on natural science and for his writing on morals. The main idea is that one can ground a metaphysical knowledge of nature and of morals by establishing some general *a priori* propositions for both branches (cf. RL 06: 205 and 214f.).

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[2] According to Mario Caimi (2017), it is thanks to the "discovery" of the fact of reason that Kant was able to ground a new kind of metaphysics, namely the practical-dogmatic one that he presents in the *Progresses of Metaphysics* (circa 1793). It is dogmatic regarding its objects, which are the same as those of traditional metaphysics (God, the world, the soul, the meaning of the existence of everything), and it is practical only insofar as it is grounded on the fact of reason, although it has no consequences whatsoever in the practical field since the moral law maintains its validity independently from it. I will not discuss this in this context, but I think that Caimi calls attention to a relevant issue: we do not need a metaphysics of morals to know what the moral law demands.

It is remarkable that Kant talks of metaphysical principles or foundations of a "science" of nature, while he uses the expression "doctrine" of right, viz. of virtue. The difference is not irrelevant, since in the MANW Kant claims that a doctrine deserves the name of science only when it forms "a system, that is a whole of cognition ordered according to principles" (04: 467). This leads Kant to distinguish between "doctrine of nature" (*Naturlehre*) (which is nothing more than a systematic organization of natural facts and is divided into "description of nature" (*Naturbeschreibung*) and "natural history" (*Naturgeschichte*)) on the one side, and on the other "natural science" (*Naturwissenschaft*), which handles its object according to principles that are entirely *a priori*. Following this criterion, chemistry, for example, is not a proper science but simply a "systematic art," since it derives its principles from experience (MANW 04: 468). Why then does Kant in the MS refer to a "doctrine" of right and virtue instead of using the word "science"?[3] This is puzzling since the doctrine of right distinguishes itself strongly from the doctrine of virtue precisely because, despite its metaphysical nature, it has a scientific character that the latter lacks. In the preface to the *Doctrine of virtue*, where he speaks once more of the relation between metaphysics and doctrine and defines metaphysics as a "system of pure rational concepts," Kant asks

> "… whether every practical philosophy, as a doctrine of duties […], also needs metaphysical first principles, so that it can be set forth as a genuine science (systematically) and not merely as an aggregate of precepts sought out one by one (fragmentarily)" (TL 06: 375).

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[3] Actually, in the *Doctrine of Right* (06: 229) Kant speaks of a "juridical science" (*Rechtswissenschaft* or, in Latin, *Iurisscientia*). In this passage, one who is versed in the doctrine of positive right is called a jurist (*iurisconsultus*), and he "is said to be *experienced in the law* (*iurisperitus*) when he not only knows external laws, but also knows them […] in their application to cases that come up in experience. Such knowledge can also be called *legal expertise* (*iurisprudentia*), but without both together it remains mere *juridical science* (*iurisscientia*). The last title belongs to *systematic* knowledge of the doctrine of natural right (*ius naturae*)." Otfried Höffe (1999, 44) offers an interpretation of this passage that aims to explain the relation between the first three forms of juridical knowledge Kant mentioned but leaves unexplained the status of juridical science. According to Höffe, Kant introduces different kinds of juridical knowledge, which are presented in ascending order. He who only knows the positive law is a jurist (*iurisconsultus*); he who knows how to apply positive law "to cases that come up in experience" is experienced in the law (*iurisperitus*); finally, the jurist who knows how to apply his juridical knowledge for his own sake and in favor of those who seek his help can be said to own legal prudence (*Iurisprudentia*).[3] All these three forms of knowledge concern positive right. When both juridical expertise and juridical prudence are taken away, one has "mere juridical science." Höffe observes that this is strange, since juridical science seems here to arise from an epistemic deficit. However, it actually represents the unchangeable core of all other forms of juridical knowledge, i.e., the core that does not depend on the knowledge of contingent positive laws and offers rather to these laws their immutable principles. Notwithstanding this important passage, in the first part of the MS Kant normally uses the term "doctrine of right," and not the term "juridical science."

This reminds us of the distinction between a doctrine of nature and natural science, that is, between a mere collection of facts and a rational system of knowledge. When applied to the practical field, the distinction would probably be between a fragmentary collection of moral precepts, of isolated ethical norms like "practice beneficent actions" or "be sincere"[4] on the one hand and a system of moral duties that are grounded on rational, *a priori* principles, that is, on a metaphysics of morals on the other hand. From this point of view, it appears that both the doctrine of right and the doctrine of virtue can be seen as sciences because of their systematic character. In the same passage, however, Kant claims the following about the doctrine of right:

> "No one will doubt that the pure doctrine of right needs metaphysical first principles; for it has to do only with the formal condition of choice that is to be limited in external relations in accordance with law of freedom, without regard for any end (the matter of choice). *Here* the doctrine of duties is, accordingly, a mere *scientific* doctrine [*Wissenslehre*] (*doctrina scientiae*)" (TL 06: 375; my emphasis).

Evidently, it is only the doctrine of right (indicated by the adverb "here," as opposed to "there," i.e., to the doctrine of virtue) that constitutes a *scientific* doctrine. The combination of the terms "doctrine" and "science" mystifies the reader. What could a doctrine of science (*doctrina scientiae*) or, to use the German expression, a *Wissenslehre* (literally, a doctrine of knowledge) be?

Kant relates this form of knowledge to the fact that the doctrine of right does not concern itself with ends, that is, with the material aspect of right, but merely with its formal aspect. It does not refer, for example, to the concrete things that individuals want to buy or sell, to the persons they want to marry, or whose services they want to contract; its objects are rather the formal conditions that allow these intentions and wishes to be satisfied in a legally valid manner. The doctrine of virtue, on the contrary, deals precisely with ends, although they are objectively necessary ends, that is, ends that "it is a duty to have" for human beings (TL 06: 380). Once more, it seems that the idea of science is strictly connected to the idea of *a priori* knowledge that is not grounded on experience. In the case of right, this would be knowledge that is not grounded on the particular ends that individuals pursue through contracts and other juridical institutions. In other words, juridical science is possible only in relation to formal, not to material aspects.[5] This implies that there cannot be any science of ethical

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[4] One could think of the lists of precepts associated with ancient philosophers like Pythagoras (a list that, in his case, included also nutritional precepts such as "do not eat fava beans").

[5] This impression is reinforced by the footnote that Kant inserts in TL 06: 375, where he claims that in the case of practical philosophy, the expected practical knowledge, "unless it has to do with a duty of right," "need not be spun out into the finest threads of metaphysics […], when it has to do with a mere duty of virtue." In this case, what is at stake is not so much to know what

duties since these are defined with reference to the ends that reason shows us are necessary. It is, then, not possible to have a science of the way in which particular individuals make their ethical duties the motives for their action. But it is possible to have science of the way in which they ought to regulate their juridical relations, and therefore fulfill their juridical duties, for this does not depend on any consideration of the nature of their motives, wishes, passions, and so on. This is a merely formal knowledge that does not depend on matter, that is, on the concrete content of what is mine or yours (a piece of land, a house, a horse) and on the motives of the people who want to become the owners of that concrete object.

At the same time, this does not mean that the metaphysical principles of right can abstract from any reference to empirical facts. Differently from the *Groundwork* and the second *Critique*, in which Kant strictly separates the metaphysics of morals (aiming to establish purely rational principles) from a practical anthropology (aiming to concretely apply metaphysical principles), in the *Metaphysics of morals* Kant gives a different meaning to the relation between both disciplines (cf. Wood 2002, 3). Accordingly, a metaphysics of morals cannot but contain also "principles [*Prinzipien*] […] for applying the highest universal principles [*Grundsätze*]" to human nature (RL 06: 216). For this reason, Kant says, "a metaphysics of morals cannot be based upon anthropology but can still be applied to it" (RL 06: 216f.).[6] The doctrine of right therefore has as its object the system of duties that arise from the application of the supreme principle of right to the coexistence of a plurality of *choices* according to a universal law of freedom. The doctrine of virtue, in contrast, has as its object the system of duties that arise from the application of the moral law to human nature and, in turn, to the individual choice that pursues specific ends. In both cases, it is not enough to identify the supreme metaphysical principles (*Grundsätze*), but it is necessary to consider also the principles or criteria (*Prinzipien*) for applying them to human nature (which is not tantamount to considering human nature in itself).

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the content of the duty is, but to know how the conscience of the duty can serve as an incentive for action. It is, then, an eminently practical knowledge that leads to a kind of practical wisdom. Juridical science, on the contrary, has a theoretical value that does not depend on its concrete practical effects. Kant establishes even an analogy between this science and mathematics: in the case of right, "what is mine and what is yours must be determined on the scaled of justice exactly, in accordance to the principle that action and reaction are equal, and so with a precision analogous to that of mathematics" (TL 06: 375).

[6] Although the *a priori* character of the metaphysical moral principles is not being questioned, Kant includes in the concept of a metaphysics of morals "the system of duties that results when the pure principle is applied to the empirical nature of human beings in general" (Wood, 2002, 4). This is coherent with the definition of practical philosophy as a doctrine of duties as mentioned above (TL 06: 375) and with the idea that a metaphysics of morals has as its object "freedom of choice" (RL 06: 216) and not freedom as moral autonomy, which is the object of the *Groundwork* and of the second *Critique*. It would be in vain to look in the MS for a discussion of freedom as autonomy or for a foundation of the moral law: these concepts are given as previously defined and founded.

To resume, one can claim that the metaphysics of morals presented in the MS has as its object the *a priori* principles of right and ethics (with the corresponding systems of duties arising from these principles) and the criteria for applying them to the conditions defined by the specificities of human nature. These are, in the case of the juridical principles, the unavoidable coexistence of choices that aim to pursue freely their practical ends and, in the case of ethical principles, the human capacity of setting ends to oneself as well as the sensible nature of human beings. The systematic knowledge of the *a priori* principles and of their criteria of application represents a doctrine. In the case of right, the doctrine acquires the character of science, since it limits itself to the formal condition of application and, therefore, to the formal aspect that is characteristic for juridical duties. In the case of ethics, the doctrine has systematic character but cannot neglect the material aspect of ethical duties. It is, therefore, not a science.

2.2. What is metaphysical in the doctrine of virtue and in the doctrine of right?

As we have seen, differently from the *Groundwork* and from the second *Critique*, the MS claims that a metaphysics of morals has as its object also the conditions for applying the *a priori* principles to the conditions under which human beings live and act. In the case of ethics, this means acknowledging that individuals pursue happiness and have talents and capacities that can be developed (TL 06: 386f.). We can therefore set ourselves the end of pursuing perfection and happiness. In the *Doctrine of Virtue*, Kant's aim is, accordingly, to formulate general guidelines that might serve as a normative orientation when we formulate such ends. More specifically, Kant claims that practical reason demands that we set ourselves two general ends, namely: *our* moral perfection and the happiness of *others*, since we cannot be responsible for the moral perfection of others and since our happiness is an end that we pursue naturally and cannot be the object of a rational demand.

But it is not easy to decide which paths we should take to pursue these two ends. The metaphysical principles of the doctrine of virtue have precisely the task of indicating which paths should be avoided and which should be taken. At the same time, however, we remain free to choose which concrete strategies of action represent the best way of implementing reason's dictates. There are principles that forbid specific actions, like suicide or humiliating others, and that give rise to perfect duties, that is, to duties that prima facie admit no exception (although they allow for casuistic questions and thereby admit exceptions after all). However, all the principles that demand positive actions refer to imperfect duties that allow for a certain latitude concerning the concrete forms of their implementation. The principle that commands us to be beneficent, for instance, does not require us to give money to specific persons. We are free to decide

how to exert beneficence, whether by donating to charities, to individuals or by helping people in different ways, and we are also free to decide *when* to act beneficently. The circumstances under which we fulfil our duty of beneficence are empirical and cannot, therefore, be the object of metaphysical knowledge. The latter concerns the principles that should guide us in our ethical life, not the concrete actions to perform. The *Doctrine of Virtue* formulates metaphysical principles that should offer us guidance when it comes to deciding which ethical duties we must fulfil, while at the same time leaving open how (and when) we want to fulfil them.

In the case of right, a metaphysics of morals takes as its empirical starting point the circumstance that people are forced to live alongside one another because Earth is spherical. That is, we cannot walk away from other people infinitely to find resources that no one else can claim as their own (RL 06: 352). As much as the principles of right might be metaphysical, they cannot neglect this fact. It would not be necessary for right to exist at all if human beings were able to live in full isolation, with no contact whatsoever with each another.[7] In this sense, the physical features of the planet are not a condition for applying these principles; rather, they are what makes the existence of the principles necessary in the first place. In other words, right becomes necessary because of the conditions in which human beings must live. Metaphysical principles cannot abstract from this necessity, and for this reason, they have as their main object the distribution of finite resources among individuals. These resources are not only of an economic or material nature: it is not merely a question of distributing land or natural resources, but also of acquiring services and even settling marriage contracts, for a spouse cannot be shared by a plurality of individuals, according to Kant.[8]

Now, for Kant, the main task of right is to allow choices (*Willküren*) living side by side not only peacefully, that is, by finding some *modus vivendi*, but also in such a way that every choice "can be united with the choice of another in accordance with a universal law of freedom" (RL 06: 230). The problem is that Kant does not specify what this universal law of freedom (ULF) looks like, nor which kind of freedom he is referring to here. And this is a central point because the definition of this law dictates the very nature of right—certainly its metaphysical concept—and therefore the rightful nature of a specific legal order. Any such order that violates the ULF is *eo ipso* unlawful, at least from the point of view of a metaphysical doctrine of right (i.e., from the point of view of ra-

[7] This is a possibility that Kant considers, although purely hypothetically, when he discusses the second Ulpian rule ("even if [...] you should have to stop associating with others and shun all society" (06: 236).

[8] As is well known, Kant distinguishes three possible relations of private right (RL 06: 259f.): One can possess and use a thing, one can use a person but not possess her (e.g., by employing her as a servant), one can possess a person but not use her (e.g., the State or the sovereign with regard to the citizens).

tional right). For this reason, in the following I aim first to briefly clarify which freedom is intended here (a) and second to give some content to the ULF in order to understand what is metaphysical about these concepts (b).

(a) As Burkhard Tuschling (2013, 72) remarked, in the MS one must contend with at least three different concepts of freedom. In the "Introduction" we find first the "negative concept," according to which "freedom of choice is this independence from being determined by sensible impulses," for human choice "can indeed be affected, but not determined by impulses" (RL 06: 213). Right after this negative, we come across the positive concept of freedom, namely "the ability of pure reason to be of itself practical" by subjecting its maxims to the universal law (RL 06: 213f.). Finally, in the "Introduction to the Doctrine of Right" we find freedom as "the only one innate right," that is, as "independence from being constrained by another's choice." As we shall soon see, it is precisely this third kind of freedom that must "coexist with the freedom of every other in accordance with a universal law" (RL 06: 237). It is characterized through three "authorizations" (*Befugnisse*), namely, (1) juridical equality (as reciprocity in accepting and imposing obligations among members of the juridical–political community); (2) the quality of being one's own master and of being held as a human being beyond reproach before having performed any legally relevant action; and (3) the authorization to do and say anything that does not violate the rights of others.[9] It is worth highlighting that, for Kant, freedom is not the supreme value to be safeguarded. Even the *exeundum*, that is, the principle that demands that we leave the state of nature and enter a "civil state" that might transform provisory right into peremptory right, is not justified through the need to safeguard individual freedom (this would make of Kant just another thinker of the natural law tradition); it is rather practical reason that makes this demand, so the *exeundum* can be seen as a genuine *a priori* principle. As an individual right, freedom is innate, but it is neither untouchable nor irrevocable— quite the contrary: often it is individuals themselves who lose it through illegal acts that subject them to the State's coercion. Furthermore, it can be legitimately limited by other individuals, as we shall see. Finally, and most importantly, it represents a mere *formal condition* for letting individuals enter reciprocal legal relations. Its qualifications or authorizations are those which are necessary for any person who wants to affirm herself as a legal subject and perform juridical acts.[10] As such a formal quality, it has metaphysical character, since it does not depend on any empirical act or feature of the subject who holds it.

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[9] The literature on this definition of external freedom is extensive. I /allow myself to refer the reader to Pinzani, 2017 and 2021.

[10] As soon as the subject starts performing such acts, though, she risks losing some of those qualifications, either partially and temporarily or permanently. This is the case with passive citizens, who lose the qualification of legal equality compared to active citizens; it is also the case of criminals, who lose their original integrity and the innate quality of being masters of themselves (cf. Pinzani, 2018).

(b) What is then the ULF and to which of the three concepts of freedom does it refer? Kant mentions it not only in his definition of the concept of right, but also in the formulation of both the universal *principle* of right (UPR) and of the universal *law* of right (ULR) (RL 06: 230). Let us therefore start by analyzing its relations to these two formulae. The UPR is formulated impersonally and offers the criterion for judging when an action is legally right (*recht*). This criterion is that the action (or its maxim) allows for the coexistence of each person's freedom of choice with everyone's freedom (RL 06: 230). It is an *a priori* principle since it does not depend on the content of the actions, that is, on the ends that individuals pursue through their actions. As a metaphysical principle, it serves as groundwork for the ULR, which is expressed in the form of an imperative and addresses the agent directly. It says: "so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (RL 06: 231). The ULR complicates things. It does not mention the coexistence of choices in accordance with a ULF (like the definition of the concept of right and the UPR do), but the coexistence of the *free use of choice* (*freier Gebrauch der Willkür*) of the agent and the *freedom* [*Freiheit*] of everyone. This needs a brief conceptual explanation. Choice is the "faculty to do or to refrain from doing as one pleases" when it is "joined with one's consciousness of the ability to bring about its object by one's action" (RL 06: 213). Choice is free when it "can be determined by pure reason," although it can be affected by sensible impulses (RL 06: 213). The free use of choice is therefore the use of the faculty to do as one pleases when (1) it is joined with one's consciousness of the ability to bring about its object by one's action and when (2) it is determined by pure reason.[11] The ULR regulates the coexistence between *the use* of this faculty by the agent, on the one side; and on the other, the *freedom of everyone*, not just the *choice of others*. I suggest that we understand the expression "freedom of everyone" in this passage as indicating not freedom of choice (i.e., as freedom according to both the negative and positive concepts of freedom), but freedom as the singular innate right. From this point of view, what is at stake is not just the determination of the conditions for some *modus vivendi* among choices—a *modus vivendi* that can be defined empirically and contingently—rather, one must determine the conditions that allow individuals to use their choice freely without violating the innate right of any juridical subject, including *their* own. But what does this mean, concretely?

The innate right consists primarily in the "independence from being constrained by another's choice" (RL 06: 237); therefore, juridical subjects may not use their choice in a way that illegitimately constrains others. Furthermore, in accordance with the three authorizations that constitute outer freedom, the coexistence of choices cannot be organized in such a way that some receive privileg-

[11] This is in accordance with the negative and positive definitions of freedom of choice mentioned above (RL 06: 214).

es over others (this would violate the innate juridical equality), some individuals are fully subjected to the choice of others (this would violate the quality of being one's own master), some individuals are held to be criminal before having committed any legally relevant action (this would violate the quality of being considered "beyond reproach"), or some individuals cannot do or say something that does not have consequences for the rights of others.[12] So understood, the ULF, which Kant never formulates explicitly, acquires quite a clear content. Rational right, which is grounded on metaphysical principles, regulates the coexistence of individual choices so that there are no privileges, nor unjustified discriminations, and so that individuals have full freedom in everything that does not violate the rights of others.

The ULF harmonizes also with the postulate of reason that Kant mentions in this context, in section C of the "Introduction to the doctrine of right" (RL 06: 231). Through this postulate, reason claims that "freedom is limited […] in conformity with the idea of it" and "may also be actively limited by others." In other words, reason says that the choice of each individual may be legitimately and actively limited by the choice of others, but that this limitation is legitimate only when it represents a defense of one's own innate right, that is, of one's own freedom as independence from illegitimate coercion. Coherently with the frequent use of metaphors from physics, particularly those of action and reaction, Kant imagines legal relations as a field of forces that are constantly striving for equilibrium. Reason says, therefore, that this equilibrium may be reached legitimately through the operation of reciprocal limitation in the use individuals' choice.[13]

Once more, Kant does not claim that right is necessary to defend the innate freedom of individuals. The necessity of right is postulated by reason with no

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[12] While the first consequence of the application of the criterion of the UPR and of the ULF to innate freedom is quite obvious, the same cannot be said of the others. Concerning the first consequence, it is coherent with Kant's repeated rejection of legal privileges like those possessed by aristocracy and clergy in his times; our liberal democracies follow him on this point with limited exceptions (e.g., when a country's constitution grants to politicians that they be judged by a special court). That ~~some~~ individuals might not be fully subjected to the will of others has not been so obvious for a long time: slavery comes to mind (a phenomenon abolished in some Western countries only in the late 19th century and which still exists at some levels in many countries), but one should consider also situations in which women are legally dependent on men (be they their fathers, uncles, brothers or husbands). That individuals can be considered criminals by default normally finds expression in racist attitudes within society rather than in legal norms (e.g., when one hears that "all gypsies are thieves"). However, recently Denmark has adopted measures that allow for harsher punishment if the violator of the law comes from neighborhoods in which illegality apparently thrives (a norm that will interest mostly neighborhoods whose population has an immigrant background). And all countries that foresee punishment for the "crime" of blasphemy offer a good example of how one's freedom to say things that harm no one but invisible beings or personal sensibilities can be legally restricted.

[13] It is worth remembering that, according to Kant, this claim has the character of a postulate, i.e. it is "incapable of further proof" (RL 06: 231). As I have argued elsewhere (Pinzani 2017), the content of this postulate can be resumed to the formula: "it is necessary that right be."

reference whatsoever to the value of individual freedom. Reason strives for equilibrium among individual choices, for any alternative would be unacceptable and would represent the triumph of contingency, chance or sheer force. We can claim, therefore, that the concepts of right and freedom as an innate right are, in effect, *a priori*, since they have merely formal character and do not depend on any experience or on any consideration of the peculiarities of human nature. They would exist even if the legal subjects were other beings (say: people from another planet), as long as they are able to set themselves ends that they can pursue rationally, and if they are forced to share the same physical space and limited resources. From this point of view, one can claim that, independently from the concrete legal order of the society in which they live, they have freedom (as defined above), and they must obey the ULR. The *Doctrine of Right*'s universalism is therefore based on the formal character of its metaphysical concepts, not on the specific contents of the legal relations discussed in the sections on Private and on Public Right. Even if we accept the universal character of these concepts, we have yet to ponder whether they are necessarily of a metaphysical nature. In the final section, I therefore discuss whether it is possible or desirable to strip Kant's doctrine of right of its metaphysical character in the vein of how some authors have approached Hegel's *Philosophy of Right*.[14]

3. NON- OR NEW METAPHYSICAL PRINCIPLES OF RIGHT?

As we have seen, even a metaphysics of morals must take into account some basic empirical facts. In the case of right, these are the spherical nature of Earth and its finite natural resources. In the case of ethics, they are the fact that humans have qualities we can develop and needs and desires that we want to satisfy to achieve happiness. Needs and desires, however, are not likely to be the object of a metaphysics—at least as Kant understands it (things change with Hegel).[15] Only from the point of view of his philosophy of history can Kant see some meaning in individual needs, since for him human needs generate commerce and commerce has a civilizing function (ZeF, 08: 368).

The fact that we are phenomenal, needy beings, however, is not a secondary circumstance that should have no impact on the formulation of metaphysical principles. It is rather one of those empirical conditions that causes the introduc-

[14] See e.g., (Pinkard, 1994) and (Pippin, 2012).

[15] In short, Hegel tries to find the core of rationality that is hidden inside almost every aspect of reality, including the apparently most trivial ones like individual needs and wishes. Far from seeing needs as an expression of our irrational or merely animal nature (like Kant basically does), Hegel perceives them as representing the most essential element of an elaborate network of social relations whose rationality is so strong that it deserves to be considered as a system, namely the system of needs. This rationality however differs completely from the one that characterizes the principles of right according to Kant. Hegel sees a purposefulness where Kant would see predominantly the unruly interplay of individual needs.

tion of these principles, as with the cases of Earth's spherical form and its finite resources, which make it unavoidable that we will desire the same object as others (the same piece of land, the same spouse, the same service by the same person at the same moment). All these conditions are empirical in themselves, but they should be considered when formulating the metaphysical principles because they are why these principles are necessary in the first place. We need to regulate our coexistence through them so that the unavoidable conflicts arising from our needy nature are minimized, if not eliminated altogether. Taking these unavoidable conditions into account would therefore not be tantamount to introducing contingent elements into metaphysical principles. Rather, principles that do not consider Earth's spherical nature, its finite resources *and our needy nature* would be of no use for human beings. This means that, in formulating his metaphysical principles of right, Kant was conscious of these unavoidable conditions, although he does not seem to give to each of them the same weight. While he grounds, for instance, the private ownership of land and, more generally, all juridical relations mentioned in the section on Private Right on the spherical nature of Earth and on the limited character of natural resources, he seems to minimize the fact that basic needs for survival are essentially the same for each of us and that this circumstance could justify equal distribution of resources, both concerning the initial acquisition of land (on a pre-distributive level) and in correcting the possible negative impact of economic transactions among individuals (on a re-distributive level).[16]

The main reason for this selective perception of the unavoidable circumstances to which metaphysical principles of right apply may be found in Kant's mistrust of non-rational motives, which is to be observed in all his practical writings, from the *Groundwork* to the MS. Although they represent an essential aspect of human nature, Kant evidently tries to neutralize them. This attitude might be consistent with his understanding of practical reason, but it relies on a conceptual misunderstanding of which Kant himself sometimes seems to be aware. On the one hand, he fears that humans might act against the dictates of practical reason if they allow themselves to be guided by pathological motives like drives, instincts, needs, wishes, and whims. On this point, Kant follows Plato in his ideal of reason dominating passions, instead of agreeing with his contemporaries Hume and Smith on the unavoidable predominance of passions on reason. On the other hand, however, humans' motives are mostly non-rational (although not irrational), like when we try to satisfy our needs or wishes, when we fall in love with a person we want to marry, or when we hope to make money out of an economic interaction. Such motives are precisely what lead us to enter the legal relationships that are the object of the *Doctrine of Right*. As long as these motives do not conflict with the moral law, we may be moved to act by them. Kant acknowledges this too, as we saw; the only condi-

[16] On this point see Alì and Pinzani (forthcoming).

tion that he puts on this free play of motives is that our corresponding actions must not violate the freedom of others, according to the UPR and the ULR. This means that Kant himself is or should be aware that there is nothing intrinsically wrong with needs or wishes and that a metaphysical doctrine of right should take them into account as unavoidable circumstances to which its principles apply, just as in the case of the Earth's spherical nature and its finite natural resources.

Nevertheless, when Kant discusses the legal relations in the Private Right section, he is not willing to give to our needy nature the attention it deserves; he rather insists on the formal character of juridical transaction, even when it might lead to a situation in which some individuals cannot satisfy their basic needs, such as in the case of poverty, or when some individuals become dependent on the will of others (and therefore lose their innate external freedom) because, as a consequence of the first arbitrary distribution of land, they do not own any natural resources except their physical and intellectual abilities. In other words, the metaphysical principles of right introduced by Kant in the sections on Private and Public Right do not consider that we, as needy beings with innate freedom, need to have access to specific satisfiers without having to depend on the choices of others.

This is not tantamount to claiming that Kant was wrong when he formulated the metaphysical principles of right in the section on Private Right; but he could have followed a different path—a path that was opened by the very concepts he introduced in the MS and by the idea, which he defends, that human beings have needs. One could, therefore, claim that the *Doctrine of Right* might have looked quite different had Kant paid more attention to our needy nature, as he does, for instance, in the paragraphs on beneficence in the *Doctrine of Virtue* (TL 06: 453). Moreover, this would have been more consistent with his views on the history of humankind as expressed in his writings on the philosophy of history (e.g., MA 08: 107ff.).

In my view, it would be interesting to pursue this reasoning and to try to imagine how a Kantian metaphysical doctrine of right would look once our needy nature is taken into account. This is not the place for such an endeavor; however, an attempt to do so would do justice to Kant's original intention when he was writing the MS, namely, his intention to offer some rational guidance for a life that looks so irremediably irrational. Once again, this is the core of the Enlightenment project in all its different, often apparently contradictory avatars. How otherwise could Hume's idea that reason must be the slave of passions be reconciled with Kant's platonic stance on this issue? Both philosophers want to help us find some order and some meaning in a seemingly senseless world. While their proposals differ from one other, they nevertheless share the intention of shedding light on the darkness that encompasses our existence. This is the true meaning of Enlightenment, and we cannot and would not want to renounce it.

For this reason, although we might be suspicious of the term "metaphysics," particularly when connected to politics and ethics, we should consider whether Kant's original intention may still appeal to us, at least with regard to the metaphysical concepts of right and freedom (introduced in the *Doctrine of Right*) and the metaphysical idea (introduced in the *Doctrine of Virtue*) that there are ends it is a duty to have, namely, the pursuit of one's own perfection and of the other's happiness. These concepts and ideas express a view of our common humanity that demands both reciprocal respect (on the juridical level) and solidarity (on the ethical level), while at the same time leaving it open for us to give different answers to the question of how such ideals should be concretely implemented. The central value of Enlightenment is respect, and that means in the first place acknowledging cultural differences (this goes further than mere tolerance, which, as Kant highlights, is expression of arrogance; see WA 08: 40), while at the same time holding onto our common humanity. This is the deeper intention lying beneath Kant's attempt to identify metaphysical principles of morals, and it is a project worth pursuing.

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