Kant's reformulation of the concept of *ius naturae*

Abstract:
Like previous theorists of natural law, Kant believes in the possibility (and necessity) of a *rational* theory of *ius*, but also claims that the very concept of *ius naturae* and the method of investigation of its principles must be thoroughly reformulated. I will maintain that Kant solves the methodological problem of natural law theories by stating that a *rational* doctrine of Right concerns *pure* rational knowledge. Right must be conceived as a *metaphysical* doctrine in which its principles and laws are determined *a priori*. By conceiving the idea of a "metaphysics of morals" and linking Right with it, he finds a way both to conserve the notion of *ius naturae* (i.e. rational and "immutable principles for any giving of positive law" (RL, AA 06: 229)) and to purify it from any empirical or anthropological element.

By locating his doctrine of Right[1] within a rational and normative realm (the metaphysics of morals), Kant takes up the main concern of natural law theorists, to wit, the investigation of the fundamental principles of rights and juridical obligations. However, he believes that the method of investigation on which *ius naturae* is founded must be revised in the light of critical philosophy. Modern natural law was characterized by its normative-teleological orientation: an end ascribed to human nature (whether self-preservation, as in Hobbes and Locke, or perfection, as in Wolff) was used so as to typify the laws of nature in terms of precepts or rational rules which command us to pursue that end.[2] Towards the end of the eighteenth century, German natural law theories converged

[1] I use the word "Right" (with a capital 'R') when referring to the German word *Recht.* This latter term refers to both the objective and the subjective dimension of *ius*, to wit, *ius* as *lex* (law) and *ius* as *potestas* (right). Because of that, *Naturrecht* (*ius naturae*) is usually translated into English both as "natural law" and as "natural right". In this text, I shall use the former expression.

[2] Cf. Ilting 1983, 73; Kersting 2006, 1035-1036. See, for instance, the following definitions of law of nature: "a *Law of Nature* is a Precept, or general Rule, found out by reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved" (Hobbes 1985, 189); "the State of Nature has a Law of Nature to govern it, which obliges every one: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. […] Every one as he *is bound to preserve himself* (Locke 1960, 271); "the law of nature obliges us to perform the actions that promote the perfection of man and his condition, and to omit those that promote his imperfection and the imperfection of his condition" (Wolff 1763, 21-22.) ["lex naturae nos obligat ad committendas actiones, quae ad perfectionem hominis atque status ejusdem tendunt, & ad eas omittendas quae ad imperfecctionem ipsius atque status ejusdem tendum"].

with political eudaimonism: the happiness or welfare of the people was conceived as the end of the state.[3] Kant dismantles the normative connection between a natural end and rational (moral) laws and bases his doctrine of Right in the idea of freedom.

The relationship between Kant's philosophy of Right and the modern natural law tradition can be approached from several angles, for example by analyzing the notion of contract in natural law,[4] the relationship between natural law and positive law[5] or the idea of freedom as a natural right.[6] The aim of this paper is to examine a foundational aspect of Kant's critique to natural law theories, that usually underlies the different approaches that we can find in the literature but has not been presented, to my mind, in a coherent and detailed way. This aspect refers to the methodological (and normative) question of how we can justify rights and duties using reason alone. Like previous theorists of natural law, Kant believes in the possibility (and necessity) of a *rational* theory of *ius*, but also considers, as we will see, that that the very concept of *ius naturae* and the method of investigation of its principles must be thoroughly reformulated. I will maintain that Kant solves the methodological problem of natural law theories by stating that a *rational* doctrine of Right concerns *pure* rational knowledge. Right must be conceived as a *metaphysical* doctrine in which its principles and laws are determined *a priori*. By conceiving the idea of a "metaphysics of morals" and linking Right with it, he finds a way both to conserve the notion of *ius naturae* (i.e. rational and "immutable principles for any giving of positive law" (RL, AA 06: 229)) and to purify it from any empirical or anthropological element.

The paper is structured as follows: in the first place (I), I will analyze the distinction between laws of nature and laws of freedom and then focus on two essential features of Kant's account of

[3] See Klippel 1999, 77. Achenwall also defended the *salus publica* (i.e. the increase of the wellbeing of the people) as the end of the State (Achenwall & Pütter, 1995, 222). During the second half of the eighteenth century, Achenwall's handbook on *ius naturae* became popular and was preferred to works by renowned authors such as Thomasius and Wolff (Schwaiger 2016, 86-87). Kant lectured at least twelve times using this handbook.

[4] Cf. Kersting 1995. For a general study of Kant and the social contract tradition, see for instance Geismann 1982, Herb & Ludwig 1993, Brandt 2000, Flikschuh 2003.

[5] See for example Dulckeit 1932, Kühl 1990, Kersting 1993, 504f.

[6] Gregor 1993, Hancock 2009, Williams 2012.

moral law: (a) its necessity and (b) its source. In analyzing each of this features, we will see the methodological problems that he finds in the natural law theories. In the second place (II), I will discuss Kant's critique of political *eudaimonism*. Since he denies the normative connection between a natural end and the laws and principles of Right, this critique is closely connected with his rejection of the method of the natural law tradition. Finally (III), I will examine the incorporation of Right into the metaphysics of morals, linking it with Kant's reformulation of the concept of *ius naturae*.

I.

The first obvious remark to be made on the relationship between Kant's moral theory and the natural law tradition is the fact that Kant does not speak of moral laws in terms of the laws of nature but in terms of the laws of freedom. This reformulation is not a mere terminological but reflects one of the main theses of the critical philosophy in general, and a deep change in the conception of the obligation and its justification in particular. In the lectures on natural law from 1784, known as *Naturrecht Feyerabend*, Kant stresses the confusion between moral laws and laws of nature and attributes it to the natural law theorists:

> Laws are either laws of nature or laws of freedom. If freedom is to be under laws it must give the laws to itself. If freedom took laws from nature then it would not be freedom.[…] It must thus itself be a law. Comprehending this appears to be difficult and on this point all the theorists of natural law have erred. (V-NR/Feyerabend, AA 27: 1322, translation amended)[7]

In the natural law tradition, laws that impose an obligation on us are called laws of nature. The laws of nature can oblige us because we are beings gifted with reason and a free will. If we were not rational and free beings, we could not recognize the binding force of the laws and act in accordance with them.[8] According to the above cited passage, natural law authors, in Kant's opinion, did not

[7] Kant's works will be cited by the standard notation of the Academy edition (Berlin. 1900ff.). English quotations are taken from the *Cambridge Edition of the Works of Immanuel Kant*. I have indicated the cases where I have found it necessary to amend the translations.
[8] Watkins 2014, 472.

properly comprehend the connection between free will and law. The idea of a free will (e.g. the human will) governed solely by the laws of nature would be contradictory, because a will subject entirely to mechanical causality would not be free.[9] Freedom and nature refer to two distinct causal realms which are regulated by different laws.[10] Furthermore, the realm of the moral does not coincide with the phenomenal realm of the nature but with the realm of freedom. [11]

The laws of nature and laws of freedom share, *qua* laws, two distinguishing features.[12] The first of them is necessity: a law is an objective or necessary rule (cf. A126; KpV, 05: 21-22; V-MS/Vigil, AA 27: 488). The second feature concerns legislation: a valid law implies that it has been prescribed or legislated by an appropriate authority. Let us now consider how this two elements are present in the case of moral laws. This will lead us to two central points at which Kant moves away from the view of natural law theorists.

A) The necessary character of law

According to Kant, the laws of freedom entail the necessity of an action. However, a moral law can express necessity in two different ways: as *necessitas*, i.e. as necessity, or as *necessitatio*, i.e. as constraint.[13] In the *Vigilantius* lectures, Kant explains the distinction between those terms in the following way:

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[9] In the *Metaphysics of Morals,* Kant refines the distinction between will [*Wille*] and choice [*Willkür*] and holds that only this latter could be characterized as free (RL AA, 06: 213).

[10] On the other side, Kant criticizes Wolff and Baumgarten for assuming that we are independent of natural necessity only because our actions are determined by different motives [*Bewegunsgründe*]. The mere fact of using "acts of reason" to give rise an action does not free us from the mechanism of nature (V-MS/Vigil, AA 27: 503).

[11] The conceptual distinction between the laws of nature and the laws of freedom is a result of the critical investigation carried out in the *Critique of pure reason*. There, Kant claims that we can think of causality in only two ways: according to nature or from freedom (A532/ B560). From the point of view of transcendental idealism, the natural dialectic which opposes transcendental freedom to the necessity of freedom disappears, and both propositions (thesis and antithesis) become compatible. Kant's aim is not to prove the *reality* of freedom, in theoretical or transcendental sense (since it is not possible), but to show that causality from freedom is not in conflict with nature (A557/ B585).

[12] Watkins 2014, 474.

[13] The Latin neologism *necessitatio* (translated into German as *Nöthigung*) was originally coined by Baumgarten in order to refer to the transformation of something contingent into something strictly necessary. Cf. *Metaphysica*, AA 17: 137; Schwaiger 2009.

c. Now the laws of freedom are either

I. purely necessary, or *leges objective mere necessariae*. These are found only in God. Or 2. necessitating, *necessitantes*. These are found in man, and are objectively necessary, but subjectively contingent. […] Necessitation by the moral law, to act in accordance with it, is *obligation*. (V-MS/Vigil, AA 27: 481, translation amended)

A law of freedom can be, therefore, objectively necessary or coercive (*necessitante*). For a purely rational being (e.g. a holy or divine will), the laws of freedom are objectively necessary because the will coincides spontaneously with reason. Because rational beings (e.g. human beings) have both a rational nature and a sensible nature, however, the laws of freedom are subjectively contingent. The law as such, that is to say, its foundation, is objectively necessary. But, in so far as human beings can act in accordance with it or not, it is subjectively contingent. The human will does not always follow the laws of reason because it is also affected by inclinations. That is why the practical necessity of laws of freedom presents itself to our will as a form of constraint [*necessitatio, Nöthigung*]. This coercion that the law imposes on us is an obligation, and the commanded or prohibited action, i.e. the content of that obligation, is a duty. For the natural law theorists, the laws of nature are rational norms that express the necessity to act according to our rational nature, and that means to act according to our natural end. Baumgarten expresses this idea neatly: "he who lives in conformity with nature, seeks, inasmuch as he can, his perfection. Therefore, the obligation of seeking his perfection is the obligation of living in conformity with nature, and vice versa" (Baumgarten, IP, AA 19: 26).[14] Kant agrees that the laws of freedom command us to act according to our rational nature. However, he claims that this moral command does not imply that we should seek our natural end, but quite in the opposite, that we should refrain our natural impulse or inclination towards it. In sum, to act according to our rational nature (to an objective law of reason) implies a form of *necessitatio* (constraint) and not a mere form of moral *necessity*.

[14] "Naturae convenienter vivens, quantum potest, quaerit perfectionem suam. Ergo obligatio quaerendae suae perfectionis est obligatio naturae convenienter vivendi, et v.v.".

A consequence of Kant's understanding of the moral law as a form of constraint is its identification with a categorical imperative. In his view, what the natural law theorists considered a moral command of reason (i.e. a *lex naturalis*) was a mere hypothetical imperative.[15] This latter kind of an imperative express the necessity of an action, but only as a means to achieving some desired purpose. In this case, the necessity of the law is conditioned by the previous adoption of an end. Categorical imperatives, in turn, express the necessity of an action by itself, without referring to any desired end (GMS, AA 04: 414). Only this type of imperatives has *objective* and *unconditional necessity*, and hence *universal validity* (GMS, AA 04: 416). Regarding hypothetical imperatives, Kant maintains that there is one among them that refers to a *real* purpose, that is, to an end which all human beings have by nature (GMS, AA 04: 415). Like the theorists of *ius naturae*, he believes that human beings have an end by nature. This end is happiness, and we can assume it with certainty in every person. But rules that prescribe us to strive for our natural end are only precepts or imperatives of prudence. This rules are elaborated on the basis of a mere empirical knowledge concerning the best means to achieve happiness (GMS, AA 04: 418). It follows from this

> that imperatives of prudence cannot, to speak precisely, command at all, that is, present actions objectively as practically *necessary*; that they are to be taken as counsels (*consilia*) rather than as commands (*praecepta*) of reason. (GMS, AA 04: 418)

The error of many natural law theorists consists in having conceived imperatives of prudence, those practical rules that tell us how to achieve our natural end (whatever content it has), as moral laws.[16] This type of rules lacks the unconditional character, and thus the universality, that an imperative must have in order to be considered a command. Only categorical imperatives express

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[15] For example, according to Hobbes, the fundamental law of nature says: "every man, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages" (Hobbes 1985, 190). From a Kantian point of view, the necessity of this law is conditioned by a desired end: we should seek peace as far as it is a necessary condition of our self-preservation.

[16] In the Mrongovius lectures, Kant makes an explicit objection to this aspect of the doctrines of Wolff and Baumgarten (V-Mo/Mron II AA 29: 626f).

truly moral laws. We can now turn to the second of the elements of laws of freedom: the authority that legislates them.

b) The source of the law

In the natural law tradition, the concept of obligation was related to the idea of a will that has the authority to coerce another person. This idea was connected, in turn, with the distinction between an active obligation (i.e. the imposition of an obligation) and passive obligation (i.e. the subjection to an obligation). In the *Vigilantius* lecture, Kant explains that this conceptual distinction led his predecessors to place the source of the law in a will other than one's own:

> Although the obligation is established by reason, it is nevertheless assumed that in the performance of our duty we have to regard ourselves as passive beings, and that another person must be present, who necessitates us to duty. Crusius found this necessitating person in God, and Baumgarten likewise in the divine will. (V-MS/Vigil., AA 27: 510)

Both Crusius and Baumgarten argue that the validity of an obligation rests on reason, but the concept of *obligatio* implies the distinction between two different persons: one who binds (*obligans*) and another one who is bound (*obligatus*). We are (passively) obligated by the law which reason imposes on us, but the will that (actively) constrains us is not our own will but rather a divine will. Kant goes on to say:

> If, however, we pay heed to duties to oneself, then man is presented in his physical nature, i.e., insofar as he is subject to the laws of nature, as the obligated, and rightly so; but if the obligator is personified as an ideal being or moral person, it can be none other than the legislation of reason; this, then, is man considered solely as an intelligible being, who here obligates man as a sensible being. (V-MS/Vigil., AA 27: 510, translation amended)

Kant accepts the traditional distinction between passive and active obligation but denies that the notion of God as the author of moral law has to be involved in it. This distinction is now explained by appealing to the concepts of the critical philosophy: the difference between the human being

considered as a being subject to the laws of nature (a sensible being), and the human being considered as a moral being (an intelligible being). Kant argues that if we want to identify the source of the law with a moral person, this person cannot be God, because, in doing so, the law would lose its unconditional binding force. If the *obligator* is to be personified as an ideal being, this must be the human being himself and his lawgiving reason. It is there that moral obligations have their origin, and each person, as an *intelligible being*, legislates the law for himself.

In *The Metaphysics of Morals*, Kant introduces the discussion of duties to oneself by stating that the distinction between passive and active obligation (i.e. between the *auctor obligationis* and the *subiectum obligationis*) produces an antinomy. The mere idea of a duty to oneself could make us reason in the following way: if I am the agent imposing an obligation on myself, i.e. the author of the obligation, I could exonerate myself from fulfilling it. But if I can be excused from an obligation to myself, this obligation would not be an obligation, thus posing a contradiction (TL, AA 06: 417). The antinomical conflict is resolved through the distinction between *phenomena* and *noumena*, in this case applied to the way in which human beings can consider themselves. A human being can regard himself as a natural being, whose reason determines him to perform some action in the sensible world. However, he can also regard himself "as a being endowed with inner freedom", that is, "as a being that can be put under obligation and, indeed, under obligation to himself" (TL, AA 06: 418). Taking into account this double perspective, the idea of a duty to oneself contains no contradiction: the human being, as *homo phaenomenon*, is subject to the obligation (*subiectum obligationis*), and, at the same time, as *homo noumenon*, is the author of that obligation (*auctor obligationis*).[17] Kant affirms that this explanation is also valid for the case of duties to others: "for I can recognize that I am under obligation to others only insofar as I at the same time put myself under obligation, since the law by virtue of which I regard myself as being under obligation proceeds in every case from my own practical reason" (TL, AA 06: 417f).

[17] Note here that Kant presents this arguments while discussing duties of virtues, and, in particular, duties to oneself. However, this explanation is a key piece in Kant's theory of obligation in general (cf. GMS, AA 06: 453f).

This capacity of reason of seeking the law in itself, independently of its external objects (included the will of God), is called autonomy. "Autonomy of the will — Kant says — is the property of the will by which it is a law to itself" (GMS, AA 04: 440). To act in such a way that the maxim of my choice could hold as universal law means acting according to a moral command arising from my very own reason. In order to explain the nature of obligation, natural law theorists needed to distinguish the person who binds from the person who is bounded. Kant on the contrary conceives the human will as lawgiving, without presupposing any external source of the law. Human beings, as rational beings in general, are subject to the legislation that emerges from their own reason.[18]

Now we can connect Kant's critique of the teleological conception of moral law (i.e. that the moral law commands us to pursue some natural end) and his principle of autonomy. In the *Groundwork*, Kant explains that, since for previous authors the moral law emerged from an external will, they could only explain the connection between the human will and the law appealing to "some interest", i.e. to an end. The fact that the moral law was conceived as a precept that commands us to promote some end was, therefore, a consequence of taking an erroneous starting point.[19] In sum, Kant believes that by situating the origin of the law in a will other than one's own, previous authors renounced the unconditional character that a moral command must have. From his point of view, that human beings are only subject to the laws given by their own lawgiving will is a necessary consequence of the very concept of obligation.[20]

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[18] According to Baum, the main thesis separating Kant from the natural law tradition is the idea that human will, and not a divine will, legislates moral laws (Baum 2006, 75).

[19] Cf. GMS, AA 04: 434-433: "if we look back upon all previous efforts that have ever been made to discover the principle of morality, we need not wonder now why all of them had to fail. It was seen that the human being is bound to laws by his duty, but it never occurred to them that he is subject *only to laws given by himself but still universal* and that he is bound only to act in conformity with his own will, which, however, in accordance with nature's end is a will giving universal law. For, if one thought of him only as subject to a law (whatever it may be), this law had to carry with it some interest by way of attraction or constraint, since it did not as a law arise from *his* will; in order to conform with the law, his will had instead to be constrained by *something else* to act in a certain way. By this quite necessary consequence, however, all the labor to find a supreme ground of duty was irretrievably lost".

[20] Cf. KpV, AA 04: 440.

Kant's rejection of the method of natural law is closely connected to his critique of moral (and political) *eudaimonism*,[21] and this is what we shall explore in the next section.

II.

According to Kant's reformulation of *ius naturae*, God plays no role in the validity, or even in the authorship, of the law of nature (i.e. the moral law). A central, well-known, thesis of his practical philosophy is that moral laws and moral concepts must have their origin in reason, completely a priori. Otherwise, Kant argues, they cannot have universal and necessary validity. This thesis implies a strong rejection of moral *eudaimonism*. In a nutshell, he believes that "if *eudaimonism* (the principle of happiness) is set up as the basic principle instead of *eleutheronomy* (the principle of the freedom of internal lawgiving), the result is the *euthanasia* (easy death) of all morals" (TL, AA 06: 287).

Kant refuses to accept not only ethical but also political *eudaimonism*. As I said in the introduction, at the end of the 18th century, German natural law theories were characterized by proposing happiness or welfare of the people as the ultimate end of political power. In several reflections on the philosophy of law, even as early as in the 1760s, Kant criticizes the attempt to ground the principle of Right and the state in the concept of happiness (cf. Refl. 7540, AA 19: 450; Refl. 7955, AA 19: 532; Refl. 7854, AA 19: 535; Refl. 7919, AA 19: 554; Refl. 7963, AA 19: 565). Moreover, in the lectures on natural law from 1784, he claims:

> What is the end of a *republique*? Some say happiness, but that is as false as it is false to say that God created human beings for their happiness. (V-NR/Feyerabend, AA 27: 1382)

In the *Feyerabend* notes, Kant anticipates fundamental notions and ideas that he later develops in the *Doctrine of Right* from 1797, such as, for example, the concept of Right, the principle of Right and the distinction between juridical duties and duties of virtue. In opposition to Achenwall's account of *ius naturae*, in this lecture Kant proposes a new conception of Right and the sovereignty of the state that is neither linked to happiness nor refers to some end ascribed to human nature. Achenwall's

[21] Cf. Welzel 1990, 167.

textbook belonged to the Wolffian tradition of natural law and defended the shared view that public happiness was the final end of the state. According to Feyerabend's testimony, Kant explains to his students that Achenwall was wrong and that the foundation of Right and the state is the idea of freedom. Furthermore, he points out that we do not need to presuppose God as the author of the laws of nature (i.e. juridical laws present *a priori* in our reason) in order to explain the validity of Right:

> Here neither happiness nor a command of duty but freedom is the cause of Right. The author has grounded it in his *Prolegomena* by saying that it is a divine law and that we would be made happy through it but that is not needed here at all. (V-NR/Feyerabend, AA 27: 1329)

In the lectures, Kant also refutes the normative connection between the end of self-preservation and the principle of Right. Following Wolff, Achenwall maintains that "the most general law of human soul is *seek perfection*".[22] But seeking perfection implies both preserving and increasing our perfection. The set of moral laws that concerns self-preservation is called Right [*ius*] and "the proposition *do not infringe upon the preservation of others* is the universal, specific, first and adequate principle of natural law [*iuris naturae*]".[23] Regarding Achenwall's position, Kant says:

> The author says that I am bound by my nature to preserve my life; this would be the principle of Right. But that does not belong to Right at all for in Right I can do with my life whatever I will. […] Each is obligated as far as he is able to refrain from anything that interferes with the self-preservation of others, *scil. moraliter* [namely morally], says the author. This is indeterminate from the start for I do not know how far it goes. […] I am required only not to resist his freedom. (V-NR/Feyerabend, AA 27: 1334)

Kant begins by attacking the idea that Right is based on the natural obligation of pursuing our own preservation.[24] Right does not regulate ends which men aim to achieve (neither naturals nor moral) but the *external* sphere of freedom, i.e. the compatibility of actions in the relationship from one person

[22] Achenwall & Pütter 1995, 18.
[23] Achenwall & Pütter 1995, 72.
[24] In the *Doctrine of virtue*, Kant claims that the preservation of life concerns a moral end (self-perfection) (TL, AA 06: 421). Thus, the classical duty of self-preservation, which authors such as Grotius, Hobbes and Achenwall interpreted as a juridical duty, is, for Kant, a duty of virtue.
[24] Cf. RL, AA 06: 230.

and another (V-NR/Feyerabend, AA 27: 1334).[25] Secondly, Kant denies that this fundamental obligation originates in a juridical duty to others of not infringing upon their preservation. Such a juridical duty would be undetermined because there is no shared criterion about what belongs to self-preservation: everyone interprets it in his own way. Kant claims that our natural or innate obligation says nothing about the ends that other people pursue but only commands us not to infringe upon their freedom.[26] In opposition to Achenwall's doctrine of Right, based on normative ends, Kant defines Rights as "the limitation of the particular freedom of each by the conditions under which universal freedom can exist" (V-NR/Feyerabend, AA 27: 1334).[27] Furthermore, he points out that public laws should not promote the happiness of the citizens but only their freedom:

> If states give laws for the preservation of citizens they must see whether they do not thereby suppress the freedom of others. All paternalistic laws are useless. […] Each one can seek his happiness however he will as long as he does not violate universal freedom. (V-NR/Feyerabend, AA 27: 1334)

In the second part of *Theory and practice* the critique of political *eudaimonism* has a central place. There Kant argues that the concept of Right "proceeds entirely from the concept of freedom in the external relation of people to one another" and has nothing to do with the natural end that human beings have, to wit, happiness (TP, AA 08: 289). From this natural or empirical end, no universal principle could be obtained because each one understands something different by happiness (TP, AA: 08: 290; 298). Right, as Kant already said in the lectures *Feyerabend*, must be thought as "the limitation of the freedom of each to the condition of its harmony with the freedom of everyone insofar as this is possible in accordance with a universal law" (TP, AA 08: 289-290). Kant even holds that a government based on the principle of benevolence to the people, in which the head of the state prescribes to his citizens "how they *should* be happy", is "the greatest despotism thinkable" (TP, AA

[25] Cf. RL, AA 06: 230.

[26] *Neminem laede* is, in fact, the first external juridical duty and its content coincides with the universal principle of Right (RL, AA 06: 236). This principle, Kant argues in the *Doctrine of Right*, is a law that imposes an obligation on us, to wit, the obligation to "act externally [so] that the free use of [our] choice can coexist with the freedom of everyone in accordance with a universal law" (RL, AA 06: 231).

[27] Cf.V-NR/Feyerabend, AA 27: 1321; RL, AA 06: 230.

08: 290). If the sovereign takes his own conception of happiness as a general criterion for governing, imposing it on the people, he would infringe upon his subjects' freedom. In effect, Kant states that being coerced to be happy in accordance with someone else's conception of wellbeing contradicts our juridical freedom, "each may seek his happiness in the way that seems good to him" (TP, AA 08: 290).

To my mind, we can extend Kant's critique of political *eudaimonism* to the doctrines of natural law in general: nobody can be coerced, by an external will, to adopt an end (whether self-preservation, perfection, happiness, or any other).[28] Any political regime based on a pretended power to coerce a people to seek a certain end is *ipso facto* illegitimate. Let us now see the solution that Kant finds to solve the methodological problem of natural law theories (its normative-teleological character) and to reformulate the concept of *ius naturae*.

III.

Having identified the general error in which previous authors fell into, Kant claims that this error can be rectified in only one way: by starting an investigation of the foundations of the obligation, freed from empirical knowledge. In order to succeed in its task of determining how we *should* act, moral philosophy must be conceived as a *pure* moral philosophy, that is to say, as a metaphysics of morals. Laws and moral concepts must have their origin *a priori* in reason, because if this origin were rooted in experience they could never achieve the necessity and universality required to determine duties and obligations.

The idea of a *metaphysics of morals* was already presented in the *Critique of pure reason*. There Kant argues that philosophy (i.e. rational knowledge through concepts that emerged from human reason) has two objects, nature and freedom, and thus, two different legislations, the laws of

[28] Nevertheless, Kant believes that there are ends which ought to be pursued. In the *Doctrine of virtue*, he presents one's own perfection and the happiness of others as two objective ends (i.e. ends established by pure practical reason) that give rise to duties of virtue. The adoption of an end is always an act of *internal* freedom, and thus, it does not concern the sphere of Right (RL, AA 06: 230; TL, AA 06: 396).

nature and the laws of freedom (A840/ B868). Moreover, philosophy of pure reason can be either *critique* or *metaphysics*. Whereas *critical philosophy* is a *propaedeutic*, or a preparation, "which investigates the faculty of reason in regard to all pure *a priori* cognition", metaphysics is "the whole (true as well apparent) philosophical cognition from pure reason in systematic interconnection" (A841/ B869). Metaphysics does not investigate reason itself, as critical philosophy does, but is concerned with those two objects over which human reason legislates: nature and freedom. Hence, metaphysics is divided into metaphysics of nature and metaphysics of morals: "the former contains all rational principles from mere concepts (hence with the exclusion of mathematics) for the theoretical cognition of all things; the latter, the principles which determine action and omission a priori and make them necessary" (A841/ B869).

This conception of metaphysics presupposes two seminal theses that have a direct influence on Kant's reformulation of natural law, in spite of the fact that he did not state them explicitly until the 1790s. Firstly, metaphysics does not consist in merely rational knowledge but in *pure* rational knowledge, i.e. in knowledge that arises entirely from reason, and secondly, since morals consists in a philosophical knowledge established by pure reason, it is also a part of metaphysics. In the *Groundwork of metaphysics of morals*, Kant undertakes the critical and propaedeutic task of establishing the grounds of moral obligation. We might think that this text prefigures the conclusion that, since a *rational doctrine of Right* concerns duties and obligations, it must be erected through *pure rational knowledge*[29] (i.e. elaborated within the framework of a metaphysics of morals). But Kant does not put forward this idea there. We should not lose sight of the fact that his aim in the *Groundwork* is to investigate the foundation of obligation in order to establish the principle of *morality* [*Moralität*] (GMS, AA 04: 392), and not a principle of morals [*Moral*] that could hold both for ethics and for Right.[30] On the other hand, that critical philosophy attacks directly the normative

[29] In other words: propositions and laws of Right are not only rational principles but rational principles that are obtained a priori. Some of them are analytic (v. g. the principle of Right (TL, AA 06: 396)), and some synthetic (v.g. the proposition about the possibility of juridical possession) (cf. RL, AA 06: 250).

[30] Cf. Baum 2006, 75; Wood 2002.

core of *ius naturae* was acknowledged by different jurists and theorists of law who tried to develop, after the reception of the *Groundwork*, a natural law doctrine according to Kantian ideas.[31]

The idea that Right must belong to metaphysics is explicitly formulated for the first time in 1793. In the preparatory drafts for *Theory and Practice*, Kant states:

> What is metaphysics? The science of a priori principles through concepts, not constructed through intuition. […] Duty and Right alone are concepts which concern freedom and its laws and do not belong to nature like cause and effect. […] Thus *every doctrine of Right must contain metaphysics*. (VATP, AA 23: 135-136, emphasis added by me)

Right refers to a set of a priori principles that govern human action and determine how we should act. Now, since juridical duties and laws concern freedom, the doctrine of Right has to be necessarily conceived as a metaphysical doctrine. The metaphysics of morals is, indeed, a system of a priori principles that has freedom as its object. In the above mentioned preparatory drafts, Kant also says:

> What is metaphysics? Philosophy of the supersensible, i.e. whatever cannot be given in any experience. Right also belongs to it. (VATP, AA 23: 134, translation amended)

Interestingly, Kant does not only relate Right to the definition of metaphysics that he puts forward in the *Critique of pure reason* (i.e. metaphysics as pure rational knowledge) but also to the definition of metaphysics as "philosophy of the supersensible". This latter definition of metaphysics appears in the essay prize on the progress of metaphysics. In this text, published posthumously in 1804, Kant maintains that, considering the ultimate end [*Endzweck*] of metaphysics, it can be defined as "the science of progressing by reason from knowledge of the sensible to that of the supersensible" (FM, AA 20: 260). The doctrine of Right is a system of *a priori* principles whose object is freedom in its external use, i.e. freedom regarding the practical relation from one person to another (RL, AA 06: 230). Since external (or juridical) freedom does not belong wholly to the sensible world, because no

[31] On the early attempt to develop a doctrine of natural law according to Kantian criticism, made by different philosophers and jurists around 1790, see Blühdorn 1973, 363f; Kersting 1982, 148f; Kersting 1993, 151f; Klippel 2001.

phenomenon given to us as an object of experience corresponds to it, Right can be regarded as part of the philosophy of the supersensible.

The systematical and definitive place of Right as one of the two branches of pure morals appears in a late entry of the Kantian corpus, to wit, the *Metaphysics of Morals* from 1797. In the prologue to the *Doctrine of Right*, Kant points out, in accordance with what he has already announced in the first *Critique*, that the metaphysics of morals is the system that was supposed to follow the critique of practical reason, and a "counterpart of the metaphysical first principles of natural science" (RL, AA 06: 205).[32] This metaphysics, Kant goes on to say, is split into the metaphysical first principles of the *doctrine of Right* and the metaphysical first principles of the *doctrine of virtue* (RL, AA 06: 205).

In the "Introduction to the Metaphysics of morals", Kant argues:

> One can therefore think in an external legislation that contains only positive laws; but then a natural law would still have to precede it, which would establish the authority of the lawgiver (i.e. his authorization to bind others by his mere choice). (RL, AA 06: 224, translation amended)

According to this passage, we can conceive the idea of an external legislation which only refers to positive laws. However, we would still have to presuppose, in that case, the existence of a natural law that founds the power of the legislator to oblige everyone else to comply with those positive laws. With this argument, Kant emphasizes that the justification of juridical obligations requires a normative or moral dimension, that here he calls "natural law", whose origin lies *a priori* in reason. In fact, he underlines the relation of his doctrine of Right to the natural law tradition by stating that this doctrine concerns the "systematic knowledge of the doctrine of natural law (*ius naturae*)" (RL, AA 06: 229, translation amended). The *Rechtslehre* does not (wholly) deal with doctrines of positive law (established in certain time and place) but rather with their underlying rational principles, in order to provide "immutable principles for any giving of positive law" (RL, AA 06: 229). Now, how exactly do these a priori principles come into play in the doctrine of Right? A complete answer to this question

[32] Cf. KU AA 05: 170.

is out of the scope of this paper, but I would like to make a few remarks on the subject before concluding.

I argued that Kant conceives the old *ius naturae* as a rational and metaphysical doctrine of Right, i.e. as a system of a priori principles through pure concepts, whose object is freedom of choice *in its external use*. That means that the set of juridical a priori principles is restricted to the sphere of reciprocal interaction between persons, and to the form of coexistence of their actions, leaving aside the end of their maxims (RL, AA 06: 230). It is from the notion of external freedom, and not from some conception of the human nature and its ends, that our natural (i.e. supra-positive) rights and obligations are to be determined. The fundamental juridical obligation is formulated by the universal principle of Right: "any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (RL, AA 06: 230). Kant claims that this normative principle "is indeed a law that lays an obligation on me", an obligation that commands me to "so act externally that the free use of [my] choice can coexist with the freedom of others" (RL, AA 06: 231). The counterpart of the universal principle of Right is the principle of innate freedom. This principle states that "freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" is our innate right (RL, AA 06: 237). The universal principle of Right and the principle of innate freedom are, therefore, two sides of the same coin: on the one hand, we have the (natural) obligation not to infringe on the freedom of others, and on the other hand, we have an innate right to freedom, i.e. a moral capacity for putting others under the obligation not to infringe on our freedom (ibid.).

Kant does not only develop his moral and normative doctrine of Right from these two principles, but also from two postulates: the "postulate of practical reason with regard to rights" (RL, AA 06: 246) and the "postulate of public right" (RL, AA 06: 307). The aim of the first postulate is to authorize the possession of objects in general, because a right or permission to use an object cannot be directly derived from the universal principle of Right or from innate right. The second postulate

states that entering a rightful condition is an absolute command of practical reason, i.e. a duty. In §41-42 of the *Rechtslehre*, Kant argues that the natural condition ought to be abandoned because in this condition, as a *status iustitia vacuus*, there is no possibility to determine and secure "what is mine and yours" (that is to say, to enjoy rights). It is worth mentioning here that those postulates and principles of Right aim not only to show the rational necessity of the state, but also to establish what the *ideal* state is. In brief, they must delineate

> the form of a state as such, that is, of *the state in idea*, as it ought to be in accordance with pure principles of right. This idea serves as a norm (*norma*) for every actual union into a commonwealth (hence serves as a norm for its internal constitution) (RL, AA 06: 313).

This conception of "the state in idea", according to which the sovereign power corresponds to the people (ibid.), does not mean that the republican ideal is completely dissociated from the state as an empirical phenomenon. On the contrary, the pure republic exerts a normative force on the political praxis inasmuch as every existing state is under the obligation to advance gradually and continually towards a legitimate constitution (RL, AA 06: 340). The idea of a rightful constitution is indeed a pure concept of practical reason but also a *normative* one: "[though] no example in experience is *adequate* to be put under this concept, still none must contradict it as a norm" (RL, AA 06: 372).

To conclude, I would like to stress that Kant's critique of the natural law tradition did not mean the end of *ius naturae*, but only of its dominant connection with Wolffian or *eudaimonistic* principles.[33] With his critical philosophy, he offered a new methodological foundation for the reformulation of the natural law, giving a new impetus to the discipline that was also acknowledged by his contemporaries. In his view, natural law theorists failed because, on the one hand, they did not consider our reason as capable of legislating moral laws and, on the other hand, they sought their normative content in our sensible nature. Through the lens of critical idealism, and by connecting Right to a new conception of metaphysics, Kant corrected what he saw as his predecessors' mistakes

[33] See Klippel 1976, 180f.

and found a way of establishing rational and immutable principles of Right, thus both reformulating and keeping safe the idea of *ius naturae*.

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