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Law, Order and Freedom

A Historical Introduction to Legal Philosophy

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Chapter 6
The Synthesis of Kant

6.1 Introduction

As a supporter of the Enlightenment, the German philosopher Immanuel Kant (1724–1804) attempted to design a grand synthesis of the two Enlightenment ideals, scientific and moral progress: He defined the Enlightenment as follows:

> *Enlightenment is man's emergence from his self-incurred immaturity....* The motto of enlightenment is therefore: *Sapere aude*! Have courage to use your *own* understanding! (Kant 1991, p. 54)

Kant realised that these two ideals stand in tension with each other because empirical science is value-free or amoral: no norms ensue from facts. Moreover, if one can explain everything causally, human consciousness included, what then remains of human freedom? To this problem, Kant's philosophical studies of human reason attempt to provide a solution, which had a great impact on philosophy after him.

Kant was a real hero of the spirit. His knowledge was extensive, but originating almost completely from the library. Without ever having travelled, he could tell gripping stories of foreign nations and their customs. Great events did not occur in his life; as a bachelor he was primarily married to his books. With rigorous self-discipline, he dedicated his whole life to philosophy and to science. After his philosophical studies he spent some time as tutor with families from the nobility. From the age of 30 until his death he worked at the Prussian University of Königsberg. There he lectured on a broad spectrum of subjects: philosophy, theology, physics, geography, anthropology, ethics and natural law. His most well-known works are *Kritik der reinen Vernunft* (Critique of Pure Reason, 1781), *Kritik der praktischen Vernunft* (Critique of Practical Reason, 1788) and *Kritik der Urteilskraft* (Critique of Judgment, 1790), which made him famous already during his lifetime. As a liberal, Kant praised the French Revolution, but condemned the succeeding terror.

As the extract above shows, the highest value of man, in Kant's view, lies in his ability of self-legislation. From this portrayal of mankind he deduced a liberal constitution of the state, based on arguments that are also to be found with Locke (Section 4.2). This appears among other things from *Über den Gemeinspruch* (On the Common Saying, 1793), in which Kant responds to the French Revolution.

He subscribes there to the principle of equal freedom as foundation for the state. The restraint imposed by state and law on the autonomous individual is based on a social contract. Unlike Locke, Kant does not see the social contract as a historical or implicit agreement. It is a *hypothetical* contract: a metaphor for the demand that the state must be organised in such a way that it *could* be willed by all free, rational individuals. According to Kant, everyone could agree to a state that protects the rights to the freedom and property of everyone against infringements by others. Because of human autonomy, laws may relate only to the external political and social relations between citizens. Internal matters, such as a philosophy of life, should, on the other hand, remain free from state interference. As autonomous beings legal subjects must be able to establish for themselves what is good for the welfare of their souls.

> No-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end (Kant 1991, p. 74).

The government, moreover, does not possess any special authority in the spiritual domain: 'Caesar is not superior to the grammarians.' In short:

> *Right* is the restriction of each individual's freedom so that it harmonizes with the freedom of everyone else (in so far as this is possible within the terms of a general law) (Kant 1991, p. 73).

This does not mean that the individual, in Kant's view, may arbitrarily make use of the negative freedom with which the law leaves him. For private life Kant develops a perfectionist ethics: self-legislation means that you must make *good* use of your freedom. This is, however, pre-eminently a personal responsibility. Should the state force you to act correctly, the act would as a consequence lose its moral character.

How, then, does one establish what the good entails? Modern science cannot furnish such moral knowledge: from facts no norms can be derived. Because of its value-neutral character, science is not capable of providing a foundation for the liberal principles of freedom and equality. Because such principles are nowhere objectively observable, from the perspective of empirical science one should actually regard them as subjective human ideals. But if they are simply subjective, they can make no claim to universal validity. Kant was acutely aware of the fact that the two most important ideals of the Enlightenment, scientific progress and moral emancipation, are in tension with each other. He realised specifically the extent to which science directly threatens the ideal of individual autonomy. Because it wants to explain everything causally, including human thinking and conduct, it leaves no room for free human choices. According to science man is pre-determined by fixed natural laws, not by *self*-legislation.

Kant, nonetheless, attempted to reconcile the two Enlightenment ideals with each other. In doing this he does not fall back onto the classical metaphysical unity of the True and the Good (Chapter 2), because as modern Enlightenment philosopher he rejects the possibility of knowledge of an invisible higher reality, such as Plato's realm of Ideas or the Christian kingdom of God. Modern natural science is, in his view, the only source of reliable knowledge of reality. Kant looked for a more

modest solution by allocating to each of science and ethics their own domain: of, respectively, *theoretical reason* and *practical reason*.

In this regard his analysis differs from that of the empiricists (Section 6.2). According to the empiricist model of knowledge, sensuous impressions provide the source of all knowledge: the stream of loose empirical observations is through generalisation organised into general categories. Groups of impressions that are akin are generalised into general concepts, such as 'tree' or 'person'. Likewise, the causal relations between groups of phenomena are inventoried by the generalisation of observations. When one observes that two groups of sensory phenomena with great regularity follow upon each other, one concludes that the first is the cause of the second. If knowledge commences thus, the empiricists say, then judgments about knowledge must be controllable with reference to empirical observation. One should be able to analyse complex judgments of knowledge by means of simpler judgments which refer directly to observable reality, such as 'this wooden door is brown'. Judgments that cannot be tested in this way, such as 'God is great', 'the soul is immortal' or 'lying is bad', can be disposed of as metaphysical fantasy. The rationalistic view of philosophers like Plato that true knowledge is based exclusively on reason is, in this view, a chimera.

However, if an adherent of the Enlightenment takes seriously the empiricist criterion of knowledge, he loses his two ideals. He would, in the first place, have to acknowledge that his ideal of moral emancipation is based on fantasy. In the second place, natural science would similarly fall from its pedestal, whereas the success of this same science is the very source of inspiration for the empiricists. Indeed, two fundamental characteristics of a scientific law in the form, 'whenever x occurs, this causes y', cannot be derived from observation. *Causes* are not observable: in fact, one only experiences that y always follows *after* x. Moreover, the *whenever* cannot be derived from empirical experience: natural laws claim to apply to the past and future, but one's experience relates only to the relations between x and y that occurred in the past. Actually, in empirical observation only successive, disconnected impressions occur. The organisation of these impressions is the work of consciousness, and must, therefore, strictly speaking, be banished to the same fantasy world as metaphysical judgments about the First Cause or the Eternal (that is, god). This would mean the end of science.

As it happens, Kant saves *both* science *and* morality by fully acknowledging, contrary to empiricism, the constructing role of human consciousness. It is human reason that makes scientific knowledge possible by organising the chaos of observations into general categories and causal relations. Reason, in other words, precedes observation, and, therefore, does not itself have to be justified with reference to empirical observation. Up to this point Kant goes in the direction of rationalism. At the same time Kant accords to reason more modest capacities than the classical rationalists: one cannot exclusively by way of thinking, separate from empirical reality, arrive at knowledge of the world. In brief, human consciousness provides the structure, that is, organises the empirical phenomena into general concepts as well as into relations of causal regularity; sensory experience provides the content or material of knowledge. In accordance with the ideal of natural science, judgments

about such content must, therefore, be testable against empirical observation; up to this point Kant agrees with the empiricists. Metaphysical judgments concerning non-observable notions, such as God, do not furnish any knowledge.

By means of this manoeuvre Kant succeeded in saving the scientific ideal of the Enlightenment, but at a price. If scientific knowledge is partly based on the constructions of human consciousness, it has only relative value. It only furnishes knowledge of reality as it appears to our consciousness, not of reality in itself as it exists separate from observation and human organisation. This, however, also has an important advantage: with the same manoeuvre with which Kant relativises the validity of science, he secures a space for ethics. The causal relations into which science organises reality are after all likewise a human construction. Reality as such may look quite different. Whether this is the case we cannot possibly know. In Kant's view, we, however, do have an indication that there is more, that is, a moral reality.

This indication is to be found in our moral consciousness (Section 6.3). Our conscience speaks to us in the form of *unconditional* precepts: 'Thou shalt!' You should not lie or kill, also not, or especially not, when it would be in your own interest. 'Unconditionally' in other words means: irrespective of the empirical circumstances. Kant, therefore, believes that moral consciousness does not allow itself to be explained empirically. Take, for example, the causal, empirical explanation of Hobbes's natural law (Section 4.1). According to Hobbes, individual human conduct and thinking are caused by the natural urge to survive. This pursuit motivates individuals to institute a peaceful legal order via a social contract with foundational rules, such as 'you may not kill'. The duty of obedience of individuals to a rule such as this thus applies only conditionally: only in so far as this assists them to survive. Therefore, in the state of nature killing is allowed. As a result, however, Hobbes cannot explain why one has the awareness that killing is *never* good (except in self-defence). In his empirical theory of morality the moral motive is, at most, *one* of the many conflicting inclinations, not a moral law that stands above all others.

Kant concludes from this that human reason entails two forms of judgment. Via our *theoretical reason* we construct a scientific, causal-explanatory worldview. Apart from this, we can also via our *practical reason* establish how, irrespective of our empirical selfish motives, we should act in the world. In our scientific reality we create order by way of explanatory *natural laws*, whereas in the moral world we are guided by the *moral law* as this finds expression in our conscience. We can accordingly view our conduct in two ways. When we view things from a scientific perspective we assume that all our conduct is determined by a complex of preceding causes: by education, friends, mood, etc. From the perspective of this deterministic viewpoint it is difficult to hold someone accountable for his actions: he could after all not have done otherwise. Such a causal explanation is, however, simply an organisation which we impose upon the world, and, therefore, does not exclude other possibilities. When we subject our conduct to a moral law, such as 'you may not lie', we assume that we *can* also act in terms of it, even if moral truth works out

badly for us. In other words, if we adopt the moral point of view, we assume that we are *free* to choose the good as well as the bad, and that we are responsible for the choice.

The next step is to ask what exactly the moral law entails. Because Kant rejects metaphysics, he cannot consult traditional morality which appeals to God's Ten Commandments, or the ethics of Plato's ideal state. The only thing that we can know about the Moral Law, in Kant's view, is the form in which it appears to our moral consciousness: as an unconditional and universally valid law or precept (*Categorical Imperative*). Still, this provides a sufficient basis on which to subject moral views to a formal, critical test: can you will that the reason you give for a specific action should also serve as a general law which regulates the actions of every person in such circumstances? This test is called the *principle of universalisability*. Suppose that, being in a bad mood, I stab someone to death in a dark alley. On being asked about it I, lacking conscience, give as reason: 'I killed him because he bothered me.' You cannot generalise (*universalise*) this reason into a universal law, a generally valid reason for the actions of everyone: 'everyone may always kill all others who bother him.' Everyone, including you yourself, can then become the next victim. Ultimately no one will remain, so that the general law is annulled. My reason can be justified only from the point of view of *my* personal inclinations. However, a law applies irrespective of the person concerned.

This equality before the moral law Kant also expresses as follows: you may never use other human beings merely as a means for your own ends; you must always also view them as autonomous beings with their own ends. In this way his formal test, in addition, acquires a more specific substantial content: all people are of equal value. As in the case of the conflict between freedom and causality, Kant's separation of the scientific and the moral points of view enables a synthesis in the conflict between empirical inequality and moral equality: although all people as empirically observable individuals have different characteristics, as moral, autonomous persons they have an equal value.

According to Kant's natural-law doctrine, law is derived from this general ethics (Section 6.4). In their substance, law and morality overlap, because the core of law must consist of moral rules that are necessary for peaceful co-existence. These are the same rules that were identified by Locke: respect each other's bodily integrity as well as property and freedom rights (Section 4.2). The function of law is to make it possible for people to live together, and law is, therefore, a necessary condition for the further moral perfection of human beings, as is required by ethics. This is why Kant regards coercion as necessary to maintain legal order, although from a general ethical point of view it deprives action of its moral character. For this reason state coercion must remain restricted to the minimum: it must, in terms of the social contract, merely align the negative freedom of one person with the equal freedom of all others. Kant's liberal, narrow state morality thus stands in the service of a perfectionist, broad personal morality.

6.2 Theory of Knowledge: Synthesis of Empiricism and Rationalism

Kant wrote his great work on theoretical knowledge, the *Critique of Pure Reason*, only at the age of 56. When he started with philosophy he was, like many of his contemporaries, a faithful follower of Leibniz and Wolff, thinkers who had elaborated on the rationalism of Descartes. Like Descartes (Section 3.4) these rationalists were of the view that all knowledge stems from human reason. They rejected the senses as an unreliable source of knowledge. At a certain moment, Kant, however, came into contact with the empiricism and scepticism of Hume, who rejected rational knowledge as an indemonstrable illusion. After he had digested Hume, Kant arrived at his synthesis of the two movements. For purposes of a proper understanding of Kant's theory of knowledge, we first give some attention to Hume.

6.2.1 The Influence of the Empiricism of Hume

The Scottish philosopher David Hume (1711–1776) wrote his primary work, *A Treatise of Human Nature,* when he was only in his twenties. Because the book was for the most part met with a lack of understanding, he dedicated a great part of his life to give an elaboration of the main aspects of his thinking in a more accessible and less offensive way.

Hume, like Locke, revolts against the rationalistic theory of knowledge of Descartes. General concepts are not inherent to reason, but come into being by way of generalisation and abstraction from sensory experience. Hume refines Locke's description of the content of consciousness (see Section 4.2.5) in various respects. He, for instance, draws a distinction between *impressions* and *ideas*. The image that I have of a chestnut tree at the moment that I actually observe it ('impression') is stronger and more vivid than when I later recall it in my mind's eye (recalling or imagining as 'idea'). *Ideas* are faded copies of earlier *impressions*. We suppose that this happens because the chestnut tree in the first instance, together with the light and our eyes, is an antecedent in the causal process by means of which the impression comes into being. Hume does not, however, want to start from indemonstrable suppositions; he wants to stick to that which is given to our consciousness, and that is the powerful and vivid image of the tree, not the tree itself.

Hume develops, just like Locke, an empiricist epistemology: general concepts come into being by means of generalisation from sensory observations. Sensory impressions, for example the colour black, can leave behind a 'simple idea', a copy in the memory or imagination. From the material of such simple ideas, 'combined ideas' can subsequently be formed. Hence the concept 'coal' is a combination of the simple empirical characteristics hard, black, etc. Hume uses this investigation into the *origins* of our ideas to arrive at a *criterion of legitimation* for claims concerning knowledge. One must in the following way verify whether claims of knowledge in an assertion are justified. One must first take apart the combined ideas of the

assertion to arrive at the constitutive simple ideas. After this analysis one must verify whether all elements of the assertion refer unambiguously to sensory givens. If not, then one has to do with pseudo-knowledge. Metaphysical assertions, such as 'God has the shape of a sphere', can, for example, not be tested against empirical observation, assertions, such as 'it rained on 21 August 2008 in Edinburgh', can.

In addition, Hume also regards as justified, knowledge of the relations between ideas, such as that of mathematics and logic, although these do not stem from sensory experience. This kind of knowledge is, however, only concerned with the ideas themselves, not with the reality outside of the ideas. Thus, '2+2=4', or 'it rains or it does not rain' (formally expressed as 'either p, or not-p') are fully determined by the content of the concepts that are used (in the last instance, by the concepts 'or' and 'not'). This appears from the fact that their denial ('it rains *and* it doesn't rain') results in a contradiction. The judgment 'it rains or it does not rain' is *necessarily* true, irrespective of whether it rains in reality.

Judgments that pretend to concern reality, but that are based merely on reasoning about ideas, such as 'God', which cannot be established by sensory observation, do not, on the other hand, furnish any knowledge.

> If we take in our hand any volume; of divinity or school metaphysics, for instance; let us ask, *Does it contain any abstract reasoning concerning quantity or number?* No. *Does it contain any experimental reasoning concerning matter of fact and existence?* No. Commit it then to the flames: for it can contain nothing but sophistry and illusion (Hume 2007, p. 144).

However, suppose that the book in question is Newton's *Principia Mathematica*. This classical work on natural science contains many causal laws. The compound ideas of causality and regularity do not, however, comply with Hume's test. In our observation only the following is given: a billiard ball comes rolling across the billiard table, it touches another ball, it comes to a standstill, and the other one starts rolling. Irrespective of how many times we have observed this, it is never sufficient to be able to say that the movement of the first ball *causes* that of the second, only that the movement of the second regularly follows on that of the first. Something like a separate 'cause' is not given in the observation. When we say that the first movement causes the second, we do not only mean that the second follows regularly, but also that it *necessarily* follows upon the first. The idea of necessity is, however, misplaced here: one can easily imagine, without contradiction, that the second ball does *not* start moving (like the billiard table, when a ball hits its cushion). Therefore, Hume decides, we must replace the idea of causation with (or interpret it as) that of 'regular succession'. Tested against Hume's empiricist criterion of knowledge, the laws of natural science, however, encounter a second problem. Regular succession only relates to the past: we have exclusively observed that up until now the one has followed upon the other; our observations, thus, do not prove that the same would occur the next time around. A general law: 'given circumstances O, if a, then also b', always exceeds experience. It is simply an assumption that the sun will rise again tomorrow. 'Induction' (deciding on a general law based on a number of particular examples) is actually an invalid type of reasoning. Science, moreover, assumes that

it describes and explains a reality of material things outside of human consciousness. However, as already indicated, this assumption cannot be empirically proven either: actually we only observe *pictures* of reality, not reality itself. Consistent with Hume's empiricist criterion of knowledge one may, thus, not assume that material things exist outside of our consciousness which cause our sensory impressions, and that these things are connected by causal relations of regularity.

Thus Hume is confronted with the question whether convictions that cannot be abandoned by human beings, can actually be justified. The universal causal laws of Newton's natural science lose their foundation in Hume's epistemology, whereas natural science is regarded as the very model of reliable knowledge. In general, every intelligent anticipation of future occurrences by human beings is based on observations of the past – plus the assumption that the established regularity will continue. All knowledge deriving from observation is, furthermore, based on the examination of what is given to us in our consciousness – plus the assumption that these data are generated by external objects. In both instances the assumption can never be justified. When properly considered, the senses actually provide us with no certain knowledge, but only a stream of separate, incoherent, observations, Hume sceptically concludes.

In practice, things nevertheless work better than could be expected. People are programmed in line with inductive reasoning; a child who once burnt himself by the fireplace, will not do so a second time. (And thus not reason: 'From one example, one may not draw general conclusions; that my sister-in-law cannot drive, after all does not prove that all women are bad drivers.') If this was not the case, the human race would long ago have ceased to exist: it is, therefore, a *useful* custom. (Note that the previous sentence implies inductive reasoning, too.)

6.2.2 Kant's Epistemology

The work of Hume made clear to Kant that reason, the human capacity of thinking, can never serve as the only basis for knowledge and science. With Hume, Kant is convinced that the content of all knowledge and science must be derived from observable reality. Reason on its own leads to unverifiable thought constructions. The rationalism of Descartes (Section 3.4) is, therefore, untenable. On the other hand, Kant regards the sceptical conclusions that Hume draws from his empiricism as too radical. In his view there is specifically *one* indisputable example of certain knowledge: natural science. Never before has a theoretical system after all been so successful in the explanation and prediction of occurrences in reality. At the same time Kant is of the view that objective moral knowledge still is possible.

> Two things fill the mind with ever new and increasing admiration and reverence, the more often and more steadily one reflects on them: *the starry heavens above me and the moral law within me* (Kant 1977, p. 133).

On this basis, Kant arrives at a position between empiricism and rationalism.

Kant confirms that in the scientific worldview no place exists for an objective ethics, and, equally, not for human freedom and rationality, because the world of

natural science consists of causally determined, aimless and amoral processes. As Hume had indicated, an unbridgeable gap exists between the domains of 'is' and 'ought'. Through his synthesis of empiricism and rationalism Kant nonetheless wants to recognise natural science as the source of universally valid knowledge, and at the same time securely posit an objective ethics as well as the rationality and freedom of man. Kant attempts to give to each of natural science and ethics its own space, by making a sharp distinction between, on the one hand, the domain of empirically observable nature, and, on the other, of rationality and freedom. In the first-mentioned domain, natural laws apply, in the second, moral laws. This division plays an important role both in his epistemology and in his ethics. He formulates his epistemology, which concerns the possibility of scientific knowledge, in his *Critique of Pure Reason*. The possibility of an objective ethics is dealt with in his *Grundlegung zur Metaphysik der Sitten* (Groundwork of the Metaphysics of Morals, 1785) and in his *Critique of Practical Reason*.

In contrast with the scepticism of Hume which undermines the claims to knowledge of natural science, Kant is convinced that natural science provides irrefutably certain knowledge; he regards Newton's natural science as *the* example of objective knowledge. Kant concludes from this that Hume's empiricist epistemology cannot be completely accurate: the non-empirical part of our knowledge must stem from a source other than the senses. Kant's question, therefore, becomes: how is this knowledge possible? What are its conditions of possibility?

In answering this question Kant draws a distinction between three types of judgment: *synthetic* judgments a priori, *synthetic* judgments *a posteriori*, and *analytical* judgments *a priori*. Synthetic judgments a priori furnish us with new knowledge by combining the data of our experience with each other ('synthesising'); but they, in addition, contain 'a priori' elements, preceding all experience, specifically because of their generalising character. 'All events have causes' is one example of a synthetic judgment a priori: it provides knowledge which is certain, independent of all experience. Concrete knowledge of the world, for example, concerning which causes bring about which events, are on the other hand, still synthetic a posteriori: their accuracy appears only after ('posterior') empirical observation. An example of a synthetic judgment a posteriori is: 'In Amsterdam a Royal Palace is to be found.' The truth of this judgment can be established only with reference to empirical experience. It is not fixed a priori. The correctness of analytical judgments, on the other hand, simply follows from the meaning of the concepts used – thus detached from experience. For this reason an analytical judgment is likewise always a priori: its correctness is independent of what occurs in reality. This form of a priori knowledge only provides insight into our concepts.

Should Hume have used this terminology, then he would, in contrast with Kant, have said that synthetic judgments a priori – judgments which provide knowledge independently of sensory observation – cannot be reduced to empirical experience and are, therefore, senseless. What is indeed meaningful is the other kind of a priori judgments, the analytical, which exclusively express relations between ideas and

do not furnish any knowledge of reality. Judgments concerning reality are in terms of Hume's empiricist epistemology always synthetically a posteriori. This would, however, undermine the claims of natural science.

To this, Kant responds with the statement that our reason also plays a role in the knowledge of natural science: it provides the formal a priori structure with which we organise the multitude of our sensory impressions. Kant links up with Hume's conclusion that the senses as such provide nothing more than an incoherent stream of perceptions. He adds to this that reason brings about an objective order and unity in these perceptions. Reason orders the chaos of perceptions into coherent things and events in space and time, and discerns causal relations between them. 'Space', 'time' and 'causality' are, therefore, not themselves empirical data, but are preceding, organising principles of our minds, which structure sensory givens.

Kant nonetheless does not regard these principles as subjective in Hume's sense: they indeed form a substantial part of our knowledge. Kant contends this with the statement that their general validity must necessarily be presupposed, because they belong to the conditions of possibility of natural science. Should one not recognise them as basic elements of our knowledge, natural science would be impossible; but natural science specifically provides certain knowledge; therefore, these principles of the mind must also be objective. In Kant's view, Hume's empiricist theory of knowledge is, therefore, too limited.

This does not mean that Kant in the end reverts to rationalism. He rejects the rationalist assertion that the mind can completely on its own arrive at true knowledge. Mere rational reasoning, according to Kant, leads to contradiction and indemonstrable thought constructions. Assertions concerning a non-observable world of Ideas, or concerning God, are based on unfounded speculation. Our knowledge is limited to the world that we observe via our senses, albeit that our mind provides in this respect the formal structure. The role of reason limits itself to the organisation of the raw material that the senses provide.

Knowledge, therefore, neither stems directly from reason as the rationalists contended, nor exclusively from the senses as the empiricists maintained, but from cooperation between them.

This, however, also means that natural science only has a limited validity. It is, after all, partly the product of the structuring activity of our own consciousness. The above-mentioned organisational principles constitute, so to speak, glasses that we can never take off. How the world is in itself, disconnected from these principles, we can, therefore, never know. We only know the world as it appears to us, or as Kant says, the 'phenomenal world'.[1] Reality as such, which he refers to as the *Ding an sich* or 'noumenal world' (ideal world), lies beyond out reach.

The validity of natural science is thus indeed universal, but limited to the world as it appears to us via our consciousness. Hence Kant provides space for an objective

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[1]Phenomenon = something as it appears to us.

ethics in addition to an objective science. Science after all leaves open the *possibility* that the world-in-itself is indeed rational, purposive and valuable. The world of natural science only shows blind, amoral processes, which have no aim, but are determined by the causal impact of accidental external forces. 'Causality' is, however, an organising principle of the human mind. For this reason causal natural laws apply to the world only in so far as *man* organises it. This leaves open the possibility that the world as it really is, is not causally determined, but has a rational and moral character. Perhaps it does have a purpose and is valuable. According to Kant's epistemology, we can, however, have no knowledge of such an eventual moral world. Substantive knowledge separate from sensory experience, is after all beyond our reach. Kant nonetheless contends that there is an indication that the world as it really is indeed has such a moral and rational character: we experience a moral awareness that prescribes conduct of an impartial nature to us. According to Kant, this cannot be causally explained (for example, on the basis of our instinct for survival). Therefore, this awareness must refer to a non-causally determined moral sphere, although this is not knowable to us any further.

Kant's theory thus amounts to saying that natural science does indeed produce generally valid knowledge, but that this only relates to what he refers to as the phenomenal reality: the world as it appears in our organising mind. Our mind specifically organises sensory perceptions *from the viewpoint of causality*: everything that happens has a cause. Phenomenal reality does not limit itself to external nature; internal nature, for example someone's character, is also determined by general causal laws. But irrespective of the extent to which empirical reality is causally determined, in Kant's view this does not affect the fact that people make themselves and others accountable for their actions. The 'person', in the sense of the responsible subject, escapes from the causal laws of natural science; when one puts it like this, one adopts the viewpoint of freedom and responsibility.

6.3 Ethics

6.3.1 The Categorical Imperative

In his *Groundwork of the Metaphysics of Morals* Kant starts with a description of moral actions: what does someone do who acts morally; in which way do moral actions distinguish themselves from other forms of action? A person who acts morally, according to Kant, obeys an absolute precept, for example: 'do not steal', even if stealing has all kinds of benefits. Differing from what Hobbes contends, moral consciousness is disconnected from calculation on the basis of rational self-interest.

Kant analyses moral consciousness in terms of a 'good will', which cannot stem from the empirical, causally determined world. An example may explain this notion. Suppose that I want to return to the owner a book I borrowed from him. He seems to have absconded from his apartment so that my intentions cannot be carried out.

According to Kant this does not devalue at all the purity of my motive; the world does not morally regress because of this incident. Suppose, on the other hand, that I want to go and steal a rare book. I go to the bookshop where I recently saw it being displayed. It appears to no longer be there, and I cannot carry out my intentions. In this instance I exhibit an evil resolve and the world, from a moral point of view, has experienced harm, even though on the face of it nothing happened. For the goodness of the good will it does not matter whether the act actually succeeds; for the badness of the evil will it does not matter whether the act actually fails. Does the good will, therefore, not have to pursue results? It does indeed: when I intend to give back a borrowed book, I must at the same time (attempt to) do it: this result must be intended. But when external circumstances have the consequence that my intentions fail, this does not negatively affect my moral intent. It is the same with bad intent: when the intended result is not achieved, it does not change the bad will into something good.

After his analysis of the good will, Kant articulates the moral motivation in different terminology: someone who acts in a moral way does not act on the basis of 'inclinations', but on that of 'duty'. How is this to be understood? Kant gives some examples: (1) most people like being alive and do not have the inclination to commit suicide; (2) some people are plagued by bad luck and entertain the desire of making an end to their lives; (3) many people are by nature friendly and tend to bring pleasure to others; (4) some people are so preoccupied with their own misery that they cannot bring themselves to have any interest in the fate of others. These are all causally determined 'inclinations' and they are, according to Kant, morally neutral: people find these in themselves and can do nothing about the fact that they are like this; these are givens, in the same way as rain and sunshine are givens. But in contrast to the weather, these inclinations do form the object of a moral judgment: one can distance oneself from them, and ask oneself whether it is a good thing to give free rein to these inclinations. Someone who, on the basis of such a consideration, does not seek to exercise control over inclinations 1 and 3, but does so in relation to inclinations 2 and 4, acts by definition not 'based on inclination', but 'out of duty'.

The question then arises what exactly 'duty' means. Kant analyses the notion with the assistance of two new terms, *autonomy* and *heteronomy* (self-legislation and legislation by others, or, less literally but more precisely, rational self-determination and causal determination by external and internal forces). Inclinations are heteronomous: they force themselves onto people; when you do nothing about them, they drag you along. They belong to the causally determined world. Duty is autonomous: after one has distanced oneself from the given inclinations and subjected them to a moral judgment, one either endorses or rejects them deliberately and voluntarily. They belong to a non-causally determined sphere of free, rational choice. What duty entails can similarly be expressed as follows: inclinations are directed at things (I want to stay alive, or rather not; I want to bring pleasure to others, or rather not), whereas duty is directed at the inclinations: 'Can I really will my inclinations? If not, then it is my duty to distance myself from them.' Stated

somewhat more formally, inclinations are preferences of the first order (they relate to things external to themselves); the sense of duty is a preference of the second order (it relates to the preferences of the first order). By way of the preferences of the first order, people are defined (heteronomy), whereas the preferences of the second order prescribe the law for the preferences of the first order (and are, therefore, autonomous). Not all preferences of the second order are, however, autonomous preferences. Suppose that each time when I want to consume a portion of chips, the spirit of my deceased father whispers to me that I should refrain from doing so. 'I only want to do what my father allows me to do' is then a heteronomous preference of the second order. Also, my ranking of preferences may again be determined by my heteronomous inclinations. Kant's sense of duty acquires an autonomous character because the given preferences (and, thus, also the given preferences of the second order) are subjected to a *moral* judgment. How does this happen?

In order to subject the given inclinations to a moral judgment, one must first express them in words, in relation to which Kant introduces the term *maxim*. Maxims are subjective principles of action; they give expression to elements of what one could call someone's personal way of life. I, for example, stand before the choice of giving back borrowed money or not. Then I either act according to the rule: 'I give back borrowed money', or according to the rule: 'I only give back borrowed money if the owner would treat me very badly should I keep the money.' Kant at this point proposes a thought experiment: only those rules are morally justified that you can will as *universal* rules for everyone in similar circumstances. From an egotistical perspective the second rule is perhaps the best. The moral perspective, which attests to rationality and impartiality, however, produces a different outcome: which one of the two rules can I will as a *general* law that is universally observed? Only the first rule, because I cannot will that borrowed goods in general never be given back (including when I myself am the lender). In the balancing of a rule, such as 'I never kill others' against 'I kill others when it comes to it', things are even clearer. As general rule for everyone the latter rule would have the consequence that ultimately no one remains to observe the rule. In the case of general observation, this rule would thus annul itself. In short, as a general rule, it is not even conceivable.

Maxims are thus subjected to a moral judgment. A person who answers the call of moral judgments, complies with what Kant calls the *categorical imperative*, an unconditional rule which often goes against one's own interests. He formulates it as follows: 'Act only according to maxims of which you can at the same time will that they become a general law.' Kant opposes this categorical imperative to *hypothetical imperatives* or conditional rules. These are rules of the following type: *if* you want to achieve this, *then* you must do that (if you want to boil an egg, you have to heat the water to 100°C (or 212°F)). Such prescriptions are conditional, because their execution depends on the desire of someone to pursue the given aim: they take their point of departure in given inclinations, and do not subject these to a moral judgment. Morality, in Kant's view, consists, by contrast, of rules that apply absolutely. You should not steal, even if you strongly want to do this. Morality,

moreover, provides *universal* rules or imperatives: everyone who finds himself in the same situation should act in the same way. Via moral consciousness, man hence gives to himself laws of a generally valid and unconditional import.

How must the categorical imperative be understood? It is often interpreted as follows. After one has formulated a maxim (for example, the maxim that one does not have to give back borrowed money), one attempts to imagine everyone acting in accordance with such a maxim. If one can think and/or will the situation that would then occur, the maxim is morally allowed; if not, it is prohibited. However, a situation in which no one gives back borrowed money, and in which, therefore, after some time no money is lent out anymore, can very well be *thought* without contradiction, in so far as there is nothing contradictory about a society that does not make use of money. Furthermore, that I would not *will* such a situation in which no money is lent out, would only be the case when I, for example, have an irregular income so that I sometimes have to borrow money. But if I am a wealthy person, I would have no objection at all to a world in which no money is lent.

When one adopts this interpretation of Kant's categorical imperative, the imperative ultimately rests on a conviction on the part of Kant that some institutions, such as money and property, are of great social importance. The problem is that this interpretation makes of Kant a utilitarian: he assumes the social utility of various institutions, and calls actions morally justified when they support these useful institutions, whereas actions that endanger useful institutions are immoral. In this way, nothing remains of the autonomy of moral judgment. Morality must then adjust itself to social utility in the 'phenomenal' world.

It is, thus, better to interpret Kant's categorical imperative as follows: the contradiction in thinking or willing does not lie *in* the imagined general practice, but *between* the imagined general practice and my intention to *continue* my action with its *original* aim within this practice. If no one returns borrowed money, I equally cannot call on others to lend me money; it is inconceivable that in a situation in which everyone knows that no one gives back borrowed money, *I* would succeed in borrowing money from someone. I can thus only act with success in accordance with my maxim not to give back borrowed money, when (most) others do *not* act according to the maxim. This means that I parasitise in these circumstances on an existing practice upheld by the actions of others. But with what right do I grant myself certain benefits that I at the same time cannot extend to everyone? Evidently I am not acting on the basis of a moral motive, but of 'inclination': I simply stand in a special relation to myself. The categorical imperative prohibits making exceptions to general rules to the advantage of persons with whom one has a special affective relationship (oneself or those one likes), to the detriment of others to whom this does not apply. Interpreted thus, the categorical imperative is a maxim of the second order: a *meta-maxim*: 'I only want to act in accordance with maxims that can be generalised.' Because of this, Kant's ethics is referred to as 'formal': the moral value of people's actions is not determined by their 'substance', because it leads

to an objective that is considered good, but by its 'form', because the underlying maxims can be generalised or are *universalisable*.

The categorical imperative, presented in this formal way ('Act only according to maxims of which you can at the same time will that they become a general law'), is formulated by Kant in a less formal manner as well: 'Never use others merely as a means for your own ends, but also respect them as persons with their own ends.' In this formulation the moral motive finds very clear expression. An example in criminal law: one might punish people simply because this has a preventative effect on the actions of others. When someone messes in the street, you could give the person a very severe punishment, for instance the death penalty, so that other people would in future also refrain from doing so. Thus one could serve the general interest at the cost of one individual (the severely punished polluter). The ethics of Kant prohibits this because then one person is used as a means for the welfare of others.

When we attempt to express this formulation of the categorical imperative as a meta-maxim, we arrive at something like this: 'I only want to act according to maxims which are compatible with the respect of all people as equals.' Kant's thought experiment gives expression to the unity and equality of all people from a moral perspective: we place ourselves in the position of others as if we ourselves were those other people. Thought of as empirical, 'phenomenal' people, we are all very different. All individuals in observable reality, moreover, have their own subjective inclinations and preferences, which result in strong mutual tensions. The categorical imperative wants to show how we can annul these differences: as 'noumenal' rational beings we are all equally subjects of the same moral law. For this reason we may never use other people merely as instruments for our own ends, but we must always respect them also as fellow human beings, that is, as ends in themselves.

On the basis of the (variedly expressed) categorical imperative we can establish which rules that regulate our actions are morally just, and which not. In Kant's view, the correct rules form a coherent whole, which because of their rational character apply always and everywhere. However diverging human lives and cultures may be, fundamental rules, such as that people may not be abused and murdered, that promises should be kept, that damage should be compensated, and that need should be alleviated, apply universally. The general realisation of such rules, where people respect each other as ends in themselves, in the sense explained, would lead to what Kant calls the *Reich der Zwecke* (Kingdom of Ends). This is the ideal society in which all people are fully rational, are treated as ends in themselves and in which they can realise their personal ends in harmony. In the Kingdom of Ends we would be really free, free from the unwanted interference of others, and free to do what we ourselves want to. The Kingdom of Ends appears to exist only in our moral imagination, as a far-removed ideal. It has no empirical reality: in time and space it appears inconceivable. My actual life is largely determined by empirical conflicts with other people (and with reality). In the ideal, but conceivable, Kingdom of Ends, the conflicts with other people are, however, suspended. Kant does not say that we

can imagine the historical realisation of this *Reich*, but that we should nonetheless pursue it, by controlling our desires and by acting as if we live in such Kingdom.

Kant's Kingdom of Ends thus appears to be a liberal version of the Aristotelian ideal of social harmony, supplementing Aristotle's social ethics with individual auton- omy and its associated negative freedom rights. This liberal twist does not imply that Kant is a supporter of a narrow morality in the private domain as well. His emphasis on the purity of the moral intention fits in badly with this. Kant's ethics is summarised by himself somewhere as follows: *You must strive for the perfection of yourself and the happiness of others*. This implies *essential freedom*: freedom *from* selfish tendencies *for the sake of* moral rationality and impartiality. At stake is, therefore, a perfectionist ethics which the individual imposes on himself – which, however, in the public, political and social spheres leads to a non-perfectionist, liberal, 'narrow' morality, to which people enjoin each other. In public life only 'negative freedom' applies.

That social and political morality cannot be perfectionist, can, in keeping with Kant, easily be illustrated. Suppose that people would have the duty to bring each other to moral perfection (and that this task is carried out by the government), then the success of the intention would at the same time entail its failure. After all, if people under the pressure of others or out of fear of punishment by the state adhere to morality, they would not be acting with a purely moral motive. People cannot lay hold of the autonomous moral will of others, nor can the state. For this reason only the duties that people impose upon themselves can have a perfectionist nature; the social duties to which people subject each other, are non-perfectionist: they only relate to external conduct. We can even say that Kant does not perceive of social morality as perfectionist in order to create space for individuals to live a life of perfection without state coercion. This comes to the fore most clearly in Kant's legal philosophy (Section 6.4).

6.3.2 Kant's Deontological Ethics Versus Utilitarianism

On account of his clear separation of the domains of the factual and the normative, Kant opposes every form of ethics that seeks its foundation in empirical nature. Kant rejects specifically the normative ethics of *utilitarianism*, which is based on the factual human pursuit of pleasure.[2] As criterion for the moral goodness of an action, utilitarianism holds that it must contribute optimally to the greatest happiness of the greatest number. This means that the determination of the proper action in a concrete case is not fixed a priori, but depends on ends-means calculations. One must, for example, attempt to estimate to what extent the telling of a lie or of the truth would cause happiness.

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[2]Utilitarianism is discussed in detail in Section 7.2. Here we view it from a Kantian perspective.

In Kant's view, this is in complete conflict with the nature of ethics. Ethics after all manifests itself to us in the form of unconditional universal precepts, or as a categorical imperative. 'Thou shalt not lie' is, for example, an absolute principle of such fundamental importance that it applies irrespective of the consequences. The universal import of the rule implies that its validity cannot be dependent on changing empirical circumstances, such as human happiness. Furthermore, the utilitarian criterion 'The greatest happiness of the greatest number' can in the case of conflicting interests lead to the choice of actions that advance the happiness of a great majority at the cost of a minority or an individual person. Imagine, for example, that the happiness of 90% of the population would be greatly enhanced by keeping 10% unemployed. According to utilitarianism, one would have to actually do this, because comparatively the unhappiness of the minority is much smaller. Measured against Kant's categorical imperative, however, this would be pre-eminently immoral: one uses some persons merely as means for the happiness of others.

Kant, moreover, contends against the utilitarian consequentialist ethics that this would lead to great uncertainty. We after all possess only deficient knowledge of nature. Calculations to establish which conduct would bring about maximal happiness are, therefore, based on expectations that are too disputable.

Utilitarianism is, moreover, in conflict with the law-like character of ethics. If one had to keep account of all changing circumstances, one would continually have to make exceptions to moral rules. The categorical imperative, on the other hand, applies absolutely, without exception or internal contradiction. In Kant's view, real moral conflicts do not exist. They are simply incorrect applications of the categorical imperative, which can be attributed to irrational factors, such as our empirical inclinations and desires.

6.4 Legal Philosophy

6.4.1 Law and Ethics

Kant's legal philosophy flows directly from his ethics. He regards law as a central subdivision of ethics, which has the specific function of making human co-existence possible. He is, therefore, an adherent of the doctrine of natural law, albeit that he interprets it in his own way. Man lives in communities, in relationships of mutual dependence and influence. Only in a more or less ordered community – and thus not in a Hobbesian 'state of nature' where everyone is about to kill each other – can people realise their ends. The existence of a community is ensured through *law*, which, according to Kant, consists of an application of the categorical imperative to the extent necessary for social co-existence. Examples of necessary rules are: do not kill, do not steal, comply with agreements.

Suppose that it was permissible to kill people when you feel like it. Should everyone accept this as a general rule, society would disappear. Not only can you not will

this; you cannot even imagine a society like that. Another example: when people comply with agreements only when it is to their own advantage, the whole institution of agreements would disappear, and together with it the reasonable mutual expectations that people must have of each other if they want to live together.

Ethics in its totality consists, in brief, of general rules which emanate from the categorical imperative, and which one imposes on oneself. *Law* consists of the general rules which are, moreover, essential for society, and which people impose on each other. All other duties that emanate from the categorical imperative are purely moral in nature, and not juridical. The non-legal part of ethics is not constitutive of the existence of society, but simply determines what a *good* society would look like.

This constitutive role of law in creating an orderly society requires that law must be actually operative in social life, thus in the 'phenomenal world'. Law is so important that it must be enforced by the state, by means of concrete sanctions in observable reality. Because of its organising social function, law directs itself primarily at the factual conduct of legal subjects, whereas ethics essentially is concerned with a proper, pure mental attitude. Stated somewhat differently, law restricts itself to *legality*. It is sufficient when one's external conduct is correct, even if one's motives are improper. Ethics, by contrast, is essentially concerned with *morality*, or with pure motives. For Kant, the actual consequences of actions are less important in the case of ethical duties which are not also legal duties. When I have sincerely done my best to help someone in need, then I have likewise done my moral duty, even if I have not succeeded in my intentions. We simply do not have complete control over the circumstances under which we act. Legal duties are, by contrast, so clear and so important for society that they must without qualification be complied with, irrespective of people's intentions.

According to Kant, law consists not only of constitutive rules that follow directly from the categorical imperative, but also of other positive rules which the state has promulgated. Indirectly these also follow from the categorical imperative because societal order requires just as much that the state regulates a number of specific matters in greater detail (for example, right-of-way rules).

Kant emphasises the empirical aspect of law also in the following way. In its content, positive law can deviate greatly from the ideal, natural law that follows from the categorical imperative. In Kant's view, such law is indeed immoral, but it nevertheless falls within the concept of 'law' – in contrast to the traditional natural-law doctrine, which denies to very unjust law the status of law in the true sense. Kant even states explicitly that bad positive law must always be obeyed.

He derives this absolute duty of obedience from the legal part of the categorical imperative, consisting of the rules which are necessary for social life, and which create the possibilities for the further development of a morally good life. These are so important that they must be established and maintained by the state through uniform laws. Law would lose its ordering function if every individual could establish for himself whether positive laws are just or not, in other words, whether they comply with the categorical imperative. When each citizen can interpret the law in his own way, everyone takes the law into his own hands, which will result in social

chaos. Measured against the categorical imperative, such a society one cannot will. Hence Kant gives absolute priority to order and legal certainty on account of the categorical imperative, in comparison with justice which is derived extra-legally from the same categorical imperative.

With this Kant comes close to Hobbes's absolutist theory of the state. Unlike Hobbes, Kant, however, does assume the existence of an objective moral standard against which positive law can be tested: the categorical imperative obliges the government on its part to formulate positive law in accordance with the general moral law. According to Kant, government is in this respect, however, solely accountable to its own conscience. Citizens have no legal right of resistance when the state nonetheless adopts immoral law. They may only in legal and peaceful ways attempt to replace this with law which is morally more just.

Kant consequently arrives at a paradoxical relation to revolution: there can never be a moral duty, and even less so a legal duty, to overthrow state authority. But once a revolution has succeeded, the new sovereign should, consistent with the same order argument, again be obeyed unconditionally. Kant was certainly enthusiastic about the French revolution, but not because of the violent overthrow of the monarchy. His enthusiasm concerned the new liberal constitution which complied in various respects with the categorical imperative. Here again, Kant proved to be a supporter of the ideals of the Enlightenment.

6.4.2 Social Contract

Kant presented his liberal legal philosophy also in terms of a hypothetical social contract. As a requirement of practical reason, Kant formulates the *bürgerliche Verfassung*, the civil constitution, through which the community is ruled by law, in the form of a *pactum sociale*, a social contract. He presents this social contract as an agreement where people commit themselves to a community or a communal purpose. The first duty of everyone is to create and maintain a civil state. Here people have the right to be protected by enforceable state laws.

In its most ideal, moral form, law consists of rules that guarantee everyone's freedom in so far as this is reconcilable with the *equal* freedom of all others. If the state nevertheless limits one's freedom more than is necessary, one must still obey because of the absolute duty of obedience mentioned before. 'Freedom' here refers to what Kant calls *negative freedom*: being able to do what one wants to, free from the interference of others. In the space which law should leave open, we are thus free in the negative sense: we may do what we want to. In Kant's view, however, this is only freedom in the legal domain. In the moral domain, in our conscience, we should act in accordance with the non-legal, perfectionist part of the categorical imperative. Here action attains moral value only by virtue of the good intentions of the actor. Good conduct because of external coercion would negate all authentic moral quality. It is for this reason that Kant favours maximal freedom in the domain of law, which is after all enforced by sanctions. This freedom may be limited only

by laws that protect the equal freedom of everyone. Since laws which limit freedom in this way emanate from the categorical imperative, and thus from our reason and our freedom, we are, in obeying the state, still autonomous, or self-legislating.

In Kant's view, the civil constitution must be regulated by a triad of principles that are related to the Enlightenment ideals. The first principle entails everyone's individual freedom as a human being. Within constitutional limits everyone must be able to act as he wishes, and be happy in his own way. The state has no right to make people 'happy against their will' (anti-paternalism).

The second principle is that of everyone's equality as subject of the law. This entails that everyone has an equal right to legal protection against others and the state, or equality before the law. Although Kant viewed all people equally as autonomous persons in moral respect, he did not advocate substantive equality in a legal sense. In the empirical-legal sphere of social life he simply advocated formal equality before the law. As classical liberal he rejected feudal estate privileges: all positions had to be accessible to everyone on the basis of their personal merit. But since the talents of different people vary considerably, the formal principle of equality does not exclude socio-economic inequality:

> Thus. . .the one must obey the other, (as the child its parents or the wife her husband), the one serves (the labourer) while the other pays, etc (Kant 1991, p. 75).

In the same vein Kant also rejected equal political rights. The legislative power must be determined solely by people who occupy an *independent* position:

> The only natural qualification required by a citizen (apart, of course, from being an adult male) is that he must be his *own master* (*sui iuris*) (Kant 1991, p. 78).

And these are men who are independent of others because they have some possessions. Only they comply with the requirement of maturity.

The third principle is that of everyone's independence as a citizen. With this Kant refers to the original contract by virtue of which the community is established. This hypothetical contract obliges the state to legislate in such a way that its laws could have had its origin in the general will of the people. Although Kant rejects a general right to vote, the legislature thus has to serve the general interest. These three principles lie at the foundation of the state.

This 'general will of the people' refers, just like the 'original contract', to Reason, the rational noumenal aspect of all people. Kant's social contract does not refer to an actual agreement, but expresses the idea of general validity. Viewed practically, its import is to bind the legislature to the hypothetical general will of rational people.

6.4.3 International Law

As we saw in the preceding discussion, the central function of the state is to protect the freedom of citizens. This has consequences for international law as well, for a state cannot succeed in this task when in their mutual relations states each go their own way. Therefore, the principles of freedom and equality should also obtain

validity in international relations. In line with the immanent logic that determines the civil constitution, international violence must be monopolised by a supra-national institution. A league of nations must ensure that states do not violate their mutually adopted agreements, and that appeal is possible when they disagree about the correct interpretation of international treaties. Wars must be banned by the league of nations. With these ideas Kant was the first philosopher to advocate an international legal order of which the United Nations nowadays constitutes a weak shadow.

According to Kant, international law not only determines the relations between states, but also the way one state deals with the subjects of another state. Foreigners may not be treated as enemies or be robbed of their possessions or their freedom. When someone wants to settle abroad permanently, a more detailed agreement must be established; one has no appeal to a right to world citizenship that would allow one to settle anywhere permanently. From this follows that colonial practices are impermissible. This is evident when the inhabitants of one country take possession of another country for economic reasons. Kant moreover objects to paternalistic colonial practices such as a civilization offensive for the sake of the colonised (as propagated by Douwes Dekker/Max Havelaar, see Chapter 1). He phrases this objection by analogy to his argument against revolutions: one may not use illegal means in order to bring about a better legal condition.

6.5 The Separation of 'Is' and 'Ought' and a Narrow Social Morality

Kant's *Critique of Practical Reason*, which concerns moral knowledge, shows important parallels with his *Critique of Pure Reason*, which concerns theoretical knowledge. In both instances he accords a decisive role to reason, but at the same time limits its role to providing a formal structure.

There is, however, also a fundamental difference between moral and theoretical knowledge. Meaningful theoretical knowledge comes about through the cooperation between the senses and reason; theoretical knowledge without a foundation in experience loses itself in meaningless speculation. Each of these two sources of knowledge (senses and reason) separately has too little to offer. Things are different in the case of moral knowledge. According to Kant, the empirical plays no role here at all. Kant, therefore, restrains himself from formulating substantive moral norms, such as the Ten Commandments. His *categorical imperative* entails a critical formal test which judges conduct by its acceptability from a supra-personal, impartial point of view. Reason here provides, independently of sensory experience, in itself a sufficient anchor. Ethics consist simply of the form of a universal law, of an unconditional, universally valid precept.

This difference is a consequence of Kant's endorsement of the worldview of natural science: facts do not have any normative value. Kant concludes from this that morality must have its source in a totally unique sphere of reasonableness. For this reason it bears a formal character. Reason alone can after all provide us with

no substantial knowledge. All our substantial aims stem from our empirical lives: they derive from our needs, desires and inclinations. For this reason they lack any moral character: what we actually desire does not have to coincide with what is morally desirable. Only by testing our desires against the rational moral law does it appear whether they are morally acceptable. In Kant's view, there is consequently a fundamental gulf between is and ought, that is, between facts and norms.

In this respect Kant's ethics differ radically from that of Aristotle (Section 2.5). In the worldview of Aristotle, reality clearly has a normative and rational character. Because of this the essential purposes which one comes across in reality are similarly normative in nature. There is no separation between facts and norms; to know reality likewise means to know the good. Greek rational ontology assumes a natural unity of the True and the Good.

This teleological metaphysics is abandoned in the worldview of modern natural science. Nature is regarded here as value-free and irrational. Therefore, Kant must place his ethics in a radically different domain. Hence he arrives at a dualistic worldview: on the one hand there is amoral, causally determined nature, on the other hand the rational domain of human ethics. The latter domain, Kant can no longer find in the external irrational world. For this reason he situates it in human consciousness which stands against the rest of nature. Thus man, in accordance with the modern worldview of Kant, acquires the role of autonomous self-legislator. At the same time man is the legislator of external nature, as scientific causal laws are human constructions, by means of which man acquires a hold on the empirical world. This stands in contrast with Greek ontology, which regards rationality and norms as present in the world, demanding of man to conform to it. Here nature plays the role of legislator.

Kant reproaches the rationalistic ethics that preceded him, of defending a highest good which stands external to human beings, for example, by deriving a standard of perfection from the design of nature. In Kant's view, the autonomous ability of self-legislation corresponds much better with the unique moral responsibility of human beings.

The modern worldview also leads Kant to a limitation of perfectionism. Because human rationality can no longer find any anchor in an eternal rational nature, its capacity becomes significantly smaller: all it can still do is to bind subjective maxims to moral conditions. Kant does not search for human perfection in an all-round development of abilities, but simply in internal 'good will'. The good will is internalised to such an extent that one cannot with certainty state of any person that he is of good will. In comparison with Greek ethics, Kant's view of the perfect way of life is considerably restricted. Only the good will 'shines like a jewel', Kant says somewhere, whereas in Greek ethics the whole human being, and even the cosmos, is in essence a perfectly structured jewel.[3]

Since man has been proclaimed as self-legislator because of his unique reasonableness, individual autonomy attains a central status. In legal philosophy this

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[3]Greek: *kosmos* = both *order* and *jewel*.

means that the government must ideally grant its subjects as much freedom as possible to determine their own lives. This stands in sharp contrast with Plato, where the state must force its subjects to live a morally perfect life (Section 2.4). Kant's social morality, which culminates in his legal philosophy, is a 'narrow', liberal, non-perfectionist morality.

Kant's narrow social ethics deviates in a number of fundamental respects from the ethics of Hobbes, although there are important agreements between them (Section 4.1). The agreements are especially to be found in their legal views. Kant and Hobbes see the law as a means to maintain social order, and, therefore, (almost) never allow for revolt. Law, according to both of them, consists of the rules that are necessary for a peaceful social order. They both contend this by means of the idea of a social contract.

For the rest, Kant stands closer to Locke's liberalism. His legal viewpoint is based on the extra-legal, moral value of autonomy, and not like Hobbes's legal theory, simply on the desire to survive and to lead a life of pleasure. In order to further moral autonomy, the law must guarantee individual freedom. Hobbes's state, in contrast, allows no basic liberties, because this would threaten the legal order. Kant, who tests positive law against an extra-legal morality, would call law immoral if it violates freedom. But, just like Hobbes, he would on the basis of the order argument then still require obedience. In contrast with Hobbes, Kant would, however, regard it as obligatory to change illiberal law via legal means.

6.6   Commentary

Kant's philosophy has been the subject of much criticism; we limit ourselves here to a few critical comments on his ethics and his legal philosophy.

In the first place, criticism of what can be referred to as Kant's 'moral narcissism'. If the only thing which can unconditionally be called good is the good will, then people are encouraged to preoccupy themselves with the purity of their motives, and to leave it at that. This can lead to the navel gazing of what Hegel has called the *schöne Seele* (beautiful soul): someone who rejoices in his own excellence, and, therefore, does not want to dirty his hands with worldly matters. This moral narcissism can affect all human relations. When I only help someone because the maxim 'I never help anyone' is not universalisable, then all things considered, the object of my care is not the person who seeks help, but my maxim. To do good to someone is then not directly a morally valuable act, but only indirectly. This approach could impoverish human relations.

In the second place, Kant's ethics radiates an ungrounded optimism. In his view every moral problem can be solved by applying the universalisability test. Its application requires no specific philosophical competence: every person has the required abilities; what is more, especially simpler people can do it best. The problem is, however, that an act can be described in different ways. In terms of one description it is possibly universalisable, in terms of the other, it is not. (A related joke: 'May

I pray while I eat?' Answer: yes. 'May I eat while I pray?' Answer: no.) Kant's example of a person who, on the run from a killer, seeks shelter with me is notorious. The killer knocks on my door, and asks whether I saw the person passing. According to Kant I should not lie in this situation; lying is forbidden under all circumstances. But why could my act of not telling the truth not instead be described as 'To mislead someone who threatens the rights of another so that his evil intent is defeated'? Kant makes absolute *one* description of the act in question, not allowing for any nuance: lying is forbidden under all circumstances, full stop. Kant's optimism consequently easily leads to legalism and rigidity. Many moral dilemmas cannot be solved by applying a formula to them, and whoever thinks that he can do so, becomes a literalist who passes by the complexities of moral dilemmas.

In the third place, one can question Kant's unconditional prohibition of revolt. The prevailing order must always be obeyed, and preferred above the uncertainty of a new order brought about via a revolution, irrespective of how unjust the existing order is. In this respect Kant sides with Hobbes against Locke. But why should this actually be the case? Why may the obedience to a legal authority not have a conditional character? The maxim 'If the ruling regime violates elementary human rights and encourages people to report their own family members to the police, I attempt to bring about a revolt', does not, when generalised, have to lead to chaos. Moreover, when governments are aware of the fact that the obedience of citizens is conditional, the chance is greater that no chaotic abuses will occur.

In the fourth place, and tying in with the previous point: Kant's somewhat schizophrenic relation vis-à-vis revolution is surprising. You may not participate in it; it is a kind of natural catastrophe which simply occurs, and which you have to allow to take its course. But if something good arises out of it, it is a welcome bonus. Thus a dualism arises between the amoral world history and the moral conduct of individuals: it is never morally justified for individuals to participate in revolutions, which nevertheless still happen, and then, even when not willed, can bring about moral progress. The moral actor consequently becomes a spectator who does not want to participate in the dirty work of others, but who afterwards wants to profit from it. Is this not a form of parasitising – something which Kant's ethics prohibits?

The previous point of critique relates to Kant's dualism between moral actor and actor in natural life. This ties in with his dualistic distinction between the spheres of the reasonable (the sphere of freedom) and the empirical (the sphere of causality). Our fifth critical remark relates to this. Kant might contend unjustly that non-egotistical human conduct cannot be explained in an empirical way. Hume's invocation of the ability for sympathy (or rather empathy) may present a satisfactory explanation (see also the discussion of Freud in Section 8.2). According to Hume, the impartial character of our moral consciousness is the consequence of a process of socialisation, by which we learn to imagine ourselves in the shoes of another, and take account of his views and interests. By means of this process the general suprapersonal rules are established which are necessary for co-existence. In contending this, Hume does not have to divide up the world into two spheres, the causally determined and the moral. With him, morality is a part of man's psychology and of social life. With Kant, the bridging of the spheres of freedom and causality

is difficult to imagine. Nevertheless, ethics requires that man turn his rational moral considerations into action. But every time this happens, free will would break into the causal chain of empirical events. And then the principle that everything in nature is causally determined would no longer be valid. Descartes produced God in order to bridge the gap between the spiritual and the material. But according to Kant, rationalistic evidence of the existence of God exceeds the limits of the human capacity for knowledge.

To solve this problem one could interpret Kant's philosophy in terms of the 'two-aspect theory'. One would then not assume that man really consists of two completely dissimilar substances (a spiritual and a physical, or noumenal and phenomenal). According to this interpretation, there are just two different *points of view* regarding the same thing. On the one hand, we can regard ourselves as a branch of empirical nature. Then we regard our feelings, tendencies and motives as completely causally determined, and thus in principle predictable. This is the viewpoint of Hume and of modern empirical psychology. In general, this interpretation is characteristic of the objectifying spectator perspective of empirical science. This interpretation of human conduct leaves no space for freedom of choice and moral responsibility.

The same human actions can, however, also be viewed differently, from the viewpoint of the participant. From the point of view of the acting person himself his choices appear to still be free: he can reason for himself which conduct deserves preference, weigh up reasons in favour of and against it, etc. In our daily lives it is very difficult to see ourselves as completely unfree. We, moreover, do not regard other people as automatons or animals led by their instincts, but appeal to their responsibility. From this point of view human actions are not blind, determined, natural events: it could also have been different had the 'actor' willed it.

The two-aspect theory makes no pronouncement about what reality is like. We can, after all, only know how it *appears* to us. And according to the two-aspect doctrine it appears in the above-mentioned two ways, dependent on the perspective that one adopts: the scientific or the moral. (In daily life – and in criminal law judgments – these perspectives, moreover, frequently cross each other.) By interpreting the two-aspect doctrine methodologically, the problem which the ontological interpretation of Kant's ethics brings about is avoided, that is, that man really consists of two radically different 'substances', with the interaction being a mystery.[4] With his two-aspect theory Kant wants to escape from both empiricism and rationalism. In doing this he creates space for ethics outside of the domain that is occupied by natural science.

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[4]To escape from such dualism, some writers adopt a reductive approach: they reduce the one aspect to the other. According to August Comte (1789–1857), everything, also man, can be explained causally; the idea of the autonomous man who makes his own history is illusory; Comte's empiricism sees through this illusion. A rationalist, such as Sartre (1905–1980), does exactly the opposite: the true man is the absolutely free man; it is a form of bad faith when one, in an extension of science, subscribes to the view that man is causally determined.

Methodologically interpreted, the two-aspect theory nonetheless retains something unsatisfactory. Both points of view, after all, exclude each other. This inconsistency gives to both perspectives an *as if* character: as soon as one adopts the one point of view, it is difficult to still take the other seriously.

To conclude, we add some brief points of criticism. Kant invokes the unequal maturity of empirical human individuals to legitimise unequal substantive rights. Against this, social-democratic critics have contended that it gives women and labourers few chances to develop their maturity – an important difference compared to children (who are immature as such). Communitarians have opposed Kant's vision that autonomy constitutes man's moral essence: this is based on an unjustifiable metaphysical worldview, because people would be primarily communal beings (see Section 9.1.2). Forceful criticism has also been expressed against Kant's respect for empirical science, among others by Hegel (Section 7.3) and Habermas (Section 9.3).

Nonetheless, Kant's philosophical heritage is large. In the domain of epistemology, it is nowadays generally accepted that human consciousness plays an important constitutive role in the formation of knowledge. In contemporary ethics new variants of the procedural principle of universalisability have been developed (see Hare, Section 8.3.2; Habermas, Section 9.3; Rawls, Section 10.5).