§1: Introduction

According to *The Metaphysics of Morals*, the crown jewel of Kant’s practical philosophy, the doctrine of morality (philosophia moralis) is properly divided into two parts: the doctrine of right (Ius), and the doctrine of virtue (Ethica). Kant associates each of the subdivisions of morality with a distinct form of lawgiving and law, juridical, on the one hand, and ethical, on the other. Kant thus divides *The Metaphysics of Morals* into two parts, *The Doctrine of Right*, and *The Doctrine of Virtue*, and the work contains three separate introductions. The introduction to *The Metaphysics of Morals* presents an initial characterization of juridical and ethical law, and locates them both under the common genus of moral law. The introduction to *The Doctrine of Right* then further develops the idea of juridical law from an initial characterization of the concept of right. The introduction to *The Doctrine of Virtue* does the same for ethical law, beginning this time from the concept of an end that is also a duty.

The ambition that is embodied in this architectonic structure is part of the great appeal of Kant’s mature practical philosophy. Following the tradition of the natural lawyers, Kant divides juridical law into natural law, on the one hand, and positive law, on the other. He calls knowledge of the system of natural law “juridical science” (juris scientia). Once juridical science has been expanded by empirical knowledge of a system positive law, juridical science becomes jurisprudence (jurisprudencia). By locating right, along with ethics, under a common
genus of moral law, Kant promises to bring the phenomena of jurisprudence, including an understanding of private, public, and international law, all within the purview of his powerful moral philosophy. For, the general concept of a moral law is developed in his celebrated ethical writings, first in the *Groundwork to the Metaphysics of Morals*, and then more systematically in the *Critique of Practical Reason*. Kant thus promises to treat the phenomena of jurisprudence as one distinct department of a single morality of reason and freedom.

At the same time, Kant’s architectonic marks the profound difference between right and ethics. All morality involves our relations to others, but right (*ius*) is communal, institutional, and public in some distinct and special sense that sets it apart from the rest of morality. This is a thought with a long history that also has resonance in philosophy today.¹ For those moved by the thought that the public and institutional phenomena treated by jurisprudence are categorically distinct from ethics, this embodies a real insight. The unity-within-difference of Kant’s architectonic thus holds great appeal for answering a central question of jurisprudence: how is law related to morality?

However, *The Metaphysics of Morals* has made it difficult for commentators to understand how Kant’s claim that juridical law is moral law is consistent with what he says about the specific difference between juridical and ethical law. In particular, it has seemed hard to see how juridical laws could be moral laws at all. For juridical laws, according to Kant, do not require an agent to act from the incentive of duty, but moral laws do.

Furthermore, there are passages in the introduction to *The Doctrine of Right*—in particular the

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notorious discussion of “strict right” in §E—that seem to treat juridical laws not as requirements to be taken up by the reason of those subject to them at all, but rather as licenses for one agent to externally coerce another agent into compliance. This has understandably conveyed the impression that—emphatic protestations to the contrary notwithstanding—Kant does not really intend to subsume the phenomena of jurisprudence under his morality of reason and freedom after all.

The clearest attribution of this incoherence to Kant’s text can be found in the work of Marcus Willaschek. In a series of papers stretching over several decades, he has argued that Kant’s official position is impossible to reconcile with his account of right. At various times he has asserted that The Doctrine of Right does not belong in The Metaphysics of Morals, that juridical laws as characterized by Kant cannot be categorical imperatives, and that juridical laws possesses features incompatible with those attributed to moral laws, as these are discussed in The Groundwork to the Metaphysics of Morals, and The Critique of Practical Reason. Other commentators who are less willing to attribute confusion to Kant, such as Allen Wood and Katrin Flikschuh, are moved by the same features of the text to downplay the generic unity of ethics and right in Kant’s practical philosophy. They thus embrace many of Willaschek’s conclusions, and advance similar readings of passages such as §E, while simultaneously arguing that these conclusions are not in tension with Kant’s understanding.

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2 Willaschek, “Why the Doctrine of Right Does Not Belong in The Metaphysics of Morals”. Willaschek has walked this rhetoric back in his later writings, while leaving the substance of his criticism intact.


4 Willaschek, “Right and Coercion”. This is part of his argument that the Universal Law of Right cannot be derived from the Categorical Imperative.
of his own position. In this paper I wish to resist such readings, and argue that we should take Kant’s claims that juridical laws are moral laws at face value. My hope is that by seeing where these commentators go wrong we can remove one obstacle to understand how the *The Metaphysics of Morals* might deliver on the appealing unity-within-difference promised by its architectonic.

Towards this end, in §2 I set out the generic unity that Kant argues juridical and ethical law share as moral law. In §3, I consider his characterization of the specific difference between juridical and ethical laws. In §4, I present Willaschek’s development of “the paradox of juridical imperatives” that he believes results when one tries to combine the specific character of juridical law with the generic character Kant attributes to moral law. In §§5-6 I set out to undermine this paradox, and develop a more adequate understanding of the relationship of right to ethics. Finally, in §7 I present a reading of §E that is fully compatible with Kant’s claim that juridical laws are moral laws. In §8, I end with some very brief remarks about the conception of jurisprudence that emerges from my reading.

§2: *The Generic Unity of Right and Ethics*

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5 Indeed, Willaschek himself, as we will see, tries to argue that Kant recognized the tensions Willaschek attributes to *The Metaphysics of Morals*, and that he was working to resolve them within the text at the time it was published. It is worth saying here that Willaschek is deeply sympathetic to *The Doctrine of Right*, and the spirit of his interpretation involves the attempt to carry Kant’s project farther than Kant himself managed to do.

6 For reasons of space, in this paper I focus on the arguments of Willaschek and Wood. I believe the critique I offer could also be used to undercut Katrin Flikschuh’s claim that juridical laws involve freedom but not autonomy, and that being just does not involve acting from the incentive of duty. But I do not undertake to show this here. See Katrin Flikschuh, “Justice Without Virtue” in *Kant’s Metaphysics of Morals: A Critical Guide*, ed. Lara Denis (CUP: 2010), pp. 51-71.
For Kant, all of nature works according to principles (laws), and rational nature is no exception. But rational nature is distinct from non-rational nature, Kant thinks, in that it acts according to principles through the representation of these principles. What is distinctive of reason is that it governs itself.⁷ If we are speaking about practical reason, the principles through which reason governs itself are practical rather than theoretical principles that relate to action.

On Kant’s understanding, a practical principle represents actions falling under it as necessary. In doing so, it represents the actions as in some way good.⁸ Kant draws a distinction between conditional and unconditional practical principles. A conditional practical principle represents actions falling under it as necessary relative to the pursuit of some end that the action furthers.⁹ The necessity in question is thus conditional on pursuit of the end, and the action required is instrumentally good as a means to this end. When a stone falls, to be sure, it does so in accordance with the principle of gravitation, but it knows nothing of this principle. By contrast, when a rational being eats a hamburger as a way of satisfying her hunger, she acts on a general knowledge that a hamburger (as opposed, say, to a tureen of sawdust) is something that it is good to eat relative to her end of satisfying hunger.

By contrast with such instrumental principles, an unconditional practical principle represents an action as necessary regardless of ones ends. The necessity of actions falling under the principle is thus not conditional on the pursuit of some antecedently given end, and the action required is good intrinsically rather than instrumentally. As Kant colorfully

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⁷ Citation
⁸ 4:414, 6:222
puts it at one point, in this case the action itself contains a law.\textsuperscript{10} Moral laws, on his conception, are unconditional practical principles in this sense: they represent an action as intrinsically necessary and so good to perform in a non-instrumental sense.\textsuperscript{11} When a rational being returns your book because she promised you she would, she acts on her general representation of returning the book as something that is morally good to do in light of the fact that she promised to do so.

For beings who are exposed to non-rational inclination, and so do not conform to practical principles by an inner necessity of their nature, all practical principles show up as imperatives telling them what they \textit{ought to} or \textit{must} do.\textsuperscript{12} Imperatives for Kant thus represent the subject of the imperative as one who must, at least potentially, be constrained to conform to the principles they express in the face of inclinations to the contrary.\textsuperscript{13} Imperatives make necessary an action for a subject who does what she ought to do only contingently.\textsuperscript{14} The practical \textit{necessity} of actions that fall under the law thus shows up in imperatives as the \textit{necessitation} of the subject to perform the actions the law requires.\textsuperscript{15} For imperfect beings, conditional practical principles are what Kant calls “hypothetical” or “technical” imperatives, necessitating agents to perform actions that are necessary as means to their ends.\textsuperscript{16} Unconditional practical principles are “categorical imperatives”, necessitating

\textsuperscript{10} 4:402. It is one of Kant’s central ideas that unconditional practical principles make an action necessary directly through the representation of the action’s form, 6:222. For a rich development of this idea, see Stephen Engstrom, \textit{The Form of Practical Knowledge}.
\textsuperscript{11} 6:221
\textsuperscript{12} 4:413, 6:222.
\textsuperscript{13} 6:222, 4:412-13.
\textsuperscript{14} 6:222
\textsuperscript{15} 6:223
\textsuperscript{16} 4:414-16; 6:222
agents to perform actions that are intrinsically necessary.\textsuperscript{17} All moral laws are categorical imperatives for human beings.\textsuperscript{18}

Obligation, as Kant defines it, is the necessity of a free action under a categorical imperative of reason.\textsuperscript{19} When we represent ourselves as obliged to perform an action, we thus represent an action as necessary to do in light of a moral law. Obligation thus relates an action to a moral law as the ground of its necessity. Furthermore, it represents that grounding relation as holding for a subject who must be necessitated or constrained to perform the action in the face of the contrary inclinations to which she may be exposed. For human beings, all moral laws give rise to obligations.

Kant calls a “duty” the action that we are obligated to perform by a moral law.\textsuperscript{20} He tells us that we can be bound to perform the same duty in different ways. For this reason, he refers to duty as the “matter” of obligation, with the implication that the same duty can serve as the matter informed by different kinds of obligation.\textsuperscript{21} To represent an action as a duty is thus to represent it as the object of some obligation; it is to represent the action as necessary, and intrinsically good, in relation to some moral law. For human beings, all moral laws give rise to the duties that are the object of the corresponding obligations.

\textsuperscript{17} 4:414  
\textsuperscript{18} 6:227  
\textsuperscript{19} Ibid.  
\textsuperscript{20} 6:222  
\textsuperscript{21} We will return to this point later in §6; it requires some care to be interpreted properly. It will turn out that the “different ways we may be being bound” to perform a single duty cannot be based on different objective grounds, and so different laws. Rather, Kant has in mind the same law binding us to a single duty in more than one way simultaneously, and so giving rise to more than one form of obligation.
According to Kant, both juridical and ethical laws are moral laws.\textsuperscript{22} Since human beings are exposed to inclinations, for us both sorts of laws are categorical imperatives.\textsuperscript{23} As a result, they both lay obligations on us to perform duties.\textsuperscript{24} Kant is explicit that these concepts of moral law, categorical imperative, obligation, and duty, are common to both right and ethics, and can be used to characterize both ethical and juridical laws.\textsuperscript{25} Juridical and ethical laws thus share a generic unity as moral laws. Willaschek aptly dubs this “Kant’s official position” on the relation of Right and ethics to morality in general.\textsuperscript{26} It is this official position that Willaschek is concerned to argue fails to cohere with the specific distinction between juridical and ethical laws. I now turn to this difference.

\textit{§3: The Specific Difference Between Right and Ethics}

\textsuperscript{22} 6:213. For a characterization of practical philosophy as structured by the genus of morals, and the species of right and ethics, see also 6:379.
\textsuperscript{23} 6:222.
\textsuperscript{24} 6:220-21; 6:222.
\textsuperscript{25} First of all, the section where the definitions of the last several paragraphs are found is in the first introduction to \textit{The Metaphysics of Morals} as a whole that precedes both \textit{The Doctrine of Right} and \textit{The Doctrine of Virtue}. Given their placement, we would expect these definitions to apply to both parts. Furthermore, the relevant section of the introduction is entitled “Preliminary Concepts of the Metaphysics of Morals (PHILOSOPHIA PRACTICA UNIVERSALIS)”. Both the description of the concepts as “preliminary” to the whole work, and the Latin gloss of them as “universal practical philosophy” provide further evidence that Kant intends the concepts to apply to both ethics and right. In additional to all this, as if intending to lay to rest all possible doubt on this question, Kant precedes the definitions of categorical imperative and obligation with the sentence, “The following concepts are common to both parts of \textit{The Metaphysics of Morals}.” For further textual support, see Kant’s explicit assertion that the concept of moral law and categorical imperative to apply to duties of right at 6:396, and his ubiquitous use of the terms “obligation” and “duty” in connection with juridical laws.
Kant distinguishes between two species of lawgiving, and two associated species of law, juridical and ethical. In architectonic comments scattered throughout the three introductions, Kant represents both juridical and ethical laws as having their basis in different aspects of a unitary concept of freedom, understood as a power of reason.\(^{27}\) According to Kant, freedom is the power to act from moral laws.\(^{28}\) Kant suggests at several places that the division of moral law into ethical and juridical law flows from the fact that the operation of the power of human freedom is exposed to two sorts of hindrances or obstacles lying in our nature, one internal and one external.\(^{29}\) The doctrine of virtue, which deals primarily with ethical laws, is concerned with the internal hindrances to the exercise of freedom from the sensible inclinations to which we are exposed that can influence reason’s operation.\(^{30}\) The doctrine of right, which deals with juridical laws, is concerned with external hindrances to the exercise of our freedom arising from the choices of others.\(^{31}\)

Starting with the ethical side, the hindrance to our ability to act from the moral law lies in our non-rational inclinations and passions. Since such inclinations bear only a contingent relation to acting morally, the subject must be capable of setting them aside and constraining herself to act rightly through respect for the moral law.\(^{32}\) Virtue is Kant’s term for the standing inner strength required to set aside contrary inclinations and act from the moral law.\(^{33}\) Such virtuous self-constraint is a hindering of the influence on reason of sensible inclinations that are themselves obstacles to our freedom. As a result, subjection to

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\(^{27}\) 5:220-21.  
\(^{28}\) 6:221-22.  
\(^{29}\) 6:396  
\(^{31}\) 6:396  
\(^{32}\) 5:79; 6:379.  
\(^{33}\) 6:380.
such discipline is properly conceived as strengthening the power of freedom and not
diminishing it.\textsuperscript{34} Famously for Kant, to be free is not be lawless, but rather to be bound by a
law that one gives oneself.\textsuperscript{35} Kant views this variety of internal hindrance in the hearts of
individual ethical subjects as giving rise for human agents to a distinctive form of law—
ethical law—that articulates duties of virtue, requirements of inner self-constraint on an
ethical subject.

Let us see how Kant articulates this ethical form of law. According to Kant, all
lawgiving involves two elements:

\begin{quote}
[F]irst, a law, which represents an action that is to be done as \textit{objectively} necessary,
that is, which makes the action a duty; and \textbf{second}, an incentive, which connects a
ground for determining choice to this action \textit{subjectively} with the representation of the
law.\textsuperscript{36}
\end{quote}

The first element is the moral law that represents the action as necessary, and so serves as
the objective ground making the action a duty. The second element is an incentive that
connects the representation of the law with a subjective ground for choosing to do the
action required by the law. The subjective ground is what explains the choice of the subject

\textsuperscript{34} This is in part what explains Kant’s opposition to the liberty of indifference account of our
freedom at \textit{MM} 6:227. Freedom is a rational power; moral laws are the principles of the
proper exercise of this power. The inclinations that make possible deviation from moral law
are thus hindrances or impediments to the proper exercise of our freedom. As a result,
exposure to them cannot be rightly said constitute that freedom; for freedom is a power and
they are properly speaking indicative of inability rather ability. Constraint of inclination by
the moral law is thus constitutive of freedom and not opposed to it. For an illuminating
discussion of the philosophical issues involved, and the failure of neo-Kantians to absorb
them, see Douglas Lavin, “The Possibility of Practical Error”.

\textsuperscript{35} 6:218.

\textsuperscript{36}
to do the action. “Connects” here is, I believe, an intentionally abstract term that needs to be interpreted with care and may amount to different things in different cases.

Of these two elements, Kant locates the specific difference in forms of lawgiving with the second. He writes,

That lawgiving which makes an action a duty and also makes this duty the incentive is 

ethical. But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the idea of duty itself is juridical.\(^{37}\)

The subjective ground or incentive in ethical lawgiving is duty. Ethical lawgiving thus involves an identity between the duty that is required by the law and the subjective ground of choice that the lawgiving connects with the representation of this law. A duty, as we have seen, is the matter of an obligation: it is an action that is represented as necessary under a categorical imperative. For duty to serve as the subjective ground of choice is thus for an agent to act from the recognition that the action she performs is necessary under a moral law. In this case, the subjective ground of the agent’s action will be the same as the objective ground making the action a duty, namely the law itself.\(^{38}\) The agent can then be said to derive the action directly from the law, as its sufficient ground.\(^{39}\)

Let us now attend to the locutions Kant employs to describe the “connection” forged in ethical lawgiving between this incentive and the representation of the law. In the passages quoted above, he discusses the “connection” in terms of what the lawgiving

\(^{37}\) 6:218-19.

\(^{38}\) Kant thus moves freely between describing duty, obligation and the law itself as what ethical lawgiving makes the incentive, e.g. at 6:231. For talk of the law as incentive, see also, 5:71-72.

\(^{39}\) 4:412, 5:71-72.
“makes” the incentive, and he further glosses this by saying that ethical lawgiving “includes” the incentive “in the law”. Thus the connection between the representation of the law and the subjective ground of choice in ethical lawgiving appears to be that the subjective ground is contained in the representation of the law. At various points, he speaks of this containment in terms of what the law “requires” or “demands” of the subject.\(^{40}\) In ethical lawgiving the subjective ground of duty is thus represented as part of the requirement specified by the law.\(^{41}\)

In ethical lawgiving, the law itself is represented as requiring that one perform an action falling under the law \textit{from the recognition that the action is required by this very law}. Therefore, ethical lawgiving represents a law as requiring an identity between the maxim that expresses the subjective ground of my choice and the practical law that is the objective ground of the necessity of the action to be performed. The implication is that I can only satisfy the relevant ethical obligations when this identity obtains, and I derive my action from the law that makes the action a duty. Ethical laws articulate duties of virtue, requirements that an agent constrain herself through respect from the moral law by acting from that law even in the face of opposing inclinations.

This conception of acting from the incentive of duty should be familiar to students of Kant’s practical philosophy, since it is the same idea that figures in his account of morally worthy action from \textit{Groundwork} I and II. Famously, Kant argues there that morally worthy

\(^{40}\) 6:214; 6:231.
\(^{41}\) I think strictly speaking, we would have to say that the subjective ground is represented as part of the content of the categorical imperative that expresses the law. The concept of duty and obligation do not apply to holy wills. For them, there are no obligations and duties, and so no distinction between ethical and juridical obligations. See 4:397. (How we are to conceive of right as it might apply to beings with a holy will is a difficult topic.)
action is action done from duty, where this entails acting from respect for the moral law.\footnote{42} Kant contrasts this with acting merely in accordance with duty, where I perform an action that is a duty, but not because it is a duty, and so do not derive the action from a moral law but rather from some sensible inclination to do what happens to be the right thing.\footnote{43} The incentive that ethical lawgiving “connects” with the law is the same as the incentive that Kant argued there was necessary for morally worthy action. His account of ethical lawgiving is thus that ethical obligations can be fulfilled only by morally worthy action. When it comes to ethical principles, we only get credit for doing the right thing if we do it because it is right.

If we now turn to juridical lawgiving, we see that things are quite different. Here the obstacles to the operation of freedom arise from an external source in the choices of other agents. Thus, in the introduction to *The Doctrine of Right*, Kant tells us that the concept of right underlying juridical lawgiving concerns the external relation between agents, insofar as their actions can have influence on one another.\footnote{44} In particular, the relevant form of influence is the possibility of hindering the freedom of others by constraining them through our choice.\footnote{45} Right is the sum of conditions under which it is possible to connect the choice of each with the freedom of each other.\footnote{46} In this explication of the concept of right, we have Kant’s demarcation of a distinctive sphere of morality that concerns the threat to freedom that comes not from within our hearts, but from the external relations of domination that can arise when one agent is constrained by the choice of other agents.

\footnote{42} 4:400-01; 4:403; 5:71; etc.\footnote{43} The examples discussed at 4:397 ff. are meant to bring this contrast out. See also, for example, 5:71, where Kant writes, “What is essential to any moral worth of actions is that the moral law determine the will immediately.”\footnote{44} 6:230\footnote{45} Ibid. For an illuminating discussion of the contrast between choice and wish, as well as the other features of the concept of right as Kant understands it, see Arthur Ripstein, *Force and Freedom*, pp. 30-56.\footnote{46} Ibid.
From this explication of the concept of right, Kant immediately produces The Universal Principle of Right (UPR). It reads,

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.  

The UPR is the first natural law principle defended by Kant in The Doctrine of Right. On its own it specifies our one intrinsic right: the freedom of the person that is “internally ours”.  

The UPR tells us that action that is incompatible with, i.e. hinders, the freedom of others is wrong. Kant argues, however, that not all hindrances are on a par. For, a wrongful action is a hindrance to freedom, and the constraint overcoming such wrongful hindrances is rightful coercion. For, to hinder that wrongful action is to hinder a hindrance to freedom.  

In parallel with his argument concerning ethical self-constraint, Kant argues that such rightful coercion of others is a furthering rather than diminishing of the power of freedom. Echoing what we said about ethics, we might say concerning right that for Kant freedom is not lawlessness, but rather subjection to a law through which we reciprocally bind one other.

Let us see how Kant develops these ideas in his account of the specific character of juridical law. By contrast with ethical laws, Kant tells us that in juridical laws the representation of the law does not include the incentive of duty. We might expect Kant to say that it “includes” other incentives “in” the law in the place of duty. But this is not what he says. Kant instead glosses the claim about the incentive of duty by saying that juridical
lawgiving “admits” other incentives. About these other incentives that juridical lawgiving “admits” but does not “include”, he says,

It is clear that in the latter case this incentive which is something other than the idea of duty must be drawn from pathological determining grounds of choice, inclinations and aversions, and among these, from aversions; for it is a lawgiving, which constrains, not an allurement, which invites.\(^5\)

I think that we will not be in a position to understand Kant’s idea that juridical lawgiving connects a law with both duty and pathological aversion until we further develop his account of right as entailing the authorization to coerce, which I do in §7. For now, the crucial point is that whatever connection is forged between incentives and the representation of the law in juridical lawgiving, the connection is not one of inclusion within the represented content of the law. This is confirmed by passages, where Kant describes juridical lawgiving as requiring the legality of an action, which he defines as “the mere conformity or nonconformity of an action with law, irrespective of the incentive to it.”\(^6\) As a result, juridical obligations, unlike ethical obligations, can be fulfilled by action that is not done from the incentive of duty. They can thus be fulfilled by action that is not morally worthy, action that possesses legality but not morality.

This characterization of juridical lawgiving makes sense given the characterization of the domain of right as arising from the confrontation of freedom with external hindrances. Kant writes, concerning the UPR, the first and ultimate juridical law,

\(^{50}\) Ibid.
[I]t cannot be required that this principle [the UPR] of all maxims be in turn my maxim, that is, it cannot be required that I make it the maxim of my action; for anyone can be free so long as I do not impair his freedom by my external action, even though I am quite indifferent to his freedom or would like in my heart to infringe it. That I make it my maxim to act rightly is a demand that ethics makes on me.\(^5\)

Kant seems to be reasoning here in the following way. Right is concerned with the practical relation between free choosers insofar as they can impair one another’s freedom through their external action. If I do not choose to influence the power of choice of another agent so as to hinder or constrain it, I have not impaired her freedom through my external action. This is true even if I am morally indifferent to her freedom, and make the choice on some other ground, for example, out of fear of the long arm of the law or of her righteous wrath. It is thus possible for my external action to be united with the freedom of choice of another in accordance with a universal law, without my having performed that action because of this fact.

Since juridical laws articulating duties of right concerns precisely such external relations between the choices of agents, they do not include the incentive of duty. It is thus possible to fulfill the obligations that they lay on one without acting out of respect for the relevant juridical law. And it is the flip side of the same point to say that I cannot externally constrain—i.e. coerce—someone on the grounds that her action, although right, is not morally worthy, since she is doing it for the wrong reason. For action that does the juridically

\(^5\) 6:231.
right thing for the wrong reason is not a hindrance to anyone’s freedom, and rightful coercion is thus not necessary to overcome it.\textsuperscript{53}

\textit{§4: The Paradox of Juridical Imperatives}

Willaschek thinks Kant’s general account of moral laws as categorical imperatives, and his specific account of juridical laws as not requiring action from the incentive of duty, are in conflict with one another. Here is what he says about categorical imperatives.

By insisting that imperatives are meant to ‘necessitate’ the will of those who may possibly be tempted to violate the laws (cf. \textit{MS} 6:222; G. 4:413-414), Kant makes it clear that the whole \textit{point} of imperatives, as opposed to their corresponding practical laws, is to be \textit{obeyed}. Hence, the point of \textit{categorical} imperatives is to be obeyed unconditionally, not (merely) because of some end one may have, but (also and in any case) because that is what the imperative demands. Put differently: the only way to obey a categorical imperative, as such, is to obey it for its own sake.\textsuperscript{54}

The main point Willaschek makes here seems to me to be a genuine insight. As we have seen, Kant holds that moral laws are principles that govern rational nature by serving as the

\textsuperscript{53} Indeed, it is not only not necessary, but not even \textit{possible} for external coercion to overcome this problem, since it’s one of Kant’s central points that I cannot be coerced by another into acting out of respect for a moral law. This is why ethical obligations cannot underwrite authorizations to coerce; such coercion could never succeed in bringing agents to fulfill their ethical obligation, since it could never make them act out of respect for the moral law.

\textsuperscript{54} Willaschek, “Which Imperatives?”, 70.
grounds from which rational agents derive actions.55 “The whole point” of unconditional practical principles is for their subjects to derive actions from them; this is precisely what distinguishes laws of freedom from laws of nature. To respond to an unconditional practical principle as an unconditional practical principle just is to derive actions from it. Categorical imperatives are the way these requirements of reason show up for a being who is exposed to subjective hindrances to the operation of this law. “Their whole point” is thus for those subject to them to derive actions from them in the face of countervailing temptations from inclination. It follows that to treat a categorical imperative as such is also to “act from it”. One thus treats a categorical imperative as a categorical imperative by constraining the opposing inclinations, and deriving actions from the practical law it expresses, as the ground of those actions.

However, Kant’s account of juridical laws seems in tension with this conception of the point of moral laws. Willaschek writes,

But then, it seems, juridical laws cannot find expression in categorical imperatives, after all, because juridical laws do not require obedience for their own sake…[T]he juridical rightness of an act does not depend on whether it has been done of respect for the law or some other reason…Thus it seems that, on Kant’s view, juridical laws, as such, cannot give rise to imperatives at all, since these would have to be categorical imperatives in order to prescribe unconditionally, but they cannot be categorical imperatives if they respect the externality of Right.56

56 Willaschek, “Which Imperatives?”, 73.
The specific nature of juridical law, as opposed to ethical law, is constituted by the fact that juridical laws do not require that one satisfy them with action that is done from the incentive of duty. “The whole point” of juridical laws is that they can be satisfied without acting from duty.

So, on the one hand, Kant advances a conception of a moral law according to which to respond to something as a moral law is to act from the incentive of duty. Furthermore, he claims that juridical laws are a species of moral law; moral law is the common genus that juridical laws share with ethical laws as laws. On the other hand, Kant holds that juridical laws do not require action done from the incentive of duty. This is the specific feature that marks them as juridical rather than ethical. The problem is that the features of the species seem to conflict with those of the genus. To respond to juridical law as law I must act from the incentive of duty. By contrast, to respond to juridical law as juridical I need not act from the incentive of duty. The paradox then emerges when we ask what it would be to respond to juridical law as juridical law, for it would seem that it both does and does not require that I act from the incentive of duty. Willaschek calls this “the paradox of juridical imperatives”.

According to Willaschek, Kant could have avoided this paradox if he had abandoned the claim that juridical laws are moral laws and so issue in categorical imperatives. This is a more dramatic divergence of juridical from ethical principles than Kant’s official position countenances. If juridical principles are not moral laws, then their “whole point” is not to be acted from by agents who are subject to them. And if, as a result, they are not categorical imperatives, then although they may be normative in some broader sense, they do not lay obligations on those subjects who are exposed to contrary inclinations.

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57 The particular formulation of the paradox in terms of species and genus is mine. I do not know if Willaschek would accept all of the details of my presentation of it.

Willaschek thinks that Kant was to some degree aware of the paradox, and was grappling with it at the time that he composed *The Doctrine of Right*.\(^{59}\) He also thinks that his preferred solution to the paradox is anticipated at various places in *The Doctrine of Right*.\(^{60}\) Naturally, his attention focuses particularly on Kant’s discussion of “strict right” in §E of introduction. This is the passage that most conveys the impression that Kant denies that juridical laws are categorical imperatives. §E plays something like the role of a proof text for Willaschek’s argument that Kant both recognized the paradox of juridical imperatives, and anticipated Willaschek’s preferred solution. Let us see how Willaschek reads this important and difficult text.

§E comes on the heels of Kant’s defense in §D of the claim that right is connected with an authorization to use coercion as a hindrance to a hindrance to freedom, which we discussed in §3 above. §E appears to radicalize this claim and carry it further. The section is entitled, “A Strict Right Can Also be Represented as The Possibility of a Fully Reciprocal Use of Coercion That is Consistent with Everyone’s Freedom in Accordance with Universal Laws”. Kant glosses the claim with the following passage. I quote it at length because of it’s importance for our purposes.

This proposition says, in effect, that right need not be conceived as made up of two elements, namely an obligation in accordance with a law and an authorization of him who by his choice puts another under obligation to coerce him to fulfill it. Instead, one can locate the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone. That is to say, just as right

\(^{60}\) Willaschek “Why the Doctrine of Right Does Not Belong”, 224.
generally has as its object only what is external in actions, so strict right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice; for only then is it pure and not mixed with any precepts of virtue. Only a completely external right can therefore be called strict (right in the narrow sense). This is indeed based on everyone’s consciousness of obligation in accordance with a law; but if it is to remain pure, this consciousness may not and cannot be appealed to as an incentive to determine his choice in accordance with this law. Strict right rests instead on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws…Right and authorization to use coercion therefore mean one and the same thing.\(^{61}\)

As Willaschek reads this passage, the discussion of “strict right” plays the role of describing what it is to represent a juridical law as a juridical law. He reads the passage as saying that there is nothing more to being under a juridical obligation to do X than the fact that some other agent has a right to coerce me to do X.\(^{62}\) He reasons that if there is “nothing more” to A’s being under a juridical obligation to do X than others possessing the right to coerce A to do X, then to speak of “juridical obligations” is really just a roundabout way of referring to rights to coerce.\(^{63}\)

Thus Willaschek understands the passage to be arguing that a right, strictly speaking, need not be made up of two elements of obligation and authorization to coerce, precisely because right is identified with only one of these two elements. This is how he understands

\(^{61}\) 6:232.
\(^{63}\) Ibid.
Kant’s claim that a right and the authorization to coerce “mean one and the same thing”.

Willaschek thus says that this passage represents the realm of Right “not as a realm of rights and obligations, but merely as a realm of rights, conceived of as authorizations to coerce.”

The message of §E is thus that strictly speaking, there are no juridical obligations.

Since obligations are the necessity of an act under a categorical imperative of reason, in denying the reality of genuine juridical obligations, the overall import of this passage is to deny that juridical principles are categorical imperatives. Since §E clearly does not make them hypothetical imperatives either, its hidden message is that juridical principles, considered as such, are not imperatives that put agents under necessities at all. Willaschek thus thinks that §E is best read as Kant’s tacit endorsement of Willaschek’s preferred solution to the paradox of juridical imperatives.

Willaschek softens the force of this surprising interpretation by noting that Kant speaks of an “indirect” ethical obligations to perform juridical duties. It is possible to take an ethical perspective on juridical laws, and from this perspective one may view juridical laws as categorical imperatives. But this, he claims, is a perspective foreign to right. Allen Wood, who has a similar reading of §E, concurs with Willaschek on this point. What Wood says is instructive.

Both parts [right and ethics] involve categorical imperatives, because Kant holds that juridical duties as such are also ethical duties (MS 6:219). In so far as juridical duties are regarded as ethical duties, they can be brought under the principles of ethics, which can also be used to show that we have good reasons for valuing external

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64 Willaschek, “Which Imperatives?”, 79.
freedom (or right) and respecting the institutions that protect right through external coercion.\textsuperscript{67}

The picture of what it would be to “have good reasons” for valuing external freedom is on display in the following quotation,

Even if we do not question Kant’s analysis of the concept of right, however, we may think that his principle has to go beyond that concept if it is to provide us with a \textit{reason} (a moral one) for respecting the external freedom of others. Now there is no question that Kant believes the dignity of humanity provides us with a \textit{moral incentive} for respecting people’s rights. It might therefore also provide us with strong moral incentives for setting up a just system of right and for trying to reform existing legal and political systems so that they better protect the rights of persons and do not infringe on them….But these moral incentives have nothing to do with the \textit{principle} of juridical duties.\textsuperscript{68}

Wood draws the conclusion that juridical laws are, after all categorical imperatives, but only because they can be supported by independent moral reasons that fall under “the principles of ethics”, and “have nothing to do with” the principles of right.

In similar reflections, Willaschek says that “strict right” is an idealization that abstracts from the “ethical considerations” with which it is always “mingled” in real life.

Once these considerations are taken into account, we may after all view principles of right as


\textsuperscript{68} Wood, “The Final Form”, 7-8.
categorical imperatives. What Willaschek and Wood take away from the realm of right with one hand, they return with the other in the form of an indirect ethical obligation to do what is right.

It is worth noting that the main philosophical impetus for Willaschek’s reading of §E comes from a need to find a way out of paradox of juridical imperatives. If it turns out, as I will argue in §5, that the paradox can be dissolved without abandoning either the generic unity of juridical laws with ethical laws, or their specific difference, then the philosophical motivation for this reading will be undermined. But in advance, it is worth noting that the Willaschek-Wood reading of §E is strained in several respects.

First, we may note that §E itself refers at three different points to obligations of right. It even contains the assertion that juridical laws are “based” on everyone’s consciousness of the obligations the laws specify. On the face of it, it thus seems very strange to read the passage as denying that, strictly speaking, there are any juridical obligations. Indeed, the passage actually seems to assert that consciousness of juridical obligation is in some way the very source of strict right, even if it should not be considered the incentive to action.

This reading becomes even more strained, when we consider the broader context in which it is situated. As we have seen, obligation is a technical term that Kant takes the trouble of defining explicitly in the introduction to the Metaphysics of Morals. He defines obligation as the necessity of an action under a categorical imperative of reason. When giving

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69 Willaschek, “Which Imperatives?”, 86.
70 Willaschek responds to this feature of the passage by asserting that this obligation, unlike (real) obligations that flow from genuine categorical imperatives, “does not have any prescriptive force”. He bases this claim on Kant’s assertion that the obligation in question cannot be appealed to as an incentive, if we are speaking of strict right. In §7, I provide an alternate explanation of what Kant means by this comment about strict right that does not require us to introduce a new “non-prescriptive” sense of obligation that conflicts with Kant’s actual definition of obligation at 6:221. Willaschek, “Which Imperatives?”, 80.
this official definition, Kant goes out of his way to explicitly assert that obligation as defined there is a concept that belongs to both parts of The Metaphysics of Morals. On Willaschek’s reading, the text of §E implicitly repudiates his explicit definition of obligation. This seems unlikely.

Furthermore, when we locate the passage in the rest of the introduction to the Doctrine of Right, we can see how implausible it is that Kant is claiming here that under juridical principles there are rights to coerce, but no obligations. For, just a little bit later in the introduction, Kant gets around to explicitly defining “rights” in the sense relevant to Willaschek’s claim. If Willaschek were right about §E, we would expect Kant’s definition of a right to eschew any reference to obligations in favor of authorizations to coerce. However, his definition of a right is that it is a capacity to put others under a juridical obligation. Rights are thus defined by Kant in text following shortly on the heels of §E in terms of juridical obligations. How then could his message be that under juridical principles, strictly speaking, there are rights but no obligations?

Although strained, the Willaschek-Wood reading does the service of capturing in a dramatic form the impression that the rhetoric of §E naturally conveys. For, details of interpretation aside, it seems that here Kant is in some way affirming the picture of right as exhausted by principles licensing agents to push each other around from outside. As the paradox of juridical imperatives makes clear, this is deeply puzzling, given Kant’s simultaneous insistence that juridical laws are moral laws. Seeing our way to a resolution of

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71 See Footnote 25 above.
72 Kant explains in the relevant passage that we may speak of rights in the plural in two sense: (1) as systems of doctrines, as in natural right and positive right, and (2) as the moral powers of individuals. Willaschek clearly intends (2) in speaking of rights, 6:237.
73 6:237; see also 6:383. This point will be central to my interpretation of strict right in §7 below.
the paradox will thus have to involve providing a more satisfactory interpretation of §E.
Before doing this, I turn to consider the paradox itself.

§5: The Paradox Resolved

I think that the paradox of juridical imperatives can be resolved without abandoning either the claim that juridical laws are categorical imperatives, or the claim that they do not require action from the incentive of duty. The key, on my view, is to see that one can respond wrongly to a principle without failing to fulfill the requirement it articulates. In the case that is relevant to the paradox, I wish to argue that one may fail to respond to a categorical imperative as a categorical imperative, without failing to fulfill the requirements it specifies. For help in seeing how this might be possible, I will step back from Kant’s text and consider an analogous claim about a set of norms that are clearly not categorical imperatives.

Consider an arbitrary and highly artificial system of etiquette prevailing in some society. To the extent that this system of principles specifies actions as practically necessary in some way, and so good in Kant’s exacting sense, it does so either through a contingent overlap with moral considerations, or, more frequently, by enabling one to pursue ends of a social kind. In short, a few nice points of convergence with morality aside, to the extent that the system has any normative bite, it does so by giving rise to hypothetical imperatives. Even if the rules of etiquette do not amount to practical principles in Kant’s sense, they are nonetheless recognizably a set of norms to which an agent can respond. We can speak intelligibly of the actions these rules require, or permit, or forbid, as long as we understand, for example, that actions required by this baroque code are not always practically necessary
in any of Kant's senses. In this respect they may be rather like the rules of games, but with much greater social importance and consequence.

Now let us imagine a fanatical devotee of this system etiquette. As I am imagining her, she makes a religion—or perhaps better, a *morality*—out of the norms of etiquette. She treats them not as a set of artificial social practices that are often necessary to follow as means to achieve various sociable ends. Instead, in her action and thought they show up as principles that make action good in itself. She thus treats the norms of etiquette as though they were categorical imperatives. Some signs of this pathology include her tendency to view the politeness of someone's behavior as a direct indication of the moral worth of her person; her tendency to uphold the finer points of etiquette in contexts where they ought rightly to be let go; her feelings of guilt and remorse about any failures of etiquette on her part; and her infuriating willingness to move freely between moral principles and social mores without generally marking any difference between the two in her thought, speech and action.

Now, there will no doubt be many things going wrong with this agent from a moral point of view. For example, she will fail to fulfill some moral duties when doing so would involve breaking the rules of etiquette. She will also treat as moral duties many things that it is delusional to think of in this way. In addition, her general perception of the moral character of his fellows will be systematically mistaken in predictable ways, as will her moral reactions to them. No doubt this will result in some shabby treatment of others. But I would like to set aside her likely moral failings, and focus solely on how we are to describe her relation to the norms of etiquette themselves.

As I am imagining the case, the agent hews at all times closely to the rules of etiquette. In terms of the content of the requirements they articulate, she is as sterling as an agent exposed to inclinations can be. The problem with her action thus does not come into
view if we restrict ourselves to the content of the requirements put on her by the norms of etiquette. It is tempting to say that as far as etiquette goes, there is no problem with the agent.

In a sense this is true, since she almost never knowingly violates any of the relevant social niceties. But in another sense, it is not. Consider, would we rightly say of her that he is responding to the norms of etiquette as the norms of etiquette? I have stipulated that the norms of this highly artificial system render action practically necessary only either through contingent overlap with moral considerations, or instrumentally in relation to social ends. The nature of the norms in question is thus that they are an arbitrary social construction that gives rise in intelligible ways to various hypothetical imperatives conditional on the pursuit of social ends. But this is not how our envisioned agent responds to them. In fetishizing them, she treats them as laws for a kingdom of ends.

Given the nature of the norms in question, our agent at once fulfills the letter of their requirements, while failing to respond to them in a way that is appropriate to their nature. This rational failure is explained precisely by the nature of the relevant norms: given their nature as arbitrary social fiats, to respond to them as though they are categorical imperatives is to make a rational mistake. However, this mistake is not to be captured in terms of the content of the requirements of etiquette they put agents under. We are not imaging that etiquette requires agents to fulfill the norms in the consciousness of their arbitrariness; by failing to place the norms correctly the fanatical agent is not rude to anyone, and does not, for example, accidentally send inappropriate signals about whom she intends to marry, or do any of the other things that the code forbids. It follows that to respond to the norms of etiquette as the norm of etiquette, more is required than merely fulfilling the
requirements that serves as the content of these norms. For one can do that, while responding to the norm in a way that is wildly inappropriate given its nature.

Let us return now to moral laws and categorical imperatives. These differ from the norms of etiquette in being unconditional practical principles. But the lesson I would like to draw is that it is in some cases possible also to respond wrongly to such principles without failing to fulfill the content of the obligations the principles put us under. Now, of course, this will not be possible where the content of the requirement the principle puts us under includes responding to the principle as the principle that it is. According to Kant, this is precisely the case with the obligation laid on by ethical laws and ethical lawgiving. To fulfill the obligations laid on me by ethical lawgiving, I must act from the recognition that the action in question is required under a categorical imperative of reason. In order to satisfy the content of this requirement, my action must have moral worth and be done from the incentive of duty.

But, were there a category of moral law where the requirement the law specifies does not include responding to the law as law, it would be possible to draw the distinction that we drew with respect to the norms of etiquette above between the narrow requirements for fulfilling the obligations the law specifies, and the broader requirements for responding to the law as the law it is. For, in this case, it would be possible to at once fulfill the obligation this law lays on me, while nonetheless failing to respond to it appropriately given its nature. But this is just how it is with the UPR, and juridical laws generally, according to Kant.

Suppose then the agent fulfills the letter of the requirements of a juridical law, while failing to act from the recognition that the action is required by a categorical imperative of reason. In that case, the agent will have fulfilled the requisite obligation, but nonetheless gone wrong. Gone wrong how? Well, the principle in question is, after all, a moral law, a
categorical imperative of reason. To respond to it as a categorical imperative is to act from
the recognition of the practical law in question by deriving actions from it; as Willaschek says
rightly, *that is the whole point of a categorical imperative*. So the mistake is failing to respond to a
principle of reason as a principle of reason. Although this mistake does not consist in failing
to fulfill the content of the obligation the principle specifies, it is nonetheless explained
precisely by the nature of the principle as a moral law.

We could thus diagnose the paradox of juridical imperatives as arising from an
ambiguity in speaking about what one “must” do in regard to juridical law. For, we could
mean two things by such talk. Speaking narrowly, we signify the actions that would be
required to fulfill the obligation a juridical law lays on us. In that sense, with respect to
juridical laws, it is false that one must act from duty; one may fulfill a juridical obligation with
less than that. Speaking of “must” broadly, we signify not only what would be required to
fulfill the obligation in question, but also what would be required to respond to the law as a
law. In the broad sense, with respect to juridical laws, it is false that one need not act from
duty. A contradiction only seems to result when we equivocate between these broader and
narrower sense of ‘must’.

Indeed, there is textual evidence that Kant himself affirms the two senses of “must”
distinguished in just this way. Speaking of juridical laws, he writes,

> [W]hether freedom in external or in the internal use of choice is considered, its laws,
as pure practical laws of reason for free choice generally, must also be internal
determining grounds of choice, although they should not always be considered in this respect.\textsuperscript{74}

Here he acknowledges that given the nature of a juridical law as a law of reason, one \textit{must} take the law as the subjective determining ground of choice. Here we have an appearance of the broad sense of “must” that arises from the nature of practical laws. However, Kant also adds, “they [juridical laws] should not always be considered in this respect.” This suggests that there will be some way of considering juridical laws in which it is not appropriate to say that one must make juridical laws the subjective ground of one’s choice.

Later Kant writes, about the relevant respect, “When one’s aim is not to teach virtue but only to set forth what is \textit{right}, one need not and should not represent that law of right as itself the incentive of action.”\textsuperscript{75} A natural gloss on “setting forth what is right” would be “specifying the content of the obligations that juridical laws lay on us”. If this is correct, then Kant himself distinguishes two expository purposes, and two corresponding senses of “must”. When one wishes to describe how an agent responds rightly to a juridical law as a law of reason, one legitimately says that the agent must make the law her subjective ground of choice. On the other hand, when one wishes to describe the actual content of the obligations that the law lays on an agent, one “need not and should not” represent the law as requiring that agents make it the subjective determining ground of their choice. This is exactly the distinction between the broad and narrow sense of “must”. There is no paradox of juridical imperatives.

\textsuperscript{74} 6:213.
\textsuperscript{75} 6:231.
§6: Indirectly Ethical Duties

Those sympathetic to the Willaschek-Wood interpretation of §E will likely be frustrated at this point by my attempted dissolution of the paradox of juridical imperatives. For, the very passages in Kant to which I have just appealed to dissolve the paradox appear in the context of his discussion of the ethical obligations to perform duties of right. It is thus open to them to reply that these passages do not distinguish between broader and narrower ways in which we might consider the relation of a subject to a juridical law, but rather discuss the “moral reasons” or “ethical considerations” that support making juridical laws the subjective ground of our choice. In defense of this claim, they may note that one of the passages I quoted refers to the expository aim of “teaching virtue”. Virtue is, after all, a concept that belongs to ethics rather than right. Let us look into this further.

We have already discussed Kant’s account of the difference between ethical and juridical lawgiving. Ethical lawgiving includes the incentive of duty within the representation of the law, while juridical lawgiving does not. These two lawgivings give rise to two respective forms of obligation, one that involves the necessity of action from the incentive of duty, and the other that does not. We have also seen that Kant treats duty as the matter of obligation, and says that we may be bound in more than one way to perform a single duty. In particular, Kant holds that “all duties, just because they are duties, belong to ethics”. We are thus bound to the duties of right in two ways, one juridical and one ethical. Kant thus says at one point that all duties of right are thus “indirectly ethical” duties.

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76 6:219.
77 6:221.
This may seem to support the Willaschek-Wood line, since it is very natural to take these passages to be asserting that there are ethical grounds for performing all duties of right. But a more careful inspection shows that this is not what Kant intends. In the introduction to the *Doctrine of Virtue*, Kant writes,

> For any one duty only *one* ground of obligation can be found; and if someone produces two or more proofs for a duty, this is a sure sign either that he has not yet found a valid proof or that he has mistaken two or more different duties for one…If, for example, someone wants to draw a proof for the duty of truthfulness first from the *harm* a lie does to other human beings and then also from the *worthlessness* of a liar and his violation of respect for himself, what he has proved in the first case is a duty of benevolence, not of truthfulness, and so a duty other than the one for which proof was required.\(^7^8\)

Although his example involves two duties of virtue, Kant here clearly asserts a more general point. His claim is that any one duty can have at most one objective ground of obligation. If there are two different grounds of obligation for performing the same action, one thereby specifies *two different duties* that this action fulfills. The explanation of this fact is that duty is that to which we are bound by obligation, and obligation is necessity under a categorical imperative of reason. Duty is thus a relational concept; to view something as a duty is always to relate it to some definite moral law as its objective ground. In Kant’s example, the moralist is confused when he sloppily provides two separate grounds in support of the duty of truthfulness. Properly speaking, Kant thinks, when we consider two grounds for

\(^7^8\) 6:403.
refraining from lying, we are considering two different duties—truthfulness and benevolence—that a single action might fulfill in a given case.

We can see the problem this poses for the Willaschek-Wood understanding, if we switch examples to consider an alleged ethical ground for performing a juridical duty. For example, perhaps we think that we ought not to falsely represent ourselves as having fulfilled a contractual obligation for two reasons: ethically speaking, because doing so would involve a violation of the respect for the worth of our own person, and juridically speaking, because it will violate the bilateral commitment involved in contract right. If we are right about both these grounds, then the action of refraining from falsely representing ourselves as having fulfilled our contractual obligations has two different grounds of obligation: it would be *lying* and it would be *fraud*. Kant’s analysis in keeping with the passage above is clear: this action then satisfies two different duties: one duty of right not to defraud others, and the other duty of virtue not to lie. The idea that there might be ethical grounds for performing juridical duties thus rests on confusion about the individuation of duties. So this cannot be the proper interpretation of the idea that we are bound to perform duties of right in two ways.

Indeed, this is a point that Kant himself makes about duties of right in the most emphatic terms. Kant writes, intending to forestall exactly this confusion,

> It can be seen from this that all duties, just because they are duties, belong to ethics; but it does not follow that the lawgiving for them is contained in ethics: for many of them it is outside ethics. Thus ethics commands that I still fulfill a contract I have entered into, even though the other party could not coerce me to do so; but it takes the law (*pacta sunt servanda*) and the duty corresponding to it from the doctrine of right, as already given there. Accordingly, the giving of the law that promises agreed
to must be kept lies not in ethics but in *Ius*...For if this were not the case, and if the lawgiving itself were not juridical so that the duty arising from it was not really a duty of right (as distinguished from a duty of virtue), then faithful performance (in keeping promises made in a contract) would be put in the same class with actions of benevolence and the obligation to them, and this must not happen.\(^\text{79}\)

In this passage, Kant tells us that the lawgiving for juridical duties does not lie in ethics; ethics does not provide a new objective ground for performing juridical duties. It rather takes these duties as *already given* from the doctrine of right. Thus the only objective ground for performing these duties are those specified by the relevant juridical laws. If a moralist tried to introduce ethical considerations as objective grounds for performing juridical duties, as Wood seems to envision, he would inadvertently change the topic, substituting an ethical duty for a juridical duty. Since Kant holds that ethical and juridical duties have different features, this will involve a misapprehension of the materials of right.\(^\text{80}\) Kant is thus anxious to forestall this interpretation of his claim about duties of right being indirectly ethical.

How then are we to understand the claim that there are ethical obligations to perform juridical duties? Kant tells us that all ethics teaches about duties of right is that we are to perform them *because* they are duties of right.\(^\text{81}\) In other words, all ethics adds is that we are to respond to juridical laws as the laws of reason that they are.\(^\text{82}\) Viewing duties of right as indirectly ethical thus does nothing more than explicitly thematize the sense in which an agent responds to a juridical law inappropriately when she fails to act from the incentive

\(^{79}\) 6:219-220.

\(^{80}\) I discuss the difference between the forms of obligation and duty in §7 below.

\(^{81}\) 6:220.

\(^{82}\) 6:213.
of duty. In other words, talk of indirect ethical duty is a way of marking the broad sense of “must”. Since ethical lawgiving involves a form of obligation that requires acting from the incentive of duty, and since one must act from the incentive of duty to respond to a juridical law properly as a law of reason, Kant thinks it is fruitful to class this broader sense of requirement together with other directly ethical obligations. However, he clearly marks the distinction within this class between indirectly ethical duties that rest solely on juridical laws as their objective ground, and directly ethical duties that rest on ethical laws.83

It follows that the fact that duties of right are also indirectly ethical duties does not make juridical laws categorical imperatives. Were juridical laws not already laws of reason, serving as categorical imperatives for us, then no ethical grounds could make them so. In fact, the reverse is true: juridical duties are indirectly ethical precisely because juridical laws are already categorical imperatives of reason. What Willaschek and Wood take with one hand they’re left holding in the other.

§7: Strict Right

83 What about Kant’s claim that representing duty as the incentive to perform duties of right is appropriate only when teaching virtue, (6:231)? Isn’t virtue an ethical ground for performing juridical duties? No. For, virtue is the moral strength of the will to act from the incentive of duty, whatever its objective ground, (6:394; 6:406). Kant thus tells us that the concept of virtue has application to all ethical obligations, including those binding us to juridical duties, and stresses that this does not make them duties of virtue with an objective ground lying in ethics, (6:383). The proper response to juridical laws as laws of reason requires the inculcation of virtue, understood as the general disposition to act from duty. His point in drawing this contrast is not to provide an ethical ground for juridical action, but only to explain that what is necessary for someone to respond properly to juridical laws (virtue) is different from what is necessary to fulfill juridical obligations. Thus, inculcating virtue will involve representing juridical laws in a different way than laying down what is right.
A proper understanding of the relationship of right to morality turns crucially on our reading of §E. I have now argued that the Willaschek-Wood reading of this passage is strained (§4), that we should set aside its philosophical motivation as irrelevant (§5), and that appeal to indirectly ethical duties cannot save this reading from its most drastic consequences (§6). It is time to try to do better.\textsuperscript{84}

As I understand it, the relevant context of §E is the following. In §B Kant has characterized the concept of right as involving a practical relation between free choosers. From this relational characterization of the concept of right, in §C he then develops the UPR. There he also argues first that action satisfying the UPR is right, and second that any action that hinders right action does the agent who is so hindered a wrong. Finally, in §D he argues that this agent who is wronged is justified in hindering this hindrance to her freedom, and that such constraint is compatible with freedom, and so does not wrong the agent who is hindered. By the beginning of §E, Kant has thus argued that one who possesses a right under the UPR has an authorization to constrain those who hinder the exercise of this right.

§E sets out to clarify the precise relationship between having a right and being authorized to constrain those who violate this right. The thesis announced at the heading of the section tells us that Kant will be arguing that a “strict right” can itself be represented as an authorization to constrain. The section thus sets out to defend some kind of identity between right and the authorization to constrain. This is confirmed by the final sentence of the passage, which reads, “Right and authorization to coercion therefore mean one and the same thing.” We must try to understand the identity that is being proposed.

\textsuperscript{84} The reading of this section owes a great deal to Arthur Ripstein’s discussions of coercion. See Force and Freedom, pp. 52-56, and especially §3 of “Authority and Coercion”.
A clue comes when Kant glosses the identity asserted in the heading as saying that right “need not be conceived as made up of two elements”: (1) obligation in accordance with a juridical law, and (2) an authorization of “him who by his choice puts another under obligation” to constrain the subject of this obligation to its fulfillment.\(^85\) This characterization of the obligation in question as flowing from the choice of the agent to whom the obligation is owed echoes Kant’s later definition of a right as a moral capacity to put others under obligations.\(^86\) He there also describes such capacities as “lawful titles” to bind one another, conferred on us by juridical laws. Although there are important exceptions, generally speaking, the juridical obligations that one agent is under are acts of the power of choice of other agents.\(^87\) Like the concept of right itself, on Kant’s conception, juridical obligations are thus fundamentally relational in form: the practical necessity that one agent is under has its source in the power of choice of another agent. My juridical obligation is your right actualized.\(^88\)

What would it then be to conceive of right as “made up of” obligations and the authorization to coerce as two elements? Since obligations are acts of a moral capacity of the choice of the agent to whom they are owed, and since the authorization to coercion is a capacity as well, it would, I think, be to analyze possessing a right in terms of a compound of two separate and distinct capacities. To say that they are separate capacities is to say that to

\(^{85}\) 6:232.
\(^{86}\) 6:237.
\(^{87}\) For the most crucial exception, see Kant’s discussion of the obligation that feuding agents have to exit the state of nature, 6:307. To say that juridical obligations are acts of another is not to say that the laws that confer these titles to obligate are also acts of another. Indeed, they cannot be, since a rational being can only be subject to laws she has given herself, either alone or along with others, 6:223.
\(^{88}\) It follows that even when I fulfill a juridical obligation to you from the incentive of duty, the explanation of my action will reside, in part, in an act of your will. Thus even the self-constraint involved in the virtuous performance of duties of right will involve a recognitive component of being held to doing something by another.
attribute the one is not yet, conceptually speaking, to attribute the other. If in general they travel together, we will need a substantive argument that wherever an agent is justified in exercising the first capacity, she will also (tend to) be justified in exercising the second.

By saying that they need not, and indeed, should not, be conceived this way, Kant is steering us away from this understanding of his argument about the authorization to coerce. But what is the alternative? The alternative must involve the announced identity between right and the authorization to coerce that comes at the end of the passage. As we’ve seen, right and the authorization to coerce are both capacities. This suggests that when Kant says that they “mean one and the same thing”, he is saying that, conceptually speaking, to attribute the one capacity just is to attribute the other capacity. This is because they are, in fact, one and the same capacity. We can “locate” right “directly” in the possibility of coercion, because like putting others under an obligation, coercion is an act of this power. We thus do not need a mediating element to get us from the attribution of the right to the authorization to constrain others.89

But how then are we to understand Kant’s claim that if strict right is to “remain pure” and “not be mingled with anything ethical” it requires only external grounds of choice, and that the consciousness of obligation cannot be appealed to as an incentive? The ethical element Kant refers to here as “mingling” with right is surely indirectly ethical duty associated with the broad sense of must. By it putting it aside here, I think Kant is doing nothing more than reiterating his conception of juridical lawgiving as not including the incentive of duty in the representation of the law. As we have seen, a juridical law does not require an agent to act from the incentive of duty to fulfill the obligations the law puts on us.

89 This point is connected to Kant’s claim that the authorization to hinder a hindrance to freedom follows analytically from the concept of right. See 6:231 and 6:396.
So, in representing this requirement narrowly, we are to set this incentive and the broader sense of “must” that goes with it aside. On this reading, “strict right” does not function to explain the perspective of someone who is appropriately responding to juridical laws as the juridical laws they are. In fact, something like the opposite is true: discussion of “strict right” functions to set aside consideration of the appropriate rational response to juridical laws, and focuses our attention more narrowly on the requirements that are the content of these laws.

If this is the case, then how are we to understand Kant’s claim that strict right rests on the possibility of using external coercion compatible with the freedom of everyone, instead of on the incentive of duty? On my reading, Kant is marking a crucial distinction between the content of juridical and ethical obligations. Since you cannot coerce people to act from the incentive of duty, ethical lawgiving cannot confer an authorization to coerce agents into fulfilling their obligations. It is precisely because juridical lawgiving does not include the incentive of duty in the representation of the law that it is possible to view the law as authorizing the coercive enforcement of the obligations the law lays on us. So when Kant says that the representation of something as a strict right rests on the possibility of such coercion, instead of on the inclusion of the incentive of duty, this is an expression of the profound difference between right and ethics that it is the work of §E to make explicit.

Being under an ethical obligation is being required to act from the incentive of duty; being under juridical obligation lacks this element, and includes in its place the liability to coercion. For, it is the hallmark of juridical obligation that both being under an obligation, and being constrained to fulfill this obligation, are actualizations of one and the same power, located in

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90 6:394.
the subject to whom the obligation is owed.\textsuperscript{91} When it comes to juridical obligation, to say what someone ought to do is simultaneously to say what the person to whom the obligation is owed can hold her to doing. Thus, what might appear to someone to be a diverse series of actions—putting someone under an obligation, requiring fulfillment of the obligation, coercing fulfillment—each requiring a separate moral justification, should instead be seen as unfolding actualizations of a single power. Although this is utterly unlike what one finds in ethical obligation, it is nevertheless compatible with the thought that responding to both juridical and ethical laws in accordance with their nature requires acting from the incentive of duty.

On this reading of §E, Kant is not arguing that there are no juridical obligations, or that strictly speaking, juridical laws are not categorical imperatives. Rather, he is making the claim that juridical laws are categorical imperatives of a distinctive kind that give rise to obligations precisely by conferring a lawful title on one agent to put another agent under an obligation. His crucial claim in this section is that this title also suffices to hold her to fulfill the obligation should she fail to do so of her own free will. Here we begin to see the promise of the unity-within-difference of Kant’s architectonic fulfilled.

\textit{§8: Conclusion}

I would like now, very briefly, to indicate what the consequences of our discussion are for Kant’s defense of what we might call a “practical reason” approach to jurisprudence.

\textsuperscript{91} At this point we have finally arrived at an interpretation of the sense in which juridical lawgiving “connects” the subjective ground of aversive inclinations to the representation of a juridical law. It does so by authorizing those to whom obligations are owed to constrain the subjects of the obligation to their fulfillment. Such constraint may give rise to aversive inclinations that act as a subjective determining ground of choice if duty itself fails.
The UPR that has served as our sole example of a juridical law is the thin wedge through which Kant introduces his system of ever richer juridical principles.\footnote{Citation of Ripstein’s unpublished paper} The story in rough outline is the following. In Part I of \textit{The Doctrine of Right} on private right, Kant argues that, having accepted the right of the individual to the freedom of her own person, we must acknowledge—on pain of contradiction of this freedom with itself—the right of individuals to acquire and have objects external to the self.\footnote{Citation to postulate of freedom with respect to rights} Kant calls this second juridical principle “The Postulate of Practical Reason with Respect to Right”. This postulate confers the right to acquire things (property), the performances of others (contracts), and even persons, as one may acquire a husband, or wife, through marriage, or children through childbirth or adoption.\footnote{Include Citation} When these acquired rights are transgressed, Kant argues that we also have the right to correct the wrong by receiving what is rightfully ours (torts).\footnote{Include citation} Kant has fascinating and difficult things to say about the formal distinction between property, contracts, and family as domains of right, and herein lies his philosophy of private law.

However, it is part of Kant’s story that these domains of acquired right, made possible by the Postulate—our second natural law principle—are in a certain sense unintelligible outside of the context of the public institutions of a political community. Indeed, having provided an a priori argument in support of the Postulate that underwrites the various departments of private right, Kant argues once again that freedom will be in contradiction with itself if the abstract natural law principles he has defended are not embodied in a contingent and concrete system of institutionalized positive law under a duly
constituted public authority.\textsuperscript{96} This is the basis for Kant’s argument for his third natural law principle, which tells agents that they must exit the state of nature and enter into the civil condition, the condition of public right. If freedom of the person legitimates private right, private right thus in turn legitimates public right, including the right of legitimate political authorities to settle and enforce necessarily contingent matters involved in concrete positive law.\textsuperscript{97} When it comes to juridical law, reason demands that the abstract become concrete.

Unlike straightforward categorical imperatives that Kant argues are knowable \textit{a priori}, positive law can be known only through promulgation of the law by the relevant authorities. But the relevant authorities are authorities—if they are—only because they are authorized to make contingent law by the \textit{a priori} natural law principles Kant discusses. When they have the imprimatur of such natural law principles, and so have been duly enacted by rightful public authorities, contingent positive laws acquire the force of juridical laws, too. (Of course, it’s probably positive laws that we had in mind all along when hearing Kant’s talk of juridical laws.) In this way, even when, following the baroque intricacies of an utterly contingent tax code, I pay my federal taxes, or calibrate my speed in accordance with the highly specific traffic laws of my state, or refrain from casting two votes in a mayoral election, I can be said in a sense to derive my actions from a moral law, a categorical imperative of reason. This is, to be sure, a categorical imperative that has of necessity become flesh and blood by being embodied in contingent institutions of positive law. But it is, on Kant’s view, a categorical imperative nonetheless. Jurisprudence is thus a part of moral philosophy, the science of human freedom.

\textsuperscript{96} Insert citation to §8 of Part I, also to Martin Stone
\textsuperscript{97} To Ernest Weinrib on poverty
These are wildly ambitious and heady claims. My aim here has been to remove one obstacle to accepting Kant’s own characterization of the architectonic of his mature practical philosophy. I have argued that Kant’s account of juridical laws as moral laws is consistent. Whether it is true is another question.