

Kant's Moral Justification of the Duties of Law and the Immanuel-Kant-Problem

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Abstract

Kant's attempt at grounding his political theory in his moral theory leads to what I suggest we call the 'Immanuel-Kant-Problem': The duties of law of a citizen, as Kant justifies them in his *Metaphysics of Morals*, are incompatible with this citizen's moral duties. A moral agent is supposed to act for the sake of duty, that is, out of respect for the moral law. The highest duty of a citizen of a state, however, is to submit to the laws of this state. In his moral philosophy, Kant had made it explicit that lawful actions of a citizen of a state and intrinsically moral actions are based on very different kinds of motivation and that these kinds of motivation are mutually exclusive. A citizen, in virtue of being rational, has the capacity to challenge the laws of the state on moral grounds. But Kant denies the citizens of a state any right to violate the laws of this state. Thus, there is the question of why Kant claims that every rational agent is morally obligated to become a citizen of a state and to submit to its laws. My claim is that the answer to this question can be found in Kant's account of political governance and its authority. The Immanuel-Kant-Problem is intrinsically connected to this account.

I. Introduction

In 1797, Kant publishes the *Metaphysics of Morals*. The title of the book insinuates the idea that Kant meant to ground his political philosophy in the normative foundations laid out by his moral philosophy. Indeed, 10 years earlier, he had published his moral theory under the title of a *Groundwork to the Metaphysics of Morals*. In his *Critique of Practical Reason* from 1788, he recapitulates and extends the project of the *Groundwork*, without however making any claims to completing this project by a 'metaphysics of morals'.

The scholarly discussion of how to understand the connection between Kant's moral and his political philosophy is very controversial. Christoph Horn distinguishes between two diametrically opposed positions: There are those who make a *dependence claim* and those who make an *independence claim*. The former attribute to Kant the view that morality puts constraints on what can be politically and legally right. The latter deny that Kant argues in favour of such constraints.¹ Horn makes a new contribution to this debate, suggesting a 'middle position'; his claim is that, in the 'doctrine of right' in the *Metaphysics of Morals*, Kant develops a theory of 'non-ideal normativity', a political theory of positive law, according to which the authority of positive laws is weaker than that of the moral law even though it is equally derived from 'practical reason'.² Horn proceeds in two steps; first, he recognizes that the arguments in favour of the independence claim are convincing;³ then he suggests a new way to make sense of Kant's claim that his political philosophy has its normative foundations in his moral philosophy. Horn's main claim is that, according to Kant's philosophy of history, the establishment of a state of law is a necessary condition for the possibility of moral progress. The non-ideal normative authority of positive laws given by a political institution is, according to Horn, weaker than that of the moral law. But the authority of the state of law is nevertheless justified. This is because people who persist in the state of nature deprive themselves of the possibility of moral progress. This progress is independent of whether or not the laws of a particular state meet properly moral standards.

¹ Horn 2014: 9, 31 u.a. Horn mentions Ingeborg Maus, Wolfgang Kersting, Otfried Höffe, Bernd Ludwig, Paul Guyer, and Gerhard Seel as those who defend the independence claim. The opposite position is held by Julius Ebbinghaus, Allen Wood, Thomas Pogge, Arthur Ripstein (see Ripstein 2009), and Markus Willaschek (see Willaschek 1997 and 2009).

² Horn 2014: 308 and 311.

³ Horn 2014: 55.

I find Horn's reading of Kant's philosophy of history and of the role of the state of law as a means for achieving moral progress perfectly convincing. However, I doubt that this reading can establish the claim that Kant's political theory is grounded in his moral theory. The progress Kant believes to recognize in the history of human civilization is 'moral' only in a rather broad and mainly consequentialist sense of the term: civilization is a historical process in the course of which people slowly but continuously learn how to live together in groups peacefully and to their mutual advantage. The plausibility of Kant's claim that there is such progress does not depend on the assumption that the people promoting this development are autonomous agents, that they are moral agents in the very specific sense that Kant developed in his moral theory. Belief in moral progress was common also among the sentimental moral philosophers of the Scottish Enlightenment such as David Hume and Adam Smith. Indeed, Horn's reading of Kant's philosophy of history provides further evidence for the independence claim. Still, I think that there is a close connection between Kant's moral philosophy and his political philosophy and that the independence claim has to be rejected. Defenders of the dependence claim have looked for the connection between the two theories at the wrong place. Kant does not argue in favour of moral constraints on what can be politically and legally right. My claim is that the connection is to be found in Kant's justification of political authority. This justification leads to what I label the 'Immanuel-Kant-Problem': the moral duty to act autonomously, i.e., for the sake of the moral law, is incompatible with the absolute duty of a citizen of a state to obey its law.

II. Lawgiving – ethical and juridical

In the general introduction into the *Metaphysics of Morals*, Kant claims that '[i]n lawgiving ... there are two elements: first, a law which represents an action that is to be done as *objectively* necessary, that is, which makes the action a duty; and second, an incentive, which connects a ground for determining choice to this action *subjectively* with the representation of the law' (AA VI:218). In what follows, he distinguishes between 'ethical' and 'juridical' legislation. This distinction concerns the 'second element' of legislation, namely the 'incentive' to act in accordance with the law. Ethical lawgiving does not only make an action a duty; it also makes this duty an incentive. Juridical lawgiving, however, allows for other kinds of incentives, that is incentives independent of duty, including in particular the incentive of 'aversion' (AA VI:218/9). Later, Kant identifies the object of this aversion as the punishment imposed on anyone who violates the law (see AA VI:227).⁴ Ethical and juridical lawgiving have one thing in common: they make actions in accordance with the law objectively necessary, that is, an absolute duty.

Kant's distinction between natural external laws and positive external laws corresponds to his distinction between ethical and juridical laws. Natural external laws are obligatory and 'can be recognized ... a priori by reasons even without external lawgiving'; however, the authority of positive external laws depends on 'actual external lawgiving' (AA VI:224).⁵ Natural external laws are those maxims of agents that are universalizable; pure practical reason provides them with their authority (though not with their specific content). The content and authority of positive external laws depend on political institutions and their acts of lawgiving. The question

⁴ In the *Doctrine of Virtue*, Kant adds an analogous distinction, namely the distinction between duties of law and duties of virtue. Ethical duties constitute an internal constraint, duties of right a constraint that does not have to be internal; the latter constraint can be constituted by „external lawgiving“. Here, Kant also distinguishes between „self-constraint“ and the „constraint by another“ (AA VI:394).

⁵ See also AA VI:237.

to be raised is this: What enables a political institution to make the duty to follow its laws objectively necessary?

The seemingly straightforward answer to this question is the dependence claim; according to this claim, the authority of a political, lawgiving institution depends on its commitment to giving only positive laws that are morally justified. But Kant does not defend such moral constraints on positive lawgiving. As I shall argue, the lack of such constraints makes the Immanuel-Kant-Problem inevitable. But how can Kant defend the power of political institutions to make obedience to its laws an absolute duty without relying on the claim that political and external lawgiving must meet moral constraints?

That Kant does not want to put any moral constraints on political institutions which make positive external laws is clear from the very beginning of the *Metaphysics of Morals*: political institutions enjoy the freedom to make laws and provide them with absolute authority independently of any authorization of these laws through pure practical reason. By making positive external laws, political institutions constitute their own standards for the distinction between right and wrong actions as well as the duty for all citizens to act in accordance with these standards:

A deed is *right* or *wrong* (...) in general insofar as it conforms with duty or is contrary to it (...); the duty itself, in terms of its content or origin, may be of any kind. A deed contrary to duty is called *transgression* (...). (AA VI:224, Kant's italics)

According to Kant, the 'doctrine of right' is the 'sum of those laws for which an external lawgiving is possible'. These laws include both natural and positive external laws. Jurists may inquire into whether the positive laws of a state are in accordance with the 'universal criterion ... by which one could recognize right as well as wrong'; they do not have to limit their inquiry to 'what the laws in some country at some time prescribe' (AA VI:229). Kant is clearly aware of the distinction between a timeless and universal and a temporally limited and local standard for the distinction between right and wrong. But his notion of 'right' is normatively ambivalent. On the one hand, right is what duty prescribes, and 'the duty itself, in terms of its content or origin, may be of any kind' (see above); Kant recognizes the possibility of there being duties the authority of which cannot be traced back to the moral law. On the other hand, right is what is in accordance with natural laws, that is, laws of freedom or moral laws. Kant's definition of 'right' is compatible with both the morally right and the legally right:

Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom.
(AA VI:230)

III. Coercion and punishment as exclusive rights of political institutions

Reference to the citizens' freedom is a key concern in Kant's justification of state-imposed coercion and punishment. The function of coercion and punishment is to ensure that citizens act in accordance with the law. It seems as if Kant saw the need for *moral* justification of these political measures; after all, any application of these measures means a limitation of the freedom of the citizen on whom they are imposed. Such a limitation seems to be incompatible with what is morally right:

Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it. (AA VI:231, Kant's italics)⁶

What is wrong is a 'hindrance to freedom in accordance with universal laws'. Coercion, however, is 'a hindrance' to 'a certain use of freedom'. Relying on coercion can only be morally right if the 'freedom in accordance with universal laws' is not the same as the freedom of which one can make 'a certain use'. It may help to speak of an 'abuse' of freedom instead of 'a certain use of freedom'. However, the freedom that can be abused cannot be the freedom which consists in acting in accordance with universal laws; it can only be the 'freedom in the negative sense' as Kant defined it in his *Critique of Practical Reason* (see CpR, §8, AA V:33). Coercion and punishment are justified if used in order to defend the freedom of an agent who acts in accordance with universal laws. Only those citizens who act as if they were only free in the negative sense of freedom are objects of these measures.

Conflicts between citizens do not arise as long as all of them act freely, that is, in accordance with universal moral laws. But conflicts arise whenever a citizen abuses his freedom. The prospects of institutional coercion and punishment are supposed to prevent such abuse. But since the freedom that can be abused is not the freedom in accordance with universal laws, coercion and punishment do not violate this freedom.

Who has the right to use coercion? Legitimate coercion is a matter of defending citizens' freedom in accordance with universal laws; it is imposed on a citizen in the name of all citizens. Kant speaks of a 'strict right' in terms of 'the possibility of a fully reciprocal use of coercion' (AA VI:232). Every citizen has moral duties in virtue of being a rational agent. These duties do not depend on the existence of a political institution. These duties include the duty to respect everybody else's moral freedom, it is the moral duty to 'act rightly':

That I make it my maxim to act rightly is a demand that *ethics* makes on me.
(AA VI:231, italics CF)

However, Kant holds the view that a particular agent who is free and under the moral law does not have the right to defend her moral freedom against those who abuse their freedom and victimize them. No individual agent has the right to use coercion, not even in an act of self-defence.⁷ The right to coercion and punishment is an exclusive right of political institutions.⁸

The question is whether the laws given by a political institution set any limits to the moral freedom of the citizens of the respective state. They can only avoid doing so if they are in accordance with the moral law. But Kant explicitly denies that the authority of positive laws depends on their being moral laws. Can a state and its institutions make claims to acting in the name of the moral law, can they exercise coercion and punishment in the name of the moral law, even if the laws they make are not moral? Kant claims that they can. But how can he defend this claim? Coercion exercised on citizens to act in accordance with the laws of a state and punishment for any transgression of these laws can avoid being an act that violates the moral freedom of the citizen who is its object only if the respective laws are moral laws. But if the

⁶ See also AA VI:396.

⁷ Here, I agree with Marcus Willaschek who holds the view that the moral duty to act for the sake of the moral law does not imply any right to use coercion on others. See Willaschek 2009: 59-65.

⁸ Arthur Ripstein underlines this claim of Kant, saying that „for Kant the starting point for political philosophy concerns the ways in which people may be forced to treat each other” (Ripstein 2004: 17).

laws of a state are not moral, a citizen can justify his violation of these laws by relying on the moral law as the supreme authority over her free will. Imposing coercion or punishment on such a citizen is therefore an act of violating her moral freedom. But Kant does not allow for citizens' violation of the laws of the state on moral grounds.

Why, then, is it a universal moral duty to join a state and become its citizen? It is a fact that the abuse of negative freedom is common among citizens. Kant speaks of 'the inclination of human beings generally to lord it over others as their master' (AA VI:307). All citizens can at any time be victimized and hindered from exercising their moral freedom by others. The only legitimate way to put an end to this constant threat is to join a state as a citizen. However, Kant emphasizes that the transition from a state of nature to a state of civilization is not only an imperative of prudence; it is imposed on all rational agents by the categorical imperative, it is a matter of doing their moral duty:

From private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into rightful condition, that is, a condition of distributive justice. (AA VI:307)

But in general they do wrong in the highest degree by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is against violence. (AA VI:307/8)

It is not experience from which we learn of the maxim of violence in human beings and of their malevolent tendency to attack one another before external legislation endowed with power appears, thus it is not some deed that makes coercion through public law necessary. On the contrary, however well-disposed and law-abiding human beings might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples and states can never be secure against violence from one another, since each has its own right to do *what seems right and good to it* and not to be dependent upon another's opinion about this. (AA VI: 312, Kant's italics)

IV. Kant's Rousseauian heritage

In his political philosophy, Kant uses the language of contract theory; in particular, he speaks of the transition from a state of nature to a state of civilization. Much of what he says on this topic reminds one of Rousseau's theory of the social contract, even though Kant's conception of the state of nature also bears Hobbesian elements. According to Kant, the legitimacy of the state and the authority of the laws its institutions give depend on their authorization by all citizens. He agrees with Rousseau in his understanding of the main function of a state, namely to protect every individual citizen from victimization by other citizens. In return for the state's protecting their freedom, citizens have to give up some of it.

Kant – as Rousseau before him – expects the citizens to trust the institutions of the state; in particular, citizens of the state have to trust in the rightness of its laws. Citizens are not allowed to make their legal obedience dependent on the moral rightness of these laws. For Kant, the request of legal obedience implies a kind of moral de-authorization of the citizens. Such moral de-authorization has no antecedent in either Hobbes' or Rousseau's contractarian theory of the state. Neither Hobbes nor Rousseau developed a moral theory independent of a political theory,

that is, a theory of a moral law whose authority is independent of the existence of any political institutions. According to Rousseau, in the state of nature there is only a natural right for each individual to freedom and equality. Norms of action that oblige all people, or rather all members of a state, depend for their existence on a political institution that can rightly claim to act in the name of all citizens of a state. The state respects and protects their freedom and equality in virtue of being constituted and authorized by their general will. Accordingly, whenever these citizens act in accordance with the law of the state that they have collectively constituted and authorized, they act autonomously. Their autonomy is mediated through the general will. It depends on the existence of a state. Kant's theory of autonomous action is very different indeed.

Kant first develops a theory of autonomous moral agency and then uses it in order to explain why there is a moral duty for every rational agent to become a citizen of a state and to submit to its positive laws. For him, the transition from a state of nature to a state of civilization cannot be a transition from a state of lawlessness to a state of law. Thus, he has to deal with a conflict that has no antecedent in any other contractualist political theory. It is the conflict between moral and political obligation, between the moral law on the one hand and the positive laws of the state on the other, laws which do not have to be moral in order to be obligatory for the citizens of a state. Why is this a conflict? The conflict arises from the fact that no rational agent can obey both the moral law and the laws of the state of which she is a citizen at the same time. This is the conflict which I suggest to label the 'Immanuel-Kant-Problem'. It leads to the question of what happens to the moral autonomy of a rational agent once she joins a state – or constitutes it in cooperation with other rational agents like her?

V. Political duties replace moral duties

Whether the positive laws of a state are also moral laws or not is of no consequence for their authority. As I have pointed out before, their authority does not depend on their being moral. A citizen of a state has to obey the laws of this state, quite independently of whether they are moral or not. But even if these laws were moral, the motivation of the citizen to obey them cannot be moral. Moral obligation and legal obligation are mutually exclusive, even if the respective laws request the same choices and actions. Kant famously distinguished between moral and legal obligation.⁹ In the *Metaphysics of Moral* he writes:

Ethics adds only that this principle [the formal principle of duty, that is, the categorical imperative] is to be thought as the law of *your* own will and not of will in general, which could also be the will of others; in the latter case the law would provide a duty of right, which lies outside the sphere of ethics. – Maxims are here regarded as subjective principles which merely *qualify* for a giving of universal law, and the requirement that they so qualify is only a negative principle (not to come into conflict with the law a s such). (AA VI 389, Kant's italics)

However, the Immanuel-Kant-Problem is not merely a problem of incompatible motivations. Fundamentally, it is a conflict of incompatible authorities. Kant makes explicit that a state cannot authorize its citizens to transgress its laws without undermining its authority as the one and only legislator. Accordingly, the autonomy of the individual moral agent is incompatible with the status of a citizen who is bound by the laws of the state. This is the case even if we understand the status of a citizen as autonomous in the Rousseauian sense, that is, as mediated by the general will. Once a rational agent joins a state, her individual moral autonomy has to be

⁹ In his analysis of Kant's theory of motivation, Willaschek introduces further distinctions. For my argument, these distinctions can be neglected. See Willaschek 1997: 211-7.

transformed into the duty to follow the positive laws of this state, without any restrictions or limitations. Still, Kant speaks of the primacy of the notion of ‘duty’ in comparison to that of ‘right’:

... we know our own freedom (from which all moral laws, and so all rights as well as duties proceed) only through the *moral imperative*, which is a proposition commanding duty, from which the capacity for putting others under obligation, that is, the concept of a right, can afterwards be explicated. (AA VI:239, Kant’s italics)

Once a rational agent has become a citizen of a state, she has to give up on her individual autonomy and transfer the power and authority of legislation to the state and its institutions. Otherwise, the authority of the state over its citizens would not be absolute:

... since a people must be regarded as already united under a general legislative will in order to judge with rightful force about the supreme authority (...), it cannot and may not judge otherwise than as the present head of state (...) wills it to. (AA VI: 318)

Kant is indeed very explicit:

... the sovereign has only rights against his subjects and no duties (that he can be coerced to fulfill). – Moreover, even if the organ of the sovereign, the *ruler*, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of the state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by *complaints* (...) but not by resistance. (AA VI: 319, Kant’s italics)

And furthermore:

... a people cannot offer any resistance to the legislative head of a state, since a rightful condition is possible only by submission to its general legislative will, There is, therefore, no right to *sedition* (...), still less to *rebellion* (...), and least of all is there a right against the head of a state as an individual person (the monarch), *to attack his person* or even his life (...) on the pretext that he has abused his *authority* (*tyrannis*). (AA VI:320)

The fact that the laws of the state do not have to be moral in order to be authoritative for its citizens is compatible with these laws actually being moral. According to Kant, all citizens of a state should enjoy ‘lawful freedom’, ‘civil equality’, and ‘civil independence’ (AA VI: 314).¹⁰ This sounds morally promising. But a closer look at Kant’s account of the content of the laws of the state reveals that their moral legitimacy was not of great importance to him. I want to mention merely three examples: his distinction between active and passive citizenship (AAVI:314), the state’s right to withdraw all dignity from a criminal (AAVI: 329-30, 463), and Kant’s support for the death penalty (AAVI: 320, 333).

¹⁰ Ripstein has explained in detail what the task of positive lawmaking implies if it is committed to the moral values of freedom and equality of all citizens. See Ripstein 2004.

VI. Kant's moral justification of the authority of state-institutions and the Immanuel-Kant-Problem

In the *Metaphysics of Morals*, and in particular in the *Doctrine of Right*, Kant develops a contractarian theory of the state along at least some of the lines of Rousseau's *Social Contract*. He derives the authority of positive laws and of the political institutions giving these laws, via the general will of the citizens, from the moral autonomy of the individual agents who collectively constitute the general will; these agents have a moral duty to become citizens of the state. But once the contract has been signed, once the general will has been constituted and the state established, there is a primacy of positive law over the moral law. The individual autonomy of the partners is transformed into a kind of collective autonomy; the power and authority of legislation pass from the hands of individual agents into the hands of the ruler of the state and its political institutions. Whereas it is desirable that the political institutions legislate laws that are also moral, their authority does not depend on it.

What does the Immanuel-Kant-Problem imply with respect to the question of whether Kant's political theory is grounded in his moral theory? Do we have to embrace the independence claim after all? Should we conclude that Kant's political theory is independent of his moral theory? As I mentioned earlier, this is the implicit conclusion also of Christoph Horn's view. Horn points out that, in his political theory, Kant addresses people who are selfish, disposed to let their will be determined by their inclinations, and who see others as competitors for resources which tend to be scarce.¹¹ If we read Kant's *Metaphysics of Morals* accordingly, Kant's main question underlying this project must have been how naturally selfish and competitive people can live together as citizens of a state, peacefully and to everybody's advantage. This was the leading question of which motivated the political thinkers of the Scottish Enlightenment.

Another element of Kant's thought which speaks in favour of such a reading of the *Metaphysics of Morals* is his ambivalent view of human nature. According to Kant, we are both similar to non-human animals (we are embodied and vulnerable) and to divine creatures (we are rational beings). In his moral theory, he addresses people as rational beings, as people who may take pride in their rationality, capable of freedom and autonomy. Why not read his political theory Horn suggests that we read it? After all, we are vulnerable and fearful creatures and the moral law appears to us very demanding indeed. We are constantly tempted to ignore it and pursue our happiness as if it was independent of our commitment to the moral law. For creatures as we are, joining a state, becoming citizens, and submitting to the laws of its political institutions seems an imperative of prudence. However, and I mentioned this before, according to Kant, becoming a citizen of a state is not merely a matter of prudence; it is a matter of following the moral law, imposed on all rational agents by the categorical imperative. Thus, again, the question is why Kant claims that it is a moral duty for every rational agent to become a citizen of a state, even though he can hardly have ignored the price this step implies: giving up one's moral autonomy and submitting to the laws given by state institutions?

To answer this question, we must focus on Kant's justification of his claim that a state and its institutions not only give laws but also make the duty to follow these laws objectively necessary. To begin with, we must remember that the notion of a 'law' is ambivalent. On the one hand, we speak of natural laws; their authority in the actual world is necessary and universal; violating a natural law is impossible, and there are metaphysical reasons for this impossibility. On the other hand, we speak of the positive laws of a state, given by its institutions. The citizens of a state are perfectly capable of violating these laws even though they are not supposed to do so. At first sight, moral laws seem to resemble the laws of a state. After all, people can violate

¹¹ See Horn 2014:300-320.

them. But Kant has argued in favour of the claim that we should understand the moral law as similar to natural laws; it implies a metaphysical claim about the order of the world of freedom.¹² The moral law is the law of the world of freedom, the ‘kingdom of ends’ as Kant also calls it; its authority resembles that of natural laws, it is necessary and universal. Whoever lives up to her moral freedom and puts herself under the moral law will not violate the moral law. My claim is that, according to Kant, this absolute authority of the moral law is the source for the equally absolute authority of the positive laws of a state. Whoever becomes a citizen of a state for the sake of moral duty and thereby submits to the laws of this state will, for the sake of this very duty, accord the same absolute authority to the laws of this state she previously accorded to the moral law.

What speaks in favour of my claim includes Kant’s rejection of the sentimentalist and naturalist justifications of political institutions and of the constraints they impose on our actions as they had been proposed by some of the philosophers of the Scottish Enlightenment. Kant judges these justifications as ‘tenuous’ since they derive the authority of morality and law from humans’ natural motivation to promote their own happiness and well-being. As Kant says in the introduction into the *Metaphysics of Morals*:

If the doctrine of morals were merely the doctrine of happiness it would be absurd to seek a priori principles for it. ... Only experience can teach what brings us joy. ... All apparently a priori reasoning about this comes down to nothing but experience raised by induction to generality, a generality (...) still so *tenuous* that everyone must be allowed countless exceptions in order to adapt his choice of a way of life to his particular inclinations and his susceptibility to satisfaction and still, in the end, to become prudent only from his own or others’ misfortunes. (AA VI:215-6, italics CF)

In his *Metaphysics of Morals*, Kant sets himself the task of proposing an alternative justification for the authority of a state and of the laws given by its institutions; he rejects the idea of tenuously justified authority. Both moral and political, legal authority have to be absolute, that is, objective and necessary, independent of what people happen to think they need for their happiness and against all exceptions. I suspect that Kant thought Rousseau’s theory of the *Social Contract* provided an equally tenuous justification of the authority of the laws of the state. After all, Rousseau justifies this authority in prudential terms; becoming a citizen of a state based on a social contract is, according to Rousseau, the best strategy available for people who live in society and want to preserve as much as possible of their natural freedom and equality nevertheless. If the disposition of a state’s citizens to submit to its laws depends on the state’s allowing them to promote their individual happiness and well-being, including their freedom and equality, then this disposition ends at the very moment this state fails to do so. The authority of its laws cannot be absolute.

By grounding the duty to submit to the positive laws of a state in every rational agent’s moral duty, Kant wants to make sure that the general will constituted by these agents can attribute absolute authority to the positive laws of the state and make the duty to follow them objective and necessary. The disposition of the citizens to act in accordance with their juridical duty cannot depend on any conditions the state does not inevitably fulfil. In particular, it cannot depend on whether or not the state allows its citizens to promote their happiness. Only morally autonomous persons are capable of providing the state of which they are citizens with an authority that equals that of the moral law, that is with objective and necessary or absolute authority. The absolute authority of a general will and of the state it constitutes implies that the citizens of the state cannot make their willingness to follow its laws dependent on any

¹² For a more detailed defense of this claim see Fricke 2018.

conditions whatsoever; this excludes also the condition which requests these laws to be moral. Accordingly, Kant's claim that the laws of a state do not have to be moral, that their authority does not depend on their being moral, is further evidence for his main claim, namely, that the authority of the laws of a state has to be absolute. Only morally autonomous agents can provide the grounds for such authority, but they do so at the costs of losing it. Both claims are like two sides of the same coin. This is why Kant's political theory is indeed grounded in his moral theory. But, according to my version of the dependence claim, Kant does not impose any moral constraints on what the positive laws of a state may prescribe. Kant grounds his political theory in his moral theory because the autonomy of individual moral agents is the only possible source for the absolute authority of the positive laws of a state. The 'Immanuel-Kant-Problem' is the price Kant has to pay for defending this absolute authority.

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