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KANT'S APRIORICAL IDEA OF LAW: TWO WAYS OF ITS JUSTIFICATION[1]

Abstract. Kant proposed an apriorical account of the idea of law, according to which the law's only legitimate goal is to guarantee for each citizen a possibly broad scope of external freedom compatible with the same scope of all other citizens. However, Kant did not make it entirely clear how this idea is to be justified. This paper presents two ways of justification, drawing on Kant's view of the human nature. The first one appeals to the apriorical components of this view (rationality, freedom, equality, and dignity), and the second one is based on its empirical components (the ambivalent account of human predispositions).

Keywords: idea of law, external freedom, the categorical imperative, radical evil

DWA SPOSOBY UZASADNIANIA KANTOWSKIEJ APRIORYCZNEJ IDEI PRAWA

Streszczenie. Kant zaproponował *aprioryczne* ujęcie idei prawa, zgodnie z którym jedynym prawomocnym celem prawa jest zapewnienie każdemu obywatelowi możliwie szerokiego zakresu zewnętrznej wolności dającego się pogodzić z identycznym zakresem wolności innych obywateli. Kant nie rozjaśnił jednak w pełni tego, jak należy to ujęcie uzasadnić. W artykule zostały przedstawione dwa sposoby jego uzasadnienia oparte na Kantowskim obrazie natury ludzkiej. Pierwsze z nich odwołuje się do apriorycznych elementów tego obrazu (racjonalności, wolności, równości i godności), drugi – do elementów empirycznych (ambiwalentnego ujęcia przez Kanta ludzkich predyspozycji).

Słowa kluczowe: idea prawa, zewnętrzna wolność, imperatyw kategoryczny, radykalne zło

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[1] I dedicate this paper to the memory of Tomasz Bekrycht, a great scholar, an expert on Kant's practical philosophy, and – above all – my dear friend.

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1. KANT'S IDEA OF LAW – LAW AS A MEANS OF THE PROTECTION OF EXTERNAL FREEDOM

Kant's idea of law, expounded most fully in the first part of his work titled *The Metaphysics of Morals*, has an apriorical character, i.e. it rests on the assumption that its basic, immutable principles can be derived *a priori* from pure reason alone[2]. The main results of this derivation, i.e. the principles that structure the domain of law, are clearly expressed in the following two passages:

> The concept of Right [Law – *Recht*], insofar as it is related to an obligation corresponding to it (i.e., the moral concept of Right), has to *do, first,* only with the external and indeed practical relation of one person to another, insofar as their actions, as facts, can have (direct or indirect) influence on each other. But, *second,* it does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the other's *choice. Third,* in this reciprocal relation of choice no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is *the form* in the relation of choice on the part of both, insofar as choice is regarded merely as *free,* and whether the action of one can be united with the freedom of the other in accordance with a universal law. 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 the universal law of freedom (Kant 1991, 56; Kant 2020, par. 231).[3]

> Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity (Kant 1991, 63; Kant 2020, par. 237).[4]

One should emphasise two crucial points of Kant's analysis of law:

(1) The concept which is fundamental for Kant's understanding of law is that of (external) freedom (*die äußere Freiheit*), i.e. of freedom to act as one wishes, without being compelled by others. It is fundamental in the sense that human beings have the (legal) right to this kind of freedom (provided it is compatible with the same scope of freedom of others) and that the *only* justification for imposing legal duties on citizens is external freedom's protection; no other justification, e.g. concern with the welfare of citizens, is legitimate (thus, one can legitimately assert

[2] The term "metaphysics" means for Kant precisely the inquiry into the *a priori* laws and concepts, and the results of such an inquiry.

[3] This last – especially important – sentence reads in the original: "Das Recht ist also der Inbegriff der Bedingungen, unter denen die Willkür des einen mit der Willkür des anderen nach einem allgemeinen Gesetze der Freiheit zusammen vereinigt werden kann."

[4] Kant dubs it "the only inner right" (as an *a priori* right, it is also a *natural Right*). Strictly connected with this right is Kant's definition of a lawful (right) action, the so-called Universal Principle of Right, which says that "An action is *right* if it can co-exist 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" (Kant 1991, 56; Kant 2020, par. 231).

that Kant was an adherent of the liberal view of the limits of legal intervention in social life).

(2) The protection of external freedom is realised by means of legal duties (prohibitions), which differ from the moral ones in that they do not have to be fulfilled for right reasons (i.e. just because they are duties): a merely “external” consonance of an action with them (which Kant calls ‘legality – *Gesetzmäßigkeit*’) is sufficient. Kant does not make it explicit why the law could not require the right motive (which, for Kant, is the satisfaction of a duty just because it is a duty), but, as it seems, two reasons stand behind this claim. First, one can hardly imagine a procedure which could determine whether an agent acted “out of duty” (i.e. had the duty as the only determinative ground of his/her action) rather than merely “in accordance with duty”; and such a procedure would be necessary for the *enforcement* of legal duties if they were to demand also a proper motivation (enforceability being a definitional feature of legal duties). Secondly, the very fact that the definitional element of law is that it makes use of sanctions – non-moral incentives – seems to imply that it cannot require that citizens comply with its precepts for morally-appropriate reasons.

As we can see, it is not difficult to understand what Kant means by law: the law is an instrument serving the protection of external freedom, and juridical (legal) duties need not be fulfilled just because they are duties (the law requires only the “legality” of our actions). The difficulties appear in two other points: when one asks whether a given action is compatible with everyone’s freedom or not; and when one strives to reconstruct the steps of the reasoning (of “deduction”) that led Kant to the endorsement of this – *liberal* – view of the limits of law. I shall not be concerned with the former difficulty, which has a technical rather than philosophical character, i.e. it can be overcome in the course of a careful analysis of various rights (property, family, etc.) with a view to establishing such a scheme of these rights which maximises the extent of freedom[5]. I shall only be concerned with the latter difficulty. This difficulty is a serious one, because one can hardly find passages in *The Metaphysics of Morals* in which this kind of deduction is explicitly conducted; rather, one encounters a meticulous (though immensely illuminating) analysis of various legal concepts, including that of freedom, which, nonetheless, does not sufficiently explain why Kant delineated the limits of law in this liberal way. Two ways of justification might seem plausible at first glance, but, as we shall see, they turn out to be rather unsatisfactory upon closer inspection.

Firstly, one could argue that Kant’s account of the function of law had to be liberal, because it was constructed in the course of an apriorical analysis, which, as Kant believed, cannot focus on the “matter” of choices or relations between

[5] Of course, Kant presents such a scheme, which, though controversial in several points, has a very sophisticated form; he argues, for instance, that private property or the rule of the first appropriation of the land can also be derived apriorically.

people; it can concern only their "form" (and, if we consider human actions, their "form" is freedom). However, this path of reasoning is not cogent. One could point out (following Max Scheler or other proponents of the "material *a priori*" in ethics) that it is arbitrary to maintain that an apriorical analysis cannot concern "matter". It could also be argued that this kind of justification of the limits of law would be very weak: it should be construed as a testimony to the limitations of the apriorical method (as understood by Kant, i.e. limited only to the "formal" aspects of law) rather than as a plausible argument for the claim that the essence of law is the protection of external freedom.

Secondly, it could be claimed that the idea of law can be derived *directly* from the categorical imperative (in its first formula – the Universal Law). On this interpretation, the idea would be the result of the application of the procedure of universalisability to the question of the proper use of one's external freedom. This result could be spelled out in this way: "accord to yourself as much external freedom as you can wish to accord accord to other people". Schematically, this justification can be presented this way:

The Categorical Imperative in its Formula of Universal Law → The Idea of Law

It must be admitted that this interpretation is not entirely implausible: if we assume that the law deals with our external freedom and that the scope of external freedom must be determined by the procedure of universalisability (two fairly uncontroversial premises), then, apparently, we can infer that we can give to ourselves not more freedom than we are ready to give to others. However, there are two weak points of this argumentation. The first one is that the categorical imperative is focused not only on the external aspects of human actions, but also on their motivation, and, as was mentioned, legal duties do not require that agents discharge of them with the proper motivation, i.e. that the determining ground of their actions is the mere consciousness of the fact that they are duties. Thus, it is by no means certain that the categorical imperative can be legitimately used with regard to external aspects of actions alone. The second, even more important, weakness of this argumentation is the following: it seems that the only claim regarding external freedom which can be derived from the categorical imperative (assuming that it can be at all applied to external aspects of action alone) is that we should not grant to others less freedom than we are ready to grant to ourselves (or that we should give to ourselves the same scope of external freedom which we are ready to give to others); however, the categorical imperative cannot ground the derivation of the central thesis of Kant's idea of law, i.e. that the *only* function of law is the protection of external freedom and that the scope of this freedom should be *as wide as possible*, constrained only by the requirement of consistency.

Consequently, it seems that the answer to the question about the justification of Kant's account of the limits of law must be sought elsewhere. In my search for

this answer, I shall make three points: that the foundations of Kant's idea of law lie in his view of human nature; that this view embraces both apriorical and empirical components; and that even though apriorical components play the decisive role in Kant's justification of his idea of law, the empirical components provide the resources for its additional justification (even though this justification *is not* invoked by Kant himself). Needless to say, only the former type of justification – namely the derivation of the idea of law from certain apriorical theses about the human nature – preserves the apriorical character of this idea. Nonetheless, it would be interesting to demonstrate that this idea is supported also by Kant's empirical claims about the human nature.

2. KANT'S VIEW OF THE HUMAN NATURE

I do not propose to reconstruct the Kantian view of the human nature in all its complexity: this would be a daunting task, which could be hardly realised in this paper[6]. I will focus only on those components of this picture which are pertinent to the question about the justification of Kant's idea of law. As already mentioned, the components can be divided into apriorical and empirical. The former embrace rationality, (metaphysical) freedom, fundamental equality, and the dignity of human beings, while the latter embrace what I will call the 'ambivalent' account of human predispositions and inclinations. In the next two sub-sections, I will look more closely at these two types of components and trace their links with Kant's idea of law.

2.1. The apriorical components

In *Groundwork of the Metaphysics of Morals*, Kant established the categorical imperative as the supreme principle of morality (the principle which demands, in its Formula of Universal Law, that people should act only on such maxims, i.e. personal rules of conduct, that can be generalised) and argued that an act is genuinely moral if, and only if, the "unconditionally good will" stands behind it, i.e. the will which does the act prescribed by the categorical imperative "out of duty"/"from duty" (i.e. is motivated only by the reverence for this imperative); an act that only accords with the duty is, according to Kant, merely legal, not (genuinely) moral[7]. In order to establish the connection of this deduction with the view of the human nature, Kant engaged into "transcendental argumentation", i.e.

[6] Such a reconstruction can be found, e.g., in Wood (1999, part II).

[7] It is worth stressing that in conducting his deduction of this principle, Kant maintains that the analysis he provides is an analysis of common moral consciousness, which implies that if a "common man" (human being) were to look deeply into himself/herself to ascertain the way in which he/she makes moral judgments, he/she would be bound to agree with Kant's conclusions.

he asked about *the condition of possibility* of being moved only by the categorical imperative as well as *the condition of ascribing to us moral responsibility for our actions*. His conclusion was that this condition is (metaphysical) freedom, which, in its negative characterisation, is the "independence from being determined by sensible impulses,"[8] and in its positive characterisation – "the capacity of pure reason to be of itself practical"[9] (cf. Kant 1991, 42; Kant 2020, par. 213–214). As Tomasz Bekrycht put it:

> The critique of pure reason demonstrated that freedom is not logically contradictory, proving that it must belong to the sphere of the noumenal reality, the existence of which is the foundation of freedom. Since it is impossible for our theoretical knowledge to access this sphere, freedom is not subject to theoretical proof. However, knowledge of the idea of freedom is a practical necessity for the subject of moral action and, thus, it is not merely an arbitrary invention or a dogmatic premise, but a transcendental concept (Bekrycht 2019, 148).

Accordingly, if human beings were not endowed with the capacity for metaphysical freedom, they would not be able to assume the categorical imperative as the sole motive of their actions, and, consequently, they could not be blamed for their immoral (non-legal, i.e. either "externally" discordant with the duty, or legal but inappropriately motivated) actions. Thus, according to Kant, (metaphysical) freedom is the condition of the validity of the categorical imperative. This metaphysical freedom – freedom of the will – is in fact the spontaneity of reason itself, because, in Kant's view, will is, in fact, *practical* reason. Hence, for Kant, rationality and freedom are inextricably connected with each other. However, this argumentation does not exclude that freedom, being a condition of moral responsibility, is not more than fiction (it is merely an idea that has no counterpart in reality) and that, as a consequence, the categorical imperative is not valid. Kant did not provide an unequivocal solution to this problem, though, of course, he fully realised it and tried to tackle it in two different ways. While in the *Grounding of the Metaphysics of Morals* he made an attempt to provide an *independent* reason for the thesis about the freedom of will (he appealed in this context to the *spontaneity* of reason as evidence of this freedom), in his later work – *Critique of Practical Reason* – he abandoned this attempt: he treated the validity of the categorical imperative as the "fact of reason" (the consciousness of the binding force of the moral law being thus a primitive *datum*); consequently, he could claim that freedom of the will (as a presupposition of this validity) is not a mere idea, but an objective reality instead[10].

The claim about rationality and freedom as features of the human nature led Kant to endorse two other important claims. The first one is about the fundamental

[8] In the original: "jene Unabhängigkeit ihrer Bestimmung durch sinnliche Antriebe."

[9] In the original: "das Vermögen der reinen Vernunft für sich selbst praktisch zu sein."

[10] For an extensive analysis of this problem, see especially Paton (1946, 199–221) and Wood (1999, 171–174).

equality of all human beings. Since all human beings are endowed with the capacity for metaphysical freedom, and, therefore, all are equal in the domain of morality (each person has an equal capacity to acquire moral merits or demerits[11]) – the domain which is of paramount importance, it follows that all human beings are *fundamentally* equal (i.e. equal as moral persons), even though they may differ in their talents, inclinations, etc. Kant explicitly connected freedom with the right to equality (equal treatment) in the following passage:

> This principle of innate freedom already involves the following authorizations, which are not really distinct from it (as if they were members of the division of some higher concept of a right): innate *equality,* that is, independence from being bound by others to more than one can in turn bind them; hence a man's quality of being *his own master (sui iuris),* as well as being a man *beyond reproach (iusti*), since before he performs any act affecting rights he has done no wrong to anyone; and finally, his being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it – such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere *(veriloquium aut falsiloquium)*; for it is entirely up to them whether they want to believe him or not. (Kant 1991, 63; Kant 2020, par. 237).

From the fact that human beings possess the distinctive features of rationality and freedom, and that these features are characteristic for all human beings, it follows that all of them have *intrinsic worth*, i.e. dignity: they are "beyond all price" – they constitute "ends in themselves."

Given the above account of the human nature, it becomes easier to understand why Kant endorsed the liberal conception of law, i.e. he confined the function of law to protecting our external freedom.

Firstly, the maximally wide scope of external freedom for each person compatible with the same scope for all other persons provides the space in which human beings can manifest in a possibly extensive manner their (metaphysical) freedom, and thereby undertake acts flowing from their reverence for the categorical imperative. It can therefore be said that the value of external freedom is instrumental to the realisation of the capacity for making (metaphysically) free choices. A similar point was made by, e.g., Jennifer K. Uleman, who wrote that:

> Willing (…) always sets our bodies in motion toward the realization of the object of our choice. For Kant, fee (autonomous) willing is the only unconditioned, absolute good. This claim may be of course construed in different ways. But no one may deny that the moral demand to protect and promote this good (free willing) entails protecting and promoting it in its external efforts. Whatever stymied that motion, whatever interfered with those efforts, can rightly be construed as interfering directly with Kantian freedom (Uleman 2004, 591–592).

[11] Kant put much stress on this equality, writing that: "in matters that concern all men without distinction [i.e., in moral matters] nature is not guilty of any partial distribution of her gifts, and (…) in regard to the essential ends of human nature the highest philosophy cannot advance further than it is possible under the guidance which nature has bestowed even upon the most ordinary understanding" (Kant 1963, B879).

Schematically, this justification could be presented this way:

The Categorical Imperative (in any of its formulas) → Metaphysical freedom → The Idea of Law (*The idea of law is justified by the assumption of metaphysical freedom, because it (the idea of law) creates the maximum space in which we can exhibit this freedom*).[12]

Secondly, one could appeal to the notion of human dignity and, thereby, to the third formula (of the Humanity as an End in Itself) of the categorical imperative. The argument would be as follows: since human beings are "ends in themselves", whose rationality and freedom ought to be respected, the law must not impose on them any duties (for instance, paternalistic ones) which could not be justified as a means of their protecting freedom, because this would amount to treating them as not fully rational. Schematically, this justification can be presented this way:

The Categorical Imperative in its Formula of Humanity → The Idea of Law (*The idea of law is justified by the Formula of Humanity, because it (the idea of law) guarantees that citizens will be respected in their humanity*).

The common features of these two ways of justifying the idea of law involve their appealing to metaphysical freedom (the second way does it in an indirect way, while the first one in a direct way), as well as their implying that Kant's doctrine of law cannot be detached from his ethical theory (because metaphysical freedom itself is justified on the grounds of Kant's ethical considerations). It must be added, however, that these two theses are not accepted by all Kantian scholars. For instance, Allen W. Wood – one of the most prominent experts on Kant's practical philosophy – argued that the "sphere of right" as understood by Kant is "independent of morality" (Wood 1999, 323). According to Wood, Kant's idea of law should be viewed as expressing the respect for our "humanity", i.e. our capacity to set ends (moral and non-moral ones) according to reason[13]. This claim can be interpreted in two different ways. The first is that the idea of law is ultimately embedded in the third formula of the Categorical Imperative, i.e. the Formula of

[12] Paul Guyer (2002) also argued that the idea of law is to be derived from the assumption of human freedom. However, his reasoning is slightly different: he asserted that this assumption is the *first component* of *two different derivations* – of the categorical imperative, and of the idea of law. Schematically: human freedom (as an unconditioned value) → the Categorical Imperative; human freedom (as an unconditioned value) → the Idea of Law. However, this reconstruction does not seem to be faithful to Kant's texts, since human freedom itself is derived by Kant, via transcendental argumentation, from the moral law (the categorical imperative); therefore, it should not be treated as the first component of his reasoning.

[13] The thesis that Kant's legal theory can be detached from his ethical theory was also defended by, e.g., Thomas W. Pogge (2002).

Humanity as the End in Itself, in which case the derivation would be ultimately moral. According to the second way of interpretation, it should be seen as asserting, from the prudential standpoint, that the Kantian idea of law most effectively protects the pursuit of our various desires[14]. However, this last interpretation encounters two difficulties: it seems to provide a too weak justification of the Kantian attachment to external freedom[15], because the prudential considerations may be used to substantiate its various – and far-reaching – limitations (e.g. of the paternalistic kind); and, given the weight which Kant attached to free will, it can hardly be claimed that it does not play any role in his justification of his idea of law. One may also add that apart from the fact that metaphysical (inner) freedom is the fundamental concept of Kant's practical philosophy, and thus cannot be discounted in the interpretation of 'external' freedom, Kant wrote explicitly in the part I of the *Preface* to *The Metaphysics of Morals* that freedom can be examined in the internal and external use of the capacity for choice (*Willkür*), which seems to imply that, in fact, there is, in his view, *one* concept of freedom[16].

To summarise, in *Groundwork of the Metaphysics of Morals*, Kant argued that the categorical imperative is the supreme principle of practical philosophy, i.e. both of legal and moral philosophy. The two ways of justification of Kant's idea of law presented above are not contradictory to this claim. However, they show that the derivation of this idea from the categorical imperative is more plausibly interpreted as *indirect* (mediated by the Formula of Humanity or metaphysical freedom) rather than as direct (i.e. susceptible to direct derivation from the Formula of Universal Law).

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[14] Wood argued, in the spirit of the second interpretation, that "our external freedom would be inadequately protected if we had to rely on people's moral virtue in order to get what is ours by right. A system of virtue cannot presume any virtue or good will even on the part of those who legislate and administer right" (Wood 1999, 323). However, this argument is implausible: those who assume the moral argument in favour of the maximum consistent external freedom for all citizens do not assert that this broad space can only be used to express our morally good will, but, rather, that it creates the space in which our freedom of will can manifest.

[15] The same could be said about another possible non-moral justification of Kant's idea of law, i.e. that the concept of happiness or welfare is too vague to become the basis of law. Kant did maintain that these concepts are too vague but, arguably, it was not his main reason for treating law as an instrument of the protection of external freedom.

[16] I cannot develop here another possible line of justification of Kant's idea of law, i.e. the one based on social contract. As is well known, in his legal and political philosophy, Kant also appealed to the idea of original contract (cf. Kant 1999): he claimed that only such laws may be promulgated which could be consented to by a whole nation. However, following Rousseau here, by "consent" he did not mean an empirical consent of real people (citizens), but, rather, rational consent (i.e. a hypothetical consent of people in so far as it is made in abstraction from their particular, empirical desires). Needless to say, it is by no means clear whether this way of limiting the sovereign as a legislator would lead to the liberal view of the limits of law. If it was Kant's opinion (as it seems so), it would mean that he did not appreciate the indeterminacy of the results of social contract, even if made by rational agents.

2.2. Empirical components

It should be noticed that the above account of the human nature does not tell us anything about the propensities of the human nature; it is limited to those parts of the human nature which can be reconstructed in an apriorical manner. The study of human inclinations and predispositions by definition does not belong to the area of *a priori*, but to the area of empirical investigation (which Kant calls "anthropology"). However, even though Kant is most famous for his apriorical study of the human nature, it must be stressed that he also worked out in much detail a very interesting and penetrating *empirical* picture of human beings, which can be invoked as a way of justifying his idea of law (though, as mentioned, Kant does not use it in this context). This picture was most fully presented in his two books: *Religion within the Limits of Reason Alone* (Kant 2008) and *Anthropology from a Pragmatic Point of View* (Kant 1978). I shall first provide a reconstruction of this view, and then I shall link it with the apriorical idea of law.

In *Religion*, Kant (2008) distinguished three human predispositions towards good and three human predispositions to evil. The first predisposition to good is the predisposition to animality, which is rooted in us as living beings, and thus does not require the use of reason for its functioning. This predisposition is, in fact, self-love (*Selbstliebe*) conceived purely physically, as embracing the instincts for self-preservation, for reproduction, for the care of children, and for community with other people. This kind of self-love is, therefore, not to be identified with egoism (tendency to give excessive weight to one's interests as compared with that of others'): it is basically good, though it can be put do bad use. The second predisposition to good is the predisposition to humanity, i.e. to self-love conceived comparatively. It manifests itself when comparing ourselves with other people, and it is connected with such basically good emotions and desires as, for instance, desire for equality, admiration, or desire for recognition, though it may also be put to bad use and generate envy, jealousy, excessive ambition, or desire for power. This predisposition characterises us not only as living but also as rational beings. The last predisposition to good – predisposition to personality – is rooted in us as not only living and rational beings, but also as moral (responsible) beings. This predisposition makes it possible for us to understand the moral law (the categorical imperative) and to have respect for it so that it may become a sufficient ground of our actions. I shall now turn to the second set of predispositions – to evil.

The least serious one is frailty (*fragilitas*), which is an agent's weakness in observing the rules he/she accepted; it consists in that even though an agent wants to comply with the rules *for right reasons* (i.e. just because they are moral rules), he/she fails to realise his/her intention because of the greater motivational force of some other (amoral or immoral) motives. The more serious type is impurity (*impuritas*, *improbitas*): an agent's motivation is "impure" if he/she observes moral rules not only "out of duty" – i.e. only because they are moral rules – but

also for some other reason; for instance, he/she may be telling the truth not only because it is a moral duty, but also because he/she is afraid that his/her lying would be detected and punished. Impurity is, therefore, a tendency to contaminate the motives of our moral actions by including among them immoral or amoral motives. As a result of this contamination, our moral actions are only legal (in accordance with the duty), not moral in the strict sense (done only out of duty)[17]. The third, and the most reprehensible, type of predisposition to evil is wickedness or perversity (*vitositas*, *corruptio*), which consists in that an agent prioritises self-interest or self-love over the moral law, and follows the moral law only if it serves his/her own interest. It is, therefore, a tendency to invert the proper hierarchy of motives of action. One more point needs to be mentioned regarding Kant’s analysis of predispositions to evil, i.e. the meaning of the term “radical evil”, which he regards as a deeply embedded feature of the human nature. The relationship between this term and the three predispositions to evil is not entirely clear. It seems that radical evil in a narrow sense is wickedness, and in a broader sense also weakness and impurity. Whichever of these two senses is correct, the radical evil in the Kantian sense proves to be relatively moderate evil: “radical” does not mean “extreme” or “absolute.” Kant does not maintain that the reason why human beings infringe upon moral duties is that they derive some demonic pleasure from the very fact of infringing upon moral duty; they are not “absolutely evil”, i.e. they do not commit evil just for the sake of committing evil. Kant categorically denies that human beings may take the violation of moral rule to be the reason of their actions. The question arises why Kant, who denies absolute evil, employs the apparently misleading term “radical evil” (resembling “absolute evil”) to describe the human nature. Taken etymologically, however, the term is by no means misleading: as Kant reminds us, “*radix*” in Latin means “root”; and the most typical human predisposition to evil – impurity – consists precisely in contaminating the “root” of our moral actions, i.e. their motivation. Furthermore, the claim that the predisposition to evil is “radical” means also that it is deeply rooted in the human nature.

In summary, Kant’s empirical account of human nature is neither optimistic nor pessimistic. It is not optimistic, because Kant admits that there exist in the human nature various tendencies to evildoing. But it is not pessimistic either,

[17] It is noteworthy that according to Kant, impurity is morally worse than frailty, even though an impure person acts in accordance with a moral rule, while the frail person fails to do so. This “ranking” of the badness of propensities for evil can be explained by the fact that the frail person tries to perform the moral duty for the right reason (even if he/she fails in her efforts), while an impure person performs the moral duty for the (partly) wrong reason; and, for Kant, the crucial factor for the moral evaluation of an act is its motivation. In order for this ranking to be plausible, however, frailty cannot consist in yielding to any temptation to act amorally or immorally; it must be a temptation to do something which is only moderately wrong, i.e. to experience sensual pleasure. Kant does not make this point clear but, arguably, only in this way his ordering can be defended.

because Kant clearly states that the human nature embraces also predispositions to good, and that predisposition to evil is never predisposition to *absolute* evil: the human will is good, i.e. it never wants to commit evil just because it is evil, and, the worst evil which it can commit (prioritising self-interest over the moral law) is far from being extreme. The human nature is, therefore, ambivalent – and as such needs to be "transformed" if it is to become truly moral. It is a task of each individual human being to undergo a moral transformation/revolution, which will enable him/her to follow moral rules for appropriate reasons, i.e. just because they are moral rules. In Kant's view, human beings are in a position to undergo such a transformation, because they have free will. In other words, predispositions (to good and to evil) never release us from moral responsibility for our actions, since they do not give rise to those actions on their own: the incentives that flow from them must always be incorporated by our free power of choice into the maxims of actions. It is the exercise of this power which is the direct cause of our actions. Thus, the origin of evil actions does not lie in the predispositions, but solely in the freedom of will, which decides to order those predispositions in a morally-improper way.

Now, having presented empirical components of Kant's view of the human nature, it is time to tackle the question of their relations with his idea of law. As was mentioned, Kant does not invoke this aspect of his view of the human nature in his analysis of the idea of law. Nonetheless, one can plausibly argue that such relations can be established. I shall start from making a general claim about the relations between views of the human nature and the attitude to freedom. The claim is that 'the assumption that human nature is morally ambivalent justifies granting human beings a broad scope of freedom, whereas the assumption that people are deeply immoral justifies imposing severe limitations on freedom'. This general claim can be substantiated along the following lines. The assumption that people are morally ambivalent justifies a relatively high level of trust towards them and, thereby, justifies granting them a wide scope of external freedom; simultaneously, it does not justify pursuing plans of radical social change – potentially dangerous for external freedom – in the name of the realisation of "the potential of goodness" inherent in the human nature. This is because the assumption that human beings are morally-ambivalent cannot justify the claim that this potential is really substantial. By contrast, the assumption that the human nature is inherently flawed, i.e. that people are deeply immoral, implies that people cannot be trusted; thereby, it justifies even the radical narrowing down of the scope of their freedom. Accordingly, this assumption leads to the conclusion that the power of government ought to be extensive in order to counteract the flawed human nature. It also justifies leading politics in the spirit of the "war rhetoric": since human nature is inherently flawed and thus humans are naturally disposed to act immorally (pursue wars, commit crimes, etc.), the government should be in constant readiness for fighting against internal and external enemies. Returning

to Kant, there is no doubt that his view of the human nature is ambivalent, justifying neither excessive distrust nor excessive trust towards the human nature (two assumptions that may, each in its own way, support the policy of narrowing down our external freedom). Accordingly, it can plausibly be asserted that this justifies granting human beings a wide sphere of freedom.

3. CONCLUDING REMARKS

I have presented two independent ways of justifying the Kantian idea of law as a means of protecting external freedom. The first way was based on the apriorical components of Kant's view of the human nature, whereas the second one was appealing to its empirical components. It is only the first way which is consistent with the apriorical character of this idea; to invoke the second one would amount to the "empirical contamination" of this idea (which, as it seems, is the reason why various empirical claims about the human nature made by Kant do not play any role in his justification of his apriorical idea of law). It does not alter the fact, however, that these claims endorse this idea in *its content* (i.e. in so far as it provides a substantive thesis about the protection of external freedom as the function of law), though, of course, not as far as its methodological character is concerned.

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