

# ON THE RIGHT OF HUMANITY BETWEEN ETHICS AND RIGHT

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**Abstract:** This paper's proposal is to show the fundamental presence of the right of humanity as limitative condition of freedom in Kant's *Doctrine of Virtue* as well as in his *Doctrine of Right*. Ethics and right originate indeed from the acknowledgment and from the defence of the inalienable dignity that everyone has in virtue of his being a rational free agent. Humanity is then a value which transcends the distinction between ethics and right and founds them. Not only Kantian ethics but also Kantian right possess a content of values.

**Keywords:** Right of Humanity; Ethics; Law; Values.

## INTRODUCTION

The centrality of the concept of humanity (*Menschheit*) and of the absolute dignity of the person in Kant's practical philosophy are well known, like the one of the second formula of the categorical imperative "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a mean" (*GMS*, 429). What most people ignore is that the value of humanity plays a role that grounds not only the Kantian ethics, but also the Kantian right.

This paper intends to show the central role of the concept of humanity in Kant's system of duties and its presence in the *Doctrine of Right* (*Rechtslehre*) as well as in the *Doctrine of virtue* (*Tugendlehre*) of the *Metaphysics of Morals*. Before proceeding in my analysis I want to specify that I chose not to examine the value of humanity in a positive sense, as an end to assume and to promote actively ("use humanity in your person and in the person of others always as an end"), but in a negative sense, as a limiting condition of human freedom ("do not use humanity in your person and in the person of others simply as a mean"). My focus is then not on those duties of virtue, which are related to the order (*Gebot*) to promote one's own end (self-perfection) and to assume the end of other people (happiness), as if they were one's own, but on the duties related to the ban (*Verbot*) to treat oneself and other people like things. The latter is identified in the *Metaphysics of Morals* with the right of humanity (*Recht der Menschheit*), an important concept for the *Doctrine of Virtue* as well as for the *Doctrine of Right*, as it will be shown.

## THE RIGHT OF HUMANITY IN THE *TUGENDLEHRE*

Although in the *Doctrine of Virtue* the right of humanity is not mentioned nor represents the source of a particular type of duties, it is present in it, as one can note by reading the Introduction to the *Doctrine of Right*. In the “Division in accordance with the objective relation of law to duty” (MS, 240), the duties to others derive from the right of men (perfect duties of right) and from the end of men (imperfect duties of virtue), while the ones to oneself from the right of humanity in one’s person (perfect duty of right) and from the end of humanity in one’s own person (imperfect duty of virtue). Following this distinction the *Tugendpflichten* (duties of virtue) are connected with the concept of “end”, while the *Rechtspflichten* (duties of right) with that of “right”. The imperfect duties (*unvollkommene Pflichten*) to oneself and others would then belong to the duties of virtue and the perfect duties (*vollkommene Pflichten*) to oneself and others to the duties of right.

But Kant used in the *Metaphysic of Morals* another criterion to distinguish the two types of duties: not the couple of concepts “end – right”, but the concepts of “internal and external coercion”. From this point of view, all those duties which cannot be imposed on the subject by a different individual from himself, are called duties of virtue; instead, all those which can, are duties of right. Following this second criterion which has more weight in the Kantian system of duties, not only the imperfect duties to oneself and to others belong to ethics, but also the perfect duties to oneself which derive from the right of humanity. This subdivision agrees with several passages of the Kantian *Nachlass*, in which Kant confers the status of ethical duties to the perfect duties towards oneself, although they derive from a right.

Their collocation among the *Tugendpflichten* gives unfortunately origin to some interpretative difficulties. These duties to oneself are indeed not imperfect nor of wide obligation, like the other duties of virtue, but perfect and of narrow obligation, like the duties of right<sup>1</sup>. Because of the brevity of this paper, to consider now this problematical aspect of the Kantian system of duties would not acknowledge their importance for Kant’s ethics. My primary aim here is rather to emphasize the weight the duties to oneself have in the moral action – whereby the adjective “moral” does not refer merely to the ethical sphere, but to the whole formed from right and ethics, that one which had been called the whole of the laws *iusti et honesti* in the *Metaphysic of morals Vigilantius*<sup>2</sup>.

The perfect duties to oneself are related with the respect of the dignity of one’s own humanity. As such they represent the only condition under which the other duties can be observed and then the highest condition and the principle of the whole morality. They derive from the necessary limitation of freedom to the essential ends of humanity and such a limitation is

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<sup>1</sup> From Kant’s point of view the duties of narrow obligation are those which command what to do, the duties of wide obligation command on the other side not to act in a specific way, but to assume a specific maxim of action.

<sup>2</sup> *MSV*, 523 f.

acknowledged by Kant as the principle of all the duties, without any sort of distinction between ethical and juridical ones:

For, suppose there were no such duties: then there would be no duties whatsoever, and so no external duties either. – For I can recognise that I am under obligation to others only insofar as I at the same time put myself under obligation, since the law by virtue of which I regard myself as being under obligation proceeds in every case from my own practical reason; and in being constrained by my own reason, I am also the one constraining myself. (MS, 417)

The violation of the duties to oneself means immediately that the agent throws away his own humanity and, with it, the possibility to act morally both in the ethical and in the juridical sphere. It seems, then, that the duties derived from the right of humanity in one's own person have a fundamental weight not only for the ethics, but for the Kantian right too, although they do not belong to it.

According to the tradition, Kant recognises indeed in the *Rechtslehre* an 'internal' or 'innate right' among the external ones. This innate right is the right of humanity which is identified with freedom as "independence from being compelled by another's choice, insofar as it can coexist with the freedom of everyone else in accordance to a universal law." Innate equality, the quality of being his own master (*sui iuris*) and the authorisation to do to others whatever that does not in itself diminish what is theirs (MS, 237 f.), are involved together in this concept of freedom and inseparable from it. The philosopher unfortunately did not add nothing more to this elements nor developed the concept of 'innate right'. Since the *Doctrine of Right* has to do only with acquired rights, not with innate ones, he rather excluded it from the *Rechtslehre*.

## THE RIGHT OF HUMANITY IN THE *RECHTSLEHRE*

A more careful reading of the *Metaphysics of Morals* helps to recognise the presence of the right of humanity as basis of several elements of the *Doctrine of Right*<sup>3</sup>. The right of humanity is indeed the ground of juridical honesty, that is the duty to respect one's own value in one's own relations with other people. This duty is expressed by these words: "Do not make yourself a mere mean for others, but be at the same time an end for them"<sup>4</sup>. This formulation represents the Kantian translation of the Pseudo-ulpianian principle '*honeste vive*'. Its presence in the *Doctrine of*

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<sup>3</sup> M. J. GREGOR, *Laws of Freedom. A Study of Kant's Method of Applying the Categorical Imperativ in the Metaphysik der Sitten*, Blackwell, Oxford 1963, pp. 47 f, recognises the right of humanity as grounding principle of the whole Kantian system of right.

<sup>4</sup> This particular duty represents the result of the Kantian attempt to propose a division of the right conform to the Pseudo-ulpianean formulae (*honeste vive, sneminem laede, suum cuique tribue*), but adding the a sense that Ulpian "may not have thought distinctly in them, but which can be explicated from them or put in to them" (MS, 236 f.).

*Right* is worth noticing because it shows that also in the juridical sphere the subject cannot act without any type of value, but he has to respect his own dignity as well as others'<sup>5</sup>.

The right of humanity represents also the source of the innovation in the Kantian system of morals compared with the philosophical tradition: the 'right to persons akin to right to things' (*das auf dinglicher Art persönliche Recht*)<sup>6</sup>. This right concerns the possession of an object as a thing (*als einer Sache*) and its use as a person (*als einer Person*), and regulates the domestic relations: the one between husband and wife in the marriage (*das Eherecht*), the one of the parents to their children (*das Elternrecht*) and the one of the man of the house to the servants (*das Hausherrn-Recht*). These relations have not to do properly with things, but with persons, who are possessed and used. According to the right of humanity nobody can still be owner (*Eigentümer*) of himself nor property of anybody else: nobody can have himself at his own disposal nor allow others to have him at their disposal<sup>7</sup>. The Kantian attempt to formulate the 'right to persons akin to right to things' consists then in finding out a juridical form which allows to use a person without making a thing of her<sup>8</sup>. Since this type of right presents the man as a condition that limits the actions of others, it expresses the sense of the second formula of the categorical imperative of the *Foundation of Metaphysics of Morals* (*GMS*, 429)<sup>9</sup>.

The third element where the innate right shows its importance is the right to punish. This right has not to do with vices, but rather with acts contrary to justice. As 'categorical imperative' it "can never be inflicted merely as a mean to promote some other good for the criminal itself or for the civil society. It must always be inflicted upon him because he had committed a crime."<sup>10</sup> The reason of it derives from the fact that who is punished is a man. Since he has an inalienable and absolute value, it is not allowed to use him like a mean whatever crime he committed<sup>11</sup>, even if it

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<sup>5</sup> Kersting (1993, p. 219), defines the *honestas iuridica* as 'the internal condition of external freedom'. With this expression he means a coercion which does not belong merely to the ethical legislation, but which represents a fundamental element for the constitution of the juridical order.

<sup>6</sup> *MS*, 276 - 284.

<sup>7</sup> *MS*, 270.

<sup>8</sup> Kant defines this specific right as a permissible law, which naturally follows from the right of humanity in our own person. Thank to this law it is possible to acquire a person as a thing and not to violate the dignity of humanity (*MS*, 276 ).

<sup>9</sup> As an example for this type of duties I will mention here the marriage right (*Eherecht*), because it expresses the sense of the 'right to person akin to right to thing' more clearly than the others. According to Kant the *Eherecht* has to protect the person's dignity: only in relationships regulated by this type of right a man and a woman can make such a reciprocal use of their sexual organs that does not reduce them to things but respects them as persons. The enjoyment following from the sexual act is indeed the aim for which one gives a part of himself to the other one. But such an act makes persons into things. From Kant's point of view the person in an absolute unity and the fact that she gives up a part of herself to achieve enjoyment, does not imply to acknowledge the absolute value of humanity. Only within the marriage it is possible that both man and woman do not loose their dignity as persons: each one gives up him/herself as a thing and loses his/her own personality, but at the same time acquires the person of the other one and, through it, regain his/her own personality. (*MS*, 277 – 280).

<sup>10</sup> *MS*, 332.

<sup>11</sup> It is worth noticing that from the Kantian perspective the respect due to another man in virtue of humanity in his own person can never be refused neither when he committed an appalling crime, nor when he has the worst vices. Kant writes indeed "The same thing applies to the censure of vice, which must never break out into complete contempt and denial of any moral worth to a vicious human being; for on this supposition he could never be improved, and this not consistent with the idea of a human being, who as such (as a moral being) can never lose entirely his predisposition to the good."(*MS*, 463 f.).

might help for his moral improvement or as a warning for the society. So, although he could be condemned to loose his civil personality, the right to punish intervenes to protect his innate personality<sup>12</sup>.

The categorical character of the right to punish leads Kant to indicate its principle and its measure in the law of retribution (*ius talionis*)<sup>13</sup>. I do not want to comment now such a choice of Kant. My aim is only to note that from Kant's point of view this measure provides a solution to the need to safeguard the absolute value of the human person, who can never be reduced to a mean to achieve some end.

But the comprehension of the centrality of the right of humanity in Kant's philosophy of right would loose its completeness, if the reflections written between 1772 and 1775 were not considered<sup>14</sup>. This material is rather conspicuous and would require an analysis that I cannot offer in this short paper. I still want to shed light on some aspects which are relevant for my present analysis.

In those reflections the right of humanity that Kant has in mind concerns the protection of all what has to do with the innate value of human individuals and represents the limiting condition for the juridical relations, especially in the use of one's own and of others' body<sup>15</sup>. Two reflections are particularly interesting because they characterise further this right. The reflection 6801 (*Ref.* 165) identify the source of all duties, without any distinction between juridical and ethical ones, with the fact that men honour the value of humanity and recognise in the concept of humanity what limits freedom through necessary conditions. On this point of view, the right of humanity is the juridical principle. More interesting is the reflection 7862:

The constricting force of the whole law consists not only of what a person owns, but moreover of the right of humanity. Therefore everyone is bound to support the right of every single person. This right of humanity binds also everyone to himself; he is assimilated in humanity, but acquires its rights on the duty to preserve its dignity. Therefore all the duties to oneself. One has to distinguish between what belongs to the person of the man and what belongs to his possession, to the latter organ, faculty and everything on which freedom has power. Every possession is casual. Then the right in consideration of it is not *originarium* but *acquisitum*. I acquire all that only *conformiter* to the idea of humanity (because it is the reason of the possibility of man); so the acquisition is possible on condition of the conformity of freedom to the idea of humanity"<sup>16</sup> (*Ref.* 538).

I think that this passage is important, because it clearly shows that the basis of Kantian right is not property, despite its weight in the *Rechtslehre*.<sup>17</sup> The inalienable value of humanity is that on which duties of right as well as duties of virtue are based.

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<sup>12</sup> *MS*, 331.

<sup>13</sup> *MS*, 332.

<sup>14</sup> The reflections belong to the phases ξ (1772), ο (1771 - 1776), π (between κ = 1769 e ρ) e ρ (from 1773 on 1775), of the Adickes' classification.

<sup>15</sup> Particularly noteworthy are the reflections 7572, 7576, 7577, 7580, 7632, Phase ρ (AA, XIX 458 ff.).

<sup>16</sup> My translation.

<sup>17</sup> Saage (1994) attributes to the property a grounding role in the Kantian right.

## CONCLUSION

As I have examined, the right of humanity is an important element of the *Doctrine of Right* and of virtue, although its presence in them has problematical aspects. In the ethical sphere not to carry out the particular duties which are linked with the right of humanity means immediately the devaluation of humanity and the elimination of the possibility of any act conform to the ethical and to the juridical law. From this point of view the importance of the value of humanity and the respect due to it in ethics becomes relevant for the right.

Although Kant denies the impossibility to consider the right of humanity in the *Doctrine of Right* (because it has to do only with acquired rights, not with innate), its presence in important places of the *Doctrine of Right* is undeniable. This reading, on the light of the reflections preceding the *Metaphysics of Morals*, gives evidence to the fact that Kantian juridical philosophy is not indifferent to values, but takes its origin from the acknowledgement and the protection of the dignity of human persons in their relationships with different agents. So, the juridical system and its laws do not constitute a mechanism, in which every part is a mean for the functioning of the whole. They are rather a system in which every human being has a value not merely for its importance in the functioning, but in virtue of the innate dignity of its humanity.

Humanity is then a value which transcends the distinction between ethics and right, because it does not belong exclusively to one of them, but both to ethics and right and founds them. Not only Kantian ethics but also Kantian right possesses then a content of values.

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