

# Whence ‘honeste vive’?

Luke J. Davies

## I Introduction

Kant tells us in the Introduction to his Doctrine of Right that all duties of right both (i) concern the external (i.e., physical) relation that distinct individuals stand in to each other and (ii) are rightfully enforceable by others, particularly the state.<sup>1</sup> These features, in part, help to distinguish duties belonging to the juridical realm from those that belong to ethics (the latter of which Kant discusses primarily in the *Groundwork*, second *Critique*, and Doctrine of Virtue). However, one duty that Kant introduces in his ‘General Division of Duties of Right’ in the Doctrine of Right has neither of the features just mentioned. This is the duty *honeste vive*, which Kant characterises as an internal duty of right owed to oneself. Kant’s full explanation of *honeste vive* states,

Be an honorable human being (*honeste vive*). Rightful honor (*honestas iuridica*) consists in asserting one’s worth as a human being in relation to others, a duty expressed by the saying, ‘Do not make yourself a mere means for others but be at the same time an end for them’. This duty will be explained later as obligation from the right of humanity in our own person.<sup>2</sup> (MM 6:236)

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I’m grateful for comments received on earlier versions of this paper from Jens Timmermann, Kate Moran, Martin Brecher, Ralf Bader, Ralph Walker, Adrian Moore, Anil Gomes, Jacob Weinrib, and Colin McLear.

<sup>1</sup> For discussion of these features, see Williams (1983: 59-63), Rosen (1993: 90, 169), Gregor (1963: 35), and Rauscher (2017).

<sup>2</sup> References to Kant’s works refer to volume and page numbers of the Academy text (*Kants gesammelte Schriften*, Berlin: G. Reimer/W. de Gruyter, 1902). Abbreviations used are the following: G = Groundwork for the Metaphysics of Morals, MM = Metaphysics of Morals, SR = On a Supposed Right to Lie from Philanthropy, PP = Perpetual Peace, DMM = Drafts for the Metaphysics of Morals, Mo/Mron = Moral Mrongovious lectures, Mo/Collins = Moral Collins lectures, Mo/Vig = Vigilantius lectures on the Metaphysics of Morals, NF = Feyerabend lectures on Natural Right, Refl = Reflections, and Rel = Religion within the Bounds of Mere Reason. The first *Critique* is cited according to the standard A/B format. Translations are from

Given what Kant tells his readers in the Introduction to the Doctrine of Right, this characterisation raises two systematic problems. First, all duties of right concern our relation to others, but *honeste vive* is a duty to oneself. Second, all duties of right are rightfully enforceable, but, according to Kant, duties to oneself are not. Due to these problems, it seems that there is no place for *honeste vive* in Kant's account of right. Indeed, many commentators deny that *honeste vive* is a duty of right. They claim that it is either an ethical duty, or a duty that belongs neither to ethics nor right, or that it is not a duty at all.<sup>3</sup>

Thus, due to the systematic problems that arise for *honeste vive*, commentators have favoured the view that *honeste vive* must not belong in the Doctrine of Right.<sup>4</sup> I believe this is mistaken. Kant was not wrong to include *honeste vive* in his 'General Division of Duties of Right'. In this paper, I argue for a reading of *honeste vive* that is able to make sense of its place in the Doctrine of Right. In doing so, I also argue that we should accept two claims about the nature of Kantian duties of right: the RELATIONALITY CLAIM and the UNENFORCEABILITY CLAIM. The relationality claim states that while Kantian duties of right must concern others, they need not be owed to others. The unenforceability claim states that there are some duties belonging to juridical realm that are not rightfully enforceable. These two claims are significant for our understanding of the duties that belong to Kant's political philosophy. The former tells us that

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the Cambridge Edition of the Works of Immanuel Kant unless otherwise indicated.

<sup>3</sup> In particular, Höffe (2006, 2010), Ludwig (2015), and Pippin (1999) take the first option, Gregor (1963) takes the second, and Byrd and Hruschka (2010) take the third. Gregor's view is explicitly motivated by a desire to preserve both features of duties of right mentioned above. There has also been no sustained discussion of these problems among those who claim that *honeste vive* is a duty of right. For example, Ripstein merely states that the characterisation of *honeste vive* "may seem out of place" given Kant's account of the nature of right (2009: 37).

<sup>4</sup> It is worth noting that there are two problems that I do not address in this paper. First, I do not address the problem of determining the role of *honeste vive* in relation to the other two duties of right in the 'General Division'. In order to determine this role, we first need an account of *honeste vive*. The purpose of this paper is to provide just such an account. For discussions of the role of *honeste vive* in relation to the other two duties of right, see Pinzani (2005), Byrd and Hruschka (2010), Pippin (1999), and Ebbinghaus (1953).

Second, I do not fully address the problem caused by the fact that Kant changed his mind about *honeste vive* between the lectures and drafts, and the published Doctrine of Right (though see §3.1 for some discussion of this). In the lectures and drafts, *honeste vive* is an ethical duty (see Refl 7078 19:243, DMM 23:386, Mo/Collins 27:280, Mo/Vig 27:527, NF 27:1336, Mo/Mron 29:632). This gives some credibility to the views of Höffe, Ludwig, and Pippin, who take *honeste vive* to be an ethical duty (see note 3 for references). However, *honeste vive* is clearly a duty of right in the Doctrine of Right, and this is (to my knowledge) the only published work that features a discussion of this duty. For this reason, we should take Kant's classification of *honeste vive* in the Doctrine of Right seriously. As I argue below, doing so can tell us something interesting about the scope of duties in Kant's political philosophy.

duties to ourselves are amongst our duties of right on Kant's account. The latter tells us that there are some Kantian duties that are not rightfully enforceable despite the fact that they only command external actions. Thus, not only does *honeste vive* belong to the Doctrine of Right, but understanding the way in which it does can tell us something interesting about the nature of duties in Kant's political philosophy.

My discussion proceeds as follows. §2 sets out the two systematic problems in more detail. §3 sets out my reading of *honeste vive*. §3.1 focuses on Kant's claim that *honeste vive* is to be explained by appeal to the right of humanity in one's own person. Since the duties corresponding to this right all concern our relation to other individuals, I argue that those duties are consistent with the definition of right. This section thus defends the relationality claim. §3.2 argues that some duties belonging to Kant's political philosophy are not rightfully enforceable, and that there is evidence of this both in Kant's preparatory works and the published Doctrine of Right. This section thus defends the unenforceability claim. §4 concludes.

## 2 Two systematic problems

### 2.1 The definition of right

Kant's definition of right in the Introduction to the Doctrine of Right states that right is concerned exclusively with the relationship between the external (i.e., bodily) actions of distinct individuals. He says that the 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 deeds, 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 of another [...] but only a relation to the other's choice (*Willkür*). Third, in this reciprocal relation of choice no account at all is taken of the matter of choice. (MM 6:230)

That is, right is concerned with the formal, external relation between the imputable actions (deeds) of distinct individuals.<sup>5</sup>

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<sup>5</sup> For Kant, choice (*Willkür*) is the elective aspect of the will that chooses between self-love and duty. It is thus, strictly speaking, something internal to the agent. However, here choice should be understood to signify the external actions performed; more specifically, those external actions that can be imputed to the agent who performed them (see MM 6:223).

This creates a problem for understanding the place of *honeste vive*. Duties to oneself, on Kant's account, cannot have the structure described in the passage above. This is because a single person cannot relate to herself as both the subject of duty and the possessor of the right corresponding to that duty (nor can she bear an external relation to herself). Such a relation would place her in the position of being both actively constraining and passively bound. But, Kant claims this involves a contradiction (see MM 6:417). Duties to oneself instead concern the relation—Kant's appeal to which is made possible by his transcendental idealism—between a human being's 'noumenal' and 'phenomenal' self (a relation also involved in all ethical duties). When considered from the perspective of her noumenal self, the human being is thought of as an intelligible being free from the influence of sensibility. When considered from the perspective of her phenomenal self, the human being is thought of as an animal being who is affected by sensibility. Once this distinction is made, duties to oneself are rendered possible because "the concept of a human being is not thought in one and the same sense" (MM 6:418, see also Mo/Vig 27:593).<sup>6</sup>

The significance of this for our purposes is that relations of right and duties to oneself have different structures. One concerns the relation between the external actions of distinct individuals. The other concerns the relation between the noumenal and phenomenal selves of a single person. It thus appears that relations of right to oneself, and so also duties of right to oneself, are not possible. For this reason, it appears that *honeste vive* cannot be a duty of right.

One might object, saying that *honeste vive* means 'live decently' and that this requirement should not be exhausted by the fact that one fulfils one's duties (of right) to oneself. The duty as stated at MM 6:236 appears to require a broader set of actions than those prescribed by duties to oneself. Understanding the duty more broadly might assuage the problem I've just described. This is because *honeste vive* would then include duties to others as well as duties to oneself, and so would be consistent with the definition of right. (Though we would still need an explanation of the possibility of duties of right to oneself). However, given Kant's explicit desire to explain *honeste vive* by appeal to the right of humanity in our own person and the fact that this only generates duties to oneself (see MM 6:240), we should still maintain that *honeste vive* is a duty that is owed to oneself and not also to others. There is simply a gap between the general statement of the duty and the purposes for which Kant uses it in the Doctrine of Right. Thus, the problem for *honeste vive* caused by Kant's definition of right remains.

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<sup>6</sup> For instructive treatments of Kant's account of duties to oneself, see [Timmermann \(2013, 2006\)](#).

## 2.2 External enforceability

The second problem arises from the fact that Kant characterises both internal duties (see Mo/Collins 27:270, Mo/Mron 29:617) and duties to oneself (see Mo/Vig 27:581-83, DMM 23:393) as those for which no external lawgiving is possible.<sup>7</sup> They are duties that require self-coercion. However, a central feature of duties of right is that they are externally enforceable (see MM 6:239). This again speaks against the possibility of an internal duty of right to oneself (see Pippin 1999: 69).

Kant's discussions of duties to oneself focus (more often than not) on ethical duties to oneself. For this reason, in most discussions of duties to oneself such duties are characterised as externally unenforceable because they concern one's maxims and not one's external action—as is the case with all ethical duties. In ways that I specify more fully below (§3.1), *honeste vive* is concerned not with one's maxims but instead with one's external action. It requires that we not act in such a way that we become a mere means for others.<sup>8</sup> Thus, contrary to what I have claimed, it might appear that *honeste vive* is externally enforceable despite the fact that it is a duty we owe to ourselves. If this were the case, then the second systematic problem would not be a problem at all.

However, we should introduce a distinction between coercible actions and actions that are externally enforceable as a matter of right. Coercible actions are actions that it is possible for a person to be externally coerced into performing. For example, I can be coerced into exercising more if someone threatens me—"Three 10-mile runs a week or your life!". Not all coercible actions will be rightfully enforceable. Rightfully enforceable actions are those coercible actions that one is entitled to coerce. With this distinction in mind we can say that my exercising more is a coercible but not a rightfully enforceable action. This is because, absent any agreement we may have about the frequency with which I take exercise, you are not entitled to coerce me to go out running.

Duties to oneself that concern our external interactions with others are, on

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<sup>7</sup> Kant is not explicit about the type of possibility he has in mind in these discussions. However, in passages concerned with internal duties he seems to have in mind metaphysical possibility. This is the sort of possibility relevant to the fact that ethical duties are not enforceable. In passages concerned with duties to oneself, he seems to have in mind normative possibility. So, we might say that duties to oneself are coercible but not rightfully enforceable. (I discuss this distinction below).

<sup>8</sup> In the *Groundwork*, whether a person is used as a mere means is out of her control because such use is the result of the maxim of another, and not one's own actions (see G 4:397). Thus, we must understand that phrase differently here. I maintain that *honeste vive* requires that we must not act as though we were mere things for the use of others, nor allow others to treat us this way.

a Kantian account, coercible but not rightfully enforceable. This means that the fact that *honeste vive* only requires external actions is insufficient to discharge the second systematic problem. Right requires that our external actions are consistent with the free choice of all others (under a universal law) (see MM 6:231). The only times at which coercion is permissible (i.e., the times at which an action is rightfully enforceable) are those in which this requirement has been (or is about to be) violated. If the external freedom of one person has been (or is about to be) infringed by the actions of another, then, and only then, coercive action to stop this infringement is permissible. Because duties to oneself that concern external actions do not concern the relation of one person to another, but only one person to herself, they still do not count as rightfully enforceable. But, this means that *honeste vive* is not rightfully enforceable. The second systematic problem remains.

### 3 ‘Be an honourable human being’

These problems arise because Kant tells us that duties of right (i) concern our external relation to others and (ii) are rightfully enforceable. In this section, I set out my account of *honeste vive* as a duty of right owed to oneself that is not rightfully enforceable. I argue that *honeste vive* demands that we not act in a way that is incompatible with our external freedom. In setting out this account I defend both the relationality claim and the unenforceability claim. The relationality claim says that duties of right must regard others, but need not be owed to others. Kant’s discussion of the right of humanity in our own person in the Doctrine of Right provides evidence for the relationality claim. The content of the duties corresponding to this right all concern our relation to others, though we owe the duty to ourselves (§3.1). The unenforceability claim says that there are some duties of right that are not rightfully enforceable. We can defend the unenforceability claim if we make appropriate use of a distinction that receives little attention in Kant’s political writings. This is the distinction between general duties of right and juridical duties (§3.2).

#### 3.1 The right of humanity in one’s own person

Kant claims that *honeste vive* will be “explained later as obligation from the right of humanity in our own person” (MM 6:236). This explanation never materialises. Instead, one must piece his view together from the scattered comments he makes throughout the Doctrine of Right. This task is made more difficult by the fact that, as Brandt (2012: 312) notes, the phrase ‘honorable human being

[*rechtlicher Mensch*]' only appears here in Doctrine of Right and the phrases 'rightful honour [*rechtliche Ehrbarkeit*]' and '*honestas iuridica*' do not appear anywhere else in Kant's works. Thus, the textual guidance normally available in Kant's works by turning to his drafts and lectures is not available here, in large part.<sup>9</sup> Nevertheless, Kant's discussion of the right of humanity in our own person provides an indication of how *honeste vive* is to be understood. This is because *honeste vive* is the duty corresponding to the right of humanity in one's own person (just as the right of human beings is what corresponds to our duties of right to others, see MM 6:240).

Examination of Kant's comments about the right of humanity in our own person in the Doctrine of Right reveals that they all refer to some limit to our possible rightful entitlements. They either suggest that a certain type of right is possible, as in the case of rights to persons akin to rights as things (see MM 6:276). Or they suggest that a certain type of right is not possible, as in the cases of self-ownership akin to possession of property (see MM 6:270) and the right to perform certain sexual acts (see MM 6:277). The right of humanity in our own person delimits the domain of possible rightful relations.<sup>10</sup> Those actions that are consistent with our external freedom are included in the domain, and those that are not consistent with our external freedom are not. *Honeste vive* is the duty commanding that we not act in a way that is ruled out by the right of humanity in our own person.<sup>11</sup>

This view is supported by Kant's claims in the *Vigilantius* lectures. There,

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<sup>9</sup> With that said, the requirements of *honeste vive* appear similar to what Kant in the Doctrine of Virtue calls 'respectability (*honestas externa*)'. Hoffmann explicitly equates *honestas externa* and *honestas iuridica* (2015: 450). Respectability is the showing of respect for a human being as a moral being in one's external conduct. I believe that the best way to understand the relationship between the two is as follows. Both concern our external actions in relation to others, but from a different point of view. *Honeste vive* (*honestas iuridica*) is a juridical duty that corresponds to the right of humanity in one's own person. *Honestas externa* is an ethical requirement to be respectable in one's external actions corresponding to the end of human beings (see the table at MM 6:240). It concerns the end of human beings rather than the end of humanity in one's own person since Kant is concerned in his discussion of *honestas externa* that the failure to act respectably will set a bad example for others (see MM 6:464).

<sup>10</sup> On this, also see Refl 7881 19:544, Denis (2015), Mulholland (1990: 229–31), Ripstein (2009: 18).

<sup>11</sup> Here I disagree with Byrd and Hruschka (2010: 63), who argue that *honeste vive* is not a duty that we have to fulfil at all. Their reasons for this primarily concern Kant's adoption of the principle '*volenti non fit iniuria*' ('no wrong happens to one who consents'). Since we can be taken to consent to all of the actions that we perform, we cannot wrong ourselves and thus cannot owe duties to ourselves. On the view that I argue for above, Kant was concerned (in part) with the limits of consent when discussing the right of humanity in one's own person. He believed that there are some actions for which our consent is not valid. Performing these actions constitute a violation of our duties to ourselves. This allows room for *honeste vive* to

he states that the right of humanity in our own person correlates with three kinds of duty, each of which falls under the general requirement that “Man never treat himself as a thing” (Mo/Vig 27:601). Kant says,

1. A man cannot dispose over his own substance, for he would then himself be master over his very personality, his inner freedom, or humanity in his own person. These, however, do not belong to him; he belongs to them as *phenomenon* is obliged to *noumenon*. He is therefore not *dominus* over his personality, considered as an *objectum reale*.
2. He cannot dispose over the causality of humanity, i.e., of freedom, insofar as this is outer freedom, in opposition to the inner freedom of 1. He cannot therefore rob himself of his freedom, which would happen if he were willing to hand over the totality of his forces and powers for the arbitrary, absolute, unpermitted use of another. These forces belong to humanity in his person, and not to him, and he can treat them only in a permitted way, therefore, and not so arbitrarily as a thing.
3. He must preserve his honour. (Mo/Vig 27:601-02)

As this passage makes clear, Kant claims that there are certain actions that are opposed to our external freedom and so we are not able, or permitted, to perform them. Let me say a bit more about this.

Kant’s explanation of *honeste vive* at MM 6:236 states both that rightful honour “consists in asserting our worth as a human being in relation to others” and that it requires that we “not make [ourselves] a mere means for others”. While the latter of these requirements is meant as another expression of the former, the two come apart. In particular, the former statement of the duty seems to indicate a requirement that one stand up for or assert oneself in one’s interactions with others. Call this the **ESTEEM REQUIREMENT**. The esteem requirement is violated when we allow others to treat us as a mere means and not also as an end. In permitting this treatment we allow others to treat us as if we were mere things. The latter statement, however, seems to indicate a normative limitation to the ways in which we can act that are consistent with our juridical status (and this is also affirmed by the *Vigilantius* passage). Call this the **STATUS REQUIREMENT**. The status requirement is violated when we attempt

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be a genuine duty to oneself. Additionally, there would be little sense to Kant’s inclusion of *honeste vive* in the ‘General Division of Duties of Right’ if he did not think that it imposed some obligations on us (see MM 6:222).



to enter into a relation with others that is inconsistent with the humanity in our own person. These two requirements are importantly different. The esteem requirement claims that certain actions are impermissible. It says, for example: ‘You should not degrade yourself in your interactions with others’. The status requirement claims that certain actions are impossible because they would strip a person of her juridical status. It says, for example: ‘You cannot contract to sell yourself into slavery’.

The explanation Kant gives of *honeste vive* in the Doctrine of Right and the inclusion of the duty to preserve one’s honour in the Vigilantius passage quoted above speak in favour of the belief that Kant was concerned with both the esteem and the status requirements. How do these interact? The status requirement sets a limit to the actions one is capable of performing given one’s juridical status. The esteem requirement then adds a further limitation by stating that certain (normatively) possible actions, i.e., actions that do not strip oneself of one’s status, are nevertheless wrong and so impermissible because they degrade the humanity in our own person.

There is one salient difference between the Vigilantius lectures and the Doctrine of Right that is worth discussing. In every instance but one that Kant refers to the right of humanity in one’s own person in the Doctrine of Right it is to speak about a relation to other people. (The exception is Kant’s discussion of bestiality, which I discuss below.) The same is not the case in the Vigilantius lectures, where Kant claims that mutilating or killing oneself would be a violation of the duty of right that corresponds to the right of humanity in one’s own person (Mo/Vig 27:587). This difference is significant. *Honeste vive* commands that we not make ourselves a mere means *for others*. Inclusion of the prohibition on actions such as mutilating or killing oneself in the contents of this duty does not fit this characterisation. This difference also raises an important question: why did Kant change his mind about the scope of duties of right between the Vigilantius lectures and the Doctrine of Right? Why are duties of right that do not concern others absent from the Doctrine of Right?<sup>12</sup> One simple answer would be that Kant’s definition of right does not allow this; it states that right concerns the relation between two or more people. But this is clearly unsatisfactory, for we can still ask why the definition of right should be stated in this and not some other way.

Here is another, more speculative, answer. Kant is primarily concerned in the Doctrine of Right with the conditions under which coercion is permissible and necessary. As we have seen, Kant believes that it is not permissible to coerce the fulfilment of a duty to oneself (and in the case of ethical duties such

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<sup>12</sup> Thanks to Adrian Moore for pressing me to address this question.

coercion is not just impermissible but impossible). This rules out the possibility of rightfully enforcing the duties that prohibit mutilating or killing oneself. However, in the Doctrine of Right Kant only includes duties that concern one's relation to others in the content of *honeste vive*. In doing so, he allows that those duties can be indirectly enforceable due to the fact that the practices that accompany their violation are rightfully enforceable. The practices are rightfully enforceable because they involve actions that consent cannot make permissible. An example will help to clarify this.

Consider laws surrounding the selling of sex. For Kant, selling sex to someone violates the requirements of *honeste vive* (see MM 6:278-79, Mo-Collins 27:387, Refl 7572 19:458-59). However, despite the wrongness of the act, the state is not permitted to prohibit selling sex because it merely constitutes the violation of a duty to oneself and does not violate a duty to owed others. With that said, the state may prohibit buying sex. Due to the fact that one has a duty to oneself not to sell sex, consent cannot make such a sale permissible. For this reason, buying sex constitutes a violation of the rights of the person from whom it was bought even if that person's involvement was voluntary. We are wronged by actions that we allow to be performed on or to us when we lack the capacity to consent to those actions.<sup>13</sup> Trying to sell sex is one such act for Kant. For this reason, the state may coercively prevent others from buying sex but it may not coercively hinder solicitation by the would-be sex worker.<sup>14</sup> In coercively prohibiting buying sex, the state is not enforcing the would-be sex worker's duty to him or herself (and so is not coercively enforcing the requirements of *honeste vive*), but is instead merely enforcing a duty not to wrong others; a duty that would be violated by treating a person in a way that he or she could not consent to.

Practices that involve the violation of one's duty to oneself may be prohibited even though it is not the duty to oneself that is being enforced. These practices are rightfully enforceable because they involve actions that consent can't make permissible. Due to this, the person who acts on the (supposed) consent given by another wrongs that person. Thus, the restriction of duties of right to oneself to only those that concern one's relation to others makes those duties indirectly enforceable by prohibiting the practice that accompanies their violation. I am

<sup>13</sup> See, DMM 23:359: "Someone can be wronged by another through a deed despite having given his consent to it".

<sup>14</sup> We might still question whether Kant was right to draw the boundary between rightfully enforceable and coercible actions in the way he did. Some duties that we owe to ourselves do seem to be plausible candidates for rightful enforcement. However, the view that the only actions that are rightfully enforceable are those that harm or wrong others is at least a familiar one, and so I will not pursue this point further here.

not coercively prohibited from trying to sell sex, but the option of doing so is taken away by the fact that others are coercively prohibited buying sex from me. This is why there are only duties of right to oneself that concern one's relation to others. Of duties to oneself, only those that concern others can be at least indirectly enforced.

Recall that Kant states that all duties of right concern the external relation between distinct individuals. This caused a problem for understanding the place of *honeste vive*, a duty of right to oneself. The difference between the *Vigilantius* lectures and the Doctrine of Right allows us to address this problem. In the Doctrine of Right, despite the fact that the duties associated with the right of humanity in one's own person are owed to oneself, they nevertheless always concern the external, practical relation one has to others. This concern is consistent with the definition of right in the Doctrine of Right. Thus, there are some relations that are the proper concern of right, despite the fact that they involve a duty one owes to oneself. This affirms the relationality claim, which says that duties of right must concern others, but that they need not be owed to others.

What should we say about the prohibition of bestiality? In the Appendix to the Doctrine of Right Kant states that bestiality is punishable by "permanent expulsion from civil society" (MM 6:363). This comment clearly doesn't fit with my characterisation of the right of humanity in one's own person, according to which the duties corresponding to that right are not rightfully enforceable. (Remember that for Kant animals are things and not persons, and so it cannot be said that the prohibition on bestiality satisfies the definition of right, see G 4:428). It appears that Kant simply lacks the resources to claim that such a practice may be coercively prohibited. Bestiality does not concern the relation of one person to another, but the relation of one person to a thing. It therefore falls outside the scope of rightful enforceability. Thus, Kant committed an error in including that prohibition in the Doctrine of Right.<sup>15</sup>

### 3.2 Duties of right and juridical duties

So far I have argued that *honeste vive* is consistent with the definition of right in the Introduction to the Doctrine of Right because it always concerns the external relation between distinct individuals. This allows us to address the first systematic problem. However, in order to make space for *honeste vive* in the

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<sup>15</sup> One way to rescue Kant's belief that bestiality should be prohibited would be to revise his position on the status of animals. If animals are granted moral status, then one's relation to them would be considered a proper concern of right.

Doctrine of Right, we must also address the second systematic problem. This problem is generated by the fact that Kant claims that all duties of right are rightfully enforceable, but duties to oneself are not. Consider the following passage from the Introduction to the Doctrine of Right:

All duties are either duties of right (*officia iuris*), that is, duties for which external lawgiving is possible, or duties of virtue (*officia virtutis s. ethica*), for which external lawgiving is not possible. (MM 6:239, see also NF 27:1333)

This passage clearly draws the distinction between duties of right and duties of virtue on the basis that the former admit of external lawgiving (i.e., they can be rightfully enforced) and the latter do not. No room is left for a non-enforceable duty of right. If all duties of right are rightfully enforceable but duties to oneself are not, then duties to oneself simply cannot be duties of right. We might think that the indirect enforceability of *honeste vive* discussed above is sufficient to avoid this problem. However, this does not work because the duty to oneself itself still does not admit of external lawgiving. If it did, then duties to oneself that do not concern others (i.e., the duties not to mutilate or kill oneself) would be candidates for external lawgiving. Right would not be limited to our interactions with others and we would return to the first systematic problem. So, another solution is required if we are to make sense of the place of *honeste vive*.

Below I draw on Kant's distinction between duties of right generally and juridical duties in order to address the second systematic problem. Duties of right generally are those duties that concern our external action and not our maxims but are not rightfully enforceable. Juridical duties are those duties that concern our external action and are rightfully enforceable. It is duties of right generally that cause the problem. This is because duties that require an external action but that are not rightfully enforceable do not fit with the clean division between right and ethics that Kant aspired to. However, it is both understandable and desirable that there will be some duties of this kind. Not all duties that require the performance of an external action rather than the adoption of a maxim will be duties for which state enforcement is appropriate (as we will see in the discussion of equity below). Duties of right generally thus make a valuable contribution to Kant's system of duties. Moreover, there are grounds for endorsing the distinction between juridical duties and duties of right generally on the basis of remarks Kant makes both in the drafts for the *Metaphysics of Morals* (§3.2.1) and in the published Doctrine of Right (§3.2.2). These remarks indicate that Kant was aware that duties belonging to

the juridical realm must be more complex than passages like that quoted above seem to suggest.

### 3.2.1 Humanity in one's own person: the drafts

In the drafts for the *Metaphysics of Morals* Kant claims both that the right of humanity in one's own person "demands only actions" (DMM 23:381), and that the duties associated with that right are to be self-coerced not coerced by others. On this latter point, he says:

[T]he doctrine of morals is either the doctrine of right or the doctrine of virtue.

However the authorization of coercion of others (to coerce them) is grounded upon the subject's personality [...] in accordance with which it is necessitated by itself in self-regarding actions and is morally compelled by analogy with the coercion of another, and this obligation towards itself can thus also be called the right of humanity in our own person which precedes all other obligation.

Thus the right of humanity in our own person does not yet belong to the doctrine of virtue because it does not also demand that the idea of duty towards oneself be itself the incentive of the action. (DMM 23:390, my emphasis)

In this passage Kant affirms the two-part division in his moral philosophy, and claims that the right of humanity in one's own person constitutes a part of the doctrine of right that is to be self-coerced. The combination of these claims is significant. Kant presents a duty of right that requires only external actions for which only self-coercion is appropriate. This means that there are positive textual grounds for supporting the distinction between duties of right generally and juridical duties. Moreover, the duty Kant is discussing is the right of humanity in our own person, exactly the right that he later claims will be used to explain the duty *honeste vive*.<sup>16</sup> One might worry that this passage appears

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<sup>16</sup> These passages provide grounds for disagreement with both Ludwig and Gregor. Ludwig claims that internal juridical duties, such as *honeste vive*, belong to the Doctrine of Virtue and not the Doctrine of Right (2015: 36). However, the passages above clearly indicate that Kant, at least while writing the drafts, thought otherwise. Gregor claims that the right of humanity in our own person (she does not explicitly mention *honeste vive*) is not a non-enforceable duty of right but rather a duty that belongs neither to ethics nor to right (1963: ch. 8). The systematic problems that motivate this paper make this solution appealing. However, for Kant the division between right and ethics is exhaustive. The morality of an action can only be appraised from the point of view of an agent's internal state (i.e., her maxims) as is done in the case of ethics or

in the drafts and not the published work. Let me now turn to comments Kant makes in the published Doctrine of Right that leave room for *honeste vive* as an unenforceable duty of right.

### 3.2.2 Wide duties of right: the published work

In the Introduction to the Doctrine of Right, Kant distinguishes between right in a narrow sense and right in a wider sense. All rights in the narrow sense are rightfully enforceable. The same is not the case for rights in the wider sense. Here is the relevant passage:

An authorisation to use coercion is connected with any right in the narrow sense (*ius strictum*). But people also think of a right in a wider sense (*ius latium*), in which there is no law by which an authorisation to use coercion can be determined. — There are two such true or alleged rights, equity and the right of necessity. *The first admits a right without coercion*, the second, coercion without a right. (MM 6:233-34, the emphasis is mine).

Kant here affirms that right in the wider sense does not admit of external coercion. Moreover, he admits that one such right exists: equity.<sup>17</sup> In cases of equity a judge does not have what is needed to rule in favour of the plaintiff, though that person does have a rightful claim to something.<sup>18</sup> Kant gives two examples of claims of equity. In the first, a partner in a company that is met with reverses has contributed more to that company and so lost proportionally more than her peers. However, on the presumption that the contractual agreement between the partners was to share profits equally, a judge could not rule in her favour if she sued for greater compensation. In the second case, an employee is paid wages in a currency that has depreciated since signing the contract. Here

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her external state (i.e., her external action) as is done in the case of right (see MM 6:214, 6:239, 6:380-81, Mo/Vig 27:527, Mo/Mron 29:632). Thus, if *honeste vive* is neither an ethical duty nor a duty of right, then it cannot be a duty at all.

<sup>17</sup> Rosen (1993: 110) believes that Kant's comments on equity were a mistake, and that he should have stuck to an earlier statement, in one of his lectures, that equity belongs to ethics (quoted in Rosen at p. 110). However, Kant affirms equity as a non-coercive right in several lectures, and in the published Doctrine of Right, which indicates that this was his considered view (see Mo/Collins 27:433; Mo/Vig 27:532, 27:573). Thus, it is worth determining if there is a way to fit equity into Kant's broader system. I maintain that the distinction between duties of right generally and juridical duties does just that.

<sup>18</sup> "One who demands something on [the basis of equity] stands instead upon his *right*, except that he does not have the conditions that a judge needs in order to determine by how much or in what way his claim could be satisfied" (MM 6:234).

Kant tells us that the employee cannot appeal to a judge in order to receive the amount in wages that would equal the spending value of what was agreed upon because “nothing was specified in the contract, and a judge cannot pronounce in accordance with indefinite conditions” (MM 6:234). Importantly for us, a claim of equity is a valid claim of right, but it cannot be vindicated by a court and does not belong to strict right.<sup>19</sup>

Kant’s characterisation of equity is significant for our purposes because it allows us to distinguish between duties of right generally (right in the wider sense) and juridical duties (right in the narrow sense) on the basis of some of Kant’s remarks in the Doctrine of Right itself. There is at least one genuine right mentioned in Kant’s published works that cannot be rightfully enforced by the state. This means that the duties that correspond to claims of equity are general duties of right and not juridical duties. It is important to stress here that equity is not analogous or equivalent to the right of humanity in one’s own person. My claim is not that all general duties of right can be reduced to each other. Rather, equity is interesting for us here just because it is an instance of a right that cannot be rightfully enforced by the state. In the case of equity, this is because the conditions of employment were not sufficiently determined for the judge to make a ruling in the case. Duties corresponding to the right of humanity in one’s own person are not enforceable for different reasons; namely, Kant’s claim that duties to oneself are to be self-coerced. What both of these rights share is that they are concerned only with external actions and that they are not rightfully enforceable.

Kant’s distinction between enforceable and non-enforceable right is mentioned again in the Doctrine of Right in the following passage:

Just as right generally has as its object only what is external in actions, so strict right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice; for only then is it pure and not mixed with any precepts of virtue. Only a completely external right can therefore be called strict (right in the narrow sense). This is indeed based on everyone’s consciousness of obligation in accordance with law; but if it is to remain pure, this consciousness may not and cannot be appealed to as an incentive to determine his choice in accordance with this law. Strict right rests instead on the principle of its being possible to use external constraint that can coexist with the freedom of

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<sup>19</sup> See Walla (2015) for an informative discussion on equity. She shares the view that equity is a non-coercible right, stating: “equity claims are genuine juridical rights although no coercive rights” (2015: 45).

everyone in accordance with universal laws. (MM 6:232)

Kant here defines strict right as that which only requires external grounds for the choice to perform an action, and so is only concerned with rightfully enforceable actions. This is distinguished from considerations of virtue, which are based on one's consciousness of one's obligation (see Mo/Collins 27:272-73). (Kant speaks of a duty that is 'mixed with' something ethical, but it is difficult to see what this might mean given the sharp distinctions he draws. We should instead think of him as merely distinguishing between right and ethics). On the basis of Kant's distinction between right in the wide sense and right in the narrow sense, we should understand strict right as the set of rights that have two components. They are only concerned with (i) external actions that are (ii) rightfully enforceable. An ethical duty will always fail to adhere to both of these components of strict right. Ethical duties require something internal in action (a particular maxim), and thus fail to satisfy (i). Moreover, because it is not metaphysically possible for a person to be coerced into adopting particular maxims, ethical duties are not rightfully enforceable. Thus, they also necessarily fail to satisfy (ii).

It is also possible that a duty fails to adhere to just one of the two components of strict right. This is the case with duties that belong to right generally. While such duties are concerned only with what is external in action (and so are not ethical), they cannot be rightfully enforced. The distinction between strict right and right generally provides grounds for endorsing the unenforceability claim. Duties belonging to right generally are those that concern what is external in action but are not rightfully enforceable. With the unenforceability claim in place, we are able to address the second systematic problem. Recall that the second systematic problem arises because duties to oneself are not rightfully enforceable but duties of right are. Since *honeste vive* is a duty to oneself, it seemed as though it could not be a duty of right. But, Kant claims both in the drafts for the *Metaphysics of Morals* and the published *Doctrine of Right* that there are duties that only demand external actions (and so cannot be ethical duties) but are not rightfully enforceable. These are general duties of right. Duties corresponding to claims of equity are one example of such duties. *Honeste vive* is another.

One further clarification is in order. Kant has a category of wrongs called 'wrongs in general', which he says correspond to actions that are "wrong in the highest degree" (see MM 6:337, 6:308, 6:344, PP 8:382, 8:384).<sup>20</sup> It might easily be thought that these wrongs are related to general duties of right such that the

<sup>20</sup> Kant also calls wrongs in the highest degree formal wrongs; see MM 6:308n, Walla 2015, Weinrib 2008.



violation of a general duty of right is a wrong in general.<sup>21</sup> However, I want to separate the two, and believe that Kant gives us a way of doing so.

Wrongs in general are characterized by Kant as wrongs against humanity as such. They do not wrong any particular individual (or group of individuals) considered on their own, but humanity considered as a totality.<sup>22</sup> There are two sorts of actions that can be wrong in general, both of which “take away any validity from the concept of right itself and hand everything over to savage violence” (MM 6:308n). The first is an action that perpetuates our remaining in the state of nature, a state in which rights are insecure (see MM 6:256, 6:306, PP 8:348-491, Rel 6:97n, A752/B780). This can occur at both the individual and the state level. In the state of nature between individuals a person does not wrong another by her actions. However, they do wrong in the highest degree by remaining in a condition in which there are no rights (MM 6:308, 6:313). The same is true of the state of nature between states (MM 6:344). No state wrongs another by its actions, though it does wrong in the highest degree by remaining in an international state of nature. The second sort of action that can be wrong in general is one that causes us to return to the state of nature.<sup>23</sup> The defining features of wrongs in general are thus that they do wrong to humanity as such, and that they take the validity away from the concept of right. The violation of general duties of right share neither of these features. When I do not act in the way required by *honeste vive*, I wrong myself. When I don’t act in a way compatible with the right of equity in another person, I wrong that person. These actions do not take validity away from the concept of right, but only deny the particular rights of the individual in question. For this reason, general duties of right are not duties the violation of which constitute wrongs in general.

## 4 Conclusion

Kant tells us that all duties of right both (i) concern the external (i.e., physical) relation that distinct individuals stand in to each other and (ii) are rightfully enforceable by others. This appears to block the inclusion of *honeste vive* in the

<sup>21</sup> Thanks to Jacob Weinrib for alerting me to this potential misunderstanding.

<sup>22</sup> Thus, we can wrong an individual, a group of individuals, or the totality of humanity. These correspond to the categories of unity, plurality, and totality in the first *Critique* (see A80/B106, Weinrib 2008: 148).

<sup>23</sup> Kant’s examples of actions that return us to the state of nature are: revolution (MM 6:320, see also Flikschuh 2008, Korsgaard 2008, Ripstein 2009), public crimes such as counterfeiting money, theft and robbery (MM 6:331, see also Newhouse 2016), and—perhaps most controversially—lying to a would-be murderer at your door (SR 8:426, see also Weinrib 2008 and Varden 2010).

Doctrine of Right. However, in this paper, I have argued that such a conclusion is too hasty. In doing so, I have endorsed relationality and unenforceability claims. The relationality claim states that duties of right on Kant's account must concern others, but need not be owed to others. The unenforceability claim states that not all duties of right are rightfully enforceable. These claims have significant implications. For instance, if duties to oneself are not rightfully enforceable, then practices such as trying to sell sex cannot be coercively prohibited. This is true even if the people who attempt to buy sex may be rightfully prohibited from doing so. In addition, the existence of an unenforceable duty of right blocks one way in which we might attempt to draw the distinction between Kant's ethics and his political philosophy. It isn't true that only ethical duties are unenforceable, and so the distinction between right and ethics cannot be drawn solely on that basis. The existence of general duties of right is also significant. This is because they are a category of duty in Kant's moral philosophy that is only concerned with external actions, but which is not rightfully enforceable.

There is much about the place of *honeste vive* that remains to be discussed. For example, a systematic discussion of the way in which the duty is violated is necessary. So too is a discussion of the relation between *honeste vive* and the other two duties of right, *neminem laede* and *suum cuique tribue*. This latter discussion will require a broader look at the Doctrine of Right than this paper was able to afford. However, any account must be able to say something about how to address the two systematic problems. In order to determine what *honeste vive* requires, we must know where it stands in relation to the rest of Kant's moral philosophy. In order to argue for its place as the foundational duty of the Doctrine of Right, we must know that it belongs in that work, and not some other. The arguments of this paper have put us in a position to begin to answer those further questions.

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