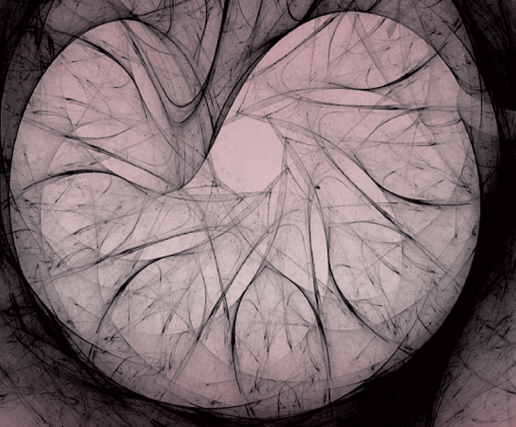
POLITICAL PHILOSOPHY NOW

# Reason, Normativity and Law

## New Essays in Kantian Philosophy



Edited by
Alice Pinheiro Walla
and Mehmet Ruhi Demiray

POLITICAL PHILOSOPHY NOW

**Political Philosophy Now** is a series which deals with authors, topics and periods in political philosophy from the perspective of their relevance to current debates. The series presents a spread of subjects and points of view from various traditions which include European and New World debates in political philosophy.

**Also in series**

*Kant's* Doctrine of Right *in the Twenty-first Century*
Larry Krasnoff, Nuria Sánchez Madrid and Paula Satne

*Hegel and Marx: After the Fall of Communism*
David MacGregor

*Politics and Teleology in Kant*
Edited by Paul Formosa, Avery Goldman and Tatiana Patrone

*Identity, Politics and the Novel: The Aesthetic Moment*
Ian Fraser

*Kant on Sublimity and Morality*
Joshua Rayman

*Politics and Metaphysics in Kant*
Edited by Sorin Baiasu, Sami Pihlstrom and Howard Williams

*Nietzsche and Napoleon: The Dionysian Conspiracy*
Don Dombowsky

*Nietzsche On Theognis of Megara*
Renato Cristi and Oscar Velásquez

*Francis Fukuyama and the end of history*
Howard Williams, David Sullivan and E. Gwynn Matthews

*Kant's Political Legacy: Human Rights, Peace, Progress*
Luigi Caranti

POLITICAL PHILOSOPHY NOW

# Reason, Normativity and Law
## New Essays in Kantian Philosophy

Edited by Alice Pinheiro Walla and
Mehmet Ruhi Demiray

UNIVERSITY OF WALES PRESS • 2020

*www.uwp.co.uk*

*British Library Cataloguing-in-Publication Data*
A catalogue record for this book is available from the British Library.

ISBN 978-1-78683-512-3
e-ISBN 978-1-78683-513-0




Typeset by Marie Doherty
Printed by CPI Antony Rowe, Melksham

# Contents

# List of Figures

This page intentionally left blank

# List of Contributors

**Sorin Baiasu** is Professor of Philosophy at Keele University (UK). He is the author of *Kant and Sartre: Re-discovering Critical Ethics*, and editor or co-editor of *Politics and Metaphysics in Kant*, *Kant on Practical Justification: Interpretive Essays*, *Comparing Kant and Sartre* and *Sincerity in Politics and International Relations*. He has published papers in, among others, *Kant-Studien*, *Kantian Review*, *Studi Kantiani* and *Sartre Studies International*. He is the director of the Keele-Oxford-St Andrews Kantian Research Centre (KOSAK) and co-convenor of the Kantian Standing Group of the European Consortium for Political Research.

**Ruhi Demiray** is an Einstein Junior Scholar based at the Freie University in Berlin since January 2019. Previously, he was Philipp Schwartz fellow of the Alexander von Humboldt Foundation at the University of Siegen, a Marie Curie fellow at Keele University, and Fulbright doctoral research fellow at the University of Wisconsin-Milwaukee. He holds a PhD in political science from Middle East Technical University and works on political and legal philosophy. He is particularly interested in human rights theories, the rule of law and the state, and Kant's political-legal philosophy.

**Domenica Dreyer-Plum** is a postdoctoral researcher in Political Science at the University of Bonn, Germany. Her research interests are cosmopolitanism, legal theory and the philosophy of European Union law. She received a Bachelor degree (BA) from the University of Bonn, a Master of Philosophy (MPhil) from the University of Cambridge and a PhD in Political Science from the University of Bonn.

**Christoph Hanisch** is an Assistant Professor at Ohio University. Before joining OU's philosophy department in 2016, he was a postdoctoral fellow at the University of Vienna and a member of the European Research Council research project 'Distortions of

Normativity'. He works primarily in contemporary ethical theory (constitutivist accounts of normativity), social and political philosophy, and Kant's legal philosophy. He holds a Magister degree (Mag.phil) from the University of Vienna, a Masters of Philosophy in Philosophy (MPhil) from the University of St Andrews, and a PhD in Philosophy from Bowling Green State University.

**Sarah Holtman** is Associate Professor of Philosophy at the University of Minnesota, Twin Cities. She holds a PhD from the University of North Carolina, Chapel Hill and a JD from the University of Virginia. A specialist in moral and political philosophy and philosophy of law, her particular focuses are Kant's practical philosophy and Kant-based approaches to current questions of morality and justice. The issues on which she has written include poverty relief, just punishment and the moral demands that should shape our attitudes towards fellow citizens in both domestic and international contexts. Her published work has appeared in journals and anthologies including *American Philosophical Quarterly*, *Ethics, Kant-Studien*, *Kantian Review*, *Social Theory and Practice*, *Utilitas* and *The Blackwell Guide to Kant's Ethics*. Among her current projects is a short volume on social welfare and the Kantian state for the 'Cambridge Elements' series, *The Philosophy of Immanuel Kant* (ed. Desmond Hogan, Howard Williams and Allen Wood).

**Sylvie Loriaux** is Associate Professor of Political Theory at Laval University, Canada. Her research focuses on modern and contemporary political philosophy, global ethics and theories of justice. She has contributed articles to various journals, including *Grotiana*, *Moral Philosophy and Politics*, *European Journal of Political Theory*, and *Critical Review of International Social and Political Philosophy*. She is currently working on a project that explores the idea of original possession in common of the earth and related questions of global distributive justice.

**Michael Lyons** has a PhD in Philosophy from Trinity College Dublin. He studied philosophy at the University of Bristol, where he earned his BA, and at King's College London, where he earned his MA. Michael was also a visiting research student at the University of Edinburgh. His work is primarily in metaethics and normative

ethics, and in his doctoral dissertation he uses Kant's moral theory to suggest a way to reconcile moral supervenience and moral realism.

**Sofie Møller** is a postdoctoral research associate at the Cluster of Excellence 'the Formation of Normative Orders' at the Goethe University Frankfurt. She has a background in law and philosophy and is the author of a number of articles on Kant's practical and theoretical philosophy. Her research interests include legal philosophy, political philosophy and the history of philosophy. She has an MA in Semiotics from the University of Bologna, a Magister degree in Philosophy from the University of Copenhagen, an LLM in European and Comparative Law from the European University Institute in Florence and a PhD in Law from the European University Institute.

**M. E. Newhouse** is a senior lecturer and director of the Surrey Centre for Law and Philosophy at the University of Surrey School of Law in the United Kingdom. Her research interests include Kantian moral, legal and political philosophy. She has a JD from the University of Washington School of Law and a PhD in public policy from Harvard University.

**Matthé Scholten** is a postdoctoral researcher at the Institute for Medical Ethics and History of Medicine of the Ruhr University Bochum. He primarily works in moral philosophy and medical ethics and his research interests include Kantian ethics, free will and moral responsibility, and competence to consent to treatment and research. He has a PhD in philosophy from the University of Amsterdam. Matthé has published several articles on Kant's practical philosophy. His dissertation 'Reminders of Duty: A Kantian Theory of Blame' develops a Kantian theory of moral responsibility and his article 'Schizophrenia and Moral Responsibility: A Kantian Essay' appeared in *Philosophia*.

**Alice Pinheiro Walla** is W1 Professor of Political Philosophy at the University of Bayreuth, Germany. Previously she was Assistant Professor in Moral and Political Philosophy at Trinity College Dublin, Ireland. She is a Kant scholar by training and has published a number of articles on Kant's practical philosophy. Her

research interests are political philosophy, moral philosophy, legal philosophy, and history of philosophy. She has a Magister degree (Mag.phil) from the University of Vienna, a Masters of Letters in Philosophy (MLitt) from the University of St Andrews and a PhD in Philosophy from the University of St Andrews.

# Introduction

*Alice Pinheiro Walla and Ruhi Demiray*

> The most important revolution from within the human being is 'his exit' from his self-incurred immaturity. Before this revolution he let others think for him and merely imitated others or allowed them to guide him by leading-strings. Now he ventures to advance, though still shakily, with his own feet on the ground of experience.[1]

The question of normative authority or justification was an essential concern in Kant's entire philosophical project.[2] The general theme of this volume is the implications of Kant's conception of normativity for the practical domain, that is *how we ought to act or how the world ought to be organised*. The chapters in this volume analyse applications of Kant's general view of normativity to metaethical, moral, juridical and political issues of contemporary relevance. Together, they contribute to an overall understanding of the more abstract tenets of Kant's general theory of normativity by showing *in concreto* how Kant offers theoretical tools for dealing with the moral and political challenges of our times. In this introduction, we briefly sketch what we take to be Kant's general conception of normativity and how it relates to the practical domain. While Kant's general conception of normativity pervades different domains of his theory like a *guiding thread*, it can acquire different configurations depending on the specific area of human cognition and experience in question. This is particularly salient in the legal-political domain. We then provide a brief summary of each chapter and how they contribute to the general purpose of the volume.

## Kant's General Conception of Normativity

Kant asks how we can legitimately make the theoretical, practical and aesthetical claims we do, that is when we have the *authority* to raise such claims as to render them *valid* or even *binding* to the agent and other persons. Kant's answer for each domain of philosophical inquiry is based on a unified strategy that is, to use Kant's terminology, *transcendental* and *critical*. Kant's strategy is *transcendental* because it spells out the necessary rational conditions that enable us to adopt the role of knowing, acting and aesthetically judging rational beings. So-called *synthetic a priori judgements* are necessary because they *constitute* the standpoint we must adopt in order to make claims concerning truth, rightfulness and beauty.[3]

On the other hand, it is *critical* because it requires becoming aware of the *limits* of the intellectual power or capacity in question, that is knowing how far we can go in raising these claims, and what concrete guidance our capacities can provide.[4] Since it is possible that we overstep the 'competence' of the power in question when raising particular claims, synthetic a priori judgements are also *normative*. They are standards we can fail to meet and allow us to distinguish between legitimate and illegitimate uses of our capacity to judge in a certain domain.[5] Synthetic a priori judgements provide us, therefore, with the transcendental criteria that our particular claims in each sphere of human experience must conform to if they are to be considered valid. Distinctive of a Kantian conception of normativity is thus the view that reason provides a priori the universal standards that structure our theoretical, practical and aesthetic experiences as coherent and intelligible domains.

Another central feature of Kant's theory of normativity is that it does not appeal to an external authority: universal normative standards are *inherent* to reason and this is precisely *why* they are normative. Although we may fall short of these universal standards in our use of rationality, reason already provides us with the resources for determining whether a specific claim is justified. Kant thus rejects philosophical accounts that postulate extravagant rational powers, claiming to achieve more than reason can provide and we can possibly know. He contrasts his critical conception of reason to that of dogmatic rationalist thinkers.[6] According to

Kant, dogmatic rationalists failed to distinguish between the *intuitive* understanding attributed to God and the *discursive* form of understanding characteristic of rational finite beings like us. Discursive reason merely *conceives the form* in the rough matter given to us by experience.[7] Our cognitive, practical and aesthetic experiences are constituted by this process of unification involving the subject's spontaneity and, conversely, raw data from the external world. It follows that we are never capable of *creating* the objects of our experience; 'conceiving the form' is the contribution of the subject and the basis of what we can possibly experience, but is less than an act of divine creation.

Interestingly, Kant's conception of normativity in its general form already implies a commitment to freedom and equality. Kant recognises that normativity requires some form of *rational necessity*. Rational necessity is none other than *lawfulness*, but lawfulness cannot be derived from a source external to our own reason without undermining the idea of rational necessity. Normativity must be thus inherent to our *free* use of reason and based on its own laws.[8] This is none other than *universality*. The only way to ascertain the validity of our particular judgements is to confirm whether they are universal from the perspective of reason. Lest our normative judgements be *arbitrary*, we must raise ourselves to the standpoint of an impartial judge capable of distancing herself from merely subjective conditions (for example, her personal interests, preferences or biases) and taking into consideration all claims regardless of the identities of the authors of such claims.[9] The very activity of thinking consistently presupposes not merely an attitude of impartiality, but the capacity of thinking *with oneself and others*. Freedom and equality are thus fundamental normative assumptions, formally connected to the rational necessity characteristic of Kant's conception of normativity.

## A Plurality of Normative Spheres

Although it is possible to speak about Kant's general theory of normativity and identify unifying features in his account, there are clear differences in the way normativity manifests itself across different domains of his theory. Most striking for today's reader is the difference between ethical and legal normativity in Kant's theory.

One could expect Kant to regard morality as a kind of 'meta-norm' setting ultimate legitimacy standards, or at least normative constraints, for other domains such as religion, science, economics et cetera, insofar as these have practical implications or relevance. In other words, morality would be the highest standard for the permissibility of other practical norms. While this applies to Kant's views on religion (religious precepts must be compatible with reason and morality),[10] this is not the case for the legal-political domain. Kant distinguishes between juridical duties and duties of virtue on the basis of two different rational principles and their respective incentives. Because Right does not require ethical motivation for the satisfaction of its requirements (mere external compliance is sufficient from the perspective of Right), external coercion is possible in the case of positive laws. Although Kant identifies 'morality' as a broader form of normativity encompassing both the juridical and the ethical domains,[11] it is not clear if Right and Virtue can be reduced to a single form of moral normativity.[12] Within the domain of legal normativity, Kant contrasts between private right and public right, commutative justice and distributive justice, wide and strict right, and 'what is right *in itself*' and 'what is laid down as right', which suggests different normative standpoints concerning law and justice, depending on whether one is in the state of nature or already in a civil condition. At times, these standpoints are not easily reconcilable, despite the fact that positive law has normative priority over private judgements about rights.[13] Although existing states fall short of Kant's ideal republic and what we would consider a *just state*, Kant insists that these public institutions must be regarded as legitimate sources of positive statutes and of legal obligations. This leads to the worry that individual morality and political-juridical duties to uphold existing civil conditions and obey its laws may at times become incompatible.[14]

Kant also allows for the possibility of complying with juridical duties through purely ethical motivation. The fact that juridical and ethical duties are all *duties* unites them within a broader moral framework. Kant's account of legal normativity can be thus understood both as linked to his ethical philosophy and as an independent normative sub-system within his practical philosophy.

It is therefore noteworthy that Kant's philosophy surrenders neither to the temptation of a completely unified system at the cost of the complexity and situatedness of human experiences that it is

actually supposed to account for, nor to a fragmentation of human life into a set of disconnected domains.[15] In fact, a specific sphere of normativity can be regarded both as an independent domain of experience and as linked to other spheres of normativity. It therefore makes good sense to present metaethical, moral, legal and political issues together in order to understand the nuances of Kant's theory of normativity as applied to different practical spheres.

## The Many Facets of Practical Normativity: The Contributions in This Volume

Kant's theory of normativity has not only been challenged by many strands of western philosophy, but has also been differently interpreted by those following Kant's footsteps. Although the problem of normativity encompasses Kant's critical philosophy as a whole, our focus in this volume will be on normativity in Kant's practical philosophy, especially at the intersection between morality, law and politics.

The first part of the volume, 'Reason and Normativity', focuses on the Kantian idea of moral normativity as derived from reason and its implications for recent debates in metaethics (**Lyons, Baiasu**), and on the nature and unity of Kant's conception of reason across his theoretical and practical thought (**Møller**).

The second part, 'Reason and Legal Order', analyses Kant's conception of normativity in the political-juridical domain. The authors explore issues concerning: which individual and civic responsibilities arise from the Kantian ideal of practical rationality (**Holtman**); how it is possible to understand juridical laws as categorical imperatives since external coercion is incompatible with moral autonomy (**Newhouse**); how to situate Kant's legal philosophy in regard to natural law theory and legal positivism (**Hanisch**); and whether Kant's conception of coercive laws and of the state are compatible with the contemporary idea of universal human rights (**Scholten, Demiray**).

The third part, 'Kant and Contemporary Political Issues', is devoted to applied politics. It brings together new topics in Kant studies with problems of contemporary relevance such as the specific wrongs of annexation and colonialism from a Kantian

perspective (**Loriaux**), possible contributions of Kant's legal theory to debates on territorial rights (**Pinheiro Walla**), and the tension between the Kantian cosmopolitan aspirations of the European Union and its current asylum policy (**Dreyer-Plum**).

Constructivist accounts of morality occupy an important place in contemporary metaethical discussions. In particular, *Kantian* constructivism claims to account for moral objectivity without contentious metaphysical and ontological claims concerning the existence of moral facts.[16] It allegedly avoids the difficulties of both moral subjectivism/scepticism and moral realism. In his chapter, **Michael Lyons** brings forth a new approach to these debates. He first explains how Kant's moral philosophy can be read both from a moral realist and a moral constructivist perspective, and argues that, in order to provide a plausible account of moral normativity, Kantian moral constructivism must embrace some minimal realist commitments. Lest it should fall prey to a problematic moral subjectivism, Kantian moral constructivism should base its conception of ideal rational agency on stance-independent moral principles such as 'never treat rational agents as mere means to an end'. Although this would not entail a commitment to a mind-independent moral reality, Lyons argues that a minimal form of moral realism might still be required on the metaethical level.

Lyons's distinction between agent (stance)-dependency and mind-dependency bridges the gap between Kantian moral constructivism and moral realism and is consistent with the Kantian account of normativity we sketched before. However, it is unclear whether accepting these distinctions would require at least partially subscribing to Kant's metaphysics, that is to his Transcendental Idealism, which includes metaphysical notions such as the transcendental unity of self-consciousness or the distinction between a noumenal and phenomenal self. **Sorin Baiasu**'s chapter takes a stance on this question. His argument focuses on what can be regarded as a particular form of constructivism, namely 'constitutivism'. Constitutivist approaches derive normativity from the elements or aspects constitutive of agency itself; however, Baiasu criticises the reluctance of such theories to address their metaphysical underpinnings. A prominent example is John Rawls, a seminal figure for Kantian constructivism.[17] Baiasu focuses on Connie Rosati's naturalist account of normativity, which also purports to derive normativity from agency independently from contentious

metaphysical commitments and, hence, is another illustration of this tendency to stay 'philosophically on the surface'. He argues that Rosati's account either fails to demonstrate the dependence of normativity on agency or, if it succeeds in demonstrating this relation, leaves the nature of normativity unclear. Rosati's theory is therefore not a satisfactory alternative to constitutivist theories. Baiasu concludes that in order to clarify normativity, constitutivists would need to move below philosophical surface, to make use of a critical metaphysics inspired by Kant, and to engage with philosophical arguments more deeply.

Also, with important implications for metaethics, **Sofie Møller** shifts her inquiry towards Kant's conception of reason and the idea that it unites theoretical and practical philosophy. According to Møller, Kant's account of reason is essentially *juridical-political*, even in his theoretical philosophy. Møller focuses on the 'Discipline of Pure Reason' of the first *Critique* and on three metaphors Kant used to explain the functioning of reason: that of a *tribunal*, *debate* and *community*. She criticises Susan Shell and Onora O'Neill for regarding reason in the *Critique of Pure Reason* as merely *political* and follows Friedrich Kaulbach in seeing it as primarily *juridical* in nature. However, Kaulbach's reading neglects the role of a community of thinkers, and thus the political dimension of Kant's conception of theoretical reason, which supervenes upon its juridical character. Møller's contribution illustrates why Kant's approach to normativity can be compared to a form of democratic constitutionalism.

The second part of the volume examines Kant's conception of political-legal normativity.[18] It includes both works emphasising the relation between ethical and political-legal normativity (**Holtman**) and works focusing on the special nature of legal normativity in Kant (**Newhouse**, **Hanisch**, **Scholten**, and **Demiray**).

Opening the second part, **Sarah Holtman** inquires how Kant's theory of justice as developed in the *Rechtslehre* is connected to his ethical philosophy. She argues that Kant's idea of justice is deeply rooted in his foundational ethical ideas, although it is not the case that his principle of justice is directly derived from the categorical imperative. For Holtman, the connection between Kantian ethics and Kantian justice is the non-individualistic perspective of co-legislators in a community striving to find common normative standards acceptable to all. Therefore, she considers the kingdom

of ends formula more helpful than the other formulations of the categorical imperative principle. Holtman illustrates her argument by an analysis of two main characters of Kazuo Ishiguro's novel *The Remains of the Day* and the way they fail to fulfil their ethical and civic duties. Holtman's chapter shows that only the standpoint of free and equal citizens in the kingdom of ends can ultimately justify our ethical and political choices, not the particular identities and social roles we happen to embody.

How can a juridical law be regarded as a categorical imperative? How can a statute that is promulgated by a legislative body be unconditionally binding for all people within a particular political society? This central question concerning the normativity of law is the topic of Newhouse's contribution. She criticises the view defended by Marcus Willaschek that juridical laws cannot be unconditionally valid if they are externally coercible. Newhouse concedes that juridical laws need not be obeyed for their own sake, that is because it is our duty to do so. Otherwise the link between law and external coercion, that is punishment in case of violation, would be impossible. However, this does not mean that juridical laws can only amount to hypothetical imperatives. Since we are required to avoid a state of external unfreedom and since punishment is a treatment incompatible with external freedom, maintaining our external freedom requires avoiding conduct that deserves punishment. This means that we have an unconditional duty to comply with juridical laws as a condition of our existence as externally free persons. Newhouse's solution to the dilemma between the unconditionality and externality of juridical laws sheds new light on both Kant's philosophy of law and the role of criminal law in Kant's legal theory.

In contrast to Newhouse's duty-centred interpretation of Kant's legal philosophy, the subsequent chapters in the second part of this volume concentrate on the concept of right. Based on the distinction between provisional and conclusive right, **Christoph Hanisch** presents a reconstruction of Kant's conception of political-legal normativity that is reducible neither to natural law theory nor to legal positivism. He argues that innate right and some acquired rights are already conceivable in the state of nature, that is prior to the institution of positive law. However, such rights can acquire unconditionally binding status only when they are enacted by a public institution. Hanisch develops this view by drawing a

parallel to David Enoch's theory of conditional reasons, according to which there are reasons for action that are conceivable to us from the very beginning but only acquire normative force once they are *triggered* by a communicative act such as a request or a command. Similarly, we can understand Kant's innate right and private rights as present in the state of nature in the form of *conditional* reasons for action. This helps us understand Kant's views concerning prolonged possession and offers an alternative to natural law theory and legal positivism.

**Matthé Scholten** analyses the alleged link between human rights and the Kantian idea of dignity and also provides insights concerning the nature of legal normativity and its implications. Although Kant has been championed as a pioneer of human rights based on the idea of human dignity, Scholten argues that universal human rights, as we understand them, cannot be derived from Kant's notion of dignity. This is because rights in Kant's legal theory only describe the limits of our external freedom and do not prescribe any particular motives we must adopt.[19] Further, rights not only require external coercion but there is also an analytic connection between the two concepts. In contrast, the Kantian conception of human dignity is indissolubly grounded in the ethical conception of autonomy. However, Scholten argues that we are not faced with a dilemma between human rights and dignity, since these are principles regulating different spheres of our lives.

In the last chapter of the second part, **Ruhi Demiray** agrees with Scholten that human rights cannot be derived from ethical notions such as human dignity and autonomy, since these cannot justify the use of external coercion in interpersonal relations. However, he defends the view that Kant's political-legal philosophy provides a foundation for a *juridical* conception of human rights with the idea of an innate right to freedom, which he regards as an explication of the principle of equal freedom. Against possible objections to innate right to freedom as the foundation of human rights, Demiray clarifies that the innate right to freedom enables a non-foundationalist, formal and juridical conception of human rights as a set of publicly coercible standards delimiting the scope of what can be politically justified. He reconstructs Kant's idea of law as a system of equal freedom instantiating these rights.

The third part of the volume is devoted to applications of Kant's political and legal philosophy to the political challenges

of our times.[20] **Sylvie Loriaux** addresses a tension in contemporary debates on international politics and law between *restitution claims* (based on the view that forcible dispossessions of territory are wrong and call for restitution) and *legitimacy claims* (based on the idea that existing states have the moral right to rule, despite having acquired territories by force). She criticises the interpretations by Arthur Ripstein and Peter Niesen, who conceptualise the territorial rights of the state as analogous to bodily rights of individuals, and presents a reconstruction of Kant's theory of territorial rights that can address the aforementioned tension. She argues that territory is distinct from the political community that possesses it and that some specific criteria must be met if states' acquisition of territory is to be rightful. However, since the use of force is historically prior to the implementation of law and justice, from the moment a state comes into existence it must be respected as legitimate. Its unjust acquisition of territory should therefore be addressed through peaceful reforms.

**Alice Pinheiro Walla** continues the debate on the territorial rights of states. In agreement with Loriaux, she argues that Kant's legal theory offers a plausible theory of territorial rights, which can greatly enrich current debates on territory. The crux of Pinheiro Walla's interpretation is that Kant introduces territorial rights not because he considered the self-determination of states a value that should be promoted for its own sake. Instead, territorial rights are required in order to make acquisition of land compatible with the fundamental principles of Right. Her account has some important implications: while territorial rights are clearly distinct from property rights from a domestic perspective, they have a stronger normative status at the international level because the state of nature between states has not yet been overcome. She concludes that a cosmopolitan civil condition would render national borders normatively obsolete.

In the final chapter, **Domenica Dreyer-Plum** critically assesses the European Union's laws and practices regarding the rights of non-EU citizens from the point of view of Kant's cosmopolitan right. She provides a detailed analysis of EU regulations concerning the implementation of the rights of asylum seekers. She argues that although the EU is committed to what Kant called 'cosmopolitan right' and 'hospitality right' in its primary and secondary laws, it has not implemented them adequately at the institutional

level. In an attempt to make concessions to the interests of member states, the EU asylum and migration policies must accommodate competing norms in immigration law and diverging practices of EU member states at external borders. While abolishing internal borders, the EU entrenches external borders against non-European nationals. This shows that the EU's aspiration to Kantian cosmopolitanism, in which every human being's fundamental rights are respected, remains unfulfilled regarding asylum seekers.

While each contribution in this volume helps shed light on different facets, implications and possible applications of Kant's conception of practical normativity, we do not assume that Kant's philosophy is a rigid dogma to be applied as an axiom to real life cases or that Kantians must agree on fundamental interpretational aspects of Kant's theory. Indeed, the different and sometimes diverging standpoints offered by the contributors of our volume make evident the richness, complexity and enormous potential of Kant's thought for contemporary philosophical debates and problems of our times. This should come as no surprise when we consider the fundamental motto of Kant's conception of Enlightenment: *sapere aude*! *Dare to make use of your own understanding*! In this way, our volume also celebrates the diversity of thought that should motivate philosophical discussion, and the deep commitment to truth, debate and respect for persons that should unite us as philosophers.

* * *

The idea for this volume was born in the Kantian Political Thought Standing Group during the 2014 European Consortium for Political Research conference in Glasgow. We would like to thank Howard Williams for his encouragement and advice, Stefano Bacin and an anonymous reviewer for their expertise and helpful feedback, and Ricky Walla, Danielle Scheil, Gizem Yildirim and Sarah Lewis for their invaluable support in the preparation of the manuscript.

## Notes

1 *Anth* 7:229. For references to Kant's works, see the bibliographical note at p. 255.

2 See Konstantin Pollok, *Kant's Theory of Normativity: Exploring the Space of Reason* (Cambridge: Cambridge University Press, 2017), p. 2.

3 For Kant's famous contention that all our theoretical knowledge is based on synthetic a priori judgements and his introduction to the major problem of the entire critical philosophy as the question of the justification of such judgements, see the introductions to the *Critique of Pure Reason* (*KrV*). For his account of the principles of pure understanding as the principles of theoretical synthetic judgement, see *KpV* A154/B183–A226/B274. For the Categorical Imperative as the principle of practical synthetic a priori judgement, see *GMS* 4:420 and *KpV* 5:31. For purposiveness as the principle of aesthetic synthetic a priori judgement, see *KU* 5:198.

4 We are adopting here a broad conception of Kant's transcendental method that applies not only to theoretical philosophy, but also to his practical philosophy. Broadly understood, Kant's transcendental method is the search for the necessary presuppositions that ground our cognitive, practical (moral) and aesthetic experiences. Once recognised, such necessary presuppositions serve both to give coherence and intelligibility to our experiences in general and as the criteria for judging the validity of particular performances within these domains of experience. It has been a matter of debate whether Kant's transcendental method also applies to practical philosophy. We think that the term should not be dropped, since it marks the distinguishing character of Kantian philosophy in contrast to the many other strands of thought that also claim the term 'critical' in designating themselves. It also makes explicit how Kantian philosophy surmounts the shortcomings of both dogmatic rationalism (promising supersensible – transcendent – knowledge) and empiricism (ignorant of the a priori basis of our cognitive, moral and aesthetic experiences).

5 For the conception of synthetic a priori principles as both constitutive and normative, see Pollok, *Kant's Theory of Normativity*, p. 9.

6 See Pollok, *Kant's Theory of Normativity*, pp. 27–57.

7 For the idea that forms are not perceived but conceived, see Pollok, *Kant's Theory of Normativity*, pp. 150–7.

8 In the *Critique of Pure Reason*, Kant argues that 'reason must subject itself to critique in all its undertakings, and cannot restrict the freedom of critique through any prohibition without damaging itself…The very existence of reason depends on this freedom, which has no dictatorial authority, but whose claim is never anything more than the agreement of free citizens, each of whom must be able to express his reservations, indeed even his veto, without holding back' (A739/B767). For the relationship between freedom and politics in Kant's conception of reason, see Sofie Møller's chapter in this volume.

9 Enlightenment for Kant requires three stages: to think for oneself; to think while adopting the perspective of others; to think at all times in unity with oneself (*KU* 5:294). Cf. *Anth* 200 and 228. Kant's enlightenment project is not merely an epistemic project, as it was for other enlightenment thinkers, but requires a specific practical attitude: the *courage* to think for oneself (*sapere aude!*). Further, it is not merely individual, but a collective enterprise, requiring a culture of public reasoning. See Reinhard Brandt, *Immanuel Kant – Was bleibt?* (Leipzig: Felix Meiner, 2010), p. 178; and Alice Pinheiro Walla, 'Kant on Freedom of Thought', in Anna Tomaszewska and Hasse Hämäläinen (eds), *The Sources of Secularism: Enlightenment and Beyond* (New York: Palgrave Macmillan, 2017), pp. 189–206.

10 See *RGV*.

11 See *MS* VI: 239, where Kant claims that both Virtue and Right belong to Morality (*Sittenlehre*).

12 The question of whether the juridical domain is somehow dependent on the moral Categorical Imperative principle has been the object of great discussion in Kant scholarship. See the chapters by Newhouse, Scholten and Demiray in this volume.

13 For a discussion of the tensions between private judgements about rights and positive laws in Kant's legal theory, see Alice Pinheiro Walla, 'When the Strictest Right is the Greatest Wrong: Kant on Fairness', *Estudos Kantianos*, 3/1 (2015), 39–56; Corrado Bertani, 'Equity Presumptions Versus Maxim of Distributive Justice in the *Metaphysische Anfangsgründe der Rechtslehre*, §§ 36–40', in Margit Ruffing, Claudio La Rocca, Alfredo Ferrarin and Stefano Bacin (eds), *Kant und die Philosophie in Weltbürgerlicher Absicht: Akten des XI. Kant-Kongresses 2010* (Berlin: De Gruyter, 2013), pp. 783–96; B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right. A Commentary* (Cambridge: Cambridge University Press, 2010), pp. 215–31; and Ruhi Demiray, 'The Intrinsic Normativity of Law in Light of Kant's Doctrine of Right', *Con-Textos Kantianos*, 3 (2016), 174–8.

14 Arthur Ripstein has famously offered an account of when a legal order no longer qualifies as a rightful condition and degenerates into organised violence, as illustrated by national socialism in Germany. In this case, a right to revolution would be justified. Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge: Harvard University Press, 2009), pp. 336–52.

15 Christoph Horn explains this aspect of Kant's account practical normativity by arguing that, although practical reason is *one*, it gives rise to an ideal and a non-ideal form of normativity; while morality is ideal, the political-legal domain displays a non-ideal form of normativity, which is sensitive to the situatedness of human beings and achievable,

and for these reasons *weaker* than moral normativity. While discussing the plausibility of Horn's account would go beyond the purposes of this introduction, he is certainly right to stress that political-legal normativity in Kant should not be understood as 'applied ethics' and that the relation between Virtue and Right is more complex than the current debate between 'independence' and 'dependence thesis' is able to recognise. Christoph Horn, *Nichtideale Normativität. Ein neuer Blick auf Kants politische Philosophie* (Berlin: Suhrkamp, 2014), pp. 301–2.

16 On moral constructivism in general and Kantian moral constructivism, see Carla Bagnoli (ed.), *Constructivism in Ethics* (Cambridge: Cambridge University Press, 2013). For recent contributions to the debates on Kant, moral constructivism and moral realism, see Frederick Rauscher, *Naturalism and Realism in Kant's Ethics* (Cambridge: Cambridge University Press, 2015), and Robinson dos Santos and Elke Elisabeth Schmidt (eds), *Realism and Antirealism in Kant's Moral Philosophy: New Essays* (Berlin/Boston: De Gruyter, 2018).

17 John Rawls, 'Kantian Constructivism in Moral Theory', *The Journal of Philosophy*, 77/9 (1980), 515–72. For Rawls's distancing from metaphysical approaches, see John Rawls, 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs*, 14/3 (1985), 223–51.

18 For recent literature on Kant's political-legal philosophy, see Horn, *Nichtideale Normativität: Ein neuer Blick auf Kants politische Philosophie*; Reidar Maliks, *Kant's Politics in Context* (New York: Oxford University Press, 2015); Sari Kisilevsky and Martin J. Stone (eds), *Freedom and Force: Essays on Kant's Legal Philosophy* (Oxford: Hart Publishing, 2017); Larry Krasnoff, Nuria Sanchez Madrid and Paula Satne (eds), *Kant's Doctrine of Right in the 21st Century* (Cardiff: University of Wales Press, 2018).

19 Cf. M. E. Newhouse's chapter in this volume.

20 For recent literature discussing the applicability of Kant's political and legal philosophy to the contemporary challenges, see Elisabeth Ellis (ed.), *Kant's Political Theory: Interpretations and Applications* (University Park: Penn State University Press, 2012); Katrin Flikschuh and Lea Ypi (eds), *Kant and Colonialism* (Oxford: Oxford University Press, 2015).

# Part I:
# Reason and Normativity

This page is intentionally left blank