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NORMATIVENESS OF COERCION IN THE KANTIAN LEGAL SYSTEM IN THREE STEPS

NORMATIVIDADE DA COERÇÃO NO SISTEMA JURÍDICO KANTIANO

Indalécio Robson Rocha[1]

Abstract: The purpose of this paper is to argue about how legal deduction based on freedom can promote the normativity of right. Without being able to offer a definitive answer, the debate on the distinction between ethics and right is used as a strategy to address the arguments in favor of a strong and unconditional normativity of right. In this context, it is argued that Kantian right is derived from practical freedom and is a subspecies of morality, from which derives its unconditional normative force. This connection can be made from the objective practical reality of right, through which is perceptible a singular and unconditional legal-normative externality, which should not be reduced to the factual reality of positive right. The consequence of these arguments is that, for legal coercion to be normatively consistent, it must be based on legal reasons, that is, argumentative evidence that can be fundamentally traced back to practical freedom**.** In the end, a validation procedure of coercion is presented in three steps, clarifying how it would be possible to identify the unconditionality of the right normativity in the legal Kantian system.

Keywords: deduction, unconditionality, normativity, coercion, procedure

Resumo: *O objetivo deste artigo consiste em argumentar sobre como a dedução jurídica baseada na liberdade pode promover a normatividade do direito. Sem poder oferecer uma resposta definitiva, aproveita-se o debate sobre a distinção entre ética e direito como estratégia para endereçar os argumentos em favor de uma forte e incondicional força normativa do direito. Neste contexto, sustenta-se que o direito kantiano é derivado da liberdade prática e é uma subespécie da moral, da qual provém sua força normativa incondicional. Essa conexão pode ser realizada a partir da realidade prática objetiva do direito, pela qual é perceptível uma externalidade jurídico-normativa singular, incondicional, que não deve ser reduzida à realidade fática do direito positivo. A consequência desses argumentos é que, para que a coerção jurídica seja normativamente consistente, deve ser baseada em razões jurídicas, isto é, provas argumentativas que possam ser reconduzidas fundamentalmente à liberdade prática. Ao final, é apresentado um procedimento de validação da coerção em três etapas, esclarecendo como seria possível identificar a incondicionalidade da normatividade do direito no sistema jurídico kantiano.*

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[1] Bachelor of Law School from the Catholic University of Santa Catarina in Joinville/Brazil. Lawyer. PhD student and Master of Philosophy at the Federal University of Paraná (UFPR), Brazil, with a research stay (*sanduíche*) at the University of Vechta, Germany (*Universität Vechta*), in 2023. Currently pursuing a regular PhD in Philosophy at the University of Vechta, Germany, under a double supervision arrangement with UFPR, Brazil (*cotutela e dupla diplomação*). This study was financed by the CNPq, National Council for Scientific and Technological Development - Brazil, in Vechta/Germany. Portions of this work were presented and discussed at the "Philosophical Doctoral Seminar" (*Programm Doktorandenkolloquium*) during the summer term of 2023 at University of Vechta. I am grateful for the valuable feedback provided by Professor Jean-Christophe Merle (*Universität Vechta*). E-mail: indaleciorobson.rocha@gmail.com.

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Palavras-chave: *dedução, incondicionalidade, normatividade, coerção, procedimento*

1. Relation between moral, ethics and right

Distinction between ethics and right is important for any philosophy of right. It emerges as an essential question for philosophy in general, but it is especially decisive for the modern philosophical tradition that has dealt with the theme of justice as a norm for human maxims and actions. Since ethics also has human actions as an object, if the differentiating criteria are absent or are obscure, there are great chances to argue legal notions from ethical notions and vice versa.

What type of action should be imposed by legal coercion? Would it be appropriate to subject a person to a lawsuit that he/she would be forced to donate part of his/her properties to the poor? It seems that this would be a mistake and would place ethics and right on the same level of justification and application and, consequently, of imputability. Such a concern did not escape Kant. As he warned, a misinterpretation that places right and ethics "in the same class […] must not happen" (MS 6:220)[2]. Therefore, legal and ethical justifications and applications must be differentiated. Reserving the peculiarities of each commentator and interpreter, according to Lopes (2021, p. 14, p. 47 and p. 71) the Kantian debate on the distinction between ethics and right can be summarized in two big positions.

The first position defends the thesis of the independence of right in relation to morality. The categorical imperative would have connection only with the doctrine of virtue and not with the doctrine of right. This position presents two main arguments. The first is that because the categorical imperative is an *a priori* synthetic proposition, it would be incorrect to derive the principle of right from it, an analytic proposition to coercion. As it is sufficient in itself, an analytic proposition would not require another concept to explain it (KrV B10). The logical principles of identity and non-contradiction between the subject (right) and the predicate (coercion) of the concept would determine its logical validity. In other words, it would not be necessary to leave the coercive principle of right itself to find its foundation in the categorical imperative. Hence, it may be called the *argument of analyticity*. The second, which is naturally related to the first, is that in addition to the epistemological aspect of the quality of the propositions, the characteristic of the externality of the right would be another factor that would prevent that derivation. The externality of right would coincide with the acceptance that the motive for action may be other than the duty itself, an operationalization that would be impossible from the categorical imperative.

[2] All English translations of Kant's texts used in this paper are from The Cambridge Edition of The Work Of Immanuel Kant in Translation series, although original German and other translations were also used in comparison when one makes necessary. Quotations follow the Akademie Ausgabe's edition. All translations of other texts from other languages into English were made by the author.

For this reason, Kant would have dispensed universality in legal maxims, which would reveal the independence of the legal system in comparison to the moral system derived from the categorical imperative. This position is strongly based on a supposed non-universalizable quality of the legal maxim, a characteristic that gives the legal system a factual epistemological status, namely, positive right. For these reasons, it can be called the *argument of the maxim*.

Ultimately, the interpretation identifies right as positive and coercive right, which can even establish which actions are considered licit or illicit, but never prescribe to the agent how his/her choice (*Willkür*) will be determined. That is why manifestations about a possible morality about right would result from ethics. However, Kant's legal incursions at the *a priori* level would denote possible moral rights without the effectiveness of legal coercion. Authors such as Solari (1949), Ebbinghaus (1968), Kersting (1984), Bobbio (1992), Willaschek (1997, 2002, 2009 and 2012), Kaufmann (1997), Pogge (1998, 2002), Wood (2002), Ripstein (2004, 2008, 2009a and 2009b), Geismann (2010), Faggion (2014) and Baiasu (2016) represent this position.

Prominently, Solari, Ebbinghaus, Pogge and Faggion argue in this direction. Faggion (2014, p. 286) states that "the concept of "outer freedom", by being negative and external, should be considered an empirical concept". To Faggion (2014, p. 286), "even the concept of "internal freedom" [...] can perfectly be taken as requiring a merely empirical capacity: the capacity to be persuaded to do or dissuaded from doing, *i.e.*, a capacity for choice of means, and not of final ends". Pogge (2002, p. 139-140) emphasizes the distribution of external freedom by the "Pareto efficiency" "instantiated" in positive right as a description of what "right is". Ebbinghaus (1968, p. 114) considers the "experience" as the exclusive source of "legal theory". Finally, Solari (1949, p. 213 ff.) reduces the *a priori* to the mere condition of possibility of legal experience – and not assessment or correction – for a science of coercive positive right. The identification of the legal system with positive (strict) right as a means of coercing other subjects becomes evident in such approaches. In other words, its normativity would be only strict empirical universality.

Although the defense of the independence of right in relation to morality shows concerns about the role of the State in the sphere of individual freedom of the citizen, it brings with it weaknesses. It presents difficulties in articulating an *a priori* (unconditional) right even when Kant intended for this purpose several pages of what Willaschek (1997, p. 220) called the "official view" of the *The Metaphysics of Morals*, subdividing it into two doctrines: of right and of ethics. For that position, Kant would have failed on this point. There would not effectively be a subdivision of morality into right and ethics, because the legal system would constitute itself independently,

according to its own rules. The legal-moral *a priori* could not be considered a criterion for evaluating positive right as a systematic element of the doctrine of right.

The second position sustains the distinction of right specifically in relation to ethics, but considers it as a subspecies of morality. Ethics and right derive from the same normative source, namely morality, whose maximum principle is based on practical freedom, the categorical imperative and the moral law. There is a conceptual distinction concerning the relation between gender and species, but the nature of normative force is the same. Although interpreters such as Willaschek (1997, 2002, 2009 and 2012) and Nance (2012) acknowledge that there is textual evidence for both groups of commentators and interpreters to substantiate their views, it is undisputed that Kant's initial textual position in the *The Metaphysics of Morals* was make such a link. There are several clear and direct passages in this broad sense[3], which positions the debate in the hermeneutic rather than exegetical field, that is, whether Kant would have been successful in his initial project of doctrine of morals or not. Following Willaschek's (1997) and Wood's (2002) interpretation at the point, Nance (2012, p. 545) notes that "Kant does not provide an explicit deduction linking the categorical imperative to the universal principle of right". While this is a fact, this position argues that it is not sufficient evidence for the breakdown of right's connection with morality.

As a result, the legal system must bind itself to morality in order to be systematically consistent with practical philosophy as a whole. Morality is considered a criterion for evaluating right as part of the doctrine of right. Its relation is established directly with the scope, limits, purposes, and conditions of the exercise of legal freedom. An immediate implication of a legal a priori is the binding of agents to unconditional practical necessity, whose normative force is empirically purified. Gregor (1963), Ludwig (1988, 2002), Mulholland (1990), Rosen (1993), Terra (1995), Habermas (1997), Höffe (1996, 1998), Guyer (1996, 2000, 2002, 2005, 2016), Beckenkamp (2003, 2009, 2018), Almeida (2006), Flikschuh (2007), Tonetto (2010), Nance (2012), Martins (2012), Zöller (2013), Calovi (2013), Trevisan (2014), Klein (2014), Merle (2014), Horn (2016), Torres (2018) and Durão (2020), represent this position.

Without being able to offer a definitive answer regarding the debate and not being this the objective of this paper, one tries to understand its nuances and identify what possible contributions can be made to a notion of redistributive justice based on the Kantian system. In this sense, specifically, Guyer (2002) offers important arguments that summarize the panoramic view of the

[3] MS 6:205; 207; 214; 215; 218, especially the footnote; 219; 220; 221; 222; 225; 226; 227; 228; 239-240; 252.

second group, especially against the argument of analyticity[4]. Because arguments are relevant insofar as they contribute to the purposes of this paper, their nuances will be better explored in the following topics. Thus, the focus here will be examining reasons contrary to the argument of analyticity, relegating the examination of the argument of the maxim to another moment.

Therefore, the involved problem in the hypothesis of freedom not being the foundation of right will be exposed (topic 2). The relation between deduction and the reality of right will be presented as a decisive moment of its normativity (topic 3). Successively, a circular procedural approach will be suggested to the real legitimation of coercion (topic 4), finally showing how the unconditionality of right could be important to redistributive topics.

2. Freedom reality and right

Guyer presents important contrary points to the argument of analyticity. Its fragility lies in the strictly logical interpretation of the relation between analytical and synthetic propositions. For him, it is not enough to assess that the right cannot be derived from the categorical imperative exclusively from general logic. In addition to being logically consistent, it needs to be convincing from a practical point of view, that is, reasons can be given why it is possible to obey the right. The analytic procedure "must not go so far that in the end the object itself disappears" (Log 9:64).

This does not seem to be possible with the general logic because *per se*, it abstracts from the objects of knowledge to deal only with the forms of thought. Thus, from a practical point of view, there is a relation between offering reasons, convincing and referring to objects, whether *a priori* or *a posteriori*. As Guyer (2002, p. 26) observes, "Kant himself does not assume that the logical character of analytic judgments relieves us from all further obligation to justify them". Even though a practical justification procedure can make use of aspects of general logic, the establishment of the normative force of legal binding of the agent must refer to objects. The fact that the principle of right can also be logically proved by the principle of noncontradiction or of identity, does not follow that it is exclusively analytical or that it should not be known by relating it to more fundamental principles or concepts, whether analytical or synthetic.

The analysis of the relation between right and morality is not an easy task, especially due to all the complexity involved in the *Doctrine of Right*. Kant's movements involve various types of arguments, from practical analytical propositions (*e.g.*, principle of right, MS 6:230, § C) to

[4] Although they argue in favor of the connection between right and morality, Flikschuh (2007) and Tonetto (2010) are exceptions to such a panoramic view, as they do not agree with Guyer's (2002) approach contrary to the argument of analyticity.

theoretical ones (*e.g.*, empirical possession, MS 6:250), in argumentative movements that sometimes are related (*e.g.*, postulate of practical reason, synthetic principle of acquired rights, MS 6:246, § 2, in relation to the principle of right), sometimes they are contrasted (legal possession, MS 6:249, § 6, in contrast to empirical possession). *The Metaphysics of Morals* erects a system of propositions of the most varied types, with diverse criteria and contexts.

At all these times, the concept of practical moral freedom is presupposed by Kant (MS 6:214). Therefore, it implies its property of being an unconditioned cause for human action, substantiating the agent's exercise of freedom. From this broad moral notion of practical freedom, can be derived the notions of legal freedom (MS 6:237) and inner freedom (MS 6:407), subdivisions of the entire doctrine of morals. While both lead back to the practical moral freedom, right belongs to the domain of morality. The hard core lies in *how* to relate right to morality in this presented structure, whose strictly logical reading seems not to be enough.

As practical moral freedom is a reality for the agent (KpV 5:30-32; MS 6:252) through his/her conscience (MS 6:221), right must necessarily be grounded in it. If it is not connected to this original source of freedom, from which ethics also comes, then it cannot be considered legitimate from a practical point of view. Since right is not connected with practical moral freedom, there would be a big problem in affirming the possibility of legal imputation based on a law of freedom. Unlike ethical actions, legal actions would not be expressions of the agent's exercise of freedom.

If the action does not express the individual's freedom, how can we justify that the agent ought have acted in accordance with the right? If he/she does not act, why ought he/she to be held accountable? How can you justify that it is rational to impute him/her for his/her action, since pure practical reason would only determine choice from an ethical and not a legal point of view? If it is not possible to minimally answer such questions, positive right will be reduced to a mere technique of social control, empirically conditioned, contradictory to the aforementioned broad notion of freedom. So what evidence can be offered to justify that the right is binding from a morally broad perspective?

3. Deduction as a means of proof of the reality of the right

A beginning of proof is identified when Kant uses the expression postulate (MS 6:231). Against Willaschek (1997, p. 220, 2010, p. 68, footnote 9), Guyer (2002, p. 27) observes that by "calling a principle of right a postulate, Kant may mean to suggest something about *how* such proposition must be proved, but not that it cannot be proved". In Kant's oscillation between

denominations of principle and postulate, there is evidence of an attempt to emphasize a possibility of proof of binding to right. Evidently, this proof cannot be the same required by the probative perspective of theoretical philosophy since the argumentative level of right here is the practical one.

Guyer's interpretation presents the connection between right and morality by resorting to proof of the objective reality of right. In this way, its foundation and proof based on practical freedom require a transcendental deduction. The classic excerpt from the first *Critique* quoted below is important for the notions of transcendental deduction and practical objective reality:

> Jurists, when they speak of entitlements and claims, distinguish in a legal matter between the questions about what is lawful (*quid juris*) and that which concerns the fact (*quid facti*), and since they demand proof of both, they call the first, that which is to establish the entitlement or the legal claim, the **deduction**. We make use of a multitude of empirical concepts without objection from anyone, and take ourselves to be justified in granting them a sense and a supposed signification even without any deduction, because we always have experience ready at hand to prove their objective reality. But there are also concepts that have been usurped, such as **fortune** and **fate**, which circulate with almost universal indulgence, but that are occasionally called upon to establish their claim by the question *quid juris*, and then there is not a little embarrassment about their deduction because one can adduce no clear legal ground for an entitlement to their use either from experience or from reason (KrV B116-17).

This passage is especially important when relating transcendental deduction to a justification procedure, whereby one requests the normative legal foundation of a concept rather than being satisfied with mere factual explanations. “Fortune” and “fate” are not merely empirical concepts and therefore must necessarily be normatively evaluated from the point of view of freedom, the cornerstone of the practical system. The principle of right presupposes freedom as its foundation and from this assumption other deductions are possible. Because agents have freedom, they can be held responsible for their actions, as long as this bond can be justified. This means that the mere statement of brute facts without a normative moral assessment – more specifically legal – does not produce what Kant calls “objective (rightfully-practical) reality” (MS 6:251). This is because “an act of freedom cannot (like a natural effect) be deduced and explained in accordance with the natural law of the connection of effects with their causes, all of which are appearances” (MS 6:431).

A traffic accident can be considered a brute fact by the simple description of a driver colliding with another, but this does not mechanically result in the exercise of his/her freedom. If from this fact it is possible to deduce some “imputability”, both ethical and legal, to reach “legitimacy” (KrV B117), such a conclusion must be presented through normative deductions about the interpretation of the case. Otherwise, the brute fact will not have “practical objective reality”,

but only an "objective reality", which could simply be called theoretical. Consequently, an imputation based solely on such theoretical grounds would be illegitimate. Hence Guyer (2002, p. 30) consistently argue that

> [...] claims of right, as opposed to mere descriptions of fact, can never establish their objective reality by a direct appeal to experience. While particular claims of right are not the same as principles of right, of course, surely this suggests that, if principles of right are to be shown to have binding force for us, which can hardly be shown by an appeal to experience, the concepts on which they are based must have their objective reality established by some form of deduction.

Certainly experience is important because it limits knowledge. Any type of knowledge, whether practical or theoretical, is conditioned to the forms of human representation of understanding, through which the diverse will be synthesized producing an object. In its most general meaning, Kant understands by synthesis "the action of putting different representations together with each other and comprehending their manifoldness in one cognition" (KrV B103). "Only the spontaneity of our thought requires that this manifold first be gone through, taken up, and combined in a certain way in order for a cognition to be made out of it" (KrV B102). Synthesis is presupposed in the procedure of transcendental deduction of any proposition, analytic or synthetic. Regardless of the type of proof offered, whether *a priori* or *a posteriori*, analytic or synthetic, the deduction of the proposition resorts to synthesis.

Therefore, the proof of practical objective reality depends on a synthesis of representations, whose notion already presupposes an analysis. Every "combination, whether we are conscious of it or not, whether it is a combination of the manifold of intuition or of several concepts, and in the first case either of sensible or non-sensible intuition, is an action of the understanding [...]" (KrV B130). An act "executed [...] only by the subject itself" (KrV B130). This "action must originally be unitary and equally valid for all combinations, and that dissolution (**analysis**), that seems to be its opposite, in fact always presupposes it" (KrV B130).

From the conceived synthesis and analysis, it is possible to project the right from the perspective of objective practical reality, in addition to a merely logical one. On the one hand, analysis alone is not enough, since "prior to all analysis of our representations, these must first be given, and no concept can arise analytically as far as the **content is concerned**" (KrV B103). From a logical perspective, it is possible that only by analysis, a concept is consistent in itself by the analytic relation of subject and predicate. On the other hand, this does not derive the legitimacy (content) of its application considering experience, even if anticipating it in *a priori* terms (KrV B84). For practical purposes, this legitimacy must be normative, an expression of how the world ought to be. In this sense, the principle of right may be analytically consistent with coercion, but

without deduction as proof of its objective reality it would be arbitrary. To claim that the right is analytic of coercion is both logically correct and practically insufficient. This is especially important for right when one thinks that its definition and application must be legitimate.

In other words, reality is previously represented through the synthesis of the diverse, which can be “raw and confused and, thus in need of analysis” (KrV 103). As in the example of the traffic accident, a first immediate representation is the “raw” fact of the crash. However, the measurement of the exercise of freedom in the context is not immediately obvious or can even be “raw” and “confusing”, requiring due “analyses”, *e.g.*, by a police or judicial legal instruction. Conceptually, legal coercion is a possibility, but its “competence” or “authorization” (MS 231-32, § D and § E) will be legitimized only after the establishment of its objective reality based on freedom. Otherwise, it will be arbitrary, as a State that intends to control the private freedom of the citizen – as such the point of the defense of the independence of right.

Although the sense or meaning of objective legal-practical reality does not derive from experience, it is certainly based on legal praxis. It applies “to cases that come up in experience” (MS 6:205) from representations. Evidently, the receptivity of the traffic accident is initially perceived from a theoretical perspective. A cause and effect are immediately identified between the crash of the car (cause) and the deformation of the other vehicle (effect). However, whether there is an originating cause based on freedom (a "special kind" of "cause", *cf*. GMS 4:446) that could have determined that brute fact is not immediately obvious. The transcendental deduction needs to start from the human cognition of the principle of causality, which initially resorts to theoretical cognition. However, for practical purposes, it does not end there.

Although difficult and not much investigated by commentators[5], distinguishing between theoretical and practical cognition is necessary, after all it constitutes one of the fundamental topics about the possibility of practical objective reality. Only by considering it, is it possible for it to be conceived. Given the present exposition, the distinction will be based on the type of proof required in both types of cognition, a strategy that Guyer (2002, p. 33) also uses.

Unlike a proof of general logic that abstracts from every object of knowledge, theoretical and practical cognitions require the corresponding object. Theoretical cognition requires the proof of the features of the object concept in experience, then that the absence of correspondence between the proposition and the object results in an absence of knowledge. However, practical cognition requires a different kind of correspondence. The quality of the justification is evaluated by the

[5] This fact is recognized by Willaschek and Watkins (2020, p. 3196) and Kain (2010, p. 211).

deductions made from the concept or principle for purposes of legitimation in the practical use of reason. Willaschek (2002, p. 78-79) suggests the denomination of insights for the "theoretical cognition […] of practical rules", just as Kant (MS 6:218) also speaks of "practical rules"[6], and Guyer (2002, p. 33) points out that the form of practical laws and what they reveal are "matter for *practical* cognition rather than *theoretical* cognition".

As adduced by Kant, it is a question of knowing what exists (to be) and what should exist (ought to be) (KrV B661). In the first case, scientific instruments can provide evidence of the object in question in the experience. In the second case, one can consider the type of proof as an argumentative structure that involves several argumentative elements, including theoretical ones, in a deduction strongly based on freedom (moral, and legal) or on pure practical reason itself. Although theoretical elements are included in the deduction process, for legitimation purposes, they cannot be considered more relevant than freedom, once there is a priority of practical reason over theoretical reason (KpV 5:121).

While theoretical cognition starts from the "evidence of experience" (MS 6:215) to know the object, practical cognition takes the opposite movement. It postulates (KrV B661) and departs from *a priori* principles for determining the object (MS 6:215). Determination of the object initially occurs through the *a priori* cognition of how the object must exist to apply it to experience, formatting and adapting it *a posteriori*, without waiting for its complete realization in reality, but only an "approximate to it" (MS 6:205).

4. Coercion and objective practical reality

How then to relate this approach of objective practical reality with legal coercion? Based on the arguments presented, the normativity of legal coercion will depend on the proof of its practical reality. Guyer's (2002) arguments allow for establishing a strong connection between practical freedom and the principle of right at a metaphysical level, justifying the unconditional normativity of right. However, it seems possible to advance the arguments for justifying the principle to the other levels of coercion, for example, based on the legal acts of a Republic.

That broad sense of deduction presented above will be necessary for the conception and application of coercion, at least to be considered legitimate. This is not the same as saying that the mere possibility of coercion is not enough to characterize a first step in preserving legal freedom. Indeed, Kant claims that right "can locate the concept of right directly in the possibility of

[6] Kant also refers to duties as possible objects of practical-theoretical knowledge in MS 6:218.

connecting universal reciprocal coercion with the freedom of everyone" (MS 6:232). It should be noted that it only says that "the concept" can be "located directly" by this analytical evaluation – not its content.

By the "principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws" that it will be possible to "determine his choice" in "accordance" with the "everyone's consciousness of obligation in accordance with a law" even if not "may" nor "cannot" "appealed to [it] as an incentive" (MS 6:232). The possibility and determination of choice seem to be two distinct moments. Mere possibility is a ground of determination of choice sufficient to right without, however, actually determining it immediately. The transition from possibility to its application (determination) is not automatic and requires justifications at whatever level is thinking about coercion[7]. The classic creditor example offered by Kant remains instructive today:

> Thus when it is said that a creditor has a right to require his debtor to pay his debt, this does not mean that he can remind the debtor that his reason itself puts him under obligation to perform this; it means, instead, that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with a universal external law (MS 6:232).

With this excerpt, it is perceptible that the basis of subjective right (imposition of a duty to the other) lies in the presupposition of conscience that the other has about his/her duties, although the creditor cannot access it. This step of coercion is rightly attributed to the mark of mere "possibility". However, the application of coercion is not mechanical and will depend on deductions that can establish the relation between the not fulfilling of duty by the debtor and the right of the creditor to charge it. That is, the creditor must demonstrate that it has the "right to require" the payment of the debt since the mere fact that the debtor does not make the payment does not automatically result in his/her responsibility. In this sense, the creditor must, *e.g.*, adduce mainly positive legal reasons; must demonstrate that it constituted a contract and that the legal system allowed it to perfect such a deal. Having done this, it will certainly be conceivable a violation of freedom, whose beginning occurs in the experience, but needs to be normatively validated, either initially by the positivation of coercion (legislative), or in its use by the creditor in the protest of the debtor's name (following executive rules), or in its coercive application (judiciary). In other words, the creditor needs to demonstrate that the delay is illegal (delinquency) for coercion to be employed.

[7] At least, these levels can be identified in the state of nature, by self-defense and in the civil state, in its institutional positivation by the legislative power, its use and specification by the executive, its application by the judiciary or by others legal professionals and, privately, by citizens, through contracts.

This step of coercion could be attributed the label of "reality", whose arguments of the creditor will aim to demonstrate its "practical objectivity". Hence, the "practical objective reality" in the scope of right. In this operation, the creditor will not need to question the agent's internal motivations for the default, nor explain his/her own motivations for the debt collection, but certainly must demonstrate that the default occurred based on the freedom of the debtor. Likewise, it will always be up to the recipient of coercion to be able to state their reasons, which are also based on freedom, an essential equation for the balanced use of coercion. That is why, in order not to be arbitrary and illegitimate, in an executive judicial process it will always be possible for the debtor to present his/her defense reasons for the default as due process of law and, thus, contribute to the definitions of the reality of the case.

It may be conceivable, for example, that the debt was only unpaid because the debtor did not have the opportunity to pay it on time, which is a defense argument. If this is proven, any default must not be charged from the debtor, even if the principal obligation does, because this manifestation of prior freedom was not affected by the supervening fact. Therefore, the contractual benefits and considerations already established by the agents from their private contractual freedom – that is, when they closed the contract – must be applicable by the judiciary by syllogism – not allowing forced collections by the unilateral choice of the creditor. This will result in the necessary collection of the main obligation based on the freedom of the parties, but any coercion must be defined and applied regarding reparation or punitive damages consequences, such arrears.

This statement raises an important topic and subject in several current discussions about what is actually called "legal post-positivism" or "neoconstitutionalism" and can increase the example of the creditor. The use of the Brazilian Civil Code here is pertinent. Article 396 stipulates that "if there is no fact or omission attributable to the debtor, he/she does not incur in arrears". This is the exact legal positivation of what was said above based on the *Doctrine of Right*. However, Article 397 defines that the "default of the obligation, positive and liquid, at its end, constitutes the debtor in arrears by operation of law". In other words, if someone assumed a positive and liquid debt, to be paid on a certain day, the simple act of not paying it would be enough to constitute in arrears. Article 397 is inconsistent with what has been asserted based on the Doctrine of Right. The question now is whether any judge could mischaracterize the arrears by appealing to the "proof of objective reality" of default. In general, it is anticipated that the answer can only be negative. As said, the process of legal justification involves theoretical elements, even if evaluated from the point of view of freedom. In this sense, the legislator, armed with data from the experience of a given

society, can adapt positive right through legal fiction, *e.g.*, based on prudence, which best preserves freedom in that society.

This can be identified in the Brazilian Civil Code. It is fully conceivable that a positive and liquid debt to be paid on a certain day may not be paid as a result of a fact or omission not attributable to the debtor, pursuant to the diction of Article 396. Assuming that it is an elderly person who does not know the technological means of payment and who needs to go to a bank to make the payment if there is any kidnapping on the way that prevents him/her from paying the debt, it would not be fair to attribute responsibility to him/her by arrears. Nonetheless, Article 397 of the Brazilian Civil Code does not provide such a hypothesis of exclusion of imputability and the elderly will remain responsible for the default in the debt[8].

However, certainly, the degree of justice present in decisions of this type can always be the object of contestation. On the one hand, the example illustrates the difficulties inherent to the relation between normativity and facticity in right. On the other hand, it helps to exemplify the role of normative justification of coercion. Even when the legislator itself provides that coercive hypothesis on article 397 of the Brazilian Civil Code, the criterion of freedom makes it possible to criticize the legal provision from an unconditional practical point of view, making it possible to rethink it. Unconditionally, the rational imperative operating on the point would be its exclusion from the Civil Code, although the material issue of default should be previously addressed and dealt with at the state level. This would be an example of reform based on the "practical reality" of right.

Even in the face of such difficulties, it would be hard to defend that it would be possible for the creditor to interfere directly with the debtor's property by their own will to charge, without the necessary intervention of an impartial third party (judge) legitimized to execute the coercion; nor that it would be forbidden to the debtor to exercise due process of law, presenting his/her version of the reality of the facts (access to the judiciary) as a practical reality. Both assertions are only possible if thought for the balance of preserving freedom by the equation of the law of coercion from a real and practical point of view, that is, for the collection to be legitimate. In this case, a certain kind of procedure with real elements will be requested for legitimate coercion. The sore point demonstrates that the mere logical possibility of coercion is not enough to define its practical objective reality and, therefore, obtain legitimacy, regardless of the level at which it is considered (legislative, executive, judiciary, business, etc.).

[8] The establishment of this legal provision by the legislator may result from an assumption of general prudence (*e.g.*, negative effects of the incentive to delinquency), by which it is presumed that, strictly, the default of a positive and liquid obligation with a certain term will always result from the freedom of the agent. As a matter of sovereignty and obedience to the positive right, legal fiction in general must be observed, especially due to the primacy of the legislative over the judiciary.

The notion of freedom is very important at this point when related to practical cognition, especially from a legal perspective. As a postulate, agents must start from the principle of right as the basis of a deduction for the application of coercion that must be precisely *analogous* to mathematics, although this precision must be gradually contextualized, *e.g.*, precision levels of legislations, execution orders, sentences (verdicts), negotiations, etc. This is possible from the establishment of objective reality, especially because mathematical precision will be applied to empirical elements, *e.g.*, quantity and quality of coercive impositions (*e.g.*, of arrears).

Kant corroborates the assertion when he says that strict right must have such precision: "the doctrine of right wants to be sure that *what belongs* to each has been determined (with mathematical exactitude)" (MS 6:233). In this sense, the determination of "each one's own can" only be carried out *a posteriori*, with an *a priori* legitimation. For this, a real demonstration of the exercise of freedom that violated the right of the other is required. Mathematical exactitude is, in this aspect, the most concrete possible latitudinal determination of the legal duty, even starting from those levels that can be previously specified, *e.g.*, legislative, executive, judiciary, business, etc. until come to back practical freedom.

The essential is that the deduction of coercion based on freedom is the mark for attributing legitimacy to right, for which it can be called "legal coercion". At this point, with reason, right and coercion "mean the same thing" (MS 6:232, § E), when *properly* justified. Otherwise, it will be nothing more than an illicit example, that is, an *illegitimate* and *unjust* (*facti*) *coercion*.

By all these parameters in perspective, the relation between right and coercion could be represented by what will be called here a *circular procedural approach*, that already is considered systematically in the Kantian legal philosophy. What will be done here is just an explanation about that. For its exposition, different moments of the *Doctrine of Right* will be used. The approach consists of, at least, the following steps: initial, intermediate, and final.

a) Concept of right: right = coercion. Initial step

Initially, this formula represents a logical-conceptual analyticity. Through it, it can be stated that "right is coercion" based on what Kant calls the "possibility of connecting universal reciprocal coercion" (MS 6:232). It is claimed that

> [t]his proposition says, in effect, that right need not be conceived (emphasis add) as made up of two elements, namely an obligation in accordance with a law and an authorization of him who by his choice puts another under obligation to coerce him to fulfill it. Instead, one can locate the *concept of right*

> *directly in the possibility* (emphasis added) of connecting universal reciprocal coercion with the freedom of everyone (MS 6:232).

In terms of *conception* (and this word is important), its possibility means that the predicate "coercion" is intrinsic to the subject "right". It must be *conceivable* at the same time as a determination of the will of others. Apparently, this is an *a priori* statement – prior to experience –, unconditionally and apparently without content, that is, merely logical.

However, this absence of content is only apparent. If this conceptual analyticity were devoid of any content, the arguments presented earlier based on Guyer (2002) would be inconsistent with the systematization outlined here. The argument of analyticity would prevail. When Guyer (2002) presents the deduction of the principle of right based on freedom, it seems to be identifiable that even for the mere conceptual possibility of right there must be an objective content. It is known in advance that reciprocal human actions (direct and indirect) interfere with the freedom of others. For example, innate common possession and unsociable sociability are minimal descriptive conditions that expose the interferences of human actions with freedom. Human subjective conditions are accepted for the establishment of the principle of right in an imperative way (MS 6:231), ordering non-interference with the freedom of others. Therefore, the initially logical-conceptual possibility receives a content.

Nevertheless, this content is *a priori*. It is the *a priori* assumption that agents know their legal duties in relation to others, possible only through the categorical imperative (*ratio cognoscendi* of freedom). Subjective elements such as factual reciprocity of actions, common possession, and human anthropology make it possible to understand the legal duties arising from humanity itself. Although, as it is *a priori*, its representations may still be obscure and need proper analyses, requiring the real specifications of its representation.

It is acceptable that the agent is aware that *harming* the other is wrong, even though there are difficulties in clearly defining what this may mean in the experience. Kant recognizes this when he addresses the subjective ground of the right of necessity (MS 6:235), where the agent's justification (self-preservation) for his/her action is not legally legitimate. Even with the notion that he/she should follow the duty of not harming the other, the agent still commits a harm against his/her partner – killing him/her for the sake of his/her own preservation[9]. The right of necessity reveals an *a priori* content that indicates to the agent that his/her conduct is legally wrong from the point of view of reason.

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[9] This is the classic example of castaways of a shipwreck who have to fight for a single plank to stay afloat and survive at sea. One of them kills the other to survive

Because it is wrong, it must be judged as *culpable* (MS 6:236). Therefore, there is the *possibility* of attribution of responsibility and the agent could still be punished for his/her action. At this point, the *possibility* is a keyword in the face of the argument of analyticity. When evaluating the factual context of the case, the court could conclude both by the *application* and by the *non-application of coercion*, precisely due to the atypical factual situation in which the agent found himself/herself. As Kant says, the "judicial verdict" was "uncertain" (MS 6:236). Although the agent knew that harming his/her partner was wrong, the initial *a priori* bond would not have enough force to analytically justify the coercion. Since there is no objective foundation of reason to exempt him/her from his/her responsibility, what will exempt him/her from coercion is "*impunity subjective*" (MS 6:235). That *a priori* knowledge that the agent knew did not have sufficient normative force to determine the coercion on him/her.

Although the example reveals an initially weak normative force, this minimal *a priori* knowledge of legal duties would hardly be denied. It is through the *a priori* affirmation of the second duty of right (*neminem laede*, MS 6:236) that the obligation to enter the civil state arises. It seems to be precisely through the mere idea of violation of this duty that the greatest injustice arises in wanting to remain in the state of nature (MS 6:307). Its recognition moves the entire Doctrine of Right.

In spite of that, the *a priori* aspect of legal philosophy is not enough to deal with real legal problems. Nor does Kantian philosophy claim to be self-sufficient in this way. Especially in an analytical perspective, thus Kant says, "all analytic definitions are to be held to be uncertain" (Log 9:142). Even in the elaboration of an analytic concept "one can never be certain here whether the analysis has been complete" (Log 9:145). This is a first step towards legitimizing knowledge of the right, but it should consider experience in order to identify legal problems and address them with legitimacy. It is precisely in this that resides the whole issue of the tension between the innate right and the acquired rights (MS 6:257); equally, this is the political problem of unilateral legal decisions of choice in the state of nature (*beati possidentes*) (MS 6:264). In both cases, the *a priori* dimension of legal philosophy requires a further step towards experience, returning to the *a priori* after the normative evaluation of the empirical dimension. The peremptoriness of property rights implicated by the civil state – a synthetic *a priori* proposition – is an example that the initial *a priori* normative force is not sufficient by itself to legitimize actions initially permitted by it.

In other words, the *a priori* is sufficient to initially link the agent's responsibility to the coercive right, but it is only after the actual processing of the a posteriori content that there will be the legitimacy of the coercion and strong validation of that initial weak link. In these terms, saying

a priori that "right is coercion" is correct, having a background of objective legitimacy, but it will need to be procedurally validated from reality. It should be noted that the *a priori* analytical quality of the right is not denied, nor is it defended that it is not binding. The point is the force it has, which is sufficient to assert an initial level of bind, but insufficient to characterize the legitimacy of the agent's complete determination. This leads to the second moment.

b) Effective legal reality: violation of freedom → coercive right. Intermediate step

Instead of expressing this formula in affirmative terms, it would be better to represent it through a question: "Is there a violated right?". In other words, was there a nonfulfillment of duty that legitimized the victim to exercise his/her right, which is *a priori* coercive? Having sufficient reasons to consider the theoretical reality as legally effective, certainly based on the freedom of agents, it is possible to move from the initial possibility to the actual exposition of coercive right. Rather than the coercive right being considered only from an *a priori* point of view and immediately applicable, the legal reality of the conditions for the application of the right needs to be established.

In this step, the theoretical conditions for the universalization of legal normativity will be established. In other words, by accepting the contingency of reality, there will be an influx of theoretical aspects of right, which must be permanently evaluated through the unconditionality of freedom[10]. This seems to be the "concordance" or "consistence" (cf. KrV B186) between the law of freedom and the coercion mentioned by Kant:

> The law of a reciprocal coercion necessarily in accord (emphasis add) with the freedom of everyone under the principle of universal freedom is, as it were, the *construction* of that concept, that is, the presentation of it in pure intuition *a priori*, by analogy with presenting the possibility of bodies moving freely under the law of the *equality of action and reaction*. In pure mathematics we cannot derive the properties of its objects immediately from concepts but can discover them only by constructing concepts. Similarly, it is not so much the concept of right as rather a fully reciprocal and equal coercion brought under a universal law and *consistent* (emphasis added) with it, that makes the presentation of that concept possible (MS 6:233).

Kant distinguishes between the *concept* of right, – what can be indicated as being the initial possibility of right – from its *presentation*. Presentation of that concept requires *pure intuitions*

[10] In discussing the factual closure of humanity on Earth's surface, Pinzani (2022, p. 205) highlights that "no matter how metaphysical [pure] the principles of law may be, they cannot neglect this empirical fact". Pinzani repeatedly emphasizes that, for Kant, human experience is an essential condition for the application of "rational right". Kant already elucidated this aspect in his *Doctrine of Right* in MS 6:205 and ss., but Pinzani goes further, clarifying and deepening this idea, albeit in a preliminary manner, remaining in the initial step of coercion proposed before. This article expands this aspect of the Kantian doctrine, detailing the application of legal coercion with the greatest possible concreteness.

(space and time) and to make his point, Kant resorts to the analogy of the physical law of the equality of action and reaction. Through this analogy, it is demonstrated that the possibility of coercion – *a priori* – does not have conditions to measure the quantity and quality that will represent the coercion of the right. The spheres of freedom resulting from that analogy demand the objectivity of reality.

That is why "reason has taken care to furnish the understanding as far as possible with a priori intuitions for constructing the concept of right" (MS 6:233). Only after verifying the theoretical conditions for the violation of freedom in space and time, that is, the practical-theoretical establishment of the condition for applying coercion, will the analytical formula of coercive right receive a practical-normative content *a posteriori*. That initial *a priori* content will now receive an a posteriori specification with empirical contours relatively established – such as *beati possidentes*. Here a particular claim of right may be offered by experience, though does not yet have the unconditional force of reason, but a mere expectation about this force. Such a claim can come from legislation, court decisions, decrees, contracts, or merely *a priori* notions, such as the claims of fundamental rights that, in a Kantian language, can appeal to *a priori* objects as a basis (common possession, general will, humanity itself, kingdom of ends, etc.).

However, the claim will not necessarily correspond to the final coercive right – just like the problem of the quantity and quality of *beati possidentes*. As the exercise of a right always takes place in relation to the other, the recipient has the right to the due process of law – just like the role of the universal will for peremptoriness of property. For this reason, the calibration of the result of the analogy of the physical right of action and reaction, which accepts the contingency of reality, can result in coercion that is not exactly what was initially claimed. This is either from legislations, verdicts, decrees, contracts, or, precisely to the point, from a merely *a priori* perspective.

This seems to be the result of the "construction of the concept of right" that will allow its "presentation" subject to and "consistent" to the universal law, that is, freedom. Once the process of legal justification is passed and the theoretical conditions for application are established, the "coercion necessarily in accord (to the concept of right)" will allow affirming the necessary application of the right. That is the necessary application of coercion. Hence, there will be the necessary objectivity of legitimation, reciprocal, egalitarian, and proportional. Therefore, the right remains coercion, even if the general *a priori* level of this statement needs to be specified in order for it to be legitimately applicable, that is, to bind the agent from a real point of view.

c) Legal necessity: violation of right → coercive right = objective basis. Final step

After the real claim step, there will be an "objective basis" for "exercising the right (before reason and before a court)" (MS 6:236). But this basis needs to be validated from a practical point of view. As Kant says when dealing with the right of necessity and the problem of the subjectivity of the agent, what "someone by himself recognizes on good grounds as right will not be confirmed by a court" (MS 6:236). What the agent thought by himself/herself as something unjust, can be obtained "indulgence" before the court. This is precisely the adequacy of reality to the competence or normative authorization derived from the justification of coercion, for what a person thinks of as his/her right may not necessarily correspond to what is objectively a right. As the claim of "his/her right" is nothing more than the imposition of the "duty" that the other ought to have already fulfilled, the procedural aspect involving reality is essential for the right of coercion to legitimize this claim.

Returning to the *Doctrine of Right* example, the creditor can claim a charge of USD 15,000.00, to be paid through *animals*. *A priori*, coercion would be imposed by stating the following: "You must have observed your duties in not harming me, which are represented in quantity X and quality Y and, for not having observed them, you will be obliged by the authority to fulfill them". It is important to note the *indetermination* of what could represent the boundaries of the duties of not harming the other. The argument of analyticity proposes that the second part of the statement (coercion/predicate) would derive intrinsically from the first (right/subject). This is correct if, on an *a priori* level, considers that the agent's right means, at the same time, the forced execution of something *still undefined*. At the *a priori* level, the statement seems legitimate – remembering that there is an initially legitimizing *a priori* content –, but from the real point of view it does not yet. How to charge someone without knowing *exactly* what to charge? There is a legitimate initial claim at a certain level, but it still needs to be better instructed in another.

In the *individual* view of the creditor, the undefined quantity and quality of what would objectively represent his/her right should coincide with that initial claim of USD 15,000.00, in animals. It is to say: "You must have observed your duties not to harm me, which are now represented in a charge of USD 15,000.00, through animals and, because you have not observed them, you will be obliged by the authority to fulfill them". However, for its legitimation, when passing through the procedural aspect that involves reality, the structure *can* receive contents *a posteriori* identical or different from what was initially claimed. Accepting the contingency of reality there is always the possibility that the constitution of the contract was wrong, the values

were incorrectly noted, the arrears were not constituted, and so on, all real factors that imply the boundaries of coercion or even its very existence. If there is no validation of the initial claim, it will be the same as saying that the "private horizon" of unilateral choice, that is "particular and conditioned" (Log 9:41), is absolutely right, which is not immediately obvious.

In this sense, the objective validation of the claim cannot result from a unilateral and private will. It must be guided by a will strong enough to endow coercion with legitimacy, that is, by practical reason. And for that, the participation of the recipient of the coercion is required, who will be able to defend himself/herself by demonstrating the deficiencies of the unilateral will – and even being able to demonstrate its total wrongness. Their participation at this point resembles the necessary validation of the *beati possidentes* by the universal will, which also represents the notion of the other in the political process of defining property. Having verified the conditions for the application of coercion and the participation of the recipient, correcting mistakes of the unilateral choice, the statement could be: "You must have observed your duties in not harming me, which are now represented in an indemnity of *USD 10,000.00* to be paid in *cash* and, for not having observed them, will be obliged by the authority to fulfill them". Although the right was confirmed, the quantity was reduced by USD 5,000.00 and the quality was changed to cash. It could even be proven the creditor was totally wrong by zeroing out those claims as such: X = 0 Y = 0.

We return to the conceptual equation *a priori*: "right is coercion". One notes that the definition of right is still the same. But now the statement is provided with an objective basis established from practical and theoretical elements that must normatively adjust reality. So, right is coercion represented in the exact contents processed based on a universal law of freedom. No more, no less. In this sense, the contract, the decree, the judicial decision (sentence/verdict), and the legislation have already gone through a process of legal justification in their own levels of processing (negotiable, executive, judicial, legislative, etc.) and have an objective basis.

The final step takes a universal normativity that comes from the initial step and is weighted to the theoretical-practical condition of the intermediate step, all this based on freedom. If the ponderation meets the initial step, then that particular result is as universal as the first step. Therefore, the *a priori* conclusion is discernible through the procedure, not as a singular case, but as contained in the universal under a certain condition. In other words, evaluating the singular result as contained in the universal. That is, namely, everything is contained in a universal and is determinable according to universal rules, and is precisely comprehended in the principle of *rationality* or *necessity* (*principium rationalitatis sive necessitatis*, Log 9:120). Legal coercion is that which has been subsumed to the universal, determined by rationality and therefore producing

rationality. Especially in comparison to its uses, that "are to be assessed as like universal one" (Log 9:103). They certainly started with *a priori* comparatively *weak* claims, but after their later specifications, at the end of the procedural approach, they bring with them the final result with a *strong* normativity. In other words, this is the category of "legal necessity". With that, it is possible to identify levels of bonds – and, by consequence, levels of determination of choice until it is a complete one in a more concrete way.

This can be exposed analytically, although the final result seems to come from an *a priori* synthetic proposition. The process that endowed the initial claim of right with an *a posteriori* content starts with *a priori* impulse and ends with the unconditional assertion of that right, which "the proof [...] can afterwards be adduced, in a practical respect, in *analytically* way" (MS 6:255, emphasis added). After the approach, when the agent claims to "have a right", he/she is saying that he/she has the authorization or competence to charge the duty of the other to pay him the USD 10,000.00, in cash. In this case, the creditor's right (subject) means the same as, *e.g.*, the coercion of judicial blocking of the debtor's bank accounts (predicate) to pay the debt. After the validation of its content by the universal law of freedom, the claim whose predicate was previously undefined, is now determined. It is to consider that the creditor, when claiming his/her right, already had in mind (was c*onceivable*, MS 6:232) the claim of the judicial blocking of the debtor's bank accounts, but now, with *much more reason* and *clarity*. In other terms, it was implicit. Occurs the development of the undefined content of the predicate of the concept, with all its consequences. That was impossible to anticipate in *a priori* terms, it is clear now (KrV B209; Log 9:111). This is because now it has an objective base of reason, different from the merely subjective one thought individually, even from an initial *a priori* perspective.

The final step of coercion resembles the move made by Kant to define properties justified by a *synthetic a priori* proposition (civil State) (MS 6:250). Its circularity also resembles the *circular* procedure of original land acquisition (apprehension, declaration, and appropriation, MS 6:258-9). In both cases, claims begin *a priori*, receive initially relative material content – "with a view" to the civil State (MS 6:264) –, but to be defined (peremptoriness), it is necessary a new unconditionally force *a priori* in a kind of review of their content. There is a collective universal force operating after its normative validation.

Legal necessity represents the unconditionality of pure practical reason *determination* and it must be fulfilled regardless of any empirical motivation of the agent. That is to say, legal coercion must be applied regardless of the empirical aspects involved in its execution, the particular motivations of the agent, or the purity of intention. In a parallel, it would be equivalent to the

assertion of the boundaries of *legal possession* (here, of course, coercion) by "*leaving out* empirical conditions, as it is justified in doing by the law of freedom" (MS 6:255). Its legitimation derived from theoretical conditions validated by universal freedom that now has unconditional force. The "practical-theoretical" objective basis of coercion now was established both for the judicial collection of the creditor in the example provided before and for other forms of addressing coercion (legislation, decrees, contracts, etc.).

This justifies why compliance with coercion must not be restricted by material aspects such as economic reasons – *e.g.*, the alleged "reserve of the possible" in which Brazilian State action for social rights already established in legislation is weakened for economic reasons. It also explains why there is so much illegitimacy in a State that, in general, is not successful in enforcing its legislation, such as the Brazilian State. For example, item VII of Article 153 of the Brazilian Federal Constitution stipulates that it is the responsibility of the Federal Union to "institute taxes on" "large fortunes [wealthy], under the terms of a complementary law". In other words, it is determining the State to coercively tax the wealthy through another law, which is naturally reflected in the efficiency of social rights. However, more than thirty-five years after the enactment of the Brazilian Constitution of 1988, the aforementioned complementary law that would regulate tax collection has never been enacted by Congress. If one does not focus on the ideological issues involved in this type of topic, the main arguments for non-regulation are based on economic reasons, such as the economic instability coming from the possible flight of capital abroad. By the circular procedural approach presented here, for economic reasons, there is a violation of the unconditional legal necessity already inscribed by the constitutional legislative process.

Since the laws (or decrees, judgments, contracts, etc.) carry with them their objective basis, their non-compliance, regardless of the reasons, entails a violation of the unconditionality of the law. This reveals that legal efficiency is connected with the legitimacy of a State. Against Ripstein (2008, p. 228; see also 2009a, p. 168-169), it is not mere "mechanical vocabulary". If the legal justification procedure starts with the conceptual and *a priori* statement that the right is coercion (initial step), after identifying the violation of the right as a theoretical condition for its application (intermediate step), normatively ratifying that right is coercion (final step), the non-execution of coercion is the same as the non-fulfillment of the right in its most *fundamental* aspect. In other terms, on *a priori* level. In this sense, the high-income concentration of the great fortunes (wealthy), which intensifies Brazilian social and economic inequality, is a systematic harm to the freedom of the poor, whose constitutional solution, even if partial, would reside in the regulation of those taxes.

5. What could mean the externality of right?

State inertia only allows the systemic framework of violation of freedom to perpetuate itself. In this way, legal inefficiency translates into low levels of preservation of legal freedom and directly violates the concept of right. Therefore, it translates into theoretical reasons that substantially affect practical reason, which is inconsistent with the primacy of practical reason over theoretical reason. An efficient right is not merely a matter of legal technique, but also has a direct relation with the levels of legitimacy and justice of a State. If this is so, the efficiency of right cannot be considered something merely empirical. Hence, a normative approach is required, especially to the assessment of the reality, more precisely about what could be called the *externality of right*. This is exceptionally important for the intermediate step of coercion which, as far as can be seen, plays a fundamental role in a possible legal and rational determination of choice (*Willkür*), implicating the argument of the maxim. Unfortunately, for obvious reasons we will need to see this at another moment.

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