The Priority of the Right in Kant’s Ethics

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For Kant the right has priority over the good – at least that is how he is usually interpreted. The origin and Kant’s explicit statement of the doctrine of the priority of the right is in the second chapter of “The Analytic of Practical Reason” in the Critique of Practical Reason: “On the concept of an object of pure practical reason”, where Kant writes that the concept of good and evil must not be determined before the moral law (for which, as it would seem, this concept would have to be made the basis) but only (as was done here) after it and by means of it [CPPr 5: 62 f.].

Yet, Allen Wood has recently claimed that Kant accords the good priority over the right because in The Doctrine of Virtue he grounds our duties in the promotion of ends:

Because Kant bases all specific ethical duties on our virtuous commitment to ends, within the system of ethical duties he grounds the duty to act in certain ways exclusively on the promotion of ends. In the language of twentieth-century Anglophone ethical theory, this means that, within the system of duties, he holds to the priority of the ‘good’ over the ‘right’, and is therefore a ‘consequentialist’ rather than a ‘deontologist’ in the main senses those terms now have for moral philosophers. But, of course, the fundamental principle on which Kant grounds ethics is not consequentialist. This points to the importance of distinguishing the fundamental principle of an ethical theory from the style of reasoning it recommends in ordinary deliberation. We may (as Kant does) advocate consequentialist reasoning in much moral deliberation without accepting a consequentialist foundation for morality.

Did Kant then shift from the priority of the right in the Groundwork and the second Critique to the priority of the good in the Doctrine of Virtue? If not, does the fault lie in Wood’s interpretation of the Doctrine of Virtue or in the common reading of the earlier works: Is the right prior to the good in the Doctrine of Virtue too or is the good prior to the right even in the Groundwork and the second Critique? How does this affect the

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traditional deontological and the recent teleological and consequentialist readings of Kant as well as his relation to virtue ethics? In the following paper I will try to answer these questions.

I.

I begin with Rawls's famous account of the priority relation between the right and the good. Rawls first mentions the priority of the right in *A Theory of Justice*. There the sentences which clearly express what the priority of the right amounts to are the following:

- Conceptions of the good have to conform to what the principles of justice require.
- The principles of right, and so of justice, put limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one's good.
- Men's desires and aspirations are restricted from the outset by the principles of justice which specify the boundaries that men's systems of ends must respect.
- Certain initial bounds are placed upon what is good and what forms of character are morally worthy, and so upon what kinds of persons men should be.

What these sentences come down to is variously expressed as:

- The good is not defined independently of the right.
- The right determines permissible and impermissible conceptions of the good.
- The right constrains the good.

Accordingly, the priority of the good means:

- The good is defined independently of the right.
- There are no impermissible conceptions of the good.
- The good is not constrained by the right.

What precisely does it mean that the good is defined (not) independently of the right? As a fairly uncontroversial point I take it that some goods, e.g., pleasure, preference satisfaction, etc., are non-moral goods. Non-moral goods are defined independently of the right because they can be established as goods without recourse to conceptions of the right. Hedonism, e.g., which tries to establish that pleasure is the sole intrinsic good is a theory of the non-moral good of which amounts to the same, a non-moral theory of the good: arguments for and against hedonism do not turn on moral considerations, and theories of the right cannot strengthen or weaken the case for hedonism. Most non-moral goods are personal goods, i.e., goods which promote the well-being of individuals, like, e.g., the goods on Griffin's list of prudential goods that are valuable for every human life and components of a good life: accomplishment, the components of human existence (which include among other things freedom from pain and anxiety, autonomy and liberty), understanding, enjoyment, deep personal relations. These non-moral goods must be distinguished from moral goods (which, like justice and fairness, are often structural goods as opposed to the non-moral personal goods). Moral goods cannot be established as goods without recourse to conceptions of the right and hence cannot be defined independently of the right. With things are good (our judgments of value) as a separate class of judgments intuitively distinguishable by common sense, [...] Second, the theory enables one to judge the goodness of things without referring to what is right" (Rawls, 1999, p. 22).


5 I cannot argue here for the distinction between the moral and the non-moral good. It is an intuitively plausible distinction which underlies most accounts of utilitarianism and consequentialism. See, e.g., how Darwall begins his characterization of consequentialism: "Consequentialism begins with the idea that there are values that are prior to morality. Even if there were no moral right and wrong, some things would still be good and others bad. The pain and suffering caused by a cataclysmic earthquake, for example, are bad things, regardless of any relation to vice or misconduct. They are bad things to happen, bad states of the world. [...] Both the agent-relative and the agent-neutral disvalue of pain are independent of morality, [...] so both are called ‘nonmoral’. [...] A fundamental tenet on which all consequentialist moral theories agree is that the moral rightness and wrongness of acts is determined by the *nonmoral value of relevant consequences* (Stephen Darwall, 2003, "Introduction", in: Stephen Darwall (ed.), *Consequentialism*, Oxford: Blackwell, pp. 1–7, at p. 1 f.).

6 This point is not uncontroversial. One might hold that not every moral consideration involves a conception of the right and that even though moral goods are not defined independently of moral considerations, they may still be defined independently of conceptions of the right. I cannot discuss this matter here and simply assume that moral goods cannot be defined independently of a.

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3 According to Rawls the definition of the good independently of the right "means two things. First, the theory accounts for our considered judgments as to which
this distinction between moral and non-moral goods in place we can
define what it means that an ethical theory defines the good independently or not independently of the right. A necessary condition
for the good to be defined independently of the right is that the theory of
the good does not include moral goods. If the exclusion of moral goods is
also regarded as a sufficient condition we get the following first account of
the definition of the good independently/not independently of the right.

- The good is defined independently of the right if the theory of the
good includes only non-moral goods.
- The good is not defined independently of the right if the theory of the
good includes moral goods (besides non-moral goods).

A few examples might be helpful. First, take W. D. Ross’s theory of the
good which consists of four things that are intrinsically good: “virtue,
pleasure, the allocation of pleasure to the virtuous, and knowledge (and in
a less degree right opinion)”.7 Since virtue8 and the allocation of pleasure to
the virtuous9, are moral goods Ross does not define the good independently
of the right. Natural law theories, on the other hand, define the good independently of the right because their list of goods
consists only of non-moral goods: life, knowledge, play, aesthetic
experience, sociability (friendship), practical reasonableness and
religion.10 Classical hedonistic utilitarianism also defines the good inde-
pendently of the right and differs in this respect from consequentialist
theories which include distributive justice among the goods to be
maximized. But granting this distinction between defining the good
independently and not independently of the right, why should it be
appropriate to call this a difference in the priority of the right or the
good? In what sense of “priority” does the good have priority if it is
defined independently of the right? We may find an explanation when
we remember that Rawls’s talk of the priority of the right/good in A
Theory of Justice follows his now famous classification of ethical theories
in terms of how they define and connect the right and the good. He
assumes that by this criterion all ethical theories can be divided into two
classes:

A theory is teleological if and only if

- the good is defined independently of the right, and
- the right is defined as that which maximizes the good (Rawls 1999,
  pp. 21 f.).

Deontological theories are defined as non-teleological theories, hence as
theories where

- the good is not defined independently of the right, or
- the right is not defined as that which maximizes the good.

Usually these definitions are taken to correspond to the priority of the
good and the priority of the right, respectively. The idea behind the
definition of the good independently of the right in teleological theories is
that these theories first define the good and then define the right as the
maximization of the previously defined good. The good is thus defined
literally prior to the right. Because it is defined prior to the right, the
good cannot include moral goods (since moral goods cannot be specified
without reference to the right). Therefore, if the good is defined prior to
(i.e., before) the right it must be defined independently of the right in the
sense defined above.

This sense of the priority of the good in teleological theories is
untenable. To begin with, teleological theories do not need to define the
good first and the right afterwards. They might as well begin with a
definition of the right, namely that the right consists in the maximization

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8 “The first thing for which I would claim that it is intrinsically good is virtuous
disposition and action, i.e., action, or disposition to act, from any one of certain
motives, of which at all events the most notable are the desire to do one’s duty,
the desire to bring into being something that is good, and the desire to give
pleasure or save pain to others” (Ross 1930, p. 134).
9 “Thus the pleasures of which we can say without doubt that they are good are
[... ] the pleasures of moral beings that are deserved and are either realizations of
good moral dispositions or realizations of neutral capacities (such as the pleasures
of the senses)” (Ross 1930, p. 138).
10 This list is taken from John Finnis (1983, Fundamentals of Ethics, Oxford: Oxford
University Press, 50 f.), Natural law theorists do not agree on a list of
Introduction to Natural Law Ethics, Georgetown: Georgetown University Press,
pp. 6–25), e.g., defends the following list: life, family, friendship, work and play,
experience of beauty, knowledge and integrity.
of the good, and then define the good.\footnote{This point is also made in Roger Crisp's entry on deontology in the Oxford Companion to Philosophy: "[Utilitarianism] can suggest that the right is indeed prior to the good, in the sense that utilitarians can state that it is right to maximize the good, whatever the good turns out to be" (Rog Crisp, 1995, “Deontological Ethics” in: Ted Honderich (ed.), The Oxford Companion to Philosophy, Oxford: Oxford University Press, pp. 187 f., at p. 188).} Having started with this conception of the right, one needs to find out which are the intrinsically good things that ought to be maximized. Whether one begins with a theory of the good or a theory of the right is neither here nor there: a theory of the non-moral good is part of any plausible moral theory. It is logically independent of theories of the right and may be established before or after the theory of the right. Whether a moral theory has room for moral goods besides non-moral goods does not depend on the order of justification of the theories of the good and the right. Rather, it depends on what kind of theory of the right the moral theory consists of. If, like in utilitarianism, the theory of the right consists of one principle only, viz. the maximization principle, the moral theory cannot include any moral goods because the inclusion of moral goods would make the theory circular. This point has been made by Frankena who claimed that in utilitarianism the moral quality of actions can only depend on the non-moral value of what they bring about because: "For the moral quality or value of something to depend on the moral value of whatever it promotes would be circular."\footnote{William K. Frankena, 1973, Ethics, Second Edition, Englewood Cliffs, N. J.: Prentice-Hall, p. 14.} There is indeed a circle if one holds that the moral value of an outcome depends on the right and then claims that the right depends on the moral value of the outcome. If the moral good depends on the right (i.e., if what counts as a moral good depends on the conception of the right) and if the right consists only in the requirement to maximize the moral good, then it is impossible to know what it is that one ought to maximize. If the moral good is not identifiable independently of the right and the right, in turn, consists only in the requirement to maximize the moral good, the theory is circular and cannot identify justice or fairness or anything else as a moral good. If, instead, the right consists only in the requirement to maximize the non-moral good one knows what to maximize (pleasure, for example). But of course, nothing in the theory of the non-moral good compels us to accept only one moral principle in our theory of the right. If we add further moral principles or subscribe to an altogether different set of moral principles which does not include the maximization principle we can without circularity add moral goods to the theory of the good.

To sum up, whether a moral theory's theory of the good consists only of non-moral goods or includes moral goods as well, i.e., whether the good is defined independently or not independently of the right, depends entirely on the theory's principle(s) of the right. Defining the good prior to and therefore independently of the right amounts to nothing more than defining the non-moral good. The definition of the non-moral good is part of any plausible moral theory and decides nothing as to whether there are moral goods besides the non-moral goods. Depending on which theory of the right we subscribe to, we may or may not include moral goods. We may therefore draw the following conclusions: if the priority of the good is understood as defining the good before defining the right, the priority of the good does not entail that the good is defined independently of the right. If the priority of the good is understood as defining the good independently of the right, it remains unclear which sense of "priority" could warrant to refer to the independent definition of the good as the priority of the good. One might even say that, if at all, the right has priority over the good because it is the theory of the right that determines whether a moral theory contains moral goods or only non-moral goods.

What about defining the priority of the right/good in terms of permissible and impermissible conceptions of the good? After all, Rawls's main concern is not whether a theory includes moral goods or not but rather whether a theory distinguishes between permissible and impermissible conceptions of the good. Even in a theory that includes only non-moral goods the selection of which things are to be included into the theory of the good might depend on the theory of the right if the theory of the right excludes some non-moral (alleged) goods as impermissible conceptions of the good. To accommodate this, the above-mentioned account should be amended to the following second account of the definition of the good independently/not independently of the right:

- The good is defined independently of the right if the theory of the good includes only non-moral goods and the selection of these non-moral goods does not depend on the theory of the right, i.e., the theory of the good includes only non-moral goods and there are no impermissible conceptions of the good.
- The good is not defined independently of the right if the theory of the good includes moral goods, or (regardless whether the theory includes
moral goods or not) if the selection of the non-moral goods to be included in the theory of the good is constrained by the theory of the right insofar as some goods are excluded from the list because they are incompatible with the theory of the right. In short, the theory of the good is not defined independently of the right if it includes moral goods or if there are impermissible conceptions of the good.

For Rawls, the paradigm of a theory with no impermissible conceptions of the good is utilitarianism: In calculating the best outcome every pleasure or preference must be taken into account. No pleasures or preferences are ruled out in principle from this calculation. Even the most horrible preferences must be impartially balanced (according to their strength) against other preferences. Whether a horrible preference (like, e.g., the desire to rape someone) may be fulfilled depends on the outcome of the calculation which is determined by the details of each situation and not by considerations of principle.13 If, as a result of this calculation, a preference is not allowed to be fulfilled, this prohibition applies only to the case at hand with no implications for other cases: The preference had to give way to other stronger preferences, but has not been ruled out in principle from consideration and has to be considered again in each newly arising case. In Rawls's theory of justice as fairness, on the other hand, there are some conceptions of the good which are ruled out by the principles of justice as having no value and being wrong in itself: The "pleasure in discriminating against one another, in subjecting others to a lesser liberty as a means of enhancing their self-respect" (Rawls 1999, p. 27) is an impermissible conception of the good that need not (and must not) be considered in moral deliberations. It is impermissible because the first principle of justice demands that "each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others" (Rawls 1999, p. 53) and experiencing the pleasure of discriminating against others necessarily involves a violation of this principle.

This difference between utilitarianism and Rawls's theory seems clear enough. But is it really a difference in kind, a difference between the priority of the good and the priority of the right, a difference that divides ethical theories into two kinds, teleological ones and deontological ones?

That may well be doubted. To see this, let us first define an impermissible conception of the good as a conception of the (moral or non-moral) good which the theory of the right excludes from being allowed to pursue and which need not (and must not) be considered in any deliberations about what is the right thing to do. Preference utilitarianism, which demands the maximization of overall preference satisfaction, places no restrictions as regards the content of preferences, and everything that can be taken as someone’s preference must be taken into account. Even someone’s preference for equal distribution of goods, which runs contrary to the utilitarian goal of maximization, must be considered. However, there is a variant of preference utilitarianism which defines the right in terms of personal preferences only and treats external preferences as impermissible conceptions of the good. Does it make sense to say that in this theory the right has priority over the good whereas in an all-out preference utilitarianism the good has priority over the right? Or take Harsanyi’s requirement that anti-social preferences be excluded from consideration.14 Does Harsanyi accord the right priority over the good? The same question might be asked of Brink’s15 objective utilitarianism. And further, should these theories then be counted as deontological since the priority of the right is typical of deontological theories? Even classical utilitarianism has impermissible conceptions of the good, e.g., equal distribution and retributive punishment (understood as intrinsic, not as instrumental goods). Of course, depending on the theory of the right, moral theories have more or less impermissible conceptions of the good. Maybe there is only one theory with no impermissible conceptions of the good, namely an all-out preference utilitarianism. But to hold that in every theory except preference utilitarianism the right has priority over the good was surely not the intended meaning of the priority of the right. However, one could indeed say that in every moral theory, except virtue ethics, the right has priority over the good because it is the theory of the right that determines which, if any, conceptions of the good are

13 Of course, we may know in virtue of empirical generalizations that some preferences will nearly always be outweighed by other preferences and therefore need not be considered each time anew. But this exclusion from consideration is justified by empirical, not moral, considerations.

14 "Some preferences, which may very well be their ‘true’ preferences under our definition, must be altogether excluded from our social-utility function. In particular, we must exclude all clearly antisocial preferences, such as sadism, envy, resentment, and malice" (John C. Harsanyi, 1977; "Morality and the Theory of Rational Behaviour", in: Amartya K. Sen and Bernard Williams (eds.), Utilitarianism and beyond, Cambridge: Cambridge University Press 1982, pp. 39–62, at p. 56).

impermissible. As with the other two conceptions of the priority relation between the right and the good, this conception cannot give a plausible account of the priority of the good. Furthermore, the equation of the priority of the right with the existence of impermissible conceptions of the good does not indicate a useful distinction between two kinds of moral theory. It is rather a matter of degree how many impermissible conceptions of the good a theory has. A very specific theory of the right (which, like Rawls’s theory, for example, refers to equal basic liberties) has more impermissible conceptions of the good than a less specific theory of the right (which refers only to pleasure).

Although the three conceptions of the priority relation between the right and the good as considered so far are not very helpful, we may ask whether, according to these conceptions, Kant gives the right priority over the good. As regards Kant’s theory of the good I rely on its Rawlsian interpretation. Rawls distinguishes six conceptions of the good in Kant’s theory:

1. Our conception of happiness.
2. The fulfillment of true human needs.
3. The fulfillment of permissible ends, i.e., ends that respect the limits of the moral law.
4. The good will.
5. The ideal of a realm of ends, i.e., the good as the object of the moral law.
6. The complete good.

The first conception of the good is given by “unrestricted empirical practical reason” and must satisfy only “various principles of rational deliberation that characterize the hypothetical imperative”. It is the only conception of the good that is “entirely independent of the moral law, since it is the rational without restriction” (Rawls 2000, p. 231). The second conception of the good is designed to ensure that the moral law has objective content and is “designed expressly to be used at step (4) of the CI-procedure” (Rawls 2000, p. 222). This conception’s dependence on the right is not obvious, since the specification of true human needs is independent of the right: what belongs to our true human needs is not determined (or restricted) by theories of the right but by theories of human nature. Yet the fact that true human needs are to be included into the theory of the good is a requirement of the CI-procedure and makes this conception of the good dependent on the theory of the right. The third conception of the good is the first which is without doubt not independent of the right: which ends are permissible and which impermissible cannot be determined without a conception of the right. In Kant’s theory the formula of humanity as end in itself would exclude as impermissible any conception of the good which involves using people merely as a means. The fourth, fifth and sixth conception of the good evidently presuppose a conception of the right. Hence, Kant does not define the good independently of the right and therefore accords the right priority over the good. Since there is in this respect no relevant difference between Kant’s theory of the good in his earlier works and in the Doctrine of Virtue the priority of the right is true of the former and of the latter. Consequently, Wood’s verdict that in the Doctrine of Virtue the good is prior to the right is incompatible with Rawls’s definition of the priority relation between the right and the good. But Wood evidently employs a different conception of the priority of the right/good than Rawls. According to this conception, which is at least as widespread as Rawls’ conception, the good has priority over the right if the right is somehow derived from the good. The right has priority if the principles of the right are justified without reference to or without presupposing principles of the good. It is commonly held that in this sense Kant and deontological theories give priority to the right whereas consequentialist and teleological theories give priority to the good. Recently, some Kant scholars have challenged this deontological reading of Kant in favour of a teleological reading which rejects the priority of the right. As an example of the traditional reading I will now discuss how Schneewind contrasts the priority of the right in Kant with the priority of the good.

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17 Rawls’s justification for ascribing this conception of the good to Kant is in Rawls 2000, 173 f., 221 f., 232–34.
18 Kant mentions permissible ends in the Doctrine of Virtue [MM 6: 388 and 450].
II.

The two opposing views can be compared in the following table:

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<thead>
<tr>
<th>Priority of the Good</th>
<th>Kant: Priority of the Right</th>
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<tbody>
<tr>
<td>(1) The goodness of states of affairs that can be brought about by human action is basic.</td>
<td>(1*) The concept of the good agent is basic.</td>
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<tr>
<td>(2) Being happy or having fully developed talents is intrinsically good.</td>
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<tr>
<td>(3) A good agent is one who habitually and deliberatively does right acts.</td>
<td>(3*) A good agent is one whose will is wholly determined a priori by the moral law.</td>
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<tr>
<td>(4) A right act can be defined as one that brings about good states of affairs (to the greatest extent possible).</td>
<td>(4*) It is necessarily true that whatever acts a good agent does are right acts.</td>
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<tr>
<td>(5) We must know what is good before we can know what acts are right.</td>
<td>(5*) We do not discover what is right by first finding out what is good.</td>
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<td>(6) Right acts have only instrumental value.</td>
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<tr>
<td>(7) The goodness of a state of affairs occurs independently of the will of any finite moral agent (since that kind of state of affairs is intrinsically good because of the very nature of that kind of state of affairs).</td>
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<td>(8) If an agent must will to pursue good states of affairs, she is not self-legislating.</td>
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(9) Whatever states of affairs a good agent brings about are good states of affairs.

(10) Only outcomes of right acts can count as good states of affairs.

(11) We cannot determine what states of affairs are good without first knowing what is right.

(12) In order to know what is right all we need to know is what the perfectly good agent would do.

To get a precise idea of each opposing view, we have to examine this contrast more closely. First, look at claims (4*) and (9) of the Kantian view. Taken together they yield:

(9*) Whatever states of affairs a right act brings about are good states of affairs, i.e.,

Every outcome of a right act is a good state of affairs.

Since (10) is the converse of (9*) and can be rephrased as

Every good state of affairs is the outcome of a right act.

we get:

(G) A state of affairs is a good state of affairs if and only if it is the outcome of a right act.

(G) can be taken as a definition of a good state of affairs. It presupposes that a right action can be defined independently of the notion of a good state of affairs, or else the definitions of a good state of affairs and right action would be circular. According to Schneewind’s interpretation, then, Kant’s theory has the following formal structure regarding the relation between the right and the good:

- Right action: Action with the property $P$ (where $P$ can be specified independently of the notion of a good state of affairs, e.g., being allowed by the Categorical Imperative).
- Good state of affairs: Outcome of a right action.

The opposing view reverses this structure and begins with a definition of a good state of affairs and then defines a right action in terms of its relation to a good state of affairs:

- Good state of affairs: State of affairs with the property $Q$ (where $Q$ can be specified independently of the notion of a right action, e.g., a state of affairs with the maximum amount of pleasure).
- Right action: Action whose outcome is a good state of affairs.

Instead of (G) this view holds:

(R) An action is right if and only if it brings about a good state of affairs.

Since this second view is the consequentialist view, Schneewind seems to describe the usual contrast between Kant and consequentialism.

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20 The claims are taken literally or almost literally from Schneewind, 1992, p. 316 f.
Consequentialism: Priority of the good

Kant: Priority of the Right

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Right action: Action whose outcome is a good state of affairs

Action with the property P (identifiable independently of the notion of a good state of affairs)

Good state of affairs: State of affairs with the property Q (identifiable independently of the notion of a right action)

Outcome of a right action

Interestingly (as can be seen by looking at (4) and (9)), both views hold that a right action results in a good state of affairs, but each view attaches a different meaning to this:

- On the consequentialist view a right action results in a good state of affairs because that is how a right action is defined: an action is right only if its outcome is a good state of affairs.
- On Kant's view a right action results in a good state of affairs not because that is how a right action is defined, but because that is how a good state of affairs is defined: a state of affairs is good only if it is the outcome of a right action. Apart from right actions there are no good states of affairs.

While on the consequentialist view a good state of affairs need not be the outcome of a right action, on the Kantian view a good state of affairs can obtain only as the outcome of a right action. Taken literally, the Kantian view seems to be plainly wrong. It is a good state of affairs — obtaining independent of any action — that a country has a rich supply of raw materials or enjoys a moderate climate free from natural disasters. The outcome of an earthquake, on the other hand, is a very bad state of affairs. This way of speaking of good and bad states of affairs obtaining independently of any actions is natural and unobjectionable. A theory that cannot make sense of the notion of a good or bad state of affairs obtaining independently of any action is deficient.

A consequence of Kant's view, as it is interpreted by Schneewind, is that the consequences of actions can play no role in moral deliberations. Of course, in the past Kant was often credited with a complete disregard for consequences, but today's Kantians are eager to show that this is a misunderstanding of Kant's ethics. Yet, if consequences are relevant in moral deliberation, they must be relevant as good or bad consequences, i.e., as good or bad states of affairs. But if one cannot tell good from bad states of affairs independently of right actions, consequences cannot be relevant in determining the right action. This entails that it does not make sense to hold that a prima facie wrong action may be right because it will prevent a disastrous consequence. Since the notion of a disastrous consequence, i.e., a very bad state of affairs, which can be specified prior to right actions is not available to Kant, it is conceptually impossible for him to say that the goodness or badness of a state of affairs can in some way determine whether an action which brings about this state of affairs is right or wrong. One cannot argue, e.g., that lying is wrong under ordinary circumstances, but right in this special circumstance where it is the only means to prevent that someone is being murdered. Consequently, Schneewind's interpretation of Kant entails a moral absolutism, according to which an action is right under every circumstance, no matter what the consequences. A further consequence of Schneewind's interpretation is that the so-called paradox of deontology is not applicable to Kant's theory. The paradox arises from "the rather simple thought that it can never be right to prefer a worse state of affairs to a better":

we ask if it is not paradoxical that it should ever be morally objectionable to act in such a way as to minimize morally objectionable acts of just the same type. If it is a bad state of affairs in which one of these actions is done it will presumably be a worse state of affairs in which several are. And must it not be irrational to prefer the worse to the better state of affairs?23

This consequentialist objection against deontology has dominated the debate between deontology and consequentialism in recent years. Deontologists must address this objection, but on Schneewind's interpretation of Kant the objection is not even formulable because there is no notion of a good or bad consequence or state of affairs independent of right action. A real and deep conflict between deontology and consequentialism would thus be explained away.

Schneewind presents his account of the two opposing views as if these were the only possibilities. But that is obviously not the case. The Kantian and the consequentialist view do not exhaust the possibilities to relate the right to the good. They rather present two extreme positions compared

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21 The consequentialist definition of a right action as an action that brings about a good state of affairs entails that a good state of affairs cannot be the result of a wrong action. It is either the result of a right action or of no action at all.

with the following two more moderate views, both of which acknowledge the notion of a good state of affairs specifiable independently of right actions:

**Deontology 1:**
- Right action: Action with the property \( P \) (identifiable independently of the notion of a good state of affairs)
- Good state of affairs: State of affairs with the property \( Q \) (identifiable independently of the notion of a right action).

This view would hold, in agreement with the consequentialist view, that good states of affairs do not depend on right actions but would disagree with both the Kantian and the consequentialist view in allowing that
- (contra Kant) not every right action results in a good state of affairs: A right action may bring about a bad state of affairs,
- (contra consequentialism) not every action that brings about a good state of affairs is a right action: A good state of affairs might be the result of a wrong action.

If right actions and good states of affairs are defined independently of each other, these relationships between right actions and good states of affairs are only to be expected. It would be a peculiar coincidence if every right action would bring about a good state of affairs or if no wrong action could bring about a good state of affairs. Some might object to the view that a wrong action could bring about a good state of affairs and would want to hold that, e.g., although the well-being of my family is *ceteris paribus* a good state of affairs, it is *not* a good state of affairs if it was made possible by first committing a wrong action, like robbing a bank or murdering someone to inherit the money. Those inclined to this view might want to modify *Deontology 1* to *Deontology 2*:
- Right action: Action with the property \( P \) (identifiable independent of the notion of a good state of affairs)
- Good state of affairs: State of affairs with the property \( Q \) (identifiable independent of the notion of a right action) and not the result of a wrong action.

This view would, again in agreement with the consequentialist view, hold that there might be good states of affairs independently of right actions – as long as they are not the result of wrong actions. And it would, like *Deontology 1*, allow that a right action may bring about a bad state of affairs. But, unlike *Deontology 1*, it would claim that no wrong action can result in a good state of affairs.

The four views can be compared in the following table:

<table>
<thead>
<tr>
<th>Priority of the good</th>
<th>Consequentialism</th>
<th><em>Deontology 1</em> (Moderate Deontology)</th>
<th><em>Deontology 2</em> (Moderate Deontology)</th>
<th>Kant, Absolutism (Extreme Deontology)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priority of the right</td>
<td>Action whose outcome is a good state of affairs</td>
<td>Action with property ( P^{23} )</td>
<td>Action with property ( P^{23} )</td>
<td>Outcome of a right action</td>
</tr>
<tr>
<td>State of affairs</td>
<td>State of affairs with property ( Q^{24} )</td>
<td>State of affairs with property ( Q^{24} ) and not the result of a wrong action</td>
<td>State of affairs with property ( Q^{24} ) and not the result of a wrong action</td>
<td></td>
</tr>
</tbody>
</table>

We can now, based on Schneewind's account, give a definition of the priority of the right/good:

The right has priority over the good if
- the right is defined without any reference to or presupposing anything about the good, *and*
- the good is defined completely in terms of the right.

The good has priority over the right if
- the good is defined without any reference to or presupposing anything about the right, *and*
- the right is defined completely in terms of the good.\(^{25}\)

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\(^{23}\) *P* is identifiable independently of the notion of a good state of affairs.

\(^{24}\) *Q* is identifiable independently of the notion of a right action.

\(^{25}\) The second condition in each definition is necessary because the two first conditions alone do not exclude each other and can (as in *Deontology 1*) be fulfilled together. Without the second condition one would have to allow that the right has priority over the good and the good has priority over the right, which does not make much sense.
This definition of the priority of the right (good) might be interpreted as meaning that the right (good) is the only26 basic concept. This interpretation actually does not accord with Schneewind’s view, because according to him the concept of the good agent (rather than the concept of the right) is basic in Kant’s theory (cf. claim (1*) above). But this view has its problems: if the good agent is the basic concept, it seems that in Kant’s theory the good, rather than the right is the basic concept – just like in consequentialism, where the good state of affairs is the basic concept. But there is a crucial difference between Kant and consequentialism which precludes this conclusion: in consequentialism the good is basic because a good state of affairs is defined independently of the right and the right is then defined in terms of the good. Correspondingly, only if the good agent is defined independently of the right and the right then defined in terms of the good agent, would the good be the basic concept in Kant’s theory. But that is not the case. According to Schneewind, we are supposed to think of “the good agent as one whose will is wholly determined a priori, and [to] think of the pattern of that determination as the moral law” (Schneewind 1992, p. 316). If we equate the moral law with the right, the good agent is not defined independently of the right and therefore the good is not the basic concept in Kant’s theory. The good agent cannot be the basic concept either: if the good agent is the basic concept in Kant’s theory in the same way as the good state of affairs is the basic concept in consequentialism, the right in Kant’s theory must be defined in terms of the good agent (just as consequentialism defines the right in terms of the good state of affairs). But we just saw that the good agent is not defined independently of the right and therefore cannot be the basic concept. Rather, the right is the basic concept in terms of which the good agent is defined. Maybe Schneewind believes that the right is defined in terms of the good agent when he writes that “[i]n order to know what is right all we need to know is what the perfectly good agent would do” (Schneewind 1992, p. 317).27 But how does the perfectly good agent herself know what is right? She must have a conception of the right that does not depend on the concept of the good agent. And indeed, Kant’s perfectly good agent does have such a conception of the right, namely the Categorical Imperative. Thus, in spite of Schneewind explicitly saying that the concept of the good agent is basic in Kant’s theory, this view must be rejected: the moral law and therefore the right is the basic concept in terms of which the good agent is defined.28

The above-mentioned definition entails that the two priority relations between the right and the good are not contradictions but subcontraries: it is not the case that either the right or the good must have priority. There are theories, like Deontology 1 and Deontology 2 in which neither the right nor the good has priority. Hence, one is not forced to choose between the priority of the good or the priority of the right. Rejection of the consequentialist view does not commit to the view ascribed to Kant. A further consequence of this definition is that the traditional characterization of deontological theories as theories where the right has priority over the good is untenable: as can be seen in the above table, in deontological theories either the right has priority over the good, or there is no priority relation between the right and the good. Furthermore, since most deontological theories, even, as we shall see, Kant’s theory, belong to either of the two moderate versions of deontology, and possibly nobody holds the extreme view which Schneewind ascribes to Kant, Schneewind’s definition robs the priority of the right any significance.

But what’s more, Schneewind does not give a true account of Kant’s theory because Kant does have a conception of the good which is independent of the outcome of a right action.29 Like consequentialists, Kant can regard happiness as good. The only – important – difference is that for Kant it is not unconditionally good. It is good only if accompanied by a good will so that

an impartial rational spectator can take no delight in seeing the uninterrupted prosperity of a being graced with no feature of a pure and good will, so that a good will seems to constitute the indispensable condition even of the worthiness to be happy [G 4: 393].

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26 In theories without a priority relation, like Deontology 1, the right and the good are both basic concepts.
27 This may be taken as a harmless consequence of the claim that whatever acts a good agent does are right acts (Schneewind 1992, 316): if a perfectly good agent always does right acts, we know what is right when we know what such an agent would do.
28 Actually, I cannot see why consequentialists and Kant should have a different concept of the good agent. They both share the same concept of a good agent, and the consequentialist can agree to Schneewind’s claims (3*) and (4*) as well as Kant can agree to claim (3).
29 This conception corresponds to the first two conceptions of the good in Rawls’s account of Kant’s theory of the good.
Thus, the good will and right action (since a morally good person necessarily does right actions) seem to be a necessary condition for something to be good. But still, Kant would not count *everything* that is accompanied by a good will as good. He certainly would not say that the unhappiness of a virtuous person is good – on the contrary. Thus, Kant must have a conception of the good prior to and independently of the moral law – a conception of the good which allows him to distinguish between those states of affairs which can be good if accompanied by a good will and those which cannot be good, even if accompanied by a good will. Another way of saying this is that Kant must have a conception of the non-moral good, the good from a non-moral point of view, and a conception of the moral good, the good from the moral point of view. From this latter point of view a non-moral good state of affairs is good only if accompanied by a good will. If this is true, Kant’s theory must be classified as *Deontology* 2 and does not give priority to the right in Schneewind’s sense.

III.

The reason for thinking it necessary to interpret the priority of the right in Schneewind’s extreme sense and attributing it to Kant lies, I believe, in a very common misunderstanding of consequentialism. Consequentialism need not be interpreted as having only one basic concept, namely the good. The definition of a right action as one that brings about a good (or rather the best) state of affairs does entail neither that the very concept of the right nor that the content of the right (i.e., this definition of a right action) must be derived from the good. Consequentialism can have two basic concepts, the right and the good, and like Sidgwick one may regard the definition of the right as the maximization of the good as a basic (autonomous) intuition of the right that is not derived from a prior concept of the good. This possibility is overlooked because Schneewind, along with many other philosophers, believes that the right is defined as the maximization of the good it is defined instrumentally as means to bringing about good states of affairs such that right actions can only have instrumental value. As Freeman puts it:

30 With reference to Schneewind’s claims in the table above, the misunderstanding is that consequentialists are committed to the claims (6), (7) and (8).

Imperative, one can ask whether, as a matter of fact, obeying these principles is the best means to the maximization of the good. If, instead, the right is defined as the maximization of the good, the above question involves a circle: what is the best means to the maximization of the good? Acting rightly! What is the right action? Maximizing the good? Hypothetical imperative “If you want to maximize the good, act rightly!” and would reduce morality to hypothetical imperatives.

Once it is appreciated that consequentialism is not tied to the view that the right is a derivative concept having only instrumental value one sees that the difference between consequentialism and Kant or deontology is not a difference between the priority of the good and the priority of the right. Both theories employ the same concepts of the good and the right. There is no need to reject consequentialism in order to have an autonomous conception of the right. If the right is not instrumental to the promotion of the good, then consequentialism, too, has an autonomous conception of the right and regards the maximization of the good as a categorical imperative. With regard to Kant’s arguments against the priority of the good in the Critique of Practical Reason, we can draw the following conclusion: if the right in consequentialism is a categorical imperative and not instrumental to the promotion of the good, the right, rather than the good is the determining ground of the will. And that is exactly how Kant understood the priority of the right: the determination of the will by the moral law. We are now in a position to see the priority relation between the right and the good in a different light. In many discussions of the priority relation it is assumed that it describes a fundamental difference between consequentialism and deontology. But in fact, in both consequentialism and deontology the right is prior to the good in Kant’s sense because both maintain that the right is a categorical imperative which we are to obey regardless of our inclinations and our personal good. The difference between the priority of the right and the priority of the good is not the difference between deontology and consequentialism but the difference between what Charles Larmore33, following Sidgwick, has called the imperative view (of modern ethics) and the attractive view (of ancient ethics), or, as one might say, the ethics of duty and the ethics of virtue. Whereas in the ethics of virtue the good life consists in the virtuous life, the priority of the right opens a gap between an agent’s personal good and the demands of morality. This is true of Kantian deontology as well as of consequentialism, where the good to be promoted is not the agent’s own good.

As regards his own conception of the priority of the right, Kant did not change his mind between the Groundwork and the Doctrine of Virtue.

32 Consider instead: what is the best means to the maximization of the good? Acting Rightly! How can I act rightly? Act in accordance with the Categorical Imperative! (Or: Obey the Ten Commandments!)

Thus, although Wood’s claim that Kant “grounds the duty to act in certain ways exclusively on the promotion of ends” may be true, that still leaves Kant on the side of the priority of the right as long as he regards the duty to act in certain ways as a categorical imperative.