

Kant spends the majority of sections 6:320 to 6:336 discussing the nature and duty of the state, as well as those who comprise its authorities. Much of his argument follows naturally from his previously-developed thoughts on government and social contract theory. There is a sovereign who owns everything, but not in a private sense; rather, in the sense that “they belong to him as their supreme commander (by a right against persons)” (6:323). This is consistent with his notion of original acquisition, which asserts that people have rights not to a thing, but rather against others who might want to use or claim that thing. The sovereign, in the Kantian tradition, has a right not to the property or constituent parts of the state, but against those people or things who aim to undermine *his state*. Any type of freedom that an individual may have had in the state of nature, including the freedom to [do] certain things, is forfeit when they consent to live under the rule of the supreme commander. In return, they obtain certain advantages, such as the ability to legitimize property ownership. However, because the sovereign “has taken over the duty of the people” in this way, he now incurs a responsibility to their “protection and care” that he otherwise wouldn’t owe (6:326). Although this requirement is nearly universal, there are a few notable exceptions—one of which applies to children born out of wedlock. Because they came into the world by an illegal means, Kant argues, they are “outside the protection of the law” and therefore not entitled to any civic benefits the sovereign may grant. This means that society can effectively “ignore its annihilation” (6:326). Up until this point, I was starting to appreciate the framework Kant was building out. But infanticide is a reprehensible crime in any context, and I do not find his argument that it can sometime be ignored convincing.

In Kant’s view, actions are “good” insofar as they accord with the categorical imperative, defined as acting only according to maxims that one can will to become universal laws. This principle is the foundation for the socio-political structure of Kant’s state, designed to maintain both the universal principle of right and the innate right to freedom—concepts derived from the notion that each human life is sacred. Yet, within this structure, children born out of wedlock are not subject to state’s protections. Implicit in his conclusion is that they have a diminished moral status. But, not only are they not morally responsible for their own existence, the legal system itself is derived from the universal principle of right. So it does not seem their status can be diminished, either in the objective (within the categorical imperative) or the subjective (within the law) sense. This, I think, is where Kant errs. Rather than questioning his formulation of the state when confronted with the loophole of ignorable wedlock-induced infanticide, he instead addresses the issue by invoking the authority of his own legal theory. The proper solution, when confronted with such a loophole, should be to thoroughly examine the framework that allows it. In this case, the framework is the empirical nature that Kant ascribes to individuals. If a child born outside the law is unable to change their status, how can we justify immigration? Does this not involve a similar status change, from non-citizen to citizen? Further, in the case of the child, there exists an element of tacit consent. The child did not ask to be born illegally; they did not ask to be born at all. If the sovereign is responsible for the actions of their citizens, then they are responsible for the product of those actions. It follows that a child born out of wedlock is owed the same protections as any other citizen of the state.