Force and Freedom

Kant's Legal and Political Philosophy

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CHAPTER 1

Kant on Law and Justice: An Overview

POLITICAL PHILOSOPHY is often thought of as an application of general moral principles to the factual circumstances that make political institutions necessary. For example, John Stuart Mill seeks to justify liberal institutions by showing that they will produce the best overall consequences, given familiar facts about human nature and circumstances; for John Locke, institutions can only be justified by showing that they are the results of individuals exercising their natural prepolitical rights in response to the "inconvenience" of a state of nature.

Kant might be expected to adopt a parallel strategy, applying the Categorical Imperative to questions of political legitimacy, state power, punishment, or taxation, or perhaps viewing the state as a coordinating device that enables people to carry out their moral obligations more effectively. Alternatively, Kant might be expected to stand back from such questions, and recommend indifference to worldly matters of politics. Kant is often taken to understand morality exclusively in terms of the principles upon which a person acts. As such, it might be thought to depend contingently or not at all on the kind of society in which the agent found herself.

Such expectations quickly lead to disappointment: Stuart M. Brown's assessment is harsher than many, but representative both in its conception of Kant's project and in the criteria of its success:

> For all Kant needs to do in order to complete his program in philosophy of law is to show how the Categorical Imperative may be used to test the moral status of the rules in a body of positive law. If the test is met, the law is what it ought to be. If the test is failed, the law is morally defective and ought to be changed. At this point in the argument, Kant's task seems almost certain of accomplishment. . . . But in fact, the argument is never advanced beyond this point. Instead of showing how the Categorical Imperative may be applied to test the rules of positive law, Kant introduces a number of different principles which range in degree of generality between the extremes of the Categorical Imperative and the rules of positive law. Many of these principles have no discernible logical relationship to the Categorical Imperative and no clear application to positive law.[1]

Brown summarizes his disappointments: "The difficulty with Kant is not that he lacks opinions on these matters or that he fails to affirm ideals to which we are strongly committed; the difficulty is that his opinions neither are nor can be justified and elucidated by using the principles to which his moral philosophy commits him. Because of this difficulty, Kant fails to accomplish the task he set himself and has no philosophy of law."[2]

Kant not only denies that political philosophy is an application of the Categorical Imperative to a specific situation; he also rejects the idea that political institutions are a response to unfortunate circumstances. He insists on a sharp divide between the *metaphysics* of morals he will provide and an *anthropology* of morals that focuses on human nature,[3] and argues that law and justice are morally required "no matter how well-disposed

1. Stuart M. Brown, Jr., "Has Kant a Philosophy of Law?" *Philosophical Review* 71 (1962): 36.

2. Ibid., 33.

3. Immanuel Kant, *The Doctrine of Right,* Part I of the *Metaphysics of Morals* in *Practical Philosophy,* trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:217. Because the work exists in so many different editions and translations, and even the Gregor translation in multiple editions and paginations, all references are to the Prussian Academy pagination appearing in the margins. References to the *Doctrine of Right* are by academy pagination only; others works included in the *Practical Philosophy* volume are by title and academy pagination.

and right-loving human beings might be."[4] He denies that need generates direct enforceable obligations of aid, dismissively treating it as no different from "mere wish."[5] He formulates many of his arguments in terms of coercion, which most recent philosophers assign a secondary role in law and politics.

Most striking of all from the perspective of contemporary readers, he denies that justice is concerned with the fair distribution of benefits and burdens. None of the principles he articulates are formulated in terms of them. The distinctiveness of his approach can be brought out by contrasting it with the broadly Kantian political philosophy developed in John Rawls's theory of justice. Rawls employs Kantian concepts to address a question about social cooperation that is posed in terms of the benefits it provides and the burdens it generates. Rawls describes his account of justice as "overcoming the dualisms"[6] inherent in Kant's views, and recasting them "within the canons of reasonable empiricism."[7] The moves from the metaphysical to the empirical, the abstract to the concrete, and the universal to the historical enable Rawls to provide a broadly Kantian perspective on a set of questions that have their roots less in Kant than in the empiricist and utilitarian tradition of Bentham and Mill.[8] For that tradition, the use of state power and the ability of some people to make rules that others must follow are ultimately to be assessed in terms of the benefits they provide and the burdens they create. Rawls rejects the utilitarian approach to the distribution of benefits and burdens on recognizably Kantian grounds, but in its place offers an alternative principle for thinking about the same basic questions: given the benefits that all can

4. 6:312. Mary Gregor translates Kant's *"rechtliebend"* as "law-abiding" and John Ladd as "righteous." Each is misleading in different ways. I am grateful to Helga Varden for suggesting "right-loving."

5. 6:230.

6. Rawls, "The Basic Structure as Subject," *American Philosophical Quarterly* 14, 2 (1977): 165.

7. Rawls, "Kantian Constructivism in Moral Theory," in his *Collected Papers* (Cambridge, Mass.: Harvard University Press, 1999), 304.

8. See, for example, the remarks about the importance of psychological assumptions in any normative theory in the concluding discussion of J. S. Mill in Rawls, *Lectures on the History of Political Philosophy,* ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2007), 313.

expect from social cooperation, and the burdens that it generates, what terms of cooperation are acceptable to persons considered as free and equal?[9]

Kantian answers to questions about benefits and burdens are not the same as Kantian answers to Kant's own questions.[10] The focus of this book is on defending Kant's answers, but in so doing I will provide an indirect defense of his questions, and thereby of the presuppositions of those questions. Kant's critics often accuse him of being driven by architectonic concerns, or committed to an outdated "foundationalist" methodology that prefers *a priori* answers to empirical ones. Although architectonic and methodological factors shape Kant's presentation of his arguments, his grounds for rejecting empirical and anthropological starting points in political philosophy rest on the simple but compelling *normative* idea that, as a matter of right, each person is entitled to be his or her own master, not in the sense of enjoying some form of special self-relation, but in the contrastive sense of not being subordinated to the choice of any *other* particular person. This starting point is explicit in Kant, but it also animates many of the familiar questions of political philosophy. The nature and justification of authority, the authorization to coerce, the significance of disagreement, political obedience, democracy, and the rule of law arguably acquire their interest against some version of the assumption that each person is entitled to be his or her own master. Any real or claimed entitlement of a person or group of persons to tell another what to do, or force him to do as he is told, is potentially in tension with the latter person's entitlement to be his own master. Again, normative questions about how to manage disagreement or the pluralism that is a feature of modern societies are pressing because all parties to the disagreement and diversity are each their own master, so none is entitled to force a particular resolution on others. The same point applies to questions about what it is for people to rule themselves through institutions, or to be ruled by laws rather than individual persons.

9. I believe that there is a more Kantian way of understanding the entire Rawlsian enterprise, focused on his conception of persons as free and equal, and on his emphasis on the coercive structure of society. If such a reading of Rawls is possible, it is certainly not the dominant one, and this is not the place to develop it.

10. Even contemporary "rights-based" accounts of justice frame their questions in terms of benefits in burdens in a way that Kant rejects. For example, after invoking Kant's idea that people are never to be treated as mere means in pursuit of the purposes of others, Robert Nozick proceeds to frame his account of rights in terms of benefits and burdens. His theory of property rests on the claim that appropriation does not disadvantage others, and his theory of the state rests on a theory of compensation which makes the negative experience of fear the basis of prohibition, and the disadvantage of being prohibited from doing as you wish as generating a basis of compensation. Each of these is measured in terms of its welfare effects. See Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 32–33, 178–182, 71–87.

Kant's full explanation of what it is for each person to be his or her own master rather than the servant of another will take up most of this book. For now I merely want to indicate why this normative starting point leads Kant to reject anthropological and empirical factors in general, and benefits and burdens in particular. Both the empirical peculiarities of human inclinations and vulnerabilities and the consideration of where benefits or burdens fall can only be brought in insofar as they can be shown to be consistent with a condition in which every person is his or her own master as against each of the others. The systematic implications of that right have to be worked out first, before any "principle of politics" incorporating information based on experience can be introduced.[11] This sequenced way of framing the issues limits the ways in which benefits and burdens can be relevant to either the formulation or the application of any basic normative principle. Your right to be your own master entails that no other person is entitled to decide for you that the benefits you will receive from some arrangement are sufficient to force you to participate in it. You alone are entitled to decide whether a benefit to you is worth the burdens it brings. Nor can others justify authority over you, or use force against you, on the ground that the restrictions thereby placed on you will generate greater benefits for others. The same fundamental idea blocks the appeal to the sort of value pluralism according to which competing political values rather than interests must be "balanced" against one another. The authority of any person or institution's mandate to balance competing values must itself be reconciled with each person's right to be his or her own master. That does not mean that political authority or justified coercion is impossible, or even that institutions are never compe-

11. Kant, "On a Supposed Right to Lie from Philanthropy," in Gregor, *Practical Philosophy*, 8:429.

tent to balance competing values, only that the authority to make or enforce decisions needs to be established by showing it to be consistent with each person's right to freedom before competing interests or values can be considered.

My aim in this introductory chapter is to give a broad overview of Kant's position and the arguments he gives for it. The argumentation here will, of necessity, be sketchy. My main purpose is to lay out his conclusions, and, in so doing, preempt certain recurrent misunderstandings. Before doing so, I will identify some of those misunderstandings, each of which reflects some version of an "applied ethics" reading of Kant. Some arise because of Kant's mode of argumentation; others because Kant refuses to separate an action from its effects; still others because of the familiarity of other aspects of Kant's broader project in practical philosophy.

Mode of Argumentation. First, Kant approaches the question of the legitimate use of force through a sequence of arguments, rather than by attempting to reconcile each stage of the argument with the considered judgments of his readers. Not all of Kant's conclusions will accord with the judgments of contemporary readers, but some conflicts between his arguments and those judgments are only apparent. As the argument proceeds, new legal actors are introduced, so that, for example, although no private person has the right to tax or punish, the state has the power to do both. By identifying these arguments at the outset, I hope to preempt any impression that everything a legitimate state does must be a *direct* application of Kant's starting point in the idea of equal freedom (as Brown expects a direct application of the Categorical Imperative).

Kant's mode of argumentation reflects his attitude toward examples. He develops many examples in the course of his argument, but rejects the idea that examples can replace arguments, or that philosophy is charged primarily with accounting for examples. Instead, he remarks that "all examples (which only illustrate but cannot prove anything) are treacherous, so that they certainly require a metaphysics."[12] The metaphysics he speaks of is not a catalogue of claims about what is most real; it is a *practical*

12. 6:355.

metaphysics, an articulation of the limits that each person's claim to be his or her own master impose on the conduct of others.[13]

But to say that Kant does not regard examples as dispositive is not to say that his arguments lead to conclusions that cannot survive reflection. The direct implications that Kant draws from the Universal Principle of Right—each person's right to be his or her own master, to be presumed innocent, and to speak in his or her own name—sit well enough with considered judgments. Other, less direct implications are neither unfamiliar nor foreign. Kant understands ordinary moral thought as the exercise of practical reason, and as such, the broad structural features of familiar legal institutions will, unsurprisingly, be understandable in terms of the broad structure of practical thought. Even the less familiar aspects of Kant's arguments need to be understood in light of their relation to his austere starting point. Kant's view does conflict with what have become entrenched philosophical commonplaces, both about the anthropological nature of questions of justice and, more generally, about the appropriate concepts for practical thought. How much weight to attach to *those* disagreements depends at least in part on whether the familiar views turn out to be in tension with the equally well-rooted idea that no person is the master of another.

The Normative Status of Rules and Institutions. A second aspect of the applied ethics approach to political philosophy supposes that law and the state are instruments for approximating underlying factors that really matter. Bentham's utilitarianism provides a particularly stark example of this idea. He argues that the purpose of legal and political institutions, and indeed even the purpose of general rules in morality, is to approximate a moral result—the greatest happiness of the greatest number—which could in principle be specified without any reference to institu-

13. Against the "two worlds" reading of Kant's distinction between the realm of freedom and the realm of nature, in favor of the view that they constitute different standpoints, one theoretical and the other practical, see, for example, Henry Allison, *Kant's Transcendental Idealism* (New Haven: Yale University Press, 1983); Onora O'Neill, "Reason and Autonomy in *Grundlegung* III," in her *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989); Christine Korsgaard, "Morality as Freedom," in her *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996).

tions or rules. Legal and political institutions interest Bentham because he believes that over the long run, in human circumstances as we know them, making rules and assigning rights to people is most likely to conduce to happiness overall. Many contemporary egalitarian theories have a similar structure: society should be arranged so as to bring about an equal distribution, or one that is sensitive to the choices people have made but not the circumstances in which they find themselves, or, in another version, to properly measure the costs that one person's choices impose on another.[14] On these views, rules are appropriate because reliable, but imperfect, tools for producing morally desirable outcomes. The only basis for setting up legal institutions is that they are likely to produce the right results, as identified by external criteria, more often than they get the wrong ones.

The alternative to consequentialist and egalitarian theories is sometimes thought to be some sort of deontological theory that identifies moral value in a way that makes no reference to the state. Such theories may speak of rights or rules in specifying their moral ideals, but they make no direct reference to institutions or law. Examples include desert-based theories of distributive justice that suppose that benefits and burdens should track moral merit or individual choices, desert-based theories of punishment, and Lockean "natural rights" theories that claim that persons have fully formed moral rights in a state of nature, and that the only legitimate purpose of legal institutions is to solve problems of self-preference or insufficient knowledge in the application of those rights to particulars. For both the utilitarian/egalitarian and the Lockean or deontologist, public legal rules are justified by the likelihood that they will bring about better results than could be achieved in their absence, where success is measured in terms of tracking the preinstitutional values. On these views, if people knew more, cared more about the moral considerations that apply independently of institutions, or were more fair-minded in their judgments about particulars, legal institutions would not be required at all.

14. G. A. Cohen gives a clear formulation of this idea: "My concern is *distributive justice*, by which I uneccentrically mean justice (and its lack) in the distribution of benefits and burdens to individuals." *If You're an Egalitarian, How Come You're So Rich?* (Cambridge, Mass.: Harvard University Press, 2000), 130.

If institutions are tools for the indirect pursuit of something that can be fully specified without reference to them, Kant's focus on coercion is also bound to seem misplaced. The question of what results the state should aim to produce is prior to any question about the most effective means of producing it. So, too, with Kant's focus on rules. If rules or institutions are supposed to produce results that matter apart from them, then their normative significance is limited to the cases in which they tend to produce those results.

Kant rejects the suggestion that legal norms or institutions are instruments for achieving results that can be specified apart from them. As we shall see in more detail in Chapters 7, 10, and 11, the utilitarian/egalitarian and the Lockean/deontologist are caught up in what Kant would characterize as an "antinomy." The source of their intractable differences is a shared premise about the nature of morality. Both the utilitarian and Lockean or desert-based theories presuppose the idea that the way people should behave in any particular situation is fully determinate, though perhaps unachievable or unknown. Thus they suppose that what morally matters to social life is a result that could be specified without reference to legal institutions and, at least in principle, that in a better world with better people, the morally desired result could be achieved without them. They disagree about what the desirable result is, but share the view that the question has a completely determinate answer in every case, and it is the job of legal and political institutions to arrange things so as to increase the likelihood of achieving it.

Kant's opposing idea is that each person's entitlement to be his or her own master is only consistent with the entitlements of others if public legal institutions are in place. Much of this book will take up the task of explaining this idea in detail. The important point for now is that for Kant, both institutions and the authorization to coerce are not merely causal conditions likely to bring about the realization of the right to freedom, or even prudent sacrifices for individuals to make if they are concerned to secure their freedom. Instead, the consistent exercise of the right to freedom by a plurality of persons cannot be conceived apart from a public legal order.

This noninstrumental conception of the right to freedom gives Kant his distinctive view about the significance of coercion. If legal institutions

and political power are understood as tools for realizing moral results that are in principle achievable without them, the familiar claim that the use of state power faces a special burden of justification[15] invites an obvious line of objection: other factors, including both individual choices and natural contingencies, also make a significant difference to people's lives along almost any dimension. Why focus on the state, let alone on its coercive actions, rather than on individual actions?[16] As we shall see, Kant's non-instrumental account of the system of equal freedom provides a principled basis for making the legitimate use of force a self-contained issue.

Kant's rejection of the instrumental conception of legal rules and institutions does not commit him to the view that the normative principles he does develop are sufficient to resolve all issues of right. Kant's critics have often read him to be making such a claim in moral philosophy, and sometimes characterized his emphasis on moral rules as the product of a fear of going "off the rails."[17] It is not surprising that similar criticisms have been directed at his political philosophy.[18] The principles of right that Kant introduces are highly abstract, and require the exercise of judgment to apply them to particulars. Although some, such as Henry Sidgwick, have thought that any concept that did not classify particulars in a fully determinate way must be suspect,[19] Kant's view is that moral concepts are abstract because they are normative. As such, they require judgment to apply them to particular circumstances. As we shall see, Kant does not provide detailed formulae for the resolution of private disputes or the content of public legislation. His argument shows how those issues must be framed, consistent with each person's right to be his or her own master, and also why public institutions must be set up to resolve them.

15. See, for example, Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: MIT Press, 1999), 447–462; John Rawls, *Justice as Fairness: A Restatement* (Cambridge, Mass.: Harvard University Press, 2001), 40; Ronald Dworkin, *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), chap. 4.

16. See, for example, G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008); Liam Murphy, "Institutions and the Demands of Justice," *Philosophy & Public Affairs* 27, 4 (1998), 251–291.

17. See, for example, John McDowell, "Virtue and Reason," in his *Mind, Value, and Reality* (Cambridge, Mass.: Harvard University Press, 1998), 50–73. For discussion of why these criticisms fail to engage Kant's ethical philosophy, see Barbara Herman, *The Practice of Moral Judgment* (Cambridge, Mass.: Harvard University Press, 1993), and Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), 77–89.

18. The standard site of this misreading is Hannah Arendt, *Lectures on Kant's Political Philosophy,* trans. Ronald Biener (Chicago: University of Chicago Press, 1982). For discussion, see Otfried Hoffe, *Kant's Cosmopolitan Theory of Law and Peace* (Cambridge: Cambridge University Press, 2006), chap. 3.

19. Sidgwick, *The Methods of Ethics* (Indianapolis: Hackett, 1981), 421.

The Categorical Imperative. The most direct version of the applied ethics reading looks, as Brown does, to Kant's moral philosophy. The moral philosophy has had a significant impact on post-Kantian political philosophy, through the work of Hermann Cohen[20] in the nineteenth century and John Rawls in the twentieth. The lesson that many have taken from Cohen and Rawls, whether rightly or wrongly, is that Kantians suppose that the autonomous life is the best one, and political institutions must be designed to promote autonomy.[21] This conception of the "Kantian" position places it squarely in the instrumentalist camp. Whatever its appeal, it is not Kant's view. The first task in this chapter will be to lay out the basic distinctions between right and ethics, deferring to later chapters the detailed arguments for them.

I. Right and Ethics: Why Kant Does Not "Apply" the Categorical Imperative

Kant draws a series of sharp divisions between right and ethics. Ethical conduct depends upon the maxim on which an action is done; rightful conduct depends only on the outer form of interaction between persons. The inner nature of ethical conduct means that the only incentive consis-

20. Hermann Cohen, *Kants Begründung der Ethik,* 2d ed. (Berlin: Bruno Cassirer, 1910). At 394, Cohen acknowledges the influence of Paul Johann Anselm Feuerbach, *Kritik des natürlichen Rechts als Propädeutik zu einer Wissenschaft der natürlichen Rechte* (Altona: Bei der Veringsgesellschaft, 1796).

21. See, for example, Jeffrie G. Murphy, *Kant: The Philosophy of Right* (New York: St. Martin's, 1970), and Patrick Riley, *Kant's Political Philosophy* (Totowa: Rowman & Littlefield, 1983), 98–99. For criticism of these and other assimilations, see Onora O'Neill, "Kant's Justice and Kantian Justice," in her *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 65–80.

tent with the autonomy at the heart of morality must be morality itself; rightful conduct can be induced by incentives provided by others. Other persons are entitled to enforce duties of right, but not duties of virtue. Each of these differences precludes any direct appeal to the Categorical Imperative. Yet the vocabulary that typically surrounds the Categorical Imperative in Kant's other works can be found at various pivotal points in the argument: right is only possible "under universal law"; you must never allow yourself to be "treated as a mere means," and the people must "give laws to themselves."

Each of these differences between right and ethics turns on Kant's representation of principles of right as governing persons represented as occupying space. The basic case for thinking about your right to your own person is your right to your own body; the basic case for thinking about property is property in land, that is, a right to exclude others from a particular location on the Earth's surface; the basic case for thinking about contract is the transfer of an object from one place to another; the basic case for thinking about a state involves its occupation of a particular region of the Earth's surface.

Space is more than a useful metaphor for Kant. Its normative significance arises from the ways in which separate persons who occupy space can come into conflict in the exercise of their freedom, depending on where they are doing their space-occupying activities and what others happen to be doing in the same location. This basic normative structure is different from the normative structure contained in the idea of a rational will being in conflict with itself on the basis of its principle of action. As we shall see in the appendix, Kant's own characterization of the relation between inner and outer freedom grows out of his more general philosophical understanding of the difference between monadic and relational properties. Those differences help explain why Kant characterizes the Universal Principle of Right as a "postulate incapable of further proof." But his normative arguments both for the Universal Principle of Right and for extending it as he does do not depend on those broader philosophical grounds. The normative arguments work out the implication of free persons whose movements of their bodies can come into conflict. They are of interest even to those who remain unconvinced by other aspects of Kant's broader critical project.

Before turning to those normative arguments, it is also worth contrasting the arguments of the *Doctrine of Right* with the interpretation of the Categorical Imperative according to which it provides a test for conduct based on general features of the human situation. On this interpretation, the question of whether a maxim could be a universal law depends on the likely effects of its widespread adoption. This "teleological" interpretation has motivated many of Kant's most prominent critics, including Hegel and Sidgwick, and has generally been rejected by Kant's defenders.[22] The teleological approach may indeed be what Brown expects to see applied in the *Doctrine of Right,* that is, a formula that could be "applied to test the rules of positive law," presumably by determining whether they could pass a test of generality. His disappointment reflects the fact that Kant attempts nothing of the sort. Any principle that depended on the effects of adopting this or that legal rule would have to be what Kant characterizes as a "material" principle, that is, one that depends on the ends that persons happen to (or are likely to) have. As we shall see in Chapter 7, a material interpretation of the Universal Principle of Right can only generate rules that are both material and conditional, and so inconsistent with a system of equal freedom in which each person is his or her own master and none is the master of another.

II. The Stages of Kant's Argument

The Universal Principle of Right says that "an action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law."[23] The universal principle generates each person's "one innate right" to "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law," which "is the only original right belonging to every human being by virtue of his humanity."[24] This innate right leads to private right, which governs the inter-

22. Korsgaard, *Creating the Kingdom of Ends,* 87–92.
23. 6:230.
24. 6:237.

actions of free persons, and then to public right, which requires the creation of a constitutional state. The idea of independence carries the justificatory burden of the entire argument, from the prohibition of personal injury, through the minutiae of property and contract law, on to the details of the constitutional separation of powers. Kant argues that these norms and institutions do more than enhance the prospects for independence: they provide the only possible way in which a plurality of persons can interact on terms of equal freedom. Kant's concern is not with how people should interact, as a matter of ethics, but with how they can be forced to interact, as a matter of right.[25]

The core idea of independence is an articulation of the distinction between persons and things. A person is a being capable of setting his or her own purposes, while a thing is something that can be used in pursuit of purposes. Kant follows Aristotle in distinguishing choice from mere wish on the grounds that to choose something, a person must take himself to have means available to achieve it.[26] You can wish that you could fly, but you cannot choose to fly unless you have or acquire means that enable you to do so. In this sense, having means with which to pursue purposes is conceptually prior to setting those purposes. In the first instance, your capacity to set your own purposes just is your own person: your ability to conceive of ends, and whatever bodily abilities you have with which to pursue them. You are independent if you are the one who decides which purposes you will pursue.

It may seem misleading to conceive of your own bodily powers as a means that you have, if this suggests that they are somehow external to your ability to set and pursue purposes, or that they only matter insofar as you are actively using them. Kant makes the different claim that you are independent if your body is subject to your choice rather than anyone else's, so that you, alone or in voluntary cooperation with others, are entitled to decide what purposes you will pursue. You are dependent on another person's choice if that person gets to decide what purposes you will pursue. The person who uses your body or a part of it for a purpose you have not authorized makes you dependent on his or her choice; your person, in the form of your body, is used to accomplish somebody else's purpose, and so your independence is violated. This is true even if that person does not harm you, and indeed, even if he benefits you.

25. The German word *recht* and its cognates have no exact English equivalent. It covers both law and the more general idea of a legitimate power. Recent translators have used the word "right," which has the merit of preserving some of this ambiguity in a way that neither "law" nor "justice" does. In Kant's usage, right refers to the domain of enforceable obligations.

26. 6:213; Aristotle, *Nicomachean Ethics,* 1111a 25.

This recasting of the familiar Kantian distinction between means and ends provides a distinctive understanding of the ways in which one person can interfere with the independence of another, either by drawing that person into purposes that she has not chosen or by depriving her of her means. Literally forcing or fraudulently luring another person into helping you pursue your purposes generates familiar examples of the first type of interference, bodily injury a familiar example of the second. In doing either, a wrongdoer fails to respect another person's capacity to set her own purposes, treating her instead either as a means to be used in pursuit of his own purposes, or as a mere obstacle to be gotten around.

Interference with another person's freedom creates a form of dependence; *independence* requires that one person not be subject to another person's choice. Kant's account of independence contrasts with more robust conceptions of autonomy, which sometimes represent it as a feature of a particular agent. On this conception, if there were only one person in the world, it would make sense to ask whether and to what extent that person was autonomous. Kantian independence is not a feature of the individual person considered in isolation, but of relations between persons. Independence contrasts with dependence on another person, being subject to that person's choice. It is relational, and so cannot be predicated of a particular person considered in isolation. The difference is important from two directions. First, in principle a slave with a benevolent master and favorable circumstances could be autonomous in the contemporary technical sense. A slave could never be independent, because what he is permitted to do is always dependent on his master's choice or grace. Second, autonomy can be compromised by natural or self-inflicted factors no less than by the deeds of others; Kantian independence can only be compromised by the deeds of others. It is not a good to be promoted; it is a constraint on the conduct of others, imposed by the fact that each person is entitled to be his or her own master.

Independence is the basic principle of right. It guarantees equal freedom, and so requires that no person be subject to the choice of another. The idea of independence is similar to one that has been the target of many objections. The basic form of almost all of these focuses on the fact that *any* set of rules prohibits some acts that people would otherwise do, so that, for example, laws prohibiting personal injury and property damage put limits on the ability of people to do as they wish. Because different people have incompatible wants, to let one person do what he wants will typically require preventing others from doing what they want. Thus, it has been contended, freedom cannot even be articulated as a political value, because freedoms always come into conflict, and the only way to mediate those conflicts is by appealing to goods other than freedom. As I will explain in more detail in Chapter 2, such an objection has some force against freedom understood as the ability to do whatever you wish, but fails to engage Kant's conception of independence. Limits on independence generate a set of restrictions that are by their nature equally applicable to all. Their generality depends on the fact that they abstract from what Kant calls the "matter" of choice—the particular purposes being pursued—and focus instead on the capacity to set purposes without having them set by others. What you can accomplish depends on what others are doing—someone else can frustrate your plans by getting the last quart of milk in the store. If they do so, they don't interfere with your independence, because they impose no limits on your ability to use your powers to set and pursue your own purposes. They just change the world in ways that make your means useless for the particular purpose you would have set. Their entitlement to change the world in those ways just is their right to independence. In the same way, your ability to enter into cooperative activities with others depends upon their willingness to cooperate with you, and their entitlement to accept or decline your invitations is simply their right to independence.

Kant aims to show that independence, understood in this way, comprises a self-contained domain of reciprocal limits. The idea of a system of equal freedom both poses the problem and gives him the resources to provide a principled account of the most striking features of political life. Those who imagine that political powers can be used whenever doing so will bring about beneficial consequences see no need to draw a principled line around them. The Kantian commitment to freedom requires a principled account. Both the power to displace individual judgment, by having institutions and officials empowered to make decisions binding on everyone, and the power to enforce those decisions appear to be in tension with the idea that individuals are free to set their own purposes according to their own judgment. Kant aims to do no less than show that the existence of such powers are not only consistent with but in fact required by individual freedom.

Kant develops the idea of independence in three stages. He first articulates the relation of independence in its simplest form as a constraint on interactions between persons. He calls this "the innate right of humanity" in one's own person, because it does not require any act to establish it. Instead, people are entitled to independence simply because they are persons capable of setting their own purposes. This form of independence is incomplete, and needs to be extended to take account of the possibility that people could have entitlements to things other than their own bodily powers. Those entitlements fall under private right, and cover the traditional categories of Roman private law, relations of property, contract, and status, which govern rights to things, to performances by other persons, and, in special cases, rights *to* other persons. These categories provide a complete specification of independence between interacting persons, but can only be consistently enjoyed by all in a condition of public right with legislative, executive, and judicial branches. Each of these branches in turn has further powers grounded in its role in providing a rightful condition.

Innate Right

Kant formulates the innate right of humanity from two directions. First, each person has the right to independence from each of the others. None is born either a master or a servant. Each enjoys this right to juridical equality innately, prior to any affirmative act to establish it.[27] Your right to your own person guarantees that you are entitled to use your own powers as you see fit, consistent with the freedom of others to do the same. Innate

27. 6:237.

right also includes the right to be "beyond reproach,"[28] to have only your own deeds imputed to you, and to be assumed innocent unless you have committed a wrong.

From the other direction, innate right carries with it the imperative of rightful honor. Kant interprets the Roman jurist Ulpian's precept *honeste vive* ("living honorably") as the requirement not to allow yourself to be a mere means for others.[29] He also characterizes rightful honor as an "internal duty," something that might at first appear to have no place in a doctrine of external freedom. It is an internal duty because no other person can enforce it; it is a duty of right because it creates the boundary within which freedom can be exercised, and thereby governs the arrangements that a person can enter into as a matter of right. So your entitlement to make your own voluntary arrangements with others is limited to arrangements that are consistent with the Universal Principle of Right. As a result, you cannot give another person a right to treat you as a mere means by binding you in ways in which you cannot bind them. These limits on the ways in which you can exercise your freedom have important implication for the *Doctrine of Right* as a whole. At the level of private right, you cannot sell yourself into slavery; at the level of public right, the state lacks the power to make arrangements for you requiring you to advance another person's private purposes.

Innate right governs interactions between free persons, but does so in a way that is incomplete. Each of Kant's subsequent extensions of the idea of a right of humanity in one's own person is required because of the human capacity for choice. The extensions also show how the two striking inequalities of political life are consistent with the equal freedom required by innate right. *Private right*—the areas of law governing property, contract, and other legal relationships between private parties—explains how inequalities in material wealth, including holdings of property, contractual obligations, and employment and familial relationships, can be consistent with the equality of innate right. *Public right*—the areas of law governing the lawmaking powers of the state, including constitutional law, criminal law, and the public functions falling under the state's police

28. 6:238.
29. 6:236.

power– explains how differentiated offices are both consistent with and required by innate right.

Private Right

Innate right is an incomplete account of independence, because it regulates only a person's entitlement to his or her own person and reputation. This opens the possibility that there could be other means available that a person might use in setting and pursuing purposes. This possibility requires a further "postulate," an extension consistent with but not contained in innate right.[30] Kant argues that it would be inconsistent with right if usable things could not be rightfully used. The ability to use things for your purposes could be satisfied through a system of *usufruct,* in which things are borrowed from a common pool for particular uses. However, because of the way that Kant conceives of the relation between having means and setting ends, permissibly using things is not enough to extend your freedom; it would merely enable you to succeed at some particular purpose or other. Freedom requires that you be able to have usable things fully at your disposal, to use as you see fit, and so to decide which purposes to pursue with them, subject only to such constraints imposed by the entitlement of others to use whatever usable things *they* have. Any other arrangement would subject your ability to set your own ends to the choice of others, since they would be entitled to veto any particular use you wished to make of things other than your body. The innate equality of all persons entails that nobody could have standing to limit the freedom of another person, except to protect his or her own independence. Nobody else is deprived of *his* means simply because you have external things as *yours.* At most, your use of what is yours deprives him of things that he might *wish* for, but frustrating the wishes of others is not inconsistent with their freedom, because nobody is entitled to have others organize their pursuits around his or her wishes. So it must be possible to have external means as your own. All persons are symmetrically situated with respect to innate right; private right introduces the space for

30. 6:246. (Because of the recent discovery of a printing error in earlier German editions, the postulate appears *after* 6:250 in recent editions, but still has its academy pagination.)

an asymmetry, because it allows different people to have different claims. You and I can own different things, and we can stand in different contractual and status relations.

Kant presents private right through an analysis of the categories of Property, Contract, and Status, which form the backbone of all Western legal systems. They provide an exhaustive specification of the possible types of interaction consistent with freedom. Property concerns rights to things; contract, rights against persons; and status contains rights to persons "akin to" rights to things. Kant remarks that applying the person/thing dichotomy to itself generates four possibilities, but that the fourth, rights to things akin to rights to persons, is empty, because a thing could not owe a contractlike obligation.[31] The intuitive idea is that free persons can only interact in three basic ways. They can interact independently, each pursuing his or her separate purposes. This is the structure of innate right. Property has a corresponding structure, because as a proprietor, I possess property that is subject to my purposes and nobody else's. I can be wronged with respect to property in the same two ways that I can be wronged with respect to my person: by having my property used on behalf of another, or by being prevented from using my property on my own behalf. I have both possession and use of my property. If you use my horse without my permission, you use it on your behalf, not mine; if you damage it, you prevent me from using it on my own behalf. Contract covers the case in which parties interact interdependently and consensually. If I invite you into my home, you do not wrong me; if I agree to do something for you, my powers to do so are now at your disposal, and you are entitled to use them as specified in our agreement. If I fail to do what I have agreed to do, I wrong you, by depriving you of means that you were entitled to.

For Kant, a contract is not understood as a narrow special case of the more general moral obligation of promise keeping,[32] but as a specifically legal institution through which the parties vary their respective rights and

31. 6:358.

32. Most enforceable contracts involve promises because they concern future arrangements. On Kant's analysis, the consensual change of rights is fundamental to a contract, whether it is a present transfer or a future one expressed through a promise.

obligations.[33] Making an agreement is something that the two parties must do together; neither can vary his or her rights against the other unilaterally. The powers that can be created include the entitlement to transfer property, compel services, or undertake responsibility for the deeds of another.

Relations of status are the mirror image of contractual relations, because in relations of status one person has possession of but *not* the use of another person. Such relationships are possible when people interact interdependently but nonconsensually. The structure of this relationship parallels the situation when one person is in possession of another's property: if I am repairing your car, I am allowed to take it for a drive to see if it is working properly, but not to take it to visit friends. To do so would be to use what is yours in pursuit of my purposes rather than your own. Kant recognizes that there is a limited class of cases in which one person can be in possession of another, in a way that the latter is not in a position to consent to the ways in which his or her affairs are managed. Of the examples that Kant considers, the most familiar is the relationship between parents and children. Kant notes that parents bring children into the world "without the consent of the children and on their own initiative,"[34] and takes this to entail that parents have both a duty to act on behalf of their children and a right to "manage and develop"[35] them. In such circumstances, the only way their interaction can be rendered rightful is if the parents act on behalf of their children. Once again, the intuitive idea is familiar in a wide variety of contexts. Teachers are not allowed to take advantage of their students, because their asymmetrical relationship undermines the ability of the students to give genuine consent. Because teachers are precluded from acting for their own purposes, the relationship can only be rightful if they act on behalf of their students.

This analysis of the basic types of rightful interaction makes no use of any conception of harm. It is possible for one person to harm another without wronging her—as when I open a competing business that lures away your customers, or use my property so that you no longer have the

33. 6:271.

34. 6:280.

35. 6:281.

pleasant view you once did. It is also possible to wrong someone in each of the three ways without doing that person any harm. If I touch you without your consent while you sleep, or use your property without your consent while you are absent, I draw you into my purposes and wrong you, even if, as it turns out, you never learn of my action, and your body or property suffers no identifiable harm. If I breach a contract with you, I wrong you, even if, as it turns out, you had not yet done anything in reliance on it, and the expectation I deprived you of was purely prospective. The person in possession of another in a status relation who takes advantage of the relationship does wrong even if the ward of the relationship suffers no loss. This is not to say that Kant's analysis has no explanation of when or why harm is significant—it is significant when it wrongfully diminishes a person's powers, and so her freedom. But it is not significant merely because it diminishes either welfare or wealth.

The relations of right that Kant focuses on are initially introduced as ways in which free persons can interact consistent with each being independent of all the others. Kant devotes a separate discussion to the question of how a person can *come to have* a right to a particular thing, whether a piece of property or another person's performance, or to have another person act on his or her behalf. If recent political philosophers have considered property at all, they have tended to follow John Locke in assuming that the starting point for understanding property is an explanation of how acquisition of property differentiates the owner from all others in relation to a thing. Kant sees that this strategy cannot work. He rejects it as the "guardian spirit" theory of property, noting that property is a relation between persons, not a relation between a person and a thing.[36] Kant's theory of property explains the nature of that relationship, before explaining how persons can come to stand in that relationship with respect to a specific previously unowned thing. It also explains why property can be had "provisionally" in a "state of nature" without institutions of public law, but only conclusively in a civil condition.

36. 6:260.

From Private Right to Public Right

Early in his discussion of private right, Kant writes that "it is possible to have something external as one's own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition."[37] Kant characterizes the need for a rightful condition in a numbers of places and a number of seemingly distinct ways, appealing to each of assurance, indeterminacy, and a problem about unilateral judgments. The three arguments are each supposed to show that a system of private right without a public authority is morally incoherent, because the conceptual requirements of private right—the security of possession, clear boundaries between "mine and thine," and the acquisition of property—cannot be satisfied without a public authority entitled to make, apply, and enforce laws.

The first two types of argument have a long history in political philosophy: Hobbes speaks of assurance, Locke about problems of judgment, and Aquinas about the need for positive law to make normative concepts determinate. Yet Kant does not simply borrow from these traditional views: he develops each in a distinctive way. Assurance is characterized in these terms: "I am therefore not under an obligation to leave objects belonging to others untouched unless everyone provides me with an assurance that we will behave in accordance with the same principle with regard to what is mine."[38] The point about determinacy is also familiar: Kant characterizes the "indeterminacy, with respect to quality as well as quantity, of the external object that can be acquired" as the "hardest of all to solve," and notes that it can only be solved in a civil condition.[39] Later he notes that parts of natural right—including inheritance by bequest and the possibility of prescriptive acquisition by long possession—require positive legislation to make them determinate.

Kant subordinates these two familiar lines of argument to a broader argument, which is supposed to show that the acquisition of property

37. 6:255.
38. 6:256.
39. 6:266.

raises the basic issue of political authority, because it is an instance of one person's discretionary act changing the normative situation of others. By passing a law, a legislature purports to place citizens under an obligation that they would not be under had the law not been passed. The acquisition of unowned property shows that private right presupposes such public authority relations. One person, acting on his or her own initiative, unilaterally places others under a new obligation to stay off the property. Such a unilateral act could only be consistent with the freedom of others provided that it has a more general, omnilateral authorization. The omnilateral authorization is only possible in a rightful condition. Any other legal act, including that of resolving a private dispute or enforcing a binding resolution, requires legal authorization for just the same reasons.

Kant's detailed development of each of these arguments will be considered in Chapter 6. The key to his appeal to seemingly disparate grounds for entering a civil condition is that each of them is required to establish one of the branches of government under the separation of powers as he conceives it. The argument about unilateral judgment introduces the basic principle of public law, and provides an argument for a single legislative authority, capable of making laws from the standpoint of what he calls an "omnilateral will." The argument about assurance establishes the need for an executive branch, charged with enforcing law. The determinacy argument introduces the need for a judiciary, charged with applying the law to particular cases. Both executive and judicial powers are subject to law, because omnilateral law is the condition of acting together.

The functions of the three separate powers are distinct because only the legislature has the power to make law. It does so as the voice of the people, so that they rule themselves. The executive branch does not make general rules, but takes up means to give effect to them. The judiciary resolves particular disputes and calls upon the executive to "render to each what is his."[40] Together the divided powers preserve independence by putting people under common rules governing their interactions, and common procedures enforcing them so that no person is subject to the power or judgment of others.

40. 6:317.

Public Right

To the modern reader, Kant's list of public powers looks like a grab bag of eighteenth-century examples: the role of "supreme proprietor of the land," including the power to tax and overturn perpetuities in land ownership;[41] a separate duty to impose taxes in support of the poor; the right to distribute offices; the right to punish and grant clemency. Underlying this apparent miscellany is a principle that Kant articulates both in the *Doctrine of Right* and in the essay *Theory and Practice,* according to which the sovereign may not give a people laws that it could not give to itself, and its corollary that the people must give to itself laws that are the preconditions of its own continued lawgiving.[42]

This general way of framing the issue generates the catalogue of the powers that the state must have, as well as a set of limits on the ways in which those powers may be used. The broad range of powers included in the category of Police Power, as well as the general power to tax in support of those activities, depend upon the fundamental claims that each person has as a member of the public, rather than as a private citizen. As we shall see in Chapter 8, these powers include the maintenance of public roads and the guarantee of public spaces.

The requirement that the state support those who are unable to support themselves follows from the need for the people to be able to share a united will, as a precondition of their giving themselves laws together. As a matter of private right, nobody has a right to means that are not already his or her own, and, as Kant coldly remarks, "need or wish" is irrelevant. The duty to support the poor is not a way of coordinating efforts to discharge prior obligations to support those in need. There are no enforceable private obligations to do so. The only private obligation to support the needy is an obligation of charity, which does not dictate specific actions, but requires only that each person make the needs of (some) others one of her ends.[43] The state's duty to support the poor enters in a different way. A rightful condition makes property rights, especially the right to

41. 6:233.
42. *Theory and Practice,* 8:297. See also 6:329.
43. *Doctrine of Virtue,* 6:390.

exclude others, conclusive. In a state of nature, a person does others no wrong by taking from them; in a rightful condition, such forms of self-help are prohibited, and the person who takes what is needed to survive wrongs those from whom it is taken. Such a person is subject to the grace of those who have more. Kant's argument is that such a condition of dependency is inconsistent with the rightful honor of the dependent person. Citizens lack the rightful power to bind themselves to such a situation; as a result, enforceable private property is only rightful under a law that precludes that possibility.[44] The only way in which the right to exclude can be made the object of the general will is to guarantee public support for those unable to support themselves.

The state may not create classes or ranks of citizens, because, as Kant remarks, "talent and will" cannot be inherited. Kant is not making an empirical observation about who is likely to be most able at which jobs, but rather a normative claim about the basic entitlement to use whatever powers you have as you see fit. Hereditary classes or ranks of citizens would prevent people from using whatever abilities they had. Thus people concerned to protect their freedom—the sole concern that leads them to enter a rightful condition—could not consent to such a possibility, for they would be "throwing away their freedom."

Kant's use of "the idea of the original contract" contrasts with contractarian thought that has been prominent in more recent political philosophy. As a matter of private right, for Kant, only actual agreement matters. As a matter of public right, the state is under a positive obligation to take steps to secure, maintain, and improve a rightful condition. This positive obligation in turn generates a right on the part of officials to make and implement judgments about how best to do this. They cannot make arrangements for the people that those people could not make for themselves. Instead, the only factor relevant to determining whether citizens could give themselves a certain law is the question of whether it is consistent with their entitlement to exercise their freedom consistent with the entitlement of others to do so. The idea of people giving themselves laws constrains legislation in two directions. It carries with it a specification of properly public purposes—those of creating, sustaining, and improving a

44. 6:326.

rightful condition—which are the only purposes a state may rightfully pursue. How exactly they are best pursued—whether, for example, the best way of providing for the poor includes job training or public health insurance against debilitating illnesses—is a question for a principle of politics to decide. From the other direction, the idea of people giving laws to themselves also restricts a possible means that can be used in pursuing properly public purposes to those that are consistent with each person's innate right of humanity. Even if it could be shown that a hereditary bureaucracy would be more efficient than a system that left careers open to talents, Kant's argument shows that citizens concerned to stay in a rightful condition would have to forgo those benefits, because their power to give themselves laws is restricted to those things that are required by or implied in their interest in protecting their freedom. The principle of public right thus does not seek to generate a specific answer to every question of politics, only to show that having public bodies reach decisions which could have been different is consistent with each person's right to be his or her own master.

Kant's approach to punishment also focuses on the requirements of maintaining a rightful condition. Kant's approach is broadly retributive, in that he supposes the seriousness of the wrong provides the appropriate measure of punishment. This commitment to retributivism does not, however, reflect any belief that it is good for people to suffer in proportion to their inner wickedness, but rather a distinctive interpretation of the preconditions of the rule of law. The underlying idea is simple, even if its application is complex: whenever someone acts in a way contrary to right, others are entitled to constrain the wrongdoer's conduct. Such constraint is not an interference with freedom; it is the hindering of a hindrance to freedom. In the analytically simpler case of private damages, the person who pays compensation is required to "preserve undiminished" what the aggrieved party already had.[45] As we shall see in Chapter 10, punishment provides a further application of the same idea. Punishment upholds the supremacy of law by upholding the state's entitlement to direct conduct, both prospectively and retrospectively. Prospectively, it provides an incentive to conformity with law by announcing that the state will see to it

45. 6:271.

that wrongs have no legal effect. Retrospectively, it upholds the supremacy of law even in the face of its violation.

Kant also argues that the idea of the original contract precludes a right of revolution.[46] These notorious arguments are better known than other parts of the *Doctrine of Right.* As we shall see in Chapter 11, they turn on a simple and powerful idea: the revolutionary does not claim to be speaking for himself, but rather to be acting on behalf of "the people." Yet the idea that there is such a thing as a people only has application in a rightful condition. A rightful condition solves the problem of unilateral choice and action by creating institutions through which the people can act as a collective body. The most that the revolutionary can claim to do is speak unilaterally for some end or other. His unilateral claim, however, could never authorize the use of force. Thus, the revolutionary has no right, that is, no title to coerce.

Understood in this way, Kant's arguments against revolution do not, however, lead to the conclusion that some of the horrible regimes that the world has seen must not be resisted. To the contrary, the most egregious of these are not even candidates for a united will, because their founding principles, such as slavery or genocide, do not create a rightful condition in which all can be secure in their rights. They are, in Kant's technical sense, conditions of barbarism, that is, not defective versions of an ideal republican system of government, but rather defective versions of a state of nature. In a state of nature, everyone is authorized to use force to bring others into a rightful condition.

The Right of Nations and Cosmopolitan Right

The *Doctrine of Right* concludes with the claim that "universal and lasting peace" is not a part but "the entire final end of the doctrine of right." As a final end, it is internal to the doctrine of right, rather than outside it; the full realization of rightful relations is a condition in which every claim is defended through law rather than violence. The requirement that interaction be subordinated to law has led many readers to expect Kant to endorse some form of a world government, but he explicitly rejects that possibility.

46. 6:320.

Relations between states differ from relations between persons in two fundamental respects, each of which enters into Kant's unwillingness to generalize his argument for entering a state to an argument for a single world government. First, as a condition of public right, a state is only entitled to act for public purposes, rather than for the private purposes of its rulers or officials. Second, states do not have acquired rights to things outside their boundaries. Based on these contrasts, an association to guarantee peace requires neither a sovereign legislature nor the power of enforcement. States need only to agree to accept the decisions of a body like the court so as to settle their differences peacefully.

Although contemporary writers often regard Kant's emphasis on the state as a holdover from a very different historical period, his restriction of state powers and obligations in light of each state's borders reflects his underlying account of the basis for enforceable obligations. As we will see in Chapter 10, foreigners have only the right to visit, except when they have no place else to go.

III. Conclusion

Kant's legal and political philosophy starts with a simple but powerful conception of freedom as independence from another person's choice. The idea of freedom provides him with a systematic answer to the most basic questions of political philosophy. It explains how (and when) inequalities in wealth and power are consistent with the innate equality of all persons. It also shows that giving special powers to officials is consistent with equal freedom for all. It shows why some people must be given the power to tell everyone (including themselves) what to do by making laws, and why others must be empowered to force people to do as they are told. The answer is distinctively Kantian: political power is legitimate and enforceable because freedom requires it.

CHAPTER 2

The Innate Right of Humanity

THE UNIVERSAL PRINCIPLE OF RIGHT states that "an action is right if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with universal law."[1] An action is wrong if it hinders an action or "condition" that is itself rightful, that is, one that can coexist with everyone's freedom.

Kant also identifies a right as a "title to coerce." He goes on to argue that it follows from this, by "the principle of contradiction," that any act that hinders another person's use of freedom may in turn be hindered by others. This idea of hindrance, and the analogy with general dynamics through which Kant explicates it, have been the source of some confusion. I will examine Kant's direct arguments for the Universal Principle of Right, as well as the analogies he draws with dynamics, in the appendix. My task in this chapter will be to lay out his conception of equal freedom in normative terms.

My focus in outlining the broad idea of equal freedom will be on what Kant characterizes as the "innate right of humanity in your own person," which he also identifies as the right to be your own master—that is, the

1. 6:230.

right that no other person be your master. I will explain the social and interpersonal dimension of this conception of self-mastery, its relation to a system of equal freedom in accordance with universal law, and Kant's characterization of that system in terms of coercion.

By making the innate right to freedom the basis for any further rights, Kant imposes an extreme demand for unity on his account of political justice. The rights that each person has against others must be derived from it, as must the fundamental constitutional rights that protect political freedoms and freedom of religion. The same right to independence also limits state action to genuinely public purposes and the means that the state may use in achieving them. In particular, state power may not be used to subject one private person to the choice of another. All of this is to come. The basic case of a system of equal freedom under law must first be established.

Both the idea of right as a system of equal freedom and the related idea that a right is a title to coerce incorporate ideas that have fallen from favor in recent political philosophy, because they are widely thought to be subject to fatal objections. The idea of equal freedom is said to be unable to balance competing exercises of freedom against each other except by attending to the underlying interests that are at stake, and so to those interests, rather than freedom as such. The claim that a distinctive set of standards governs the use of force is said to overlook the fact that the concept of a norm is prior to the concept of a sanction for its violation.

I will introduce Kant's conception of innate right as a system of equal freedom by engaging these two objections. I will first introduce the idea of a system of equal freedom, and then show how it allows coercion to be understood as a hindrance to freedom.

I. Purposiveness and Its Restriction

The idea of a system of equal freedom for all has come in for a rough ride in recent times, to the point where it strikes many people as hopeless, because subject to a devastating objection. I will introduce the core ideas through a dialogue with this objection. In *A Theory of Justice,* John Rawls advocated a principle of "maximum equal liberty," but, in response to criticisms by H. L. A. Hart, conceded that his approach to justice lacked

the theoretical resources to develop that idea.[2] Other attempts to formulate liberty-based principles have fallen victim to other, equally familiar criticisms. Remarking that libertarianism is a poorly named doctrine, G. A. Cohen has argued that any set of rules protects some liberties at the expense of others. Cohen gives the example of the way in which property rights restrict the freedom of nonowners to use land.[3] From another perspective, Ronald Dworkin has used the example of driving the wrong way on a one-way street to illustrate the difficulty with liberty-based accounts of justice.[4] Writing from yet another tradition, Charles Taylor has emphasized the differences between freedom of religion and the freedom to cross intersections unimpeded.[5] These critics of the principle of equal freedom differ in many ways, but are united in supposing that in a world in which one person's actions affect another, liberty is not a self-limiting principle, so societies and theories of justice that aspire to guide them must decide which liberties to favor, or how to weigh liberty against other values.

This objection was first put forward close to two centuries ago, by Samuel Taylor Coleridge. Like Cohen, he argues that property constitutes an external limit on freedom, which is imposed for purposes that have no relation to freedom as such and depend entirely on advantage. Coleridge's argument was repeated without a reference to him by Henry Sidgwick, and explicitly endorsed by Frederick Maitland, both of whom Hart referred to in introducing his own version of it.[6]

All of the standard objections to the idea of equal freedom conceive of

2. Hart, "Rawls on Liberty and Its Priority," in Norman Daniels, ed., *Reading Rawls* (New York: Basic Books, 1975).

3. Cohen, "Freedom, Justice, and Capitalism," *New Left Review* 1, 126 (1981): 9.

4. Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), 271.

5. Taylor, "What's Wrong with Negative Liberty?" in *Philosophy and the Human Sciences,* Philosophical Papers, vol. 2 (Cambridge: Cambridge University Press, 1985).

6. See F. W. Maitland, "Mr. Herbert Spencer's Theory of Society III," *Mind* 8 (1883): 506–524. Maitland in turn attributes its general thrust to Samuel Taylor Coleridge. See Coleridge, "Section the First on the Principles of Political Knowledge" (1818), in Kathleen Coburn, ed., *The Collected Works of Samuel Taylor Coleridge,* vol. 4/1 (Princeton: Princeton University Press, 1969). Both Maitland and Coleridge argue that property requires a compromise of freedom in conditions of scarcity in which "not every man can get what he wants."

freedom as a person's ability to *achieve* his or her purposes unhindered by others. This understanding of freedom, described as "negative liberty" in Isaiah Berlin's essay "Two Concepts of Liberty," characterizes any intentional actions or regulations that prevent a person from achieving his or her purposes as hindrances to freedom.[7] Some critics have questioned the special significance of the actions of others in limiting freedom on this account—lack of resources or internal obstacles may frustrate your purposes at least as much as other people's deliberate actions. Other critics have wondered how different freedoms could be measured to determine whether people had equal amounts.[8] These difficulties aside, the deeper problem is that how different exercises of negative liberty interact with each other depends on the particular purposes the people are pursuing, or what Kant would call the "matter" of their choice. If our purposes come into conflict, so too must our negative freedom. Any purpose, whether my private purpose of crossing your yard or the state's public purpose of coordinating traffic flow, can come into conflict with some person's ability to get what he or she wants.

Kant conceives of equal freedom differently. It is not a matter of people having equal amounts of some benefit, however it is to be measured, but of the respective independence of persons from each other. Such independence cannot be defined, let alone secured, if it depends on the particular purposes that different people happen to have. One person cannot be independent of the *effects* of choices made by other people, except by limiting the freedom of those people. Instead, a system of equal freedom is one in which each person is free to use his or her own powers, individually or cooperatively, to set his or her own purposes, and no one is allowed to compel others to use their powers in a way designed to advance or accommodate any other person's purposes.

You are independent if you are the one who decides what ends you will use your means to pursue, as opposed to having someone else decide for you. At the level of innate right, your right to freedom protects your

7. Berlin, "Two Concepts of Liberty," in his *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), 118–134.

8. Onora O'Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996), 161–162.

purposiveness—your capacity to choose the ends you will use your means to pursue—against the choices of others, but not against either your own poor choices or the inadequacy of your means to your aspirations. You remain independent if nobody else gets to tell you what purposes to pursue with your means; each of us is independent if neither of us gets to tell the other what purposes to pursue.

This right to independence is not a special case of a more general interest in being able to set and pursue your purposes. Instead, it is a distinctive aspect of your status as a person in relation to other persons, entitled to set your own purposes, and not required to act as an instrument for the pursuit of anyone else's purposes. You are sovereign as against others not because you get to decide about the things that matter to you most, but because *nobody else* gets to tell you what purposes to pursue; you would be their subject if they did. Thus Kant's conception of the right to independence rests on neither of what is referred to in recent literature as "interest theory" or "will theory" of rights.[9] Underlying the other differences between these accounts is a shared conception of rights as institutional instruments that constrain the conduct of others in order to protect things that matter apart from them. Kant's account identifies a right with the restriction on the conduct of others "under universal law," that is, consistent with everyone having the same restrictions. Each person's entitlement to be independent of the choice of others constrains the conduct of others because of the importance of that independence, rather than in the service of something else, such as an interest in leading a successful, worthwhile, or fully autonomous life. Those things can be specified without reference to the conduct of others, and constraining the conduct of others is, at most, a useful way of securing them. If rights are understood in this instrumental way, they are always at least potentially *conditional* on their ability to secure the underlying values that they are supposed to protect. The Kantian right to independence, by contrast, is always an entitlement within a system of reciprocal limits on freedom, and so can only be violated by the conduct of others, and its only point is to prohibit that conduct. The protection of independence and the prohibition of one person deciding what purposes another will pursue stand in a relation of equivalence, rather than one of means to an end. As a result, the constraint a system of equal freedom places on conduct is *unconditional.* An unconditional constraint does not preclude the possibility of hindering the action of a person, or even of using lethal force to do so, because the unconditional right is not a right to a certain state of affairs, such as the agent staying alive. Instead, it is a right to act independently of the choice of others, consistent with the entitlement of others to do the same. The principle of mutual restriction under law applies unconditionally, because it is not a way of achieving some other end.

9. Joseph Raz, "On the Nature of Rights," *Mind* 93 (1984): 215–229; H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175–191.

Your sovereignty, which Kant also characterizes as your quality of being your "own master *(sui juris),*" has as its starting point your right to your own person, which Kant characterizes as innate. As innate, this right contrasts with any further acquired rights you might have, because innate right does not require any affirmative act to establish it; as a right, it is a constraint on the conduct of others, rather than a way of protecting some nonrelational aspect of you. It is a precondition of any acquired rights because those capable of acquiring them through their actions already have the moral capacity to act in ways that have consequences for rights, that is, for the conduct of others. That any system of rights presupposes some basic moral capacities that do not depend on antecedent acts on the part of the person exercising them does not yet say what the rights in question are, or how many such rights there might be.

Kant writes that there is "only one innate right."

> *Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human being by virtue of his humanity.[10]

The innate right is the individualization of the Universal Principle of Right, applied to the case in which only persons are considered. The Universal Principle of Right demands that each person exercise his or her choice in ways that are consistent with the freedom of all others to exer-

10. 6:237.

cise their choice; the innate right to freedom is then each person's entitlement to exercise his or her freedom, restricted only by the rights of all others to do the same under universal law. No issues of right would arise for someone who succeeded in "shunning all society,"[11] and if there were only one person in the world, no issues of independence or rightful obligation would arise.[12]

Kant offers different formulations of innate right, each of which elaborates an aspect of the idea that one person must not be subject to the choice[13] of another, which Kant glosses in terms of one person being a mere means for another. This familiar Kantian theme is explained in terms of the classic distinction, from Roman law, between persons and things. A person is a being capable of setting its own purposes. A thing is something that can be used in the pursuit of whatever purposes the person who has it might have. The classic example of a person being treated as a mere thing is the slave, for a slave is entirely at the disposal of his or her master. The slave's problem is that he is subject to the master's choice: the master gets to decide what to do with the slave and what the slave will do. The slave does not set his own ends, but is merely a means for ends set by someone else. To call it "the" problem is not too strong: if the other problems a slave has—low welfare, limited options, and so on—were addressed by a benevolent master, the *relationship* of slavery would perhaps be less bad, but it would not thereby be any less wrong. The right to be your own master is neither a right to have things go well for you nor a right to have a wide range of options. Instead, it is explicitly contrastive and interpersonal: to be your own master is to have no *other* master. It is not a claim about your relation to yourself, only about your relation to others. The right to equal freedom, then, is just the right that no person be the master of another. The idea of being your own master is also equivalent to an idea of equality, since none has, simply by birth, either the right

11. 6:236.

12. Ibid.

13. Kant distinguishes between will *(Wille)* and choice *(Willkur)*. Choice is the ability to decide what purpose to pursue; will is pure practical reason, the capacity for self-determination in accordance with the representation of a rule (6:214). The classic discussion of this distinction is Lewis White Beck, "Kant's Two Conceptions of Will," *Annales de Philosophie Politique* 4 (1962): 119–137.

to command others or the duty to obey them. So the right to equality does not, on its own, require that people be treated in the same way in some respect, such as welfare or resources, but only that no person is the master of another. Another person is not entitled to decide for you even if he knows better than you what would make your life go well, or has a pressing need that only you can satisfy.

The same right to be your own master within a system of equal freedom also generates what Kant calls an "internal duty" of rightful honor, which "consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying do not make yourself into a mere means for others but be at the same time an end for them."[14] Kant says that this duty can be "explained . . . as obligation from the right of humanity in our own person."

Kant's characterization of this as an "internal duty" may seem out of place, given his earlier characterization of the Universal Principle of Right in terms of restrictions on each person's conduct in light of the freedom of *others*. But the duty of rightful honor is also relational: it is a duty because it is a limit on the exercise of a person's freedom that is imposed by the Universal Principle of Right. Just as the rights of others restrict your freedom, so that you cannot acquire a right to anything by acting in ways inconsistent with the innate right of another person, so, too, the humanity in your own person restricts the ways in which you can exercise your freedom by entering into arrangements with others. Your innate right prevents you from being bound by others more than you can in turn bind them; your duty of rightful honor prevents you from making yourself bound by others in those ways. Rightful honor does not warn you away from some juridical possibility that would somehow be demeaning or unworthy. You do not wrong yourself if you enter into a

14. Kant introduces the idea of rightful honor as a gloss on Roman jurist Ulpian's precept *"honeste vive"* (6:237). See Ulpian, *Rules,* Book 1, recorded in Justinian, *Digest,* Book I, 1.10. A more literal translation would be "living honorably." The Ulpian precepts appear to have been a standard reference point in discussion; they appear in Baumgarten's textbook from which Kant taught moral philosophy. Kant concedes that his reading of them involves putting content into them. Kant uses the Latin phrase *Lex iusti* ("What is right"), as well as the phrases "the law of outer freedom" and "the axiom of outer freedom," to mark this idea elsewhere in the *Doctrine of Right.*

binding arrangement inconsistent with the humanity in your own person. Instead, your duty of rightful honor says that no such arrangement can be binding, so no other person could be entitled to enforce a claim of right against you that presupposes that you have acted contrary to rightful honor.

Rightful honor does not demand that you behave selfishly, or refrain from helping another person with some particular project, or make another person's ends your own. To do any of these things is just to adopt some particular purpose, and so is an exercise of your freedom. In later chapters, we will see that rightful honor prevents you from giving up your capacity to set your own purposes, and so prevents others from asserting claims of right that assume that you did. In private right your rightful honor prevents you from entering into an enforceable contract of slavery, even if you were to believe the arrangement to be to your advantage. In public right, it prevents officials from making arrangements on your behalf that are inconsistent with your innate right. Rightful honor also provides the link from private right to public right by imposing a duty on each to leave the state of nature, which Kant characterizes as a condition in which everyone is subject to the choice of others.

Understood in this interpersonal way, the idea of independence contrasts with the idea of freedom as independence from empirical determination that some interpreters take to be central to Kant's *Groundwork,* insofar as the latter is often taken to depend only contingently on the existence or deeds of others.[15] It also contrasts with prominent contemporary views according to which natural and social obstacles pose equally serious impediments to freedom.[16] Finally, Kant's account of independence

15. If this reading of the *Groundwork* is the canonical statement of Kant's position—an issue on which I take no stand here—the existence of a *Doctrine of Right* is surprising and its content even more so. For one such expression of surprise, consider Robert Pippin's comment, "It would not be unreasonable to expect Kant at this point to suggest a certain sort of stoic indifference to the practical affairs of politics." See Pippin's "Dividing and Deriving in Kant's Rechtslehre," in Otfried Höffe, ed., *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag, 1999), 63–85.

16. For example, in *A Theory of Justice* Rawls speaks of freedom in terms of independence from natural contingencies and natural fortune. See Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 73.

does not aspire to isolate people from the effects of other people's choices. Instead, my independence of your choice must be understood in terms of my right that you not choose for me. I remain independent if your choices have effects on me, as when you decline to cooperate with me on some project, or you pursue purposes of your own, and in so doing render things I had hoped to use unavailable. Any such idea of independence from all effects of the actions of others violates Kant's basic idea of equal freedom. To insulate one person from all effects of the choices of others would subordinate everyone else to that person's choice. This last contrast between independence of the choice of others and independence of the effects of their choices underlies Kant's conception of a number of familiar legal doctrines: you do me no wrong by offering a product similar to mine but at a better price, even though I lose customers. Nor do you wrong me by damaging something that I am accustomed to using but do not own; nor do you violate any right of mine by breaching a contract with someone other than me, or by taking down your fence so that my land is now exposed to wind. In each of these cases, I remain independent, that is, entitled to use my means as I see fit. These differences are central to Kant's argument.

Once freedom is understood in terms of people's respective independence, one person's freedom need not conflict with another's. Each person is free to use his or her own abilities to set and pursue his or her own purposes, consistent with the freedom of others to use their abilities to set their purposes. A system of equal freedom demands that nobody use his own person in a way that will deprive another of hers, or use another person's without her permission.

Each of these ideas requires filling out: the idea that your freedom is to be identified with your purposiveness; the idea that your right to your own person is tied up with your right to decide what to do with your body; and the idea that the separate or cooperative exercise of those powers can form a system of equal independence. Once the account of independence is in place, it also provides an account of wrongdoing as the violation of independence. It also generates the other "authorizations" that Kant says are included in innate right, both the right to speak your mind and the right to be "beyond reproach."

II. Freedom and Choice

The idea that you exercise your freedom by setting and pursuing purposes is familiar, common to Rawls's emphasis on the moral power to "set and pursue a conception of the good," and the distinction, common to Aristotle and Kant, between choice and wish. The ability to choose in this sense doesn't depend on the ability to stand outside the causal world, or even to abstract from your own purposes in making choices. Instead, it rests on the familiar observation that if you choose to do something, you must set about doing it, which requires that you take it to be within your power to pursue.

A different conception of choice sometimes appears in philosophy, according to which people simply have certain purposes and then select means to achieve them.[17] This conception is exactly backward. Even if your wishes are fixed by your biology and upbringing, you can only *do* something if you set out to do it, and you can only set out to do what you take yourself to have the power to do. You might be mistaken about what your powers can achieve, but your freedom to choose your own purposes just is your freedom to decide how to use the powers you have. Hobbes could set out to square the circle, even though he was mathematically doomed to fail, because he took himself to have the requisite means—a compass, a straightedge, and one of the best minds of the seventeenth century. Without the powers, you can wish for anything—to walk on the moon and be home in time for dinner—but it is not a choice you can make. Your wishes may all come true, but you only *do* things by exercising your powers.

You do not, and could not, have a right against others to purposiveness as such. Instead your right is that you, rather than any other person, be the one who determines which purposes you will pursue. In the first instance, your right to your person is your right to your body. Your body is the sum of your capacities to set and pursue your purposes; your right to

17. As economics textbooks frequently put it, preferences are "given." As a matter of the best empirical theory of human motivation, this may be true. If so, the distinction between choice and wish applies *within* a person's preference profile.

it is your right that no other person determine what purposes you will pursue, not that you exercise that capacity successfully.

This formulation of your right to your person as your right to your body neither presupposes nor conflicts with any more general metaphysical claims about the relation between your person and your body. At the level of theoretical metaphysics, your person might be kept track of in other ways- the narrative of your actions, the fluctuations of your bank account, or your own conscious thoughts. As far as your claim against others, and the claims of others against you, however, the starting point must be your person as your body. You are the one to whom various things happened, the one who engaged in various transactions, and every time you did something or something happened to you, your body did it, or it happened to your body. If somebody wrongs you, he typically interferes with one or more aspects of your person; all are wrongs against your person by being wrongs against its aspects. Your person is not just a set of means that are at your disposal, but if another person interferes with your body, he thereby interferes with your ability to set and pursue your own purposes by interfering with the means that you have with which to set them, namely your bodily powers or abilities. Some philosophers have thought that you can keep track of your conscious thoughts without keeping track of your body. Any such possibility is irrelevant to the ways in which you may treat others, or others may treat you, consistent with your respective purposiveness. Your thoughts make no difference to the capacity of others to set and pursue their own purposes unless you act on them. You exercise your purposiveness by choosing, rather than merely wishing.

There is thus a fundamental distinction between interfering with the *purposiveness* of another person and interfering with that person's *purposes.* I can interfere with your purposes in a variety of ways—I might occupy the space that you had hoped to stand in, make arrangements with the person you had hoped to spend time with, and so on. Actions that affect you in these ways leave your purposiveness intact, because you still have the ability to determine how to use what you already have, and you are still the one who gets to determine how it will be used. All I have done is change the world in which you act.

Innate right entitles each person to use his or her bodily powers as he or she sees fit, consistent with the ability of others to do the same with theirs. The consistency is achieved through the idea of noninterference and the correlative requirement that cooperative activity be voluntary. Each person is only entitled to use his or her means in ways that are consistent with the entitlement of others to use theirs under universal law. This consistency requirement precludes anyone from using another person's means without that person's permission. The qualification "under universal law" entails that you could not have a right to a certain state of affairs so that, for example, others were required to organize their activities in such a way as to guarantee that it continued to obtain. Any means that you have may be subject to generation and decay, and others are not required to use their means in ways that protect you from such possibilities. Instead, they are only required to use them in ways that do not themselves damage or destroy what is already yours.

III. Domination

The right to freedom as independence provides a model of interaction that reconciles the ability of separate persons to use their powers to pursue their own purposes. In so doing, it also provides a distinctive conception of the wrongs that interfere with this independence. Wrongdoing takes the form of domination. Both your right to independence and the violations of it can only be explicated by reference to the actions of others. Wrongs against your person are not outcomes that are bad for you which other people happen to cause. Unlike the familiar "harm principle" put forward by Mill, which focuses exclusively on outcomes that can be characterized without reference to the acts that bring them about, the right to freedom focuses exclusively on the acts of others. It is not that somebody does something that causes something bad to happen to you; it is that somebody does something to you.

The idea of freedom as nondomination has a distinguished history in political philosophy. Recent scholars have pointed out that Berlin's dichotomy between negative and positive liberty leaves out a prominent idea of liberty, sometimes referred to as the "republican" or neo-Roman conception of liberty, according to which liberty consists in independence from others. These scholars argue that this conception was central to the political thought of the civic republicans of the Renaissance, who were centrally concerned with the dangers of despotism. On this reading, the early modern republicans did not object to despotism because it interfered with their negative or positive liberty (to use anachronistic terms they would not have recognized). A despot who was benevolent, or even prudent, might allow people, especially potentially powerful ones, opportunity to do what they wanted or be true to themselves. The objection was to the fact that it was up to the despot to decide, to his having the power, quite apart from the possibility that he would use it badly. Unless someone has a power, there is no danger of it being used badly, but the core concern of the civic republicans was the despot's entitlement to use it, and the subjugation of his subjects that followed regardless of how it was used.[18] Berlin is aware of this difference when he writes, "It is perfectly conceivable that a liberal-minded despot would allow his subjects a large measure of personal freedom."[19]

Freedom as independence carries this same idea of independence further, to relations among citizens. It insists that everything that is wrong with being subject to the choice of a powerful ruler is also wrong with being subject to the choice of another private person. As a result, it can explain the nature of wrongdoing even when no harm ensues. One person is subject to another person's choice; I use your means to advance purposes you have not set for yourself. Most familiar crimes are examples of one person interfering with the freedom of another by interfering with either her exercise of her powers or her ability to exercise them. They are small-scale versions of despotism or abuse of office.

Your powers can be interfered with in two basic ways, by usurping them or by destroying them. I *usurp* your powers if I exercise them for my own purposes, or get you to exercise them for my purposes. If I use force or fraud to get you to do something for me that you would not otherwise

18. See generally Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), and Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998). In "A Third Concept of Liberty," *Proceedings of the British Academy* 117 (2002): 239, Skinner points out that Berlin's idea of positive liberty is not an idea of self-mastery but of mastering yourself.

19. Berlin, "Two Concepts of Liberty," 129.

do, I wrong you, even if the cost I impose on you is small. I have used you, and in so doing made your choice subject to mine, and deprived you of the ability to decide what to do. If you chose to do the same thing and I got the same benefit from it, but I had no role in making you do it, I haven't wronged you; I just took advantage of the effects of something you were doing anyway.

I can use you in other ways as well. Suppose that you are opposed to the fluoridation of teeth on what you believe to be health-related grounds. You are mistaken about this, but committed to campaigning against fluoridation. As your dentist, I use the opportunity created by filling one of your (many) cavities to surreptitiously fluoridate your teeth, pleased to have advanced the cause of dental health, and privately taking delight in doing so on you, the vocal opponent of fluoridation. In this example, I don't harm you, and there is even a sense in which I benefit you. I still wrong you because I draw you into a purpose that you did not choose. You remain free to use your other powers to pursue other purposes. But part of being free to use your powers to set and pursue your *own* purposes is having a veto on the purposes you will pursue. You need more than the ability to pursue purposes you have set; you also need to be able to *decline* to pursue purposes unless you have set them.[20] When I usurp your powers, I violate your independence precisely because I deprive you of that veto. I am like the despot who uses his office for a private purpose.

The other way in which I can subject you to my choice is by injuring you or, in the limiting case, killing you, ending your purposiveness. If I break your arm, I wrong you because I interfere with your person. The wrong interferes with a specific aspect of your purposiveness: in this case, I destroy your ability to use your arm (for some period of time) and in so doing limit the ends that you are able to set and pursue for yourself. The wrong does not consist in the fact that you no longer *have* those powers; you are not wronged if a disease or a wild animal produces the same result. I subject you to my choice because I deprive you of them. I dominate you because I treat your powers as subject to my choice: I take it upon

20. This idea receives its classic legal articulation in Judge Benjamin N. Cardozo's remark that "every human being of adult years and sound mind has a right to determine what shall be done with his own body" (*Schloendorff v. Society of New York Hospital*, 211 NY 125 (1914)).

myself to decide whether you can keep them. If I usurp your powers, I decide what purposes you will pursue, and make you dependent on me in one way; if I destroy them, I may not set any particular purposes for you, but treat your means as though they were mine to dispose of.

This second category of wrongdoing enables the right to freedom to account for all of the core examples that make Mill's harm principle seem plausible. Bodily injury reduces your powers no matter how it comes about, but it only violates your independence if another person injures you. Any injury potentially reduces your ability to set and pursue your own purposes, but intentional injury does something more: if I set out to deprive you of powers you have, I subordinate your ability to use your powers to set and pursue your own purposes as you see fit to my pursuit of my purposes. I set myself up as your master by deciding that you will no longer have them. Intentional injury is despotism by another name. Harm merits prohibition when it is a manifestation of despotism, but not otherwise.

Use and injury exhaust the space of possible violations of independence. Other possible losses are excluded. Your entitlement to be your own master is only violated if another person makes you pursue an end you have not chosen, by using your powers without your authorization, or restricts your ability to use your powers, either by physically constraining you or by depriving you of the ability to use them. Your self-mastery is not compromised if others decline to accommodate you, because the idea of self-mastery is explicitly contrastive. The person who declines to exercise his own self-mastery in aid of your wishes or needs does not thereby become your master. Indeed, any other restrictions on the freedom of others would require them to use their powers for another person's purposes.

Many wrongs against persons combine use and injury. Touching a person without her consent uses her for a purpose she didn't authorize; if she is also injured in the process, it may limit her ability to use her powers, at least temporarily. But intentional touching is objectionable even if harmless or undetected, or the injury is small. Your person—your body—is yours to use for your own purposes, and if I take it upon myself to touch you without your permission, I use it for a purpose you haven't authorized. The problem is not that I interfere with your use of your person or

powers, but that I violate your independence by using your powers for my purposes. The trespass against your person is primary, and any consequent injury secondary to it. If I cause you minor harm, such as the distraction of the few seconds of pain you experience when slapped, the small injury is serious because it aggravates an unauthorized touching. That is why an unauthorized caress or kiss can be a serious wrong, even if the victim is asleep or anesthetized.

Other people might do various things that annoy you in various ways. You might be happier if other people dressed in ways that you found tasteful or modest, or refrained from public displays of affection. However troubling you might subjectively find such conduct, your right to your own person does not entitle you to constrain it, because it does not stop you from using your body as you see fit. Again, you could not enjoy a right against others looking at you under a universal law, because embodied and motile persons can only avoid bumping into each other by looking where they are going, and so sometimes at each other.[21]

Defenders of Mill's harm principle have sought to explain the wrong in harmless trespasses against persons by pointing to their effects on third parties, arguing, for example, that people are particularly likely to be upset by or afraid of such forms of conduct[22] or, alternatively, that most trespasses against persons are harmful, and so it is better to have a general rule proscribing them.[23] The Kantian idea of an innate right of humanity

21. It does not follow from this that your right to your person does not include rights against assault, that is, rights against what the law calls "an apprehension of a battery." Nor does it preclude the possibility that your right against assault could be engaged by others stalking you or even leering at you without touching you, even though you could not have a right against their looking at you as they go about their own business. Another person may wrong you without actually touching you in those cases in which he induces the expectation of a battery in you. That person is not entitled to put you in a position of using your powers defensively, because in so doing, he is dictating how you will use your powers. The standard by which an assault is judged must be objective, so that neither the assailant nor the person complaining determines whether a particular case is in fact an assault.

22. Colin Bird, "Harm Versus Sovereignty: A Reply to Ripstein," *Philosophy & Public Affairs* 35 (2007): 182–185; John Gardner and Stephen Shute, "The Wrongness of Rape," in Jeremy Horder, ed., *Oxford Essays in Jurisprudence: Fourth Series* (Oxford: Oxford University Press, 1999), 193–218.

23. See, for example, Joel Feinberg, *Harmless Wrongdoing* (Oxford: Oxford University Press, 1990).

in your own person provides a simpler explanation: the person who touches you without your authorization uses you for a purpose that is his but not yours. The ground for prohibiting such conduct does not depend on any hypothesis about the likelihood that some third person will harm yet a fourth.

More generally, innate right's indifference to harm, considered as such, enables it to explain the familiar exceptions to the harm principle.[24] Self-inflicted injury involves no despotism—it is not something that one person has done to another. Ordinarily, injury that results from consensual undertakings will not involve despotism either. If consent is genuine, the person injured as a result of a voluntarily undertaken danger is not subject to another person's despotism. By consenting, you can turn an act that would otherwise be another person's despotism over you into an exercise of your own freedom. The right to engage in consensual interactions and the rights you acquire through consensual interactions are, strictly speaking, not parts of the innate right of humanity as such. Instead, they are acquired rights, which require affirmative acts to establish them. We will return to them in detail in Chapter 4.

The idea of independence also explains why other harms do not matter to right. Voluntary cooperation enables people to use their powers together to pursue purposes they share. It can be made to look as though potential cooperators are always subject to each other's choice: unless you agree to cooperate with me, I can't use my powers in the way I want to. But this is an example of our respective independence. Cooperation only contrasts with domination when it is voluntary on both sides. You get to decide whether to cooperate with me because you get to decide how your powers will be used. I can no more demand that you make your powers available to accommodate my preferred use of mine than you can make that demand of me. Each of us is sovereign over our powers, and the power to decide who to cooperate with is a basic expression of that sovereignty. That is why I wrong you when I use your powers for my purposes,

24. The ways in which these exceptions follow directly from innate right might lead some to suspect that the harm principle is just a façade for arguments that appeal to independence rather than harm.

even if it doesn't cost you anything: in appropriating your powers as my own, I force you to cooperate with me.

Each person's entitlement to decide how his or her powers will be used precludes prohibiting many of the setbacks people suffer as effects of other people's nondominating conduct. People always exercise their powers in a particular context, but that context is normally the result of other people's exercises of their own freedom. To protect me against the harms that I suffer as you go about your legitimate business, perhaps because you set a bad example for others, or deprive me of their custom, would be inconsistent with your freedom, because it would require you to use your powers in the way that most suited my wishes or vulnerabilities. You do not dominate me by failing to provide me with a suitable context in which to pursue my favored purposes. To the contrary, I would dominate you if I could call upon the law to force you to provide me with my preferred context for those purposes. That would just be requiring you to act on my behalf, to advance purposes I had set. That is, it would empower me to use force to turn you into my means. Refusing to provide me with a favorable context to exercise my powers is an exercise of your freedom, not a violation of mine, no matter how badly the refusal reflects on your character.[25]

Indifference to harm that is suffered as a result of one person's failure to provide another with a favorable context is just the generalization of the protections the right to freedom provides. That is the precise sense in which it articulates reciprocal limits on freedom: you would be wronged if I could prohibit you from doing something that doesn't wrong me. You can be prohibited from dominating me, but the basis for that prohibition is also the basis for prohibiting me from calling on the state to make you provide me with favorable background conditions to use my own powers.[26]

In the same way, if you defeat me in a fair contest, you do not deprive

25. If you can be required to perform acts for others, such as easy rescues, the rationale must have another source, since failing to rescue doesn't usurp or destroy a person's powers, it just fails to rescue her. I examine this issue in more detail in "Three Duties to Rescue," *Law and Philosophy* 19 (2000): 751–779.

26. Interests can be set back in ways that are more closely connected to freedom when, for example, parents or guardians fail to see to the development of the powers of their children. I examine these issues in the next chapter.

me of any of my powers. I merely failed at something that I was trying to do. That failure may disappoint me, but it doesn't deprive me of means that I already had, it only prevents me from acquiring further ones. My defeat may change the context in which I use those powers in the future: if you win the championship, others may no longer hire me to endorse their products. But I had no entitlement against you to a favorable context or to have those other people enter into cooperative arrangements with me.

This remains the case even if I use up my means, and so have less after the contest than before: I haven't been deprived of them, I have just used them in trying to acquire something I didn't get. The fact that this happened in the context of a contest with other people doesn't make this expenditure any different from any other case in which I might expend my means while trying unsuccessfully to get more. They are mine to use, and as long as nobody forces me to use them one way or another, I am free to use them as I see fit. Conversely, if I squander them, I can't say that anyone else deprived me of them. Reasonable people may disagree about what counts as a fair contest, or about the familiar example of economic competition for which the idea of fair contest is so often invoked. Nobody can coherently dispute the claim that a fair contest is one that nobody is entitled to win in advance. No matter how significant the impact on those who lose at fair contests, the loss does not amount to the despotism of the winner over the loser.

Cases of economic competition presuppose a further context not yet contained in the idea of innate right: rights to property, obligations under contracts, and institutions charged with enforcing acquired rights. Nonetheless, they illustrate an important structural feature of the difference between wronging a person and changing the context in which that person acts. If you lure my customers away by providing a better combination of product and price, I may be much worse off. You do not wrong me, because I still have my means at my disposal: my (unsold) stock, my premises, and my abilities as a salesman. I had no right that my customers continue to patronize me. I only had a right to offer them incentives to enter into commerce with me. You have the same formal right, and so you, too, may offer them incentives. They are free to respond to our respective incentives as they see fit. I cannot have a right to my customers, because if I did, such a right would limit their ability to use their means as they see fit,

that is, by entering into transactions with whomever they please, on the terms they find most attractive.[27]

Independence can only be violated by the deeds of other persons, because it is an interest in independence of those deeds. Thus it cannot be treated as just another vulnerability, to be added to the harm principle's catalogue of protected interests. All of those interests can be set back by a variety of things other than the actions of others.

The sense in which I use you is particularly vivid if I willfully *decide* to use you, but the same point applies quite apart from my state of mind. My use of you is objectionable even if you are merely incidental to my purpose: I grab you and push you out of the way, or vent my frustration by hitting you. In either of these cases, you are an unwilling party to the transaction: I force you to participate in my pursuit of my petty purposes, either by forcing you to stand where I want you to, rather than where you were, or by volunteering you as my punching bag. Either way, subjecting your choice to mine is the means I use to get what I want; my act is objectionable because the means I use are properly subject to your choice, not mine. In so doing, I exercise despotism over you, and so treat you as subject to me. I can do the same carelessly or inadvertently. Not looking where I am going, I may injure you, or, absentmindedly, I sit on a chair, failing to notice that it is already occupied. In all of these cases, I act in ways inconsistent with our respective freedom under universal law, because I restrict your ability to use your person to set and pursue your own purposes.

IV. The Other "Authorizations"

The right to independence entitles each person to use his or her means to set and pursue his or her own purposes, consistent with the entitlement of others to do the same. Innate right also entitles you to tell others what you think or plan to do, without being held to account for saying so, and

27. It is conceivable that there might be grounds of public right to restrict economic competition in certain settings, since, as we shall see, the state has the right to "manage the economy," which entitles it to act on its best judgment about how to do so. If there are grounds for restricting competition, however, their basis cannot be traced to an individual right on the part of the person disadvantaged by the fact that people did not respond to the incentives he offered, because no person could ever have a right that others respond to his incentives or offers.

the right to be "beyond reproach," the right to have only your own deeds imputed to you. These authorizations are fundamental to public right, because they constrain the possible activities of the state in making law. The former provides the basis for rights of freedom of expression, limited only by the rights of others; the latter is the basis of both the right to sue in defamation for damage to your reputation and the right to place the burden of proof on a person who accuses you of having done wrong. These are both "already" included in innate right and "not really distinct from it" because each is an aspect of independence of the choice of others. The right to communicate your thoughts to others is just a special case of the right to use your powers as you see fit. Kant remarks that this extends even to deliberate falsehoods, because it is up to others to decide whether to believe what they are told. The only untruth "that we want to call a lie in a sense bearing on rights" is one that deprives another of some acquired right, such as a fraudulent claim that a contract has been concluded. The right to say what you think does not preclude liability for fraud, or injuring another person's reputation, or falsely shouting "fire" in a crowded theater when you know people will be trampled, because each of these deprives others of things to which they already had a right. To deprive you of property or get you to do something by lying to induce you to enter into an arrangement with me is not parallel to depriving you of property or getting you to do something with force.[28] Such cases contrast with those in which one person suggests that another do something, and the other follows the suggestion. In that case, the second person must be taken to act on his or her own initiative, because no person has a right that others use what is theirs in ways that most favor them. Using your power of speech is a special case of using your powers; saying things to others is ordinarily a matter of changing the context in which they act, rather than depriving them of what they already have.[29]

28. These cases are analyzed in detail in Chapter 5.

29. Kant's well-known essay "On the Supposed Right to Lie from Philanthropy" actually incorporates this analysis. Confronted with Constant's example of someone who comes to your door looking for a friend "just now bent on murder" (8:427), Kant contends that it is not permissible to lie, on the grounds that "truthfulness in statements that one cannot avoid is a human being's duty to everyone" (8:426), and then, surprisingly, remarks that the murderer "has no right to the truth." This latter claim follows from his claim that each person has a right to communicate thoughts to others, except where doing so directly infringes another person's

The right to be beyond reproach is another instance of the right to independence. No person can place you under a new obligation or restriction simply by alleging that you have done wrong. If he could, and thereby place the burden on you of clearing your name, he would be entitled to restrict your freedom entirely on his own initiative. Thus you would be subject to his choice. Your right to be "beyond reproach" just is the right that you never have to clear your own name; you are entitled to your own good name simply by virtue of your innate right of humanity.

V. Freedom and Coercion

We are now in a position to explain Kant's claim that right can be identified with the authorization to coerce. He writes that "right can also be represented as the possibility of a fully reciprocal use of coercion that is consistent with everyone's freedom in accordance with universal laws."[30]

This focus on coercion puts him at odds with the tradition that dominates political philosophy, at least in the English-speaking world, for which the primary normative question of political philosophy is what people ought to do, and the question of whether they should be forced to do those things is secondary.[31] A prominent version of this view receives a forceful statement by Mill in his discussion of justice in *Utilitarianism.* Mill there writes, "We do not call anything wrong unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law by the opinion of his fellow creatures; if not by opinion by the reproaches of his own conscience." For Mill, we only attach sanctions to a proper subset of the things that people should not do, and he argues that we should only do so based on the seriousness of the harm those acts

rights. No person has a right to be told the truth as such; a system of equal freedom is only possible if everyone has a right to what he or she already has, but not a right, absent some prior arrangement, to receive anything from anyone. Kant's conclusion is that lying in such cases violates the postulate of public right, and so, although it wrongs no one in particular, nonetheless does wrong in what Kant describes as "the highest degree" (6:307). For a careful discussion of these issues, see Jacob Weinrib, "The Juridical Significance of Kant's 'Supposed Right to Lie,'" *Kantian Review* 13 (2008): 141–170.

30. 6:321.

31. John Rawls's later work, with its emphasis on the coercive structure of society, is a clear exception to this tendency. See *Political Liberalism* (New York: Columbia University Press, 1993).

cause others and the costs and benefits of using threats to discourage them. So moral philosophy is concerned with the appropriate occasions of blame, and political philosophy is concerned with those moral demands a state can make and back with threats; the demands themselves are identified without reference to the concept of a threat. Mill goes on to add that "reasons of prudence, or the interests of other people, may militate against actually expecting it; but the person himself, it is clearly understood, would not be entitled to complain."[32] Mill himself develops this picture in detail in *On Liberty,* where he looks to the likely consequences and interests of other people that militate against threatening people for their own good.

For the tradition from which I have selected Mill as spokesman, coercion has two key features. The first of these is that coercion involves the shaping of behavior through the making and carrying out of threats. The second is that it is extrinsic to the wrong that it is supposed to address.[33] Let me explain these two features more carefully. The basic idea of the first is that coercion is to be identified with the deliberate setting back of a person's interests in order to shape his or her behavior. The second is perhaps more familiar. The basic idea is that a person's interests are set back in order to accomplish something, and that setting back those interests is an effective way of accomplishing that thing. The person who steals something gets locked up for a few years, so that he, and others like him, will not be tempted to steal.

If coercion is understood in terms of sanction, it must have a secondary place in political philosophy, and not figure in its basic principle, as Kant suggests. The idea that the making of threats is somehow constitutive of law or the state is vulnerable to a familiar line of objection, made prominent by H. L. A. Hart.[34] According to Hart, sanctions do not lie at the heart of any adequate conception of law. A noncoercive law is perfectly conceivable, because the concept of a rule, the violation of which

32. John Stuart Mill, "Utilitarianism," in J. M. Robson, ed., *Essays on Ethics, Religion and Society: Collected Works of John Stuart Mill,* vol. 10 (Toronto: University of Toronto Press, 1969), 245.

33. For another example, see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 148–149. Raz offers a detailed definition that focuses exclusively on coercion by threats, "since this is the form of coercion relevant to political theory."

34. See Hart, *The Concept of Law* (Oxford: Oxford University Press, 1962), 20–25.

invites sanction, is conceptually prior to the concept of a sanction for its violation, and so cannot be reduced to it. Instead, any adequate account of law must begin with the concept of a rule or norm, rather than trying to reduce it to the concept of a threat.

Kant does not conceive of coercion in terms of threats, but instead as the limitation of freedom. As we saw, freedom in turn is understood as independence from being constrained by the choice of another person. His examples of coercively enforceable obligations are drawn from the juridical categories of Roman private law, and he was presumably aware, as are all students of that legal system, that it existed without a centralized enforcement mechanism for private actions.[35] His initial, and indeed paradigmatic, example of coercion is the right of a creditor to demand payment from a debtor, a right to compel payment, not a right to punish nonpayment.

This way of setting up the idea of coercion differs from the sanction theory in two key respects: what coercion is, and what can make it legitimate. First, it supposes that although threats are coercive, actions that do not involve threats can also be coercive. An act is coercive if it subjects one person to the choice of another. One person can be subjected to the choice of another either directly, through acts, or indirectly, through threats of such acts. Kidnapping, for example, typically includes a threat addressed to the victim's family or business associates, but the wrong of kidnapping is constraining—coercing—another person, quite apart from the further wrong of extortion, that is, using the kidnapping to shape the conduct of third parties through threats. It is both artificial and misleading to suggest that only the family members or business associates are coerced, and no less so to suggest that kidnapping is only coercive if the victim is threatened directly. A more plausible view is that both victim and those who pay ransom are coerced, though in different ways, and that the direct use of force is the basic case of coercion.

Second, Kant's conception of coercion judges the legitimacy of any particular coercive act not in terms of its effects but against the background idea of a system of equal freedom. That is, unlike Bentham, he begins with the concept of a rule, but the rules in question govern the legitimate use of force in terms of reciprocal limits on freedom. Coercion is objectionable where it is a hindrance to a person's right to freedom, but legitimate when it takes the form of hindering a hindrance to freedom. To stop you from interfering with another person upholds the other's freedom. Using force to get the victim out of the kidnapper's clutches involves coercion against the kidnapper, because it touches or threatens to touch him in order to advance a purpose, the freeing of the victim, to which he has not agreed. The use of force is rightful because an incident of the victim's antecedent right to be free. The kidnapper hinders the victim's freedom; forcibly freeing the victim hinders that hindrance, and in so doing upholds the victim's freedom. In so doing, it *also* makes the kidnapper do what he should have done, that is, let the victim go, but its rationale is that it upholds the victim's right to be free, not that it enforces the kidnapper's obligation to release the victim. The use of force in this instance is an instance of the victim's right to independence, and so is a consistent application of a system of equal freedom.

If coercion is understood as justified if and only if it restricts a restriction on freedom, it does not need to be identified with a sanction. Aggression is coercive; defensive force is also coercive. The latter is not a further wrong that requires a special justification; it is just the protection of the defender's freedom. The person using defensive force is neither sanctioning the aggressor nor carrying out a threat that was supposed to deter aggression.

Kant's claim that it is legitimate to use force to hinder hindrances to freedom thus incorporates his more general idea of a system of equal freedom. He does not start with the idea that it is always wrong to restrict the choice of another person, and then struggle to show that doing so is sometimes outweighed on balance, in the way that Bentham, for example, thinks that causing pain is always bad but legitimate when outweighed by a greater good produced. Instead, the initial hindrance of freedom is wrongful because inconsistent with a system of equal freedom; the act that cancels it is not a second wrong that mysteriously makes a right, because the use of force is only wrongful if inconsistent with reciprocal limits on freedom. So force that restores freedom is just the restoration of the original right.

Examples like kidnapping and self-defense may seem too narrow to generate a full account of legitimate coercion as the protection of freedom,

35. See, for example, Barry Nicholas, *An Introduction to Roman Law* (Oxford: Oxford University Press, 1962), 27.

since both kidnappers and aggressive attackers *set out* to restrict others. But the same point applies to defensive force against accidental wrongdoing: you can protect your person against interferences by others, even if those others are merely careless in injuring you.

At the level of innate right, the entitlement to hinder hindrances of your freedom is always defensive. It may also operate prospectively; the expectation that others will defend themselves might lead someone considering aggression to refrain. The principle of right does not need to be the incentive to conduct; an act is right if consistent with the independence of others, regardless of the person's reasons for acting. In the next chapter, we will see that the introduction of acquired rights adds a further dimension to a system of equal freedom and a corresponding dimension to the possibility of reciprocal coercion.

Bentham and Austin are easy targets for Hart's criticism because they suppose that legal (or moral) rules are instruments created to serve a purpose. From that starting point, it is natural, if not inevitable, that they should also suppose that every creation has a creator, and so conclude that a rule must be an expression of a conditional intention expressed in order to produce a result. Kant rejects both their instrumentalist conception of rules and their concomitant attempt to reduce norms to intentions. He is thus in a position to conceive of coercion differently, simply as the restriction of freedom.

VI. Conclusion

The innate right of humanity is the basis of any further rights a person must have, because it is the entitlement that each person has to self-mastery, and so, as a result, also a right that limits the ways in which force may be used. So long as every person acts in conformity with the innate right of others, no coercion is used; the entitlement to coerce is simply the entitlement that others exercise their freedom consistent with your own. This same structure of equal freedom understood as restrictions on coercion governs further aspects of right, including both private right and public right. In private right, it structures the further rights that each person can acquire, and the restrictions on the capacity to acquire new rights. At the level of public right, it also restricts the means available to the state in achieving its public purposes, and imposes certain mandatory duties on it.

CHAPTER 3

Private Right I: Acquired Rights

As a principle limiting the actions of separate persons, the Universal Principle of Right is silent on rights with regard to external objects of choice, that is, those things *other* than your own person that you can use in setting and pursuing your own purposes. Your right to your own person does not depend on any further rights you might have, whether to property, or to affirmative deeds, or to loyalty[1] on the part of others. Others would need to restrict their conduct in light of your right to independence even if no other things could be used to set and pursue purposes. Kant's point is not that these dimensions of private interaction are unrelated to your right to your own person. The normative basis of acquired rights depends on your right to your own person, but rights to external objects of choice are not reducible to your right to your own person.[2]

1. I use the term "loyalty" here as it is used in the law of fiduciary obligations, to characterize an affirmative obligation to act on behalf of another person.

2. In this respect, Kant's account contrasts in interesting ways with the otherwise very different theories of property found in Locke and Hegel. Both Locke and Hegel treat property as an extension of a person, and so treat initial acquisition as the normative basis for property. Kant's approach begins with an account of the rightfulness of *owning* property via the postulate, and treats acquisition as a secondary matter. Kant's differences from Locke parallel their differing approaches to perception: Locke treats sensory input as the basis and structure