

Kant's Non-Absolutist Conception of Political Legitimacy – How Public Right 'Concludes' Private Right in the "Doctrine of Right"

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Abstract: Contrary to the received view, I argue that Kant, in the "Doctrine of Right", outlines a third, republican alternative to absolutist and voluntarist conceptions of political legitimacy. According to this republican alternative, a state must meet certain institutional requirements before political obligations arise. An important result of this interpretation is not only that there are institutional restraints on a legitimate state's use of coercion, but also that the rights of the state ('public right') are not in principle reducible to the rights of individuals ('private right'). Thus, for Kant, political obligations are intimately linked to the existence of a certain kind of republican institutional framework.

Keywords: justice, republicanism, legitimacy

*Introduction*¹

One of the great appeals of voluntarism is that it presents itself as the only possible alternative to an absolutist conception of political legitimacy, according to which might makes right. Many of Kant's interpreters have accepted this dichotomy, and as a consequence argue that a fundamental problem with Kant's non-consensual theory of political obligations is its complementary absolutist conception of political legitimacy.² Indeed, this interpretation appears affirmed by Kant himself, since many of his formulations invite the absolutist interpretation. Never-

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² For example, see Sarah Williams Holtman: "Revolution, Contradiction, and Kantian Citizenship", 212–213 and 224–227. In: *Kant's Metaphysics of Morals*. Edited by Mark Timmons. New York 2002, 209–232; Otfried Höffe: *Immanuel Kant*. Translated by Marshall Farrier. Albany 1994, 186f; Wolfgang Kersting: "Kant's Concept of the State", 162f. In: *Essays on Kant's Political Philosophy*. Edited by Howard L. Williams. Chicago 1992, 143–166, but note that Kersting appears to hold a different view in "Politics, freedom, and order: Kant's Political Philosophy", on 361. In: *The Cambridge Companion to Kant*. Edited by Paul Guyer. New York 1992, 342–366; Allen D. Rosen: *Kant's Theory of Justice*. New York 1993, 141–148; Howard L. Williams: *Kant's Political Philosophy*. New York 1983, 198–208.

theless, I believe that this is a mistaken interpretation. It results from an incorrect reading of Kant's political writings, of which the "Doctrine of Right" in the *Metaphysics of Morals* is the most important. The mistake has been to read Kant's texts through what I will call 'voluntarist lenses'. When contemporary Kantians analyze Kant's political texts through voluntarist lenses they wrongly assume both that Kant's circumstances of justice are the same as those proposed by Hume and Locke, and that the ideal of political legitimacy must be either absolutist or voluntarist.

There are several reasons to draw this conclusion. First, the majority of contemporary, historical interpretations of Kant mistakenly maintain that he considers the state merely prudentially necessary to overcome problems arising from immoral behaviour (humanity's 'warped wood') as well as from a general lack of resources. On this view, the state is not in principle necessary to enable justice³, but is simply a palliative or remedy for the inconveniences of the state of nature. Moreover, these historical interpretations presume that Kant accepted the dichotomy between voluntarism and absolutism. And since anyone with half a brain recognizes the irrationality of staying in the state of nature, they assume that Kant sided with Hobbes.⁴ In this way, they argue that considerations of prudence and simple assurance of property right lead Kant to the conclusion that our political obligations must be understood in non-consensual terms. And any sovereign that manages to subject the people to its rule is a legitimate political power, to which the people are politically obligated. Hence, they see Kant as affirming an absolutist conception of political legitimacy.

Second, when contemporary Kantian theorists, such as Onora O'Neill⁵ and the early John Rawls⁶, develop their own Kantian positions they typically argue that Kant *should* have opted for a weak version of voluntarism.⁷ An absolutist conception of political legitimacy makes right into might and, therefore, is totally unacceptable. Instead, Kant should have argued that individuals' rights set the boundaries for rightful uses of state coercion, and these individual rights should have

³ I use 'justice' and 'right' interchangeably throughout this paper.

⁴ For prudential readings of Kant's and the Kantian argument, see Mary J. Gregor: *Laws of Freedom*. Oxford 1963; Jeffrie G. Murphy: *Kant: The Philosophy of Right*, Macon 1994, 34, 70, 75f., 104, 107; John Rawls: *A Theory of Justice*. Cambridge 1999, 110, though see also *Political Liberalism*. New York 1996, 66; Thomas Pogge: "Is Kant's Rechtslehre a 'Comprehensive Liberalism?'" In: *Kant's Metaphysics of Morals*, 147; Onora O'Neill: *Bounds of Justice*. Cambridge 2000, 139; Kenneth Westphal: "A Kantian Justification of Possession. In: *Kant's Metaphysics of Morals*", 108, but contrast with 91, 104, 109; and Howard L. Williams: *Kant's Political Philosophy*. 10f., 70, 73, 164, 169f., 185.

⁵ Onora O'Neill: *Bounds of Justice; Constructions of Justice*. Cambridge 1989; and *Towards Justice and Virtue – A Constructive Account of Practical Reasoning*. Cambridge 1996.

⁶ John Rawls: *A Theory of Justice*.

⁷ Some interpreters argue that Kant actually defends weak voluntarism. For example, see Alexander Kaufman: *Welfare in the Kantian State*. New York 1999; Paul Guyer: *Kant on Freedom, Law, and Happiness*. New York 2000, and *Kant*. New York 2006; and Patrick Riley: *Will and Political Legitimacy. A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*. Cambridge 1999.

included a right to cover certain basic needs. Though these contemporary Kantians do not follow Locke in arguing for actual consent as a precondition on political obligations (strong voluntarism), they do argue for a *weak* version of voluntarism. Rightful coercion and legitimate political authority are understood in terms of *hypothetical* consent to principles of justice that are responsive to considerations of need.

In this paper, I argue that Kant's non-voluntarist conception of political obligations is not complemented by an absolutist conception of political legitimacy. I argue that Kant outlines a third, republican alternative to absolutist and voluntarist conceptions of political legitimacy. According to this republican alternative, a state must meet certain institutional requirements before political obligations arise or before persons subject to its power are obligated to recognize its rightful authority over them. Kant argues that the state must represent the general, united will by representing the will of each person born within its jurisdiction. This is achieved by setting itself up as a *public* authority that posits and enforces laws in a way reconcilable with each subject's right to freedom, namely by ensuring that the *totality* of laws (public right) secures institutional conditions in which individuals can exercise their external freedom, or choice in space and time, rightfully. So, rather than understanding political legitimacy in terms of either absolutism or voluntarism, Kant argues that it is intimately linked to the existence of a certain, republican institutional framework.

An important result of understanding Kant to be putting forward a third republican alternative to absolutism or voluntarism, and thus showing the dichotomy to be false, is not only that there are institutional restraints on a legitimate state's use of coercion, but also that the rights of the state are not seen as reducible to the rights of individuals. When Kant's texts are read through voluntarist lenses these aspects of Kant's theory do not become apparent, which is the reason why many contemporary Kantian theorists have been unable to capture these highly important features of Kant's theory of the legitimate state. And as will become clear, reading Kant through voluntarist lenses is the reason why Kant often is seen, albeit mistakenly, to have little to say about issues of economic justice. The voluntarist lenses make it impossible to see the way in which Kant links the state's legitimacy to the existence of public institutions that secure conditions of economic justice.

1. *Kant's Non-Voluntarist Conception of Political Obligations*

In the private right sections of the "Doctrine of Right" Kant argues that justice is possible only within civil society, or within a liberal, legal framework. Civil society is an enforceable precondition of justice and not merely a remedy for the inconveniences characterizing the state of nature, understood as a condition without a *public* authority (MS, AA 06: 307–308, cf. TP, AA 08: 294–295, 313, ZeF, AA 08: 354). These conclusions are grounded in Kant's relational understanding of right, according to which individuals' interactions must be respectful of each

other's innate right to "freedom", understood as her right to "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."⁸ Interaction consistent with each person's innate right to freedom is deemed impossible in the state of nature. Right cannot be realized privately by each individual acting virtuously because it is impossible for private individuals to provide rightful assurance and to overcome certain problems of indeterminacy characterising the specification of the private right principles of private property, contract and status relations in the state of nature. So there are two insoluble problems in the state of nature: the problem of rightful assurance and the problem of indeterminacy regarding application. In short, private property, contract, and status relations⁹ among individuals cannot be both rightful, or respectful of each individual's innate right to freedom, and at the same time determined and assured by a *private* authority. And private authority is the only authority there is in the state of nature. Indeed, even mutual agreement cannot make relations among individuals rightful in the state of nature, since in this situation everyone's external freedom is still subject to one another's arbitrary choice.

Due to the problems of assurance and indeterminacy, Kant maintains individuals can enjoy only provisional rights in this condition and that staying in the state of nature is to commit wrongdoing. It is to stay in a condition where we subject one another's external freedom to one another's arbitrary choices rather than to universal law, and so rightful external freedom is impossible in the state of nature. At best, the state of nature is "a state *devoid of justice*" [ein Zustand der Rechtlosigkeit (MS, AA 06: 312.24)], meaning that in the best case scenario it is a condition in which particular individuals do not wrong *one another*, but yet in choosing to remain in the state of nature they renounce any concept of right. Consequently, writes Kant, men "in general [...] do wrong in the highest degree by willing to be and to remain in a condition that is not rightful".¹⁰ That is, individuals choosing to stay in the state of nature do wrong in the highest degree even if the wrong they do is not done against particular individuals. In order to interact rightfully with others they must therefore establish a condition in which their interactions are subject to universal laws rather than to one another's arbitrary restrictions. And the only way to do this is by establishing a will that represents the will of each and yet the will of no one particular private individual. That is to say,

⁸ I have used Mary Gregor's translation of Kant's works in *Immanuel Kant: Practical Philosophy*, Cambridge University Press, 1996. MS, AA 06: 237.29–31: "Freiheit (Unabhängigkeit von eines Anderen nöthigender Willkür), sofern sie mit jedes Anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen kann".

⁹ Status relations include all relations, in which one person has legal standing with regard to another person's private life. I discuss these relations in more detail in "Kant's Non-Voluntarist Conception of Political Obligations: Why Justice is Impossible in the State of Nature". In: *Kantian Review* 13: 2, 2008, 1–45, and in "A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage and Prostitution". In: *Social Philosophy Today* 22, 2007, 199–218.

¹⁰ MS, AA 06: 307.31–32–308.01: [...] überhaupt tun sie im höchsten Grade daran unrecht, in einem Zustande sein und bleiben zu wollen, der kein rechtlicher ist."

rightful interaction requires the establishment of a will or authority that is *impartial in its form* or a *public*, general will or a public authority.¹¹ To refuse to enter civil society is therefore to refuse the condition under which interaction respectful of each person's innate right to freedom is possible. This is why refusing to enter civil society is to commit wrongdoing in the highest degree, and individuals have a strict or enforceable duty to set up a *public* authority to provide assurance and to specify the rules for their interaction.¹² Moreover, because consent cannot be a necessary condition for the establishment of a rightful state, Kant concludes that the liberal ideal of political obligations is non-voluntarist in nature.¹³ Let us now consider why this does not entail an absolutist conception of political legitimacy. To see this we must consider Kant's account of public right.

2. Kant's Non-Absolutist Conception of State Legitimacy

"*Public right*", Kant argues, is the "sum of the laws which need to be promulgated generally in order to bring about a rightful condition".¹⁴ Elsewhere he explains, "the only constitution that accords with right" is a "pure republic". The pure republican constitution accords with right because it "makes *freedom* the principle and indeed the condition for any exercise of *coercion*".¹⁵ In yet another place, Kant explains that public right ultimately aims to enable a condition in which each citizen's freedom, equality and independence is secured.¹⁶ What does this mean? It can only be that constitutive of public right is the establishment of a public monopoly on coercion to overcome the problem of assurance and the public positing and application of those laws whose function it is to overcome the problem of indeterminacy regarding the specification of the private right principles (private property, contract and status relations). Thus, we need an account of how the sovereign sets itself up as a *public* authority to overcome the problems

¹¹ See MS, AA 06: 345–346; AA 08: 344, 351–352.

¹² See TP, AA 08: 371; MS, AA 06: 230, 232.

¹³ See my "Kant's Non-Voluntarist Conception of Political Obligations" for the full argument why justice is impossible in the state of nature. The paper at hand can be seen as a sequel of sorts to "Kant's Non-Voluntarist Conception of Political Obligations". It concerns national public right in the "Doctrine of Right", and hence takes off from the interpretation that Kant defends a non-voluntarist conception of political obligations in the private right section of the "Doctrine of Right". In: "Diversity and Unity. An Attempt at Drawing a Justifiable Line". In: *Archiv für Rechts- und Sozialphilosophie/Archives for Philosophy of Law and Social Philosophy* (ARSP) 94, 2008, Heft 1: 1–25, I discuss the other two forms of public right in the "Doctrine of Right", namely the right of nations and cosmopolitan right.

¹⁴ MS, AA 06: 311.06–08: Der Inbegriff der Gesetze, die einer allgemeinen Bekanntmachung bedürfen, um einen rechtlichen Zustand hervorzubringen, ist das *öffentliche[.] Recht*."

¹⁵ Die "einzig rechtmäßige Verfassung" ist die "einer reinen Republik" (MS, AA: 06: 340.31–32). Sie allein "[macht] die *Freiheit* zum Princip, ja zur Bedingung alles *Zwanges* [...], der zu einer rechtlichen Verfassung im eigentlichen Sinne des Staats erforderlich ist [...]" (MS, AA 06: 340.35–37).

¹⁶ See MS, AA 06: 314; TP, AA 08: 290.

of assurance and indeterminacy in the right way. As we shall see, Kant ultimately argues that a tripartite authority that secures the rights of each citizen is required.

But Kant, in contrast to Locke, does not limit public right to private right, or to laws that in principle are reducible to the provisional rights held by individuals in the state of nature. Instead, I suggest, Kant argues that public right must make 'freedom its principle' by addressing also the additional challenges resulting from the fact that the public authority must establish a monopoly on coercion. When the public authority establishes a monopoly on coercion, it creates what Kant in the essay "Perpetual Peace" calls a dependency relation between itself and its citizens that it must make rightful.¹⁷ The state must reconcile its sole right to use coercion with each individual's innate right to freedom by ensuring that the total system of law provides conditions under which each private person's freedom is subject to universal law. The state therefore does not merely posit laws regarding private right. It must also secure each citizen's 'freedom, equality and independence' through additional institutional provisions for its citizens – through public right. This is why, on Kant's view, the state has a right to do things that private individuals in the state of nature cannot be seen as having a provisional right to do, or why the rights of the state (the principles of public right) do not in principle reduce to the rights of individuals (the principles of private right). Moreover, what makes the public right argument an a priori argument is that it follows from requirements internal to rightful external freedom ('right') once the monopoly on coercion by the state is assumed.¹⁸ Finally, Kant argues that in order for the public institutional system to be legitimate, its actual establishment must be a 'pure republic', meaning that it must be representational in nature. It is because the legitimacy of the state is tied to the establishment of the public institutional framework that Kant's position is non-voluntarist, yet non-absolutist and republican in nature. For considerations of space, I will focus only on how the public authority must fulfill three institutional requirements regarding its structure (tripartite public authority, equal systemic freedom, and unconditional poverty relief) and must be representative in nature before there is civil society with its corresponding political obligations.¹⁹ First I consider why the public authority must be a tripar-

¹⁷ See ZeF, AA 08: 349–350; 349n; cf. MS, AA 06: 316.

¹⁸ See MS, AA 06: 313.

¹⁹ Kant argues that in addition to positing laws governing private property, contract and status relations, civil society must have the following institutional composition: 1.) a tripartite (legislative, executive and judiciary) public authority; 2.) public institutions governing land, the economy, finances and the police; 3.) public institutions that provide unconditional poverty relief; 4.) public offices to administer the state, and finally, 5.) a public system of punishment for both private and public crimes. In Kant's text, the last four of these institutions are given the sub-headings B, C, D and E under the overall heading: "General Remark On the Effects with Regard to Rights that Follow from the Nature of the Civil Union [Allgemeine Anmerkung von den rechtlichen Wirkungen aus der Natur des bürgerlichen Vereins]" (MS, AA 06: 318.15–17). The tripartite structure of the sovereign is discussed in § 47–49 immediately before section A, which discusses the right to revolution. I combine the discussion of the tripartite nature of the state and the right to revolution in section 2.1 below. Due to considerations of space, I do not deal with point 4 (D) and 5 (E) in this paper.

tite public authority in order to represent the general, united will and so to provide rightful solutions to the problems of assurance and indeterminacy regarding the specification of private right (section 2.1.). Subsequently, in sections 2.2 and 2.3, I address the requirements concerning equal systemic freedom and unconditional poverty relief, before in section 2.4 addressing the representative nature of the 'pure' republic.

2.1 *The Tripartite Public Authority and Revolution*

Kant's theory of public right is constructed on the basis of his conception of rightful external freedom, which is grounded on each person's innate right to freedom. To have one's external freedom subject to universal law is to be restricted symmetrically and in a non-contingent manner. Kant's conception of rightful external freedom ('right') explains both why the public authority must establish a monopoly on uses of coercion and why although revolution is impermissible, one is obligated to respect the new sovereign after a successful revolution.

The function of the civil authority is to subject and assure each subject's external freedom under universal law, or rightful external freedom. In the brief summary of Kant's conception of private right above, we saw both that any privately provided solutions to the problems of indeterminacy and assurance cannot enable such rightful external freedom. Therefore, the civil authority must assume a monopoly on coercion, since this is necessary to enable rightful external freedom. What is more, as Kant argues in public right section A, it follows from this that there can be no individual right to revolution or individual resistance to governmental authority, since such uses of coercion not only undermine the possibility of rightful assurance, but are also unilateral. After all, the reason why we have a strict duty to leave the state of nature is that we have an obligation to leave behind a condition in which our external freedom is constantly and necessarily subject to other person's arbitrary uses of coercion. To put the point differently, to have a *right* to revolution presupposes that rightful relations are possible in the state of nature, and yet Kant takes himself to have shown in the private right sections that this is impossible. Consequently, revolution and coercive resistance to the sovereign always amount to wrongdoing.²⁰ For the same reason, however, if a successful revolution actually has taken place and a new sovereign with a just institutional framework has been established, then the people are politically obliged to obey the new sovereign.²¹

How, then, to conceive of the public authority, or a political authority with an impartial form? The first requirement is that the authority must represent the "general united will of the people."²² This is achieved by establishing the three ar-

²⁰ See MS, AA 06: 318ff.

²¹ See MS, AA 06: 323.

²² MS, AA 06: 314: "der allgemein vereinigte Volkswille".

tificial *public* authorities, or ‘thought entities’²³, constitutive of a public will: a legislator, an executrix and a judge.²⁴ Moreover, because the indeterminacy problem makes it impossible to be independent from others’ arbitrary choices and subject to universal law in the state of nature, when instituting the public authority the challenge is to avoid reproducing this problem. In order to do this, the public authority must constitute itself as the rule of *public law*. First, this does not only mean that the political and legal authority must treat each of its subjects as equals under the law,²⁵ but also that the legislator must be seen as having primacy with regard to the other two sovereign authorities. The legislative authority is prior to the others in that posited law must delineate the powers of the other two authorities. Only if posited law is constitutive of the executive and judiciary authorities can they enable interaction under universal law rather than subjection to arbitrary choices. This is why Kant says that in an important sense the legislator *is* the sovereign. The sovereign authority is primarily invested in the legislator by its authority to posit laws, whereas the executive authority enforces the law posited by the legislator, and the judicial authority adjudicates actual conflicts amongst the subjects by the relevant posited laws.²⁶ Kant illustrates this by saying that the legislator can be seen as the major premise in a practical syllogism, the executive authority’s resulting command is the minor premise and the judge’s verdict is the conclusion.²⁷ Nevertheless, despite the primacy of the legislator, the three constituents of the public authority complement each other and are simultaneously subordinated to each other without also usurping each other’s functions. They must therefore be seen as comprising three different, yet complementary principles, which ensure the rule of universal law and so are established as authoritative rather than merely powerful.²⁸

Second, the legislative, the executive and judiciary authorities cannot be the arbitrary choices of a private person, but must be non-contingent and symmetrical restrictions. How is this done? Consider the case in which the three artificial authorities constitutive of a public authority are represented by a monarch. The requirement of *non-contingency* is met by the monarch being a public person and not a private individual, namely by the monarch not having private property. This is why Kant says that the sovereign “*possesses nothing* (of his own) except himself; for if he had something of his own alongside others in the state, a dispute could arise between them and there would be no judge to settle it. But one can also say that he *possesses everything*, since he had the right to command over the people, to whom all external things belong [...] the right to assign to each what

²³ MS, AA 06: 338.

²⁴ See MS, AA 06: 313; cf. ZeF, AA 08: 352; cf. 350–351.

²⁵ For example, when Jews no longer could own private property in Nazi-Germany, Nazi-Germany seized to be a legitimate state. – Cf. MS, AA 06: 314; TP, AA 294–295.

²⁶ Matters of guilt or innocence, Kant argues are determined by the people (as members of a jury). In this way, if the jury is mistaken, then the people have wrongly judged themselves (MS, AA 06: 317–318).

²⁷ See MS, AA 06: 313.

²⁸ See MS, AA 06: 316–18.

is his".²⁹ The monarch cannot own private property and the property over which it exerts any kind of authority belongs to the people (public property) and is governed by posited law. Instead, the monarch determines and secures its citizens' rights against one another. The first step to secure that the monarch is impartial in its form therefore yields the requirement that the monarch cannot have private property, since this would make it impossible for it to issue non-contingent restrictions.

In turn, *symmetry* is secured by the same actions of all private persons being subjected to the same restrictions. With respect to its function as a legislator, this means that the monarch's law must be posited law. It cannot consist in daily decrees by the monarch. The main problem with having a system of daily decrees is not that it makes it almost impossible to know what the law is, but that the subjects would then be subject to the arbitrary choices of the monarch and would not be reciprocally restricted in their use of freedom vis-à-vis each other. Moreover, as mentioned above, posited law must constitute the two other offices of the monarch. Therefore the monarch, as judge, must not only adjudicate all disputes in accordance with its posited law, but his actions as judge are themselves specified by posited law. The monarch does not subject persons to symmetrical restrictions if its adjudications are simply his changing opinions rather than determinations in accordance with the rule of law. Finally, symmetry is enabled by how the office of the executrix is governed by posited law and by the executrix enforcing only the judgements of the judiciary against private individuals.

In sum, the crux of the first condition set by public right is that each branch of the tripartite authority must institutionalize the non-contingency and symmetry that rightful external freedom demands. This is achieved through the requirement that the sovereign's exercise of its authority is detached from private interests and arbitrary choices, and instead is constituted by the rule of public law. By being so constructed, the sovereign is impartial in its form. Moreover, the two conditions of non-contingency and symmetry are conceptually connected. It is because the sovereign does not have private (contingent) interests that it can subject all the citizens (private persons) to symmetrical restrictions. And it is because the sovereign's tripartite authority is a thoroughgoing system of public law that it enables interaction under universal law rather than subjection to any particular person's arbitrary choice.

2.2 Equal Systemic Freedom

The second and third condition on legitimate public authority, which I will call the conditions of 'equal systemic freedom' and 'unconditional poverty relief', each concern additional institutional systemic requirements constitutive of public

²⁹ "Von einem Landesherrn kann man sagen: *er besitzt nichts* (zu eigen), außer sich selbst; denn wenn er neben einem anderen im Staat etwas zu eigen hätte, so würde mit diesem ein Streit möglich sein, zu dessen Schlichtung kein Richter wäre. Aber man kann auch sagen: *er besitzt alles*; weil er das Befehlshaberrecht über das Volk hat (jedem das Seine zu Theil kommen zu lassen), dem alle äußere Sachen [...] zugehören." (MS, AA 06: 324.14–20).

right. Each requirement stems from how the public authority must first assume a monopoly on coercion and then must ensure that this monopoly is reconcilable with each subject's innate right to freedom.

The second condition on legitimate public authority requires the state to assume the role of guarantor of rightful relations with regard to land, the economy and finances. It does this by securing conditions of equal systemic freedom for its citizens. A condition of equal systemic freedom exists when the institutional framework, within which individuals use their rightful means to set and pursue ends, is itself constituted by universal (non-contingent, symmetrical) restrictions. If the institutional framework itself is subject to some private person's arbitrary choices, then it cannot provide a condition in which all persons' external freedom is non-contingently and symmetrically restricted, including when they set and pursue ends with their means. Hence, the state must ensure that property determining systems function according to universal laws. The state must provide institutional guarantees that the systems within which private persons' means have value and within which they set and pursue ends are not themselves subjected to the arbitrary choices of private individuals. Rather, there must be a public framework within which persons exercise external freedom independently and as equals. Only in this way can the state ensure that no one private person finds herself in a condition where the use of her external freedom is subjected to the arbitrary choice of other private persons rather than to universal law.

With regard to land, Kant argues that providing a guarantee of equal systemic freedom involves implementing two kinds of institutional requirements. First, the state issues and repeals statutes governing 'artificial' landowners, such as corporations and clerical orders.³⁰ For example, it is inconsistent with conditions of equal systemic freedom that artificial persons own land in perpetuity. The reason is that though persons as part of exercising their external freedom can establish such artificial persons, these artificial persons can continue to exist only insofar as there also exist persons who are exercising their private property rights through them. Because the state must make sure that the land belongs only to the people, corporations and clerical orders cannot have rights that exceed the rights of the individuals who exercise their rights through them at any time. Therefore, the state as guarantor of equal systemic freedom cannot recognise such artificial persons to exist in perpetuity, but rather must issue and repeal statutes restricting these artificial persons as appropriate.

Second, Kant argues that the state generates conditions of equal systemic freedom by taxing private landowners insofar as necessary to secure rightful interaction on the land.³¹ External freedom is to use one's means to set and pursue ends in space and time, either alone or together with others subject to universal law. Since it is impossible for us, as embodied beings, to exist and do anything, that is, to be somewhere, to physically move, to acquire and trade things etc. without access to land, it follows that external freedom requires access to land. More-

³⁰ See MS, AA 06: 324–325.

³¹ See MS, AA 06: 325.

over, since the sovereign is the means through which a particular person's exclusive possession of land can be made rightful, the rightfulness of any particular claim to land derives from the state's affirmation of it.³² How, then, does the sovereign go about evaluating whether the provisionally rightful claims to land should be affirmed as rightful ('concluded')? There seem to be two considerations here. First, if *any* access to land is determined by some particular (group of) private persons, such as private landowners, then others (the landless persons) find their external freedom subjected to these private persons' (the landowners') arbitrary choices. Second, since it is possible for the citizens to set ends together only if they can actually reach one another, the state must make it possible for each citizen legally to reach any other citizen via land.³³ To reconcile the landowners' exclusive possession of land with everyone's innate right to freedom, the state as 'supreme proprietor' of the land must therefore provide institutional guarantees that everyone has sufficient access to land – a place physically to exist and a legal means of physically reaching one another. The main point is that if any particular citizen is without legal access to any land or can physically reach someone else only given a third person's consent, then the state has failed to ensure that the landowners have rightful possession of their land since their exclusive landownership is irreconcilable with each citizen's innate right to freedom.

It is for these reasons that Kant maintains that the principle governing the system of law cannot simply be a principle of "aggregation" [Aggregation]³⁴, understood as a principle according to which the determination of who owns what is simply an aggregate of individual provisionally rightful property claims in the state of nature. Instead, in order to reconcile its monopoly with each person's right to freedom the state must employ a principle of "division" [Einteilung]³⁵ to regulate the private property institution. By this Kant means that the state must ensure that the totality of law is such that each citizen is secured equal systemic freedom under the law with regard to land. Thus, insofar as necessary the state must tax landowners and use the revenue to buy land as required to make the relation between landowners and non-landowners rightful, such as by building public roads and providing housing opportunities. In this way state taxation on land secures equal systemic freedom, namely by making it possible for people to exist and to use their means to set and pursue ends on the land without this possibility being under the control of someone else's arbitrary choice. If the state does not do this, then it fails to reconcile its monopoly on coercion with the rights of each of citizen.

Although the state must have the right to tax landowners insofar as necessary to ensure that the system as a whole provides conditions of equal systemic freedom for all, it can neither be that each person is guaranteed a particular kind of physical transportation system nor the opportunity to buy a particular or equal amount

³² See MS, AA 06: 323.

³³ For an excellent exposition of this point, see Arthur Ripstein's "Roads to Freedom". In: *Force and Freedom*. Harvard University Press 2009.

³⁴ MS, AA 06: 323.35.

³⁵ Ibid.

of land. Rather, persons are guaranteed that they have access to land and that they can access one another's land if they want to set ends together. Hence, the exact type, portion, etc. of land the state must purchase with tax revenues or the exact purposes towards which the land should be put in order to reconcile the relation between landowners and the landless and travellers cannot be determined in advance (a priori). For example, though all states must make it possible for everyone to move across land for purposes of interaction, their methods for doing so may be different. For some it might be necessary only to posit laws to regulate people's movement across each other's land; in other cases it might be necessary to purchase land to enable an effective infrastructure (roads and utilities). Similar reasoning applies to cases of buying up land to facilitate private housing. The point is that only the public authority is authorised to make these kinds of judgements, and their content depends upon which type of society (rural, technological, trade based etc.) exists. Although prior determinations of the use of tax revenues are impossible due to their context-dependency, it is clear that the state has a right and duty to tax landowners in order to provide conditions of equal systemic freedom with regard to land. So, if a particular political authority takes no reasonable steps to make landownership rightful by securing conditions of equal systemic freedom through land taxation, then it is not exercising its coercive powers legitimately, and political obligations do not exist.

The reasoning is similar with regard to the regulation and administration of the economy, as Kant here also defends a public systemic solution to what he considers a systemic problem. The public authority as guarantor of the economy must act as 'supreme commander' of the economic system, which consists in relations of exchange between private persons. Regardless of what type of economic system the state permits, it must assume a special authoritative role with regard to the way in which means are exchanged by ensuring that it secures what we might call a 'public marketplace'. The state fulfils this role by positing and enforcing laws that secure each person's right to access and participate in the public marketplace on equal terms. In particular, it posits laws to regulate the ways in which people participate as buyers and sellers in the marketplace. Having the right to access the public marketplace to exchange one's means preserves the right to freedom in a marketbased system where people are dependent upon trade to set and pursue ends. Therefore, the state must ensure that the economic system does not in principle deny access to persons with relevant means or deny them access to trade on equal terms. Since the citizens' exercise of external choice is dependent on the economic system, the state must regulate actual economic practices to ensure equal systemic freedom. Distinctions between permissible and impermissible ways in which to engage in economic activity (trade) will be drawn precisely at the limits at which equal systemic freedom is threatened.

For example, the state can prohibit the creation of monopolies on trade in a capitalist system. The power enjoyed by a monopoly enables it, in principle, to prohibit others from pursuing ends through the marketplace since the monopoly is in sole control of the supply. Moreover, a capitalist market system requires competition in order for markets to function, and there is no competition when mon-

opolies exist. Another example could be the public requirement upon businesses to provide access for physically impaired persons to enter their stores. If the public marketplace is inaccessible to those with physical impairments, and, as everyone else, the state has tied their exercise of external freedom to trade, then the state must institute regulations ensuring conditions of equal systemic freedom. Only by ensuring that a person's access is subject only to symmetrical and non-contingent restrictions through regulated participation, can the public authority provide the conditions of equal systemic freedom for all with regard to the economic system. In this way, public institutional regulations on trade preserve the individual's innate right to have her external freedom subject only to universal law and not to the arbitrary choices of others.

The same assumption of special responsibility by the public authority must accompany its introduction of a financial system. For example, the state guarantees conditions of equal systemic freedom with respect to permitting the introduction of money by assuming responsibility for regulating the monetary (financial) system. External freedom is the ability to set and pursue ends subject to universal law and hence a person's means constitutes her external freedom. Once the value of a person's means is determined by a monetary system, there must be public systemic regulation of the value of money. The state must ensure that the value of a person's means is not arbitrarily determined by some other private person, but only by public law. Only in this way can it ensure that permitting a financial system is consistent with each individual's innate right to freedom. The complexity of the financial system will, of course, determine the complexity of regulations required to ensure that the system does its job. But the crucial test that the state provides its subjects with conditions under which they enjoy equal systemic freedom. Presumably, the following conditions must be met with regard to money: the state must determine what counts as legal tender; it must ensure that legal tender is recognized as having the same value by all participants in the public marketplace, and it must assume sole control over the supply of legal tender. If it does not do these things, then clearly it has not passed the test. A system of law that allows arbitrary determinations of what counts as legal tender, that allows private persons to determine whether legal tender is recognized and at what value it is given in the market place, or that allows private persons to print as much money as they wish clearly does not ensure that (the value of) one private person's means (as money) is protected from the arbitrary choices of other private persons. Since external freedom is to use one's means to set and pursue ends subject to universal law, if these systemic requirements are not met, one private person's external freedom becomes subjected to another private person's arbitrary choice rather than to universal law – and so is deprived of her innate right to freedom. If the state fails to regulate the financial system and yet makes its people dependent on it, then, as with the requirements concerning equal systemic freedom with regard to land and the economy, the citizens cannot be seen as under political obligations to obey its authority.

2.3 Unconditional Poverty Relief

Most Kantians find Kant's position deficient because of his alleged failure to deal with issues not only of economic justice in general, but of the problem of poverty in particular.³⁶ Given this problem, contemporary Kantians, such as Onora O'Neill and John Rawls, find it necessary to move away from Kant's actual theory in order to develop more egalitarian Kantian theories of justice.³⁷ In contrast to these interpretations, I propose that considerations of economic justice lie at the very heart of Kant's conception of justice, not only because of the requirements ensuring equal systemic freedom outlined above, but because unconditional poverty relief is identified as a minimal condition on the legitimacy of the state.³⁸ Kant discusses the state's duties towards the poor in section C of public right.³⁹ As in public right section B, which deals with conditions of equal systemic freedom, Kant here is also concerned with how the public authority reconciles its monopoly on coercion with each subject's right to freedom by arguing that a systemic solution is necessary to rectify a systemic problem. Only by an institutional guarantee of unconditional poverty relief can the state make rightful the dependency relation between itself and those who have no means.

To reconcile its rightful monopoly on coercion with the rights of the poor, the state must ensure that no private person finds herself without any means whatsoever with which to set and pursue ends, since external freedom is impossible without means. Unconditional poverty relief, therefore, is necessary if the state is to fulfil its role of providing conditions under which persons can exercise their innate right to freedom. Without unconditional poverty relief the poor have no freedom, since they have nothing, and any access to means goes through some other private person's consent, such as to provide employment or charity. Without unconditional poverty relief, the possibility of poor persons exercising external freedom is subject to the arbitrary choices of those who have means. Consequently, as the state upholds its monopoly on coercion, it must also ensure institutionally that the poor do not find themselves so subject to the choices of others. Therefore, Kant maintains that the state has a right and a duty to tax the rich in order to provide unconditional relief for the poor, even though he also says that no individual private person has the corresponding right to coerce another to provide charity (beneficence).

³⁶ For example, see Otfried Höffe: *Immanuel Kant*, 184f.; Mary Gregor: *Laws of Freedom*, 36f; Wolfgang Kersting: "Kant's Concept of the State", 153, 164 n.7, though contrast with his modified view on 356–357 in "Politics, freedom, and order: Kant's Political Philosophy"; Onora O'Neill: *Bounds of Justice*, 65; Allen Rosen: *Kant's Theory of Justice*, 197; and Howard L. Williams: *Kant's Political Philosophy*, 196–198.

³⁷ For example, see Allen Rosen: *Kant's Theory of Justice*, 173–208; Onora O'Neill: *Constructions of Justice*, 219–234; *Towards Justice and Virtue*, 122–212; John Rawls: *A Theory of Justice*, 221–227; Paul Guyer: *Kant on Freedom, Law, and Happiness*, 262–286.

³⁸ My view that economic justice lies at the very heart of Kant's conception of political legitimacy is in disagreement with almost all contemporary Kant interpretations. For example, see Guyer (2000), Höffe (1994), Kersting (1992), Murphy (1994), and Williams (1983).

³⁹ See MS, AA 06: 325–328.

The reason why many read Kant's argument differently is due to claims like the following: since the wealthy owe their existence to the state and since state has an indirect right to preserve the people, the state will use taxation to provide for the poor people's "most necessary natural needs" [nothwendigsten Naturbedürfnissen]⁴⁰. Given Kant's formulation, we might be tempted to conclude that Kant is just confused, since a claim that 'natural needs' can give rise to demands of justice would undermine much of Kant's account of justice. So even if Kant is here expressing a desire to incorporate into his theory of justice some notion of poverty relief, he clearly fails to do so. In my view, however, the stronger interpretation of Kant's position on poverty relief pays careful attention to how this argument is made within public right, and how public right is principally concerned with how the sovereign must set up its institutional framework to reconcile its rightful monopoly on coercion with the rights of each citizen. When Kant speaks of how the wealthy owe their existence to the state, my suggestion is that he is referring to the fact that the rightfulness of their property owners' is provided by the state.⁴¹ Moreover, the state's indirect right to preserve society refers to the fact that the primary aim of the public authority is to maintain and preserve its people as a rightful condition in perpetuity. And it does this by institutionally guaranteeing each person's innate right to freedom, namely by providing unconditional poverty relief. The reason is that it must ensure that no one of its subjects ends up in a situation in which she has done nothing wrong and yet is in a private dependency relation to other subjects, in that her external freedom is subject to their arbitrary choices.⁴² It is true that the fact of our embodiment entails that we have natural needs, which obviously makes even more pressing that without certain means we cannot physically survive. But this is not Kant's main point. Rather, the importance of being embodied is that we exercise external freedom (in space and time). Without poverty relief some people (the poor) find themselves in a situation where they have no external freedom at all, and they can only access means if other subjects (the rich) consent. But to be forced to stay in such a condition is to be deprived of one's innate right to freedom. Therefore, the sovereign must provide unconditional poverty relief in order to reconcile its monopoly on coercion with the innate right to freedom of each of its subjects.

The radical claim in Kant's conception of poverty relief is that rightful external freedom does not exist in societies in which some persons have no means and any legal access to any means is dependent upon private charity or other private persons' decisions to provide employment. Here, the state is failing in its duty to establish conditions under which all persons are secured independence from having their freedom subject to the arbitrary choices of other private persons. The state cannot force its subjects into such dependency relations, and hence it cannot rightfully uphold its monopoly on coercion unless it also provides an uncondi-

⁴⁰ MS, AA 06: 326.09: "nothwenigste[.] Naturbedürfnisse[.]".

⁴¹ See also V-MS/Vigil, AA 27: 540.

⁴² Naturally, those who prefer other textual interpretations can still the above as the stronger Kantian position.

tional guarantee of poverty relief. Therefore, without an institutional guarantee of unconditional poverty relief the state is not legitimate, and political obligations do not exist. It is important to note that the claim is not that the state, in order to be legitimate, must have an extensive welfare system. The claim is only that it must take institutional steps whereby it guarantees the availability of means to those who, for whatever reason, have none.

Finally, it should be clear that these arguments concerning the state's role as guarantor of equal systemic freedom and unconditional poverty relief entail that the state's rights exceed the rights of individuals. More specifically, the state's right to ensure equal systemic freedom and unconditional poverty relief are rights that private individuals cannot have, for as private rights they are tantamount to the right to enslave others. Moreover, that the state must provide these institutional protections also explains why Kant's position is not absolutist. By requiring the state to provide systemic solutions to what he considers to be systemic problems, Kant argues that there are institutional requirements on the public authority that cannot be set aside without undermining its legitimacy. The focus above has been on only the very minimal conditions of equal systemic freedom that must be fulfilled in order to justify the state's legitimacy. Still, unless the state takes some measures to fulfil these conditions, it is not legitimate, and political obligations do not exist.

2.4 *Pure and True Republics*

Kant's account above is an ideal normative account, meaning that it is an exposition of the public authority in theory. The next, final step in Kant's argument concerns how to institutionalize the public authority, in particular the public 'thought entities' (the legislative, executive, and judiciary powers) in the real world. This requires us to explain how some actual person or persons rightfully can hold sovereign authority. Answering this question comprises the final two paragraphs (§ 51–52) of Kant's public right section on the right of a state.⁴³ Because it is tempting to read Kant as affirming absolutism in these paragraphs, I want to suggest why we need not read him that way. There are at least two ways to understand absolutism relevant to Kant's discussion here. First it could mean that the political leader can do whatever she wants and the people remain obligated. But nowhere in this discussion (nor anywhere else) does Kant maintain that particular institutionalizations of legitimate political power can involve setting aside the principles of private and public right. So clearly Kant cannot be an absolutist in this sense. Second, we could understand Kant's alleged absolutism as consisting in defending a non-representative conception of the sovereign. In the rest of this section I argue that Kant also rejects the legitimacy of non-representative sovereigns and that although he allows imperfections in states at early

⁴³ See MS, AA 06: 338–342.

stages of actual institutionalization of the sovereign, we should not see this as an affirmation of absolutism.⁴⁴

For Kant, there are three ways to conceive the relation between the people and the sovereign: autocracy (one person having command over all the others), aristocracy (a group of persons having command over the rest), and democracy (the people commanding themselves).⁴⁵ Moreover, the issue of the legitimacy of the state is not seen as resting on the question of which form of state is institutionalized – autocracy, aristocracy, or democracy – but on the nature of the institutionalization itself. Unless these sovereign powers are taken to represent the sovereign, Kant argues, the particular state fails to be an establishment of civil society, meaning that it fails to yield conclusive right. When the sovereign powers do not represent the sovereign, Kant argues, “these forms of state are supposed to represent literally just so many different moral persons invested with supreme authority” and consequently “no absolutely rightful condition of civil society can be acknowledged, but only *provisional* right within it”.⁴⁶ Non-representative states enable only provisional right, or right as we find it in the state of nature, since the people with power consider themselves *as* the sovereign, rather than *as representing* the sovereign. Thus, non-representative states fail to represent the

⁴⁴ One can (textually and philosophically) accept the above arguments regarding equal systemic justice and unconditional poverty relief and reject the argument concerning the representational nature of the state, or reject both. Seemingly strong textual support for absolutist interpretations in general and for rejecting the idea that the representational nature of the sovereign is a condition upon its legitimacy in particular, can be found, for example in “Toward Perpetual Peace” (ZeF, AA 08: 371–372), “On the Common Saying: That may be correct in theory, but it is of no use in practice” (TP, AA 08: 299–300), and in the “Doctrine of Right” (MS, AA 06: 371–372). Due to space restrictions, I have not included these passages, but let me briefly suggest why these passages need not be read as contrary to my view. Their common feature is that Kant’s argument apparently leads him to the absurd conclusion that a subject is obligated to obey *any* particular or empirical, self-acclaimed public authority, regardless of how objectionable is its exercise of power. Though Kant’s texts invite such an interpretation, I believe this conclusion is too hasty. Instead, I suggest that in each of these passages Kant argues that the content of the laws can be quite faulty *as long as* the sovereign has the proper institutional form. Therefore, if what is established is not at least public right in the minimal form (‘pure republic’), then what is established is not a faulty version of the idea of public right – but no version of public right at all. Therefore, when Kant uses the locutions such as ‘however faulty’ or ‘unconditional’ in these passages he should not be understood as referring to the fundamental principles constitutive of the constitution (the norm constitutive of the legislative supreme authority), but to their actual specification (their content). Political obligations do not disappear simply because the content of the laws is imperfect or is perceived to be unfair so long as the normative principles constitutive of the fundamental institutional structure are correct. Since the proper, minimal institutional structure necessary for political freedom is in place, the only way to remove the unfairness without thereby creating injustice is to reform civil society through public reason from within.

⁴⁵ See MS, AA 06: 338–339.

⁴⁶ “[...] so lange jene Staatsformen dem Buchstaben nach eben so viel verschiedene mit der obersten Gewalt bekleidete moralische Personen vorstellen sollen, [kann] nur ein *provisorisches* inneres Recht und kein absolut-rechtlicher Zustand der bürgerlichen Gesellschaft zugestanden werden[...].” (MS, AA 06: 341.04–08)

united, general will of the people. In these states the political power does not conceive of itself as being governed by laws delineating its powers and all private disputes ultimately to be adjudicated by an application of these laws. Instead those in power are seen as ruling in accordance with their private judgement. Consequently, such states do not, Kant argues, “make freedom the principle and indeed the condition for any exercise of *coercion*”⁴⁷. And this is why these leaders fail to set up civil society, since in this case, the actual persons with power rule in accordance with their arbitrary choice rather than enable external freedom under universal law. Hence, the people still find themselves in the state of nature.

In order to establish ‘conclusive right’ the political authority must be institutionalized as a ‘pure republic’ or as a representative system of right. In such a system those in public offices are taken to represent the sovereign by governing the public offices through public law. Such public organization captures the spirit of what Kant means by ‘the original constitution for a free state’, since it requires the institutional whole to be one “in which *law* itself rules and depends on no particular person [...]. It is the final end of all public right, the only condition in which each can be assigned *conclusively* what is his”.⁴⁸ If “law itself rules”, then everyone invested with public power – whether the highest political sovereign powers or the lower public officers such as police, public bureaucrats, and publicly licensed professionals (physicians, accountants, lawyers) – has her job and function prescribed in posited laws, and they exercise their authority in accordance with those laws. For example, judges in the pure republic do not rule merely by applying their intelligence or private wisdom, but rather are versed in the law and continuously prove themselves capable of applying the law to particular cases. If some particular judge is no longer able to apply the law or grossly fails to do it in a particular case, her license is withdrawn by the state, and so on. This, I take it, is what Kant means when he says that in the pure republic, the institutional whole functions as a system of public law, namely “a *system representing the people*”⁴⁹.

In turn, Kant contrasts the ‘pure’ republic with the ‘true’ republic. The ‘true’ republic, for Kant, takes representation one step farther than the ‘pure’ republic by requiring also the existence of active citizenship, understood as active participation in the political power through delegates. Kant argues that in the true republic there is not only a “*system representing the people*, in order to protect its rights in its name”, but in addition “all the citizens united and acting through their delegates (deputies)”.⁵⁰ The true republic is one, in which the system repre-

⁴⁷ MS, AA 06: 340: “[...] die *Freiheit* zum Princip, ja zur Bedingung alles *Zwanges* [...]”; cf. Anth, AA 07: 330–331.

⁴⁸ “[...] die einzige bleibende Staatsverfassung, wo das *Gesetz* selbstherrschend ist, und an keiner besonderen Person hängt; der letzte Zweck alles öffentlichen Rechts, der Zustand, in welchem allein jedem das Seine *peremptorisch* zugetheilt werden kann” (MS, AA 06: 341.01–04).

⁴⁹ MS, AA 06: 341: “[...] ein *repräsentatives System* des Volks”.

⁵⁰ “Alle wahre Republik aber ist und kann nichts anders sein, als ein *repräsentatives System* des Volks, um im Namen desselben, durch alle Staatsbürger vereinigt, vermittelst ihrer Abgeordneten (Deputirten) ihre Rechte zu besorgen.” (MS, AA 06: 341.09–12)

sents the people in the fullest sense, namely by the people ruling itself through its elected representatives. In true republics, the citizens are not merely 'passive' subjects to law; they are also active citizens who take part in the legislative process by voting for delegates to represent them.⁵¹

It is certainly *possible* to read these final sections of the Doctrine of Right as entailing that Kant defends absolutism. Nevertheless, in light of Kant's preceding argument that there are specific conditions on state legitimacy, we have good reasons to see these final sections of the rights of the state as Kant's understanding of how to go about actually establishing the legitimate state in the real world. In my view, nowhere in these last sections of the public right of a state (§ 51–52) does Kant indicate that he aims to undermine his preceding arguments concerning the nature of the institutional whole of public right, how the state must secure private right for all its citizens, how it must have a tripartite nature, or how it must secure equal systemic rights as well as unconditional poverty relief. Rather, the more sympathetic reading considers him as merely addressing the question of various possible actual institutionalizations of such a public authority. And I have suggested that in order for the state to be legitimate, it must rest on a representative, republican constitution ('pure republic'), even if imperfect at first. Moreover, the leaders of this republic must aim to transform it into a 'true' republic, in which the people actively governs itself through delegates. Therefore, that political legitimacy requires a certain institutional framework is never at stake. And Kant's conception of political legitimacy is non-absolutist exactly because it requires a tripartite public authority to posit, apply and enforce laws to regulate private property, contract and status relations for all and because the state must fulfill these additional institutional, systemic conditions to be legitimate.

3. The Irreconcilability of Kant's Public Right Account and Weak Voluntarist Conceptions of Legitimate States

We can now see why, contrary to the claims of many neo-Kantian positions, Kant's position cannot be captured through the lenses of weak voluntarism. According to a weak voluntarist account, the rightful uses of state coercion are seen as determined by those rights an individual can be seen as having transferred to the state. On Kant's position, however, public right is not identical to the provisional rights of individuals in the state of nature (private right). The way in which the state reconciles its monopoly on coercive authority with the rights of each citizen entails that the rights of the state are not reducible to those of individuals. For example, the state has the right to tax citizens in order to provide unconditional poverty relief while individuals do not have the right to enforce charity in the state of nature. Although we cannot delineate a priori every way in which the

⁵¹ See MS, AA 06: 339. This reading seems supported by MS, AA 06: 328–329, where Kant emphasizes that over time states must reform its laws such that all public positions must be determined by merit rather than inheritance.

rights of the state will exceed those of individuals, we can say that public right is necessary to provide assurance and to make private right determinate and that the state must set itself up with a civil institutional structure including *additional* types of institutions in order to reconcile its monopoly on coercion with the rights of each. Consequently, the rights of the state and the rights of individuals are not identical, and weak voluntarism cannot be the perspective through which to read Kant's position.

In fact, attributing weak voluntarism to Kant serves only to mask the way in which Kant's actual theory inextricably ties issues of economic justice to the issue of political legitimacy. I believe that because many contemporary Kantian theorists interpret the Kantian position as weak voluntarist, they encounter deep problems in trying to capture issues of economic justice. These interpretations make the mistake of assuming with the Lockeans that a Kantian solution must explain the rights of the state as corresponding to those of the individual and hence that the primary problem is how to make a liberal theory of freedom responsive to considerations of (natural) need. For example, the early John Rawls and Onora O'Neill are two prominent neo-Kantian philosophers who make this mistake. They both seek a way to make determinate individual economic rights such that the state can have a right to enforce them on an individual's behalf. Consequently, the puzzle they both see and try to solve is primarily concerned with how demands of freedom ('noumenal demands') can be made responsive to demands of our nature ('phenomenal demands'). In *A Theory of Justice*, John Rawls argues that the state can enforce a framework according to which each citizen has a right to be secured a list of basic goods, where this list of basic goods ties the choices within the original position to the natural or empirical conditions of human life.⁵² In contrast, Onora O'Neill in several of her articles makes the individuals' right to charity enforceable by the state, since the state can enforce beneficence.⁵³

A problem facing the early Rawls, as A. John Simmons points out, is that he never explains why only the state (and not individuals) has the right coercively to redistribute resources in accordance with the two principles of justice as fairness. And yet if Rawls cannot explain this, then surely the door is open to challenge Rawls's weak voluntarism on strong voluntarist grounds.⁵⁴ In O'Neill's case the problem is that Kant, for good reasons, explicitly denies that beneficence can be enforced. After all, if the reason you give money to pay your taxes (to be redistributed to the poor by the state) is that you are afraid you are getting into trouble otherwise, surely you are not performing an act of beneficence? Beneficence is an imperfect duty of virtue, which cannot be enforced.⁵⁵ On the one hand, all virtue involves internal use of choice (act on a particular maxim) and it requires a moral moti-

⁵² For example, see Rawls's *A Theory of Justice* 226–227.

⁵³ Onora O'Neill: *Constructions of Justice*, 219–234; *Towards Justice and Virtue*, 122–212; *Bounds of Justice*, 97–142.

⁵⁴ See A. John Simmons: "Justification and Legitimacy". In: *Justification and Legitimacy: Essays on Rights and Obligations*. New York 2001.

⁵⁵ See MS, AA 06: 390.

vation (that you act from duty), neither of which can be coerced.⁵⁶ On the other hand, beneficence is not only an ethical duty, but it is a duty of virtue, and consequently involves making somebody else's happiness your end *because* it is your moral duty to do so.⁵⁷ Hence, whatever the state does when it redistributes resources from the wealthy to the poor, it cannot be coercively enforcing beneficence. Finally, regardless of which voluntarist framework one chooses no solution faithful to Kant's basic commitments is possible, because any private redistribution and private coercion used in an attempt to secure conditions of equal systemic freedom and poverty relief will conflict with an individual's innate right to freedom. Yet explaining these rights is necessary to finding a convincing Kantian solution to the problem of how to protect the rights of the vulnerable and avoid systemic economic injustice in civil society. In contrast, on my interpretation there is no conflict, since through public right, namely a public institutional framework to secure equal systemic freedom and unconditional poverty relief, the state reconciles its rightful monopoly on coercion with each subject's innate right to freedom – and so is legitimate. Therefore, political legitimacy depends on securing conditions of economic justice. A reading of Kant as a weak voluntarist cannot deliver this conceptual link.

4. Conclusion

Civil society is an enforceable precondition for justice. But this does not entail that just any powerful coercive structure qualifies as civil society. The just state is a representative, republican system of public right composed of a tripartite public authority with a monopoly on uses of coercion, which is reconciled with each subject's innate right to freedom through securing private right for all, the provision of conditions of equal systemic freedom regarding land, the economy and finances, and through the institutional guarantee of unconditional poverty relief. Since these institutional conditions must be met before political obligations exist, Kant's liberal non-voluntarist ideal of political obligations is not matched by an absolutist conception of political legitimacy. True, all changes regarding the content of particular laws and the particular ways in which the authority specifies and enforces laws must be sought through legal appeals and through public reason and reform. Still, if an actual state fails to establish the proper republican public institutional framework, then it is not a civil society, and the people living subject to its power are under an enforceable duty to establish civil society. Kant's conception of political legitimacy is therefore not a conception according to which any systematic and powerful use of might is seen as yielding political obligations (absolutism), since there are institutional requirements on the political authority. Because of this link between political obligations and the existence of a public institutional framework, Kant's liberal republican account of political legitimacy also shows why absolutism is not the only alternative to voluntarism.

⁵⁶ See MS, AA 06: 219ff., 453–454, 376n.

⁵⁷ See MS, AA 06: 388–389, cf. 379–384, 393–397.