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Kantian Freedom as “Purposiveness”

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Abstract: Arthur Ripstein’s conception of Kantian freedom has exerted an enormous recent influence on scholars of Kant’s political philosophy; however, the conception seems to me flawed. In this paper, I argue that Ripstein’s conception of Kantian freedom as “your capacity to choose the ends you will use your means to pursue” – your “purposiveness” – is both too narrow and too broad: (1) *Wrongful* acts such as coercive threats cannot choose my ends for me; instead, such acts wrongfully restrict my perceived options. And (2) *rightful* changes to the context in which I choose that render my means insufficient for my ends restrict my capacity to choose them. Alternatively, my purposiveness reduces to my entitlements; but then freedom as purposiveness is viciously circular or fails as a new approach to the “devastating” objection that motivates it.

Keywords: equal freedom, coercion, rights, negative liberty, Ripstein

1 Introduction

In *Force and Freedom*, Arthur Ripstein characterizes Kant’s theory of justice as a “system of equal freedom” and sets out to explicate Kant’s system by defending it from what Ripstein says has been thought a “devastating objection” (FF: 31).¹ The objection, which Ripstein attributes originally to Samuel Taylor Coleridge (reformulated by H.L.A. Hart and others), is that “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” (FF: 32).² Ripstein

1 Ripstein, Arthur: *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge 2009, 31. References to this work are given parenthetically in the text, preceded by the abbreviation “FF”.

2 Besides Coleridge and Hart, Ripstein attributes this objection in some form also to G.A. Cohen, Ronald Dworkin, Charles Taylor, Will Kymlicka, Henry Sidgwick, and Frederick Maitland, among others (FF: 31–33, 233–237; see also Ripstein, Arthur: “Beyond the Harm Principle”. In: *Philosophy & Public Affairs* 34 (3), 2006, 215–245, 229–231). John Rawls endorses the objection in his later work (Rawls, John: *Justice as Fairness: A Restatement*. Cambridge 2001, 42n; see also Rawls,

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responds that these critics erroneously conceive freedom as a person’s “ability to *achieve* his or her purposes unhindered by others,” or “negative liberty”, whereas Kant conceives freedom as your “capacity to choose the ends you will use your means to pursue”, which Ripstein refers to as your “purposiveness” to draw out the contrast (FF: 33, emphasis in original; FF: 34).³ Ripstein marks a “fundamental distinction” between interfering with a person’s *purposes* (one’s ends) and interfering with a person’s *purposiveness* (the ability to set and pursue one’s ends using one’s means) (FF: 41). Acts that affect your purposes merely “change the world” or “context” in which you exercise your ability to set and pursue your ends using your means, Ripstein claims, but do not interfere with this ability itself (FF: 41, 241). If Kantian freedom is conceived as purposiveness, Ripstein says, then “one person’s freedom need not conflict with another’s [freedom]”, and Kant’s theory of justice, understood as a self-limiting system of equal rights of freedom, is not subject to this decisive objection (FF: 39).

Ripstein’s conception of Kantian freedom as purposiveness has exerted an enormous recent influence on scholars of Kant’s political philosophy; however, the conception seems to me flawed. In this paper, I argue that Ripstein’s effort to conceive Kantian freedom as purposiveness fails in two important ways, rendering it both too narrow and too broad: First, I argue that acts that Ripstein classifies as *wrongful* because they “usurp” your powers of choice – such as coercive threats of harm – *cannot* be understood to violate the right of freedom if it is conceived as purposiveness; hence, the conception is too narrow (FF: 43). Ripstein argues that “usurping” acts such as coercive threats interfere with your purposiveness because they “decide” your purposes or “choose for” you, as opposed to you choosing your own purposes for yourself (FF: 39, 45). But according to Kant, while a coercive threat may wrongfully constrain me to perform an act that is directed as a means toward another’s end, no threat can make me *choose another’s end* as my own.⁴ As Kant says, “[I] can never be constrained by others to have

John: “The Basic Liberties and their Priority”. In: Rawls, John: *Political Liberalism*. New York 1993, 289–292). See Hart, H.L.A.: “Rawls on Liberty and Its Priority”. In: *The University of Chicago Law Review* 40, 1973, 534–555, for Hart’s statement of the objection.

³ The full quotation is from Chapter Two: “At the level of innate right, your right to freedom protects your purposiveness – your capacity to choose the ends you will use your means to pursue – against the choices of others [...]” (FF: 33 f). Earlier on the same page, Ripstein elaborates, “[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 [...]” (FF: 33). In Chapter One, Ripstein refers to independence (i. e., purposiveness) as “your ability to use your powers to set and pursue your own purposes” (FF: 16).

⁴ MS, TL AA 06: 381.06–09; see also MS, RL, AA 06: 239.09–12.

an end: only I myself can *make* something my end.”⁵ I propose that Kant understands wrongful acts such as threats to operate, instead, by wrongfully restricting my options, rather than by choosing one for me or by exercising my powers for me.⁶

Second, I argue that the simple *rightful* acts that Ripstein cites as witnesses to his fundamental distinction – such as buying the last quart of milk in the store, or moving to occupy some particular location – *do* appear to interfere with the right of freedom if it is conceived as purposiveness; hence the conception is too broad. Ripstein argues that these simple rightful acts affect your *purposes*, rather than your purposiveness, because they “just change the world in ways that make your means useless for the particular purpose you would have set” (FF: 16). But others’ rightful choices may often interfere with conditions or states of the world (e. g., the availability of milk in the store) upon which I take the sufficiency of my means (e. g., my money) to achieve my purposes to depend. If I then take myself to be unable to acquire (new) means sufficient to achieve my purposes, then I can no longer rationally choose them using my means. The rightfulness of the acts in Ripstein’s simple examples depends on implicit background assumptions about our entitlements to the means and conditions we need to set and pursue our ends. But if my purposiveness is understood to reduce to some background account of my entitlements, then the conception is either viciously circular or fails to provide a new approach to answering the “devastating” objection that originally motivates Ripstein to conceive it.⁷

This paper has five sections, including this introduction. In the next section (section two), I review and clarify some basic elements of Ripstein’s conception of Kantian freedom as purposiveness. In the subsequent two sections, I argue my main claims that purposiveness is both too narrow (section three) and too broad

5 “[...] nie aber *einen Zweck zu haben* von anderen gezwungen werden, sondern ich kann nur selbst mir etwas zum Zweck *machen*.” (MS, TL, AA 06: 381.06–09.) I provide the full quotation with more discussion in section two.

6 This first failure of Ripstein’s conception of Kantian freedom has not been satisfactorily addressed in the literature. See, e. g., the essays in *Freedom and Force: Essays on Kant’s Legal Philosophy*. Ed. by Sari Kisilevsky and Martin J. Stone. Bloomsbury 2017, where the problem is not discussed except perhaps obliquely by Allen Wood (see Wood, Allen: “Right and Ethics: Arthur Ripstein’s *Force and Freedom*”. In: *Freedom and Force: Essays on Kant’s Legal Philosophy*, 147).

7 This second failure of Ripstein’s conception has been addressed in the literature as a problem of circularity (see Ebels-Duggan, Kyla: “Critical Notice”. In: *The Canadian Journal of Philosophy* 41 (4), 2011, 562–571; see also Valentini, Laura: “Kant, Ripstein and the Circle of Freedom: A Critical Note.” In: *European Journal of Philosophy* 20 (3), 2012, 450–459). But precisely how this circularity vitiates Ripstein’s simple examples of rightful action as well as its connection to the “devastating” objection that motivates Ripstein’s project has not, I think, been sufficiently addressed.

(section four) to provide an adequate conception of Kantian freedom. I conclude with some remarks on the implications of these failures for Ripstein’s attempt to answer the “devastating” objection.

2 Ripstein’s conception of Kantian freedom as “purposiveness”

In the introduction to the *Doctrine of Right*, Kant defines the innate right of freedom as follows:

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 right belonging to every man by virtue of his humanity.⁸

Ripstein begins his interpretation of Kantian freedom with the observation that “one person cannot be independent of the *effects* of choices made by other people, except by limiting the freedom of those people” (FF: 33). But Ripstein observes that other people’s choices often affect us in ways that we would not want to characterize as violations of the right of freedom: for example, if someone else gets the last quart of milk in the store when I had hoped to get milk there, we would not want to characterize that act as a violation of my right of freedom (FF: 16). Similarly, Ripstein says, if someone moves to stand in some place where I had hoped to stand, or if someone makes exclusive arrangements with a person whom I had hoped to meet, then neither should these acts be thought violations of my right of freedom (FF: 41). Hence there is a basic difference between being wronged by another’s choice and merely being affected by that choice. But how are we to account for this difference?

⁸ „*Freiheit* (Unabhängigkeit von eines Anderen nöthigender Willkür), sofern sie mit jedes Anderen Freiheit nach einem allgemeinen Gesetz zusammen bestehen kann, ist dieses einzige, ursprüngliche, jedem Menschen kraft seiner Menschheit zustehende Recht.“ (MS, RL, AA 06: 237.29–32.) In what follows “freedom” without qualification should be understood to refer to what Kant calls “external” freedom or choice, rather than “internal” freedom (i. e., autonomy). See Kant’s introductions to the *Metaphysics of Morals* and to the *Doctrine of Right* at MS, AA 06: 379.15–380.06 and MS, AA 06: 214.13–21 for the difference between “external” and “internal” freedom.

2.1 Rightfulness: merely affecting another's *purposes*

Ripstein contends that you are wronged by another's choice when it interferes with your *purposiveness*, whereas you are merely affected by another's choice when it interferes with your *purposes* but not your *purposiveness*:

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. (FF: 41.)

In a later chapter, Ripstein refers to this distinction as the “basic distinction between wronging a person and changing the context in which that person acts” (FF: 241). If I move to occupy some space where you had hoped to stand, then my choice affects your *purposes* because you can no longer choose the specific purpose of standing in that particular space. But my choice does not interfere with your *purposiveness*, according to Ripstein, because I have not interfered with your ability to choose to go where you can; for example, you could still choose to stand in some other space, or to remain where you are (FF: 41; FF: 16, 34, 41, 45, 50). Analogous reasoning applies to my rightful choices to make arrangements with someone that you had hoped to see, or to get the last quart of milk in the store when you had hoped to get milk there. My choices are rightful because they merely “change the world” or “context” in which you exercise your ability to set and pursue your ends with your means, Ripstein argues, rather than interfering with this ability itself; hence such choices affect you but do not wrong you (FF: 16, 41, 241).

Ripstein cites a number of other cases of choices that he says are rightful because they affect your purposes but do not interfere with your *purposiveness*: refusing to work with you, marketing a product that competes with yours, damaging something that you use but that is mine, limiting your gains as a third party beneficiary of a contract, and taking down a fence I own, so exposing your land to wind (FF: 39).⁹ Ripstein does not analyze these cases in detail, but his reasoning appears to be the same as in the simpler examples: If I refuse to work with you, my choice affects your *purposes* because it renders means that you had hoped

⁹ Common legal doctrines (e. g., *ius tertii*) bar recovery in these cases, Ripstein notes, despite the substantial harm that such acts might cause you (FF: 39; see also Ripstein 2006, 228).

to use (i. e., my services) to achieve those purposes unavailable to you. But my choice not to work with you does not interfere with your *purposiveness*, according to Ripstein, because all I have done is “change the world” of purposes that you can choose using your means; for example, you can still choose purposes that you can achieve by working with someone else, or by working on your own (FF: 39). Similarly, while my rightful choices to market competing products, or enter contracts or damage my own property to your detriment, may change the world in ways that frustrate your particular *purposes* to profit in the market or realize other third-party benefits of my activity; according to Ripstein, such choices do not interfere with your *purposiveness* because they do not interfere with your ability to choose the purposes you can choose using your own resources, or your own property or land, “as you see fit” (see FF: 39). The innate right of freedom protects your “capacity to choose the ends you will use your means to pursue” from interference, Ripstein says; it does not “isolate people from the effects of other people’s choices” (FF: 38 f).

2.2 Justice concerns *choices*, not wishes

According to Kant, actions that do not have any direct or indirect external “influence” on others, or that merely affect what others wish they could have, are not concerns of justice.¹⁰ Ripstein thus connects freedom as purposiveness with making a *choice*, as distinguished from making a mere wish: “[y]ou exercise your purposiveness by choosing, rather than merely wishing” (FF: 41). While you can wish for anything – for example, “to walk on the moon and be home in time for dinner” – to choose an end, you must “take it to be within your power to pursue” (FF: 40). I cannot rationally choose to walk on the moon because I take myself to lack the means or the ability to acquire the means I need to achieve that end.¹¹ But the point applies equally to more mundane ends: for example, I may want to have milk in my coffee this morning, but if I have none in the house and take it that I cannot now go to the store (or borrow or otherwise acquire milk), then I cannot rationally choose to have milk in my coffee this morning and, instead, can merely wish to have it. But my inability to rationally choose to have milk in my coffee this morning (or to walk on the moon) is no limitation of my freedom of *choice*.

¹⁰ MS, RL, AA 06: 230.07–15.

¹¹ Neil Armstrong, on the other hand, rationally could have chosen to walk on the moon in 1969. Of course, no one (yet) rationally could choose to walk on the moon “and be home in time for dinner”.

Ripstein contrasts freedom as purposiveness with the familiar liberal conception of freedom as what Isaiah Berlin calls “negative liberty”, which Ripstein characterizes as “a person’s ability to *achieve* his or her purposes unhindered by others”, citing Berlin (FF: 33). Berlin defines negative liberty, however, as a person’s ability “to do or be what [one] is *able* to do or be, without interference by other persons”.¹² Ripstein might, therefore, have better characterized negative liberty as “a person’s ability to achieve the purposes *that he or she is able to achieve* unhindered by others”. Ripstein sometimes refers to negative liberty loosely as “freedom understood as the ability to do whatever you wish”, and when he does so, one might think that the difference between a choice and a wish would distinguish freedom as purposiveness from negative liberty (FF: 16). Both accounts of freedom presuppose this difference, however.

2.3 Wrongfulness: interfering with another’s *purposiveness*

While Kant defines freedom as “independence from being constrained by another’s choice”, he does not define exactly what being wrongfully “constrained” by another’s choice means.¹³ Ripstein offers several glosses on Kant’s language – such constraint is when another “decides” your purposes for you, “tells you” your purposes, “makes you” pursue their purposes, “compels” or “forces” you to pursue their purposes – but in each case Ripstein’s meaning is the same: you are wrongfully constrained by another’s choice when another *chooses for you*, rather than you choosing your own purposes for yourself (FF: 33, 34, 36, 37, 39, 45, 49).¹⁴ Ripstein says, for example, that “[t]he slave does not set his own ends, but is merely a means for the ends set by someone else” (FF: 36). Freedom as independence “must be understood in terms of my right that you not choose for me”, Ripstein argues (FF: 39).

12 Berlin, Isaiah: “Two Concepts of Liberty”. In: Berlin, Isaiah: *Isiah Berlin: The Proper Study of Mankind*. Ed. by H. Hardy and R. Hausheer. New York 2000, 191–242, 194 (emphasis added).

13 See quotation at beginning of this main section (two).

14 Here are some of the relevant quotations in context (emphases added): “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*” (FF: 33); “[...] the prohibition of one person *deciding what purposes* another will pursue [...]” (FF: 34 f); “[t]he slave does not *set his own ends*, but is merely a means for the *ends set by someone else*” (FF: 36); “Another person is not entitled to *decide for you* [...]” (FF: 37); “[...] my independence of your choice must be understood in terms of my right that you not *choose for me*.” (FF: 39); “If I usurp your powers, I *decide what purposes* you will pursue [...]” (FF: 45).

Ripstein identifies only two possible ways that another can interfere with your ability to choose your own ends with your means (or your “powers”), which he says “exhaust the space of possible violations of [your purposiveness]”: another might 1) *injure* you, or 2) “*usurp*” (or “use”) your powers (FF: 45; FF: 43 f). Ripstein defines *injury* as when another “restricts your ability to use your powers, either by physically constraining you or by depriving you of the ability to use them” (FF: 45). When I physically constrain or damage your powers, I interfere with your ability to set any purpose that requires those powers, to the extent of the physical constraint or harm. For example, if I handcuff you, or if I break your fingers, then I restrict your ability to choose to play the piano (for a period of time, anyway) (see FF: 44). According to Ripstein, acts of injury are wrongful not primarily because of the harm they might inflict on your powers but, instead, because you do not choose for yourself how to use them (FF: 45). As illustration Ripstein offers the example of a dentist who secretly fluoridates the teeth of an anti-fluoridation activist (FF: 44). Since there is no apparent harm in such a case and, arguably, a benefit, Ripstein asserts that the second category of violations, “usurping”, is the more basic form of violations of the Kantian right of freedom (see FF: 44).¹⁵ Ripstein then defines what it means to “usurp” someone’s powers in the same terms in which he defines what it means to be wrongfully constrained by another’s choice: “If I usurp your powers, I decide what purposes you will pursue” (FF: 45).

Ripstein’s conception of Kantian freedom as purposiveness, then, may be characterized by two main claims: 1) *Rightful* acts that affect you – such as my purchasing the last quart of milk in the store, or moving to occupy some particular location – interfere with your *purposes* but are nevertheless rightful because they merely “change the world” or “context” in which you choose, rather than interfering with your *purposiveness*, which is your ability to choose the ends you will use your means to pursue (FF: 41, 241). Whereas 2) *wrongful* acts interfere with your purposiveness by “deciding” your ends or “choos[ing] for you” what purposes you will set and pursue with your means (FF: 33, 39). In the next two sections, I will argue that each of these claims is false or problematic. I begin with the second claim.

¹⁵ Ripstein argues a similar point in the context of an extended example of a supposedly harmless trespass (Ripstein 2006, 218 f).

3 Choosing for you: freedom as purposiveness is *too narrow*

As we have seen, Ripstein argues that my right of freedom “must be understood in terms of my right that you not choose for me” (FF: 39; see previous subsection). But it is difficult to see how someone could “decide” another person’s purposes or “choose for” that person (FF: 45, 39). Suppose you demand that I do something on pain of injury or death. I may comply and do what you demand, but my compliance is then merely a *means* toward my end of self-preservation. If you brandish a pistol at me and demand that I dance, and so I do dance, then my end is not dancing but, instead, to avoid being shot, and my dancing is a means toward *that* end, not your end. While it is not impossible for me to choose the end of dancing in this example, or to choose the end of dancing in addition to the end of avoiding injury, the point is that your threat to shoot me cannot compel me to set dancing as my own end. As Kant observes,

Now I can indeed be constrained by others to perform *actions* that are directed as means to an end, but I can never be constrained by others *to have an end*: only I myself can *make* something my end.¹⁶

Hence while your threat to shoot me unless I dance does wrongfully force or “constrain” me to dance as a means toward your end of (perhaps) amusement at seeing me dance, the wrongfulness of that constraint cannot consist in your *choosing the end* of dancing for me, according to Kant. On the contrary, I am the one who chooses my end, whether that end is to preserve my life by dancing or to preserve my dignity by not dancing (though at the risk of being shot).

Kant’s observation that no one can force another to have an end is crucial to the distinction he makes between Right (*Recht*) and Virtue (*Tugend*) in the *Metaphysics of Morals*. Since duties of virtue are duties to have an end (e. g., the wide duty to make others’ happiness one’s end), they can only be what Kant refers to as “self-”constraints, or “internal lawgivings”. According to Kant, no “external” constraint by others, or “external lawgiving”, can impose duties of virtue:

¹⁶ “Nun kann ich zwar zu Handlungen, die als Mittel auf einen *Zweck* gerichtet sind, nie aber einen *Zweck* zu haben von anderen gezwungen werden, sondern ich kann nur selbst mir etwas zum *Zweck machen*.” (MS, TL, AA 06: 381.06–09).

No external lawgiving can bring about someone’s setting an end for himself (because this is an internal act of the mind), although it may prescribe external actions that lead to an end without the subject making it his end.¹⁷

Hence the difference between duties of virtue and duties of right is that only duties of right are in principle enforceable by others, because no one can force another to have an end.¹⁸ The *Doctrine of Right* “deals with duties that can be given by external laws”, Kant says, whereas the *Doctrine of Virtue* “treats of duties that cannot be so given”.¹⁹ But whether external force is applied rightfully, as in the enforcement of legitimate public law, or wrongfully, as in the dancing example, no external force can set my ends for me.²⁰

Perhaps Ripstein does not mean that someone else might choose my *ends* for me but, instead, only that someone might choose my *actions* for me. So in the dancing example you “choose for” me only that I will use my powers of dancing to bring about your end of amusement at seeing me dance, rather than choosing the end of dancing for me. Yet the same problem arises. Even if my choice is to use my powers in a way that brings about someone else’s end, I am still *choosing for myself* to use my powers in this way. According to Kant, every action one performs is determined by an end one sets, and every end one sets is the object of one’s own free choice:

17 “[...] sich aber einen Zweck vorzusetzen, das kann durch keine äußerliche Gesetzgebung bewirkt werden (weil es ein innerer Act des Gemüths ist); obgleich äußere Handlungen geboten werden mögen, die dahin führen, ohne doch daß das Subject sie sich zum Zweck macht.” (MS, RL, AA 06: 239.09–12.)

18 Kant also distinguishes “ethics” from “virtue” and sometimes refers to the subset of imperfect (wide) ethical duties as the only duties of “virtue”; however, this usage is not consistent (see MS, TL, AA 06: 383.08–14; see O’Neill, Onora: “Enactable and Enforceable: Kant’s Criteria for Right and Virtue”. In: *Kant-Studien* 107 (1), 2016, 111–124). The distinction between right and virtue relevant here does not require resolving this interpretative issue, however, because perfect (narrow) “ethical” duties also require one to have an end, that is, the end of duty itself, whereas “juridical” duties do not require that duty be the incentive for one’s action (MS, AA 06: 219.02–06; see also GMS, AA 04: 397 f).

19 “[...] der *Rechtslehre* (*ius*), welche äußerer Gesetze fähig ist, und der *Tugendlehre* (*Ethica*) eingetheilt wird, die deren nicht fähig ist [...]” (MS, TL, AA 06: 379.09–12). For a straightforward account of how the categorical imperative ultimately gives the duty in either case, see Guyer, Paul: “The Twofold Morality of *Recht*: Once More Unto the Breach”. In: *Kant-Studien* 107 (1), 2016, 34–63: 34–48.

20 While it is possible to imagine a type and degree of force sufficient to deform human subjectivity itself – e. g., brainwashing, torture, drugs, implants, etc., such cases are not what Ripstein (or Kant) has in mind.

An end is an *object* of free choice, the representation of which determines it to an action (by which the object is brought about). Every action, therefore, has its end; and since no one can have an end without himself making the object of his choice into an end, to have any end of action whatsoever is an act of *freedom* on the part of the acting subject, not an effect of *nature*.²¹

Since my dancing is determined by an end I set – although my end here (*viz.* preserving my life) also advances someone else’s end – then, according to Kant, the end of my dancing must be an object of my own free choice, and so my dancing cannot be an action that someone else chooses for me. It is irrelevant whether the action I perform also happens to be “directed as means” toward someone else’s end. Since every action has its end, according to Kant, I choose it for myself.

3.1 Coercion as wrongfully restricting my options

Kant does not mean to imply that every choice that one makes is, therefore, “free” of constraints that might violate one’s right of freedom, of course. Some of the choices one makes will be wrongfully “constrained by another’s choice”; others will not.²² I propose the following as a Kantian analysis of the wrongfully coercive threat in the dancing example: When you threaten to shoot me unless I dance, your threat operates by restricting the *options* I perceive to be available to me such that I must choose between dancing or being shot. You assume I have a strong subjective incentive to avoid injury, and the purpose of your threat is to constrain me to dance by (you hope) choosing to avoid injury by dancing. Hence while your threat restricts my options, I nevertheless still have a practical choice to make. Your threat is thus wrongful because of *how* it restricts my options, not because it chooses one for me. While I would choose to dance, I could choose not to do so, and a prouder soul than I am might refuse to dance for your amusement, no matter what threat you make. Suppose you demand, instead, that I shoot someone else or be shot. If I later claim to have “had no choice” but to shoot the

21 “Zweck ist ein *Gegenstand* der freien Willkür, dessen Vorstellung diese zu einer Handlung bestimmt (wodurch jener hervorgebracht wird). Eine jede Handlung hat also ihren Zweck, und da niemand einen *Zweck* haben kann, ohne sich den Gegenstand seiner Willkür *selbst* zum Zweck zu machen, so ist es ein Act der *Freiheit* des handelnden Subjects, nicht eine Wirkung der Natur irgend einen Zweck der Handlungen zu haben.” (MS, TL, AA 06: 384.33–385.04; see also MS, TL, AA 06: 381.04–06.)

22 Recall that Kant defines freedom as “independence from being constrained by another’s choice” [“Unabhängigkeit von eines Anderen nöthigender Willkür”] (MS, RL, AA 06: 237.29). See full quotation at beginning of section two.

person, then what I would mean is that your threat wrongfully left me with no other *option* (“choice”) that would preserve my life, not that I did not choose to shoot the person in order to avoid being shot. My claim should be understood, rather, as an excuse for the choice I did make, perhaps mitigating my punishment but not absolving me of culpability for my choice.²³

Could Ripstein argue that acts that wrongfully restrict my options are precisely the acts he means by those that “choose for” me? It is difficult to see how he could. First, Ripstein’s explicit remarks concerning the rightfulness of merely “narrow[ing] the range of my options” directly contradict this characterization of his position (FF: 245). But another obstacle to such a characterization is that Ripstein’s determination as to whether an act violates my freedom would then depend on an analysis of how or in what way the act alters the *purposes* (i. e. options) I might have. This would undermine Ripstein’s “fundamental distinction between [wrongfully] interfering with the *purposiveness* of another person and [merely] interfering with that person’s *purposes*” (FF: 41). At best, any non-arbitrary application of this fundamental distinction would seem difficult to make.

Ripstein’s references to being “compelled”, “made”, or “forced” to act are not problematic as ways of describing the constraint that violates my right of freedom (FF: 49, 33). The problem is that the account Ripstein gives of that constraint (force, compulsion, etc.) as violating “my right that you not choose for me” does not appear to be compatible with Kant’s understanding of free choice (FF: 39). Ripstein claims that “usurping” acts such as coercive threats are wrongful because they “decide” your purposes or “choose for” you, as opposed to you choosing your own purposes for yourself (FF: 39, 45). But as Kant observes, while another’s threat may wrongfully constrain me to perform an act that is directed as a means toward another’s end, no threat can make me have an end, or choose what I do for me. The threat wrongfully restricts my *options*, but I always choose my end or what to do for myself. Ripstein’s conception of Kantian freedom as purposiveness is thus too narrow to explain why “usurping” acts such as coercive threats are wrongful. In the next section, I argue that freedom conceived as purposiveness is also too broad to explain why many simple rightful acts that affect others are rightful (i. e., not wrongful).

²³ See RGV, AA 06: 50.19–21. That is, since I would be culpable for the shooting, I must have been able to do or avoid it.

4 Freedom conceived as purposiveness is *too broad*

Ripstein observes that many simple acts that may negatively affect others – such as buying the last quart of milk in the store, or moving to occupy some particular space, or making exclusive arrangements to meet someone – are nevertheless rightful (FF: 16, 41). As we have seen, Ripstein argues that while such acts interfere with others' *purposes*, the acts are rightful because they merely “change the world” or “context” in which others choose, rather than interfering with their *purposiveness*, which is their ability to set and pursue their purposes with their means (FF: 41, 241; see previous subsection 2.1). But it is difficult to see how the simple rightful acts Ripstein cites do not interfere with others' purposiveness.

Consider one of Ripstein's prominent simple examples:

[S]omeone 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 [i. e., purposiveness], 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. (FF: 16.)

First, Ripstein appears to equivocate as to the choice made here. When someone else gets the last quart of milk in the store, he or she does not interfere with a particular purpose I “would have set” but, instead, one I have set, one I chose. The situation is not that I cannot choose to get milk in the store because I take it that there is no milk there – if so, then this would merely be a manifestation of the distinction between a choice and a wish. To rationally *choose* an end, you must either 1) take yourself to already have the means to achieve the end, or 2) take yourself to have the ability to acquire such means; otherwise, you can merely *wish* to choose the end (see previous subsection 2.2). Hence if I take it that there is no milk in the store, then I cannot rationally choose to get milk there; instead, I can merely wish it were possible for me to do so.

Of course, presumably, I could choose to get milk at the store at some later time, or at some other store. But then someone else's getting the last quart of milk in the store would not, as Ripstein says, have “made [my] means useless for the particular purpose [I] would have set”, precisely because I could return later or go elsewhere to use my means (e. g., my money) to get milk (FF: 16). Is my end simply to get milk (somewhere, at some time) or is it to get milk at the store (now)? Such ambiguity would likely be resolved pragmatically; for example, suppose I am picking up milk at the only local store on my way home from work and have no time to go elsewhere. My choice would then be understood as to get milk at

the local store this evening. But this problem of resolving ambiguity as to what my choice in fact is should be separated from the philosophical matter at hand.

Suppose my choice is to get milk at the store this evening. If so, then it is difficult to see how someone else’s getting the last quart of milk there does not limit my purposiveness as Ripstein defines it. *Before* someone else gets the last quart of milk in the store, I have the ability to rationally choose my end because I take it that I have the means to do so. I take it that I have enough money and that the milk is available in the store (and that I can go there, that it is open this evening, etc.). Then, when someone else gets the last quart of milk in the store, he or she interferes with a condition (*viz.*, the availability of milk there) upon which I take the sufficiency of my means (e. g., my money) to achieve my end to depend. I therefore no longer have the ability to rationally choose to use my means to get milk at the store this evening.²⁴ Someone else’s rightful choice to get the last quart at the store does, therefore, appear to “impose [...] limits on [my] ability to use [my] powers to set and pursue [my] own purpose” of getting milk there, contrary to Ripstein’s assertion otherwise (FF: 16).

Ripstein’s other simple examples of rightful acts suffer from the same problem. Suppose you “occupy the space that [I] had hoped to stand in” or “make arrangements with the person [I] had hoped to spend time with” (FF: 41).²⁵ Again, *before* you occupy the space or make exclusive arrangements with the person, I *can* rationally use my powers to choose to stand in the space or to spend the time with the person because I take it that my powers are sufficient to achieve these ends. I take it that I am able to occupy the space, or to contact the person, and that the space or person is available to me. I thus have the ability to set and pursue these ends with my means. But then when you occupy the space or make exclusive arrangements with the person, you eliminate conditions (*viz.*, that the space or person is available) that I take it need to obtain for me to choose my

²⁴ I also must take it that conditions will not change, such as that the shelves will not soon be replenished with milk.

²⁵ The equivocal way in which Ripstein describes the choices made in his examples, as choices I “would have” made or “had hoped” to make, might suggest that Ripstein conceives purposiveness as a counterfactual (FF: 16, 41; see also FF: 39). Perhaps I retain my purposiveness with regard to an end so long as I *would have* been able to choose the end, *if* I had taken it that the means I needed had been available to me (counterfactually). But then my purposiveness would be indistinguishable from my ability to merely wish for things. When I take it that I lack and cannot acquire the means I need to achieve an end, I can merely *wish* to choose the end, whereas I can rationally *choose* the end if I take myself to have or be able to acquire such means. These are the very same conditions that would establish my purposiveness as a counterfactual, that is, I would have been able to choose the end, if I had taken it that I had or could acquire the means I needed to do so.

ends using my means. If I then take it that I cannot restore the conditions upon which the sufficiency of my means depend, or acquire (new) means sufficient for my ends, then I no longer have the ability to rationally set and pursue my ends with my means. Your simple rightful choices therefore appear to have interfered with my purposiveness. And again, while presumably I could choose to occupy the space or meet the person at some later time, or occupy some other space or see someone else, if my choices are to be construed so broadly (e. g. as to go anywhere, or to see anyone), then your actions would not have frustrated my (broad) purposes in the first place (see FF: 41).

4.1 The sufficiency of my means

As we have seen, Ripstein claims that the acts in his simple examples are rightful because while they “change the world” in ways that affect my *purposes*, they do not interfere with my “ability to determine how to use [the means I] already have” to set and pursue my purposes (FF: 41). But what the preceding analyses show is that the purposes I take myself to have the ability to set and pursue using the means I already have may often depend on conditions or states of the world that others might rightfully change. Changes to such conditions may render the means I have insufficient for me to achieve my purposes, and if I take it that I lack and cannot acquire (new) means sufficient to achieve my purposes, then I cannot rationally choose those purposes with my means. Hence others’ rightful “change[s] to the world” or “context” of my choice may interfere with my ability to use the means I have to set and pursue my ends, which is my purposiveness.

This point seems easy to overlook in Ripstein’s simple examples because in them others do not interfere with means or powers that are my own (e. g., my money, my body) but, instead, interfere with conditions or states of the world that we tend to implicitly *assume* I am not entitled to control (e. g., the availability of milk in the store, a presumably public space, etc.), but upon which the sufficiency of my means to achieve my ends depends. The examples may thus seem to show that acts that frustrate my purposes by interfering with my *means* or powers are wrongful acts, while acts that frustrate my purposes by interfering with the *conditions* (or the “world” or “context”) in which I use my means or powers to set and pursue my ends are rightful acts. This implicit distinction may then be easy to conflate with the distinction between means (or conditions) that are *my own* and means or conditions that are *not my own* to use or exploit, that is, with my entitlements. But I might be entitled to exploit conditions or states of the world as well as use my own means to set and pursue my ends, and on the other hand, I may not always be entitled to use all the means I have to set and pursue my ends.

We tend to implicitly assume in Ripstein’s examples that I am not entitled to get milk in the store, or to occupy the space, or to meet the person (and that I am entitled to spend my money or move my body), but these assumptions might fail. Perhaps I am entitled to have milk available in the store because I live in a “food desert” and the store is my only accessible source of fresh foods such as milk, and I might be entitled to occupy the space or meet the person on various rationales. If so, then the acts in Ripstein’s simple examples might wrong me despite merely changing the “world” or “context” in which I choose. Ripstein’s simple examples of intuitively rightful acts obscure these background assumptions about what our rightful entitlements are to use or exploit the means or conditions we need to set and pursue our ends. We implicitly assume in the examples that our entitlements to such means or conditions have already been completely worked out.

4.2 A vicious circle

Perhaps my purposiveness should just be understood, then, as my ability to set and pursue my ends using only whatever means or states of the world I am *rightfully entitled* to use or exploit toward my ends. My purposiveness would then be my ability to choose just those purposes that I am entitled to choose. But this rendering of my purposiveness invites a vicious circle: While I may not be rightfully entitled to get milk at the store, or to occupy the space, or to meet the person; according to Ripstein, the reason must be that my freedom as purposiveness in the system of equal freedom does not require these entitlements. But whether my right of freedom as purposiveness requires these entitlements cannot be determined if my purposiveness is just defined in terms of the entitlements that the system of equal freedom as purposiveness generates. That is, Ripstein argues that (1) state institutions are just if they secure everyone’s right of freedom as purposiveness in a self-limiting system of equal rights of freedom as purposiveness. But if (2) the equal right of freedom as purposiveness is itself defined in terms of whatever entitlements those institutions determine one to have, then (3) *any* consistent and complete set of such entitlements will satisfactorily secure everyone’s equal right of freedom as purposiveness.²⁶ My freedom as purposiveness would presuppose the entitlements that it is intended to ground. Ripstein’s claim that a right to the exclusive use of one’s own bodily powers is a constituent of the innate right of freedom of persons may partially limit this circularity (see FF: 40 f). But a

²⁶ Ebels-Duggan develops this line of criticism more fully (Ebels-Duggan 2011, 562–571; see also Valentini 2012, 453 f).

system of equal freedom in which everyone is entitled *only* to the exclusive use of one's own bodily powers is a system in which everyone has the ability to use all (only) those means that one is entitled to use toward one's chosen ends.²⁷ If such a system is inadequate to Kantian justice (as it surely is), then the injustice would not consist in a failure to secure everyone's equal freedom *as purposiveness*.²⁸

Ripstein claims that simple rightful acts such as someone else's getting the last quart of milk in the store do not interfere with your purposiveness because the acts "just change the world in ways that make your means useless for the particular purpose you would have set" (FF: 16). But such acts may interfere with conditions or states of the world (e. g., the availability of milk in the store) upon which I take the sufficiency of my means (e. g., my money) to achieve my purposes to depend. The acts may thus interfere with my ability to use my means to set and pursue my purposes, which is my purposiveness. The intuitive rightfulness of the acts in Ripstein's simple examples depends on implicit background assumptions about what means or conditions we each are entitled to use or exploit to set and pursue our ends. But if my freedom as purposiveness reduces to a background account of my entitlements, then the conception invites a vicious circle, since it is my freedom as purposiveness that is itself supposed to determine what my entitlements are in the system of equal freedom.

5 Conclusion

This vicious circle returns us to the "devastating" objection with which Ripstein began (FF: 31). Recall that the objection motivating Ripstein's project in *Force and Freedom* is that equal rights of freedom are not formally self-limiting in a system; hence, to resolve conflicts and justify common institutions such as public roads, theories of justice must decide how to order basic liberties and weigh freedom against other values (FF: 31; see introductory section one).²⁹ Ripstein claims that this objection can be answered by conceiving Kantian freedom as *purposiveness*, your "capacity to choose the ends you will use your means to pursue" (FF: 39). This conception of freedom, Ripstein claims, is properly self-limiting in the system of equal freedom.

²⁷ See Ebels-Duggan 2011, 569.

²⁸ To rebut this conclusion, an independent account of everyone's entitlements is required, but if Ripstein provides one, then the equal right of freedom no longer appears to be self-limiting (see next section).

²⁹ Ripstein's struggle to justify public roads has attracted significant critical attention (see, e. g. Ebels-Duggan 2011, 558, 566 f).

I have argued that purposiveness fails to provide an adequate conceptual analysis of Kantian freedom in two ways. On the one hand, no one can “choose for me” what my ends are or what I will do, except in the negative sense that another might interfere with my ability to rationally choose an end by, for example, physically constraining (“injuring”) the means I take it I need to choose my end (and where I take it I cannot acquire new sufficient means). Hence freedom conceived as purposiveness is too narrow to explain why wrongful acts short of injury such as coercive threats, are wrongful. On the other hand, others might also limit my ability to rationally choose my ends by “chang[ing] the world” or “context” so as to alter or destroy conditions upon which I take it that the sufficiency of my means to achieve my ends depends (and again, where I take it I cannot acquire new sufficient means, or restore those conditions). Hence freedom conceived as purposiveness is also too broad to explain why others’ simple rightful acts that do change such conditions, such as when someone gets the last milk in the store, are rightful acts.

If my freedom as purposiveness is just my ability to choose whatever ends I am rightfully entitled to choose, however, then my right of freedom as purposiveness will reduce to whatever background account Ripstein can give of my entitlements. And if that account is to avoid a vicious circle, it cannot appeal solely to my equal freedom as purposiveness in a system; this would be to define my right of freedom as purposiveness as whatever my right of freedom as purposiveness requires. Hence Ripstein must provide some independent substantive account of my entitlements. But then the equal right of freedom as purposiveness would not be self-limiting, since this independent substantive account of my entitlements is what would determine the right of freedom’s shape and scope. Alternatively, my right of freedom would be “self-limiting” only in the trivial sense that my freedom to choose the ends I am entitled to choose limits itself to just those ends.

Perhaps Ripstein can provide the requisite background account of my entitlements by arguing that everyone has an innate right to the exclusive use of one’s own bodily powers and then, via Kant’s “postulate of practical reason with regard to right”³⁰, to its maximal normative extension in private rights of property, in contract, and in status relations such as marriage (see FF: 40 f; see FF: 58 f). The consistency and completeness of the resulting account of my entitlements might then resolve the problem of conflicts between rights and how to weigh freedom against other values in Kant’s system of equal freedom.³¹ But this conception of

³⁰ “Rechtliches Postulat der praktischen Vernunft” (MS, RL, AA 06: 246.04).

³¹ Perhaps Ripstein would insist that the result would be an account of my *freedom*, rather than of my entitlements. Ebels-Duggan characterizes purposiveness as a “normative” rather than “descriptive” account of Kantian freedom, since what one is “free” to do on Ripstein’s account

Kantian freedom and justice is less a new approach than a new way of framing an old one. One might just as well conceive Kantian freedom as negative liberty and argue that equal rights of liberty can be made consistent in a system where one has an innate right to the exclusive use of one's own bodily powers and (again via Kant's postulate) to its maximal extension in private acquired rights of property, in contract, and in status relations.³² But according to Ripstein, such an account is vulnerable to the "devastating" objection with which he began (see FF: 33). Casting Kantian freedom as purposiveness thus appears to merely postpone and indeed obscure the fundamental problem of how to order liberties and weigh them against other values in Kant's system of equal freedom.³³

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is defined in terms of the means or conditions one is normatively entitled to use or exploit (Ebels-Duggan 2011, 562f). Ebels-Duggan then observes the vicious circle that such a conception invites (see previous subsection 4.2). Regardless, it is Ripstein's account of my entitlements that would matter.

32 See Byrd, Sharon, and Joachim Hruschka: *Kant's Doctrine of Right: A Commentary*, Cambridge 2010, for an approach along these basic lines, though with the important addition that the right of freedom will also periodically require the provision of new legal powers.

33 My own view is that "consent-based" accounts of Kantian justice solve this fundamental problem better than do "force-and-fraud" accounts such as Ripstein's account (see Holtman, Sarah: *Kant on Civil Society and Welfare*. Cambridge 2018, 37–40). On one such account, conflicts between equal rights of freedom are resolved by public laws that are just so long as they satisfy necessary conditions for the exercise of the possible consent of everyone (O'Neill, Onora: "Kant and the Social Contract Tradition". In: O'Neill, Onora: *Constructing Authorities*. Cambridge 2014, 170–185, 170–178). These conditions may be understood to specify a set of constitutional principles and rights such as those Kant sets out in the "republican" constitution (O'Neill 2014, 178). Freedom is one such principle, which Kant defines as that attribute of a citizen "obeying no other law than that to which he has given his consent" ["keinem anderen Gesetz zu gehorchen, als welchem er seine Beistimmung gegeben hat"] (MS, RL, AA 06: 314.07–08). (The other constitutional principles that Kant explicitly enumerates are "equality" and "independence".) For a review of the difference between force-and-fraud and consent-based accounts of Kantian justice as well as a defense of a consent-based "civic respect" account, see Holtman 2018.