

# Kant on punishment and poverty

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## Abstract

I offer a Kantian argument for the idea that the state lacks the authority to punish neglected, impoverished citizens when they commit crimes to cope with that neglect. Given Kant's own commitments to the value of external freedom and the state's obligation to ensure it, there is no reason a Kantian state can claim authority to punish an impoverished citizen while also failing in significant ways to protect her external freedom.

## 1 | INTRODUCTION

In 2015, Louisa Sewell stood on trial for stealing chocolate bars from a local convenience store.<sup>1</sup> While Sewell plead guilty because she really did steal, her defense lawyer added important context: Louisa had to steal food because her welfare benefits were suspended, and she had nobody else to depend on. In addition, Louisa did not use her welfare for frivolous expenses; she used it to provide for her basic needs, but those provisions were not enough.<sup>2</sup> Nonetheless, the court replied, “we do not readily accept you go into a shop to steal just for being hungry.” Sewell was found guilty by the court and fined accordingly.

Something has gone wrong here. While it is generally wrong to steal, this is no general case: because the state failed to give Sewell sufficient welfare to ensure her survival, Louisa had to resort to crime to continue living. And yet, despite this neglect, the government punished her anyway as if it were in no way responsible for her circumstances. Unfortunately, as Andrei Poama has pointed out, Louisa's case is surprisingly common.<sup>3</sup> There are many cases where the government fails a citizen in some important way, whether that be through inadequate poverty relief, employment, education, drinking water, police protection, or something else. And as a result of these failures, neglected citizens often need to take matters into their own hands by evading taxes, selling drugs, shoplifting, squatting, and the like. These actions are cases where someone is wronged. Certainly, the shopkeeper was wronged when Louisa stole from her. But in these cases, who should be punished? And who should do the punishing?

<sup>1</sup>I originally came across this story in Poama (2021, p. 1). See the original story here: <https://theconversation.com/is-it-really-criminal-to-steal-food-when-youre-destitute-59190>.

<sup>2</sup>Thanks to C. Stephen Evans and an anonymous reviewer for pressing me to clarify this detail.

<sup>3</sup>Poama (2021, p. 1).

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In reply to these questions, a view called the “Authority Thesis” has been picking up steam among contemporary political philosophers, most notably Tommie Shelby and Antony Duff. Broadly, this is the view that the government lacks the authority to punish those whom it significantly neglects. There are stronger and weaker affirmations of the view: whereas Duff thinks government neglect can disqualify its authority to punish altogether, Shelby opts for a more conservative, qualified account of the government's status.<sup>4</sup> Admittedly, I do not know which of the two views are correct, but I am convinced Shelby and Duff are right in one important respect: when the government neglects someone like Louisa Sewell, it lacks the right to punish her for what she does to cope with her poverty.

In this article, I am going to offer a Kantian argument for this view. My contention is that, given Kant's own commitments to the value of external freedom and the government's obligation to ensure it in *Doctrine of Right*, he should affirm that the state lacks the authority to punish citizens who commit crimes to cope with their poverty. To be clear, I am not arguing that the historical Kant would affirm this view; in fact, I will later argue that his view of punishment precludes him from accepting my argument. Instead, I am arguing that Kant's denial is inconsistent with the spirit of his own political philosophy, one that is aimed at articulating why the state is supposed to protect vulnerable citizens like Louisa.

The structure of the article is as follows: first, I will argue that the historical Kant says the government has the authority to punish Louisa despite its negligence. Second, I will offer reasons to think Kant's view is inconsistent with the spirit of his own political philosophy. Third, I will address the worry that my argument risks undercutting the authority of the Kantian state altogether. Finally, I will conclude that, perhaps surprisingly, we can marshal together resources from Kantian political philosophy to affirm that the state lacks the authority to punish citizens like Louisa Sewell.

But before I begin, let me make two further preliminary remarks. There is currently a very lively debate about which sort of impoverished citizens qualify for welfare under the Kantian state and what the wrongness of poverty consists of.<sup>5</sup> For example, would Louisa's defense still be compelling if she was destitute because she gambled all her welfare away? Perhaps the Kantian state might not retain its duty to alleviate Louisa's poverty given her frivolous spending, or perhaps not. I have my own opinion about this issue, but I do not intend to settle it here. Sufficient for my purposes here is this: if someone thinks Louisa Sewell would not qualify for welfare under the Kantian state, I am confident my argument is still applicable to those citizens who do, whoever they may be.<sup>6</sup>

Second, some have asked, “Why Kant?”<sup>7</sup> After all, it seems I can get a straightforward defense of Louisa Sewell from other historical philosophers without having to work so hard. Here are at least three reasons it is interesting to consider the Kantian view in this connection: First, if I successfully show that Kant's views of punishments are inconsistent with the spirit of his political philosophy, then this will have been a worthwhile expositional endeavor for those interested in the history of philosophy. Second, I find Kant's views persuasive, but it might be tempting for others to write him off due to his harsh views about people like Louisa Sewell. So, like neo-Aristotelians who contend Aristotle's own views do not entail his sexist remarks, I want to say Kant's view does not entail the harsh verdicts about Louisa Sewell that others may see as reason to write him off for. Third, as I will later argue, Kantian political philosophy may

<sup>4</sup>Duff (2010, p. 184; Shelby, 2016, p. 214, 217–18). Found in Poama (2021).

<sup>5</sup>For example, see Loriaux (2023) for an overview and novel contribution to this debate.

<sup>6</sup>So, while I do not aim to settle this debate here, below I will consider at various points the implications of my argument for each side of that debate.

<sup>7</sup>Thanks to Samuel Fleischacker, David Corey, and Alex Pruss for pressing this question.

be uniquely situated to deal with the objection that exculpating Louisa Sewell might undermine the authority of the state altogether.

## 2 | THE HISTORICAL KANT

Kant's political philosophy begins with the claim that everyone has an innate right to freedom that is only limited by the freedom of others. He writes,

*Freedom* (independence from the constraint of another person's will), insofar as it [this freedom] is compatible with the freedom of everyone else in accordance with universal law, is the one sole and original right belonging to every person by virtue of his humanity.

(MM 6:237)<sup>8</sup>

A few comments are in order. First, the right is innate insofar as a person has it in virtue of being a human; it does not depend on anyone to confer the right on a person.<sup>9</sup> This means all have this right in the state of nature; contrary to Hobbes, we do not require a state to have any rights at all.

Second, Kant understands negative freedom generally as our capacity to make decisions for ourselves without undue coercion by others (Ripstein, 2009, pp. 31–34; Zylberman, 2022, pp. 3–4). For example, freedom entitles me to set the end of going for a walk and then pursue the end by going for the walk without the interference of other agents. To have freedom, my decision to go for a walk is not the result of subordination to another person. I am not going for a walk because, say, my friend has threatened to harm me if I do not. As I am my own master, freedom entitles me to set and pursue my own ends so long as they are compatible with others' negative freedom.

However, there is disagreement in Kantian scholarship about whether merely being able to set ends without undue force is a sufficient description of the right to external freedom.<sup>10</sup> Allen Rosen and Arthur Ripstein notably read Kant as thinking external freedom also entails protection from undue force and fraud that would prevent agents from acting independently (Ripstein, 2009, p. 45; Rosen, 1993, p. 16; Zylberman, 2022, p. 4). Ariel Zylberman, however, thinks the right to external freedom expands beyond mere protection from force to also include a right to equal treatment and a right to being above reproach (Zylberman, 2022, p. 4).<sup>11</sup> Zylberman explains these two additional features:

Actions or policies that treat you as *morally unequal* would violate your original right even if those actions and policies involved neither force nor fraud. Similarly, I understand the incident of being beyond reproach as capturing an *expressive* dimension of external freedom. This means that actions or policies that have the *expressive* message of treating you as a moral inferior violate your

<sup>8</sup>All citations from *Doctrine of Right* are from: Immanuel Kant, *Metaphysical Elements of Justice*, 2nd ed., trans. John Ladd (Indianapolis, IN: Hackett Publishing Company, 1999).

<sup>9</sup>It is not so clear how Kant thinks humans have this right. Ripstein says the Universal Principle of Right—that is, the maxim that says an action is right if it can coexist with everyone's freedom—*generates* the innate right to freedom (Ripstein, 2009, p. 13). The way the principle exists is a bit mysterious to me: Is it explained by features of a human being? Or is it just a principle that exists abstractly as a maxim of reason? I am thinking the latter is true, but the reason it is true might be due to features of our humanity. I think this because Ripstein later says that the innate right “is required because of the human capacity for choice” (p. 18). This strikes me as an explanation of the principle by from features of our humanity. Nonetheless, I leave this aside for now, though it is still worth noting.

<sup>10</sup>In the rest of the paragraph, I am indebted to Ariel Zylberman's (2022, p. 4) survey of this discussion.

<sup>11</sup>Thanks to an anonymous reviewer for bringing this paper to my attention.

original right to freedom even if those actions or policies involve neither force nor fraud.

(p. 4)

To get a sense of how these different theories work in practice—and, in particular, how Zylberman's view works—we can consider how Zylberman explains the wrongness of Jim Crow segregation. On his view, Rosen and Ripstein see segregation as violating an agent's external freedom if these laws require undue force and coercion of the agent. But in Zylberman's view, undue force is only one of three ways external freedom is violated. Indeed, when we look at Jim Crow, the most glaring ways in which it was wrong was that it treated one part of the population as less deserving of respect than others (and hence, *unequal*) and expressed a demeaning view about the segregated population (and hence, *under reproach*).<sup>12</sup> So on Zylberman's view, there are three different avenues to violating the right to external freedom, two of which are not reducible to undue force.

While I am not here taking a stand in this debate (especially since I am undecided about it), I will eventually note how it makes a difference to our diagnosis of the wrong the state does to people like Louisa Sewell.<sup>13</sup> If we accept the reductivist view, then Louisa is only wronged if she has been unduly forced by someone (i.e., a negligent state) or something (i.e., her impoverished circumstances). However, if we accept a more expansive reading of the right to external freedom, then we might think Louisa was wronged through either force, unequal treatment, demeaning expression of the law, or all the above. This will be important for the later stages of the article.

We can now move beyond the detour to the third claim of Kant's political philosophy germane to the present discussion: namely, that, Kantian rights are essentially property rights. If I have a right to something, I am entitled to control it and exclude others from it because I own it (Ripstein, 2004, pp. 12–13; 2009, p. 19). This right results in prohibitions upon others: they are not allowed to interfere with the thing I have a right to without my permission (Ripstein, 2004, p. 14). So, if we have a right to freedom, then there is a sort of property we own and can prohibit others from wrongfully interfering with (p. 13). And since everyone possesses their own right to freedom, then they also have the right to exclude us from interfering with their right. The result is a system of rights that reciprocally limit one another: everyone has a right to external freedom insofar as they do not violate another's right to freedom (p. 26).

Lastly, this is a *right* to freedom, and rights entail absolute obligations of respect. However, in the state of nature, we cannot respect this right due to three defects. The first defect is *unilateralism*. If I want to claim property in the state of nature, I also want to impose an obligation on others to not interfere with my property without my permission. Now, Kantian rights are entitlements for coercion. That is, if others are obligated to respect my property, then if they fail to do so, it is permissible for me to restrain them from continuing. But there is a problem: “a unilateral will cannot serve as a coercive law to everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws” (MM 6:256).<sup>14</sup> In other words: nobody is authorized to coerce others in the state of nature, and given the innate right to freedom, everyone is entitled to resist such coercion.

The second defect is *assurance*. Kant writes,

The obligation [to refrain from using what another claims as his own] arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless

<sup>12</sup>Zylberman (2022, pp. 4–5). Zylberman gets this “more capacious” reading of external freedom from MM 6:238–239.

<sup>13</sup>Thanks to an anonymous reviewer for raising this point.

<sup>14</sup>Quoted in Ebbels-Duggan (2012, p. 898).

everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine.

(MM 6:255–56)<sup>15</sup>

For Kant, a system where everyone acts freely requires the assurance that everyone will abide by whatever freedom requires. Otherwise, those who do abide leave themselves vulnerable to exploitation by those who flout the obligations entailed by the right to external freedom. So, without some way of guaranteeing that all people will receive equal protection from such exploitation, Kant thinks no obligation to abide by a system of rules applies.

The last defect is *indeterminacy*.<sup>16</sup> For people within a community to exercise property rights, there needs to be some rules that determine what counts as property acquisition. However, there are many different sets of property-acquisition rules; it is not the case only one of these sets alone is deducible from the innate right to freedom (Pallikkathayil, 2010, p. 137; Sinclair, 2018, pp. 6–7; Stilz, 2009, p. 40). And since no single individual in the state of nature has the authority to choose among these sets and enforce the rules, there is no solution to the *indeterminacy* problem in the state of nature.<sup>17</sup>

As a result of these defects, we have the following problem: everyone has an innate right to freedom that everyone has an obligation to respect; however, in the state of nature, there is no way of respecting freedom. As a result, Kant gives the following verdict: “it can indeed be said of the juridical state of affairs that all persons ought to enter it if they ever could (even involuntarily) come into a relationship with one another that involves mutual rights [or justice]” (Kant, 1999, p. 114). The “juridical state” is a condition where everyone within a given community can act freely, one where those who resist can even be coercively forced into it by others. The way Kant thinks we enter such a condition is by forming and submitting to a state that acts on behalf of all members in the community rather than a single person:

In order to be able to participate in the actual Law of the land, these human beings and nations require, because they mutually influence one another, a juridical condition of society. For this, they require a condition of society *under a Will that unites them*—a constitution.

(MM 6:311; emphasis added)

How does the Kantian state address the three defects of human communities in a state of nature? And in which sense are they united under a single will? The answer is that the Kantian state's branches—the legislative, judicial, and executive—are all aimed at solving one of the defects without relying on any private individual. Kyla Ebels-Duggan summarizes,

In its *legislative* function the state makes laws specifying how individuals may rightfully establish property claims. When they act according to these laws individuals' property claims are no longer problematically unilateral, since they

<sup>15</sup>Quoted in Ibid (Ebels-Duggan, 2012, p. 898).

<sup>16</sup>Ripstein thinks all three defects are independent from one another (2009, p. 147). However, Billy Christmas (2021) has argued that both assurance and unilateralism are parasitic on the determinacy problem: once determinacy is solved, so are the other defects. Ebels-Duggan seems to concur, as she claims the unilateralism “is clearest when paired with the . . . *problem of indeterminacy*” (Ebels-Duggan, 2012, p. 898).

<sup>17</sup>Christmas (2021) has also argued that this is false: it is conceptually possible, though unlikely, that a set of objective rules governing property rights can emerge as social conventions in the state of nature. If Christmas is correct, then this undermines the Kantian claim that the state is *necessary* for the protection of rights. My initial reply is that logical possibility does not really matter for Kant's necessity claim; insofar as stateless rights-protection is *empirically* impossible, I think this is enough to make Kant's point.

have the support of the omnilateral state. In its *judicial* function the state provides authoritative settlement to disputes arising from the application of these laws. And in its *executive* function it enforces the laws, solving the assurance problem.

(Ebels-Duggan, 2012, p. 899; emphasis added)

If the legislative specifies one of the possible property-acquisition sets of rules, the judicial properly settles disputes over applications of the rules, and the executive enforces the rules, then the three defects are solved. The only restraint on the Kantian state's functions is that they must act according to laws that are consistent with each citizen's right to external freedom.<sup>18</sup> Otherwise, if they act contrary to freedom, then they act against the very purpose citizens aimed at in forming and submitting to the state (Byrd & Hruschka, 2010, p. 266).

We saw above that each citizen's right to negative freedom must be compatible with every other citizen's right to negative freedom. But what about the law? What is it that makes coercive laws legitimate given Kant's concern for freedom?<sup>19</sup> Roughly, Kant thinks a law is legitimate if the citizenry can possibly consent to it. In *On the Common Saying*, Kant says political communities are grounded by “an *original contract*” that is “*only an idea of reason*” that will “bind every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people and to regard each subject, insofar as he wants to be a citizen, as if he has joined in voting for such a will” (OCS 8:297). While the constitution is not an empirical event, it nonetheless requires in practice the prohibition of any laws that citizens cannot consent to (OCS 8:297). Of course, what Kant means by consent here is not entirely straightforward. In fact, as Loriaux points out, Kant even believed the original contract was compatible with an entire community actually rejecting a particular law (Loriaux, 2023, p. 16; OCS 8:297; MM 6:319). In short, if a citizen can possibly consent to a law, this means that their acceptance of the law is not incompatible with their *rightful honor*. Rightful honor picks out the requirement entailed by our right to external freedom to not allow ourselves to be a mere means for others (MM 6:236).<sup>20</sup> Thus, we may not do things like contract ourselves into slavery or consent to political arrangements that require us to advance other citizens' interests (Ripstein, 2009, p. 18).

Kant sees this as something entailed by our right to external freedom. If we really do have a fundamental right to set our own ends independently of the coercion of others, it follows that not even we have the discretion to subject ourselves to relationships where others forcibly coerce us.<sup>21</sup> Since making ourselves means to another's ends is incompatible with rightful honor (and hence the right to external freedom) and Kantian states are designed for the sole purpose of protecting our right to external freedom, it follows that we cannot possibly consent to some exploitative arrangements (even if some stand to benefit from those arrangements).<sup>22</sup>

<sup>18</sup>“Individual rights also constrain state power through the idea of possible agreement by restricting the means the state can use in pursuing public purposes to those consistent with each person's innate right of humanity” (Ripstein, 2009, p. 208).

<sup>19</sup>Thanks to anonymous reviewer for suggesting I say something about legitimacy, and thanks to Anne Jeffrey for helping me sharpen this section.

<sup>20</sup>See Loriaux (2023) for an excellent discussion about how the wrongness of poverty is explained in terms of civil depersonification, a concept that draws heavily on rightful honor.

<sup>21</sup>“Just as the rights of others restrict your freedom, so that you cannot acquire a right to anything by acting in ways inconsistent with the innate right of another person, so, too, the humanity in your own person restricts the ways in which you can exercise your freedom by entering into arrangements with others. Your innate right prevents you from being bound by others more than you can in turn bind them; your duty of rightful honor prevents you from making yourself bound by others in those ways” (Ripstein, 2009, p. 37).

<sup>22</sup>Ripstein notes how Kant differs from Rawls on why we cannot consent to exploitative arrangements. On Rawls's view, we cannot consent to these arrangements because, from behind the veil of ignorance, we do not know if we would be affected by these arrangements and are therefore compelled by instrumental rationality to reject these arrangements. Kant, on the other hand, does not appeal to instrumental rationality. If an exploitative arrangement is incompatible with rightful honor, that is enough on its own for everyone to withhold consent—there is no appeal to self-interest. See Ripstein (2009, p. 209).

All of this, then, gives rise to what I call a *master obligation* upon the state: namely, the state must do away with anything incompatible with the citizenry's rights to external negative freedom. Positively, the state is entitled to do whatever is necessary to secure this freedom for its citizenry; negatively, state actions that are incompatible with citizens' negative freedom goes beyond state authority and is thus strictly prohibited.<sup>23</sup> In turn, citizens are obligated to submit to whatever the state requires of them in order to fulfill this obligation. In this sense, Kantian states are formed by a sort of transactional relationship between state and citizen.

The state's *master obligation* gives rise to at least two further obligations on the part of the state: first, since crime is incompatible with freedom, the state must see to it that crime is punished. When a citizen commits a crime against another citizen, they are hindering the ability for another citizen to set and pursue their own ends. For example, if a thief steals someone's car, she is hindering the owner's ability to use the car as she pleases and perhaps to pursue without interference her ends that are compatible with the negative freedoms of others—whether that be going to pick up her children from school or taking the car out for a joyride. In interfering with the owner's pursuit of her ends, she is obviously violating the owner's right to external freedom by thwarting that pursuit. But in Kant's view, the thief is also violating the rest of her community by exempting herself from the laws of the state that all her fellow citizens are supposed to obey, violating the assurance the state is supposed to provide to the citizenry by unilaterally imposing force on criminals (Ripstein, 2009, p. 302, 311; MM 6:321). So, since the state's job is to ensure protection, it is obligated to punish the thief by hindering the citizen's hindrance to another citizen's freedom (Ripstein, 2009, p. 301, 55). If the state were to fail this obligation, it would fail to provide the victim and the rest of the community the protection that legitimates its power in the first place (Ripstein, 2004, p. 35).

The second obligation the *master obligation* entails is poverty alleviation (p. 132). To fulfill this obligation, the state coerces citizens to pay money via taxation (Ripstein, 2009, p. 268). The state has the authority to do this because poverty is incompatible with our right to external negative freedom. There are, of course, different ways of explaining how poverty is incompatible with freedom. Arthur Ripstein thinks allowing poverty is wrong because it forces the impoverished to become totally dependent on the good will of the rich, and this is a slave-like arrangement that “is inconsistent with those people sharing a united will (p. 278).<sup>24</sup> Rafeeq Hasan goes further when he adds that the wrongness of poverty also targets the political community's institutional structures that make such relationships of dependence possible (Hasan, 2018, p. 12, 14). And Zylberman adds that the wrongness of poverty is also explained in terms of unequal treatment and expressive humiliation toward the poor (2022). Depending on which view we accept, we will get a different diagnosis for how Louisa Sewell was wronged by the state *and* the appropriate responses to this wrong—more on this later.

Regardless of whether the reductive or expansive interpretation is in fact correct, the important point is that it is the *state's* duty—not the citizenry's—to fix the problem of poverty. This might come as a surprising claim to those who suspect Kant's moral philosophy would require the rich to give charitably to the poor in the Kantian state. While Kant was clearly no utilitarian, we might expect him to endorse something close to Peter Singer's demanding views on the duties of charity if he were alive today.<sup>25</sup> But this is not the case. For

<sup>23</sup>“Because there is only one innate right, the right to freedom, all of the other, more specific restraints on government must be understood as aspects of that right, and so be reconciled with each other as aspects of it” (Ripstein, 2009, p. 214).

<sup>24</sup>Thanks to an anonymous reviewer for sharpening my reading of Ripstein on this front.

<sup>25</sup>See Singer (1972).

example, Lucy Allais has drawn attention to passages where Kant condemns begging because it involves self-humiliation, a posture Kant sees as flatly incompatible with the beggar's freedom because humiliation is “a function of being in a position in which you have no option but to ask strangers to choose to help you meet your basic and essential needs” (Allais, 2015, p. 760). Given that Kant appears to see private charity as begetting this kind of humiliation, it follows the remedy to poverty must be public rather than private—otherwise, the impoverished will continue to depend on the good will of the well-off (Allais, 2015, p. 765).

Of course, there are other reasons why Kant thought poverty must be solved by public institutions alone. One straightforward way of accounting for this is that the impoverished have no right to charity against others (Ripstein, 2009, p. 275). As long as other citizens do not deprive the impoverished of their ability to use their means for their own purposes, these citizens have no obligation to be charitable toward the poor (p. 276). Another reason against private charity is that private charity places the impoverished under an unpayable debt of gratitude that only further entrenches their dependence and humiliation (Zylberman, 2022, pp. 12–13).<sup>26</sup> So, there is good reason to think the case for the state as being the only appropriate alleviator of poverty is quite overdetermined.

Before continuing, it is worth noting that some think the Kantian state only has the authority to protect negative freedom (e.g., crime prevention) and that it lacks the authority to protect positive freedom (e.g., poverty alleviation).<sup>27</sup> On this interpretation, the Kantian state wrongs its citizens when it fails to protect them from crime, but it does not wrong them if it fails to alleviate poverty. If this interpretation is true, then my analysis of Louisa Sewell is off. However, I am going to assume that this interpretation is false and that Kantian states have both the authority and the duty to protect certain positive freedoms. I am comfortable making this assumption because I see Kant's view as consistent with it and the interpretation has good pedigree.<sup>28</sup>

Nonetheless, my argument does not hinge on this assumption, and it could be the case that Kantian states only protect negative freedoms. Even on this reading of Kant, there are plenty of cases where state negligence can disqualify its authority to punish. For example, consider this case from Arthur Ripstein:

Suppose somebody is repeatedly robbed and the police refuse to either protect them or take any steps to apprehend the robbers. Reduced to poverty, the person steals a loaf of bread. In such circumstances, there seems to be something especially troubling about the state punishing them, even if we suppose that retributive or deterrent purposes might be served by doing so.

(Ripstein, 1996, p. 711)

Ripstein's idea is that the state's negligence (i.e., its failure to protect the citizen) is precisely the reason why it is disqualified from punishing the citizen who needs to shoplift to survive. So, even if my reading of Kant on positive freedoms is incorrect, that does not spell trouble for the main argument. As long as Kantian states can fail to protect freedom, they are liable to losing their authority to punish in cases like these. But again, for our purposes, I am

<sup>26</sup>More recently, Ariel Zylberman has expanded on Allais's original argument to include how private beneficence to the impoverished generates an unpayable debt of gratitude upon the poor that would only further entrench their dependence and humiliation (2022, pp. 12–13). For other similar ideas, see Denis (1999), Stohr (2009).

<sup>27</sup>Thanks to an anonymous reviewer for bringing this interpretive debate to my attention.

<sup>28</sup>I read Ripstein (2009, pp. 42–43; chs. 8–9) as endorsing the inclusion of positive liberties, and I also read Stilz (2009, pp. 93–94) in section II as endorsing a similar conclusion.



going to make the assumption that the Kantian state protects both negative and positive freedoms.

Now, what happens when the state fails to fulfill one of its duties? Here, it is important to clarify an important difference between state obligations and citizen obligations. When a citizen has some obligation—say, to respect the property rights of others—others can coerce her to avoid violating this obligation. One citizen can resist another citizen's attempt at stealing her things, and the state can restrain the thief by some means of punishment. However, even if the state fails to uphold the obligations it has to its citizenry, Kant thinks nobody has a right to resist or coerce the state for these injustices. He writes,

The sovereign in the state has many rights with respect to the subject, *but no (coercive) duties*. Furthermore, if the organ of the sovereign, the ruler, proceeds contrary to the laws—for example, in imposing taxes, recruiting soldiers, and so on, so as to violate the law of equality in the distribution of political burdens—the subject may lodge a complaint about this injustice *but may not actively resist*.

(MM 6:319; emphasis added)

There is, then, an important asymmetry between states and citizens: whereas both have obligations to one another, only the state can coerce citizens to fulfill their obligations; the state is not the sort of entity that can be coerced by the citizens. If citizens see some sort of state injustice, they must stop short of active resistance against the state. They must, in Kant's words, “endure even the most intolerable abuse of supreme authority” (MM 6:230).

Why does Kant argue for this asymmetry? His answer:

Resistance to the supreme legislation can itself only be unlawful; indeed, it must be conceived as destroying the entire lawful constitution, because, in order for it to be allowed, there would have to be a public law that would permit the resistance. That is, the supreme legislation would have to contain a stipulation that it is not supreme and that in one and the same judgment the people as subjects should be made sovereign over him to whom they are subject; this is self-contradictory.

(MM 6:230)

The argument here goes something like this: every citizen has given up her own right to coerce others unilaterally by submitting to the Kantian state. In submission, citizens bind themselves to the laws of the state and the state's right to secure compliance with its laws. But if a citizen were to resist these laws, she would be using her own unilateral judgment about what laws are just or unjust, and this is precisely the sort of thing the Kantian state was designed to prevent: rather than using unilateral judgment—a thing that relies on one individual—the state is designed to use omnilateral judgment, a judgment that reflects the entire community. When citizens engage in unilateral judgment, they make themselves sovereign over their sovereigns of the political state, a clear contradiction in terms. Thus, resistance to the Kantian state is not permissible.

So, given these considerations, how would the historical Kant evaluate Louisa Sewell's shoplifting? On the one hand, it looks like the state fulfilled its obligation to punish wrongdoing by fining Sewell and compensating the shopkeeper for the loss of what was rightfully her own property. On the other, the state miserably failed its obligation to Louisa to protect her external freedom to pursue ends like feeding herself, a failure that seems to be the primary explanation of why Louisa stole from the shopkeeper. Had the state prevented Louisa from starving for multiple days, it is doubtful (though, I grant, still metaphysically possible!) that Louisa would have shoplifted. It seems that if anyone is significantly responsible for the shoplifting, it is the negligent state rather than the starved Louisa Sewell.

Would the historical Kant buy this? I think not. One reason to think this is that Louisa's shoplifting seems to count as an instance of resistance to the state, the sort of thing Kant thinks is altogether off limits for any private citizen. Another reason to think the historical Kant would not grant this analysis of Louisa Sewell is that he is categorically against pardoning criminals for offenses:

With respect to a crime of one subject against another, [the sovereign] absolutely cannot [pardon], for in such cases exemption from punishment constitutes the greatest injustice toward his subjects . . . he cannot allow a crime to go unpunished if the safety of the people might be endangered thereby.

(MM 6:337)

Presumably, if anyone is an eligible candidate for pardoning, it is Louisa Sewell. But even in a case like this, Kant does not budge: to pardon crime is to commit a grave injustice to other citizens. The reason, I take it, is that the state is supposed to be a system that categorically enforces limits on each citizen. However, pardoning excepts a citizen from this order and treats them like an exception to the rules that all the other citizens are required to submit to. So, Kant says, no preferential treatment; Louisa Sewell may not even be pardoned for this crime.

Of course, none of this is to say that the historical Kant would not have found Louisa Sewell's circumstances seriously unjust. Given Kant's views on the state's obligation to alleviate poverty, he surely would say Sewell has a right to complain and petition against the state for abdicating its responsibilities to her. However, Kant nonetheless maintains that Louisa has no right to actively resist the state; on his view, to do so would destabilize the system of equal freedom that the state is responsible for preserving. In sum, then, the historical Kant says the state retains its authority to punish Louisa Sewell despite its failure to alleviate her poverty.

However, we might question whether Kant's argument for the impermissibility of revolution also counts as an argument against resistance to particular unjust laws.<sup>29</sup> I do concede there is a clear difference between resisting a particular bad law (say, Jim Crow segregation) and altogether resisting the state by armed rebellion. But even after I concede this difference, I still contend they are wrong for the same reasons: namely, they both involve cases where a citizen uses unilateral judgment over and above the omnilateral judgment of the political community. Kant appears to endorse this explanation when he claims that

any resistance to the supreme legislative power, any incitement to have the subjects; dissatisfaction become active, any insurrection that breaks out in rebellion, is the highest and most punishable crime within a commonwealth. . . . The ground of this is that in an already existing civil constitution the people's judgment to determine how the constitution should be administered is no longer valid.

(OCS 8:299–300)

Here, Kant lumps both “any resistance” and “any insurrection” together as both being wrong for the exact same reason: both overlook the fact that citizens have given up their right to determine the civil constitution when they formed the Kantian state.<sup>30</sup> Even if full

<sup>29</sup>Thanks to an anonymous reviewer for raising this objection.

<sup>30</sup>This is why I endorse Anna Stilz's view that Kantian citizens have to obey the state and simply hope that just laws will follow Stilz (2009, p. 58).

revolution is a much more dramatic action than resistance to a particular law, they are both wrong for the same reason.

But even if this reply is insufficient, I do not think it matters for someone like Louisa Sewell. My argument is that the state—not just some particular unjust law—lacks authority over Louisa Sewell when it refuses to grant her conditions of external freedom. When Louisa shoplifts, the state sees her as violating its commands against shoplifting, and the way it describes her wrongdoing is a *legal* wrong (even if it might also be morally wrong, depending on who you ask). But I am arguing that the state's neglect of Louisa means that the state is wrong to see her shoplifting as a legal wrong because, due to its neglect, it is no longer authoritative over her. As I will explain in Section 2, the Kantian state is now locally illegitimate with respect to Louisa, though it might still be globally legitimate to the rest of the community.

Another objection to this reading is that the Kantian “right of necessity” might be proof that the historical Kant would not have endorsed Louisa's punishment.<sup>31</sup> This is a right that affords citizens legal protection to do something that is morally wrong in dire circumstances. Perhaps Kant would have thought this right would legally protect Louisa Sewell from punishment, rendering my historical reading of Kant false. Unfortunately, I doubt the historical Kant would have thought this right would apply to Louisa. Let me first say more about the content of this right before I go on to say why it does not cover Louisa.

Kant raises the right of necessity when he considers a case where a shipwrecked sailor must push another crewmate of his off a plank of wood to stay alive in the middle of the ocean (MM 6:316). In Kant's view, the sailor acted wrongly in pushing his crewmate off the plank, but he nonetheless should not face legal punishment because “an ill that is still *uncertain* (death by a judicial verdict) cannot outweigh the fear of an ill that is *certain* (drowning).”<sup>32</sup> The idea is that Kantian laws are supposed to motivate compliance, but because the law's threat of death is necessarily incapable of motivating the sailor who is about to face imminent death, Kant thinks it inappropriate for the law to carry out punishment upon the sailor. In Kant's view, “it would be an absurd law to threaten someone with *death* if he did not voluntarily deliver himself up to *death* in dangerous circumstances” (OCS 8:301). And if Kant is willing to legally except the sailor, we might think Kant should also except Louisa Sewell, a person who faced the possibility of death by starvation.

However, there are several good reasons for thinking the historical Kant would not have excepted Louisa with the right to necessity. First, Kant only mentioned this right in discussions about homicide (Van Duffel & Yap, 2011, p. 462). This is at least *prima facie* evidence that the right of necessity is not applicable to nonlethal cases like shoplifting. However, second, even if this right was not limited to cases of homicide, it is far from clear where else the right may apply given how strange Kant's application of the right is. For example, Kant also applies this right to protect a mother who committed infanticide against her bastardized child from any legal punishment (MM 6:336).

The argument is, roughly, that since the child was born outside the legal institution of marriage, the child is also born outside the legal protection of the law and thus legal protection against infanticide.<sup>33</sup> In response, Jeffrie Murphy has convincingly argued that this, to put it mildly, is not one of Kant's best moments (Murphy, 2012, pp. 77–78). For one thing, Kant's argument implausibly entails that, given the child's illegal origin, she will never have any legal

<sup>31</sup>Thanks to Samuel Fleischacker, Sylvie Loriaux, and an anonymous reviewer for pressing me on this.

<sup>32</sup>MM 6:235–36. Quoted in Ripstein (2009, p. 322).

<sup>33</sup>“A child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law. It has, as it were, stolen into the commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not ‘right’ that it should have come into existence in this way), and can therefore also ignore its annihilation” (MM 477).

protection from anyone else within the community killing her at any time. Thus, the argument says bastardized children—through the whole duration of their lives—have no legal recourse against other members of the political community who try to kill her. Of course, we might be able to offer a more sympathetic reading of Kant's analysis of this case. Perhaps, as Murphy intimates, Kant is appealing to shameful social mores against bastardized children as an explanation of the mother's action with the hope that doing so decreases her culpability. Nonetheless, even if this were true, it is hard to make sense of how this would amount to the full legal protection the right of necessity is supposed to grant.

At any rate, even if we were able to salvage a principled way of applying the right of necessity to cases that would avoid Murphy's objections, we would have an exculpation of Louisa's legal guilt *for the wrong reasons*. I do not simply want to offer a justification for the legal exculpation of Louisa; rather, along the lines of what Shelby suggests, we need a justification for exculpating Louisa from responsibility for her shoplifting due to the state's negligence of her. The right of necessity might exculpate Louisa, but it lacks the resources to explain why the state forfeits its right to punish Louisa for her shoplifting *in virtue of* its negligence. This is an important result for the argument, especially if my argument is that the state cannot punish Louisa for this crime *precisely because* it has neglected her. But that is not the explanation for Louisa's exculpation under the right of necessity. The right of necessity carries with it no indictment of the state, no verdict on whether the state retains its authority, or how exactly the state is responsible for Louisa's situation in the first place. So, even if objectors are correct about this right's application, I think there are better reasons in Kant's own political philosophy to say the state lacks the authority to punish Louisa. To these reasons I now turn.

### 3 | NEO-KANTIAN DEFENSE OF LOUISA SEWELL

I want to now contend that, given Kant's own commitments to the importance of freedom and the state's obligation to preserve it, he should have granted that the state lacks the authority to punish Louisa Sewell. Perhaps the most formidable obstacle to this contention is that Kant says resistance counts as an impermissible case of an individual using unilateral judgment about the quality of the state's laws. However, Anna Stilz has convincingly argued that this is not enough to prevent individuals from using any private judgment at all. On her view, there are uncontroversial and minimal criteria entailed by our innate right to freedom that the state needs to meet for it to count as authoritative (2009, p. 94).

One of the criteria Stilz underscores is that of *independence*, the condition of not having to rely on others to set and pursue our own ends (p. 93). Presumably, among the things necessary to achieve independence, surely enough money to purchase items satisfying basic needs counts. When the state fails to grant this for a portion of its population, Stilz suggests that there is no sense in which the state is doing the bare minimum regarding promoting our external negative freedom, and this erases that part of the population's obligations to it. She writes,

No state that does not meet at least [this condition] is reasonably interpretable as a freedom-guaranteeing state, simply because its laws do not guarantee even the “core” content of equal freedom . . . if freedom means anything at all, it must mean at least [this minimal thing]. *Since equal freedom is what grounds our obligation to establish and obey states in the first place, then we cannot be under any obligation to states whose system of laws is not reasonably viewed as an interpretation of equal freedom.*

(Stilz, 2009, pp. 93–94; emphasis added)

The upshot is that a state that grossly neglects the basic needs of its citizenry loses its claim to authority over those citizens. Stilz is careful to note that this does not mean the citizenry should disobey every law of the state; she thinks there are still moral and prudential reasons that count against doing this (p. 97).<sup>34</sup> Nonetheless, when states fail to grant protection of equal freedom to some person or group of persons through neglect, it loses authority over them. For these people, they would not be resisting the laws as if they were subject to them; rather, they would be rejecting the state's authority over them *simpliciter*. They are back in the state of nature.<sup>35</sup>

This view is open to several objections. First, perhaps Stilz is departing too much from Kant in holding that citizens can use their private judgment about whether the state is meeting substantive criteria of justice. We want a neo-Kantian defense of Louisa, not just any sort of defense.

But I doubt this objection is correct: surely Kant permitted at least some private judgment, especially about such minimal criteria like “conditions suitable for citizens to continue surviving in.” In support of this, consider that Kant did not advocate categorical obedience to any dictate of *any* government. In *Doctrine of Right*, he commands us to “obey the authority *who has power over you* (in whatever does not conflict with inner morality)” (MM 6:371; emphasis added). So perhaps the state which leaves some citizens in poverty does not have power over those citizens, and they do not owe the state in turn their obedience.<sup>36</sup>

Moreover, unless the prohibition against revolution is absolute, there are cases where individuals can use private judgment in deciding when a state is no longer authoritative over them.<sup>37</sup> For example, Ripstein finds in Kant the permission to rebel against barbaric states, which is a state that altogether denies the rights of its citizenry and is not aimed at freedom (2009, p. 341). Under *truly* barbaric states, citizens may use private judgment again because barbaric states are not legitimate states, which means citizens no longer have an omnilateral will to conform to. I, of course, depart from the historical Kant when I argue that, given his commitment to freedom, he should have afforded this sort of discretion also to people like Louisa who have been unjustly neglected by the state. Given what I have said earlier, this is not a view Kant accepted; here, I am saying he should have done so.

However, there is a second, more pressing objection to Stilz's view (Poama, 2021, p. 75). Suppose a state neglects its citizenry enough to lose its authority to punish. In order to regain this authority, the state must reform itself by addressing its negligence. However, to enact reforms, the state must have the authority to punish those who defy them. If, for example, the state seeks to rectify its negligence of the poor via taxation, it can only do so if it can coerce citizens to pay their taxes. But since the state lacks the authority to punish, it cannot coerce citizens to pay taxes. The result is that if a state loses its authority to punish because of negligence, it has no means of rectifying the negligence and regaining its authority.

There are at least two replies to this argument. First, we may bite the bullet: it turns out that any state that loses authority to punish due to negligence cannot regain its authority. This is bad news since, empirically, we know most states neglect at least some portion of its population. Because this response is both implausible and nowhere close to being Kantian, it will not work for my purposes (though some may find that for the above reasons their sympathies lie with philosophical anarchism).

<sup>34</sup>In this sense, Stilz is tracking Tommie Shelby's distinction between civic and natural duties (2016, p. 213).

<sup>35</sup>Thanks to Anne Jeffrey for pressing me to clarify the upshot of this point.

<sup>36</sup>See Koltonski (2021, p. 188) and Rauscher (2022) for further discussions about this passage from Kant.

<sup>37</sup>Katrin Flikschuch is a notable exception to this view, as she sees the prohibition on revolution as absolute (2008, pp. 395–396).

So, second, we can simply deny that a state that fails a freedom-guaranteeing condition with respect to one citizen loses the authority to punish *all* its citizenry. The upshot of this is that the state's authority is not permanently undermined; since it retains authority over the rest of its population, it can exact that authority to rectify its negligence. In defense of this move, Tommie Shelby likens the relationship between the state and a citizen to a parent and her child: “just as a child's obligation to obey his parent hinges on the parent's adequately nurturing behavior, so Shelby says, so too a citizen's ‘civic obligation to comply with legal demands is contingent on the existence of a reasonably just order’” (Poama, 2021, p. 79). That is, authority is contingent on whether the authoritative party meets certain conditions; when it fails them, it loses authority over a subject. In this sense, Shelby thinks authority can be selective: a state may have authority over those whom it does not neglect while lacking authority over those it does neglect. In reply to our initial objection, then, Shelby says the state still has authority; it is not the case that its claim to punishment is altogether undermined by neglecting part of its citizenry.

But others say the loss of authority is an all-or-nothing ordeal; the state cannot just lose it partially.<sup>38</sup> For example, Andrei Poama uses Shelby's parent–child analogy to argue *against* the possibility of selective loss of authority. He writes,

Typically, when a parent loses authority—say, because of violent, careless, or otherwise unacceptable behavior—they do so in relation to *all* of their children. . . . For example, a parent who sexually abuses one of his two children has thereby lost authority in relation to both his sexually abused and his non-abused children. [To say otherwise] would be like saying that a father who abuses one of his two daughters keeps his authority over the other daughter *until* he abuses her.

(Poama, 2021, pp. 79–80)

Poama is right that parental authority works in this way: if a parent significantly abuses one of her children, she loses authority over all of them. But Poama's analogy does not clearly translate over to political authority, at least of the sort I am arguing for.<sup>39</sup>

Kantian states can accommodate selective losses of authority. Daniel Koltonski has recently argued to this effect. On his view, Kantian states must ensure conditions of equal freedom for its citizenry. These states can do this with respect to some interactions while failing to do so in others. While the government may equally enforce a large majority of laws, Koltonski contends that it unjustly protects employers from employee revolts while failing to protect employees from their employers stealing their wages. Cases of unequal enforcement like these constitute a *local* illegitimacy, one where the government lacks authority over a subset of the population while retaining it over the rest (2021, p. 204). This contrasts with Poama's (and Stilz's) claims that loss of authority is only *global*; instead, illegitimacy can be localized. As a result, local illegitimacies license the neglected to resist. This coheres with my point above that someone like Louisa may be better described as not under the state's authority than resisting the state whose authority she is under.

I want to adapt Koltonski's idea of *local* illegitimacies to Louisa Sewell's situation.<sup>40</sup> The reason anyone has an obligation to obey the Kantian state is that it is supposed to guarantee

<sup>38</sup>See Holroyd (2011) and Matravers (2006).

<sup>39</sup>To Poama's credit, he is objecting to Shelby's distinctively Rawlsian view of authority. His objection might work against Shelby's view, but I am claiming it does not work against the Kantian view. For what it is worth, I am not sure his criticisms work against R. A. Duff's view—the other view Poama is objecting to—either.

<sup>40</sup>My application of local illegitimacy is distinct from Koltonski's insofar as his view licenses civil and uncivil disobedience, both of which require *public* resistance. But for people like Louisa, they have good reason to maintain secrecy to avoid punishment by states who take themselves to be authoritative, although I accept that she also has license to public disobedience.

conditions of freedom. When it altogether fails to do this, then the obligation no longer exists. If we consider Louisa Sewell, the state has failed to provide her enough money to eat food for several days when it was supposed to. Minimally, having sustenance like this is a vital precondition for Louisa to exercise her right to freedom. It follows that, given state negligence, Louisa's obligation to obedience is gone; she is permitted to steal chocolate from the shopkeeper, contrary to the court opinion and the historical Kant's verdict. More particularly, Louisa's obligation *to obey the state* is gone; she is not merely losing the obligation to obey one of its particular laws. But this does not entail, contrary to Poama's objection, that the state is now globally illegitimate; instead, it is only *locally* illegitimate with respect to Louisa. While Louisa and others like her can resist the law, others cannot. If the state is to regain authority over Louisa, then it must alleviate her poverty by sufficiently taxing those whom it still retains authority over. Otherwise, she may do what she needs to do.

But what exactly constitutes the range of things Louisa can do in light of government neglect? If the state loses the authority to punish her, does it mean she can do *anything* she'd like? Certainly not.<sup>41</sup> On my view, Louisa may only do whatever is needed to cope with whatever the state has done or failed to do to constitute a *local* illegitimacy. In her case, this at least permits her to steal a chocolate bar. But what else is she permitted to do? And what else must the state do to remedy her situation? The answer to both questions is going to turn on what Louisa needs to have her right to external freedom restored and what the wrongness of poverty consists of. If Ripstein and Rosen are right that the wrongness of poverty just consists in private dependence on fellow citizens, then the fitting state response might be just to ensure the impoverished citizen's basic needs are met. But if Hasan is correct about the wrongness of poverty also including dependence on unjust institutional structures, the fitting response becomes more demanding, as states now have to reform institutions to prevent situations like Louisa's from happening again (Loriaux, 2023, p. 9). Or, if Zylberman is right that the wrongness of poverty also consists in the unequal treatment and demeaning expressions of the law toward the impoverished, then states might have a duty to ensure not merely that the impoverished have all their basic needs met, but that citizens are also able to partake in meaningful, dignifying work (2022).<sup>42</sup>

Whichever view is correct, it is worth noting that each has an important effect on Louisa's permissions. If private dependence is the problem, then Louisa may do what she needs to do to avoid such dependence. Or, if private dependence and demeaning positions are the problems, then Louisa might have wider discretion in what she may do to counteract these problems. The former story may permit her to shoplift food, whereas the latter may entitle her to more lucrative crimes that will allow her to better occupy a dignified status in her political community. Whatever Louisa's licensing consists in, it must be whatever is necessary for her to have the resources to continue being a citizen in a freedom-guaranteeing state.

Before closing, let me address one last objection to this proposal.<sup>43</sup> If Louisa has license to steal from the shopkeeper, then a domino effect may occur where neglected citizens can eventually all start committing crimes against one another to cope with widespread negligence. If there is a neighborhood full of neglected citizens like Louisa, then all of them could steal from the shopkeeper. But now the shopkeeper has a grievance insofar as she is not receiving adequate protection from the Kantian state, which is precisely the reason she has an obligation to obey it. Presumably, then, the state is now locally illegitimate with respect to the unprotected

<sup>41</sup>Contrary to Duff (2010) and Tadros (2009).

<sup>42</sup>Zylberman and Hasan seem more aligned with Shelby's view, as he describes one of the worst effects of poverty as requiring undignified work, and that poverty is primarily caused by institutional injustices (Shelby, 2016).

<sup>43</sup>Thanks to Timo Jutten for raising this objection.

shopkeeper, meaning the shopkeeper may do whatever she must to make up for the state's negligence, even if such coping consists in wronging other citizens. Until the state adequately compensates the shopkeeper for the losses she has had to face due to the state's negligence of the unjustly impoverished in her community, the shopkeeper is virtually in the same position as Louisa with respect to the state.<sup>44</sup> Just as Louisa's local illegitimacy toward the state is rectified only when the state gives her sufficient welfare, the shopkeeper's local illegitimacy toward the state is also rectified only when the state compensates her for her losses.<sup>45</sup> So, how do we prevent the dominos from falling?

This is a legitimate worry. When the state neglects a citizen, such neglect is often not an isolated affair because that citizen is now licensed to wrong other citizens to cope with such negligence. This means that the dominos may fall quite rapidly in a given community when some portion of its population has been neglected by the state. While this is unnerving, I think it underscores the importance of the Kantian state's responsibility to ensure conditions of freedom for every citizen and to act fast when it fails to do so. Otherwise, the dominos will all come tumbling down.

The seriousness of this problem may depend on which view of external freedom and the wrongness of poverty we endorse. If we accept a view that just requires the state to meet the impoverished citizen's basic needs, then local illegitimacies only result in conditions of extreme neglect of the sort Louisa experienced when she could not eat for several days. On this view, then, the dominos may fall, but they will do so slowly and only in rare cases. However, if we accept the expansive view of how a state can harm citizens, and thus an expansive account of the state's obligations to the impoverished, then local illegitimacies may be a lot more frequent. But even on this view, what counts as a dignified lifestyle still may not be all that demanding: having enough money to get groceries, occasionally eat out, and afford some cheap leisure activities is not too high of a bar. Of course, if it is too high, then this is more reason for the Kantian state to take its obligations seriously.

## 4 | CONCLUSION

I have argued that the historical Kant, given his own commitments to the importance of freedom and the state's obligation to ensure it, should have ruled differently about someone like Louisa Sewell. If the Kantian state is going to be freedom-guaranteeing in any significant

<sup>44</sup>How would the shopkeeper get compensated for her losses? One way is through a civil lawsuit against the relevant jurisdiction. For example, residents of Flint, MI, received a large settlement from the state (and a few other entities) for its negligence to secure clean drinking water for them (Booth, 2023). The shopkeeper, too, could bring a civil lawsuit against the relevant entities so she can secure compensation for her losses as a result of insufficient police protection. The shopkeeper could support the state's complicity in her losses by citing how the state neglected the shoplifters, and this certainly would help her case. However, she need not do this. Even in a situation where all the shoplifters were not victims of an injustice, her claim remains the same: The state has a duty to provide her police protection, it failed to do so, so it is now time for the state to pay up for her losses (especially when those losses are significantly detrimental toward her business). I do want to note, however, that this will be a difficult case for the shopkeeper to win. Michael Huemer (2021, pp. 92–93) recounts a story of three women who brought a lawsuit against the Washington, DC, police on grounds of its negligence to protect them from a home break-in. Unfortunately, “the court dismissed the women's lawsuit without a trial, citing ‘the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen’” (*Warren v. District of Columbia*, 444 A.2d 1 [1981]). There are apparently several other cases like this. So, in practice, what I am arguing for is going to be difficult for the shopkeeper to obtain given this unjust precedent. Nonetheless, given the commitments I have argued for in this article, this precedent makes no sense. Kantian states have a duty to prevent crime for every citizen; there is not this “general duty” that does not apply to anyone in particular.

<sup>45</sup>The reason the shopkeeper is owed compensation is because she is left vulnerable like Louisa is due to state negligence, albeit in a different form. Whereas the state has failed Louisa with respect to poverty relief, the state has also failed the shopkeeper. In both cases, both are due restitution. We might even think the shopkeeper's case for restitution is overdetermined since her income is now at stake if there are enough shopliftings. Thanks to two anonymous referees for pressing me to clarify my verdict on the shopkeeper in this case.



sense, it must minimally provide the conditions for its citizens to set and pursue their own ends. When it fails to do this toward the impoverished, neglected citizens no longer have an obligation to refrain from coping criminally with such negligence, and the state can only fix this by alleviating their poverty.<sup>46</sup>

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