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Kant, coercion, and the legitimation of inequality

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ABSTRACT

Immanuel Kant's political philosophy has enjoyed renewed attention as an egalitarian alternative to contemporary inequality since it seems to uncompromisingly reassert the primacy of the state over the economy, enabling it to defend the modern welfare state against encroaching neoliberal markets. However, I argue that, when understood as a free-standing approach to politics, Kant's doctrine of right shares essential features with the prevailing theories that legitimate really existing economic inequality. Like Friedrich Hayek and Milton Friedman, Kant understands the state's function as essentially coercive and, in justifying state coercion, he adopts a narrow conception of political freedom that formally preserves the right to choose while denying that the range of choices one actually has can be a matter of justice. As a result, Kant cannot identify various forms of social pressure as potential injustices even as he recognizes their power to create and sustain troubling inequalities. For both Kant and the neoliberals, the result is that economic relations almost never count as unjust forms of coercion, no matter how unequal they are. Views that identify coercion as the trigger for duties of justice are thus particularly ill-suited to orient us to contemporary inequality.

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Over the past **30 years**, the global economy has been transformed by greater capital mobility, increased fiscal austerity, and transnational supply chains. The result of these policies has been decades of widening inequality. In the US, median real wages stagnated while the wealthy received an overwhelming share of the gains from economic growth; from 1983 to 2010, 74.2% of wealth growth went to the richest 5% of the country while the poorest 60% actually saw their wealth decline (Economic Policy Institute, 2012). As a result of these trends, the 25 richest billionaires in the US have as much wealth as the poorest 56% of the population (Collins & Hoxie, 2017). Dramatic income inequality suggests we are not on a path to closing this gap. In 2017, the CEOs of the 350 largest firms in the US earned 312 times the pay of an average worker compared to the 20-to-1 ratio that prevailed in 1965 (Mishel & Schieder, 2018). Nor is this specific to the US; income inequality has increased

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significantly in every region of the world since 1980, varying only by the speed at which it has grown (Alvaredo & Chancel et al., 2018).

Rising inequality during this period was not an economic inevitability but represents a political achievement, often described as the ascendance of neoliberalism. While neoliberalism is a notably contested concept, recent work in intellectual history has usefully defined it as a political theory developed by thinkers like Friedrich Hayek and Milton Friedman that grounds the legitimacy of the state in its capacity to create and maintain efficient markets. Policies applying this theory by cutting taxes on the wealthy and rolling back redistributive policies assisting the poor were taken up by politicians like Margaret Thatcher and Ronald Reagan and globalized through international institutions like the IMF and GATT/WTO, predictably expanding inequality wherever they were adopted (Biebricher, 2018; Burgin, 2012; Slobodian, 2018).

It is perhaps unsurprising that, in the context of widening inequality justified by appeal to the supremacy of markets, Immanuel Kant's political theory has enjoyed renewed attention as an egalitarian alternative since it seems to uncompromisingly reassert the primacy of the state over the economy. His doctrine of right looks **well suited** to orienting us to resist neoliberal inequality, offering an *a priori* argument for sovereignty that makes justice, not market efficiency, the aim of the state and places few substantive restrictions on state power in its service. Recent scholarship has sought to reconstruct Kant's account of right as a freestanding view of politics that does not need to rely on his other writings (Hasan, 2018; Hodgson, 2010; Ripstein, 2009; Rostbøll, 2016; Uleman, 2004; Varda, 2006; Weinrib, 2008; Zylberman, 2016).¹ Against a history of interpretation that saw Kant's view of the state as essentially libertarian, these scholars argue he held an egalitarian view of justice that requires state action to address poverty and inequality, disagreeing only about whether Kant's theory of justice justifies the now-familiar national welfare state, including social programs like public education and universal health care (Ripstein, 2009, p. 267), or requires further redistribution aimed at fuller equality (Hasan, 2018, p. 923). Broadly, on this view, the very nature of a legitimate state requires it to achieve distributive justice; as Arthur Ripstein puts it, 'The state, through its officials, speaks and acts for all ... its task of economic redistribution and its guarantee of equality of opportunity can be traced to this claim' (Ripstein, 2009, p. 272).

Despite this seeming promise as a resource for those who wish to resist the neoliberal erosion of the welfare state, I argue that this growing revisionary literature misses the forest for the trees; by narrowly focusing on the requirements of right, they overlook the significant architectonic factors that make the account of political freedom found there ill-suited for understanding and critiquing contemporary inequality. Kant's account of the relation

between right and political freedom leads him into contradiction – visible in 80
his views of criminal justice and cosmopolitan right as well as his distinction
between active and passive citizens – which he resolves in favor of legit-
imating existing inequality among citizens. Kant understands the state’s
function as essentially coercive and, in justifying the necessity of state
coercion, he adopts a narrow conception of political freedom that formally 85
preserves the right to choose while denying that the range of choices one
has can be a matter of justice. Kant offers a more textured picture of how
individuals experience freedom than he is sometimes credited with, but this
picture is sidelined in his doctrine of right, where only *external freedom* is
counted as relevant to justice. The result is that economic relations almost 90
never count as unjust forms of coercion, no matter how unequal they are.
Making justice a matter of external freedom alone is what makes it possible
for Kant to assert the *a priori* necessity of the state, but maintaining this view
comes at the cost of treating the human will as though it is insulated from
forms of influence that fall short of coercion. As a result, Kant cannot identify 95
various forms of social pressure as potential injustices even as he recognizes
their power to create and sustain troubling inequalities.

That poses a problem for views that portray Kant’s account of right as
requiring significant redistribution aimed at comparative equality, since they 100
rely on a nuanced view of interpersonal domination that extends beyond
coercion to be plausible. But the contradictions in Kant’s account also create
difficulties for the more modest view that Kant’s account of right suffices for
contemporary legitimations of the welfare state. As Ripstein, the most
prominent proponent of this view, acknowledges, the provision of such 105
benefits is compatible with but not strictly required by justice on Kant’s
account. However, that position is poorly suited for resisting the contem-
porary neoliberal critique of the welfare state, which argues that non-core
state functions should be provided more efficiently by the market.
Promoting policies to increase state welfare provision and reduce inequality
today requires affirmatively showing that influential neoliberal policies are 110
unjustifiable and even on Ripstein’s view, Kant’s account cannot rule out
these prevailing legitimations of inequality. In the end, Kant himself points
the way to the inadequacies of trying to develop a theory of egalitarian
justice that makes coercion its primary principle; those places where his
theory generates contradictions are precisely those that illustrate the impor- 115
tance of social norms, rather than the coercive power of the state, for
achieving justice. This suggests the need for different ways of linking free-
dom and justice that breakdown Kant’s strict barrier between right and
ethics. Perhaps other parts of the Kantian corpus can provide better grounds
for critiquing neoliberal inequality – that argument is beyond the scope of 120
this paper – but Kant’s doctrine of right is premised on views of freedom,
coercion, and the state that too closely resemble the views that legitimate

existing inequality to do that work. Theories that seek to orient us to contemporary inequality as an injustice should employ conceptions of freedom sensitive to a wider range of obstacles. 125

Justice in kant's politics

Against neoliberal views that greatly restrict the legitimacy of state action in favor of employing the market whenever possible, an *a priori* argument that the state is authorized to do whatever it judges necessary to protect freedom might appear an appealing alternative for those concerned with contemporary inequality. Yet while broadly Kantian claims about justice have been popular in Anglophone political theory for decades, Kant's doctrine of right itself has emerged as a potential source of egalitarian critique comparatively recently.² Many contemporary egalitarians draw from his moral theory and its aspiration to individual autonomy, but Kant's political theory employs a different set of concepts, as suggested by the famous passage in *Perpetual Peace* asserting that '[t]he problem of establishing a state, no matter how hard it may sound, is *soluble* even for a nation of devils (if only they have understanding)' (8:366; *emphases original*).³ Kant's claim is clear: in politics, the moral goodness of an act or actor is not at stake (Rostbøll, 2019). Instead, what is at stake is an act's justice understood as its conformity with 'right'.⁴ Kant defines right as 'the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (6:230; see also 8:290). The state's job is to create and maintain these freedom-enabling conditions. Contemporary defenders of Kant's view against market supremacy *suggest* these conditions include the familiar features of the welfare state that neoliberalism undermines, from collective bargaining rights (Weinrib, 2008, p. 25) to universal health care (Ripstein, 2009, p. 285) while others go further, suggesting that Kant's concept of freedom even underwrites a critique of capitalism (Love, 2017). 130
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But what kind of freedom does Kant think right protects? Answering this question is essential for determining what kinds of conditions a state must provide, so in this section, I look at how Kant distinguishes political freedom within his larger understanding of human freedom. That will be essential for determining whether inequality counts as an injustice or whether an individual's freedom has instead been affected without violating his right. In later sections, I will argue that Kant cannot consistently maintain the key distinction on which this account rests. That distinction is between *internal freedom*, which is central to his moral and theoretical philosophy, and *external freedom*, which is the chief concern of his political philosophy. Kant asserts that 'The freedom to which [juridical] laws can refer can be only freedom in the *external* use of choice' (6:214) – that is, the state regulates our actions, 155
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not our motives and internal deliberations. Determining how best to protect external freedom does not involve picking and choosing which acts are worthy of protection; rather, as Kant puts it, external freedom is ‘the warrant to obey no other external laws than those to which I *could have* given my consent’ (8:350, emphasis mine). When consent is impossible because an unauthorized individual coerces me or conditions otherwise prevent it, then my external freedom is violated. In those circumstances, I have not willed my action since I was essentially obeying the other’s will; there is no sense in which I could have chosen my action.

The urgency of protecting external freedom is thus connected to internal freedom, though on Kant’s view, the state and right can only touch the former. While external freedom concerns the relationship between my will and others, internal freedom concerns the freedom of the will in two other senses: a negative conception of freedom that is defined as humanity not being wholly determined by physical laws and a positive conception of freedom that is defined as humanity’s capacity to act morally and rationally, understood as the ability to give ourselves laws. Kant writes, ‘Freedom of choice is this independence from being *determined* by sensible impulses; this is the negative concept of freedom. The positive concept of freedom is that of the ability of pure reason to be of itself practical. But this is not possible except by the subjection of the maxim of every action to the condition of its qualifying as universal law’ (6:213–4, emphases original).⁵ In other words, negative freedom is our bare capacity for free will, which I largely set aside in this discussion, while positive freedom is moral action in accord with the Categorical Imperative. While positive freedom is distinct from external freedom, Kant’s account of positive freedom importantly informs his view of the human choice-making protected by external freedom. Enjoying external freedom is a precondition to positive freedom since my action is not determined by pure reason if it is coerced by another; such an act cannot be moral and positively free because its motive has not been provided by my reason but by another’s will.⁶ But protecting external freedom also requires protecting actions that are not free in the positive *sense, because* politics is about protecting external freedom, it also protects a much greater scope of activities, including activities that are morally neutral and, to the extent that they do not impinge upon the freedom of others, those that are immoral.

All this matters a great deal for thinking about what counts as free exercise of the human will and what counts as a violation of right. Importantly, for Kant, one does not act freely only when one acts morally; he holds that we are responsible for our immoral acts when they are freely willed. While he defines positive freedom as the ability of pure reason to be of itself practical, Kant does not see the human exercise of free choice as identical with pure practical reason. Instead, free choices can be irrational and immoral.⁷ As he puts it, ‘a propensity for genuine evil, i.e. a moral evil ... is only possible as the

determination of a free power of choice' (6:29 in Kant, 2012). The human will has the capacity for evil because it does not always will rationally but sometimes for impure motives. Here, it's helpful to articulate two distinct moments in willing. In Lewis White Beck's formulation, Kant conceives of the will as serving two functions, one executive (choosing the action) and the other legislative (choosing the reason for action) (Beck, 1993, p. 41). These can come apart, as in Kant's example of someone who decides not to lie in order to preserve their reputation (4:441). This is undoubtedly a free action, though Kant thinks it morally evil, despite externally appearing acceptable. That is because the executive function of the will has decided what action to take – not to lie – but the legislative function has decided on the reason for the action – self-interest – and Kant asserts that such actions are immoral. 210

Human freedom is thus a complicated phenomenon. We have the capacity to act in a way that is not determined by physical laws – or rather, Kant says we find ourselves in a situation where we must act as though that is the case – though the only way that we can really know this is by acting to obey the necessity of the moral laws determined by pure practical reason. While our actions are often contrary to that law, they are nonetheless free when the will gives itself the law, even if it's a self-regarding one. The human exercise of free choice that right protects is thus beset with practical challenges. Kant writes, 'That choice which can be determined by *pure reason* is called free choice. That which can be determined only by *inclination* (sensible impulse, stimulus) would be animal choice (*arbitrium brutum*). Human choice, however, is a choice that can indeed be *affected* but not *determined* by impulses, and is therefore of itself (apart from an acquired proficiency of reason) not pure but can still be determined to actions by pure will' (6:213, emphases original). Kant recognizes that human freedom is not absolute: we are *most* free when we act from pure practical reason, but our human choice-making is often otherwise – free to fall short of perfect rationality as it is buffeted by impulses, torn by motives, and mixed with other influences. Since protecting the freedom to choose does not only protect moral choices, one might opt for a broad understanding of what threatens human freedom and violates right, but Kant instead narrows the list of threats to rightful freedom to coercion alone. As I argue below, Kant uses the idea that human choice can be affected but nevertheless always be purely determined to argue that influences on the will other than coercion are irrelevant from the perspective of justice, even though he clearly recognizes that human choice is significantly and systematically affected by social norms.⁸ 215 220 225 230 235 240

External freedom and right 245

As the previous section showed, Kant has a complex account of human freedom, one in which freedom is ultimately valued for its capacity to

enable people to exercise pure practical reason but which also recognizes that we remain free even when we fall short of this. Yet Kant regards much of this as irrelevant from the point of view of politics and justice, which he argues is concerned with external freedom alone. Kant asserts that the obstacles that make it difficult for some people to make good use of their external freedom – those things that affect us and distinguish human choice from pure reason – are *not* matters of right. While everyone is equal as a human, politics is a separate set of obligations from morality because the rightful protection of our freedom requires the state to coercively impose law. Kant argues that the state is necessary for justice because a single will is necessary to harmonize everyone's external freedom; what's more, Kant intends for this to be knowable *a priori* in the sense that it does not depend on knowledge derived from experience, but rather follows analytically from understanding freedom and right. His argument depends on the idea that coercion is both the cause of and the solution to all violations of external freedom, an assumption he uses to strongly **distinguish** political equality from economic equality. Both the *a priori* status of Kant's argument and its accompanying focus on coercion as a unique threat to the will pose problems for egalitarian uses of his account. In this section, I focus on the difficulties stemming from the former feature; in the next section, the latter.

Kant's exclusive focus on coercion as a threat to free choice is not incidental, but inextricable from his argument that the state – an actually existing political institution – is rationally necessary. As Ripstein notes, the 'basic principle' of Kant's political philosophy centers on coercion, defined broadly as 'any limitation of freedom through another's choice' (Ripstein, 2009, 53; 8, p. 290). In the absence of a state that can restrain me, almost any action I take that affects another person meets this definition of coercion. Kant makes this clear in *Perpetual Peace* where he writes, 'a human being (or a nation) in a mere state of nature denies me this assurance and already wrongs me just being near me in this condition' for the very reason that they cannot help but affect me even though they do not have my permission (8:349). Like other social contract thinkers, Kant imagines a state of nature in which everyone has an innate right but no one can enjoy it; we are obstacles to the freedom of each other. But notice the kind of obstacles that we pose: the violations that concern Kant are not the ways in which a state of nature could prevent us from accomplishing certain tasks or living in peace. Kant believes that it is possible to live in a society with others in the absence of the state.⁹ Kant writes, 'a *state of nature* is not opposed to a social but to a civil condition, since there can certainly be society in a state of nature, but no *civil* society (which secures what is mine or yours by public laws). This is why right in a state of nature is called private right' (6:242). Living together is practically possible, but even when we are not intentionally interfering in each others' actions, our private rights are

insecure. Inhabitants of a state of nature thus ‘do wrong in the highest degree by willing to be and to remain in a condition that is not rightful’ since external freedom is not protected against infringements (6:308). Just as someone wrongs me by being nearby in the state of nature, I am likewise wronging them since my choices limit their external freedom. Kant says that the need to enter a civil condition in which external freedom is protected by the state can be ‘explicated *analytically* from the concept of right in external relations’ (6:307, emphasis mine); we might be subjectively unaware of or even indifferent to the violations of right that are occurring, but that does not change the way in which exiting the state of nature is a condition of possibility of our rightful interaction. 295 300

This leaves us with two choices for protecting external freedom: ‘I can coerce him either to enter with me into a condition of being under civil laws or to leave my neighborhood’ (8:349). The idea of leaving the neighborhood is clear enough, although even in Kant’s time – when the sale of chattel slaves created a ‘triangle trade’ that linked economic fates across the Atlantic – proximity was a poor proxy for the ability to affect someone’s choices. But what does it mean to enter into a civil condition? Kant’s answer is that we renounce unilateral enforcement of our private rights to freedom for public right, which is guaranteed by the state. He writes, ‘From private right in the state of nature there proceeds the postulate of public right: when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition, that is, a condition of distributive justice’ (6:307). Distributive justice for Kant includes all legal decisions and so deals with what people are owed in the broadest sense as ‘what is *laid down as right*’ (6:306, emphasis original). Justice is only possible in a state – not because justice solves an empirical problem with collective agency, but because people only have the capacity to consent to the same laws once a state has laid them down. As we will see, the analytic and *a priori* nature of Kant’s argument creates difficulties for egalitarian uses of it. Kant says, ‘It is not experience from which we learn of the maxim of violence in human beings and of their malevolent tendency to attack one another before external legislation endowed with power appears, thus it is not some deed that makes coercion through public law necessary’ (6:312). Crucially, the egalitarians’ arguments for the injustice of material inequality between citizens rely on empirical claims from experience about how such inequality creates conditions of dependence, while for Kant, mere coexistence without a state constitutes unjustifiable coercion by definition. For example, Ernest Weinrib argues that individuals would not consent to a state in which they were poor because right ‘precludes compromising one’s freedom by surrendering control of it to others’ (Weinrib, 2003, p. 811), implying that they face a choice between being independent in the state of nature or potentially dependent on others under a government that 305 310 315 320 325 330

tolerated significant economic inequality. As Weinrib puts it, in such a state, 335
 'My continued existence may become dependent on the goodwill or sufferance of others, to whom I might then have to subordinate myself' (Weinrib, 2003, p. 815). This is a conditional claim and I cannot know in advance which 340
 circumstances might create dependence, much less whether or not I would find myself in such circumstances. But Kant's *a priori* argument that the will is necessarily dependent on others in the state of nature leaves little conceptual space for the claim that states with such inequality are unjustifiable because of a merely probable dependence stemming from an unequal distribution of goods. 345

As this recent scholarship has rightly emphasized, Kant's is not a libertarian view in which individuals transfer and pool their ability to enforce their rights but retain their natural rights and can therefore revoke their authorization or transfer (Ripstein, 2009, p. 224–5). On Kant's view, it is inapt to describe the transformation from private to public even as a *transfer* of right because the connection between right and coercion is a conceptual necessity, being two sides of the same coin: 'Right and authorization to use coercion therefore mean one and the same thing' (6:232). Why is this an analytic truth? Recall that Kant defined right as 'the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom' (6:230). In other words, right is that condition in which the executive function of each will is compatible with that of all others. Consequently, Kant does not believe that any actual consent, agreement or authorization is required to enforce those laws that make this compatibility possible since such enforcement actions do not infringe on anyone's freedom but are rather precisely the kinds of constraints that make freedom possible. He writes, 'if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right' (6:231, emphasis original). This framework creates a structural bias away from empowering individual citizens as agents of justice. While coercion of any kind is necessarily a potential threat to freedom, public law enforcement appears as more readily freedom enhancing than private enforcement of right; that creates problems for egalitarian views that see power imbalances between private individuals as a threat to right and promote balancing economic and social power as a solution. 360

On Kant's view, freedom and equality are indeed linked, but the rightful protection of external freedom primarily concerns formal political equality before the law rather than equal social relations between citizens. This legal equality is necessary for state coercion to be compatible with freedom. Again, the conceptual connections are meant to be analytic as Kant writes, 365
 'one can locate the concept of right directly in the possibility of connecting 370

universal reciprocal coercion with the freedom of everyone' (6:232, emphasis mine). Such coercion does not constrain us because we all will it together as the rational precondition of any rightful use of our external freedom. But we cannot converge on this unitary willing spontaneously. In order to replace the conflict of wills that characterizes the state of nature, Kant believes that a single will can and must be substituted and that the state provides the law that its citizens collectively will. Public right is 'a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (*constitution*), so that they may enjoy what is laid down as right' (6:311). Because of the conflict of individual wills in the state of nature, all that can be said *a priori* is that it is objectively necessary for people to will that a single will determine the law to protect external freedom; they cannot will any content to that single will if it is to be unified. That single will is the state, and its sovereign legislation determines the content of that will. Once again, the *a priori* nature of the argument constrains its egalitarian uses; as discussed below, the egalitarian institutions of the welfare state may be compatible with right, but the structure of Kant's argument limits its egalitarian proponents from claiming that their presence is required by right or that their absence is necessarily unjust.

In sum, Kant's argument makes the state the necessary site of distributive justice by defining coercion as both the essential threat to external freedom and the necessary tool to protect it. Equality is defined above all by a citizen's relationship to state coercion rather than to a comparative relation between citizens themselves. The result is that it is very difficult to understand economic and social inequality as an unjust threat to freedom, as I explain in the next section.

Justice and economic inequality

The kind of equality that justice requires for Kant is largely formal. While legal equality makes privileges for hereditary nobility unjust, it nevertheless permits great material and social inequality of the kind that contemporary egalitarian liberals wish to rule out. In *Theory and Practice*, he writes, 'this thoroughgoing equality of individuals within a state, as its subjects, is quite consistent with the greatest inequality in terms of the quantity and degree of their possessions' (8:292). It's essential for understanding the limits of contemporary appropriations of Kant to recognize that this is not a contingent feature of Kant's political philosophy but inextricably tied to his view that justice concerns only external freedom and not other features that shape the human will. Contemporary egalitarian proponents of Kant's doctrine of right argue otherwise. In their account, Kant's clear statement of the compatibility of political equality and economic inequality in *Theory and*

Practice is an artifact of his ‘immature’ view and is discarded in the ‘mature’ *Rechtslehre* written four years later (Hasan, 2018; Weinrib, 2008). In Hasan’s description, ‘Kant recognizes that problems of dependence are created not only when one agent has direct and total control over the choice-making power of another but also when there are inequalities in productive relations that the subordinated can do nothing to influence’ (Hasan, 2018, p. 922). On this view, we should understand Kant’s complete account of right as mandating that the state **creates** relatively egalitarian economic relations among citizens in order to protect their wills from disproportionate influence by others and to maintain the possibility of truly reciprocal coercion. However, as Hasan concedes, ‘There is no a priori answer as to which inequalities of influence will count as violations of external freedom’ (Hasan, 2018, p. 923). Such efforts to interpret violations of right expansively thus run up against the structure of Kant’s view, which sharply distinguishes coercive determination of the will from mere influence on it; contextual factors that tend to shape human choices, like social norms and the intentions of market actors, are bracketed from consideration from the perspective of right because they are, by definition, unable to determine the will.

To see why this defense of Kant’s doctrine of right as a resource for contemporary egalitarians fails, let’s return to his initial exposition of the concept of right. Kant there offers market transactions as the very paradigm of free relations between individuals, who are not required to be cognizant of the other’s interior life or the way that their interaction may affect it. He writes, ‘in this reciprocal relation of choice no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the *form* in the relation of choice on the part of both’ (6:230, emphasis original). For Kant, market transactions are the model of free and equal interaction because they exemplify how, as Ripstein puts it, ‘rightful conduct depends only on the outer form of interaction between persons’ (Ripstein, 2009, p. 11). Kant’s distinction between the matter and form of choice distinguishes a free choice from its context. Equal legal status under a state that enforces on both parties the laws that govern their transaction is meaningful context, but their potential to influence each other’s ends and interests is as irrelevant from the perspective of right as the source of the preferences that lead them to desire particular goods.

Kant’s distinction between the matter and form of choice illuminates how his doctrine of right depends on understanding the pure practical will as insulated from external influences even as he admits the effect of such influences on actual human choice-making. But those influences are irrelevant to right because they fall short on coercion. On Kant’s view, a state that permits great material inequality nevertheless justifiably demands the

obedience of its poorest members because the exercise of the executive function of the will necessarily also wills the state, as it is only within a state that one's external freedom is protected; to do otherwise would be a contradiction. The motive one has for entering into the civil condition is irrelevant from the perspective of right; as Ripstein puts it, 'Kant is concerned with the authorization to coerce, so it cannot matter whether someone would foreseeably lack an *internal* incentive to conformity with positive law' because they can rightfully be forced to comply regardless (Ripstein, 2009, p. 209). Likewise, the motive for entering into a market transaction is irrelevant from the perspective of right; social inequalities that motivate one party to curry favor with another belong to the context and matter of a choice rather its form.

This poses difficulties for egalitarians who interpret unequal influence as a threat to the right because the underlying distinction between inner and outer freedom is central to the structure of Kant's doctrine of right. Kant does recognize that some market transactions can violate duties concerning the other party, but understands these as unenforceable duties of virtue that stand outside politics. As we have seen, duties of right concern external freedom and Kant says that 'the part of the general doctrine of duties that brings inner, rather than outer, freedom under laws is a *doctrine of virtue*' (6:380). Moreover, Kant says that this division is exhaustive: 'All duties are either *duties of right* (*officia iuris*), that is, duties for which external lawgiving is possible, or *duties of virtue* (*officia virtutis s. ethica*), for which external lawgiving is not possible' (6:239). Coercion can affect positive freedom only in the sense that our will cannot supply the appropriate motive for an action we did not choose. However, coercion – indeed, any external influence – cannot touch the choice-making capacity that determines the motives of our actions. We have our outer life and our inner life; right guides our conduct in the former and virtue in the latter. Unequal influence between citizens may be normatively regrettable, but it does not violate right.

According to Kant, this exclusion of unequal influence from right stems from the nature of the relationship between freedom and having an end. He writes, 'Duties of virtue cannot be subject to external lawgiving simply because they have to do with an end which (or the having of which) is also a duty. 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*' (6:239, emphasis mine). In other words, adopting an end as one's own is a particular kind of action that it is impossible for anyone else to do for you or to make you do. A mugger may coerce you into giving him cash so that he can use your money to make his own child happy, but he can't force you into adopting the goal of promoting his child's happiness as your own end. By the same token, duties of justice can never go beyond what the

law can coerce; whether I regard fellow citizens as my social equals, for example, can never be a question of right.¹⁰ 505

Kant's politics thus **involves** a kind of double insulation of the self from the world. First, the sovereign state determines the will of its subjects – but this involves our pure practical reason rather than our impure human choice-making. No actual consent is required since obedience to law is an objective practical necessity to avoid self-contradiction and thus no freedom is lost when a state coerces a subject whose human will leads him to act disobediently. But there is a second layer of insulation revealed by Kant's distinction between duties of right and duties of virtue, which seeks to insulate even human choice-making from influence. Barbara Herman's concept of 'the deliberative field' in which the agent exercises the will is useful here. As 'the space in which an agent's rational deliberation takes place,' the deliberative field is a kind of internal orientation or subjective perspective; if a motive or possible action does not appear within the field, we cannot will it because we have not even recognized it as a candidate for willing (Herman, 2007, p. 18). Kant's argument for saying that duties with respect to our inner freedom are not duties of justice rests on the claim that internal acts of the mind can be affected but not determined by outside forces. For Kant, we are effectively sovereign within our own deliberative field, but servants of the state outside it. Kant's strong distinction between internal and external freedom – and his association of justice exclusively with the latter – effectively inscribes into our agency a stark distinction between free choice and its context. 510 515 520 525

The limits of a priori politics

Egalitarians are right to be worried about unequal influence. Recall the stark inequalities with which this paper began. A CEO earning 300 times more than his average employee will have greatly unequal influence; the CEO not only possesses greater bargaining power than his employees, but is able to shape the context of their choices in all kinds of ways, including inhibiting their motivation to adopt or express political views that foreseeably irk their boss. When the employee is a woman, she also faces unequal, patriarchal social norms that shape the context of her market transactions so that she is expected to be primary caregiver for children and other families, her employment is likely to be regarded as supplemental to the income of a male head of household, and so on – all of which contributes to society-wide patterns like the gender pay gap. Such expectations aren't matters of law or violations of external freedom, yet they clearly will affect the female employee's choice of ends and motives for action. While she is formally free to pursue ambitious career goals, like becoming CEO herself, she may not regard them as plausible or meaningful and consequently may not be 530 535 540

motivated to pursue them, as a man in her position would be. Indeed, in 545
 order to reconcile herself to her entrenched, unjustified disadvantage, her
 preferences may adapt so that she becomes motivated to embrace her
 inferior position. What we see as a reason for action often depends on our
 circumstances; our ability to choose freely thus cannot always be as cleanly
 separated from its context as Kant's account requires. As Ann Cudd puts it, 550
 'Desires are formed in a social context that makes the desired objects or
 states meaningful to the one who desires them. Sometimes the social
 context is oppressive and makes things seem desirable when they would
 not be so under circumstances of social equality' (Cudd, 2006, p. 180).
 Egalitarian proponents of Kant's doctrine of right appropriately regard 555
 these social norms and influences as matters of justice, but in this section,
 I will argue that Kant's doctrine of right is inadequate for critiquing them
 because it falls into contradiction if taken as a freestanding approach to
 politics; he cannot consistently maintain both his picture of the human will
 and his account of justice as wholly separate from the norms and influences 560
 he officially classes as ethical concerns. Kant ultimately resolves these struc-
 tural contradictions in favor of legitimating existing inequality, sharply limit-
 ing the utility of his doctrine for resisting contemporary neoliberalism, as
 I discuss in the next section.

There are a variety of places in Kant's doctrine of right where the strain of 565
 holding together his view of freedom becomes evident, most prominently
 his treatment of criminal justice and the category of cosmopolitan right.
 Each of these imply the existence of non-coercive right and non-coercible
 obligation, which can be read as an **acknowledgment** that his conceptual
 scheme has not captured everything justice requires. For example, in 570
 discussing criminal justice, Kant acknowledges cases where the state's ability to
 deliver justice breaks down. Crimes that Kant believes as a matter of right
 ought to be subject to the death penalty but which a state cannot practi-
 cally punish include a mother killing her illegitimate child and a soldier
 killing another soldier in a duel. Kant notes that '[t]he feeling of honor leads 575
 to both' (6:336) and blames the 'undeveloped' civil constitution 'for the
 discrepancy between the incentives of honor in the people (subjectively)
 and the measures that are (objectively) suitable for its purposes. So the
 public justice arising from the state becomes an *injustice* from the perspec-
 tive of the justice arising from the people' (6:337, emphasis original). In other 580
 words, the way that citizens regard each other and the social status they
 accord each other beyond legal citizenship matter a great deal in politics;
 these are cases where social norms are more powerful than the state,
 usurping the role of determining the legitimacy of force. As a result, coer-
 cively punishing the subjects who violated the law against killing is in 585
 accord with right, but is nevertheless not possible. The divergence between

people's impure human will and the objective necessity that Kant argues binds them to obey the state is simply too great.

This is just one example of 'cases in which a right is in question but for which no judge can be appointed to render a decision' (6:234).¹¹ Yet on Kant's official view, there should be *no* such *cases, since* the relationship between right and coercion is analytic, they are the political equivalent of meeting a real-life married bachelor.¹² Kant writes, 'there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it' (6:231), but often finds himself diverging from his conceptual architecture. From the perspective of inequality in the global economy, perhaps the most important such case is cosmopolitan right. Cosmopolitan right is not too demanding since the duty that accompanies it is 'limited to conditions of universal hospitality' (8:357–8). That is, one has 'the right to visit' and 'to present oneself for society' and so others have a duty to be hospitable. But though it is an analytic truth that rights are coercively enforceable, cosmopolitan right and the accompanying duty to hospitality are not just unwritten laws, but unenforceable ones. When someone acts inhospitably, there is no way to coerce them into acting hospitably; enforced hospitality is no kind of hospitality at all. Kant is clear that efforts to visit forcibly in response to inhospitable receptions are themselves unjust rather than an enforcement of *the* right. Of efforts to do so, he says that such an act 'provides the occasion for troubles and acts of violence in one place in our globe to be felt all over it' (6:352). Moreover, unlike all other individual rights, cosmopolitan right has no institutional accompaniment to protect and enforce it.¹³ An individual has no court of appeal to guarantee its enforcement and so there seems to be no way to resolve a dispute about it. The accompanying duty of hospitality thus seems like a content-less lacuna since there are no laws or rules to follow which specify the nature of compliance; it seems, in short, like a duty of virtue (Ellis, 2005, p. 77–78).

We are left with a notably flawed account of what is required to achieve and maintain justice. In arguing that the coercive authority of the state is necessary, Kant employed pure practical reason rather than the human will as the basis of his account. Pure practical reason determines itself without the possibility of any outside interference; because there are no external obstacles to the exercise of the legislative function of the will, each will is fully determined by the objective necessity of having to unify with each other at the direction of the state, making the external freedom of each compatible through the existence of a coercive authority to enforce right. However, when trying to orient us to actual politics, Kant's theory breaks down because the obstacles to free human choice are so significant. Consider again the difference between the kinds of markets that a male CEO and a female employee face when selling their labor. Not only does the woman face a much more constrained set of choices due to the social

norms governing gendered labor, but depending on the extent to which she has been habituated to patriarchal norms, she may not even perceive some potential jobs as options for her. 630

Importantly, when confronted with these obstacles, Kant resolves the contradiction by declaring them compatible with freedom, thereby legitimating existing inequality. We can see this in the distinction he introduces between ‘active’ and ‘passive’ citizens, who are excluded from full citizenship because the obstacles to the free exercise of their will are so obvious.¹⁴ 635
 Kant recognizes that the actual inequality in society is too significant to argue that people coerce each other equally in even a highly abstract sense and so he inserts the qualification that all citizens must have ‘the attribute of civil *independence*, of owing his existence and preservation to his own rights and powers as a member of the commonwealth’ (6:314, emphasis original). 640
 As a result, he argues that ‘anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another’ should be denied the vote, a diverse group which includes children, ‘all women,’ domestic servants, and even ‘[t]he woodcutter I hire to work in my yard’ (6:314). Kant strikes these people from full citizenship to ensure that citizens of the state can always be said to have a sufficiently free will to participate in universal reciprocal coercion. Kant does not think that passive citizens have less moral value, as he remarks that their ‘dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality as *human beings*’ (6:315, emphasis original). When faced with the obvious political import of economic inequality, Kant gives up political equality rather than promote economic equality because pursuing the latter path would require major revisions of the structure of his argument in order to recognize unequal influence as a violation of right. 645
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Egalitarian defenders of Kant’s doctrine argue that right consequently requires state efforts to eliminate passive citizenship when possible on the grounds that ending the dependence of passive citizens more fully realizes the purpose of the state (Weinrib, 2008, p. 15–25; see also Varda, 2006, p. 271–3; Hasan, 2018, p. 919–924). But as these defenders concede, there is scant textual support for this claim; Kant says only that ‘laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one’ (6:315). This requirement is equivocal at best, providing little in the way of assurance that independence can readily be achieved while also enabling Kant to hold passive citizens responsible for their failure to overcome the obstacles to freedom they face. As I explore in the next section, this makes it hard to use Kant’s doctrine of right to critique inequality legitimated by neoliberal political theory, which argues that freedom both predictably produces 655
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unequal outcomes and requires holding individuals responsible for the outcomes of their market choices.

To the extent that Kant's doctrine of right does provide support for the institutions of the welfare state as a means of realizing right, it is contingent and defeasible. As Ripstein describes Kant's view, 'it does not preclude most of the familiar activities of modern states ... nothing in Kant's account precludes overinclusive implementation' (Ripstein, 2009, p. 223). 'Overinclusive' state action like providing universal health care is justified as a possible means of protecting external freedom, but Kant's account provides no support for the claim that it is a necessary means. Consequently, the absence of such institutions and the concomitant rise of inequality is not necessarily unjust; Kant's account is also compatible with the argument that such services can more efficiently be provided by the market.

Unlike views that start from the presumption that departures from social and economic equality are *prima facie* unjust, the social critic on Kant's view bears the burden of proof to show both that inequality causes injustice and that state action can effectively address it without violating external freedom. Kant's deference to an unequal status quo is thus not easily dismissed as a quirk of his personal views, but follows from the structure of his account, in which market transactions are taken to exemplify rightful interaction and unequal influence is, at most, a marginal violation of freedom. Indeed, in contemporary politics, the belief that market transactions exemplify free and equal relations is widely understood to legitimate inequality. I turn to the implications of this in the final section.

Neoliberal freedom and the price of purity

I began by noting that contemporary inequality is a political achievement often described as the hegemony of neoliberalism and explained how that context seemed to make Kant's doctrine of right an appealing resource for egalitarians. In this concluding section, I discuss how that context instead amplifies the problems I've identified for those seeking to use Kant's account to critique contemporary inequality and suggest some lessons for egalitarians who wish to critique contemporary inequality.

While associated with particular economic policies, neoliberalism is not reducible to support for financial institutions or cutting government spending. Rather, neoliberalism is a political theory offering a larger vision of society that explains why such policies are coherent, legitimate, and in the common interest; Friedrich Hayek and Milton Friedman are among its leading theoreticians and I focus on them for expository purposes. Like other forms of liberalism, neoliberalism grounds its account of state legitimacy in a theory of individual freedom that determines what counts as appropriate forms of governance. For neoliberalism the individual freedom to be

protected is what Friedman calls the freedom to choose or, in Hayek's words, 'the possibility of a person's acting according to his own decisions and plans' (Hayek, 1978, p. 12). On this account, as in Kant's doctrine of right, the range of choices you have are not necessarily relevant for assessing your freedom; neither are the resources you have for drawing up and enacting a plan, your membership in a social group that routinely sees its plans fail, your experience and judgment in making plans, and so on. On the neoliberal view as on Kant's, the primary threat to freedom is coercion, which means that other individuals appear to us first of all as potential obstacles to our free choice. Hayek defines coercion as 'such control of the environment or circumstances of a person by another that, in order to avoid a greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another' (Hayek, 1978, p. 20–21).¹⁵ Poverty and inequality rarely threaten freedom on this account. As Hayek puts it, 'Even if the threat of starvation to me and perhaps to my family impels me to accept a distasteful job at a very low wage ... I am not coerced' (Hayek, 1978, p. 137). So long as my poverty was merely the unfortunate outcome of many individuals freely making choices, government action in response is more likely to threaten freedom than protect it.

This neoliberal account has been highly influential in politics and is routinely invoked as a **common-sense** view to defend contemporary inequality. In this context, Kant's argument that right requires only conditions under which 'anyone can work his way up from this passive condition to an active one' (6:315) has little critical potential, when neoliberal theory readily explains why individuals should be held responsible for market outcomes that leave them impoverished. For neoliberals, personal freedom is, in the words of Eric MacGilvray, market freedom: 'freedom to do what you want with what is yours and to enjoy the rewards or suffer the consequences' (MacGilvray, 2011, p. 181–182). It is essential that neoliberal freedom holds us responsible for the outcomes of our choices; without suffering consequences, we won't learn to be the type of person who is apt to exercise neoliberal freedom successfully. Friedman makes this thought plain when he notes, 'it is important to preserve freedom only for people who are willing to practice self-denial, for otherwise freedom degenerates into license and irresponsibility' (Friedman, 1982, p. 23). Yet, at the same time that neoliberal freedom makes us responsible for the outcomes of our choices, it also recognizes that these outcomes are beyond our control (Kotsko, 2017). What makes the market an unparalleled force for the common good is precisely that the price mechanism enables it to produce an efficient outcome that market actors could not anticipate or know in another way. Redistribution is thus illegitimate because it distorts both the market and the character of market actors, who are incentivized to irresponsibility if they do not suffer the consequences of their choices. The result is

a view of society in which inequalities in power and resources are not *prima facie* injustices, but rather necessary features of any efficient social system. Disparate and lamentable economic outcomes themselves are not necessarily evidence of injustice since they are readily explainable as the product of uncoerced choices. Those individuals Kant calls passive citizens are readily assigned responsibility for their status because the market in principle makes it possible for them to be free even as it predictably leads them to become dependents. 760

Kant's view of political freedom as external freedom is distinct from the neoliberal view of market freedom, but egalitarians who employ Kant's doctrine of right will find themselves employing concepts that so closely resemble those which legitimate existing inequality that their attempts to critique it are readily rebutted. Both occupy the standpoint of a forward-looking individual trying to make choices within the environment that confronts him; the primary obstacles to enacting one's own course of action are the wills of others and their capacity to realize them coercively, which means state coercion can be freedom-enhancing; other individuals appear primarily as threats to the independence of our will, so that collective action appears fraught rather than freeing; insofar as one's choice-making capacity presents an obstacle to freedom, it is not a matter of politics but one's own responsibility. 765 770 775

If we want to orient ourselves to existing inequality as a form of injustice, we need a conception of political freedom that isn't limited to the hindering of coercion but recognizes the multiple ways in which inequality can threaten freedom. This poses a challenge not only for defenders of Kant's doctrine of right but also others who identify coercion alone as triggering the demands of distributive justice (e.g. Blake, 2001; Nagel, 2005). Let us return to the concept of 'the deliberative field' introduced above. On Kant's account of internal freedom as unaffected by external circumstances, the boundaries of the field are more or less pre-given by the nature of subjectivity and what varies among persons are the kinds of inclinations that tend to pop up and which an individual tends to promote into a reason. But as I've argued, the boundaries of the deliberative field are better understood as shaped or constituted by the social field of the individual in question – what kinds of things are considered reasons, what is considered desirable, and so on (Fricker, 2009). This more social understanding of human choosing would better orient us to inequality as a threat to freedom, as disproportionately powerful individuals and groups could shape the deliberative fields of others. But this would require breaking down the barrier between external freedom and our complex internal freedom. The fact that the actions of others can shape not only the choices available to me but also the capacity to choose – and even shape my ends – cannot help but affect the duties of right that we have towards each other to include the ethical. Those who want to avoid this conclusion and maintain that strict right is 780 785 790 795

'not mingled with anything ethical' (6:232) will find that they must place human will beyond the ability to be affected by the world except through coercion. But as we have seen, political freedom understood exclusively as the freedom to choose without being coerced ends up undermining itself. Those who want to theorize inequality as a threat to justice today must offer richer conceptions of freedom.

Notes

1. These scholars generally regard Kant's doctrine of right as consisting of the *Rechtslehre* supplemented by passages from 'Theory and Practice' and 'Perpetual Peace,' so I shall do the same.
2. For example, John Rawls' extensive published lectures on Kant engage with the doctrine of virtue in *The Metaphysics of Morals*, but they contain no reference to the doctrine of right elaborated there. See Rawls (2000).
3. I cite the volume and pagination in the standard German edition of Kant's works edited by the German Academy of Sciences, though I employ the translations in Kant (1996).
4. This term is complicated in translation because *Recht* in German means both 'law' and 'right,' following the Latin *ius*. For a useful account of the ambiguities in Kant's use of *Recht*, *das Recht*, and *ein Recht*, see Mulholland (1990), p. 4–10.
5. In Kantian terminology, a maxim is 'the subjective principle of volition' – in other words, the reason we give ourselves for our action (4:402).
6. Zylberman's claim that 'external freedom is paradigmatically positive' collapses this distinction, which risks obscuring important features of Kant's account (Zylberman, 2016, p. 103).
7. We can see here Kant's difference with a contemporary Kantian like Korsgaard (2009), who argues that only rational action counts as action at all. On the difficulties, Kant faced in reconciling his conceptions of autonomy and evil, see Kosch (2006).
8. Kant offers account of these influences in other parts of his work, such as his *Anthropology*, and contemporary Kantians often draw connections between them and political freedom that Kant himself does not in his doctrine of right (e.g., Gilibert, 2010).
9. For example, Kant refers to stateless peoples in Africa and the Americas at 6:353.
10. This also creates problems for Ripstein's argument, which relies in part on 'the possibility of internal duties of right (most significantly, the duty of rightful honor)' (Ripstein, 2009, p. 204fn35).
- Q4 11. Patrick Riley (Riley, 1982) notes a related difficulty with the relationship between right and Kant's punitive view of criminal justice (p. 155–162).
12. Outside of his doctrine of right, Kant accounts for the world's failure to exhibit features he says are an *a priori* necessity with his teleological philosophy of history, i.e., he felt assured that it was rational to assert the possibility of perpetual peace since he had already argued for its rational necessity. But while Kant's view of progress makes sense of the discrepancy in one sense, contemporary Kantians who defend the doctrine of right as a free-standing approach to politics cannot avail themselves of it, if they even find it appealing.

13. Some, like Kleingeld (2004), argue that Kant thought it desirable for a world federation of states to have some coercive authority over its members, though this was notably not a requirement of right. That is compatible with my argument here. 850
14. On the differences between Kant's account of this distinction in *Theory and Practice* and the *Metaphysics of Morals*, see Beiner (2010).
15. Chandran Kukathas (1989) emphasizes the continuities between Hayek's view of coercion and Kant's, writing of Hayek that 'His conception of freedom as "independence of the arbitrary will of another" is indeed strikingly Kantian, emphasizing as it does that liberty means "the absence of a particular obstacle – coercion by other men"' (p. 45). 855

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