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Rawls Vs. Nozick Vs. Kant on Domestic Economic Justice

Helga Varden

5.1 Introduction

Robert Nozick initiated one of the most inspired and inspiring discussions in Anglo-Saxon political philosophy of the late twentieth century when his 1974 *Anarchy, State, and Utopia*[1] (hereafter ASU) responded to John Rawls's 1971 account of distributive justice in *A Theory of Justice* (TJ)[2]. Nozick argues that Rawls's main principle of economic justice in his theory of "justice as fairness"—the so-called "difference principle"—

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[1] Robert Nozick: *Anarchy, State, and Utopia*, Basic Books Inc., 1974.

[2] All references to this work in this chapter will be to the 1999, revised edition of *A Theory of Justice*, The Belknap Press of Harvard University Press.

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is irreconcilable with liberal theory's basic commitment to protect each person's right to freedom, that is, to set and pursue ends of their own with their means.[3] Nozick considers it impossible for this principle of economic justice to apply to the distribution of income and wealth in the way Rawls envisions without conflicting with Rawls's second core idea: the right to private (or what Rawls calls "personal") property.[4] One can defend *either* a person's right to private property *or* principles of distributive justice along the lines of the difference principle. But one cannot do both. And if one wants a theory of freedom, one has to uphold the right to private property and so give up the idea of (leftwing) distributive principles of justice à la Rawls's difference principle. Any liberal attempt (whether by private individuals or the state's legal-political institutional structure) at enforcing some sort of ahistorical baseline, such as every person's right to a specific, even minimum amount of certain goods at all times, will, Nozick argues, necessarily fail.

In contrast, Rawls's 1971 account of justice as fairness solves a problem internal to Kant's moral theory. According to the prominent Kant interpretation at the time, it was impossible to envision any defensible account of economic justice within Kant's framework. The formal nature of Kant's moral account in combination with how it conceives of beneficence or charity as an imperfect duty makes it incompatible with the

[3] Rawls's difference principle states that "social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all" (TJ: 53). The relevant social and economic inequalities, in turn, are identified by utilizing a standard consisting of a set of "primary social goods," that is, "rights, liberties, and opportunities, and income and wealth" that are useful "whatever a person's rational plan of life" (TJ: 54, cf. 79–81). The difference principle is the second principle of justice as fairness; the first one states that "each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others" (TJ: 53.). Rawls clarifies that the first principle concerns traditional liberties like "political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person… the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law" and that all citizens are to be equal in regard to this principle (ibid.). Nozick takes no issue with this principle, but only with the second principle, and especially how Rawls thinks that it can apply "… to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility" (TJ: 53).

[4] If this is true, then Rawls is also mistaken in his basic claim that the two principles of justice as fairness should, and so can "be arranged in a serial order with the first principle prior to the second… [so that] infringements of the basic equal liberties protected by the first principle cannot be justified, or compensated for, by greater social and economic advantages" (TJ: 54).

basic liberal ideal of securing everyone basic rights, liberties *and* actual opportunities. Rawls's 1971 account with its difference principle is supposed to overcome this alleged problem in Kant's theory. The difference principle secures opportunities for all by means of redistributing certain basic goods in response to inequalities. And Rawls argues that because the difference principle is ranked as the second principle of justice, which cannot override the first principle of justice as fairness (the principle that secures classical rights and liberties), the potential incompatibility of rights, liberties and opportunities is solved as a matter of Kantian liberal theory. Nozick disagrees, and so aims to show that Rawls' attempt to reconcile the two concerns—rights/liberties *and* actual opportunities—in a liberal way within the framework of justice as fairness, fails.

Despite Nozick's resistance to principles of so-called *re*distributive justice, he surprisingly realizes that an aspect of his theory entails that the just state must engage in "apparent redistributive" measures to justify its monopoly on coercion in relation to so-called independents (non-citizens living within its territory) (ASU: 115). This redistributive element is not a part of his account of private property acquisition, but a necessary consequence of establishing a state with a monopoly on coercion. Both arguments—Nozick's account of private property and of the establishment of the state—remain fundamentally Lockean, but they conform to Kant's liberal intuition that our moral basis is a respect for each other's freedom (rather than Locke's fundamental principle of self-preservation). More specifically, Nozick's argument regarding private property goes like this: in times of scarcity, Locke's "enough-and-as-good" proviso no longer gives everyone a right to own land. Instead, this basic principle now grants everyone a right to access goods equivalent to 1/nth of the world's natural (undeveloped) resources (where "n" refers to the total number of people in the world), and such access can be accomplished by how private individuals employ each other in labor markets.[5]

[5] For my purposes here, all that's needed is this extremely brief outline of Nozick's account. His argument is found in Ch. 7 "Distributive Justice," Section 1 of ASU, pp. 149–182. I discuss this and other prominent, contemporary libertarian revisions of this principle of private property acquisition in my "The Lockean'Enough-and-as-Good' Proviso—an Internal Critique."*Journal of Moral Philosophy* 9 (2012b), pp. 410–422.

The other Lockean argument, regarding the need for the state (a question that Rawls sets aside in his writings), is given the following twist[6]: if we imagine individuals living together in a pre-state condition (the state of nature), then we can imagine that they will start to specialize in providing goods and services—and some people will specialize in providing security services for others. Moreover, once there are several private security companies ("protection agencies") competing in a geographical area, it is likely that one of them will be able to gain some advantage over the others (become a "dominant protection agency"). At that point, it will be irrational for anyone to buy their services from anyone but this most competitive security company since it will be the strongest and, so, the safest. Hence, in all likelihood one security company will enjoy a de facto monopoly on coercion or become what Nozick calls an "ultra-minimal state." Of course, such an ultra-minimal state does not have all the people living in the geographical area as its customers; there will still be some independents living there who do not want to buy its protective services and instead (irrationally) want to rely on their own powers to defend their rights. However, due to its immense power, the ultra-minimal state will enjoy de facto control over the exercise of coercion in the area: no one will (de facto) be able to use coercion against its customers without the ultra-minimal state's approval. But once this happens, a new moral problem arises: the ultra-minimal state must ensure that its monopoly on coercion is reconcilable with the rights of those independents living in the area who, as a matter of empirical fact, can no longer enforce their natural rights against the ultra-minimal state's customers.

Nozick's solution to this problem of the rights of independents is that the ultra-minimal state must transform itself into a "minimal state": it must secure access to its legal-political institutions for anyone (independents or non-citizens) interacting with its customers (citizens) within its geographical area. Consequently, if there is a conflict between an independent and one of its customers, the protective agency must ensure that

[6]Again, given the aims in this chapter, I'm providing an abbreviated version of Nozick's account of the establishment of the state, which can be found in Chapters 2 through 6 in ASU, pp. 10–146. I discuss Nozick's account of the establishment of the state (including much relevant secondary literature) in "Nozick's Reply to the Anarchist: What He Said and What He Should Have Said about Procedural Rights," *Law and Philosophy*, Volume 28, Issue 6 (2009), pp. 585–616.

the independent in question can afford to buy the legal services it needs to secure her rights in relation to this customer. Here the surprising, redistributive element arises: Nozick argues that the minimal state can and must justly charge its customers (citizens) the amount of money necessary to secure such legal access for the independents. Yet, he continues, this is not strictly speaking a *re*distributive element, even though it is a cost or tax that does not occur in the state of nature and involves transferring some money from those who have to those who have not. It is not redistributive in nature because the monopoly on coercion is a new kind of fact that those who partake in upholding it (as a fact) must respond to normatively, exactly by securing everyone access to its legal-political institutions when interacting with them. Hence, Nozick argues, this apparently redistributive element of the minimal state does not justify a welfare state. State-enforced, basic protection of the poor regardless of circumstances or redistribution aimed at ensuring real opportunities for social climbing through, for example public educational and health care measures remain unjustifiable, according to Nozick. Such measures are out of reach for a state committed to freedom, since they involve enslaving some to others, making some (the richer) into mere means for others (the poorer). Caring for others and their needs as such remains, Nozick concludes, a non-enforceable duty of virtue (charity or beneficence) and not an enforceable duty of justice.

The most common responses to Nozick's theory are as follows: Most liberals and libertarians pay little attention to his monopoly on coercion argument. Rightwing liberals and libertarians follow his minimal state direction (even if they sometimes revise his account or supplement it with other arguments). Leftwing liberals (including libertarians) challenge either his idea that everyone only gets a right to an equivalent of $1/n^{th}$ of the world's natural resources through labor, his idea that charity is not enforceable under any circumstances, and/or his idea that freedom is incompatible with any ahistorical redistributive principle. Kant's theory is attractive, I argue below, because its argument is consistent with Nozick's basic idea that all liberal theories must be reconcilable with each citizen's right to freedom. Kant's main argument for the state's right and duty to provide unconditional poverty relief is similar in structure to Nozick's monopoly on coercion argument. In addition, however, Kant's

theory avoids the problems haunting Nozick's account from the point of view not only of most liberal and libertarian thinkers, but also liberal legal-political practices as they mature: Nozick struggles to make any good sense of secure vision of systematic justice that includes proper concern for social climbing and real engagement in what Rawls calls "public reason." Kant's theory engages with these concerns without having to appeal to what may or may not be advantageous or virtuous for citizens to do; instead a mature vision of systematic justice is seen as following from their own commitment to the basic principle of each person having a right to freedom. To make my case, I first present a brief overview of the approaches to Kant's theory of economic justice that were prominent at the time Nozick and Rawls developed their theories. I then present what I take to be the better kind approach to Kant's theory of justice, one that has become a serious interpretive alternative by now. I then return to the theories of Nozick and Rawls in order to show why, if conceived in this alternative way, Kant's position has some of the arguments needed to realize the best of both their views.

5.2 Kantian Accounts of Economic Justice[7]

For the longest time, most Kantians considered Kant's take on economic justice as something of an inherited Achilles heel.[8] On these readings—the kind prominent in the heyday of Nozick and Rawls—Kant was seen

[7] I'm including this section for reasons of context for the Rawls–Nozick discussion, and so for readability of the chapter only. There's significant overlap between my presentation here and my first publication on these themes in "Kant and Dependency Relations: Kant on the State's Right to Redistribute Resources to Protect the Rights of Dependents." *Dialogue—Canadian Philosophical Review*, XLV (2006): 257–284. For two overviews over Kant's legal-political and related secondary literature, see Kyla Ebels-Duggan, "Kant's Political Philosophy," *Philosophy Compass*, 2012, 7:12, pp. 896–909, and my "Immanuel Kant—Justice as Freedom," in *Philosophie de la justice/Philosophy of Justice*, in the series Contemporary Philosophy, ed. GuttormFløistad, Springer: Germany, 2014, Vol. 12, pp. 213–237.

[8] See, for example, Mary Gregor: *Laws of Freedom*, Basil Blackwell: Oxford, 1963, pp. 36f; Otfried Höffe: *Immanuel Kant*, transl. by M. Farrier, SUNY Press: Albany, pp. 184ff); Jeffrie G. Murphy: *Kant. The Philosophy of Right*, Mercer University Press: Macon, pp. 144ff; Onora O'Neill: *Bounds of Justice*, Cambridge University Press: Cambridge, England, p. 65; John Rawls: "Themes in Kant's Moral Philosophy", in *Kant's Transcendental Deductions*, ed. E. Förster, Stanford University Press: Stanford, 1989, pp. 81–95, Ch. 40 "The Kantian Interpretation of Justice as Fairness," in *A Theory*

as not only as unmoved (in his theory of justice) by the material misery surrounding him, but as diametrically opposed to any redistribution of material resources to alleviate society's poverty. Any notion that the burdens of the poor, including what we often call "systemic injustices," should give rise to redistributive efforts was thought foreign to Kant and the Kantian project. To make their case, these interpreters often appealed to passages where Kant explicitly rejects the idea that justice can require the redistribution of resources in response to need (27: 517, 526),[9] as well as where he emphasizes that charity or benevolence is an imperfect duty and consequently not enforceable (MM 6:220f). In such passages Kant seems to affirm the view so forcefully expressed, as we saw above, by Nozick, that if one person were given a right to another people's property due to need or to facilitate the development of his capacities, he would be given the right to enslave her.[10] It is therefore not without reason that many have concluded that any "egalitarian" material redistribution aimed at strengthening the poor's or less able persons' abilities to set and pursue ends, is far beyond Kant's and the Kantian reach.

In response to this seemingly callous aspect of Kant, most contemporary Kantians either gave up on the idea that the Kantian position can

of Justice, rev. ed., Harvard University Press: Cambridge, Massachusetts, 1999, pp. 221–227, and *Lectures in the History of Moral Philosophy*, ed. B. Herman, 2000, pp. 217–234; Allen D. Rosen: *Kant's Theory of Justice*, Cornell University Press: New York, p. 197, Howard L. Williams: *Kant's Political Philosophy*, St. Martin's Press: New York, 1983, pp. 196 ff. For a recent defense of this interpretation of Kant on economic justice, see Pauline Kleingeld's *Kant and Cosmopolitanism: The Philosophical Ideal of World Citizenship*, Oxford University Press: Cambridge, 2013.

[9] All references to Kant's works in this article are given by means of the Prussian Academy Pagination (PAP) as well as an abbreviation. This particular reference is to "Notes on the Lectures of Mr. Kant on the *Metaphysics of Morals*," PAP 27: 479–732, in *Lectures on Ethics*, ed. P. Heath and J. B. Schneewind, Cambridge University Press: New York, 2001, pp. 249–452. In addition, I have used Mary Gregor's translations of *The Metaphysics of Morals*, Cambridge University Press: Cambridge, 1996, and of his other texts in moral philosophy printed in *Practical Philosophy*, Cambridge University Press: New York, 2006.The other abbreviations are: MM for *The Metaphysics of Morals*, CPrR for *Critique of Practical Reason*, TP for "On the common saying: That may be correct in theory, but it is of no use in practice."

[10] See especially Ch. 7 "Distributive Justice" in ASU, pp. 149–232. Similar arguments are found in Locke's writings as well as in contemporary, so-called rightwing libertarian economic writings such as those of F. A. Hayek, Jan Narveson, Erick Mack, and Fernando R. Tesón—entailing that this argument, if successful, should be of interest also to them since there is nothing in the argument that their basic commitment to understanding justice in terms of freedom rules out.

justify any redistribution of material resources,[11] or they sought to overcome the perceived problem by reformulating core elements of Kant's own position. Most of these reformulations focused on his account of domestic justice. For example, Onora O'Neill, Allan D. Rosen and, as we saw above, Rawls agreed that Kant's position is unresponsive to the material aspects of the human condition (the fact that we are embodied beings with material needs). To overcome this source of the problem, O'Neill and Rosen maintained that the state can enforce charity (beneficence),[12] and Rawls incorporated these empirical aspects of the human condition in his theory of justice as fairness (by means of the difference principle in combination with the list of primary goods).[13] Later, Paul Guyer[14] argued that by reformulating aspects of Kant's "Doctrine of Right," we can actually make room for considerations of economic justice of a Rawlsian kind. Hannah Arendt[15] and Alexander Kaufman[16] searched *The Critique of Judgment* for arguments that could render Kant's theory sensitive to the human condition and our embodied, material needs.

These attempts at reformulating Kant's position have significant problems. For example, it remains unclear how a coherent conception of justice understood in terms of freedom can appeal to anything but freedom when specifying what constitutes justice, including just coercion. That is, Nozick seems right to maintain that such a position cannot consistently set its boundaries according to nature, material needs, capacities or continuous access to basic goods, as suggested by Arendt, Guyer, Kaufman, O'Neill, Rawls (à la 1971), and Rosen. Such philosophical result is not in positions of freedom, but in positions ultimately subjecting freedom to some other end or concern. And, as Nozick also loves pointing out, the problem with such positions is that they make everyone's right to pursue their own ends is made conditional on certain ends being obtained (an ahistorical "end-result" occurring); they are not positions according to which everyone gets to set and pursue their own ends.[17] Kant seems to have had very good reasons for resisting the moves these reformulation attempts make, and these Kantian accounts do not overcome the problems involved in making them. For example, if we attempt to make charity or beneficence enforceable, as O'Neill and Rosen do, we try to do something that is in principle impossible. Kant argues forcefully that charity or beneficence requires us not only to act on specific maxims, namely those that involve making another person's happiness our own end, but also to act in these ways *because* it is the right thing to do—or from duty. An action of beneficence requires us not only to want to give money to the poor, but to do so *because* it is the right thing to do. Incorporating the moral motivation (duty) into the maxim of the action transforms the action of simply giving money to the poor into an action of beneficence (GW 4: 397ff, 440f, 449; CPrR 5: 20f; MM 6: 220f, 225f, 379f). More generally, since maxims (subjective ends of which we take ourselves to be pursuing) and moral motivation (duty) cannot be coerced, virtue is beyond the reach of justice (MM 6: 219ff, 239). Of course, the state can force its citizens to act in ways that are consistent with an end of charity—they can force richer citizens to hand their money over to poorer citizens—but doing so neither respects the richer citizens' right to freedom nor forces them to be charitable or beneficent. According to Kant, therefore, whatever the state does when it coercively redistributes material resources, it is not enforcing charity or beneficence. In fact, the ultimate upshot of this conception of right is that morality as such is beyond its proper grasp. Right (justice) only concerns what can be hindered in space and time, or what can be coerced, which is why Kant argues that only freedom with regard to interacting persons' external use of choice (right) can be enforced. Virtue (or ethics understood as first-personal morality) also requires what he calls freedom with regard to "internal use of choice"; internal freedom requires a person both to act on universalizable maxims and to do so from the motivation of duty (MM 6: 220f) and so cannot be enforced. Freedom with regard to both inter-

[11] See, for example, pp. 153 and 164n7 in Wolfgang Kersting's "Kant's Concept of the State," in *Essays on Kant's Political Philosophy*, ed. H. L. Williams, University of Chicago Press: Chicago, 1992, pp. 143–166.

[12] See, for example, Rosen 1996: 173–208 and O'Neill: 1989, ch. 10 and 12; 1998: ch. 5–7; and 2000.

[13] See, again, Rawls 1989: 81–95; 1999: 221–227, and 2000: 217–234.

[14] Paul Guyer: *Kant on Freedom, Law, and Happiness*, Cambridge University Press: New York, 2000.

[15] Hannah Arendt: *Lectures on Kant's Political Philosophy*, ed. by R. Beiner, University of Chicago Press: Chicago, 1992.

[16] Alexander Kaufman: *Welfare in the Kantian State*, Oxford University Press: New York, 1999.

[17] See, again, especially ch. 7: "Distributive Justice," in ASU.

nal and external use of choice (morality) can therefore not be enforced (ibid.). In sum, Kant's philosophical resistance to the idea that states can enforce charity runs deep in his thinking, and these attempts to reformulate his views do not overcome the philosophical problems involved in trying to argue otherwise. And, of course, many of us do not want to give up on the idea of freedom without extraordinarily good reasons to do so—which these alternative and philosophically muddled positions do not give us.

5.3 Kant's Theory of Justice as Freedom

In this section, I outline an alternative interpretation of Kant's conception of domestic economic justice, which has become more prominent in recent years.[18] Rather than seeing Kant's position on economic justice as one of his weaker moments, I defend it as a particularly appealing aspect of his position. To make my case clear, I draw attention to how those other interpretations and reformulations (from Arendt and Kaufman to O'Neill and Rosen and on to Guyer and Rawls) rest on an assumption that Kant himself explicitly rejects: that his position can or should be read through (weak) voluntarist lenses. According to the voluntarist perspective, the just state will do what individuals do if they abide by private right (their individual rights against each other), in which case what Kant calls "public right" (the delineation of state rights) is understood ideally as merely an institutionalization of private right. Or to put this point in

[18] The earliest interpretation of Kant's poverty arguments that is closer to the one I defend here is probably the one proposed by Sarah Williams Holtman in "Kantian Justice and Poverty Relief," in *Kant-Studien*, 95: 86–106. The interpretation of Kant on economic justice that is the closest to the one I'm sketching here is the one defended by Arthur Ripstein in his *Freedom and Force—Kant's Legal and Political Philosophy*, Cambridge, Massachusetts: Harvard University Press, 2009. I defend this type of position in more detail (including against alternative readings) in my papers "Kant and Dependency Relations: Kant on the State's Right to Redistribute Resources to Protect the Rights of Dependents" (*Dialogue*, XLV, 2006: 257–284) and "Kant's Non-Absolutist Conception of Political Legitimacy: How Public Right 'Concludes' Private Right in 'The Doctrine of Right'" (*Kant-Studien*, Heft 3/2010, pp. 331–351) and I defend it against recent objections raised by Pauline Kleingeld in her *Kant and Cosmopolitanism* in "Patriotism, Poverty, and Global Justice—A Kantian Engagement with Pauline Kleingeld's *Kant and Cosmopolitanism*," *Kantian Review*, Vol. 10: 2, pp. 251–266, 2014.

Nozick's words, on this view, state's rights are "decomposable without residue" into individuals' rights against one another (pp. 89, cf. 6, 118, 133). But this relationship between individual and state rights is precisely what Kant denies. Kant denies that economic justice is a concern to be analyzed simply in terms of private right (individuals' rights against each other), and instead defends it as constitutive of public right (the rights of the state, including the claims citizens have on their public institutions). More specifically, Kant defends three kinds of systemic arguments concerning economic justice: (a) poverty arguments issuing from the state's need to reconcile its monopoly on coercion with the rights of each citizen; (b) system-dependence arguments about citizens' exercise of freedom; and (c) reform arguments concerning the need for continuous improvement of public institutions so as to make them the means through we enable rightful interactions by governing ourselves through public reason. On the last point, because the state is the means through which we govern ourselves by reasoning about legal-political issues in distinctly public ways, its aim is necessarily to improve the overall institutional framework to make more public reasoning about these issues possible. Improving these institutional conditions includes ensuring a reality where all citizens can take informed part in the public discussion of legal-political issues *and* reason in public, representational ways, for example as public officials and as publicly licensed and entrusted professionals (judges, lawyers, police officers and physicians). When we explore these arguments, we realize that economic justice is not something diametrically opposed to Kant's conception of the just state, but rather, it lies at the very heart of it and it has the kinds of arguments needed to overcome the Nozick vs. Rawls-type dispute in liberal theory.

5.3.1 Kant on Private Right and the Need for the State

Right, Kant argues, is solely concerned with people's interactions in space and time, or what he in the "Doctrine of Right" calls our "external use of choice" or "external freedom" (MM 6:213f, 224ff). When we deem each other and ourselves capable of deeds—when we see each other and our-

selves as the authors of, and so responsible for our actions—we impute the actions to each other and/or ourselves. Such imputation, Kant argues, shows that we judge ourselves and others as capable of freedom under laws with regard to external use of choice (external freedom), or as legally responsible for our actions (MM 6: 227). When we interact, we need to enable reciprocal freedom, or a way of interacting that is consistent with everybody's external freedom. And this is where justice, or what Kant calls "right" comes in. Right is the relation between interacting persons' external use of choice such that reciprocal freedom is realized (MM 6: 230). A rightful interaction is reconcilable with each person's innate right to "independence from being constrained by another's choice… insofar as it can coexist with the freedom of every other in accordance with a universal law" (MM 6: 237). For Kant, justice requires that universal law (rather than anyone's arbitrary choices) regulate individuals' external use of choice when they interact.[19]

The first, main part of the "Doctrine of Right" is an account of private right. Private right, Kant explains, is "right in the state of nature," that is, right as described only with concepts referring to private individuals and not any public or civil authority with its legal-political, institutional framework (MM 6: 242). Private right concerns what is externally "Mine or Yours" (MM 6: 245). To be externally free is to set my own ends in space and time, which requires the possibility of acquiring things external to me (things distinct from my body) as my own. Kant proposes that there are three kinds of things external to me that can be my own: private property, other people's services through contracts and other people (MM 6: 247).[20] With regard to these spheres, Kant points out, we make normative claims such as "that is *my* car," "you owe me $20 for the soccer ball I gave you," and "this is *my* child." In his private right account, Kant proposes three corresponding abstract principles of private right

[19] Hence, public reason so understood refers, as Rawls suggests, both to how "government officials and candidates for public office" must reason in order to specify the "political relation" between citizens properly as well as to how citizens engage each other in public debates of legal-political issues. See John Rawls: "The Idea of Public Reason Revisited," in *The Law of Peoples*, Harvard University Press: Cambridge (2003), pp. 132f.

[20] For Kant, the reason why there are only three such categories of things is that they are made possible by the three relational categories of the understanding, namely substance (private property), causality (contract) and community (status relations) (6: 247).

(regarding private property, contract and so-called status right) that we ideally employ to govern these spheres of private right. The challenge Kant then takes on is explaining how we can make and enforce such claims to things external to us—specify and apply the principles of private right when we interact—while respecting everyone's freedom. Kant claims throughout the private right sections that such rightful enforcement of these claims to things external to us is impossible in the state of nature. The abstract principles governing private right cannot function as rightfully enforceable restrictions in this condition; they can only enable what Kant calls "provisional" justice; "conclusive" justice is therefore considered impossible in this condition (6: 267). This is not the place to go into any detail regarding these arguments—including the interpretive controversies surrounding them. Instead we may simply note that there are two main types of problems that lead Kant to this conclusion, namely a problem of assurance as well as a problem of indeterminacy in specifying and applying the principles of private right to actual interactions. Because these problems are in principle insoluble in the state of nature, Kant deems them not rightfully enforceable in this condition, and he concludes the entire doctrine of private right by claiming that we have an enforceable duty to enter civil society, meaning to establish a public authority (a legal-political framework) through which we can make the principles governing property, contract and domestic (status) relations rightfully enforceable (MM 6: 307f, cf. 6: 230, 232, 312f, 345f, 8:344, 351f, 371).[21] Kant's account of public right, in turn, aims to explain how

[21] I provide my interpretation of Kant's account of private right in "Kant's Non-Voluntarist Conception of Political Obligations: Why Justice is Impossible in the State of Nature," in *Kantian Review*, vol. 13–2, 2008, pp.1–45. Other interpretations that are similar (in that they also defend ideal reasons for the establishment of the state), though not identical (since various steps in the arguments are described in different ways) in their way of approaching Kant's Doctrine or Right include Julius Ebbinghaus: "The Law of Humanity and the Limits of State Power." *The Philosophical Quarterly*, Vol. 3, No. 10: 14–22, 1953; Katrin Flikshuh: "Reason, Right, and Revolution: Kant and Locke," *Philosophy and Public Affairs*, Vol. 36:1, s. 375–404, 2008; Wolfgang Kersting: *WohlgeordneteFreiheit. Immanuel KantsRechts- und Staatsphilosophie*, Berlin: de Gruyter, 1984 / Frankfurt: Suhrkamp 2nd ed. 1993; Arthur Ripstein: *Force and Freedom*; Thomas Pogge: "Kant's Theory of Justice." *Kant-Studien* 79, 1988, s. 407–433; Jeremy Waldron: "Kant's Theory of the State," in Kleingeld, P. *Toward Perpetual Peace and Other Writings on Politics, Peace, and History*, New York: Yale University Press, 2006, pp. 179–200; Ernest Weinrib: *The Idea of Private Law*, Cambridge, Massachusetts: Harvard University Press, 1995.

the liberal state enables rightful relations through its public, legal-political institutional framework.

5.3.2 Public Right: Systemic Justice

Public right, Kant argues at the beginning of this second part of the "Doctrine of Right," is "the sum of the laws which need to be promulgated generally in order to bring about a rightful condition" (6: 311). Two core challenges when interpreting Kant here are establishing how his public right account is informed by the private right account and figuring out exactly how public right ("the sum of the laws" that constitute the rightful condition) complements private right. Both considerations are central to Kant's account of domestic economic justice.

A major difference between Kant and much contemporary liberal thought concerns Kant's claim that it's impossible, even for individuals with only the best of intentions, to realize justice in the state of nature. According to Kant, only a public authority can solve the problems of indeterminacy and assurance in a way reconcilable with each person's right to freedom. We therefore find Kant starting his discussion of public right of the state with the following:

> however well disposed and [right-loving][22] men might be, it still lies *a priori* in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings... can never be secure against violence from one another, since each has its [her] own right to do *what seems right and good to [her]* and not be dependent upon another's opinion about this. (6: 312)

There are no rightful relations in the state of nature, since might ("violence," or arbitrary judgments and "opinion" about "what seems right and good") rather than right ("universal laws'") ultimately governs interactions here.[23] According to Kant, only a public authority for legal-political reasoning can ensure interaction in ways reconcilable with each person's innate right to freedom and acquired rights to private property, contract and status relations. Kant argues, in a Rousseauan fashion, that the public authority represents the will of each and yet the will of no one in particular—it represents an "omnilateral," general or common will. Only through such an authority can we solve the problems of assurance and indeterminacy that our commitment to right involves. The state (civil society) is the only means through which individuals can subject their interactions to universal law.[24]

A second, related difference between Kant and much contemporary thought, including Kantian liberal thought, is his challenge to the common implicit assumption that the reasoning and actions of the public authority should be thought of as analogous to those between virtuous, private individuals. According to many contemporary liberal accounts, the public authority ideally argues and acts in a way that all persons respectful of one another's individual (private) rights would do, and so these ways of reasoning and acting are those to which all persons could hypothetically consent.[25] Yet, as we saw above, Kant does not think that there is *one*, ideal way to *specify* the general principles of right, nor is there

[22] The German word used here is "rechtliebend" and Mary Gregor has translated this as "law abiding," which I find misleading since Kant does not think that it's possible to be law abiding in the state of nature (it's only possible to love, or be committed to right in this condition). Hence, I use the word "right-loving" instead of "law-abiding" here.

[23] Although Kant considers justice impossible in the state of nature, this does not mean that there is always injustice in this condition. After all, if no coercion is used—if everyone discusses everything peacefully and no one is enforcing their rights against others as they happen never to disagree about anything)—then there is no injustice (no wrongful use of coercion). Yet this is still a condition *devoid* of justice, since rightful interaction remains impossible in it (6: 312). I engage this issue in "Kant's Non-Voluntarist Conception of Political Obligations."

[24] This is why Kant argues that only a will "that is united *a priori* (i.e., only through the union of the choice of all who can come into practical relations with one another) and that commands absolutely" can justify external acquisitions because "a unilateral will (and a bilateral but still *particular* will is also unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but *a priori* and therefore necessarily, and because of this is the only will that is lawgiving. For only in accordance with this principle of the will is it possible for the free choice of each to accord with the freedom of all, and therefore possible for there to be any right, and so too possible for any external object to be mine or yours." (MM 6: 263)

[25] Some liberal accounts also seem to assume that what the state enforces is individuals' moral rights against one another, such as Kant's perfect, ethical duties (duties of virtue). As we have seen above, this is not Kant's position. For reasons of space, I cannot elaborate further on this issue here. For an overview of some of these issues, see my "Immanuel Kant–Justice as Freedom."

one, correct way to *apply* the principles to particular cases of dispute. In addition, however, and as will become clearer below, Kant also rejects the premise that the state cannot rightfully do anything beyond merely specifying, applying and enforcing individuals' individual (or private) rights against one another. This does not mean that the state can do whatever it wants to do—that citizens can do anything they want with impunity when they hold public office (absolutism)—but rather that Kant's analysis of the legitimate, liberal state is more complex these other liberal, non-Kantian theories.

Kant's general proposal, then, is that the reasoning and actions of the public authority should be, exactly, *public*. First, those citizens entrusted with this authority must act within the legal parameters of their public office and understand it as not their private domain. When vested with public authority, state officials should not understand themselves as acting as private persons (even ideally virtuous versions of themselves so considered). After all, overcoming subjection to private choice is the problem of the state of nature, the problem the public authority is supposed to solve by enabling interaction subjected only to universal law. For the public authority to be the means through which citizens enable rightful interactions among themselves, those citizens entrusted with this authority must reason in distinctly *public* ways; only in this way can they enable subjection of interaction to universal law rather than to private choice. And this is why they must reason within the legal parameters of the office when they act as public officer. Second, acting as a public official means reasoning in such a way that *all citizens* can recognize any decision's legitimacy even if they, in fact, reasonably disagree with its exact content. As we have already noted, there is no one, general way to specify the principles of private and public right or how they apply in particular cases since many specifications and applications fall within the scope of the reasonable. Right-loving, law-abiding citizens recognize exactly this.

These, then, are among the core considerations Kant appeals to when he says that the reasoning of public officials is such that all citizens' can consent to it *as citizens*: in order to represent the citizens in the right way, the public authority must consider them as "members of… a society who are united for giving law… [or as] *citizens of a state*" (6: 314).[26] Moreover, since *everyone* must be seen as born with a right to *freedom* and since freedom is understood in terms interactions that are subject to the law rather than one others' arbitrary choices, Kant suggests that we may think of the "essence" of the citizen as her right to freedom, equality and independence.[27] The perspective of the public authority is therefore not an idealized perspective of private right or of virtue, but rather a common public perspective constitutive of a rightful condition. By assuming this perspective, the public authority can (as it should) seek to secure a legal-political institutional framework within which each citizen's innate right to freedom (his right to freedom, equality and independence) is enabled and secured. Again, on this approach, the liberal state is the means through which a group of interacting people can interact rightfully.

To fill out this picture, let's look at some of the relevant details of Kant's account. Kant starts his discussion of public right by arguing that in order for the public authority to not reproduce the problems associated with private right in the state of nature, it must have a monopoly on coercion and be impartial in the right way. An in-principle impartial authority—a *public* authority—must have two features. First, it can only *re*present the citizens, and so cannot have any private interests: it cannot own land or private property (6: 323f). After all, if it did, it would simply

[26] Rawls also seems to share this basic assumption with Kant; this especially prominent in Rawls' later writings (*Political Liberalism* onwards) where he increasingly emphasizes how the theory is based on the *citizens'* two moral capacities and the *public* character of the state.

[27] Kant argues: "In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful *freedom*, the attribute of obeying no other law than that to which he has given his consent; civil *equality*, that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other; and third, the attribute of civil *independence*, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people" (6: 314). Naturally, given his emphasis on consent, it might be tempting to believe that here Kant is defending democracy or strong voluntarism (actual consent viewed as a precondition for political obligations). This, however, is not the case. As we saw above, Kant defends an enforceable duty to enter civil society (and so not a strong voluntarist conception of political obligations), and later in the "Doctrine of Right," Kant explicitly denies that democracy is a necessary condition for state legitimacy (6: 338–341). In fact, Kant maintains that there are three legitimate forms of actual states, namely autocracy, aristocracy and democracy (6: 338). I deal with some of the related interpretive issues in "Kant's Non-Absolutist Conception of Political Legitimacy: How Public Right 'Concludes' Private Right in "The Doctrine of Right" as well as in "Self-Governance in Kant's Republicanism" (work-in-progress).

be yet another, albeit very powerful, private person. The state's "interests," in other words, are interests that always are analyzable in terms of the citizens' interests, namely those institutional features that enable citizens to interact rightfully (with each other and with citizens and people outside the state's boundaries[28]). Second, the state must rule through posited law: it must be an authority whose powers are delineated by the social contract (typically a constitution), and it must be tripartite in that it distinguishes institutionally between its legislative (specification of the law), its judiciary (application of the law) and its executive (enforcement of the law) powers. In this way public offices are governed by impartial public reason rather than by private persons. In addition, of course, in order for the public authority to overcome the problems associated with private right, the posited laws must be reconcilable with each citizen's innate right to freedom and her corresponding acquired rights to private property, contract and status relations (private law) (6: 313, cf. 6: 315).

We have now seen important ways in which Kant distinguishes public right from private right, even if these ways primarily concerns how to rightfully enforce the principles of private right, including by having them specified and applied in the right ways. Kant does not, however, argue that these resulting institutional features comprise the full conception of the legitimate state; the rights of the state are not reducible to the rights of individuals in further ways.[29] The public authority must also, Kant maintains, ensure that its institutional framework as a whole is consistent with each citizen's innate right to freedom, which may be spelled out in terms of citizens' rights to freedom, equality and independence. So, it is not enough that the state institutionalizes private right so as to make it rightfully enforceable (in the ways outlined above), but it must also ensure that these institutions secure each person's the innate right to freedom by affirming those rights to be free, equal and independent through institutional frameworks—"the sum of the laws." Only in this way does state reconcile its monopoly on coercion with the innate right to freedom of each of its citizens, and thereby make sure that they are dependent only on (subjected only to) the state's own rightful coercive power (universal law) and not each other's arbitrary choices. Given the emphasis on economic justice in this chapter, let me focus on how this argument plays out with regard to the state's provision of unconditional poverty relief; special control over institutions governing land, the economy and finances; and provisions to secure the possibility of passive citizens working themselves into active citizenship (become active participants in the public reason through which civil society is governed). These are further, important ways in which Kant rejects the idea that the rights of the state are co-extensive with ("decomposable without residue into") the rights of individuals and denies that public right is merely the institutionalization of private right.

[28] I'm naturally not engaging this issue of what Kant calls international and cosmopolitan spheres of justice here.

[29] Most of these arguments are found in the section called "General Remark. On the Effects with Regard to Rights That Follow from the Nature of the Civil Union," or the sections marked A through E in the "Doctrine of Right." (MM 6: 319–338). In addition, I expand on Kant's comments about how passive citizens must be facing a set of coercive restrictions that permit them to work themselves into active citizenship (MM 6: 314f).

5.3.2.1 Unconditional Poverty Relief

Kant explains that providing poverty relief is an "indirect" right that belongs to the sovereign "insofar as he has taken over the duty of the people" (6: 325f). The reason is that "The general will of the people has united itself into a society which is to maintain itself perpetually; and for this reason it has submitted itself to the internal authority of the state." He further clarifies that this must be understood as entailing that the state cannot rely on "*voluntary* contributions" to fulfill its obligation; instead the state must invoke public taxation or dedicate interest from public funds to "the needs of the people" (6: 326). Moreover, it can fulfill these obligations, Kant argues, by using tax money to support organizations that provide "for the *poor*, [such as] *foundling homes*, and *church organizations*, usually called charitable or pious institutions." (6: 326). Now, one might conclude from reading these statements that Kant here mistakenly appeals to the need for poverty relief to ensure the survival of the state (mistakenly since the state clearly does not need everyone to survive). Alternatively, one might be tempted to believe that Kant here inconsistently appeals to the needs of the people to justify poverty relief

(inconsistent because the resulting position would no longer be a position of freedom and would also conflict with his account of beneficence). Finally, one might think that Kant here wrongly maintains that the state *must* establish a coercive public taxation program to secure the future survival of the state (wrong because the survival of the state does not require everyone to survive and because since the argument presumes Hume's so-called "circumstances of justice," namely a general lack of resources and virtue amongst the people). In fact, all of these (and more) objections are common in the secondary literature on Kant, especially in the older readings mentioned above.

As is often the case with Kant, however, to understand what he is saying, we must look at his particular arguments in light of his overall account. The particular statements and arguments considered in isolation from Kant's project as a whole, typically lead us astray. And Kant's main aim in this section of public right is to envision public right as the set (sum) of laws that enables rightful interaction under universal laws of freedom. The problem with poverty from this point of view is not need, future survival of the state, lack of resources or citizens' limited generosity, but rather that unless unconditional poverty relief is guaranteed by the state, the sum of laws does not establish rightful relations between citizens. After all, rightful relations require that the institutional coercive framework as a whole be reconcilable with each citizen's right to freedom, understood, again, as independence from other person's arbitrary choices and instead as subjection only to universal law. As we see in the quotes above, it lies within the state's rightful prerogative whether it chooses to reconcile its coercive framework with the individual right to freedom by financially supporting private charitable institutions or by setting up its own institutions; the requirement is only that it legally guarantee unconditional poverty relief. What the state cannot permit, therefore, is a situation (a total set of laws) in which the possibility of any one citizen's exercise of external freedom is subjected to, or made dependent upon another citizen's arbitrary choice to be charitable, generous, or caring, or to hire her. Such subjection of one person's freedom to another's arbitrary choice is a private dependency relation that is irreconcilable with each citizen's innate right to freedom. Instead each citizen must be in a condition where the possibility of her (external) freedom is subject only to

universal law, which is public law. By legally guaranteeing unconditional poverty relief, the state secures for each citizen legal access to means that is not subject to any other citizen's private choice. The possibility of each citizen freedom is thus made dependent only on public law.

On this theory, then, poverty is a systemic problem arising with the state's (necessary) establishment of a monopoly on coercion. Notice that in the state of nature, the fact that I have taken control over something cannot create an obligation on you to respect my exercise of choice. On a Lockean theory, there is a way to explain such an obligation: in the ideal case, you are obliged to respect my possessions insofar as my acquisition of this something is a correct application of the laws of nature (Locke's "enough-and-as-good" proviso). Kant's indeterminacy argument can be applied to Locke's account of the proviso by challenging its assumption that there is one objectively correct way to determine the value of natural resources, and so Kant's account reveals a problem with Lockean accounts of private property acquisition.[30] And, indeed, I believe that such concerns were among those that led Kant to reject the proviso as a possible principle of private property appropriation. Another reason was probably that although the proviso is likely in scenarios where we all start to acquire private property at the same time, it is much less plausible in other scenarios and does not capture the way relatively peaceful and stable historical societies have evolved. In any case, the Lockean argument is not available to Kant. On Kant's position, there is no way to explain why my unilateral choice to take something under my control can obligate you to abstain from it (and vice versa), including, of course, when there's nothing else for me to take possession of. The only reasonable solution involves entering the state where the representation of a public "us" affirms what each of us unilaterally holds onto as belonging to either one (our provisional private property). In turn, as we see here, Kant maintains that the state's guarantee of unconditional poverty relief is a minimal institutional condition for this public us being able to justifiably affirm the provisional possessions as belonging "conclusively" to particular citizens. The state's guarantee of unconditional poverty relief

[30] I illustrate one way of doing this in "The Lockean 'Enough-and-as-Good' Proviso—an Internal Critique."

for all citizens secures that even those who enter the civil condition with nothing obtain legal access to something and thereby have a safe and secure starting point for working themselves into a better situation.

5.3.2.2 The State's Regulation of Land, the Economy and the Financial System

What about the other two kinds of systemic argument regarding economic justice, those explaining ways in which system-dependence becomes important for understanding how liberal states secure conditions of economic justice for its citizens? To appreciate Kant's reasoning here, it is important to remember that the state consists of the basic legal-political institutions (the totality or "sum" of laws) that make possible rightful interaction between citizens considered as free, equal and independent. Therefore, the state must ensure that each of its citizens can legally interact with any other citizen; this possibility of legal interaction cannot be subject to anyone's choices but those choosing so to interact. To ensure these conditions, however, the state must institutionally enable freedom, equality and independence with respect to land, the economy and finances by regulating these spheres of interaction by means of various kinds of public law.

One way in which the state ensures freedom, equality and independence with regard to land is by taxing (a public law measure) landowners to provide public roads (as regulated by public law) so that everyone can interact legally (reach each other by legal means wherever they might reside on the territory) without the possibility of such access to each other being dependent on other people's choices.[31] Similarly, the fact of system-dependence is why, if the state allows a situation in which access to goods and services are facilitated through an economy, it will regulate the economy such that no one private person can control the supply of these goods and services (such as by establishing monopolies). The state will also require all business owners to treat everyone (and their money) as having equal value, and it will require business owners to ensure that their

[31] Ripstein's chapter "Roads to Freedom" in *Force and Freedom* explicates this point particularly well.

shops are accessible to all (for example, by ensuring that all citizens, both disabled and able-bodied, can access them). And finally this is why, if the state permits the use of money for trade, it must assume control over the supply of legal tender, again such that the value of people's means (their money) is not subject to any private citizens' arbitrary choices (by issuing illegal tender). Permitting any private person to be in charge of any of these economic and financial structures would make it impossible for everyone's freedom to be equally subject to universal law, since someone would then be given the "right" to restrict others by his or her arbitrary choice. This is what Kant means, in short, when he argues that once the state establishes its monopoly on coercion, it must assume institutional control over the land, economy and finances by means of public right. Again, only then is everyone's freedom subjected to universal (public) law rather than to one another's arbitrary choices and rightful interaction made possible (6: 325).

5.3.2.3 Active Citizenship and Participation in Public Reason

What about the last type of argument we find in Kant, the one concerning how the state must reform itself such that everyone faces a condition (a total sum of laws) within which they can work themselves into what Kant calls active citizenship? I suggested above that active citizenship can be understood as involving ability to partake in public reason (hold public office, professional positions vested with public authority, and participate in informed ways in public discussions). I can here only outline Kant's main arguments for this more complicated point of interpretation.[32] As we see below, there appear to be two main steps to this

[32] One interpretive complication concerns the fact that what I call public reason here is by Kant divided into "private" and "public" reason in his essay "What is Enlightenment?" Here Kant emphasizes that an enlightened public, namely one that governs itself through public reason, is a precondition for right in its full realization. Yet being an enlightened public includes two aspects: One the one hand, it involves everyone being capable of what Kant here calls "private" reasoning, which is the kind of reasoning ability necessary for one to execute the duties of a functioning public office as governed by public rules (8: 37f). On the other hand, it requires the people to govern themselves through public reason as "scholars," meaning as people capable of engaging in public critique of the actual operations of the fundamental public institutional structure. See Jonathan

argument. On the one hand, the state can never make it illegal for any one group to work itself into active citizenship. On the other hand, the state must reform itself so that: (a) only effort and merit (rather than inherited privileges) determine which particular citizens end up holding public office or professional positions entrusted with public authority, and (b) everyone can partake in public discussions in informed ways. I deal with each issue in turn.[33]

To see how Kant makes these arguments, first note that already early on in the public right section, Kant draws certain implications from the argument that the innate right to freedom is a right to independence from other persons' arbitrary choice coupled with subjection to universal law.[34] Naturally, since any coercive restriction on citizens is ultimately governed by public law and since everyone is guaranteed poverty relief, everyone is independent of other persons' arbitrary choices in fundamental ways. But, Kant argues, it would be wrong to conclude from this that all citizens are capable of full "civil *independence*" meaning "the attribute… of owing his [one's] existence and preservation to his [one's] own rights and powers as a member of the commonwealth, not to the choice of another among the people." (6: 314) In particular, Kant argues that some citizens are not capable of such active citizenship, but only of passive citizenship. Controversially, Kant argues that all children, domestic servants, "all women and, in general, anyone whose preservation in existence (his [or her] being fed and protected) depends not on his [or her] management of his [or her] own business but on arrangements made by another (except the state)" (6: 314) belong to the category of passive citizens. Because these citizens' management of their private lives, including their ability to feed and protect themselves is under another private person's authority—their parents, their husbands, or the family that they serve[35]—Kant

Peterson's interpretation of Kant's "private" and "public" reason distinction in his "Enlightenment and Freedom" by Jonathan Peterson (*The Journal of the History of Philosophy*, 2008, 46: 223–244)

[33] I develop this argument in more detail in my "Self-Governance in Kant's Republicanism," (work-in-progress).

[34] This concern is mentioned prior to the "General Remarks," on (6: 314f), in the "Doctrine of Right."

[35] The category of passive citizens therefore corresponds to Kant's the weaker party in his discussion of "status relations" in private right (6: 276–284).

deems them incapable of active citizenship. Active citizenship, in turn, means that one has the ability to take active part in the actual operations of the public authority, such as by voting on political issues. "The only qualification for being a[n active] citizen" Kant argues, "is being fit to vote. But being fit to vote presupposes… [civil] independence" (6: 314). Some of Kant's worries here might have been that if one has none or very little education, it is difficult to make informed decisions about complex political matters; servants' lack of material independence may reasonably lead them to obey their employers' pressure to vote in certain ways (so that those with large estates in effect get more votes than those with smaller estates); and women may yield to their husband's views (giving married men in effect two votes). Regardless of what we think of these arguments and judgments, the main challenge for Kant is how the state, even though it must distinguish between passive and active citizenship, can reconcile this distinction with each person's innate right to freedom.

Kant's general claim here is that the active citizens (here: adult, independent men) can only vote for laws that are "not 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 [one's][36] way up from this passive condition to an active one." (6: 315) So, no one can be legally denied the right to work themselves into active citizenship, including by proving wrong those thinking that some groups of human beings (such as women) cannot work themselves into active citizenship. And indeed, one would expect this view given how Kant in the introduction to the *Metaphysics of Morals* argues that anthropological claims about what people can and cannot do must not frame an analysis of freedom, since then we "run the risk of bringing forth false or at least indulgent moral laws, which would misrepresent as unattainable what has only not been attained" (MM 6: 217).[37] Hence, Kant's considered view, in the least, must be that posited law must be compatible with children, domestic servants and women working themselves into an active independent

[36] The original German is gender neutral here.

[37] I go into more detail in my "Kant and Women" (work-in-progress).

condition.[38] Hence, the just state cannot deny certain groups of citizens, regardless of the "passivity" of their current socio-economic condition, the opportunity to advance to full participation in public reason. The state must make sure that the totality of the rules does not force passive citizens to remain forever in their passive condition, but rather provides everyone with institutional conditions from which active citizenship can be achieved through effort.

It is also significant that the argument requiring the public authority to posit laws consistent with the possibility of each person working toward active citizenship is complemented by another argument, according to which the state can posit laws that strengthen citizens' opportunities to work themselves into active citizenship.[39] When the state comes into being, "[t]he general will of the people," Kant argues, "has united itself into a society which is to maintain itself perpetually." (6: 326) The state must ensure that the institutional structure as a whole enables its people and future generations remain in rightful relations on the land in perpetuity. Moreover, although the actual starting point for many liberal states is much less than ideal, the aim for any liberal state, Kant argues, is to reform itself into a truly representative republic, in which the people governs itself through public reason. For better or for worse, Kant does not identify democracy as a minimal condition on a state's legitimacy.[40] Instead, what he sees as crucial is for public reason to govern the institutions constitutive of the public authority—that it is a representative, law-ruled society where those in power view themselves as exactly *representatives* of ("delegates" for) its citizens. Kant says that in the just state "*law* itself rules and depends on no particular person... Any true republic is and can only be a *system representing* the people, in order to protect its

[38] It is common to maintain that Kant's statements about women reveal that he considers women incapable of civil independence in perpetuity. I discuss these issues in my papers "Kant and Dependency Relations" as well as in "Kant and Women" (work-in-progress).

[39] A major difference between these two arguments is, I believe, that only the former (that the state does not make it impossible for passive citizens to work themselves into active citizenship) can plausibly be presented as a minimal requirement on the legitimacy of the state. I discuss this issue in "Self-Governance in Kant's Republicanism."

[40] Kant considers there to be three forms of state, namely autocracy (rule by one), aristocracy (rule by nobility) and democracy (rule by the many) (6: 340). I address this issue in Kant interpretation in much more detail in my "Self-Governance in Kant's Republicanism" (work-in-progress).

rights in its name, by all the citizens united and acting through their delegates (deputies)." (6: 341) In order to bring about such a condition, Kant argues that the state must, over time, eradicate inherited right to political power, and it must instead let the people fill all the public offices and dignitary positions based on merit alone (6: 328). By "merit," Kant means the ability to assume responsibility for public offices, whether, obviously as a legislator, an informed citizen about political affairs or as a judge, lawyer, or other professional vested with public authority to handle a legal dispute. It may differ from state to state which offices are left to common (democratic) choice and to what extent, without those differences rendering the state illegitimate. The main point is that the notion of inherited privilege must be replaced with merit over time, and Kant's position considers it within the state's legitimate use of coercion actively to strengthen the institutional framework so that it becomes increasingly possible for everyone to work themselves from passive to active citizenship.

So, how do various liberal states try to accomplish this goal internal to themselves? I take it that a core component here is to provide opportunities for education for all as soon as feasible—just as liberal states have sought to do over the last few centuries. Their first developmental aim has been naturally a guarantee of basic, public education for all, including (as necessary) free education for children of poor families. Then, as many of the more established liberal states have done by now, states seek to guarantee at least student loans for all, such that higher education is available to all citizens without regard to others' (typically parents') choices about this.[41] In these ways, the state reforms itself such that it truly is the means through which the people governs itself through public reason.

5.4 Concluding Remarks

The last sections above outlines ways in which Kant views public right as "concluding" private right not only by how the distinctly *public* authority (liberal legal-political institutions) enable rightful relations in the three

[41] I deal with this point in more detail in "A Kantian Critique of the Care Tradition: Family Law and Systemic Justice." *Kantian Review* (2012a), Vol. 17:2, pp. 327–356.

spheres of private right, but also by ensuring that the totality of laws make it possible to interact in ways reconcilable with everyone's innate right to freedom. Since the focus has been on economic justice, I paid attention only to issues concerning land, the economy and finances, unconditional poverty relief, securing transitions from passive to active citizenship, and the reform of states into what Kant calls "true republics." Notice, however, that if we read Kant's position through what I called "voluntarist lenses" earlier in the chapter, none of these features of his account are visible. Only when we understand that, for Kant, public right is *not* reducible to private right, can we begin to see why and how his position is actually able to capture these important concerns of economic justice. Therefore, Kant needs no reformulation (as so many have thought) in order to have something quite significant to say about economic (including systemic) injustice. Moreover, we see that the account is thoroughly an account of freedom. At no point does it appeal to contingent aspects of the human condition or to ethics and virtue to make its case. One advantage of this focus on freedom is, I believe, that it can provide a liberal critique of—rather than assume away—some of the most pressing systemic problems concerning the core institutions within which we live and upon which our exercise of freedom is dependent in modern states. The account can therefore make sense of major developments in modern, liberal states, such as public, systemic efforts to combat poverty and provide conditions of education for all.

In making sense of those kinds of development, Kant can both capture the intuitions in Nozick that have such liberal appeal and show why an account of economic justice that stays consistent with them captures the merits of Rawls's focus on the just operations of the basic, coercive legal-political institutions of a liberal state. To state this point from a different direction: an advantage of Kant's account is that it can overcome a split in liberal freedom theories of justice like the one between Nozick and Rawls. If we read this dispute through Kant's eyes, a major problem with Nozick's theory is that it does not appreciate the nature and full implications of the state's monopoly on coercion. That monopoly does not only introduce a new moral fact important to understand why states must secure access to legal protection for all (as Nozick argues), but it is also a new, morally important fact with regard to the guarantee of legal access to

means for all (unconditional poverty relief). Two further problems with Nozick's position are that he fails to appreciate that justice is impossible in the state of nature and (relatedly) that the public authority is not yet another private person, but a *public* person, that is, a legal-political institutional framework through which we act to enable rightful interactions between us. The effect of these mistakes is that Nozick fails to see, and so fails to make sense of, how public and private law complement each other in just, liberal states and how these institutions are reformed over time (when things go well).

Rawls, on the other hand, ducks the question of whether or not justice is possible in the state of nature, and, indeed, in his 1971 account of the theory he seems to assume (like Nozick) that the reason why we have established states is mere prudence in response to the Humean circumstances of justice. Unfortunately, however, this also means that his theory of justice as fairness (in all its versions) has a non-existent account of private right, and Rawls also does not quite appreciate how his theory of the basic structure is best understood as an account of public right (in Kant's sense of the term). If we do view Rawls's theory as an account of public right—indeed an account that can be supplemented by Kant's account of private right or, for that matter, a Nozickian or any other libertarian freedom-based account of private right—libertarian objections of Nozick's kind no longer hold against it. Finally, if Nozick's and Rawls's theories are reformed along these Kantian lines, both become capable of giving better, fuller critiques of modern, liberal societies and their sustained reform efforts. Consequently, reformed versions of these theories may also provide a way of overcoming some of the related, unproductive political discussions between so-called leftwing and rightwing liberal politicians in modern states.

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