

Kant on Citizenship:  
The Systematic Unity of Freedom, Equality, and Independence

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## ABSTRACT:

Interest in Kant's legal and political philosophy has grown considerably in recent years. However, despite burgeoning scholarship in the area, many central issues that arise in Kant's political philosophy have gone unaddressed. One such issue is that of the rights and duties associated with citizenship. This thesis is concerned with presenting a systematic understanding of this aspect of Kant's discussion. I defend three central claims:

First, the three rights Kant claims are inseparable from the essence of a citizen—lawful freedom, civil equality, and civil independence—target progressively more determinate conceptions of the citizen as a right-holder. The broadest determination of the concept of a citizen is that of a human being who can act on his or her choices. A narrower determination of the concept of a citizen adds that the free human being is a member of a commonwealth. The complete determination of the concept of a citizen requires that the free and equal member of the commonwealth also be independent.

Second, Kant's interpretation of the Ulpian formulae specifies duties associated with these rights. All of the Ulpian duties are quite general. The obligations they impose are not restricted to the commonwealth in which the duty-bearer finds him or herself. They are obligations that we have to ourselves or to all others. However, we will see that despite their generality, the Ulpian duties can only be satisfied in a state. Moreover, each duty corresponds to a right of citizenship.

Third, the often-criticized distinction between active and passive citizenship in Kant's discussion is parasitic on the conception of the citizen mentioned above. The first three claims that I make in this thesis amount to a fourth, that I do not argue for explicitly; namely, that Kant's account of citizenship is both philosophically rich, and cohesive with his political philosophy as a whole.

## Introduction\*<sup>φ</sup>

Interest in Kant’s legal and political philosophy has grown considerably since 1983—the year of publication of Howard Williams’ *Kant’s Political Philosophy*, the first book-length treatment of the subject in English. However, this represents a very late development if we compare it to the constant attention given to Kant’s two major works in ethical philosophy—the *Groundwork for the Metaphysics of Morals* and the *Critique of Practical Reason*. Indeed, despite burgeoning scholarship in the area, many central issues that arise in Kant’s political philosophy have gone unaddressed or have secondary literature only in nascent stages of development. One such issue is that of the rights and duties associated with citizenship.

Kant’s discussion of citizenship has received some attention, though it has been mostly critical. This is because the vast majority of scholarship has focused on Kant’s distinction between active and passive citizens. A passive citizen is one who is protected by the state and under obligation to obey its laws, but cannot participate in law making. On the contrary, an active citizen is one who does (and must) so participate. Many people have been unsatisfied with the criteria by which Kant

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\*All citations to Kant’s work provide the page number as it is found in the Akademieausgabe or Handschriftlicher Nachlass, and reference to a particular work. The abbreviations I employ are the following:

A	Anthropology from a Pragmatic Point of View
CPR	The Critique of Pure Reason
G	Groundwork of the Metaphysics of Morals
HN	Unpublished Notes [Handschriftlicher Nachlass]
LE	Lectures on Ethics
LL	Lectures on Logic
MM	Metaphysics of Morals, general sections
PP	Toward Perpetual Peace
RL	Rechtslehre, the first part of the Metaphysics of Morals
SR	“On the Supposed Right to Lie from Philanthropic Concerns” [“Supposed Right to Lie”]
TL	Tugendlehre, the second part of the Metaphysics of Morals
TP	“On the Common Saying: That May be Correct in Theory but it is of no use in Practice.” [“Theory and Practice”]

Emphasis that appears in *italics* belongs to the original. My emphasis appears in expanded spacing.

<sup>φ</sup> I am grateful to Ralf Bader for comments on earlier drafts of this thesis.

determines who qualifies as an active citizen. The professions he chooses appear arbitrary, and he rules out women and minors altogether. This has led commentators to doubt the philosophical currency of Kant's account of citizenship as a whole. I believe the discussion, as it has developed in the literature, misses a crucial aspect of Kant's conception of citizenship—namely, that the distinction between active and passive citizenship is not exhaustive of Kant's understanding of the matter. The majority of this thesis will be concerned with presenting a more developed understanding of Kant's discussion. I defend three central claims:

First, the three rights that Kant claims are inseparable from the essence of a citizen—lawful freedom, civil equality, and civil independence<sup>1</sup>—target progressively more determinate conceptions of the citizen as a right-holder.<sup>2</sup> The account of citizenship as I develop it here follows a pattern familiar to readers of Kant's other works. It comprises a set of three attributes that progress systematically and, when taken together, constitute a unity.<sup>3</sup> The broadest determination of the concept of a citizen is that of a human being who can act on his or her choices. This corresponds to the right to freedom, which entitles us to be our own master. A narrower determination of the concept of a citizen adds that the free human being is a member of a commonwealth. This corresponds to the right to equality, which is the right to bear the same, equal, relationship to the law as everyone else. The complete determination of the concept of a citizen requires that the free and equal member of

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<sup>1</sup> RL 6:314.

<sup>2</sup> This progression appears four times in Kant's work, at TP 8:290, PP 8:349-350, MM 6:314, and SR 8:429. While the characterization of the progression changes in each instance (sometimes quite drastically), the content remains the same. I address differences in Kant's characterization of these rights at the start of each chapter (cf. 1.1, 2.1, and 3.1). See the Appendix for the passages in full.

<sup>3</sup> It difficult to avoid thinking about the categories of pure understanding from the *Critique of Pure Reason* here—especially the category of relation. I expect, though will not defend the view here, that relation, which comprises 1) Inherence and Subsistence, 2) Causality and Dependence and 3) Community (CPR A80/B106), bears a non-arbitrary relationship to the rights and duties of citizens. Indeed, Kant associates the three titles of external acquisition with the three categories of relation in the *Metaphysics of Morals* (RL 6:248).

the commonwealth also be independent. Independence both entitles and requires us to be co-determiners of the law to which we are bound.

Second, Kant's interpretation of the Ulpian formulae<sup>4</sup> specifies duties associated with these rights. All of the Ulpian duties are quite general. The obligations they impose are not restricted to the commonwealth in which the duty-bearer finds him or herself. They are obligations that we have to ourselves or to all others. This will come as no surprise to those familiar with the global scope of Kant's political philosophy. For Kant, the final end of a doctrine of right is not domestic security, but international peace. It is not my task here to identify precisely the relationship between global and domestic obligation. However, we will see that despite their generality the Ulpian duties can only be satisfied in a state. The relationship between these duties and the rights of citizens is thus an important step towards a more general understanding of Kant on political obligation.

Third, the often-criticized distinction between active and passive citizenship in Kant's discussion is parasitic on the fully determinate conception of the citizen provided by the attributes mentioned above. The three central claims that I make in this thesis amount to a fourth, for which I will not argue explicitly; namely, that Kant's account of citizenship is both philosophically rich, and cohesive with his political philosophy as a whole. This is far from being the dominant view. Most commentators are willing to reduce Kant's discussion to a series of remarks that betray the prejudices of the time in which he was writing. This is reflected in the fact that many bring up Kant's distinction between active and passive citizenship only to dismiss it either as inconsistent or patently outrageous. I will demonstrate that Kant's account of citizenship extends far beyond this. The central concern of Kant's political philosophy is external freedom. Kant develops this idea in three stages:

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<sup>4</sup> RL 6:236-237.

innate right; private right; and, public right. As we shall see, the rights of citizens correspond to the three stages in the development of this idea.

**Innate Right:** There is only one innate right, and that is to freedom. To possess an innate right, Kant maintains, is to possess an entitlement without any act to establish it. The innate right contains four separate entitlements: 1) to be your own master; 2) to be beyond reproach; 3) to innate equality; and, 4) to do whatever does not diminish what belongs to another. Each of these entitlements permits either, 1) the right to be the sole determiner of how you use your body, or 2) the right to resist any encroachments on the first entitlement. Right is analytically connected to the use of coercion and so the innate right entitles you to coercive action in the event of its violation.

**Private Right:** Private right determines the rightful use of objects external to us. The innate right only authorizes the use of what belongs to us internally. It says nothing about our use of external objects of choice. For this, an additional postulate is required: the postulate of practical reason with regard to rights. There are only three possible forms that an external object of choice can take. External objects can be: 1) things; 2) the choice of another person to perform a specific deed; and, 3) another person's status. Private right specifies the relations that must obtain for the use of external objects to be compatible with the concept of right.

**Public Right:** The rational structure of private right, because it is *a priori*, is knowable in the state of nature. However, Kant claims that our entitlement to external objects can only be made conclusive in a system of public law. Just as the postulate of practical reason with regard to rights was necessary given the innate right, so too the move to a condition of public right is necessary given private right. If it is possible for us to possess external

objects rightfully, we must be entitled to force others to leave the state of nature and form a society of public law. The constitution of this society, importantly, must be republican (cf. 3.2.2).

In demonstrating that Kant's account of citizenship extends beyond the distinction between active and passive citizenship and coheres with his discussion of external freedom more generally, I shall show that his discussion merits more serious consideration than it has heretofore been given.

Chapter 1: Freedom is the right of citizens possessed in virtue of their being human. For Kant, a right is an enforceable, non-instrumental claim against another person to the entitlement to act on one's choices (cf. 1.1.1). The right to freedom is the form that our innate right takes in civil society. As such, it entitles us to the use of our bodies. This specifies both the actions we are permitted to perform, and the limitations on those actions (cf. 1.1.4). It entitles us to be our own master, and to coerce those who interfere with that capacity. It also forbids us from depriving another of what belongs to him or her, and thus becoming reproachable from the point of view of the law.

The relevant Ulpian duty is *honeste vive*, "live honourably." *Honeste vive* is an ethical duty whose content is given by the concept of right. It requires that we set acting in a way that is compatible with our external freedom as an end for ourselves. That the content of the duty is given by the concept of right assuages the concerns we might have about the inclusion of an ethical duty in Kant's "General Division of Duties of Right" (cf. 1.2.1). If you are a person for whom the right to freedom is applicable, then you will have an obligation not to transgress that right (cf. 1.2.2); this is the requirement imposed by the first Ulpian duty.

Chapter 2: Equality is the right of citizens possessed in virtue of their status as a subject. This right requires that each member of a commonwealth bear the same,

equal, relationship to the law as every other member; it maintains that no person may possess an entitlement to coerce any other in a way in which he or she cannot also be coerced (cf. 2.1.1). This right, formal in nature, is consistent with great inequality in material wealth (cf. 2.1.2). However, some situations of dire poverty may actually result in formal inequality (cf. 2.1.3). In these cases, redistribution of material resources is necessary.

The relevant Ulpian duty is *neminem laede*, “do not wrong anyone.” This duty fits straightforwardly with the right to equality. However, an understanding of this fit requires an examination of Kant’s discussion of provisional right in the state of nature. In the state of nature, we are permitted to acquire external objects of choice, but that acquisition is merely provisionally right (cf. 2.2.2). This is because a unilateral will is insufficient for generating a determinate obligation. We are therefore required to leave the state of nature and enter a condition of public law. In such a condition, those for whom the right to equality is applicable will be bound by the second Ulpian duty.

Chapter 3: Independence is the right of citizens possessed in virtue of their status as a full citizen. This right is characterized as the ability (and duty) to participate in making the laws of the commonwealth to which you belong (cf. 3.1.1). The move from free and equal members of the state to independent citizens corresponds to the move from passive to active citizenship (cf. 3.1.2). While this latter distinction has received much critical attention, it can be fully understood only in the context of Kant’s broader discussion.

The relevant Ulpian duty is *suum cuique tribue*, “enter a condition in which what belongs to each is secure.” This duty is derived from the principles of the previous two (cf. 3.2.1). It requires that the system of public law we enter be republican (cf. 3.2.2). The third Ulpian duty will bind all those who possess the right

to independence. This is because each person who possesses that right also has the obligation to bring about a condition in which each can decide for all. It is only in this condition that what belongs to each person can be secure against every other.

# Chapter 1- Freedom

## 1.1- The Right of Human Beings

The right to freedom is the first of the three rights that Kant claims comprise the essential attributes of citizenship.<sup>5</sup> As a juridical right, freedom must be considered externally, in terms of the form of our relation to other people. However, it is not yet clear what a right to freedom involves. In order to explain the right to freedom I begin with a discussion of Kant's concept of right more generally (1.1.1). I then discuss the innate right to freedom (1.1.2). I do this because there is reason to believe that the right to freedom is the innate right, as citizens possess it (1.1.3). Finally, I present the right to freedom in light of my discussion of the innate right (1.1.4).

As with the other two rights of citizenship, Kant's characterization of the right to freedom changes between some of the passages in which it is mentioned. In this case, it is the passage in "Supposed Right to Lie" that differs most significantly. Rather than referring to the right to freedom possessed by human beings or individuals,<sup>6</sup> Kant's characterization in the "Supposed Right to Lie" refers to,

...an axiom, that is, an apodictically certain proposition that issues immediately from the definition of external right (consistency of the *freedom* of each with the freedom of everyone in accordance with a universal law).<sup>7</sup>

This difference should not concern us. As I have already stated, and will demonstrate below, we have reason to believe that the right to freedom is the innate right, as it is possessed by citizens. More than this, the innate right is derived from the concept of right analytically. This is exactly how Kant characterizes the axiom in the passage

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<sup>5</sup> RL 6:314.

<sup>6</sup> TP 8:290; PP 8:349-350; MM 6:314.

<sup>7</sup> SR 8:249.

above; it concerns the freedom of each, and issues immediately from the definition of right—i.e., it can be derived from that definition analytically.

#### 1.1.1- The Concept of Right

For Kant, a right is always connected to the protection of external freedom. This is because, for him, a right is an enforceable, non-instrumental claim against others to the entitlement to act on one's choices (just so long as that is consistent with each doing the same). In a section titled "What is Right?" in the *Rechtslehre*, he states:

The concept of right, insofar as it is related to an obligation corresponding to it (i.e., the moral concept of right), has to do, *first*, only with the external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other. But, *second*, it does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the other's *choice*. *Third*, 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...All that is in question is the form of the relation of choice on the part of both, insofar as choice is regarded merely as *free* and whether the action of one can be united with the freedom of the other in accordance with a universal law.<sup>8</sup>

This passage is concerned with the moral concept of right.<sup>9</sup> The moral concept of right is to be contrasted with what is laid down as right. The latter refers to the particular laws of a given country at a given time.<sup>10</sup> The former, on the other hand, leaves behind all that is empirical and "seeks the sources of [judgments of right] in reason alone."<sup>11</sup> The three features of the moral concept of right, as specified in passage above, are:

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<sup>8</sup> RL 6:230.

<sup>9</sup> From this definition, Kant claims that "Right is...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" (RL 6:230). This means that a condition of right does not exist until each of the conditions has been met. Given Kant's claims concerning the right of nations in both *Toward Perpetual Peace* and his Conclusion to the *Rechtslehre*, it is clear that Kant believes a state of right cannot be achieved. However, we have an obligation to bring ourselves closer to what such a state requires (cf. 3.2.2).

<sup>10</sup> RL 6:229.

<sup>11</sup> RL 6:230.

- 1) Right concerns only the external relation people can have to each other, insofar as their deeds affect one another. A deed is an action that can be imputed to the agent who performed it.<sup>12</sup> It is to be distinguished from an action for which the agent cannot be said to be the author. When I am pushed into someone, my movement is an action but not a deed. This is because I am not the author of my movement. However, if I choose to tackle someone and perform that action, then it is a deed. Given this distinction, the above passage states that right is concerned exclusively with freely performed, external actions.
- 2) Right does not concern the relation between one person's choice and another's need or wish. When we believe ourselves to be capable of bringing about the object of our desire, and act on that belief, we are exercising our choice. However, when the desire for an object is not paired with the belief that we have the means to bring that object about, then it is merely a wish.<sup>13</sup> Thus, to exclude the relation of one person's choice to another's wish is to exclude those actions from the domain of right that could not affect another's external action. If I do not have the means to bring about an object of my desire and am conscious of that fact, then your acting externally—for example, your pursuit of that object—cannot violate my claim of right. For, even if you had not so acted, my means would have been insufficient for my desire. Interference with the wish of another does not

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<sup>12</sup> RL 6:223.

<sup>13</sup> “Insofar as [the faculty to do or refrain from doing as one pleases] is joined with one's consciousness of the ability to bring about its object by one's action it is called *choice*; if it is not joined with this consciousness its act is called a *wish*” (MM 6:213). This passage leaves open the possibility that we can choose something without acting externally. That is, we can choose by acknowledging an object that we desire, being conscious of our ability to bring that object about, and refraining from acting. However, in the context of right, only those choices that have some relation to the choice of others—and thus, only those choices we act on—are relevant.

diminish that person's capacity for choice and thus cannot correspond to a legitimate claim of right.

- 3) Right is concerned only with the form of the relation of choice between the agents involved, not the matter of their choice. That is, right is indifferent to the ends that people are pursuing. It only requires that the form of each person's pursuit of his or her own ends is compatible with the freedom of every other person to pursue their own ends.

We can already see that these three features support my initial statement of Kant's definition of right. Right is a non-instrumental claim against others because it takes no account of the end being pursued. Furthermore, it is only concerned with the capacity for choice of each. However, I also said that right is always an enforceable claim against others, but nothing in the three features of the concept of right presented above supports this.

To understand how enforceability is part of the definition of right itself, it is helpful to look at the universal principle of right. It states: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."<sup>14</sup> This principle tells us the sufficient condition for an action's being considered right; namely, that it can coexist with everyone's freedom under universal law. Importantly, Kant does not believe that this places a limit on our free actions. Instead, freedom itself is limited to actions that are compatible with the external freedom of each under a universal law. Kant claims that the universal law of right follows from the universal principle of right. Indeed, the former is just the latter in its imperatival form. The universal law of right states, "[So] act externally that the free use of your choice can coexist with the freedom of

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<sup>14</sup> RL 6:230.

everyone in accordance with a universal law.”<sup>15</sup> Importantly for the relation between right and coercion, Kant claims: the universal law of right,

[Does] not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom *is* limited to those conditions in conformity with the idea of it and that it may also be actively limited by others.<sup>16</sup>

The reason for this is as follows: if someone’s action hinders the freedom of another, then the hindrance of that hindrance to freedom is consistent with right.<sup>17</sup> Coercion is just such a hindrance of a hindrance. If right is only concerned with external actions and a forceful stopping of any violation of right is consistent with right itself, then coercion is also consistent with right itself. Kant’s claim, however, is stronger than this. He maintains not only that coercion is consistent with right, but also that “strict right [—that is, right that is not mixed with anything ethical—] rests instead on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws.”<sup>18</sup> We have seen that right is concerned not with our motivation for acting, but requires the compatibility of our free, external action with the choice of everyone else. So, coercion that hinders the hindrance to an action that is inconsistent with right does not diminish the freedom of the person committing the wrong. This is because, by acting in a way that is inconsistent with the external freedom of every other, the person being coerced was not exercising his freedom. For this reason, the possibility of coercive hindering to hindrances of freedom is not merely compatible with right; it is contained in the concept of right itself.

### 1.1.2- The Innate Right

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<sup>15</sup> RL 6:231.

<sup>16</sup> Ibid.

<sup>17</sup> Kant’s reason for this is that “Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it” (RL 6:231). Hindering a hindrance to freedom counteracts its effect, and is thus consistent with right.

<sup>18</sup> RL 6:232.

In his “General Division of Rights,” Kant claims that we possess the right to freedom innately. To possess a right innately (or, as he also says, internally) is to possess it prior to any act to establish such a right.<sup>19</sup> It is worth quoting Kant at length on the innate right. He says:

*Freedom* (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. — This principle of innate freedom already involves the following authorizations, which are not really distinct from it (as if they were members of the division of some higher concept of a right): [1] innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence, [2] a human being’s quality of being *his own master*...as well as [3] being a human being *beyond reproach*...since before he performs any act affecting rights he has done no wrong to anyone; and finally, [4] his being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it...<sup>20</sup>

In this passage, Kant claims that the innate right already involves four authorizations (which I have identified with square brackets). There is not a real distinction between each of these rights as there is not a real distinction between any rights. Each is an instance of the protection of the right-holder’s freedom. The rights are: 1) To innate equality; 2) To be your own master; 3) To be beyond reproach; and, 4) To do that which does not deprive another of what is his. It is worth saying a little about each.

First, innate equality is the entitlement to exercise one’s freedom, and thus one’s capacity to coerce others, in the same way as every other. Kant claims:

The term *innate right* can therefore refer to nothing else but the use of my choice, or the freedom to resist the other’s choice, insofar as the maxim of my action is compatible with the freedom of others according to a universal law...Thus everyone is entitled to curb the choice of another, insofar as the latter’s action, by universal laws, would contradict the freedom of everyone else.<sup>21</sup>

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<sup>19</sup> There are two members of what Kant calls the “highest division of rights, as (moral) *capacities* for putting others under obligations...” (RL 6:237): Innate and acquired right. An acquired right is one that requires some act for its establishment.

<sup>20</sup> RL 6:237-238.

<sup>21</sup> LE 27:588.

Freedom is limited to those choices that are compatible with the choice of each. We have already seen that coercion is analytically connected to the concept of freedom, as the hindering of a hindrance to a free act is itself consistent with external freedom. Thus, it follows that every person who can act freely is equally entitled to coerce others to do the same.

Second, the right to be your own master is just the right to exercise your capacity for choice, as Kant understands it. Recall that external freedom is the exercise of your capacity to take up means towards ends that you have set yourself (consistent with the possibility of others doing the same). Given this definition, if another person wrongfully interferes with your use of your means or restricts the ends you can pursue, then you are not free.<sup>22</sup> Importantly, the right to be your own master is not a right to get what you want. Recall that right is not concerned with the matter of your choice. Instead it requires that your relationship with others be one in which you are able to exercise your external freedom.

Third, the right to be beyond reproach is the right that one not have one's right affected if one has done nothing to deserve it. It imposes a restriction on the use of coercion. Only those who have done wrong should be coerced. Otherwise, one's innate right to freedom has been violated.

Fourth, the right to do anything to others so long as it does not diminish what is theirs sets a limit to the actions the performance of which are grounds for coercion. Right is only concerned with the relation of the choice of agents. As we have already seen, this excludes from the domain of right any consideration of the choice of one in relation to the wish of another. That is, we cannot coercively restrict the choice of one as a result of the wish of another. The innate right specifies another limit to justifiable coercion. Kant's states that it is

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<sup>22</sup> I explain 'wrongful interference' below.

permissible to perform actions that do not diminish what belongs to others, “such things as merely communicating thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere...”<sup>23</sup> The point here is this: the mere communication of thoughts cannot possibly alter another’s capacity for choice. As a result of this, it is beyond the domain of right to enforce duties with respect to such acts. It is important to note that the inability of right to legislate with respect to promising does not imply a similar inability with respect to contract. The salient difference between the two is that contract is institutionally mediated, and depends on each party performing some external action. Thus, a dissenting party to a contract can be coerced to fulfill his obligation in a way that an insincere promisor cannot.<sup>24</sup>

### 1.1.3- The Innate Right and the Freedom of Citizens

It seems appropriate to match the innate right with the right to freedom given Kant’s characterization of the latter right as something that we possess in virtue of our humanity, or as individuals.<sup>25</sup> However there is more direct evidence to link the innate right to freedom with the right to freedom possessed by citizens. As I have already mentioned above, in “Supposed Right to Lie” Kant refers to what he elsewhere calls the right to freedom possessed by citizens as “an *axiom*, that is, an apodictically certain proposition that issues immediately from the definition of external right (consistency of the *freedom* of each with the freedom of everyone in accordance with a universal law).”<sup>26</sup> There are two passages that refer to the axiom of

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<sup>23</sup> RL 6:238.

<sup>24</sup> Indeed, in a footnote to the explanation of the fourth title of innate right Kant states: “The only kind of untruth we want to call a lie, in the sense *bearing upon rights...*, is one that directly infringes upon another’s right, e.g., the false allegation that a contract has been concluded with someone, made in order to deprive him of what is his” (Ibid.).

<sup>25</sup> TP 8:290, PP 8:349.

<sup>26</sup> SR 8:429.

outer (or external) freedom in the *Rechtslehre*; both are found in the discussion of original acquisition. They are:

- 1) But the law which is to determine for each what land is mine or yours will be in accordance with the axiom of outer freedom only if it proceeds from a will that is united *originally* and *a priori* (that presupposes no rightful act for its union).<sup>27</sup>

And,

- 2) Now, if these sensible conditions of possession, as a relation of a person to *objects* that have no obligation, are left out or disregarded (abstracted from), possession is nothing other than a relation of a person to persons, all of whom are *bound*, with regard to the use of the thing, by the *will* of the first person, insofar as his will conforms with the axiom of outer freedom, with the *postulate* of his capacity to use external objects of choice, and with the *lawgiving* of the will of all thought as united *a priori*.<sup>28</sup>

In both instances, the axiom of outer freedom is used to signal an entitlement that each has prior to any act to establish it (and prior to any law)—that is, it refers to the innate right to freedom.<sup>29</sup> In the first passage, Kant is concerned to note that any law governing our use of external objects of choice must be in accordance with the axiom of outer freedom. That is, it requires that external laws not violate the entitlement that we have prior to the law's creation. The second passage is more telling. It contains, implicitly, a progression from, 1) the axiom of outer freedom, to 2) the postulate of the capacity to use external objects, to 3) the lawgiving of the will of all thought as united *a priori*. We will come to associate this with the progression from innate right, to private right in the state of nature, and then to public right in a civil condition. I will leave the full explanation of this progression to my discussion of provisional right (cf. 2.2.1-2.2.2). It is sufficient that we merely note the

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<sup>27</sup> RL 6:267.

<sup>28</sup> RL 6:268.

<sup>29</sup> Byrd and Hruschka note this connection in their commentary, but provide no argument for it. They state, "Kant provides no examples, but without doubt, the "axiom of external freedom" refers to the assumption of an original right to freedom." They then identify this as the innate right (Byrd and Hruschka 2010, 10).

relationship here. It signals that we have *prima facie* entitlement to associate the innate right to freedom with the right of freedom of citizens.<sup>30</sup>

#### 1.1.4- The Right to Freedom

Thus, we have reason to believe that the right to freedom is the innate right as it belongs to citizens. Each of the rights contained in the innate right are of a similar nature. The first and second (to equality and to be your own master) specify an entitlement to act in a way that is consistent with the external freedom of all. The third and fourth rights (to be beyond reproach and to act in a way that does not diminish what belongs to another) set a limit to those entitlements. Acts that violate freedom may be rightfully stopped according to the right of equality. However, if the coercive action undertaken goes beyond the mere hindrance of the hindrance of freedom, then that action is itself inconsistent with right and its author is reproachable. Thus, the limit of our rightful coercion is also the limit of our irreproachability. The right to do what does not diminish what belongs to another also sets a limit to our right to be our own master. The latter right, as a right to exercise our capacity for choice, extends only to those actions that do not affect the external freedom of others. When we act in a way that goes beyond this entitlement, we diminish what belongs to another. In the context of the innate right, this can only refer to the innate freedom of the other. This is because the entitlement to the use what belongs to us innately is insufficient to entitle us to the use of external objects of choice. Thus, the innate right cannot authorize coercion that goes beyond the protection of our most basic means.

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<sup>30</sup> In *Public Right*, Kant also asserts the following: “And one cannot say: the human being in a state has sacrificed a *part* of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws...” (RL 6:316). This strongly suggests that the innate right to freedom just is the right to freedom of citizens. However, the passage finishes: “...that is, in a rightful condition, since this dependence arises from his own lawgiving” (ibid.). This indicates that freedom cannot only be a matter of the entitlements that comprise the innate right. As we will see, freedom also requires the rights of equality and independence.

The right to freedom delimits our innate entitlement. In doing so it also specifies the limits of rightful interaction. More specifically, the right to freedom forbids what Ripstein has helpfully labeled use and injury.<sup>31</sup> To use another person is to take advantage of the means they possess for your own purposes. This occurs when, for example, I force you into performing an action that promotes my purposes, but is at odds with yours. This is even the case when I benefit you through my use of your means. Given that right is concerned only with the form of the relations of choice of each, any instances of one person forcefully making use of another's means for purposes that person has not set for herself will be wrong.

To injure another person is to intentionally take away certain of his or her means. In doing so, one restricts his or her capacity for choice. This is because the intentional deprivation of the means of one person by another restricts the purposes the former can pursue as a result of the purposes of the latter. But, this is a form of subordination, and is thus wrongful.<sup>32</sup> To injure someone is to employ force where there is no entitlement to do so. As such, it goes beyond the entitlements we possess to be beyond reproach, and to do to others what does not diminish what is theirs.

Injury and wrongful use exhaust the ways in which we can violate another person's right to freedom. This is because every wrong will involve the diminution of a person's means, the use of their means for purposes they have not set for themselves, or a combination of both of these.

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<sup>31</sup> Ripstein 2009, 43-45.

<sup>32</sup> I take this explanation to have discharged my promise to explain wrongful interference.

## 1.2- *Honeste Vive*

We have now seen that we have strong reason to believe the right to freedom is the innate right, as it is possessed by citizens. This right entitles you to be your own master, and to coerce those who violate your external freedom. These entitlements are limited by the requirement that we do not diminish what belongs to another or make ourselves reproachable from the point of view of the law. I maintain that the first Ulpian duty—*honeste vive*, “live honorably”—corresponds to the right to freedom. Kant’s interpretation of this duty states,

*Be an honorable human being (honeste vive). Rightful honor (honestas iuridica) consists in asserting one’s worth as a human being in relation to others, a duty expressed by the saying, “Do not make yourself a mere means for others but be at the same time an end for them.” This duty will be explained later as obligation from the right of humanity in our own person (Lex iusti).*<sup>33</sup>

This duty requires that we set acting in a way that is consistent with our external freedom as an end for ourselves. According to both Kant’s lectures notes and unpublished material, *honeste vive* is an ethical duty. However, this causes it to look out of place in the *Rechtslehre*. All duties of right are duties to perform or refrain from performing certain actions. Ethical duties do not require the performance of an action, but rather the setting of an end. Thus, some discussion of the place of *honeste vive* in the *Rechtslehre* is necessary. By comparing it with the duty *honestas interna*, I argue in this section that *honeste vive* requires that we set limiting our actions to those that are consistent with external freedom as an end for ourselves (1.2.1). This duty corresponds to the right to freedom. The right to freedom provides us with an entitlement to act; *honeste vive* requires that we make it an end for ourselves to not transgress this entitlement (1.2.2).

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<sup>33</sup> RL 6:236.

### 1.2.1- The Place of Rightful Honor in the *Rechtslehre*<sup>34</sup>

Kant's discussion of the Ulpian duties comes under the heading "General Division of Duties of Right."<sup>35</sup> His table of duties in the Introduction to the *Rechtslehre* also claims that we have perfect duties of right to ourselves. However, Kant explicitly refers to the duty of rightful honor as a duty of ethics in the Mrongovius, Vigilantius, and Collins lectures, and in his drafts for the *Metaphysics of Morals*.<sup>36</sup> His claims in those passages are unambiguous. He states, for example,

1) *Honeste vive* is the principle of ethics...<sup>37</sup>

And again,

2) The formula [*honeste vive*] also signifies as follows: Act so that you are worthy of honour in your own eyes. The motivating ground must be, not honour, but worthiness of honour. This principle also gives us the motivating ground of virtue. Ethics applies to all duties, in regard to motives, but is distinct from *jus*.<sup>38</sup>

And finally,

3) [*Honeste*] *vive*. This is the principle of ethics, which can determine affirmative acts of duty, since it is directed to ends; e.g., promote the happiness of others according to your powers, seek to perfect yourself. But the rightness of all such acts rests only on this, that we cannot be externally compelled to them, and that therefore an inner compulsion alone occurs in them, the outer being absent, and hence that every agent coerces himself, no less than in an external action the judge would deter him from the wrongness of it.<sup>39</sup>

Each of these three passages unwaveringly places the duty of rightful honor in the category of ethics. *Honeste vive* is characterized as an internal obligation concerning the motivating grounds for our action. This, however, raises a question about the inclusion of the duty in the *Rechtslehre*. Kant sharply distinguishes between the obligations of ethics and right. Ethics is concerned with the internal grounds of one's action. Right, as we have seen, concerns the compatibility of one's choice with the

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<sup>34</sup> I am grateful to Arthur Ripstein for discussion on this topic.

<sup>35</sup> RL 6:236-237.

<sup>36</sup> LE 29:631-32; LE 27:527; LE 27:280; HN 23:386.

<sup>37</sup> LE 29:631.

<sup>38</sup> LE 29:632.

<sup>39</sup> LE 27:527.

external freedom of all under universal law.<sup>40</sup> More than this, a duty of right is one that a person can be coerced to fulfill. The same is not the case with ethical duties, as we cannot be coerced to adopt a particular end.<sup>41</sup> So, the inclusion of the first Ulpian duty in a discussion of duties of right raises a puzzle. How can we understand the place of *honeste vive* in Kant's political philosophy?<sup>42</sup> I think we can make sense of the inclusion of *honeste vive* in the *Rechtslehre* if we understand it as requiring that we set acting in a way that is consistent with our external freedom as an end for ourselves. The content of the duty would thus be concerned with external freedom and our relationship to others. However, the form of the duty would be straightforwardly ethical according to Kant's division of morals.

We can better understand what *honeste vive* requires if we compare it to another duty Kant claims we owe to ourselves; namely, *honestas interna*. This duty requires that we act in a way that is consistent with our internal freedom. More specifically, Kant claims it is a duty that each human being has to himself that

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<sup>40</sup> There has been considerable discussion about the relationship between right and ethics in Kantian moral philosophy. Indeed, there are some passages in which Kant states that ethics is the combination of juridical laws and the appropriate internal conformity to them (see, for example: MM 6:220 and RL 6:389). However, in other passages (see, for example, TL 6:239 and TL 6:383) he maintains that ethics and right are distinct. I believe that the latter position is more consistent with Kant's moral framework. For a discussion supporting this see Flikschuh 2010. For arguments to the contrary see Wood 2002.

<sup>41</sup> RL 6:231.

<sup>42</sup> There are a wide variety of interpretations of this duty in the literature. Gregor maintains that it is a moral duty that is prior to the division between ethics and right. This view is the result of her belief that *honeste vive* is a perfect duty to oneself that requires the performance of a certain action (1963, chapter 8). As right is concerned with the performance of actions, but only in relation to others, it is easy to see the motivation for Gregor's claim that the duty cannot be properly ethical or legal. However, as the passages I have quoted above state, Kant explicitly understands the duty as requiring the setting of an end. If this is the case, then the tension Gregor grapples with is non-existent. Ripstein maintains that it is a duty of right that cannot be coercively enforced. Rightful honor sets limits to the actions we can rightfully perform (2009, 37-38). However, this is at odds both with Kant's claims about the nature of the duty, as ethical, and the fact that a defining feature of duties of right is that they are externally coercible. Finally, Byrd and Hruschka argue that *honeste vive* is not a duty that we have to fulfill. They maintain that it is not a juridical duty that a person owes to him or herself, but rather a precondition for all external legal duties. While I believe this latter claim is, in a sense, correct, it is motivated by their additional claim that the three Ulpian duties differ only with respect to their modality. That is, each duty requires the same action, but the modal category from which that action is viewed changes in each case (2010, 63-64). However, this is at odds with the claims I make in this thesis, which argues that each duty contains separate content. My disagreement with Byrd and Hruschka must thus be validated by the arguments of this thesis as a whole. I do agree with their claim that each Ulpian duty corresponds to a different modal category, but not that it is the same duty in each case (see footnote 53).

requires the formal consistency of his maxims with the dignity of humanity in his own person.<sup>43</sup> The vices that are opposed to this duty,

...adopt principles that are directly contrary to [the human being's] character as a moral being (in terms of its very form), that is, to inner freedom, the innate dignity of a human being, which is tantamount to saying that they make it one's basic principle to have no basic principle and hence no character, that is, to throw oneself away and make oneself an object of contempt.<sup>44</sup>

Examples of such vices are lying, avarice, and false humility. Each of these, Kant claims, formally conflict with our dignity as free beings. Lying does so because it is in contradiction with the speaker's ability to communicate his thoughts, which is a natural end that we each possess. The wrong of eschewing this end consists in the fact that it makes the person's natural being (*homo phaenomenon*) a mere means for the achievement of an end set by the person's moral being (*homo noumenon*).<sup>45</sup> In telling a lie we undermine the institution of truth telling, which contrasts with our natural end of communicating our thoughts.<sup>46</sup> Avarice, which is understood as "living so narrowly as to leave one's own true need unsatisfied,"<sup>47</sup> conflicts with our dignity because it constitutes subjugation of ourselves to possible objects of possession. The desire to possess goods that contribute to happiness without the intention of using them subordinates our obligatory end of providing for ourselves to the contingent end of possession.<sup>48</sup> Finally, false humility, which Kant also calls servility, is inconsistent with our dignity because it requires that we belittle our own moral worth in order to achieve some gain.<sup>49</sup>

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<sup>43</sup> TL 6:420. Kant distinguishes between two aspects from which we can view the human being. The first, *homo noumenon* is free—the determiner of her own actions. The second, *homo phaenomenon* is determined to act according to her physical attributes (RL 6:241).

<sup>44</sup> TL 6:420.

<sup>45</sup> TL 6:429-430.

<sup>46</sup> G 4:422.

<sup>47</sup> TL 6:432.

<sup>48</sup> TL 6:434.

<sup>49</sup> TL 6:436.

Each of these three actions is wrong because each is inconsistent with our internal freedom, and the dignity that freedom imparts. *Honestas interna* is the virtue that opposes the vices of lying, avarice, and false humility. *Honeste vive* can be understood as imposing a similar requirement in terms of our external freedom. That is, it requires that we set acting in a way that is consistent with our external freedom as an end for ourselves. The third quotation above, in which Kant affirmed the ethical nature of *honeste vive* states, it “can determine affirmative acts of duty, since it is directed to ends...”<sup>50</sup> The ends in question are made clear in the following passage,

Although there is nothing meritorious in the conformity of one’s actions with right (in being an honest human being), the conformity with right of one’s maxims of such actions, as duties, that is, **respect** for right, is *meritorious*. For one thereby *makes* the right of humanity, or also the right of human beings, one’s *end* and in so doing widens one’s concept of duty beyond the concept of what is due...<sup>51</sup>

Here, Kant should be understood as saying that while external conformity to right—viz., the fulfillment of juridical obligation—is not meritorious, setting such conformity as an end is.<sup>52</sup> This is precisely how we should understand the requirements of *honeste vive*. The place of the duty in the in the “General Division of Duties of Right” is secure because the content of the duty is specified by the requirements of right. Without the possibility of rightful relations, *honeste vive* would not be an obligation for us. However, given the existence of external freedom, ethics requires that we set acting in a way that is consistent with our external freedom as an end for ourselves. It requires that we understand ourselves as people for whom rightful action is possible, and to act according to that understanding. Each of the Ulpian duties characterizes the requirements of right from the perspective of a

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<sup>50</sup> LE 27:527.

<sup>51</sup> TL 6:390.

<sup>52</sup> This overlaps with some of Kant’s claims about servility. He says, “Be no man’s lackey. — Do not let others tread with impunity on your rights. — Contract no debt for which you cannot give full security. — Do not accept favors you could do without, and do not be a parasite or a flatterer or (what really differs from these only in degree) a beggar” (TL 6:436).

different modal category. The first Ulpian duty views right as possible. Given that this duty corresponds to the broadest determination of the concept of the citizen, according to which we are not yet juridical subjects, the requirements of right are not yet actual. As we will see, the second Ulpian duty asserts the actuality of juridical obligation and the third asserts its necessity.<sup>53</sup>

### 1.2.2- Rightful Honor and the Freedom of Citizens

Each of the Ulpian duties specifies an obligation that the holder of its corresponding right will be obliged to fulfill. Any person to whom the right to freedom applies will be bound to fulfill the duty of *honeste vive*. Similarly, any person to whom rights to equality or independence apply will also be bound to fulfill the obligations imposed by *neminem laede* and *suum cuique tribue*, respectively. In this way, the Ulpian duties constitute a progressive determination of the duty bearer. This progression corresponds to the progression in concept of the citizen as a right-holder.

Recall that the right to freedom is the right to be your own master. It entitles you to pursue your ends in a way that is consistent with the possibility of every other person pursuing his or her own ends. The obligation imposed on us by *honeste vive* requires that we not transgress this entitlement. It requires that each person who possesses the right to freedom act within the limits of action for which that right provides an entitlement.

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<sup>53</sup> I owe this insight to Byrd and Hruschka (2010, 64). However, they use the claim that each of the Ulpian duties views right from the perspective of a different modal category in order to support their claim that the action prescribed by each duty is the same. That is, they claim that *honeste vive*, *neminem laede*, and *suum cuique tribue* all oblige the same action. While I believe they are correct in their claim that modal category from which right is viewed changes with each Ulpian duty, I do not agree that the three Ulpian duties require the same action. As we have already seen, the first Ulpian duty requires the setting of an end. The second and third, however, require the performance of certain actions. Thus, I believe, they cannot be equivalent.

## Chapter 2- Equality

### 2.1- The Right of Subjects

The right to equality is the second of the three rights Kant claims comprise the essential attributes of citizenship. It is a right that he says we possess by virtue of our status as a subject. Kant has a particular understanding of equality that concerns the form of each person's relationship to the law. I begin this section with an explanation of this type of equality (2.1.1). Then, I demonstrate why understanding equality in this way allows for substantial inequality in wealth (2.1.2). Finally, I end the section with a discussion of Kant's claim that the state is entitled to tax the wealthy in order to provide aid to the destitute because it appears to conflict with my comments in 2.1.2 (2.1.3).

Again, Kant's characterization of this right changes between the passages in which it is mentioned. Rather than calling it the right to equality in *Toward Perpetual Peace*, Kant refers instead to "the *dependence* of all upon a single common legislation (as subjects)."<sup>54</sup> However, given that he understands equality as a particular relation to the law that all share, this alternate characterization does not change the content of his account. In fact, it bolsters the view presented here that Kant's account of equality concerns a formal relation to the law.

#### 2.1.1- Subjects Equal Before the Law

For Kant, equality concerns each subject's standing in relation to the law. More precisely, people are equal when no person is able to coerce any other in a way that he could not be coerced himself. Equality is thus a characteristic that indicates the formal status of equal standing before the law. Kant claims that the formula of the principle of equality of subjects can read:

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<sup>54</sup> PP 8:349-350.

Each member of a commonwealth has coercive rights against every other, the only exception being the head of state (since he is not a member of the commonwealth but its creator or preserver), who alone is authorized to coerce without himself being subject to a coercive law. But whoever is *subject* to laws is a subject within a state and is thus subjected to coercive right equally with all the other members of the commonwealth...<sup>55</sup>

In this passage, Kant claims that each member of a state both has coercive rights and can be subject to coercive right equally. This means that each person is entitled to seek redress for a violation of his or her rights, and that each person is subject to such coercion should they violate the rights of others. Only the head of a state is excepted from possible subjection to coercion. If he were so subjected, Kant claims, “he would not be the head of state and the sequence of subordination would ascend to infinity.”<sup>56</sup>

The focus on the entitlement to coerce and subjection to coercion makes the relationship between individuals appear central to the right of equality. However, as is only implicit in the passage above, it is each subject’s relationship to the law that is the defining feature of equality. The relationship to other subjects is secondary. As I have already mentioned, in his discussion of the principles of a republican constitution in *Toward Perpetual Peace*, Kant says the second is the “*dependence* of all upon a single common legislation (as subjects).”<sup>57</sup> Kant’s formal understanding of equality provides the key to understanding the appropriateness of this characterization. We are equal when there is one law that we are all equally bound by, and can invoke in the case of wrongs. Inequality consists in one person being treated differently by the law. Equality is thus the dependence of each on a law that all share. This claim is also supported by “Supposed Right to Lie,” in which Kant is concerned to articulate the three principles that solve the problem of politics in a way that is

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<sup>55</sup> TP 8:291.

<sup>56</sup> Ibid.

<sup>57</sup> PP 8:349-350.

consistent with right. The second principle is the postulate of public law. This postulate is understood as “the united will of all in accordance with the principle of equality.”<sup>58</sup> Public law is characterized as a collective venture constrained by the principle of equality.

To say that equality is a particular relationship to the law is to say that it is a formal characteristic. This should come as no surprise given Kant’s definition of right. Recall that right itself concerns the “reciprocal relation of choice [in which] no account at all is taken of the *matter* of choice.”<sup>59</sup> To interpret Kant’s account of equality as concerning the material, rather than formal, circumstances of an interaction would thus be to understand his account as inconsistent with his own definition of right. We will examine the relationship between formal equality and material wealth in the following two sections. However, for now, it will be helpful to consider what Kant takes to be an important implication of his formal account of equality; namely, equality of opportunity as regards the possible achievement of rank in the commonwealth.

On equality of opportunity for the achievement of rank, Kant says:

From this idea of the equality of human beings as subjects within a commonwealth there also issues the following formula: Every member of a commonwealth must be allowed to attain any level of rank within it (that can belong to a subject) to which his talent, his industry and his luck can take him; and his fellow subjects may not stand in his way by means of a *hereditary* prerogative (privileges [reserved] for a certain rank), so as to keep him and his descendants forever beneath the rank.<sup>60</sup>

The discussion of equality of opportunity thus takes place in the context of a discussion of hereditary privilege. What it means for each to be able—subject to his or her talent, industry, and luck—to achieve any rank within a commonwealth is understood in terms of a prohibition on allowing birth (and thus inheritance) to

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<sup>58</sup> SR 8:429.

<sup>59</sup> TL 6:230.

<sup>60</sup> TP 8:292.

determine one's social standing. Kant says: "...since birth is not a *deed* of the one who is born, he cannot incur by it any inequality of rightful condition and any other subjection to coercive law than merely that which is common to him along with all others, as subjects of the sole supreme legislative power."<sup>61</sup> Inequality in rank itself—understood as marking a difference between inferior and superior, not commander and subject—is consistent with right. The prohibition does not concern the existence of a rank system altogether. Instead, it prohibits any action in which one person or group seeks to maintain their rank in a way that is incompatible with others rising to it (as in the case of a hereditary prerogative). This is inconsistent with the rightful equality each possesses as a subject because it permits holders of a certain rank to coerce others in a way those others could not also coerce them. Given that the nature of Kant's account of equality concerns the equal standing of each to the law, the wrong here must be with the existence of law that allows hereditary privilege.<sup>62</sup> This, again, demonstrates the purely formal nature of equality on Kant's account. Differences of rank are permissible. It is only the possibility of the determination of the rank of some by others—regardless of their talent, industry, and luck—that is impermissible.<sup>63</sup>

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<sup>61</sup> TP 8:293.

<sup>62</sup> Here it will be helpful to distinguish the way in which the entitlement to equality that forms part of the innate right differs from the right to equality of subjects. The former, as part of the innate right, only concerns the interference of others with what is internally mine (i.e., the use of my body). The right to equality of subjects, however, is an acquired right to stand in a certain relation to the law. It concerns an acquired status rather than an innate entitlement.

<sup>63</sup> A consequence of Kant's account of equality of opportunity for the achievement of rank is that material inequality cannot be used to support an argument for the provision of resources for those who are born into a low rank. To see why this is the case we must recall the distinction between a wish and a choice. We choose something when we take ourselves to have the means to achieve the object we desire. When we do not take ourselves to have sufficient means, we can only wish for the object. Kant's definition of right specifies that it is only concerned with the relation between agent's choices, not their wishes. In the context of equality of opportunity this means that a person who is without the means to achieve a higher rank has no claim of right to those means. If, however, he or she would be formally unable to achieve a higher rank given sufficient means, then a claim of right has been violated.

### 2.1.2- The Permissibility of Material Inequality

We have seen that Kant's understanding of equality is formal in nature. It takes no account of the matter of choice of each but instead focuses on the form of each person's relationship to the law. If one person is capable of coercing another in a way that he cannot in turn be coerced, the form of the relationship is unequal and thus impermissible. This formal, legal equality is consistent with significant inequality in material wealth. Kant says:

But 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, whether in physical or mental superiority over others or in external goods and in rights generally (of which there can be many) relatively to others; thus the welfare of one is very much dependent upon the will of another (that of the poor on the rich); thus one must obey...and the other directs...<sup>64</sup>

In this passage, the nature of material inequality appears to cause a problem for Kant. This is because he acknowledges that material inequality will result in a form of dependence. The poor are dependent on the will of the rich. This appears inconsistent with the innate right, which does not permit any such form of dependence. We have an entitlement, according to the innate right, to be our own masters. If material inequality leads to the dependence of some on the will of others, surely it must be impermissible on Kant's account. The tension, however, is quickly resolved. The passage continues,

But *in terms of right* (which, as the expression of the general will, can be only one and which concerns the form of what is laid down as right not the matter or the object in which I have a right), they are nevertheless equal to one another as subjects; for, no one of them can coerce any other except through public law...<sup>65</sup>

Despite the existence of material inequality, each subject is equal under the law. That is, each subject is equal in terms of coercive right. This equality, moreover, is all that

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<sup>64</sup> TP 8:291-292.

<sup>65</sup> TP 8:292.

matters in the eyes of the law. Thus, we must be able to understand the relation of dependence in which, for example, a poor employee stands with respect to a rich employer as rightful.

In order to be consistent with right, the material dependence of the poor on the rich can only exist within a relationship of formal independence.<sup>66</sup> To say that material dependence is limited by formal independence is to say, continuing with our example, that the employee can seek redress in the case of wrongs perpetrated by the employer. So, while there may be a relation of dependence—the employee needs the job to sustain himself—that dependence cannot be arbitrary from a legal perspective. The employee is subject to the will of the employer, but not his whim. This again demonstrates the fact that on Kant’s understanding of equality all that matters is the equality of each individual’s relationship to the law.

### 2.1.3- Material Inequality and Formal Standing

I have claimed that Kant’s account of equality is concerned with the form of each subject’s relationship to the law, rather than material equality. I have also explained why Kant believes that formal equality is consistent with great material inequality. However, there is still one consideration that needs to be addressed before we continue to the second Ulpian duty. In his discussion of state powers, Kant claims,

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs.<sup>67</sup>

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<sup>66</sup> Here I use ‘independence’ merely as a contrast to ‘dependence’, not in the technical, Kantian sense to be introduced later (cf. 3.1).

<sup>67</sup> RL 6:326.

In this passage Kant claims that the state is permitted to constrain the wealthy in order to provide means for the poor. This is *prima facie* inconsistent both with his characterization of right and my discussion above.<sup>68</sup> The appeal here is explicitly to the material circumstances of the destitute in a civil condition. Moreover, it is the wealthy who will be charged with providing the necessary means through coercive taxation.

To demonstrate the consistency of Kant's claim about welfare with his definition of right, we must be able to show that there is something formally impermissible about the existence of people who are unable to provide for their necessary natural needs.<sup>69</sup> This requires a discussion of the status of the innate right in the context of a civil condition. We will see that the condition of being unable to satisfy what is minimally required for unimpaired functioning is inconsistent with the innate right because it requires that the destitute are subject to the beneficence of the rich.

Recall that the innate right to freedom provides an entitlement to the use of your basic means—i.e., your body. Two of the four titles of the right—the entitlements to be your own master and coerce those who have violated your freedom—allow for the exercise of your external freedom. Furthermore, the exercise of that freedom must not be subject to the choice of another. However, this is exactly what happens when a person is unable to satisfy even their necessary natural needs. That person becomes reliant on others to provide the means that are necessary for his or her functioning. Moreover, this is the case even if all cases of

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<sup>68</sup> Indeed many commentators believe that Kant's political philosophy does not consistently provide grounds for any form of material redistribution. See: Williams 1983, 195-198; Hayek 1976, 43; LeBar 1999, 248. For discussions that support welfare rights from a Kantian perspective, see: Holtman 2004, Kaufman 1999, and Gilibert 2010. This is not the place to determine fully the extent or grounds of a possible right to welfare from a Kantian perspective. Thus, I will only seek to assuage concerns that Kant's discussion of providing means is inconsistent with his formal account of equality.

<sup>69</sup> Necessary natural needs should be understood as those needs that are essential to the person's functioning, and thus the exercise of their most basic means.

dire poverty are adequately addressed by charitable donations. We know from the *Groundwork* that there is an ethical duty to give to charity. However, this duty is both imperfect and non-enforceable. The meritorious duty to others concerns making humanity an end in itself, and that is not something a person can be coerced into.<sup>70</sup> It also allows for choice on the part of the beneficent person concerning when and to whom charitable donations are to be given. The result of this, in terms of right, is that the person who is unable to maintain him or herself is dependent on the choice of those who are better off. This dependence, moreover, concerns the use of the person's most basic means—i.e., his or her own body. Thus, there is reason to believe that dire poverty actually affects the form, and not just the matter, of people's relationships.

But, there is still cause for concern. The mere fact that one person is unable to meet his or her own needs is not obviously a relational characteristic. It may be true that if there is a duty of right to ensure that the basic functioning of each does not depend on the will of any other, then it is insufficient to depend on charitable donations in order to satisfy that duty. However, it is not clear that people have an entitlement to their basic functioning as a matter of right. If no such entitlement exists, then it would be impermissible to tax the wealthy for the benefit of the poor. I think the remedy for this problem is apparent if we consider the difference between the state of nature and a civil condition. Kant claims that in the state of nature rights are merely provisional. They become conclusive when we have made the transition to civil society, where there are public institutions that can enforce rights and make judgments in the case of disputes. The consequence of the determinacy of rights for poverty is that the destitute in a society have no options available to them as a matter of right other than begging. When property is possessed rightfully, taking the

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<sup>70</sup> G 4:430.

necessary means to sustain oneself becomes an offence; an action that can be coercively stopped.<sup>71</sup> However, begging—which Kant claims is “closely akin to robbery”<sup>72</sup>—relies on the charity of others. Thus, the reason that poverty still concerns the relation of choice of each is that the system of property that the state makes possible restricts the options available to those who cannot maintain themselves. Indeed, Kant affirms this point. The passage quoted above continues,

The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens.<sup>73</sup>

The property possessed by the wealthy is possible only in a state. But it is also the existence of the system of property that restricts the rightful use of means of the poor. This fact, combined with the fact that the type of condition being discussed—one in which the person is unable to meet even necessary natural needs—means that the formal relationship between the wealthy and the poor in such cases is impermissible. The innate right of the poor is only satisfied when the rich so choose. This is inconsistent with rightful relations in civil society. Thus, in some cases, redistribution of wealth is consistent with Kant’s formal definition of equality.

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<sup>71</sup> Kant says we have a permission to steal in order to stop ourselves from starving in the state of nature, but not in the civil condition (HN 23:385). I discuss this in 2.2.2.

<sup>72</sup> RL 6:326. The reason for this must be that both are inconsistent with the right of one of the parties. A beggar is outside of right because he or she has the use of her means determined by another. The robber, on the other hand, acts as though he or she was outside of right, by acting as though the system of property was only binding to others. Kant says of the thief: “Whoever steals makes the property of everyone else insecure and therefore deprives himself (by the principle of retribution) of security in any possible property. He has nothing and can also acquire nothing; but he still wants to live, and this is now possible only if others provide for him” (RL 6:333). The difference between the thief and the beggar is that the thief chooses to act in a way that is inconsistent with right. The beggar makes no such choice.

<sup>73</sup> RL 6:326.

## 2.2- *Neminem Laede*

We have seen that the right to equality is a right to have the same standing with respect to the law as every other subject in the commonwealth to which you belong. The right is concerned with a formal relation, and is thus consistent with great differences in material wealth. We have also seen that some differences in wealth must be considered formally impermissible—i.e., those in which the basic functioning of one is contingent on the choice of another. Violations of equality take the form of one person coercing another in a way that that person could not in turn be coerced. That is, a violation of equality is the use of coercion that is inconsistent with universal law. The second Ulpian duty—*neminem laede*, “do not wrong anyone”—is thus fitting for the right to equality. Every person to whom the right to equality is applicable will be bound to not wrong anyone. Kant’s interpretation of this duty states,

*Do not wrong anyone (neminem laede) even if, to avoid doing so, you should have to stop associating with others and shun all society (Lex iuridica).*<sup>74</sup>

As with the other two Ulpian duties, *neminem laede* imposes a general obligation on us. It does not state, “Do not wrong your countrymen” or “Do not wrong those with whom you come into contact.” It requires that we not wrong anyone at all. The fulfillment of this duty requires that we enter a civil condition, where each is a free and equal subject. This is a result of the fact that the state of nature is a state in which rights are indeterminate. In such a state, it is always possible to do wrong because the requirements of our entitlements are not sufficiently precise. While Kant suggests that shunning all society is a possible means of fulfilling the duty to wrong no one, his comments on the spherical shape of the earth indicate that he does not view this as a real option. Kant says: “...the spherical surface of the earth unites all

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<sup>74</sup> RL 6:237.

places on its surface; for if its surface were an unbounded plane, people could be so dispersed on it that they would not come into any community with one another, and community would not then be a necessary result of their existence on the earth.”<sup>75</sup> This passage claims that the boundedness of the surface of the earth makes community with others a necessary result of our existence. Thus, the possibility of fulfilling the second Ulpian duty by shunning all society is not a real one for us.

I begin this section with a discussion of the move from the innate right to private right (2.2.1). This corresponds to the shift in focus from what does belong to each internally to what can belong to each externally. Kant’s claim that the acquisition of external objects must be possible for us in the state of nature seems to conflict with his claim that a unilateral will cannot impose obligations on others. The resolution to this tension is to be found in Kant’s discussion of the *lex permissiva* and provisional right (2.2.2). The *lex permissiva* entitles us to acquire external objects of choice in the state of nature. We speak of rights being merely provisional in that state because the judgments that we each exercise in acquiring external objects of choice precede the determinate judgments made by a judge in civil society; a unilateral will is insufficient for generating determinate obligations. This is not the only way to understand the *lex permissiva*. We can also understand it as a right to do wrong in the state of nature (2.2.3). This would fit with Kant’s characterization of permissive laws in *Toward Perpetual Peace*. However, the signal weakness of this latter interpretation is that it is unable to explain Kant’s view that provisional acquisition of objects in the state of nature is true acquisition. The interpretation I develop here does not present the same problem.

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<sup>75</sup> RL 6:262. See also: RL 6:352 and PP 8:360.

### 2.2.1- From Innate to Private Right

The innate right to freedom entitles you to the use of your body and nothing more. That is, the innate right by itself does not entitle us to acquire and use external objects of choice.<sup>76</sup> Recall that Kant claims the highest division of rights is that between innate and acquired right. No act is required in order to establish the entitlements provided by an innate right. On the contrary, acquired rights all require some act for their establishment. The difference between innate and acquired right corresponds to the difference between what does belong to us internally, and what can belong to us externally. The innate right to freedom entitles us to all that belongs to us internally—our capacity for choice, and the use of our bodies. There can be no additional internal rights that we come to possess through some act. Acquired right, however, determines what can belong to us externally—things, the choice of another, and another’s status. The move in the discussion from innate to acquired right corresponds to the move from innate to private right. Private right, which concerns our entitlement to possess external objects of choice in the state of nature, contains the form of all the rights we come to have in civil society.<sup>77</sup> However, as we will see in the next section, such rights are merely provisional until we enter that latter condition.

Possession of objects of choice can either be intelligible or sensible. The latter form of possession, which Kant also calls empirical, consists merely in holding an object. When my sensible possession is disturbed I am wronged, but only because

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<sup>76</sup> Though my examples are restricted to the use of things, objects of choice can mean: “(1) a (corporeal) *thing* external to me; (2) another’s *choice* to perform a specific deed (*praestatio*); (3) another’s *status* in relation to me” (RL 6:247). These three possible objects of choice are: 1) property, 2) contract, and 3) status. What is said of property by way of example will be applicable to both contract and status. The term ‘object’ is sufficient to denote that Kant is not discussing the innate right to freedom. The reason for this is that “an object...can only be a corporeal thing (to which one has no obligation” (RL 6:270). Thus, while we are our own masters, we are not owners of ourselves.

<sup>77</sup> RL 6:297.

taking something from my grasp requires interfering with my body.<sup>78</sup> This means that the innate right to freedom explains the wrong of violating a person's sensible possession. Kant affirms this when he says: "...the proposition about empirical possession in conformity with rights does not go beyond the right of a person with regard to himself."<sup>79</sup>

Intelligible possession, on the other hand, is possession of an object consistent with that object's being in a different place to me. The wrong associated with intelligible possession consists not in the violation of what is internally mine, but in an interference with what is externally mine. Indeed, Kant claims that the real definition of what is externally mine is the following: "Something is externally mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object)."<sup>80</sup> If all wrongs associated with possession were explained by an interference with holding—that is, if all possession was sensible possession—then all wrongs would be reducible to violations of the innate right. Thus, it is a necessary presupposition of intelligible possession that we can be wronged by another's use of an object even when we are not holding it. We appeal to this type of possession all the time. It is not out of place to assume that when we own something, we do not always need to be holding it. When I leave my books on the desk at the library to go to lunch, they are still my books. A person would wrong me by taking them, even if in doing so my body remained untouched. However, because the innate right cannot explain the wrongs associated with this form of

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<sup>78</sup> RL 6:248.

<sup>79</sup> RL 6:250. This comment is made following Kant's statement that the distinction between claims of innate right and claims of acquired right differ in that the former are connected analytically with the concept of right, while the latter are connected synthetically. This is because the innate right to freedom follows directly from the concept of right itself, but cannot justify our use of external objects. However, the postulate of practical reason with regard to rights, in conjunction with the innate right, demonstrates the entitlement to external objects of choice. Thus, all judgments about acquired rights are synthetic.

<sup>80</sup> RL 6:249.

possession, we require something additional to demonstrate our entitlement to external objects of choice. This something is what Kant calls the postulate of practical reason with regard to rights. This postulate states,

It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to rights.<sup>81</sup>

The postulate considers a maxim that would make acquisition of all external objects impossible, regardless of the relations between possible owners with respect to their outer freedom. Such a maxim, Kant claims, would be contrary to rights. Thus, the postulate says that it must be possible that some object of choice can be within my rightful power.<sup>82</sup> In explaining the reasons for this, Kant states,

[Not having an entitlement to use external objects] would annihilate them in a practical respect and make them into *res nullius*, even [if] in the use of things choice [were] formally consistent with everyone's outer freedom in accordance with universal laws. — But since pure practical reason lays down only formal laws as the basis for using choice and thus abstracts from its matter, that is, from other properties of the object *provided only that it is an object of choice*, it can contain no absolute prohibition against using such an object, since this would be a contradiction of outer freedom with itself.<sup>83</sup>

This passage states that in order for the maxim considered by the postulate of practical reason with regard to rights to be consistent with right, we would have to understand some property of the object as imposing a prohibition on our use of it. This is because an implication of the maxim is that even if the use of the object were consistent with the external freedom of all under a universal law it would still have to be impermissible. This conflicts with our obligations of right. All that matters for right is the consistency of our use of objects of choice with the external freedom of

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<sup>81</sup> RL 6:246.

<sup>82</sup> Kant distinguishes between objects of choice that are within my power to use, and objects that are under my control. The former are objects that I have the physical capacity to use. The latter are objects on which I have exercised that capacity (ibid.). Something that I do not possess but is within reach (and belongs to no one) is an object within my power. If I reach over and grasp that object, it is under my control.

<sup>83</sup> Ibid. In quoting this passage, I follow Byrd in altering Gregor's translation of the first sentence from, "even *though* in the use of things choice was formally consistent..." to, "even *if* in the use of things choice *were* formally consistent..." (Byrd 2010, 99). As Byrd argues, the use of the subjunctive later in the sentence warrants translating *zusammenstimmen* in the subjunctive rather than the past tense.

all others. The maxim in question states that something other than this restraint imposes an obligation on us. Thus, the maxim cannot be binding for us. The result of this is that external objects of choice must be usable.

Despite the fact that external objects of choice must be useable for us, Kant claims that our acquisition of them in the state of nature cannot put everyone else under an obligation. When I acquire an object in that condition I assert that my will makes a rule for all. In making such an assertion, I claim that the freedom of every other is restricted by my action. Kant says:

By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have...Otherwise I would have to think of a right to a thing as if the thing had an obligation to me, from which my right against every other possessor of it is then derived; and this is an absurd way of representing it.<sup>84</sup>

When I unilaterally assert my will and take an object into my intelligible possession, I thereby assert that every other person has an obligation they did not have before; namely, to allow me to be the sole determiner of the use of that object.<sup>85</sup> However, this restriction of the freedom of others by my unilateral will is inconsistent with right. Only a general will that gives universal law can impose reciprocal—and therefore rightful—restrictions on freedom.<sup>86</sup> Thus, the assertion of my unilateral will is insufficient to hold others under an obligation.

### 2.2.2- Provisional Right and the *Lex Permissiva*<sup>87</sup>

Kant's claims about the acquisition of external objects in the state of nature are puzzling. On the one hand, he claims that such acquisition must be possible for

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<sup>84</sup> RL 6:261.

<sup>85</sup> We might think that sensible possession also creates an entitlement that did not exist before. That is, when I pick up an object, we might think that the duty you have not to interfere with that holding corresponds to an additional innate right of mine. However, Kant's claim that there is only one innate right should assuage this concern. There can be numerous acquired rights that correspond to the objects, choices, and statuses in our possession, but there are only various instances of the single innate right. Thus, the problem of acquisition is only a problem for acquired rights, not the innate right.

<sup>86</sup> Cf. 3.2.2.

<sup>87</sup> I am grateful to Thomas Sinclair for discussion on this topic.

us in terms of right. That is, the concept of right itself cannot prohibit our use of external objects. This claim is not limited to either the civil condition or the state of nature: it holds generally. On the other hand, he claims that a unilateral will is insufficient to hold others under an obligation. These claims seem to be at odds with each other.

One way to resolve the tension between these two claims is by examining Kant's characterization of the postulate of practical reason with regard to rights as a permissive law. He says:

This postulate can be called a permissive law (*lex permissiva*) of practical reason, which gives us an authorization that could not be got from mere concepts of right as such, namely to put others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession.<sup>88</sup>

This passage states that the postulate of practical reason with regard to rights gives us an authorization that the concept of right itself cannot provide. As I have mentioned above,<sup>89</sup> all claims vindicated by the innate right are connected analytically with the concept of right. Nothing extra is required in order to demonstrate our entitlement to the use of our bodies. The same is not the case with claims of acquired right. In the passage above, Kant is explicit that the *lex permissiva* supplies what is necessary for the authorization to acquire external objects. Thus, it is not just that external objects must be acquirable for us; we must also be able to put others under an obligation as a result of that acquisition.

Despite the fact that the *lex permissiva* entitles us to acquire objects, Kant claims that rights are merely provisional in the state of nature. He says,

Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is *provisionally rightful*

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<sup>88</sup> RL 6:246.

<sup>89</sup> See footnote 79.

possession, whereas possession found in an *actual* civil condition would be *conclusive* possession.<sup>90</sup>

There is reason to be skeptical about Kant's claim that rights are merely provisional in the state of nature. If the *lex permissiva* entitles us to put others under an obligation, then why are our claims merely provisional? The answer to this question must be that only an omnilateral will can confer an acquired right. In the civil condition, the assertion of a unilateral will would constitute a wrong. However, because no law forbidding such an act is in place in the state of nature, acquisition that imposes an obligation on others is permitted. Kant affirms this way of understanding of the *lex permissiva* in his notes for the *Metaphysics of Morals*. He states that the permissive law provides a natural law permission to do what would be prohibited under civil laws. The examples he gives are: being a judge in your own case; polygamy; and, stealing food when in danger of starving.<sup>91</sup> Each of these would be impermissible according to the laws of civil society. However, given that no such laws exist in the state of nature, we have a natural right permission to perform them.

In the state of nature, acquisition of external objects of choice is merely provisional because it is the result of a unilateral will. As we have seen, only an omnilateral will can confer a conclusive right. However, the judgments we make in the state of nature can be consistent with the requirements of right. Flikschuh, following Reinhardt Brandt, understands the *lex permissiva* as granting us a permission to act on dark, preliminary judgments about right.<sup>92</sup> Kant says,

Every determinate judgment of ours is based on a dark, preliminary judgment which we reach beforehand. The latter guides us in our search of something determinate. Someone in search of undiscovered shores, for example, will not simply sail into the seas. Before embarking, he will already have formed a preliminary judgment about his likely destination. Preliminary judgments precede determinate judgments.<sup>93</sup>

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<sup>90</sup> RL 6:257.

<sup>91</sup> HN 23:385.

<sup>92</sup> Flikschuh 2000, chapter 4.

<sup>93</sup> Kant quoted in Flikschuh 2000, 139.

Dark, preliminary judgments anticipate determinate judgments. Without such prior judgments, according to the passage above, a determinate judgment would be considerably more difficult to reach.<sup>94</sup> We can understand the *lex permissiva* as permitting the dark, preliminary judgments that precede the determinate judgments made in a civil condition. Provisional right is possible because we are each capable of making judgments about right in the state of nature. The rights are provisional rather than conclusive because our unilateral judgment is insufficient for the conferral of a determinate right.<sup>95</sup>

The indeterminacy of rights is the problem that Kant claims is the hardest to solve in the state of nature. This is because, in the state of nature, we lack a clear principle to mark the limits of our entitlements. The need for a permissive law and the indeterminacy of rights in the state of nature fit together. If rights were determinate, we would not require a permissive law in order to acquire external objects. Such acquisition, moreover, would be conclusive rather than provisional.

The possibility of provisional rights in the state of nature makes the move to civil society necessary. Kant claims,

If no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition...The difference is only that the civil condition provides the

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<sup>94</sup> The passage is ambiguous. It is unclear whether we could find something determinate even if we lack an idea of it from the start. In the case of right, it is clear that Kant believes we could not. I take that to be sufficient for my case here. Nothing turns on whether determinate judgments are possible without preliminary judgments in other cases.

<sup>95</sup> Byrd understands the *lex permissiva* as a power-conferring norm. She claims that Kant's description of a situation in which we acquire an object in the state of nature is one that is not wrongful. With this I am in complete agreement. However, she also claims, "Kant's reason for allowing coercion to force the move to civil society is not to establish rights to external objects of choice, but instead to *secure* these rights" (Byrd 2010, 102). This reads more like a claim from the Lockean state of nature than the Kantian state of nature. For Locke, our rights are determinate in a state of nature, but insecure (Locke 1960, II.ii). The state is therefore contingently necessary as a means of securing the rights we already have. For Kant, the state is necessary for the existence of conclusive right itself. For a comparative discussion of Kant and Locke on the state of nature see Flikschuh 2008. For an implicitly Lockean reading of Kant's state of nature, see Waldron 1996.

conditions under which these laws are put into effect...So if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature.<sup>96</sup>

This passage affirms my claim that provisional right is necessary for the move to civil society. If rights were not possible even provisionally in the state of nature, there would be no command to leave such a state. It also affirms my claim that the *lex permissiva* permits us to acquire external objects of choice because the laws of right are the same in the state of nature as they are in the civil condition.

### 2.2.3- *Lex Permissiva* as a Right to do Wrong?

I have claimed that the *lex permissiva* entitles us to unilaterally acquire external objects of choice in the state of nature; an entitlement that we could not possess in civil society. This is not the only way we can understand the *lex permissiva*. In *Toward Perpetual Peace*, Kant invokes the idea of the *lex permissiva* as a permission to do wrong given the circumstances in which an action takes place.<sup>97</sup> In discussing the external relation of a despotic state to other states, Kant claims that the despotic state need not give up its constitution if doing so will bring about its destruction. Rather, it may wait until a time that it is more secure before making the necessary internal changes. He says: “These are permissive laws of reason that allow a situation of public right afflicted with injustice to continue until everything has either of itself become ripe for a complete overthrow or has been made almost ripe by peaceful means...”<sup>98</sup> Thus, a permissive law as it is understood in *Toward Perpetual Peace* allows a wrong in anticipation of a future rightful condition. In the context of acquisition of external objects, this would mean that even though our acquisition and use of such objects in

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<sup>96</sup> RL 6:312-313.

<sup>97</sup> PP 8:348.

<sup>98</sup> PP 8:373n.

the state of nature is wrong, it is permitted until the point at which we can enter a civil society.

The strength of this reading is that it asserts that Kant's understanding of permissive laws remained consistent between *Toward Perpetual Peace* and the *Metaphysics of Morals*. It also captures the Kantian claim that the unilateral imposition of obligation is wrong. However, if we understand all acquisition in the state of nature as wrong, then it is difficult to make sense of the claim that our entitlements as a result of such acquisition are even provisionally right. Above, it was worth asking how rights could be provisional given that, on my interpretation, the *lex permissiva* provides the entitlement to acquire objects. The relevant concern there had to do with the provisionality of rights. The solution to the worry was to say that, while unilateral acquisition of external objects of choice was not wrong, it was insufficient to generate a determinate claim. We are not repeating that question here. Instead, the problem with the view that the *lex permissiva* is a right to do wrong is that it cannot explain how acquisition of external objects amounts to a claim of right at all. If all acquisition were merely wronging others in the state of nature, it is not clear how we would possess rights even provisionally. But, as we have seen, the existence of provisional right is necessary in order to generate the command to leave the state of nature. On the account I have given, possession is true possession in the state of nature, but the necessary indeterminacy of that possession requires the move to the civil state.

Rights are merely provisional in the state of nature. This is because a unilateral will is insufficient to make the determinate judgments required for a claim of conclusively rightful possession. The indeterminate nature of rights in the state of nature means that the full specification of the second Ulpian duty is only possible in

a civil condition. However, the obligations imposed in the state of nature are real obligations. We can see that the shift from the first Ulpian duty to the second corresponds to a shift in perspective with respect to right. The first Ulpian duty viewed right as merely possible. This is because it viewed the duty-bearer as someone who is merely capable of becoming a juridical subject. The same is not the case with *neminem laede*. This duty views right from the modal category of actuality, not possibility. The obligations imposed in the state of nature are real ones. Every person to whom the right to equality is applicable will also be bound by the second Ulpian duty. The concept of the citizen as right-holder at this level of determination is that of a member of a community of equal subjects. These subjects have duties to each other just as they have entitlements to external objects.

## Chapter 3 – Independence

### 3.1- The Right of Citizens

The right to independence is the third and final right Kant claims comprise the essential attributes of citizenship. It is a right that he says we possess in virtue of our status as citizens. The right to independence goes beyond the rights to be free and equal under the law. It entitles—and requires—those who possess it to be co-determiners of the law to which they are bound (3.1.1). While the concept of citizenship requires this trait, not all within a commonwealth will possess it. This leads Kant to draw the much-criticized distinction between active and passive citizenship (3.1.2). An active citizen is one who can, and must, participate in law giving. A passive citizen cannot so participate.

As with the other two rights, Kant’s characterization of the right to independence changes between the passages in which it is mentioned. In this case, both *Toward Perpetual Peace* and “Supposed Right to Lie” employ alternate characterizations. *Toward Perpetual Peace* refers to “the law of their *equality (as a citizen of the state)*...”<sup>99</sup> “Supposed Right to Lie” refers to,

...a *problem* of how it is to be arranged that in a society, however large, harmony in accordance with the principles of freedom and equality is maintained (namely by means of a representative system)...<sup>100</sup>

The *Toward Perpetual Peace* characterization of the right to independence may appear puzzling because of its employment of the term “equality.” However, as we have seen, Kant refers to the equality of subjects as a dependence on law in *Toward Perpetual Peace*. Thus, we must understand him as meaning something different by equality in the passage above. I think that we should understand “the law of their equality” as referring to a citizen’s equal capability to determine the law to which he

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<sup>99</sup> PP 8:349-350.

<sup>100</sup> SR 8:429.

or she is bound, not his or her equal standing before it. Consultation with the drafts for *Toward Perpetual Peace* confirms this. There, in preparation for what was published, Kant refers to “die selbständigkeit als staatsbürger [the independence as citizens]” as the third principle of republican constitutions—exactly that language we find in the *Rechtslehre* and “Theory and Practice” passages. This gives us strong reason to suppose that “equality” in *Toward Perpetual Peace* is equality to determine the law, rather than equal standing before it. The “Supposed Right to Lie” passage concerns the means by which freedom and equality are to be maintained in a state. The solution, given in parentheses, is a representative system. Given that Kant’s discussion of independence is a discussion of the principle by which we determine who is permitted to vote, the “Supposed Right to Lie” passage is also consistent with both “Theory and Practice” and the *Rechtslehre*.

### 3.1.1- Independence as Law-Giving

The right to independence is the right to participate in determining the law of the state in which one finds oneself. Kant describes an independent person as, “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.”<sup>101</sup> In this regard, it sounds much like the right to freedom with which we began. Indeed, it is the necessary consequence of Kant’s understanding of the innate right to external freedom. This is because the innate right to freedom requires the postulate of practical reason with regard to rights. This postulate permits us to acquire external objects of choice. The possibility of acquiring external objects of choice makes the move to a civil condition, where what belongs to each is fully determined, necessary. Once in a state, it must be possible that each can achieve the status of independence.

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<sup>101</sup> RL 3:314.

Those who do achieve that status have both a right and a duty to be co-determiners of the law to which they are bound.

The necessity of exercising the right of independence is a result of Kant's understanding of the general will of a state. The general will is the legislative branch of the state (or the sovereign). The role of the legislature is to determine the law to which all members of the commonwealth are bound.<sup>102</sup> On this Kant says,

But a public law that determines for everyone what is to be rightfully permitted or forbidden him is the act of a public will, from which all right proceeds and which must therefore itself be incapable of doing wrong to anyone. But this is possible through no other will than that of the entire people (since all decide about all, hence each about himself); for it is only to oneself that one can never do wrong. But if it is another, then the mere will of one distinct from him can decide nothing about him that could not be wrong, and the law of this will would, accordingly, require yet another law that would limit its legislation; hence no particular will can be legislative for a commonwealth.<sup>103</sup>

In this passage Kant affirms the role of the general will in law making. He also states that right is dependent on such law making, and that acts of the general will can thus do no wrong to anyone. Recall that right is "the sum of conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom."<sup>104</sup> A system of public law is one such condition of right. Thus, the mode of determination of the particular laws that comprise the system of public law must be incapable of wronging anyone. Kant's characterization of the legislature as a general and united will is meant to forestall a particular form of objection. Namely, one in which it is said that the legislature does wrong to the individuals who comprise the state. The resolution to this problem requires that each decide about all and thus about himself. Kant invokes the phrase *volenti non fit injuria* [no wrong is done to someone who consents] to explain how this resolves the

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<sup>102</sup> RL 6:313.

<sup>103</sup> TP 8:294-295. See also: RL 6:313-314.

<sup>104</sup> RL 6:230.

problem. A particular act cannot be wrong if we have consented to it.<sup>105</sup> Recall from the discussion of the innate right that use and injury exhaust the possible wrongs that we can inflict on a person. This is because every wrong will involve a diminution or use of a person's means that that person has not determined for him or herself. Consent to a particular action changes the normative structure of the interaction. This is because consent makes the otherwise wrongful act consistent with the purposes of both parties. What would be battery becomes merely touching. Use becomes a joint venture. For Kant this means that no particular will can legislate in a commonwealth.<sup>106</sup> If it did, then some for whom the laws are binding would not have consented to them. This would leave open the possibility that those who have not consented are wronged. Thus, only a general and united will is capable of such legislation consistent with right. The right to independence is the right to be a member of the general and united will.

### 3.1.2- Active and Passive Citizens<sup>107</sup>

Not every member of the commonwealth qualifies to become a full citizen. That is, not everyone in a commonwealth is independent. For this reason, Kant draws the distinction between active and passive citizens. This distinction has been

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<sup>105</sup> This is not precisely true. There are some actions that consent cannot make permissible. These actions, which conflict with the right of humanity in our own person, make us a mere thing. Kant refers to the right of humanity in our own person seven times in the *Rechtslehre*—at RL 6:270, 276, 277, 281, 296, 328, and 363. These passages exclude the introduction, where it is mentioned in the explanation of the first Ulpian duty and listed on the table outlining the division of duties at RL 6:240. In each instance Kant discusses either a limitation on external behaviour, or a permission that we must have as people who perform deeds.

<sup>106</sup> The discussion of provisional right in the state of nature should make this no surprise. One of the problems of the state of nature is that each imposes his or her unilateral will on every other by creating obligations those others would not otherwise have had. However, this makes the use of the basic means of each dependent on the will of another, which is inconsistent with the innate right.

<sup>107</sup> This section draws on J. Weinrib's discussion in "Kant on Citizenship and Universal Independence" (2008). However, I do not endorse the characterization of Kant's account of citizenship he presents. While I believe that Weinrib is correct in arguing for the claim that the distinction between active and passive citizenship is not as pernicious as it may at first appear, he is wrong to think that this distinction provides a comprehensive account of Kant's thoughts on citizenship.

the subject of much criticism.<sup>108</sup> This is because Kant's remarks on the distinction appear both arbitrary and sexist. He says:

- 1) He who has the right to vote in this legislation is called a *citizen*... The quality requisite to this, apart from the *natural* one (of not being a child or a woman), is only that of *being one's own master (sui iuris)*, hence having some *property* (and any art, craft, fine art, or science can be counted as property) that supports him — that is, if he must acquire from others in order to live, he does so only by *alienating* what *is his* and not by giving others permission to make use of his powers — and hence [the requisite quality is] that, in the strict sense of the word, he *serves* no one other than the commonwealth.<sup>109</sup>

And,

- 2) This quality of being independent, however, requires a distinction between *active* and *passive* citizens, though the concept of a passive citizen seems to contradict the concept of a citizen as such. — The following examples can serve to remove this difficulty: an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (*naturaliter vel civiliter*); all women, and, in general, 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 (except the state).<sup>110</sup>

In the first passage, Kant identifies two qualities that are necessary for independence. The first is natural: that of not being a woman or child. The second is conventional: that of being your own master. The necessity of each of these qualities appears to be reaffirmed in the second passage. Kant says that all women lack the status of independence, and that only those who do not depend on any other (except the state) can be considered independent. Both of these qualities threaten us with an easy misunderstanding of Kant's view. On the one hand, if we understand Kant as continuing to affirm the natural quality necessary for independence in the *Rechtslehre*, then we risk understanding him as claiming that only men can become citizens. On the other hand, failing to understand Kant's claims about dependents risks viewing

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<sup>108</sup> See, for example: Kleingeld 1993, 137-150; Uleman 2004, 596; Grcic 1986, 455; Potter 2002, 269ff; Ellis 2006, 551; Beiner 2010 23-25; Baynes 1989, 446; Kersting 1992a, 357-358 and 1992b, 153; George 1988, 204; Pogge 1997, 179-180; Mulholland 1990, 330; and, Mendus 1992, 166-190.

<sup>109</sup> TP 8:295.

<sup>110</sup> RL 6:314.

him as “[degrading] those without property into second-class political beings.”<sup>111</sup> I maintain that Kant did not continue to affirm the natural quality in his later work, and that his comments about dependency do not amount to a degrading of those citizens who are worse off.

### 3.1.2.1- The Status of Women

It is clear that in the passage quoted above from “Theory and Practice,” Kant’s inclusion of the natural quality excludes women from attaining the status of active citizenship. This means that no woman could be considered independent on that view.<sup>112</sup> However, the exclusion of women in the passage from the *Rechtslehre* does not mean that Kant has reaffirmed this requirement. Indeed, there is no mention of a natural quality necessary for active citizenship anywhere in the *Metaphysics of Morals*. There, Kant says, “The only qualification for being a citizen is being fit to vote.”<sup>113</sup> In both “Theory and Practice” and the *Metaphysics of Morals*, Kant is concerned with this condition for independence. The difference between the two accounts is Kant’s inclusion, in “Theory and Practice,” of a description of those he believes empirically satisfy the requirement. That is, the condition for independence—fitness to vote—is the same between the two texts. What changes is Kant’s addition of empirical claims concerning who meets that condition in one of the texts.<sup>114</sup> So, if the natural quality is not reaffirmed, the question that remains is: Whence the exclusion of women in the *Metaphysics of Morals* passage?

In order to answer this question, it will be helpful to reconsider the examples Kant provides in order to clarify his distinction. Active citizens include: 1) civil

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<sup>111</sup> Kersting 1992a, 357.

<sup>112</sup> It is no secret that Kant’s writing elsewhere—I am thinking especially of his discussion of ‘the character of the sexes’ at A 7:303-311—reflects sexist beliefs. However, I want to deny the claim that these beliefs form an essential part of his conception of citizenship.

<sup>113</sup> RL 6:314.

<sup>114</sup> J. Weinrib asserts that the theory of citizenship itself changes from “Theory and Practice” to the *Metaphysics of Morals*. I think this is too strong a claim. As we have seen, the structure of the account remains the same throughout Kant’s writing, though some of the details and presentation are changed.

servants, 2) schoolteachers, and 3) blacksmiths and carpenters. Passive citizens include: 1) domestic servants, 2) private teachers, and 3) tradesmen who go to the houses of the people they work for. These examples constitute three pairs. The question we must ask is what makes the former fit to vote, but the latter not. We already know that active citizens do not depend on any other for their preservation. This cannot mean that active citizens are wholly independent. Each member of the commonwealth is dependent on its laws and public institutions. Instead, active citizens are not dependent on any particular person for their preservation while passive citizens are. Let us examine the examples in turn:

A civil servant compared to a domestic servant. The former, for Kant, is dependent on no particular will because, as we have seen above, only the united will of all can legislate in a commonwealth. Thus, a civil servant does not depend on any other person's will, but rather on the will of all—that is, on the state. If there were an inconsistency with dependence on the state, then none would qualify as active citizens. The domestic servant, on the contrary, depends on the will of his or her employer. Thus, the domestic servant is dependent on the will of another particular person and thereby unfit for active citizenship.

A schoolteacher compared to a private teacher.<sup>115</sup> The schoolteacher, like the civil servant, depends on no particular will for his or her preservation. When Kant was writing, a schoolteacher collected a salary from a large pool of students, and thus did not depend on any particular student. Moreover, instructors of this kind were made to print their own materials and were not listed in the university catalogue. Thus, it could not be said that they were dependent on the university either. The private teacher, however, was dependent on the

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<sup>115</sup> This distinction has been the subject of extra scrutiny given the fact that Kant's own profession (a schoolteacher) is used as an example of a position that qualifies one for independence. For criticism along this line see: Beiner 2010, 25.

family for which he or she worked. This example appears to draw quite a contingent distinction and therefore requires extra scrutiny. If we suppose that the private teacher was especially talented, then it is possible that despite the fact that he or she worked for one family exclusively, work would always be available. However, if this is the case, then it is difficult to see why he or she would fail to count as independent on Kant's view. A possible resolution to this concern can be generated from Kant's claim that the independent citizen must not merely give others the permission to make use of his or her powers, but rather alienate what is his or hers. Even if the private teacher is in high demand, he or she still requires that others seek permission to make use of his or her powers. The same is not the case with the schoolteacher, who in the preparation for his or her course makes use of his or her talents without needing others to seek permission for such preparation. Thus, the schoolteacher qualifies as an independent citizen but the private teacher does not.

Blacksmiths or carpenters compared to tradesmen who go to the houses of the people they work for. This is perhaps the most difficult distinction, but the idea remains the same. Blacksmiths or carpenters, who own their own shop and sell goods, do not depend on any particular person in order to exercise their skills. This does not mean that they do not require patrons. However, the right to independence does not require that each is wholly independent. Only that each does not depend on any particular other person. The same is not the case with door-to-door tradesman. They depend on the will of another in order to exercise their art. This, however, is inconsistent with independence. The distinction between those who own their own shop and those who go door to door mirrors that between schoolteachers and private

teachers. The former do not need others to seek permission in order to exercise their art; the latter do. For this reason the former are independent but the latter are not.

Women are excluded from achieving the status of active citizenship on the *Metaphysics of Morals* account because of a contingent, historical property, not because of some natural quality. At the time Kant was writing, women were dependent on men for their preservation. Thus, according to the conventional criteria for active citizenship—that of being your own master—women did not qualify. However, as contingent, this is subject to change. Indeed, Kant’s claim that all women are dependents is now false. More than this, the reasons for this claim being false can be determined by Kant’s own criteria.

#### 3.1.2.2- The Status of the Poor

Again the passage from “Theory and Practice” leaves room for misunderstanding of Kant’s position in the *Metaphysics of Morals*. In “Theory and Practice” he claims that being your own master requires the possession of some property. Property is understood broadly to include any skill that one can use to support oneself. However, this implies that the poor, who may have a skill but no means to exercise it, are barred from active citizenship. It is this that led Kersting to claim that Kant’s account of citizenship degraded those who do not possess property into second-class political beings.

The solution to this worry comes from Kant’s qualification that an active citizen must depend on no other but the commonwealth in conjunction with his claims about welfare. As we have seen (2.1.3), Kant claims that the state has a duty to provide for the necessary natural needs of those who are unable to maintain themselves. This is because the formal relation between wealthier citizens and the poor, when no public institution is mediating their contact, is one in which the poor

are wholly subject to the choice of the rich. This is not a rightful relation. The state therefore has the right to enforce taxation in order to support the poor. This provides an institutional remedy to the formal wrong that would otherwise take place. As a result of this requirement, the poor meet the conventional condition for independence. They depend on no other than the commonwealth. Thus, Kersting is wrong to suppose that Kant's account of citizenship amounts to a degradation of those who have no property. On the contrary, they qualify for active citizenship on the grounds that they depend on the state but not on any particular will.

. . .

Criticism that Kant's account of active and passive citizenship excludes both women and the poor from becoming active citizens involves a misunderstanding. As we have seen, the criterion for active citizenship on both the "Theory and Practice" account and the *Metaphysics of Morals* account is the same. Both require fitness to vote. What changes is the inclusion, in "Theory and Practice," of Kant's understanding of the empirical requirements for such fitness. However, on the principle of distinction between active and passive citizens, both women and the poor are candidates for active citizenship. This should assuage any concern that Kant's account essentially bars such people from the status of independence.

### 3.2- *Suum Cuique Tribue*

We have seen that independence is the right to be a co-determiner of the laws to which one is bound. This right distinguishes active from passive citizens. The former have an obligation to form part of the general and united will of the people; the latter are merely parts of the state, without being members of it. The third Ulpian duty—*suum cuique tribue*, “enter a condition in which what belongs to each is secure”—corresponds to the right of independence. Kant’s full articulation of this duty states,

(If you cannot help associating with others), *enter* into a society with them in which each can keep what is his (*suum cuique tribue*). – If this last formula were translated “Give to each what is *his*,” what it says would be absurd, since one cannot give anyone something he already has. In order to make sense it would have to read: “*Enter* a condition in which what belongs to each can be secured to him against everyone else” (*Lex iustitiae*).<sup>116</sup>

So, the final Ulpian duty requires that we enter into a society in which each can keep what is his. This duty is derived from the first two (3.2.1). It requires not only that we enter a civil society of public law, but also that the constitution of that society be republican (3.2.2). The requirement that the state be republican assuages the concern we might have about the distinction between active and passive citizens. This is because the idea of a republican state requires that each of its members is independent.

#### 3.2.1- The Derivation of the Duty

Kant claims that the three Ulpian duties can be used as principles for dividing the system of duties of right. *Honeste vive* marks our internal duties. This is because it concerns an ethical obligation we owe to ourselves; namely, an obligation to set acting in a way that is consistent with our external freedom as an end. *Neminem laede* marks our external duties. This is because it concerns a duty that one has as a result

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<sup>116</sup> RL 6:237.

of other people's external acquisition of objects. While not internal, this duty is still necessary. This is because external freedom requires that external objects of choice are useable for us. The third Ulpian duty, "[contains] the derivation of the latter from the principle of the former by subsumption."<sup>117</sup> That is, *sum cuique tribue* is an external duty derived from the principle of an internal duty.

Kant uses the term 'subsumption' to denote the relationship between the major and minor premises in a syllogism. Subsumption is the recognition that the individual referred to in the minor premise is an instance of the condition of the major premise. It is the "cognition that the condition (somewhere) exists."<sup>118</sup>

Consider the following argument:

- 1) All humans are mortal.
- 2) Cajus is human.
- 3) Thus, Cajus is mortal.

The minor premise subsumes an individual under the universal rule of the major premise. In this case, it asserts that Cajus is an instance of the condition 'is human.' The conclusion of the argument, 'Cajus is mortal,' is an affirmation of the predicate of the universal rule for the subsumed cognition.<sup>119</sup> It takes the form of the second premise—that is, it is a judgment about Cajus. In the case of the Ulpian duties, the third takes the form of the first under the principle of the second. The first Ulpian duty concerns our acting in a way that is consistent with our external freedom, and the second concerns our association with others. Given Kant's comments about subsumption, we should understand the third Ulpian duty as one that takes our duty to act in a way that is consistent with our external freedom as the principle of our association with others.

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<sup>117</sup> Ibid.

<sup>118</sup> LL 9:121.

<sup>119</sup> LL 9:120.

### 3.2.2- *Suum Cuique Tribue*: The Republican Constitution

The obligation imposed on us by the third Ulpian duty is to enter a condition where what belongs to each can be secured against everyone else. We must understand what this means in light of Kant's claim that the duty is derived from the first two. I have argued that this derivation forces us to understand the obligation imposed by *suum cuique tribue* as requiring that we take the obligation to act in a way that is consistent with our external freedom as the form of our association with others. This goes further than the requirement, imposed by our duty to do no wrong, that we enter a condition of public law. It specifies the form that condition must take. As we have seen, this form requires that each represent all. For Kant, this can only occur in a republican constitution, in which the three state powers—the executive, legislative, and judiciary—are separate.<sup>120</sup> In such a state, each is able to act in a way consistent with his or her own external freedom and the external freedom of others.

There is a tension between the requirement that each make a decision for all in a republican constitution and the distinction between active and passive citizenship. We have seen that the requirement that the state have a general and united will is motivated by the concern that, if the laws were determined for some by others, then the legislature could wrong them. However, this is exactly what happens when there are passive citizens. Only active citizens are able to vote. Thus, only active citizens are capable of determining the laws to which each individual in the commonwealth is bound. But this means that some are making a decision for others, and that is inconsistent with right. What should we make of this? On the one hand, the legitimacy of law requires that only those who were co-determiners of it be bound by it. Otherwise the legislature could wrong those for whom the law it creates

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<sup>120</sup> PP 8:350-351.

is binding. On the other hand, Kant claims that there can be passive citizens in a state. Citizens who are protected by the law, but cannot participate in determining it. Kant was aware of this tension. He claims, “the concept of a passive citizen seems to contradict the concept of a citizen as such.”<sup>121</sup> When we use the term citizenship, we invoke all three of the rights discussed above—freedom, equality, and independence. A passive citizen, however, is only free and equal. Thus, the concept of a passive citizen is the concept of a person who is free, equal, and independent, but not independent. This is a contradiction. The form that this contradiction takes in civil society is that the passive citizen is one who ought to be a co-determiner of the law but cannot be. So, the passive citizen remains dependent on the will of others, just as in the state of nature. But this is inconsistent with their right. This inconsistency leads to the obligation on the part of the state—the purpose of which is to secure the right of each—to put all in a position of independence.<sup>122</sup> The concern about the existence of passive citizens is assuaged by the fact that the state is required to bring any passive citizen to a point at which he or she can become active.

. . .

The duty to enter a condition in which what belongs to each is secure from everyone else requires that we form a republican state. Republicanism is the only form of state in which the freedom of each is taken as the principle of its constitution. This freedom requires that each member of the state be an active citizen. In terms of the rights of citizens, this means that the state has an obligation

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<sup>121</sup> RL 6:314.

<sup>122</sup> Kant’s discussion of the necessity of bringing all to a condition of independence concerns the republican state as an idea of reason. Ideas of reason are ideas that go beyond all possible experience (CPR A644/B672). They do not provide the concept of a given object, but instead perform a regulative function. The exact use of ideas of reason in practical philosophy goes beyond the scope of this thesis. It will turn out, for example, that Kant’s view does not require that any state actually be republican. Instead, it would be sufficient for a despotic government to rule in accordance with the idea of republicanism. While this has important implications for the application of Kant’s political philosophy to contemporary discussion or particular empirical circumstances it does not affect his concept of citizenship. Thus, I leave this topic for another work.

to bring it about that every one of its members is free, equal, and independent. The connection between the right to independence and the third Ulpian duty should be clear. Each person who possesses the right to independence is bound to bring about a condition in which what belongs to each is secure. To remain in a condition where some are independent while others are not is to remain in a condition in which some are wronged by the decisions of others. This is because the freedom of some is restricted by the choice of others in a way that cannot be remedied through law. In the case of the third Ulpian duty, right is viewed through the modal category of necessity. Recall that the first Ulpian duty viewed right as merely possible. This is because the level of determination of the duty-bearer did not yet view him or her as a juridical subject. The second Ulpian duty viewed right actual. The level of distinction of the duty-bearer viewed him or her as a member of a community of equals to which real obligations are owed. The third Ulpian duty views right as necessary. This is because level of determination of the duty-bearer views him or her as a co-determiner of the laws to which he or she is bound. This capacity also confers the obligation to bring about a condition in which each member of the state to which the person belongs possesses a similar capacity. The right to independence thus corresponds to a duty to bring each member of the community into the same status.

## Conclusion

I began this thesis by saying that I would make three claims: First, the rights Kant claims comprise the essential attributes of citizenship constitute a progressive determination of the concept of the citizen. The broadest determination of the concept of the citizen is that of a human being capable of acting on his or her choices. This corresponds to the right of freedom. The right to freedom is the form that the innate right takes in civil society. It entitles us to the use of our most basic means, but nothing more than this. Without the right to freedom, the rights to equality and independence would not be possible. A narrower determination of the citizen is that of a member of a commonwealth. This already presupposes the right to freedom. Only those who are capable of exercising their capacity for choice can be subjects. As subjects, each person is entitled to the right of equality. Equality is the right to bear the same relationship to the law as every other member of the commonwealth to which you belong. It consists in each member's equal ability to coerce every other in all and only those ways that he or she can in turn be coerced. The complete determination of the concept of the citizen, however, also requires the right to independence. This is the right (and also the duty) to participate in law making. Independent members of the commonwealth are not merely passive; they take an active role as members of the general and united will. In doing so they make their freedom of choice the principle of interaction with all others. The concept of citizenship is fully determinate with the addition of independence because independence constitutes the final expression of an individual's freedom within the state.

Second, I stated that Kant's interpretation of the Ulpian formulae specifies duties that are associated with these rights. The first Ulpian duty requires that we set

acting in a way that is consistent with our external freedom as an end for ourselves. As an ethical duty, its performance cannot be coerced. All those to whom the right to freedom is applicable will be bound to fulfill this duty. The second Ulpian duty requires that we not wrong anyone. This is not achievable in the state of nature because such a state is one in which we acquire external objects of choice through the exercise of our unilateral will. However, only an omnilateral will is sufficient to confer determinate obligations. All those to whom the right to equality is applicable will be bound to not wrong anyone. This is because the right to equality presupposes that one is a part of a community of equal subjects. Each member of that community will have a duty to not wrong other members. Finally, the third Ulpian duty requires that we enter a condition in which what belongs to each is secure. This is only possible in a republic constitution. As we have seen, the three rights of citizens also comprise the principles of a republican constitution. Independence, the right to participate in law making, is necessary for the satisfaction of the third Ulpian duty. This is because it makes the freedom of each the principle of our form of association. While external objects may be secure in a state that comprises merely free and equal citizens, the freedom of each is only secure in a state in which each is a co-determiner of the law.

Third, and finally, I claimed that Kant's discussion of active and passive citizenship did not exhaust his beliefs on the matter. These claims amounted to a fourth, that Kant's account of citizenship is richer, and more cohesive with the rest of his political philosophy than extant literature acknowledges. In demonstrating that the rights to freedom, equality, and independence jointly comprise the concept of the citizen, and that the Ulpian duties are determined in relation to those rights I have now also demonstrated that Kant's account merits more attention than it currently receives.

## Appendix

### Freedom, Equality, and Independence: the Passages

- 1) “Theory and Practice,” 8:290:

“Thus the civil condition, regarded merely as a rightful condition, is based a priori on the following principles:

  1. The *freedom* of every member of the society as a human being.
  2. His *equality* with every other as a *subject*.
  3. The *independence* of every member of a commonwealth as a *citizen*.”
  
- 2) *Toward Perpetual Peace*, 8:349-350:

“The civil constitution in every state shall be republican.  
A constitution established, first on principles of the *freedom* of the members of a society (as individuals), second on principles of the *dependence* of all upon a single common legislation (as subjects), and third on the law of their *equality* (as a *citizen of the state*)...”
  
- 3) *Metaphysics of Morals*, 6:314:

“In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful *freedom*, the attributes 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 another; and third, that 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.”
  
- 4) “Supposed Right to Lie,” 8:429:

“Now, in order to progress from a *metaphysics* of right (which abstracts from all conditions of experience) to a principle of *politics* (which applies these concepts to cases of experience) and, by means of this, to the solution of a problem of politics in keeping with the universal principle of right, a philosopher will give 1) an *axiom*, that is, an apodictically certain proposition that issues immediately from the definition of external right (consistency of the *freedom* of each with the freedom of everyone in accordance with a universal law); 2) a *postulate* (of external public *law*, as the united will of all in accordance with the principle of *equality*, without which there would be no freedom of everyone); 3) a *problem* of how it is to be arranged that in a society, however large, harmony in accordance with the principles of freedom and equality is maintained (namely by means of a representative system); this will then be a principle of *politics*, the arrangement and organization of which will contain decrees, drawn from experiential cognition of human beings, that have in view only the mechanism for administering right and how this can be managed appropriately.”

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