Kantian-Republicanism: Toward a New Theory of Political Authority

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Abstract

States claim to have normative powers that ordinary people, like you and me, do not. These include the powers to give others binding moral obligations and enforce those obligations with violence. Since ordinary moral agents lack these abilities, states are claiming to be exceptional. Obviously, claims to be exceptional require justification. If none can be found, then we ought to conclude that these claims are mistaken — we should all become anarchists. This would require a seismic shift in the way we see the world. Most people on earth are governed by states that claim to have these powers, and much of day-to-day life is built around institutions that take these powers for granted. Moreover, many see the obligations purportedly created by their states as partly constitutive of their national identity and sense of self. Therefore, agreeing with the anarchist is not something we should do lightly. This is the problem of political authority. In this thesis, I examine the political philosophy of Immanuel Kant in search of ideas that might help us make progress on this problem. The result of this investigation is the sketching of a new(ish) theory of authority: *Kantian-Republicanism*. This combines the structure of Kant's theory with the republican apparatus of popular control. I argue that this theory is worthy of further consideration and development because it helps move the debate forward on the problem of political authority.

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Introduction

Political authority is strange if you think about it. It is a little like being born with a subscription to an awful network provider. The product never works properly, the customer service makes you want to cry, the fees are extortionate. And the worst part? The cancellation policy. The lucky ones have to leave behind everyone and everything they know. The unlucky ones get their subscription renewed.

The point is simple: if government were a business, it would have gone bust long ago. None of us would tolerate this sort of conduct in other areas of our life. We would switch providers, start our own companies, or exit the market entirely if we had to. But government is special. Or at least, that is what we are told.

Government officials claim to have a special standing that the rest of us lack. When I take money from people under the threat of force, it is called theft. When the government does it, we call it taxation. When I lock up people for misbehaviour, it is called kidnapping. When the government does it, we call it incarceration.

Political authority is weird because public officials are just as human as you and me. But they claim to be special because the rules say they are. Supposedly these are laws, customs, conventions, and so on that pick these people out and raise them above the rest of us. That in itself is weird.

But perhaps the weirdest thing of all about political authority is the fact that the rest of us don't just play along, we embrace it. Most of us think we have a reason to do what these people say, just because they told us to do it.

Indeed, most people are so readily accepting of political authority that Michael Huemer (2012) speculates we must all be suffering from some kind of collective Stockholm syndrome. Huemer is not making a sceptical point. He is not arguing that the *possibility* of widespread error undermines our belief in the state's legitimacy. Instead, he is claiming that the hypothesis of widespread systematic error is the best explanation for our intuitions of political authority because all the other explanations miss the mark (Huemer, 2012).

Huemer is not the only one to hold a view like this. Philosophers have discussed the problem of political authority at least as far back as Thomas Hobbes (1996). But ever since the seminal work of A. John Simmons (1981), political philosophers have become less and less confident in the theories of political legitimacy on the table.[1] As a result, it is fair to say that philosophical anarchism is a growing position in political philosophy (Simmons, 2000: Ch. 6).

But despite all the weirdness, I am not so sure that we are systematically mistaken about political authority. There are two reasons for this. First, I myself have clear and strong intuitions regarding political legitimacy. I seem able to consistently classify obvious cases of illegitimate regimes (the Third Reich, North Korea, the Assad regime in Syria, and so on). And I have clear intuitions that some regimes (Japan, Norway, New Zealand) are legitimate. Second, the fact that these intuitions are so widespread and so deeply held, seems to me to justify a presumption in the reliability of these intuitions.

[1] For a helpful overview of these theories, see Wellman & Simmons (2005).

Of course, this presumption is just a starting point. In the absence of a good theory of political authority, we probably should agree with the philosophical anarchists. Therefore, I think it is important to carefully consider the options out there.

In the decades following Simmons's work, political philosophers have put many new ideas and theories on the table (Raz, 1986; Dworkin, 1986; Wellman, 2001; Stilz, 2009). One influential strand of ideas has come out of the Kantian school of thought. Kantian ideas have, of course, always been central to modern political philosophy due to the influence of Kantian-inspired political theorists like John Rawls (1991) and Robert Nozick (1974). But the recent resurgence of interest has actually focused on the details of Kant's theory itself. This interest has followed on the heels of work by interpreters like Arthur Ripstein (2009). These interpreters have not only sought to explain Kant's ideas in their historical context; they have also argued that these ideas can shed light on the problems of political philosophy we debate today. In particular, they argue that Kant's political theory can help us answer the problem of political authority.

Contemporary political philosophers have taken notice of this Kantian promise. Some, like Anna Stilz (2009), have tried to build on ideas from Kant's theory to create new and interesting answers to the problem of political authority. Other political philosophers, like Niko Kolodny (2019; 2023) have argued that the ideas in Kant's theory ultimately fail to move the debate forward.

In this dissertation, I will examine Kant's political theory to see if it does contain promising and fruitful ideas we can use to answer the problem of political authority. I do not approach this task as a committed Kantian. In my view, Kant is one of the most interesting and influential figures in the history of philosophy. I hardly ever find myself agreeing with

what he says, but I almost always find his perspective thought-provoking. As a result, I am inclined to take his views seriously, even though I very rarely endorse them.

Given this perspective, I have devoted the first two Chapters of this dissertation to arguing for my preferred interpretation of Kant's theory. By my lights, this is the only way to proceed in good faith. Because unless we have the strongest version of Kant's theory on the table, there is little point in mining it for solutions to our problems.

To that end, I spend the first Chapter critiquing the standard interpretation of Kant's theory championed by Ripstein (2009). I argue that the standard interpretation fails to overcome an objection called the guarantee problem. I then argue that the problem can be avoided if instead we adopt my preferred interpretation. Not only do I think my interpretation is more accurate to what Kant thought, I also think it is the stronger theory.

In Chapter 2, I explain how my interpretation of Kant's theory answers the problem of political authority. I argue that Kant relies on the Hobbesian notion of representation as a principal-agent relationship to solve the problem of political authority. In a nutshell, the state gets to tell us what to do because, as our agent, its say-so is our say-so. When it gives laws to us, it is as if we have given those laws to ourselves. Once coupled with the plausible idea that we can indeed give ourselves reasons and obligations, we arrive at the conclusion that public officials do have the standing to tell us what to do. I think this idea is very attractive, and I definitely think it is under-explored in contemporary theories of political authority.

But in Chapter 3, I switch gears. I argue that even though my preferred interpretation of Kant's theory is internally coherent, I cannot accept the theory as true. My main problem is that Kant's theory relies on an idea I call *noumenal authorisation*. To justify the claim that the state serves as our agent, Kant postulates that we authorise the state through a special kind

of noumenal consent. Depending on how one chooses to interpret Kant's transcendental idealism, this can mean different things.

But I argue that however we choose to cash out this idea, it comes with commitments that I cannot accept because they strike me as incredible. To be clear, I think someone coming from the perspective of a committed Kantian would not share my misgivings. But since I am not a Kantian, I press ahead by proposing some constructive revisions to the theory.

My proposal pushes the theory in a more republican direction. I argue that we can replace the aspects of Kant's theory that rely on noumenal consent, with the republican notion of popular control. Doing so, allows us to keep what I find attractive in Kant's theory without having to accept commitments of noumenal consent that I find problematic. The result is a new(ish) theory I call *Kantian-Republicanism*.

However, adopting my republican revisions comes at a cost. That is why in Chapter 4, I address Thomas Simpson's impossibility dilemma — perhaps the most serious objection facing republican theories of freedom. Simpson argues that republican freedom is impossible because either the people have enough power to overthrow the state (in which case they dominate individuals), or the state has enough power to resist the people (in which case the state dominates everyone). Either way, someone is dominated. Simpson's dilemma does not affect Kant's original theory, but it poses a challenge for Kantian-Republicanism. I argue that Simpson's objection fails to show the impossibility of republican freedom, and so, the republican revisions I recommend do not come at too high a price.

In Chapter 5, I turn to a different set of challenges. Kantian-Republicanism is a functionalist theory — it grounds territorial rights in the state's successful performance of its essential functions. But functionalism has long faced three powerful objections from A. John

Simmons: the particularity problem (why does this state have authority over this population rather than others?), the boundary problem (why do existing borders have moral force?), and the annexation problem (why can't a just state legitimately acquire new populations by force?). I argue that Kantian-Republicanism's popular control condition provides a unified solution to all three problems. Because popular control depends on sharing a resistive culture, the social norms that enable mutual awareness and coordination, it naturally localises authority to specific populations (solving particularity), grounds borders in the geographical distribution of these cultures (solving boundary), and explains why conquered populations initially lack control over annexing states (solving annexation). This unified solution strikes me as elegant and gives intuitively plausible verdicts in paradigm cases.

To be clear, I am not sure whether this theory is true. But I do argue that it is surprisingly promising. Together, Chapters 4 and 5 defend Kantian-Republicanism against the objections most likely to derail it. The former defending its republican flank; the latter defending its Kantian flank. Hopefully, these arguments show the theory warrants serious consideration.

So, this dissertation sets out to explore Kant's political theory to mine it for insights we can use to address the problem of political authority. The result of that exploration is a theory that synthesises two closely related but nevertheless distinct traditions in political philosophy.

I doubt the arguments in this dissertation will persuade either Kantians, or republicans, or anarchists to accept the theory outright. But I am reasonably confident that the arguments in these Chapters will be relevant and interesting for all of these audiences.

Moreover, I hope that these arguments are of interest to fence-sitters like myself. I may not supply a conclusive answer to the anarchist's challenge, but hopefully I give them a good enough reason not to take the leap into philosophical anarchism just yet.

Chapter 1 – The Guarantee Problem

1 Introduction

As interest in Kant's theory of political authority has surged in recent years, it has been subject to a number of objections. Chief among these is the *guarantee problem*.[2]

The problem was initially presented as a general objection to both Kantian theories and republican theories. In this chapter, I will set aside discussion of republican theories to focus on offering a reply on behalf of Kantians.

The guarantee problem is a serious objection because it threatens the foundation of Kant's political theory. At the foundation of Kant's theory is the innate right to freedom. This right demands that no one should be the master of another — each should enjoy their freedom as non-domination (Ripstein, 2009: 42).

But according to this conception of freedom as non-domination, you are free just in case no other private person has the ability to use your body or property without your permission.

The guarantee problem challenges this presentation of Kant's theory by pointing out that no realistically achievable polity could fully guarantee that no one else be able to use what is yours. Actual states may be able to ensure that most people's belongings are left alone most of the time. But no state can prevent all cases of unauthorised use. Moreover, even if they could, this would not be sufficient. Freedom as non-domination requires that no one be *able* to use your stuff. So, even if your belongings are never *actually* used without your consent,

[2] This problem was initially introduced by Niko Kolodny (2019), but the name was coined by Tom Sinclair (2018)

you would remain unfree so long as others *could* use them without your say-so. Once we appreciate just how demanding this conception of freedom is, it is obvious that no realistically achievable state could provide the sort of guarantee that it requires.

But *if* the state's legitimacy depends on its ability to secure the freedom of all within its jurisdiction, then the fact that no state can guarantee everyone exclusive use of their belongings, implies that no state can be legitimate (at least in any realistically achievable possible worlds).

This is the guarantee problem in a nutshell. And what makes it so powerful is that it seems to rely on nothing more than Kant's own premises in conjunction with a very weak empirical assumption about the realistic limits of state power. In this chapter, I propose a solution to this problem.

I argue that the guarantee problem stems from making the instantiation of equal freedom for all a condition on the state's legitimacy. This condition follows from accepting the now-standard interpretation of Kant's political theory: Arthur Ripstein's three-defect model. On this view, equal freedom for all is the criterion of legitimacy, and this in turn requires the state to solve three defects with the state of nature: (i) the unilateral choice problem; (ii) the interpretation problem; and (iii) the equal assurance problem. This gives rise to the guarantee problem because providing equal assurance to all demands enforcement capabilities beyond the reach of any realistically possible governments. And so, I argue, the three-defect model forces us to confront the guarantee problem.

I propose that we can solve this problem by rejecting the three-defect model and replacing it with a one-defect model — according to which the state's legitimacy depends only on its solving the unilateral choice problem. I argue that this move specifies conditions of

legitimacy that do not assume unattainable enforcement capabilities. And so, this move suffices to solve the guarantee problem.

The Chapter is structured as follows. In Section 2, I explain the standard interpretation of Kant's political theory in detail. In Section 3, I explain the guarantee problem and its connection to the standard reading. In Section 4, I discuss existing proposals for solving the guarantee problem. I discuss what I take to be their shortcomings, but I also argue that these proposals lay the groundwork for my preferred solution. In Section 5, I propose my preferred solution — rejecting the three-defect model in favour of the one-defect model. Section 6 is the conclusion.

2 Kant's Political Theory (The Standard View)

The details of Kant's political theory are controversial. But in recent years, a consensus has emerged on how best to interpret the broad strokes of Kant's theory. This position has been defended in most detail by Arthur Ripstein, whose exposition of Kant's legal and political philosophy in *Force & Freedom* has been influential.

My own interpretation of Kant diverges from this consensus. But before I can explain how and why, it pays to set out Ripstein's interpretation.

2.1 The Universal Principle of Right & Freedom

On Ripstein's view, the fundamental axiom of Kant's political philosophy is:

> *Universal Principle of Right* (UPR): "an action is right if it can co-exist 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 universal law" (MM, 6:230).

The UPR provides a criterion for rightness. It tells us that something is right if it is consistent with equal freedom for everyone under universal law; otherwise it is wrong. But what exactly does Kant mean by 'freedom?'

According to Kant:

> "*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" (MM, 6:237).

In this passage, Kant defines freedom as independence from being constrained by the choices of others. Ripstein interprets Kant's notion of freedom as independence to be equivalent to the Republican conception of freedom as non-domination (Ripstein, 2009: 42-50).

Christian List & Laura Valentini (2016: fn. 5) also classify Kant's conception of freedom-as-independence as roughly equivalent to the Republican conception of freedom-as-non-domination, although their reason for doing so would likely be rejected by both Kantians like Ripstein and Republicans like Phillip Pettit. List & Valentini put Kantians and Republicans in the same category because they think that both schools of thought are committed to a 'robust'[3] and 'moralized' conception of freedom (See Valentini, 2012). However, both Ripstein (2012) and Pettit (2008a: 117) reject the claim that they each endorse moralized conceptions of freedom, but for different reasons.

[3] They claim both conceptions are 'robust' in the sense that freedom requires more than non-interference in the actual world. Freedom also requires non-interference in a suitably expansive set of close-by possible worlds.

Valentini & List claim that Republican freedom is moralized because it requires the absence of 'arbitrary interference'[4] and the notion of arbitrariness seems like a moral (because evaluative) term. The worry is that arbitrariness might just be a synonym for 'unjustified.' Which would make Republican freedom moralized because only 'unjustified' interference would be freedom limiting.

However, Pettit (2008a: 117) denies this, and instead claims Republican freedom relies on purely descriptive, rather than evaluative, terms. When Pettit uses the term 'arbitrary' he means 'uncontrolled.' Specifically, he means that the interference is not controlled by the target of interference.

> "Arbitrary interference, on this interpretation, is interference practised in accordance with the arbitrium, or 'will', of another. It is precisely what I describe here as uncontrolled interference: that is, interference that is exercised at the will or discretion of the interferer; interference that is uncontrolled by the person on the receiving end [...] On that usage the term has a perfectly descriptive, determinable meaning and people can agree on when it applies and when it does not apply, independently of differences in the values they espouse; it is not a value-dependent or moralized term" (Pettit, 2012: 58).

The main point Pettit is trying to make is that Republican freedom is not moralized because an arbitrary/uncontrolled will is cashed out in purely descriptive (as opposed to evaluative) terms. If Pettit is right, then Republican freedom would not qualify as moralised for the reason that List & Valentini put forward.

[4] I discuss Republican freedom at greater length in Chapter 4.

However, Valentini's (2012) argument to the effect that Kantian freedom is moralized might apply just as well to Republican freedom. Valentini argues that Kantian freedom is moralized because what counts as 'interference' depends on what we already have a right to. I explain this point more just below, but the general idea is that my freedom requires that no one else have the ability to use what is *mine* without my consent. The sense of 'mine' here is not merely what I currently possess, but rather what I have a *right* to. Therefore, whether a particular form of interference qualifies as an infringement of my freedom can only be settled by an independent account of what my rights are. According to Valentini, this moralizes Kantian freedom because it makes our freedom depend on a more foundational account of distributive justice.

It is seldom appreciated that the same line of attack also applies to Republicans. But just as Kantian freedom presupposes a distinction between mine and thine (what I have a right to versus what you have a right to) Pettit (2008b) has argued that Republican freedom presupposes a similar distinction between which of your choices require protection and which do not. By Pettit's lights, you are *not* necessarily dominated when another has the uncontrolled ability to interfere with some of your choices; you are only dominated when they have this kind of control over your 'protected choices.'

> "To have a theory of suitable protection is not yet to have a theory as to what choices are suitable for protection. [...] I call such a set of choices basic liberties. [...]. The free person or *liber* is the citizen or *civis* who is fully incorporated into a framework that guards those basic liberties against the control of others" (Pettit, 2008b: 203).

So, Pettit thinks that what counts as an infringement of another's freedom depends on which choices are protected as basic liberties. And he ends up in much the same place as

Kantians because he thinks that our basic liberties ought to extend to the resources we have a right to according to rules of property.

> "Set up common rules of ownership, for example, and it will be possible for everyone at once to own and use land or any other commodity according to those rules. And then the basic liberty of owning and using property according to those rules can be given suitable protection." (Pettit, 2008b: 214).

So, Valentini's objection applies to both Kantians and Republicans because both presuppose a system of rules according to which people are assigned rights to external objects. By Valentini's lights, this poses a problem because both views aim to ground *justice* in their respective conceptions of freedom. But if the underlying conception of freedom already presupposes an account of distributive justice, then both theories fail.

Ripstein's (2012) response to this objection strikes me as on target. He argues that what Valentini alleges to be circularity is better understood as indeterminacy. His point is that Kantian freedom (and therefore Kantian justice) is indeterminate without concrete social institutions to settle what belongs to whom. This is not a bug of the Kantian framework; this is a feature. It is only *because* freedom is indeterminate in this way, that freedom necessarily requires social institutions (including the state) to make, apply, and enforce rules that determine people's property rights. This is how Kant *justifies* institutions like the state — these institutions are morally required because they are needed to determine what counts as an infringement of freedom by settling what legitimately belongs to whom.

Whether Republican freedom and Kantian freedom occupy the same position in conceptual space need not depend on whether both are 'moralized' in the sense that List and Valentini claim. Rather, these conceptions of freedom are roughly equivalent because (i) both

defer to an indeterminate set of choices that must be made determinate by concrete social institutions; (ii) both identify freedom with the suitable protection of these choices from the wills of others; and (iii) both claim that protection is suitable only when it is robust against changes in the wills of others.

Once we appreciate the equivalence between Kantian freedom and Republican freedom, we can read the UPR as claiming that an action is right if it is consistent with everyone's non-domination in accordance with universal laws. This is why Ripstein (2009: 13) claims that the UPR generates each person's one *innate right to freedom* (non-domination).[5]

This lays the foundation for Kant's justification for political authority because, as we will see, Kant argues that the state of nature is wrong (i.e. not right) because it is inconsistent with equal freedom (universal non-domination).

2.2 The Postulate of Private Right

On Ripstein's reading of Kant, your ability to set your own ends is nothing over and above your ability to use the means at your disposal, and which you have a right to, as you see fit.

To appreciate this point one must reflect upon the Kantian view of practical agency. On this view, choosing is contrasted with wishing (Ripstein, 2009: 40). I may *wish* to leap a tall building in a single bound, but I cannot *choose* to do so. Kantians mark this difference by

[5] It is not clear to me whether Ripstein is quite right here. The claim that the innate right to freedom is generated by the UPR seems to suggest that this abstract principle of practical reason is the ground of this right. But it seems Kant thinks that this right is properly grounded in our human nature as rational beings. At any rate, the coherence of Ripstein's position does not depend on whether we take human nature or the UPR to be foundational.

saying that I can choose to do only that which I take to be within my power. So, whilst I can choose to stand on one leg, I cannot choose to leap a tall building in a single bound. The difference being that I take the former to be within my power, whereas the latter I do not.

This point generalises to objects other than my body. Because I have a car, I can choose to drive within the speed limit, but I cannot choose to speed past the sound barrier, even though I may wish to do so.

The lesson Ripstein extracts from these reflections is that *choosing* is a matter of *doing*. And so, one counts as choosing only if one *uses the means at one's disposal towards the pursuit of some desired goal*. So, on this picture of practical agency, my choosing to drive within the speed limit simply consists in my using my car in ways pursuant to that end. Unless I actually use my car, or at least try to do so, Ripstein's Kant would say that I do not count as having chosen but merely wishing.

So, if choosing is a matter of using my means as I see fit, then another has the ability to decide what ends I can pursue just in case they have the ability to decide how I use my means. If my neighbour can remotely turn off the engine of my car whenever he chooses, then I cannot set my own ends *independently* of him because his choices about how to use my car determine how I can use it and so what choices I can make. In this sense, he has become my 'master' — he dominates me.[6]

[6] One might wonder whether this shows that I am dominated or whether it merely shows that the car is not fully or truly 'mine.' This question gets to the heart of the guarantee problem (the chief focus of this Chapter). If my car's being truly *mine* depends on whether others lack the ability to use it without my consent, then the state can fulfil its morally mandated function only if it has the capacity to perfectly enforce the law. If on the other hand, my car can still be *mine* even though others sometimes have the ability to use it against my will, then

The only way to render myself independent of him would be to wrest control of my car away from him. In order for me to enjoy the sort of freedom that Kant envisions, I require, not merely use of what is mine, but also *exclusivity*. Unless I enjoy exclusive use of what is mine, I am unfree. And so, unless everyone enjoys exclusive use of what is theirs, there cannot be universal equal freedom.

The key idea is this. Ripstein's Kant thinks that "it would be inconsistent with right if usable things could not be rightfully used" (Ripstein, 2009: 19).

In other words, you must be able to have property rights over external objects in order to be free:

> "Any other arrangement would subject your ability to set your own ends to the choice of others, since they would be entitled to veto any particular use you wished to make of things other than your body" (Ripstein, 2009: 19)

So, Kant thinks that freedom requires that you be able to own things. The problem, as Kant sees it, is that owning things is impossible in the state of nature.[7] That is why he thinks

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perfect enforcement will cease to be a necessary condition on the legitimacy of the state. As we shall see, I argue for the latter position.

[7] There is a wrinkle in trying to simplify this exposition of Kant's theory. Kant draws a distinction between owning something 'conclusively' and owning it 'provisionally.' He says that while it is possible to own something conclusively *only* in a civil condition, it is possible to own something provisionally in a state of nature. There is much disagreement over what this distinction amounts to. According to the interpretation of Kant I defend in this Chapter and the next, I own something conclusively when others are obligated not to use it without my consent—conclusive rights entail corresponding obligations on others. In contrast, provisional rights do not impose obligations on others. On this view, I own something provisionally just in case my possession of it wrongs no one—provisional rights are mere permissions to use an object. This position on provisional rights

that you are required to leave the state of nature and proceed into a condition in which what belongs to you can be secured to you against everyone else, i.e. a rightful condition. This is what he calls the *postulate of public right.*

2.3 The Postulate of Public Right

The postulate of public right claims that "when you cannot avoid living side by side with all others you ought to leave the state of nature and proceed with them into a rightful condition." (MM, 6:307).

Ripstein claims that individuals satisfy the demands of the postulate of public right simply by living under a rightful condition. A state satisfies the postulate of public right (and is therefore legitimate) by being a rightful condition.

But what exactly is a rightful condition? According to Ripstein, the postulate of public right "requires that human beings enter a condition in which what belongs to each can be secured to him against everyone else." (Ripstein, 2009: 340) So, a rightful condition is one in which what belongs to each can be secured to him against everyone else.

If we think about it, this makes sense given the definition of right we get from the UPR. According to that principle, rightness is defined as equal freedom under universal law. And since equal freedom requires us to each have exclusive use of what is ours (i.e. have private property), a rightful condition requires us to each be secure in what is ours.

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is by no means idiosyncratic—Ripstein (2009:165) has roughly the same view. There is much that could be said about the role provisional rights play in Kant's theory but given that this role is orthogonal to Kant's justification for state legitimacy, I shall omit discussion of it.

According to Ripstein's Kant, the postulate of public right requires us to leave the state of nature and proceed into a civil condition because in a state of nature we cannot each be secured in what is ours — and so, cannot enjoy equal freedom. He identifies three main defects with the state of nature that make it impossible to have private property: (i) the problem of *unilateral choice*; (ii) the problem of *interpretation*; and (iii) the problem of *equal assurance*.

This is the three-defect model for diagnosing what is wrong with the state of nature. Each defect is sufficient to block a condition of equal freedom, and solving all three problems is necessary and, indeed, sufficient to realise a condition of equal freedom (a rightful condition). Therefore, on Ripstein's view, the state is legitimate if and only if it solves all three problems.

2.4 The Three-Defect Model

I shall briefly explain each problem in turn, and then explain how the civil state is supposed to solve them.

The first defect is the problem of unilateral choice. In order to be secured in our belongings, we must be able to have belongings in the first place. External objects can be ours only if we have a right to them. So, we must be able to have rights in external objects.

No one needs to do anything in order to have rights to their own bodies, but in order for anyone to have a right to an external object, someone had to establish a right to the object at some point in time.

But, in order for an act of acquisition to succeed in establishing a right to an external object, the act of acquisition must be authorised by a law, or principle of acquisition. So, the

question arises as to what law, or principle, an agent in the state of nature could appeal to when performing an attempted act of acquisition.

Ripstein's Kant thinks no such law or principle could exist in a state of nature, so that any attempt to perform an act of acquisition would have to presuppose that the act itself is capable of creating a law that binds everyone. In other words, one would have to presuppose a kind of natural authority over others. But since everyone is naturally equal, no individual has this sort of natural authority over others. Therefore, it is impossible to perform acts of intelligible acquisition in a state of nature. And unless acts of acquisition are possible, having acquired rights is impossible. So, we cannot have belongings secured to us in a state of nature because we cannot acquire belongings in the first place.[8]

The second defect Kant considers is the problem of interpretation. Suppose that the problem of unilateral choice could somehow be solved in a state of nature. This would leave us with general principles of acquisition that enable people to establish rights to external objects. Even under these circumstances, people would not be able to depend/rely on their acquired rights. This is because there would be inevitable reasonable disagreement over what belonged to whom.

The problem is that any general principle is useful only if it can be applied to particulars. This involves judging whether the particular in question qualifies as an example of one of the

[8] One can of course 'provisionally' acquire something in the state of nature. But this is not true acquisition because it does not give others an obligation not to use the thing of which, I have taken possession. Ripstein regards these merely provisional rights as "a right to use force to exclude others from an external object while you are in possession of it" (Ripstein, 2009:165).

general categories specified by the general principle. Doubtless, in many cases, it will be obvious to everyone whether a given particular falls within the bounds of the category specified by the principle. But inevitably there will be borderline cases — there will be particulars over which there is reasonable disagreement about whether it falls within the concept or not.

For example, imagine that I sell my property to you. But now we have a disagreement over the gazebo I installed in the garden. I claim that the gazebo is chattel, you claim that it is a fixture. If I am right, then the gazebo is mine because it would not be included in the sale; if you are right, then the gazebo is yours because it would be included in the sale. The problem is that the terms 'chattel' and 'fixture' share a fuzzy border. My gazebo lies on this border, and it is therefore indeterminate whether it belongs to you or me now.

Generally speaking, there will be reasonable disagreement because it is genuinely *indeterminate* how these borderline cases are to be decided. There is simply no fact of the matter as to whether the general principle applies to this particular or not. And if that's true, then there will inevitably be cases of reasonable disagreement over what belongs to whom.

The problem of interpretation shows that we cannot be secured in what is ours in a state of nature because what is mine and what is yours will be indeterminate. Sometimes it will be the precise contours of our belongings (does my land end *here* or over *there*). Other times (as with the gazebo) it will be indeterminate whether entire objects belong to us.

The third defect in the state of nature is the problem of equal assurance. Imagine that the first two defects of the state of nature were somehow solved so that people would have principles of acquisition and that the boundaries of any acquired rights would be fully

determinate. Ripstein's Kant says that even under these circumstances, people would still not have rights to external objects because of the *duty of rightful honour*.

Ripstein defines the duty of rightful honour as an internal duty of right.

> "It is an internal duty because no other person can enforce it; it is a duty of right because it creates the boundary within which freedom can be exercised [...] your entitlement to make your own voluntary arrangements with others is limited to arrangements that are consistent with the Universal Principle of Right. As a result, you cannot give another person a right to treat you as a mere means by binding you in ways in which you cannot bind them" (Ripstein, 2009: 18).

Paradigmatically, the duty of rightful honour limits the domain of private right by blocking you from voluntarily selling yourself into slavery — any attempt to do so would simply lack the intended normative effect. In the sphere of public right, the state is disabled from requiring you to serve the private interests of another (Ripstein, 2009: 18)

In order for me to have a right to something, everyone else must be bound by a duty not to use it. But each person's duty of rightful honour prevents them from being bound by arrangements that would allow others to treat them as a mere means. So, if property rights would allow some to be treated as mere means by others, then there cannot be property rights because the duty of rightful honour would block it.

This is supposedly why Kant claims that:

> "I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine" (6:256).

So, unless I am assured that everyone else will respect my rights, I cannot be bound to respect theirs because agreeing to such an arrangement, without the required assurance would be inconsistent with my duty of rightful honour.

An arrangement in which you were bound without assurance would be inconsistent with your duty of rightful honour because it would allow others to treat you as a mere means. In Ripstein's words:

> "[If you] refrain from taking what is mine, without assurance that I will refrain from taking what is yours, then you are permitting me to treat what is yours, and so an aspect of your capacity to set and pursue purposes, as subject to my purposes" (Ripstein, 2009: 162).

The basic idea is this. Accepting an arrangement in which I would be bound not to use your stuff, without assurance that you will not use my stuff, would effectively subject my belongings to your choice. You would get to decide what purposes my belongings serve because you would get to decide whether they are to be used by me or not. An arrangement such as this would thereby treat me as a thing rather than a person, or as a means, rather than as an end.

Now, if I have a right to something only if everyone is bound not to use it, then I can have a right to something only if no one else's duty of rightful honour blocks it. This means that I can have a right to an external object only if everyone is assured that I will not use their external objects. So, people can have rights to external objects only if everyone is assured that no one else will violate their rights to external objects. Any other arrangement would be inconsistent with the duty of rightful honour.

The state of nature is defective, from the perspective of acquired rights, because there is no natural assurance that everyone's rights will be respected. In the state of nature, the only assurance you can have that others will not use your stuff must come from your own strength, or from the goodwill of others. If everyone relies on their own strength, then some will have assurance, but not everyone — given natural variations in ability. But relying on the goodwill of others is also insufficient because it is not the kind of assurance that guarantees our independence from one another. Therefore, equal assurance is impossible in the state of nature. But since property rights require equal assurance, it follows that rights to external objects are impossible in the state of nature.

According to Ripstein, each one of the three defects with the state of nature is sufficient to block rights to external objects. The state is presented as the solution to these three defects. The state is characterised as having three core functions: (i) making law; (ii) applying law; and (iii) enforcing law. Each one of these functions is taken to be a solution to each of the three defects with the state of nature.

The state is taken to solve all three problems with the state of nature by performing its three core functions. By making law, the state sets out the principles of acquisition that allow people to establish rights to external objects. When judges apply the law to particular cases, they thereby resolve the indeterminacies that prevent us from distinguishing between mine and thine. By equally enforcing the law for all, the executive authority supposedly supplies everyone with equal assurance. This is why Ripstein claims that the postulate of public right "contains only the requirement that institutions make, apply, and enforce laws"(Ripstein, 2009: 198). Jointly, these three requirements constitute "the minimal conditions for the existence of a rightful condition" (Ripstein, 2009: 198).

2.5 The Unity of the Defects

One might wonder why solving each problem is an independent condition on legitimacy. For example, why would two out of three be insufficient? The underlying logic behind the three-defect model is that each problem is a distinct way in which equal freedom under universal law can be blocked.

As we saw above, Ripstein views Kantian freedom as conceptually tied to the idea of having exclusive use of what is yours. Each of the three problems in the state of nature represents a distinct way in which we might fail to have exclusive use of what is ours.

The problem of unilateral choice blocks us from acquiring external objects as our own to begin with. The problem of interpretation renders my use of an external object non-exclusive because equally valid interpretations assign the same object to different people. The problem of interpretation blocks us from owning particular external objects because, without an authoritative interpretation of the rules, there will be no fact of the matter as to exactly *what* belongs to *whom*. The problem of assurance blocks exclusive use because others are always able to use what is mine without my leave.

By solving each problem, the government secures equal freedom by "rendering to each" what is his (Ripstein, 2009: 342).

This is important to emphasise because it reveals the underlying motivation behind the three-defect model: legitimacy depends on equal freedom. So, according to Ripstein's three-defect model a government is legitimate if, and only if, it secures the equal freedom of its population.

3 The Guarantee Problem

Having articulated the standard view of Kant's political theory, we are now in a position to appreciate the force of the guarantee problem.

Kolodny's initial presentation of the problem is best expressed in the following passage.

> "Does a properly constituted state deprive individuals of the power to invade one another? As things are, the state does not deprive me of the power, for instance, to trespass on my neighbor's yard" (Kolodny, 2019: 105).

Kolodny's point is simple and intuitive. If I am secure in what is mine only when others are *unable* to use what is mine, then obviously no existing states meet this standard. To appreciate this fact, all we need do is reflect on the many banal opportunities we have to use the stuff of others with effective impunity. The example of trespassing on my neighbour's yard is particularly striking precisely because it is obvious that the state cannot prevent me from doing it ahead of time.[9]

What matters is that I retain the power to use her yard: if I will to trespass, then (all else equal) I will succeed. Of course, I have no desire to do so, and I am unlikely to do so. But this is not enough. Exclusive use (and therefore equal freedom) require that I lack the ability to use the belongings of others. So long as I retain this ability, exclusive use does not obtain.

To hammer home the problem, try to imagine what it would take to deprive me of the ability to use other people's belongings in this way. According to Kolodny:

[9] Ripstein's response would be to deny that the state must preclude all rights violations by preventing them ahead of time. I discuss this response below.

> "We can imagine contingent technological or physical conditions in which the state might deprive me of this power. The state might be able, for example, to fit me with a bracelet that would incapacitate me should I so much as will invasion. And we might insist that, in order to count as "properly constituted," a state would have to implement such a scheme of incapacitation. We might thus vindicate Suffices Against Private, but only by ratcheting up what a "properly constituted" state requires" (Kolodny, 2019: 105; cf. Sinclair, 2018: 36))

Kolodny's point is that there are states we can imagine with organisational and technological capabilities, able to fully secure our acquired rights. For this reason, the standard view of Kant's theory allows for the possibility of legitimacy. But, if this sort of enforcement capacity is a necessary condition for legitimacy, then the bar for legitimacy is too high for any realistically possible state to clear.

If no realistically possible state can be legitimate then it follows straightforwardly that no states in the actual world are legitimate. Therefore, the standard view of Kant's theory entails anarchism.[10]

We can present the guarantee problem in the form of an argument:

[10] Specifically, it entails *a posteriori* philosophical anarchism. See, A. John Simmons, J*ustification and Legitimacy: Essays on Rights and Obligations*, where he distinguishes between two forms of philosophical anarchism: *a priori* anarchism, which holds that some essential feature of the state (its coercive or hierarchical character) makes legitimacy impossible in principle, and *a posteriori* anarchism, which concedes that a state could in principle be legitimate but claims that states in the actual world are illegitimate because they fail to satisfy conditions of legitimacy for contingent reasons.

(1) A state is legitimate only if it secures the equal external freedom of everyone it governs. (*equal freedom requirement)*

(2) A state secures the equal external freedom of everyone it governs only if it guarantees/assures each person exclusive use of what is theirs. (*exclusive use requirement*)

(3) No realistically attainable state could guarantee/assure each person exclusive use of what is theirs. (*unattainability thesis*)

(4) [Conclusion] No realistically attainable state could be legitimate. (*anarchy thesis)*

The guarantee problem is obviously a problem for contemporary Kantians who hope Kant's theory can offer an attractive solution to the problem of political authority, and therefore help avoid the anarchy thesis.

But it is also a problem for Kant himself. To appreciate this, it is important to recall that Kant clearly intended his theory to justify the authority of actual states. After all, he took it to be the case that we ought to obey any de facto authority that has power over us (MM, 6:371). Given this aim, it is also an internal problem for Kant if his theory of authority entails the anarchy thesis. Of course, it remains open to an anarchist to accept Kant's theory and so to welcome this implication of Kant's view. But if his theory does entail the anarchy thesis, then this is at least a problem *for Kant,* given his stated aims.

Given that the argument above is valid, the only way for Kant to resist the anarchy thesis is to deny one of the premises. The force of the guarantee problem lies in how seemingly difficult it is to do this, given the standard interpretation of the theory. To appreciate this difficulty (and so to appreciate the force of the problem), we must therefore examine each of the premises in turn.

3.1 The Equal Freedom Requirement

The equal freedom requirement identifies the protection of its subjects' freedom as a necessary condition of the state's legitimacy. Therefore, if we accept this requirement, then any state that fails to secure the freedom of its subjects is not a legitimate state.

As we saw above, the equal freedom requirement is the essential feature of the three-defect model. Each defect of the state of nature is just one way in which equal freedom is blocked. Without the equal freedom requirement, we lack an explanation for why the state's legitimacy depends on its solving all three problems. So, to reject the equal freedom requirement basically amounts to rejecting the three-defect model which is the standard interpretation of Kant's political theory.

In Section 5, I will recommend that this is exactly what we should do.

3.2 The Exclusive Use Requirement

The exclusive use requirement states that freedom requires that no one else be able to use your stuff without your consent. In other words, it says that my neighbour is not free, so long as I retain the ability to trespass on her yard.

The exclusive use requirement follows from Ripstein's interpretation of Kantian freedom. As we saw above, that interpretation requires my neighbour to have exclusive use of her yard because otherwise its availability depends on my will. And since Ripstein thinks that her ability to pursue her ends depends on the continuous availability of her means, the fact that that availability depends on my will means that her ability to set her own ends depends on my will — in other words, she is unfree because she is not independent of my will.

Despite the fact that the exclusive use requirement seems to follow from Ripstein's interpretation of Kantian freedom, all the existing proposals for solving the guarantee problem involve rejecting this premise — including Ripstein's own proposal.

3.3 The Unattainability Thesis

The unattainability thesis is a straightforward empirical premise. Simply put, it says that no state in the actual world can satisfy the exclusive use requirement. To see why, just recall Kolodny's trespass case.

What that example of lawn-trespassing goes to show is just how easy it is to use another's resources without permission. To be sure, some people will lack the ability to use the belongings of others. But just imagine what it would take for the state to ensure that *no one* could trespass on the lawn of anyone else.

Clearly this is too high a bar for any state in the actual world to clear. And so, no existing proposals deny the unattainability thesis.

3.4 Summary

And that is it. The guarantee problem is the most powerful objection to the standard interpretation of Kant's theory because of its simplicity. The problem relies on only three premises, two of which are simply the standard interpretation's legitimacy criterion and an unassailable empirical premise. That means the only wiggle room available if one wants to hold on to the standard interpretation is to deny the exclusive use requirement.

In the next Section, I will evaluate existing attempts to do that.

4 Existing Proposals

I shall now consider some existing attempts to solve the guarantee problem.

4.1 Ripstein

Ripstein's solution to the guarantee problem involves rejecting the exclusive use requirement.

He denies that the state solves the equal assurance problem by preventing all violations of acquired right — that would be too high a bar for any state to clear.

Instead, he claims that the state provides equal assurance by providing *legal remedies*. A remedy is a corrective measure, whereby the state returns your belongings to you (or something of equivalent value).

The idea behind a remedy is that it returns you to the position you would have been in had the crime never occurred. So, the state may not be able to prevent your rights from being violated; but what it can do is ensure that your rights are upheld by returning your sphere of freedom to what it was before the wrong occurred. He writes:

> "the remedial aspect of the enforcement gives you all the assurance you need: you have what is yours, because if another wrongs you, you will be able to get it back. Private remedies secure private rights by ensuring that they will be effective in space and time. Norms apply even after they are violated, and coercive enforcement is just their effectiveness in space and time. Without that guarantee, rights are not secure, because whether they are effective depends entirely on the particular purposes of other persons" (Ripstein, 2009: 167).

So, Ripstein thinks that the state can be legitimate without satisfying the exclusive use requirement because remedies are sufficient to secure our rights, and the state can realistically provide remedies. By ensuring any stolen goods will be returned, the state makes it "prospectively pointless" to take what is yours (Ripstein, 2009: 165).

However, Sinclair convincingly argues that Ripstein's proposal does not solve the guarantee problem. He writes that Ripstein:

> "clearly assumes that the state's enforcement is fully effective. If it weren't, not all rights violations would be prospectively pointless, and it wouldn't be true that you were always able to get back what was taken from you. Yet it's precisely this assumption that the guarantee problem calls into question, and Ripstein says nothing to explain what justifies it. Nor does he explain why whatever justifies it wouldn't also be possible in the state of nature" (Sinclair 2018: 39).

Sinclair's point is that the guarantee problem specifically calls into question the state's ability to solve whatever problem lies behind the requirement for equal assurance. If Ripstein understands that requirement to be motivated by your need to retain exclusive use (in some extended sense) even when you are dispossessed of your belongings, then he is assuming that the state has the capacity to successfully identify who has stolen what and force them to return what they have taken (or something of equivalent value). But as Sinclair points out, this merely assumes that the state is capable of solving all cases of theft. And this is something that clearly no actual states can realistically attain. For this reason, Ripstein's appeal to remedies seems unable to solve the guarantee problem.

4.2 Sinclair

Sinclair's solution consists in rejecting what I have called the exclusive use requirement. He does this by reconsidering the initial motivation for the problem. By Sinclair's lights, the guarantee problem arises because of our innate equality. In a state of nature some people would enjoy more assurance than others that their claims to external objects would be respected due to natural variations in strength. The strong would be assured against the weak but not vice versa. Sinclair thinks it is this simple fact that offends our innate equality.

He says:

> "What is required is only that I am not *more* assured of compliance with my claims of acquired right than you are of yours. For only that makes for a problem of *unequal* freedom. Strictly speaking, a law with which no one had any hope of anyone's compliance wouldn't require anyone to lay herself open to being taken advantage of by others in a way that is incompatible with our innate equality" (Sinclair, 2018: 46).

Sinclair's idea seems to be that everyone requires an equal degree of assurance because otherwise their obedience to the law would leave them open to being taken advantage of by others. If that is right, then the state need not fully assure everyone to solve the problem — all it needs to do is ensure that no one leaves herself *more* open to being taken advantage of by others than they are open to being taken advantage of by her. Sinclair writes:

> "What matters is that no one has *ex ante* greater assurance than anyone else of respect for her acquired rights. And the state can secure this condition. […] So long as no one can reasonably expect to be at an advantage in respect of her capacity to evade justice (including the restitution of what is yours according to the laws of acquired right), the laws' authoritativeness does not involve authoritatively constraining anyone to leave herself more open to being taken advantage of by others than they are open to being taken advantage of by her. And this despite the possibility that some will violate others' acquired rights and get away with it" (Sinclair, 2018: 46).

Sinclair argues that a state can satisfy the demand for equal assurance without perfect enforcement, because the state need not perfectly secure everyone's rights — it only needs to ensure that everyone's rights are secured to the same degree, even if this leaves open the possibility of violation. So, rather than perfect enforcement, Sinclair thinks we need *uniform enforcement*.

To illustrate the idea, let us use crime rates as a rough proxy measure for the ex-ante probability of having one's rights violated. Perfect enforcement requires the crime rate to be zero, and this is obviously unattainable. Of course, Ripstein's proposal is slightly more complicated because attempted but unsuccessful crimes do not count; nor do successful but remedied crimes. But for simplicity of presentation, we can set aside these caveats.

Achieving zero crime rates throughout a state's entire jurisdiction is obviously unattainable, even though it is metaphysically possible. Sinclair's proposal avoids requiring perfect enforcement, by allowing crime rates to be non-zero, so long as they are uniform across a population. Whether one is rich or poor, famous or unknown, man or woman, white or black, we should all be subject to the same risk of rights violation. Of course, *ex post* some people will be victims and other will not; but so long as everyone enjoys the same *ex ante* prospects of violation, the state satisfies the equal assurance condition, and the guarantee problem is avoided.

An interesting implication of this solution is that a state would satisfy it even if everyone had no hope of other people complying with their rights — so long as everyone were equally hopeless. So, even if the crime rate for pickpocketing were 100 percent, such that everyone had *ex ante* certainty that they would be a victim of pickpocketing, the state would still be legitimate. Sinclair accepts that this is an implication of his view.

One might wonder whether uniform enforcement is any more attainable than perfect enforcement. Of course, perfect enforcement would be harder, but this need not imply that uniform enforcement is something any existing state could attain. To see why, consider the work that goes into dusting a cluttered room. Eliminating all dust in the room is an unattainable goal because of diminishing marginal returns on effort — the cleaner the room gets, the harder it is to improve its cleanliness. But now imagine that my goal is simply to

ensure that every surface area of the room is equally dusty. Is this goal attainable? As is, the dust is unevenly distributed across the room. The level of fine-tuning it would take to achieve a uniform distribution of dust strikes me as impractical.

But although we can question whether uniform enforcement is actually attainable, that is not the most interesting objection to Sinclair's proposal. Here is an objection I think is worth considering.

On Sinclair's view, uniform enforcement is a *necessary* condition on state legitimacy. That means that unless everyone's *ex ante* prospects of having their rights respected are equal, the state is illegitimate. Let us suppose that some state has actually achieved this standard such that all claims of acquired right are uniformly enforced throughout its entire jurisdiction.

Now suppose that, due to social factors beyond the state's control, there has been a crime wave in urban centres across the country. Despite the state's best efforts, it simply cannot bring down crime rates in those urban areas. As a result, the state no longer provides uniform enforcement, and so everyone has been plunged back into the state of nature, and the state is illegitimate.

This poses a problem. The state has a moral duty to leave the state of nature and proceed into a rightful condition. But *ex hypothesi,* it cannot make its urban areas safer. The only feasible way for the state to equalise crime rates would be to make everywhere else *less* safe. It could pull back on funding, approve less warrants, open fewer investigations, and so on. The result would be higher crime rates in non-urban areas. But so long as this equalised crime rates across the country, the state would have a moral duty to do it. This is because, there is a

duty to leave the state of nature, leaving the state of nature requires uniform enforcement, and under these conditions, uniform enforcement requires levelling down.

This strikes me as a serious problem for Sinclair's position. Intuitively, it seems wrong to suggest that a state's duty to secure the equal freedom of its citizens could require it to worsen the security of some of their rights for no other reason than to ensure that they were all equally vulnerable. However, it is difficult to see how Sinclair's proposal could avoid this objection.[11]

That said, it is not obvious to me that Sinclair needs to commit himself to a uniform enforcement standard. Sinclair thinks that uniform enforcement is possible in an idealised version of the state of nature; therefore, the state is not necessary to supply equal enforcement. Rather, the necessity of the state lies in its ability to solve the problems of unilateral choice and interpretation.

Sinclair notes that the problem of enforcement is typically presented by Kantians as an independent defect that would be unsolvable in the state of nature even if we imagine that the

[11] Sinclair has suggested that he might be able to avoid this objection if his account is interpreted differently. Rather than requiring that everyone enjoy equal ex ante prospects of evading justice, we could read it as requiring merely that the law be administered consistently—regardless of victim. On this reading, the state would have to ensure that everyone had the same ex ante prospect of having their case investigated, tried, prosecuted and so on. However, I fail to see how this modification would avoid the levelling down objection I just posed. The state's capacity to deliver any service is always going to be limited by the demands on that service. So, if there are crime waves in some areas, then the state is not going to be able to deliver the same justice-related services in those areas as it will be able to deliver in areas with less crime. Again, the only way to ensure equal treatment will be to level-down.

problems of unilateral choice and interpretation were somehow already solved. But Sinclair thinks this way of presenting Kant is misleading. The real point of Kant's argument is that those problems simply cannot be solved in the state of nature. Therefore, even if we concede that the problem of enforcement can (in principle) be solved in the state of nature, it will still turn out that the state is necessary because it is the only solution to the problems of unilateral choice and indeterminacy.

I agree with Sinclair on this point, but I do not think he takes it far enough. Sinclair's considered position is that the state is sufficient (maybe) to solve the problem of equal assurance, but not necessary to solve the equal assurance problem because that problem can (in principle) be solved in the state of nature. And yet, he also thinks that solving the equal assurance problem is a necessary condition on the state's legitimacy, even though the moral necessity of the state is independent of equal assurance (because it lies in considerations about unilateral choice and indeterminacy).

My own view, which I develop below, is that we should drop equal assurance as a necessary condition on state legitimacy. This is what I take to be the main lesson from Sinclair's account.

Sinclair, of course, does not take it this far. I think this is because he thinks this move inconsistent with what Kant has to say about assurance. After all, Kant does say:

> "I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine" (MM,6:256).

This passage seems to suggest that equal assurance (whether perfect, or merely uniform) is a necessary condition on universally binding obligation. If that is right, then the state's ability

to solve the unilateral choice and interpretation defects with the state of nature will depend on whether it already provides everyone with equal assurance. This is because the state's ability to solve those problems depends on its having the ability to create binding legislation for everyone. But if that legislation binds only if everyone is equally assured, then equal assurance *is* a necessary condition on the state's legitimacy. However, as we shall see, I think Newhouse offers a better interpretation of this passage, and this opens the door to rejecting the equal assurance condition.

4.3 Newhouse

I now turn to considering Newhouse's proposed solution to the problem. Newhouse's main innovation is to reinterpret Kant's claims about equal assurance. The standard view that both Ripstein and Sinclair assume is that assurance is primarily about what we rationally may expect others to do. If I may rationally expect others to behave in such a way as to respect my acquired rights, then I am assured. Newhouse thinks this reading is misguided. She says:

> "As an analysis of Kant's equal assurance requirement, this discussion grasps the wrong end of the stick: equal assurance addresses us in our capacity as potential wrongdoers, not as potential victims. As potential wrongdoers, we have a duty to refrain from encroaching on the property of others only because we are assured that all other potential wrongdoers are equally constrained. This is not at all the same thing as assuring us, in our capacity as potential victims, that our resources will subsequently be restored to us if we are wronged" (Newhouse, 2023: 9).

When Newhouse claims that our duty to refrain from encroaching on the property of others depends on others' being "equally constrained" she is talking about a *normative* constraint rather than a *physical* constraint such as coercion.

Her point is simple and modest. As moral equals, the moral law must bind us equally. Therefore, if I were morally bound to respect your property, while you were not morally bound to respect mine, then you and I would not count as moral equals. But on the assumption of our innate equality, we are moral equals. And so, your being bound to respect my property is a condition on my being bound to respect yours. On Newhouse's reading, I do not require assurance about how you *will* behave; I require assurance about how you *ought* to behave.

Of course, Kant phrases the equal assurance requirement in terms of how others "will behave." But Newhouse argues convincingly that it would be a mistake to treat this phrasing as decisive. She claims:

> "Any theory of assurance that relies only on those features of punishment that might be outweighed by other considerations cannot explain how such assurance can be equal, because no incentive that depends on personal preferences for its effectiveness can motivate all individuals to obey, even if it is systematically provided" (Newhouse, 2023: 10).

The point is that the effectiveness of a deterrent always depends on people's personal preferences. This poses a problem if deterrence is supposed to secure our categorical independence from the wills of others. For if the effectiveness of a deterrent depends on another's personal preferences, then does it not depend on his arbitrary will?

The deeper point is that interpreting equal assurance in terms of equal normative constraint rather than equal behavioural constraint simply fits better with Kant's overall argument and general preference for categorical *a priori* arguments over just-so empirical arguments. For these reasons, I think Newhouse's interpretation of the equal assurance requirement is correct.

However, Newhouse's proposed solution to the guarantee problem strikes me as misguided.

Like Sinclair's, Newhouse's solution also consists in rejecting the exclusive use requirement. Instead of the state needing to ensure that each of us enjoys exclusive use of what is ours, the state must simply ensure that each of us is morally obligated to obey its laws.

According to Newhouse, the state creates these reciprocal obligations by threatening to punish all who break the law. Since all are equally situated with respect to this threat, all are equally obligated not to break the law. Her view is that the threat of punishment by the state is the mechanism by which a duty is generated for everyone.

She thinks that the state's threat of punishment creates a duty because punishment involves being treated as a mere means by others. Since the duty of rightful honour obligates us not to allow such treatment, we have a duty to avoid making ourselves *liable* to punishment.

To be clear, the threat of punishment is thought to generate an obligation only when the alternative is to live free under the omnilateral will of the state. And since only the state can offer such an alternative, only the state's threat of punishment succeeds in creating an obligation for us. Interestingly, Newhouse (2023: 12) thinks that

> "individuals have a duty to obey the legislative command even when the chances of arrest and prosecution are small, because lawbreakers surrender their right to be "beyond reproach," meaning that their innate freedom is no longer legally protected."

This move is crucial to the plausibility of Newhouse's position. The state may threaten to punish (however lightly) anyone who trespasses on the lawn of another, but everyone knows

this threat is toothless. No actual states have the capacity to discover (let alone arrest, prosecute, and punish) all lawn trespassers; so were this necessary for there to be an obligation to obey, then anyone who would evade justice would not be obligated to obey the law. And so the guarantee problem would loom once more because equal assurance through threat of punishment would be unattainable.

The problem with Newhouse's proposal is that she relies on this idea of remaining "beyond reproach." The idea is that, although I might avoid punishment, I am still obligated not to break the law because doing so would forfeit my legal protection to be beyond reproach. My right to be beyond reproach is simply my right against the presumption of wrongdoing. According to Ripstein:

> "The right to be beyond reproach is another instance of the right to independence. No person can place you under a new obligation or restriction simply by alleging that you have done wrong. If he could, and thereby place the burden on you of clearing your name, he would be entitled to restrict your freedom entirely on his own initiative. Thus you would be subject to his choice. Your right to be "beyond reproach" just is the right that you never have to clear your own name; you are entitled to your own good name simply by virtue of your innate right of humanity."(2009: 52)

Thus understood, it is unclear why certain cases of my breaking the law would involve my forfeiting my right to be beyond reproach. Even if I have committed a crime, the state is not permitted to treat me as guilty unless and until I am prosecuted; I am after all *innocent until proven guilty*. If so, then it would seem that only lawbreakers whom the state can successfully prosecute will have actually surrendered their right to be beyond reproach. But then this would simply reintroduce the guarantee problem because no actual states have the capacity to successfully prosecute all lawbreakers.

Perhaps Newhouse has in mind some weaker notion of the right to be beyond reproach. Rather than surrendering their legal right to be presumed innocent, perhaps lawbreakers surrender their right to be beyond suspicion. By breaking the law, they warrant the state to investigate them to determine their guilt or innocence. And perhaps this is all Newhouse has in mind by the right to be beyond reproach. But if this is all Newhouse means, then does the state violate the rights of the innocent person it investigates, even when it concludes that they are innocent?

Setting this question aside, the real problem here is that it is unclear why such investigations involve treating someone as a mere means so as to violate their innate freedom. Newhouse's proposal rests on the idea that *punishment* involves being used as a mere means, and that since we have a duty to avoid this, we have a duty to obey the law so as to avoid punishment. But even supposing that we grant this, how does the duty to avoid being treated as a mere means generate a duty to obey the law so as to avoid the suspicion of the state *even when I know no one will ever discover my crime*?

I'm not sure how Newhouse could respond here. For her account to work, she needs to explain why breaking the law makes one liable to others treating one as a mere means because that is how she proposes generating a duty to obey the law. But here is the dilemma. If she says that breaking the law makes one *legally* liable to being treated as a mere means, then she is assuming unattainable enforcement capabilities because legal liability assumes that the state be capable of discovering one's crime. If instead she says that breaking the law makes one *morally* liable to being treated as a mere means, then she avoids assuming unattainable enforcement capabilities, but at the expense of presupposing the very thing she was trying to show. For if breaking the law makes one morally liable to punishment, then

doesn't this presuppose that one already has a duty not to break the law? Because of this dilemma, I do not see how to make Newhouse's proposal work.

What is striking is that her appeal to punishment just seems unnecessary. The dialectical payoff of reinterpreting Kant's equal assurance requirement is that it eschews the need to appeal to empirical considerations regarding deterrence and the state's enforcement capacities. If equal assurance is really about everyone being equally morally bound to obey the law, then all the Kantian needs to show is that the state has the normative power to generate obligations for everyone in virtue of reflecting an omnilateral will. This dialectical payoff is undermined by then making unattainable enforcement capacities a condition on the state's having this normative power.

4.4 Synthesis

Before moving on to my positive proposal, allow me to point out some unexpected synergies between Sinclair and Newhouse. By my lights, Sinclair's central insight is to point out that the necessity of the state lies in its solving the problems of unilateral choice and interpretation; not in its solving the assurance problem. These problems simply cannot be solved in the state of nature. In contrast, the assurance problem does not justify the necessity of the state because it can (in principle) be solved without it. This insight enables Sinclair to focus on the other two problems as the primary justification for exiting the state of nature and proceeding into a civil condition.

Newhouse's central insight is to reinterpret Kant's remarks on assurance. Instead of reading Kant as requiring equal assurance of how people *will* behave, she reads him as requiring equal assurance about how they *ought* to. What matters is whether everyone is equally *obligated* to respect acquired rights, not whether they are equally deterred from

violating these rights. This insight enables Newhouse to shift her focus to what it would take to equally obligate everyone.

I think Sinclair's and Newhouse's insights are complementary. Here is how. Suppose that a state somehow solves the unilateral choice problem. As a result, it is able to legislate for everyone within its jurisdiction. When it does so, it generates obligations for them that they otherwise would not have. The state could then solve the problem of interpretation by establishing public positions such as judges whose job it is to apply the law to particular cases. Once this system is in place, then everyone (within the relevant jurisdiction) would automatically be obligated to respect the acquired rights of others. Therefore, the assurance problem (as Newhouse understands it) would automatically be solved.

Of course, neither Newhouse nor Sinclair would accept this proposal to harmonise their views. I am not presenting it as a faithful representation of their respective views. Rather, I am presenting it as a promising development.

In the next Section, I argue this move opens the door to a different solution to the guarantee problem.

5 Solving the Guarantee Problem

In the previous Section, I suggested that Kantians ought to drop the equal assurance requirement as an *independent* condition on state legitimacy because any state that solves the unilateral choice problem will automatically satisfy equal assurance understood as equal moral obligation under the law. In this Section, I show how this move helps us solve the guarantee problem.

First, let us recall the problem:

(1) The state is legitimate only if it secures the equal external freedom of everyone it governs. (*equal freedom requirement)*

(2) A state secures the equal external freedom of everyone it governs only if it guarantees/assures each person exclusive use of what is theirs. (*exclusive use requirement*)

(3) No actual state guarantees/assures each person exclusive use of what is theirs. (*unattainability thesis*)

(4) [Conclusion] No actual state is legitimate. (*anarchy thesis)*

I think we can solve this problem by rejecting the equal freedom requirement. By rejecting this requirement, we can accept both (2) that external freedom requires exclusive use, and (3) that no realistically possible state can secure exclusive use for all its citizens, without thereby having to accept the anarchy thesis. This move cuts the guarantee problem off at the knees: if equal freedom is no longer a condition on legitimacy, then neither is exclusive use nor perfect enforcement.

However, this move requires us to answer two new questions: (i) what is the relevance of equal freedom within Kant's theory, if it is not the criterion of legitimacy; and (ii) if not equal freedom, then what is the criterion of legitimacy?

I will argue that equal freedom ought to be considered the *ideal* of Kantian justice, rather than the minimal standard required to be legitimate at all. Following Ripstein, I think Kantians should accept that Kantian justice is a purely regulative ideal, and is for that reason an unattainable standard nevertheless we ought to pursue. All states, including legitimate ones, ought to strive for equal freedom even though it is practically unattainable.

Moreover, I will argue that the minimal standard for legitimacy is solving the problem of unilateral choice — solving this problem is both necessary and sufficient for legitimacy.[12] Notice that embracing this standard of legitimacy requires us to reject Ripstein's three-defect model of the state of nature. According to that model, the state's legitimacy depends on its solving all three problems; whereas I am suggesting that solving the unilateral choice problem is sufficient for legitimacy.

5.1 The One-Defect Model

I think we should replace the three-defect model with the one-defect model. Rather than the state's legitimacy depending on whether it solves three problems, we should read Kant as saying that it really only needs to solve one problem: the problem of unilateral choice.

Kant's discussion of the state in the *Doctrine of Right* is overwhelmingly dominated by the problem of unilateral choice. He really only makes one passing comment about indeterminacy (MM, 6: 266). And two brief comments about equal assurance (MM, 6:256 & 6:307).

The bulk of his justification for the state goes into discussing the nature of private rights as requiring universal obligation (MM, 6: 245); the impossibility of establishing those obligations in the state of nature (MM, 6:256); and how these obligations can really only be created by the united will of all (MM, 6:314).

[12] As I argued above in my attempt to pull together threads from Newhouse and Sinclair, solving the problem of unilateral choice enables you to solve the other two problems as well, once we understand assurance as Newhouse does.

If, as Newhouse argues, we ought to interpret equal assurance as equal obligation under the law, then the equal assurance problem is just the unilateral choice problem in a different guise. This is because the solution to the unilateral choice problem is the instantiation of an omnilateral will. An omnilateral will has the power to give obligations to everyone. Hence, if the omnilateral will legislates a rule, then everyone subject to it is bound by that rule. In other words, if there is an omnilateral will, everyone is equally assured that everyone else is also bound by the same law. Therefore, if a state solves the unilateral choice problem, then they solve the equal assurance problem automatically.

But what about the interpretation problem? Again the interpretation problem is best understood as the unilateral choice problem in a different guise.

The problem of indeterminacy is that there will always be cases in which there is no matter of fact about whether the rule applies. The rule neither applies to the case nor does it not apply; there is genuine indeterminacy. In these "hard cases" a decision must be made about whether to apply the rule or not. But any attempt to make this decision is an attempt to determine the rights of others. And this presupposes exactly the kind of authority that the unilateral choice problem calls into question.

When a judge delivers a verdict in a hard case, he is exercising a normative power. Without a solution to the unilateral choice problem, this is impossible because his verdict would have no normative effect. Once we have a solution to the unilateral choice problem, we automatically have a solution to the interpretation problem because the judge can have the power to apply rules to particulars in virtue of being authorised by an omnilateral will.

That this is the correct solution is evident from the fact that Ripstein does not say that the state solves the interpretation problem by delivering a fully specified legal code that determines everyone's rights in advance of any dispute. He says:

> "The court is empowered to exercise judgment in accordance with law. That does not mean that all questions of private right must be answered by a comprehensive civil code, only that the legal system as a whole authorizes officials to decide private disputes in accordance with concepts of private right" (Ripstein, 2009: 172).

Since the only thing the state needs to do to sufficiently solve the problem of interpretation is authorise officials to apply rules to cases, the problem of interpretation gets solved automatically once the unilateral choice problem is solved.

So, what I am calling the one-defect model is an interpretation of Kant whereby the problem of assurance and the problem of interpretation are folded into one problem — the problem of unilateral choice.

5.2 Does this Solution Work?

Let us take stock. I have proposed that we can solve the guarantee problem by rejecting the equal freedom requirement. Because this move involves rejecting the three-defect model, I proposed replacing it with a one-defect model. What remains to be shown is that accepting the one-defect model does not thereby commit us to an implausible standard for the state's capacities. Put another way, we need to show that realistically possible states can solve the unilateral choice problem.

Now, I have my own view about what it takes to solve the unilateral choice problem, and I discuss that view in detail in Chapters 2 and 3. I will not pre-empt those discussions here, in part because it would take us too far afield from the guarantee problem.

So, to show how this solution is robust, I will show how Ripstein's solution to the unilateral choice problem does not presuppose unrealistic capacities for law enforcement. I will critique Ripstein's account of the general will in the next Chapter, but for now, let us assume it works for the sake of illustration.

Ripstein argues that the state solves the unilateral choice problem simply by creating public offices. In his words:

> "An official is permitted only to act for the purposes defined by that mandate. The concept of an official role thus introduces a distinction between the mandate created by the office and the private purposes of the officeholder. That distinction shows what it is for laws rather than people to rule, even though the actual ruling is done by people. […] All that is required for the legislative will to be omnilateral is for the distinction between public and private purposes to apply to it in the right way" (Ripstein, 2009: 192).

Ripstein's basic idea is that all a state needs to do to solve the unilateral choice problem is to create the right kind of institutions. So long as these institutions create a distinction between public and private through public offices, that state has an omnilateral will.

When an official makes a decision within the mandate of her office, that act is authorised by law. Therefore, we can regard that act as rule of law, rather than rule by a private person. And for Ripstein, this is all we need for the state to have the authority to make arrangements for us. So long as its decisions are in accordance with our innate right to freedom, those decisions bind us.

I disagree with Ripstein on this point because I think more is required to ground genuine political authority but notice that Ripstein's solution to the unilateral choice problem is

something that states in the actual world routinely achieve. Many states have official positions that manage to sustain a distinction between public and private. So, if one accepts Ripstein's solution to the unilateral choice problem and accepts the one-defect model of interpreting Kant, then the guarantee problem is answered.

Creating and sustaining public institutions does not require unrealistic enforcement capacities, not does it requires institutional perfection. Institutions can sustain some corruption without losing legitimacy. What matters is that the distinction between public and private be sustained, not that it be perfectly implemented.

5.3 What About Enforcement

One might worry that my solution is too blasé about the enforcement of our rights. After all, we don't just care about owning things, we also care about whether we can use them independently of others. By rejecting the equal freedom requirement, don't we lose the heart of Kant's theory?

I do not think so. Rather, I think equal freedom (non-domination for all) must be understood in its proper place. As discussed above, Kant begins his account by introducing the UPR. This principle tells us that *right* consists in equal freedom for all. Ripstein then interprets Kantian freedom as the sort of independence from others that requires exclusive use of external objects that belong to us. Ripstein rightly points out that the UPR therefore presupposes we have the ability to own external objects. However, owning external objects (conclusively) is impossible in the state of nature.

I am arguing that the state's legitimacy lies in its enabling us to own things conclusively, just as the UPR presupposes us to be capable of. Since the UPR is a requirement of practical reason, the state is therefore justified as a precondition for complying with this requirement.

But notice that the state can do this without thereby ensuring that we enjoy exclusive use of what is ours and that we are therefore equally free; in fact, no realistically possible state can meet this standard. Rather, equal freedom functions as the standard of ideal justice. As such, equal freedom is the regulative ideal that all states are meant to pursue — each state ought to pursue perfect enforcement, even though this goal is unattainable.

Therefore, it is not true that my solution to the guarantee problem requires rejecting the importance of enforcement. Perfect enforcement becomes an ideal to be pursued, not the minimum bar a state must clear to be legitimate.

6 Conclusion

In this chapter I sought to clarify the guarantee problem, a challenge that emerges from the standard Kantian diagnosis of three defects in the state of nature:

1. *unilateral-choice problem*: no single agent can legitimately bind everyone, so original acquisition (and thus property) seems impossible;
2. *interpretation problem*: any general rule admits borderline cases, and without a lawful authority to decide them, we face indeterminacy;
3. *equal assurance* problem: absent a state's guarantee, individuals remain at risk of arbitrary invasion of body or property.

In Section 2, I showed that insisting on resolving all three defects (and so securing perfect exclusive use) demands an impossible level of enforcement — no real state can prevent every trespass or petty intrusion.

In Section 3, I distilled this into a succinct argument: if legitimacy requires equal freedom and no actual state can provide it, then no actual state could be legitimate.

In Section 4, I reviewed three influential responses — Ripstein's reliance on legal remedies, Sinclair's emphasis on uniform enforcement, and Newhouse's focus on moral obligation — and argued that each re-imports unattainable enforcement.

In Section 5, I proposed an alternative: to treat equal freedom (and perfect enforcement) as a regulative ideal rather than as a literal threshold for legitimacy, to identify unilateral choice as the single foundational obstacle — so that once a genuinely public authority can legislate for and adjudicate all disputes, the other two defects would no longer stand in the way — and to hold that a polity is legitimate so long as it alone possesses the exclusive normative power to bind its members, without demanding perfect security.

In the context of the thesis as a whole, this Chapter was critical for clarifying important details in Kant's theory. We now understand what was the problem Kant was trying to solve. The one-defect interpretation makes it clear that Kant saw the state's job as a matter of solving the unilateral choice problem. This one-defect model avoids the collapse into anarchism but naturally raises a further question:

How exactly does the state solve the unilateral choice problem?

In Chapter 2, I will explore Kant's notion of the general will to address this question. Drawing on Kant's texts (and some insights from Hobbes), I will argue that the general will can be understood as a union of individual wills formed by an *a priori* duty to take responsibility for the state's actions. This interpretation will help us spell out Kant's conditions of legitimacy.

Chapter 2 — What is the General Will?

1 Introduction

Kant, as a social contract theorist, frames his justification for the state in a problem-solution structure. The problem lies in the *state of nature*: a hypothetical scenario involving humans like us but without state institutions. Social contract theorists argue that such a condition would be morally or prudentially problematic. The proposed solution is the *civil condition*: a condition under state institutions that resolves the problem of the state of nature.

In the last Chapter, I argued that Kant's problem with the state of nature is the *unilateral choice problem*. This problem arises from a tension between the following Kantian commitments:

(1) Practical reason requires that original acquisition of external objects be possible for us (*postulate of private right*) (MM, 6:251 & 6:247)
(2) Original acquisition necessarily involves legislating for others so as to bind them (follows from Kant's concept of ownership) (MM, 6:249).
(3) An agent is bound only by laws he or she gives to themselves (self-legislation constraint) (MM, 6:223)

As anticipated in Chapter 1, the civil condition is supposed to solve this problem by creating a *general will* (MM, 6:264). While individuals cannot unilaterally impose obligations, the general will can (MM, 6:259). If the general will authorises acquisition, then

it generates the necessary obligations. Therefore, the state is justified as the morally required solution to Kant's problem with the state of nature.[13]

But what is a general will? Why can it impose obligations when individuals cannot? Kant is not clear on this point. This Chapter aims to fill that explanatory gap by clarifying the concept of the general will and showing how it can impose obligations on all.

I will argue that the general will is best understood as a union of each person's particular will, binding on all because each person's will is binding on themselves. In so doing, I endorse Macarena Marey's (2018: 574) interpretation of the general will as a conceptual presupposition of practical reason. We must presuppose that our wills have been united as a necessary presupposition of rational agency. I argue that this interpretation best fits the textual evidence.

However, I argue that Marey's interpretation struggles to explain how empirical legal institutions come to wield the authority of a merely intelligible general will. Moreover, her account struggles to accommodate passages where Kant seems to suggest that a multitude cannot unify itself into a people.

[13] This simple presentation is complicated by Kant's idea of *provisional acquisition.* Kant says that we can originally acquire things in a state of nature but only *provisionally* (MM, 6:256). There is much disagreement over what this is supposed to mean (Messina, 2019). Some scholars think that provisional rights are just as binding as conclusive rights (Byrd & Hruschka, 2010: 101), whereas others think that provisional rights fall short somehow (Ripstein, 2009: 165). I will not adjudicate the debate on provisional rights here. In presenting my argument, I will assume (the orthodox position) that *original acquisition* involves establishing *conclusive rights*. I do think that my argument is compatible with more revisionary positions on provisional rights, but I will not argue that point here.

In light of these limitations, I propose a modest amendment to Marey's interpretation. I argue that for Kant, the intelligible act of the original contract unifies the general will *through* the mechanism of representation. This move represents a synthesis of Marey's interpretation and Ripstein's interpretation. It also identifies Kant's potential use of Hobbesian conceptual machinery. Thus, it situates Kant as an innovator of Hobbesian representation.

In Section 2, I discuss the concept of the general will. I identify three desiderata that any adequate interpretation of the concept should satisfy.

In Section 3, I discuss three existing interpretations of the general will. I argue that only the intelligible presupposition interpretation satisfies all three desiderata. According to this view, the general will is something that practical reason requires us to presuppose insofar as we are to live alongside each other as embodied rational beings.

In Section 4, I recommend a moderate revision of the intelligible presupposition interpretation. My revision is ecumenical in spirit in the sense that it builds on the strengths of the other interpretations. Specifically, I build on Ripstein's insight that a multitude is united into a people by being represented. And so, if we must regard ourselves as united, then we must regard ourselves as having authorised the state.

In Section 5, I discuss the striking parallels between my revised interpretation of Kant and the political philosophy of Thomas Hobbes, as well as noting key differences.

In Section 6, I build on Ripstein's idea that public offices are essential to the state's capacity to represent us; although I offer a different (yet compatible) rationale to his.

In Section 7, I address a possible objection to my interpretation.

In Section 8, I conclude by evaluating the strengths and potential weaknesses of Kant's political theory as a whole; as well as flagging outstanding issues that I shall address in the next Chapter.

2 The Concept of the General Will

The general will plays a central role in Kant's theory of authority, but Kant is far from clear about what it is or how it functions. I begin by explaining what the general will is supposed to do, and then examine how Kant says it is supposed to do it.

2.1 The Function of the General Will

The general will's essential function is to make it possible to create binding obligations of right for an entire population — something that individual agents cannot normally do.

> "For a unilateral will (and a bilateral but still *particular* will is also unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving." (MM, 6:263).

A key point is that a unilateral will cannot impose obligations on all. In Kant's view, a moral agent is bound only by laws they give to themselves. As he puts it:

> "A *person* is a subject whose actions can be *imputed* to him. *Moral* personality is therefore nothing other than the freedom of a rational being under moral laws […]. From this it follows that a person is subject to no other laws than those he gives to himself (either alone or at least along with others)" (MM, 6:223)

This self-legislation constraint makes it puzzling how private property is possible. As Kant notes:

> "When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right" (MM, 6:255).

Acquiring property appears to involve creating obligations for others. But if obligations must be self-imposed, it is unclear how property acquisition is possible. Yet Kant insists that it must be possible:

> "It is therefore an a priori presupposition of practical reason to regard and treat any object of my choice as something which could objectively be mine or yours.[...] For if it is necessary to act in accordance with that principle of right, its intelligible condition (a merely rightful possession) must then also be possible.[...] It can only be inferred from the practical law of reason (the categorical imperative), as a fact of reason" (MM, 6:247 & 6:252)

Kant calls this necessary presupposition of practical reason the *postulate of private right*. It is something we must simply presuppose to be the case if we are to act as rational agents at all. Herein lies the problem: we need original acquisition to be possible because otherwise we could not intelligibly act as rational agents; but there is a clear tension between original acquisition and the self-legislation constraint.

Kant presents the general will as the solution, claiming that it alone can impose obligations on everyone. If original acquisition is authorised by the general will, it becomes binding. But the general will cannot exist in the state of nature – it is possible only in a civil condition. Therefore, the state is justified because it enables original acquisition by making binding obligations possible.

> "[T]he condition of being under a general external (i.e., public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours" (MM, 6: 256).

The general will is thus central to Kant's justification for the state. The general will is the condition of original acquisition, and the civil condition is necessary to create a general will. So, if we are to fully understand Kant's justification for state authority, we need to understand why the general will makes original acquisition possible, and why the general will requires a civil condition.

2.2 How the General Will Works

Kant identifies three characteristics of the general will. The first feature is:

(*Omnilaterality*): the general will must be capable of legislating for everyone.

Omnilaterality is essential. Without it, the general will would not qualify as a solution to the unilateral choice problem — unless a will can legislate for everyone, original acquisition is impossible.

But if individuals are bound only by self-imposed obligations, Kant must explain how the general will's imposition of obligation somehow qualifies as self-legislation. He appears to address this through the second feature of the general will:

(*Derivation*): the general will must be derived from each person's particular will.

Derivation is the only way to get *Omnilaterality* and respect the self-legislation constraint. In Kant's words:

> "For the acquisition of a public rightful condition by the union of the will of all for giving universal law would be an acquisition such that none could precede it, yet it

would be derived from the particular wills of each and would be *omnilateral*" (MM, 6:259).

And similarly:

"The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it *cannot* do anyone wrong by its law. Now when someone makes arrangements about *another,* it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for *volenti non fit iniuria).* Therefore, only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative" (MM, 6:314).

Finally:

"All right, that is to say, depends upon laws. 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" (OCS, 8:294).

These passages suggest that the general will is omnilateral (legislative for everyone) because it is derived from the particular wills of each. This derivation is grounded in unification (MM, 6:314). The omnilateral will is the unified will of all. When everyone decides for all, each also decides for themselves. This is how the general will can be both lawgiving and consistent with the self-legislation constraint.

Kant offers little detail about what unites the individual wills. He does say, however, that the general will must be "united not contingently but *a priori* and therefore necessarily" (MM, 6:263). And so, the third feature of the general will is:

(*A Prioricity*): the general will must be united necessarily, not contingently.

A prioricity effectively rules out any sort of empirical mechanism of unification. For example, it is not enough for a general will in Kant's sense that each person happens to agree on some issue. He seems to require that the mechanism of unification be necessary, rather than contingent.

To sum up: the general will imposes obligations on everyone and is central to Kant's justification for the state. It is omnilateral because it is derived through unification from the particular wills of individuals, and it must be unified a priori. In the next section, I examine three interpretations that attempt to flesh out this idea.

3 Three Proposals

In this Section, I evaluate three interpretations of Kant's concept of the general will.

3.1 The Principle Interpretation

The first interpretation I will consider is the *principle interpretation* (Flikschuh, 2012). On this view, the general will is a principle meant to guide rulers when deciding what to legislate. Katrin Flikschuh is representative of this view. She writes:

> "The idea of the general united will has no empirical reality: it is a criterion of rightful judgement for the ruler as public lawgiver and does not represent the (hypothetically) real unification of a multitude of wills" (Flikschuh, 2012: 41).

When Flikschuh claims that the general will is a criterion of rightful judgment, she means that it is a normative standard against which we can evaluate actual legislation. At first glance, this interpretation of the general will seems more concerned with articulating an ideal of justice than a criterion for legitimacy. But Flikschuh insists otherwise:

> "The coercive relationship between ruler and subjects is juridically legitimate only in so far as we can understand the ruler's will as a public will. The idea of the general united will serves as necessary criterion of any *de facto* ruler's legitimacy.[...] The latter [the general will] does not, however, represent the idea of a plurality of co-legislating wills: the public will's omnilateralism is a function, rather, of its capacity to make coercive universal law that is valid for everyone because it takes the rights claims of all equally into consideration" (Flikschuh, 2012: 40-1).

Flikschuh seems to think the state's legitimacy depends on whether we can regard it as a public will. By this, she seems to mean a will that takes everyone's rights and claims equally seriously when governing. The general will thus serves as a necessary condition on legitimacy because without it, the state would be unable to govern impartially. Only once the ruler has the idea of the general will in hand, can we even think of him as a suitably public will.

This interpretation of the general will finds some textual support in the following passage:

> "Now the legislator can indeed err in his appraisal of whether those measures are adopted *prudently*, but not when he asks himself whether the law also harmonizes with the principle of right; for there he has that idea of the original contract at hand as an infallible standard, and indeed has it a priori […]. For, provided it is not self-

> contradictory that an entire people should agree to such a law, however bitter they might find it, the law is in conformity with right." (OCS, 8:299)

So, it is fair to say that the principle interpretation captures something of what the general will is supposed to be. However, even though it satisfies the condition of aprioricity, and claims to satisfy omnilaterality, the view clearly fails to satisfy the condition of derivation. By Flikschuh's own lights, the general will is in no way the unification of a plurality of co-legislating wills. And so, this interpretation cannot account for omnilaterality in a way that respects the self-legislation constraint.

To be fair, proponents of this view conceive the problem with the state of nature differently. For them, the unilateral choice problem is not generated by the tension between the postulate of private right and the self-legislation constraint. And so, it is unsurprising that this interpretation fails to answer the unilateral choice problem on my terms. But if the arguments in the last Chapter hold, then we have decisive reason to believe that Kant's problem with the state of nature is the unilateral choice problem. And so, we have reason to reject the principle interpretation as an unsuccessful answer to that problem.

3.2 The Juridical-Person Interpretation

The second view I shall consider is the *juridical-person interpretation* (Varden, 2008; Ripstein, 2009; Capps & Rivers, 2018). On this view, the general will is a well-constituted kind of legal system. When such a system exists, there lies a general will. More precisely, the general will is an artificial person constituted by our legal practices, and capable of acting intentionally through its norms and procedures. On this view, the rule of the general will just is the rule of law.

Arthur Ripstein is representative of this view.

Ripstein emphasises the idea of a legal office. An office is defined by legal rules, which confer rights and obligations on whoever holds it. This creates a distinction between private and public action. A person's official actions are manifestations of the public will when they act within the limits of their office.

So long as officials act within their legal mandate, their actions express not their private will but the will of the law. This, according to Ripstein, reconciles state authority with freedom because no private will is involved when the state uses coercion.

He also believes the general will imposes obligations, but not by uniting individual wills. Rather, he draws on Kant's treatment of status-based relations, where one person may make arrangements for another under strict conditions:

> "one person can "make arrangements for another" consistent with right provided that the first does so subject to the formal constraints of relations of status. First, the person making arrangements must act so as to ensure the ongoing purposiveness of the one for whom the arrangements are being made, and second, the person making the arrangements is precluded from using the power to make those arrangements for his own private purposes" (Ripstein, 2009, p. 192).

Notice that this just flatly denies the self-legislation constraint. Rather than the general will being omnilateral *because* it is the unification of particular wills, the general will (as legal system) is omnilateral *because* it is making arrangements for others that preserve their freedom and because it has no other proper purpose of its own — its only objective is the pursuit of a rightful condition.

Of course, public officials routinely pursue other ends (economic prosperity, national pride, cultural renewal, etc.). But these pursuits are not attributable to the general will because they are not mandated by the offices themselves.

Interestingly, this view does have room for the idea of unification, but this plays no role in grounding omnilaterality. Rather, Ripstein seems to put it the other way around:

> "A multitude of human beings is a people just because institutions act for them; the institutions are the principle of their unity, and the acts of those institutions are the acts of the people. [...] only through institutions can "a multitude of human beings" make itself into a people.[...] Kant can thus agree with Hobbes that a people is created by the institutions that act for it. The existence of representative institutions—that is, institutions in which the officials act on behalf of the citizens considered as a collective body—makes it possible for the people to live together under laws and so to become a collective body" (Ripstein, 2009: 195)."

By Ripstein's lights, omnilaterality comes first, and unification comes downstream of that. It is in virtue of being represented by a legitimate state making, applying, and enforcing law on their behalf, that the multitude is unified. This is made clear by Ripstein's claim that Kant is in agreement with Hobbes — who famously thought that collective representation was the mechanism for unifying an otherwise disconnected multitude of individuals (Hobbes, 2018).

Ripstein's interpretation does enjoy strong textual support from the following passage:

> "the only constitution that accords with right, [is] that of a pure republic. [...] This is the only constitution of a state that lasts, the constitution in which *law* itself rules and depends on no particular person. It is the final end of all public right, the only condition in which each can be assigned *conclusively* what is his.[...] Any true

> republic is and can only be a *system representing* the people, in order to protect its rights in its name, by all the citizens united and acting through their delegates (deputies)"(MM, 6:341).

In this passage, Kant makes three big claims. First, the only kind of state that is truly legitimate is a pure republic because only under such a system can rights be made conclusive. Second, a pure republic is one where the law itself rules rather than any particular person. Third, in its essence, a true republic is a system that represents the people.

All three claims support the juridical-person interpretation. The first claim says that the kind of state in which you can have a general will can only be a republic, and the second claim says that in a republic, the law rules, rather than individuals. This strongly echoes Ripstein's claim that public offices are essential because it allows us to regard the actions of officials as the actions of the law itself, rather than the actions of private wills. Taken together, these two claims seem to support the idea that rule-by-law is somehow essential to making original acquisition possible, just as the juridical person interpretation contends. The third claim supports Ripstein's idea that the people are unified through representation.

So, it is fair to say that the juridical-person interpretation has a lot going for it. But ultimately it cannot address the unilateral choice problem as specified in the last Chapter.

Recall. The unilateral choice problem (as I understand it) is generated by the tension between (i) the *postulate of private right* (that original acquisition must be possible); (ii) the *nature of original acquisition* (that it involves legislating for everyone); and (iii) the *self-legislation constraint* (that one can only ever be bound by a law one gives to oneself). As I argued, the tension arises because original acquisition requires the ability to bind everyone, but each has only the ability to bind himself. The juridical-person interpretation cannot

address this problem because it denies the self-legislation constraint by assuming that one can "make arrangements for others" provided that one's efforts are consistent with the formal requirements of right.

And so, even though Ripstein's account has the ingredients of omnilaterality, and unification, it fails to account for derivation because the view does not ground omnilaterality in the particular wills of individuals. Beyond that, this interpretation fails aprioricity because the mechanism of unification (institutions acting for them) is *a posteriori* and contingent rather than a priori and therefore necessary.

Next, I shall discuss the intelligible presupposition interpretation.

3.3 Intelligible Presupposition Interpretation

According to my preferred interpretation, the general will is "a conceptual element that the very idea of valid and legitimate Right obliges us to assume" (Marey, 2018: 574; See also, Byrd & Hruschka, 2010: 175). Let us unpack that a little.

According to Marey, general will just is the will of all (within a particular population) united as one. Except that this united will is not something we can find out there in the world, it is rather a presupposition of practical reason. It is something that we as practical reasoners must *assume* to exist if we are to live as rational agents in a shared world. In Marey's words:

> "In Kant, the political community constitutes itself from a multitude (*Menge*), but the unity of this multiplicity is given a priori as the condition of the possibility of acquiring rights and guaranteeing the innate right" (Marey, 2018: 559).

When Marey says that the unity of the general will is given a priori she means that it is given to us, not in experience, but through practical reason itself because assuming it is a

necessary condition on the possibility of *something else* we are bound to assume: the possibility of original acquisition.

To use Kant's terminology, the general will is a further postulate of practical reason, just like the postulate of private right. Both are assumptions that practical reason commands us to make as a condition of intelligible agency.

Think of it as a chain of dependence: practical reason requires that original acquisition be possible (postulate of private right), but because of the self-legislation constraint, original acquisition is possible only if there is a general will to authorise it. Therefore, since practical reason requires me to assume the possibility of original acquisition it thereby also requires me to assume the general will – that my will has been united with others.

The mechanism of this unification is, according to Marey, the idea of the original contract:

> "As we know, the original contract has an ideal status. However, this does not mean that Kant does not define the kind of "act" (Akt) in which it consists. In the contracting original act, "everyone *(omnes et singuli)* within *a people* gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state *(universi)*". The first outcome of the original contract is thus the self-creation of the popular will as sovereign" (Marey, 2018: 570).

By Marey's lights, the original contract is a further assumption we must make because it is what explains *how* the will of all came to be unified a priori. It is ideal, and so we need not assume that any *historical* act of original contract took place (Kant explicitly denies this). Nevertheless, from the perspective of practical reason, we must assume that our wills have been united to others through our agreement or choice. This is seemingly analogous to how

we must assume ourselves to have legislated the moral laws that bind us not lie or kill. No Kantian thinks that each of us at some point in our lives actually promised never to murder. Rather, they think that insofar as we see ourselves as rational agents, we must presuppose ourselves to have chosen the moral laws that bind us.

Marey's intelligible presupposition interpretation satisfies all three of Kant's desiderata. It derives the general will from the particular wills of individuals (the general will just is the presupposition that the will of each has been unified with others). It satisfies aprioricity because both the general will and the mechanism of unification (the original contract) are a priori assumptions, not given in experience. And lastly, it explains omnilaterality in the right way. Because the general will is the union of particular individual wills, and because each has the power to bind himself, the general will binds all, and so can authorise original acquisition.[14]

Marey interprets the following passage to illustrate the general will's omnilaterality:

> "The *civil union (unio civilis)* cannot itself be called a *society,* for between the *commander (imperans)* and the *subject (subditus)* there is no partnership. They are not fellow-members: one is *subordinated to,* not *coordinated with* the other; and those who are coordinate with one another must for this very reason consider themselves equals since they are subject to common laws. The civil union *is* not so much a society but rather *makes* one" (MM, 6:307).

[14] One might worry that I commit the fallacy of composition, whereby I erroneously assume that a whole must have the properties of its parts. However, as we see in (MM, 6:335) quoted below, Kant thinks the general will necessarily involves each individual co-legislating with everyone else. And since each person is bound by laws they give themselves, they are bound by the general will because they co-legislate it.

In this passage, Kant describes a relationship between the *commander* and the *subject*. And he is very clear that the latter is subordinated to the former. Whereas Flikschuh interprets this passage as referring to the government as commander and the citizens as subject, Marey interprets it as referring to the people as a united general will as commander and each of them considered individually as subjects. She quotes the following passage in support of her interpretation:

> "They comprise the relation of a *superior* over all (which, from the viewpoint of laws of freedom, can be none other than the united people itself) to the multitude of that people severally as *subjects,* that is, the relation of a *commander (imperans)* to *those who obey (subditus)*" (MM, 6:315).

In this passage, Kant claims that the *commander* is not the government, rather it is the general will. And if we think that only a general will can be legislative for everyone, then it makes perfect sense why each of us as individuals would be subordinated subjects with regard to it. To claim that the general will has authority over us is to claim nothing more than our own practical reason has the power to command us. To see how Kant might envision this relationship between commander and subordinate, consider the following passage:

> "Saying that I will to be punished if I murder someone is saying nothing more than that I subject myself together with everyone else to the laws, which will naturally also be penal laws if there are any criminals among the people. As a colegislator in dictating *the penal law,* I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy). Consequently, when I draw up a penal law against myself as a criminal, it is pure reason in me *(homo noumenon),* legislating with regard to rights, which subjects

> me, as someone capable of crime and so as another person *(homo phaenomenon),* to the penal law, together with all others in a civil union" (MM, 6:335).

In this passage, Kant claims that I am a co-legislator of the penal law — that I legislate with regard to rights. And at the same time, I am subjected to that law, such that if I break it, I am punishable. He is clear to distinguish between me (qua *homo noumenon*) and me (qua *homo phaenomenon*). The former is a "holy" co-legislator of the law, whereas the latter is regular old punishable me (decidedly unholy).

This passage helps deepen our understanding of Kant's claim that the general will is commander, and each of us is a subject in relation to it. The general will's authority over us is a function of our authority over ourselves. Pure reason within each of us (homo noumenon) has the power to command and bind the will of us considered as empirical creatures (homo phaenomenon). So, once that pure reason has been a priori unified with reason in everyone else, then the laws legislated by that general will bind us as surely as any moral law or requirement of reason does.

Thus the intelligible presupposition interpretation does a good job at accounting for the omnilaterality of the general will in the right way by grounding it in the a priori unification of each individual's particular will. And it is for this reason, that I think the intelligible presupposition interpretation offers the best account of what the general will is and how it works to solve the unilateral choice problem with the state of nature.

However, there is a problem. This interpretation may succeed at showing why the general will is authoritative, but it fails to explain why the government gets to wield that authority.[15] Suppose we accept the claim that as a presupposition of practical reason, we must presuppose that original acquisition is possible, and that doing so commits us to presupposing our wills have been united with others a priori. How does it follow that *this* government making, applying, and enforcing laws on me is authorised by the general will?

When the government legislates, this is clearly an empirical act. How then can I, at the same time, regard it as an intelligible act of my own will. In short, why must I regard myself as the author of *these* laws?

In the next Section, I offer a slight modification to the intelligible presupposition interpretation. As we shall see, my suggestion can be thought of as a synthesis of all three interpretations.

4 Revision in Light of Representation

Recall that for Ripstein, representation is the mechanism of unification. By his lights, a multitude becomes a people only when there are properly constituted legal institutions acting on their behalf. When it does so, he says that the state's actions are attributable to the people.

As we saw, Ripstein grounds the state's representing us in its conformity to the formal constraints on relations of status — they act on our behalf but only ever for public, not private

[15] Marey does claim that the government's legitimacy is grounded in its successfully representing the general will. However, she does not give an explanation for how or why any particular government comes to represent any particular general will.

purposes. In this Section, I propose a different grounding of representation: intelligible authorisation.

The idea is that the act of the original contract, whereby a multitude unites itself into a people (general will), is best understood as an act of authorisation. Each individual agrees to authorise the actions of the state understood as an artificial juridical person embodied in concrete legal practices. By authorising the same state, the actions of the state are thereby attributable to each of them. And so, when the state legislates for us as individual subjects, this act of legislation is attributable to each of us understood as a merely intelligible co-legislator. That is how I can be both subject and author of the actual laws under which I live.

In effect, I am saying that Marey and Ripstein are both right. The will of all is united a priori as a necessary presupposition of reason AND the will of all is united *because* the state represents us and thereby functions as the principle of our unity.[16] We are to imagine individuals in the state of nature coming together as merely private persons. Each recognises the need to form a general will constituted by the union of their respective individual wills. To accomplish this, they make an agreement — the original contract. The content of this agreement is to authorise the actions of the same representative agent (the government). Because each individual has authorised the same agent, this agent becomes their common representative. In virtue of representing them, the government thereby unifies their wills. By representing them, it becomes possible to think of this multitude as a single unified agent with a will of its own (the people). The people (the entity constructed via common

[16] Byrd & Hruschka (2010: 173) offer a similar interpretation of Kant. On their view, the original contract is the act by which a multitude forms itself into a people. And then after forming itself, the general will transfers its legislative power to a corporeal representative — the government. On my interpretation, the general will is formed *through* collective representation, rather than prior to it.

representation) is the seat of all legislative authority. Even though it is grounded in the government's representation of the multitude considered individually, the unified people is the ultimate authority, and the government is its representative agent.

Notice what this move accomplishes.

First, all three of Kant's desiderata are satisfied. The state has the normative power needed to authorise original acquisition in virtue of representing (rather than strictly *being*) the general will. The general will is omnilateral because it is the union of each person's particular will. The mechanism of this union is a priori as a necessary presupposition of practical reason. And yet now we can accommodate all the texts that initially seemed to support the juridical-person interpretation.

We now have an explanation for why a truly legitimate state (a true republic) is and can only be a system *representing* the people. If the government did not represent the people, then we could not think of ourselves as having unified our wills via an original contract.

This also explains why Kant elsewhere defines a republic in terms of separation of powers. In *Towards Perpetual Peace* he writes that

> "[This] has to do with the way a state, [...] makes use of its plenary power; and with regard to this, the form of a state is either *republican* or *despotic. Republicanism* is the political principle of separation of the executive power (the government) from the legislative power; despotism is that of the high-handed management of the state by laws the regent has himself given, inasmuch as he handles the public will as his private will" (TPP, 8:352).

So which is it? Is a republic a system representing the people, or is it a principle of separating the executive power from the legislative power? The answer is 'yes.' For Kant,

these two definitions are equivalent. And we can see this by considering the distinction he draws between a republic and a democracy:

> "So that a republican constitution will not be confused with a democratic constitution (as usually happens), the following must be noted. [...] Of the three forms of state, that *of democracy* in the strict sense of the word is necessarily a *despotism* because it establishes an executive power in which all decide for and, if need be, against one (who thus does not agree), so that all, who are nevertheless not all, decide; and this is a contradiction of the general will with itself and with freedom" (TPP, 8:352).

Kant distinguishes republicanism from democracy. In fact he insists that democracy is the only form of government that cannot be republican. This is because he defines a republic as a system in which the executive power is kept separate from the legislative power. Republicanism is typically interpreted as merely a matter of separating the executive branch of *government* from the legislative branch of *government*. But if this were what Kant meant, then it is unclear why a democracy could not also be a republic.

Instead, what Kant means by separation of executive power from legislative power is that the government (the executive power) must be distinct from the people (the legislative power). And since Kant defines a democracy as a system in which the people govern, there cannot be (even in principle) a distinction between the executive power and the legislative power. That is why he thinks that a democracy cannot be a republic. The implication being that a democracy is inconsistent with right and illegitimate. In explaining why he says:

> "This is to say that any form of government which is not *representative* is, strictly speaking, *without form,* because the legislator cannot be in one and the same person also executor of its will" (TPP, 8:352).

The point is that democracies cannot be legitimate because the people play the role of both legislator and executor. Representation requires separation between the representative (the executive power held by the government) and the represented (the legislative power held by the people). In the absence of this separation, there is no representation. And it is precisely this lack of representation that leads to the government being "without form" which is to say incompatible with the idea of the original contract.

All of these passages make sense once we see the original contract as an intelligible act of authorisation. Without the government *qua* representative, there would be no locus of agreement to unify the will of all, nor would there be a single voice capable of binding the will of all into a commonwealth. And so, any constitutional system that did not recognise a fundamental distinction between the *sovereign* (the legislative will of the people) and the *ruler* (the government tasked as the executor of the legislative will) would simply fail to perform the essential function of the state: unify the will of all through common representation so as to enable original acquisition.

Rather, a constitution that failed to distinguish sovereign from ruler would necessarily be despotic because there would be no general will to authorise its actions.

Lastly, this modified interpretation also allows us to make sense of the principle interpretation. According to that view, the general will is a criterion of right judgment meant to guide rulers in legislation, and subjects in their good-faith criticism. And indeed, I think the idea of the original contract can play this role too. After all Kant says:

> "the universal principle by which a people has to appraise its rights *negatively* — that is, appraise merely what may be regarded as *not ordained* by the supreme legislation, as with its best will - is contained in the proposition: *What a people cannot decree for itself a legislator also cannot decree for a people*" (OCS, 8:304).

Notice two things. First, Kant does say that there is a universal principle for the appraisal of our rights. Second, the reason this principle works is because it is a means of discerning what has *not* been legislated by the "supreme legislation" (the general will). And indeed, this tracks the content of the principle itself. The principle states that a legislator's power to issue binding law is limited by what the united will of the people can legislate for itself.

Practical reason cannot command me to do just anything. There are limits imposed by my duty of rightful honour and the categorical imperative. As such, the state cannot rightly command me to kill an innocent because that is something that I (from the perspective of practical reason) cannot command myself to do. And since I cannot command myself to do it, the state's attempts to obligate me simply fail. This is why Kant claims that:

> "there is a categorical imperative, *Obey the authority who has power over you* (in whatever does not conflict with inner morality)" (6:371).

The inner morality constraint is there because it is what blocks me from commanding myself. And since the government's ability to command me is parasitic on my ability to command myself (from the perspective of practical reason), the government's authority is constrained by the limits of my own powers of self-legislation.

The revision I have suggested thus identifies something valuable in each interpretation.

Yes, the general will can function as a criterion of rightful action for rulers and citizens to use when evaluating legislation. Yes, the legal system as a juridical person wields genuine

authority over individuals and is essential to the unification of the multitude. Yes, the general will is an a priori necessary presupposition of practical reason.

Each view emphasises a different aspect of the general will and how it functions within Kant's political theory. By thinking of the original contract as an intelligible act of authorisation, we can tell a unified story that accommodates the insights of each view.

4.1 Evaluation

But more importantly, does this interpretation provide a coherent solution to the unilateral choice problem?

As we saw, the problem arises because of tension between the postulate of private right and the self-legislation constraint — original acquisition requires the ability to legislate for everyone, people are bound only by laws they give to themselves.

If my interpretation is correct, Kant's solution to this problem is an intelligible act of authorisation. Were each of us to authorise (and thereby take ownership of) the state's actions, then the state's legislative acts would bind all of us because it would act by our authority. Each of us would thereby become the author of the laws under which we lived. Such a state could authorise original acquisition without violating the self-legislation constraint because the obligations created by a suitably authorised act of original acquisition would all be self-generated obligations. Each person would be bound to respect the belongings of others because each would be the co-author of that obligation.

Of course, no such act of authorisation ever took place as a matter of empirical fact. But Kant does not need to show that it has, nor does he try to. Rather, he claims that we *must* presuppose ourselves to have authorised the state under which we live as a condition of practical reason at all. Without this presupposition, original acquisition would be impossible,

and freedom would be in conflict with itself. Since practical reason commands us to presuppose our having authorised the state, we are rationally warranted to act and behave as such. To do otherwise would be inconsistent with the demands of reason.

This intelligible act of collective authorisation—though merely a presupposition of practical reason rather than an empirical event—bears resemblance to Hobbes's theory of political authority in *Leviathan* (Hobbes, 2018). While Kant grounds his account in the demands of practical reason, Hobbes offers a structurally similar solution based on the idea of a historical founding covenant. Though both philosophers diverge significantly, the conceptual overlap is nonetheless instructive. Moreover, it is well-known that Hobbes was a major influence on Kant's political thinking. Therefore, we should not be surprised to find Kant taking inspiration from Hobbes

In the next Section, I explore Hobbes's influence on Kant at greater length.

5 The Relevance of Hobbes

There are many parallels between my revised interpretation of Kant, and the political theory of Thomas Hobbes, as presented in *Leviathan.* I shall begin by noting their similarities, before stressing their differences.

For Hobbes, the authority of the state is grounded in the *covenant*. This is an original act of founding the state whereby a multitude of individuals unifies into a people – what Hobbes calls a *commonwealth*. In Hobbes's covenant, each party agrees (and is thereby bound) to *authorise* the actions of a single agent.

> "the consent of a subject to sovereign power is contained in these words, "I authorise, or take upon me, all his actions" (Hobbes, 2018, Leviathan, XXI).

Each party agrees to authorise the same agent as everyone else, and because of this, each is united with every other.

> "A Multitude of men, are made One Person, when they are by one man, or one Person, Represented; […]. And because the Multitude naturally is not One, but Many; they cannot be understood for one; but many Authors, of every thing their Representative faith, or doth in their name; Every man giving their common Representer Authority from himselfe in particular; and owning all the action the Representer doth." (Hobbes, 2018, Leviathan, XVI).

Hobbes's idea is nuanced and requires careful unpacking.

For Hobbes, authorisation is an act whereby A acquires ownership over the actions of B. In virtue of authorisation, the actions of B are *attributable* to A. In all relevant respects, when B acts, it is *as if* A had done it himself. This is what Hobbes calls a relationship of *representation*. B represents A just because A authorised B. When A and B stand in this relationship to one another, A is called the *author* and B is called the *actor/agent/representative*.

In Hobbes's political theory, collective authorisation accomplishes two things.

First, it unifies the multitude. Once each person "owns" all the actions of the state, they are unified *because* they are all share a common representative. When he acts on their collective behalf, it makes sense to think of them as a unity rather than a mere multitude.

Second, collective authorisation bestows upon the common representative the normative power to legislate for everyone.

> "From hence it followeth, that when the Actor maketh a Covenant by Authority, he bindeth thereby the Author, no lesse than if he had made it himself. And no lesse subjecteth him to all the consequences of the same." (*Leviathan,* XVI)

For Hobbes, acting "by authority" means acting in one's capacity as a representative. So, what this passage is saying is that when a representative makes an agreement on your behalf, you are bound by that agreement as surely as if you had made it yourself. When my lawyer signs a contract on my behalf, I am on the hook for it in exactly the same way I would be if I had signed it myself. So, when the ruler represents everyone within a population, it thereby has the power to bind all of them through its legislative acts.

Notice the parallels with my reading of Kant. On my view, the will of all is unified into a general will through an intelligible act of collective authorisation. Each agrees to be represented by the same government. And because each is thus represented, the will of all is unified into a single will capable of legislating for everyone. When the government acts in the name of this general will, it binds each of us considered as subjects because it is acting "by authority" of the general will.

That said, there are some notable differences between each author's theory. Most starkly, Kant's idea of the original contract is explicitly ideal and necessary as a presupposition of practical reason, whereas Hobbes's covenant was understood by Kant to be a merely contingent historical event (OCS, 8:289).

The second main difference Kant flags between his and Hobbes's view is that Hobbes's ruler enjoys almost unlimited power when compared to Kant's. Hobbes's ruler had authority to do pretty much anything shy of killing citizens because he thought no one could rationally will their own death.

In contrast, Kant's ruler is constrained by each person's duty of rightful honour and the other commands of the Categorical Imperative. This difference is therefore not so much structural as it is substantive. Each theorist has different views about how extensive our rights of self-rule are, and this accounts for their differing views regarding the extent of government authority.

Lastly, depending on how one reads Hobbes, there might be a difference in where each theorist locates ultimate sovereignty. As we have seen, Kant explicitly locates sovereignty in the united general will of the people — and is therefore best read as an advocate of popular sovereignty (albeit only in an idealised way). In contrast, Hobbes is sometimes read as locating ultimate sovereignty with the ruler. On this reading, authorisation involves alienating one's right to rule oneself. Once alienated, all authority lies with the ruler (Flikschuh, 2012).

It is important to note that this reading of Hobbes is strongly contested in the literature. The main alternative interpretation argues that people retain their right to self-rule but that the sovereign becomes the sole *user* of it. On this view, sovereignty remains with the people even though it is executed by the ruler (Skinner, 2018). So, if this reading of Hobbes is correct, then their views of sovereignty are more similar than some scholars recognise (Marey, 2018).

Having considered how both philosophers think about sovereignty and authorisation, it is important to ask: what sort of entities can legitimately serve as representatives? While both Hobbes and Kant rely on the notion of representation, neither treats natural persons as appropriate for this role. Here, the juridical-person interpretation—most notably defended by Ripstein—offers important insights. But as I shall argue, the role of official positions in state authority is best understood not merely as a safeguard against domination, but as a requirement of rightful honour itself.

6 Artificiality & Offices

As we saw above, the juridical-person interpretation (as championed by Ripstein) identifies public offices as a necessary condition on the legitimacy of the state. By Ripstein's lights, this is essential because it insulates citizens from the private judgments of public officials. Rather than having to see government decisions as the expressions of their private wills, the mandates of public offices make it possible to regard government action as merely the *rule of law*. So, on Ripstein's view, officials represent us in their public capacity only, not in their private capacity.

I am sympathetic to Ripstein's view, and I think he is right to stress the importance of public offices. But I want to offer an alternative explanation for why public offices are so important. Strictly speaking, this alternative explanation does not compete with Ripstein's; rather, it complements it and illuminates it.

In *Leviathan* (XVI), Hobbes distinguishes between natural and artificial persons. Natural persons act in their own name; artificial persons act in the name of others. Only artificial persons can be representatives.

A similar idea appears in Kant. For him, "a person is a subject whose actions can be imputed to him" (MM, 6:223), while a "thing is that to which nothing can be imputed" (MM, 6:223) Because humans must be treated as persons, they cannot renounce responsibility for all their actions. This implies that a natural person cannot be fully authorised by another—doing so would reduce them to a thing, violating the duty of rightful honour.

Since the moral law requires us to authorise all the actions of the sovereign, and we cannot authorise all the actions of a natural person, the sovereign must be an artificial person. Kant writes:

Ripstein rightly notes that official positions distinguish public from private roles and thereby create artificial persons. For example, when Trump buys his wife flowers, he acts in his private capacity; when he signs executive orders, he does so in his public capacity.

However, the key point is not that official positions prevent domination (they may do that also), but that they preserve the representative's rightful honour. Representation alienates a person from their actions, so it must be limited to artificial persons. Since artificial persons are constituted by official roles, such roles are essential to legitimate state authority.

Artificiality also ensures continuity. Natural persons die; without continuity, the general will would dissolve over time. But this would clearly be contrary to how Kant envisions the duration of the general will.

> "The general will of the people has united itself into a society which is to maintain itself perpetually" (MM, 6:326).

The idea seems to be that we ought not to regard society as a temporary arrangement. Rather we are supposed to think of the civil condition as a perpetual enterprise from one generation to the next. A representative state must therefore endure over time to support intergenerational progress toward equal freedom. Artificial persons, through office succession, make this possible.

Now that I have presented my revised interpretation of Kant, and some of its implications, I will turn to addressing a potential objection to my view.

7 Objection

7.1 Not Explicit Enough

One might accept the textual evidence in support of my interpretation but argue that if the revised intelligible presupposition interpretation were correct, Kant would have stated it more explicitly. Instead, it requires significant inference. I have two responses.

First, in the preface to the Doctrine of Right, Kant admits:

> "Toward the end of the book I have worked less thoroughly over certain sections than might be expected in comparison with the earlier ones, partly because it seems to me that they can be easily inferred from the earlier ones and partly, too, because the later sections (dealing with public right) are currently subject to so much discussion, and still so important, that they can well justify postponing a decisive judgment for some time" (MM, 6:209).

This suggests we should expect less clarity in the later parts, including those on public right. Moreover, Kant justifies this by claiming the relevant ideas can be "easily inferred" from earlier material — indicating that his view may require interpretive reconstruction.

Second, writers often skip over details when addressing an audience familiar with a topic. I might omit basics when discussing Rawls with academics but include them for students. Similarly, if Kant assumed his audience understood Hobbes's theory — particularly the links between responsibility, representation, and unity — then we would expect him to be less explicit.

Hobbes was widely read in Kant's intellectual milieu (Skinner, 2018), and Kant engages him directly in *On the Common Saying*. There, Kant challenges Hobbes's claim that the sovereign can never wrong its subjects, assuming familiarity with Hobbes's views. So if Kant

took the Hobbesian framework for granted, this would explain his lack of direct elaboration. The intelligible presupposition interpretation, then, may reflect not an absence in Kant's thought but his rhetorical expectations of his audience. Therefore, I do not find this objection decisive against my interpretation.

7.2 The Irrelevance of Representation

One might object that this interpretation of Kant is needlessly complex. If the short story is that I necessarily will the state as an autonomous noumenal will, is that not sufficient to allay all concerns about being subject to the will of another? If so, why do we need to complicate the theory by appealing to representation?

Firstly, on an interpretative level, it seems clear that representation plays a crucial part in Kant's theory. To say that we necessarily will the state does not rule out the relevance of representation given that Kant thinks that what is 'literally a state' can only be a 'system representing the people.' Therefore, to say that we necessarily will the state is to say that we necessarily will a system representing the people. The real question is: why think that representation is essential to the omnilateral will?

The answer I have given is that representation is essential because it is the only mechanism of unification—a multitude is united into a people/commonwealth because they share a common representative. So, because each person necessarily wills the possibility of original acquisition, they necessarily will the means to that end. Since original acquisition is possible only if there is an omnilateral will, they necessarily will that too. If I am right that an omnilateral will is just each person's individual will united a priori with those of others, then each of us necessarily wills this unification. And if unification, requires representation, each of us then necessarily wills the existence of a common representative to unify our wills.

Therefore, representation is not an ad hoc addition to Kant's theory. It emerges from a careful analysis of what the omnilateral will is and what it takes to create one.

8 Conclusion

One might worry that this solution to the unilateral choice problem is no solution at all. Just because we *need* original acquisition to be possible, it does not follow that it is in fact possible. Similarly, just because we *need* to presuppose our having authorised the state as a condition of rightful relations, it does not follow that we *really* authorised the state.

I think this worry is well-founded, and I take it up more fully in the next Chapter. In brief, my argument will be as follows.

At its core, Kant's political theory can be seen as giving us a *justification* for our common-sense political beliefs. Many of us, pre-theoretically, take ourselves to be members of a particular political community. We see ourselves as part of a unified people, not merely an aggregate of individuals. We think it makes sense to talk of the will of the people, and we think that (sometimes) the government in charge of us represents the will of the people. When we think it is representing that will faithfully, we are disposed to approve, and when we think it is not, we disapprove and see ourselves as having reasons to intervene. Given that many of us think this way, and act as if this view were correct, we naturally want to know whether we are justified in seeing things this way.

At its core, Kant's theory aims to show that we are rationally justified because regarding ourselves, and each other, in this way is the only rational thing to do. When Kant says that these views are 'presuppositions of practical reason,' he means that it would be *irrational* to regard things differently. Herein lies our *warrant* for seeing our political lives as we do. Since

we cannot coherently regard ourselves as rational agents without these presuppositions, we are rationally justified in holding onto them.

Given that Kant thinks reasons are internal to the norms constitutive of rational agency, his theory really does give us a reason to obey the law that succeeds on his own terms.

One might object that the norms constitutive of rational agency do not give us the sort of robustly real reasons we were looking for in the first place. And indeed, I am sympathetic to this objection (as we shall see in the next Chapter). But I think Kantians should deny that this is a problem for *them;* moreover, they should deny that this is a problem for Kant himself.

Given their metanormative commitments, Kant's political theory works just fine. And so, insofar as their goal is to vindicate political obligations from within a Kantian worldview, then they can claim success. If non-Kantians are unmoved by the theory, then that is not so much a sign that the theory itself is faulty, but rather a sign that there is a deeper disagreement about normativity itself that first needs to be addressed.

This is the best response I think a Kantian could give. But in the next Chapter I will argue that it forces Kantians to give up on a goal that some of them share—to show that Kant's political theory can and should be of interest to non-Kantians. I shall argue that insofar as Kantians hold on to this goal, then they have reason to revise Kant's original theory. And I suggest one plausible way of doing so.

Chapter 3 – Kantian-Republicanism

1 Introduction

As discussed in Chapter 2, the success of Kant's political theory depends on whether the state can solve the problem of *unilateral choice*: freedom requires that someone have the ability to legislate for everyone, but legislation works only when self-imposed. According to Kant's theory, the state solves this problem by unifying the wills of all into a *general will* — a will capable of generating obligations that bind everyone. So, Kant's theory works only if its story about unification works.

For Kant, the mechanism of unification is authorisation. Unification occurs when our *noumenal selves* each authorise the same agent: the state. Once authorised, the state's actions become attributable to all of our noumenal selves. Because our noumenal selves have the power to bind us, the state's legislative acts bind us all. Thus, noumenal authorisation is how Kant unifies the will of each into the general will of all.

Kant's theory is creative, powerful, and elegant. However, in this chapter, I argue that Kant's mechanism of unification, noumenal authorisation, entails commitments that most political philosophers (including myself) will not welcome. To avoid these commitments, Kant's theory needs revision. Specifically, it needs a new mechanism of unification; so, I propose one: *control-based agency*. I argue that this revision preserves what is attractive about Kant's theory, whilst making it more attractive to most political philosophers.

My arguments are not addressed to Kantians who accept systemic dependency between Kant's political theory and the rest of his critical system. It is unlikely that Kantians will find the entailed commitments of noumenal authorisation unwelcome because they are commitments that Kantians generally accept as part of the Kantian package.

Instead, my arguments are primarily addressed to non-Kantian political philosophers who are best described as Kant-curious. Those who wonder whether Kant's political theory is a good deal. They want to know whether it offers a compelling answer to the problem of political authority without demanding too high a price in terms of unwelcomed commitments.

Zooming out, I will argue that we have good reason to replace Kant's *Authorisation Condition* (the premise that the state's status as the agent of the people is grounded in the people's consent/authorisation) with what I call the *Popular Control Condition.* According to the *Popular Control Condition*, the state's agency of the people is grounded in their control over the state. I will argue that the commitments of the *Authorisation Condition* are more problematic than those of the *Popular Control Condition*. And since we have good reason to revise a theory if, all else equal, doing so would help us avoid unwelcome commitments, we have good reason to replace the former condition with the latter.

The Chapter proceeds as follows:

Section 2 restates Kant's political theory in light of the groundwork laid in the preceding Chapters. This Section is a brief recap of those ideas.

Section 3 introduces a *grounding dilemma.* Either Kant's theory commits us to the existence of noumenal entities or it commits us to metanormative constructivism/constitutivism. I argue that both options are problematic. At a big picture level, Section 3 is where I discuss my misgivings with the *Authorisation Condition*.

In Section 4, I articulate my positive proposal. I discuss the *Popular Control Condition.* I identify two of its commitments: control-based agency and polyadic domination. I then give arguments for why these commitments strike me as more credible than those of the *Authorisation Condition*.

In Section 5, I discuss the implications of replacing the *Authorisation Condition* with the *Popular Control Condition.* I argue that the revision results in a new(ish) theory: *Kantian-Republicanism*.

In Section 6, I address a number of objections to Kantian-Republicanism. I hope that addressing these objections helps to show that the theory does warrant further consideration.

However, there is one objection that I lack the space to address in this Chapter. In Section 7, I introduce and explain this objection. I leave a promissory note to address it in Chapter 4.

In Section 8, I conclude by discussing this Chapter's place within the dissertation as a whole.

2 Kant's Model

In Chapter 1, I argued for a reinterpretation of Kant's account of the state of nature. I claimed that we should reject the standard interpretation—the so-called three-defect model—and instead adopt a one-defect model.

According to the one-defect model, the central problem with the state of nature is the *unilateral choice problem*. More specifically, individuals in the state of nature lack the normative power to generate obligations for others. Their acts are *unilateral*: they bind only themselves.

Each person has the normative power to bind themselves simply in virtue of their own humanity. But for the same reason, they lack the power to bind others. This constraint follows from what I call the *self-legislation constraint*—a principle that Kant clearly accepts.

At first glance, this situation is not yet problematic. It becomes so only when Kant argues that freedom requires private property.

Kant defines private property as an object that is *mine* because others are morally obligated not to use it without my consent. He also claims that external objects are not naturally owned by anyone. Ownership must therefore be established through a positive act.

Thus, if freedom is to include the right to possess external objects, individuals must have the ability to obligate others. Yet, because of the self-legislation constraint, individuals in the state of nature lack this ability.

This, on my interpretation, is the real force of the unilateral choice problem.

I argued that we should accept the one-defect model for two main reasons. First, it fits better with a close textual reading of Kant's *Doctrine of Right*. Second, and more importantly, it provides a clearer path to solving the *guarantee problem*.[17]

In Chapter 2, I turned to Kant's proposed solution to the unilateral choice problem. It is widely accepted that Kant's solution is the appeal to the *general will*. However, the concept of the general will is notoriously difficult to interpret, and Kant offers little elaboration.

[17] To briefly recap Chapter 1, I argued that Kant's problem with the state of nature is that practical reason requires the possibility of original acquisition; which in turn requires the ability to legislate for others. But Kant also endorses a self-legislation constraint on obligation, so the state of nature is problematic because practical reason demands the ability to legislate for others, but no such ability exists in the state of nature — that is the unilateral choice problem. Defenders of the three-defect model argue that in addition to this, original acquisition requires both the ability to authoritatively determine the application rules to cases, and equal assurance for all. I argued that solving the unilateral choice problem automatically enables you to apply rules to cases, and that an equal assurance requirement invites the guarantee problem. Since we are not required to attribute identification of either additional problem to Kant by the text in the Doctrine of Right, I conclude that we ought to reject the three-defect model in favour of the one-defect model.

I considered three leading interpretations and argued that none fully captures the concept's function in Kant's theory. Instead, I offered an alternative interpretation, which I now briefly revisit.

According to my alternative, Kant's solution is the unification of each individual will with the wills of all others into the general will.

This unification explains the *omnilaterality* of the general will. I take *omnilaterality* quite literally: it is the capacity to obligate everyone, in contrast to *unilaterality*, where one can obligate only oneself.

I argue that unification is the only available solution to the unilateral choice problem, given both the self-legislation constraint and Kant's definition of private property. Only by unifying the will of all can we acquire private rights as genuinely ours.

I then offered an interpretation of how Kant proposes to achieve this unification. On my reading, Kant draws—implicitly—on Hobbes's model of authority as attribution.

According to the Hobbesian model, the state has authority over me because I authorised it through an act of covenant. This act establishes a relationship such that the state's actions are attributable to me. It is this attribution that grounds the state's authority.

For Hobbes, this attribution mechanism unifies a multitude into a single commonwealth. The logic is straightforward: each individual possesses the natural right of self-government. When each of us authorises the state, its legislative acts become attributable to all of us and thereby bind each of us.

In short: we achieve omnilaterality through the unification of wills via co-authorisation. Each individual authorises the state; the state's actions are attributable to all; and through this attribution, our wills are unified via the state's representation of us.

I argue that Kant implicitly endorses this Hobbesian model of authority through attribution. However, while Hobbes grounds the state's authority in an actual empirical act of covenant, Kant famously rejects any reliance on such a thing.

Instead, Kant claims that the will of all is unified *a priori*, through what he calls the *original contract*. Crucially, the original contract is not a historical event; it is, in Kant's terms, an *idea of reason*.

On my interpretation, the original contract should be understood as an act of *noumenal authorisation*. Just as Hobbes unified wills through empirical authorisation, Kant unifies wills through noumenal authorisation.

On this view, our noumenal selves are taken to agree to authorise the state's actions, thereby becoming the authors of those actions. Because each noumenal will authorises the same state, their wills are unified through it into the *general will*.

It is in virtue of the state representing this noumenal general will that its legislative acts are said to bind us.

Thus, I argue that Kant provides an elegant and internally coherent solution to the unilateral choice problem. We respect both the self-legislation constraint and Kant's definition of private property by postulating noumenal co-authorisation.

Once a state comes into being—once it establishes institutions, makes laws, applies them, and enforces them—our noumenal selves are taken to authorise that state. In doing so, they make the state's actions attributable to themselves.

Therefore, when the state legislates, its laws bind all of us—and this is precisely what Kant requires to secure the conditions necessary for private property.

In the next section, I will argue that this interpretation of Kant faces a grounding dilemma. To resolve it, the account must be moderately revised. I will suggest that, while these revisions are substantial, they are well worth the price.

3 A Grounding Problem

Kant offers an elegant account of state authority. The state can legislate for everyone because everyone intelligibly authorised it. Since freedom requires private property, and property requires public authority, we have a duty to authorise the state. For Kant, a duty is the result of legislation by our noumenal selves. Thus, our duty to authorise the state is sufficient to establish that we do in fact authorise it.[18]

[18] One might think that Kant's view is similar to David Estlund's (2007) theory of normative consent. However, I think the similarities are only apparent. On Kant's view, we can move from the premise that we have a duty to consent, to the conclusion that we have consented. Estlund's view is slightly different. He points out that there are clearly examples in which the immorality of something is sufficient to nullify the normal effects of our consenting to it. Cannibalism remains wrong regardless of whether I consent to it. But if the presence of consent is nullified due to the immorality of our consenting, then why (he asks) is not the lack of consent nullified due to the immorality of our not consenting. Whereas Kant's view says that a duty to consent is enough to infer that you really did consent, Estlund's view is that a duty to consent is enough to ensure that your lack of consent is irrelevant.

This brings us to a significant difficulty. For Kant's solution to succeed, it must postulate a noumenal self.[19] Yet doing so introduces a dilemma, depending on how that entity is interpreted. Two principal interpretations are typically proposed:

(1) *The noumenal self is a real sui generis entity distinct from the empirical self.*

(2) *The noumenal self is a constructivist standpoint—a perspective you must presuppose in order to act rationally.*

These reflect the dominant approaches to Kant's transcendental idealism. Each option carries distinct costs.

If we adopt (1), we are committed to the view that my noumenal self is a metaphysically distinct entity that authorised the state under which I, the empirical self, now lives. But this raises a pressing question: why should my empirical self be bound by the actions of my noumenal self? If the two selves are genuinely distinct, we need an account of how one can normatively bind the other. And whatever the explanation, it cannot merely assert that "the noumenal self is really just you," or that it is "the real you" since that would collapse the distinction between (1) and (2). If the noumenal self is genuinely a metaphysical other, its authority over me requires justification beyond stipulation.

Contemporary Kantians—especially in political philosophy—typically reject (1) in favour of (2) (Korsgaard, 1996; Ripstein, 2009).

On this second view, the noumenal self is not an ontologically separate entity, but a standpoint required for (because constitutive of) rational agency. Yet this gives rise to a

[19] My noumenal self is a subject who is "me," yet in some respect distinct from my empirical identity (Critique of Pure Reason, A806/B834).

different concern. How does regarding myself as responsible for the state make me actually responsible for it? On this reading, I have not authorised the state as a matter of fact. Rather, insofar as I regard myself as a rational agent, I must regard myself as having authorised it. The norms constitutive of agency itself require me to act *as if* I am responsible for the state.

But this is not obviously the same as my actually *being* responsible for it. This is the worry. It is a matter of empirical observation that many of us regard ourselves as having political obligations, in much the same way that most of us regard ourselves as having moral duties to keep our promises. The fact that we tend to see things this way is not really in dispute. Rather, what we want from a theory of political obligation is an account of whether we are *correct* to regard ourselves as having these obligations.

On (2), Kant's political theory essentially says that you are correct to regard yourself as having political obligations because doing so is a presupposition of practical agency under the conditions in which you find yourself. You are *justified* in acting as if you have political obligations because to do otherwise would mean you could not rightly regard yourself as a rational agent. Your rational warrant for carrying on as you do comes from the fact that what you are doing is part of what it is to be a rational agent in your circumstances.

But notice the shift. There is a subtle but important difference between being justified in acting as if x is true, and its being the case that x actually is true. For example, a free will sceptic might readily acknowledge that it is rational and justifiable to act as if your will is free, whilst emphatically denying that your will actually is free.

Indeed, the free will analogy is illuminating. Suppose that you become concerned about whether your will is actually free in the manner that your phenomenological experience of choice suggests. And so, you go to a philosopher to find an answer. Suppose this philosopher

tells you that you are fully justified in carrying on *as if* you were free because doing so is part of what it is to be a rational agent. You might rightly respond "so what?" You worry that the philosopher has missed the point. Of course it would be irrational to regard yourself as unfree—the rationality of assuming yourself free was not what you came for. What you really wanted was an answer to whether or not you are in fact free.

Similarly, one might be dissatisfied with a Kantian-constitutivist account of political obligation. Rather than wanting to know whether we are *justified* in carrying on as if we have political obligations, what we really want to know is whether we *in fact* have political obligations.

Of course, there is a disanalogy between political obligation and free will. In the case of free will, the fact that we are rationally required to regard ourselves as free obviously fails to show that we are in fact free. But the same is not true according to the constitutivist about political obligation. On their view, normative facts (like duty and responsibility) are entirely determined by the norms constitutive of rational agency.

If constitutivists are right, then there is no difference between your having political obligations, and rationality demanding you act *as if* you have them. They think all normative requirements (including obligations) flow from the norms constitutive of agency itself.

Whether one finds this move convincing will depend on whether one accepts constitutivism as the correct account of metanormativity. Unless one accepts this position, there will remain a gap between our being rationally required to regard ourselves as obligated, and our actually being obligated. Closing this gap requires us to accept constitutivism.

Therefore, the price of Kant's theory is either (i) spooky entities that can boss us around; or (ii) metanormative constitutivism.

I assume we can all agree that (i) is a steep price to pay for any political theory. So, I will say no more on that front.

But, what about (ii)? Is metanormative constitutivism really that bad?[20]

The main reason I find constitutivism implausible is because I am persuaded by the "shmagency" objection advanced by Enoch (2006). Enoch's presentation of the objection is subtle and nuanced. This makes it difficult to immediately appreciate its force. So, here is my attempt to represent his objection in its most persuasive form (at least for me).

The constitutivist claim is that all practical normativity (all reasons for action) are ultimately grounded in either the norms, or standards, or motives, or aims constitutive of action/agency. Think of it by analogy to a game like chess. There are rules (bishops move diagonally) and goals (capture the enemy king) that are constitutive of playing chess. Following the rules and pursuing the goals is both necessary and sufficient for playing chess. Constitutivists claim that the same is true of agency. There are particular rules (like consistency) such that being an agent just amounts to following (or trying to follow) these rules. Just as one fails to play chess if one moves their bishop like a knight, so too one fails to be an agent if one rejects the norms of agency. The constitutivist's big idea is that all practical reasons are ultimately grounded in the rules of the "agency game."

[20] For seminal presentations and defences of the view see Rawls (1980), Korsgaard (1996), O'Neil (1989)l, Street (2008), Velleman (2009).

But Enoch points out that the norms of a game are binding on us only if we have some reason to play the game that is independent of its constitutive norms. It may be constitutive of chess that I capture the king; but I have reason to capture the king only if I have a reason to play chess that is independent of the basic rules of chess. This general point justifies Enoch in asking what reason we have to play the agency game. After all, why not play the "shmagency game?" We could instead be "shmagents" performing "shmactions." Shmagents are creatures just like agents except that they do not comply with the norms constitutive of agency.

Constitutivists of course deny that they owe a reason for why we have a reason to play the agency game. Their view is that reasons just are the norms constitutive of agency, and so their view precludes the possibility of giving a 'reason' for being an agent in the first place. Instead, the constitutivist's only move is to claim that the norms constitutive of the agency game are rationally binding *even though* there is no independent 'reason' to play the agency game.

But Enoch points out that this claim is problematic. As a general thesis, it is clearly false that our engaging in some activity, or playing some game thereby gives us reason to follow its rules. Enoch points out that for any game we might find ourselves playing, there are indefinitely many variations of those games we could be playing.

Consider our playing chess. We could just as easily be playing chess*. Chess* is exactly the same as chess except that you can only checkmate on an even number of moves. Similarly we could imagine chess** or chess***; each one a slight variation on chess itself. The problem that "whenever you find yourself playing chess, you also find yourself (in sufficiently early stages of the game) playing these cooked-up games chess*, chess**, chess***, and so on. But it doesn't seem that you have reasons to win at chess*, or at

chess**, or at chess***. This is so, presumably, because you don't have a reason to play chess*, or chess**, or chess***." (Enoch, 2011: 211).

Not only do we lack a reason to follow the rules of these other chess variants, but we also lack a reason pursue the constitutive aims of them. So, Enoch concludes that as a general thesis, it is false that our engaging in some activity thereby normatively binds us to abide by its rules or pursue its constitutive aims. And because this thesis is false for games in general, we need an explanation for it is true for the agency game in particular. Exceptions require explanation.

And this is where I think Enoch has the constitutivist in checkmate (please forgive the pun). The fact that constitutive norms are not by default normatively binding implies that the agency game is an exception. So unless we are willing to concede an unexplained exception, we cannot accept the constitutivist position without a reason to play the agency game. But for the reasons discussed above, the constitutivist cannot give one.

Constitutivists have offered replies to the shmagency objection (Velleman, 2009; Ferrero, 2010; Rosati, 2016). However, I find these replies unsuccessful in light of Enoch's (2011) rejoinders. I obviously lack the space to exhaustively recount the back and forward of this debate, and I lack anything original to say on the topic. In light of these limitations, my rehearsal of the shmagency objection must suffice to explain why I find constitutivism difficult to accept.

So, Kant's theory faces a grounding problem because it relies on noumenal authorisation. Depending on how we interpret this, the theory either commits us to spooky entities or to constitutivism. Either way, the theory charges a steep price.

This is unfortunate because Kant's theory has much to recommend it. As I argued in the last Chapter, Kant's theory is elegant and powerful. So, in the next Section I propose a revision. The goal is to preserve what is attractive about Kant's theory, while avoiding the costs just mentioned.

4 A Way Forward

Here is one way of presenting the skeleton of Kant's theory.

1. *Legitimacy Condition:* A state is legitimate if and only if those in its jurisdiction are subject to (morally bound by) the laws the state gives to them.[21]
2. *Self-Legislation Constraint*: "a person is subject to no other laws than those he gives to himself (either alone or at least along with others)"(MM, 6:223).[22]
3. *Hobbesian Agency Thesis*: If the state is the agent of its population, then when it gives laws to them, they give those laws to themselves.
4. *Authorisation Condition*: The state is the agent of its population *because* the population authorised the state through consent (noumenally).
5. *Conclusion*: The state is legitimate.

As we can see from my arguments above, the *Authorisation Condition* is the source of the trouble. By making consent the ground of agency, Kant's theory commits itself to noumenal

[21]Only under these conditions does the state solve the problem of unilateral choice, and thereby make original acquisition possible. See Chapters 1 and 2.

[22] This is not only a constraint, but also a sufficient condition. A person is bound by the laws they give to themselves provided the law is consistent with the duty of rightful honour.

consent and all of its associated costs. In this Section I will recommend revising Kant's theory by replacing *Authorisation Condition* with the following.

> 4'. *Popular Control Condition:* The state is the agent of its population if and *because* the population controls the state.

It should be clear, that replacing the *Authorisation Condition* with the *Popular Control Condition* maintains the essence of Kant's theory, whilst avoiding the costs associated with noumenal consent. Because the *Popular Control Condition* does not invoke consent at all, the theory is no longer committed to noumenal entities, nor is it committed to constitutivism. Therefore, the revision I recommend would, if made, avoid the costs discussed in the previous Section. But should we replace the *Authorisation Condition* with the *Popular Control Condition*. Would this trade be a better deal?

I think it would be a better deal because the commitments entailed by the *Popular Control Condition* strike me as less costly than those entailed by the *Authorisation Condition*.

I shall argue that the *Popular Control Condition* entails the following two commitments:

(i) Control grounds agency

(ii) Polyadic domination

I shall explore both of these commitments in detail below. As we shall see, both commitments are already *implied* by Phillip Pettit's analysis of freedom as non-domination. In Chapter 1, I argued that Kantians and republicans already share the same conception of freedom as non-domination. And so, I shall argue that Kantians can help themselves to much of the modern republican machinery, simply by adopting Pettit's particular analysis of the concept.

4.1 Control Grounds Agency

Above, I claimed that Pettit's analysis of freedom as non-domination implies the thesis that control grounds agency. The truth of this point may not be immediately obvious, so let me explain.

Central to Pettit's analysis of freedom as non-domination is the claim that interference is not sufficient for domination (Pettit, 2012: 56-59). This feature of his analysis is part of what makes the republican analysis of freedom distinct from the liberal analysis. According to the liberal analysis, interference is both necessary and sufficient for a reduction in freedom. On the republican analysis, it is neither necessary (because interference is not necessary for domination), nor is it sufficient.

Pettit illustrates that interference is not sufficient for domination by using the example of a man asking his friend to hide the keys to his liquor cabinet (Pettit, 2012: 57). Our intuition is that this man does not experience a reduction in freedom even though he endures interference at the hands of his friend. Pettit accounts for this intuition by pointing out that the man *controls* the interference. He set up the terms governing the interference, he made the request, and his friend is only complying because it is what he asked for. From this, Pettit extracts the following lesson: interference is non-dominating provided that it is controlled by the interferee.

All of this is well-known, and uncontroversial. What is underappreciated is Pettit's deeper explanation for why control negates domination. This is what he says.

> "The arrangement in place with the key is a means, we might say, whereby you impose your own longer-term will on yourself, not a means whereby I impose my will on you. You are the one who set up that arrangement and you are the one who decided the conditions it imposes. You use me to give effect to your own will, not

> relying on yourself to be able to do so. When I shut off the option that you now want to take, interfering with you and even frustrating you, I channel that will and enable it to have an impact on your behaviour. I perform like a robot that is programmed to satisfy your instructions. I act as your servant, not your master" (Pettit, 2012: 57).

Ordinarily, interference is dominating because it imposes the will of another onto you. The act of interference is a means that serves an alien will. But according to Pettit, control negates this domination by ensuring that the will imposed on you is your own. There is a subtle and important point here: control is sufficient to transform an action from being a means of *your* will, to being a means of *my* will. When I control your interference, it no longer serves your will; instead it serves mine. This transference of the act from your will to my will is essential to explaining why your interference no longer subjects me to an alien will. Without postulating this transference, Pettit's account would not explain why interference is insufficient for domination.

This is why I claim that Pettit's analysis of freedom implies the thesis that control grounds agency. The analysis postulates this thesis as a necessary presupposition to explain why interference is insufficient for domination.

One might object that Pettit's analysis of freedom does not show that control grounds agency because of a disagreement over what 'agency' means. Some might object that the principal-agent relationship essentially implies consent, authorisation, fiduciary duties of care and so on. If so, then the transference I have just discussed would not be sufficient for agency.

In reply, I would remind you that I am stipulating a definition of agency that implies none of this. This is not an arbitrary decision on my part. Instead, I am merely adopting Hobbes's notion of agency. Recall that for Hobbes, a principal-agent relation is defined by the transference of attribution. If an action performed by one agent is transferred to another, then the first becomes the agent, and the latter becomes the author (principal). His definition of agency implies noting about the grounds of agency, nor anything about its associated duties. This is fine because the argument does not rely on accurately analysing the ordinary use of the concept. Whether we call it agency or something else, the only feature that matters is the transfer of attribution.

On the Kantian view, if an act reflects my will, then it is imputed to me. So, on Pettit's analysis of freedom, control suffices to transfer attribution of interference from one agent to another because it suffices to ensure that the interference no longer reflects an alien will; instead it reflects one's own will.

4.1.1 Three Types of Control

One might worry that the kind of control Pettit discusses is not the same kind of control that a state's population could realistically be said to exercise over the state. In the case of the alcohol cabinet, the man initiates and instructs his friend to interfere under certain conditions. He therefore actively initiates the arrangement that produces the interference.

But this is disanalogous to popular control. Regardless of how we spell out the details of popular control (as I do below), there are no actual states whose populations actively instruct it to implement the specific laws on the books. And so, it is reasonable to worry that the kind of control that negates domination is not the same kind of control that the people exercises over the state.

However, Pettit's analysis of control is not restricted to the case of the medicine cabinet. Pettit distinguishes between three kinds of control (Pettit, 2012: 156).

- Active control
- Virtual control
- Reserve control

He illustrates each kind of control using the example of a horse and its rider.

First, imagine a rider who intentionally directs exactly where the horse goes. The horse may be inclined to go left, but he directs it to go right. This is a paradigm example of active control (Pettit, 2012: 156).

Second, imagine a rider who lets the horse have its lead. The horse can go where it wills but the rider actively monitors the horse's movements. He has a plan for where he wants the horse to go, and he chooses to interfere only on the condition that the horse strays from his plan. This is a paradigm example of what Pettit calls virtual control (Pettit, 2012: 156).

Thirdly, imagine a rider who has no preferences about where the horse goes. He lets the horse take him as the horse chooses. And unlike virtual control, this rider has no plan in mind and has no intention to interfere. Instead, he has the ability to direct the horse *if he changes his mind*. He retains the ability to interfere should he have a change of heart (Pettit, 2012: 156).

Although he illustrates the idea of non-dominating interference using the example of the alcohol cabinet (which seems like a version of virtual control), Pettit's express position is that all three forms of control negate domination in the same way.

> "I ensure that the horse I ride goes where I will, whether or not the influence I exercise is of the active, virtual or reserve variety" (Pettit, 2012: 157).

Pettit's point here is that the horse's movements remain subject to my will regardless of whether my control is active, virtual, or reserve. Either way, the actions of the horse reflect my will.

Now, whereas it is implausible to think that a state's population exerts active control over it, it is far more plausible to suggest that its population exerts either virtual or especially reserve control over it.

> "Patterns of virtual and reserve influence are as important as patterns of active influence [...]. They are particularly worthy of notice here since, as we shall see, there is every reason to think that the modes of influence whereby people might exercise control over government include virtual and reserve influence, as well as active" (Pettit, 2012: 157).

Pettit's considered view is that legitimate states non-dominatingly interfere with their population *because* that population exercises reserve control over their state. It does so by having the ability to overthrow the state when needed (Pettit, 2012: Ch. 8 & 9)(Lovett & Pettit, 2019).

But notice the implication. On Pettit's view interference is non-dominating if and only if the interfere controls the interference *because* their control suffices to bring the interference under the will of the interfere. So, if the state does not dominate the people despite it interfering with them, and despite the people's control being merely reserve, then reserve control is sufficient to make the state's interference reflect the will of the people. And since this is how I have defined a principal agent relationship, it follows that the people's reserve

control of the state is sufficient to ground a principal agent relationship between the state and its population.

This is assuming of course that we accept Pettit's analysis of non-dominating interference. I will return to this point below, but first, I must discuss the other commitment that the *Popular Control Condition* entails: polyadic domination.

This concept is essential for heading off a serious objection. Because even if, you accept that a population's reserve control grounds agency, you might worry that this fails to establish the individual obligations implies by the idea of legitimacy. After all, a state is legitimate only if the laws it decrees create binding moral obligations for individuals. So, if this revision to Kant's theory is to succeed, it must show that this normative power over individuals follows from popular control.

But Kant's mechanism for this power is reflexive normative power plus agency. I have the power to bind myself, the state's legislative acts counts as my own, therefore, the state's laws bind me. But if control is what grounds agency, then one might worry that the state lacks the power to legislate for me as an individual because I do not control it as an individual. I do not individually have the ability to overthrow the state, even if the population as a whole does. Perhaps popular control can show that the state has the power to create obligations for the people as a whole, but unless we already believe that the group has authority over the individual, this alone will not explain why the state's laws bind me as an individual.

To head off this objection, I will argue that the Popular Control Condition also requires the idea of polyadic domination.

4.2 Polyadic Domination

The idea of polyadic domination was first introduced by Thomas Simpson (2019). According to him, polyadic domination exists when there is a group of people who *collectively* dominate another party. They dominate collectively because no individual member dominates as an individual; nor does the group, as a single group agent, dominate either. Instead, the members of the group dominate *together* because they jointly wield the ability to team up and invade. Simpson illustrates the idea of polyadic domination using the following case.

> *Non-Coordinating Masters*: There are three Masters and a Slave. No Master is strong enough to interfere with the Slave alone. If two or more of them coordinate, they can interfere. But all three Masters are benevolent. They each recognise their ability to team up. But none of them wills to invade the slave. None of them are engaged in team reasoning, nor do they have any joint intentions to cooperate (Simpson, 2017:32).[23]

Intuitively, the Slave is dominated. But who dominates him? Simpson argues that none of the individual Masters dominate him because none of them has the unilateral ability to invade. Imagine what would happen if one Master had a change of heart and chose to invade, but the others did not. Because no individual Master is strong enough to overpower the Slave, invasion would not occur. Therefore, no single Master dominates the Slave.

[23] Simpson talks about joint intention and team reasoning for a reason. The standard view in the literature is that a collection of individuals counts as a team just in case they have the joint intention to cooperate with one another (Searle, 1990; Gold & Sugden, 2007; Bratman, 1999; Gilbert, 1989; Tuomela, 2007). So, because the other two Masters reject this joint intention, the three of them do not count as a team. This matters because team agency is a crucial aspect of republican political philosophy. I explain this point further below.

Nor is it a group agent that dominates the Slave. The Masters do not qualify as a group agent because they fail Pettit and List's 'conversability test' and because they lack the decision-making procedures that group agents require to act as a single agent (Simpson, 2017: 37). Therefore, no group agent dominates the Slave.

And yet the Slave is clearly dominated. This is why Simpson postulates the idea of 'polyadic domination' as opposed to 'dyadic domination.' Typical examples of domination like that of a single Slave, and a single capable Master, are what Simpson would call dyadic because there is one agent occupying the relatum of dominator (the Master) and one agent occupying the relatum of dominated (the Slave).

In contrast, *Non-Coordinating Masters* is an example of polyadic domination because the relatum of dominator is occupied by multiple agents (Master 1, Master 2, Master 3). Therefore, it is not the case that any of the Masters dominates individually, but rather that they all dominate *together*.

To illustrate the contrast between polyadic and dyadic domination, Simpson contrasts *Non-Coordinating Masters* with the following case.

> "*Nearly Coordinated Masters*: There are three Masters and a Slave. No Master is strong enough alone to interfere with the Slave. If two of them coordinate, they can interfere. Master 1 is ready to interfere, but Master 2 and Master 3 are benevolent, rejecting the proposed joint intention and not engaging in team reasoning" (Simpson, 2017: 32).

Nearly Coordinated Masters is an example of multiply instantiated dyadic domination. Simpson explains that in this case Master 2 dominates the Slave and so does Master 3 (but not Master 1). Why? Because a change in the will of Master 2 is, all else equal, sufficient to

ensure that invasion occurs. And ditto for Master 3. Therefore, the Slave is not polyadically dominated in this case; he is dyadically dominated twice over.

Why accept the idea of polyadic domination? Because, Simpson argues, we could not otherwise account for the clear intuition that the Slave is dominated in the *Non-Coordinating Masters*. Domination is essentially relational. So, if the Slave is dominated, then someone(s) must be dominating him. But since it cannot be any individual Master, and since it cannot be a group agent, it must be the Masters collectively. Our intuition in this case therefore give us evidence to support the postulation of polyadic domination.

To tease apart the difference between dyadic and polyadic domination, Simpson proposes two tests: (i) the *Can Do Test* (for dyadic domination); and (ii) the *Can Do Together Test* (for polyadic domination).

Can Do Test: suppose A decides to invade B. Hold all else fixed (including the wills of others). Then ask whether A will invade B. If the answer is yes, then A dominates B.[24]

Can Do Together Test: imagine a collection of individuals. These individuals have the ability to coordinate. For this reason, they are members of a group. Call this group G. Suppose each member of G decided to coordinate with one another to invade B. Hold all else fixed (including the wills of others outside G). Then ask whether they invade B. If the answer is yes, then the members of G dominate B together.[25]

As we can see, none of the Masters in *Non-Coordinating Masters* pass the *Can Do Test;* but they do pass the *Can Do Together Test*. The same is true for a population with reserve

[24] This test was initially proposed by Niko Kolodny (2019).

[25] This test was first proposed by Simpson (2017).

control over its state. No individual citizen would pass the *Can Do Test* because no individual citizen would overthrow the state if she willed to. But all citizens considered together would pass the *Can Do Together Test* because they would overthrow the state *together* if they willed to. So, if we ask "who dominates the state" the answer can only be that the people dominate it together.

This is crucial for two reasons. Firstly, it shows that the objection considered above was misplaced. There is no need to demonstrate how the group has authority over the individual or how group obligations ground individual obligations. If a population dominates polyadically, then they exercise reserve control over the state together. Since reserve control grounds agency, the state represents them polyadically.

Secondly, polyadic domination is crucial because of the *Self-Legislation Constraint.* Recall that this constraint says the following.

> "a person is subject to no other laws than those he gives to himself (either alone or at least along with others)"(MM, 6:223).

This constraint recognises two distinct ways that I can give myself laws. The first is individually. The second is 'along with others.' The second means of self-legislation is what ensures the state's laws bind all of us, despite none of us individually controlling the state. Because we do not individually control the state, the state's legislative acts cannot be attributed to us individually. But because we do control the state 'along with others,' the state's legislative acts can be attributed to us 'along with others.' And since we have the power to give ourselves laws in this fashion, the state's laws are binding for us.

This is why I said that that the *Popular Control Condition* commits one to both the control grounds agency thesis and the possibility of polyadic domination. According to the

republican theory of popular control, which Pettit advocates, popular control must be either active, virtual, or reserve. Since reserve control is the easiest to satisfy, this is the minimal kind of control a population must have to avoid domination by its state. And since control blocks domination by making the actions of the interferer serve the will of the interferee, reserve control grounds agency.

Moreover, as Simpson argues (2017)[26] popular control must be polyadic. The only alternatives are individual control (which is unrealistic) or control by a group agent (which presupposes institutions to begin with). Therefore, popular control must be *polyadic reserve control*.

So, fully spelled out, the *Popular Control Condition* says: the state is the agent of its population if, and because, the members of its population exercise polyadic reserve control over the state.

5 Proposed Revision: Kantian-Republicanism

So, why should we revise Kant's theory by replacing the *Authorisation Condition* with the *Popular Control Condition*? For me, this move makes sense because the commitments of the *Popular Control Condition* strike me as more plausible than the commitments of the *Authorisation Condition*.

As I argued above, I find it difficult to accept Kant's account of noumenal authorisation because I think there is probably no such thing as a metaphysically heavyweight noumenal self, and because I think constitutivism is false because of the shmagency objection. Since the *Authorisation Condition* works only if one of those things is true, I cannot accept it.

[26] And Pettit agrees (Lovett & Pettit, 2019).

In contrast, I find the *Popular Control Condition* easier to accept because I think its commitments are more plausible.

The thesis that control grounds agency seems plausible to me because of cases like Pettit's alcohol cabinet. In these cases, there is clearly interference and yet it seems like there is not domination. Pettit's account of non-dominating interference strikes me as credible, and that account indispensably postulates the thesis that control grounds agency. And so, this thesis also strikes me as credible.

Moreover, the possibility of polyadic domination seems credible to me because of my intuitions in Simpson's *Non-Coordinating Masters* case. It seems obvious to me that the Slave is dominated in this case. And for the reasons discussed above, the best explanation for this intuition is that the Masters dominate polyadically. And so, the possibility of polyadic domination also seems credible to me.

Note that I am not claiming that either of these claims have to be true. Instead, I am saying that I have a higher credence in them than I do in either of the *Authorisation Condition's* commitments. And so, I am persuaded to replace the *Authorisation Condition* with the *Popular Control Condition* in Kant's theory.

I expect that these considerations will not persuade many Kantians. Unfortunately, this disagreement would probably turn on other debates. For example, I am persuaded by Enoch's shmagency objection to constitutivism. But many constitutivists, including Kantians, remain unconvinced because either they misunderstand the objection, or (more likely) they think one of the existing responses to it succeeds whereas I think they fail.

Or this disagreement could come down to whether one thinks intuitions about particular cases are generally reliable guides to the truth (Singer, 2005; Huemer, 2008). I am persuaded

that they are reliable (McMahan, 2013; Huemer, 2005). But Kant himself thought that examples could only ever mislead (Kant, *Groundwork* 4:408); and I would wager that many contemporary Kantians agree with him.

We cannot hope to settle these other debates here. So, I will limit my claim by conceding that a Kantian with radically different starting points to myself would see no good reason to revise Kant's account in the manner I have suggested. For someone like that, my arguments in this Chapter will probably seem unpersuasive.

But I would also wager that there are many political philosophers, both Kantian and non-Kantian, who would lean towards agreeing with me. It is, of course, standard practice to appeal to case-based intuitions in the literature, and many remain sceptical of constitutivism for the reasons discussed above. This goes to show that my position is at least not idiosyncratic. So even though I concede that my arguments might fall flat for some Kantians, I still think my arguments are of interest to political philosophers.

Recall that my goal in this dissertation is to critically explore Kant's political theory from the perspective of a non-Kantian political philosopher. I want to know whether Kant's theory has insightful lessons or compelling solutions to the problem of political authority. Given this goal, I think it is fair to explore revisions to Kant's account that better equip it to solve this problem.

Of course, if my revisions are implemented, then the resulting theory cannot accurately be described as Kant's theory. To continue calling it that would be to misrepresent Kant's actual position.

That said, the revised account that I recommend is still distinctively Kantian in its heritage. It still retains the following characteristic elements of Kant's original theory.

- The regulative ideal of equal freedom as non-domination.
- The unilateral choice problem with the state of nature.
- The omnilateral will solution to the unilateral choice problem.
- The self-legislation constraint.
- Unification of the multitude through representation.
- The enablement of original acquisition as the essential function of the state.

What makes it distinctively non-Kantian is its integration of characteristically republican elements like the following.

- Popular control
- Polyadic domination
- Pettit's account of non-dominating interference.

Given this blend of Kantian and republican features, I think it appropriate to call this revised theory *Kantian-Republicanism*.[27]

[27] I am not the first to use this name. Kolodny (2019) used it as a catch-all term to refer to both Kantian theorists and republican theorists. His aim was to offer an objection to both theories, grounded in their shared commitment to freedom as non-domination. He was not alluding to a synthesis of the two traditions. Also, Lovett (2022: 94) uses the term to refer to hypothetical republican theories that regard the duty to not dominate others as a side-constraint rather than an overridable duty. This use of the term is not to suggest that Kant counts as part of the republican tradition (Lovett says he does not). Instead he uses the term because he thinks that Kant's doctrine of right approximates what a republican side-constraint view might look like. I think my use of the term is better motivated than both Kolodny's and Lovett's.

One might worry that this name confuses more than it illuminates. After all, is it not the case that Kant was a republican? If so, then the name "Kantian-Republicanism" would be redundant rather than novel.

However, the movement we call contemporary or neo-roman republican does not recognise Kant as part of the tradition. For example, Lovett (2022: 2) claims that "Rousseau and Kant, in contrast, are definitely not republicans." Moreover, Pettit (2013) argues that Kant does not qualify as a republican in the same tradition as himself, even though he acknowledges Kant's commitment to the same conception of freedom as non-domination. Both Pettit and Lovett agree that Kant does not qualify as a republican because of his views on the role of the citizenry.

For Kant, "a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority**" (**MM, 6:320).[28] This prohibition on popular resistance is the reason republicans do not recognise Kant as part of their tradition. In his book, *The Well-Ordered Republic* (2022)*,* Lovett identifies three core principles that he thinks defines the republican tradition

1. *Non-domination principle*: freedom as non-domination is the principal value of justice.
2. *Empire of law principle:* furthering the cause of freedom as non-domination requires a system of laws enforced by a state.

[28] There is some controversy over how best to interpret Kant's views on the morality of revolution. The standard view is that Kant thought revolution was always impermissible regardless of how unjust the state is (Flikschuh, 2008). But there are some prominent Kantians who think popular resistance is sometimes morally permissible (Korsgaard, 2008; Ripstein, 2009).

3. *Popular control principle:* the legitimacy of the state enforcing the law depends on whether the officials of that state are subject to the popular control of the people.

Lovett claims that Kant is not a republican precisely because his theory does not satisfy the popular control principle.

Pettit agrees with Lovett in the following passage.

> "While Rousseau and Kant remained faithful to some core ideas in the Italian–Atlantic tradition of thinking [Pettit's republicanism] – in particular, as we shall see, to the idea of freedom as nondomination – the way of thinking about citizens and the state that they ushered in was as inimical to the tradition as classical liberalism" (Pettit, 2013: 170).

The upshot is this. If popular control is a non-negotiable feature of the republican tradition (as mainstream republican theorists think it is) then Kant does not count as part of the republican tradition because his theory rejects the popular control principle.

Therefore, the name "Kantian-Republicanism" does not smack of tautology. Instead, it points to a synthesis of two distinct (but closely related) traditions in the history of political thought. The resulting theory bears distinct hallmarks from both, and so I think it appropriate for the name to reflect that.

For the reasons discussed above, I think Kantian-Republicanism avoids the problems I have with Kant's theory, but still retains the elegance and explanatory power that makes Kant's theory attractive in the first place.

In the next Section, I shall address some potential objections to this revised theory.

6 Objections & Replies

My main argument is that the *Popular Control Condition* is less problematic than the *Authorisation Condition*. And as a result, we have good reason to revise Kant's theory by replacing the *Authorisation Condition* with the *Popular Control Condition*, resulting in Kantian-Republicanism.

Because I have conceded that my argument will not move Kantians with vastly different starting points, I anticipate that likely objections will focus on whether the *Popular Control Condition* really is less problematic than the *Authorisation Condition*, from the perspective of a non-Kantian political philosopher.

6.1 Is Reserve Control Really Sufficient for Self-Legislation?

Kantian-Republicanism relies on the idea that a population's reserve control is sufficient to satisfy the self-legislation constraint. But one might object to this move on the following grounds.

1. Reserve control is essentially non-intentional.
2. Giving laws (legislation) is an action.
3. Action is essentially intentional.

(2) and (3) imply that an agent only ever gives law if they intend to do so. One cannot unintentionally act, because intention is what makes the difference between an action and mere happening. At least, this is the orthodox view in the philosophy of action literature (Anscombe, 1956; Davidson 1971). Therefore, you or I only give laws to ourselves if we intend to do so.

But reserve control cannot get us there. According to (1), reserve control implies an absence of intention. Therefore, one might object that reserve control cannot possibly ground

self-legislation, and so the *Popular Control Condition* cannot actually replace the *Authorisation Condition.*

This objection is powerful because Kantian-Republicanism cannot coherently deny any of these premises. If reserve control does require intention, then it could not extend to explain benevolent master cases (which are supposedly paradigm cases of reserve control). Legislative acts are obviously acts. Denying that premise would be a non-starter. Of course, the theory could deny that intention is essential to action, but that would come at a huge cost. The thesis is so strongly held within the philosophy of action field, that to deny it would arguably be more problematic than accepting constitutivism.

My reply to this objection does not involve denying any of these premises. Instead, it involves clarifying a conceptual point about the principal-agent relationship. When we say that the actions of the agent are attributable to the principal, we are not making a claim about causal attribution. We are not saying that the principal actually performs the action in the usual way that agents perform actions like sipping a cup of coffee or driving to the office. Instead, when we say that the actions of the agent are attributable to the principal, we mean that, in a morally relevant sense, it is *as if* the agent had performed the action themselves. Let me now unpack this idea.

Ordinarily, when an agent performs an action, they thereby create a normative (as opposed to merely causal) relationship between their will and an event (the action). This normative relationship can alter the agent's position in the normative landscape by creating duties, making various reactive attitudes appropriate, altering permissions and so on.

When we say that actions performed by the agent are attributed to the principal, we mean to say that the same normative relationship, typically created through action, is created between the will of the principal and the event we call the action of the agent.

A principal-agent relationship suffices to bypass the self-legislation constraint because it ensures that the population's relationship to the legislative acts of the state is qualitatively identical to the relationship it *would* have to any legislative acts it could have performed itself. So, a principal-agent relationship does not somehow make it the case that the population actually performs an act of legislation on itself. Instead, the state is the only one who performs an action (and so, it is the only one that need have an intention to do so). The principal-agent relationship ensures that the population relates to the state's action in the same way it would to its own action. And so, because the people need not perform the legislative act, they need not have the relevant intention.

That said, why should we accept that reserve control is sufficient to establish a relationship that typically involves intentional action? I think the best reason to accept this postulate is that it is indispensable to the republican account of non-dominating interference I discussed above. Many philosophers, myself included, have robust intuitions in cases of non-dominating interference. Because the republican account offers the best explanation of these intuitions, I think that gives us some reason to accept it.

I am not claiming that this reason is conclusive. Instead, I am claiming that, from my perspective, this reason is stronger than any reason I have to accept the commitments of the *Authorisation Condition*.

6.2 Should We Accept Polyadic Domination?

One might also wish to object to the idea of polyadic domination. There are two ways one might try to do this. First, one might do so by rejecting the idea of domination itself. Second,

one might accept dyadic domination but reject the extension of the idea to polyadic domination. The problem with taking either of these options is that we have robust intuitions about domination.

Rejecting the idea of domination does not come for free. When we consider cases like the benevolent Master, it strikes us that the Slave is not free. I find this intuition both clear and reliable across a number of similar cases. And I expect that you probably do as well. The idea of domination earns its keep by explaining our intuitions in cases like these. Given the absence of interference, and the Master's disposition not to interfere, domination presents itself as the best explanation of why we judge the Slave to be unfree.[29] Therefore, rejecting the concept of domination seems counterintuitive.

Next, one might accept the concept of domination but insist that only dyadic domination is possible; not polyadic domination. But this move would also come at a cost. As I argued above, the concept of polyadic domination earns its keep because it seems like the best explanation of our intuitions in the *Non-Coordinating Masters* case. In that case, it is clear (to me at least) that the Slave is unfree/dominated. But for the reasons discussed, none of the Masters dominate individually, and nor is there a group agent that dominates.

The only available options are to (i) deny that domination requires dominator(s); (ii) weaken the conditions for group agency so that the three Masters count as a group agent; (iii)

[29] There are of course some philosophers who disagree. For example, Kolodny (2023) argues that domination is dispensable because we can explain the same intuitions using the idea of subordination. However, I remain unconvinced because Kolodny's concept of subordination accounts for these cases as problematic because of inequality. But my intuitions tell me that the Slave is not merely unequal to the Master. They also tell me that the Slave is unfree. Domination explains the Slave's unfreedom; Kolodny's subordination does not.

weaken the conditions for domination so that the Masters dominate the Slave individually; or (iv) deny that the Slave is dominated at all. The problem is that none of these options strike me as more credible than simply accepting polyadic domination.

6.3 What About Evil Laws?

One might object that control based agency implies that the people are bound by even the most evil laws of the state. Suppose that a population has the power to overthrow the state. The state passes a law that violates the basic liberties of its citizens. Suppose that the people do not overthrow the state. Does this imply that all are bound to obey this evil law?

I think the answer is 'no.' Recall that on the Kantian view, our powers of self-legislation are constrained by the duty of rightful honour. As a result, no one can give themselves a law inconsistent with their basic liberties. This constraint also limits the legislative powers of the state. Since the state's legislative powers are downstream of the people's legislative powers, it cannot bind them to any arrangement that they could not bind themselves to.

In my view, this explains Kant's one restriction on the powers of the state: "what a people cannot decree for itself a legislator also cannot decree for a people*"* (MM, 8:304). This line makes sense once we appreciate that the legislator's power works by transfer of attribution. By acting in the name of the people, the legislator makes the people the co-author of what it does. So, when it legislates for them, it is as if they legislated for themselves. But if the duty of rightful honour prevents this act from having normative force, then the legislator's acts fail to obligate the people.

Therefore, the Kantian-Republican view sketched in this Chapter does not imply that the people are bound to obey evil laws. It would still imply that these laws are attributable to the population as a whole, even though they are not bound by them. Indeed, I believe Kantian-Republicanism would be committed to the view that injustices committed by the state, and

allowed by a population with popular control, would be attributable to the people. And as a result, the people would have some sort of special responsibility for these acts of injustice. I do not have a fully worked out view of what this responsibility would entail, or what sorts of attendant obligations it would imply. But that some sort of account is required seems unavoidable to me.[30]

7 The Impossibility Dilemma

There is an objection to my argument that I do not have the space to fully address in this Chapter. I flag it here as a promissory note. I will address it in Chapter 4.

One might argue that introducing the *Popular Control Condition* into Kant's political theory is a poisoned pill because it imports a republican problem into the theory that was not there before: *Simpson's impossibility dilemma.*

On the republican view, freedom is the absence of domination, so two problems must be solved for any political order to count as free:

- *Dominium*: private persons dominate each other.
- *Imperium*: the state dominates private persons (Simpson, 2017: 30).

To solve the problem of *dominium*, there must be a state capable of protecting individuals from private domination. To solve the problem of *imperium*, the population must have reserve control over the state.

Simpson's impossibility dilemma is this:

[30] For a recent discussion of this sort of idea, see Stilz (2011).

Either the people have enough power to overthrow the state, or they do not. If they do, then the people themselves dominate individuals, since the state does not check their power to interfere. If they do not have the power to overthrow the state, then the state dominates them because nothing checks the state's power to interfere. So, even though republicans need solutions to both dominium and imperium, Simpson argues that one or the other is inevitable. In either case, some agent possesses the uncontrolled power to invade, rendering non-domination for all a conceptually unachievable ideal (Simpson, 2017 & 2019).

This objection relies on the *Popular Control Condition,* and so, it does not affect Kant's original theory. On that view, the people must not have the power to overthrow the state. Instead, Kant insists that the state should have unchecked power. For Kant, the state's interference does not count as domination because that interference is authorised by the united general will of the people. Kant invokes the Latin maxim *volenti non fit iniuria* (the willing cannot be injured). Whereas republicans rely on popular control to render the state's interference non-dominating, Kant relies on consent.

But as we discussed above, Kant's reliance on noumenal consent comes with unacceptable commitments. So, even though his theory is immune to Simpson's dilemma, I see independently sufficient reason to revise it, if I can.

This is why Simpson's dilemma is so troubling. Unless I can give a good answer to it, my proposal to replace the *Authorisation Condition* with the *Popular Control Condition* would be unjustified because Simpson's dilemma is at least as troubling as any of the objections I raised against noumenal consent. At the end of the day, the cure should not be worse than the disease.

Republicans have offered a reply to Simpson (Lovett & Pettit, 2018), but the debate is ongoing (Simpson, 2019). As I said, I defer my response to Chapter 4. But if my arguments there succeed, then the inclusion of popular control need not entail the impossibility of republican freedom. Kantian-Republicanism can remain both coherent and normatively robust.

8 Conclusion

In this Chapter, I argued that Kant's theory relies on noumenal authorisation. Depending on how we interpret that, this commits Kant to either distinct metaphysical entities called noumena, or to constitutivism. I argued that neither option is attractive.

To avoid these costs, I proposed replacing the *Authorisation Condition* with the republican *Popular Control Condition*. I explained the commitments of this move and argued that they are less problematic than those associated with the *Authorisation Condition*.

This was a pivotal Chapter in the dissertation. Until now, I have focused on giving the best interpretation of Kant's political theory. My motivation for putting the most faithful representation of Kant's ideas on the table was to enable a clear-eyed assessment of them. As someone who wants to know whether Kant can help us solve the problem of political authority, it was important to first present his ideas in their best light. That was the job of Chapters 1 and 2.

This Chapter was not an interpretive exercise. Instead, my goal was to keep what I find exciting about Kant's theory, while jettisoning the components that cause problems for me. In their place, I proposed leaning into the republican political tradition. The resulting theory, Kantian-Republicanism, strikes me as a promising solution to the problem of political authority.

But whether it is viable remains to be seen. Its plausibility will depend on whether I can answer Simpson's dilemma in the next Chapter.

Chapter 4 — The Possibility of Republican Freedom

1 Introduction

Thomas Simpson (2017; 2019) has argued that Republican freedom is impossible. He presents the following dilemma for Republicans:

> *Simpson's Dilemma***:** either the People are powerful enough to protect us from the state, or they are not. If they are, then we are dominated by the People, since any agent powerful enough to overthrow the state is powerful enough to interfere with you or me. If, on the other hand, the state is powerful enough to protect us from the People, then we are dominated by the state, because nothing constrains its will.[31] Either way, we are dominated. And so, Republican freedom is impossible.

Frank Lovett & Philip Pettit (2019) have replied to Simpson's dilemma by resisting the first horn of it. They argue that Republican freedom is possible because the People can be powerful enough to protect us from the state *and* unable to invade us themselves. They claim that social norms of the right kind could prevent the People from invading us, and so protect us from domination. In short, they argue that in the ideal of Republican freedom the state

[31] The term 'will' is slippery. As I read Pettit, he defines the term as nothing more than the capacity to choose between competing options. See Pettit (2008a: 104-5).

protects us from each other, the People protect us from the state, and social norms protect us from the People. Call this the *Republican reply*.

However, Simpson (2019) has posed the following rejoinder to this Republican reply:

1) Social norms are the only restraint on the People invading individuals.

2) Social norms depend on the moral judgments of the People.

3) If the only restraint on an agent invading individuals depends on the moral judgments of that agent, then that agent dominates those individuals.

Conclusion: the People dominate individuals.[32]

Call this *Simpson's Rejoinder.* Simpson's point is that social norms cannot block domination because they constitutively depend on the moral judgments of the very agents they are supposed to inhibit. If he is right, then social norms cannot protect us from the People, and the Republican reply fails.

In this Chapter, I argue that Simpson's rejoinder fails; and so, the Republican reply succeeds. I do so, by challenging (3). For lack of a better label, I shall call this the *moral judgment dependence principle* (MJD principle for short).

My main goal in doing so is to show that the Republican modifications I recommended in earlier Chapters are not as costly as they may have at first appeared.

[32] Technically, it is not the People *qua* single agent that dominates us; rather it is the individual members of the People that dominate together or as Simpson would put it 'polyadically' (Simpson, 2017: 36). Therefore, the claim that the People dominate individuals should be taken as shorthand for the more cumbersome claim that the members of the People dominate individuals. For more on this see Section 3.1.

If Simpson's rejoinder succeeds, then adopting a popular control condition on political freedom is a poisoned pill. My aim is to defuse this worry by showing that Republican freedom is possible because Simpson's rejoinder fails.

In Section 2, I outline the core commitments of Republicanism (Pettit, 1997; 2012). In Section 3, I reconstruct Simpson's argument and present his objection. In Section 4, I offer three interpretations of Simpson's argument: (i) the endogenous interpretation; (ii) the instability interpretation; and (iii) the voluntarist interpretation. I argue that the first two fail, but that the voluntarist interpretation requires further consideration. In Section 5, I identify the key premise of the voluntarist interpretation to be *moral judgment voluntarism*—the thesis that a change in will is (all else equal) sufficient to change one's moral judgments. In Section 6, I clarify this thesis and try to identify the most plausible and least controversial version of it. In Section 7, I argue that Republicans have sufficient reason to reject moral judgment voluntarism; and can thereby resist Simpson's dilemma without having to bite bullets. In Section 8, I address a possible objection. Section 9 is the Conclusion.

2 Republicanism in a Nutshell

2.1 The Concept of Freedom

Republicans argue that the concept of freedom is best understood as *non-domination*; and that it is possible only under state institutions that make, apply, and enforce laws that define and protect our basic liberties (Pettit, 2012). The state is indispensable because it is the only kind of agent that can protect us from one another. Without the protection of the state, individuals would be vulnerable to invasion/interference from their neighbours.[33]

[33] Notice how this differs from my interpretation of Kant's political theory in Chapters 2 and 3. On my reading of Kant, the primary justification for the state lies in the moral necessity of solving the problem of unilateral choice. In contrast, Republicans primarily justify the state as necessary to prevent private domination.

As I noted in Chapter 2, domination is defined as subjection to the uncontrolled will of another. Sometimes, Republicans use the term 'arbitrary' instead of 'uncontrolled'; but these terms are meant to refer to the same thing.[34] Interference (the intentional removal or replacement of some of your options) is one of the most familiar ways in which our freedom can be reduced.[35] But republicans argue that the mere ability to interfere also reduces your freedom by subjecting you to the will of another. According to Pettit,

> "The subjection shows up in an alteration of the options you face. You will no longer confront a free choice between X, Y and Z. Rather, the objective or cognitive profile of the options will be changed so that what you confront is a choice between X-if-it-please-me, Y-if-it-please-me and Z-if-it-please-me. The options will alter

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One might worry that leaves Republicanism open to the guarantee problem. However, even if this is the case, it is irrelevant to my aims in this thesis. The Republican modifications I recommend Kantians adopt in Chapter 3, do not require embracing this further Kantian commitment. What matters in this Chapter is whether incorporating a Republican popular control condition destabilizes the Kantian theory by making non-domination impossible.

[34] According to Pettit, "Arbitrary interference, on this interpretation, is interference practised in accordance with the *arbitrium*, or 'will', of another. It is precisely what I describe here as uncontrolled interference: that is, interference that is exercised at the will or discretion of the interferer; interference that is uncontrolled by the person on the receiving end" (2012: 58).

[35] Republicans distinguish between options that require protection (those whose removal/replacement would count as interference) and options that do not require protection. The former are called *basic liberties* (Pettit, 2008c). An action only counts as 'interference' in the relevant sense when it intentionally affects a basic liberty. For example, if you decide not to be my friend anymore, you intentionally deprive me of options, but republicans don't regard this as an interference with my freedom because these options are not protected as basic liberties.

> in a manner that parallels the alteration imposed by the removal, replacement or misrepresentation associated with unlicensed and uncontrolled interference" (Pettit, 2012: 60).

Pettit's point is that A's ability to interfere with B alters B's option set. This is because of how he individuates options. For him X is a distinct option from X-if-it-please-me (Pettit, 2012: 52).[36]

2.2 The Necessity of the State

Crucially, Republicans argue that we would still need the state even if everyone were a saint. This is because Republican freedom demands *external constraints* on interference; merely *internal constraints* (such as virtue) are insufficient for the reason discussed above. If the only constraint on your choice is internal, then my option is X-if-it-please-you, rather than just X (Pettit, 2012).

The internal/external distinction boils down to whether the constraint can be overcome by an act of will. We can cash this idea out by using the following test.

> *Can Do Test*. "Imagine that B were to will to invade A. Hold fixed, to the extent possible, everything else, including the wills of all other agents. Then ask whether

[36] Pettit's position is more nuanced than it may first appear. He assumes that "for any agent there are features or properties such that their presence reliably supports the attraction or aversion felt for a given prospect or option" (Pettit, 2012: 52). One of these features is whether these options are subject to the will of another. He thinks we ought to care about this because we are bound to regard others as appropriate objects of reactive attitudes, and this requires us to regard them as an independent centre of choice (Pettit, 2012: 60).

B invades A. If so, B has the power to invade A, and dominates her; otherwise he does not" (Simpson, 2017: 36).[37]

Of course, virtuous people *would* not will to invade others because that would be wrong. But this is not what Republicans are worried about; rather they worry about whether these people *could* invade *if* they were to have a change of heart. It is important to emphasise this point because sometimes the external/internal distinction fails to track what really matters when it is interpreted as a distinction between psychological limits endogenous to the agent, and physical limits exogenous to the agent.

For example, Republicans think that a disabling phobia can be a sufficient constraint for freedom because it can prevent someone from invading even if they choose to do so (Pettit, 2008a: 123). To illustrate, imagine that I am strong, sneaky, and evil. I am strong enough to overpower anyone I come across, and sneaky enough to get away with it. Moreover, I hate people and strongly desire their possessions. But now suppose that a traumatic childhood has instilled in me a disabling phobia of physical violence. I would very much like to go around mugging people with impunity. But whenever I try to do so, violent panic attacks throw me to the ground before I can get my hands on the would-be-victim. In a case like this, it is clear that I do *not* dominate others because my phobia adequately constrains me.[38]

This case shows that the internal/external distinction should not be interpreted as tracking constraints 'inside the individual' versus those 'outside the individual'—a disabling phobia surely counts as something inside me. Rather, the internal/external distinction should be

[37] This test was originally proposed by Niko Kolodny (2019).

[38] This verdict follows from a straightforward reading of Pettit (2008a) where Pettit is explicit that disabling psychological conditions can prevent domination.

interpreted as tracking constraints 'inside the will' versus those 'outside the will' What really matters is whether the constraint on interference can be overcome through an act of will — whether a change in will (all else equal) suffices to produce interference/invasion.[39] In the case above, I do not dominate because my choosing to mug people is not sufficient to ensure that I mug them — my panic attacks prevent it.[40] This phobia qualifies as an 'external' constraint because it does not prevent me from *choosing* to mug strangers; rather, it constrains me because even after I make this choice, the phobia prevents me from realising my evil desires.[41]

This explains why virtue is not a constraint of the right kind. Virtue primarily operates on us *before* the moment of choice by shaping our deliberations and so on. This means that an ideally virtuous person might never *choose* to do evil. But this is irrelevant because domination is chiefly concerned by what *would* follow from a change in will—irrespective of whether a change in will is likely to occur. The upshot is that virtue is insufficient because it is 'internal to the will'.

For this reason, Republicans argue that we need the state to impose 'external' constraints on our behaviour. Because the virtue of our neighbours is insufficient to prevent our domination, freedom requires that there be a system of coercion in place that effectively

[39] Republicans sometimes prefer the term invasion over interference.

[40] Recall that as I understand him, Pettit uses the term 'will' to refer to the capacity for choice. See fn. 1.

[41] To be clear, this is my own interpretation of Pettit's Republicanism. But I think this interpretation dovetails with Pettit's framework.

deters us from invading each other; and the state is the only agent capable of imposing such a system.[42]

2.3 The Necessity of Popular Control

However, Republicans also argue that the state itself is a potential threat to freedom. The state has a will of its own (List & Pettit, 2011) and can interfere with us if it decides to do so; therefore, in the absence of external constraints on the state, it dominates us.

As I noted in Chapter 2, to solve this problem, Republicans think we need *popular control* over the state in the form of civic vigilance (Pettit, 2012). If push comes to shove, and the state turns tyrannical, its population must be able to overthrow it. Crucially, Republicans think that a population wields this power of revolution only as a *potential team agent*.[43] As discussed in the previous two Chapters, a potential team agent is a collection of individuals that has the ability to form a team if they choose to.

[42] Kolodny 2019 argues that this justification for the state invites the guarantee problem. This is probably correct. However, it does not affect my argument because as I argued in Chapter 1, Kantians can avoid this problem by rejecting the three-defect model for the one-defect model of the state of nature problem. That insight carries over to the Kantian Republican account sketched in Chapter 3. The point of this Chapter is not to show that Republicanism is immune to this problem. Rather the aim of this Chapter is to show that Republican freedom is possible so that adopting the Republican modifications I suggest does not import more problems than it solves.

[43] The term 'team agent' was first introduced by Simpson (2017), but it has subsequently been adopted by Republicans too (Lovett & Pettit, 2019). On team reasoning, see Natalie Gold and Robert Sugden, "Collective Intentions and Team Agency," Journal of Philosophy 104 (2007): 109–37.

Simpson defines a team as follows:

> "Pettit's social ontology must, and implicitly does, recognize a locus of social power other than individuals or group agents. As he does not give a term to groups that sustain this power, we can call them *teams*. Team members' action is coordinated but not necessarily directed. As a distinct form of social agency, there is a sense in which teams lie "between" individuals and group agents. Teams have a degree of coordination that makes their action distinct from that which emerges from individuals interacting without any joint intention.[44] But they do not have the degree of coordination that group agents require. Teams are not "mere pretenders" to group agency. They exercise a different form of social agency (Simpson, 2017: 39-40).

The People is a merely potential team because actual teams exist only if a group of individuals have the necessary joint intentions regarding one another. On the other hand, a merely potential team exists when there is a group of individuals who could form these joint intentions and thereby team-up.

'The People' is a technical term that refers to the merely potential team agent that wields the threat of revolution to keep the state in line.

To be clear, the People may refer to a single team (the set of all citizens who would team up in revolution) or it could refer to the set of all overlapping teams that could and would

[44] On joint intention, see John Searle, "Collective Intentions and Action," in *Intentions in Communication*, ed. P. Cohen, J. Morgan, and M. Pollack (Cambridge, Mass.: MIT Press, 1990), pp. 401–15.

team to overthrow the state under the right circumstances. So, the People could refer to a mass revolutionary movement or it could refer to a smaller guerilla insurgency depending on context. What matters is that these potential teams would successfully overthrow the state if they tried.[45]

To sum up, Republicans argue that we need the state to protect us from each other, but we also must be capable of teaming up to overthrow the state. If either element is missing, we cannot be free.

3 Simpson's Impossibility Dilemma

3.1 Simpson's Challenge

Simpson objects that Republican freedom is impossible because each individual is either (i) dominated by the state; or (ii) dominated by the People. His point is that if the People have enough power to overthrow an agent as powerful as the state, then they certainly have enough power to interfere with you or me.

To be clear, Simpson's point is not that the People dominate *qua* singular agent; rather his point is that the People dominate in virtue of its *individual* members dominating *collectively*.

[45] One may wonder what implications this has for my account of Kantian-Republicanism as sketched in the preceding Chapters. According to that account, the state's legitimacy tracks popular control. So long as one is a member of a potential team agent that has the ability to overthrow the state, then that state has authority over one. My view need not require that every citizen be a member of the *same* potential team. What matters is that each citizen be a member of *some* potential team that could overthrow the state in the event of overreach. This is because, my account unifies individual wills through Hobbesian *representation.* Therefore, one's will is unified with that of another just in case both are represented by the same agent (the state). So, even if both control the state via membership to different teams, their wills are still unified through that common representation; and so, the state has legitimate authority over both.

As a singular agent, the People cannot dominate because it fails Pettit's test of 'conversability' required to have a will of its own.[46] Since it lacks a will, the Can Do Test cannot be applied to it. And since the Can Do Test cannot be applied, this would seem to imply that the People cannot dominate

However, Simpson resists this implication, arguing that it would fail to "recognize that the people have the power to impose checks on the state" (Simpson, 2017: 40). For this reason, he argues that this requires us to generate a supplement to the Can Do Test rather than concluding that teams cannot dominate. So, he proposes the *Can Do Together Test* for teams.

> *Can Do Together Test*. "Consider some agents, a, b, . . ., n, who could coordinate; as such, they are members of G. Imagine that each member of G was to will to φ by coordinating. To the extent possible, hold fixed everything else, including the wills of all other agents. Then ask whether they φ. If so, then the members of G have the power to φ, otherwise not" (Simpson, 2019: 415)

The Can Do Together Test shows how the People can come to dominate particular individuals. Simpson draws a distinction between 'dyadic' domination and 'polyadic' domination. Dyadic domination obtains just in case one individual dominates another individual alone—the dominator and dominated form a single pair. Polyadic domination obtains when a group of individuals collectively dominate an individual *together.*

[46] For discussion of this test see Pettit (2014).

> "Polyadic domination is the relation that holds between some group of people, G, and A, when, by acting in a coordinated way, the members of G have the uncontrolled power to interfere with A" (Simpson, 2017: 36).

This point is crucial. Because polyadic domination is possible, the People can dominate individuals like you or me even though it lacks a will of its own. Rather, to say that the People dominate is shorthand for saying that its members dominate *together.* None possess the power to invade on their own, but together they do.

Let us suppose that when applied to the People, the *Can Do Together Test* delivers the verdict that the People have the power to overthrow the state. That is to say, were each member of the People to will revolution, then (all else equal) a revolution would succeed. Simpson argues that any team capable of doing this would also have the power to interfere with regular people.

History provides many examples, including the French Revolution, the Russian Revolution, the Chinese Communist Revolution, the Haitian Revolution, the Iranian Revolution, and so on. In all of these cases the revolutionary movement engaged in extrajudicial killings shortly after overthrowing the regime. Simpson's point is that the People can also pose a threat to *our* freedom. And if the People has enough power to overthrow the state, then the state cannot prevent it from interfering with you or me. And so, Simpson concludes that either we are dominated by the state, or we are dominated by the People.

3.2 The Republican Reply

Republicans such as Lovett & Pettit (2019) have replied to this objection by arguing that Republican freedom is possible provided the right sort of cultural norms are in place. They argue that norms determine which kinds of cooperation are possible and which are not. So,

given the right norms, the People will be able to resist the state, but unable to interfere with individuals. The sort of norms they have in mind are those that highly value freedom and the goals of civic vigilance. When these norms are operative, members of a society know that people are generally disposed to cooperate to resist state overreach and members are aware of salient strategies for doing so. But just as importantly, these norms also make it common knowledge that others are disposed to negatively react when others try to interfere with basic liberties.

Their point is not that Republican norms make it *unlikely* for the People to invade individuals; rather, their point is that Republican norms render the People *unable* to interfere. To see this, we can apply the *Can Do Together Test*. We imagine that each member of the People wills to invade an individual, if we hold fixed all else, do they invade? Lovett & Pettit claim the answer is 'no.'

This is because invasion requires teaming up. By hypothesis teaming up is necessary for invasion because anything less would be blocked by the state. The problem only gets off the ground if those attempting to invade are powerful enough to resist the state; and this requires teaming up. But Lovett & Pettit argue that teaming up is possible only if potential team members are aware of each other's willingness to cooperate in pursuit of the same goal. Norms prevent teaming up, primarily, by disabling this mutual awareness condition.

Their key insight is this: social norms set expectations about what other people want and what they are willing to tolerate from others. The social norm against child abuse sets a default expectation that each person one meets is extremely likely to disapprove of child abuse: no one decent wants to abuse children, and no one decent is willing to tolerate such abuse perpetrated by others. As a result, anyone with deviant desires will rationally expect to face severe social sanction if they expressed their deviant desires to others.

This threat of social sanction is the external restraint that blocks domination.[47]

Because social sanction can effectively ruin someone's life, individuals are strongly incentivised to avoid it. This threat prevents individuals with desires for domination from expressing these desires to others. Because each person by default expects others to not have these desires, and because each person is incentivised to never reveal their deviant desires to others potential teammates never find one another. For this reason they never satisfy the mutual awareness condition required for them for teaming up. By preventing mutual awareness in this way, the threat of social sanction prevents team-ups for invasion.

Social norms also facilitate teaming up for the purpose of resisting state tyranny. They create the expectation that people should stand up and fight for the cause of freedom. Those that do not risk social sanction too. But more than that, these social norms also give everyone else the confidence that they will not resist alone. People can go to a protest against the government confident that they will not be the only ones. People can resist gross abuses of power secure in the knowledge that everyone will 'be on their side.'

Therefore, the Republican reply is that social norms both enable teaming up to resist state overreach; and prevent the same people from teaming up to invade others.

[47] One might wonder whether the external constraint is the threat of social sanction, or simply failure of the awareness condition. As I read them, Lovett & Pettit are arguing that social norms create a threat of social sanction. This threat of social sanction is what prevents would-be dominators from seeking out would-be cooperators. And unless they seek out would-be cooperators, they cannot satisfy the mutual awareness condition required for teaming up. So, the threat of social sanction is the proposed mechanism for *why* the mutual awareness condition remains unsatisfied.

To illustrate the point, imagine that there is a robust and widely endorsed political culture in which everyone values freedom. Everyone is disposed to react with scorn and indignation at proposals to invade the liberties of others, and crucially everyone *expects* others to react in these ways. Moreover, everyone expects others to be willing to cooperate with efforts to protect these liberties, even engaging in the use of force to do so. So, if everyone were to spontaneously and independently will to invade the same individual (Bob), and doing so required them to team up, they would be unable to do so because of the perceived cost of searching out willing cooperators. Each would expect social sanction for expressing these desires, and this threat of social sanction is an 'external' constraint that blocks team ups.[48] That is the sort of culture Republicans think we need.

Once the culture is in place, would-be dominators would think themselves alone and would expect to face heavy social sanction were they to seek out potential cooperators. Lovett & Pettit conclude that Republican freedom is possible because the state blocks domination from individuals by imposing the law; the People block domination by the state by threatening revolution; and social norms block domination by the People by limiting the kinds of cooperation that are possible.

[48] This idea resonates strongly with Timur Kuran's (1995) concept of *preference falsification*. This is the idea that the threat of social sanction can lead to widespread misrepresentation of private views. Kuran appeals to preference falsification to explain how revolutions can appear suddenly. Once people see others rebelling, they acquire evidence that others feel as they do, and so no longer expect sanction for expressing their views publicly. This can lead to what Kuran calls a "revolutionary bandwagon."

I think that this reply by Lovett & Pettit is basically right. It explains how the People can be capable of resisting the state and yet incapable of invading us. But as we shall see, it needs to be developed in the face of a renewed attack by Simpson.

3.3 Simpson's Rejoinder

Simpson (2019) claims that social norms along the lines of the ones Lovett & Pettit describe cannot provide an external constraint on the People—a constraint that blocks domination. He justifies this claim by pointing out that social norms are sustained by (and therefore depend on) the 'moral judgements' and 'patterns of sympathy' that individuals have.

> "Change the relevant moral judgments and sympathies, and the norms accordingly change. If everyone now thinks that mugging is fine, muggings are going to start to happen in pretty short order" (Simpson, 2019: 421).[49]

Simpson is not denying Lovett & Pettit's core point. He is not denying that social norms block teaming up for prohibited activities. Rather, he is claiming that these activities (and teaming up in their pursuit) will shortly follow changes in the relevant moral judgments *because* the relevant social norms cannot survive changes in these moral judgments.

Because these norms rely on the moral judgments and sympathies of individuals, Simpson argues that they are merely internal constraints on action—they do not block domination. And for this reason, Republicans cannot appeal to them to resolve the dilemma.

[49] As I read him, Simpson's use of the term 'moral judgment' refers to the *beliefs* people have about what would be morally permissible or impermissible for them to do.

> "To appeal to the actual norms that obtain in a given society is covertly to rely on such self-restraint. As this is true for individuals, it is true also for teams. That the self-restraint of the powerful is insufficient to make others free is the most central contrast between the republican conception of freedom and the liberal. To renege on it is to abandon the conception of freedom as non-domination."(Simpson, 2019: 423)

In this passage, Simpson is charging Republicans with a kind of inconsistency. Republicans already claim that the self-restraint of those able to interfere with others is insufficient to make others free. The powerful still dominate because *if* they chose to interfere, nothing would stop them—they pass the Can Do Test. Simpson is claiming that this same logic holds for teams such as the People. If each member of a potential team (capable of overthrowing the state) were to decide to team up to lynch me, then (according to Simpson) the only thing standing in their way would be their self-restraint. If he is right, then Republicans must either concede that I am dominated by them, or else they must abandon the distinctive insight of non-domination: that the self-restraint of the powerful is not sufficient to make weaklings, like me, free. The power of Simpson's argument lies in its appeal to central Republican commitments to apparently undermine the very possibility of Republican freedom.

We can represent Simpson's rejoinder as follows:

1) Social norms are the only obstacle to the People invading individuals.

2) Social norms depend on the moral judgments of the People.

3) If the only obstacle to an agent invading individuals depends on the moral judgments of that agent, then that agent dominates those individuals.

Conclusion: the People dominate individuals.

This formulation captures the core argument of Simpson's rejoinder. Republicans already accept (1); and (2) is prima facie plausible. Therefore, it seems like all the action is on (3). Going forward we can call (3) the *moral judgment dependence principle* (MJD principle). I have chosen to present Simpson's rejoinder this way because it turns out that there are several ways of justifying the MJD principle to make the argument work. And for this reason, there are several ways of interpreting Simpson's argument. I will discuss each of these in the next Section.

4 Interpreting Simpson

As we can see, the crux of the debate concerns whether social norms block domination; Republicans claim they do, Simpson claims they do not. Simpson justifies his claim by noting that norms depend on our moral judgments and patterns of sympathy—were these to change, then so would the norms.

I shall now consider different interpretations of Simpson's argument. Each interpretation depends on how we choose to justify the MJD principle.

4.1 The Endogenous Interpretation

One way of spelling out Simpson's argument would be to justify the MJD principle as follows:

1a) If the only obstacle to an agent invading individuals depends on something inside the agent, then that agent dominates those individuals.

2a) The moral judgments of an agent are always inside that agent.

3a) If the only obstacle to an agent invading individuals depends on the moral judgments of that agent, then the only obstacle to that agent depends on something inside that agent [from 2a].

Conclusion: If the only obstacle to an agent invading individuals depends on the moral judgments of that agent, then that agent dominates those individuals (MJD principle) [from 1a and 3a].

Call this, the *endogenous interpretation* of Simpson's argument. The key premise of this interpretation is (1a). This premise draws a necessary connection between 'endogeneity' or 'internality' and domination. Put simply, because moral judgments are 'in the mind', the social norms that depend on them cannot block domination. Therefore, the People dominate individuals

While the endogenous interpretation of the argument is valid, I will argue that it fails. Republicans could object that even though moral judgments and sympathy responses are 'in the mind' this does not disqualify them as 'external' constraints. After all, (as I argued above) if disabling phobias count as external constraints, then merely being 'in the mind' cannot disqualify something from being an external constraint (Pettit, 2008a: 123).

One might worry that this response proves too much because it implies that benevolent masters do not dominate because their virtue prevents them from invading. However, this worry is misplaced.

As I pointed out in Section 2.1, the benevolent master (as we typically imagine him) is still able to beat his slaves because a change in his will (however unlikely) would suffice to produce interference given the circumstances—the virtue holding him back only constrains him prior to his choice. On the other hand, the sort of phobia or pathology Pettit has in mind

is the disabling kind. So, rather than the typical benevolent master, imagine another who has an uncontrollable compulsion to do the right thing. If he ever tries to do otherwise, he is crippled by debilitating panic attacks. Pettit's point is that *this* sort of phobia *can* constrain invasion in such a way as to block domination. Why?

Because *this* sort of constraint can make someone fail the Can Do Test. Suppose this master has a change of will and decides to beat his slave. Does this change of will alone suffice to produce invasion. Surely not! If upon deciding to beat his slave, the master is debilitated by panic attacks, then these panic attacks prevent the beating from taking place. Therefore, a constraint can prevent domination even if it is merely endogenous to the agent it constrains (or merely depends on something endogenous). Republicans already accept this point, and for good reason—(1a) And so, the endogenous interpretation of Simpson's argument fails.

4.2 The Instability Interpretation

A second reading of Simpson's argument might rely on the *instability* of our moral judgments. In the closing passage of his argument, Simpson says,

> "In practice, the concern is not that the moral judgments and sympathies of large numbers of people around one will instantly change for the worse or be ignored wholesale. The concern is that norms will evolve for the worse so that, years or perhaps months from now, the society I find myself living in is one in which the norms that previously sustained freedom no longer exist" (Simpson, 2019: 424).

In this passage, Simpson suggests that the problem with norms depending on moral judgments and sympathies is that these might naturally evolve over time into something compatible with domination. We can represent this interpretation as follows:

1b) If the only restraint on an agent invading individuals depends on something potentially unstable, then that agent dominates those individuals.

2b) Moral judgments are potentially unstable.

Conclusion: If the only restraint on an agent invading individuals depends on the moral judgments of that agent, then that agent dominates those individuals (MJD principle).

Call this the *instability interpretation.*

I see no immediate reason why Republicans should deny (2b). However, Republicans should reject premise (1b). Indeed, Pettit does reject it:

> "Actual domination, that is, uncongenial, uncontrolled control, may occur without actual interference, as we have seen; it may materialize by courtesy of invigilation or inhibition. But all such domination, however mediated, is an actual evil and it contrasts with potential domination, which is not. Potential domination represents only the danger of an evil and so is only probabilistically relevant to the cause of freedom" (Pettit, 2008b: 218, fn 28).

In this passage, Pettit is explicit that the potential for domination in the future is not relevant to the Republican ideal of freedom. Republican freedom obtains for me just in case no one else *actually* has the uncontrolled ability to interfere with me. The fact that someone might compromise my freedom in the future does not thereby entail that I am unfree now.

To see this, imagine that I, and a friend, are trapped together on an otherwise deserted island. Suppose that neither of us is obviously stronger than the other and so neither of us dominates the other. But now suppose that my friend has a greater genetic potential to

develop strength and muscle than I do. Through hard training he could, over time, develop the strength required to invade me with impunity. However, the mere fact that one day he could become stronger than me does not entail that I am unfree now.

The point is that Republicans already reject (1b). And since the instability argument depends on this premise, this interpretation (just like the endogenous interpretation) is dialectically unfruitful. At worst, it misrepresents the Republican position. At best, this argument fails to put any pressure on Republicans to accept the conclusion because it relies on a premise that they already reject. Moreover, it is unclear that Republicans have good reason to revise their position of (1b).

Imagine that my village has some nasty and powerful neighbours, but that these neighbours are unable to invade because the river separating us is too deep to traverse. Does the fact that the river *may* dry out due to evolving weather patterns entail that we are in fact dominated now? Surely not! The reason is that our nasty neighbours fail the Can Do Test—a change in their will is not (all else equal) sufficient to produce invasion. Therefore, we are not dominated. If our intuitions in this case are correct, then this directly refutes premise (1b).

So, *if* Simpson's argument is merely that depending on moral judgments makes norms potentially *unstable*, then his argument fails.

4.3 The Self-Restraint Interpretation

Next, let us consider a third justification for the MJD principle:

1c) If the only obstacle to an agent invading individuals depends on the agent's own self-restraint,[50] then the agent dominates those individuals.

2c) If the only obstacle to an agent invading individuals depends on the agent's moral judgments, then that obstacle depends on the agent's own self-restraint.

Conclusion: If the only obstacle to an agent invading individuals depends on the moral judgments of that agent, then that agent dominates those individuals (MJD principle).

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[50] The following remarks should suffice to clarify what I mean by 'self-restraint.' By my lights, an agent is self-restrained when (i) she *can* perform some action; (ii) she *wants* to perform it; yet (iii) by a deliberate act of *will* she refuses to do so.

A paradigm case would be my wanting to cheat on my diet by eating cheesecake. Suppose I have easy access to cheesecake; I have a strong desire to eat it; but I consciously decide not to do it. Here, nothing external bars me from the cheesecake; I hold myself back by willpower alone.

One might worry that this analysis misses the possibility of being self-restrained by features of 'me' other than my will. For example, what if I am prevented from acting by some stable character trait or something like that. There might be something to this line of thought. Imagine that I want to ask out someone whom I greatly admire, and by chance, I find the right opportunity. But suppose that I fail to ask them out because of my shyness. In this case, the action is prevented by one of my stable character traits rather than by my choice. And whereas in the cheesecake case, we would attribute my failure to weakness of will, and my success to willpower, in this case we would attribute my failure to shyness, and my success to courage — both of which are dispositions. In both cases, there is a legitimate sense in which I am 'the only thing standing in my own way.'

However, I think it clear that despite these similarities, we would naturally describe the diet case as an example of self-restraint, but we would not naturally do the same for the shyness case.

Call this the *self-restraint interpretation* of Simpson's argument. The power of this argument lies in premise (1c). As Simpson points out, a core commitment of Republicanism is that the self-restraint of the powerful is insufficient to block domination. Therefore, Republicans cannot reject (1c) without undermining their entire project.

However, Republicans can and should reject (2c). Consider the following case:

> *Implant:* Master is benevolent and so she lets her slaves do whatever they want even though she could beat them if she willed it. A concerned eccentric scientist, motivated by a desire to liberate these slaves from their domination, implants a device in Master's brain. This device infallibly reads the mind of its host and paralyses them from doing anything they judge to be wrong.

In this case, the implanted device does not stop its host from choosing to do the wrong thing, it merely paralyses them before they can achieve the wrongful deed. Imagine that one judges it wrong to eat meat but suffers from weakness of will. Eventually one breaks and orders a cheeseburger. But as one raises the burger to one's lips, the device activates, and freezes one in place, unable to eat the burger.

In the *Implant* case, the same is true for Master. Imagine that after receiving the device, Master spo ntaneously chooses to beat one of her slaves. She still judges it to be wrong, but she is going to do it anyway because the slave annoyed her. But as she raises the whip, the device activates and paralyses her before she can strike. The relevant question is whether the Master continues to be at best self-restrained after receiving the implanted device. The answer is clearly 'no'. One cannot say that she is holding herself back by willpower alone given that she is actively trying to invade.

But now notice that the constraint on her invasion depends on her moral judgments. The device only paralyses her when she attempts to do what *she* judges to be wrong. If she instead judged it permissible to beat people who annoy her, then the device would not stop her from beating the slave. But given that her moral judgments are what they are, she is constrained by something that depends on her moral judgments, and yet she is not self-restrained.[51] *Implant* is therefore a counterexample to (2c).

5 Objections

5.1 Proves Too Much

One might object that *Implant* proves too much. If Republicans reject (2c), won't this undermine their verdict in the paradigm case of the benevolent master? In that case, we all acknowledge that the benevolent master won't invade, and yet most judge that she still dominates her slaves. Moreover, it seems that the reason she dominates is that she is at best self-restrained. How can we hold on to these beliefs if we reject the claim that a constraint's dependency on moral judgment suffices to make it a matter of self-restraint?

As I argued earlier, what matters is whether the constraint on invasion is internal to the will or external to it. If it is merely internal, then the constraint merely affects whether the agent actually chooses to invade. Furthermore, this point is reinforced by the Can Do Test. This test checks whether a change in will is (all else equal) sufficient to produce invasion. The reason this test works is because it reveals whether any putative restraint is internal to the will or external to it. It does so by presupposing that a change in will has already occurred (thereby sidestepping internal constraints) and then asking if anything (an external constraint)

[51] One might object that this diagnosis assumes Master cannot change her moral judgments at will. Presumably, if she could change her mind about the permissibility of beating slaves, then she would still count as self-restrained. I address this possibility in the objections Section below.

blocks invasion thereafter. As I said above, what matters is whether the obstacle to invasion continues to be effective *after* the crucial moment of choice to invade.

This point is relevant because it offers an explanation for *why* Republicans claim that the benevolent master dominates her slaves even though she won't invade. Republicans can claim that the benevolent master dominates because her benevolence (her disposition to care about the wellbeing of others) is merely a constraint internal to her will—it may prevent her from choosing to invade but would do nothing to stop her assuming she had already made the choice. This point is backed up by the Can Do Test: if we imagine the counterfactual in which the master chooses to invade, we can just see that invasion would occur. In short, the benevolent master is at best self-restrained because the relevant constraint is something internal to her will—it can only affect whether she *decides* to invade.

Notice that this explanation is untouched by *Implant*. One can accept the verdict in that case without denying that benevolence is an internal constraint on what an agent decides to do. So, the Republican can acknowledge that without the implanted device, Master is at best self-restrained. But after receiving the implant, she is now restrained by something that operates external to her will—the paralyzing device. The fact that this device targets attempts to invade others depends on what the agent judges to be permissible. But so long as the contents of these permissibility judgments are not up to the will of the agent, she is more than self-restrained.

Therefore, Republicans can resist the self-restraint interpretation of Simpson's argument by rejecting (2c) without thereby undermining their verdicts in benevolent master cases.

5.2 Voluntarism

One might object that I have been too quick to assume that an agent's permissibility judgments are not up to their will. If they are, then the Master in the *Implant* case really is

self-restrained. Because even though the paralyzing device operates external to her will, the targets of that device are determined by the agent's own moral judgments. So, if the contents of these permissibility judgments are determined by the will of the agent, then whether the device prevents Master from beating her slaves is in some sense up to her. Therefore, if the contents of one's moral judgments can be changed at will, then restraints that depend on moral judgments count as self-restraints.

Almost no one thinks that we have the ability to change our beliefs directly and immediately. Suppose I offered you £1million to believe that baby-torture is permissible in the next five minutes. I doubt you would manage. Therefore, this kind of voluntarism about beliefs is clearly false. However, it is less clear whether one can indirectly change one's beliefs over time. Perhaps you could win the £1million pounds if I gave you ten years to complete the challenge.

Luckily, we do not need to settle the debate on doxastic voluntarism here. All we need to do is apply the Can Do Test. This test allows us to check whether a putative constraint blocks domination or not. Therefore, if we think that Master fails the Can Do Test in *Implant*, then we can infer from this judgment that Master does not dominate; and if she does not dominate, then she is not merely self-restrained. Mere self-restraint from invasion entails domination; and so, by contraposition, no-domination implies that the agent is not merely self-restrained. If she is not merely self-restrained, even though the device depends on the contents of her moral judgments, then we can infer that the contents of her moral judgments are *not* changeable by her will in the relevant sense. So, does Master fail the Can Do Test?

Imagine that one of her slaves trips over her favourite dress and so Master becomes enraged. Although she knows it would be wrong to beat her slaves, she forms the desire to do it anyway because she is angry. Her will is weak, and so she decides to beat the slave—

morality be damned. Does she succeed in doing so? If we consider the short term, the answer is clearly 'no'. No one can just change their beliefs immediately by simply deciding to do so. Therefore, Master clearly cannot invade right away because the implanted device is stopping her.

But to settle the question of whether Master passes the Can Do Test, we can extend the time horizon and ask: given her decision to beat her slave, and holding fixed other relevant factors (including the wills of others) does she succeed in beating her slave? Suppose for example, that the dress was a family heirloom and so Master holds onto a grudge for years. She decides, then and there, that she will do what she can to change her moral beliefs, so that one day she can whip the slave herself.[52] So, will she succeed?

To me the answer seems like a resounding 'maybe'. To me, it seems like Master has the option to 'try to change her moral beliefs,' but she does not simply have the option to 'change her moral beliefs.' Therefore, my intuitive answer to the Can Do Test is not a 'yes,' it is a 'maybe.'

However, 'maybe' is a fail—one passes the Can Do Test if and only if the answer is 'yes.' To appreciate the reason why, consider the insight into domination that the Can Do Test captures. Pettit claims that

> In order to deliberate about what to do, in the manner that is distinctive of human beings, we have to assume with respect to the options before us in any context that

[52] Small amendment: in the *Implant* case, the device paralyses Master before she can do anything that she believes to be wrongful. One might worry that this extends to deliberate attempts to change her moral beliefs for immoral reasons. However, the case can easily be amended to accommodate this. Just imagine that the device only registers other-regarding actions. So, for example Master cannot lie to others, but she could lie to herself.

> we can take one or we can take another. [...] Sometimes, of course, we think of an option, not in the basic terms in which it is so available, but under a richer description that reaches out to include a desired but saliently uncertain consequence; we think of it as hitting the target, for example, rather than just trying to hit the target. But in every case there is an aspect under which each option presents itself to us such that we can think: I can just do that, or I can just refuse to do that; what I do in this choice is up to me.

In this passage, Pettit is making the point that when we deliberate, we regard the options before us as the sorts of things we just *can do*. This includes cases where the options are such as 'hitting the target' even though it is 'saliently uncertain' whether we will in fact hit the target. Notice that on Pettit's view, 'hitting the target' is a distinct option from 'trying to hit the target' even though both options involve less than 100% certainty of success. And so, there is a meaningful distinction between having the option 'to invade,' and having the option 'to try to invade.'

Pettit thinks these can-do assumptions are crucial to deliberation, and he regards it as axiomatic for Republicanism that we are sometimes in positions to rightly make these assumptions as part and parcel of rational deliberation.[53] And Pettit builds on this point about can-do assumptions to clarify when one agent dominates another. The big picture point is that domination obtains when one agent is in a position to rightly make a can-do assumption regarding the option to invade another. What matters is that from that agent's point of view, they regard the option of invasion as simply something they *can do*. This is what the Can Do

[53] Axiom of personal choice.

Test seeks to establish. This is because, Pettit thinks that we are rationally required to regard the agency of others in the same manner that we regard our own.

> "What is true of how we view ourselves as agents holds equally of how we must view others as agents: that is, view them from what we might call the second as distinct from the third person standpoint (Darwall 2006). If we think of others as agents in a certain context of decision, then we have to think of them as having this or that option at their disposal, so that the choice is up to them.

So, domination requires that one agent be in a position to rightly make a can-do assumption regarding the option to invade another (unchecked). This is why the Can Do Test is an appropriate test for domination—it tests whether this can-do-assumption regarding the option of invasion is warranted from that agent's point of view. When we judge the answer to be 'maybe' we are judging that the agent is warranted in having the can-do-assumption with respect to the option of 'trying to invade' but not with respect to the option of 'invasion.' Since it is the latter option that determines domination, a 'maybe' is a fail of the Can Do Test.

Therefore, if the correct answer is 'maybe' then Master does not dominate her slaves. To be sure, Master's will is not irrelevant here. By deciding to change her moral beliefs, Master surely increases the probability of invasion occurring. But this is not the same thing as her having the ability to invade.

So, because Master fails the Can Do Test, we can determine that she does not dominate her slaves. And since mere self-restraint entails domination, the fact that she does not dominate entails that she is not merely self-restrained. And yet, the restraint preventing her from invading definitely depends on her moral judgments. Were the contents of these moral judgments changeable by an act of will, then she would be merely self-restrained. The fact

that she is not merely self-restrained would then imply that the contents of her moral judgments are not changeable through an act of will. Thus, moral judgment voluntarism is refuted.

So, because Master fails the Can Do Test, we know that she does not dominate her slaves. But recall, that mere self-restraint *implies* domination—if the only obstacle to A invading B is A's self-restraint, then B is dominated. So, by *modus tollens*, the fact that Master does not dominate her slaves *entails* that Master is *not* merely self-restrained.

Master is prevented from invading not by her own will, but by the implanted device that activates whenever she judges an act to be wrong. This device clearly depends on her moral judgments. Were the contents of those moral judgments to change, then the device would permit and forbid different actions.

Now, were it the case that the contents of Master's moral judgments could be changed by will, then (given the device's dependence on her moral judgments), Master would be merely self-restrained. In other words, *if* moral judgment voluntarism, *then* mere self-restraint. But since we know that Master is *not* merely self-restrained, we can infer (by *modus tollens* again) that moral judgment voluntarism does not hold. And so, we can reject moral judgment voluntarism on the basis of our intuitions in the Cand Do Test.

We might wonder whether this argument works even if moral judgments are not beliefs. For example, what if moral judgments are really interpretations of actions to determine whether they are consistent with one's self-conception. On this view, to judge an action permissible would be to interpret it as consistent with one's endorsed conception of oneself. If we adopt this view, then the relevant question is not whether Master can intentionally change her beliefs about the moral facts; rather, the relevant question is whether she can

change her interpretation of what she wants to do in such a way as to align with her self-conception. Perhaps she could come to see beating slaves as necessary to prevent society from becoming too 'effeminate' or soft. If so, then does she dominate her slaves?

In response, I think that the answer is still 'no.' If the worry is supposed to be that these interpretations are endogenous, or that they are unstable, then my arguments in Sections 4.1, and 4.2 apply. If instead, the worry is about whether an agent can change her interpretations at will, then the concern is over voluntarism and the implication of self-restraint. But notice that the argument I gave above in response to the voluntarism objection works just as well. What matters is whether a Master's decision to invade is sufficient to produce invasion by effecting a change of interpretation. So, what happens when we apply the Can Do Test? My modal intuitions tell me that the answer is again 'maybe.' And so, I see no reason why changing our conception of moral judgment would pose a distinct problem for my case.

Perhaps the worry is more complicated though. Perhaps the worry is that a decision to do x, already entails that one interprets x as consistent with one's self-conception. On this view, the Can Do Test would be trivially passed because the very act of choosing to invade entails that one now judges invasion permissible. Republicans should respond to this worry by noting that this conception of moral judgment is prima facie implausible. If any decision to x entails that one judges x to be morally permissible (because consistent with one's self-conception), then it is impossible for someone to choose to do what they judge to be immoral. But this implication is unacceptable because each of us has some experiences of knowingly doing the wrong thing. Therefore, Republicans should respond by rejecting this overly strong conception of moral judgment as implausible.

5.3 Manipulation

One might object that my discussion has focused myopically on whether the People itself would intentionally change its own moral judgments. However, one might think that in real-world cases, the more concerning prospect is that the People is persuaded to change their moral judgments by a dangerous charismatic leader like Hitler.

By analogy, suppose that in the *Implant* case, Master cannot voluntarily change her moral judgments for the reasons given above, and so her slaves are not dominated by her. But now suppose that Master has a charismatic evil uncle. This uncle thinks that if people refuse to beat their slaves then this will undermine the social fabric and lead to the eventual downfall of 'civilisation.' The evil uncle decides to use his charisma to convince Master that beating her slaves actually is the moral thing to do.

If he succeeds, in persuading Master, then the device would no longer prevent her from beating her slaves. So, is it the case that the evil uncle dominates the slaves by wielding the power of persuasion over Master.

By analogy, might it be the case that charismatic leaders dominate us as individuals because they have the uncontrolled ability to persuade the masses to change their moral judgments?

There are two relevant lines of response to this objection.

First, to determine whether the evil uncle dominates the slaves, we ought to run the Can Do Test. If we imagine that the uncle decides to convince Master to change her mind about the permissibility of beating slaves, then all else equal, does he succeed? As above, I think the honest answer is 'maybe.' No one has a guarantee of persuading anybody of anything, and so it strikes me that the uncle fails the Can Do Test. If this judgment applies to the uncle,

then I think the same judgment should be applied to charismatic leaders seeking to corrupt society.

Second, we ought to remember that even if some charismatic leaders do dominate populations in some societies, this might be irrelevant to the discussion at hand. The question is not whether modern societies in the real world are free; rather the question is whether the Republican ideal of freedom is possible at all. For that reason, it is simply irrelevant whether real world democracies currently struggle with the influence of dangerous and charismatic leaders. What matters is whether this problem would persist in even an ideally Republican society. Once we shift our attention to ideals, it should be clear that charismatic leaders do not dominate.

In the Republican ideal sketched by Lovett & Pettit, Republican social norms are so strong that they make it taboo to advocate for the invasion of others. We are to imagine these norms are so prevalent and so deeply held, that people who desire to violate them are cowed into silence by the implicit threat of social sanction. Perhaps an apt analogy would be the social norm condemning paedophilia. This norm is so strong that no one in their right mind would ever express approval of the behaviour to others, let alone try to convince them of its permissibility. To do so would virtually guarantee exile from one's social world.

It is important to emphasise this point because when we imagine some charismatic leader trying to convince people that invading their neighbours is permissible, we ought to remember just how radical this is supposed to sound to the imagined population. Imagine that the most charismatic leader ever made an effort to convince people of the permissibility of paedophilia. It should be clear that such an attempt would more likely result in his losing his influence and becoming a pariah. But if we are supposed to imagine that the social norms

against invasion are just as strongly accepted, then we should think that charismatic leaders do not dominate in an ideal Republican society.

Of course our own societies fall far short of this ideal, but the debate is not about whether you and I currently enjoy Republican freedom. The question is whether Republican freedom is even *possible* to begin with. Therefore, all Republicans have to do to answer this objection, is to show that under ideal conditions, charismatic manipulative leaders do not dominate.

6 Conclusion

In this Chapter, I have offered a defence of Republicanism against Simpson's rejoinder. I began by summarising the debate between Simpson and his interlocutors. I honed in on the central point of disagreement: whether social norms can block domination. I then offered a number of interpretations of Simpson's argument for why social norms cannot block domination. I discussed each in turn and argued that none are persuasive. Therefore, I conclude that Republicans can coherently reject Simpson's conclusion without having to bite bullets.

This Chapter was essential to the dissertation as a whole because it showed that the republican revisions I recommended in Chapter 3 were not more costly than the problems they helped to avoid. Think of this Chapter as an effort to defend the republican flank of the theory.

In the next Chapter, I will defend Kantian-Republicanism against another suite of objections attacking its Kantian flank. Specifically, I will address the particularity, boundary, and annexation problems for functionalist theories. Since all Kantian theories are functionalist theories, this objection must be addressed.

Chapter 5 — Functionalism, Popular Control, & Territorial Rights

1 Introduction

In Chapter 3, I offered a revised version of Kant's political theory: Kantian-Republicanism. According to it, the state's authority depends on its being the agent of its population. As an agent, the state's legislative acts are attributable to the people. And so, when the state makes law for them, they count as giving those laws to themselves. To the extent that those laws fall within the scope of their self-regarding normative powers (constrained by the duty of rightful honour) these laws are morally binding. And to the extent that the state acts within the bounds of these morally binding laws, it does the people no wrong (*volenti non fit iniuria*).[54] This is the Kantian aspect of the theory.

But instead of grounding this principal-agent relationship in noumenal authorisation, Kantian-Republicanism grounds it in popular control. The people have to polyadically dominate the state by having the uncontrolled ability to team up and overthrow it together. So long as they have this specific team-up ability, the population exercises what republicans call popular control. This is the republican aspect of the theory.

[54] Even though evil actions by the state can still count as attributable to the population that controls it, these actions do not fall under the scope of volenti non fit iniuria. That is because the principle only permits self-inflicted harms that are compatible with the duty of rightful honour. This is why Kant can say that you cannot wrong yourself and yet maintain that suicide is impermissible.

Kantian-Republicanism is a *functionalist* theory of territorial rights.[55] Functionalist theories ground a state's territorial rights in its successful performance of the essential functions of the state identified by the theory.[56] For example, Kantian-Republicanism says the function of the state is to make original acquisition possible. So, it makes the state's territorial rights depend on whether it successfully does so.

Functionalism has endured sustained challenge from its rivals (Miller, 2012; Moore, 2015; Simmons, 2016; Hill, 2023). They allege that functionalism cannot adequately accommodate our intuitions regarding which states have rights to which territories and populations.[57] These challenges have coalesced into three distinct but related objections:

1. *The Particularity Problem*: Why does a given state have the right to rule this population, rather than any other?

2. *The Boundary Problem*: Why do existing borders have moral force, as opposed to alternative configurations?

3. *The Annexation Problem:* Why is it illegitimate for even a just state to acquire new populations and territories by force?

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[55] For an excellent recent overview of recent work of territorial rights, see Stilz (2024).

[56] Both Kant and Rawls are forefathers of functionalism. A selection of contemporary functionalists includes Altman & Wellman (2009), Beitz (1999), Buchanan (2004), Christiano (2006), Quong (2019), and Waldron (2010).

[57] This line of criticism was initiated by A. John Simmons. For the initial presentation of the objection see Simmons (1979). For development of the objection see Wellman & Simmons (2005). For application of this objection to functionalism see Simmons (2016).

Although there have been a number of admirable attempts to address these problems, (Quong, 2019; Stilz, 2019; Koch Mikalsen, 2020; Motchoulski, 2022; Taylor, 2024) no solution currently enjoys widespread acceptance. And so, anyone considering the merits of Kantian-Republicanism will want to know whether the theory is vulnerable to any of these well-known objections.

In this Chapter, I argue that a key benefit of Kantian-Republicanism is that it gives an elegant solution to all three of the main objections to functionalist theories. Because Kantian-Republicanism grounds the state's authority in popular control, the absence of popular control entails the absence of legitimate authority. I will argue that this popular control condition is all the theory needs to answer functionalism's main problems.

The arguments in this Chapter should be of interest to political philosophers interested in the merits and potential of Kant's political theory. And it should also be of interest to political philosophers interested in functionalism but concerned about the objections levelled against it.

The Chapter proceeds as follows.

In Section 2, I discuss functionalism. I begin by highlighting its attractions and then proceed to explain the main problems to it that have been discussed in the literature. I explain the particularity problem, the boundary problem and the annexation problem. I also briefly mention some of the existing proposed solutions and note that none of these currently enjoy widespread acceptance amongst political philosophers.

In Section 3, I discuss Kantian-Republicanism's popular control response. I explain the republican idea of popular control, before explaining how popular control rests on the

existence of a resistive culture. I then argue that this *resistive culture condition* supplies us with a unified solution to the particularity, boundary, and annexation problems.

In Section 4, I address some potential objections to the popular control response. In the course of doing so, I argue that Kantian-Republicanism gives defensible answers to issues of historical supersession and secession whilst remaining distinctively functionalist. I also address the worry that this Kantian-Republicanism collapses into liberal nationalism.

In Section 5, I conclude by reflecting on how political philosophers (both Kantian and non-Kantian) ought to respond to the arguments in this Chapter.

2 Functionalism – Attractions & Challenges

Functionalism can be formulated thusly,

> *Functionalism*: A state's territorial rights are grounded solely in its successful performance of its morally mandated functions (Taylor, 2024).

Put this way, functionalism is compatible with a wide range of theories depending on what a particular theory identifies as the required functions of the state. Hypothetically, one could formulate a Hobbesian functionalist view that identified the mere maintenance of social order as the morally mandated function of the state—the state succeeds so long as it is an improvement on the "war against all" we would find in the state of nature. However, such a view would be implausible because it would make a state's legitimacy compatible with the most awful, systematic human rights abuses imaginable (Miller, 2012).

In practice, functionalists identify the promotion of basic justice, or the protection of basic human rights as the relevant functions of the state (Altman & Wellman, 2009; Buchanan, 2004; Quong, 2019). This move rules out the worst kinds of state atrocities and accommodates the intuition that legitimacy must somehow be tied to justice. In this Chapter,

I follow common practice by restricting my discussion to functionalist theories that identify 'justice' as the morally mandated function of the state.

Functionalism is popular among political philosophers. The appeal seems to be,

> "closely connected to the view's singular focus on the role that states ought to play in securing a narrow class of basic, uncontroversial political goods [those constitutive of basic justice]. By grounding claims to authority in this relatively modest goal, functionalist accounts provide an alternative for those who are skeptical of tying political legitimacy to the achievement of more demanding procedural or relational ideals" (Hill, 2023:12).

Functionalism is appealing to many because it parsimoniously ties legitimacy to the provision of justice. In doing so it vindicates the intuitive idea that political obligations are morally binding, non-voluntary, and justice focused.

However, despite their appeal and popularity, functionalist theories have been subject to serious, sustained criticism on three main grounds: (i) they struggle to explain why *this* state has the right to rule *this* population rather than some other population; (ii) they underdetermine the precise boundaries of territorial jurisdiction; and (iii) they deliver counterintuitive verdicts in what Taylor (2024) calls ideal takeover cases.

Thus, we face three problems that functionalism needs to answer:

> *The particularity problem:* Why does the state have the right to rule this population but not others, and why does this population have to obey this state but not others?[3]

The boundary problem: Why is this configuration of borders morally binding rather than some other configuration?

The annexation problem: Why does a just state not have the right to rule populations and territories it recently acquired by force?

All three problems trace back to the pioneering work of A. John Simmons (Simmons, 1981, 2016). Let us consider each in turn.

2.1 The Particularity Problem

Simmons first introduced the particularity problem in his seminal work *Moral Principles and Political Obligations* (Simmons, 1981: 31). According to him, an adequate theory of political obligation must explain why individuals are bound to their specific state above others. Pre-theoretically, we assume that individuals have a special moral bond to their own state. This bond implies they are bound to their state, but not others. Simmons' point is that an adequate theory of political obligation ought to explain this pre-theoretical intuition. This is what he labels the particularity requirement, and any theory that fails to meet this requirement faces what has come to be called the particularity problem.

To illustrate, Simmons claimed that Rawls' (1991) natural duty of justice theory of political obligation was unacceptable because it could not address the particularity problem. Rawls argued that there exists a natural duty to further justice through the institutions of the state that applies to us and a weaker obligation to further institutions of justice elsewhere. The essence of Simmons' objection is that natural duties bind everyone to everyone else. For this reason, they cannot explain why political obligations only bind together members of the same polity. Efforts to respond to this critique have motivated subsequent moves in the debate.

2.1.1 The Proximity Response

Jeremy Waldron (1993) offered the most influential response to Simmons' particularity problem. He argued that those interested in a natural duty approach would do well to follow Kant instead of Rawls.

Waldron's Kant argues there is a moral requirement to pursue equal freedom, and this requires us to leave the state of nature and proceed into a rightful condition—but only with those to whom one is proximal. The problem of unequal freedom arises only among those who are causally interactive, so the requirement to create and obey a state is proximity-sensitive. This proximity response has been generalised and adopted by non-Kantians including Christopher Wellman (2001), who argues that our duty to rescue others from a "nasty, brutish, and short" fate in the state of nature is best fulfilled with those to whom we are physically proximate.

Thus, Waldron's account offers those attracted to the natural duty approach a general solution to the particularity problem: to explain why a natural duty binds an individual to one state above all others, one must show that the duty is proximity-sensitive.

2.2 The Boundary Problem

Following Waldron's proximity response, Simmons (2016) replied by arguing that proximity alone is not enough to draw the right distinctions. The proximity response works by drawing an asymmetry between people to whom I am proximal, and those I am not. And then it claims that my political obligations apply to the people to whom I am proximal, but do not apply to those I am not. So, if I am equally proximal to two groups of people, then my political obligations apply to both groups. But many real-world states draw borders across more or less continuous populations. Thus there are many residents of border zones who are equally proximal to populations across the border as they are to those on their side of the

border. Intuitively, they have political obligations only to those on their side, but not to those on the other. But the proximity response alone cannot account for this. So, Simmons concludes the proximity response fails.

Simmons then generalises from his objection to the proximity response. He hypothesises that the same problem will arise for any purported symmetry breaker to which one might appeal to rescue their functionalist theory. He argues that any such feature is unlikely to perfectly map onto the precise boundaries to which custom and history have arrived. This is what he calls the boundary problem.[58]

It is important to note that Simmons chiefly sees the boundary problem as an issue of indeterminacy. Without a symmetry breaker of the right kind, functionalist theories give indeterminate answers to who has authority over whom. And since he thinks there are no suitable symmetry breakers to which functionalists can appeal, the position is hopelessly indeterminate, and ought to be rejected for that reason.

2.3 The Annexation Problem

In the course of arguing for the boundary problem, Simmons offered the following thought experiment to illustrate it:

> *American Annexation*. In an unjust act of invasion, the US seizes control of a Mexican town just beyond its southern border. The Mexicans choose not to fight back and so the invasion is bloodless. Given the superior military force of the US, no other countries interfere, though they officially condemn it. After annexing this

[58] Simmons introduced the boundary problem in his seminal work, the *Boundaries of Authority.* This is the same book in which he shifted the terms of the debate away from natural duty and towards functionalism.

> piece of territory, the US proceeds to govern it justly, extending full citizenship rights to the newly annexed people (Simmons, 2016: 75).

Intuitively, it seems as if these newly annexed people are not bound to the US — this annexation fails to establish genuine political obligations. And yet, Simmons argues that the proximity response lacks the conceptual resources to explain this intuition. *Ex hypothesi*, these annexed people are equally proximal to US populations as they are to Mexican populations. Therefore, whatever natural duty of justice grounds political obligation to the one, should suffice to do so for the other.

The debate following Simmons' introduction of this thought experiment has moved on from the specific concern about indeterminacy. Nowadays, the debate has matured into a sustained reflection on the morality of annexation (Taylor, 2024; Hill, 2023).

And indeed, philosophers worry that functionalist theories face an *annexation problem* because they seem to imply that conquering states have authority over annexed peoples. For example, in *American Annexation,* most have the intuition that the US government does not have legitimate authority over the people it has just conquered.

To show how this point generalises, consider another case that is often discussed in the literature:

> *Benign Colonialism.* A very just but expansionist state, Imperia, has bloodlessly annexed an equally just, but weaker state, Colonia. Imperia immediately grants the Colonians full citizenship rights and governs them as justly as native Imperians (Miller, 2016).

Many worry that functionalist theories imply Imperia has the right to rule the Colonians because it is fulfilling its function of providing justice. But intuitively, Imperia lacks the right to rule the Colonians, and it seems like the Colonians have a right to independence.

In this case, we can see that the annexation problem is distinct from the boundary problem. Whereas the boundary problem was about indeterminacy, the annexation problem is about whether the functionalist theorist's criterion for authority is sufficient.

One might think that Imperia lacks the right to rule because they unjustly seized power over Colonia. Anthony Taylor (2024) has recently defended a view like this. According to him, we can account for Imperia's lacking a right to rule because its unjust violation of Colonia's rights has made Imperia liable. And its liability consists in its forfeiting the right to rule the Colonians.

However, there is a closely related case that controls for this but still delivers the same counterintuitive result.

> *Occupation*. The Allies have just defeated the Nazis and now occupy Germany. Instead of allowing a transition to German independence, France decides to annex Germany. They immediately give the German people full citizenship status and proceed to govern them as justly as native French people (Stilz, 2019).

Most people have the same reaction to *Occupation* as they do to *Benign Colonialism*. But notice that in *Benign Colonialism*, Imperia unjustly conquers Colonia, whereas in *Occupation*, the Germans were not unjustly conquered. On the contrary, the German occupation was justified as part of a just war against the Nazis. And so we cannot appeal to an unjust seizure of power to explain why France lacks authority over the German people. Thus the annexation problem remains a potent challenge for functionalism.

2.4 Existing Proposed Solutions

A number of solutions to the particularity, boundary, and annexation problems have been proposed in recent literature:

- Waldron (1993) appeals to proximity-sensitive obligations to address the particularity problem.
- Quong (2019) postulates a claim-right against having one's citizenship changed involuntarily.
- Koch Mikalsen (2020) aims to rule out the permissibility of annexation by arguing that it is not necessary for a state's performance of its mandated functions.
- Taylor (2024) appeals to liability to explain why annexing states lack the right to rule and recommends supplementing functionalism with a primary right to secession.
- Motchoulski (2022) proposes a natural duty/fair-play hybrid theory that attempts to rule out the permissibility of annexation on the grounds that it frustrates pre-existing duties of reciprocity between citizens.
- Stilz (2019) likewise abandons pure functionalism in favour of a hybrid theory that recognises the value of collective self-determination as a means of serving the individual's interest in non-alienation.

Each of these proposals has its attractions, as well as its difficulties (for recent critique, see Hill, 2023). However, my aim in this Chapter is not to provide a comprehensive critical assessment of their respective merits and shortcomings.

Like I said, I have two objectives. First, I want to show that Kantian-Republicanism is not itself vulnerable to these problems. This will help address a potential major concern one might have when evaluating the theory. Second, I want to offer an alternative unified solution

to functionalism's main problems. The fact that no existing solution has achieved widespread acceptance indicates that there is some demand for an alternative solution. Since none of these goals require me to evaluate these alternatives, I shall set them aside to focus on my positive proposal.

3 Popular Control as a Functionalist Solution

In this Section, I explain Kantian-Republicanism's popular control response to the main problems of functionalism.

The main philosophical move behind this response is to make popular control *a sufficient condition for a principal-agent relationship*. As we saw in Chapter 3, there are other ways to create such a relationship (for example: consent). Kantian-Republicanism merely claims that popular control is sufficient to create this relationship between the people and the state.

However, a principal-agent relationship is merely *a necessary condition for the legitimacy of the state.* That is because the legitimacy of the state depends on whether its laws actually bind its people. And as we saw in Chapter 3, a state may be the agent of its people and still fail to morally bind them if its laws violate the duty of rightful honour. Therefore popular control is a sufficient condition for a principal-agent relationship; and a principal-agent relationship is a necessary condition for legitimacy.

That said, popular control effectively functions as a necessary condition on state legitimacy in the restricted domain of practically accessible possible worlds. That is because all other means of establishing a principal-agent relationship are practically impossible. Take consent for example. Consent is sufficient for a principal-agent relationship, but it is practically impossible for any existing state to acquire the valid consent of all whom it governs. And so, popular control is the only game in town when we are restricting our

discussion to all practically possible worlds. The upshot is that popular control functions as a *practically* necessary condition on legitimacy. With that qualification flagged, we can define popular control as follows:

Popular control condition: a state is legitimate only if its population controls it.

Allow me now to unpack precisely what I mean by popular control. This next subsection retreads material already discussed in Chapter 3. I repeat it here for ease of exposition.

3.1 Popular Control

Popular control is an ability that a population has in relation to its state. As such, its truth conditions are determined counterfactually. To determine whether popular control obtains we can implement the following *Can Do Test.*[59]

Imagine everyone in (or some significant proportion of) a population *willed* to overthrow the state (successful revolution). Then, to the greatest extent possible, hold everything else fixed, and ask whether the revolution succeeds. If the answer is 'yes', then popular control obtains.

What matters is whether the relevant counterfactual conditional is true. And notice that this can be true even if the relevant antecedent is false in the actual world.

In other words, a population may control its state even if they do not will to overthrow it—what matters is whether the social conditions are set up to ensure that *if* they willed revolution, they *would* succeed.

[59] This is a modification of Kolodny's *Can Do Test* (2019) and Simpson's *Can Do Together Test* (2017).

I adopt Lovett & Pettit's (2019) model of popular control. According to them, a population can only exert popular control over its state as a merely *potential team.*

The distinction between potential teams and actual teams is significant.

Actual teams are characterised by their members having joint intentions to cooperate in the pursuit of some shared goal. Members must have the relevant attitudes and mental states towards one another and their shared goal, otherwise they do not qualify as an actual team.

In contrast, potential teams are merely collections of individuals that *could* become actual teams. Imagine school children at playtime. If enough of them willed to play football, then they would form teams and start playing. Only then would they qualify as actual teams. Prior to their forming the relevant intentions, they were merely potential teams. Again, the relevant test is counterfactual—*if* they willed to play football, *would* they team up to do so?

This distinction is crucial. In well-ordered states, there won't be standing militias or underground rebel alliances ready and able to overthrow the state when needed. In other words, the population won't control the state as an actual team because they won't have the relevant joint-intentions.

Rather, Lovett & Pettit (2019) argue that a population may still have control over its state as a potential team. By having the ability to team up in response to gross injustice, the population can serve as a check on the abuse of power even though they may lack the relevant intentions and attitudes towards one another. The conditions for qualifying as a potential team are therefore far weaker than those for qualifying as an actual team. A collection of children qualify as an actual team just in case they each have the relevant mental states in the actual world. The same collection would qualify as a potential team even without these intentions—all that matters is whether they would team up if they willed to do so.

Some potential teams exercise control, and others do not. Potential teams exercise control when awareness and strategy conditions are in place (Lovett & Pettit, 2018). That is to say, individuals will easily become aware if others develop a willingness to cooperate, and a set of strategies for cooperation are salient, such that individuals can reasonably predict what strategies others will choose given a willingness to cooperate. In other words, the social conditions are such that the only operative barrier to cooperation is a lack of will to do so.

It is illuminating to think of potential teams as analogous to a benevolent master. The benevolent master lacks the will to interfere with his slaves but faces no other barriers to his doing so—if the master has a change of will, he will interfere. Similarly, when the people control the state as a potential team, they have the ability to interfere with the state but lack the will to do so. Were enough of them to have a change of will, then the conditions are such that they would interfere. And just as the benevolent master invigilates the actions of his slave, so too the people invigilate the actions of the state.

Notice that in neither case does this invigilation depend on their attitudes or intentions. The slave master still invigilates what the slave does, even though he couldn't care less what the slave does. What matters is that he retains the ability to interfere in the event that he has a change of will. Similarly, the people invigilate the state even when its people are apathetic or disengaged. What matters is the relevant counterfactual: if they willed revolution, would they succeed?

This distinction between actual and potential teams differentiates the popular control response from Stilz's (2019) political autonomy account. On her view, the state's legitimacy depends on its reflecting the actual popular will of the people. For Stilz, a popular will exists just in case enough members of a population have a joint-intention to cooperate with one

another in the pursuit of justice. And so, Stilz thinks the legitimacy of the state depends on its population being an actual team whose will the state can reflect.

This, of course, raises the question of whether the populations of intuitively legitimate states actually have the relevant mental states.

The same question does not arise for Kantian-Republicanism's popular control response because a population can qualify as a potential team without its members having the relevant mental states.

Again, what ultimately matters is whether the relevant social conditions are in place. I shall now unpack the social conditions required for popular control: (i) *mutual awareness* and (ii) *salient strategy*.

3.2 Resistive Culture

Teaming up is possible if and only if two conditions are met (Pettit, 2012; Lovett & Pettit, 2018):

i. Mutual Awareness: it is common knowledge that most members of the population would generally be willing to team up under specific conditions, and willing to entertain invitations to team up under those conditions.
ii. Salient Strategies: it is common knowledge how those willing to cooperate would do so.

To illustrate the general idea, imagine the social norms around protest. Suppose that the government were to announce an unpopular war with a non-hostile neighbouring country. Most of us expect this behaviour to be met with protest. We expect people to generally be opposed to the war, and willing to coordinate in opposition to it. Moreover, we generally know how these protests would be organised, how to get involved, and so on. Without these

two conditions (mutual awareness and salient strategies), members of a population would be unable to coordinate with one another. Mutual awareness is necessary because teaming up requires joint intentions, and joint intention requires a mutual awareness of each other as engaged in a shared enterprise. Salient strategies are essential because without them mutually willing parties simply lack the means to coordinate their activities. Therefore, mutual awareness and salient strategies are essential.

Notice that both conditions turn on what is common knowledge.[60] Common knowledge is not factive. After all, geocentrism was once common knowledge. Instead, common knowledge is a game-theoretic concept referring to a common type of social belief. This type of belief is characterised by its recursive structure. For example, geocentrism was common knowledge, not only because most people believed it, but also because most people believed that most people believed it. Everyone could go about their day confidently expecting that most people would push back against declarations that the earth revolved around the sun.

An important point to flag about common knowledge is that it can persist even if the base belief does not. For example, it might be common knowledge that the dictator is well-loved by everyone. Perhaps this belief is so strong that those who dislike the dictator never say anything for fear of social sanction. This could eventually lead to a situation where most hate the dictator, but everyone still believes that everyone else still likes him. In that case, it would still be common knowledge that the dictator is well-loved even though almost no one loves him.

Popular control depends on the population having the ability to team up. And as we have seen this requires the mutual willingness and salient strategy conditions to be satisfied. It

[60] For the canonical treatment of this idea, see Lewis (1969).

must be common knowledge that most people would be willing to team up with each other to resist the state under specific conditions, and willing to entertain invitations from each other to that effect. And it must be common knowledge how those willing to resist the state would do so together. Populations in which these common knowledge conditions are satisfied are said to have a "resistive culture."

Pettit (2012: 173-4) defines a resistive culture as a population's actual or merely *perceived* disposition to resist abuses of power by the government. Ideally, this would be an actual disposition consisting in everyone actually having the desire and the will to stand up to injustice. But Pettit is clear that even if this is lacking, a resistive culture exists, and the people can control the state so long as the population's willingness to resist is at least common knowledge. That is to say, everyone believes people are generally willing to resist and everyone believes that everyone believes this, ad infinitum. Pettit (2012: 61), emphasises this point by quoting Hobbes' famous line asserting that the "reputation of power is power."

The upshot here is that Kantian-Republicanism imposes a resistive culture condition on state legitimacy.

Resistive Culture Condition: a state is legitimate only if its population has a resistive culture.

The resistive culture condition follows from the popular control condition. Popular control requires the ability to team up. Teaming up is possible only if the mutual awareness and salient strategy conditions are satisfied. And because these conditions are only satisfied in populations that have a resistive culture, the popular control condition is satisfied only if the resistive culture condition is satisfied. Therefore, because Kantian-Republicanism makes the

legitimacy of the state depend on popular control, it also makes it depend on the existence of a resistive culture.

3.3 A Unified Solution

I will now show how Kantian-Republicanism's popular control response provides a general unified solution to the particularity, boundary, and annexation problems. The solution lies in the fact that the popular control response makes a resistive culture a necessary condition on state legitimacy. I argue that this fact alone suffices to answer all three problems.

3.3.1 Particularity

First and foremost, let me address the particularity problem.

Recall that the particularity problem arises when a theory fails to explain why intuitively legitimate states only have authority over their conventionally recognised population, but not others. Functionalism claims that legitimacy tracks function — if and only if a state fulfils its functions, then is it legitimate. So, to answer the particularity problem, we need an explanation for why the state can fulfil its morally mandated function for its own population but cannot do the same for other populations.

I claim that Kantian-Republicanism's popular control response fills this explanatory gap. The theory identifies the enablement of original acquisition as the essential function of the state. The state fulfils this function by serving as the agent of its population, in a principal-agent relationship. Given the practical impossibility of universal consent, popular control becomes a practically necessary condition on this relationship. And since a resistive culture is a necessary condition on popular control, it is also a necessary condition on the state fulfilling

its function. Therefore, according to the theory, the state can only fulfil its function for the population that controls it, and this population must share a resistive culture.

Therefore, the state's authority extends only to members of the potential team that controls it. And since membership of this potential team is determined by which individuals share a resistive culture, the state's authority extends to only those individuals that share a resistive culture. The state lacks authority over other populations because those populations lack control over it. Therefore, political authority is particular because popular control is localised by geographically bounded resistive cultures.[61]

3.3.2 Boundary

Secondly, I address the boundary problem. Critics argue that functionalists cannot appropriately determine the bounds of political authority because functionalism ignores historical factors even though these factors are obviously relevant for how contemporary political borders emerged. For this reason critics argue that a functionalist theory's reliance on timeless natural duties "in no way determines that the only acceptable result will be the one at which convention and law have in fact arrived" (Simmons, 2016: 70).

The popular control response answers this objection by directly appealing to convention (resistive culture) itself. By making an actual resistive culture an enabling condition of the state's function, the popular control response ensures that the bounds of political authority

[61] One might wonder about cases in which state A dominates state B. If state A is controlled by its own population, then does Kantian-Republicanism imply that state A's population is the principal of state B and that therefore, state B has authority over them? The answer is 'no' because domination is not transitive. See Lovett (2019: 69-70).

match the boundaries arrived at by convention. A state's borders ought to reflect the geographical distribution of the potential team that controls it.

In cases where this is not the case—for reasons I will discuss below—then we have strong reason to change those borders.

3.3.3 Annexation

Lastly, let us consider how Kantian-Republicanism handles the annexation problem. To recap, the annexation problem arises because critics argue annexing states like Imperia can fully annex other populations and still treat them justly. Assuming this is right, then it follows that annexation is still compatible with the state fulfilling its function. This is what ensures the problematic verdict that annexing states can have legitimate authority over those they conquer.

Kantian-Republicanism avoids this implication because of two of its structural features. First, the theory identifies the enablement of original acquisition as the essential function of the state instead of the provision of basic justice.[62] This shifts the question away from whether a state can annex and provide justice. Instead, the question becomes whether the state can enable original acquisition for the populations it annexes. If it cannot do so right away, then the annexation problem fails to bite for Kantian-Republicanism.

[62] To be clear basic justice is still a condition on the state's legitimacy, but it plays a different role in the theory. Basic justice is a requirement of the duty of rightful honour. This duty/immunity ensures that only suitably just legislation can bind a population. If the state tries to make laws incompatible with basic justice, then the duty of rightful honour blocks these laws from becoming morally binding.

According to the theory, a state enables original acquisition for a population only if it serves as the agent of that population. And it can only do that if the population in question controls the state as a potential team, the boundaries of which are fixed by a resistive culture. Therefore, if an annexed population does not share a resistive culture with a potential team that controls the state, then that state cannot fulfil its essential function for the annexed population. Regardless of how justly it rules, the state fails to act for the annexed population because conquered people do not control the state that conquers them. The upshot is that Kantian-Republicanism does not imply that annexing states automatically get legitimate authority over the people they conquer on account of good governance.

In this Section I explained Kantian-Republicanism's popular control response to the particularity, boundary, and annexation problems. In the next Section, I will discuss and respond to some potential objections.

4 Objections

4.1 Indeterminacy

A central objection to the popular control response concerns its ability to deliver determinate and particular answers to the questions: Which individuals qualify as members of the relevant population? Who belongs to the "potential team" capable of controlling the state? Critics may argue that unless the theory can provide a principled account of population membership, it risks the same indeterminacy they charge against other functionalist proposals..

To address this objection, recall that the popular control response grounds authority in popular control, and popular control is exercised by a potential team. The relevant population, then, is not those who actually form an actual team—i.e., those with joint intentions in the present—but those who could team up to resist the state, were the need to arise. Thus,

determining membership in the relevant population requires identifying which individuals could form a potential team.

The theory answers this by appealing to social norms—specifically, those that enable mutual awareness and the identification of salient strategies for cooperation. For a collection of individuals to qualify as a potential team, they must share the norms that enable such mutual awareness and coordination. These social norms are culturally and geographically bounded, and they emerge within particular cultures. In practice, this means that individuals only control the state that operates within their region. As such, authority is particular because the resistive culture that enables popular control is particular.

This also explains why individuals do not, under normal circumstances, control states that are not their own:

(1) The social norms that enable them to control a state do not extend to the geographical regions where those states operate;

(2) These social norms typically specify which particular state members are expected to resist. For example, there is a cultural norm in the US that Americans will resist the US government if it turns rogue, but not that Americans will resist the Canadian government.

4.1.1 Addressing Indeterminacy

Simmons's boundary problem charges that functionalist theories cannot settle which individuals belong to which populations. In response, Kantian-Republicanism can appeal to socialisation: membership in the relevant potential team is determined by socialisation into a resistive culture. Socialisation is the process by which individuals acquire the recursive beliefs, expectations, and behavioural markers required to form a potential team with others

similarly socialised. These shared norms enable mutual awareness and salient strategies, thus solving the coordination problem that plagues other views.

Socialisation can occur through one's upbringing in a particular community or through later assimilation after joining a new community. What matters is that there are real differences between people who have been socialised into the relevant norms and those who have not. Thus, socialisation determines whether someone is a member of a potential team capable of controlling the state, and thereby determines the boundaries of political authority.

4.1.2 Is this account determinate enough?

One might worry that dual citizens or cosmopolitans who are socialised into more than one resistive culture generate indeterminacy. However, Kantian-Republicanism can accommodate this by recognising that dual citizens may indeed have obligations to more than one state, as members of two distinct potential teams. This sort of overlap does not threaten the theory's capacity to district populations; it merely reflects real-world cases of dual citizenship, not the deeper indeterminacy that Simmons fears. For example, residents of Northern Ireland are socialised into the resistive culture that controls the UK, not the Republic of Ireland, and thus the theory yields determinate answers in such contested cases.

4.2 Question-Begging

A further objection concerns whether Kantian-Republicanism's popular control response is question-begging in its appeal to convention, culture, or social norms. The worry is that a theory of political authority is supposed to *justify* why conventions about political boundaries and districting have normative force, not merely assume it. If a theory appeals to these

conventions as part of its explanation, it might seem to be presupposing the very thing it is meant to explain—that is, using the explanandum in the explanans.[63]

However, this objection misunderstands the structure of the popular control response. Kantian-Republicanism does not depend on conventions or social norms *having* normative force. In fact, as Simons observes, the widespread assumption that conventions have such force is precisely what needs explaining (Simmons, 2016). Were the theory to appeal to the normativity of conventions in order to explain their normative force, it would indeed be circular.

But Kantian-Republicanism does something different. It appeals to *non-normative* features of conventions and social norms—specifically, their *role in enabling coordination*. Because this fact is non-normative, there is nothing circular about appealing to it in the course of explaining the normativity of these conventions. The theory requires only that these norms facilitate (i) mutual awareness and (ii) salient strategies for coordination. These are features that social norms can have regardless of whether they possess genuine normative force.

To illustrate, consider a simple analogy: suppose fashion norms lack genuine normative authority, and that people are systematically mistaken about the value of a coordinated outfit. Still, these norms reliably generate expectations about what is appropriate to wear to a formal event, what counts as a reasonable strategy for complying, and where to rent a tuxedo if necessary. One can thus appeal to the coordinating power of this norm in the course of explaining the uniformity of dress at an official event, even if one denies that the norm has real normative authority.

[63] For allusions to this kind of objection, see Simmons (2016)

The same is true in the case of political authority. Kantian-Republicanism appeals to the coordinating features of social norms—which are essential to forming a potential team agent—without presupposing their normative legitimacy. The explanatory work is done by the *instrumental* role these norms play in enabling collective agency and control, not by their independent normative status. Therefore, the popular control response does not beg the question in the way this objection assumes.

4.3 Historical Supersession

Kantian-Republicanism's focus on the current abilities of the state and its population enable it to answer the annexation problem by explaining why even an ideally just state would lack authority in cases like *American Annexation* and *Occupation*.

But one might worry that this is not the full story. After all, even if we grant that annexing states lack authority right away, functionalists typically hold the view that eventually these states can acquire the right to rule (Waldron, 1992; Stilz, 2019a). Functionalists typically explain this phenomenon by postulating that the rights of conquered people initially block conquering states that govern justly from acquiring legitimacy. But as these rights fade over time, these just states eventually get the right to rule the populations they conquered. The process of rights fading over time is called *historical supersession.*

But Kantian-Republicanism does not appeal to the rights of conquered people to explain why annexing states that govern justly initially lack the right to rule. And so, this theory cannot appeal to the usual story about historical supersession of rights to explain how these states can eventually acquire legitimacy. Some political philosophers would see this as a virtue because they are sceptical of historical supersession (Simmons, 2016). But since this sort of scepticism has implausibly strong implications (Stilz, 2019a), one ought to insist that

Kantian-Republicanism offer some account of how states eventually become legitimate despite past injustices.

The Kantian-Republican answer is simple. As we saw, the theory says that just conquering states lack legitimacy initially because the populations they conquer do not initially control them. Since the theory makes popular control a necessary condition of legitimacy, these states initially lack legitimacy. This answer to the annexation problem gives the theory a straightforward answer for how these states eventually become legitimate: the annexed populations eventually get control over them.

In cases where no population controls the state, annexed populations may get control by expanding their capacities to coordinate over time. In cases where some population already controls the state (as in ideal takeover cases) annexed populations can get popular control by merging with the existing potential team that already controls it. Because potential team membership requires sharing a resistive culture, joining the existing potential team would involve some process of partial cultural assimilation.

The assimilation I have in mind would only involve socialisation into the same resistive culture (the norms constitutive of the common knowledge required for effective coordination). As populations assimilate over generations, the state that annexed their forefathers would become legitimate. But if this assimilation is blocked for whatever reason (persistent discrimination, failures of integration, etc.), then the state would still lack legitimate authority over them. That is the Kantian-Republican response in a nutshell. What should we make of it?

To my mind, this account is at least as plausible as the standard functionalist account that appeals to the historical supersession of rights. If that is right, then this account of historical

supersession is sufficient to meet this objection. But more than that, I think this account gives an intuitively appealing explanation of our common sense intuitions in paradigm cases.

For example, populations like the Mercians of ancient Britain were conquered long ago. Yet the current UK government seems to have legitimate authority over their descendants and their former territory. Kantian-Republicanism explains this example by pointing to the cultural assimilation of Mercian descendants into the resistive culture of the population controlling the UK government. On the other hand, some think the current US government lacks authority over many native American communities, especially those living in reservations. Kantian-Republicanism explains this case by pointing to the failure of assimilation into the resistive culture of the population controlling the US government. Because the theory seems to give intuitively acceptable answers in these paradigm cases, I count this as a virtue of the theory.

4.4 Secession

One might object that Kantian-Republicanism fails to fully answer the annexation problem because I have not yet addressed the issue of secession.

To begin, theories of secession typically come in one of two flavours (Buchanan, 1994).

On the one hand, there are *remedial right theories*. According to this view, a group can have the right to secede only if it has been subjected to persistent gross injustice at the hands of its own state. The right to secede is only ever acquired in response to injustice.

On the other hand, there are *primary right theories.* On this view, some groups have the right to govern themselves by default. Theories differ according to what conditions the group has to satisfy (shared culture, sufficiently just, etc.). What distinguishes the primary right view is that it allows some groups to secede even if their state has done nothing wrong.

Here's the problem for functionalism. Functionalists claim that states have the right to rule so long as they fulfil their function. But if some groups have the right to secede from states that have done nothing wrong, then this would seem to undermine the functionalist position. After all, what would it mean to say that a state had the right to rule a group, if that group had the right to reject that rule at will? So, it seems functionalism is incompatible with a primary right view.[64]

But Taylor (2024) has recently argued that functionalists cannot give a coherent answer to the annexation problem *unless* they accept a primary right to secession. This is because he thinks Germans in the *Occupation* case are in a relevantly identical position to unmolested secessionist groups. So, he thinks that the only consistent way for functionalists to claim that the Germans have a right to reject French rule in *Occupation* is to accept a primary right to secession.

To be clear, Taylor does not view this as an objection to functionalism. He thinks functionalists can accept a primary right view without difficulty. But for the reason just given, one might worry about this alleged compatibility.

And so, one might worry that the plausibility of Kantian-Republicanism depends on what it has to say on this issue.

Luckily, I think Kantian-Republicanism can coherently explain why France lacks the right to rule in *Occupation* whilst also denying the existence of a primary right to secession. Here is how.

[64] And as we would expect, functionalists typically reject the primary right view. For a paradigm example, see Buchanan (2004).

According to Kantian-Republicanism, France lacks the right to rule in the *Occupation* case because the German people lack control over the French state. In this thought experiment, we are supposed to imagine the German people have recently been defeated by the Allies. They are not in a position to resist the French government. Nor do they share a resistive culture with the French population who may control the French state. So, because the German population lack control over the French state, it lacks the right to rule them.

In contrast, the typical separatist groups that Taylor has in mind are typically socialised into the same resistive culture as their non-separatist compatriots. For example, I assume that Scottish separatists would be able to coordinate with Scottish loyalists (and other UK citizens) to resist the Westminster government. This popular control, in addition to Westminster governing justly, is sufficient for the Westminster government to have the right to rule Scottish separatists. So, Kantian-Republicanism can give the intuitively correct verdict in the *Occupation* case whilst coherently denying a primary right to secession.

But like I said in my response to the historical supersession objection, persistently non-integrated groups would not be subject to the authority of the state because they would lack control over it. Depending on the circumstances, these groups may have a right to establish their own state, rather than integrating into the dominant resistive culture. But notice that this would fall short of a primary right to secession. Instead of leaving a legitimate rightful condition to set up their own, these persistently non-integrated groups would actually be leaving a state of nature to establish a rightful condition. So rather than exercising a right to secede from a legitimate state, these groups would be exercising their right to leave the state of nature and proceed into a rightful condition.

4.5 Distinctiveness

A final objection holds that Kantian-Republicanism's popular control response merely repackages either collective self-determination or liberal nationalism, and so fails to offer a distinct alternative to existing views.

This worry can be met on both fronts.

First, Kantian-Republicanism does not endorse the value of collective self-determination. Collective self-determination theories all claim that groups sufficiently committed to the pursuit of justice, have a right to pursue justice on their own terms and in their own way (Altman & Wellman, 2009; Moore, 2015; Stilz, 2019). This right to self-determination affords them a right to political autonomy and self-rule. The hallmark of this position is that any group capable of governing itself, on terms that are sufficiently just, has the right to do so.

Now, one might think that Kantian-Republicanism's emphasis on the unification of the multitude and its emphasis on popular control implies that it too is a collective self-determination theory, rather than a functionalist theory. But this would be a mistake.

But Kantian-Republicanism does not assign the same sweeping right to collective self-governance. On the Kantian-Republican view, there is nothing morally valuable about a group governing itself per se. What matters is whether persons can live together under the possibility of original acquisition. This requirement motivates the theory's emphasis on unification and popular control. These features only have value to the extent that they enable original acquisition. Therefore, once a state enables original acquisition for the groups it governs, those groups no longer have the right to use force to establish just institutions. And so, Kantian-Republicanism does not collapse into a collective self-determination theory because it does not share the defining characteristics of those theories.

Second, the account does not collapse into liberal nationalism.

Liberal nationalists argue that cultural nations are the bearers of the right to political self-governance (Margalit & Raz, 1990; Kymlicka, 1996; Gans, 2003; Meisels, 2009; Miller, 2007, 2012, 2016). Whereas collective self-determination theorists afford this right to any sufficiently just group. Liberal nationalists restrict it to groups with a distinct national culture. For this reason, one might worry that Kantian-Republicanism collapses into liberal nationalism because of the role the theory assigns to resistive cultures.

To be sure, there are some notable parallels between liberal nationalism and Kantian-Republicanism, but the same parallels exist between liberal nationalism and republicanism more generally. And yet, republicanism is not generally recognised as a liberal nationalist position. Here is why.

Liberal nationalism is distinctive for making two distinct claims.

The first is motivational. They claim that only co-nationals are sufficiently motivated to sacrifice for each other to the extent that just institutions require. They start with the uncontroversial empirical claim that liberal democratic institutions only work if enough people are willing to make personal sacrifices for each other. They then make the more controversial motivational claim that only members of the same cultural groups are willing to make these sacrifices. From these premises, they conclude that justice empirically depends on the existence and maintenance of these cultural ties.

The second claim liberal nationalists make is normative. They claim that membership and participation in one's own cultural group is a morally weighty individual interest because it is part of the good life. On the assumption that morally weighty individual interests ground rights, (Raz, 1986), nationalists conclude that individuals have a right to participate in,

preserve, and transmit their culture. This right, in turn, grounds territorial rights and political obligations.

Republicans in general rely on neither of these claims. Rather than making motivational claims about willingness to sacrifice, republicans claim that coordination relies on shared beliefs that are created and sustained by a very particular kind of culture: one that qualifies as resistive. Therefore, republicans do not rely on the partiality that is distinctive of liberal nationalism. Nor do they rely on the claim that cultural membership is part of the good life. Instead, they claim that membership to resistive cultures enables the coordination needed for popular control.

To this extent, Kantian-Republicanism is in agreement with neo-roman republicanism. Neither view makes the distinctive claims associated with liberal nationalism.

Therefore, Kantian-Republicanism neither relies on the value of collective self-determination nor smuggles in a commitment to liberal nationalism. Instead, it maintains its distinctiveness as a functionalist theory grounded in the capacity of popular control.

5 Conclusion

In this chapter, I argued that Kantian-Republicanism offers a defensible, novel, and unified solution to functionalism's main problems.

My argument relied on the popular control condition as a mechanism the theory uses to localise the authority of the state. I argued that this mechanism alone can solve the particularity, boundary, and annexation problems.

By my lights, this result should add support for the revision to Kant's theory I recommended in Chapter 3. There, I recommended that Kant's theory should replace noumenal consent with popular control as a mechanism for establishing a principal-agent

relationship. In this Chapter, I have argued that this revision has the added benefit of supplying a novel and plausible solution to problems that have long bothered Kantian political philosophers.

As we have seen throughout this Chapter, the particularity, boundary, and annexation problems have traditionally been aimed at the Kantian tradition of political theory (Simmons, 2016). And Kantians themselves have recognised the need to answer it (Waldron, 1993; Stilz, 2009).

I am not claiming that existing solutions all fail. Making the case for that claim would require more space than I have available in this dissertation.

But, I have claimed that no existing solution to any of these problems currently enjoys widespread acceptance amongst political philosophers. For this reason, the fact that my recommended revisions also offer a unified and plausible solution to all three problems, makes my revisions even more attractive. Not only do my revisions allow Kantians to avoid the costs associated with noumenal authorisation, but they also allow Kantians to answer persistent objections.

For non-Kantian political philosophers, I think the arguments in this chapter should raise their credence in functionalism. Despite its intuitive appeal, many philosophers reject functionalism on the grounds that functionalists lack a compelling response to the objections discussed in this Chapter. So, if my arguments here have been successful, then those who have rejected functionalism before ought to revise that decision.

This Chapter concludes my defence and development of Kantian-Republicanism in this dissertation. Allow me now to conclude with some reflections on what this thesis accomplished, its limitations, and some potential avenues for further research.

Conclusion

In this dissertation, I set out to investigate Kant's political theory to see whether it can help us make progress on the problem of political authority. In this conclusion Chapter, I will summarise the argument of each Chapter that came before. Then, I will discuss the implications and significance of those arguments for debates in contemporary political philosophy. After that, I flag the limitations of this dissertation, before concluding with some remarks about potential future research.

1 Summary and Reflection

I began this dissertation by discussing the standard interpretation of Kant's political theory (the three-defect model), and its most serious objection (the guarantee problem). Starting with the orthodox interpretation of Kant was essential to developing a clear view of his ideas. My discussion of the guarantee problem was motivated by my aim of finding the strongest, most credible interpretation of Kant's view. Since I concluded that the three-defect model fails to answer the guarantee problem adequately, I argued that we have reason to reject that interpretation for my preferred reading of Kant: the one-defect model.

To recap the difference, the three-defect model held that the state of nature made original acquisition impossible because of three distinct problems:

1. The unilateral choice problem.
2. The interpretation problem.
3. The assurance problem.

Since the function of the state is to make original acquisition possible, the state must solve all three problems. I argued that this made the guarantee problem unavoidable. In

contrast, the one-defect model, holds that only the unilateral choice problem makes original acquisition impossible in the state of nature. Therefore, the state's legitimacy depends only on its ability to solve this problem. I argued that this interpretation avoids the guarantee problem.

Ultimately, this Chapter laid important groundwork for the rest of the dissertation by painting a clear picture of the problem Kant's theory was built to solve. The problem starts from the assumption that freedom is non-domination, and then proceeds to show how we cannot comply with the demands of freedom in the state of nature.

That then brought us to Chapter 2 where I discussed Kant's solution to the problem revealed in Chapter 1. Again, my goal in this Chapter was to faithfully represent the interpretation of Kant, in which I have the highest credence. The key insight from this Chapter was the connection I drew between the ideas of Kant, and the ideas of Hobbes.

I argued that Kant's solution to the unilateral choice problem was the unification of the people through the idea of the original contract. In brief, the problem is that original acquisition presupposes authority because one cannot create the obligations constitutive of property without having the ability to give obligations to others. The Hobbesian solution to this problem is agency plus reflexive normative powers. Start from the idea that people have the ability to give obligations to themselves. Then add the idea that some people have the ability to *act for* others. The result? Some people have the ability to give obligations to others. By having the ability to act for its population, the state would have the ability to give them obligations; thereby making original acquisition possible.

In my estimation, this is the most exciting and under-explored idea in Kant's entire theory. This is exactly the kind of insight I was hoping to find — the sort of idea that could advance

the debate on the problem of political authority by showing us a different mechanism for grounding political authority.

Since Kant starts with the assumption that people have the ability to give obligations to themselves, his solution to the unilateral choice problem turns on how he establishes the state's ability to act for us. And this is where I parted ways with Kant. According to my interpretation, Kant's theory grounds the state's ability to act for us in the idea of noumenal authorisation. By his lights, we are rationally required to see ourselves as having authorised the state because seeing ourselves thusly is a presupposition of practical reason.

This move of Kant's is what motivated my pivot in Chapter 3. This is the Chapter where I introduced Kantian-Republicanism. My motivation for doing so was that I could not accept the implications of noumenal authorisation because they struck me as implausible. However, I argued that noumenal authorisation was not absolutely essential to make Kant's theory work. Since Kant's theory only needs to account for how someone could acquire the ability to act for others, I explored a different mechanism for acquiring this ability: popular control. Appealing to popular control brought Kant's ideas much closer to the republican tradition. That is why I named the resulting theory Kantian-Republicanism.

My objective in proposing this new(ish) theory was to demonstrate that Kant's insights can be used outside of the social contract tradition. I wanted to demonstrate that these ideas can be of relevance to contemporary political philosophers, even if they are not convinced by the rest of the Kantian project. But before I could explore the merits of this new theory, I first had to defend it against a potentially fatal objection: Simpson's impossibility dilemma.

That is why, in Chapter 4, I turned my attention to addressing this objection head on. In brief, I argued that regardless of how we choose to interpret Simpson's argument, it does not

successfully show the impossibility of republican freedom. Many of the arguments in that Chapter were only relevant to addressing Simpson's objection, but the Chapter as a whole was vital to the overall argument of Chapter 3. Without Chapter 4, my argument for why Kantian-Republicanism is less problematic that Kant's original theory would have been unsound. But with Chapter 4 in place, my revisions to Kant's theory look more like an upgrade than a failed experiment.

And so in Chapter 5, I tried to demonstrate how Kant's ideas could be used to tackle contemporary problems in political philosophy. That is why I tested Kantian-Republicanism against the three main objections to functionalist theories of territorial rights. The result was a surprisingly elegant solution. I argued that Kantian-Republicanism's reliance on popular control actually strengthens the theory by giving it the resources to answer the particularity problem, the boundary problem, and the annexation problem using one mechanism.

So, this dissertation started with puzzlement over the problem of political authority. That puzzlement motivated an examination of a key historical figure's ideas on the matter. Examining those ideas seriously required an interpretive effort in Chapters 1 and 2. That effort yielded fruit by showing me that authority can be grounded in reflexive normative powers plus agency. In an effort to preserve and explore that idea, I sketched a theory that preserves it, whilst avoiding the pitfalls I perceived in Kant's own theory. I then defended that theory and explored some of its potential applications to contemporary problems in political philosophy.

2 Significance

If the arguments in this dissertation succeed, then it will represent a substantial contribution to the field of political philosophy.

Firstly, it will deliver a credible solution to the guarantee problem. As I argued above, this is perhaps the most troubling objection to contemporary Kantian political theory. As I have argued, none of the existing replies adequately meet the challenge. And without a good answer to this problem, Kant's political theory would imply anarchism. So, if my arguments in Chapter 1 succeed, then Kantians will have gained a viable solution to one of their most pressing problems.

Secondly, if the arguments in Chapter 4 succeed, then republicans will have gained a credible solution to Simpson's dilemma. Again, I think this is a big deal for republicans because Simpson's dilemma threatens the very coherence of the republican project.

As I argued there, I think that Lovett & Pettit's reply to Simpson basically works. So, I see my contribution as primarily helping to clarify what the disagreement is and clarifying why the Lovett & Pettit's solution actually gets the job done. This is a significant contribution because of the stakes involved. Republican theory is an exciting research project with much promise. The arguments in Chapter 4, ought to increase our confidence in the viability of this research project.

Thirdly, if the arguments in Chapter 5 succeed, then this dissertation will have successfully defended functionalism against a family of objections it has struggled with since the 1980's. Granted, this solution does not generalise; so it does come with substantive commitments that not all functionalists will be willing to accept. But Kantian-Republicanism would still be significant because it would be the first functionalist theory to answer all of Simmons's objections with one unified solution.

Lastly, I think Kantian-Republicanism itself is a substantial contribution to political philosophy. Only further reflection will tell if this theory has legs to stand on. But if it does,

then it would represent a successful synthesis of two of the most influential traditions in the history of Western political thought. By borrowing the mechanisms of agency from the social contract tradition of Hobbes and Kant, and the mechanisms of popular control from the republican tradition, Kantian-Republicanism attempts to say something genuinely new. If it succeeds in doing so, then this would be significant.

3 Limitations

For the reasons discussed above, I think this dissertation has met the goals I set for it. I have conducted a thorough examination of Kant's theory and used insights from that examination to make fresh contributions to contemporary debates surrounding the problem of political authority.

But it is also important to be clear about what this dissertation has not shown. By my estimation, there are at least three limitations that should be flagged.

The first limitation of this dissertation is that I do not speak or read German. Since Kant's work was written in German, my inability to read it in its original language should obviously temper confidence in the veracity of my interpretations of him. To remedy this, I have engaged extensively in prominent secondary sources and commentaries. But even there, my inability to read German has limited me to English-language secondary sources. Given that there is a great deal of excellent German-language Kantian scholarship, of which I have zero understanding, we can conclude that my dissertation has not taken into account all of the relevant evidence on this matter.

That said, this limitation does not worry me too much. My goal was not to give the final word on how to interpret the Doctrine of Right. My goal was to engage with the arguments I

found there and present them in the best light I could. So even if my interpretations missed the mark a little, the ideas should be of interest in their own right.

The second limitation of this dissertation is that I have not delivered a precise account of the limits of state authority. I have argued that there are limits, and that they are set by the duty of rightful honour. But I have not said much about what concrete limitations this duty imposes on state rule beyond the prohibition of slavery. This omission partly reflects Kant's own. Kant says that the duty of rightful honour disables us from using our normative powers to create arrangements in which others use us as mere means. I have helped myself to this device, but I have not said anything specific about what using as a mere means requires.

This omission makes Kantian-Republicanism an incomplete theory. Given that the only limitation the theory imposes on the state's authority is the duty of rightful honour, this omission leaves the theory unable to give clear verdicts in all but the most clear-cut cases.

In one sense, this is a strength of the theory because it becomes compatible with a wide range of interpretations for what it takes to treat someone as a mere means. The theory's verdicts would then differ depending on one's preferred analysis. This flexibility means that one could adopt the theory without thereby committing oneself to a particular substantive view on wrongful use.

In another sense, this lack of specificity is a weakness of the theory because it makes it less falsifiable by use of thought experiments. In my estimation, this limitation of the dissertation means that Kantian-Republicanism is an incomplete theory.

The last limitation I want to flag is that this dissertation does not deliver the final word on the philosophical problem that motivated it in the first place. I started off wanting to know

whether our experience of political authority is illusory or real. Unfortunately, I cannot say that I am convinced either way yet.

But I do think that this dissertation delivers the next best thing: insights we can use to move the debate forward. Allow me to explain as I discuss avenues for possible future research.

4 Future Research

I said above that the most exciting discovery in this dissertation was Kant's Hobbesian solution to political authority: reflexive normative powers plus agency. Above all others, this idea seems ripe for further research and exploration. Here is why.

Right now, the debate over political authority is conducted in the language of rights. The assumption is that a state's legitimacy is constituted by its having a right to govern, and its population having a duty to obey (Christiano, 2008: Ch. 6). I suspect that framing the debate in the terminology of rights, has led philosophers to build theories that proceed by either justifying the state's right or by justifying the people's duty; on the assumption that one entails the other.[65]

But notice that this is not how I proceeded when sketching Kantian-Republicanism. My arguments focused on justifying the existence of a principal-agent relationship; not on justifying duties or rights. In my view, this departure is significant because it points the way toward new options and opportunities for theorising in this field.

[65] Stephen Perry (2013) challenges this assumption by arguing that the right to rule entails the duty to obey, but not the other way around.

Take for example, my argument for control-based agency. That argument would never have occurred to me if my goal were to justify the state's right to rule, or the people's duty to obey. If that were my goal, I would have looked for moral principles that ordinarily ground duties (Simmons, 1981). Or perhaps I would have looked at potentially weighty interests served by the state's having this right (Raz, 1986). But once I started looking for arguments to ground agency, the republican grounding in popular control presented itself to me.

Nor do I think popular control exhausts the available options. One research project I would like to see conducted is the development of theories that try to ground agency in *identity.* Take for example identity-based theories of associative obligation. These are views which argue that states are legitimate because parts of our practical identities are constituted by our political obligations. (MacIntyre, 1981; Horton, 1992). Critics like Simmons (2000: Ch. 4) have argued that these views fail to ground any duties because practical identities do not seem like the sort of thing appropriate to that task. But if we shift focus from duty to agency, then it seems to me as if practical identities are well-suited to the task. After all, if we are asking when one agent has the ability to speak for another — when their actions count as the actions of another — then practical identity strikes me as relevant.

This is just an illustrative suggestion, not a fully worked out argument. But that is my point. I think this is the sort of project that merits further research. Hopefully that research will yield new and better theories that could help us make progress on the problem of political authority.

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