THE CATHOLIC UNIVERSITY OF AMERICA

The State of Nature as the Moral Foundation for Political Society: Kant's Contribution to Contract Theory and its Application to Theories of International Relations

A DISSERTATION

Submitted to the Faculty of the

Department of Politics

School of Arts and Sciences

Of The Catholic University of America

In Partial Fulfillment of the Requirements

For the Degree

Doctor of Philosophy

by

Carol Browning Cooper

Washington, D.C.

2016

The State of Nature as the Moral Foundation for Political Society: Kant's Contribution to Contract Theory and its Application to Theories of International Relations

Carol B. Cooper, Ph.D.

Director: David Walsh, Ph.D.

The image of the state of nature has played an important role in political philosophy, international relations, and practical politics for the last several centuries. As the basis of social contract theories, it contributed to the development of the doctrine of government by consent; as a metaphor for the anarchical context in which nation-states relate to each other, it has continuing relevance for theories of international relations and the practice of foreign policy. But how useful is it as a construct for understanding the nature of human beings, the purpose of the states they create, and their political and international relationships?

This dissertation answers this question by exploring the state of nature within Immanuel Kant's political philosophy. Uniquely among social contract theorists, Kant rejects both the putatively historical state of nature and the consensual contract. Nonetheless, this dissertation argues not only for his place within the contractarian tradition, but for the philosophical superiority of his treatment of the state of nature in comparison with Thomas Hobbes, John Locke, and Jean-Jacques Rousseau.

Kant's metaphysical approach to the state of nature allows him to identify and articulate the moral foundations of such problems as property rights, freedom, coercion, and law, thus insisting on the necessity of the state while still defending republican consent as the ideal political standard. He achieves this on the basis of the essential moral self-awareness of the human person—the perspective the historical state of nature and social contract try to achieve, with less success.

Finally, this dissertation examines Kant's logic of the state of nature with regard to states in the international sphere. Here, it is argued that a consistently Kantian approach to international relations results neither in resignation to the international state of nature as a permanent status quo, nor in the imperative to instantiate a world state. Rather, by appealing to the metaphysical approach Kant used at the individual and state level, this dissertation concludes by arguing that states can accept the reality of the international state of nature without viewing such a state as normal or necessary.

This dissertation by Carol B. Cooper fulfills the dissertation requirement for the doctoral degree in Politics approved by David Walsh, Ph.D., as Director, and by Claes Ryn, Ph.D., and Christopher Darnton, Ph.D. as readers.

_____

David Walsh, Ph.D., Director

_____

Claes Ryn, Ph.D., Reader

_____

Christopher Darnton, Ph.D., Reader

"Two things fill the mind with ever new and increasing admiration and awe, the more often and steadily we reflect upon them: *the starry heavens above me and the moral law within me*. I do not seek or conjecture either of them as if they were veiled obscurities or extravagances beyond the horizon of my vision; I see them before me and connect them immediately with the consciousness of my existence."
— *Immanuel Kant*

"Experiences of participation in various areas of reality constitute the horizon of existence in the world. The stress lies on experiences of reality in the plural, being open to all of them and keeping them in balance. This is what I understood as the philosopher's attitude, and this is the attitude I found in the open existence of all great philosophers. . . . To restore this openness of reality appeared to me to be the principal task of philosophy."
— *Eric Voegelin*

TABLE OF CONTENTS

ACKNOWLEDGMENTS

There are many people in my life whose help, love, and encouragement have made the completion of this dissertation possible. I am grateful to my director, Dr. David Walsh, for his advice in setting the course for this project and his many years of patience and unfailingly positive encouragement as it was completed. Dr. Claes Ryn has been a trusted friend and teacher since my first days as a graduate student and I especially appreciated his pre-defense reassurances. I am very thankful, too, for the time and effort Dr. Chris Darnton put into detailed readings of my chapter drafts and helpful suggestions for improvement.

Institutionally, I want to thank the whole Politics Department at CUA for their support, financial and otherwise, and for being a welcoming second home for now nearly ten years. I am also grateful to the Department of Political Science at Rice University for granting me a Complimentary Research Associate position, which allowed me to complete the bulk of the research for this dissertation through their library. And I must thank Steve McGuire for organizing the panel at the 2014 Northeastern Political Science Association meeting at which I was able to refine and present the research that became the basis of the first two chapters.

Many friends have given personal and emotional support over the years and I am thankful for their patience, encouragement, and prayers. I am especially grateful to Jeremy Geddert, Josh Bowman, Dana Robinson, and my other fellow students, for time spent in commiseration and for very good advice. Steven Rybicki deserves many thanks for reading chapter drafts and giving characteristically kind validation and thought-provoking feedback. I also want to remember the people of the Church of the Ascension and St. Agnes, and especially the late Rev. Lane Davenport, for the opportunity they gave me to participate in a spiritual community whose ethos forms the deep background out of which this work was written.

Finally, I want to thank my family for their support in so many tangible ways. My parents, Susan and Greg Browning, spent months cheerfully watching my children, running my errands, and cleaning or fixing my house while I wrote. My children, Charlie and Nora, both of whom were born in the midst of this dissertation process, continue to be my inspiration and joy every day. And last, of course, the indispensible person—my husband David, who not only endured the unpleasant experience of having his spouse's life overtaken by an all-consuming project, but threw the whole weight of his enthusiasm, creativity, organizing prowess, and even proofreading skills behind its success, as well. This project was completed through the strength of our combined determination. Thank you, David, for your belief in my ability to succeed and the sacrifices you accepted to make my success possible. I could not have done it without you.

INTRODUCTION

I. Significance and Orientation

The image of the state of nature has played an important role in political philosophy, international relations, and practical politics for the last several centuries. In political philosophy, the state of nature has been used to structure thinking about politics by imagining what human life would have been like before political civilizations were formed. On that basis, theorists can appeal to the alleged inaugural circumstances of politics for the justification and legitimization of political authority over the individual person. The justifications vary according to the characteristics of the imagined state of nature and the people who live in it and the ways in which those people come to construct a political order for themselves. Despite these wide descriptive variations, however, the most famous versions of this trope—those of Thomas Hobbes, John Locke, and Jean-Jacques Rousseau—all have one thing in common: they assert that people in the state of nature form political communities *by consent*. This consent was usually described as a formal contractual process of some kind, although the terms differed, and for that reason thinkers who use this image are collectively called contract theorists or contractarians.

The state of nature, thus, has had the most visible impact on practical politics by positing an act of consent at the basis of any justification for political authority. The notion, as stated in the United States' Declaration of Independence, that governments "derive their just power from the consent of the governed" owes its existence to the concept of a state of nature. Of course, the fact that thinkers felt the need to develop such stories about the origin of politics shows that they were already operating within certain assumptions about people and politics that logically imply a need for consent. These include: that human beings possess a quiddity that is not derived from

their political context (at least to some important extent); that this includes an essential freedom and a moral self-awareness; and that government must therefore justify before the human person's self-awareness any forceful limitation of his individual freedom. These, in turn, developed out of the increasing awareness within Western political thought and practice of, for example, the tension between individual freedom and political authority, the fragile dependence of political order on political unity, and the destabilizing impacts of competing truth claims on the felt need to ground the contingent practice of politics in some absolute order of right, among other things. The image of the state of nature, and the process of exiting it by consent, is thus somewhat incidental to the more fundamental issues at hand, but it nonetheless provides an appealing and enduring embodiment of those issues in the form of a quasi-historical origin myth.

But there is another sense in which the state of nature is not a myth, but an apparently permanent factor of human civilization. Because individual nations stand, with regard to each other, in a position of freedom ungoverned by any superior authority, they can be said to occupy a context analogous to human beings in a state of nature. This analogy was noted by every major contractarian and often appealed to as evidence of the existence of such a state of nature (the actual historical evidence being rather thin). In the last century, the *anarchy* of the international system has come to occupy a central place—in some cases, *the* central place—in theories of international relations.[1] Although there are competing visions of the nature of this anarchical state, just as there were competing visions of the pre-political state of nature, some more social and cooperative, others more competitive and warlike, the absence of an overarching authority on the international scene is nonetheless understood to be a factor of great importance for

[1] Some principal examples include Hans Morgenthau, *Politics Among Nations* (New York: Alfred A. Knopf, 1973); Kenneth Waltz, A Theory *of International Politics* (Long Grove, IL: Waveland Press, Inc., 1979); and John Mearsheimer, *The Tragedy of Great Power Politics* (New York: W. W. Norton & Co., 2001).

understanding and predicting the behavior of states. And yet debates persist, not least because those theorists who take anarchy as the most definitive feature of the international system, and the most important determinant of state behavior, have also been remarkably wrong in their predictions. This has led some to question whether anarchy as such has any significant inherent causal function or whether individual states can be thought of in the same essentialist way that human beings in a state of nature are.[2]

As it happens, criticisms of the state of nature concept in political philosophy abound as well, many of which are as old as the theories themselves.[3] The most obvious of these is the one already implied above: that no such thing as a "state of nature" ever existed or ever could have existed. This objection was anticipated by all of the major contractarians and was actually the reason why they appealed to the anarchy of the international scene as evidence for a "real" state of nature. Related to this is the more specific criticism that no such thing as the *social contract* ever existed or could exist. This objection takes a few different forms. One was Hume's argument that all existing societies, to the extent that we even know their origins, were founded on force and violence, not consent.[4] Another, raised by Montesquieu and Rousseau, argued that all such theories impute to supposedly primitive people such sophisticated expectations, ideas, and reasoning abilities as could only have been developed in a political context.[5] Others object on the grounds that describing the pre-political state of man as the "natural" one means that

---

[2] See, e.g., Alexander Wendt, "Anarchy is What States Make of It," *International Organization* 46, No. 2 (Spring, 1992), 391-425.

[3] Jeremy Waldron writes that "from the moment the theory of the social contract was invented, critics have ridiculed what they took to be its absurd historical pretensions." "John Locke: Social Contract vs. Political Anthropology," in *The Social Contract from Hobbes to Rawls*, edited by David Boucher and Paul Kelly (New York: Routledge, 1994), 55.

[4] Patrick Riley, "On Kant as the Most Adequate of the Social Contract Theorists," *Political Theory* 1, no. 4 (Nov. 1973), 451.

[5] Kenneth Waltz, *Man, the State, and War* (New York: Columbia University Press, 1959), 165.

civilization, by comparison, is merely artificial. By implication, politics becomes somehow secondary to or restrictive of man's natural capacities, or, alternatively, a mere empty artifice that can be torn down and rebuilt at will. This was the contention of traditionalists like Edmund Burke, who preferred to think of political society as a participatory, evolving, "eternal contract."[6] More recently, it has been objected that the idea of a primitive "state of nature" trades on prejudiced and ill-informed opinions about native peoples, who were often used as examples of such a state, encountered by Europeans as European colonialism spread across the globe during the centuries these theories were being written.[7]

Given the existence of these objections, historical and modern, alongside the continuing relevance of the state of nature idea for international relations, constitutional theory, and political philosophy, a re-assessment of the "state of nature" image seems in order. Thus, the orienting question for this dissertation is the following: *is the "state of nature" a useful construct for accurately understanding the nature of human beings, the states they create, and their political and international relationships*? One way to approach an answer to this question is to look at the political philosophy of the one thinker in the contractarian tradition who neither constructed an elaborate, mythical state of nature nor used a social contract to illustrate the principle of government by consent—Immanuel Kant.

---

[6] See Edmund Burke, *Reflections on the Revolution in France*, edited by J.G.A. Pocock (Indianapolis: Hackett Publishing Co., 1987), especially the following passage: "Society is indeed a contract. Subordinate contracts for objects of mere occasional interest may be dissolved at pleasure — but the state ought not to be considered as nothing better than a partnership agreement . . . to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence . . . . As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures, each in their appointed place" (84-85).

[7] Aaron Beers Sampson, "Tropical Anarchy: Waltz, Wendt, and the Way We Imagine International Politics," *Alternatives: Global, Local, Political* 27, No. 4 (Oct.-Dec. 2002), 429-457.

II. Thesis

This dissertation will argue that Kant's political philosophy shows us the hard limits of the "state of nature" as a profitable image or analogy for thinking about human politics. In the most mature form of his political thought, the Doctrine of Right, or *Rechtslehre*, published in 1797,[8] Kant rejects the trope of the putatively historical state of nature and social contract, but retains both in a purely theoretical form. He uses what this dissertation will call the "theoretical state of nature" to explore much of the same ground that the "putative state of nature" image tried to evoke, but with more success. The theoretical state of nature looks at human beings and the relationships between them as abstracted from all empirical phenomena, rather than as imagined before government. In this way, Kant is able to articulate the metaphysical assumptions on which liberal politics rest—that human persons have an innate right to freedom but also an innate awareness of moral duty, and that government is necessary to enforce external limitations on the use of freedom in accordance with the awareness of right—while avoiding the trap of having to defend an imaginary version of history. His civil state is not a different *state of*

[8] The "Metaphysical First Principles of the Doctrine of Right" (*Metaphysische Anfangsgründe der Rechtslehre*) makes up the first half of Kant's *Metaphysics of Morals* (*Die Metaphysik der Sitten*). The second half is the "Metaphysical First Principles of the Doctrine of Virtue" (*Metaphysische Anfangsgründe der Tugendlehre*). The two halves were initially published in separate installments, but do share some common introductory material. The *Rechtslehre* deals with questions of political or legal right. It is itself split into two parts, "Private Right" and "Public Right." Private Right covers much of the same ground as a typical state of nature story, and even frequently uses the term "state of nature." Public Right applies these metaphysical, moral foundations to the laws of a civil or "juridical" state. The *Tugendlehre* deals with the related but conceptually separate topic of internal, personal ethics—a category of right that is beyond the reach of positive law and is, for that reason, not systematically discussed in this dissertation. An English translation of the full *Metaphysics of Morals* appeared first in 1799, but languished in what Stephen Palmquist called "virtual oblivion" and seems no longer to be available at all. It was not translated in full again until Mary Gregor's 1991 translation, published by Cambridge University Press. Palmquist calls Gregor's translation "the standard English edition of the *Metaphysics of Morals*." The "Doctrine of Right" was translated in 1887 by William Hastie (as *Philosophy of Law*) and again in 1965 by John Ladd (as *Metaphysical Elements of Justice*); excerpts translated by H.B. Nisbet appear in *Kant: Political Writings*, edited by H.S. Reiss (Cambridge: Cambridge University Press, 1991). This dissertation relies primarily on Gregor's translation. See Stephen Palmquist, "Review of Mary Gregor's Translation of Kant's *Metaphysics of Morals*," *Kant-Studien* 86 (1995), 240-244, available online at http://staffweb.hkbu.edu.hk/ppp/srp/arts/MM.html.

being than the state of nature, but rather the formal manifestation or legal recognition of a permanent human moral reality.

Likewise, Kant removes the problematic social contract from his discussion of the origin and purpose of politics. Without speculating on how human civilizations arose, Kant nonetheless argues that the principles expounded in the "theoretical state of nature" do not sanction a right to consent to government but rather demand that the political condition itself is so fundamentally right that it is beyond consent. If such a thing as a state of nature were to actually exist, the primary right a person in it would have would be to *force* everyone else to leave it and join a formal political state. As for consent as a basis of liberal politics, Kant places it not at the putative origin but rather at the teleological end of the state. In this way, it is able to operate as the aspirational principle for all forms of human political societies, and also as a test for the rightness of any particular legislation. In this way, he avoids one of the most potent criticisms of consent as a basis for politics—that anything can, theoretically, be consented to—and provides, instead, a moral-political standard that rests on the same metaphysical foundations that the social contract concept, more opaquely, does.

One interesting twist comes, however, when Kant moves to a consideration of international politics. Here, like so many others, he does describe the international system as a "state of nature." Beyond this, his theory is less clear. He wants to argue, in keeping with his previous logic, that states have a duty to exit this state of nature and join a hierarchical civil state. But he finds various practical problems with this—a one-world government seems unpalatably menacing to freedom, and anything less seems to lack the requisite enforcement powers—and waffles on whether the exit should be coerced, consensual, or merely aspirational. Nevertheless,

even amid the lack of clarity on these details, Kant remains firm in his beliefs that the anarchy of the international state of nature is not the "normal" condition for states and that states and peoples in their international relations have the capacity to know and follow the normative order of right.

All of these issues will be explored in detail in the coming chapters. All of them, however, demonstrate the extent to which Kant was aware of the limits of the idea of a "state of nature" to accurately describe what human beings are, what states are, what right is, what duty is, and what we ought to do.

III. Contributions, Framework, and Scope

In addition to, and by way of demonstrating, the thesis described above, this dissertation makes the following contributions to the study of Kant's political philosophy. First, just as a comprehensive study of Kant's state of nature, it provides a small but unique addition to a very crowded field of secondary literature on Kant and his politics. Secondly, it clarifies his use of the terms "state of nature," "natural condition," "condition that is not rightful," and "Private Right" by introducing the distinction between the *theoretical* state of nature and the *putative* one. Then, it demonstrates how this distinction relates to the "idea of the original contract," to the difference between "Private Right" and "Public Right," between "International Right" and "Cosmopolitan Right," and to the state of nature as it exists in the international system. Finally, it extends this approach into the field of international relations by asking what Kant's handling of the state of nature means for assumptions of anarchy in the international system.

The interpretation of Kant's political philosophy upon which this dissertation is based is found in David Walsh's *The Modern Philosophical Revolution: The Luminosity of Existence*, especially the first chapter, "Kant's 'Copernican Revolution' as Existential." Additionally, this dissertation utilizes a number of terms and interpretive constructs from the philosophy of Eric Voegelin to elucidate and explain some of Kant's ideas, and to critique certain other members of the contract tradition. It is well known that, despite writing eight volumes of *The History of Political Ideas* and another five of *Order and History*, Voegelin had very little to say about Kant. Thus, the fact that this dissertation approaches Kant through a Voegelinian framework can be counted as another contribution, this one to the literature on Eric Voegelin.

The works of Kant covered in this dissertation are limited to his political writings—primarily the *Metaphysics of Morals*, which contains the *Rechtslehre*, the 1795 essay "Perpetual Peace," and the 1793 essay "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice." Other essays on politics and history, and his 1973 work *Religion Within the Boundaries of Mere Reason*, are referenced as needed. The three *Critiques* are not discussed systematically, but may be mentioned in passing.

IV. Agenda

The first chapter establishes Kant as a thinker in the contractarian tradition. One very fair question arises as a result of Kant's rejection of the putative state of nature and social contract, which is, can Kant be understood as a contractarian in any meaningful way without using these concepts in his work? In the course of answering this question in the affirmative, this chapter will explore the main topography of the *Rechtslehre*, with a specific focus on the first part,

"Private Right," which will be explained in terms of the theoretical state of nature. By considering both the state of nature and the social contract in terms of theoretical ideas, rather than civilizational origin-myths, Kant is able to remove the symbolic veil from the moral reality these stories represent. Thus, Kant demonstrates the extent to which human beings themselves, along with the societies they construct together, are embedded within a moral order too rightful to countenance a pure state of nature and too fundamental to be, itself, a matter of mere consent.

Chapter two continues this exploration of the *Rechtslehre* by way of contrast with two other contractarians—John Locke and Jean-Jacques Rousseau. This chapter argues that Kant's usage of the theoretical state of nature demonstrates the philosophical superiority of his contract theory with regard to three important political problems: property rights, freedom and the legitimacy of force, and that essential quiddity of the human person, which Kant calls "the right of human beings as such."

Chapter three continues this contrast with other contractarians by taking up the case of Hobbes. Hobbes was a significant influence on Kant's political thought (as was Rousseau), but Kant also wrote an extended critique of Hobbes in the second part of his essay on "Theory and Practice." The chapter argues that, despite similarities and a certain extent of influence, Kant's thought differs from Hobbes's in essential respects—methodological, epistemological, and moral. Even where the line of influence is clear, Kant develops the ideas he borrowed far beyond where Hobbes himself was willing to take them. This leads to clear disagreements on human freedom, revolution and political reform, and the possibility of peace internationally. The distinction between the theoretical and putative states of nature plays a necessary interpretive role, as does Kant's continued insistence on the essential right of human beings as such.

The fourth and final chapter will continue the discussion of international politics primarily by way of Kant's "Perpetual Peace" essay, which contains his blueprint for a binding universal peace treaty that would bring an end to all war. The final sections of the *Rechtslehre* also cover the topics of international politics and peace, but differ from "Perpetual Peace" in some important ways. This chapter will argue that the interpretive conclusions reached over the previous three chapters help explain some of the many inconsistencies within and questions about Kant's internationalist thought. In particular, this chapter will argue that the theoretical state of nature helps us understand the relationship between cosmopolitan and international right; that the theoretical social contract can stand in for Kant's otherwise-elusive "ideal" world state or international federation; and finally that Kant's internationalist thought once again relies upon and reveals this all-important category of the right of human beings as such.

This dissertation will conclude by comparing Kant's internationalist thought and his approach to the state of nature to some of the international relations literature exploring the same problems. There are three categories of literature to which Kant's approach may apply, in different ways: the literature, mostly from the Realist school, that assumes a Hobbesian-style state of nature best describes the international system, the literature critiquing this assumption, and the literature looking to Kant for an alternative approach. Ultimately, Kant's internationalist thought is as challenging as his political and moral philosophy: unremittingly firm in its principles, frustratingly open-ended about their application, demonstrating throughout a hopeful patience and a confidence in us, his heirs in the human race to whom he knew he was speaking, to know and do the right thing.

CHAPTER ONE: THE KANTIAN STATE OF NATURE

The goal of this dissertation is to explain Kant's approach to the state of nature and the social contract, the philosophical clarity this approach brought to the contractarian tradition, and the implications of Kant's contribution to theories of international relations that rely on concepts like the state of nature. This chapter will take on the first of these three tasks.

Kant's approach to the state of nature and the social contract is unique among contract theorists, controversial in some respects among modern scholars, and complex to the point of seeming self-contradictory on its own terms. Kant sometimes refers to these ideas in a straightforward, apparently non-problematic way, but in other places he inveighs against a literal understanding of them. Perhaps most troubling is the fact that, at the juncture between the state of nature and the civil society in his most mature political writings, he places not a consensual contract but rather an authorization to coercion. At other times, he abandons the terms altogether in favor of alternative explanations.

This chapter will make a number of arguments in order to resolve the apparent confusion. The first step in this process is to establish what contract theory is and what kinds of political, moral, and philosophical problems the state of nature and social contract were invented to address. A question that arises in this process is whether Kant's political theory can plausibly be understood as a part of this contractarian tradition, or whether his reinterpretation of ideas like the state of nature and the social contract ultimately places him beyond its borders. This question is less interesting for its own sake than for the fact that it provides us an opportunity to see that contract theory, itself, is only a tool used to investigate much more perennial and

fundamental problems—the essential nature of human beings, the existence of freedom and rights, the correspondence between the internal awareness of the moral law and the external application to positive law, the legitimacy, artificiality, and duties of government, and so forth—and ask whether Kant succeeds in navigating these questions on plausibly contractarian grounds. For what it's worth, this chapter will argue that Kant can be understood as a contractarian.

Next, we will look at how Kant uses the concepts of the state of nature and social contract in the *Rechtslehre*, his most mature political work. Much of the confusion about his approach to these concepts can be clarified by separating the *putative* understanding of these terms—the prehistoric, prepolitical state of nature and the social contract as an event that took place, or should have, within human history—from their *theoretical* usage, to which Kant is more inclined. This chapter will argue that the theoretical state of nature, especially in the form of a discussion of "private right," allows Kant to deal with the fundamental questions of contract theory while avoiding the problematic historical positions, the untenable or simply fanciful assumptions about human nature, and the flimsy consensual foundation for civil society upon which other contract theories depend.

Finally, we will apply this understanding of Kant's theoretical state of nature as a hermeneutical tool for several key passages in the *Rechtslehre*, including the one that purports to be a transition from a state of nature to a civil society. This chapter will argue that Kant's approach, thus understood, allows us to view politics as the legal instantiation not of an alleged contractual act but of an overarching yet internally recognized moral order. Nevertheless, this legal instantation is itself necessary according to that moral order. Kant's approach demonstrates

that consent *itself* cannot be the basis of political order, because the rightfulness of consent depends on the possibility of more fundamental aspects of the human person—such as the ability to recognize and adhere to the moral law. This allows right to be reconciled with legal coercion simply on its own terms, without having to clear the bar of the contract. And yet, once again, according to the dictates of that rightful order itself, consent takes its place as the theoretical standard for political practice and, especially, political reform. Kant's civil society does not dispense with the theoretical state of nature but rather exists within it. Likewise, it is not built upon the terms of a long-forgotten contract, but strives constantly to fulfill more perfectly the terms of the theoretical, contractual standard. This chapter will conclude by arguing that this perspective clarifies Kant's political philosophy as well as the aims of contract theory as a whole and that, therefore, Kant not only is *a* contract theorist, but the most philosophically compelling one in the tradition.

I. What Is Contract Theory?

The "classic" club of social contract theorists is usually understood to be comprised of Hobbes, Locke, Rousseau, along with less widely read theorists like Grotius and Pufendorf, who gave the contract a more or less central place in their political thought. Others would expand the "tradition" to include any thinker who mentioned the general concept of contract or agreement at all, even as far back as the ancient Greeks.[1] Furthermore, there are at least as many critics of the

[1] See, e.g., David Boucher and Paul Kelly, "The Social Contract and Its Critics: An Overview," in *The Social Contract from Hobbes to Rawls*, edited by Boucher and Kelly (New York: Routledge, 1994), 1, 13, 29n1-2. For what it's worth, Boucher and Kelly place Kant in the "classic" club without hesitation and even refer to him as

tradition as there are members, and the development of the concept throughout the history of political thought owes as much to their objections as to the theories of proponents.[2]

But whether Kant is a member of the contractarian tradition is a more open question. If he is, his particular explication of concepts like the state of nature and the social contract constitute a radical reinterpretation of what "the tradition" is largely understood to be. Establishing the substance and significance of this reinterpretation and its implications for political philosophy and international political theory is the task of this dissertation. However, there are some who would argue that the nature of his reinterpretation is so extreme as to effectively remove him from the tradition altogether. In order to address this challenge, it is necessary to establish what, exactly, we mean by "social contract theory."

Patrick Riley, in a chapter tellingly titled "How Coherent Is the Social Contract Tradition?" defines the social contract as "the still popular doctrine that political legitimacy, political authority, and political obligations are derived from the consent of those who create a government (sometimes a society) and who operate it through some form of quasiconsent, such as representation, majoritarianism, or tacit consent."[3] Onora O'Neill puts it even more concisely: "The fundamental idea of the social contract tradition is that consent or agreement can justify basic social and political institutions."[4] We can see two themes arising already from these brief definitions: one is, most obviously, the concept of *consent*; the other has to do with what O'Neill

---

"the most significant of the classic *civil* contractarians from the perspective of the modern resurgence of interest in contract theory" (1, 6).

[2] Boucher and Kelly, 1, 17-29.

[3] Patrick Riley, *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel* (Cambridge: Harvard University Press, 1982), 2.

[4] Onora O'Neill, "Kant and the Social Contract Tradition," in *Kant's Political Theory: Interpretations and Applications*, edited by Elisabeth Ellis (University Park, PA: The Pennsylvania State University Press, 2012), 25.

calls *justification* and Riley alludes to with his language of *legitimacy* and *derivation*. This second theme reveals that "contract theory" is really an attempt to answer a question, or a set of questions, about the *origin* and *purpose* of politics.

These perpetual questions form the basis of political philosophy *per se*, so it is not surprising that within a "tradition" that aspires to address concerns so fundamental and overarching, one would find a great deal of variation. The following passage from David Boucher and Paul Kelly's essay, "The Social Contract and Its Critics," demonstrates the diversity found even simply under the term "consent":

> The choice may be to create society; civil society; a sovereign; procedural rules of justice; or morality itself. It may be a choice of contract that binds in perpetuity, or one renewed with each succeeding generation. The choice may be historical, ideal, or hypothetical, its expression explicit or tacit, and the contractees may be each individual contracting with every other, individuals contracting with their rulers and God (and the various permutations to which such a combination gives rise), the heads of families agreeing among themselves, corporations or cities contractually bound to a superior, or the people as a body contracting with a ruler or king. Furthermore, the motivation for the choice may be a religious duty, personal security, economic welfare, or moral self-righteousness. We are not, then, confronted with one social contract, but with a variety of traditions, each adopting contractarianism for its own purposes.[5]

The assumptions or arguments made as two *who* consents, to *what*, *how*, in *what way*, for *how long*, and *why* demonstrate again that the entire enterprise is an attempt to answer very difficult fundamental questions such as *what is man? what is politics?* and *how should men live together politically?* Given this, we can say that contract theory is not so much "a variety of traditions," but rather a framework that different thinkers have used to address these fundamental questions, with answers varying widely based on the assumptions each held about human beings, freedom, authority, politics, history, ethics, God, and so forth.

[5] Boucher and Kelly, 2.

Nevertheless, the framework must have unique characteristics to distinguish it from other traditions attempting to answer the same perpetual questions. All seem to agree that *consent* is one such necessary ingredient; we could say, based on the foregoing analysis, that the social contract tradition is a framework for thinking about politics which is based on the assumption that (at least some) human beings are the kinds of beings who are capable of rational consent, and therefore should have some measure of consent over the political relationships in which they exist, and furthermore that these facts about them are significant enough to ground those political relationships philosophically, over and above other options such as nature, history, or religion.

This need to "ground" politics in something other than itself is not unique to contract theory. Human beings, it seems, have never been content to accept their political societies simply as they are, without question, but have always sought to view them as (or turn them into) a representation of something more meaningful, real, and permanent. Eric Voegelin writes about this as the difference between "existential representation," which is the actual structure of any decently-functioning system of government—even a very primitive one operating on nothing but tradition and tacit consent—and "transcendental representation," by which human societies "supplement" the existential order, the way their societies *happen* to be structured, by thinking of them as symbolically representing some higher order.[6]

> That the government is tolerated is the result of its fulfilling more or less adequately the fundamental purposes for which any government is established—the securing of domestic peace, the defense of the realm, the administration of justice, and taking care of the welfare of the people. If these functions are fulfilled moderately well, the procedures by which the government comes into power are of secondary importance.[7]

---

[6] Eric Voegelin, *Autobiographical Reflections* (Baton Rouge: Louisiana State University Press, 1989), 64-65.

[7] Ibid., 65.

But governmental functions are frequently performed less than satisfactorily, for at least some portion of the populace, which prompts reflection on the source and meaning of the apparatus in charge of maintaining functional order. In ancient and primitive societies, this symbolic representation was often emphatically transcendent, in that politics was understood to mirror what these peoples believed to be the divine or cosmic order—the king as god, for instance. But Voegelin points out that "nothing has changed this fundamental structure of governmental order, not even in the modern ideological empires. The only difference is that the god whom the government represents has been replaced by an ideology of history that now the government represents in its revolutionary capacity."[8]

Now, Voegelin does not here specifically mention contract theory or modern regimes other than the ideological, revolutionary type. However, even John Locke makes a similar point in his *Second Treatise*—that a governments of any type are safe, so to speak, as long as they continue to perform their basic functions reasonably well.[9] It is only when governmental order, through its excesses, abuses, or deficiencies, begins to break down that the citizens begin to question its "legitimacy"—a word which, all by itself, suggests that governments are and ought to be judged by a *lex* or standard not of their own making.[10] Existential representation is never enough.

---

[8] Voegelin, *Autobiographical Reflections*, 65.

[9] Eric Voegelin, *The Collected Works of Eric Voegelin, Vol. 25: History of Political Ideas, Vol. VII: The New Order and Last Orientation*, edited by Jürgen Gebhardt and Thomas A. Hollweck (Columbia, MO: University of Missouri Press, 1999), 138.

[10] See John Locke, *The Second Treatise of Government*, Ch. 14, §161; Ch. 18, §201; Ch. 19, §223-225, 230.

Considering that Locke went on to argue for one of the most famous versions of contract theory, it seems fair that we can investigate the genre as a whole under these Voegelinian terms. Contract theory is not quite an "ideology of history" in the sense that Voegelin intended, for even its most ardent proponents never pretended to be writing actual history. All of them anticipated the obvious objection that no "state of nature" or consensual "social contract" could be proven to have ever actually existed. But the claims of contract theory *are* another kind of "transcendental" order upon which these theorists believed political regimes should model themselves. It is an order based not (or at least not directly) upon the physical cosmos, the laws of God, or the progress of history, but rather upon certain innate characteristics of *human beings* themselves, revealed by reconstructing what human life must have been like in a pre-political state of nature. Of these human characteristics, the capacity to consent is only one example among many. Each contract theorist proposed and defended his own version of the "natural" human, each with his own unique menu of characteristics, but all used this reconstructed, putatively authentic humanity as the foundation and legitimizing standard for positive law and governmental power. The centerpiece of the contractarian tradition is that man becomes the measure of the political. The state of nature, from whence this man was born, is the modern state's creation myth. These elements are as much a part of the "contractarian tradition" as the contract itself.

II. Is Kant a Social Contract Theorist?

Yet even this understanding of the contractarian tradition is not sufficient to guarantee Kant a place within it. The difficulty is that, while most of the "classic" exemplars of social contract theory come up with concrete, if often less than convincing, descriptions of when, where, and how human beings pronounce their consent to a polity in some form or another, Kant does not. Most contractarians place this "moment of consent" (variously called a contract, compact, or covenant) at the transition (historical or hypothetical) from a "state of nature" (which may or may not include informal societies of varying complexity) into a formal civil state. Not only does Kant employ language of the "state of nature" inconsistently in his work, ultimately preferring the distinction of his own making between "private" and "public" right, but the archetypical contract is almost absent from his political theory. Indeed, most puzzlingly, where one finds the "moment of consent" in most contract theorists—at the juncture between the state of nature and the civil state—Kant places what could only be called a moment of *coercion*. This discrepancy will be taken up in greater detail in a later section of this chapter; for now, suffice it to say that Kant's handling of the twin concepts of the state of nature and the social contract is unconventional enough to question the extent to which he should be considered under the framework of contract theory at all.

Two examples from the secondary literature illustrate the difficulty. In 1973, Patrick Riley published an article titled "On Kant as the Most Adequate of the Social Contract Theorists." While Riley cannot call Kant's political philosophy more than "quasi-contractarian," he nonetheless concludes that Kant's attempt "to rescue what he conceived as the essential

element of contractarianism" was successful—so successful that Riley claims he ultimately "raise[d] to their highest pitch the ideals of the contractarian and voluntarist tradition which he inherited and transformed."[11]

Riley asserts, as if it were uncontroversial, that Kant "is ordinarily taken to be part of the social contract tradition, which began with Hobbes and was developed by Locke and Rousseau."[12] What sets Kant apart as "most adequate" is his idealism—the fact that he understands the social contract not as a thing enacted historically or a right presently possessed by a populace, but simply as an abstract "standard" or "eternal norm" by which states and their constitutions can be judged.[13] Riley believes that, with this formulation, Kant "rescue[s] what he conceived as the essential element of contractarianism—the notion that all laws must be such that rational men could consent to them—from charges of historical 'unreality,' as well as from what he apparently took to be anarchistic implications of the doctrine in some forms, such as Locke's theory of a right of revolution."[14]

Riley emphasizes the fact that Kant's political philosophy, including his idealist contract theory, is intertwined within, and ultimately subordinate to, his moral philosophy. Indeed, Riley spends the bulk of his article defending Kantian moral philosophy from various criticisms, insisting that "Kant's whole system, including the quasi-contractarian politics, 'works' if his moral philosophy works, since politics only creates a context for morality."[15] Part of what makes Kant's approach seem "most adequate" to Riley is that Kant's insistence on hypothetical

---

[11] Patrick Riley, "On Kant," 451-452, 468.
[12] Ibid., 450.
[13] Ibid.; "eternal norm" is a quote from Kant's *Conflict of the Faculties*.
[14] Riley, "On Kant," 451-452.
[15] Ibid., 454.

consent as the *norma* or "standard" and on the objectivity and obligatory nature of the moral law means that, ultimately, politics is judged by something *beyond mere consent*. This is why he defends Kant's moral philosophy as having content, against those who claim it is only "formal."

Interestingly, this formalism is one of the common charges against *consent* as a basis for politics, as well: that anything can be (and often is) "consented" to. Because Riley believes Kant's moral philosophy "works," that is, is not completely formalistic, he believes Kant's "consent standard" has content too. In Kant's political philosophy, consent exists within a framework of universal moral laws that respect the freedom and right of humanity of everyone. Thus, the standard is not simply "consent" full stop, but consent within universal laws of right. By making *this* formula the standard, Kant avoids the twin problems of either forcing people to consent to the "right" things (*a la* Rousseau's "general will"), or removing all moral content from consent whatsoever, essentially blessing whatever is consented to just because it was consented to.[16] For these reasons, Riley concludes that Kant's "transformed" contractarian theory, in which "liberty . . . will be guaranteed through the laws of a republic under the Idea of the social contract," is the best and most coherent example of contract theory that tradition has to offer.[17]

More recently, and somewhat in response to this very article, Onora O'Neill has questioned whether Kant "fall[s] within the social contract tradition at all," and ultimately concludes that "it may not be feasible to construct a seriously Kantian form of contractualism."[18] Where Riley finds that Kant exemplifies the ideals of the social contract tradition, O'Neill argues

[16] Riley, "On Kant," 452.
[17] Ibid., 468.
[18] O'Neill, 26-27.

that he seems to abandon them altogether. "Kant's basic justification of political institutions appeals to a quite different universal principle of justice" than consent, a principle that furthermore "makes no obvious reference to consent," nor does Kant "identify [consent] as the principle of a social contract."[19] For O'Neill, it is not enough for consent to be merely an ingredient in a larger political theory; it must make up the basis of justification in order for a theory to be considered sufficiently contractarian. "If the basic moves of a theory of justice do not appeal to consent, we may no longer be considering any recognizable version of the social contract tradition."[20]

O'Neill recognizes that Kant makes reference to the social contract as an "idea of reason" that can be used, not to justify existing civil societies, but rather to evaluate their adherence to a standard of justice.[21] However, she claims that this usage is not "hypothetical," as Riley and others have described it, but rather "modal."[22] For Kant, it's not a question of whether any given political arrangement *might have* or *would have* been consented to in some way in order to come into being and gain legitimacy, but rather a question of whether such an arrangement *could possibly be* consented to by everyone. More specifically, a just and legitimate polity is any one that would *not* be *impossible* to be consented to universally. Thus we can see the relationship between this "modal" standard of consent and Kant's categorical imperative, from which it is derived: that a moral action is one that the actor *could* make into a universal law, or one that is *not* clearly *impossible* to universalize.

---

[19] O'Neill, 26.
[20] Ibid., 30.
[21] Ibid.
[22] Ibid., 32.

Therefore, "Kant's thought is not that coercion is justified" because it has been "or would be consented to, but because certain types of republican coercive institutions *could* be consented to . . . whereas their rejection *could not* be consented to" universally.[23] O'Neill admits that this "minimalist approach" helpfully "avoids some of the central difficulties of justification of the social contract tradition."[24] However, she also wonders if it might not be "too weak" even to accomplish its goals even as an abstract standard: "surely all sorts of constitutions and legislation, including much that seems palpably unjust, *could* be universally consented to."[25] Ironically, this is the very charge of consensual "formalism" which Riley argues Kant's formula especially *avoids*. Regardless, O'Neill ultimately concludes that

> If Kant is "the most adequate of the social contract theorists" this may ironically be because he abandons the idea that the social contract is some sort of agreement or contract, actual or hypothetical, and thinks of it simply as formulating the necessary conditions for the possibility of universal consent to a political order for unsocial yet interacting rational beings.[26]

Despite the fact that these two commentators seem to disagree on whether or not to label Kant a "social contract theorist," the substance of their arguments is remarkably similar. They

---

[23] O'Neill, 38.

[24] Ibid.

[25] Here and at times elsewhere in her article, O'Neill seems to slip from considering Kant's formulation of the social contract as an abstract ideal into an apparently empirical mode of discussion. This is especially puzzling given the fact that the primary thesis of her article is that the standard interpretation of Kant's contract—in terms of "ideal," "abstract," or "hypothetical"—is incorrect because these terms are not *abstract enough*, and the even more "minimalist" and abstract notion of "modality" is needed to correctly understand Kant's position. Yet, she claims that the necessity of coercion (which the "modal" contract is required to justify) is based on "specific historical circumstances of human life" (37), namely their being "unsocial yet interacting" as she asserts in the final quote given below (39). This claim may be true in the case of Kant's "Theory and Practice" essay, but it is clearly not the case in the later *Rechtslehre*. O'Neill herself recognizes this difference, but overstates the case by claiming that the *Rechtslehre* deals with a principle of justice that "might or might not require coercive powers," for instance in the case of "beings [who] were never inclined to do one another injustice" (37). As we will argue below and in following chapters, this reading of the *Rechtslehre* seems contrary to Kant's understanding of the necessary connections between freedom, right, human dignity, and coercion.

[26] O'Neill, 39.

both agree that Kant abstracts the ideal of consent from its usual place as either the putatively historical event that invented politics or the legitimizing principle of present societies that allows for revolutionary action in the event of governmental oppression. Both also agree that this abstraction helps Kant avoid some of the conceptual "difficulties" or criticisms faced by other contract theorists.[27] Riley ultimately agrees with O'Neill's assessment that there is no element of actual, concrete consent in Kant's political philosophy. But O'Neill draws from this fact the conclusion that Kant is thus *not* a contractarian, while Riley concludes that he not only is, but is the "most adequate" thereof.

This substantive agreement within the apparent disagreement is illustrative of the difficulty not only with Kant, but with contract theory as a whole. It almost seems tempting to decide that Kant has subverted contract theory entirely—as he supposedly did with metaphysics—and substituted something else, something better, instead. However, as with metaphysics, the case is perhaps not so clear. Given the centrality that contract theory has for our own system of government—based as it is on the consent of the governed, and for liberal politics in general—it seems worthwhile to understand what Kant's transforming (or subverting) of the terms and concepts of the contractarian tradition means for those of us who are the intellectual and political heirs of it.

Regardless of the label, this "transformation" is the subject of this dissertation and we may now turn to it in earnest.

---

[27] Riley, "On Kant," 451; O'Neill, 27.

III. The State of Nature and the Social Contract in Kant's *Metaphysics of Morals*

At least some of the disagreement between Riley and O'Neill can be attributed to the fact that their articles are based on different works by Kant.[28] Riley references many of Kant's political writings, but acknowledges that "Kant's fullest statement of his republicanism and (ideal) contractarianism is to be found in the *Rechtslehre*," the Doctrine of Right which comprises the first half of Kant's *Metaphysics of Morals*.[29] O'Neill, for her part, bases most of her analysis on an earlier essay of Kant's titled "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'" usually referred to as "Theory and Practice." Here, she says, "Kant states his views on the social contract most clearly."[30] As it happens, Kant discusses or employs contractarian language in many of his writings (not just the clearly political ones, either), several of which will be covered in the course of this dissertation. However, it is necessary to begin somewhere, and in this case we will begin the *Rechtslehre*.

A. Why Start with the *Rechtslehre*?

There are a few good reasons for starting here. First of all, it is important to understand that while Kant's philosophy is "systematic" in the sense that his investigations of various topics—knowledge, ethics, science, politics, religion—all flow from the same set of assumptions and proceed according to the same principles, it nonetheless cannot be thought of as a *static*

[28] Another significant, though largely implicit, difference is the assumptions they both make as to what Kant's overarching project was, and thus what role his political philosophy was meant to play within that larger system. O'Neill claims it is a "fact" that the "critique of reason is evidently Kant's central task" (35). Riley seems more inclined to view Kant's political philosophy as a species of his moral philosophy, implying the centrality of that project within Kant's thought (455-456). The difference is not insignificant, but is tangential to the present discussion.

[29] Riley, "On Kant," 465.

[30] O'Neill, 31.

system but rather an evolving, directional one. Kant's later works build upon conclusions drawn in his previous ones, and occasionally his terminology and conclusions change. To study Kant is to see a thinker *in the process* of working out difficult philosophical problems more than having come to unambiguous conclusions about them. The awareness of uncertainty and the limits of reason, combined with a penchant to return to the same problems from different topical angles and to modify his understanding and expression of them over time, are hallmarks of Kantian philosophy.[31]

The *Metaphysics of Morals* was one of Kant's very last works, published in 1797 when he was already in his 70s. Paul Guyer calls it "the work at which he had been aiming most of his life."[32] Kant scholars B. Sharon Byrd and Joachim Hruschka take it as axiomatic that the *Metaphysics of Morals*, and specifically the *Rechtslehre*, is the "more mature" of Kant's political works, and warn against the "perplexing results" one will get if one "mixes arguments" from various writings in an attempt to discover, for instance, a definitive Kantian position on the social contract.[33] For these reasons, it seems prudent to start from the end and work backwards. If there is doubt that the earlier works can illuminate our investigation of the later, then perhaps the final form of Kant's thought can aid us in understanding the earlier, occasionally faltering, steps in the process towards it and thus reveal their true importance.

Secondly, we begin with the *Rechtslehre* because the concepts of the state of nature and the social contract, as reinterpreted by Kant, play such a central role in the structure and

---

[31] See, e.g., B. Sharon Byrd and Joachim Hruschka, *Kant's Doctrine of Right: A Commentary* (Cambridge: Cambridge University Press, 2010), 13-15, and Paul Guyer, "Introduction," *Cambridge Companion to Kant*, edited by Paul Guyer (Cambridge: Cambridge University Press, 1992), 12.

[32] Guyer, "Introduction," 4.

[33] Byrd and Hruschka, 8.

development of that work. Byrd and Hruschka describe §41, in which Kant discusses the transition between a state of nature and a civil state, as "particularly significant because in it lie the keys to understanding Kant's entire *Doctrine of Right*."[34] This is not to say that the *Rechtslehre* contains the "clearest" usage of the concept of the social contract, to use O'Neill's term—indeed, Kant's hardly even uses the term itself in this work, and the development of his reinterpretation is anything *but* clear or obvious on the surface. However, as Kant's most mature political work, what we find is that Kant is here not simply "using" or "criticizing" the ideas of the state of nature and the social contract as they are commonly understood, but actually developing his own parallel model—his own theory of the origin, justification, causes, and purposes of government according to his particular system and methods.

B. Method of the Rechtslehre

Those methods deserve some attention before moving into the textual analysis. The first methodological element is to keep in mind the *metaphysical* nature of Kant's work in this book. Despite the fact that the term appears prominently in the title of the work as a whole, as well as in the titles of each of its two main parts, there is a tendency for commentators to be flummoxed as to what, exactly, Kant meant by that term—not to mention by the project itself as a whole.[35] After all, it was Kant who supposedly "killed" metaphysics in his *Critique of Pure Reason*.[36] For

[34] Byrd and Hruschka, 24.

[35] Katrin Flikschuh documents the tendency of many 20th-century Kant scholars to base their studies of his political philosophy on his "more specifically ethical writings, i.e., the *Groundwork* and the *Critique of Practical Reason*," while neglecting the *Metaphysics of Morals* entirely or, at best, giving it "only a complementary role" ("Survey Article: On Kant's *Rechtslehre*," *European Journal of Philosophy* 5, No. 1 (1997), 51-52).

[36] Karl Ameriks writes that "the general notion of a rejection of transcendent metaphysics met with more approval than Kant's own attempt to resuscitate pure philosophy in terms of a metaphysics of experience," which

students of Kant who would champion this accomplishment as a feature, not a bug, of his system, it must be disconcerting to know that Kant's last great work stands as an apparent attempt to revive the dead science.[37]

And certainly "The Metaphysics of Morals" is not an especially meaningful phrase in its English translation, not least because there seems to be considerable disagreement about what the definition of "metaphysics" is, even before we reach the question of how Kant used it and what *he* meant by it. As for that, Kant defines "metaphysics" in this work as "a system of *a priori* cognition from concepts alone," which requires explanation on several levels.

Kant's thought operates within a number of related but distinct pairs of terms: pure vs. practical, noumenal vs. phenomenal, *a priori* vs. *a posteriori*, theoretical vs. empirical, synthetic vs. analytic, and any of the first members of these pairs could be described as "metaphysical" in some sense. Kant's category of "noumenal," the real "reality" of things as they are behind their phenomenal appearances, is often indicated, as this category would seem to contain most of the putative "knowledge" of the old metaphysical doctrines he exposed as unproven and unprovable. Similarly, the combined category of "synthetic *a priori*" concepts—ideas that are derived neither from experience (*a posteriori*) nor from the definition of a thing (analytic)—is frequently what is understood by "metaphysics" in the Kantian sense.

---

approval has almost certainly not abated in the intervening centuries ("The Critique of Metaphysics: Kant and Traditional Ontology," *The Cambridge Companion to Kant*, edited by Paul Guyer (Cambridge: Cambridge University Press, 1992), 250).

[37] For instance, even though Paul Guyer's "Introduction" to Kant's life and work in the *Cambridge Companion to Kant* acknowledges that the *Metaphysics of Morals* was the "work at which he aimed most of his life," Guyer breaks off his otherwise thorough review and summary without considering that work itself and does not even mention it again. See also Riley, "Review Essay of O'Neill and Flikschuh," *Political Theory* 31, No. 2 (Apr. 2003), 316-317.

On the other hand, Byrd and Hruschka, in their *Commentary* which is the primary English monograph on the *Rechtslehre*, understand Kantian "metaphysics" simply and broadly as anything "non-physical," and thus view Kant's project as "necessarily a metaphysics of morals because it deals with extra-physical rather than physical entities."[38] This straightforward definition, which is incidentally not far away from the *τὰ μετὰ τὰ φυσικά* of Aristotle that coined the term, allows them to clarify both the title and the purpose of Kant's work as a metaphysics not of *morals*, but rather of *mores*, in the Tocquevilleian sense. According to this explanation, *mores* are the "physical" expressions of non-physical "morality," such as an ethnographer might be able to discover simply by observing the habits of a particular culture. "That which *transcends* actual mores or customs," including morality itself, belongs to metaphysics. So, for instance, "external freedom can be perceived empirically, but internal freedom and the *right* to external freedom can be comprehended only within a metaphysics."[39]

The distinction is not unhelpful, and it has some support from the text. For instance, Kant explicitly says that the Supreme Principle of the Doctrine of Right is analytic, not synthetic, which would seem to place the metaphysical basis for Right on grounds outside the narrow category of synthetic *a priori* concepts.[40] This principle states that the use of coercion in the service of right is consistent with the concept of freedom as Kant understands it.

> If a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as a *hindering of a hindrance to*

[38] Byrd and Hruschka, 3-4.
[39] Ibid., 4.
[40] Immanuel Kant, *The Metaphysics of Morals*, translated and edited by Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:396 (cited hereafter as MM). The German edition of the *Metaphysik der Sitten* and all of Kant's other works referenced in this dissertation is the *Elektronische Edition der Gesammelten Werke Immanuel Kants*, edited by Berhnard Schröder, available online at https://korpora.zim.uni-duisburg-essen.de/Kant/verzeichnisse-gesamt.html.

> *freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it.[41]

This is an important passage that will be analyzed in greater detail later on. For now, what matters is that Kant believes this principle regarding the use of coercion is derived from, indeed contained within, his definition of "freedom," and is therefore an analytic concept.

But what is freedom? It is not an analytic concept. Kant addresses it under a section titled "Preliminary Concepts of the Metaphysics of Morals," along with other such concepts as duty, obligation, and person. But these others are given fairly straightforward definitions, while *freedom*, although listed first, stands out as having a discussion attempting to justify its use in the project rather than any kind of definition. Kant calls freedom "a pure rational concept" which is "transcendent for theoretical philosophy," being beyond the possibility either of "any possible experience" or "any theoretical cognition."[42] It is, in Kantian terms, a synthetic *a priori* concept. It cannot be proven according to any mode of human reason that freedom exists; rather, it must be *assumed* to be real as a prerequisite for engaging in a meaningful discussion of morality. Freedom is the answer to the question of why any morality—whether in the form of a non-physical concept or standard, or in the form of empirical customs or *mores*—is even possible to begin with.

This discussion of freedom demonstrates the danger in understanding Kantian "metaphysics" in an overly broad way. Kant is not simply interested in non-physical concepts like freedom on the basis of their being non-physical; he is interested in them because they

---

[41] MM, 6:231.
[42] MM, 6:221.

contain the origin, the reason for, the *reality* of the various physical expressions of morality in laws and *mores*. Oddly, for this reason, Byrd and Hruschka's explanation of metaphysics runs the risk of making the ethnographer's mistake: describing Kant's method without grasping the *why* behind it.

The role of freedom as it relates to social contract theory in Kant's philosophy will be taken up more fully in due time. For now, the point is simply that Kant relates all of his analytic principles of right back to an unprovable, synthetic concept of freedom. This pattern comprises the second important element in the structure of the *Metaphysics of Morals*—the "system" portion of Kant's own definition, given above. Byrd and Hruschka describe this system as "Euclidean" in nature.[43] Kant assumes a small number of "postulates" or axioms, and from them derives, analytically, an entire system's worth of principles, definitions, laws, and applications. The foregoing example of the Supreme Principle of the Doctrine or Right, as derived from a postulate about freedom, is a good example of how Kant derives a "Principle" from a "Postulate." In this case, an "analytic" principle depends on a postulate of freedom which is synthetic, not analytic. The Principle is only analytic if one already accepts the postulate about freedom as true. Another example of the geometric process can be seen in this passage on the concept of possession:

> The question: how is it possible for *something external to be mine or yours?* resolves itself into the question: how is *merely rightful* (intelligible) *possession* possible? and this, in turn, into the third question: how is *synthetic a priori* proposition about right possible?[44]

---

[43] Byrd and Hruschka, 9.
[44] MM, 6:249.

All questions of morality must be traced back to their origin in synthetic *a priori* postulates. Kant goes on to emphasize that any moral suppositions about empirical possession of any particular thing, including whether other people's actions towards a thing possessed by someone (such as theft) are right or wrong, are analytic. In order for such suppositions to be deemed conclusive, they must be shown to be derived from a synthetic proposition about the nature of possession as such, outside of any consideration of actual people, things, and events.[45] In this context, the full title of this work—*The Metaphysical First Principles of the Doctrine of Right*—should by now be clear.

But the geometric progression does not end with the derivation of principles from postulates. The "forward" application to the phenomena of practical human interactions, customs, laws, and constitutions is as much a part of the method as the "backward" grounding in metaphysical postulates. This can be inferred from the entire context of the passage in which Kant defines "metaphysics."[46] It can also be seen in the example regarding possession: the very next section is titled "Application to Objects of Experience of the Principle That It Is Possible for Something External to Be Mine or Yours."[47] But Kant is very careful to insist that the

[45] MM, 6:249-250.

[46] "If, therefore, a system of *a priori* cognition from concepts alone is called *metaphysics*, a practical philosophy, which has not nature but freedom of choice for its object, will presuppose and require a metaphysics of morals, that is, it is itself a *duty* to *have* such a metaphysics, and every human being also has it within himself, though in general only in an obscure way; for without *a priori* principles how could he believe that he has a giving of universal law within himself? But just as there must be principles in a metaphysics of nature for applying those highest universal principles of a nature in general to objects of experience, a metaphysics of morals cannot dispense with principles of application, and we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to *show* in it what can be inferred from universal moral principles. But this will in no way detract from the purity of these principles or cast doubt on their *a priori* source" (MM, 6:216-217).

[47] MM, 6:252.

relationship works in only one direction. While he admits that certain sciences "can accept many principles as universal on the evidence of experience," moral laws, on the other hand,

> hold as laws only insofar as they can be *seen* to have an *a priori* basis and to be necessary. Indeed, concepts and judgments about ourselves and our deeds and omissions signify nothing moral if what they contain can be learned merely from experience. And should anyone let himself be led astray into making something from that source into a moral principle, he would run the risk of the grossest and most pernicious errors.[48]

This "pernicious error" is one Kant takes great pains to avoid as he explores the many commonplace features of human life in community (the *Rechtslehre* covers such mundane topics as making promises, marriage, parenting, householding, money, inheritance, losing and finding things, and even the publishing of books).[49] This concern obviously bears upon his approach to the social contract as well. Thus, the final point to emphasize is that where empirical circumstances seem to contradict or contravene a given metaphysical postulate, we are bound by logic to hold to the postulate as the more "truly true" of the two options. With this in mind, we can now turn to the text in earnest.

C. Structure of the *Rechtslehre*

Kant's *Metaphysics of Morals* is divided into two parts, the "Metaphysical First Principles of the Doctrine of Right" and the "Metaphysical First Principles of the Doctrine of Virtue." These are frequently referred to using the German short forms of the titles: *Rechtslehre* and *Tugendlehre*.[50] The *Rechtslehre* deals with questions of law and public policy—those aspects of human behavior that can and should be managed externally through the authority of what Kant

---

[48] MM, 6:215.
[49] MM, 6:273, 6:277, 6:280-281, 6:282-284, 6:286-289, 6:293-294, 6:300-303, 6:289-291.
[50] From *Recht*, "right," *Tugend*, "virtue," and *Lehre*, "doctrine."

calls the "juridical state," that is, a state ruled by positive law.[51] The *Tugendlehre* deals with the related but conceptually separate topic of ethics—that is, norms for human behavior that can and should only be managed internally to the self, such as duties, motivations, and the development of personal moral maxims for action.[52] These two spheres, the legal and the moral, overlap significantly on the phenomenal level of actual human behavior, but derive their difference from the *incentive* that motivates the action.[53] Legal behavior is incentivized externally, through state power; moral behavior is derived only from an internal, personal allegiance to moral duty. The terms "right" and "virtue" appear in the titles (rather than "legality" and "morality," or "politics" and "ethics") because Kant's focus is on the normative, metaphysical *source* of these incentive structures for human beings, more so than expositing the structures themselves. *Right*, the German *Recht* as Kant understands it, is the ordering principle for the laws and constitution of a civil state, which exist only to enforce this order externally.[54] The cultivation of personal allegiance to duty—becoming the kind of person who would do Right regardless of incentive, external or otherwise—is *virtue*, and the ultimate duty.

The ideas under consideration for our purposes are found in the *Rechtslehre*, which is itself split into two parts, "Private Right" and "Public Right."[55] Private Right deals with the relationships of human beings prior to, outside of, or abstracted from the civil state, while Public

---

[51] Kant uses "civil state" (*bürgerliche Zustand*) and "juridical state" (*rechtlicher Zustand*) mostly synonymously to indicate the meaning given here. However, "juridical state" can carry a narrower connotation of a state organized under the rule of law, i.e., a republic. Not coincidentally, the rule of law stands at the culmination of Kant's political logic (see MM, 6:341 and this dissertation, p. 74). For a fuller explanation of these terms and their relationship to the modern German *Rechtsstaat*, "rule of law," see Byrd and Hruschka, 25-27 and 26fn6.

[52] MM, 6:239, 6:379.

[53] MM, 6:218-219; see also Scott M. Roulier, *Kantian Virtue at the Intersection of Politics and Nature: The Vale of Soul-Making* (Rochester: University of Rochester Press, 2004), 46.

[54] MM, 6:230-231.

[55] *Das Privatrecht* and *Das öffentliche Recht*.

Right discusses those human relationships as constituted by the laws of a civil or juridical state. Private Right thus contains, topically, much of the material that would fall under the umbrella of a "state of nature" as well as many references to such a state.

Prior to both of these sections are a series of introductions in which Kant defines his terms, lays out and justifies the general organization of the entire project, and—most importantly—establishes some of the metaphysical postulates from which his system will proceed. Many of these were described in the section above on the methods of the *Rechtslehre*. With regard to *Recht* specifically, Kant describes it in terms of a definition, a principle, and a law, and shows how it is derived from the postulated definition of freedom. The definition of *Recht* is: "The sum of the conditions (*Inbegriff der Bedingungen*) under which the choice (*Willkür*) of one can be united (*zusammen vereinigt*) with the choice of another in accordance with a universal law of freedom (*allgemeinen Gesetze der Freiheit*)."[56] It is important to take notice of the fact that this definition does not set out a moral principle so much as it describes a *situation* ordered by a moral principle—the universal law of freedom. *Recht* is *derived* from the postulate of freedom and the moral laws that postulate entails, but *Recht itself* is a "sum of conditions," a certain kind of external or applied order.

Order must be enforced. Just as Kant demonstrates how *Recht* is derived from the postulate of freedom, so he derives from it the logical sub-principle that Right entails an

[56] MM, 6:230-231. The principle is: "'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law.'" The law is: "So act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law." Regarding freedom, "reason says only that freedom *is* limited to those conditions [of *Recht*] in conformity with the idea of it and that it may also be actively limited by others; and it says this as a postulate that is incapable of further proof."

"Authorization to Use Coercion."[57] In fact, he concludes, "Right and authorization (*Befugniß*) to use coercion (*zu zwingen*) therefore mean one and the same thing."[58] Even though *knowledge* of the postulate of freedom and the obligation of Right is an internal experience, *Recht* strictly or legally speaking can only be understood in terms of *external* obligation—that is, coercion. The "principle of its being possible to use external constraint (*äußeren Zwanges*) that can coexist with the freedom of everyone" is "based on everyone's consciousness of obligation (*Bewußtsein der Verbindlichkeit*)," according to the metaphysical method, but "this consciousness may not and cannot be appealed to as an incentive" to rightful action.[59] The development of moral consciousness and internal incentives to rightful action is the domain of the Doctrine of Virtue. Successful attempts towards this end are aided by a person's being in a situation of maximal external and psychological freedom, which *Recht* can provide, but that is as much of a connection as Kant seems to allow. Any further mixing of internal and external incentives amounts to a sort of psychological manipulation that Kant finds inhumane and contrary to freedom.[60]

Kant continues his Euclidean metaphysical method in Private Right, the first chapter of which is titled "How to *Have* Something External as One's Own."[61] The emphasis is on "have" because this chapter is dedicated to establishing whether *is it possible* to have something as one's own—in other words, what is possession and why is it possible? This is Kant's development of

---

[57] MM, 6:231.
[58] MM, 6:232; *Recht und Befugniß zu zwingen bedeuten also einerlei*.
[59] MM, 6:232.
[60] See, e.g., his discussion of the "fundamentally wrong" "spiritual coercion" that takes place when courts of law coerce people to take oaths or swear to certain beliefs (MM, 6:303-305).
[61] MM, 6:245.

the concept of *possession* as an *a priori* principle derived from the postulate of freedom. The metaphysical nature of his argument is obvious; he repeatedly stresses the distinction between the concept of theoretical possession he is trying to develop and merely empirical possession in the sense of physically holding onto a particular thing. The last few sections of this chapter discuss the difference between "provisional" possession in a state of nature and "secure" possession in a civil state.[62]

Having established the metaphysical possibility of possession as a concept, Chapter 2 explores how to *acquire* a possession under various scenarios. This is an example of the third move, the application, in Kant's Euclidean methodology. Kant considers that there are three categories of possession: of physical things, of other people's promises (usually with regard to things) in the form of contracts, and of other people themselves in domestic relationships. Since we know from Kant's moral philosophy that people can never be used as, or even considered as things, he treats the "possession" of spouses and children as "Rights to Persons Akin to Rights to Things."[63] This chapter concludes with a discussion of a few types of possession which, though seemingly theoretically possible, do not fit into any of the categories above and thus raise complications with regard to legal enforcement.

Chapter 3 also deals with special cases of possession—in this case, where the "rightful" outcome of conflicted or contested rights in a state of nature would necessarily differ from such an outcome as decided by a court of law in a civil state. This chapter is fruitful not only for its comparisons between the Kantian state of nature and the civil state, but also for exploring the

[62] MM, 6:253-257.
[63] MM, 6:254, 6:276.

tensions within his assertion that "right and authorization to use coercion therefore mean one and the same thing."

At the end of Private Right comes §41, which, along with the first three sections of Public Right, contains perhaps Kant's most explicit discussion of the "state of nature," as that term is commonly understood, and the transition from it into the formal "juridical" or civil state. This line of reasoning is continued into the early sections of Public Right as Kant lays the conceptual groundwork for—justifying, we might say—his juridical state. Kant spends the rest of the first chapter of Public Right unfolding the details of this civil state.[64] Its second chapter examines the "right of nations" considered as members of an international "state of nature," and the brief, final chapter covers "cosmopolitan right," the right of the global community considered as a whole, with a view towards peace under an international order of Right.

D. The Social Contract in the *Rechtslehre*

With these things in mind, we turn to the question of how the state of nature and the social contract fit into the structure and purpose of the *Rechtslehre*. If there is not necessarily a consistent approach to the social contract within Kant's *oeuvre* as a whole, is there at least a coherent treatment of it within this late work?

Interestingly, and rather in favor of those who would consider Kant *not* to be a social contract theorist, Kant hardly uses the actual *term* "social contract" in the *Rechtslehre* at all.[65]

---

[64] Inexplicably, Public Right is split into "sections," rather than "chapters" as was the case in Private Right. I refer to "chapters" here for consistency as well as to distinguish from the short numbered sections marked with §.

[65] Apparently only twice in this form (*gesellschaftlichen Vertrag[es]*): once in 6:340 and again in 6:344. Elsewhere he uses "original contract," *ursprünglichen Vertrag*, or refers to the concept obliquely.

The *concept* of something like a social contract comes up only a few times. In Chapter 2 of Private Right, he discusses "the point at which *others* (participants) consent (*Einwilligung*) to its establishment" as opposed to those who "are opposed to entering it," and explains parenthetically that by "it" he means "the civil (*bürgerlichen*) condition."[66] At another point, in the first chapter of Public Right, Kant references an "original contract (*ursprüngliche Contract*)," which is "the act by which a people forms itself into a state (*Staat*)."[67] There follows a discussion of freedom in which Kant explains that a person does not lose even "a *part* of his innate outer freedom" in the creation of this contract, "but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition (*rechtlichen Zustande*), since this dependence arises from his own lawgiving will (*gesetzgebenden Willen*)."[68] This discussion of the loss, gain, or transformation of freedom in the contractual transition out of the state of nature is a standard one among contract theorists, and Kant's position here is not much different than Rousseau's. Furthermore, like John Locke, Kant insists that his state of nature is opposed not to the *social* (*gesellschaftliche*) condition but only specifically to the *civil* (*bürgerliche*) one.[69] So now we begin to see the outlines of what a Kantian "social contract" might look like: an apparently consensual process in which the participants, who already exist in some kind of informal society, transform their lawless freedom into freedom that accords with law and thereby create a formal civil state. In this form, Kant's social contract seems entirely typical.

---

[66] MM, 6:267.
[67] MM, 6:315.
[68] MM, 6:316.
[69] MM, 6:242.

The problem is, of course, that Kant does not appeal to this process or anything remotely like it when he discusses the transition out of the state of nature and into the civil state in the all-important §41 and the following sections. And in other places, he seems to rule it out entirely. Near the beginning of "Private Right," as Kant is in the process of setting up his principles and postulates regarding concepts like *right* and *possession* of property under the aspect of a state of nature, he claims that "I am therefore not under obligation (*nicht verbunden*)" to leave other people's things alone "unless everyone else provides me assurance" that they will do the same.[70] Once again, this starts to sound like a standard contract-theory construction, but Kant goes on to assert that "this assurance does not require a special act to establish a right (*besonderen rechtlichen Acts*), but is already contained in the concept of an obligation corresponding to an external right (*äußeren rechtlichen Verpflichtung*)."[71] An "assurance" without a "special act" to establish it gives the impression that Kant is envisioning a "contract" without a contract.

Even in the passage discussing the "original contract," mentioned above, Kant goes on to qualify his discussion by saying that "properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy (*Rechtmäßigkeit*) of the state."[72] In the section (§46) immediately prior to this discussion, he hints at the general direction in which he wants to take this "idea" of the original contract, in which freedom is not lost but only transformed: "whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone," whether they are

[70] MM, 6:255-256.
[71] MM, 6:256. Later in this same passage, he speaks of "obligation" in general as *Verbindlichkeit*.
[72] MM, 6:315.

voting citizens or not.[73] But even here, the logical connection between the "idea" of the contract and the standard for republican laws is not made explicitly or clearly and will need to be reconstructed from the rest of the text. This is about as far as an analysis of Kant's use of the term "contract" can take us.

E. The State of Nature in the *Rechtslehre*

However, Kant uses the term "state of nature," *Naturzustand*, several dozen times throughout the work, and spends considerable effort describing the transition from it to the civil condition. The depth of his treatment of this concept, especially given our assertion that the state of nature is as important a concept to contractarianism as the social contract itself, suggests it may provide a more fruitful line of analysis and discussion.

The first such mention comes at the end of the introduction to the *Rechtslehre*, in which Kant explains the structure of his approach in a series of "divisions" illustrated with charts. Of the division of "right"—the *Rechtslehre* being, as has been said, divided into "private right" and "public right"—Kant says that the important distinction is not between "*natural* and *social* right" but between "natural and *civil* right," as mentioned above. He admits that others have taken the former perspective, but as far as he is concerned, "a *state of nature* (*Naturzustand*) is not opposed to a social but to a civil condition, since there can certainly be society in a state of nature, but not *civil* society (which secures what is mine or yours by public laws)." Thus, for his

[73] MM, 6:315.

purposes in this work, he will consider "right in a state of nature" under the heading of "private right."[74] In this sense, the entire first half of the *Rechtslehre* takes place in a "state of nature."

Kant's terminology of "private" vs. "public," his usage of the term "right," and his decision to frame the need for public laws and civil society in terms of property ("what is mine or yours") are all idiosyncratic choices, the justification for which is not immediately apparent. Indeed, the most obvious question at this point in the work is a version of the one that began this dissertation: what is the use, philosophically, of the concept of "private right"? What advance in thought does this terminology bring over the older term "state of nature," which Kant nonetheless continues to use throughout the entire "Private Right" section?

Some insight can be gleaned from the context of some of the other passages in which the term "state of nature" appears. For example, in §9, titled "In a State of Nature Something External Can Actually Be Mine or Yours but Only *Provisionally*," Kant discusses the nature of possession as it exists "prior to a civil constitution (or in *abstraction* from it [*von ihr abgesehen*])."[75] Likewise, in a discussion of how disputes over competing rights may be rightfully handled differently before a court than simply between individuals privately, he speaks of such judgments as they are "in the *state of nature*, that is, in terms of the intrinsic character (*innerer Beschaffenheit*) of the matter."[76] The next section, which investigates another, similar situation of the same kind, speaks of "the intrinsic grounds that justify it (*inneren berechtigenden Gründen*)" as equivalent to "the state of nature."[77] This is followed by three instances of the

[74] MM, 6:242: *Recht in dem ersteren*, "right in the former [condition]."
[75] MM, 6:256.
[76] MM, 6:300.
[77] MM, 6:301.

"state of nature" being identified parenthetically with knowing a right per se (*an sich*) or "*as it is in itself* (*wie es an sich ist*)," with Kant's emphasis original.[78]

These phrases—"in abstraction," "intrinsic character," "in itself"—reveal Kant's primary philosophical intention behind his use of the "state of nature" concept. He repeatedly emphasizes, using different terms but making the same point, that a civil constitution makes rights (especially property rights) "secure (*gesichert*)" or "conclusive, (*peremtorisch*)" but crucially it does *not* "settle (*ausgemacht*)," "determine (*bestimmt*)," create, establish, or invent those rights in any way.[79] The "rightful condition (*rechtliche Zustand*)" merely recognizes "provisional (*provisorisch*)" rights that already exist—in the "state of nature (*Naturzustand*)." In Kant's metaphysical system, any given constitution is an empirical, phenomenal *application* of a concept of Right that precedes it logically (not chronologically). Kant is using the state of nature as a conceit in order to isolate Right *in itself* from its familiar *appearance* as instantiated in positive law. The state of nature is a convenient tool to "locate," so to speak, the abstract concepts under discussion.

This is not to denigrate the necessity—and he does insist on its "necessity"—of a civil condition.[80] Provisional possession in a theoretical state of nature exists "in anticipation of and preparation for the civil condition"; it "has in its favor the rightful *presumption* that it will be made into rightful possession" in a civil state.[81] Right in the state of nature looks forward to its

---

[78] MM, 6:302-303.

[79] MM, 6:256, 6:264. See also David Walsh, *Modern Philosophical Revolution: The Luminosity of Existence* (Cambridge: Cambridge University Press, 2008), 63.

[80] "A civil constitution, though its realization is subjectively contingent, is still subjectively necessary, that is, necessary as a duty" (MM, 6:264).

[81] MM, 6:257.

application in law, just as the law looks back to the concept of right *in itself* to find its content and justification. Regardless, Kant still insists that the "provisional acquisition is true acquisition (*provisorische dennoch eine wahre Erwerbung*); for, by the postulate of practical reason with regard to rights, the possibility of acquiring something external in whatever condition (*welchem Zustande*) people may live together (and so also in a state of nature) is a principle of private right."[82] Right in the state of nature is right as it truly *is*, and is therefore logically prior to the civil condition in any form. Thinking back to the previous discussion of Kant's geometrical method, we can see that the state of nature is "where" Kant establishes the principle that possession is possible, while the civil condition is "where" that possibility becomes actualized, empirically.

What Kant does *not* do is take the superfluous step of insisting on a *historical* precedent to buttress the logical one. At times, his language seems to imply this assumption, as when he spoke of "whatever condition people may live together" in the section noted above, or when he contrasts "a subject who is ready" to enter a civil condition with "those who are not willing to submit to it."[83] But §10 clears up any misunderstanding. Here Kant distinguishes between *original* (*ursprüngliche*) and *primitive* (*uranfänglichen*) communities, primitive ones being "supposed to have been instituted in the earliest *time* of relations of rights (*Zeit der Rechtsverhältnisse*) among human beings and cannot be based, like [original ones], on principles but only on history." Because Kant considers *time* to be phenomenal, this is obviously not what he intends by his usage of the "state of nature" as a conceit for the noumenal realm, a "where"

[82] MM, 6:264.
[83] MM, 6:257.

for the explication of his principles. Furthermore, in this section, he claims that even an "original" community is something we can think of only "problematically."[84]

The analysis thus far seems to leave us with three unanswered questions. First, if the state of nature is meant only to be a theoretical place-holder with no phenomenal reality, whether primitive, original, or hypothetical, is this really a helpful way of using the concept? This is a restatement of the question asked above: what is the use of Kant's category of "Private Right"? Secondly, if this is his intended usage, and even if it is helpful, why does Kant then go on to describe a "transition" out of it and into a civil condition in §41, the passage that is supposedly the key to the whole work?[85] And finally, what does this mean for the notion of the "contract" and for the question of whether Kant is to be considered a "contract theorist"? To answer these questions, it is necessary to explore their role within Kant's political philosophy as a whole. In this exploration we will see that this theoretical "state of nature," the ephemeral "contract," and the process of transition to the civil state Kant ultimately describes exemplify the metaphysical project, previously elaborated, which itself stands as the epitome of his life's work.

IV. The Role of the State of Nature in Kant's Political Philosophy

For Kant, an historical, actual "moment of consent" in the form of a social contract is not considered because such an event would imply that the basis of political authority is empirical, not metaphysical. To take an empirical event and make it a moral principle for politics—much less the overarching, founding, justifying principle—would be to commit the "pernicious error"

[84] MM, 6:258.
[85] This was Byrd and Hruschka's assertion (24), discussed above in section III.A. of this chapter.

Kant warned against at the outset.[86] For this reason, he explicitly discounts justifications for government that involve even generalizations drawn from experience with humans, such as the human propensity to violence.[87] Whereas all other social contract theorists find themselves compelled to invent various prudential reasons for quitting the state of nature, Kant insists that the legitimacy of the state comes from "an idea as a practical principle of reason" and not from its actual "*historical basis.*"[88] In fact, Kant not only eschews contemplating a social contract that might have taken place at some point in the past, he forbids using it "for the sake of action" in the future, and for this reason—controversially—Kant argues that revolution on the basis of a putative right to consensual governance is, in fact, *wrong*.[89] Discovering that one's current polity was *not* actually ever consented to is not a sufficient reason for revolting and creating one that *is*.[90] In a passage that seems to confirm O'Neill's argument that Kant's "social contract" cannot even be understood "hypothetically," Kant asserts that

> Whether a state began with an actual contract (*wirklicher Vertrag*) of submission (*pacta subiectionis civilis*) as a fact, or whether power (*Gewalt*) came first and law (*Gesetz*) arrived only afterwards, or even whether they should have followed this order: for a people already subject to civil law these subtle reasonings are altogether pointless and, moreover, threaten a state with danger.[91]

---

[86] Roger Sullivan, "Introduction" to the *Metaphysics of Morals*, edited by Mary Gregor (Cambridge: Cambridge University Press, 1996), xv-xvi.

[87] MM, 6:312.

[88] MM, 6:319.

[89] MM, 6:318.

[90] But he does concede that, when revolutions do take place, they should be treated in the aftermath as *fait accompli* and obeyed (even by a deposed sovereign!) with the same equanimity he requires of any other citizen of any other regime. For Kant, it seems that political morality, like metaphysics, like time, flows only in one direction. It is not to be put to use 'fixing' the wrongs of the past, but only in effecting gradual, lawful improvements in the future (MM, 6:321-323). Kant's position on revolution will be explored in more detail in chapters three and four.

[91] MM, 6:318.

But rather than throw out the ideas of "state of nature" and "social contract" altogether as inadequate or erroneous, not to mention dangerous, Kant actually accomplishes what the other contract theorists could not: he explains how the "contract" *as a concept* can still validly operate as a justification for civil government in the absence of any empirical—or hypothetical—form.

But Kant's social contract is much more important than simply as an *example* of his idealist philosophy. It stands out as an instance in which nearly all the threads of Kant's system, from his famous critical and moral philosophies to the details of his political and historical thought, come together. Kant's contractarian theory entails an explanation of not only consent, but also coercion, obligation, and duty; it is based upon his understanding of human nature, human rights, reason, freedom, and dignity; it spreads outward to consider international politics and looks forward to consider the whole moral arc of history. For this reason, if for no other, it seems to be an important knot to unravel. These individual strands of thought, as they relate to Kant's contract theory, will be examined in detail in the following chapters. For now, this chapter will conclude with a close reading of four more key passages from "Private Right," including the all-important §41-44, in order to answer the three questions posed at the end of the last section.

A. Politics as a Phenomenal Symbol of Noumenal Reality

The first two of these sections, although they do not themselves involve a discussion of the state of nature, nonetheless provide a very helpful context for that discussion. These examples demonstrate Kant's metaphysical approach by examining some fairly mundane cases

in which the phenomenal practices of human politics interact with the noumenal reality of human relationships in odd, but therefore revealing, ways. We've seen how Kant's reasoning assumes that, even if we cannot "know" noumenal things the way we know phenomenal ones, we can assume a handful of postulates that are at least *not impossible* noumenally, and from them derive some theoretical principles that *must* be true if the postulates are true—even if they seem to contradict phenomenal, empirical practices and experiences. Once we understand how this reasoning operates in the case of these two examples from early in the *Rechtslehre*, we can apply it by inference to the more complex case of the state of nature and the social contract.

For Kant, time and history belong to the world of phenomena just as much as space and physicality. Certain things that human beings can only experience bodily or chronologically are still nonetheless *merely phenomenal* and experienced only insofar as human beings must partake in the phenomenal world. But Kant assumes, on the basis of the arguments he developed in his three Critiques, that human beings are the kinds of beings who are *not merely phenomenal* in and of themselves, but who also have the ability to partake in the noumenal realm. So, for instance, we can confidently understand ourselves as *being* free, even though phenomenally—as science would understand us, if it took us as objects of study—we *appear* to be as causally determined as any other object on earth, and even though we cannot definitively prove our own freedom even to ourselves. If we want to accept this postulate of freedom as true, then Kant believes we must accept a number of logically derived conclusions as well—once again, even if these conclusions contradict all appearances. This is perhaps not so far-fetched when it comes to literally physical appearances, but importantly for our purposes, Kant argues that *time* is phenomenal as well.

It is admittedly difficult to understand the origin and purpose of politics, the justification of political authority, and the role of consent outside of empirical time. The historical element, on the other hand, is the source of most of the criticisms against contract theory of any iteration.[92] Kant uses the distinction he developed between phenomenal time and noumenal reality to escape this trap, but he does not explain this move explicitly with regard to the state of nature or the social contract. However, the following two passages from the *Rechtslehre* can demonstrate his position by analogy.

The first example is found in the second section of Chapter 2 of the *Rechtslehre*, in which Kant discusses "Contract Right"—here, not in the sense of a social contract, but simply in the normal sense of any sort of contract between people in which things, services, or money are promised and ultimately exchanged. Kant defines this sort of contract (*Vertrag*) as "an act of the united choice (*vereinigten Willkür*) of two persons by which anything at all that belongs to one passes to the other."[93] He then explains that, actually, there are *four* logically and chronologically separate "acts" that make up a contract. The first two, "*offering* and *assent*" make up the negotiating phase.[94] Then follows the concluding phase, which is made up of the acts of "*promise* and *acceptance*."[95] But having separated the process of creating a contract into its constituent acts, Kant nonetheless is careful to qualify this separation by insisting that "what belongs to the promisor does not pass to the promisee (as acceptant) by the *separate will*

[92] Patrick Riley cites "Hume's 'historical' objection that states ordinarily arise through force and violence, not through agreement or promise" as the one Kant wanted "above all" to avoid ("On Kant," 451). Likewise, Boucher and Kelly list "historical dubiousness" first among a list of contemporaneous criticisms, along with "impracticability, and flawed logic" (17-18). Indeed, the objection is so obvious that Hobbes, Locke, and Rousseau all anticipated and attempted to rebut it in the course of the works which contain their own contract theories.

[93] MM, 6:271.

[94] MM, 6:272.

[95] MM, 6:272.

(*besonderen Willen*) of either but only by the *united will* (*vereinigten Willen*) of both, and consequently only insofar as both wills are declared *simultaneously* (*zugleich*)."[96] The simultaneity is extremely important to Kant. He admits the "empirical acts" by which two human beings negotiate and conclude a contract "must necessarily *follow* each other in time" and can never be empirically simultaneous.[97] But it is not the empirical acts that matter to the essence of a contract—it is the *wills*, the free *choices*, of the two individuals that are essential. These exist on the noumenal plane and can, in that sense, exist simultaneously. In Kant's words,

> It is true that in an external relation of my *rights* my taking possession of another's choice (and his taking possession of mine in turn) . . . is first thought of empirically, by means of a declaration and counter-declaration of the choice of each in time. . . . Since, however, that relation (*Verhältniß*) (as a rightful relation) is purely intellectual, that possession is represented through the will, which is a rational capacity for giving laws (*ein gesetzgebendes Vernunftvermögen*), as intelligible possession (*possessio noumenon*) in abstraction from those empirical conditions. . . . Here both acts, promise and acceptance, are represented (*vorgestellt wird*) not as following one upon another but . . . as proceeding from a single *common* will (this is expressed by the word *simultaneously*).[98]

Interestingly, this perspective is able to provide content to the ceremonial "formalities" with which contracts are often concluded—things like the common handshake.[99] Kant notes that these little ceremonies are not meaningless habits but are actually an attempt to symbolize a metaphysical reality in empirical time. Somehow people "know" that the contract cannot be an infinite process of moments of promising and of accepting, between which each party is free to abdicate from the process, or in which the thing that is the object of the contract is somehow

---

[96] MM, 6:272.
[97] MM, 6:272.
[98] MM, 6:272-273.
[99] MM, 6:272.

suspended between owners.[100] Actually, Kant does not claim that they "know," but only that the symbolic formalities "manifest the perplexity" of people trying to instantiate a noumenal reality into a phenomenal, time-bound process.[101] "Only a transcendental deduction of the concept of acquisition by contract can remove all these difficulties. . . . by omitting [through omission of] empirical conditions (*Weglassung der empirischen Bedingungen*) . . . in accordance with a principle [law] of pure practical reason (*Gesetz der reinen praktischen Vernunft*)."[102]

This "principle of pure practical reason" is based on an unprovable "postulate of pure reason," namely, "I ought to keep my promise."[103] Like most metaphysical principles, "*that I ought* to keep it everyone readily grasps," but "*why ought* I to keep my promise?" is a question simply beyond answer or proof (*Beweis*).[104] This movement from an unprovable (but uncontroversial) postulate, to principle, to deductions of concepts is yet another example of Kant's metaphysical method, but one in which the application to empirical conditions is less straightforward. To summarize, then: in order to understand contract right for what it truly *is* we have to *abstract from* empirical conditions to grasp the pure noumenal *relationship* present in the contract, which is always united and simultaneous *in its reality*, even when it *cannot* appear so in physical conditions like time and space. In so doing, we find our way back to the postulate, the moral assumption, underlying the entire process. This postulate can be demonstrated to be the

---

[100] MM, 6:274: "Transfer by contract of what is mine takes place in accordance with the law of continuity, that is, possession of the object is not interrupted for a moment during this act; for otherwise I would acquire, in this condition, and object as something that has no possessor, [that is] originally, and this contradicts the concept of contract. . . . Transfer is therefore an act in which an object belongs, for a moment, to both together, just as when a stone that has been thrown reaches the apex of its parabolic path it can be regarded as, for just a moment, simultaneously rising and falling, and so first passing from its rising motion to its falling."

[101] MM, 6:272.

[102] MM, 6:272-273.

[103] MM, 6:273.

[104] MM, 6:273.

context for all analysis and practice of contract law, but it is itself the boundary of any further analysis.

Lest this exercise of parsing out the essence of a simple contract come across as either pointlessly academic or contradictory to the practical human condition, Kant provides us with another example that puts his perspective in a perhaps more meaningful context. At the end of Chapter 2, Kant provides three examples of "ideal acquisition (*idealen Erwerbung*)," by which he means an acquisition "that involves no causality in time and is therefore based on a mere *idea* of pure reason."[105] Unlike the case of a contract, in which the two parties, despite being distinct individuals, at least both empirically *exist* at the same chronological time, in these three special "ideal" cases, one party to the process of acquisition does *not* exist at the same time as the other. But Kant insists that acquisition of this ideal type "is nonetheless *true* (*wahre*), not imaginary (*eingebildete*)."[106] Of the three examples, the last, "Leaving Behind a Good Reputation after One's Death," is perhaps the most abstract and ideal, since it involves the "possession" of an entirely non-physical "thing" (the other two examples involve cases like inheritance, where even if one party to the transaction is not alive at the time of the transaction, the transaction still involves a physical item).[107] But in this case, it is *because* the "thing" possessed is ideal, rather than physical, that it *can* be understood as "possessed" by a person who also no longer physically exists.

For Kant asserts that physical existence, as such, is not essential to his definition of a person. One may recall that *immortality* is one of the Postulates of Practical Reason, although in

[105] MM, 6:291.
[106] MM, 6:291.
[107] MM, 6:295-296; 6:293-294.

this case it seems not to matter (in a footnote, Kant inveighs against using his argument to come to any "conclusions about presentiments of a future life" or "disembodied souls").[108] A person, he says, is "a being of such a nature that I can and must abstract from whether he ceases to be entirely at his death or whether he survives as a person; for in the context of his rights in relation to others (*rechtlichen Verhältniß auf andere*), I actually regard every person simply in terms of his humanity (*jede Person bloß nach ihrer Menschheit*), hence as *homo noumenon*."[109] Death only causes the end of existence as *homo phaenomenon*; it has no bearing on the true humanity, the noumenal reality, of the person as a person. For this reason, Kant can defend the "possession" after death of the reputation a person earns during his lifetime, and the right of that person's friends (or even honest strangers) to defend him against slander.

For our purposes, however, the crucial point is the noumenal character of a person's "rights in relation to others." Kant explains this further in the footnote. These rights, of which one's reputation after death is simply an example on the extremely ideal end, do not "go beyond the purely moral and rightful relations (*rein moralischen und rechtlichen Verhältniß*) to be found among men during life as well."[110] In both cases, indeed in all cases,

> these are relations in which human beings stand as intelligible beings (*intelligibele Wesen*), insofar as one *logically puts aside*, that is, *abstracts from*, everything physical (i.e., everything belonging to their existence in space and time); but one does not remove them from this nature of theirs and let them become spirits, in which condition they would feel the injury of those who slander them. — Someone who, a hundred years from now, falsely repeats something evil about me injures me right now; for in a relation purely of rights (*reinen Rechtsverhältnisse*), which is entirely intellectual, abstraction is

[108] The three postulates are freedom, immortality, and the existence of God. The footnote is MM, 6:296n.
[109] MM, 6:295.
[110] MM, 6:296n.

> made from any physical conditions (of time), and whoever robs me of my honor (a slanderer) is just as punishable as if he had done it during my lifetime. . ."[111]

It is important to understand both what Kant is saying here and what he is *not* saying. This is not a claim about rights as if they were nothing but an abstract, a-historical concept brought to bear on physical, historical beings. Kant has already defined property rights as a relation, not a concept: "possession (*Besitz*) is nothing other than a relation of persons to persons (*das Verhältniß einer Person zu Personen*)."[112] He used similar relational terminology in his discussion of contract law. Here, Kant's argument is that rightful relationships between people need to take into account the fact that human beings are neither completely material beings nor completely abstract or "spiritual" ones. Human beings have a foot in two worlds. They exist physically as *homo phaenomenon*; intellectually as *homo noumenon*. Their noumenal reality, for Kant, contains the true reality of personhood—of humanity as such.

More to the point: right is not a "concept" at all, nor a thing that can be "possessed" by an individual. *Right* is a noumenal condition of humanity, individual and collective, tied up with human dignity, freedom, and knowledge of moral duty. Insofar as we consider these "rights in relation" or "rightful relations," we are speaking in intellectual terms. The way these rights are expressed, ordered, and lived out politically is an application of the intellectual to the physical, once again demonstrating the geometric progression of Kant's metaphysical project.

Kant is also careful not to make this claim on the basis of a religious dogma about the afterlife, or to extend it to support such a dogma.[113] Human beings stand in relationships of

---

[111] MM, 6:296n.
[112] MM, 6:268; property rights will be discussed in greater detail in chapter two.
[113] MM, 6:296n.

rights that may be *abstracted from* the physical ("entirely intellectual"), but should not be understood to be "removed from" their physical nature. It's not that human beings as such must be eternal (that's another discussion), but rather that their *relations of rights* stand outside of, abstracted from, time.

Politics takes place among phenomena but is not reducible to them. At the same time, Kant does not try to force phenomenal politics to conform absolutely to the abstract reality he articulates. Kant understands that there must be allowance made for the physical conditions in which human beings exist. This is why he goes on, in Chapter 3, to discuss some cases in which the legal "right" of the rightful civil order, which must often rely on that which can be proven forensically in a court of law, takes precedence over the private right that people would recognize in state of nature, or even in their informal relationships, when those two versions of right seem to conflict.[114]

[114] Kant discusses four instances of this type. The first, "On a Contract to Make a Gift," describes the ability of a court of law to enforce a promise someone has made, even when the promise is only to give a gift—the gratuity of which promise would seem to imply a freedom to back out of the promise with no harm done. The next two cases involve burdens of responsibility or proof: who is responsible for the maintenance in good condition of a thing lent, and who is the true owner of a thing lost and then found? In the state of nature—and here Kant repeatedly clarifies that, by that term, he means "the intrinsic character" or "grounds" of the decision—the burden falls on the lendee and the finder (6:300-301). But a court of law is only responsible for what can be established forensically—what "can be *most readily* and surely *judged*"—and thus under the auspices of public right, the burdens shift (6:303). The lender, as the verifiable owner of the thing, is presumed responsible for its condition in the absence of a specific contract to the contrary; the person who acquires a thing in good faith and according to legal form is not responsible for ascertaining the validity of the item's prior chain of custody. In these three cases, Kant merely points out the contrast between right "in itself" vs. right as "laid down" legally and seems content to accept the imperfect alignment as a necessary evil of the juridical state (6:297). The one exception comes in the last case, which asks whether a court can force people to take oaths or swear to certain beliefs. Here, Kant still sides with the human right to his own conscience over what is "obviously laid down only on behalf of the judicial authority" (6:304). In fact, he not only sides with the intrinsic right in this case, but denounces this judicial practice in very strong terms. This sort of "spiritual coercion" he calls "fundamentally wrong" and insists that "even in the civil condition coercion to take oaths is contrary to human freedom, which must not be lost" (6:304-305).

B. Kant's Transition from the State of Nature to the Civil State

Both of these examples set the context for our discussion of §41-44. §41 is titled "Transition from What Is Mine or Yours in a State of Nature to What Is Mine or Yours in a Rightful Condition Generally"; the others are not titled but continue the same line of argumentation. §42 ends "Private Right," and §43-44 begin the discussion of "Public Right," the exposition of the Kantian civil state. Terminologically, these passages are important not simply as the juncture between Kant's concepts of "Private" vs. "Public" right, but also because they clarify the category of "rightful condition" which we now see *opposed* to the category of "state of nature." Indeed, §41 is primarily concerned with setting up the distinction between "a rightful condition (*der rechtlicher Zustand*)" and "a condition that is not rightful (*der nicht rechtliche Zustand*)."[115] Here Kant seems to be using the term "state of nature" (*natürliche Zustand/Naturzustand*) in a much more conventional way—no longer as a theoretical place-holder for right *as such*, but now in the sense of a primitive society ungoverned by positive law.

Within this distinction, there are three other points to establish. First of all, as can be seen from the title, this transition develops out of his long discussion of possession and property rights. Secondly, it contains a discussion of the mechanism for transition from the conventional state of nature to the civil state. This is the place where most contract theorists develop their contract; Kant, on the other hand, describes the transition in terms of *coercion*. The justification for the coercion relies on Kant's development of the metaphysics of possession, and leads into the third important element: the "right of humanity" or "right of human beings as such." In contrast to the other contract theorists, Kant does not use the construct of the *primitive* "state of

[115] MM, 6:305-308.

nature" to elaborate a theory of human nature, reason, liberty, and rights, although some hints of his understanding of such appear from time to time within his use of the *theoretical* state of nature, as in the two examples discussed in the prior section. At this juncture, however, a fuller elaboration of both "right" and the beliefs Kant held about human beings is required in order to understand how Kant's replacement of consent with coercion can be consistent with the rest of his political and moral philosophy.

Much has already been said about Kant's understanding of possession—that property is held in the state of nature "only provisionally," while "conclusive possession" requires entry into a civil constitution that would enforce lawful possession; that this provisional possession is "in anticipation of and preparation for the civil condition"; and that "any guarantee" that the civil condition can provide "already presupposes what belongs to someone," such that formal political arrangments do not distribute or adjudicate property among persons but "only secure" what has already been "settled and determined" previously.[116] This much of the logical progression was already established early on, in §8-9 of Private Right. Here, in §41-44, Kant makes the relationship even more explicit and central: "If no acquisition were cognized as rightful (*rechtlich erkennen*) even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible (*unmöglich*)."[117] He has previously established that rights to property, which we "must" assume (*muß . . . als möglich angenommen werden*) existed in the state of nature, carry "with them a right to constrain (*nöthigen*) everyone with whom we could have any dealings (*Verkehr*) to enter with us into a constitution (*Verfassung*) in which external

[116] MM, 6:256-257.
[117] MM, 6:312

objects can be secured (*gesichert*)."[118] Here, he states even more clearly that "each may impel (*antreiben*) the other by force (*mit Gewalt*) to leave this state [of nature] and enter into a rightful condition."[119]

Regarding this impulsion, all contract theorists have, of course, developed some theory of what Kant calls "public lawful external coercion (*öffentlich gesetzlichen äußeren Zwange*)"—of when, how, and to what extent people who have *already consented* to be part of a political project can be coerced by the authority established *through that consent* to remain a part of it or to obey its commands.[120] It is important to clarify the extent to which Kant's approach to coercion as an aspect of the transition out of a state of nature differs from this concept.

Most obviously, this coercion occurs outside the civil state—it is a constraint to *join*, rather than to *obey*, the civil state. Kant's problem is not with dependent free-riders within a civil state, or with those who might regret their loss of original freedom, but rather with those who would willfully remain in what he calls "a condition that is not rightful"—that is, the state of nature.[121] Kant values human freedom—he views it as natural, innately right, and something to be preserved in the civil state—but in this case the rightfulness of the duty to join a civil society trumps any independent individual's preference to do otherwise. In this way, Kant replaces the moment of consent with a license to *coerce* others into political arrangements against their will.

---

[118] MM, 6:256-257.

[119] MM, 6:312. The *Gewalt* echoes the same term used at the beginning of the sentence, where Kant asserts that "the state of nature need not . . . be a state of *injustice* (*iniustus*), of dealing with one another only in terms of the degree of force (*Gewalt*) each has. But it would still be a state *devoid of justice* . . . ." etc. The base meaning of *Gewalt* is "violence"; c.f. the tamer *Zwang*, "coercion" or constraint in the sense of pressure.

[120] MM, 6:312

[121] MM, 6:306, 308.

This is a fact that should be as jolting to the reader as Rousseau's "forced to be free" statement (and indeed, the two approaches will be compared in chapter two). Even Hobbes's authoritarian polity was established on the basis of consent, not force. This is, at first glance, an exceedingly strange approach for a philosopher as concerned with ethics, liberality, and peace as Kant was.

Here, again, it is helpful to compare the passage in §41-44 to the earlier discussion of §8-9. In §8, Kant writes that, if ownership is to be considered possible, then "the subject must also be permitted to constrain (*nöthigen*) everyone else with whom he comes into conflict (*zum Streit*) about whether an external object is his or another's to enter along with him into a civil constitution."[122] In the following section, he gives it as "a right to constrain (*nöthigen*) everyone with whom we could have any dealings (*Verkehr*) to enter with us into a constitution."[123] Then he discusses a person "who is ready for it"—"it" being civil condition—and who, on the basis of this readiness, "resists (*widersteht*) with right those who are not willing to submit to it."[124] This same individual is described as being "compatible with the introduction and establishment of a civil condition." And then, again, anyone "who does not want to enter" such a civil condition can be rightfully "prevent[ed] (*abzuhalten*)" from "usurping" an object by a person who "is provisionally justified (*vorläufig . . . berechtigt*)" in possessing and using it. Otherwise, Kant argues, the thing "would be annihilated practically."[125]

---

[122] MM, 6:256.

[123] MM, 6:256. *…ein Recht, jedermann, mit dem wir irgend auf eine Art in Verkehr kommen könnten, zu nöthigen, mit uns in eine Verfassung zusammen zu treten…*

[124] MM, 6:257.

[125] MM, 6:257.

These passages, while similar in some ways, nonetheless also seem to lack terminological consistency. On the one hand, it seems Kant grants a dispensation to an individual who is in favor of a civil state to force those who disagree with him into it, against their wills. On the other hand, he seems to imply that this right only extends to those with whom such a person "comes into conflict" or "has dealings." And all this, apparently, on the basis of mere property concerns—that things be able to be put to practical use. Considered this way, the formulation seems to risk committing the "pernicious error" against which Kant warned early on: deriving a moral right (to coerce) from an empirical situation (conflict with another person over the use of a physical thing).

However, in §44 Kant clarifies by arguing that "it is not experience (*Erfahrung*) from which we learn of human beings' maxim of violence (*Gewaltthätigkeit*) and of their malevolent tendency to attack one another" if not constrained by an external power.[126]

> It is therefore not some fact that makes coercion (*Zwang*) through public law necessary. On the contrary, however well disposed and law-abiding men might be, it still lies *a priori* in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples, and states can never be secure against violence (*Gewaltthätigkeit*) from one another.[127]

Recall here the distinction between the "rightful" and "not rightful" conditions made in §41, and the correspondence between these terms and the civil state and state of nature, respectively. It is also important to remember that Kant claims the state of nature is opposed not to the *social* but only to the *civil* condition, as Locke did—but unlike Locke, who believed men in the state of nature could coexist more or less rightfully under the laws of nature and nature's God, Kant

[126] MM, 6:312.
[127] MM, 6:312.

asserts that any "condition" in which human beings coexist that is not ordered by civil law is *by definition* not rightful, even if it is not actually violent.[128] Given this understanding, we can see that Kant's primary concern is not that physical things be put to efficient use, but that *relations between people* exist within a *rightful* context. Ultimately, there is something about human beings as such that, in Kant's view, requires them to exist in a rightful order. This order of *Recht* is the only way of living that is compatible with—indeed, sufficiently reverential of—human nature as Kant understood it. And it is to this understanding of persons and *Recht* that we can now turn.

It helpful here to recall the definition of "*Recht*," derived from the categorical imperative, which Kant provide in the "Introduction" to the *Rechtslehre*: "Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with the universal law of freedom."[129] Likewise, a right action is one that "can coexist with everyone's freedom in accordance with a universal law."[130] Right and reason demand that "freedom *is* limited to those conditions . . . and that it may also be actively limited by others."[131] That is, human freedom rightly understood is always compatible with universal law, or we might say, with universal *lawmaking*, recalling the categorical imperative from which this formulation is derived. Any other use of "freedom" is outside the bounds of both *Recht* and Kant's definition of freedom. In this context, Kant gives his theory of how a coercive *Recht* may thus be reconciled with freedom properly understood:

---

[128] See John Locke, *Second Treatise of Government*, Ch. 2, §6-8.
[129] MM, 6:230.
[130] MM, 6:230.
[131] MM, 6:231.

> Resistance (*Widerstand*) that counteracts the hindering (*Hindernisse*) of an effect promotes this effect and is consistent with it. Now whatever is wrong (*unrecht*) is a hindrance to freedom in accordance with universal laws. . . . Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion (*Zwang*) that is opposed to this (as a *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce (*eine Befugniß . . . zu zwingen*) someone who infringes upon it.[132]

Kant immediately qualifies this "authorization to coerce" by cautioning against thinking of Right "as made up of two elements, namely an obligation (*Verbindlichkeit*) in accordance with a law and an authorization (*Befugniß*) of him who by his choice puts another under obligation (*verbindet*) to coerce (*zu zwingen*) him to fulfill it."[133] Rather, Kant wants to unify these concepts by "connecting universal reciprocal coercion (*allgemeinen wechselseitigen Zwanges*) with the freedom of everyone."[134] The possibility of universal reciprocal coercion is "based on everyone's consciousness of obligation in accordance with law," although Kant is quick to say that this consciousness itself "cannot be appealed to as an incentive" for rightful behavior; "strict" right, or right in the legal sense, is limited to that which can be enforced externally. The question of internal motivation is under the purview of virtue. Kant thus seems more anxious to emphasize the difference between legally-enforceable right and the internal moral awareness on which it is based than to explain the connection more fully. The connection seems to have two aspects: first, the assumption that other people share this "consciousness of obligation,"[135] and

---

[132] MM, 6:231
[133] MM, 6:232.
[134] MM, 6:232.
[135] Claes Ryn, in *Will, Imagination, and Reason: Babbitt, Croce, and the Problem of Reality* (New Brunswick, NJ: Transaction Publishers, 1997), describes how some of Kant's later readers (and critics) tried to pull this insight out of "the rationalistic encrustrations of Kant's thought" (54). For instance, Irving Babbitt writes of the awareness each person has, simultaneously, of "his idiosyncrasy" and the "self that he possesses in common with other men" (63). Ryn traces this line of thinking to "the transcendental Self of German philosophy" (63) and

secondly, that this awareness amounts to a "right of humanity" in one's own person, on the basis of which a person can make themselves a standing obligation to others—that is, assert a right.[136] Mary Gregor summarizes this briefly: "The moral title of others to compel us through the power of the State, their rights according to the law, are based upon our consciousness of obligation toward them, which is, in turn, based upon our recognition of the presence of pure practical reason within us and of our obligation toward our own personality. The 'right of humanity within our own person' is, Kant maintains, the . . . foundation of all obligation."[137]

But what is the "right of humanity in our own person"? Kant uses the term a few times throughout the *Metaphysics of Morals*, but does not quite explain it fully.[138] Otfried Höffe argues that the lack of explanation is due both to Kant's desire to keep right and virtue conceptually separate and to the fact that this right contains "a novel type of duty" which Kant "himself only fully understood later on."[139] The first mention of the "right of humanity in our

---

specifically to Kant, although "Babbitt complains that Kant affirms this doctrine in 'an abstract and rationalistic way.' But just beneath the rationalistic surface there can be discerned philosophical impulses pointing to an intuitive Self, inherent in each of our intuitive selves. This Self is active not only in moral volition but also in that non-conceptual synthesis which gives us a common world and a common, yet always varying, humanity. If men were not first of all joined in an intuitive grasp of their universal humanity, they could not interact meaningfully, not form particular societies" (64).

[136] "We know our own freedom (from which all moral laws, and so all rights as well as duties proceed) only through the *moral imperative*, which is a proposition commanding duty, from which the capacity for putting others under obligation (*verpflichten*), that is, the concept of a right (*Begriff des Rechts*), can afterwards be explicated" (MM, 6:239).

[137] Mary Gregor, *The Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the "Metaphysik der Sitten"* (New York: Barnes & Noble, Inc., 1963), 46.

[138] "Humanity in our own person" (*Die Menschheit in seiner Person*, MM, 6:435; *Die Menschheit selbst*, *Menschheit an jedem anderen Menschen*, MM, 6:462) is discussed in various places in the *Tugendlehre*, but except in one instance (noted below), "the right of" such is not mentioned—"right" being under the purview of the *Rechtslehre*.

[139] Otfried Höffe, "Kant's Innate Right as a Rational Criterion for Human Rights," in *Kant's "Metaphysics of Morals": A Critical Guide*, edited by Lara Denis (Cambridge: Cambridge University Press, 2010), 85. In a previous book, he writes that this new duty "is somewhat disturbing. Kant sets a new standard with this idea. He demonstrates that legal morals are based on an element that is foreign to right and anomalous or in conflict with the system. Whereas the other duties of right are external and directed at others, the first formula implies an internal

own person" comes in a section at the end of the Introduction to the *Rechtslehre* called the "Division of the Doctrine of Right." Here, Kant lists and explicates the three classical Ulpian legal formulae, the first of which is "*Be an honorable human being* (*ein rechtlicher Mensch*)."[140] Kant reformulates this as "*rightful honor* (*rechtliche Ehrbarkeit*)" and claims it "consists in asserting one's worth as a human being in relation to others, a duty expressed by the saying, 'Do not make yourself a mere means for others but be at the same time and end for them.'"[141] Kant then explains that this duty is an "obligation from the *right* of humanity in our own person (*Verbindlichkeit aus dem Rechte der Menschheit in unserer eigenen Person*) (*Lex iusti*)."[142]

Otfried Höffe sees the other two formulae, "*Do not wrong anyone*" and "*Enter* a condition (*Gesellschaft*) in which what belongs to each can be secured to him against everyone else," as the guiding principles for Private Right and Public Right, respectively."[143] Kant writes that the three principles correspond to the division of rights in that "the derivation of the latter [external duties or Private Right] from the principle of the former [internal duties or the right of humanity in our own person] by subsumption" results in the third set of duties, or Public Right. Höffe explains that the term "by subsumption" is a logical term showing that Kant is thinking of

---

duty toward oneself" (*Kant's Cosmopolitan Theory of Law and Peace* (Cambridge: Cambridge University Press, 2006), 120). Höffe also claims that "the passage is seldom mentioned" and even when it is, its true significance "escapes the attention of interpreters," (*Kant's Cosmopolitan Theory*, 119, 121).

[140] MM, 6:236.

[141] MM, 6:236. *Ehrbarkeit* can also mean "respectability" or "honorableness"; c.f. Kant's discussion in "Theory and Practice," Section I, on the difference between having happiness and being worthy of it.

[142] MM, 6:236. Kant also claims that "this duty will be explained later," and seems, in the chart at 6:240 explaining the division of the entire *Metaphysics of Morals* project, to intend to cover it under "Duties to Oneself" in the *Tugendlehre*. He does not do so, however. (See MM, 29n15.)

[143] Höffe, *Kant's Cosmopolitan Theory*, 120. Mary Gregor translates the third principle as "(If you cannot help associating with others), *enter* into a society with them in which each can keep what is his" (MM, 6:237).

the three principles as a syllogism: internal duties (the right of humanity) is the major premise, external duties the minor premise, and public legal right therefore the conclusion.[144]

If this is the case, the "right of humanity in one's own person" can truly be said to stand at the base of Kant's entire moral-political project, even if he does not explain it fully himself. Höffe reads it as a "legal self-assertion" that is as mutual and reciprocal as the authorization to coercion: "one's original self-esteem must be extended by an equally original esteem for others, so that every being of a legal ability is treated as a being with rights."[145] By claiming that "asserting one's worth as a human being in relation to others" is a duty and obligation, rather than a right, Kant is "subjecting natural human beings to the categorical imperative of right, which commands recognition both of oneself and of others as legal subjects."[146]

The next apparent mention of this "right of humanity" comes in the very next subsection, after his discussion of the Ulpian principles. Here, Kant discusses the "one innate right," which is freedom, and describes it as "the only original right belonging to every man by virtue of his humanity (*kraft seiner Menschheit*)."[147] This "principle of innate freedom" carries a number of "authorizations, which are not really distinct from it"; among these Kant lists "being a human being *beyond reproach* (*unbescholtenen Menschen*) (iusti)." The German differs, but the Latin term here corresponds to that of the first Ulpian principle.[148] The third instance occurs at the end

[144] Höffe, *Kant's Cosmopolitan Theory*, 127-128.
[145] Ibid., 129, 124.
[146] MM, 6:236; Höffe, *Kant's Cosmopolitan Theory*, 130.
[147] MM, 6:237.
[148] Höffe, on the other hand, argues that "Kant is concerned to avoid identifying the first principle with innate right as a whole," but rather that the first Ulpian principle—and indeed, the three Ulpian principles as a whole—"correspond . . . to a system of duties of right that is not discussed elsewhere in the text" (*Kant's Cosmopolitan Theory*, 128). However, in his later (2010) article, "Kant's Innate Right as a Rational Criterion for

of this "division" section, where Kant describes his system in a series of charts. The first such chart separates the concept of Duty into four categories: of right and virtue (the main division of the *Metaphysics of Morals*) and again by duties to oneself and duties to others. Duty of right to oneself is titled "right of humanity in our own person," while duty of right to others is titled "the right of human beings."[149] Kant explains that the difference is derived not only from the difference between "self" and "others," but also from the distinction between *homo noumenon* ("humanity") and *homo phaenomenon* ("human being").[150]

The "right of humanity" comes up again in his discussion of property and marriage, in both cases as the reason why a person cannot turn himself into an object to be owned, whether by himself or by another.[151] In the first of these cases, Kant claims that "this is not . . . the proper place to discuss this point, which has to do with the right of humanity, not that of human beings,"

Human Rights," he does not make this assertion and indeed (84ff) seems to consider the first Ulpian principle in terms of that innate right.

[149] *Das Recht der Menschheit in unserer eigenen Person* vs. *Das Recht der Menschen*, MM, 6:240.

[150] MM, 6:239. Höffe finds a "formal difficulty" in this "inner duty of right," which is that, being both inner "and also a duty toward oneself," it ought to belong "to a doctrine of virtue," rather than right. Höffe attempts to resolve this difficulty, but nonetheless finds it "problematic" (*Kant's Cosmopolitan Theory*, 129). Walsh, on the other hand, argues that "Kant separates right and virtue along lines that recognize the intermediate reality of politics . . . . Kant is able to explain how virtue can still be integral to an external order by recognizing externality as integral to virtue. . . . We can ask about the difference between the legally right and the morally right because law exists within this distinction and can never escape its boundary." (*Modern Philosophical Revolution*, 63). Thus, Höffe and Walsh come to apparently opposite conclusions regarding the status of Right. Because it seems to depend on an "inner achievement" or "self-referential moment that is necessary for constituting a legal subject or . . . person," Höffe argues that "Right is not naturally given, but must be created" (130). Walsh, in contrast, argues that "We may be the formulators of the law, but we are not its authors. Right has its source in that reason that is the limiting horizon of our existence" (64). There is an active, participatorial, even creative element to our existence in right: "the language of rights takes its bearings from its own practice" (61). But this can be so not because right is not natural, but because *humans* are not (merely) so: "We may intend by our actions to enact natural law, but the possibility originates in our transcendence of nature. That is what Kant identifies, not by reference ot the idea of right or of virtue, but to the idea of each within which we exist. . . . The metaphysics of morals is what cannot be escaped" (62).

[151] MM, 6:270, 6:278.

thus maintaining the division he gave in the chart.[152] However, when the related concept of the *end* of humanity vs. human beings arises in the *Tugendlehre*, Kant seems to equate the two: "it is in itself a duty for a human being to make his end the perfection belonging to a human being as such (properly speaking, to humanity)."[153] And even in the *Tugendlehre*, Kant sometimes speaks of the right, rather than the end, of humanity and human beings—since to make such a right one's own end as a maxim falls under the domain of virtue—and here, again, he speaks of "the right of humanity, or also the right of human beings," as apparently equated.[154] These passages can be clarified by understanding that Kant sometimes wishes to discuss a human being "simply in terms of his humanity, hence as *homo noumenon*," as in the case of one's reputation after death.[155] At other times, he makes the same clarification by phrasing it as "the right of human beings as such." One such instance is in the "transition" passage, to which we may now return.

With this understanding, we can now see why Kant asserts that no one could have the "right" to remain in the state of nature or even to have a chance to consent before joining civil society. Of the state of nature, Kant claims that "given the intention to be and to remain in this state of externally lawless freedom, human beings do *one another* no wrong at all when they feud among themselves."[156] In other words, it is not the feuding, *per se*, that is the problem; it is the willingness "to be and to remain in a condition that is not rightful."[157] This he calls "wrong in the highest degree (*im höchsten Grade . . . unrecht*)," and it is this "highest degree" of wrong

---

[152] *Recht der Menschheit, nicht dem der Menschen*, MM, 6:270.
[153] *Menschen überhaupt (eigentlich der Menschheit)*, MM, 6:386.
[154] *das Recht der Menschheit, oder auch der Menschen*, MM, 6:390.
[155] *Person bloß nach ihrer Menschheit, mithin als homo noumenon*, MM, 6:295.
[156] MM, 6:307.
[157] MM, 6:307-308.

that would seem to legitimate the use of coercion against it.[158] He explains in a footnote that this "highest degree" of wrong removes "any validity from the concept of right itself" and "subvert(s) the right of human beings as such (*Recht der Menschen überhaupt*)."[159]

This "right of human beings as such" is at the heart of the Kantian project. Because it is the same thing as the innate right to freedom, and thus connected to the essential moral awareness by which our freedom is illuminated, it underlies his coercive understanding of *Recht*.[160] Kant insists that these notions of freedom and right are so universal and fundamental, they are the reason why political society *must* exist—politics is part of the order of *Recht* and is therefore not subject to the whim of free choice.[161] One's worth as a human being is not dependent on another person's consent for its reality.[162] Thus, simply on the basis of one's status as a human being (as such), one has standing to "put others under obligation," even coercively.[163]

Ultimately, the understanding of coercion most consistent with this "right of humanity" is the one that indicates not only that we have the right to constrain those people with whom we *happen* to "come into conflict" to join us in civil society, but that such a constraint extends to "everyone with whom we could have any dealings" at all—effectively, the entire human population.[164] But the "right of humanity" or of "human beings as such" also informs his

---

[158] MM, 6:307.
[159] MM, 6:307.
[160] Höffe calls it "a preliminary achievement that constitutes right" (*Kant's Cosmopolitan Theory*, 129).
[161] Walsh writes, "Politics is never merely an option, for we are embedded in a network of obligations before we even begin. This was the weak point of all social contract explanations of civil society, with their inevitable implication of the arbitrariness of a state founded on individual choice" (*Modern Philosophical Revolution*, 62). See also Höffe, *Kant's Cosmopolitan Theory*, 126.
[162] See Höffe, "Kant's Innate Right," 86.
[163] MM, 6:239; see above, n135.
[164] MM, 6:256-257. See also Walsh, *Modern Philosophical Revolution*, 64.

understanding of consent and his vision of government under an "ideal contract," to which we may now turn.

C. Consent as an Ordering Ideal for Politics

This section set out to answer three questions: why Kant chooses to use the "state of nature" as a vehicle for an exploration of *Recht* in abstraction from political phenomena; why he nonetheless includes a discussion of a "transition" from putatively concrete state of nature to a civil state; and what the answers to these questions mean for Kant's place in the contractarian tradition.

These questions are all related, and all find their answer in an understanding of the "right of human beings as such." This right stems from Kant's belief that human beings are unique among things and beings in the world in that we can think, act, and exist on two levels: the level of phenomenal appearances in the world in which we live and move, and the level of noumenal reality as experienced internally to ourselves. Like politics, human beings exist phenomenally, but are not reducible to phenomena. The self-awareness of this fact is part of that noumenal reality, and part of the source of the "right." Patrick Riley summarizes a relevant passage of the *Fundamental Principles of the Metaphysics of Morals* thusly: "whatever has mere value can be replaced by something of equivalent value, but that which is the condition of anything else's *having* a value—that is, man—has dignity."[165]

If there were only one human being in the world, the binary might remain a simple matter of internal vs. external, subjective vs. objective, reality vs. appearance. However, because of the

[165] Riley, "On Kant," 463. The passage from the *Grundlegung* is 4:434-435.

multiplicity of persons in the world, the *relationships between* human beings must be taken into account as well. And here Kant finds that these relationships also take place on both levels at the same time, as we saw in the examples of contract law and reputation after death. Furthermore, as shown in those examples, that simultaneity has the potential to cause some discomfort and "perplexity," especially when it becomes obvious that what people *experience* as real on a noumenal level cannot be *expressed* sufficiently within the limits of phenomena. For this reason, human beings often try to "symbolize" their awareness of this reality with ceremonies like the handshake—or political theories, like the "social contract." Indeed, politics as a whole becomes open to this sort of symbolization in the process of what Voegelin called "transcendental representation."

There is twofold distinction that sets Kant apart, however. First of all, Kant is not content simply to explore the structure of moral reality *via* symbols (such as the "state of nature"), as the other contract theorists do, but insists on pushing through them to get back to the intuitive, metaphysical insights that the symbolisms attempt to express. Secondly, because he finds this metaphysical ground to be fundamentally moral, relational, and humane, he resists the temptation to seek its political implementation via the ideological-revolutionary activity that Voegelin finds so troubling (for good reason). Kant sees the fundamental rightness in the "existential representation" of states as they are currently organized, even if that current organization happens to be unjust phenomenally. The solution to the injustice is not found in

violent reorganization of the state into a more perfectly "transcendental" form, but rather in the very *Recht* that underlies its existence as a state *as such*.[166]

In this context, Kant's utilization of the symbol "state of nature" to represent human relationships on the noumenal level should come into clearer focus by now. His own category of "Private Right" should also be more clear—it is "private" in the sense of existing between individual humans considered "simply in terms of [their] humanity."[167] So while the putatively historical state of nature is a state we would, by right, be obliged to leave (if it ever existed), the theoretical state of nature is one which, in a sense, we *never* leave. It always exists, because it contains phenomenal politics within it:

> For in terms of their form, laws concerning what is mine or yours in the state of nature *contain the same thing* (*enthalten . . . ebendasselbe*) that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect [emphasis added].[168]

In other words, Kant's state of nature is intended to represent a rightful ordering of human relationships abstracted not so much from *government* as from empirical *phenomena*.

And it is for that reason that Kant resists thinking of the state of nature in literal terms. An empirically-existent anarchic state could tell us nothing about "the right of human beings as such," since anarchy has no correspondence to our awareness of what right relationships between human beings should look like. This right of humanity so supersedes any supposed "right" to consent in politics that Kant completely elides the conventional contract in his account of the

---

[166] In this sense, Kant's ideal "contract" can be aptly compared to Edmund Burke's "eternal contract," with its emphasis on the value of traditions as particular vehicles for universal truths and on the need for incremental, rather than revolutionary, improvements to the political and social structure.

[167] MM, 6:295.

[168] MM, 6:312-313.

transition, replacing it with a reiteration of the authorization to coercion drawn from the definition of *Recht* itself.

Ultimately, it is this *Recht*—and not consent as such—that is the justification and ideal standard for governments and political authority. Actual consent, whether past, present, or future, is rather beside the point. This fact seems to make Onora O'Neill's point, mentioned at the beginning of this chapter, that "Kant's basic justification of political institutions," along with his description of the social contract, "appeals to a quite different universal principle of justice" than consent.[169] We will end this section, therefore, with a look at §52, in the first chapter of Public Right, in which Kant discusses consent and the social contract with an eye towards his ideal form of government and how that may practically come about.

Kant begins §52 by declaring that "It is *futile* to inquire into the *historical warrant* of the mechanism of government, that is, one cannot reach back to the time at which civil society began." This is one of the standard criticisms of all social contract theory, and we have already explored the unique reasons why Kant believes this line of reasoning is "futile." But there are worse things than futility. He continues: "but it is *punishable* to undertake this inquiry with a view to possibly changing by force the constitution that now exists."[170] By "punishable," he does not mean merely imprudent, in the sense that one might risk being accused of treason for entertaining these thoughts. Kant is again thinking in terms of *Recht*: justifying revolution on the grounds of a 'right' to government by consent, derived from an alleged social contract, is punishable because "insurrection in a constitution that already exists overthrows all civil rightful

[169] O'Neill, 26.
[170] MM, 6:339-340

relations and therefore all right."[171] The desire or willingness to overthrow one's current constitution is the same as the attitude of one who would refuse to leave the state of nature to begin with. Both stances are subject to opposition through coercion in the name of *Recht*.

And yet, in this very same passage, Kant asserts his ideal that the constitution ought to "be reconciled with the idea of the original contract," and that if it is not currently so, it is the sovereign's responsibility "to change it, so as to allow to continue in existence that form which is essentially required for a people to constitute a state."[172] This approach may seem unnecessarily conservative to those who think kindly of radical opposition to political injustice, or who fancy themselves patriots of a nation founded on revolution, but it is not itself unreasonable. However, Kant goes on to claim that even the sovereign cannot force the constitution to change form entirely—as, for instance, from a monarchy to a democracy. That kind of radical change is not rightfully within the sovereign's power. "For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage."[173] This objection, which can only seem frustratingly pedantic to Kant's modern, liberal readers, can nonetheless be reconciled by remembering that Kant is fundamentally concerned with *Recht*, not consent *per se*.

A political order of *Recht* can be stated *in terms of* consent—that laws ought to be such that all people could consent to them—but it can be stated, and fulfilled, in other terms as well. Kant's fundamental insight is that human beings deserve a politics that respects and protects their freedom and the right of their humanity as such. Merely consensual politics, empirically

[171] MM, 6:340.
[172] MM, 6:340.
[173] MM, 6:340.

speaking, do not always fulfill that end—and, theoretically at least, the end could be fulfilled without recourse to much in the way of visible mechanisms of consent. Kant explains further in a passage that is worth quoting in full:

> "The different forms of states are only the *letter* (*Buchstabe*) (*littera*) of the original legislation in the civil state, and they may therefore remain as long as they are taken, by old and long-standing custom (and so only subjectively), to belong necessarily to the machinery of the constitution. But the *spirit* (*Geist*) of the original contract (*anima pacti originarii*) involves an obligation (*Verbindlichkeit*) on the part of the constituting authority (*Gewalt*) to make the *kind of government* suited to the idea of the original contract. Accordingly, even if this cannot be done all at once, it is under obligation to change the kind of government gradually and continually so that it harmonizes *in its effect* with the only constitution that accords with right (*rechtmäßigen Verfassung*), that of a pure republic, in such a way that the old (empirical) statutory forms, which served merely to bring about the *submission* of the people, are replaced by the original (rational) form, the only form which makes *freedom* the principle and indeed the condition for any exercise of *coercion* (*Zwanges*), as is required by a rightful constitution (*rechtlichen Verfassung*) of a state in the strict sense of the word. Only it will finally lead to what is literally (*auch dem Buchstaben*) a state."[174]

Notice once again Kant's use of the term "obligation," here connected with the "spirit" and the "idea" of the social contract, rather than with right directly. Even though people, as individuals or as subjects, cannot insist on a right to a consensual contract, their governments are "under obligation" to treat them as if one existed and, if the current constitution is not conducive to that end, to undertake changes in that direction. Until this is achieved, Kant claims—surprisingly, given all the foregoing—that the state is not "literally" a state "in the strict sense." He goes on to explain this statement in terms we should now find familiar. What he means by a "literal" state is one "in which *law* itself rules and depends on no particular person. . . . in which each can be assigned *conclusively* what is his."[175] Absent such a condition, "no absolutely

[174] MM, 6:340-341.
[175] MM, 6:341.

rightful condition (*kein absolut-rechtlicher Zustand*) of civil society can be acknowledged, but only *provisional* right within it."[176] Now, recalling the passages on property rights in the state of nature versus the juridical state, we can conclude the following. First of all, provisional right would nonetheless be *true right*—this is why even unjust constitutions must not be subverted. Challenging or overthrowing the state on the grounds that its right is not yet perfected is no better than claiming a right to steal another person's property in the state of nature because that person's ownership is not yet made conclusive by public law. Yet, because provisional right always "anticipates" its conclusion, states are under obligation to *leave* this condition of provisional right and make their way into a condition in which right is *conclusive*, that is, "in which *law* itself rules." A constitution under the rule of law Kant thus proclaims "the final end of all public right."[177]

Despite the fact that Kant declares *this* to be the "final end" of public right, the Public Right section of the *Rechtslehre* goes on, of course, for two more chapters. In the consideration of *Recht* in the international sphere in these chapters, we again see this language of provisional vs. conclusive right and the same logic with regard to the lack of any concept of *Recht* in a state of nature and the mutual obligation to leave it. While Kant grants that nations, naturally, have rights "*to go to* war" and certain rights "*in* war" itself, he also insists that nations have a right "to constrain each other (*einander zu nöthigen*) to leave this condition of war" altogether and form instead an association "that will establish lasting peace."[178] Until this happens, "any rights of nations . . . are merely *provisional*. Only in a universal *association of states* (analogous to that

[176] MM, 6:341.
[177] MM, 6:341.
[178] MM, 6:343.

by which a people becomes a state) can rights come to hold *conclusively* and a true *condition of peace* (*wahrer Friedenszustand*) comes about."[179]

The "state of nature" symbol, insofar as it is synonymous with "Private Right," is useful as an explorative tool for looking at relational rights which, although they would be merely "provisional" if lived out on this basis alone, are nonetheless true and in this way can be seen as they "really are." The state of nature understood either as the putative natural origin of human societies through the social contract, or as the situation in which nations must relate to each other in the international sphere, indicates "a condition that is not rightful." This non-rightful condition is one that human beings, whether individually or collectively as states, are obliged by Right to leave—because that Right exists on the basis of their very humanity. This explanation should suffice to answer the first two of the questions for this section—the philosophical usefulness of Kant's theoretical "state of nature" and the necessity of the coercive transition out of the "historical" one. This leaves only the question of whether Kant is really a contract thinker. As mentioned above, it would seem that Kant's mere usage of terms such as "state of nature" and "social contract" in the development of a doctrine not of consent, but of Right, is not sufficient to label him a thinker in the contractarian tradition. We will conclude this chapter with a response to that contention.

V. Conclusion

At the beginning of this chapter, we asked the question "What is Contract Theory?" and answered it with a number of criteria. In addition to the contract indicated by the label, several

[179] MM, 6:350. These passages will be discussed in detail in chapter four.

other elements were identified: the usage of a "state of nature," the centrality of the human person as understood through the lens of the state of nature, and the impulse to "ground," "legitimize," or "supplement" existing political regimes by connecting their immanent orders to an order of a more permanent, meaningful, and universal kind. Furthermore, we identified the way in which the contract theorists found the source of this meaningful, "transcendental" order within the state of nature and the human person as he supposedly existed in such a state. These elements are more than accidental characteristics common to a set of authors mulling the same set of problems, in response to the same types of political challenges, in roughly the same chronological era. They are, rather, as fundamental to the logic and purpose of contract theory as the contract itself. It is impossible to think coherently of a social contract without also thinking of a state *prior* to its execution, the characteristics of human beings in that state, with their specific motivations for executing the contract, and the whole structure of rational, moral, and psychological assumptions, implicit and explicit, that must underlie the necessity, form, and purpose of that contract.

According to these criteria, does Kant fit the definition of a "contract theorist"? Certainly he makes ample use of the "state of nature" as a vehicle for exploring the underlying moral structure of politics, as well as for understanding what human beings and their relationships truly are. Furthermore, he places these true, noumenal characteristics of the human at the center of his understanding of political *Recht*—it is *because* human beings have an awareness of the order of right in which they exist that they also have a moral claim to dignity and freedom and a political order that respects and protects these. But it cannot be denied that his handling of consent and

the social contract is marginal enough to question whether he belongs to a tradition bearing that label.

The more pertinent questions, for the purposes of this dissertation, are as follows. First, what reality, what moral truth, is contract theory seemingly attempting to express? Does Kant's philosophy grasp this underlying reality, even if in so doing he elides the actual contract as, ultimately, a symbol not worthy of the truth it is meant to represent? And finally, whether one thinks Kant was successful in this attempt or not, what has his transformation of the concepts of "state of nature" and "social contract" meant for the tradition and those who have made use of it?

The concept of political consent rests upon a number of assumptions about human beings—that they are rational, that they are capable of free choice, that they are aware of both moral obligation and their ability to choose to ignore such obligation, and that this awareness imparts a standard by which one knows how one ought to be treated and how one ought to treat others, assuming the same set of characteristics is equally true about them as well. All of the foregoing assumptions can be found within the political theories of the "classic" contractarian club. What sets Kant apart is the extent to which he identifies and explores these assumptions, which lie more or less implicit in other contract theories, and sum them up into a "right of humanity." For Kant, the essential thing is not *merely* rationality, not *merely* capacity for choice, not *merely* moral awareness, but the human ability to choose to do what is right regardless of circumstance or incentive. This ability entails the foregoing characteristics, and *requires* freedom in order to operate—but it is the ground for the right to freedom (and equality, independence, political participation, etc.), not vice versa. In other words, consent contains

within itself something true enough about human beings for it to be a powerful moral standard for just politics, but *that* something, *that right*, is the real ground of politics and *not consent as such*. Why should human beings be allowed to consent freely to their political circumstances? Because human freedom is essential to human moral choice, and this capacity to choose is what gives humans dignity.

The difference between emphasizing consent via the social contract versus emphasizing the moral capacity and dignity of human persons that grounds consent, as symbol or practice, may seem insignificant. Returning to our previous discussion of "transcendental representation," we could say it is analogous to the difference between insisting that the king is a god (because political order must represent divine order), and simply reflecting on the necessary connections between politics and ethics. Again, this might not seem like much of a difference, but, on the other hand, it reminds one of the difference between Socrates and his accusers.

Ultimately, it is the contention of this dissertation that Kant's "universal principle of justice," his concept of *Recht*, is *not* wholly different from his understanding of contract and consent. Rather, it is the principle that underlies consent, that gives content to its form, and that demonstrates why consent *is right*. For this reason, it seems entirely fitting not only to consider Kant as a member of the contractarian tradition, but to compare his political philosophy with the contractarians who preceded him and, then, to ask what his transformation means for those who came after him, who would borrow the ideas of the state of nature and the social contract. This is the task of the following chapters.

CHAPTER TWO: RIGHT, COERCION, AND HUMAN DIGNITY

Chapter one argued that Kant can legitimately be considered a contract theorist based on his use of the "state of nature" concept, his emphasis on "the right of human beings" as the true end of politics, and the fact that his theory logically concludes in the political republic, the embodiment of the consensual ideal. This conclusion was based on the argument that Kant's exploration of the metaphysical first principles of politics, under the guise of a theoretical "state of nature," reveals and interrogates the implicit assumptions underlying most contract theory. Ultimately, it is the position of this dissertation that Kant's theory is not only more honest in recognizing those underlying assumptions, but is also more successful in investigating and explaining the moral realities they represent and aspire to politically.

Chapter one left us with the following agenda: to compare Kant's political philosophy with other theorists in the contractarian tradition, in order to explain what his contributions have meant for the tradition and for those who have made use of it, specifically within the field of international relations. In order to do that, we will first return to a matter raised but not resolved in that chapter. This has to do with the difference between Kant's *theoretical* state of nature, the abstract, noumenal placeholder for discussing rightful human relationships as abstracted from concrete phenomena, and the *putative* state of nature that he discusses, and ultimately rejects as incompatible with Right, in §41-44 and elsewhere. Which one of these notions *is* the "Kantian state of nature"? What is the relationship between the two of them?

The resolution of this question is necessary because the emphasis of this dissertation as a whole lies more strongly on a consideration of the *state of nature* and the *metaphysical assumptions or pre-conditions of politics* than on the contract as such. We considered the contract in detail in chapter one in order both to answer the question of whether Kant is a

contractarian theorist and to follow Kant's philosophical logic to its final conclusion in the consensual, republican state. However, except insofar as the contract comes to bear upon a discussion of the state of nature, the focus of this discussion belongs primarily on the state of nature rather than the social contract *per se*.

Certainly the field of international relations has borrowed much more from the concept of the state of nature than the social contract, in order to describe the "anarchic" situation in which states exist with regard to each other. And whereas other contractarians appeal to this international anarchy to justify their descriptions of a putative state of nature for individual human beings, interestingly Kant is the only one who takes the logic of the social contract, of the necessity of moving *out* of the state of nature, and applies it to states in the anarchical international sphere as well. The details of Kant's thought in this regard will be covered in later chapters; at this point, it is necessary to return to the state of nature in the *Rechtslehre* in order to complete the argument for Kant's philosophical superiority vis-à-vis the other contract theorists.

The argument will be constructed by examining three important characteristics of Kant's state of nature: property rights, the relationship between freedom and coercion, and the nature of the human person. Chapter two will compare Kant's development of these concepts to similar ideas in the works of John Locke and, especially, Jean-Jacques Rousseau, who was a major influence on Kant's political and moral thought. Chapter three will continue the analysis by way of contrast with Thomas Hobbes, whose memorably dour description of man's natural state provides the basis for so much 20th-century international relations theory.

The three elements this chapter will discuss—property, freedom, and the human person—are all ultimately interrelated. We will attempt to separate them in order to discuss each with

some semblance of systematicity, but it is good to recognize at the outset that, in the case of all three philosophers, the assumptions and assertions comprising each topic rely on the others for coherence.

I. Property and Right (contra Locke)

Property is, at first glance, a strange starting point for a discussion that intends to conclude in an understanding of the human person. It may seem especially curious to those used to hearing Jefferson's reformulation of inalienable human rights, in which he substituted "the pursuit of happiness" for the classic right to property. However, all of the major theorists of the contractarian tradition dealt with questions of property in the context both of the state of nature and the civil state, and Locke, Rousseau, and Kant, in their own ways, all regard property as an impetus for man's quitting the state of nature. (Hobbes is unique in this regard—he denies that any notion of property could exist in a state of nature—and for this and other reasons, the discussion of his philosophy vis-à-vis Kant's will be taken up separately in chapter three.) Furthermore, the question of property is fundamental to a discussion of international relations, as claims to territorial possessions and sovereignty of borders, as well as the execution of international trade, all rely on coherent and universally recognized concepts of rights to property, ownership, and use.

Kant's essential logic regarding "provisional" property rights in the state of nature and their relationship to "conclusive" rights in civil society was covered in chapter one. Here, we will look more closely at the relationship between property, coercion, freedom, and Kant's understanding of human beings. Kant himself made these connections clear when he claimed

that rights to property carry "with them a right to constrain everyone with whom we could have any dealings to enter with us into a constitution in which external objects can be secured."[1] Already in this sentence, we see Kant making the connections we intend to explore in this chapter: between property, freedom, coercion, and the persons involved. Again, the basic logic of these assertions was already discussed in chapter one, but here can ask a different question: why base this argument on property? What is it about property rights as such that can take us from the mundane world of *things* people own and use, to the ideal, metaphysical realm of Right which underlies, orders, and requires the political state?

We will begin the answer this question by way of comparison with John Locke's treatment of property in the *Second Treatise of Government*. Locke, perhaps even more so than Kant, gives property a central place in his political theory. His 'labor theory of value' and assumptions about ownership of the body are ideas that remain as influential as his doctrines of government by consent and separation of powers. In many ways, Locke's complex, sociable state of nature, his republican civil state, and—arguably, according to certain interpretations—even his social contract bear some similarities to Kant's.[2] For all these reasons, a comparison between the two is worth undertaking.

Ultimately, despite certain surface similarities, the comparison demonstrates the extent to which Locke failed to clarify foundational philosophical assumptions which Kant explored in depth. Thus, his description of man's state of nature, while appealing in many respects, fails to provide a strong normative ideal for either individual or international political cooperation.

---

[1] MM, 6:256-257.

[2] See Jeremy Waldron, "John Locke: Social Contract vs. Political Anthropology," in *The Social Contract from Hobbes to Rawls*, edited by David Boucher and Paul Kelly (New York: Routledge, 1994), 61-65.

Locke assumes, as Kant later does as well, that the state of nature is opposed not to the social, but merely to the civil organization of mankind. Indeed, Locke considers a wide variety of aspects of normal human life—including marriage and childrearing, making and enforcing promises, commerce up to and including the customary use of money, and the punishment of evildoers—explicitly under the auspices of the state of nature.[3] Furthermore, Locke would agree with Kant that the state of nature "need not be a state of *injustice*,"[4] as he distinguishes clearly between the state of nature and both the "state of war" and the "state of license."[5]

Of the state of war, Locke says that this comes about only when one "declaring by word or action [a] settled design upon another man's life puts him in a state of war with him against whom he has declared such an intention."[6] Likewise, and more to Locke's particular purposes, "he who attempts to get another man into his absolute power does thereby put himself into a state of war with him."[7] In contrast, Locke defines the state of nature as "a state of peace, goodwill, mutual assistance, and preservation" in which "men liv[e] together according to reason without a common superior."[8] Thus, the Lockean state of nature is *not*, by necessity, a state of war.

Furthermore, although Locke describes the state of nature as "a state of perfect freedom," he qualifies this assertion by insisting that that freedom exist "within the bounds of the law of Nature."[9] It is this law, Locke believes, that prevents the state of nature from being necessarily a

---

[3] John Locke, *Second Treatise of Government* (New York: Barnes & Noble Books, 2004). Family, Ch. 6; commerce, Ch. 5, §40-51 and money, §50; punishment Ch. 2, §6-12; promises, Ch. 2 §14. Citations hereafter will refer to chapter and paragraph number.

[4] MM, 6:312; of course, Kant immediately goes on to clarify that it is only so because it is "a state *devoid of justice*" entirely.

[5] Locke, Ch. 3, §19; Ch. 2, §6.

[6] Ibid., Ch. 3, §16.

[7] Ibid., Ch. 3, §17.

[8] Ibid., Ch. 4, §19.

[9] Ibid., Ch. 2, §4.

state of war:

> But though this be a state of liberty, yet it is not a state of license; though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it. The state of Nature has a law of Nature to govern it, which obliges every one, and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign Master, sent into the world by His order and about His business; they are His property, whose workmanship they are made to last during His, not one another's pleasure.[10]

Locke's sanguinity regarding the governing efficacy of natural law and reason over the incorrigible passions and crooked inclinations of humanity has long been a source of criticism, and the contrast between his assertions in this passage and Kant's argument that the state of nature is a state "devoid of justice"—that is, it is indeed a state of license and nothing else—are only too clear. One may observe a certain congruence in the insistence that freedom be limited to "the bounds of the law of Nature" (Locke) or "accordance with a universal law" (Kant), but again, for Kant, that universal law contains an *obligation* to join political society and exercise one's freedom under not a natural but a civil law. Locke makes no argument, here or in his discussion of the social contract, that such a precept is contained in his law of nature. Given that Locke offers little beyond an appeal to "reason" in support of his contentions, it seems almost unfair to press the contrast any further. The philosophically interesting thing in this passage, for our purposes, is that this is where his argument on property begins.

Locke describes people here as the "workmanship" of God; "they are His property" and are made in order to go "about His business." In this context, these assertions comprise a portion of his argument for why people in the state of nature ought not to harm each other—and ought to

[10] Locke, Ch. 2, §6.

know they should not harm each other—but his argument for private property follows a parallel structure. In Chapter 5 of the *Second Treatise*, "On Property," Locke begins by conceding that, originally, God gave the earth and everything in it "to mankind in common."[11] He also notes, somewhat derisively, that "it seems to some a very great difficulty how any one should ever come to have a property in anything" in particular. Certainly Kant believed the question was sticky enough to require a detailed metaphysical exploration. Locke, however, seems less bothered by it, if only because he believed the question raised greater difficulties for his paternalist, monarchical political adversaries than for his own logic and aims.[12] However, he does attempt an explanation on his own terms.

Following the logic described above, Locke asserts that God has given people both the world of physical things as well as the "reason to make use of it to the best advantage of life and convenience"—perhaps the "business" of God he had in mind previously.[13] Life and the going about of business both require, at a minimum, bare survival; survival requires nourishment in the form of food, which is seemingly a kind of property.[14] Possession of *this* much of property must at least be possible because its use causes it to be joined to the user's body: it becomes "a part of him."[15] Locke bases this line of argument on the assertion that "every man has a 'property' in

---

[11] Locke, Ch. 5, §24.

[12] "If it be difficult to make out 'property' upon a supposition that God gave the world to Adam and his posterity in common, it is impossible that any man but one universal monarch should have any 'property' upon a supposition that God gave the world to Adam and his heirs in succession, exclusive to the rest of his posterity." But, generously, Locke says he "will not content [him]self" with this riposte but will try to supply his own answer to the question of how possession is possible as well (Ch. 5, §24).

[13] Ibid., Ch. 5, §25.

[14] For the way in which a medieval dispute over this exact line of logic—with regard to Franciscan monks who had taken vows of poverty but, obviously, still needed to eat—framed and continues to influence discussion of property rights in the west, see Brian Tierney, *The Idea of Natural Rights* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 2001), especially "Part II: Ockham and the Franciscans," 93-203.

[15] Locke, Ch. 5, §25.

his own 'person.' This nobody has any right to but himself."[16] Thus, the joining of a piece of food to the body of a person, as is required "for the support of his life," is both a rightful termination of any other person's claim to that property and a rightful privatization of an item from the common store.[17]

It is worth mentioning at this point that Locke's assertion that everyone rightfully and self-evidently possesses his own body and person is not philosophically uncontroversial, however commonplace it may seem in the 21st century. Hobbes denied the possibility of *any* mutually-recognized claims to property in the state of nature and explicitly included the human body in this assertion.[18] On the contrary, Locke claims, but does not justify, that a person's body should be the exception to the general rule of common property in the state of nature. In fact, Locke's formulation claims that "every man has a 'property' in his own 'person,'" which seems to treat not only the body, but also the self as a kind of property.

Of course, Locke has already reduced the human person to a kind of property—God's property, his "workmanship," whom no other person has a right to violate.[19] And just as men are

---

[16] Locke, Ch. 5, §26.

[17] Ibid., Ch. 5, §25.

[18] "And because the condition of Man . . . is a condition of Warre of everyone against everyone . . . It followeth, that in such a condition, every man has a Right to everything; even to one anothers body." Thomas Hobbes, *Leviathan: Or, The Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civill* (New York: Barnes & Noble Books, 2004), 79 (Ch. XIV).

[19] Eric Voegelin considers both of these assertions by Locke—that man is God's property and that man has a property in his own person—both silly and tragic. "The appearance of man as the proprietor of his person would have fascinated Hobbes if he had lived to witness it. He might have classified it as a variety of madness similar to that of the man who believes himself God. The history of political thought does not offer an attack on the dignity of man comparable to this classification of the human person as a capital good, to the undisturbed economic use of which one has a natural right. . . . The blunt assertion that man is an instrument of economic production, that man has a property right in his living body just as in 'the labor of his body' and 'the work of his hands' . . . is an assertion that is difficult to reconcile with the traditional picture of Locke—ascribed to by many excellent authorities—as not only deeply religious but also particularly sensitive to human dignity" (147-148, emphasis added). And Voegelin finds it unconvincing that Locke derived this view of man from a belief in a proprietor-God, but thinks the reverse was more likely: "Man is a proprietor who watches over his own property and recognizes his duty not to damage

God's property because they are the work of his hands, so a man can have property of lesser things that are the products of *his* workmanship:

> The "labour" of his body and the "work" of his hands, we may say, are properly his. Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For this "labour" being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good left in common for others.[20]

Returning to analogy of food, Locke goes on to ask whether it is really the consumption, the irrevocable joining to his body, that makes the food the property of the eater, or whether it did not become property at some earlier event such as their cooking, storing, or collecting? Locke concludes that "if the first gathering made them not his, nothing else could. That labour put a distinction between them and the common. That added something to them more than Nature . . . and so they became his private right."[21]

This, essentially, is Locke's answer to the question of, in Kant's terms, how "rightful possession of an external object" is possible.[22] If one assumes that the "internal" self, against which the "externality" of objects is defined, is rightfully "owned" by that internal self, and that the labor it directs and effects with its body is also rightfully owned, then any external object that becomes "mixed" with that labor becomes owned by the owner of the labor. The explanation is elegant enough in its common-sense simplicity, but that apparent elegance comes rather at the

---

anybody else's, and God is formed in his image. The seventeenth century has produced a curious assortment of Gods. For Grotius, God was a roving merchant who wants all men to keep commercial intercourse over the seven seas; for Hobbes, he was the Leviathan sitting on the proud; for Louis XIV, a king with a court; for the profoundly religious Locke, he is a manufacturer who does not want his property to be damaged" (147). All quotes from *The History of Political Ideas, Vol. VII*.

[20] Locke, Ch. 5, §26.

[21] Ibid., Ch. 5, §27.

[22] MM, 6:249.

expense of philosophical rigor. It also does not answer the question of why the political apparatus should be based upon property, although it unquestionably is for Locke:

> The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property; to which in the state of Nature there are many things wanting.[23]

> The[se] inconveniencies that they are therein exposed to . . . make them take sanctuary under the established laws of government, and therein seek the preservation of their property. . . . And in this we have the original right and rise of both the legislative and executive power as well as of the governments and societies themselves.[24]

Thus, while Locke's political thought comes closest to Kant's, out of all the most prominent contractarians, in being so explicitly based on property, the transition he imagines out of the state of nature is consensual and prudential, rather than obligatory. There are, however, other ways of understanding Locke's contractarianism.

Jeremy Waldron argues that the *Second Treatise* can be read as offering two intertwined narratives: one, "the classic story of the state of nature [and] the social contract," and the other a political anthropology describing all human history in terms of incremental, often unconscious, certainly unrecorded, moments of consent.[25] According to this second story, the "contract" simply becomes something like an idealized generalization of the "framework" or "continuum of consent" which we find in the anthropological history, moments of absolutist interruption notwithstanding.[26] In other words, "The point of the social contract story is to provide a moral template to be placed over historical events and over our present predicament, for the purpose of

---

[23] Locke, Ch. 9, §124.
[24] Ibid., Ch. 9, §127.
[25] Waldron, "John Locke," 52.
[26] Ibid., 61.

ascertaining what it is right and wrong for us and our political rulers to do."[27] This begins to sound like Kant's theoretical, hypothetical, or modal contract; the subtle but significant difference, however, is that Locke is still attempting to derive this "framework" or "moral template" from history as it actually happened, or at the very least treat it as a theory whose validity is derived from application to historical test cases,[28] while Kant insists on deriving his ideal consensual framework solely from metaphysics, *not* historical phenomena.

The same critique applies to his description of property. Locke seems to think he has done a good job overcoming the "very great difficulty" of explaining how possession is possible, but all he has done is to offer a speculative, if detailed, account of how rights to property might have *come about*, without really answering the question of how rightful possession of an external object of choice is *possible* in the first place. Rather, Locke *assumes* intelligible possession is possible, and then describes how the possibility becomes realized. In other words, he offers a mechanistic answer to a metaphysical question. And unfortunately for him, the whole logic of the exit from the state of nature derives from this account of property and is, in the end, done largely for the sake of property so defined. If Locke's treatment of property is philosophically unsatisfactory, so is his contract—regardless of whether he meant it literally or only hypothetically. Waldron's otherwise compelling account of the "two stories" layered within the *Second Treatise* does not take this problem into account.

Some have accused Locke of writing propaganda on behalf of the partisans of the

[27] Waldron, "John Locke," 63.
[28] Ibid., 65.

Glorious Revolution.[29] Others see in the *Second Treatise* a half-baked popular "philosophy" circularly derived from and meant to justify the capitalist prejudices of Locke's middle-class milieu.[30] Both of these positions view Locke's treatment of property rights as, essentially, a pseudo-intellectual attempt to justify a plainly self-interested political position. However, even in the more generous (and more likely) case that Locke was at least trying to write a work of bona fide theory (if not philosophy per se), it cannot be denied that several important questions about the concept of property, on which his entire ideal political structure is based, are rather glossed over.[31]

Kant, on the other hand, begins his approach to the question of property by taking the

---

[29] See Martyn P. Thompson, "Locke's Contract in Context," in *The Social Contract from Hobbes to Rawls*, edited by David Boucher and Paul Kelly (New York: Routledge, 1994), 73-94. Thompson's article is a response to Richard Ashcraft's assertions, in *Revolutionary Politics and Locke's 'Two Treatises of Government'* and elsewhere that the "*Two Treatises* was nothing but propaganda" (90).

[30] Eric Voegelin views much of the most influential aspects of the *Second Treatise*, such as "the contract formula," as having "controversial function only," which is not a far cry from calling them propaganda (137). Like Thompson, he notes that the "contract gently disappears in sec. 112 and is reduced to 'consent,' tacit or explicit" (138). But Voegelin does not see a coherent theory here so much as a reflection of Locke's personal prejudices: "The contract as such is quite unimportant; what matters are the actual relations between the monarch and the people, which must be found satisfactory upon 'examination'; if Locke as the spokesman of the people has examined them and found them good, they are said to enjoy the people's 'consent'" (138). Likewise, Locke's description of separated and limited government Voegelin calls "the type of governmental structure that wins Locke's approval" (138). As with his governmental structure, Locke (according to Voegelin) described what he knew and approved of. Contrary to Hobbes, who "tried to pierce through to the existential roots of this strange new animal, the modern man," Locke "was satisfied with a description of man as he appeared to him and the average people of his social group." In other words, Locke took "the victorious Puritan bourgeois" as the archetype for man as such. While this approach "may appear to the philosopher as the unbearable flatness of Locke," he nevertheless truly "grasped the essence of the type [of man] that determined the following centuries of English politics" and described this "new man as the new man wanted to see himself" (141). All quotes from *The History of Political Ideas, Vol. VII*.

[31] Martyn Thompson's article, "Locke's Contract in Context," described above, concludes that Locke's *Second Treatise* "hovers between the universal systematizing impulse of philosophical inquiry and the practical political engagement of propaganda. It is a work of political theory—a work which, in its ambivalences and incoherencies, corresponded exactly to that liberal attitude which is suspicious of 'total, holistic' views of the world but which nonetheless has faith in a number of political doctrines designed to have an impact on practical policy. . . . If the *Second Treatise* were just propaganda, it would have been very bad propaganda, as Locke himself could hardly have escaped noticing. . . . Yet the *Second Treatise* did *not* contain a philosophical inquiry. It contained an argument which climbed to certain theoretical heights and then dipped back down again, especially at the end, to the specifics of English constitutional conflicts" (90-91).

"very great difficulty" considerably more seriously than Locke. First, he separates the questions of "How to *Have* Something External as One's Own," the title of the first chapter of the *Rechtslehre*, and "How to *Acquire* Something External," the title of the second chapter, thus clearly differentiating the metaphysical and mechanical aspects of possession. Then, to answer the first question, he distinguishes between "empirical possession," such as holding a fruit in one's hand (or plucking it off a tree, taking it home, or eating it, to use Locke's examples), and "rational" or "*merely rightful* possession," by which he means the concept of owning the apple regardless of the physical proximity of apple and owner.[32] "Only if I can say that I possess it even though I have put it down, no matter where," can the possession be understood as more than physical—and therefore, as rightful.[33] However, Kant makes it clear throughout this discussion of definitions that, while empirical, physical possession is simple enough to determine (I am either holding a thing or I am not), and while the distinction between the two types of possession is also plain, the *possibility* of rational, rightful possession has yet to be demonstrated:

> The question: how is it possible for *something external to be mine or yours?* resolves itself into the question: how is *merely rightful* (intelligible) *possession* possible? and this, in turn, into the third question: how is a *synthetic a priori* proposition about right possible?[34]

The question is *a priori* because "all propositions about right are *a priori* propositions," and it is synthetic because it cannot be derived from empirical data.[35] Kant demonstrates this possibility—which by no means establishes proof of actuality—by showing the absurdity of impossibility: "a maxim by which, if it were to become law, an object of choice would *in itself*

---

[32] MM, 6:246-247.
[33] MM, 6:247.
[34] MM, 6:249.
[35] MM, 6:249-250.

(objectively) have to *belong to no one* (*res nullius*) is contrary to rights. . . . 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."[36] In other words, it is a principle which, being at least *not impossible*, must be assumed in order for practical reason—including morality, law, and politics—to operate. Kant goes on to say that this situation should not be particularly surprising, since the concept of rational, rightful possession is derived from the postulate of freedom, which cannot be proven, either.[37]

However unsatisfactory this may be, at the very least we can see that Kant understands the extent of the "very great difficulty" in a way that Locke simply does not. Furthermore, Kant sees how the difficulty exists not only in the theoretical realm of metaphysical postulates, or even in the question of the historical development of property rights and inequality in which Locke was absorbed, but also in its application within the lives of real people. Inherent in the concept of rational possession—a "having" as opposed to simply "holding"—is the fact that such possession is really a form of "lawgiving . . . since by it an obligation (*Verbindlichkeit*) is laid upon all others, which they would not otherwise have, to refrain from using the object."[38] This is not an inconsequential act, as legal scholar Arthur Ripstein explains:

> The act of acquiring a piece of property is something that one person does on his or her own initiative, which changes the normative situation of others. Acts that were formerly permissible are now forbidden: if you acquire a piece of land, I can no longer use or interfere with it. Whether the act of acquisition places those others under an obligation or only a presumptive obligation, or simply authorizes the appropriator to exclude others

---

[36] MM, 6:46-247.

[37] MM, 6:252: "No one need be surprised that *theoretical* principles about external objects that are mine or yours get lost in the intelligible and represent no extension of cognition, since no theoretical deduction can be given for the possibility of the concept of freedom on which they are based. It can only be inferred from the practical law of reason (the categorical imperative) as a fact of reason."

[38] MM, 6:253.

> from the thing acquired, it is a unilateral act through which one person changes the normative situation of another.[39]

Property rights and claims do not arise and cannot be exercised in a vacuum. In a sense, it is impossible for rights ever to be truly "individual," as the essence of every purported right is a kind of law that applies to everyone *but* the one who makes it. An individual's claims to ownership of property *always* "change the normative situation of others." This is not a side-effect of rights claims—a chance byproduct of "mixing" one's labor with the free stuff of earth—this is what rights claims *are*. The challenge that Kant must address is how to reconcile this unilateral lawgiving with the postulate of freedom, upon which it is based, and with the concept of *Recht* which limits freedom to compatibility with universal law. This very great, very difficult problem is one Locke is operating *within* as he attempts to rebut the objection that a person could claim private property out of the common store without "the express consent of all"—that is, unilaterally—but it is one he ultimately fails to address directly.[40]

There are two other aspects of Kant's discussion of property rights to point out before we discuss how he comes to reconcile property with freedom and, finally, why he places property rights at the foundation of his political logic. The first of these is the *relational* aspect of claims to property in the sense of rational, rightful possession. We discussed in chapter one how Kant goes so far as to define property rights as a relation, rather than a concept: "possession is nothing other than a relation of persons to persons."[41] The relational aspect, in this sense, is implicit in the rights claim that "changes the normative situation of others," but is given more nuance in

---

[39] Arthur Ripstein, *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), 90.

[40] Locke, Ch. 5, §27.

[41] MM, 6:268.

Kant's detailed exploration of the kinds of things a person can rightfully possess: besides the obvious category of physical items, he also lists "another's *choice* to perform a specific deed" and "another's *status* in relation to me."[42] The former includes promises and contracts; the second Kant also defines as "rights to persons akin to rights to things."[43] Kant's inclusion of these aspects of "possession" reveals the intrinsically communal nature of the entire concept—indeed, when explaining the domestic relationships under the category of "rights to persons akin to rights to things," he emphasizes again that "what connects them is a relation *in terms of rights* (*ein rechtliches Verhältniß*)."[44]

The "akin" qualifier is utterly important, however; Kant's prohibition on treating people as means rather than ends, developed in the *Fundamental Principles of the Metaphysics of Morals*, carries over into the *Rechtslehre*. For instance, in considering sexual activity in marriage—a case of a "right to a person akin to a right to a thing"—Kant claims that this act is only possible under the condition "that while one person is acquired by the other *as if it were a thing* (*gleich als Sache erworben wird*), the one who is acquired acquires the other in turn; for in this way each reclaims itself and restores its personality."[45] Otherwise, the act forces a person to "mak[e] himself into a thing, which conflicts with the right of humanity in his own person (*dem Rechte der Menschheit an seiner eigenen Person widerstreitet*)."[46] This "right of humanity in his own person" shows that the prohibition on treating a person as a thing or a means applies to oneself as much as to other people. This was demonstrated in chapter one, in the discussion of

---

[42] MM, 6:247.
[43] MM, 6:276: *Von dem auf dingliche Art persönlichen Recht*.
[44] MM, 6:254.
[45] MM, 6:278.
[46] MM, 6:278.

Kant's reformulation of the three classical Ulpian legal principles, the first of which is "*Be an honorable human being*," or "Do not make yourself a mere means for others but be at the same time and end for them."[47] In a later passage that seems pointed almost directly at Locke, Kant claims that "someone can be his own master (*sui iuris*) but cannot be the owner *of himself* (*sui dominus*)(cannot dispose of himself as he pleases)—still less can he dispose of others as he pleases," and this, once again, because "he is accountable to the humanity in his own person.[48] We will return to this discussion of the "right of humanity" in the last section of this chapter; for now, it is sufficient to point out its operation within Kant's discussion of property rights and the extent of the contrast this creates with Locke's individualistic account.

The second aspect is related to the first: in order for an intelligible principle of reason like "possession" to exist in a relationship between people, *both* people in the relationship have to *recognize* the act. This aspect of recognition is, in a sense, the acceptance by one person of the other person's "change to the normative situation" in which they all exist. This dependence of one person's free choice on another person's recognition is an important part of the "very great difficulty"; Hobbes, for instance, is canny enough to note the existence of the problem (although he gets around it, unsatisfactorily, by simply denying that any recognition of other people's

[47] MM, 6:236.

[48] MM, 6:270. On the previous page, he also takes aim at the Labor Theory that Locke developed from the idea that a person owns himself and his labor, but from a different direction. Kant's terminology regarding categories of rights is very precise: there are rights *to things*, rights *against people*, and rights *to people* (akin to rights to things). Kant does not use, and does not think there can be, a category of rights *against things*; he believes the Labor Theory makes the error of assuming such rights are possible. "It is hard to assign any other cause for that opinion . . . than the tacit prevalent deception of personifying things and of thinking of a right to things as being a right *directly* against them, as if someone could, by the work he expends upon them, put things under an obligation to serve him and no one else; for otherwise people would probably not have passed so lightly over the question that naturally arises . . . 'How is a right to a thing possible?'"

rights could exist in the state of nature).[49] Locke explains how one person's action—labor—can establish a claim to the object of that labor, but he never explains how *other people* come to recognize that claim as legitimate. He assumes that they do—his irenic state of nature, so starkly contrasted to Hobbes' world of "nasty, brutish, and short," depends on it—but he does not justify the assumption.

Kant, in contrast, recognizes the centrality of mutual recognition to the concept of property rights and the complexity of the relational situation that recognition entails, as well as the difficulty in expressing all of this terminologically. Indeed, he goes so far as to deconstruct his own terminology of a "right to a thing" as comically implying "my right as if it were a *guardian spirit* accompanying the thing, always pointing me out to whoever else wanted to take possession of it and protecting it against any incursions."[50] He thus re-starts his explanation the same point at which Locke began—the possession of all things in common—and re-defines property right as "a right to the private use of a thing of which I am in . . . possession in common with all others."[51] Once again speaking metaphysically, and therefore atemporally, in contrast to Locke's historical explanation, Kant claims that

> this possession in common is the only condition (*Bedingung*) under which it is possible for me to exclude every other possessor from the private use of a thing . . . since, unless such a possession in common is assumed, it is inconceivable how I, who am not in possession of the thing, could still be wronged by others who are in possession of it and are using it. – By my unilateral choice (*einseitige Willkür*) I cannot bind (*verbinden*) another to refrain from using a thing, an obligation (*Verbindlichkeit*) he would not otherwise have; hence I can do this only through the united choice of all (*vereinigte Willkür Aller*) who possess it in common.[52]

---

[49] Hobbes, *Leviathan*, 78-80.

[50] MM, 6:260. He concludes, generously, that although it is "absurd" to think of rights in this way, "it may be permissible, if need be, to make this rightful relation perceptible by picturing it and expressing it in this way."

[51] MM, 6:261.

[52] MM, 6:261.

Thus, that "unilateral act through which one person changes the normative situation of another," quoting Ripstein, can only take place within a context in which, as it were, the possibility of such unilateral actions has already been authorized by "the united choice of all" who "possess" or, we might say, interact with external objects "in common." Here we may return to the question that began this section—why base politics on property?—and see how thoroughly Kant has answered it. Once again using the construct of a "state of nature" to discuss rights abstracted from physical objects, historical time, and actual legal structures, Kant is able to locate rights to property not in the object, nor in the unilateral free choice, nor in the labor of any person's hands, but in the *relationships* between human beings who share the world in common. Not only is this understanding not incompatible with the civil state (as an intellectual hurdle to overcome in the exit from a state of nature), it is finally only *possible* in a civil state, where rightful relationships can be ordered by law and enforced in courts of justice. The civil state is the logical necessity for a world held in common by people who exist relationally, but who are able to make private use of things rightfully according to Kant's ethical postulates.[53] Locke's social contract and civil state is "based on" property in the sense that a prudential concern to preserve unfettered access to those objects to which one has staked a private claim is the motivation for leaving the state of nature and establishing a legal system. By contrast, Kant's legal system is based on an awareness of the complex web of human relationships and obligations, the intrinsically communal nature of rights, and, most importantly, the humanity of

[53] MM, 6:268: "Now, if these sensible conditions of possession, as a relation of a person to *objects* that have no obligation, are left out or disregarded (abstracted from), possession is nothing other than a relation of a person to persons, all of whom are *bound* with regard to the use of the thing, by the *will* of the first person, insofar as his will conforms with the axiom of outer freedom, with the *postulate* of his capacity to use external objects of choice, and with the *lawgiving* of the will of all thought united as *a priori*."

the actors involved. The need for politics, like right itself, is ultimately found not "in" property or even in possession as a rational concept, but in the relations between human beings that a metaphysical investigation of property reveals. Thus Kant simultaneously reveals and overcomes one of the fundamental problems with the concept of an anarchical state of nature: to attempt to understand man and his most essential rights as if he were outside of this web of obligation and mutual recognition is to fail to understand at all.

However, it must be conceded that, on this point at least, Kant's ideas are not entirely original. The influence of Rousseau's thought on Kant's moral philosophy generally has been well established,[54] but the intellectual lineage is particularly apparent in these passages. We have already seen Kant's emphasis on a "united choice of all" in the quote given above; in several passages surrounding that quote he also refers to the same concept with the terms "will of all united" and "general will."[55] Since the general will was one of Rousseau's most famous concepts—and one essential to his own discussion of the state of nature and the social contract—at this point we will turn to Rousseau's account of property to assess the extent of this intellectual relationship.

Rousseau's answer to the question "why base politics on property?" is essentially *not to*:

---

[54] See Richard Velkley, *Freedom and the End of Reason: On the Moral Foundation of Kant's Critical Philosophy* (Chicago: University of Chicago Press, 1989); Susan M. Shell, *The Rights of Reason: A Study of Kant's Philosophy and Politics* (Toronto: University of Toronto Press, 1980), especially Ch. 1, part 2; and J.B. Schneewind, "Autonomy, Obligation, and Virtue: An Overview of Kant's Moral Philosophy," in *The Cambridge Companion to Kant*, edited by Paul Guyer (Cambridge: Cambridge University Press, 1992), 314. Riley, in *Kant's Political Philosophy* (6-7, 15-17, 99, inter alia), and Howard Williams, in his *Kant's Political Philosophy* (185-186), also mention the fact of this influence.

[55] See, e.g., "the *rational title* of acquisition can lie only in the idea of a will of all united *a priori* (necessarily to be united) (*eines a priori vereinigten (nothwendig zu vereinigenden) Willens Aller*)" (MM, 6:264), "will can justify an external acquisition only insofar as it is included in a will that is united *a priori* (i.e., only through the union of the choice of all (*Vereinigung der Willkür Aller*) who can come into practical relations with one another) and that commands absolutely" (6:263), "*Appropriation* . . . as the act of a general will (in idea) giving an external law through which everyone is bound to agree with my choice" (6:259).

politics is only "based on" property in what Rousseau describes, in the *Discourse on Inequality*, as an unfortunate historical accident: "The first man who, having enclosed a piece of ground, to whom it occurred to say *this is mine*, and found people sufficiently simple to believe him, was the true founder of civil society. How many crimes, wars, murders, how many miseries and horrors Mankind would have been spared," had this "first man" been thwarted or his realization prevented.[56] The more important task for Rousseau, in this volume at least, is to expound the original state of nature in which there was no private property nor any need for such. Private property is the basis of inequality, which is itself the basis of the corruption, decadence, and human misery Rousseau lamented in the political society of his day, while man in Rousseau's state of nature was in a state of profound equality.[57] Rousseau believed that any reformation of social corruption or amelioration of the human misery resulting from inequality would have to take place based on an understanding of pure, uncorrupted human nature, which he took it upon himself to reveal in his writings.[58]

For this reason, the reformed society which he describes in his *Social Contract* does not have property rights as its basis, per se, but rather is structured to recover and preserve human freedom and equality to the greatest extent possible. Here, Rousseau modifies his account slightly. At some point, he says, the primitive man of the pure state of nature, despite his abundant freedom and equality, finds that he can no longer keep himself alive through his own

---

[56] Jean-Jacques Rousseau, *Discourse on the Origin and Foundations of Inequality Among Men* or *Second Discourse*, in Victor Gourevitch, ed., *Rousseau: The Discourses and Other Early Political Writings* (Cambridge: Cambridge University Press, 1997), 161 (Part II, §1). Citations hereafter will refer to parts and paragraph numbers.

[57] Ibid., Preface, §1-3, Exordium, §2, Part II, §1.

[58] Ibid., Preface, §11-12. See also Ryn, "Power Without Limits: The Allure of Political Idealism and the Crumbling of American Constitutionalism," *Humanitas* 26, Nos. 1 & 2 (2013), 13-18.

strength alone.[59] His only choice, other than death, is the combination and coordination of his individual power with the powers of others, in the hope that the aggregate power might prove sufficient to keep everyone alive. At this point, Rousseau sounds almost as pessimistic Hobbes. However, he endeavors to demonstrate that his social contract has much more to offer than bare survival: structured well, it has the potential to ensure freedom and equality as well as life itself.

The contract itself, however, presents an initial problem for the preservation of freedom: in order to ensure survival, each person must undergo a "total alienation to the whole community of . . . all his rights."[60] Therefore, Rousseau purposes "to find a form of association" in which each person "may nevertheless obey only himself, and remain as free as before."[61] This notion of obedience to self alone is the cornerstone of Rousseau's understanding of freedom and independence; in the context of the social contract, Rousseau sublimates this self-obedience into the *general will*. "Each giving himself to all, gives himself to nobody," he asserts, with the result that "we gain the equivalent of all that we lose, and more power to preserve what we have."[62] No individual has any more rights over another than the other has over him; all are "under the supreme direction of the general will," which is itself constructed by the participation of those under it.[63]

This is where the concept of force enters in: as a citizen, each man shares the authority of the sovereign general will, but as a subject he is coerced and compelled by that same authority. Rousseau acknowledges that each person's subjective interests may run "contrary to, or

---

[59] Jean-Jacques Rousseau, *The Social Contract*, translated by H.J. Tozer (Ware, UK: Wordsworth Editions Ltd., 1998), 14.
[60] Rousseau, *Social Contract*, 15.
[61] Ibid., 14.
[62] Ibid., 15.
[63] Ibid.

divergent from, the general will" to the point that some people may be tempted to become free-riders within the community.[64] To prevent this, Rousseau points out that it is implicit in the original contract

> that whoever refuses to obey the general will shall be constrained to do so by the whole body; which means nothing else than that he shall be forced to be free; for such is the condition which, uniting every citizen to his native land, guarantees him from all personal dependence, a condition that ensures the control and working of the political machine, and alone renders legitimate civil engagements, which, without it, would be absurd and tyrannical, and subject to the most enormous abuses.[65]

That the political community has, inherently, the right to constrain scofflaws and free-riders is neither an original nor a controversial concept. That this constraint is the *means by which an individual becomes free* is Rousseau's innovation, and the statement "he shall be forced to be free" is rightly famous for this reason. This understanding of freedom will be discussed in greater depth in the following section.

Property is secondary to these issues, for Rousseau. However, in this text, he does at least provide a theory of property rights that is both less fancifully polemical than the one in the *Second Discourse* and also clearly related to Kant's logic. Here, Rousseau argues that individuals may "possess" land or items in the state of nature—and this possession may even be *recognized* by other individuals—but it is only the civil state that grants citizens property *rights* to such land or items and enforces, through positive law, what was only contingently occupied in the state of nature.[66] His argument thus far is quite similar to Kant's account of provisional vs. conclusive property rights. Rousseau continues with an argument that productive use, rather than mere occupancy or fiat, is required for possession, and raises the possibility—one might

[64] Rousseau, *Social Contract*, 18.
[65] Ibid.
[66] Ibid., 21.

even say the hope—that some civil society might arise absent the concept of possession.[67] Such a possibility demonstrates that, in any case, "the right which every individual has over his own property is always subordinate to the right which the community has over all."[68]

Already it is apparent that, with regard to possession, Kant's theory goes one step further than Rousseau's. He claims that rightful possession "must" have existed in the state of nature; otherwise the civil condition itself would be impossible."[69] There is no possibility of a civil society lacking a notion of possession, holding everything on common, as Rousseau hopes. On the contrary, the notion of possession is so fundamental to Kant that he uses it to construct what could be viewed as an equivalent of Rousseau's "forced to be free" statement, in his argument that "each may impel (*antreiben*) the other by force (*mit Gewalt*) to leave this state and enter into a rightful condition," that is, a condition in which everyone "is assured of what is his."[70]

Regardless, the important thing is that Rousseau recognizes what is apparent in the language of "general will" that Kant borrows:[71] the fact that any claim to private property limits the rightful use of freedom for everyone else.[72] This tension between property, freedom, and

---

[67] Rousseau, *Social Contract*, 21-23.
[68] Ibid., 23.
[69] MM, 6:312
[70] MM, 6:312, 6:308.
[71] "Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (*common*) and powerful will (*collectiv allgemeiner (gemeinsamer) und machthabender Wille*), that can provide everyone this assurance. – But the 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).
[72] Actually, Rousseau's account comes at this notion from the other direction by placing the burden of limitation on the one claiming an exclusive right to property: "Every man has by nature a right to all that is necessary to him; but the positive act which makes him proprietor of certain property excludes him from all the residue. His portion having been allotted, he ought to confine himself to it, and he has no further right to the undivided property. That is why the right of first occupancy, so weak in the state of nature, is respected by every member of a state. In this right men regard not so much what belongs to others as what does not belong to themselves" (*Social Contract*, 21).

right must be resolved, somehow, by the civil state. The way in which a given state—or given political philosopher—chooses to do this depends on their assumptions and understandings of those three concepts and on which of the three takes priority. It is on this point that Kant's political thought ultimately does diverge from Rousseau's, no matter how great the influence otherwise is.

II. Freedom & Coercion (contra Rousseau)

In order to establish this divergence, we will return to the issues of freedom, force, and the "general will" which are so much more important for Rousseau than issues of property. Just as Rousseau believed that property shifted from something insecurely "possessed" in the state of nature to something conclusively and rightfully, if somewhat restrictively, owned in civil society, he also believed that human nature and human freedom undergo "a very remarkable change" in the transition from the state of nature into the civil state.[73] Civil man, he says, behaves according to morality, justice, duty, law, and reason, instead of instinctive impulses or appetites. Civil society "transform[s] him from a stupid and ignorant animal into an intelligent being and man."[74] The natural "animal" has liberty within the limits of his own strengths and abilities; the civil "man" has liberty within the limits of the general will. Finally, and most importantly, the civil state grants to man "moral freedom, which alone renders man truly master of himself; for the impulse of mere appetite is slavery, while obedience to a self-prescribed law is liberty."[75] Elaboration on this point seems in order, but curiously, Rousseau stops and claims he has

[73] Rousseau, *Social Contract*, 19.
[74] Ibid.
[75] Ibid., 19-20.

"already said too much" and that the "philosophical meaning of the term liberty" is beyond the scope of his argument.[76] Nevertheless, his claim that human nature and human freedom actually *change form* during the transition out of the state of nature is important for understanding his thought as a whole—as well as, potentially, Kant's, since Kant, by his own account, learned his view of humanity from Rousseau.[77]

The most important thing to understand about Rousseau's account of freedom is that this transformation *is not automatic*. Unlike Locke's blithe assertion that "we are born free as we are born rational," Rousseau is not at all sanguine about the prospects of freedom for humanity at large.[78] An element requires the right conditions to change its form and to maintain the new form; another change in conditions can cause it to revert or even enter a new phase. Of course, Rousseau does not believe a return to the pure state of nature to be possible. All of his political writings, however, take place in the context of a society he believed was just as bad, if not worse, than a state of nature—one that warped human nature, constricted freedom, and celebrated decadence rather than virtue—and were thus aimed at describing what sort of conditions might be conducive to allowing the right kind of freedom to develop for the right kind of people. For Rousseau, freedom, morality, and coercion come together in the concept of the general will.

Given this context, we can return to the "forced to be free" statement and consider that the "force" under discussion is not simply a coercion to obedience. Of course, the so-called "monopoly on force" that enforces compliance with positive law is an inherent aspect of the definition of government itself, but Rousseau is not claiming that the general will has the power

---

[76] Rousseau, *Social Contract*, 20.
[77] See Shell, 20-32, and Schneewind, 314, 336n16.
[78] Locke, *Second Treatise*, Ch. 6, §61.

to enforce obedience or even good citizenship. Rather, he is making a point about freedom. His argument is that being forced to obey is *the same thing* as being forced to be free. In other words, the process of mutual coercion by the general will is *what makes you free*.[79] This participation in the general will is the necessary condition for freedom to undergo its phase change from its debased, natural form—which Rousseau compared to a form of slavery: to appetite, instinct, and impulse—to the "moral freedom" of the correctly-ordered civil state.

The upshot is that, for Rousseau, freedom is *artificial*. It is the *product* of being subject to, participating in, and being mutually coerced by the general will. Furthermore, because it is artificial and contingent upon the conditions of the general will, freedom is essentially *impermanent*. Its existence depends on its being continually reconstituted by participation in the general will.[80] Any other political arrangements—such as the one of 18th-century France which he condemned for its inequality and decadence—are as fatal to true freedom as the slavish state of nature. The form of freedom that Rousseau longs to recover simply cannot exist under such conditions.

Finally, because Rousseau defines this freedom as a "moral" freedom, in contrast to the impulsive freedom of the state of nature that had no moral content whatsoever, it becomes clear that morality for him is *also* artificial, impermanent, and dependent upon external societal

---

[79] This is the argument Steven G. Affeldt makes, in contrast to the apparent *prima facie* reading that Rousseau's general will is merely enforcing "good citizenship," in "The Force of Freedom: Rousseau and Forcing to Be Free," *Political Theory* 27, No. 3 (June 1999), 302.

[80] Affeldt: "Since the general will in virtue of which genuine society and genuine law exist must be constituted anew at each moment, what the individual citizen owes the common cause is, described most generally, continuous participation in the necessarily continuous effort to constitute a general will. . . . For Rousseau, there is no distinction between good citizenship and bad citizenship. One is a citizen if one is continuously engaged in the effort to constitute a general will. If one is not so engaged but is peacefully complying with what one treats as an established order of laws, one is not an apathetic citizen or an indifferent citizen or a bad citizen. One is simply not a citizen at all" (308). "In treating law as given and trying simply to obey, the continuous constitution of a general will has ceased" (307) and so, therefore, has freedom.

conditions in the same way that freedom is. His definition of liberty is "obedience to a self-prescribed law": in other words, constructing a morality for oneself or, in a political context, with others through the mechanism of the general will.[81] The capacity for moral freedom may be an abiding *potential* for human beings, but Rousseau believes they can only realize this potential within a correctly-ordered political context. The general will uses mutual coercion to create a process in which participants corporately, continuously construct moral laws for themselves, which process as a whole meets Rousseau's definition of "liberty" and thus comprises the context for liberty to exist.

Whether or not one finds a stark contrast with Kant on this point depends on whether one reads Kant as arguing that freedom and morality are, in Patrick Riley's terms, "something constructed," or "something 'there.'"[82] The former position is one that Riley believes is held by advocates for "a quasi-Rousseauian contractarian reading of Kant, according to which we give the law, rather than find it," or what he frequently refers to as the "'deepened' Rousseau" view of Kant.[83] The latter position is one Riley develops into a teleological perspective.[84] Riley argues that, for Kant, reason—through which we find the moral law—and politics are both *for* something. Reason "has the end of bringing us to will to respect persons as ends," the cornerstone of Kantian ethics.[85] Politics "serves primarily to make morality, or at least moral

[81] Rousseau, *Social Contract*, 19-20.
[82] Patrick Riley, *Kant's Political Philosophy* (Totowa, NJ: Rowman & Littlefield, 1983), 56.
[83] Ibid., 6.
[84] Ibid., 8.
[85] Ibid., 26.

ends, more nearly possible."[86] Freedom is what gives validity to the will and makes moral choices meaningful, rather than determined.[87]

The rest of the Kant literature, as Riley hints, is somewhat split on this question.[88] Even Riley himself admits that the answer to whether, for Kant, the moral law is *constructed* or *discovered* by reason often "turns on which words are given decisive weight."[89] The situation is complicated by the fact that Kant borrows not only his general attitude towards humanity from Rousseau, but also, apparently, his understanding of freedom in the context of a general will.[90] This was already covered somewhat in chapter one, in discussing how Kant tried, in a transparently Rousseauian phrase, to connect "universal reciprocal coercion with the freedom of everyone."[91]

J.B. Schneewind explains that "Rousseau convinced Kant that everyone must have the capacity to be a self-governing moral agent, and that it is this characteristic that gives each person a special kind of value or dignity. Culture in its present corrupt state conceals this capacity of ours, Rousseau thought, and society must be changed to let it show and be

---

[86] Riley, *Kant's Political Philosophy*, 9.

[87] Ibid., 28.

[88] It may be more accurate to say that many commentators on Kant don't even realize there is a question at all, but assume the "constructed" perspective as the obvious one. An example, among many, is this one from Paul Guyer's "Introduction" to the *Cambridge Companion to Kant*: "In the practical sphere, few can any longer take seriously the idea that moral reasoning consists in the discovery of external norms—for instance, objective perfections in the world or the will of God—as opposed to the construction for ourselves of the most rational way to conduct our lives both severally and jointly" (3). On the other hand, Wolfgang Kersting, in his chapter "Politics, Freedom, and Order: Kant's Political Philosophy," also in the *Cambridge Companion*, claims that "Kant shares the conviction, common to all variants of natural right theory, that there is an objective, timelessly valid and universally binding principle of right, which is accessible to human knowledge, which draws an irrevocable boundary between that which is right and that which is not that obligates everyone, and which contains the criterion with the assistance of which the correctness of human actions can be judged" (344).

[89] Riley, *Kant's Political Philosophy*, 52.

[90] In addition to the Schneewind article discussed below, see also Howard Williams, "Kant on the Social Contract," in *The Social Contract from Hobbes to Rawls*, David Boucher and Paul Kelly eds. (New York: Routledge, 1994): "Kant's conception of freedom in a political context accords with the notion of social freedom developed by Rousseau in the *Social Contract*" (138).

[91] MM, 6:232.

effective."[92] As we have seen, the change Rousseau envisioned was a politics built on the general will, participation in which would rescue people from both corrupt society and slavish natural freedom. "Previous thinkers had frequently used the metaphor of slavery to describe the condition in which we are controlled by our passions, but for them the alternative was to follow laws that God or nature prescribe. Rousseau held that we make our own law and in doing so create the foundation for a free and just social order. This thought became central to Kant's understanding of morality."[93]

However, Kant did not swallow Rousseau's assertions whole—indeed, he seemed to anticipate the very question we are trying here to resolve, although the terms he used to navigate it are (like so much of Kant's writing) less than clear. Schneewind points out that Kant saw the need to overcome the problems of "how such law-making is possible" and "how we can impose a necessity upon ourselves. If my obligations arise simply through my own will, how can there be any real constraints on my action?"[94] Rousseau's answer to this question—that "conscience is a sentiment that moves us without regard for our own interest"—Kant could not help but find insufficient, regardless of any other appreciation he had for Rousseau.[95]

Kant's answer—Schneewind helpfully reconstructs it from the *Critiques*, the *Metaphysics of Morals*, and several other of Kant's writings—comes from his understanding of the human will, the faculty of choice, and the operations of Practical Reason. The operating assumption is that "no authority external to ourselves is needed to constitute or inform us of the demands of morality. We can each know without being told what we ought to do because moral requirements

[92] Schneewind, 314.
[93] Ibid.
[94] Ibid.
[95] Ibid.

are requirements we impose on ourselves."[96] So far, this explanation seems to fit the "something constructed," Rousseauian view. However, Kant recognizes that the internal human experience is not a blank slate—Schneewind describes both "the givens we feel as desires," as well as the "inherent structure" of practical reason which "imposes form" on these givens.[97] Both the "givens" and the "structure" are experienced as "the source of the necessities that we impose" on ourselves, necessities which "are no more escapable than those that give structure to the physical world."[98] The appearance of determinism here is avoided through the faculty of choice: "the tension between reason and desire is central to our moral experience," and it is left to choice, where "our freedom, properly speaking, resides," to decide how to resolve the tension into action.[99]

This explanation still does not quite answer the question or take us much further than the Rousseauian position. Indeed, even if Rousseau's solution of sentimental conscience was not sufficiently incisive, Kant's attempt to reconcile self-imposed law with morality appears inescapably paradoxical, which is no better. Some of the confusion here is certainly attributable to the fact that Kant is reaching—we might even say exposing—the limits of spatio-temporal language like "internal" and "external" as a helpful analogue for the human experience of moral consciousness. At this point, it seems best to return to the text and examine what Kant actually has to say about freedom, right, and coercion in the context of politics.

---

[96] Schneewind, 309.
[97] Ibid, 315.
[98] Ibid.
[99] Ibid., 317, 330.

Kant does not give a true definition of freedom in his Introduction to the *Metaphysics of Morals*.[100] He simply assumes it as a "regulative principle" or postulate:

> The concept of *freedom* is a pure rational concept, which for this very reason is transcendent for theoretical philosophy, that is, it is a concept such that no instance corresponding to it can be given in any possible experience, and of an object of which we cannot obtain any theoretical cognition: the concept of freedom cannot hold as a constitutive but solely as a regulative and, indeed, negative principle of speculative reason.[101]

Furthermore, Kant connects freedom emphatically with morality and right from the very outset, even if this emphasis seems to lead him even further into the paradoxical quagmire.[102] Continuing from the quote above, he says that

> in reason's practical use the concept of freedom proves its reality by practical principles, which are laws of a causality of pure reason for determining choice independently of any empirical conditions (of sensibility generally) and prove a pure will in us, in which moral concepts and laws have their source.
>
> On this concept of freedom, which is positive (from a practical point of view), are based unconditional practical laws, which are called *moral*.[103]

In spite of his lack of clarity and definition on this point, we can at least see that Kant does not think *freedom* is "constructed" by the state or by the individual—although it might have to be *assumed*, without proof, by an individual, in order to make sense of moral principles. The question of whether *morality* is "constructed" is less obvious. On the one hand, his claim that "moral concepts and laws have their source" in "a pure will in us" would seem to lean toward

---

[100] Later, in the Introduction to the *Rechtslehre* specifically, he defines it, in terms of a right, as "independence from being constrained by another's choice" (6:237). This definition is clearly *compatible* with his definition of "person," discussed just below, but seems rather narrower than the postulate of Freedom he intends to apply to both parts of the *Metaphysics of Morals*.

[101] MM, 6:221.

[102] For example: "*Obligation* is the necessity of a free action under a categorical imperative of reason" (MM, 6:222), or see below (p. 110-111 of this chapter) the discussion of freedom of choice not consisting in a choice for or against right, but only in choosing right "freely" (6:226-227).

[103] MM, 6:211.

just such a reading. But on the other hand—and in the very next sentence no less—Kant claims that these "practical laws, which are called *moral*" are derived from "this concept of freedom," which he has not clearly defined. Further confusing the matter is the plainly Rousseauian assertion he makes, within his definition of the word "person," that "a person is subject to no other laws than those he gives himself (either alone or at least along with others)."[104]

The way these passages can be resolved in favor of a "something 'there'" reading is by understanding that, for Kant, "will" and "practical reason" are the same.[105] To say that moral laws come from a person's "pure will" is to say nothing more than that they are known through practical—that is, moral—reason. This practical reason/will is what Kant says "directs with absolute necessity" in its giving of moral law.[106] The faculty of *choice*—which is distinguished from what Kant is calling "will,"—is where freedom "resides," as discussed above.[107] However, the choice available to us is not one "for or against the law" or "being able to choose in opposition to. . . (lawgiving) reason, even though experience proves often enough that this happens."[108] Rather, the freedom of choice consists, on the one hand, of making maxims for oneself in accordance with the law as understood through practical reason and/or given by the will, and on the other hand—more profoundly—in the fundamental allegiance of one's moral

[104] MM, 6:223: *eine Person keinen anderen Gesetzen als denen, die sie (entweder allein, oder wenigstens zugleich mit anderen) sich selbst giebt, unterworfen ist*.

[105] "The will (*Wille*) is therefore the faculty of desire considered not so much in relation to action (as choice (*Willkür*) is) but rather in relation to the ground determining choice to action. The will itself, strictly speaking, has no determining ground; insofar as it can determine choice, it is instead practical reason itself" (MM, 6:213).

[106] MM, 6:226.

[107] Schneewind, 330.

[108] MM, 6:226.

person with practical reason and its imperatives, regardless of "sensible impulses" or "empirical conditions."[109]

There is a parallel here between Kant's attempt to reconcile freedom of choice with the necessity of moral law, and his approach to consent that we discussed in chapter one. There, we saw that while the juridical state itself could not be subject to contract or consent, nevertheless consent stood as an overarching ideal or standard for the operation of politics *within* such a state. Likewise, the moral law itself cannot properly be said to be an object of free choice, as if we can decide (or "consent") with indifference whether we want to do the right thing or not. However, within the imperatives of practical reason, there is room for freedom of application in the form of personal maxims.

The difference is that all this activity takes place *within* a person rather than among many people, and thus overlaps with the subject matter of the second half of the *Metaphysics of Morals*, the *Doctrine of Virtue*. This interior experience of aligning oneself to the moral law is paradoxical by nature; it is both a moral duty and an activity that can only be undertaken validly if undertaken freely.

> A human being has a duty to carry the cultivation of his *will* up to the purest virtuous disposition, in which the *law* becomes also the incentive to his actions that conform with duty and he obeys the law from duty. This disposition is inner morally practical perfection.[110]

Ultimately this "cultivation" is what Kant (via Rousseau) understands as the "self-prescribed law" and thus (again via Rousseau) as the essence of freedom itself. This process of

---

[109] MM, 6:226-227, 6:213-214, 6:226. In the *Doctrine of Virtue*, 6:436, Kant speaks of "the (natural) human being's feeling himself compelled to revere the (moral) human being within his own person," which has been condensed here to "moral person."

[110] MM, 6:387.

"cultivation"—here considered under the heading of "one's own perfection," which is one of only two moral "ends that are also duties"—is how Kant is able to resolve the paradox of a free being placing binding obligations upon himself.[111] It is hard to see how this resolution makes sense if the moral law as such is something arbitrarily "constructed"—indeed, it is apparent now that the only reason the issue was problematic to begin with was because of these assumptions on the part of Rousseau.[112]

It should be emphasized at this point that, when it comes to his discussion of politics in the *Rechtslehre*, Kant does strictly exclude this kind of internal "cultivation" of allegiance to moral duty from consideration. Politically, all that can be considered are external constraints on external actions.

> Thus the universal law of right, so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, is indeed a law that lays an obligation on me, but it does not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom *is* limited to those conditions in conformity with the idea of it and that it may also be actively limited by others; and it says this as a postulate that is incapable of further proof.[113]

However, these political considerations can never be completely divorced from an awareness of what human beings are, internally. This is what Rousseau seems to grasp, however incoherently, in his belief that human beings' potential to be individual, moral self-regulators ought to be realized in a political arrangement in which they can act as mutual, political self-regulators. The difference is that Kant's does not believe that mutual coercion makes one free;

---

[111] MM, 6:385-387. The other end that is also a duty is the happiness of others.

[112] Patrick Riley summarizes essentially the same point in terms of Kant's notion of the "good will": "In the end, Kant's position rests on the view that only a good will is capable both of *being* an objective end and of *having* (legislating) such an end; and this position is so impressively defended that it is reasonable to assume that his moral philosophy is far more adequate than its critics allow" (Riley, "On Kant," 464). Indeed, if our argument is correct, it is *Rousseau's* moral philosophy that stands out as formalistic and contentless in comparison.

[113] MM, 6:231.

rather, mutual coercion is possible only because of respect for the freedom one already has, or, in other words, respect for *the right of humanity in our own person*.[114] This is what grounds the state, not the other way around. Kant retains the theoretical "state of nature" as a way to try to emphasize the priority of this grounding, even while rejecting any putative state of nature as a state in which it is impossible to respect human right or human freedom at all. We established this already in the previous chapter, but is further revealed in this comparison between Kant and Rousseau by way of their rather obvious disagreement over what constitutes the ideal state and how such a state ought to be pursued—the disagreement which is responsible for Kant's relative political conservatism vis-à-vis Rousseau's revolutionary radicalism. Rousseau's insistence on a specific type of civil state as exclusively compatible with free humanity only makes sense if that particular type of state is the only thing that can make men free. For Kant, civil states *as such* give expression to the moral freedom men already possess and thus are Right, in his sense, regardless of particular, current defects of governance.[115]

III. The Human Person

It is difficult to think about freedom without also considering the beings who have it; thus, in this brief, final section, we will consider the implications of the foregoing disagreement between Kant and Rousseau for the human person as understood by each.

The key to Kant's understanding of the human person can be found in those passages, discussed at length in chapter one, dealing with the "right of humanity" in one's own self or the

[114] MM, 6:236; this concept was discussed above, pp. 95-98 of this chapter, and in chapter one, 58ff.

[115] Once again, Kant's position here seems remarkably similar to that of Burke, who also critiqued the French Revolution from the perspective of political society as constituting an "eternal contract."

"right of human beings as such."[116] One of these passages is the one in which he also established freedom as the only innate right human beings have. "*Freedom* (independence from being constrained by another's choice (*nöthigender Willkür*)), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right (*ursprüngliche Recht*) belonging to every man by virtue of his humanity (*kraft seiner Menschheit*)."[117] He explains that this one right to freedom contains within it other rights such as equality, being one's own master (as opposed to one's owner), and "being a human being *beyond reproach* (*iusti*).[118] This "lex iusti" is the same label he gave to the first Ulpian formula: "*be an honorable human being*," the imperative to assert "one's worth as a human being in relation to others."[119]

The right to freedom may be the only innate right, but it is not innately or immediately known; following the previous discussion in which he claimed freedom was beyond "theoretical cognition," he now claims that "we know our own freedom (from which all moral laws, and so all rights as well as duties proceed) only through the *moral imperative*, which is a proposition commanding duty, from which the capacity for putting others under obligation (*Andere zu verpflichten*), that is, the concept of a right, can afterward be explicated."[120] A human person's moral awareness carries the implication (though not the proof) of freedom to fulfill the moral obligations of which one is aware. The rightfulness of putting others under obligation stems

[116] The first mention of "right of humanity" is in the Ulpian formulae (6:236); as the "right of human being as such," in 6:308n; see chapter one of this dissertation, 57ff.
[117] MM, 6:237.
[118] MM, 6:237-238.
[119] MM, 6:236.
[120] MM, 6:239.

from this awareness and the imputation of the same awareness onto other human persons: in other words, the fundamental right of human beings as such.[121]

In this way, Kant pulls the various threads this chapter set out to explore—the obligations created by claims to property, the right to freedom, and the rightful coercion these both entail—back into an account of what it means to be a human being. Furthermore, he insists that this must be done by considering the human person "in terms of his capacity for freedom, which is wholly supersensible, and so too merely in terms of his *humanity*, his personality independent of physical attributes (*homo noumenon*)."[122] So considered—as we see later in the *Doctrine of Virtue*, where it is more fully discussed—

> a human being regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world. He can measure himself with every other being of this kind and value himself on a footing of equality with them.[123]

The whole point of Kant's "state of nature," in the guise of a discussion of "private right," is to illustrate the essential, noumenal characteristics of human beings as such—i.e., those things that are *not* constructed by the state. These may find their rightful expression *in* a civil state, but they are not products *of* the civil state. On the contrary, the civil state is dependent upon their theoretically independent and prior existence for its own existence and necessity. For Kant, Right and the human awareness of it already exist in the theoretical state of nature. Politics is

---

[121] See Ryn, *Will, Imagination, and Reason*, 63-64.

[122] MM, 6:239.

[123] MM, 6:434-435. Of course, the duties inherent in this perspective (such as the duty to view oneself in these terms and demand that others do so as well) and stemming from it are duties of virtue, properly speaking, not of right—even private right. However, this perspective on the human person *is* tied together with the political through the fact that they both have their source in freedom (as discussed in the Introduction to the *Metaphysics of Morals* as a concept intended to apply to both parts) and the fact that politics should be structured *for* people thus conceived. This is why the "right of humanity" keeps appearing as a justification for various political obligations.

based upon this Right in the sense that it recognizes, formalizes, and exists within an order already in existence. Thus, the state of nature, in the sense of private human relationships abstracted from politics and considered solely on the basis of mutual recognition of personal moral dignity, and the formal political realm in which people actually live, are both structured by the same rightful order.

On the contrary, for Rousseau, man in the state of nature is an animal; he might have a capacity for freedom and self-legislation, but he depends on a rightly-constructed state to make him truly free, moral, and human. The state, if wrongly constructed, could just as well turn him back into an animal. This is the outcome Rousseau desperately wishes to prevent or cure. It does not seem to be a concern of Kant's in the least.

Likewise, Rousseau cannot have confidence in a universal order of Right because he does not think there is such a thing. Everything is contingent upon the laws we give ourselves. Thus, there is no standard by which to judge civil societies or the lack thereof; the only considerations are prudential ones. We may give ourselves laws that make us free, or laws that make us corrupt and miserable, or we may remain ignorant animals with no capacity for self-governance at all. But for those who happen to prefer free self-governance, as Rousseau does, it is of the utmost concern to construct and maintain the sort of state wherein freedom is possible, by all means necessary—including force.

Judith Shklar, bringing some nuance to our discussion, likens Rousseau to the "classical utopists," such as Sir Thomas More, and claims that his aim was not so much the construction of the perfect state, or even the philosophical discussion of such, as it was "to picture the awful distance between the possible and the probable by showing in great detail how men *could* live,

even though they *always* refuse to do so."[124] As a utopian, however, he seems engaged in a contradictory effort: "an attack on both the doctrine of natural sin . . . and on all actual societies."[125] Rousseau's man is good, but fails to achieve what Rousseau imagines is his potential largely as a result of societal institutions. Of course, men are also responsible for the institutions, which is why utopians place the blame not on "God, fate, or nature, but in ourselves."[126]

It is "ourselves" in the aggregate, however. In his political writings, Rousseau hardly seems to acknowledge the possibility of the *individual* as a free moral agent. Freedom comes only in the collective—in the right kind of political society. As a result, the individual, though "free" in Rousseau's special sense, is always subsumed into the whole. His end is not himself, but his society, because his society is what makes him what he is.[127] For Kant, on the other hand, society exists for man, and provides the structure within which individual moral agents may be free to realize their best potential on their own. The awareness of oneself as a free moral agent is not the product of the state but vice versa.

Conclusion

The problem that all political philosophers—not just contractarians—must eventually face is the tension between one person's freedom and other people's rights, both of which the rightly-ordered civil state is tasked with preserving, to the greatest extent possible. Both Locke

[124] Judith N. Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 1969), 1-2.

[125] Ibid., 2.

[126] Shklar, 2.

[127] See, e.g., Rousseau's later assertion that "when the prince has said to [a citizen]: 'It is expedient for the state that you should die', he ought to die, since it is only on this condition that he has lived in security up to that time, and since his life is no longer merely a gift of nature, but a conditional gift of the state" (*Social Contract*, 35).

and Rousseau—and Hobbes, in his own unique way, as we will discuss in the following chapter—pinpoint property as an important source of this tension. It is necessary for people to have and use objects in the world, and yet that having and using becomes an inevitable source of conflict, inequality, and frustration. Both are able to see that this situation begs certain questions: why can one person have more than another? Why can one person have a thing that someone else wants? Why is it possible for anyone to have, exclusively, anything at all, in a world that everyone has a right to share?

Locke's answers to these questions are the least satisfactory, given that the goals of his work are split between justifying the revolution he helped execute, providing a theoretical basis for a new English constitution, and crafting a coherent political philosophy. His account is illustrative mostly because it reveals the moral assumptions he operated within but failed to address, which showcases both the relative philosophical depth as well as the theoretical necessity of Kant's account, in comparison.

Rousseau's solution with regard to property mirrors his approach to human moral freedom: ultimately, it is subsumed within the state. His definition of freedom, his invention of the general will, and his obvious (if occasionally contradictory) concern for the welfare of the human race were all compelling enough to Kant that he incorporated them extensively into his own political thought. But the stark differences in their use of the concept of the state of nature, combined with Rousseau's inability to explain the paradox of a binding self-prescribed law, demonstrate the extent to which their philosophies ultimately diverged—theoretically, practically, politically, and humanely.

At the outset of this chapter, we set out to answer the questions of which "state of nature" Kant describes—the theoretical or the putative—is properly understood as "the Kantian state of nature," and why, in addition to how his approach to the concept of the state of nature sets him apart as the best and most coherent thinker in the contractarian tradition. The intervening sections have demonstrated that there are at least some questions endemic to the contractarian tradition which Kant's philosophy interrogates much more thoroughly and completely than either Locke or Rousseau. The final point of emphasis is the degree to which this exploration is accomplished by and through Kant's theoretical "state of nature." This is the vehicle through which Kant shows us the depth of respect he had for the human person, the source of which is the human capacity to know the duties given by the moral law *and* to freely adopt those duties as ends. This essential capacity of human beings is what gives Kant confidence in the existence of an order of Right and the power of that Right to structure human relationships, formally or informally, as well as world history. His choice to use the conceit of a theoretical "state of nature" allows him to explore many of the same problems as other contractarians—such as property rights, freedom, and the legitimate use of force—within his own set of metaphysical postulates and without contamination from empirical contingencies. In so doing, he was able to expose many of the unquestioned assumptions underlying previous versions of contract theory, and thus reject any sort of putative state of nature as philosophically and morally insufficient.

In the next chapter, we will look at how Kant accomplishes the same goal with regard to Hobbes's political philosophy.

CHAPTER THREE: KANT CONTRA HOBBES

In addition to making the case for Kant as the "most adequate" of the contract theorists, this dissertation also set out to demonstrate the applicability of Kant's understanding of the state of nature to theories of international relations, which so often make use of that concept. And certainly no thinker's conception of the state of nature has been more influential in that field than Hobbes's.[1] Given Hobbes's influence on the concept of international anarchy, and the role of that concept in theories of international relations, it should be emphasized that the question of Kant's relationship to Hobbes is in many ways the crux of the matter. If Kant's critique of Hobbes's state of nature were valid, then all of the theories built on it would be called into question.

There is an immediately obvious problem, however, which is that Kant does not critique Hobbes's state of nature at all. In fact, he *agrees* with Hobbes's characterization of the state of

[1] See especially Michael C. Williams, "Hobbes and International Relations: A Reconsideration," *International Organization* 50, No. 2 (Spring, 1996). Williams writes that "the name of Thomas Hobbes and the concept of anarchy often seem virtually synonymous in discussions of international relations," and that even amid disagreements among the various major schools of thought, "the adequacy of a Hobbesian vision of international politics provides a common rhetorical and analytic touchstone . . . as it has . . . for generations" (213). Williams cites nine recent examples. He quotes Michael Smith as saying that Hobbes's "notion of the international state of nature as a state of war is shared by virtually everyone calling himself a realist" (213). The work of Smith's is *Realist Thought from Weber to Kissinger* (Baton Rouge: Louisiana State University Press, 1986). Noel Malcolm also sees it as the basis for the Realist school of international relations in "Hobbes's Theory of International Relations," *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), 433. Likewise, Mark A. Heller understands (and critiques) Hobbesian anarchy as paradigmatic for international-relations thinkers in "The Use & Abuse of Hobbes: The State of Nature in International Relations," *Polity* 13, No. 1 (Autumn 1980), 21-32. Helen Milner's "The Assumption of Anarchy in International Relations: A Critique," *Review of International Studies* 17, No. 1 (Jan. 1991) likewise critiques the extent to which "anarchy has been accorded a central role in international politics," citing such examples as Robert Art and Robert Jervis, Robert Gilpin, and Kenneth Waltz (68). Aaron Beers Sampson also criticizes "the dangers of positing anarchy as the fundamental fact of international politics" on the grounds of the misleading and prejudicial assumptions about primitive societies that such state of nature-based theories import: "Tropical Anarchy: Waltz, Wendt, and the Way We Imagine International Politics," *Alternatives: Global, Local, Political* (Vol. 27, No. 4, Oct.-Dec. 2002), 429, 430-431. John Mearsheimer traces the origin of "the concept of anarchy and its consequences for international politics" to a 1916 book by G. Lowes Dickinson, but accepts that "the most important work in this regard" is Hobbes's *Leviathan* (*The Tragedy of Great Power Politics* (New York: W. W. Norton & Co., 2001), 413n4, 414n5).

nature as a "state of war,"[2] and seems to attribute his own "postulate of public law"—the duty to leave the state of nature and join civil society—to his reading of Hobbes's *De Cive*. Byrd and Hruschka, in their commentary on the *Rechtslehre*, point out that Kant and Hobbes "are often compared and indeed one does see the influence particularly of Hobbes's *Leviathan* on Kant's legal philosophy."[3] They describe this influence, broadly, as Kant's borrowing of the categories of "commutative" and "distributive" justice.[4] Commutative justice, for Hobbes, indicates the just action of fulfilling a contract. For Kant, this becomes the basis of "private right," in the sense of just actions considered in and of themselves.[5] Hobbes describes "distributive justice," according to Byrd and Hruschka, as "the justice of an arbitral decision."[6] This rather primitive description nonetheless provided Kant with the basis for his postulate of public law.[7] Byrd and Hruschka explain:

> To better understand distributive justice, it is enlightening to consider Hobbes' sixteenth principle of natural law. The sixteenth principle of natural law expresses a requirement: In case of a dispute about rights, the disputing parties should submit to the decision of an arbitrator. This requirement amounts to a pre-Kantian formulation of the postulate of public law, which requires us to move to the juridical state. In his lectures of 1784, Kant reformulates Hobbes' principle: "Submit to a *justitia distributiva!*" or: "Move to a state of a *justitia distributiva!*" These statements in Kant's lectures are the early Kantian equivalents to the postulate of public law.[8]

Kant recreates the same logical chain in a footnote in *Religion Within the Boundary of Mere Reason*. The context for the footnote is a discussion of the "ethical state of nature" and the

---

[2] He does so twice: once in a footnote in *Religion Within the Boundaries of Mere Reason*, which we will discuss in depth below, and once in the *Critique of Pure Reason*, A752/B780.

[3] Byrd and Hruschka, 20.

[4] Ibid., 33, 71-76.

[5] Ibid., 72-73.

[6] Ibid., 72.

[7] Kant, of course, expands on the idea significantly, ultimately supplying a third category of justice to it to complete his understanding of "Public Right" in the *Rechtslehre*. Byrd and Hruschka identify this third category as *iustitia tutatrix* or "protective" justice (73, 33).

[8] Ibid., 73.

duty of every person to leave this state of nature and "become a member of an ethical community."[9] Despite the fact that Kant here and in many other writings champions freedom of thought, conscience, and belief, he nonetheless believed that the presence of evil within and among human beings distracts them "from the common goal of goodness" and thus necessitates a duty to join a community of good-willed people committed to "good works"—essentially, a church.[10] Kant's argument here is more complex than this brief summary will allow, but this does suffice to explain why he is appealing to a Hobbesian state of nature in a discussion of religion. The footnote is as follows:

> Hobbes's statement, *status hominum naturalis est bellum omnium in omnes* [the natural state of men is a war of all against all], has no other fault apart from this: it should say, *est status belli . . . etc.* For, even though one may not concede that actual *hostilities* are the rule between human beings who do not stand under external and public laws, their condition (*status iuridicus*), i.e., the relationship in and through which they are capable of rights (of their acquisition and maintenance) is nonetheless one in which each of them wants to be himself the judge of what is his right vis-à-vis others, without however either having any security from others with respect to this right or offering them any: and this is a condition of war, wherein every man must be constantly armed against everybody else. Hobbes's second statement, *exeumdum* [sic] *esse e statu naturali* [one must exit from the natural state], follows from the first: for this condition is a continual violation of the rights of all others through the presumption of being the judge in one's own affairs and of not allowing any security to other human beings in theirs save one's own power of choice.[11]

---

[9] Kant, *Religion within the Boundaries of Mere Reason and Other Writings*, translated and edited by Allen Wood and George di Giovanni (Cambridge: Cambridge University Press, 1998), 6:96. The footnote is well-known and oft-cited in the secondary literature investigating the relationship between Kant and Hobbes or the topic of Kant's thoughts on the state of nature, generally. See, e.g., Byrd and Hruschka, 213; Howard Williams, *Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism* (Cardiff: University of Wales Press, 2003), 11-12; Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), 208-209; and Christopher Meckstroth, *The Struggle for Democracy: Paradoxes of Progress and the Politics of Change* (Oxford: Oxford University Press, 2015), 122n15.

[10] Kant, *Religion*, 6:97, 6:100, 6:100-101.

[11] Ibid., 6:97.

The quotation from Hobbes come, apparently, from *De Cive* chapter I, §12 and §13.[12] The most plausible source of the second 'quote' does not quite say what Kant paraphrases here; Hobbes merely asserts "that through fear of each other we think it fit to rid ourselves of this condition, and to get some fellows; that if there needs must be war, it may not yet be against all men, nor without some helps."[13] The prudence of ad-hoc defensive alliances in a state of war seems a far cry from an absolute principle to quit the state of nature, but it is clear enough from this passage and others that Kant considered the idea as having been derived from Hobbes. Hobbes does go on to develop his thought in that direction, as can be seen in his various Natural Laws, especially as articulated in the *Leviathan*.[14]

[12] Kant's quotations of Hobbes are better described as paraphrases than verbatim quotes. The Cambridge translation, by Wood and di Giovanni, correctly attributes the first quotation to *De Cive*, I.12, (213n86). It is more difficult to locate a definitive source of the second one. First of all, Kant's original footnote has the gerundive, properly, as *exeundum*, not *exeumdum*, although the typo in this translation reappears in a remarkable array of secondary literature, including Howard Williams (12, quoting the Cambridge edition), Wolfgang Kersting in his *Companion* chapter (352), and a 1996 *Harvard Law Review* article by Jeremy Waldron that quotes Kersting; Tuck cites a 1960 translation that correctly gives *exeundum* (208). Secondly, the Cambridge translation also locates the original quote in *De Cive* I.12 (213n87), which seems incorrect: even allowing for broad paraphrastic license, the section contains nothing similar to this phrase. Stephen R. Palmquist's *Comprehensive Commentary on Kant's Religion Within the Bounds of Bare Reason* (West Sussex, UK: John Riley & Sons, Inc., 2016) gives *De Cive* as the source of both quotations but does not locate them within it (260n37). Byrd and Hruschka simply note that the phrase is one "we usually associate with Hobbes" (213). Hegel appeals to the same principle with similar language in his *Philosophy of Right*, and his German editor, Karl-Heinz Ilting, gives *De Cive* I.13 as the passage of origin (see Adriaan T. Peperzak, *Philosophy and Politics: A Commentary on the Preface to Hegel's Philosophy of Right* (Dordrecht: Martinus Nijhoff Publishers, 1987), 12n13). We discuss the plausibility of this passage above. A more recent translation of *Religion*, by Werner S. Pluhar (Indianapolis: Hackett Publishing Co., 2009), does provide this passage, in Latin and English, in a footnote to Kant's footnote, but does not give the source citation (107nj). It is possible that the source of the second statement, as a concept if not a phrase, is actually *Leviathan* (see Byrd and Hruschka, 72-73). At any rate, the confusion only adds to the impression, for which we will argue, that Kant may have been influenced by Hobbes to develop the "exeundum principle," but he took it much further than Hobbes himself likely intended.

[13] Thomas Hobbes, *Man and Citizen: De Homine and De Cive*, edited by Bernard Gert (Indianapolis: Hackett Publishing Co., 1991), 118. The Latin text says, *ut mutuo metu e tali statu exeundum & quaerendos socios putemus; ut si bellum habendum sit, non sit tamen contra omnes, nec sine auxiliis*.

[14] In addition to *Leviathan*'s 16th law of nature, described by Byrd and Hruschka above, consider how the fundamental version of natural law evolved from "*that peace is to be sought after, where it may be found; and where not, there to provide ourselves for helps of war*" in *De Cive* (II.2) to the rhetorically more elegant and forceful "*to seek Peace, and follow it*" in *Leviathan* (New York: Barnes & Noble, 2004), 80 (chapter XIV).

Regardless, the *Religion* footnote demonstrates Kant's admiration of Hobbes and shows that, on the whole, he agrees with Hobbes on what the putative state of nature would be like. His only disagreement comes in the form of a clarification—that the state of nature would not necessarily be a state of active hostility, but would rather be a state in which each person stands in a posture of potential hostility towards the others. We have already discussed how this clarification occurs in §42 and §44 of the *Rechtslehre*, where Kant asserts that the state of nature need not necessarily "be a state of *injustice*"—actual hostility—but is rather better defined as "a state *devoid of justice*" entirely.[15]

Nonetheless, this chapter will argue that, despite the well-documented influence, the philosophical differences between Hobbes and Kant are much more decisive, especially when applied to theories of international relations. Even Byrd and Hruschka qualify their interpretation by pointing out that Kant's "reformulation" clearly "extends far beyond Hobbes" and his original intentions.[16] To the extent that Hobbes does articulate an "obligation to join," we will argue that the *motivation* for that obligation on his part is prudential, and thus conditional, rather than categorical and absolute as it is for Kant. This difference boils down to a basic difference of method: Hobbes's scientific materialism versus Kant's metaphysical idealism. Furthermore, as we concluded with regard to Locke and Rousseau in the previous chapter, many disagreements between Kant and Hobbes ultimately stem from one fundamental divergence: on the nature of the human person and specifically the human awareness of the moral law. This difference explains why the two thinkers come to contradictory conclusions on the related issues of freedom, constitutional change, and international peace, despite an

[15] MM, 6:312.
[16] Byrd and Hruschka, 73.

apparently similar starting point. It can also be illustrated in the fact that Kant maintains a separation between the putative and theoretical states of nature in his philosophy, whereas for Hobbes, everything relies on his arguments regarding the putative state of nature.

This argument will be constructed primarily by way of two texts: Hobbes's *Leviathan* and Kant's 1793 essay, "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'" usually referred to as "Theory and Practice." This essay is split into three parts, covering morality and right at the individual, state, and international levels. The second part, "On the Relationship of Theory to Practice in Political Right," is subtitled "Against Hobbes" and contains one obvious and several implicit criticisms of Hobbes's theory. The essay as a whole provides us with one of Kant's most profound and emphatic reflections on the nature, purpose, and moral capacities of the human person in a political context, in much greater depth than can be found in the *Rechtslehre*.[17] It also contains—as was mentioned in chapter one—a fuller exploration of the social contract as "an idea of reason."[18] Nevertheless, for our purposes, we will read "Theory and Practice" through the lens of what we have already established, in the previous two chapters, as Kant's thought on the state of nature and the social contract in the *Rechtslehre*. Kant occasionally mentions Hobbes and the Hobbesian state of nature in other texts, such as the passage in *Religion* mentioned above, and these instances will be cited as necessary.

---

[17] Of course, the "Doctrine of Virtue" or *Tugendlehre*—the other half of the *Metaphysics of Morals*—has quite a lot to say about humans as moral beings, but the context is deliberately separated from the political doctrines of the *Rechtslehre* and the discussion is much more diffuse.

[18] Immanuel Kant, "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'" in *Kant: Political Writings*, translated by H.B. Nisbet and edited by Hans Reiss (Cambridge: Cambridge University Press, 1991), 79. Initially published in in the monthly *Berlinische Monatsschrift*.

The premier account of Hobbes's political philosophy is his *Leviathan*, published in 1651 in the wake of the English Civil War. Thus, any discussion of Hobbes regarding the state of nature must begin and end with *Leviathan*. However, Kant's "Theory and Practice" was actually written as a response to a different work, Hobbes's *De Cive*, "On the Citizen," published in Latin in 1642.[19] This earlier work covers much of the same ground as the later *Leviathan*,[20] but we will discuss it to the extent necessary to understand Kant's critiques and shed any further light on Hobbes's philosophy as a whole. This chapter will begin with a look at Hobbes's understanding of the state of nature and the human person, then move to Kant's critique of Hobbes, and conclude by establishing what that disagreement means for politics at the individual, state, and international levels.

I. The Hobbesian State of Nature

Hobbes, when compared to Locke and Rousseau, presents a more challenging foil for Kant in a number of ways. First of all, his political theory, like Kant's, is systematic in a way that neither Locke's or Rousseau's could be considered. Like Kant, Hobbes's method can be easily described as "geometrical"; not only did he profess a great admiration for geometry (as we will discuss below), but he also included an obvious nod to Euclid in the titles of two of his major compositions. The larger work of which *De Cive* is a part he called *The Elements of Philosophy*; he also published a book titled *The Elements of Law*. *Leviathan*'s subtitle, "The

[19] Howard Williams (*Kant's Critique*, 10) and Byrd and Hruschka (71n1) both note that Kant read and used *Leviathan*, probably in its Latin translation, although a German translation was published in 1794 (Williams, 191).

[20] In fact, in his "Introduction" to *Man and Citizen,* Bernard Gert asserts that *De Cive*, while less compelling than *Leviathan* "as literature," nonetheless "is superior to it as philosophy," especially with regards to the philosophical basis for such "crucial concepts" as the Right and Laws of Nature (3). *De Cive*'s lengthy (relative to *Leviathan*) preface and dedicatory letter also provide a much more transparent account of Hobbes's assumptions, motivations, and goals than one can find in the later work.

Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civill," likewise indicates his intention to follow a scientific method. Within the work, he both articulates and demonstrates his operating assumption that knowledge is constructed through the adding and subtracting of definitions of words, just as geometrical proofs are constructed by combining a few basic axioms and formulas.[21] Hobbes believed he was accomplishing something entirely new with this method; as far as he knew, no

> other Philosopher hitherto, hath put into order, and sufficiently or probably proved all the Theoremes of Morall doctrine, that men may learn thereby, both how to govern, and how to obey; I . . . hope, that one time or other, this writing of mine, may fall into the hands of a Soveraign, who will consider it himselfe, (for it is short, and I think clear,) without the help of any interessed, or envious Interpreter; and by the exercise of entire Soveraignty, in protecting the Publique teaching of it, convert this Truth of Speculation, into the Utility of Practice.[22]

The last line could almost be seen as foreshadowing Kant's project in "Theory and Practice." Certainly the goal of setting out a complete, systematic theory of moral and political doctrine mirrors what Kant wanted to accomplish. In addition to their relationship with regard to the state of nature and the obligation to leave it, there are other, topical similarities. Both discuss the topic of religion in public life to a considerable extent.[23] To the eternal frustration of Kant's liberal admirers, they both repudiate revolution as a morally acceptable option for oppressed peoples. Kant, like Hobbes in this quote, places the moral responsibility for improvement of the

---

[21] "When a man *Reasoneth*, hee does nothing else but conceive a summe totall, from *Addition* of parcels; or conceive a Remainder, from *Substruction* of one summe from another: which (if it be done by Words,) is conceiving of the consequence of the names of all the parts, to the name of the whole; or from the names of the whole and one part, to the name of the other part. . . . These operations are not incident to Numbers onely, but to all manner of things that can be added together, and taken one out of another. For as Arithmeticians teach to adde and substract in *numbers*; so the Geometricians teach the same in *lines*, *figures*, . . . Writers of Politiques, adde together *Pactions*, to find mens *duties*; and Lawyers, *Lawes*, and *facts*, to find what is *right* and *wrong* in the actions of private men. In summe, in what matter soever there is a place for *addition* and *subtraction*, there also is place for *Reason*; and where these have no place, there *Reason* has nothing at all to do" (*Leviathan*, 21, V).

[22] Hobbes, *Leviathan*, 239 (XXXI).

[23] Broadly speaking, the last four chapters (XV-XVIII) of *De Cive* and the entire second half (Parts 3-4, chapters XXXI-XLVII) of *Leviathan* cover religion in a political context, as does most of Part III of Kant's *Religion* and the Conclusion to the *Metaphysics of Morals*.

commonwealth solely into the hands of the sovereign.[24] Hobbes also stands apart from Rousseau and Locke in having a substantial international aspect to his work. His influence on the modern field of international relations has already been noted; Hobbes himself even uses the word "anarchy" to reference the state of nature in *Leviathan*.[25]

1. Context and Method

To gain a complete understanding of Hobbes's motivations, in addition to his geometrical method, we must also consider the historical and intellectual circumstances in response to which he was writing. In order to do that, we will return to Voegelin and the concepts of existential and transcendental representation. In chapter one, we discussed how Voegelin's term "transcendental representation" indicated efforts by political societies in every age to understand themselves in terms of a transcendent order of some kind and to work to better reflect, or represent, that order in the "existential representation" of actual political and social structures. Voegelin argued that these terms applied equally well whether the transcendent order was a religious, philosophical, or ideological one—although he held a special contempt for ideological visions of order, leading as they so often do to violent disregard for human life in their implementation.

But it turns out that religious visions of political order can be just as horrific, especially when adherents of competing religious sects vie for political control. Not only was this the case during Hobbes's lifetime, but it provided the impetus for his political writings. Importantly, his work stands within a widespread political and intellectual reaction to Europe's 16th-century wars

[24] "This restriction [the original contract as a test for the rightfulness of law] obviously only applies to the judgement of the legislator" ("Theory and Practice," 79). See also MM, 6:321-22, 340-41.

[25] *Leviathan*, 230 (XXXI).

of religion that also resulted in the Westphalian international system—that still-reigning conception of states as independent, autonomous, sovereign units, derived from the terms of the 1648 treaties that ended the Thirty Years' War.[26]

De Cive was published in 1642, on the eve of the English Civil War and during what turned out to be the last decade of the Thirty Years' War—both of which were religiously-motivated conflicts. By the time *Leviathan* was published in 1651, both conflicts had ceased, but Hobbes evidently felt that more needed to be done to prevent future outbreaks of such religious violence. He was certainly not alone in this feeling; Stephen Toulmin writes that "by 1620, people in positions of political power and theological authority in Europe no longer saw . . . pluralism as a viable intellectual option, any more than . . . tolerance was for them a practical option."[27] The thing they took to be the root problem was not religion as such but rather the existence of *competing versions* of religion; if only people could settle on one version of religion or another, the conflicts over competing (and thus uncertain) truth claims could be ended. As Toulmin puts it, "it might not be obvious what one was supposed to be certain about, but *un*certainty had become *un*acceptable."[28] By 1630, "the desperation of the time" had increased to a fever pitch:

> Failing any effective political way of getting the sectarians to stop killing each other, was there no other possible way ahead? Might not philosophers discover, for instance, a new and more rational basis for establishing a framework of concepts and beliefs capable of achieving the agreed certainty that the skeptics had said was impossible? If uncertainty, ambiguity, and the acceptance of pluralism led, in practice, only to an intensification of

---

[26] Howard Williams, *Kant's Critique*, 1-2; Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: University of Chicago Press, 1990), 196; see also Jonathan Havercroft, "Was Westphalia 'All That'? Hobbes, Bellarmine, and the Norm of Non-Intervention," *Global Constitutionalism* 1, Issue 1 (March 2012), 120-140.

[27] Toulmin, 55; my thanks to Bruno Latour and his lecture "Politics and Religion: A Reading of Eric Voegelin," given at the University of Cologne on June 17, 2015, for pointing out the connection between Toulmin, Voegelin, and Hobbes. The lecture is accessible online at https://www.youtube.com/watch?v=jgyrnecHWMg.

[28] Toulmin, 55.

> the religious war, the time had come to discover some *rational method* for demonstrating the essential correctness or incorrectness of philosophical, scientific, or theological doctrines. . . . On reflection, perhaps, human experience might turn out to embody clarities and certainties that . . . the skeptics had overlooked.[29]

A "rational method" that might end the killing is what Hobbes claimed to set forth in his political writings. In the Preface to *De Cive*, Hobbes compares his own political philosophy with the "counterfeit and babbling form" of it derived from the ancient philosophers, which he blamed for "mischiefs that have befallen mankind":

> How many kings, and those good men too, hath this one error, that a tyrant king might lawfully be put to death, been the slaughter of! How many throats hath this false position cut, that a prince for some causes may by some certain men be deposed! And what bloodshed hath not this erroneous doctrine caused, that kings are not superiors to, but administrators for the multitude! Lastly, how many rebellions hath this opinion been the cause of, which teacheth that the knowledge whether the commands of kings be just or unjust, belongs to private men; and that before they yield obedience, they not only may, but ought to dispute them![30]

Note, again, that Hobbes's ultimate aim is not to criticize a particular proposition of political theory—that tyrants may be overthrown by the people—with which he disagrees and which he blames for violence, but rather to dispute *the ability to dispute* on political matters whatsoever. He continues by appealing to the actual structure of the ancient societies in which the early philosophers lived. Here, "subjects did not measure what was just by the sayings and judgments of private men, but by the laws of the realm; nor were they kept in peace by disputations, but by power and authority. Yea, they reverenced the supreme power . . . as a certain visible divinity."[31]

We will return to the concept of the "visible divinity" shortly, but before we do, another note on Hobbes's method is in order. Toulmin noted the widespread wish for an indisputable,

---

[29] Toulmin, 55-56.
[30] Hobbes, *De Cive*, 96-97.
[31] Ibid., 97.

"rational method" that would put an end to endless speculations; this, too, Hobbes believes he can provide. Rather than thinking of philosophy in terms of a search or desire (*philos*) for something one does not yet have—rather, that is, than starting from Socratic ignorance—Hobbes defines "wisdom" as "*the perfect knowledge of the truth in all matters whatsoever*."[32] The way to gain wisdom is to "travel from the contemplation of particular things to the inference or result of universal actions";[33] later, he describes *De Cive* as being "grounded on its own principles sufficiently known by experience."[34] Already it is obvious that this inductive approach, despite any analogical similarity to geometry, is diametrically opposed to Kant's deductive, metaphysical method. But Hobbes believes that this is the method that will provide the two results he, and many others, greatly desired: certainty and peace.

> Truly the geometricians have very admirably performed their part. For whatsoever assistance doth accrue to the life of man . . . we must acknowledge to be a debt which we owe merely to geometry. If the moral philosophers had as happily discharged their duty, I know not what could have been added by human industry to the completion of that happiness, which is consistent with human life. For were the nature of human actions as distinctly known as the nature of *quantity* in geometrical figures, the strength of *avarice* and *ambition*, which is sustained by the erroneous opinions of the vulgar as touching the nature of *right* and *wrong*, would presently faint and languish; and mankind should enjoy such an immortal peace, that [were it not for limitations of space on the planet] there would hardly be left any pretence for war.[35]

Ultimately, Hobbes believes his method will "demonstrate that there are no authentical doctrines concerning right and wrong, good and evil, besides the constituted laws in each realm and government."[36] The duty of determining what is considered "right" or "wrong" is left to the person in charge of making the laws—namely, the artificial person created by the social contract,

---

[32] Hobbes, *De Cive,* 90.
[33] Ibid., 91.
[34] Ibid., 103.
[35] Ibid., 91.
[36] Ibid., 98.

the *Leviathan*, the visible god. Thus, while it is already clear enough that some of Hobbes's moral and legal principles will differ from those of Kant's moral philosophy—dedicated as that is to expounding just such an "authentical" and indeed universal doctrine of duty regarding right and wrong—the question for us to consider is *why*, and what difference this makes for politics, especially international politics.

This problem of religious conflict and violence, and Hobbes's response to it, is what Eric Voegelin describes in terms of existential and transcendental representation in his *New Science of Politics*. In Voegelin's terms, the representatives of the various religious sects each had their *own version* of transcendental truth which they were fighting to superimpose onto the existential political order. The English civil war had demonstrated how sectarians competing "for existential representation could destroy the public order of a great nation—if such proof was needed after the eight civil wars in France and the Thirty Years' War in Germany. The problem of public order was overdue for theoretical restatement, and in Thomas Hobbes this task found a thinker who was equal to it."[37] Voegelin believes Hobbes was equal to this task because he was able to trace the source of the disagreement and uncertainty that Toulmin described as "unacceptable" back to "the authoritative source of order in the soul" of the individual person who believes he has direct access to a transcendental truth.[38]

> The Hobbesian theory of representation cuts straight to the core of the predicament. On the one hand, there is a political society that wants to maintain its established order in historical existence; on the other hand, there are private individuals within the society who want to change the public order, if necessary by force, in the name of a new truth. Hobbes solved the conflict by deciding that there was no public truth except the law of peace and concord in a society; any opinion or doctrine conducive to discord was thereby proved untrue.[39]

---

[37] Eric Voegelin, *New Science of Politics* (Chicago: University of Chicago Press, 1987), 152.
[38] Ibid., 164.
[39] Ibid., 153.

Voegelin's final line here is somewhat ironical—at least, Hobbes seems earnest about his method and goals and believes through them he has found a solid, certain, and rational basis for his conclusions—well beyond any arbitrary "decision" on his part. Nevertheless, it is undoubtedly true that his "theory of representation" was constructed with an eye toward "peace and concord" and certainty above all, and it is to this theory that we will now turn.

2. Hobbes's Physiological Epistemology

Like all contract theorists, Hobbes begins his theory by reconstructing man in the state of nature. Like Kant—and in contrast to Locke and Rousseau—he sees the need to establish what the natural man can know and how he can know it before moving on to the content of that knowledge and its implications for politics. To this end, Hobbes argues for a severely materialistic, physiological understanding of human knowledge and psychology. The Hobbesian state of nature and his social contract or "covenant" are both set up in the terms of and as logical outgrowths from this materialist understanding of the human being; as such, it is worthwhile reconstructing that understanding in some detail.

True to his inductive scientific method, Hobbes begins with "sense" and spends the first several chapters of *Leviathan* describing how physical sensation of external objects produces a motion in the mind we call "thought," how the residual inertial motion produces thoughts "in *Trayne*," how trains of thought can be called "*Imagination*" or "*Memory*," and how such trains, "being *regulated* by some desire, and designe," become what we call "Mentall Discourse."[40] Those who have "much memory, or memory of manything," are said to have "*Experience*."

[40] Hobbes, *Leviathan*, 1, 3-4, 9, 8 (I-III).

Those whose experiences are well-remembered, with the effect of allowing them to predict the result when encountering a similar event, are said to have "*Prudence,* or *Providence*, and sometimes *Wisdome*."[41]

As noted above, Hobbes defines "wisdom" in *De Cive* as "*the perfect knowledge of the truth in all matters whatsoever*."[42] Now, having established the biological basis of thoughts, Hobbes describes how speech and words develop and, thereby, comes to a discussion of truth which explains the previous definition. According to Hobbes, words (spoken or written) are simply names labeling a particular thought or kind of motion in the mind. Their purpose

> is to transferre our Mentall Discourse, into Verbal; or the Trayne of our Thoughts, into a Trayne of Words; and that for two commodities; whereof one is, the Registring of the Consequences of our Thoughts; which being apt to slip out of our memory, and put us to a new labour, may again be recalled, by such words as they were marked by. So that the first use of names, is to serve for *Markes*, or *Notes* of remembrance. Another is, when many use the same words, to signifie (by their connexion and order,) one to another, what they conceive, or think of each matter; and also what they desire, feare, or have any other passion for. And for this use they are called *Signes*.[43]

He concludes the discussion with a lovely metaphor encapsulating his position on the matter: "words are wise mens counters, they do but reckon by them: but they are the mony of fooles, that value them by the authority of an *Aristotle*, a *Cicero*, or a *Thomas*, or any other Doctor whatsoever, if but a man."[44] And this is how he arrives at a reconciliation of wisdom and truth: "*truth* consisteth in the right ordering of names in our affirmations," which requires nothing more than a good memory and scrupulously beginning with definitions when

---

[41] Hobbes, *Leviathan*, 4, 10 (II-III).
[42] Hobbes, *De Cive,* 90.
[43] Hobbes, *Leviathan*, 14 (IV).
[44] Ibid., 17 (IV); and this despite having just denounced metaphors as a deceptive abuse of words on p. 14!

reasoning.[45] One who pretends to reason otherwise "does not know anything, but onely beleeveth."[46]

Even so, Hobbes is careful to remain circumspect about the reliability of any particular human's capacity to reason (it seems difficult, after all, even with the aid of word-names, to keep track of every event and sense impression made in one's mind). He is absolutely certain about the facticity of his account of the workings of the human mind—he repeatedly assails the terminology of the ancient philosophers and medieval scholastics as being "absurd" in the sense of signifying nothing, which, if his assumptions were valid, would be true[47]—but the actual *outcomes* of such minds are another matter altogether:

> And therfore, as when there is a controversy in an account, the parties must by their own accord, set up for right Reason, the Reason of some Arbitrator, or Judge, to whose sentence they will both stand, or their controversie must either come to blowes, or be undecided, for want of a right Reason constituted by Nature; so is it also in all debates of what kind soever: And when men that think themselves wiser than all others, clamor and demand right Reason for judge; yet seek no more, but that things should be determined, by no other mens reason by their own . . . . [they] will have every of their passions, as it comes to bear sway in them, to be taken for right Reason, and that in their own controversies: bewraying their want of right Reason, by the claym they lay to it.[48]

This passage shows us where Hobbes wants to go next: having set up a materialist epistemology, he now sets his sights on the origins of human psychology. To this end, he provides an account of human "passions" that takes up the next several chapters. The goal of his argument is to present the human person as not only unreliable with regard to reason, but also thoroughly capricious in his impulses and motivations—in other words, utterly lacking order of

---

[45] Hobbes, *Leviathan*, 16, 24 (IV, V).

[46] Ibid., 22 (V).

[47] "And words whereby we conceive nothing but the sound, are those we call *Absurd*, *Insignificant*, and *Non-sense*. And therefore if a man should talk to me of a *round Quadrangle*; or *accidents of Bread in Cheese*; or *Immaterial Substances*; or of *A free Subject*; *A free-Will*; or any *Free*, but free from being hindred by opposition, I should not say he were in an Errour; but that his words were without meaning; that is to say, Absurd" (Ibid., 23, V).

[48] Ibid., 22 (V).

any kind beyond the physiological. If human beings cannot plausibly claim to have, or even to be aware of, any sort of order on the internal level, then order must be imposed upon them externally. Thus, as he foreshadows in the passage above, unruly human passions can only be tamed by "some Arbitrator, or Judge"; there can be no appeal to human reason as such. It is not essential to Hobbes's theory to determine *who* should be in charge or *what* they should decide; all that matters is that *someone decide* and everyone else obey. Nevertheless—as is also apparent from the passage above—Hobbes is not willing to allow the 'decider' to set himself up by force. Rather, "the parties must by their own accord" establish someone to judge. Politically, Hobbes accomplishes this via his theory of representation.

3. Hobbes's Natural Psychology

"Passions" is the word Hobbes uses for the feelings people have about the things that cause sense impressions in their minds; like sense and thought, these feelings consist of "motions" in the mind caused by objects external to the self. Thus, when a passion "is toward something which causes it, is called APPETITE or DESIRE"; when away from something, "it is generally called AVERSION."[49] By adding to these two basic feelings such nuances as "likelihood of attaining what they desire," or by combining two passions together to create a third, Hobbes spins out the whole complement of human emotions.[50] For example:

> For *Appetite* with an opinion of attaining, is called HOPE.
> The same, without such opinion, DESPAIRE.
> *Aversion*, with opinion of *Hurt* from the object, FEARE.
> The same, with hope of avoyding that Hurt by resistance, COURAGE.
> Sudden *Courage*, ANGER.[51]

[49] Hobbes, *Leviathan*, 28 (VI).
[50] Ibid., 30 (VI).
[51] Ibid.

Despite the mechanistic process by which the passions are aroused in a person by external objects, Hobbes nevertheless recognizes the role of human idiosyncrasy in emotion, as opposed to the more straightforward causal chains of thought, mental discourse, and reason. Different objects may provoke very different emotions in different people, or even in the same person at different times. This psychological construction allows Hobbes to reinforce two theoretical pillars on which his theory of representation rests. First, as Eric Voegelin points out, "the generic nature of man must be studied in terms of human passions; the objects of the passions are no legitimate object of inquiry."[52] The only psychological constant is that humans *have passions* and desire above all to see them fulfilled. Hobbes thus defines "Felicity" as "*Continuall successe* in obtaining those things which a man from time to time desireth, that is to say, continuall prospering."[53] Because that successful prosperity depends on having the power to attain desired ends or flee objects of aversion, Hobbes is able to claim, famously, that the "generall inclination of all mankind" is "a perpetuall and restlesse desire of Power after power, that ceaseth onely in Death."[54] We are not yet to a definition of a "person," but this is Hobbes's understanding of human nature, generally speaking.

---

[52] Voegelin*, New Science*, 180. See also Hobbes's Introduction to *Leviathan*: "whosoever looketh into himself, and considereth what he doth, when he does *think*, *opine*, *reason*, *hope*, *feare*, &c, and upon what grounds; he shall thereby read and know, what are the thoughts, and Passions of all other men, upon the like occasions. I say the similitude of *Passions*, which are the same in all men, *desire*, *feare*, *hope*, &c; not the similitude of the *objects* of the Passions, which are the things *desired*, *feared*, *hoped*, &c: for these the constitution individuall, and particular education do so vary, and they are so easie to be kept form our knowledge, that the characters of mans heart, blotted and confounded as they are, with dissembling, lying, counterfeiting, and erroneous doctrines, are legible onely to him that searcheth hearts" (xxxiv).

[53] Hobbes, *Leviathan*, 35 (VI).

[54] Ibid., 59 (XI).

The second pillar of Hobbes's theory is that morality, for him, is not "objective" in the normal sense; people call objects of their appetites "good," and things from which they are repulsed they call "evil."[55] Such moral terms are literally relative, in that they

> are ever used with relation to the person that useth them: There being nothing simply and absolutely so; nor any common Rule of Good and Evill, to be taken from the nature of the objects themselves; but from the Person of the man (where there is no Common-wealth;) or, (in a Common-wealth,) from the Person that representeth it; or from an Arbitrator or Judge, whom men disagreeing shall by consent set up, and make his sentence the Rule thereof.[56]

Once again, we see that the solution to inevitable human disagreement is appeal to a judge established by consent, but Hobbes slips in an apparent third option as well. An individual person defines what is "good" or "bad" for himself, and may agree to third-party arbitration in the event that his definitions conflict tangibly with another person's. However, "in a Common-wealth," the "Person that representeth it" can define what is good or bad *for the commonwealth* as a whole. This is Hobbes's solution in a nutshell, but he still must overcome the problem of how to get individual people from a state in which they may define good and evil for themselves into one in which they allow it to be defined for them, by a representative.

It is a serious problem to overcome; having eliminated "the objects of the passions" as a "legitimate object of inquiry," Hobbes is faced with the fact that there is now no reliable, intrinsic source of order either internal or external to the human person. No possible highest good is left, to use Aristotle's term, as Voegelin does: "With the *summum bonum*, however, disappears the source of order from human life; and not only from the life of individual man but

---

[55] David Walsh has a more nuanced view in *The Growth of the Liberal Soul* (Columbia, MO: University of Missouri Press, 1997): "The human nature with which he deals is constituted by its awareness of a law of nature given by God as well. Hobbes is emphatic that all men by nature can know God" (117).

[56] Hobbes, *Leviathan*, 29 (VI).

also from life in society."[57] Voegelin argues that, historically, "the order of life in community depends on *homonoia* . . . that is, on participation in the common nous."[58] A "common nous" is not far away from Rousseau's and Kant's understanding of a "general will," and even Locke believed that human awareness of the universal natural law could operate as a basis for law and order in society, with or without government. Hobbes, on the other hand, "is faced with the problem of constructing an order of society out of isolated individuals who are not oriented toward a common purpose but only motivated by their individual passions."[59]

Hobbes's reductionism leaves no constant except passion itself. The greatest of the passions is Fear—Hobbes makes it the basis not only of government, but also religion—and the greatest thing a person fears is death.[60] As Voegelin explains, "if life cannot be ordered through orientation of the soul toward a *summum bonum*, order will have to be motivated by fear of the *summum malum*."[61] This is the basis upon which Hobbes describes his famously dark and dangerous state of nature,[62] with its "warre of every man against every man," its "no *Mine* and *Thine* distinct; but onely that to be every mans, that he can get; and for so long, as he can keep it," and its "life of man, solitary, poore, nasty, brutish, and short."[63] Thus, the harsh

---

[57] Voegelin, *New Science*, 180.

[58] Ibid.

[59] Ibid.

[60] Regarding fear, Hobbes says that the "worst of all" things in the state of nature is "continuall feare, and danger of violent death" (*Leviathan*, 77, XIII). On religion, he says, "*Feare* of power invisible, feigned by the mind, or imagined from tales publiquely allowed, Religion; not allowed, Superstition. And when the power imagined, is truly such as we imagine, True Religion" (*Leviathan*, 31, VI). Here, it is clear that he has in mind that religion, like morality, be defined by the sovereign, but elsewhere he writes of it in terms of individual preference: "this Feare of things invisible, is the naturall Seed of that, which everyone in himself calleth Religion; and in them that worship, or feare that Power otherwise than they do, Superstition" (*Leviathan*, 64, XI).

[61] Voegelin, *New Science*, 182.

[62] Noel Malcolm, among others, prefers to emphasize the communal aspects of Hobbes's state of nature, especially in the context of its application-by-analogy to the international realm. See "Hobbes's Theory of International Relations," in *Aspects of Hobbes* (Oxford: Clarendon Press, 2002). This will be discussed in greater depth in the conclusion to this chapter.

[63] Hobbes, *Leviathan*, 77-78 (XIII).

consequences of living at the mercy of unregulated natural passions are what "encline men to Peace . . . . And Reason suggesteth convenient Articles of Peace, upon which men may be drawn to agreement."[64]

4. Hobbes's Account of Natural Law

Given all the foregoing, it is fascinating that, at this juncture, Hobbes's theory actually begins to align with Kant's. The "Articles of Peace" consist of what Hobbes calls the "Lawes of Nature." Hobbes also recognizes one "Right of Nature," the right to preserve one's own life, and argues that this right, in the state of nature, logically entails "a Right to everything; even to one anothers body."[65] What Hobbes defines as "A Law of Nature" is simply an inverse of the Right—a person is obliged *not* to do anything "which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved."[66] The problem, of course, is that the unrestricted exercise of the "right to everything" ends up perversely undermining its own end of the preservation of life: "as long as this naturall Right of every man to everything endureth, there can be no security to any man."[67] Therefore, Hobbes endeavors to restate his definition of a "law of nature" such that the "*Fundamentall Law of Nature*" is now given as "*to seek Peace, and follow it*."[68] Only when this is not possible is a reversion to the Right of Nature allowed.

---

[64] Hobbes, *Leviathan*, 78 (XIII). See also Voegelin: "If human nature is assumed to be . . . devoid of ordering resources of the soul," except passion, "the horror of annihilation will, indeed, be the overriding passion that compels submission to order" (*New Science*, 184).

[65] Hobbes, *Leviathan*, 79 (XIV).

[66] Ibid.

[67] Ibid., 79-80 (XIV).

[68] Ibid., 80 (XIV).

Hobbes attributes discovery of these definitions to "Reason," by which he means the physiological process of sensory experience, combined with the ability to use word-names to aid in memory and prediction of cause-and-effect sequences. In fact, he later clarifies his use of the term "Laws of Nature" by saying, in essence, that he is using the term only conventionally. What "men use to call by the name of Lawes" are actually only "Conclusions, or Theorems," or "dictates of Reason," when reason is employed in contemplating how best to maintain and preserve one's own life.[69] He gives no account of *how* such reason—notoriously faulty in humans, especially in those who have not lived long enough to acquire much experience, which would presumably be true of most people in the state of nature—could come to a reliable knowledge of what he now wants to universalize as "a precept, or generall rule of Reason, *That every man, ought to endeavor Peace*."[70]

We have already mentioned, in chapter two, how the obvious differences between Kant and Hobbes on the definitions of "reason" and "right" lead to very different treatments of, for instance, property in the state of nature. Hobbes denies even the possibility of property outside

[69] "…wheras Law, properly is the word of him, that by right hath command over others. But yet if we consider the same Theoremes, as delivered in the word of God, that by right commandeth all things; then are they properly called Lawes" (*Leviathan*, 98, XV).

[70] Ibid., 80 (XIV). *De Cive* gives a similar account of reason and the natural laws: "*true reason* is a certain *law*; which, since it is no less a part of human nature than any other faculty or affection of the mind, is also termed natural. Therefore the *law of nature* . . . is the dictate of right reason, conversant about those things which are either to be done or omitted for the constant preservation of life and members, as much as in us lies" (II.1). Hobbes gives a further explanation of "right reason" in a footnote that clarifies "I understand not, as many do, an infallible faculty, but the act of reasoning, that is, the peculiar and true ratiocination of every man concerning those actions of his, which may either redound to the damage or benefit of his neighbors" (II.1n). This "true ratiocination" is defined negatively by comparison with "the false reasoning, or rather folly of those men, who see not those duties they are necessarily to perform towards others in order to their own conservation" (II.1n). He then refers the reader to the sections of his first chapter in which he establishes the basic unsociability of human beings—"all society therefore is either for gain, or for glory; that is, not so much for love of our fellows, as for the love of ourselves"—and the fear, distrust, contempt, competition, and violence that stem from this fact and lead, by way of experience, to an understanding of the right of nature (I.2). This he likewise defines as "right reason" (I.7). That he is still undeniably thinking of a physiological process is clear from III.25, which declares the 20th Law of Nature to be against "drunkenness." Obeying the law of nature depends on "right reason," which requires a functioning brain in order to operate. Thus, doing anything that would even temporarily "destroy or weaken the reasoning faculty," like drinking alcohol, is contrary to the Law of Nature.

the civil state—"no *Mine* and *Thine* distinct"—while Kant claims that the civil state is only possible if true property rights theoretically precede it.[71] However, the rest of the Laws of Nature reveal some undeniable similarities. The second law of nature is essentially a version of Kant's universal law of freedom: "*That a man be willing, when others are so too, as farre-forth, as for Peace, and defense of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.*"[72] Likewise, the Third Law of Nature, "*That men performe their Covenants made*," makes a nice juxtaposition with Kant's postulate of promise-keeping; the difference being only that Hobbes thinks this law is deducible from physiological processes of reasoning, while Kant understands it as an unprovable postulate or regulative idea—something Hobbes would call belief, not knowledge.[73] Nevertheless, it is revealing that they both identify this moral center as the necessary foundation for everything.[74] Finally, towards the end of the list of natural laws, we find the sixteenth, which Byrd and Hruschka identified as the source of Kant's "postulate of public law" or "exeundum principle."[75] The law states: "though men be never so

[71] "If no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. . . . So if external objects were not even *provisionally* mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave the state of nature" (MM, 6:312-313).

[72] Hobbes, *Leviathan*, 80 (XIV). The concept is discussed, with significantly different wording, in *De Cive* II.3 as a subset of the first fundamental law.

[73] Hobbes, *Leviathan*, 88-93 (XV); MM, 6:273; in *De Cive*, it is given as the second law of nature (III.1-2).

[74] David Walsh sees Hobbes's insistence on this point as evidence that "Hobbes, too, is patently aware of the insupportability of an egoistic agreement. Even self-serving agreements presuppose a background of virtue, at least that of fidelity to agreements, if they are to be more than strict exchanges" (*Liberal Soul*, 121). The difference is that Kant is at least much more explicit about the nature and extent of the virtues one must presuppose in order to make any kind of public order coherent—this is, essentially, the entire point of "Private Right"—whereas Hobbes seems content to leave his moral presuppositions unexamined in the background.

[75] Georg Cavallar uses the term "*exeundum*-principle" in his review of Byrd and Hruschka's *Commentary* for *Notre Dame Philosophical Reviews* (Aug. 21, 2010, https://ndpr.nd.edu/news/24461-kant-s-doctrine-of-right-a-commentary/). Byrd and Hruschka do not use that exact phrase in their book, although they note that the Latin phrase as quoted by Kant, and later, similarly, by Hegel (see note 12 above), "became something of a motto in the eighteenth century" (213n119).

willing to observe these Lawes [of Nature, in the state of nature], there may neverthelesse arise questions concerning a mans action . . . . And therefore it is of the Law of Nature, *That they that are at controversie, submit their Right to the judgement of an Arbitrator*."[76] We will discuss the significance of this point within Kant's critique of Hobbes in the second section of this chapter.

For now, we will move on to how Hobbes instantiates these natural laws politically. The transition mirrors the one he executed by moving from a discussion of human reason to human passions. Essentially, it is one thing to understand how we can know these laws through experiential reason, but their application must face the problem of intractable human passions. "For the Lawes of Nature . . . are contrary to our natural Passions."[77] Hobbes will accomplish this through his theory of representation, which lays the theoretical groundwork for his social contract or "Covenant" by establishing a psychological solution to the problem of unruly human passion. In this process, we will begin to see that while Kant's and Hobbes's theories converged momentarily on the characterization of the state of nature and the content of natural laws, they now diverge significantly once again. Not only does Kant's account not require the complex machinations of Hobbes's theory of representation, it also does not need a consensual contract or covenant. Kant's account places *coercion* at the service of *freedom*.[78] Hobbes, on the other hand, places *consent* at the service of an *authority* so coercive and absolute, he must redefine freedom to fit it into his theory at all.

---

[76] Hobbes, *Leviathan*, 96 (XV). Clearly Hobbes is developing his logic towards an establishment of sovereignty—there is even an insistence here that "the parties to the question, Covenant mutually" to be bound by arbitration—but the arbitrator is nonetheless a far cry from a Leviathan. The seventeenth, eighteenth, and nineteenth laws go on to place limits on the power of the arbitrator, such as for conflicts of interest. No such limitations could be placed on Hobbes's sovereign.

[77] Ibid., 105 (XVII).

[78] MM, 6:341.

5. Hobbes's Theory of Representation

Hobbes begins his theory of representation with a definition of a "Person." One might wonder what it is that Hobbes has been discussing up to this point, if not the human person, but Hobbes has his reasons for wishing to distinguish between the mere human being—who can also be a person—and the broader category of "Person." This discussion actually begins in the Introduction to the *Leviathan*, where Hobbes proposes to discuss the state as an "Artificiall Man."[79] This already implies that the category "man" can contain both natural and artificial types, a distinction Hobbes continues to make with regard to "person."

> A PERSON, is he, *whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction*.
>
> When they are considered as his owne, then is he called a *Naturall Person*: And when they are considered as representing the words and actions of an other, then is he a *Feigned* or *Artificiall person*.[80]

Hobbes then gives us an etymology of "person" from the Latin (*persona*) as well as the Greek cognate (*πρόσωπον*), noting that in both instances the word bears a connotation of a face or mask, such as a stage actor might wear. Thus he defends his extension of the term "person" to include such acting: "to *Personate*, is to *Act*, or *Represent* himselfe, or an other; and he that

---

[79] "Nature (the art whereby God hath made and governes the world) is by *the Art* of man, as in many other things, so in this also imitated, that it can make an Artificial Animal. For seeing life is but a motion of Limbs, the beginning whereof is in some principall part within; why may we not say, that all *Automata* (Engines that move themselves by springs and wheeles as doth a watch) have an artificiall life? . . . Art goes yet further, imitating that Rationall and most excellent worke of Nature, *Man*. For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine CIVITAS) which is but an Artificiall Man; though of greater stature and strength than the Naturall, for whose protection and defence it was intended; and in which, the *Soveraignty* is an Artificiall *Soul*, as giving life and motion to the whole body; . . . *Equity* and *Lawes*, an artificiall *Reason* and *Will*; *Concord*, *Health*; *Sedition*, *Sicknesse*; and *Civill war*, *Death*. Lastly, the *Pacts* and *Covenants*, by which the parts of this Body Politique were at first made, set together, and united, resemble that *Fiat*, or the *Let us make man*, pronounced by God in the Creation" (xxxiii).

[80] Hobbes, *Leviathan*, 99 (XVI).

acteth another, is said to beare his Person, or act in his name."[81] But this still does not reach the level of representation that Hobbes wishes to achieve, for it does not include a concept of authority. To reach this level, Hobbes's theory requires another step:

> Of Persons Artificiall, some have their words and actions *Owned* by those whom they represent. And then the Person is the *Actor*; and he that owneth his words and actions, is the AUTHOR: In which case the Actor acteth by Authority.[82]

With this authority, the Actor can enter the Author into binding contracts and can even break the law of nature with impunity: in such a relationship—one Hobbes has defined as a type of artificial person—the actor undertakes all of the acting but bears none of the responsibility, while the author bears all of the responsibility while himself taking no action at all, other than commanding.[83] The construction of this hybrid "person," while not illogical per se, nonetheless seems to entail a troubling exchange: one side must give up an active causal agency, while the other forfeits moral agency. It appears unnecessarily restrictive on both sides, at first glance, but Hobbes is not done with his chain of logic yet.

The final step in this theory of representation is to argue that one actor can represent more than one author simultaneously. There is more to this than simply a collective type of representation: Hobbes wants to argue that this process creates an entirely new "person," according to his previous definition.

> A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; so that it be done with the consent of everyone of that Multitude in particular. For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*. And it is the Representer that beareth the Person, and but one Person: And *Unity*, cannot otherwise be understood in Multitude.

---

[81] Hobbes, *Leviathan*, 99 (XVI).
[82] Ibid.
[83] Ibid., 100 (XVI).

> And because the Multitude naturally is not *One*, but *Many*; they cannot be understood for one; but many Authors, of everything their Representative saith, or doth in their name; Every man giving their common Representer, Authority from himselfe in particular; and owning all the actions the Representer doth . . .[84]

The key to this theory of representation is Hobbes's emphasis on unity and, even more importantly, on the fact that the representative "beareth the Person" of this newly-created personal entity. Here Hobbes is describing representation generically, but in the next chapter he will apply this general theory of corporate representation to the contractual "covenant" process that creates both the commonwealth and its sovereign. In this process, as Voegelin explains it, what were formerly "single human persons" now "cease to exist and merge into the one person represented by the sovereign."[85] The privilege of bearing one's own person individually is only possible in a state of nature, where a person's "words and actions represent the power drive of his passions."[86] Once these natural "souls have coalesced" into the commonwealth, individual passions—with all their destructive, irrational, and violent effects—are effectively "broken and fused" back together into a rational, unified whole.[87] "The covenanters do not create a government that would represent them as single individuals; in the contracting act they cease to be self-governing persons and merge their power drives into a new person, the commonwealth, and the carrier of this new person, its representative, is the sovereign." Voegelin argues that this "psychological transformation" is both necessary and possible *because* Hobbes has excluded any "authoritative source of order in the soul" other than self-interested passion.[88]

---

[84] Hobbes, *Leviathan*, 101 (XVI).
[85] Voegelin, *New Science*, 183.
[86] Ibid.
[87] Ibid.
[88] Ibid., 164, 182, 184.

This psychological amalgamation is what takes place in Hobbes's social contract—given the transformation required to establish this composite Person, Hobbes is clear that what takes place here goes well beyond mere "consent." Indeed, he believes that consent, in the state of nature, is nearly worthless—to give up any of one's rights or powers without assurance from others to do the same is existentially dangerous and thus contrary to the Law of Nature, while such assurance can only be guaranteed by an overriding "Common Power."[89]

> The only way to erect such a Common Power . . . is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one man, or Assembly of men, to beare their Person . . . and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgment. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, "*I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner*." This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS. This is the Generation of that great LEVIATHAN, or rather (to speake more reverently) of that *Mortall God*, to which wee owe under the *Immortall God*, our peace and defence.[90]

It is a fascinating paradox that, despite his thoroughly modern, materialistic assumptions and methods, Hobbes ends up in nearly the same place as the ancient cosmological civilizations with their god-kings and cults of patron divinities. Indeed, as Voegelin summarizes in his own terminology, "existential and transcendental representation, thus, meet in the articulation of a society into ordered existence. By combining into a political society under a representative, the covenanting members actualize the divine order of being in the human sphere."[91] Hobbes's

---

[89] Hobbes, *Leviathan*, 107 (XVII). Also: "The Lawes of Nature oblige *in foro interno*; that is to say, they bind to a desire they should take place: but *in foro externo*; that is, to the putting them in act, not alwayes. For he that should be modest, and tractable, and performe all he promises, in such time, and place, where no man els should do so, should but make himselfe a prey to others, and procure his own certain ruine, contrary to the ground of all Lawes of Nature, which tend to Natures preservation" (97).

[90] Ibid., 107-108 (XVII).

[91] Voegelin, *New Science*, 154.

language of "covenant" and "unity" is explicitly religious. It reminds one of the covenants described in the Bible between God and Abraham, Moses, and, by extension, the entire Hebrew nation—similar if not in form, per se, then certainly in gravity, permanence, and the peril of breaking terms. It is also reminiscent of the process of conversion, although not merely of an individual within himself, but of many individuals "converting" themselves together into the new man—humankind regenerated, born again, perfectly at peace.

In this way, the political society itself becomes not the sovereign but merely the authorizing person, while the representative or actor who "carryeth this Person, is called Soveraigne."[92] The sovereign thus inherits, by transfer of authority in the author-actor relationship, the "Common Power" needed to hold the multitude of people to their promises. Hobbes, however, views this "Common Power" as more than just the ability to enforce external obedience. Rather, "by terror thereof," the sovereign "is inabled to forme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad."[93] Hobbes, it seems, is not content with Thomas Aquinas's assertion (which Kant also adopts) that positive law can only touch exterior actions and cannot reach to the level of internal motivations. Rather, true to his intention to articulate a new, scientific civil theology, his Leviathan will have the power to control men's actions through their very wills and souls.

This re-shaping of perverse, self-interested, natural human beings into tractable, united subjects of a commonwealth is the ultimate aim of Hobbes's political theory. He rightly recognizes that such a process requires much more than consent—it requires power, even

[92] Hobbes, *Leviathan*, 108 (XVII).
[93] Ibid.

unrestricted power.[94] It is for this reason that he argues that the sovereign himself is not party to of the "Covenant" and thus "there can happen no breach of Covenant on the part of the Soveraigne."[95] Furthermore, the sovereign cannot be accused of committing injustice against its subjects. Since each subject individually "is Author of all the Soveraigne doth," and since representatives acting on authority can do no harm to the author-owners of their actions, per Hobbes's earlier definition, then whoever "complaineth of injury from his Soveraigne, complaineth of that whereof he himselfe is Author; and therefore ought not to accuse any man but himselfe."[96]

It is important to emphasize, by way of conclusion to this discussion of Hobbes's state of nature and social contract, the extent to which Hobbes's political theory is based on the psychology of the human person that he has developed here, rather than the fact of anarchy in the state of nature. Anarchy, according to Hobbes's empirical methods and assumptions, is only problematic if people really are the way he has presented them here. Hobbes describes an obligation to quit the state of nature in terms of "natural laws," but these laws are known from physical *experience*, not *a priori* by way of reason. Indeed, Hobbes would deny that any category of *a priori* reason could exist.

II. Kant's Critique of Hobbes

It is undeniable that Kant and Hobbes come to the same conclusions, in many cases. They both agree that *if there were* such a thing as a state of nature, it would be a state of war and a

[94] Hobbes, *Leviathan*, 110-111 (XVIII): "Covenants being but words, and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the publique Sword; that is, from the untyed hands of that Man, or Assembly of men that hath the Soveraignty, and whose actions are avouched by them all, and performed by the strength of them all, in him united."

[95] Ibid., 110 (XVIII).

[96] Ibid., 111 (XVIII).

state devoid of justice or injustice. They both agree that there is something like a natural law or obligation, drawn from a dictate of reason as each understands it, that requires us to exit the anarchical state of nature and set up, or exist in, a formal political community. As we will discuss below, within that political community, both are willing to leave broad powers in the hands of rulers and deny the people any right to revolution. The difference, then, comes down to two things: Kant's metaphysical method vs. Hobbes's empirical, materialist assumptions, and each man's beliefs about human beings, human nature, and human rights.

On the first point, while both agree on what a putative state of nature would look like, the *role* of the putative state of nature differs in each system. Hobbes appeals explicitly to the anarchical state of nature as an experientially valid *reason for* submitting to a political system instead. Even if no such state of nature ever existed, Hobbes claims we do still know from our experience with human beings what such a state would be like, given the fact that we distrust each other, act defensively, and assume bad actors exist. Crucially, we can see what it looks like because it still operates on the international level. Hobbes's theory requires him to establish this point because his Natural Laws depend on reason for their validity, but Hobbes's reason is an entirely empirical, experiential, physiological phenomenon.

For Kant, on the other hand, to the extent that the "state of nature" operates as a *basis* for his political philosophy, it is the *theoretical* state of nature, abstracted from empirical reality. His starting point is an assumption of metaphysical principles that must be true if practical reason is going to work, not empirical experiences that create motion-data in the mind. Thus, he can say "it is not from experience" that we know that a putative nature would be a state of violence, and that "it is therefore not some fact that makes coercion through public law

necessary."[97] Kant can demonstrate this theoretically, based only on metaphysical principles of practical reason.

He can do so, moving to the second point, because he assumes the human person has awareness, via practical reason, of the moral law and all its attendant duties—a species of that which Voegelin called the "authoritative source of order in the soul," as we will demonstrate below.[98] Hobbes, on the other hand, denies that there is any objective right and wrong for human beings. Rather, those terms are merely word-names we give to the things that please or displease us. Thus, political choices for people have nothing to do with right or wrong but are purely pragmatic and self-interested: order, or death. There is no *intrinsic* reason why human beings ought to be valued or respected; there is only the happenstantial reason that people generally prefer to live and not die. If there are laws that demand treating people *as if* they have inherent value, it is only because such treatment is conducive to one's own peace and safety, whereas the contrary behavior has the potential to lead to conflict and death.[99]

Ultimately, these divergent visions of the human person are more fundamental to both thinkers than either the state of nature or the social contract as concepts and can account for the differences in their political theories from basic human ethics to the purpose of the state to the normative structure of international relations. However, once again, the state of nature becomes an important vehicle for demonstrating these assumptions—for both Kant and Hobbes. This

---

[97] MM, 6:312.

[98] Voegelin, *New Science*, 164.

[99] For example, the eighth Law of Nature in *Leviathan*: "And because all signes of hatred, or contempt, provoke to fight; insomuch as most men choose rather to hazard their life, than not to be revenged; we may in the eighth place, for a Law of Nature set down this Precept*, That no man by deed, word, countenance, or gesture, declare Hatred, or Contempt of another*. The breach of which Law, is commonly called *Contumely*" (94, XV). Likewise, *De Cive* reasons toward Equality as a law of nature not on the basis of anything inherent to the human person as such, but because "it is necessary for the obtaining of peace, *that they be esteemed as equal* . . . the contrary to which law is *pride*" (III.13).

becomes quite clear in the "Theory and Practice" essay in which Kant responds directly to Hobbes's political theory.

The extent to which this essay should be read as a critical confrontation of Hobbes, rather than a sympathetic reinterpretation, is a matter of some debate. Richard Tuck, who deals with Kant's state of nature under the heading of "The Hobbesianism of Kant," writes that the first half of the second section of "Theory and Practice"—the section subtitled "Against Hobbes"—is not only *not* a critique, but "is in fact a fairly faithful reconstruction of Hobbes's theory of sovereignty."[100] According to his reading, the only portion of the essay that should be understood as standing "against Hobbes" is the brief passage explicitly mentioning his name, in which Kant criticizes Hobbes's unlimited sovereign and defends the people's rights to conscience and expression. While Tuck must concede this criticism, he nonetheless insists that "the practical difference was . . . rather slight."[101]

Howard Williams, in his book-length account of *Kant's Critique of Hobbes*, considers the entire essay, to varying degrees, and certainly the entire second section, as an implicit criticism of Hobbes.[102] Indeed, he structures his book to follow these critiques, with full chapters on each of the three "principles" of political theory which Kant discusses before ever mentioning Hobbes by name, as we will see below. Nevertheless, Williams gives full credit to the extent of Hobbes's influence on the "inner construction of Kant's political philosophy" and especially on "the doctrine of the state of nature and our emergence from it."[103] He notes that Tuck "rightly refers . . . to the 'Hobbesianism of Kant'" and avers that the contrast which is the thesis of his

[100] Tuck, 211.
[101] Ibid., 212.
[102] Howard Williams, *Kant's Critique*, 10.
[103] Ibid., 10, 11.

book is a matter of what he has "chosen to emphasize."[104] However, he later emphatically rejects certain views "of Hobbes that would place him far closer to Kant" by interpreting him as "a deontologist."[105] Duty-based ethics assume "that it is possible to distinguish between the pursuit of self-interest and the acceptance and carrying out of our duty," but "for Hobbes, the pursuit of virtue and of self-preservation are the same thing."[106] Kant, on the other hand, "wants to leave expediency and sheer self-interest behind," which "puts him at odds with Hobbes over a wide spectrum of political ideas," including but not limited to those discussed in "Theory and Practice."[107]

It is undeniable that Kant was, perhaps temperamentally, a charitable and sympathetic reader; at times even more sympathetic to his interlocutors than they were to themselves.[108] Williams points out that, despite the obvious and seemingly fundamental difference, the idealist Kant "does not directly cite Hobbes's materialism" as an objection in "Theory and Practice."[109] Ironically, Kant's scholarly charity alone separates him from Hobbes, who eviscerated his intellectual opponents with an exuberance and wit rarely matched in the history of philosophy. Wolfgang Kersting concludes that "Kant's political philosophy forms a pragmatic synthesis of Hobbes's sense of political reality and Rousseau's ideal of justice."[110] This is a fair summation,

---

[104] Howard Williams, *Kant's Critique*, 11n25.
[105] Ibid., 67.
[106] Ibid., 67-68.
[107] Ibid., 68.
[108] An example is his reply to Christian Garve in the first section of "Theory and Practice." Although Garve understands the distinction Kant wants to make between motives of happiness and duty, he claims that he can find no "such distinction between the desires and aspirations in [his] *heart*" (68). Kant replies, "I have no hesitation in contradicting his self-accusation outright and in championing his heart against his mind" (69).
[109] Howard Williams, *Kant's Critique*, 9.
[110] Kersting, 359. Howard Williams notes that Kant admired both thinkers, but maintains that Kant's "relationship with Rousseau is more that of a collaborator than a critic" (10).

but to get there Kant must go "far beyond Hobbes," as Byrd and Hruschka noted.[111] Hobbes may have served Kant as a useful starting point, and thus a thinker Kant would continue to regard with esteem, but it is the task of this chapter to demonstrate the extent to which Kant's political theory supersedes Hobbes's.[112] Thus, we will contend that it does so on the basis of two fundamental disagreements—those described above, regarding methods and views of the human person—and with three important implications, which will be discussed in the conclusion to this chapter. These have to do with human freedom, with revolution and political reform, and with Kant's extension of the state of nature concept into the international realm.

1. "Theory and Practice," Section I: Individual Moral Theory

Kant's essay "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice'" was written to combat the notion that particular exceptions to an ethical "theory founded on the *concept of duty*" could exist, or that such a theory would need to be supplemented by practical "experience," presumably of situations in which such exceptions would seem to apply.[113] Kant admits that there may be other fields in which this saying may be true, but he wants to argue that in moral philosophy, as in mathematics and mechanics, any apparent gap between the theory (e.g., of ballistics) and practice (artillery as employed in the field) should be filled with "more theory" ("the theory of air resistance"), rather than appeals to

[111] Byrd and Hruschka, 73.

[112] Perhaps decisive should be Kant's own assessment of Hobbes's *Leviathan*: "A writing in which genius reigns, even if at the same time with many mistakes, is much better than one which contains no mistakes, but none the less only presents the most everyday common or garden things. . . . Through a book of the former kind my understanding is brought into action, and in this situation it can itself come across new horizons" (Howard Williams, *Kant's Critique*, 10n24, quoting Kant's *Lectures on Anthropology* of 1772-1773). That *Leviathan* is a brilliant example of English prose, philosophically challenging and often humorous, is undeniable; just because Kant highlighted its merits and declined to dwell its "many mistakes" should not be taken as evidence that he adopted or failed to notice them.

[113] Kant, "Theory and Practice," 62.

more practical experience at theory's expense.[114] In essence, the essay is a defense of Kant's theoretical, metaphysical method over and against those, such as Hobbes, who would attempt to base morality on practical experience alone. Such an attempt "does very great harm," Kant claims; indeed,

> all is lost if the empirical (hence contingent) conditions governing the execution of the law are made into conditions of the law itself, so that a practice calculated to produce a result which *previous* experience makes probable is given the right to dominate a theory which is in fact self-sufficient.[115]

Kant's essay is structured in order to argue for this position at three complementary levels: that of individual "*morality* in general," then with regard to "*political right*" at the state level, and finally at the international level, "with regard to the welfare of the *human race* as a whole."[116] The second section, regarding politics in theory and in practice, is subtitled "Against Hobbes" and contains the one explicit critique of Hobbes's political philosophy; that critique will be the primary focus of the rest of this chapter.

The first section contains a very concentrated restatement of Kant's moral philosophy, including his revision of the Aristotelian "doctrine of the *highest good*," which becomes, implicitly, a critique of Hobbes's doctrine of "perpetuall and restlesse desire of Power after power."[117] Kant writes that "the study of morals" is "a discipline which would teach us not how to be happy, but how we should become worthy of happiness," regardless of whether we achieve it or not.[118] There may be "comparatively" better or worse states of being with regard to achieving happiness in the sense of preferred ends, but "*reason* never recognizes" these states

---

[114] Kant, "Theory and Practice," 62.
[115] Ibid., 63.
[116] Ibid.
[117] Ibid., 66.
[118] Ibid., 64.

"as more than *relatively good*, according to the extent to which a person is worthy of it."[119] There is only one state "good in itself," which is "that state of consciously preferring the moral law of duty in cases where it conflicts with certain of my ends."[120] This is a possibility Hobbes all but rules out for human beings; contrarily, it forms the basis not only of Kant's moral arguments in this section, but his political arguments in the next section as well.

Kant argues throughout for his confidence that duty is an immediate, innate, inescapable human intuition: "man is aware with the utmost clarity" of his duty, of the imperative to fulfill it "completely unselfishly," and of the need to "totally separate" the "desire for happiness" from his awareness of duty.[121] This awareness does not require an experience of having ever actually done so, but only an affirmation that "we can be aware of the maxim of striving towards moral purity."[122] In a clear, if not explicitly noted, contrast to Hobbes, Kant differentiates this awareness from mere "physical feeling" and even claims that we should "feel . . . a revulsion at the very idea of calculating the advantages we might gain through violating our duty, just as if the choice were still a real one."[123] Rather, the awareness of moral duty "elevates the human mind" through the experience of "struggling with . . . yet overcoming" temptations to violate it.[124] "The fact that man is aware that he can do this just because he ought to" is the crucial point: this is what "discloses within him an ample store of divine capabilities and inspires him, so to speak, with a holy awe at the greatness and sublimity of his true vocation."[125]

---

[119] Kant, "Theory and Practice," 67-68.
[120] Ibid., 68.
[121] Ibid., 69.
[122] Ibid.
[123] Ibid., 68, 71.
[124] Ibid., 71.
[125] Ibid..

Finally, Kant concludes that no amount of empirical experience can rid man of these experiences and the inescapable awareness of duty. In his words, violation of "the idea of duty" makes us "appear despicable and culpable in our own eyes," in a way that failing to find happiness or pragmatically avoiding bad consequences does not.[126] In a sense, Kant is making the same kind of argument that Plato made in the *Gorgias*: that doing evil is worse than being the victim of it. In other words, contrary to Hobbes's belief, there is a *summum malum* worse than death: consciously choosing one's own private interests over what one knows to be one's duty. This truth, Kant says, "is a clear proof that everything in morals which is true in theory must also be valid in practice."[127] There are no merely empirical circumstances that can excuse a person, "a being subjected by his own reason to certain duties," from those duties.[128] Moral practice is simply concerned with carrying out one's duties, hopefully "in better and more universal ways," and emphatically *not* with finding circumstantial excuses to avoid doing one's duty.[129]

Even if we mitigate Hobbes's self-asserted materialism with the moral assumptions he has to import to make his system work, it still does not approach what Kant lays out here. Hobbes cannot account for the origin of the moral assumptions he makes; Kant, on the other hand, not only makes his assumptions explicit, but traces them back to their source in the internal, moral awareness of practical reason that is both the center and the boundary of Kant's thought. Although Voegelin did not use the phrases "truth of the soul" or "internal source of order" with regard to Kant, specifically, Kant seems to be writing about the same experience in this section of "Theory and Practice." Furthermore, by giving his essay its tripartite structure—

[126] Kant, "Theory and Practice," 72.
[127] Ibid.
[128] Ibid.
[129] Ibid..

individual, state, mankind—Kant is emphasizing the extent to which the internal source of order, in the form of practical reason's awareness of moral duty, is the definitive source of order for human societies and humankind as a whole.

2. "Theory and Practice" Section II: Political Theory

Kant uses this concept of duty to frame his discussion of the social contract, with which he begins Section II.[130] The social contract is "essentially different" from all other kinds of human contracts because, while other contracts are made to serve "some common end which they all *share*," the social contract describes "an end in itself which they all *ought to share*."[131] In this sense, the civil state which the social contract represents "is thus an absolute and primary duty in all external relationships whatsoever among human beings."[132] We have seen how, in the *Rechtslehre*, Kant develops this line of thinking to the point of dispensing with the social contract altogether; those arguments need not be repeated here. Already in this passage is a familiar definition of *Recht*—right as such, or private right, as in the theoretical state of nature—as "the restriction of each individual's freedom so that it harmonises with the freedom of everyone else," and a definition of "*public right*" as "the distinctive quality of the *external laws* which make this constant harmony possible."[133] Indeed, Kant here insists that "the whole concept of an external right is derived entirely from the concept of *freedom*" and "has nothing to

[130] *Vertrag der Errichtung einer bürgerlichen Verfassung*, "contract establishing a *civil constitution*" ("Theory and Practice, 73).
[131] Kant, "Theory and Practice," 73.
[132] Ibid.
[133] Ibid.

do" with happiness as a pursuit or an end—that is, right is a matter of theory and is not derived from empirical practice.[134]

Kant then articulates three *a priori* principles (the theory) upon which any civil state (in practice) must be based.

1. The *freedom* of every member of society as a *human being* (*Menschen*).
2. The *equality* of each with all the others as a *subject* (*Unterthan*).
3. The *independence* of each member of a commonwealth as a *citizen* (*Bürgers*).[135]

He goes on to explain these principles in terms of the "general will (*gemeinsamen Willens*)," used here in a way that is, if anything, even more Rousseauian in character than its usage in the *Rechtslehre*. Under the principle of freedom, Kant proscribes not only oppressive regimes but benevolent, paternalistic governments as well. Human freedom requires not just the ability to pursue one's own happiness in one's own way, but also "a *patriotic* attitude" that involves active participation in and preservation of the commonwealth and its laws.[136] Likewise, the equality of subjects consists in each person's "rights of coercion (*Zwangsrechte*) in relation to all the others," to ensure that "their freedom can co-exist with my freedom within the terms of a general law (*einem allgemeinen Gesetze*)."[137] Interestingly, Kant exempts the "head of state" from this requirement of equality: "he alone is not a member of the commonwealth, but its creator or preserver."[138]

On this point, and with regard to the third principle, Kant states that laws come not from the head of state, but from "a public will" which "requires no less than the will of the entire

[134] Kant, "Theory and Practice," 73.
[135] Ibid., 74
[136] Ibid.
[137] Ibid., 74-76.
[138] Ibid., 75.

people," a "*unity* of the will of *all* members (*Einheit des Willens Aller zusammen*)."[139] The parallel with Hobbes's language is striking, but instead of an amalgamation of wills, Kant's unity is the way in which individual *independence* is guaranteed. Indeed, Kant conceives of it as independence *from* any particular person's will with regard to ends, which is why the paternalism of passive submission is out of the question. Unanimity in the ongoing legislative process is certainly impossible, but Kant describes the principle of majoritarianism as something that "must be accepted unanimously and embodied in a contract."[140] This "basic law" he describes as the "*original contract* (*ursprünglichen Vertrag* or *ursprünglicher Contract*)," and it is this contract that he calls the "*idea* of reason, which nonetheless has undoubted practical reality."[141] In other words, the original contract embodying the principle of consent is the "theory" Kant wants to defend in this essay. This theoretical idea of reason places a practical moral duty on the legislator "to frame his laws in such a way that they could have been produced by the united will (*vereinigten Willen*) of a whole nation, and to regard each subject . . . as if he had consented (*gestimmt*) within the general will (*solchen Willen*, referring to *vereinigten Willen*). This is the test of the rightfulness (*Rechtmäßigkeit*) of every public law."[142]

However, just as Kant's theory places a practical moral duty on the legislator, so it places one on the citizens as well in the form of the prohibition on revolution. "This prohibition is *absolute*," Kant insists, "even if the power of the state or its agent, the head of state, has violated the original contract by authorising the government to act tyrannically."[143] This topic will be

---

[139] Kant, "Theory and Practice," 77.
[140] Ibid., 79.
[141] Ibid., 77, 79; he differentiates this contract as an "idea of reason" from one that purportedly existed "as a fact," for such a thing "cannot possibly be so" and would entail the sorts of historical and empirical problems we have already discussed in previous chapters (79).
[142] Ibid., 79.
[143] Ibid., 81.

discussed more fully in the concluding section of this chapter—importantly, it stands out as an instance of apparently obvious agreement with Hobbes as well as a source of disappointment and frustration for many of Kant's modern interpreters. Here, it is sufficient to point out that Kant develops this prohibition quite logically out of his moral theory and that it is consistent with his belief that suffering the wrong of tyranny is a better fate than committing the wrong of violent rebellion: "it is monstrous to suppose that we can have a right to do wrong in the direst (physical) distress."[144] Appealing to the categorical imperative, he notes that if a right to revolution were "made into a maxim," it would "make all lawful constitutions insecure and produce a state of complete lawlessness (*status naturalis*) where all rights cease at least to be effectual."[145] Finally, he attacks the putative state of nature and social contract as a basis for any alleged contractual right. When people mistake what is only an "idea of an original contract (a basic postulate of reason)" for "something which must have taken place *in reality*," they then erroneously conclude that "the people retains the right to abrogate the original contract at its own discretion."[146] Such people "have done the greatest degree of wrong (*höchsten Grade Unrecht*) in seeking their rights in this way."[147] This phrase echoes the one from §42 of the *Rechtslehre*, used there in reference to those who would insist on remaining in a putative state of nature; clearly Kant sees both situations in the same light.[148]

---

[144] Kant, "Theory and Practice," 81; *ein vermeintes Recht, in der höchsten (physischen) Noth unrecht zu thun, ein Unding ist*.

[145] Ibid., 82.

[146] Ibid., 83. He also notes that the supposed right to revolution also rests, "in part," on "the usual fallacy of allowing the principle of happiness to influence the judgement, wherever the principle of right is involved" (82-83). This fallacy he already rebutted in the first section of this essay, insisting instead that the principle is *to become worthy* of happiness, which requires a commitment to moral duty regardless of circumstances.

[147] Ibid., 82.

[148] MM, 6:307-308: "Given the intention to be and to remain in this state of externally lawless freedom, human beings do *one another* no wrong at all when they feud among themselves; for what holds for one holds also in turn for the other, as if by mutual consent . . . . But in general they do wrong in the highest degree (*im höchsten*

However, under Kant's conception of the original contract as an "idea of reason," the duty of loyalty does not strip the people of their other rights, nor does it negate the duty of the legislator. Kant claims that "the people too have inalienable rights against the head of state, even if these cannot be rights of coercion (*Zwangsrechte*)."[149] In this way, Kant's prohibition on revolution—a conclusion which he shares with Hobbes—ends up being a springboard to his critique of Hobbes, essentially because they have reached the same conclusion from very different premises.

Kant recognizes that Hobbes's premises lead him beyond the prohibition on revolution—an external action, enforceable by public law—to a denial of inalienable rights altogether.[150] "Hobbes is of the opposite opinion" regarding such rights: "According to him, the head of state has no contractual obligations towards the people, he can do no injustice to a citizen, but may act towards him as he pleases."[151] Now, Kant has also just said that the head of state is not to be considered as an equal subject within, or even properly a member of the commonwealth, but stands apart from them as the coercive power. However, this separation and its authorization to coerce do not exempt the head of state from his theoretical *duty*—even if that duty cannot be coercively enforced upon him by the subjects. And that duty requires a head of state not only *not* to commit specific injustices on subjects, but ultimately to rule in accordance with the idea of reason—the general principle of "theory" for politics. Thus, Kant claims that the idea that a head

---

Grade . . . unrecht) by willing to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence." Kant explains "wrong in the highest degree" in a footnote that concludes "they do wrong in the highest degree, because they take away any validity from the concept of right itself and hand everything over to savage violence, as if by law, and so subvert the right of human beings as such."

[149] Kant, "Theory and Practice," 84.

[150] To be fair, Hobbes does reserve a very limited number of inalienable rights to the people; for instance, a subject may rightfully disobey a command to incriminate himself, or "to kill himselfe, or any other man" (*Leviathan*, XXI, 138). This, however, in no way limits the Sovereign's right to execute citizens himself.

[151] Kant, "Theory and Practice," 84 (*das Staatsoberhaupt durch Vertrag dem Volk zu nichts verbunden*); Kant cites *De Cive*, Chap. 7, §14.

of state is morally free to rule as he pleases "is quite terrifying."[152] The only way to make Hobbes's proposition "correct" would be "if injustice were taken to mean any injury which gave the injured party a *coercive right* (*Zwangsrecht*) against the one who has done him injustice."[153]

The absence of a coercive right does not imply the absence of all right; in addition to enumerating certain "inalienable rights," Kant wants to emphasize that these are rights about which each person "is entitled to make his own judgments."[154] Indeed, one may gloss the rest of Kant's discussion in this section as a description of the rights to freedom of thought, conscience, and speech. These are apparently individual rights, but for Kant, they are indispensible to an understanding of public right.

The injured but "non-resisting subject must be able to assume that his ruler has no *wish* to do him injustice," but that "any injustice . . . can only have resulted through error, or through ignorance."[155] Thus, "with the approval of the ruler," every citizen must "be entitled to make public his opinion" as to the justice or injustice of the laws; "*freedom of the pen* is the only safeguard of the rights of the people."[156] In contrast to Hobbes's insistence on certainty imposed by the sovereign in the form of a "*Mortall God*," Kant insists that "to assume that the head of state can neither make mistakes nor be ignorant of anything would be to imply that he receives divine inspiration and is more than a human being."[157] Furthermore, assuming that the sovereign has need "to fear . . . independent and public thought . . . is tantamount to making him distrust his

---

[152] Kant, "Theory and Practice," 84.
[153] Ibid.
[154] Ibid.
[155] Ibid.
[156] Ibid., 84-85.
[157] Ibid., 84 (*ihn als mit himmlischen Eingebungen begnadigt und über die Menschheit erhaben vorstellen*); Hobbes, *Leviathan*, 108 (XVII).

own power and feel hatred towards his people."[158] Bringing his argument full-circle, Kant insists that the principle by which people may freely and publicly evaluate the justice of the laws is the same duty that binds the sovereign in the first place: "*Whatever a people cannot impose upon itself cannot be imposed upon it by the legislator either.*"[159] Thus, the people and the sovereign are bound together not by power or by psychological submission, but by a universal order of right known internally and expressed publicly by all involved.

Kant chooses a curious example to prove this principle—that of an official establishment of religion, to borrow American constitutional terms—which contains a further critique of Hobbes's political theory. In such a case, Kant claims "we must first ask whether a people is *authorised* to make a law for itself whereby certain accepted doctrines and outward forms of religion are declared permanent."[160] A permanently established religion would seem to prevent "further progress in religious understanding" on the part of future generations.[161] Thus, Kant confidently claims that such a law would be contradictory to the idea of the original contract and ultimately "would conflict with the appointed aim and purpose of mankind."[162]

By contrast, Hobbes insists on unity in national religion seemingly *because* he sees no validity in private conscience, internal experience of truth, or individual freedom of speech—not to mention the fact that he lacks any confidence in the possibility of progress. Diversity in religion would be incongruous with the covenantal unity Hobbes has articulated: "seeing a Common-wealth is but one Person, it ought also to exhibite to God but one Worship."[163] He

---

[158] Kant, "Theory and Practice," 85.
[159] Ibid.
[160] Ibid.
[161] Ibid.
[162] Ibid. He will argue in the next section that this "purpose of mankind" is, essentially, to progress.
[163] Hobbes, *Leviathan*, 237 (XXXI).

insists that such "Publique Worship" must "be *Uniforme*," otherwise "it cannot be said . . . that the Common-wealth is of any Religion at all."[164] As for the need to progress in religious understanding, Hobbes claims that "disputing of Gods nature is contrary to his Honour" and amounts to no more than "vain abuses of his Sacred Name."[165] Any words or "Attributes" which people assign to God should be understood as arbitrary means to the necessary end of giving him due worship of some kind, and nothing more.[166] They should certainly not be taken as "signification of Philosophicall Truth."[167] Thus, "those Attributes which the Soveraign ordaineth, in the Worship of God, for signes of Honour, ought to be taken and used for such, by private men in their publique Worship."[168] Modes of worship are, like words, nothing more than meaningless "counters" in a game everyone must play. Since Hobbes assumes that the private person cannot have access to any "truth" behind the signs, attempts to pass judgment on the suitability of various signs is both futile and disruptive to public unity. Therefore, unity and certainty take a higher priority than freedom and truth.

Kant, on the other hand, sees a need to balance "*obedience* to generally valid coercive laws (*Zwangsgesetzen*)" with "a *spirit of freedom* (*Geist der Freiheit*)."[169] By this he means that "in all matters concerning universal human duties, each individual requires to be convinced by reason that the coercion which prevails is lawful (*Zwang rechtmäßig sei*), otherwise he would be in contradiction with himself."[170] And this convincing must necessarily take place through free

---

[164] Hobbes, *Leviathan*, 237 (XXXI).
[165] Ibid., 236 (XXXI).
[166] Ibid.
[167] Ibid.
[168] Ibid., 237 (XXXI).
[169] Kant, "Theory and Practice," 85.
[170] Ibid.

communication with other people, "especially in matters affecting mankind as a whole (*Menschen überhaupt*)," of which religion is certainly one—as is political right.[171]

This middle section of "Theory and Practice" ends with two more implicit critiques of Hobbes's political theory. Incidentally, they are the same two with which we began this section: methodology and human rights. In the first, Kant argues that the "*theory* of political right" which he has set out to defend in this essay "is based on *a priori* principles, for experience cannot provide knowledge of what is right."[172] Putting this theory into practice—from leaving the state of nature to ruling a state according to the idea of the original contract—is thus necessary as a matter of principle, not experience. Indeed, Kant is emphatic that "this concept has binding force (*verbindende Kraft*) for human beings" in the state of nature and must be implemented "irrespective of the good or ill it may produce."[173] In other words, it is not the horrors of the state of war in the state of nature that force people into political community; rather, political right stands on its own intrinsic rightness.

Kant's second, and final, point is to address Hobbes's underlying assumptions about human nature and the limits of human moral knowledge. "The only objection which can be raised" against Kant's insistence that political right is valid in theory and practice

> is that, although men have in their minds the idea of the rights to which they are entitled, their intractability is such that they are incapable and unworthy of being treated as their rights demand, so that they can and ought to be kept under control by a supreme power acting purely from expediency. But this counsel of desperation . . . means that, since there is no appeal to right but only to force (*Gewalt*), the people may themselves resort to force and thus make every legal constitution insecure. If there is nothing that commands immediate respect through reason, such as the basic rights of man, no influence can prevail upon man's arbitrary will and restrain his freedom.[174]

---

[171] Kant, "Theory and Practice," 86.
[172] Ibid.
[173] Ibid.
[174] Ibid., 86-87.

Kant thus ends his argument "Against Hobbes" by turning Hobbes's own logic back on itself: if people really are as Hobbes says, and there is no basis for law other than force and fear, then the civil state is no safer a place than the state of nature.[175] Thus, it remains only to demonstrate that human beings are *not* actually slaves to their "intractability," but rather that they will "not prove too debased to listen" to the voice of "benevolence and right."[176]

3. "Theory and Practice," Section III: International Political Theory

Kant uses his third section, "On the Relationship of Theory to Practice in International Right" to prove this point about human nature. He begins with this question:

> Is the human race as a whole likeable, or is it an object to be regarded with distaste? Must we simply wish it well (to avoid becoming misanthropists) without really expecting its efforts to succeed, and then take no further interest in it?[177]

The answer to this question depends on whether one believes that humankind "possess[es] natural capacities" toward progress.[178] Kant, of course, wants to assume that they do. Furthermore, he does not want to have to prove this assumption: "it is up to the adversary to prove his case."[179] The reason for this is that Kant believes his theory of duty is valid as long as the accomplishment of such duty is theoretically *not impossible*. Thus, he does not have to prove that humankind necessarily *will progress*, but only that progress is *possible*. Kant does this in three moves: first, from his vantage as a human being himself, "a member of a series of human generations," who is "not as good as I ought to be or could be according to the moral

---

[175] Tuck views this not as a "refutation" of Hobbes, but as an extension and application of Hobbes's own "fundamental presuppositions" (211).
[176] Kant, "Theory and Practice," 87.
[177] Ibid.
[178] Ibid.
[179] Ibid., 88.

requirements of my nature."[180] Nevertheless, secondly, Kant is aware of his own "inborn duty of influencing posterity in such a way that it will make constant progress."[181] As long as this duty is not demonstrated to be impossible, Kant feels bound to it, doubt and uncertainty notwithstanding. Finally, Kant expects that this experience of being under moral duty is not limited to him but extends to humanity generally and, indeed, "may be rightfully handed down from one member of the series to the next."[182]

This hopeful maxim, which entails "the necessity of assuming for practical purposes that human progress is possible," is what animates any "earnest desire to do something useful for the common good," even on the part of those who deny such hope is valid—otherwise, Kant points out, they wouldn't even bother to write about it![183] In a final rebuttal to Hobbes, Kant claims that "the very conflict of individual inclinations, which is the source of all evil, gives reason a free hand to master them all; it thus gives predominance not to evil, which destroys itself, but to good, which continues to maintain itself once it has been established."[184] Force may maintain order, but it can never maintain right, for right requires freedom.

However, Kant must admit that the most significant problems for humankind lie not within states but between them: "nowhere does human nature appear less admirable than in the relationships which exist between peoples."[185] Hobbes would certainly agree: his advocacy for law and order ends at the borders of his Leviathan's state and he assumes that states themselves will remain in the state of nature, and the posture of war, in perpetuity. Indeed, he even foresees

---

[180] Kant, "Theory and Practice," 88.
[181] Ibid., 88-89.
[182] Ibid., 89.
[183] Ibid.
[184] Kant, "Theory and Practice," 91.
[185] Ibid.: *Die menschliche Natur erscheint nirgend weniger liebenswürdig, als im Verhältnisse ganzer Völker gegen einander*.

a day when overpopulation will *force* nations into war with each other, in which case Hobbes actually sees war as a beneficial "remedy."[186] Kant's remedy, in contrast, is to take the theory he has developed in the previous two sections and apply it to the international arena: "there is no possible way of counteracting this except a state of international right (*Völkerrecht*), based upon enforceable public laws to which each state must submit."[187] This is, of course, the theory to which it is objected that it will never work in practice. But Kant insists he will continue to "trust in the theory of what the relationships between men and states *ought to be* according to the principle of right."[188] Since it cannot be proven that the "maxim" of working, "in our disputes," toward the establishment of a "universal federal state (*allgemeiner Völkerstaat*)" is impossible, it must be valid to assume that it is possible.[189] If it is possible, then it is binding as a duty. Kant concludes: "I therefore cannot and will not see it [human nature] as so deeply immersed in evil that practical moral reason will not triumph in the end, after many unsuccessful attempts, thereby showing that it is worthy of admiration after all. On the cosmopolitan level too, it thus remains true to say that whatever reason shows to be valid in theory, is also valid in practice."[190]

III. Implications for Freedom, Revolution, and Peace

This chapter will conclude with a discussion of the three major implications that can be drawn from Kant's critique of Hobbes on the issue of the state of nature. The first section will look at human freedom. The second deals more fully with the problem of revolution and

---

[186] "And when all the world is overcharged with Inhabitants, then the last remedy of all is Warre; which provideth for every man, by Victory, or Death" (*Leviathan*, 225, XXX).
[187] Kant, "Theory and Practice," 92.
[188] Ibid.
[189] Ibid.
[190] Ibid.

political reform, a topic in which an examination of the surface-level agreement only reveals the much greater extent of the disagreement beneath. Finally, we will consider how Kant, to a much greater extent than Hobbes, applies his concept of the state of nature to the international sphere. This last topic will be the focus of chapter four, so it will be introduced here only to the extent that Kant addresses it in "Theory and Practice."

1. Freedom

In chapter one, we established that most contract theories rest on a number of assumptions about human beings, such as that they are rational, capable of free choice, possessing moral awareness and a dignity that flows from this moral awareness and the assumption that the same characteristics are true of other human beings, as well. Furthermore, we argued that one of the things that sets Kant apart from other contract theorists is the extent to which he identifies these assumptions as fundamental to the state of nature and social contract as concepts, and sums them up into a principle, the "right of humanity." To this end, Kant believes that freedom is essential to human moral choice, which is what gives humans dignity.[191] As we saw in the "Theory and Practice" essay, this insistence on fundamental human dignity marks Kant's philosophy at every level from the individual to the international. On the other hand, it is hard to reconstruct anything like a concept of human dignity from Hobbes's philosophy, and this is perhaps not unrelated to the fact that he does not extend the logic of the obligation to quit the

[191] Höffe argues that the very fact that Kant included a discussion of an innate right, "what is internally mine and yours," separates him from and "may also be read as a criticism of Hobbes." Whereas "Hobbes states that there is 'no Mine and Thine distinct' in the state of nature, 'but only that to be every man's, that he can get; and for so long, as he can keep it," Kant asserts that "what is internally mine or yours implies a right that is innate and invariably characteristic of the human being." Hobbes seems not to have entertained the idea of a right at this innate level, but rather merely "identifies property with what is mine" (*Kant's Cosmopolitan Theory*, 125).

state of nature into the international realm. As Kant himself identifies, this lack of a concept of human dignity in Hobbes is tied to his refusal to allow the citizenry a meaningful measure of freedom. What Kant does not do, and what we intend to do here on his behalf, is offer a critique of Hobbes's own understanding of freedom and the implications of that understanding for human beings, states, and international relations.

Whatever relationship of influence otherwise exists, it is hard to imagine a greater distance between two thinkers than the distance between Kant and Hobbes on the issue of freedom. Kant's understanding of freedom was established in depth in the previous chapter, in terms of its relationship to practical reason, moral awareness, and the capacity to choose to align oneself with that moral awareness and legislate for oneself as a result. Hobbes, on the other hand, defines "freedom" in terms of literally physical motion:

> Liberty, or Freedome, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion;) . . . . For whatsoever is so tyed, or environed, as it cannot move, but within a certain space, which space is determined by the opposition of some externall body, we say it hath not Liberty to go further. And so of all living creatures, whilest they are imprisoned, or restrained, with walls, or chayns; and of the water whilest it is kept in by banks, or vessels . . . they are not at Liberty. . . .
>
> And according to this proper, and generally received meaning of the word *A* FREE-MAN, *is he, that in those things, which by his strength and wit he is able to do, is not hindred to doe what he has a will to*.[192]

According to this definition, Hobbes is able to claim that a variety of other, alleged "hindrances" are in fact compatible with freedom because they do not literally hinder motion. Thus, "Feare, and Liberty are consistent . . . . And generally all actions which men doe in Common-wealths, for *feare* of the law, are actions, which the doers had *liberty* to omit."[193] Under this definition, any law that the sovereign passes is "consistent" with freedom as long as it

[192] Hobbes, *Leviathan*, 133 (XXI).
[193] Ibid., 134 (XXI).

does not literally, physically constrain a person. Nevertheless, Hobbes places a hopeful faith in the "Artificiall Chains, called *Civill Lawes*," which despite being "weak, may neverthelesse be made to hold, by the danger, though not by the difficulty of breaking them."[194]

But we have also already seen some ways in which Hobbes wished to shore up the weakness of mere law through the particular construction of his commonwealth. One of these was the psychological and volitional fusing of the people into the artificial person of the Leviathan. This process transferred the authority of political action to the sovereign, while leaving the people with the moral responsibility for the sovereign's authorized actions, but no ability to act themselves, or even to dissent. Indeed, Hobbes's prohibition on dissent is not unrelated to this process, since it is illogical to allow for any disunity among people who have relinquished their individuality to the artificial personhood of the state. Thus, "it is annexed to the Soveraigne, to be Judge of what Opinions and Doctrines are averse, and what conducing to Peace . . . . For the Actions of men proceed from their Opinions; and in the wel governing of Opinions, consisteth the well governing of mens Actions. . . . therby to prevent Discord and Civill Warre."[195] Conveniently, Hobbes reduces moral conscience to a matter of opinion as well: "men, vehemently in love with their own new opinions . . . gave those their opinions also that reverenced name of Conscience, as if they would have it seem unlawfull, to change or speak against them; and so pretend to know they are true, when they know at most, but that they think so."[196] Thus, what Kant understands as true knowledge by way of practical reason, Hobbes reduces to mere opinion, selfishness, and pride.

Once again, Voegelin helps us understand Hobbes's intention and contribution, within

---

[194] Hobbes, *Leviathan*, 134 (XXI).
[195] Ibid., 112 (XVIII).
[196] Ibid., 37 (VII).

what must ultimately be understood as a severe limitation. Motivated by a desire to put an end to religious conflict, "Hobbes had to deny that their zeal was inspired, however misguided, by a search for truth. Their struggle had to be interpreted . . . as an unfettered expression of their lust for power."[197] By denying the possibility of sincerity in the disagreements of opinion or conscience, Hobbes showed himself "to be one of the greatest psychologists of all times; his achievements in unmasking the *libido dominandi* behind the pretense of religious zeal and reforming idealism are as solid today as they were at the time when he wrote."[198]

Despite the accuracy of this psychological diagnosis, however, Hobbes mistakenly applies it universally: if all is reduced to a lust for power, then all the problems caused by lust for power can be prevented through the establishment of a power, *any* power, that is sufficiently secure, dominant, and durable. There is nothing to lose in this move except the human ability to access any kind of independent, interior truth. Hobbes's attempt to "solv[e] the troubles of history through the invention of the everlasting constitution" could only work if "the source of these troubles, that is, the truth of the soul, would cease to agitate man."[199] The problem is—as Kant argued in the first section of "Theory and Practice"—this truth of the soul, the awareness of moral duty, indeed all of the sources of order that fall under Voegelin's category "experiences of transcendence" seem like undeniable realities. Voegelin asserts simply that they "belong to the nature of man," but "Hobbes was quite able to solve this problem, too; he improved on the man of God's creation by creating a man without such experiences."[200]

The phenomenological fact of internal, conscious experience is, of course, the weak spot

---

[197] Voegelin, *New Science*, 179.
[198] Ibid.
[199] Ibid., 161.
[200] Ibid.

in any materialistic philosophy, Hobbes's or otherwise. The purported *universality* of the *content* of such experiences is, likewise, the weak spot of any philosophical system based them instead.[201] Even Kant, in his discussion of reason's intuition of moral duty in the first section of "Theory and Practice," must confront the fact that his interlocutors claim not to share such intuitions as Kant describes them.[202] Ultimately, Kant must let his moral system rest on unprovable postulates of freedom and right.

But the corresponding problem for Hobbes seems insurmountable, even on his own terms: people who choose to do what is right over and above their interests, even their own lives, undoubtedly exist.[203] Even one such person would be enough to refute Hobbes's case and prove Kant's, since, in this instance as in others we have seen, Kant relies only on the *possibility* of moral awareness of duty in the human person. If it is *possible* for human beings to separate awareness of duty from desire and self-interest, and to act on the former to the contempt of the latter, then it becomes a part of duty to regard every human being "with a holy awe at the greatness and sublimity of his true vocation."[204]

As we discussed in chapter one, Kant understands that consent must be the moral standard for politics because human beings are the kinds of beings who can have an immediate, internal awareness of moral duty and, on the basis of that fact, they deserve dignity, respect, freedom, and a voice in crafting the moral and legal standards of their own communities. By

---

[201] Tuck notes a "conventional interpretation" of Kant's practical reason by some commentators (he cites Jeremy Waldron and Robert Paul Wolff) that asks "surely, if we all think according to the categorical imperative, no conflict can, by definition, result?" (209)

[202] Kant, "Theory and Practice," 68-69.

[203] Hobbes himself would be a good example. Bernard Gert describes how, in spite of claiming to be "a timid man," Hobbes was nonetheless "willing to hold views that he must have known would cause him some considerable trouble. He engaged in many academic controversies, which required considerably more courage in Hobbes's day than at the present time. Both the Roman Catholic Church and Oxford University banned the reading of his books and there was talk not only of burning his books but of burning Hobbes himself" (30).

[204] Kant, "Theory and Practice," 71.

denying that human beings have any such capacity, and thereby dispensing with any need for republican consent, Hobbes is able to envision a politics of permanent stability, security, and peace. However, with consent goes any intrinsic reason to treat human beings with dignity, because the intrinsic capacity for dignity is the basis for consent in the first place, as we argued in chapter one. This is why Voegelin claims that the "repression of the authoritative source of order in the soul is the cause of the bleak atrocity of totalitarian governments in their dealings with individual human beings."[205] Conversely, the existence of the authoritative source of order in the soul is the fact about human beings that makes them deserving of dignity and respect in the first place. This why Kant insists on limitations to sovereignty and the freedoms of thought, conscience, and expression.

2. Revolution

But the sovereign is not the only aspect of political society that needs limitation. While Kant is careful to enumerate certain inalienable rights, the rights of the people are not unlimited. As we have seen, Kant not only denies any right to revolution, even within a tyrannical system of government, but also limits reform-oriented activity to respectful political discourse and publication. Ultimately it is up to the sovereign to institute any changes, guided by his own sense of moral duty. Hobbes also insists on an absolute prohibition on revolution, but for different reasons which also lead him to prohibit dissent of any kind. This fact is what leads Richard Tuck to conclude that, whatever theoretical differences may exist regarding definitions

[205] Voegelin, *New Science*, 164.

of freedom and understandings of human rights, the "practical difference" between the Kant and Hobbes is "rather slight."[206]

By emphasizing the slightness of the "practical difference," Tuck is joining a broad chorus of commentators who express their disappointment in Kant's refusal to give revolutionary activity the approval of moral rightness under his system.[207] Sympathy for democratic revolution seems to be taken for granted as part of modern, liberal politics, and Kant's position is difficult to reconcile with his own sympathy for the French Revolution.[208] Indeed, what good is any theoretical difference between two political theories that would leave victims of oppressive governments effectively without practical recourse?

One way to understand Kant's position is to borrow some terms from Eric Voegelin. In our discussion of Hobbes's covenant, we mentioned how Voegelin understood this process as an actualization of divine order in history.[209] This follows from our discussion in chapter one of how the "existential" structure of political societies is subject to transformation into a "transcendent representation," and how this impulse can take the form of ancient pagan

---

[206] Tuck, 212.

[207] Arthur Ripstein calls it "troubling" (*Force and Freedom*, 336). Byrd and Hruschka valiantly argue that the prohibition "only applies in a state that is truly a juridical state" (91). Accordingly, it would not apply to "any state whatsoever," as "Kant's only interest in despotic states is to reject them" (182). Wolfgang Kersting carves out a narrower exception for "a regime that practices state terror and murders entire groups of the population" (361). Ripstein's argument is similar (325ff). Two seminal articles on the issue are Kenneth Westphal, "Kant on the State, Law, and Obedience to Authority in the Alleged 'Anti-Revolutionary' Writings," *Journal of Philosophical Research* (Vol. 17, 1992), 383-426; and Lewis White Beck, "Kant and the Right of Revolution," *Journal of the History of Ideas* (Vol. 32, No. 3, Jul.-Sep. 1971), 411-422. Beck argues that the prohibition on revolution reveals a "paradox" and "inconsistency" in Kant's thought, demonstrating how his "static" understanding of natural law cannot resolve, or even recognize, the inherent conflict between the competing duties of human progress and moral right (411, 419, 422). Beck appeals to Hegel's "evolving" perspective on right as the superior perspective (420-422). Westphal's argument is complex, but also ultimately concludes that the prohibition stands as evidence of a logical failure within Kant's political philosophy, but is also not nearly as absolute as it might seem.

[208] See Katrin Flikschuh, "Reason, Right, and Revolution: Kant and Locke," *Philosophy and Public Affairs* (Vol. 36, No. 4, Fall, 2008), 375-404. Flikschuh's article defends the logical consistency of Kant's position on revolution against those who would smuggle Lockean-style natural-rights assumptions into their reading of Kant. Like most other commentators, however, she finds Kant's position on revolution "morally problematic in certain respects," though she is quick to claim it is not completely "without merit morally" (377).

[209] Voegelin, *New Science*, 154; page 149 of this chapter.

theocracies, medieval wars of religion, and modern ideological revolutions. What Voegelin understands, like Hobbes and Kant do—and what Kant's modern critics seem to miss—is that this transformation process is more often violent than peaceful and very often results in a practical situation worse than the one it tried to change. To the extent that people are willing to risk violence and instability for the sake of overturning an unjust regime, Kant would say they are complicit in replacing the absolute principle of duty with the relative "principle of happiness (which is not in fact a definite principle at all)," which he notes "has ill effects in political right just as in morality, however good the intentions of those who teach it."[210] And Kant was certainly aware of the good intentions—he himself was famously sympathetic to the motivations behind and historical significance of the French Revolution, even if he could not endorse its methods.[211]

Voegelin, likewise, is sympathetic to Hobbes's distress over the religious wars of his time and his desire to instantiate, essentially, a permanent anti-revolutionary regime—a representation of immanence rather than transcendence, so to speak; a *mortal* god. Nonetheless, Voegelin insists that Hobbes's solution comes at the terrible price of denying any sort of internal access to truth or right on the part of the individual, as we discussed in the previous section. This is the problem that Kant also identifies. Kant understands that the source of political disorder is not, as Hobbes believes, *that* individual persons have awareness of moral truth, that they differ on the content of that truth, or even that they desire to see the truth "represented" by the political structures in which they exist. Rather, the problem stems from the belief that access to truth

[210] Kant, "Theory and Practice," 83.
[211] Howard Williams, *Kant's Critique* 20, 26-34; Beck, 411-413.

gives one a right to violence—or really, any kind of wrong—on behalf of that truth.[212] Kant wants to take the side of the human person's awareness of moral right via practical reason, but he firmly believes that *same right* necessarily entails a refusal to commit wrong even in the most dire circumstances or on behalf of the most noble goals.

What Kant is thus able to posit, over and against the impulse to instantiate any kind of permanent, "transcendent representation," whether religious, revolutionary, anti-revolutionary, or even modern liberal-democratic, is what we might call an *orientation* toward right as a transcendent ideal.[213] Orientation is more than merely an attitude or desire, although it contains such; it is rather that which defines the direction of an ongoing process, whether individual, political, or world-historical. In that sense, it is inherently dynamic and participatory rather than static.[214] Where Hobbes wants to separate the responsibility for or authorship of action from the

[212] Claes Ryn, in "Power Without Limits," documents the psychology behind such beliefs, noting that people very easily become "dependent" for their "self-worth" on allegiance to certain idealistic, moral-political "dreams" (20). "The horrors of the twentieth century were not paradoxical or difficult to explain. In important respects, they emanated directly from a self-deluding, self-applauding moralism and a concomitant dearth of moral character," since the deluded, dependent self is borrowing moral self-worth from the dream rather than developing it through concrete moral action (20). But it is less the dearth of moral character and more the fragility of the dream-dependent self that is responsible for the "horrors" of revolutionary violence: "To show mercy for or to compromise with opponents would cast doubt on the moral nobility and necessity of the dream and would, in effect, denigrate self. To give up the dream is unthinkable, for it is the idealist's source of personal worth and pride. It alone legitimizes his power" (21). See also Kant's discussion of enlightenment vs. dependence, n215 below.

[213] "Orientation" is another Voegelinian term. Howard Williams helpfully discusses this distinction under the terms "metamorphosis" versus "palingenesis," in *Kant's Critique of Hobbes*, 160-190. He concludes that "Kant's analogy highlights a process; Hobbes's analogy highlights a condition. The analogy Kant suggests draws our attention to development; Hobbes's analogy draws our attention to fixity and order. Kant's notion of metamorphosis applies to both individuals and states. They should be regarded as on a path of change and improvement. The *Leviathan* applies only to the state, which is seen as fully mature once it attains this condition" (190). We prefer the analogy of "orientation" here because the orientation is what defines the direction of any process, and because individuals and states can still consider themselves 'oriented' in the right direction even when any actual progress is stymied, for whatever reason.

[214] Participatory in the sense that it requires reorientation and input on the part of all. Howard Williams points out that, according to Kant, "the failure of the human race to progress was a failure of everyone. It could not be attributed to the rulers of humankind alone" (*Kant's Critique*, 23). See also note 217 below.

act itself, Kant envisions legitimate areas of action and moral responsibility on the parts of both sovereign and citizen.[215]

Kant's apparent optimism on topics such as human moral awareness and perpetual world peace is always tempered by an expectation that these things will likely never be permanently achieved. Nonetheless, we see that Kant emphatically insists on the validity of moral, legal, and international right as a guiding ideal—that is, that at which all such things are *oriented*. He does want to see his ideal "represented" politically—he even uses that exact term in another essay, "The Contest of the Faculties"—he just understands that cannot be made to happen instantly:

> All forms of state are based on the idea of a constitution . . . . if we accordingly think of the commonwealth in terms of concepts of pure reason, it may be called a Platonic *ideal* (*respublica noumenon*), which is not an empty figment of the imagination (*ein leeres Hirngespinnst*), but the eternal norm (*ewige Norm*) for all civil constitutions whatsoever, and a means for ending all wars. A civil society organised in conformity with it and governed by laws of freedom is an example representing it in the world of experience (*respublica phaenomenon*), and it can only be achieved by a laborious process, after innumerable wars and conflicts.[216]

Framing right in terms of an orientation rather than (for lack of better terms) a *task* allows Kant to consider how the long, slow work of incrementalism seems to be part and parcel of the content of that right. This explains why even the sovereign should not unilaterally change the constitution of a state overnight.[217]

---

[215] Kant even uses the term "earthly gods," echoing Hobbes's "Mortall God," to refer simply to common people like himself involved in philosophical and political disputes (the kind Hobbes would ban) about what is best for humankind as a whole ("Theory and Practice," 92).

[216] Kant, "The Contest of the Faculties," in *Kant: Political Writings*, translated by H.B. Nisbet and edited by Hans Reiss (Cambridge: Cambridge University Press, 1991), 187 (§8).

[217] MM, 6:340; see also Kant's essay "An Answer to the Question: What is Enlightenment?" Here Kant considers enlightenment as gaining the courage to think for oneself, rather than relying on received opinion (*Kant: Political Writings*, 54). He believes freedom is both necessary and, ultimately, sufficient to allow an entire people to become enlightened, and thus argues, as he did in "Theory and Practice," for a public policy of freedom of speech (55, 58-60). Nonetheless, he realizes that "a public can only achieve enlightenment slowly. A revolution may well put an end to autocratic despotism and to rapacious or power-seeking oppression, but it will never produce a true reform in ways of thinking. Instead, new prejudices, like the ones they replaced, will serve as a leash to control the great unthinking mass" (55).

This is related to the distinction Kant makes between the putative and theoretical states of nature. He refuses to allow the concept of the state of nature to be understood as anything other than an abstraction—to think of it, and the social contract, as a historical reality invites the temptation to resort to violence "if, in the opinion of the people, the contract has been severely violated."[218] The modern discomfort with the prohibition on revolution stems from the same intuition that makes the state of nature and social contract seem plausible in the first place—that the origin determines the orientation, that the beginnings of humankind and human society can tell us something decisive about who we are as persons and what our political structure should be like. Kant recognizes the validity of these desires, but refuses to posit them historically, either in the form of a putative state of nature or a blessing on revolutionary means to republican ends. What is *right* for human beings depends on neither an anthropological account of primitive conditions nor a historical moment of political consent.

The "exeundum principle" requires that people not only join a civil society but also *stay there*. Revolution effectively reverts a society back into a state of nature. Hobbes grasps this much, but fails to see the moral necessity of incremental improvement, for reasons we've already discussed. He also fails to see how the "exeundum principle" must apply to the international state of nature, as Kant insists. This problem will be the topic of the final section.

3. Peace

There has been some debate about how one should understand Hobbes's state of nature when applied *by analogy* to the international sphere. Noel Malcolm, for instance, thinks it contains enough communal and social elements to understand international relations, by

[218] Kant, "Theory and Practice," 83.

extension, in terms of an international society.[219] Realist thinkers, on the other hand, take the more conventional view of international anarchy as a *de facto* posture of war and tend to discount any norms or cooperative structures as tools only useful when they advance national interest but disposable when they do not.[220] These are interesting questions, but the very existence of this debate points to a more essential problem: why did Hobbes himself fail to extend his purported "exeundum principle" to the international sphere?

Kant understood that any principle of reason with regard to the state of nature (i.e., to leave it) should hold wherever such a state exists—whether individual or international. We have already seen the extent to which he learned this idea from Hobbes. One potential answer to the question is a possibility already raised in this chapter—that Hobbes's writings might have inspired the idea of an "exeundum principle" in Kant and other thinkers, but that he did not develop the concept that far himself. A second possible answer is not unrelated to the first: that for Hobbes, the state of nature must be abandoned not out of principle but for pragmatic reasons. Kant's project is to demonstrate that a state of nature is wrong in principle, whether that state existed historically or imaginatively among primitive humans, is reintroduced by way of violent

---

[219] Noel Malcolm notes passing references by Hobbes to ad-hoc confederacies and covenants, and even aspects of culture in the state of nature: "one of Hobbes's basic causes of conflict in the state of nature, the desire for 'glory', presupposes some sort of social context of shared values" (453). Moreover, he argues that Hobbes's Laws of Nature do constitute workable moral system within the state of nature, Hobbes's claims to the contrary notwithstanding, and that this understanding can apply on the international level as well. "Indeed, his specifying of cases where the state has just cause to fear its neighbor sets up an implicit contrast with other cases where it does not," in which unnecessary violence would violate the logic of self-preservation (449). The analogy finally breaks down altogether when one considers Hobbes's assumption of absolute equality in the state of nature. Not only do powerful states have little to fear from weak ones, but Malcolm observes that "states, unlike human beings, do not go to sleep at night" (450). Thus, Malcolm concludes that "Hobbes's account contains many of the ingredients of what modern theorists describe as an 'international society': shared practices, institutions, and values. The widely held belief that no society of any kind can exist in a Hobbesian state of nature is drawn from a few places in his writings . . . where he sets out the ultimate or worse-case implications of the state of war . . . the extreme case he describes should probably be understood by analogy with an asymptotic limit, a theoretical absolute which may be approached but never reached (452).

[220] Ibid., 433.

revolution, or continues to exist as the status quo for states with regard to each other. Hobbes merely wants to convince people that a state of nature would always be dangerous and insecure, and thus that existence in a civil state is always preferable, by comparison.

But even on these terms, it is still worth asking why he did not want to extend his exhortations to the international sphere even on pragmatic grounds. It is obvious that he understood the international state of anarchy as inherently dangerous:

> Kings, and Persons of Soveraigne authority, because of their Independency, are in continuall jealousies, and in the state and posture of Gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their Forts, Garrisons, and Guns upon the Frontiers of their Kingdomes; and continuall Spyes upon their neighbours; which is a posture of War.[221]

He does go on to claim that, because sovereigns can use the posture of war to "uphold . . . the Industry of their Subjects," anarchy on the international level does not result in the same level of "misery, which accompanies the Liberty of particular men."[222] But he does at least consider it as enough of a potential source of danger to list it among the "things that tend to the dissolution of a common-wealth."[223] It seems as though it would be advantageous to Hobbes's cause of peace to exhort states, as well as individuals, to lay down their independence and submit to a sovereign. But Hobbes does not do this. Rather, at best, his theory posits what Wolfgang Kersting describes as "a strategy for merely managing the natural condition among states," namely "a balance of terror."[224]

---

[221] Hobbes, *Leviathan*, 78 (XIII).
[222] Ibid.
[223] Ibid., XXIX. This is the title of the chapter; war as a cause of dissolution is the final entry. It is possible that, one sovereignty offering protection as well as any other, Hobbes considered war dangerous to *states* but not particularly so to *individuals* (relative to the state of nature), who can simply shift their allegiance to the victor.
[224] Kersting, 363.

Richard Tuck calls this question the "obvious and deep problem about Hobbes's political theory."[225] Tuck points out, crucially, that Hobbes is not so much extending the concept of the state of nature to the international realm by analogy, as modern theorists of international relations tend to do, but is actually doing the reverse: "his state of nature was modelled on the relationship between states."[226] The problem is, that international state of nature was not effective in pushing states into the arms of "a common sovereign, nor was it likely to do so. If the imaginative force of the state of nature depended on its plausibility as a picture of states as much as individuals . . . then Hobbes's theory seemed to be clearly and immediately refuted."[227]

Tuck goes on to defend Hobbes's theory, via Kant's adaptation and reformulation of his ideas. According to this account, "Kant saw very clearly that the Hobbesian theory entailed no end to the state of war."[228] The difference is only that Kant is willing to wait on history, and not allow humankind's past failures to dampen his belief in his principles of right. This gives him the ability to hope that human beings will eventually tire of warfare and see "that they could only enjoy the kind of security for which their wars were fought by creating a system of international agreements between states."[229] Tuck concludes that Kant's ideal "rules" for international relations—"minimal in character, thicker . . . than those of a Hobbesian state of nature, but much thinner than those of a civil society"—demonstrate that "Kant's intention was to show that a genuinely Hobbesian account of modern international relations was possible."[230]

---

[225] Tuck, 140.
[226] Ibid.
[227] Ibid.
[228] Ibid., 214-215.
[229] Hobbes, *Leviathan*, 218.
[230] Tuck, 221.

Howard Williams, on the other hand, reads Kant's internationalist thought as "challeng[ing] Hobbesianism and the Westphalian international order to which it belongs in a thoroughly comprehensive way."[231] He argues that Kant refuses to "accept Hobbes's gladiatorial vision of international politics."[232] While Kant might "acknowledge" that Hobbes provides an accurate account of the status quo (or at least "a dimension" of such), "this is not in principle how things ought to be."[233] As we have emphasized throughout this chapter, "Kant would criticize Hobbes for deducing his moral and political principles from the facts, rather than presenting those principles independently as ones that might shape the facts."[234] For these reasons, Howard concludes that a Hobbesian account, in which "the laws of nature . . . operat[e] dimly in the international sphere," is thoroughly inadequate for Kant.[235] Rather, the duties attached to the postulate of public law must apply at all levels or not at all. The whole system stands or falls together: the "stability and justice" of the national and international orders are codependent. "For the sake of the law itself we have to look for its enforcement not only within the boundaries of states, but beyond them."[236]

Whether or not one agrees with Kant's insistence on the fundamental rightness of a formal state of international right, two things should by now be clear. First of all, this assertion on Kant's part is absolutely consistent with the rest of his philosophical system.[237] Secondly, if the argument of this chapter is correct, it cannot be understood as "genuinely Hobbesian" in any significant sense. Kant argued in the last section of "Theory and Practice" that human moral and

---

[231] Howard Williams, *Kant's Critique*, 2.
[232] Ibid., 194.
[233] Ibid.
[234] Ibid., 194-195.
[235] Ibid., 195.
[236] Ibid., 195. Williams also quotes a passage from the *Rechtslehre* to this effect (MM, 6:311).
[237] This is the grounds on which Kersting defends "perpetual peace [as] a necessary guiding idea for politics": Kant is "not being fantastic, but consistent" (364).

political progress must at least be considered as *possible*. If possible, then it stands as the basis for an international order of right. Hobbes does not consider this possibility (although it seems implicit in his written attempts to persuade his fellow men toward better political behavior) and in fact seems to assume perpetual continuation of the status quo, at least internationally.

Ultimately, then, it seems that the answer to why Kant extended the logic of the obligation to leave the state of nature to the international level, while Hobbes did not, comes down to the same two differences at issue all along: methodological assumptions, and presuppositions about human beings. Kant is thinking in terms of theoretical moral duty for inherently moral beings, while Hobbes approaches the concept from the perspective of security and practical likelihood. Kant thinks both the civil state and the international federation are matters of principle in the sense of being derived from categorical imperative—they are absolute duties. And they are the only kinds of external situations that are fit for human beings. The likelihood of accomplishing a universal civil state is irrelevant—once again, Kant is arguing for an orientation toward right, not a permanent instantiation of it.

Nonetheless, he did consider some particulars of what a state of international right might look like in *Perpetual Peace*, which is the topic of the next and final chapter.

CHAPTER FOUR: THE INTERNATIONAL STATE OF NATURE

In the third section of "Theory and Practice," Kant dealt with the supra-national aspects of his political philosophy under the title of "International Right," but subtitled "From a Universally Philanthropic, i.e. Cosmopolitan Point of View."[1] For the sake of his argument that what *human beings* know to be true in theory is also true in the practice of *international politics*, this perspective was useful. However, as can be seen in the title and subtitle, it combined two issues that Kant later dealt with separately, first in his influential and still popular essay, "Perpetual Peace," and again in the *Rechtslehre*, in the last two chapters of "Public Right."[2] In these works, he calls the two issues "The Right of Nations" and "Cosmopolitan Right." The first deals with relations between individual *states* as states, and the second with relations between individual *citizens* of one state and foreign nations, or with citizens of various states with regard to each other as individuals. For both topics, Kant assumes that a state of nature—actual, this time, not theoretical—characterizes the current status of relations between the entities involved, and thus sets his task to consider how those relations might be transformed out of the state of nature and given a rightful, juridical form. This is more than mere speculation on Kant's part; Patrick Riley points out that such a global legal order "is more important to the political theory of Kant than to that of any other thinker, since for him the possibility of a public legal order at *any* level is jeopardized by the absence of such an order at the highest [international] level."[3]

[1] Kant, "Theory and Practice," 87.

[2] It was one of his most popular writings even in his lifetime, according to Paul Guyer, *Kant* (New York: Routledge, 2006), 294. Regarding its continuing relevance, see, e.g., Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999), 297; this topic will be discussed again in section II.3 below, and in greater detail in the conclusion of this dissertation.

[3] Patrick Riley, *Kant's Political Philosophy*, 114.

"Perpetual Peace" was first published in 1795, only two years before the *Rechtslehre*. Many of its arguments are repeated in the later work. However, there are also a number of inexplicable inconsistencies between the two works that have been the subject of considerable debate in the secondary literature. Most of these debates center around the *extent to which* and the *way in which* Kant envisioned the states and people of the world might leave the international state of nature and join themselves together under a formal, legal arrangement.

The discussion is complicated by the fact that Kant not only seems to change his mind throughout his works (both of these writings differ in some ways not only from each other, but from "Theory and Practice" and the several other essays in which Kant discusses international and cosmopolitan right, dating back decades), but he also does not use consistent terminology. Especially with regard to the international political structure he wished to posit as ideal—described in "Theory and Practice" as either a "cosmopolitan constitution," *weltbürgerliche Verfassung*, or a "universal federal state," *allgemeinen Völkerstaat*—Kant did not settle on a consistent term or concept, even within the same work.[4] The confusion has allowed Kant to be claimed as an ally by thinkers with significantly divergent visions for international order. We will discuss many of these issues in the course of this chapter.

As we argued in the first chapter, one assumption of this dissertation is that Kant's thought is less of a static system and more of a work in progress. For that reason, we understand the *Rechtslehre* as the final word on any apparent discrepancy within Kant's oeuvre as a whole. Although we will have to employ that assumption again in this chapter, in order to discuss and resolve some of the issues listed above, establishing "Kant's final opinion" on these matters is not the primary objective here. Rather, the issue at stake is Kant's use of the state of nature and

[4] "Theory and Practice," 90, 92.

related concepts in his thinking about problems of international political relationships. The way in which he does this—including the apparent struggles, indecisiveness, and inconsistencies—demonstrate both the value and the limitations on the use of the "state of nature" analogy for international relations.

As in previous chapters, we will argue here that Kant's unique approach to the state of nature—separating the theoretical state of nature, which he uses as a tool to discuss the rights of human beings as such, from the putatively historical state of nature, with its utter lack of right and justice—along with his understanding of a social contract as a guiding idea of reason, help explain and resolve several otherwise puzzling questions about Kant's internationalist thought.

Why does Kant distinguish between the *international* and *cosmopolitan*? What is the value of the "theoretical" state of nature—private right—in a context even Kant admits is an actual state of nature, and a state of war? Here, we will argue that Kant's separation of these topics mirrors his separation of the putative and theoretical states of nature. The putative state of nature characterizes the international political situation between states, while the idea of cosmopolitan right can be understood as a theoretical state of nature on the supra-national level.

If states operate in the world in a way analogous to persons, why do they have different kinds of rights and obligations? We have already seen why Kant's political logic leads him to insist on some kind of formal, legal structure that would bring an end to the international state of nature, but why was he not able to settle on a clearly "rightful" formulation of what that structure should look like? What is the significance of the discrepancies between and within his works on this topic? Many scholars have struggled to extract a clear picture of Kant's 'ideal world state' from his inconsistent terminology and contradictory assertions. We will argue that the social

contract as an idea of reason can helpfully stand in as a theoretical analogue to the ideal world state, providing the "theory" needed to show what needs to be done in "practice."

And finally, to the extent that Kant's logic with regard to states and peoples differs from his stated principles for individuals within a state, what does that difference mean for his political thought as a whole? We will conclude by bringing the discussion back to Kant's concept of the right of humanity as such, and argue that his understanding of this principle is just as active on the international level as it is on the domestic one.

We will begin to answer these questions, first, by taking a look at the relevant texts, then by examining how the secondary literature has handled some of the questions and inconsistences. This will set the stage for the final section, in which we will apply the framework developed over the previous chapters to bring better clarity to some of these issues.

I. Perpetual Peace

Kant begins "Perpetual Peace" with an explanation of its title: the source was a punny signboard with 'The Perpetual Peace' written over a picture of a graveyard.[5] The "graveyard" motif reappears throughout the work—in a sense, as a continuation of his critique of Hobbes from "Theory and Practice."[6] Kant introduces it at the beginning as a tongue-in-cheek nod to those who would see his project as futile utopianism, asking whether it applies more to the sovereigns "who can never have enough of war," and thus fill the ranks of the peaceful dead, or

[5] Immanuel Kant, "Perpetual Peace," in *Kant: Political Writings*, translated by H.B. Nisbet and edited by Hans Reiss (Cambridge: Cambridge University Press, 1991), 93.

[6] Hobbes asserts in *Leviathan* that "the Felicity of this life, consisteth not in the repose of a mind satisfied," that is, in peace, but in the "perpetuall and restlesse desire of Power after power, that ceaseth onely in Death" (XI). Death (or more properly, the next life) holds the only possibility of peace and rest for human beings.

to the "philosophers who blissfully dream of perpetual peace."[7] As one of the latter, he offers a subtle dig at the "practical politician" who conducts himself with "principles of experience" but is nonetheless perturbed by others' naïve dreams of peace. "If the practical politician is to be consistent," he must admit that "the theorist's abstract ideas . . . cannot endanger the state."[8] Having thus defended himself from the charge of presenting any "danger to the state" with his argument, Kant goes directly into his paradigm for establishing peace on *this* side of the grave.

The rest of the work is split into four sections. The first two sections comprise a model treaty—or perhaps more accurately, a constitution—that would structure the international system Kant has in mind. These sections are followed by two "supplements" and an appendix; these sections together are longer than the treaty articles themselves and contain much of the theoretical justification for Kant's proposed system.

1. Preliminary Articles

In the first section, Kant presents six "preliminary" articles for peace between states. These articles contain agreements that would need to be in place in order for the three "definitive" articles in the following section to be established. Kant believes three of the preliminary articles are of such vital importance—"being valid irrespective of differing circumstances"—that they should be agreed to "*immediately*."[9] These are:

> 1. No conclusion of peace shall be considered valid as such if it was made with a secret reservation of the material for a future war.
>
> 5. No state shall forcibly interfere in the constitution and government of another state.

[7] "Perpetual Peace," 93.
[8] Ibid.
[9] Ibid., 97.

> 6. No state at war with another shall permit such acts of hostility as would make mutual confidence impossible during a future time of peace.[10]

The other articles—numbers 2, 3, and 4—"need not necessarily be executed at once, so long as their ultimate purpose . . . is not lost sight of." Kant allows this flexibility "only as a means of avoiding a premature implementation which might frustrate the whole purpose of the article."[11] These three articles prohibit acquiring another independent state "by inheritance, exchange, purchase, or gift," mandate the gradual abolition of standing armies, and forbid taking on national debt to fund foreign wars.[12]

The first preliminary article, despite its convoluted wording, is primarily meant to establish the distinction Kant wants to make between a "peace" and a "truce." A treaty designed to give either or both parties future wiggle room to resume the conflict is definitionally, Kant argues, only a cease-fire. Peace, on the other hand, should already carry the connotation of perpetuity, and thus any "valid" peace treaty worthy of the name must conclusively "nullif[y] all existing reasons for a future war, even if these are not yet known to the contracting parties."[13] However, its other purpose is the establishment of trust between the two parties.

This is clearly also the purpose of the sixth preliminary article. Kant denounces "dishonorable stratagems" such as "the employment of *assassins* . . . *poisoners* . . . *breach of agreements*, *the instigation of treason* . . . etc.," because "it must still remain possible, even in

---

[10] "Perpetual Peace," 93-94, 96-97.

[11] Ibid., 97; c.f. MM, 6:340, where Kant places limitations on the sovereign's duty to reform the constitution in a republican direction, "as if it rested on the sovereign's free choice and discretion which kind of constitution it would subject the people to. For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage."

[12] "Perpetual Peace," 94-95.

[13] Ibid., 93.

wartime, to have some sort of trust in the attitude of the enemy."[14] Here, Kant reintroduces the idea of the state of nature as an analogue for international anarchy. Even in the midst of a hot war, "neither party can be declared an unjust enemy," because both states are merely "asserting [their] rights by force within a state of nature, where no court of justice is available to judge with legal authority."[15] That is—to anticipate the concept as expressed in the *Rechtslehre*—the two parties cannot speak of justice or injustice because they still exist in a state entirely "devoid of justice."[16] However, it is not a state devoid of *right*, and on the basis of the principles of right which must exist, provisionally, even in a state of nature, the parties to a war must agree to forego the use of such "diabolical arts" as would foreclose the possibility of peace even at a future date.[17] If trust and peace between two states are no longer even possibilities, then the stage is set for "a war of extermination, in which both parties and right itself might all be simultaneously annihilated," and after which would come "perpetual peace only on the vast graveyard of the human race."[18]

The fifth preliminary article stands somewhat apart from these two, although it also has trust as its ultimate purpose—without guarantees of autonomy and self-determination, states feel "insecure," and security is necessary for trust.[19] But the rest of Kant's logic is more closely related to his prohibition on revolution. He senses that it is not states, but people within a state, who are distressed by the "scandal and offense" taking place within another state. Nevertheless, it "would be a violation of the rights of an independence people" for another state to interfere in

[14] "Perpetual Peace," 96; c.f. Kant's assertion in "Theory and Practice" that the dissenting citizen "must be able to assume that his ruler has no *wish* to do him injustice" (84).
[15] "Perpetual Peace," 96.
[16] MM, 6:312.
[17] "Perpetual Peace," 97.
[18] Ibid., 96.
[19] Ibid.

its "struggling with its internal ills."[20] The only exception he allows is in the event of a civil war that actually splits the state "into two parts, each of which set itself up as a separate state and claimed authority over the whole." In such a case, it would be permissible for foreign powers "to lend support to one of them," not because each is now its own state, but rather, interestingly, "because their condition is one of anarchy."[21] We will discuss some of the implications of this and the rest of Kant's reasoning in the second section of this chapter; for now, we will move on to consider the "definitive" articles of Kant's model treaty.

2. Definitive Articles

The section containing the definitive articles begins with a thoroughly Hobbesian preamble on the international state of nature:

> A state of peace among men living together is not the same as the state of nature, which is rather a state of war. For even if it does not involve active hostilities, it involves a constant threat of their breaking out. Thus the state of peace must be *formally instituted*, for a suspension of hostilities is not itself a guarantee of peace. And unless one neighbour gives a guarantee to the other at his request (which can happen only in a *lawful* state), the latter may treat him as an enemy.[22]

Kant continues this thought in a footnote that anticipates an objection to his final line—that states, so long as the international condition remains anarchical, have a right to treat each other as enemies. The logic of his refutation follows familiar lines:

> It is usually assumed that one cannot take hostile action against anyone unless one has already been actively *injured* by them. This is perfectly correct if both parties are living in a *legal civil state*. For the fact that the one has entered such a state gives the required guarantee to the other, since both are subject to the same authority. But man (or an individual people) in a mere state of nature robs me of any such security and injures me by virtue of this very state in which he coexists with me. He may not have injured me

[20] "Perpetual Peace," 96.
[21] Ibid.
[22] Ibid., 98.

> actively (*facto*), but he does injure me by the very lawlessness of his state (*statu iniusto*), for he is a permanent threat to me, and I can require him either to enter into a common lawful state along with me or to move away from my vicinity. Thus the postulate on which all the following articles are based is that all men who can at all influence one another must adhere to some kind of civil constitution.[23]

This is, once again, the postulate of public law—the duty to quit the state of nature and reside in a rightful condition, where the relationships between people, states, or both can be structured by law rather than force. The formulation here is a step closer to that of the *Rechtslehre* in that Kant has introduced a coercive element not present in "Theory and Practice": one person can "require" another to join "a common lawful state," or force them to go away. Exactly how that "requiring" plays out between sovereign states is the source of one of the inconsistencies in Kant's thought on this issue; this will be examined in due time.

Kant ends this footnote by establishing three types of constitutions to which the postulate dictates we should move. The first is the civil state, "based on the *civil right* of individuals within a nation (*ius civitatis*)." The second is "based on the *international right* of states in their relationships with one another (*ius gentium*)," and the third "on *cosmopolitan right*." This last category is more complicated; Kant is thinking here not merely of individuals as citizens of the world, but of "individuals and states" as actors, both "coexisting in an external relationship of mutual influences" where they "may be regarded as citizens of a universal state of mankind [*allgemeinen Menschenstaats*]."[24] Kant asserts that this category is "necessary" to "the idea of a perpetual peace."[25] As long as both individuals of any state and the states themselves are "able to influence the others physically," there must be a category of right that orders those influencing relationships, and neither of the other two categories are able to cover all the possible iterations

[23] "Perpetual Peace," 98.
[24] Ibid., 98-99.
[25] Ibid., 99.

of such relationships. Thus, Kant insists on a third category to recognize the ability of individuals to influence states, and vice versa; for individuals to influence each other despite being citizens of different states; and for people (or peoples) to understand themselves simultaneously as members of (or constitutive of) a particular state, *and* as "citizens of a universal state of mankind." Nonetheless, the exact nature of *right* in this category—especially regarding how to make such a right "public" in a meaningful sense—is a more complicated question.

Having established this postulate, Kant moves into the three "definitive" articles themselves. Each of these articles addresses "right" at the three political levels he has articulated: state, international, cosmopolitan. The first article states that "*The Civil Constitution of Every State shall be Republican*."[26] The lengthy explanation that follows contains, essentially, the arguments on this topic we have seen Kant make previously, in "Theory and Practice," and subsequently in the *Rechtslehre*. Kant envisions a system of separated powers, based on representation, and administered according to the "idea of the original contract."[27] This constitution—which he calls the "one and only perfectly lawful kind"—not only accords with "the pure concept of right" which is the "original basis" of all government whatsoever, but has the added benefit of being practically conducive to peace.[28] If "the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on so dangerous an enterprise."[29]

---

[26] "Perpetual Peace," 99.
[27] Ibid., 99-100.
[28] Ibid., 101, 100.
[29] Ibid., 100.

The second definitive article moves to the international level and states that "*The Right of Nations [Völkerrecht] shall be based on a Federation of Free States [Föderalism freier Staaten]*." It is at this point that Kant returns to the concept of the state of nature. He begins, once again, in a manner immediately recognizable to every Hobbesian realist: "Peoples who have grouped themselves into nation states may be judged in the same way as individual men living in a state of nature, independent of external laws."[30] The difference is, of course, that Kant does not want to assume this state as the unalterable status quo internationally; by "judged" he does not mean merely "considered," but literally *judged*: "they are a standing offense to one another by the very fact that they are neighbors."[31] Thus:

> Each nation, for the sake of its own security, can and ought to demand of the others that they should enter along with it into a constitution, similar to a civil one, within which the rights of each could be secured. This would mean establishing a *federation of peoples* [*Völkerbund*]. But a federation of this sort would not be the same thing as an international state [*Völkerstaat*].[32]

There are a number of important points in this short passage. First of all, we again see Kant introduce a coercive element to the transition from state of nature to constitutional state, although "can and ought demand of others" is rather less coercive than "each may impel the other by force," as §44 of the *Rechtslehre* has it.[33] Secondly, although Kant is undoubtedly working within a context of right—this section is, after all, expounding the "Right of Nations"—he claims that a state may exercise this demand "for the sake of its own security." And finally, the constitution in which the states must "enter" is not identical to the civil one articulated in the first article, but only "similar," while also not the same as an "international state" in the sense, he

---

[30] "Perpetual Peace," 102.
[31] Ibid.
[32] Ibid.
[33] MM, 6:312.

goes on to say, of "a number of nations forming . . . a single nation [*ein Volk*]." It is "contradictory" to form one nation out of several, because the universal state would abolish the statehood of the constituent states, rendering them nullities. It would, essentially, destroy the entire conceptual basis of the first article and of civil right, as assumed in the "postulate" articulated in the footnote to the preamble. Thus, the only way to consider the right of nations is as "a group of separate states which are not to be welded together as a unit [*einem Staat*]."[34]

Kant elaborates on this argument in the ensuing discussion: "while natural right allows us to say of men living in a lawless condition that they ought to abandon it, the right of nations does not allow us to say the same of states."[35] While there is an *analogy* to be made between individuals in a state of nature and states in an anarchical international context, ultimately states and individual people are not the same kind of thing.[36] Persons are not nullified as persons by entering a civil state; rather, the civil state is the only context in which their essential personhood is recognized with the rights and dignity it deserves. States, on the other hand, "already have a lawful internal constitution, and have thus outgrown the coercive [*Zwange*] right of others to subject them to a wider legal constitution in accordance with their conception of right."[37] Thus, while peace stands for states "as an immediate duty" according to reason,

> Peace can neither be inaugurated nor secured without a general agreement between the nations; thus a particular kind of league, which we might call a *pacific federation* [*Friedensbund*] (*foedus pacificum*), is required. . . . This federation [*Bund*] does not aim to acquire any power like that of a state, but merely to preserve and secure the *freedom* of each state in itself, along with that of the other confederated states [*verbündeten Staaten*], although this does not mean that they need to submit to public laws and to a coercive

[34] "Perpetual Peace," 102.
[35] Ibid., 104.
[36] Patrick Riley makes a similar point in *Kant's Political Philosophy*: "Kant did not believe that states are in quite the same position as men in a state of nature, that they are under the same obligation to leave that condition as 'natural' men" (116). Riley attributes this stance to Kant having perhaps "accept[ed] too much sovereignty for one who is arguing against Hobbes" (117).
[37] "Perpetual Peace," 104.

> power [*Zwange*] which enforces them, as do men in a state of nature. It can be shown that this idea of *federalism* [*Föderalität*], extending gradually to encompass all states and thus leading to perpetual peace, is practicable and has objective reality.[38]

The practicability comes from the potential of even *one* state to republicize, reject the practice of war for glory (Kant vehemently repudiated this in a passage just prior to the one above), and orient themselves towards peace. If this can be accomplished, it will provide "a focal point for federal association," and states will begin to "join up with the first one, thus securing the freedom of each state in accordance with the idea of international right, and the whole will gradually spread further and further by a series of alliances [*mehrere Verbindungen*] of this kind."[39]

Kant's logic makes sense as far as it goes, but it unfortunately does not present a very clear idea of the "federation" he has in mind. In the paragraph recounted above, he claims that this federation would not "acquire any power" over the constituent states. On the other hand, in the very next paragraph, he acknowledges the futility of any single state unilaterally to renounce war, as this would endanger them existentially.[40] Thus, it is necessary to find some "substitute for the union of civil society" in the form of "a free federation [*freie Föderalism*]. If the concept of international right is to retain any meaning at all, reason must necessarily couple it with a federation of this kind."[41] But it is difficult to understand how a non-coercive federation *can* "substitute" for civil society in any meaningful sense, or make the rights of pacifist states secure.

---

[38] "Perpetual Peace," 104.

[39] Ibid.

[40] Hobbes said essentially the same thing: "if other men will not lay down their Right, as well as he; then there is no Reason for anyone, to devest himselfe of his: For that were to expose himselfe to Prey . . . rather than to dispose himselfe to Peace" (*Leviathan*, XIV).

[41] "Perpetual Peace," 104-105.

In the final paragraph of this section, Kant tries to address these issues again from another angle. Regarding the coercive element, he asserts that "The concept of international right becomes meaningless if interpreted as a right to go to war," for this would simply be a version of might making right.[42] Once again, he employs the analogy of the graveyard as the only type of "perpetual peace" available if it is understood as "just for men who adopt this attitude to destroy each other" when rights are in dispute.[43] Then, in contrast to everything he has already said, Kant asserts that

> There is only one rational way in which states coexisting with other states can emerge from the lawless condition of pure warfare. Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws, and thus form an *international state* [*Völkerstaat*] (*civitas gentium*), which would necessarily continue to grow until it embraced all the peoples of the earth. But since this is not the will of the nations, according to their present conception of international right (so that they reject *in hypothesi* what is true *in thesi*), the positive idea of a *world republic* [*Weltrepublik*] cannot be realised. If all is not to be lost, this can at best find a negative substitute in the shape of an enduring and gradually expanding *federation* [*immer ausbreitenden Bundes*] likely to prevent war.[44]

Nonetheless, it would never eliminate the "risk" of it. Clearly, Kant is giving us his true 'ideal' in the sense of the obvious logical conclusion of his system of right. Here, states are treated just the same as people in a state of nature; there is no consideration for their practical abolishment *as states* because, instead, the ultimate *rightness* of a universal state of coercive public right takes precedence. Kant concludes that the "negative substitute" of the federation

---

[42] "Perpetual Peace," 105.

[43] Ibid.

[44] Ibid.; c.f. "Theory and Practice," 90, where he says "the distress produced by the constant wars . . . must finally lead them [states], even against their will, to enter a *cosmopolitan* constitution. Or if such a state of universal peace is in turn even more dangerous to freedom, for it may lead to the most fearful despotism (as has indeed occurred more than once with states which have grown too large), distress must force men to form a state which is not a cosmopolitan commonwealth under a single ruler, but a lawful *federation* under a commonly accepted *international right*."

named in the title of the article is nothing more than a mere *practical* concession to the empirical realities of state interests in the current international status quo.

This is one of the instances in which the corresponding discussion in the *Rechtslehre* diverges significantly. Furthermore, we can also see how many different terms Kant has already used for both the practical federation of some kind, as well as the ideal world state. We will return to these issues shortly, but for now we will move on to the final article and the concluding sections of "Perpetual Peace."

The third definitive article of Kant's model treaty differs from the others in that is states a limitation, rather than an obligation: "*Cosmopolitan Right shall be limited to Conditions of Universal Hospitality*."[45] Kant begins by clarifying that by "cosmopolitan" he means "concerned not with philanthropy, but with *right*."[46] This is interesting insofar as he seemed to cover both of these topics, along with international right, all together in the third part of "Theory and Practice." Here, he splits the right of nations off into its own article, and reduces "cosmopolitan right" to "the right of a stranger not to be treated with hostility when he arrives on someone else's territory."[47] Refugees may "be turned away," if doing so will not endanger their lives, but they "must not be treated with hostility," as long as they respect the laws of the host nation and are not themselves hostile.[48] Kant's justification for this "right of strangers" or refugees has to do with the finite amount of space available on the surface of the planet, and the corresponding necessity for embodied beings, who must take up space, to be able to do so somewhere on the earth's surface. Thus, "all men are entitled to present themselves in the

[45] "Perpetual Peace," 105.
[46] Ibid.
[47] Ibid.
[48] Ibid., 105-106.

society of others by virtue of their right to communal possession of the earth's surface."[49] This should not be seen as a contradiction to any of Kant's theories of property or an analogue to Hobbes's "right of every man to every thing."[50] Rather, he is simply observing that "no-one originally has any greater right than anyone else to occupy any particular portion of the earth." All such rights are acquired and still exist within a reality in which the "*right to the earth's surface*" is one "which the human race shares in common" by virtue of bodily existence thereon.[51] Thus, any person in any place, who is there in good faith, has a right not to be treated with hostility even if he must be removed.

The upshot is that this situation and the necessities and rights inherent to it create an opportunity for—and indeed, a history of—"social intercourse" among and between people, even on opposite sides of the globe.[52] He points out that nations have already "entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*."[53] This statement comes immediately after a scathing indictment of one example of such "violation of rights"—the practice of what we now call colonialism. Kant views this as a violation of the right to hospitality on the part of the stranger himself: the "injustice" which "the civilised states of our continent" display "in *visiting* foreign countries and peoples (which in their case is the same as *conquering* them) seems appallingly great."[54] He goes on to condemn "the oppression of the natives," "wars, famine, insurrection," and "the cruellest and most calculated slavery," committed by "powers who make endless ado

[49] "Perpetual Peace," 106.
[50] Hobbes, *Leviathan*, XIV.
[51] "Perpetual Peace," 106.
[52] Ibid.
[53] Ibid., 107-108.
[54] Ibid., 106.

about their piety, and who wish to be considered as chosen believers while they live on the fruits of iniquity."[55] In addition to being gross violations of human rights, these practices subvert the moral purpose of the "cosmopolitan right" to visitation and asylum: that the various peoples of the earth might "enter into peaceful mutual relations which may eventually be regulated by public laws, thus bringing the human race nearer and nearer to a cosmopolitan constitution."[56] Thus, Kant concludes that the "idea of cosmopolitan right . . . is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity."[57] We have already seen how the "right of humanity" and the "right of human beings as such" play a significant, if less than straightforward, role in the *Rechtslehre*—a role that could aptly be described as forming part of the "unwritten code" underlying all of the concepts of right Kant explores there. Here we see his thought moving, once again, in the same direction.

3. Supplements

The three definitive articles are followed by two "supplements" and an Appendix. The first supplement deals with Kant's teleological beliefs about the progress of history: the way in which the experience of wars and other evils will slowly push humanity toward an acknowledgement of right and a desire to abolish such things through formal legal structures. At the very least, the *possibility* that such a progression of history might exist is enough to justify working in that direction from the perspective of practical reason. It is an interesting perspective—one which was also present in "Theory and Practice"—but not essential to the project of this chapter.

[55] "Perpetual Peace," 106-107.
[56] Ibid., 106.
[57] Ibid., 108.

The only portion of it that bears on the questions at hand is the passage in which Kant returns to the question of whether an international federation of states or a one-world government is preferable. Here, Kant seems to reverse course from his previous statements to say that the state of nature, even as "a state of war," is "still to be preferred to an amalgamation [*Zusammenschmelzung*] of the separate nations under a single power which has overruled the rest and created a universal monarchy [*Universalmonarchie*]."[58] This he describes as "a soulless despotism" which is liable to "lapse into anarchy" as the "laws progressively lose their impact" with increasing distance from the center of power. This situation he foresees as ending "in the graveyard of freedom."[59]

This, of course, is the usual objection to utopian visions of a world state. However, what Kant is actually arguing against is not a world state *as such*, but specifically one set up by force. "It is nonetheless the desire of every state (or its ruler) to achieve lasting peace by thus dominating the whole world."[60] But a peace contrary to right is not worthy of the name and will, as he has argued, devolve into anarchy and death. Whatever Kant might have in mind regarding the way states might "demand" that their neighbors join them in submitting to a rightful condition, this is certainly not it. Actually, what he envisions in this section is that the national and cultural differences between states, given by "*nature*" and "presuppose[d]" in "the idea of international right" itself, will progress through war and conflict to a place of "mutual understanding and peace."[61]

---

[58] "Perpetual Peace," 113.
[59] Ibid., 113-114.
[60] Ibid., 113.
[61] Ibid., 113-114.

The second supplement is a corollary to Kant's discussion of free speech in "Theory and Practice." Here he asserts—with an obvious sense of humor—that there should be a "*Secret Article of a Perpetual Peace*" added to the foregoing articles he has already enumerated. This secret article states, again with irony, that "*The maxims of the philosophers on the conditions under which public peace is possible shall be consulted by states which are armed for war*."[62] Lest any authority take offense at being told to "seek instruction from *subjects* (the philosophers)," Kant is quick to add that the consultation may take place "*silently*" merely by permitting freedom of expression. The state need only "*allow them to speak* freely and publicly on the universal maxims of warfare and peace-making, and they will indeed do so of their own accord if no-one forbids their discussions."[63]

4. Appendix

This brings us to the fourth and final section of the work, the Appendix. This section is the longest of the four and in many ways the richest. It is split into two parts; the first deals with "the disagreement between morals and politics in relation to perpetual peace," and the second with "the agreement between politics and morality according to the transcendental concept of public right."[64] The titles tend to obscure rather than illuminate their content. The second part contains Kant's articulation of his principle of "publicity" as a test for the morality of an action. The first section is a defense of the absolute imperatives of moral right for politics against the opportunists and relativists who would justify committing wrong on the basis of circumstance,

[62] "Perpetual Peace," 114-115.
[63] Ibid., 115.
[64] Ibid., 116, 125.

expedience, or interests. It is a piece of moral philosophy worthy of Plato in its tone and execution; in content, however, it covers much the same ground as "Theory and Practice."

Kant is honest about the fact that his moral system is based on unprovable postulates of freedom and right that may not, in fact, be real. However, he wants to make it absolutely clear that a system based merely on experience and expedience *must* assume that they are definitely *not* real, while all morality needs to be true for theory and practice is for such postulates to be at least *possible*.

> If, of course, there is neither freedom nor any moral law based on freedom, but only a state in which everything that happens or can happen simply obeys the mechanical workings of nature, politics would mean the art of utilising nature for the government of men, and this would constitute the whole of practical wisdom; the concept of right would then be only an empty idea. But if we consider it absolutely necessary to couple the concept of right with politics, or even to make it a limiting condition of politics, it must be conceded that the two are compatible.[65]

Kant juxtaposes two characters to represent these points of view: the "*moral politician*," who understands morality as compatible with politics and takes it as his job to better reconcile the two in practice, and the "*political moralist*," who bases his "morality" on the principles of political expedience alone.[66] The first, the moral politician, Kant views as the type of political leader who understands the duty to make incremental reforms to a state's internal constitution—this is the view we have already seen in both "Theory and Practice" and the *Rechtslehre*—and also take a lead in improving relationships between states. But this cannot be done by forcing another state "to relinquish its constitution, even if [it] is despotic."[67] Rather, Kant once again

[65] "Perpetual Peace," 117.
[66] Ibid., 118.
[67] Ibid.

counsels patience: "while plans must be made for political improvement" in the international sphere, "it must be permissible to delay their execution until a better opportunity arises."[68]

Kant spends the rest of this section attacking the second character, the political moralist, by seeking to expose the fact that such leaders must go to great lengths to justify and cover up their "might makes right" maxims with moralistic excuses. The existence of these excuses prove that "men can as little escape the concept of right in their private relations as in their public ones."[69] Once one is able to "recognis[e] one's duty" rather than seeking to undermine it for various selfish or expedience ends, then one is able to see that "in *objective* or theoretical terms, there is no conflict whatsoever between morality and politics."[70] The only conflict exists within the human soul itself. Thus, moral courage consists less in applying moral principles to external situations than in "facing the evil principle within ourselves and overcoming its wiles."[71]

But nonetheless, moral principles do have application and Kant recognizes that sometimes their dutiful application in the real world comes at the risk of physical consequences. But, he says famously, "*fiat iustitia, pereat mundus* (i.e., let justice reign, even if all the rogues in the world must perish."[72] And among these principles of justice, he again includes the imperative that states "unite [*Vereinigung*] with other neighboring or even distant states to arrive at a lawful settlement of their differences by forming something analogous to a universal state [*einem allgemeinen Staat analogischen*]."[73]

---

[68] "Perpetual Peace," 118.
[69] Ibid., 122.
[70] Ibid., 122, 124.
[71] Ibid., 124.
[72] Ibid., 123. Of course, the Latin says rather more bluntly "let there be justice, though the earth perish."
[73] Ibid.

The second part of the Appendix, and the last section of "Perpetual Peace," contains a unique theory of Kant's that was present only in nascent (and somewhat different) form in "Theory and Practice" and was not repeated in the *Rechtslehre*—in fact, some of its prescriptions are contradicted in this later work. Kant calls this theory "an experiment of pure reason"—essentially a test or "readily applicable criterion" for judging whether a proposed political action is either certainly wrong, or possibly right. Kant claims this criterion is "*transcendental*" and "can be discovered *a priori* within reason itself."[74] The test states: "All actions affecting the rights of other human beings are wrong if their maxim is not compatible with their being made public."[75] Kant stresses that this is "a purely *negative* test"; that is, it is possible that some maxims can survive being publicized, but still be wrong.

He applies this test to two of the three political levels discussed in the definitive articles: in this case, only the state and the international levels. The test case at the state level is revolution: in this instance, Kant claims we can establish its wrongness on principle by the fact that a maxim on the part of the people expressing "its intention to rebel on certain occasions" could not be publicly included in either the actual constitution or the idea of the original contract without making either self-contradictory and logically absurd.[76] It would "defeat its own

[74] Perpetual Peace," 125-126.
[75] Ibid., 126.
[76] Ibid. It is on this topic that the publicity theory appears in "Theory and Practice." In this case, Kant presents it only as an example where his moral "theory is adequately confirmed in practice. In the British constitution, of which the people are so proud that they hold it up as a model for the whole world, we find no mention of what the people are entitled to do if the monarch were to violate the contract of 1688. Since there is no law to cover such a case, the people tacitly reserve the right to rebel against him if he should violate the contract. And it would be an obvious contradiction if the constitution included a law for such eventualities, entitling the people to overthrow the existing constitution, from which all particular laws are derived, if the contract were violated. For there would then have to be a *publicly constituted* opposing power, hence a second head of state to protect the rights of the people against the first ruler, and then yet a third to decide which of the two had right on his side" (83-84). Kant placed a footnote after "*publicly constituted*" which contains the germ of the publicity theory, but states it not as an *a priori* criterion but as a simple if/then argument: "No right in a state can be tacitly and treacherously included by a secret reservation, and least of all a right which the people claim to be part of the

purpose." However, the government could easily make public its intention to "punish any rebellion by putting the ringleaders to death," and be perfectly coherent and consistent in so doing. Thus, revolution is morally wrong.[77]

Kant gives three test cases for international right, and their logic runs similarly to the state test case. The first considers whether a state may renege on a promise to another state. The second asks whether a small state may mount a preemptive attack on another state "which has grown to a formidable size (*potentia tremenda*)" and whose relative superiority in power thus "gives cause for anxiety." Thirdly, Kant tests whether a large state can annex a smaller one, if the smaller one is creating "a gap in the territory of the larger state."[78] Clearly, all three cases require secrecy; if a state in any of the three cases were to publicize its intention beforehand, it would make the execution of the task impossible or at least very risky. As for cosmopolitan right, Kant declares he will "pass over it here in silence, for its maxims are easy to formulate and assess on account of its analogy with international right."[79]

This concludes "Perpetual Peace," but not Kant's writings on international politics or the debates over what he truly envisioned as the rightful ideal for interactions between states and peoples.

II. Inconsistencies in Comparison to the *Rechtslehre*

Kant's *Rechtslehre*, as we have already discussed, is split into two major sections: "Private Right," or right as such, often discussed under the umbrella term of the "state of nature,"

---

constitution, for all laws within it must be thought of as arising out of a public will. Thus if the constitution allowed rebellion, it would have to declare this right publicly and make clear how it might be implemented" (84n).

[77] "Perpetual Peace," 127.

[78] Ibid., 128.

[79] Ibid.

and "Public Right," which is the formal, legal right of a civil state. Most of our discussion in chapter one focused on "Private Right" and the first few sections of "Public Right," which discussed the state of nature, the obligation to join a civil state, the coercion that replaced the consensual social contract at the juncture between, and the reconsideration of the social contract not as an event but as an "idea of reason" or guiding principle for politics. However, "Public Right" continues past this point and concludes with a chapter on "The Right of Nations," a short chapter on "Cosmopolitan Right," and a very brief Conclusion that ends with Kant's looking forward to "perpetual peace" on the grounds he has established.[80]

However, there are a number of ways in which this discussion departs from the way in which he treated these topics in "Perpetual Peace" itself. This combined with the fact that, once again, Kant is not consistent or clear with his terminology regarding his ideal international federation or state, has led to considerable debate in the secondary literature. We will begin this section with a look at these two chapters of "Public Right" in comparison with what we have already found in "Perpetual Peace," and then turn to some of the questions in the literature.

1. International and Cosmopolitan Right in the *Rechtslehre*

The chapter titled "The Right of Nations" begins with Kant explaining that he really means to discuss "the right of states," *Staatenrecht*, but is stuck with the common German term, *Völkerrecht*, "*right of nations*," which is "not quite correct."[81] A nation, he says, should be considered by analogy to a family—bound together by laws rather than blood, but understood in

[80] MM, 6:355.
[81] MM, 6:343. The title of Chapter 1 of "Public Right" is *Staatsrecht*, the right of a state.

opposition to orphan "savages" still living atomistically in a state of nature. The "right of *states* in relation to one another" is rather different:

> a state, as a moral person, is considered as living in relation to another state in the condition of natural freedom and therefore in a condition of constant war. The rights of states consist, therefore, partly of their right *to go to* war, partly of their right *in* war, and partly of their right to constrain each other to leave this condition of war and so form a constitution that will establish lasting peace, that is, its right *after* war.[82]

But as we saw in "Perpetual Peace," the analogy of the state as a person in an international 'state of nature' has certain limits, which Kant underscores by splitting cosmopolitan right away from the right of states. "The only difference between the state of nature of individual men . . . and that of nations is that in the right of nations we have to take into consideration not only the relation of one state toward another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole."[83] Interestingly, then, he claims that this "difference . . . makes it necessary to consider only such features as can be readily inferred from the concept of a state of nature."[84] And this is what he proceeds to do; all of his discussions of the rights of nations before, during, and after war are set within the context of the international state of nature.

He describes the international state of nature in four steps. First, that states are "by nature in a non-rightful condition" with regard to each other. Secondly, that this "is a *condition* of war (of the right of the stronger)," even if no "actual attacks" are presently taking place. Echoing §42-44 once again, he says that "although no state is wronged by another in this condition (insofar as neither wants anything better), this condition is in itself still wrong in the highest

---

[82] MM, 6:343.
[83] MM, 6:343-344.
[84] MM, 6:344.

degree, and states neighboring upon one another are under obligation to leave it."[85] Thus, thirdly, "a league of nations [*Völkerbund*] in accordance with the idea of an original social contract is necessary, not in order to meddle in one another's internal dissensions," but simply to establish peace externally.[86] Finally, "this alliance [*Verbindung*] must . . . involve no sovereign authority (as in a civil constitution) but only an *association* (federation) [*Genossenschaft*/ *Föderalität*]."[87] Furthermore, Kant asserts that this "alliance . . . can be renounced at any time and so must be renewed from time to time."[88]

Following this, Kant begins his discussion of the rights of nations with regard to war. He claims that "free states in a state of nature" have and "original right . . . to go to war with one another," although he holds out hope that they might do this, "perhaps, to establish a condition that is more closely approaching a rightful" one.[89] He considers two problems related to this right to go to war: first, in what sense a state has the right to use its own citizens as fodder for war, and secondly, what kinds of actions by another state are sufficient to justify a war to begin with. Regarding the first question, Kant insists that the citizens of the state not be treated as the personal property of the sovereign, but rather "regarded as co-legislating members of a state (not merely as means, but also as ends in themselves)."[90] Thus, the right to go to war is derived "from the *duty* of the sovereign to the people (not the reverse)," and any actual declaration of war must come via representative consent of the people.[91]

---

[85] MM, 6:344.
[86] MM, 6:344-345.
[87] MM, 6:345.
[88] MM, 6:345.
[89] MM, 6:345.
[90] MM, 6:345-346.
[91] MM, 6:345.

Of course, this entire discussion of a right "to go to war" directly contradicts "Perpetual Peace," which stated that international right must not be interpreted in this way.[92] The second problem within this question, regarding the conditions for a just war, brings up the second such instance of obvious disagreement. Kant defines the right to go to war as "the way in which a state is permitted to prosecute its right against another state, namely by its own *force*, when it believes it has been wronged by the other state," since, in a state of nature, there is no structure for legal, non-violent recourse. Kant then considers what kinds of actions would constitute "wrongs" wrong enough to justify war.

> In addition to active violations (first aggression, which is not the same as first hostility) it may be *threatened*. This includes another state's being the first to undertake *preparations*, upon which is based the right of *prevention* (*ius praeventionis*), or even just the *menacing* increase in another state's *power* (by its acquisition of territory) (*potentia tremenda*). This is a wrong to the lesser power merely by the *condition* of the *superior power*, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate. Accordingly, this is also the basis of the right to a balance of power among all states that are contiguous and could act on one another.[93]

This is clearly an about-face from the conclusion of his 'publicity' criterion in the Appendix of "Perpetual Peace." Indeed, Kant goes even further to articulate a "right to a balance of power" among neighboring states, a concept he treated dismissively in "Theory and Practice."[94] The passage is problematic for other reasons—having already defined the international state of nature as "wrong in the highest degree" to the point that "no state" can be "wronged by another" while both are willing to remain in it, it seems odd now to speak of one

---

[92] "Perpetual Peace," 105.

[93] MM, 6:346.

[94] At least, insofar as it could be a vehicle for peace: "For a permanent universal peace by means of a so-called *European balance of power* is a pure illusion, like Swift's story of the house which the builder had constructed in such perfect harmony with all the laws of equilibrium that it collapsed as soon as a sparrow alighted on it" ("Theory and Practice," 92).

state "being wronged by" and "prosecuting a right" against another state, or of attacks that can be in any coherent sense "legitimate" in a non-legal context.

But even more interesting is the example Kant gives for "active violations," mentioned only in passing above. Such violations "include *acts of retaliation*" for wrongs committed by another state. Kant is not saying that a state has the right to retaliate—quite the opposite. A state that retaliates even for true offenses, "instead of seeking compensation (by peaceful methods)," has committed a violation that gives the state retaliated *against* a right to go to war.[95] By resorting to violence without first attempting peaceful resolution, the retaliating state has essentially "start[ed] a war without first renouncing peace." Kant insists that, even in a state of nature, such "formalities" like declarations of war can exist: "if one wants to find a right in a condition of war, something analogous to a contract must be assumed, namely, *acceptance* of the declaration of the other party that both want to seek their right in this way," that is, by war.[96] This analogous "contract" echoes, once again, the passage in §42 where Kant says of people in a state of nature that "what holds for one holds also in turn for the other, as if by mutual consent."[97] The difference has to do with the fact that Kant understands states in the international context as in a state of nature but as *in progression* towards a state of perpetual peace. For that reason, the awareness of private, provisional right ought to trump any alleged "right" derived from the mere *absence* of public right.

This can be seen even more clearly in the next section, dealing with "right during a war."[98] Kant admits that "it is difficult even to form a concept of this or to think of law in this

[95] MM, 6:346.
[96] MM, 6:346
[97] MM, 6:307.
[98] MM, 6:347.

lawless state without contradicting oneself." But, following the same line of reasoning in the sixth preliminary article of "Perpetual Peace," Kant states the right of states during war as "the waging of war in accordance with principles that always leave open the possibility of leaving the state of nature among states (in external relation to one another) and entering a rightful condition."[99]

These principles apply in the aftermath of war, as well. Kant defines the "right of a state *after a war*" as the right of the victor to give "the conditions on which it will come to an agreement with the vanquished and hold *negotiations* for concluding peace."[100] The next few sentences explaining this right are rather surprising and worth recounting in full:

> The victor does not do this from any right he pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force. The victor can therefore not propose compensation for the costs of the war since he would then have to admit that his opponent had fought an unjust war. While he may well think of this argument he still cannot use it, since he would then be saying that he had been waging a punitive war and so, for his own part, committing an offense against the vanquished.[101]

These statements follow from Kant's arguments in the previous section regarding retaliation. Essentially, the conclusion of a war gives one state the right to force another state back to the peaceful negotiating process they should have undertaken in the first place; it does *not* give either state the right to punish each other, because they are both still outside of the lawful, rightful context that would make legitimate punishment possible. Thus, Kant goes on to say that this right includes provisions for exchange of prisoners of war "without ransom [or]

---

[99] MM, 6:347.
[100] MM, 6:348.
[101] MM, 6:348.

regard for their being equal in number," for amnesty, and against colonization, annexation, or bondage.[102]

Regardless of what Kant says about a theoretical state of nature being "devoid of justice" and both sides being equally at fault for staying in it, it still seems obvious that certain conflicts are characterized by unwarranted aggression on one side and relative innocence on the other. If the limitations outlined above seem rather hard on a state that has been attacked unjustly, Kant does go on to consider what rights a state might have against a truly unjust enemy. He defines such an enemy as one "whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated."[103] States have a "right to peace"; that is, they have rights to neutrality if they wish, to guarantees that their peace treaties will be respected, and to defensive alliances.[104] Another state whose posture makes these rights impossible for other states may be resisted almost without limit: "an injured state may not use *any* means *whatever* but may use those means that are allowable to any degree that it is able to."[105] And indeed, given the *publicity* of such a state's stance, not only the injured state but all states are justified in taking preemptive action:

> Since this can be assumed to be a matter of concern to all nations whose freedom is threated by it, they are called upon to unite against such misconduct in order to deprive the state of its power to do it. But they are not called upon *to divide its territory among themselves* and to make the state, as it were, disappear from the earth, since that would be an injustice against its people, which cannot lose its original right to unite itself into a commonwealth, though it can be made to adopt a new constitution that by its nature will be unfavorable to the inclination for war.[106]

---

[102] MM, 6:348-349.
[103] MM, 6:349.
[104] MM, 6:349.
[105] MM, 6:349.
[106] MM, 6:349.

Still, Kant reverts to his usual stance at the end of this section, saying that "It is *redundant* . . . to speak of an unjust enemy in a state of nature" that is unjust in itself. "A just enemy would be one that I would be doing wrong by resisting; but then he would also not be my enemy."[107] The objective still remains, then, not to continue to recount and delimit the rights of nations regarding war, but to articulate the duty to leave the state of war altogether.

Thus, we come another formulation of Kant's ideal international political system. Employing the terminology he established in "Private Right," Kant first asserts that rights, especially property rights "which states can acquire or retain by war," are present in the state of nature but still "merely *provisional*. Only in a universal *association of states* [*allgemeinen Staatenverein*] (analogous to that by which a people becomes a state) can rights come to hold *conclusively*."[108] Here, however, Kant is quick to qualify his assertion by differentiating it from a world state:

> If such a state made up of nations [*Völkerstaats*] were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations [*Corporationen*] would again bring on a state of war. So *perpetual peace*, the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliances of states [*Verbindungen der Staaten*], which serve for continual *approximation* to it, are not unachievable. Instead, since continual approximation to it is a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved.[109]

There is a lot going on in this short passage, much of it apparently contradictory. Notably, while he is still pessimistic about the idea of a world state, he does not *condemn* the idea in the strong terms we have seen in prior works. Perpetual peace is "the ultimate goal" of

---

[107] MM, 6:350.
[108] MM, 6:350.
[109] MM, 6:350.

the category of right under discussion here, but is nonetheless "unachievable" as a result of the aforementioned pessimism. But the "political principles" that point toward it are achievable, as are the intermediate steps of alliances that "approximate" [*Annäherung*] the ultimate goal. Then, however, he speaks of the approximation as a "continual" one and insists that, because it is based on the "right of human beings and of states," it must be achievable. He goes on to describe what this looks like: "Such an *association* of several *states* [*Verein einiger Staaten*] to preserve peace can be called a *permanent congress of states* [*Staatencongreß*]."[110]

Kant defines this "congress" as "only a voluntary coalition of different states [*willkürliche . . . Zusammentretung verschiedener Staaten*] which can be *dissolved* at any time, not a federation [*Verbindung*, previously "alliance"] (like that of the American states) which is based on a constitution and can therefore not be dissolved."[111] Despite the fact that this formula is rather weaker than some others he has recommended, Kant nonetheless concludes that this is the "only" way "the idea of a public right of nations can be realized."[112] Rather than making formal legal mechanisms for conflict resolution the imperative, Kant now says merely that states in such an arrangement can resolve "their disputes in a civil way, as if by a lawsuit."[113] It seems Kant has decided that the international sphere, conceptualized as a state of nature *by analogy*, can be perfected and pacified into a *state by analogy*, too.

The short chapter on "Cosmopolitan Right" is very close, in content, to the corresponding discussion in "Perpetual Peace." Kant first establishes the difference between philanthropical cosmopolitanism and the rightful kind he has in mind, then moves to a discussion of the spatial

[110] MM, 6:350.
[111] MM, 6:351.
[112] MM, 6:351.
[113] MM, 6:351.

limitations of the earth's surface, and thus into the familiar "right of citizens of the world *to try to* establish community with all and, to this end, to *visit* all regions of the earth."[114] There are only two significant differences. First is the fact that he now describes this 'right to visit' in the context of commerce, specifically: each state has a right "of *offering to engage in commerce* with any other" without being treated as an enemy for having made the attempt.[115] Because international commerce, and the communities and relationships it creates, help nudge states toward a "possible union of all nations with a view to certain universal laws for their possible commerce," it can be called "*cosmopolitan right* (*ius cosmopoliticum*)."[116]

The second is not so much a difference from "Perpetual Peace" as a continuation of its logic—after again denouncing the abuses of colonialist settlements, Kant considers whether "newly discovered lands" can rightfully be settled. Of course, he says, if the land is truly empty "the right to settle is not open to doubt."[117] The difficulty is that he senses the temptation, as he said in "Perpetual Peace," to view newly 'discovered' lands as "ownerless territories" despite their being peopled, because the "native inhabitants [are] counted as nothing."[118] Thus, he says, if such new 'discoveries' are already inhabited, even sparsely by "shepherds or hunters," then settlements "may not take place by force but only by contract"—and he emphasizes such a

---

[114] MM, 6:353.
[115] MM, 6:352.
[116] MM, 6:352.
[117] MM, 6:353. Richard Tuck points out that, with regard to America, "the first settlers came from societies which lived constantly on the edge of famine and demographic collapse, and it was only with hindsight that (for example) the English colonists could have known that the famine of 1623 was the last true famine which England was ever to experience; indeed, it is perfectly possible that it was the growth of the colonies which helped to eliminate famine" (233). Thus, it is not without reason that such settlers believed "it was *necessary* to seize the underdeveloped temperate lands of North America"; it was, for them, "literally a matter of life or death" and thus the native populations "turned out to be guilty of a moral crime against the European settlers" by trying to prevent occupation (232-233). Be that as it may, of course "the attempt to save the lives of Europeans resulted in the mass slaughter of aboriginals on a scale far beyond even the great famines of the fourteenth century in Europe," thus proving Kant's point.
[118] "Perpetual Peace," 106.

contract must "not take advantage of the ignorance of those inhabitants with respect to ceding their lands."[119]

This begins to sound like a social contract, especially considering that this discussion is taking place under cosmopolitan right, rather than the right of nations. Kant refers to native peoples as collective units, but also seems to understand that both they and the would-be settlers do not constitute a "state" in the strict sense. Thus he anticipates an objection derived from his own logic: "Someone may reply that such scruples about using force in the beginning, in order to establish a lawful condition, might well mean that the whole earth would still be in a lawless condition." Indeed, if coercive measures are justified between individuals, to forcibly exit a putative state of nature, and between states, in war and after, so long as it moves the world towards peace—why is it not warranted in *this* situation? Kant answers:

> This consideration can no more annul that condition of right than can the pretext of revolutionaries within a state, that when constitutions are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all the more securely and make it flourish.[120]

This statement ends the chapter without further explanation. We can take from it that Kant understands the peoples of the earth, in their relationships between each other, as contained within a recognizable order of right that underlies the validity of even the idea of a social contract. Thus, when there is an *opportunity* to create such a contract, as when relations between

---

[119] MM, 6:353. In a footnote in "Perpetual Peace," Kant nonetheless condemns such primitive lifestyles as "undoubtedly most at odds with a civilised constitution. For families, having to live in separation, soon become strangers to each other, and subsequently, being scattered about in wide forests, they treat each other with hostility, since each requires a large area to provide itself with food and clothing" (110n). Here in the *Rechtslehre*, however, he simply notes that such peoples—he mentions specifically the "American Indian nations"—must "depend for their sustenance on great open regions," and that this fact must be respected by any newcomers. He patently rejects the "specious reasons [that] justify the use of force" against native peoples: that in this way "these crude peoples will become civilized," or "because one's own country will be cleaned of corrupt human beings" sent to populate new settlements and thus "become better in another part of the world." "Such supposedly good intentions cannot wash away the stain of injustice in the means used for them" (6:353).

[120] MM, 6:353.

peoples are undertaken for the first time, the contract should be realized historically. However, for those people *already* under a legal arrangement, any violent attempt to replace it (or revert to it) only destroys it.

Nonetheless, Kant's logic with regard to coercion and consent, violence and right, and justice in a state of lawlessness is convoluted, to say the least. It is apparent, however, that there is an abiding connection between the concepts of the state of nature (putative and theoretical), the social contract (as an idea of reason or as an actual pact between states and peoples), and the rights of humanity in such cases as revolution, war, and global migration and commerce. Kant himself draws the concepts together in the Conclusion to the *Rechtslehre*:

> Now morally practical reason pronounces in us its irresistible *veto*: *there is to be no war*, neither war between you and me in the state of nature nor war between us as states, which, although they are internally in a lawful condition, are still externally (in relation to one another) in a lawless condition; for war is not the way in which everyone should seek his rights. So . . . . we must work toward establishing perpetual peace and put an end to the heinous waging of war . . . . For this is our duty.[121]

Kant thus concludes that "establishing universal and lasting peace" is "the entire final end of the doctrine of right within the limits of reason alone,"[122] because only in peace can "what is mine and what is yours [be] secured under *laws* for a multitude of human beings living in proximity to one another and therefore under a constitution."[123]

Before we move to an analysis and attempt to resolve some of the apparent inconsistencies between the various works, we will take a look at how they have already been handled within the secondary literature. There seem to be three major categories of debate which will be discussed in turn. The first is the issue of the cosmopolitan right—what is it, what is it

---

[121] MM, 6:354-355.

[122] *Rechtslehre innerhalb der Grenzen der bloßen Vernunft*; compare to the title of the *Religion*: *Religion innerhalb der Grenzen der bloßen Vernunft*.

[123] MM, 6:355.

for, and how does it relate to and differ from international right? The second is the question of what Kant's ideal structure for world peace really is—of all the various formulations and terms, which comes closest to Kant's true goal? And finally, how are we to understand the concept of Right in a state of nature supposedly devoid of it? This final question in some ways the most important, as it underlies the first two.

2. What is the Relationship between International and Cosmopolitan?

One of the most obvious questions confronting a reader of Kant's internationalist thought is *why* he chooses to make this separation of international and cosmopolitan right. Indeed, there is little consensus on what, exactly, Kant meant by the term "cosmopolitan right," and some good evidence that he was uncomfortable using it in the first place; he seems to have something in mind quite different than the "conventional eighteenth-century sense" of the term.[124] Richard Tuck defines it, rather opaquely, as "the principles which one would believe to apply if one came to think of all human societies as in some way partaking in associative relations."[125] But he describes Kant's explanation of it as "sparse" and concludes that, while such a state of affairs (whatever it is) between states might be "desirable, Kant was never willing to say that it was necessary."[126]

[124] Tuck, 223. See also Byrd and Hruschka, who claim that "he seems reluctant to use the word" because its conventional meaning "connotes something quite different from what he has in mind," (209n98). The reluctance is apparent in the fact that his first task, in both "Theory and Practice" and "Perpetual Peace," when discussing cosmopolitan law, is to clarify the term with regard to "philanthropy." See, e.g., "we are here concerned not with philanthropy, but with right," ("Perpetual Peace," 105); and the fact that he feels the need to footnote the subtitle of the third section of "Theory and Practice," (87).

[125] Tuck, 220. Tuck discusses it with reference only to "Perpetual Peace," "Theory and Practice," *Religion*, and other earlier essays; he does not address Kant's discussion in the *Rechtslehre*.

[126] Ibid.

Byrd and Hruschka point out the counterintuitiveness of including the category to begin with: why is Kant not content to "have simply (1) the domestic level, and (2) the international level, and thus (1) domestic law, and (2) international law?"[127] What is the purpose of this third layer of right? Byrd and Hruschka demonstrate some more difficulties with establishing a definition of "cosmopolitan right": first of all, even the term "cosmopolitan," *Weltbürger*, literally "world citizen," is not strictly accurate. "People are world citizens . . . only in one united world state, which Kant rejects."[128] Even granting the use of the term in an apparently metaphorical sense, they argue that Kant fundamentally changes his definition of "cosmopolitan law" between "Perpetual Peace" and the *Rechtslehre*. In the earlier work—as we described above—the concept is described clearly in terms of the right of a *stranger* or refugee to *visit* other states, and the duty of states not to treat such people with hostility. This right is based on two arguments: that all people should be understood as members of the universal human race, and that everyone has a right to *a* place on the earth's surface.[129] The problem with this line of reasoning, they suggest, is that when the "right to be in a place on the earth's surface becomes concrete" through the establishment of particular states taking up particular pieces of land, then "the right to be in a place other than the one an individual rightly occupies disappears, and with it the right to visit that other place."[130]

Thus, they argue that Kant's position evolved significantly when he reconsidered the subject in the *Rechtslehre*. Here, they claim, the "right to visit" becomes subsumed "under

---

[127] Byrd and Hruschka, 211.
[128] Ibid., 205.
[129] Ibid., 205-207. Byrd and Hruschka demonstrate the likely lineage of these ideas from earlier thinkers such as Grotius and Pufendorf.
[130] Byrd and Hruschka, 207. Thus, they conclude, the "right" articulated in "Perpetual Peace" is "simply an assumption."

international and not under cosmopolitan law."[131] They argue this on the basis of the statement, made in the first section of "Right of Nations," that the difference between people and states in the state of nature is that states must take into consideration not only relationships among themselves, but relationships between states and individuals, and individuals to each other across national lines, as well.[132] It is certainly a plausible reading of that statement, although we argued (p. 24 above) that Kant is rather giving a general introduction to all the types of right above the domestic level that can be thought of in terms of a state of nature. This interpretation is also reinforced by the fact that Kant specifically includes, in the chapter on "Cosmopolitan Right," a discussion of "the right of citizens of the world *to try to* establish community with all and, to this end, to *visit* all regions of the earth."[133] Nevertheless, Byrd and Hruschka argue, with good reason, that Kant has restricted "cosmopolitan right" in the *Rechtslehre* to the right of "peoples" (as opposed to either formal states or single individuals) to conduct "commerce" with each other.[134] Thus, they conclude, what Kant intends by "cosmopolitan law" is "legal regulation of international commercial trade, something on the order of but more far-reaching than today's General Agreement on Tariffs and Trade," and that "it is the responsibility of all the individual states" to enact this.[135]

---

[131] Byrd and Hruschka, 208.

[132] MM, 6:343-344.

[133] MM, 6:353, emphasis original.

[134] Byrd and Hruschka, 208-209. They do admit, however, that the word Kant uses for "commerce," *Verkehr*, can also mean more broadly "interaction" (209). Mary Gregor makes the same point in an editor's footnote to this section of the *Rechtslehre*, pointing out additionally that "Kant moves between *Wechselwirkung*, i.e., interaction, intercourse, or 'commerce' in a very general sense, and *Verkehr*, which he used in his discussion of contracts to signify exchange of property, 'commerce' in a more specific sense" (121nb). Byrd and Hruschka also note that *Verkehr* is used in its more *general* sense later in the *Tugendlehre* (209n100). And "Perpetual Peace" also considers commerce under "cosmopolitan right"—though not in the Article defining it, but later in the first Supplement (114).

[135] Byrd and Hruschka, 209. This seems an odd conclusion to draw if one is trying to *distinguish* cosmopolitan from international law, especially if cosmopolitan law is supposed to be based on a distinction between *peoples* and *states*.

So, then, if the ultimate responsibility is left to the states to enforce whatever "cosmopolitan law" is, why does Kant even bother with the distinction? Byrd and Hruschka argue that it is based on Kant's understanding of right in the state of nature. Contrary to Hobbes, who refuses to acknowledge property rights in a state of nature, Kant assumes that they *must* exist in order for the civil state to be possible at all.[136] However, there is a duty to order those rights under a system of legal right—this is the distinction Byrd and Hruschka have emphasized before between "commutative" (informal) and "distributive" (legal) justice. In the case of the international market, however, they argue that Kant is making an exception. Here, it is possible for a market to exist on the basis of commutative justice alone: "the establishment of a universal state of nations is neither a necessary nor a sufficient condition for ordering the (international) market." Rather, individual states can "agree on an ordering of the (international) market, independent of whether they have formed a state of nation states." And this informal commercial "ordering," being "logically independent" from formal international law, can be called "cosmopolitan law."[137]

Howard Williams, on the other hand, takes it for granted that Kant's "cosmopolitan right" *does* entail rights of visitation on an individual level. Williams approaches this issue through the lens of independence—we have also discussed the importance of this topic for Kant, both in "Theory and Practice" and, in terms of autonomy or obedience to self-legislated laws, in the *Rechtslehre*—noting that "Kantian independence and cosmopolitanism go hand in hand."[138] Williams argues that independence replaced the concept of "fraternity" for Kant in the classic French formula, *Liberté, Égalité, Fraternité*, and indeed we saw Kant use this very formula in

[136] Byrd and Hruschka, 212-213; *Leviathan* XIII-XIV; MM, 6:312-313.
[137] Byrd and Hruschka, 211.
[138] Howard Williams, *Kant's Critique*, 299.

"Theory and Practice." But Williams points out that "the fellowship of human beings" and their "common humanity" is clearly as important to Kant as their autonomy and independence.[139] He then reconstructs, from notes Kant wrote as he was composing "Theory and Practice," the way in which Kant recombined fraternity and independence into the "idea of the *cosmopolitan*."[140] Nonetheless, Williams admits "it is not absolutely clear how he comes to this apparently odd juxtaposition," noting that Kant's explanation says only that cosmopolitan fraternity is "where independence is internally presupposed without contract."[141]

Williams helpfully unpacks this obscure formulation in terms of autonomy—the lawgiving faculty of an independent citizen in a republic as Kant understands it. Such "participants in law-making are the common authors of their public world. They share this characteristic with independent citizens of other states. This is the foundation of cosmopolitanism for Kant."[142] Essentially, by virtue of being lawgivers in their own home states, such individuals "demonstrate [their] preparedness to subordinate [them]selves to the laws of the state [they] are visiting."[143] On this basis, human beings are entitled to be treated as friends, rather than enemies; hospitality and fraternity can only be expected if visitors "are prepared to respect that state's laws as if they were their own."[144] This is what Kant apparently means by internalizing independence in the absence of a contract; essentially, being the kind of person who does what is right regardless of law, and who is thus capable of law-making.[145] But at the same time, this capacity for independence "makes the implicit demand on other nations

---

[139] Howard Williams, *Kant's Critique*, 141-142.
[140] Ibid., 142.
[141] Ibid.
[142] Ibid., 143.
[143] Ibid., 228.
[144] Ibid.
[145] Ibid., 143; c.f. the first of the "Ulpian formulae," "*Be an honorable human being*," (MM, 6:236).

that they should enforce the rule of law in an impartial way," thus aiding in the spread of republicanism worldwide.[146]

Katrin Flikschuh regards approaches such as these as representative of two basic ways of interpreting Kant's cosmopolitan right: the "institutional approach" versus the "agent-centred approach."[147] Flikschuh notes that the institutional approach is more common, especially when considering cosmopolitanism in economic terms, because of the tendency to think that "just global institutions can regulate and constrain individuals' actions in the desired manner: the justness of institutional design ensures the justness of individuals' actions."[148] But of course, the situation is rarely so clear-cut. Thus, Flikschuh argues for an approach that balances the two and takes their interaction into account: "Social institutions do regulate and co-ordinate political and economic relations between individuals. But the very individuals whose actions are to be regulated and constrained by them set up those institutions."[149] Thus, echoing Williams to a certain extent, she argues that "agents' appreciation of their responsibilities as agents assumes special importance in the economic context," where the size and mysterious internal "laws" of such institutions as the global "market" seem especially vulnerable to individual irresponsibility and abuse. Presciently, she remarks that how one understands this balance of moral responsibility between individual and institution "makes a difference [as] to what one regards as appropriate economic institutions and distributive schemes."[150] This entire topic ultimately stems from Kant's understanding of property rights at the individual level: "the restriction of

[146] Howard Williams, *Kant's Critique*, 228-229.
[147] Katrin Flikschuh, *Kant and Modern Political Philosophy* (Cambridge: Cambridge University Press, 2000), 198.
[148] Ibid., 199.
[149] Ibid., 200.
[150] Ibid.

cosmopolitan Right to global mine-thine relations mirrors parallel restrictions at the level of mine-thine relations between individuals within states."[151] This is a fair point, but it raises the obvious question: what is the parallel public, legal authority for cosmopolitan right? Is it the federation (or world state) of international right? Did Kant imagine cosmopolitan right operating *within* a worldwide federation of states, or alongside it, or merely in preparation for it? It seems difficult to answer these questions on the basis of Kant's "sparse" analysis of cosmopolitanism, but perhaps a look at the features of an ideal state will enlighten us.

3. What *Is* Kant's Ideal International State?

This question has animated voluminous debates not only among Kant scholars in philosophy and political theory, but among scholars of international relations as well. The latter debate is split, primarily, between those who emphasize "Kant's explicit and clear-cut rejection of world government" and those who view him "as the paradigm for the existence of a cosmopolitan or universalist tradition in international relations."[152] Others choose to emphasize the complicated and inconclusive nature of Kant's thought on this question—the very situation that has prompted the question in the first place.[153]

---

[151] Flikschuh, *Kant and Modern Political Philosophy*, 189.

[152] Andrew Hurrell, "Kant and the Kantian Paradigm in International Relations," *Review of International Studies* 16, No. 3 (Jul., 1990), 183-184. Hurrell cites several examples of each approach on these pages. Georg Cavallar also provides numerous examples in his essay "Kantian Perspectives on Democratic Peace: Alternatives to Doyle," *Review of International Studies* 27, No. 2 (Apr., 2001), 299-248. Both of these articles stand as premier examples of the debate over what an authentically "Kantian" international political philosophy really is. The "Doyle" referenced in the title of Cavallar's article is Michael Doyle, whose article "Kant, Liberal Legacies, and Foreign Affairs," in *Philosophy & Public Affairs* 12, No. 3 (Summer, 1983), 205-235, first established the influential "democratic peace theory," which would be an example of Hurrell's second category.

[153] Hurrell's article is an example of this approach. See also Kenneth Waltz, "Kant, Liberalism, and War," *The American Political Science Review* 56, No. 2 (Jun. 1962), 331-340.

As for the former, an example of what is, arguably, the standard prima-facie reading can be found in Patrick Riley's *Kant's Political Philosophy*. Riley assumes Kant's ideal is some kind of federation (he uses *foedus pacificum* as shorthand) and describes it as "something more than an ordinary treaty, but something less than a state," based on "voluntary acceptance of good international conduct."[154] Whatever it is, it is emphatically *not* "a true world city."[155] However, Riley reconstructs this position primarily on the basis of "Theory and Practice" and "Perpetual Peace," as well as some of Kant's older essays—but not (at least in this chapter) on the *Rechtslehre*, which does not contain the *emphatic* rejections of one-world government that the older essays do.

Thus there are actually two issues at stake here: what to do with Kant's shifting terminology, and how close Kant's ideal federation comes to a true world state (or not). At the heart of the second question lies a matter we have seen before: of the relationship of theory to practice, and specifically, of how to make political reality (international in this case) better reflect or "represent" what Kant wants to articulate, consistently, on the transcendental level. This deeper-level issue will be addressed below; for now, we will consider the question of terminology.

Between "Theory and Practice," "Perpetual Peace," and the *Rechtslehre* alone, there are at least eighteen different terms Kant uses to indicate a supra-national political organization of some kind.[156] Byrd and Hruschka have helpfully organized all of them into categories; they also

---

[154] Riley, *Kant's Political Philosophy*, 118-119.
[155] Ibid., 115.
[156] *Weltrepublik*, *weltbürgerliche Verfassung*, *Verbindung*, *Bund*, *Friedensbund*, *Völkerbund, Völkerstaat*, *Staatenverein*, *Staatencongreß*, *verbündeten Staaten*, *Föderalism freier Staaten*, *Föderalität*, *föderative Vereinigung*, *Corporationen*, *Genossenschaft*, *willkürliche Zusammentretung verschiedener Staaten*, *Zusammenschmelzung*, *Universalmonarchie*. All but one of these were mentioned in the course of this chapter.

show how the categories themselves shift over the course of Kant's writings. They identify three categories common to both "Theory and Practice" and "Perpetual Peace": these are "the single world state," the "state of nations," and the "league of nations."[157] Under the first category, they put both *Universalmonarchie* and *weltbürgerliche Verfassung*, the cosmopolitan constitution. The primary difference between the other two categories is that the "state of nations" contains a coercive element, while the "league of nations" is voluntary and non-coercive. Byrd and Hruschka place *Weltrepublik* and *Völkerstaat* under "state of nations," and argue "it is obvious that Kant favors this model, because he claims it is the only model according to reason for states to leave the lawless state."[158] The third category contains most of the terms that are cognates of *Bund* (alliance, association, league), *Föderalität* (federalism), and *Verein* (union). Byrd and Hruschka argue that Kant understood this category as "better than nothing in avoiding wars," but essentially just a concession to "human weakness" and national pride.[159] By the time of the *Rechtslehre*, they note that he no longer uses *Universalmonarchie* at all, employs *allgemeiner Staatenverein* to indicate the second category, and introduces a new category, the "permanent congress of states."[160] They indicate that this category may have come from the 18th-century practice of states sending "their best diplomats *de facto* to The Hague. This situation permitted formal or informal discussion of common problems."[161] Thus, Kant imagines a similar *permanent* congress based on this model, which is "similar to a league of nations [except that] a

[157] Byrd and Hruschka, 196-199. They do state that their categories are based on "substantive and not terminological criteria," strictly. "Kant switches terms but the substantive criteria of the three models remain the same" (200).
[158] Ibid., 199.
[159] Ibid., 200.
[160] Ibid., 201-203.
[161] Ibid., 204. Kant mentions the practice in the *Rechtslehre*, 6:350.

league arises through the member states' closing treaties whereas the permanent congress of states is in a pre-contractual phase of negotiations."[162]

While Kant approves of any international development that seems likely to move the world in a peaceful direction, Byrd and Hruschka nevertheless emphasize that "Kant has a vision of international and cosmopolitan law we today have come nowhere near attaining."[163] The formal, coercive nature of international law in the second category remains to be realized.

> Far from accepting a loose league of states, such as the United Nations, or a commercial negotiation forum, such as the World Trade Organization, Kant envisions a state of nation states and a cosmopolitan legal order, both with courts backed by coercive enforcement powers, as the ideal solution to ensuring peace on the international and cosmopolitan levels. Until we secure the rights of individuals in their relations to nation states and of nation states in their relations to each other, as well as the rights of whole peoples in their mutual trading relations, all rights remain provisional, even rights within our own juridical states.[164]

Richard Tuck, on the other hand, views Kant's ideal as "a loose confederacy of sovereign states" (he goes on to emphasize the "looseness" of it), based on "a system of international agreements."[165] This seems to fit the third category in Byrd and Hruschka's account. Tuck goes on to describe it as "broadly modelled on the German orthodox theory of the sociable *state of nature*"—the model of the state of nature that Kant had rejected in favor of the Hobbesian model, when speaking of the putative state of nature of either individuals or states.[166] In other words, Tuck sees Kant's ideal international community—it doesn't seem quite fair to call it a state—as a kinder, more socialized state of nature. Thus, in optimistic contrast to Byrd and Hruschka, Tuck is able to claim that

---

[162] Byrd and Hruschka, 204-205.
[163] Ibid., 188.
[164] Ibid.
[165] Tuck, 218-219.
[166] Ibid., 219.

> in international affairs it is reasonable to suppose that since the foundation of the League of Nations, and even more since the foundation of the United Nations, states no longer possess their old autonomy. In a sense, Kant has been vindicated: we can now think of international relations in precisely the same way as we think of civil society, since the international order is itself a constructed one. Indeed, public opinion has run well ahead of the juridical facts—for example, the so-called 'world community' has been pleaded in justification of many actions in recent years which it would be hard to defend on a close reading of the actual rules of the United Nations, including, most spectacularly, intervention in the internal affairs of member states.[167]

Other thinkers choose to de-emphasize the 'ideal' institution altogether. Wolfgang Kersting says that "Kant does not expect that a stable world federation that can always ward off war can ever be attained."[168] Rather, perpetual peace should be viewed as "a necessary guiding idea for politics"[169]—what Kant called, in his three *Critiques*, a 'regulative principle.' Paul Guyer, on the other hand, still affirms that "justice can truly exist anywhere only if it exists everywhere," and so requires an actual "perpetual peace [that] will be promoted by the spread of republican government."[170] But Guyer does not think this "spreading" will come at the hand of force or federations; rather, hearkening back to Kant's discussion of republican reform at the state level, he asserts that "world peace can be instituted and maintained only by the free choice of rulers who are moral politicians. And only such a conclusion is compatible with Kant's insistence upon the radical character of human freedom."[171] On the contrary, Kenneth Waltz argues that "it is only in the civil state that man has the possibility of living the moral life. The civil state made changes in man's behavior possible; it was not the other way around. And this is also the view that Kant takes of the relations between the internal and external affairs of

---

[167] Tuck, 234.
[168] Kersting, 363-364.
[169] Ibid., 364.
[170] Guyer, *Kant*, 302.
[171] Ibid.

states."[172] In other words, it seems impossible, according to the internal logic of Kant's system as Waltz interprets it here, for there to be republican reforms or reformers in the absence of an established universal peace.[173] But Waltz, echoing Kersting, cannot find a concrete model for such an institution that is not "doomed to be transitory and shifting" and concludes that we must think of it as something like a ephemeral "goal of mankind," one which ultimately demonstrates more about mankind's inherent limitations than any possible future.[174] But where Kersting would nonetheless ground the goal or "guiding idea for politics," in both its domestic and international form, on "innate human right [that] demands that we work for perpetual peace,"[175] Waltz is much more pessimistic:

> [Kant] was not engaged in the puerile task of telling men of affairs to stop behaving badly. Nor could he have been, for the dependence of behavior upon condition is one of his major theses. Taken as a King's Mirror, Kant's "[Perpetual] Peace" is lost in futility. But so to take it requires a very unKantian interpretation. In describing what the states and the world will have to do and to become if moral behavior is to be possible, Kant makes understandable and in a sense excuses the failures of men and their rulers to achieve moral rectitude.[176]

Whatever we may think of Waltz's reconstruction of Kant's moral philosophy, he does seem to have struck the heart of the matter in emphasizing the difficulty that would have to be overcome to achieve Kant's ideal on a global basis. Both of the questions we have raised—on the nature and role of cosmopolitan right, and on the form of Kant's ideal state—turn in some way on the question of obligation, coercion, and force, or lack thereof, for the international realm. For their part, these issues return us to the question of how to understand Right in the international state of nature.

---

[172] Waltz, "Kant, Liberalism, and War," 337.
[173] Ibid.; he references Kant's 1784 essay, "Idea for a Universal History with a Cosmopolitan Purpose."
[174] Ibid., 338-339.
[175] Kersting, 364.
[176] Waltz, "Kant, Liberalism, and War," 339-340.

4. What is Right in an International State of Nature?

This is also the question that involves most of the outright contradictions between "Perpetual Peace" and the *Rechtslehre*, as opposed to additions, omissions, or changes in tone or terminology. For example, why does Kant completely discard his 'publicity' theory in the *Rechtslehre*?[177] Why does he nonetheless retain some of the concepts of Right based upon it, such as the prohibition on revolution, while contradicting himself on others, such as the right to preempt threats? Indeed, given the fact that Kant moves in the direction of *more* moral latitude in the state of nature, one must ask how it is possible for there to *be* a coherent sense of duty, obligation, or Right in a world "devoid of justice"? Any concept of cosmopolitan right assumes the existence of such, as does any concept of obligation to *leave* or right to coerce another state to *join* an international federation, if that is what Kant envisions. To that end—upon whom would such rights and obligations fall? Is it peoples or states understood collectively who must take the lead in civilizing their world into a community? Do the individual heads of states bear the duty, as "moral politicians," to reform both their states and their world? Do they have the right to go to war? If so, do they have a right to wage war for the sake of forcing each other into "a rightful condition," or have they "outgrown" such coercion?[178] Or should all be left up to the invisible imperative of progressive human history and the empirical lessons of conflict and war for mankind?

---

[177] Byrd and Hruschka point out that "it is always the *weaker* players whom the principle of publicity prohibits from taking action," and that while this certainly does not mean the actions of a stronger state, who can get away with publicity, are necessarily *right*, such a state can still "cynically declare that the principle of publicity does not tell *it* that its intent to suppress is wrong. Such result leads to imbalance in the moral debate, which is enough to justify sacrificing the principle altogether" (14n40). This may be true, but they do not make an attempt to derive this argument from Kant himself, and seem to base it on assumptions about power imbalances in moral relationships that Kant likely did not share. That said, I have not encountered any other explanation in the literature as to *why* Kant chose to discard his prior theory when writing the *Rechtslehre*.

[178] MM, 6:344 and "Perpetual Peace," 104; generally, MM, 6:343-346 and "Perpetual Peace," 104-105.

All of these issues revolve around Kant's understanding of the state of nature; if that can be clarified, some of them can be solved. It should be noted that questions like this do not arise from a purely Hobbesian conception of the state of nature, as it is commonly understood, even when applied by analogy to the international scene. Byrd and Hruschka make this observation, writing that "Kant, in contrast to Hobbes, views the state of nature on the meta-level of rights, whereas Hobbes provides merely a factual description of the state of nature."[179] Actually, as we have argued for several chapters now, Kant views the state of nature on *both* levels. This approach was, perhaps, easy enough to understand in the case of individual states—their formation and development informed not by a putative social contract, but rather by the abiding theoretical imperatives of "private right," the obligation to join, and the contract as an idea of reason. The questions we see Kant wrestling with in his international thought come—at least in part—from the conceptual difficulties of applying this theoretical scheme of the state of nature and social contract to an empirical situation that resembles (or consists of) a putative state of nature, and thus seems to require an actual social contract.

III. The State of Nature in Kant's Internationalist Thought

Over the last few chapters, three interrelated interpretive schemes have emerged for understanding Kant's use of the state of nature in his political thought. The same approaches will help us gain a better perspective on Kant's internationalist thought and some of the problems it contains, which we have already presented. The first of these three schemes is the separation of the theoretical state of nature, first used in "Private Right" to investigate the metaphysical foundations underlying public legal right and making it possible, from the putatively historical

[179] Byrd and Hruschka, 212.

state of nature and social contract that other contract theorists used, with less success, to try to explore the same concepts. The second revisits the concepts of orientation and incrementalism toward an ideal, especially to the extent that these concepts relate to the issue of coercion in the exit from the state of nature. And finally, we will end with a consideration of the rights of human beings as such in the international sphere.

1. Theoretical vs. Putative State of Nature

Kant's ability to transform the state-of-nature trope into a vehicle for understanding the intrinsic rights of human beings as human beings, abstracted from empirical considerations, accomplishes more than merely rescuing him from the logical difficulties of positing a putative, historical state of nature. It also allows him to demonstrate how this category "private right" underlies, informs, and in many ways operates *within* an established juridical state, simultaneously. Kant sees no need to insist on some kind of moral or psychological transformation of the human person who enters a society; rather, the category of "private right" contains those things that are permanently true of human beings in any condition whatsoever. This becomes especially helpful when Kant turns his attention away from the putative, pre-civil state of nature, to a state of nature that actually exists: the international sphere.

All state-of-nature images make moral claims about human beings. These claims are imported into the discussion when the state of nature is applied by analogy to the international arena. This usually takes the form of motives ascribed to anthropomorphized states, e.g., of self-interestedness, fear, or ambition. Kant's understanding of the state of nature, however, allows him to separate his metaphysical claims about the moral status of actors on the international

scene from the empirical reality of the anarchical condition in which they exist. This is seen most clearly in his separation of "cosmopolitan right" from "international right."

In this chapter, we explored some of the controversies around Kant's category of cosmopolitan right, including its definition, scope, intent, and relationship to international right. One way to rethink some of these controversies is to understand cosmopolitan right as the *theoretical* analogue to the *actual*, empirical international state of nature. In essence, cosmopolitan right is the "private right" of international politics. This is why it is able to operate coherently in the absence of formal, public international right, but would still be valid even if some kind of international federation were to exist. The rights it contains may be merely "provisional" in the absence of such a federation, but they are nonetheless real, true, and valid. Thus, like private right, cosmopolitan right can exist independently of, as the basis for, or as the animating moral force within any potential international rightful condition. This is what Kant meant when he pointed out "the difference between the state of nature of individual men . . . and that of nations," which is that states do not only relate to each other as units, but exist in a context in which individuals of various states relate to each other and to the states, as well. Thus, Kant argues that "this difference . . . makes it necessary to consider only such features as can be readily inferred from a state of nature."[180] That is, the states as units relate to each other on the basis of a state of nature, which can be said to be "devoid of justice," but the other relationships—*because* they involve individuals who already exist in a rightful condition of some kind—belong to a different order of right and justice: cosmopolitan right.

When Kant rejected the idea of the putative state of nature as an image of the origin of politics, he rejected the notion of a historical social contract as well. There is some considerable

[180] MM, 6:343-344.

overlap between "private right" and Kant's contract as an idea of reason, seeing as how they are both based on the same moral postulates—the laws of freedom and the right of human beings as such. The difference, in considering international politics, is that states still exist in a "condition that is not rightful," so there is not yet a corresponding category of "public right" for the international arena. There is, so far, only the standing obligation to *leave* this condition and create a public one. This leads to the question of whether or not, or to what extent, states need to employ an *actual* contract to leave the non-rightful condition, or if the *idea* of the social contract is sufficient at this level, as well. If individual states don't exist on the basis of a concrete contract—if they can organize and improve themselves on the basis of the theoretical one alone—why does the international sphere need one? If it does not, then how can the mere *idea* of the contract serve to orient and structure the non-rightful international condition?

2. Coercion, Incrementalism, and Orientation

Perhaps the correct reaction to the problem of Kant's inconsistent and contradictory language with regard to his "ideal" international state is not to try to reconstruct what that might have or should have been on the basis of intractable evidence, but to consider the rather remarkable fact that he himself chose not to. Presented with an opportunity to construct a detailed plan for exiting the state of nature, Kant instead articulates only the moral obligation to do so. It is true that the preliminary articles of "Perpetual Peace" contain some detailed directives regarding state actions and interactions, but these are only prerequisites for the real contract. The definitive articles, as we have seen, are frustratingly inconclusive and lacking in practical direction. In particular, it is very hard to pin down the extent to which Kant is willing

to grant coercive powers to states, either to oblige each other to enter the contract, or to enforce its provisions, whatever they are, once one is in place. When he considers international right again in the *Rechtslehre*, the bulk of his discussion is focused on the rights of states with regard to war—a topic he completely ruled out in "Perpetual Peace." He does not recount any articles of a proposed contract; in fact, the only time he mentions something like a practical attempt to establish a contract is in the section on cosmopolitan right, where he *denounces* the use of force to "establish a lawful condition" through colonial conquest.[181]

In chapter three, we established the way in which the *idea* of the original contract—that states should have a consensual, republican form—operated as a regulative principle toward which states ought to be oriented. It did not require that states adapt to its dictums immediately or permanently, and we argued that the principles of right on which the ideal contract itself is theoretically grounded prohibit using it as an excuse for violent revolution within an unsatisfactory political state. This sort of violent instantiation of a guiding moral ideal is a contradiction in terms. Rather, the duty Kant lays on the shoulders of heads of states is to undertake incremental improvements of the constitution, toward a republican ideal. The same incrementalist perspective applies to the international sphere, with regard to the question of the ideal state.

One state cannot unilaterally force the world out of a state of nature; it seems hardly possible, and certainly not rightful, for even a coalition of states to do so. When Kant denounces the use of force to "establish a lawful condition" between peoples, he does so explicitly through comparison with "revolutionaries within a state." In both cases, the wrongfulness of the condition with regard to public law does not justify an action that would be wrong according to

[181] MM, 6:353.

the overarching "condition of right" in which the actors exist, and which makes the rightful condition obligatory in the first place.[182] But the contract as an idea of reason does give states a coherent moral criterion: do those things that will make a universal rightful condition more possible, as opportunities arise, and steadfastly refuse to do those things that would make it impossible. This is what Kant intends when, after admitting that "*perpetual peace* . . . is indeed an unachievable idea," he nonetheless insists that the "political principles directed toward perpetual peace" leave states with an achievable "task [*Aufgabe*] based on duty."[183] This "task" is no longer *to exit* the state of nature or *to establish* an international contract, in the sense of an event that changes the world's status once and for all. Rather, he describes the task as one of "continual approximation [*Annäherung*]" of the idea of perpetual peace.

Once again, we see that political duty for Kant comes with both an end and a means. The end is not so much the *instantiation* of the ideal—the consensual contract, the world state—but rather to be *oriented* in the direction of such an ideal. The orientation defines the direction of the means, which must be incremental, continual, and participatory. Orientation without an awareness of the duty of incrementalism results in ideological violence; incrementalism without orientation is nothing more choices made by whim. Both do violence to the right of human beings as such: the first by making the end justify the means, and the second by separating the means from any end whatsoever. It is for these reasons that Kant rejects regime change and forcible world domination, regardless of whether such actions are undertaken to establish lasting "peace" or merely as a manifestation of a state's *libido dominandi*.

---

[182] MM, 6:353. Essentially, private right—note that this discussion take place under "cosmopolitan right."
[183] MM, 6:350.

In conclusion, it is worth noting that we have not considered Kant's almost mystical trust in the inevitable progress of human history toward right in any great detail. This is an area of Kant's thought that is especially difficult for modern readers accept, often either because they reject the teleological metaphysics, or are skeptical about the possibility of progress.[184] Without getting too far into it here, we would only like to suggest that the existence of this guiding principle of right, combined with the myriad opportunities presented to humans and their political states every day to make choices in accordance with it, lend some validity to living *as if* one were a part of a teleologically- or providentially-directed history.

3. The Right of Humanity

Even at the international level, Kant's concern for the status of the human person in the world is evident. It is primarily obvious in the fact that he is not content to consider states *only* as unitary actors, but also includes the relations between individuals of different states, between individuals and states, and between different *peoples*, informally, as well. Secondarily, it can be seen in the way he distributes moral responsibility for gradual improvement of global security, international law and institutions, and commerce between and among all of these layers. And ultimately, it is apparent in many of the details of his argument. Otfried Höffe has pointed out the extent to which Kant's articulation of the "right of humanity in [our] own person" can be

[184] Katrin Flikschuh notes, in *Kant and Modern Political Philosophy*, that "since Kant's teleology of nature strikes many readers as obtuse, these sections are often dismissed as inaccessible or as historically outdated, and as irrelevant from a practitioner's point of view." But she recognizes that they contain "the philosophical perspective that informs his proposal for political reform" (188), namely, "that he conceives of humanity's possible historical progress as an ongoing and relatively open-ended process consisting of individual contributions made over time by generations of people who set an example that others can follow" (193). See, e.g., Kant's discussion of the possibility of his own ability to contribute to the knowledge and advancement of mankind in the third section of "Theory and Practice."

read as "the right to be considered as a legal entity in relation to other human beings."[185] In this sense, the right of humanity is the metaphysical principle underlying the (theoretical) ability of one person to coerce another to leave the state of nature and enter a civil state, as we discussed in chapter one. Kant claims this right "consists in asserting one's worth as a human being in relation to others"[186]—not by violence, if one can help it, but rather through *right*, by establishing a visible order of right—turning one's essential, self-known moral worth into public, legal standing. One's worth as a human being is not dependent on another person's consent for its reality.[187] This "right of humanity in one's own person" is the basis of the right not to be used as the sovereign's personal property in war; to travel and visit various places on earth and be accepted as a person with legal standing even outside one's home state; to undertake trade across state lines and thus contribute to the progress of the world toward peaceful international structures; and to be viewed not only by foreign individuals but also by foreign *states* as an entity with legal standing and moral worth in the world.

We have argued over several chapters how this understanding of the essential moral worth of human beings as such underlies and animates Kant's entire concept of Right at every level. Here we assert that it makes sense of the ideal world state as well. The alleged insecurity of juridical rights at the domestic level, as long as the international sphere remains in a state of nature, has less to do with the possibility of conflict or conquest destroying established legal structures—although that is certainly a risk that should be mitigated—than the fact that, in the absence of such a system, individual human beings do not yet have the rightful legal standing and respect they deserve. When states are insecure, they use their citizens as tools for war. They

[185] Höffe, "Kant's Innate Right," 85.
[186] MM, 6:236; in the first of the three Ulpian formulae.
[187] Höffe, "Kant's Innate Right," 86.

reject refugees at the border. They restrict trade, media, and speech. They interact with each other as monolithically unitary actors and reduce the individual humanity of citizens to national identity and nothing more. The ideal state is a state in which individual persons have standing as moral entities everywhere in the world. Just like Kant's juridical state under the idea of the original contract, such an ideal could potentially take many forms and yet be validly *right*.

IV. Conclusion

This chapter concludes the discussion of Kant's state of nature itself, in all its various forms and manifestations. The only question that remains is a question of application. There is a body of literature we have left largely unconsidered up to this point: the international relations literature dealing with anarchy, the international state of nature, questions of international institutions and norms, and the role of Kant's political theory therein. We will examine some of these questions in the conclusion.

CONCLUSION

Theories of international relations attempt to do two things: accurately *describe* the empirical reality of states and their relationships in the world, in order that we might better understand what types of actions and *objectives* are possible and choiceworthy in that world. All such descriptions are necessarily simplifications; this is why theories, which measure, categorize, prioritize, systematize, and ultimately explain the raw data, are important. To this end, theories must begin with certain fundamental assumptions, especially regarding which measurable aspects of the world have the most profound bearing on which sorts of actions, and how such actions measurably impact the status of the world. Consequently, the various "schools" of international relations are organized around shared sets of assumptions, and many of the debates between them come down to whether the empirical evidence should be interpreted as supporting or discrediting the various foundational assumptions.[1]

The image of the state of nature has played a formidable role in these debates. It is most often associated with the Realist schools of thought, many of whose foundational assumptions are clearly derived from it, including that the fact of anarchy is the most important interpretive and determinative aspect of the international situation. The standard conception of the state of nature in this regard is broadly Hobbesian,[2] or at least described as such by its critics:

> The most fundamental question you can ask in international theory is, What is international society?, just as the central question in political theory is, What is a State? Thinkers who emphasize the element of international anarchy in international relations answer this quite simply: Nothing. A fiction. An illusion. *Non est*. The first to make it

[1] A clear and succinct explanation of assumptions shaping debates can be found in Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, No. 2 (Spring, 1993), 177-178.

[2] Alexander Wendt actually lists Hobbes himself as a "classical realist" in "Anarchy is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, No. 2 (Spring, 1992), 395.

> explicit is probably Hobbes. Hobbes was certainly the first to make the equation between international relations and the state of nature.[3]
>
> In the discussion of modern international relations Hobbes is a figure of towering importance. . . . He provides the principle impetus of what may loosely be called the Realist tradition, which presents world politics as essentially the struggle of states for power . . . . Hobbes's contribution to the Realist tradition was to provide a rigorously systematic account of the logic of relations among independent powers that find themselves in a situation of anarchy in the sense of absence of government.[4]
>
> Thomas Hobbes has been remembered chiefly as the theorist of a natural condition of humankind afflicted by an insecurity so profound that it results in the logic, and all too often the fact, of a war of each against all and, therefore, of a ceaseless and self-interested quest for power that ends only in death. In this struggle the ideas of right and wrong, just and unjust, have no place. Certainly it is for these famous (or infamous) views that he is so often celebrated (or denounced) as the quintessential realist.[5]
>
> The name of Thomas Hobbes and the concept of anarchy often seem virtually synonymous in discussions of international relations. Indeed in the controversies between neorealists and neoliberals; structuralists, poststructuralists, and feminists; and rationalists, constructivists, and realists (among others) that currently dominate our fields, the adequacy of a Hobbesian vision of international politics provides a common rhetorical and analytic touchstone, much as it has in varying forms for generations.[6]

As the last quote demonstrates, even those who would argue against realism tend to take anarchy for granted as a factor of primary importance, even as they try to balance its weight with a focus on other factors like cooperation between states, the pacifying role of economic organizations, the existence of courts of international law, and the informal norms that can constrain state behavior.[7] Alexander Wendt, for example, writes that he "share[s] all five of Mearsheimer's 'realist' assumptions," the first of which is "that international politics is

---

[3] Martin Wight, "An Anatomy of International Thought," *Review of International Studies* 13, No. 3 (Jul., 1987), 222.

[4] Hedley Bull, "Hobbes and the International Anarchy," *Social Research* 48, No. 4 (Winter, 1981), 719-720.

[5] Donald W. Hanson, "Thomas Hobbes's 'Highway to Peace'," *International Organization* 38, No. 2 (Spring, 1984), 329.

[6] Michael C. Williams, "Hobbes and International Relations," 213.

[7] Wade L. Huntley, "Kant's Third Image: Systemic Sources of the Liberal Peace," *International Studies Quarterly* 40, No. 1 (Mar., 1996), 46.

anarchical."[8] The realists, for their part, do emphasize anarchy as the predominant structural (and therefore, explanatory) aspect of the international realm, but interestingly are less eager to link themselves with Hobbes on this point.[9] Their perspective, though, can be fairly described as Hobbesian:

> Realism paints a rather grim picture of world politics. The international system is portrayed as a brutal arena where states look for opportunities to take advantage of each other, and therefore have little reason to trust each other. Daily life is essentially a struggle for power, where each state strives not only to be the most powerful actor in the system, but also to ensure that no other state achieves that lofty position. . . .
>
> This pessimistic view of how the world works can be derived from realism's five assumptions about the international system. The first is that the international system is anarchic.[10]
>
> From the vantage point of neorealist theory, competition and conflict among states stem directly from the . . . facts of life under conditions of anarchy. . . . The recurrence of war is explained by the structure of the international system. Theorists explain what historians know: War is normal.[11]

There are a number of ways this perspective has been criticized. One is to argue, as we did in chapter three, that even Hobbes's state of nature was always meant to be left.[12] It is hard to describe anything as "normal" within a system that is not. Another is to point out that even

---

[8] Alexander Wendt, "Constructing International Politics," *International Security* 20, No. 1 (Summer, 1995), 72.

[9] For example, the Mearsheimer article referenced by Wendt (and cited here, n10 below) does not mention Hobbes at all, nor does his landmark work, *The Tragedy of Great Power Politics* (New York: W. W. Norton & Co., 2001). Kenneth Waltz constructs his "image" of international anarchy in *Man, the State, and War* (New York: Columbia University Press, 1954) from Rousseau's understanding of the state of nature—with reference to Kant, Hobbes, and others, but largely by way of contrast and critique (159-186). The three mentions Hobbes receives in Waltz's *Theory of International Politics* (Long Grove, IL: Waveland Press, Inc: 1979) are not in the context of international anarchy (66, 103, 132). Hans Morgenthau makes reference to Hobbes and his state of nature a few times in *Politics Among Nations* (New York: Alfred A. Knopf, 1973 [5th edition]), but not in the first chapter in which he developed his "Realist Theory of International Politics" (3-15), and twice by noting, as we did in chapter three, that the logical extension of his philosophy should actually bring an end to anarchy (481, 488). I could not locate anything written by Stephen Van Evera or Stephen Walt that mentioned Hobbes.

[10] John J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19, No. 3 (Winter, 1994-1995), 9-10.

[11] Kenneth Waltz, "Origins of War in Neorealist Theory," *Journal of Interdisciplinary History* 18, No. 4 (Spring 1988), 619-620.

[12] Bull, 725-731; Morgenthau, 481, 488; Michael Williams, 214.

within Hobbes's state of nature, there must have been a certain level of social interaction, shared knowledge, common norms, and at least occasional cooperation. This is Noel Malcolm's argument, which we also discussed in chapter three. A similar approach is to posit another contractarian's state of nature, instead, as the best descriptor of international anarchy—popular choices include Locke, Grotius, Pufendorf—and Kant.[13] Georg Cavallar has observed that at least some members of this last category are too quick to assign to Kant purely universalist or utopian views he did not unequivocally endorse.[14] Indeed, relegating Kant to any one such classification would seem to be an oversimplification, for reasons we have seen. Given his assumptions about the international state of nature—to the point of claiming that the protection of rights at the individual level will never be secure until peace and justice are formally established between states—it would seem just as reasonable to describe him as a realist.

Of course, one of the most successful ways Kant's political philosophy has been put to use in international relations is through the development of the democratic peace theory.[15] This theory turned one of Kant's predictions from "Perpetual Peace"—that as states republicize, they will join an ever-expanding pacific federation made up of the world's republics—into an empirically testable question. Are democratic states more peaceful than non-democratic ones? These theorists found that, plausibly, they are—at least among themselves.[16] This position was developed in the 1970s and 1980s and bolstered by the fact that it survived the end of the Cold

---

[13] Bull, 732-736; Wight, 223; Alexander Wendt, *Social Theory*, especially chapter six, "Three cultures of anarchy," 246-312.

[14] Georg Cavallar, *Kant and the Theory and Practice of International Right* (Cardiff: University of Wales Press, 1999), 10. He names Martin Wight as an example.

[15] The history of its development is described in Fred Chernoff, "The Study of Democratic Peace and Progress in International Relations," *International Studies Review* 6, No. 1 (Mar., 2004), esp. 51-52.

[16] The seminal articles are Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs," published in *Philosophy & Public Affairs* 12 in two parts; Part I in No. 3 (Summer, 1983) and Part II in No. 4 (Autumn, 1983); see also Doyle, "Liberalism and World Politics," *American Political Science Review* 80, No. 4 (December, 1986).

War, which many realists predicted would also bring an end to a peace based (in their view) not on shared norms but only on a common enemy.[17] It has now become "as close as anything we have to an empirical law in international relations."[18] This is a nice vindication of one of Kant's predictions, but it is not an argument from the state of nature as such.

Interestingly, one of the theorists of international relations to take Kant the most seriously was none other than Kenneth Waltz, the predominant theorist of the realist camp. In *Man, the State, and War*, he gives a brief but mostly accurate account of Kant's treatment of the state of nature, the provisional nature of private right, the *exeundum* principle, and the need to extend all of these into the international realm. This account, however, suffers from one fatal flaw, which leads him to reject Kant's entire reasoning as "inconsistent."[19] The flaw is Waltz's claim that "the civil state makes possible the ethical life of the individual," or "men need the security of law before improvement in their moral lives is possible."[20] This is problematic on a number of counts. Kant was extremely careful to separate his political from his ethical theory, and to limit the use of legal force to the regulation of *external* behavior. The only overlap he allowed between the two fields was the fact that "everyone's consciousness of obligation" was the ultimate theoretical ground for both public legal right and private ethical right.[21] Certainly, ethical behavior is better practiced within a "rightful" external condition than "one that is not rightful," but Kant does not claim the rightful condition is a necessary prerequisite to the ethical life. Indeed, the fact of his clarification, in §44 of the *Rechtslehre* and the footnote in the

---

[17] See, e.g., John J. Mearsheimer, "Back to the Future: Instability in Europe after the Cold War," *International Security* 15, No. 1 (Summer, 1990), 5-56.

[18] Jack S. Levy, "Domestic Politics and War," *The Journal of Interdisciplinary History* 18, No. 4 (Spring, 1988), 662.

[19] Waltz, *Man, The State, and War*, 164.

[20] Ibid., 163.

[21] MM, 6:232.

Religion, that the state of nature may actually not be a "state of injustice" assumes this separation, as does the awareness of the right to coerce.

This is not a mere quibble; the assertion that the state is the prerequisite to moral behavior is what leads Waltz to dismiss Kant's international thought altogether. He argues that Kant's ultimate aim for international society was a hybrid of the dangerous "world state" and the toothless hope that "all states [will] so improve that they will act on maxims that can be universalized without conflict."[22] This hybrid would rely on both state self-improvement and the belief that states will "learn enough from the suffering and devastation of war" to collectively institute "a rule of law among them that is not backed by power but is voluntarily observed."[23] The problem is—if one applies the state of nature by analogy from the individual level—that such self-improvement and moral learning is impossible absent the kind of political order these things are meant to lead to, according to Waltz's mistaken argument. Thus, he concludes, "the inconsistency is apparent."[24] This position, and its implications, are even more apparent in the following passage, which was quoted in part in chapter four:

> Let the philosophers scribble as they will, writes Kant at the beginning of "Eternal Peace." There is no danger, for rulers will not listen. This has been taken as criticism of states and condemnation of their rulers. But to the philosopher's advice rulers cannot listen, as Kant well knew. He was not engaged in the puerile task of telling men of affairs to stop behaving badly. Nor could he have been, for the dependence of behavior upon condition is one of his major theses. Taken as a King's Mirror, Kant's "Eternal Peace" is lost in futility. But so to take it requires a very unKantian interpretation. In describing what the states and the world will have to do and to become if moral behavior is possible, Kant makes understandable and in a sense excuses the failures of men and their rulers to achieve moral rectitude.

---

[22] Waltz, *Man, the State, and War*, 163.
[23] Ibid., 164.
[24] Ibid.

> In the end we are left not with a confident foretelling of "the end of wars and the reign of international law" but with a deeper appreciation of the causes of war and the immense difficulty of doing anything about them.[25]

Once again, this entire interpretation hinges on the assertion that "the dependence of behavior upon condition" is one of Kant's "major theses." This is convenient for Waltz, who argues throughout his many works that the condition of anarchy determines scope of action for states in the same way that, he thinks, the condition of being in a state of nature circumscribes the possibility of moral action by human beings. This interpretation imports into Kant's theory the assumption we found in the theories of both Rousseau and Hobbes, but significantly *not* in Kant's, that human nature must undergo a fundamental transformation in order exist politically.

What this dissertation has argued is that, in Kant's view, the things that make a person a "human being as such" remain constant, regardless of external condition—a person can be considered in this context even after death! Thus, the theoretical state of nature—which contains and explains those things that are right for human beings and their relationships, regardless of empirical context—operates with equal validity in a state of nature or in a juridical state. In a putative state of nature, this theoretical "private right" is what pronounces the duty to leave *and* the right to coerce—a person's own moral self-awareness and self-respect make him a standing obligation to treat him *legitimately*. This moral self-awareness and the relational demands it makes operate universally. They do not rely on a political context for reality; rather, they are what makes politics both possible and necessary.

Kant does not treat the putative state of nature as the "default" position for human beings. There is little we can learn about the inherent rightfulness of human beings and human relationships from such a wrongful condition. Instead, he looks to a theoretical state of nature to

[25] Waltz, "Kant, Liberalism, and War," 340.

deal with these questions—an underlying context of right that operates within a political context or without. There is no reason to think that he understood the international state of nature any differently. It is not the default setting nor the permanent one; at any time, it is possible that conflict between states could be resolved through a court of law rather than war. Waltz and the realists think international anarchy is inescapable, necessarily entails conflict, and determines how states will act, at least to some extent. Their critics—and the course of human events—have shown that this is not always true. Kant's use of the state of nature shows us why.

It is, admittedly, difficult to base an empirically-testable theory on an idealist, theoretical one. 'That the course of history bends toward justice' is not a testable or falsifiable hypothesis. But Kant comes rather short of asserting this about history *predictively*; rather, his assertions come down to a belief that moral beings can behave *as if* the fulfillment of the moral course of action is possible. Realists, too, are upfront about their theory being a theoretical abstraction from and simplification of reality.[26] It does not have to make assumptions about the knowledge and motives of states (though it sometimes does); it merely needs to assert that, and test whether, states behave *as if* the structure of international anarchy causes them to act in competitive and self-interested ways.[27] It could be just as plausible to assert that, and test whether, states behave *as if* anarchy causes them to act in ways that presume a moral common ground and anticipate a rightful final conclusion.

We know from the interpretive frameworks developed in this dissertation that Kant believed it is possible for states to recognize the right of human beings as such (cosmopolitan right assumes this), that states, like individual human persons, possess an inviolable internal

[26] Waltz, *Theory of International Politics*, 68.
[27] Waltz, "Origins of War," 618-620.

freedom (thus Kant's injunction against interventionism), and that they can orient themselves towards a right that they cannot yet rightfully instantiate. All of these assertions raise a number of worthwhile questions for international relations. We also know that Kant rejected the putative state of nature for human beings, and the actual one for states, as the normal or default mode of existence. He did not use nature to "excuse" the moral "failures" of men or states. The essence of this Kantian critique of Realism lands here: just because anarchy exists does not mean it is permanent or normal. Other international relations thinkers argue that the existence of institutions, norms, international laws, or the democratic peace make anarchy less of a defining feature of international life. It is possible to imagine Kantian rebuttals to this position as well. It seems, in fact, that this is the task Kant has left up to future generations of his readers:

> Toward the end of the book [the *Rechtslehre*] 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.[28]

This statement seems as true today as it did when Kant wrote it. Given the amount of further work that would be required to approach anything like a "decisive judgment," we will end this dissertation here with the hopes that we have more clearly established the principles by which Kant's "Private Right," consisting of his theoretical state of nature, can illuminate the portions of "Public Right" he left unfinished, and up for debate.

[28] MM, 6:209.

BIBLIOGRAPHY

Affeldt, Steven G. "The Force of Freedom: Rousseau and Forcing to Be Free." *Political Theory* 27, no. 3 (June 1999): 299-333.

Ameriks, Karl. "The Critique of Metaphysics: Kant and Traditional Ontology." In *The Cambridge Companion to Kant*, ed. Paul Guyer, 249-279. Cambridge: Cambridge University Press, 1992.

Beck, Lewis White. "Kant and the Right of Revolution." *Journal of the History of Ideas* 32, no. 3 (Jul.-Sep. 1971): 411-422.

Boucher, David and Paul Kelly, eds. *The Social Contract from Hobbes to Rawls*. New York: Routledge, 1994.

Bull, Hedley. "Hobbes and the International Anarchy." *Social Research* 48, no. 4 (Winter, 1981): 717-738.

Burke, Edmund. *Reflections on the Revolution in France*. Edited by J.G.A. Pocock. Indianapolis: Hackett Publishing Co., 1987.

Byrd, B. Sharon and Joachim Hruschka. *Kant's Doctrine of Right: A Commentary*. Cambridge: Cambridge University Press, 2010.

Cavallar, Georg. *Kant and the Theory and Practice of International Right*. Cardiff: University of Wales Press, 1999.

_____. "Kantian Perspectives on Democratic Peace: Alternatives to Doyle." *Review of International Studies* 27, no. 2 (Apr., 2001): 229-248.

_____. Review of *Kant's Doctrine of Right: A Commentary*, by B. Sharon Byrd and Joachim Hruschka. *Notre Dame Philosophical Reviews* (Aug. 21, 2010). Accessed March 13, 2016. https://ndpr.nd.edu/news/24461-kant-s-doctrine-of-right-a-commentary/

Chayes, Abram and Antonia Handler Chayes. "On Compliance." *International Organization* 47, no. 2 (Spring, 1993): 175-205.

Chernoff, Fred. "The Study of Democratic Peace and Progress in International Relations." *International Studies Review* 6, No. 1 (Mar., 2004): 49-77.

Denis, Lara, ed. *Kant's "Metaphysics of Morals": A Critical Guide*. Cambridge: Cambridge University Press, 2010.

Doyle, Michael. "Kant, Liberal Legacies, and Foreign Affairs," *Philosophy & Public Affairs* 12, no. 3 (Summer, 1983): 205-235, and 12, no. 4 (Autumn, 1983): 323-353.

_____. "Liberalism and World Politics." *American Political Science Review* 80, no. 4 (December, 1986): 1151-1169.

Flikschuh, Katrin. *Kant and Modern Political Philosophy*. Cambridge: Cambridge University Press, 2000.

_____. "Reason, Right, and Revolution: Kant and Locke." *Philosophy and Public Affairs* 36, no. 4 (Fall, 2008): 375-404.

_____. "Survey Article: On Kant's *Rechtslehre*." *European Journal of Philosophy* 5, no. 1 (1997): 50-73.

Gert, Bernard. Introduction to *Man and Citizen: De Homine and De Cive*, by Thomas Hobbes. Indianapolis: Hackett Publishing Co., 1991.

Gregor, Mary. *Laws of Freedom: A Study of Kant's Method of Applying the Categorical Imperative in the "Metaphysik der Sitten."* New York: Barnes & Noble, Inc., 1963.

Guyer, Paul, ed. *Cambridge Companion to Kant*. Cambridge: Cambridge University Press, 1992.

_____. Introduction to *Cambridge Companion to Kant*, ed. Paul Guyer, 1-25. Cambridge: Cambridge University Press, 1992.

_____. *Kant*. New York: Routledge, 2006.

Hanson, Donald W. "Thomas Hobbes's 'Highway to Peace'." *International Organization* 38, no. 2 (Spring, 1984): 329-354.

Havercroft, Jonathan. "Was Westphalia 'All That'? Hobbes, Bellarmine, and the Norm of Non-Intervention." *Global Constitutionalism* 1, no. 1 (March 2012): 120-140.

Heller, Mark A. "The Use & Abuse of Hobbes: The State of Nature in International Relations." *Polity* 13, no. 1 (Autumn 1980): 21-32.

Hobbes, Thomas. *Man and Citizen: De Homine and De Cive*. Edited by Bernard Gert. Indianapolis: Hackett Publishing Co., 1991.

_____. *Leviathan: Or, The Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civill.* New York: Barnes & Noble Books, 2004.

Höffe, Otfried. *Kant's Cosmopolitan Theory of Law and Peace*. Cambridge: Cambridge University Press, 2006.

_____. "Kant's Innate Right as a Rational Criterion for Human Rights." In *Kant's "Metaphysics of Morals": A Critical Guide*, ed. Lara Denis, 71-92. Cambridge: Cambridge University Press, 2010.

Huntley, Wade L. "Kant's Third Image: Systemic Sources of the Liberal Peace." *International Studies Quarterly* 40, no. 1 (Mar., 1996): 45-76.

Hurrell, Andrew. "Kant and the Kantian Paradigm in International Relations." *Review of International Studies* 16, no. 3 (Jul., 1990): 183-205.

Kant, Immanuel. "An Answer to the Question: What is Enlightenment?" In *Kant: Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991.

_____. "The Contest of the Faculties." In *Kant: Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991.

_____. *The Metaphysics of Morals*. Edited and translated by Mary Gregor. Cambridge: Cambridge University Press, 1996.

_____. "On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice.'" In *Kant: Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991.

_____. "Perpetual Peace." In *Kant: Political Writings*, ed. Hans Reiss and trans. H.B. Nisbet. Cambridge: Cambridge University Press, 1991.

_____. *Religion within the Boundaries of Mere Reason and Other Writings*. Edited and translated by Allen Wood and George di Giovanni. Cambridge: Cambridge University Press, 1998.

Kersting, Wolfgang. "Politics, Freedom, and Order: Kant's Political Philosophy." In *Cambridge Companion to Kant*, ed. Paul Guyer, 342-366. Cambridge: Cambridge University Press, 1992.

Levy, Jack S. "Domestic Politics and War." *The Journal of Interdisciplinary History* 18, no. 4 (Spring, 1988): 653-673.

Locke, John. *Second Treatise of Government.* New York: Barnes & Noble Books, 2004.

Malcolm, Noel. "Hobbes's Theory of International Relations." In *Aspects of Hobbes*. Oxford: Clarendon Press, 2002.

Mearsheimer, John J. "Back to the Future: Instability in Europe after the Cold War." *International Security* 15, no. 1 (Summer, 1990): 5-56.

_____. "The False Promise of International Institutions." *International Security* 19, no. 3 (Winter, 1994-1995): 5-49.

_____. *The Tragedy of Great Power Politics*. New York: W. W. Norton & Co., 2001.

Meckstroth, Christopher. *The Struggle for Democracy: Paradoxes of Progress and the Politics of Change*. Oxford: Oxford University Press, 2015.

Milner, Helen. "The Assumption of Anarchy in International Relations: A Critique." *Review of International Studies* 17, no. 1 (Jan. 1991): 67-85.

Morgenthau, Hans. *Politics Among Nations.* New York: Alfred A. Knopf, 1973.

O'Neill, Onora. "Kant and the Social Contract Tradition." In *Kant's Political Theory: Interpretations and Applications*, ed. Elisabeth Ellis, 25-41. University Park, PA: The Pennsylvania State University Press, 2012.

Palmquist, Stephen R. *Comprehensive Commentary on Kant's Religion Within the Bounds of Bare Reason.* West Sussex, UK: John Riley & Sons, Inc., 2016.

_____. "Review of Mary Gregor's Translation of Kant's *Metaphysics of Morals*." *Kant-Studien* 86 (1995): 240-244. Accessed March 19, 2016. http://staffweb.hkbu.edu.hk/ppp/srp/arts/MM.html.

Peperzak, Adriaan T. *Philosophy and Politics: A Commentary on the Preface to Hegel's Philosophy of Right*. Dordrecht: Martinus Nijhoff Publishers, 1987.

Pluhar, Werner S., trans. *Religion Within the Bounds of Bare Reason*, by Immanuel Kant. Indianapolis: Hackett Publishing Co., 2009.

Reiss, Hans ed. *Kant: Political Writings*. Translated by H.B. Nisbet. Cambridge: Cambridge University Press, 1991.

Riley, Patrick. *Kant's Political Philosophy.* Totowa, NJ: Rowman & Littlefield, 1983.

_____. "On Kant as the Most Adequate of the Social Contract Theorists." *Political Theory* 1, no. 4 (Nov. 1973): 450-471.

_____. "Review Essay of O'Neill and Flikschuh." *Political Theory* 31, no. 2 (Apr. 2003): 315-318.

_____. *Will and Political Legitimacy: A Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant, and Hegel*. Cambridge: Harvard University Press, 1982.

Ripstein, Arthur. *Force and Freedom: Kant's Legal and Political Philosophy.* Cambridge, MA: Harvard University Press, 2009.

Roulier, Scott M. *Kantian Virtue at the Intersection of Politics and Nature: The Vale of Soul-Making*. Rochester: University of Rochester Press, 2004.

Rousseau, Jean-Jacques. *Discourse on the Origin and Foundations of Inequality Among Men*. In *Rousseau: The Discourses and Other Early Political Writings*, ed. Victor Gourevitch. Cambridge: Cambridge University Press, 1997.

_____. *The Social Contract*. Translated by H.J. Tozer. Ware, UK: Wordsworth Editions Ltd., 1998.

Ryn, Claes. "Power Without Limits: The Allure of Political Idealism and the Crumbling of American Constitutionalism," *Humanitas* 26, Nos. 1 & 2 (2013): 5-27.

_____. *Will, Imagination, and Reason: Babbitt, Croce and the Problem of Reality*. New Brunswick, NJ: Transaction Publishers, 1997.

Sampson, Aaron Beers. "Tropical Anarchy: Waltz, Wendt, and the Way We Imagine International Politics." *Alternatives: Global, Local, Political* 27, No. 4 (Oct.-Dec. 2002): 429-457.

Schneewind, J.B. "Autonomy, Obligation, and Virtue: An Overview of Kant's Moral Philosophy." In *The Cambridge Companion to Kant*, ed. Paul Guyer. Cambridge: Cambridge University Press, 1992, 309-341.

Shell, Susan M. *The Rights of Reason: A Study of Kant's Philosophy and Politics*. Toronto: University of Toronto Press, 1980.

Shklar, Judith N. *Men and Citizens: A Study of Rousseau's Social Theory.* Cambridge: Cambridge University Press, 1969.

Smith, Michael. *Realist Thought from Weber to Kissinger*. Baton Rouge: Louisiana State University Press, 1986.

Sullivan, Roger. "Introduction" to *The Metaphysics of Morals*, by Immanuel Kant, ed. Mary Gregor, vii-xxvi. Cambridge: Cambridge University Press, 1996.

Thompson, Martyn P. "Locke's Contract in Context." In *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly, 73-94. New York: Routledge, 1994.

Tierney, Brian. *The Idea of Natural Rights*. Grand Rapids: Wm. B. Eerdmans Publishing Co., 2001.

Toulmin, Stephen. *Cosmopolis: The Hidden Agenda of Modernity*. Chicago: University of Chicago Press, 1990.

Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant.* Oxford: Oxford University Press, 1999.

Velkley, Richard. *Freedom and the End of Reason: On the Moral Foundation of Kant's Critical Philosophy*. Chicago: University of Chicago Press, 1989.

Voegelin, Eric. *Autobiographical Reflections*. Baton Rouge: Louisiana State University Press, 1989.

_____. *The Collected Works of Eric Voegelin, Vol. 25: History of Political Ideas, Vol. VII: The New Order and Last Orientation*. Edited by Jürgen Gebhardt and Thomas A. Hollweck. Columbia, MO: University of Missouri Press, 1999.

_____. *New Science of Politics*. Chicago: University of Chicago Press, 1987.

Waldron, Jeremy. "John Locke: Social Contract vs. Political Anthropology." In *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly, 51-72. New York: Routledge, 1994.

_____. "Kant's Legal Positivism." *Harvard Law Review* 109, No. 7 (May 1996), 1535-1566.

Walsh, David. *The Growth of the Liberal Soul.* Columbia, MO: University of Missouri Press, 1997.

_____. *The Modern Philosophical Revolution: The Luminosity of Existence*. Cambridge: Cambridge University Press, 2008.

Waltz, Kenneth. "Kant, Liberalism, and War." *The American Political Science Review* 56, no. 2 (Jun. 1962): 331-340.

_____. *Man, the State, and War.* New York: Columbia University Press, 1954.

_____. "Origins of War in Neorealist Theory." Journal of Interdisciplinary History 18, no. 4 (Spring 1988): 615-628.

_____. *A Theory of International Politics*. Long Grove, IL: Waveland Press, Inc., 1979.

Wendt, Alexander. "Anarchy is What States Make of It." *International Organization* 46, no. 2 (Spring, 1992): 391-425.

_____. "Constructing International Politics." *International Security* 20, no. 1 (Summer, 1995): 71-81.

_____. *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999.

Westphal, Kenneth. "Kant on the State, Law, and Obedience to Authority in the Alleged 'Anti-Revolutionary' Writings." *Journal of Philosophical Research* 17 (1992): 383-426.

Wight, Martin. "An Anatomy of International Thought." *Review of International Studies* 13, no. 3 (Jul., 1987): 221-227.

Williams, Michael C. "Hobbes and International Relations: A Reconsideration." *International Organization* 50, no. 2 (Spring, 1996): 213-236.

Williams, Howard. *International Relations in Political Theory*. Philadelphia: Open University Press, 1992.

_____. *Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism*. Cardiff: University of Wales Press, 2003.

_____. "Kant on the Social Contract." In *The Social Contract from Hobbes to Rawls*, ed. David Boucher and Paul Kelly, 132-146. New York: Routledge, 1994.