

Kant on the Right to Freedom: A Defense*

Louis-Philippe Hodgson

I

Kant's thought occupies a peculiar position in contemporary political philosophy. It has exerted a considerable influence on the field, most notably through the works of John Rawls.¹ Yet the briefest glance at the *Doctrine of Right* will confirm that it is not Kant's political ideas that have proved influential but rather ideas contained in his moral writings, from which Kant's followers have devised political theories often at considerable variance with his own. No doubt, the obscure and sometimes fragmentary character of Kant's political writings is partly responsible for this state of affairs, but there is more to the story. Kant's political philosophy rests on a highly contentious claim: that rational agents have a *right to freedom*, by which he means that their freedom can justifiably be restricted only for the sake of freedom itself. Yet not only does Kant fail to supply any explicit argument in support of that claim; he uses it to establish theses that range from the surprising (on the right to revolution, say) to the downright chilling (on capital punishment and the castration of rapists, among many others).² Even his most devoted fol-

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1. See John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Harvard University Press, 1999), esp. sec. 40.

2. On the right to revolution, see Immanuel Kant, *Doctrine of Right*, pt. 1 of *The Metaphysics of Morals*, in *Practical Philosophy*, ed. and trans. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 6:318–23 and 371–72; on the death penalty, see *ibid.*, 6:333–35; on castration as punishment, see *ibid.*, 6:363. I do not think that Kant's claims about the last two topics actually follow from his premises, although I cannot take up the matter here. For a powerful defense of Kant's views on revolution, see Christine M. Korsgaard, "Taking the Law into Our Own Hands: Kant on the Right to Revolution," in *The*

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lowers have been tempted to conclude that his approach to political philosophy must rest on a mistake: one should simply forget about the right to freedom and turn to Rawls's *Theory of Justice* for more palatable Kantian insights into matters of political justice.

My aim in this article is to show that the right to freedom—and, by the same token, Kant's general approach to political philosophy—cannot be so lightly dismissed. More specifically, I defend two main claims. First, I argue that our having a right to freedom follows from considerations similar to those underlying the derivation of the Formula of Humanity in *Groundwork* II.³ Those who embrace Kant's moral insights should therefore think twice before rejecting his political thought. At the same time, I contend, there is nothing problematic about the reverse position—accepting Kant's views on the right to freedom while rejecting his moral philosophy—since the argument for the right to freedom rests on less contentious premises than does the argument for the Formula of Humanity. In short, one need not be a card-carrying Kantian to accept the main idea behind Kant's political philosophy, although it certainly helps.

The second claim I defend is that, if one thinks that freedom should be central to political philosophy—as one will if one accepts that we have a right to freedom—then there is much to be said for adopting a conception of freedom like Kant's. I argue for this point chiefly by contrasting Kant's view with the more familiar one defended by Philip Pettit in his influential recent writings on republicanism. The two approaches have in common a crucial element: they both construe freedom as demanding not only the absence of interference with a person's choices but also a form of independence from the choices of others. Yet they also diverge on some important points; when they do, I argue, Kant's view offers the preferable alternative. In particular, I maintain that the ideal set by freedom does not demand only that a person enjoy adequate protection against outside interference, as Pettit contends, but also that she have *legal standing*, understood as requiring the enjoyment of a fully adequate scheme of legal rights. This is to get ahead of ourselves, however; let us begin by taking a closer look at Kant's views on the right to freedom.

Constitution of Agency (Oxford: Oxford University Press, 2008), 233–62. Note that references to Kant's works throughout are to volume and page numbers of the Royal Prussian (later German) Academy edition.

3. See Immanuel Kant, *Groundwork of the Metaphysics of Morals*, in *Practical Philosophy*, esp. 4:427–29. “Formula of Humanity” is the standard name for the second formulation of the categorical imperative.

II

What does it mean exactly to say that we have a right to freedom? In his most explicit passage on the topic, Kant writes: “*Freedom* (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human being by virtue of his humanity.”⁴ I discuss the conception of freedom that Kant is operating with here at some length in the latter parts of the article. For now, I want to stress that his claim concerns a specific aspect of our freedom: what he calls *external freedom*, by contrast with the aspect of freedom that is the cornerstone of his moral philosophy, which he calls *internal freedom*. The distinction corresponds roughly to that between freedom of the will and freedom of action: a rational agent’s internal freedom consists in her ability to determine her will independently of alien influences; her external freedom consists in her ability to set and pursue ends for herself without being subject to the choices of others. Thus, I lack internal freedom if I am unable to resist a particularly appealing piece of cake you offer me, despite having made a promise to give up sweets, since I then let an alien force—my inclination to eat the cake—determine my will against the requirements of my rational nature. By contrast, I lack external freedom if I am unable to resist eating the cake because you are forcibly shoving it down my throat. Note that the two aspects of freedom are in principle independent: I can be a slave to my inclinations while living in an ideal state in which my rights are invariably respected, and I can be a moral saint while living in a despotic state in which my rights are incessantly violated.⁵ Note further that, for reasons that will become clear below, Kant holds political philosophy to be exclusively concerned with external freedom; accordingly, when I speak of freedom without qualification in what follows, it is always to refer specifically to that aspect of freedom.

Turning now to Kant’s claim proper, it is worth stressing its radical character at the outset. To say that the right to freedom is the only original or innate right is to say that it is the only right that human beings have “by nature, independently of any act that would establish a right.”⁶ All other rights—including most obviously property and con-

4. Kant, *Doctrine of Right*, 6:237 (Gregor translation amended).

5. This is not to deny that the two aspects of freedom are ultimately part of a single ideal on Kant’s view. Nor is it to deny that the value of external freedom depends on that of internal freedom, in the sense that the ideal of external freedom only makes sense for beings who can be internally free. However, as I suggest at the end of Sec. III, I do not think that the ideal of external freedom is tied to the specific conception of internal freedom that Kant espouses; in my view, a thinner conception would suffice to ground the ideal of personal sovereignty that underlies his political philosophy.

6. Kant, *Doctrine of Right*, 6:237.

tract rights—must be established through specific acts: they are what Kant calls *acquired rights*. Now, since one can only acquire rights consistently with the preexisting rights of others, the implication is that the right to freedom restricts what other rights human beings can acquire but that no other right similarly restricts the right to freedom. In other words, no competing rights can weigh against the demands of freedom because all other rights have to be acquired consistently with the original right to freedom. It follows that freedom can justifiably be restricted only for the sake of freedom itself and hence—to highlight the radical element—that there can be no trade-off between freedom and values like prosperity, security, or happiness. Human beings have an innate right to do anything that is consistent with the freedom of other rational agents.

This makes for an unusually narrow conception of political philosophy. On Kant's view, the use of state power is justified only so long as it aims to protect freedom, and the sole aim of political philosophy is to determine the conditions under which rational agents can live side by side—and thus affect each other through their choices—without infringing on one another's freedom.⁷ All other questions that have traditionally been part of the field—questions concerning distributive justice, most notably—must be either recast in terms of freedom or set aside. Few contemporary liberals, even among those sympathetic to the Kantian outlook, would agree with this view of political philosophy's subject matter. They would grant that freedom is a particularly fundamental value and that restricting a person's freedom requires a special kind of justification, but saying that the justification must be grounded exclusively in freedom is another matter.

To see how significant the nuance is, consider the argument put forward by H. L. A. Hart in "Are There Any Natural Rights?"⁸ Hart's central claim is that individuals must have a right to freedom for the notion of a moral right to make any sense. He points out that there are two main reasons why we invoke moral rights: one is to justify interfering with an agent's freedom ("I have a right to demand that you leave this apartment"); the other, to insist that such interference would be unjustified ("I have a right to speak my mind"). Hart contends that these reasons for invoking a moral right make no sense unless we think that the mere fact of interfering with an agent's freedom calls for justifica-

7. See *ibid.*, 6:230 and 382.

8. H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175–91. For reasons he never specified, Hart later became dissatisfied with his argument; he claimed it "mistaken" and his "errors not sufficiently illuminating to justify re-printing" ("Introduction," in *Essays in Jurisprudence and Philosophy* [Oxford: Oxford University Press, 1983], 17). Whether correct or not, that assessment does not affect the point I make here.

tion; this in turn amounts to saying that agents have a natural right to freedom—that is, a right to freedom that does not depend on their actions but simply on their status as agents. The strength and plausibility of rights-based normative theories thus supports the claim that rational agents have a right to freedom.

If this is correct, then anyone who thinks that rights are central to political theory will find the cost of rejecting freedom as a fundamental value prohibitively high.⁹ But note that this line of argument supports a right that falls well short of the Kantian right to freedom. Nothing Hart says supports the conclusion that freedom can be restricted only for the sake of freedom itself. His argument aims to show that violations of freedom call for justification, but it leaves open whether the justification is to proceed entirely in terms of freedom or whether it can proceed in terms of other values as well.¹⁰ For all that Hart says, restricting my freedom might be justified, say, by the fact that doing so will substantially promote general welfare—a possibility that Kant’s approach strictly rules out.

III

How might one establish that we have a right to freedom in the stark sense intended by Kant? As I mentioned at the outset, Kant has surprisingly little to say on the issue; what he does say, however, points in a promising direction. Consider first Kant’s claim that the right to freedom is an innate right. As I said above, this denotes a right that human beings have “by nature, independently of any act that would establish a right.” What is it about our nature that gives rise to the right to freedom? The passage I quoted at the beginning of the previous section holds the answer: the right to freedom belongs “to every human being by virtue of his humanity.” In other words, bearing in mind Kant’s idiosyncratic use of the term “humanity,” we have a right to freedom in virtue of our rational nature, understood specifically as our rational agency—our capacity to set ends for ourselves according to reason.¹¹ The question is how exactly this capacity can ground the right to freedom.

Two related characteristics of rational nature play a crucial role in

9. For an argument that supplements Hart’s by showing just how absurd a political theory would be that had no place for rights, see Hillel Steiner, “The Natural Right to Equal Freedom,” *Mind* 83 (1974): 194–210.

10. The same holds for Steiner’s argument.

11. For Kant’s conception of humanity, see notably *Doctrine of Right*, 6:392, and *Groundwork*, 4:428–29 and 437. See also Christine M. Korsgaard, “Kant’s Formula of Humanity,” in *Creating the Kingdom of Ends* (Cambridge: Cambridge University Press, 1996), 106–32, esp. 110–14 and 124; and Allen W. Wood, *Kant’s Ethical Thought* (Cambridge: Cambridge University Press, 1999), 118–22.

the argument. First, rational beings engage in full-fledged actions that contrast with the merely instinctual behaviors of nonrational creatures. Second, rational beings can demand and give justifications for these actions. Together, these two facts mean that having a rational nature puts one in the business of exchanging justifications for actions. By contrast, nonrational beings can neither exchange justifications nor behave in ways that could be rationally justified.¹² Now, I want to suggest that rational agency gives rise to the idea of a right to freedom through a particular—and particularly stringent—ideal of justifiability to others.¹³ The thought is as follows: if we ask when the use of force against me can be justified from my point of view qua rational agent, we will find that it is only so justified when it is necessary to protect freedom.¹⁴

Such a claim is bound to be controversial. It entails that the use of force against me cannot be justified on the ground that it will have beneficial consequences, either for me or for others; in other words, it rules out the possibility of justifying interference on paternalistic grounds and more generally on any ground other than the need to protect freedom. What might make such a contention plausible? One thing that would do the trick would be to show that a person's humanity

12. The behavior of a nonrational being may be rationally explained, of course—that is, we may apply our standards of rationality to such behavior. We may even assess it in terms of goals we ascribe to the being in question (as when we explain a dog's drinking by the fact that it has not had water in several hours). But it would make no sense to ask whether the behavior was rationally justified, since by hypothesis the being engaging in it cannot respond to standards of rationality.

13. The emphasis on justifiability to others is reminiscent of the moral theory defended by T. M. Scanlon in *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998). But although the Kantian approach is broadly contractualist, it is not Scanlonian. What distinguishes Scanlon's theory is not the emphasis on justifiability to others as such (although Scanlon deserves credit for stressing that notion's importance); rather, it is his specific account of what makes an action justifiable to others and, in particular, his conception of reasonable rejectability. On this point, the Kantian view I defend is different from Scanlon's and more rigorously antipaternalistic. Thus, while it may be that no one could reasonably reject (in Scanlon's sense) a principle allowing paternalistic intervention when it promises to make the patient much better off (by her own lights) in the long run, such intervention is still ruled out on a Kantian view (as I stress in Sec. VI).

14. I focus on the use of force because I take it to constitute the basic case of a restriction of freedom. But note that Kant does not hold that all restrictions of freedom involve the use of force. Once property and contract rights are in place, I can undermine your freedom simply by taking what is rightfully yours or by refusing to perform a deed to which you are contractually entitled. Dealing with these cases in any satisfactory manner is beyond the scope of the present article, but what I say here about the use of force also applies to these other violations of freedom (and more generally to any case in which one person takes it upon herself to decide for another). I discuss how the right to freedom gives rise to property rights in my forthcoming "Kant on Property Rights and the State," *Kantian Review* 15 (2010).

is in some sense normatively fundamental. If rational agency is one value among many, then it is unclear why other values could not sometimes outweigh it and justify restricting a person's freedom, but if it has some kind of primacy over other values, then something like the right to freedom does seem to follow. Of course, the idea that agency is normatively fundamental is familiar in the context of Kant's practical philosophy: it is the cornerstone of the argument for the Formula of Humanity. It is therefore tempting to view the right to freedom as a straightforward consequence of that argument. There is some truth to that, since the argument does support Kant's position on the right to freedom, although I will argue that some of the more contentious premises in the standard argument for the Formula of Humanity are not necessary to establish the right to freedom.

Let me start by saying more about the relevant part of the standard argument.¹⁵ It begins with a straightforward observation: that rationally choosing an end subjects one to requirements that would otherwise not apply. Once you have rationally chosen to learn to play the piano, say, you are required to practice at least sometimes—even if your immediate impulses push you in the opposite direction.¹⁶ Yet, prior to your adopting that specific project, practicing to play the piano was entirely optional for you—something it might have been good for you to do, perhaps, but certainly not something you had to do. The question is, how are we to account for the difference that rationally adopting an end makes? Kant makes a straightforward suggestion: implicit in our activity of practical deliberation, there is a recognition of our rational nature as a source of practical necessity—a recognition, to borrow a phrase from David Sussman, of our rational nature as “an authority that can make something that is good to do into something we must do.”¹⁷

15. For Kant's presentation of the argument, see *Groundwork*, 4:427–29. The reading I adopt here is closest to that put forward by David Sussman in his wonderful discussion “The Authority of Humanity,” *Ethics* 113 (2003): 350–66. I am also indebted to the discussions in Korsgaard, “Kant's Formula of Humanity,” and in Wood, *Kant's Ethical Thought*, 124–39. Kant's argument evidently admits of different interpretations; the point I make does not depend on the exact version I outline here, which is mostly intended to fix ideas. For interpretations of Kant's position that go in a very different direction, see Barbara Herman, “The Difference That Ends Make,” in *Perfecting Virtue: New Essays on Kant's Ethics and Virtue Ethics*, ed. Julian Wuerth and Lawrence Jost (Cambridge: Cambridge University Press, forthcoming); and Stephen Engstrom, *The Form of Practical Knowledge* (Cambridge, MA: Harvard University Press, 2009).

16. Of course, you may at some point reconsider the matter and decide to give up on the end of learning to play the piano. But the point is that, so long as it is your end, it makes rational demands on you because you have rationally chosen it.

17. Sussman, “Authority of Humanity,” 359. Kant's argument has been claimed (notably by Korsgaard and Wood) to show that humanity is the source of value quite generally. The reading finds support in Kant's explicit identification of practical necessity with good-

That is not yet the contentious part of Kant's position (although these ideas have come under attack recently).¹⁸ The contentious part—and the part that is central to the rest of my discussion—is Kant's further claim that rational nature is the only such authority that a rational agent has to recognize and, hence, the only source of practical necessity. How Kant can make such a claim may appear puzzling. Aren't there ends—appreciating the arts, say, or understanding the major scientific theories of one's time—that have sufficient independent value to set a requirement that rational agents must recognize, regardless of what they actually choose to pursue? Here I take Kant's response to rest on a form of skepticism about the claim to authority of purported objective values. The general idea is that, for any given value that is claimed to be authoritative—appreciation of the arts, pleasure, happiness, or what have you—a rational agent can always ask, why should I care about that? Why should I take that to have authority over me? And for values like appreciation of the arts, pleasure, or happiness, there will be no conclusive answer to give. Of course, there is much to be said in favor of all these things. But the point is that, in the first analysis, these are not values that a rational agent has to accept—they are not values that she has to view as independently authoritative simply by virtue of acting.¹⁹ By contrast, a rational agent cannot reject the authority of rational nature itself without involving herself into a kind of contradiction. That authority is a precondition of her acting's making sense at all; it is the one authority to which a rational agent is necessarily committed by virtue of acting.²⁰

I believe that a skeptical stance similar to the one I just highlighted,

ness (see *Groundwork*, 4:414), but since the claim that humanity is the source of practical necessity suffices for present purposes, I leave the more contentious claim about value to one side.

18. See notably John Broome, "Is Rationality Normative?" *Disputatio* 11 (2008): 153–71; and Niko Kolodny, "Why Be Rational?" *Mind* 114 (2005): 509–63. For a Kantian reply, see Christine M. Korsgaard, "The Activity of Reason," *Proceedings and Addresses of the American Philosophical Association* 83 (2009): 23–43.

19. I say "in the first analysis" because once the authority of humanity has been established, it has implications for the ends that a rational agent ought to adopt. To take an obvious example, the happiness of other rational agents turns out to be an obligatory end for Kant (see *Doctrine of Virtue*, pt. 2 of *The Metaphysics of Morals*, in *Practical Philosophy*, 6:393–94). The point I am making here is that happiness is not an independent source of practical necessity; any authority it has must ultimately depend on the authority of humanity. For an influential reading of Kant's moral philosophy that emphasizes the importance of obligatory ends, see Barbara Herman, "Obligatory Ends," in *Moral Literacy* (Cambridge, MA: Harvard University Press, 2007), 254–75. I am grateful to an anonymous referee for pressing me to clarify this point.

20. In the same line of thought, Sussman points out that a person who "simply does not care about sticking to his putative commitments in the face of any competing temptation" is unintelligible to us, in a way that a person who simply fails to recognize the value of art, say, clearly is not ("Authority of Humanity," 359–60).

albeit one concerned specifically with the justification of coercion, underlies Kant's claim that we have a right to freedom. The thought is as follows. For any purported objective value one might invoke to justify using force against a rational agent—the greater good, the agent's own happiness, or what have you—the agent can always ask, why should I accept that as a justification? How does that give you the authority to restrict my freedom? And for values like the greater good or the agent's happiness, once again, there will be no conclusive answer to give. We may think that the agent should accept a justification of coercion grounded in such values, that she will do so insofar as she is reasonable or perhaps insofar as she fully appreciates the values' importance, but we cannot show that she has to accept it insofar as she is rational. In short, the justification does not adequately engage the viewpoint of the person qua rational agent.

By contrast, a rational agent cannot object to being coerced for the sake of freedom itself—that is, for the protection of her or another person's rational agency—since she is committed to recognizing the authority of rational agency simply by virtue of acting. One who uses coercion against a rational agent for the sake of protecting freedom accordingly stands on firmer justificatory ground than one who uses coercion for any other purpose. A justification grounded in freedom is, so to speak, unimpeachable: a rational agent has nowhere to stand to reject it. If we accept, as Kant does, that only a justification for coercion that meets this exacted standard—only a justification that any rational agent must accept qua rational—fully respects the standing of the person against whom coercion is used, then it follows that rational agents have a right to freedom in the relevant sense: the only ground on which their freedom can justifiably be restricted is the need to protect the exercise of rational agency.

I should acknowledge a gap in the argument. One might concede that a rational agent is committed to recognizing the authority of her own rational agency by virtue of acting; showing that she is committed to recognizing the authority of other people's rational agency seems an altogether different matter. Yet only if the latter is established will we have shown that a rational agent cannot object to uses of force against herself that aim to protect freedom in general—not only her freedom but also that of others. The difficulty is all too familiar: Kantian moral philosophers have been wrestling with it for decades. I do not claim to have the solution, although I tend to think that it has to go something along the lines laid out by Thomas Nagel in *The Possibility of Altruism*.²¹

21. Thomas Nagel, *The Possibility of Altruism* (Princeton, NJ: Princeton University Press, 1970). For a detailed discussion of the issues I gesture at in the text, see Christine M. Korsgaard, *The Sources of Normativity* (Cambridge: Cambridge University Press, 1996), lecture 4.

The idea would be roughly as follows. To say that force can be used against me to protect my agency, but not that of others, would be to imply that my rational agency is somehow uniquely authoritative. No one can plausibly make such a claim: there is nothing that makes my agency authoritative in a way that yours is not. To think that the sheer fact that it is *my* agency makes a difference is simply to fall prey to the kind of practical solipsism against which Nagel warns us.²² If that is correct, then the point I made above retains its generality: the use of force against me does not have to protect my own freedom to be justified; it only has to protect the freedom of some rational agent. Still, this is only the outline of a solution; for present purposes, I simply assume that a solution to the problem can be devised.

The upshot of our argument, modulo the qualifications in the previous paragraph, is that a rational agent's choices are to be respected, so long as they do not interfere with another person's ability to make choices—that is, so long as they remain within the confines set by the fact that one person's agency is worthy of the same respect as another's.²³ That is precisely the idea at the heart of the Kantian right to freedom: a person has a right to freedom “insofar as it can coexist with the freedom of every other in accordance with a universal law.”²⁴ To invoke

22. See Nagel, *Possibility of Altruism*, 107ff.

23. A clarification is in order. I have argued that Kant views the right to freedom as grounded in our humanity, that is, in our capacity to set ends according to reason. I am now suggesting that the right to freedom protects a rational agent's ability to make choices in general—that is, her ability to set and pursue ends for herself. There is obviously a gap between the two ideas; let me explain briefly how it is bridged. It is indeed in virtue of her capacity for rational choice that a rational agent has standing to reject any purported justification of coercion that does not rest on freedom. But although the right to freedom depends in this way on the agent's having the capacity to set ends according to reason, it does not depend on her exercising that capacity correctly on any given occasion. That is, in a way, the whole point of the argument I presented above: an agent's choosing poorly—against her own happiness, against her interest, or what have you—cannot by itself justify restricting her freedom, since those are values that she can choose to reject; only when her actions are inconsistent with universal freedom is there a justification for the use of force that she must accept. The right to freedom accordingly protects the exercise of rational agency construed quite broadly: so long as a person is minimally exercising her rational agency—so long as she is exercising her ability to set and pursue ends for herself (as opposed to, say, stumbling around blind drunk)—her actions are protected by the right to freedom. The determining ground of the agent's choice, which can be practical reason or some other ground (see Kant, *Doctrine of Right*, 6:213), thus remains a strictly private matter as far as political philosophy is concerned.

24. *Ibid.*, 6:237. It is worth stressing that there is no general right that others not interfere with one's choices—only that they not interfere with one's choices insofar as these are consistent with universal freedom. This marks a crucial difference between the right to freedom defended by Kant and the “right to liberty” attacked by Ronald Dworkin (see “What Rights Do We Have?” in *Taking Rights Seriously* [Cambridge, MA: Harvard University Press, 1978], 266–78).

one of the more memorable images of the *Doctrine of Right*, this means that coercing a rational agent can only be justified to the extent that it constitutes a “hindering of a hindrance to freedom”;²⁵ in all other cases, the justification for using force will be one that the rational agent is free to reject.

It is unclear to me how one who accepts Kant’s argument for the Formula of Humanity could reject the argument I have presented for the right to freedom: the considerations put forward in the former argument, when applied to the problem of justifying coercion, naturally yield the thought that rational agents have such a right. But this does not mean that the converse also holds—that accepting the argument for the right to freedom commits one to Kant’s moral outlook. I am inclined to think that the skeptical form of reasoning I have outlined is less contentious when applied specifically to the political case than it is when applied to moral values in general. The argument in the moral case rests on the idea that no purported objective value can bind a free rational agent unless it is directly grounded in our capacity for rational choice—a thought that goes hand in hand with Kant’s particularly stringent conception of autonomy, according to which the moral law has to be self-legislated.²⁶ Anyone who views morality as grounded in a kind of realism about reasons—as many prominent contemporary philosophers do²⁷—will likely retort that this both overestimates what can be derived from the ideal of rational agency and underestimates how aspects of the world other than our rational nature can make authoritative

25. Kant, *Doctrine of Right*, 6:231. Paul Guyer has suggested that this comes dangerously close to the thought that two wrongs make a right—to the point where he thinks that Kant needs an argument to show that this is not what his thesis amounts to (see “Kant’s Deductions of the Principles of Right,” in *Kant’s “Metaphysics of Morals”: Interpretative Essays*, ed. Mark Timmons [Oxford: Oxford University Press, 2002], 23–64, esp. 48). This seems to me mistaken. Kant’s point is that stopping someone from acting in a way that is incompatible with universal freedom is not a wrong; if it merely hinders a hindrance to freedom, then it is consistent with universal freedom and thus rightful. The case is completely different from that of revenge, or from a case in which someone is prevented from doing an action that is morally wrong, but consistent with universal freedom. If I knock you out to prevent you from lying to someone, then I am acting wrongly. The fact that I am opposing a moral wrong does not make my action rightful, since your intended action is compatible with external freedom (Kant holds that your action is incompatible with your internal freedom, of course, but restricting your external freedom does nothing to correct that problem—if anything, it compounds it). Opposing a moral wrong therefore cannot in itself justify the use of force; only hindering a hindrance to external freedom can. On the idea that lying does not generally restrict external freedom, see Kant, *Doctrine of Right*, 6:238.

26. See, e.g., Kant, *Groundwork*, 4:432–33.

27. See notably Derek Parfit, *On What Matters* (Oxford: Oxford University Press, forthcoming); Joseph Raz, *Engaging Reason* (Oxford: Oxford University Press, 1999); and Scanlon, *What We Owe to Each Other*.

demands on us. I do not mean to weigh in on either side of this debate but only to stress that Kant's moral philosophy comes with heavy baggage.

The argument for the right to freedom travels more lightly. It does not entail that a person can be morally bound only by a law she imposes on herself but only that she cannot be justifiably coerced on grounds that she could object to and, hence, that she has a veto right with respect to the grounds that can be invoked to justify the use of force against her. This is undoubtedly a demanding conception of personal sovereignty, but it strikes me as having broader appeal than the deep Kantian conception of autonomy. All it assumes is that a rational agent is entitled to have force used against her only in ways that are justifiable from her point of view *qua* rational agent. One may agree with this point while rejecting Kant's moral outlook; for even if one embraces full-fledged realism about value, the question remains open whether it is acceptable to impose specific values on someone through force. One might very well think that a person should get to decide for herself what ends she is to pursue, not because her rational nature is the source of all authority but simply because, when all the relevant values are taken into account, a competent adult is entitled to make her own choices, even when that means making her own mistakes.

IV

The argument for the right to freedom rests on the assumption that a justification for the use of force is inadequate unless it is such that all, including those against whom force is used, must accept it. As I have put it, if we cannot answer conclusively an agent who asks, "What is that justification to me?" then our justification is simply of the wrong kind for the use of force. It might be helpful at this point to say more about the kind of view that this is meant to exclude. Classical utilitarianism provides a conspicuous illustration. On the view I attribute to Kant, the idea that the use of force might be justified in terms of its conduciveness to the greatest feasible good is a nonstarter—not because utilitarianism is necessarily false as a view about personal morality but because the proposed justification does not appropriately engage the standpoint of nonutilitarians. The problem is not that utilitarians have nothing to say to those who disagree with them; at the very least, they have the usual arguments in favor of their position. The problem is that the utilitarian justification for the use of force is supposed to draw its strength from the truth of utilitarianism itself—from the fact that morality actually demands that the good be maximized. That is precisely the kind of move that Kant's approach precludes. On his view, any principle regulating the use of force depends for its justification on whether it is one that all rational agents must accept; being correct according to some

objective standard is not sufficient—it is not the right kind of normative fact to do justificatory work in this domain.

Kant's assumption about what can justify the use of force rules out not only utilitarianism but any view that attempts to justify coercion by invoking the correct conception of what is of value in human life—be it happiness, perfection, equality, or what have you. In short, it rules out any view that is *comprehensive* in the sense that John Rawls has given the expression—any view that simply applies to political matters a general doctrine about the good life.²⁸ This is no coincidence: Kant's views on the justification of coercion are strikingly similar to those that motivate Rawls's turn to political liberalism. Indeed, the fundamental thought I have attributed to Kant receives an illuminating articulation in an underappreciated passage from *Political Liberalism*:

Those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs when they have the political power to do so. Of course, those who do insist on their beliefs also insist that their beliefs alone are true: they impose their beliefs because, they say, their beliefs are true and not because they are their beliefs. But this is a claim that all equally could make; it is also a claim that cannot be made good by anyone to citizens generally.²⁹

Assuming that Rawls takes fundamental political questions to concern the justification of coercion, these lines express precisely the idea I have attributed to Kant, namely, that a justification for the use of force does not count as acceptable to everyone simply because it rests on correct beliefs about the good life.³⁰ The reason, as Rawls puts it, is that such a justification “cannot be made good” to those who do not think the

28. On the idea of a comprehensive doctrine, see John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 13 and 175. That Kant's view is not a comprehensive liberalism in Rawls's sense has already been noted by Thomas Pogge (see his “Is Kant's *Rechtslehre* a ‘Comprehensive Liberalism?’” in Timmons, *Kant's “Metaphysics of Morals,”* 133–58, esp. 146–51). I believe that Pogge is correct to claim that Kant's political philosophy does not presuppose his moral philosophy—I made a similar point above, if in slightly different terms than he does. But I do not think that he goes far enough: he fails to note that there is a deeper connection between Kant's and Rawls's views on the justification of coercion, one that explains why neither of them could accept a political philosophy grounded in a comprehensive moral doctrine.

29. Rawls, *Political Liberalism*, 61.

30. The assumption is supported by Rawls's view that political power is essentially coercive; see, e.g., John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), 182, and *Political Liberalism*, 136. Presumably, fundamental political questions concern the use of political power and, hence, the justification of coercion.

beliefs correct in the first place—as I put it, it fails to address properly everyone’s standpoint.³¹

The passage has deeper implications for how we should understand the failure to justify coercion in a way that addresses the standpoint of all rational agents: it suggests that the failure is fundamentally one of reciprocity. The idea is as follows. Suppose that I use force against you on the basis of a justification I believe to be correct but to which you object. In doing so, I may not view myself as coercing you in the name of moral beliefs I happen to hold: I may think that I am coercing you in the name of the correct moral doctrine. Furthermore, I may believe this entirely in good faith—I may think, “*Of course* my justification properly addresses everyone’s standpoint: how could anyone object to the truth?” The problem with this position, as Rawls points out, is that you could say the exact same thing, in equal good faith, while using force against me in the name of a moral doctrine you take to be correct but with which I disagree. In this respect, our situations are perfectly symmetrical. Thus, when I coerce you on grounds that I cannot “make good” to you—when I fail to address your standpoint—I coerce you in a way that I would not allow you to coerce me, and hence I take myself to have a power over you that I would not allow you over me.³² It is this failure of reciprocity—this failure to treat you as someone with a standing equal to mine—that disqualifies my justification on Kant’s view. In this way, the thought that motivates Kant’s political philosophy is inextricably tied to a particularly basic ideal of reciprocity.³³

31. I do not mean to suggest that Kant and Rawls agree about what specific justifications for the use of force count as addressing the standpoints of all concerned. Rawls would likely reject Kant’s claim that only a justification proceeding entirely in terms of freedom can meet the standard. This is suggested by his insistence that, in his theory, the basic liberties are given by a list drawn from the history of constitutional democracies and that “no priority is assigned to liberty as such, as if the exercise of something called ‘liberty’ has a preeminent value and is the main if not the sole end of political and social justice” (*Political Liberalism*, 291–92). That said, Rawls’s conception of liberty is arguably too different from Kant’s for such a statement to count as conclusive evidence that the two approaches are irreconcilable.

32. If I am even minimally consistent, I have to allow you to coerce me on the basis of my own doctrine. Given the symmetry of our situations, however, genuine reciprocity would demand that I allow you to coerce me on the basis of your doctrine.

33. The connection between Kant’s approach and Rawls’s political liberalism points to a further consideration against the position of those who accept Kant’s moral philosophy but are tempted to ignore his political writings and to take their political philosophy from Rawls’s *Theory of Justice*. We saw in the previous section that this denotes an insufficient appreciation of the link between Kant’s moral and political views. The claims of the present section suggest that, at a deeper level, this position rests on a misunderstanding of Kant’s contribution to political philosophy. Kant’s primary aim is not the one that animates *Theory of Justice* but rather the one that motivates Rawls’s later works: it is to put forward not a theory of justice but a theory of state legitimacy. Among other things, that accounts for

V

Kant's claim that the right to freedom is the only innate right of human beings entails, as we saw above, that freedom can be restricted only for the sake of freedom itself. In other words, the limitation that is built into the right to freedom—its restriction to actions that can be universally allowed without conflicting with the freedom of other agents—points to the only way in which the use of force can be justified on a Kantian view. A rational agent thus has the right to do everything that does not interfere with the freedom of others; only when her actions contravene universal freedom can the use of force against her be justified because only then does the use of force constitute what Kant calls a “hindering of a hindrance to freedom.”³⁴ Now, this way of putting the point brings out an important limitation of the conclusion we have reached so far, namely, that it remains strictly formal in character: it tells us that rational agents have the right that force be used against them only when freedom is at stake, but it does not tell us when exactly freedom is at stake. Our argument thus requires some filling out: we need to determine what external freedom consists in, since only then will we know exactly what rational agents have a right to. To be more precise, we saw above that the only justification for the use of force that a rational agent cannot reject is one grounded in the need to protect the exercise of rational agency, understood broadly as the ability to set and pursue ends for oneself;³⁵ the question we need to ask is, against what does a person's exercise of her rational agency need to be protected?

How we answer that question is of the utmost importance in the present context, since it will largely determine whether Kant's contention that political philosophy should be concerned exclusively with the demands of freedom can be reconciled with our considered judgments. If we adopt too narrow a conception of what freedom demands, then a commitment to the right to freedom will come at the cost of much that we take to be of legitimate concern to political philosophy; since the argument for the right to freedom can only bear so much weight, that may well send us back to the drawing board. I do not think that Kant's conception of freedom gives rise to this problem; on the contrary, I believe that it provides a particularly promising starting point for a freedom-centered approach to political philosophy. In the rest of the

how little Kant has to say about matters of distributive justice: a theory of legitimacy has only very broad implications for such questions, since countless different schemes of distribution can be legitimate. If Kant's political thought is in competition with any part of Rawls's output, then, it is with the later works; turning to *Theory of Justice* as a substitute for the *Doctrine of Right* amounts to changing the topic.

34. Kant, *Doctrine of Right*, 6:231.

35. On this construal of rational agency, see n. 23.

discussion, I argue for this point by contrasting Kant's view with that put forth by Philip Pettit in his recent defense of republicanism.³⁶ I proceed in this way partly because the two views are sufficiently close to make the contrast illuminating but also because Pettit's theory strikes me as the most successful recent attempt to ground political philosophy squarely in the demands of freedom. My aim is to show that Kant's view of freedom shares the features that make Pettit's view a plausible starting point for political philosophy but also to argue that, where the two pictures diverge, Kant's proves the more compelling one.

Let us begin by looking at the shared idea animating the two views. For that, we need look no further than the passage I quoted at the beginning of Section II, in which Kant writes that freedom consists in "independence from being constrained by another's choice."³⁷ That claim situates his view with respect to a divide among conceptions of freedom whose importance Pettit repeatedly stresses.³⁸ On one side of that divide is the broadly Hobbesian conception, according to which external freedom consists in the absence of interference: roughly, I am free insofar as no one actively interferes with my choices. On the other side is the Rousseauian conception, according to which external freedom consists in some form of independence from the choices of others: roughly, I am free insofar as no one gets to decide for me.³⁹ Kant's view, like Pettit's, falls squarely in the Rousseauian camp.

Kant does not deny that the Hobbesian conception is on to something: clearly, my agency can be undermined by others' actively interfering with my choices. But he recognizes that this cannot be all there is to freedom. If we understand freedom exclusively in terms of non-interference, then we assume that a person's freedom depends solely on whether others actually interfere with her activities. To see what is wrong with that assumption, we need only consider the well-known example of the slave who, because of his master's kindly disposition, ends up doing whatever he pleases.⁴⁰ On a Hobbesian view, such a slave

36. See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), and "Keeping Republican Freedom Simple," *Political Theory* 30 (2002): 339–56.

37. Kant, *Doctrine of Right*, 6:237.

38. See, e.g., Pettit, *Republicanism*, 21–27.

39. For Hobbes's position, see *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett, 1994), chap. 14, sec. 2, and chap. 21, sec. 2. Rousseau endorses the view of freedom as independence most explicitly when he writes that "freedom consists less in doing one's will than in not being subject to the will of others" (*Lettres écrites de la montagne* VIII, in *Oeuvres complètes* III, ed. Bernard Gagnebin et al. [Paris: Gallimard, 1964], 841; my translation). For an excellent discussion of Rousseau's views on this point, see Frederick Neuhouser, "Freedom, Dependence, and the General Will," *Philosophical Review* 102 (1993): 363–95, esp. 380–81.

40. The example is central to Pettit's discussion; see notably *Republicanism*, 34–35.

has to count as perfectly free; the fact that the master could choose to interfere at any point is neither here nor there. But that cannot be right—after all, regardless of how kind his master might be, a slave is paradigmatically unfree. If the Hobbesian conception cannot account for that thought, then it is plainly inadequate. The Rousseauian conception, by contrast, readily identifies the source of the slave’s unfreedom: if being free means that no one else gets to decide for you, then our slave is straightforwardly unfree, since however often he might get to do what he wants, his master retains the power to decide for him. That should come as no surprise: the Rousseauian conception is tailored to account for this kind of case, since it starts from the thought that freedom is to be understood by contrast with slavery—the free person is one who decides for oneself, who is one’s own master, and so on.⁴¹ The example of the happy slave suggests that this general outlook captures our intuitions about political freedom better than the Hobbesian conception does—a point that both Kant and Pettit recognize.

The Rousseauian conception also presents a more specific advantage for the kind of freedom-centered approach that Kant advocates: it supports a much broader spectrum of political ideals and causes than does the idea of freedom as noninterference. Pettit is not himself explicitly committed to an exclusive focus on freedom—although he does find the thought “congenial”⁴²—but he is intensely alive to this aspect of the Rousseauian outlook. Indeed, he makes a remarkably strong case in *Republicanism* for the idea that the demands of freedom underlie a vast range of political ideals commonly taken to stem from competing values.⁴³ Most compellingly perhaps, he argues that ideals traditionally associated with the feminist and socialist movements are usefully recast in terms of “the image of the person who knows no master”—the woman who is not subject to the choices of her husband (or of any other man), the worker who is not “dependent on the grace and mercy of [his] employer.”⁴⁴

It is worth stressing that Pettit’s point depends not on the specifics of his conception of freedom but only on his commitment to a Rousseauian outlook. Indeed, the point mainly rests on the general contrast between freedom and slavery, since it amounts to saying that the central ideals of feminism and socialism spring from a concern with partial (and hence particularly insidious) forms of slavery, namely, household and wage slavery. Once again, the comparison with the Hobbesian outlook is telling. If one focuses on the idea of noninterference, then the

41. See *ibid.*, 31–35.

42. *Ibid.*, 81.

43. See esp. *ibid.*, 138–43.

44. *Ibid.*, 138, 141.

situation of an individual subject to partial slavery will often seem unproblematic: the relevant master—the husband, say, or the employer—may well choose to wield his power gently, and hence the situation may be comparable to that of the happy slave. If one focuses on the idea of independence, however, the problem becomes immediately apparent: partial slaves, like other slaves, do not get to decide for themselves and are unfree for that very reason. Insofar as Pettit relies on that thought to show that the range of demands associated with freedom is broader than has traditionally been assumed, his detailed discussion of the matter can be enlisted in support of the focus on freedom that Kant advocates.

VI

I now want to consider some important differences between Kant's and Pettit's views, both to provide a more complete picture of Kant's view and also to flag some advantages that I think it presents. I begin with a few words about Pettit's view, since that will be the point of comparison for the rest of the discussion. Pettit holds that freedom essentially consists in the absence of *domination* from others. His definition of domination makes explicit how this differs from mere noninterference: "What constitutes domination is the fact that in some respect the power-bearer has the capacity to interfere arbitrarily, even if they are never going to do so."⁴⁵ The emphasis on the power-bearer's capacity to interfere is what places Pettit's view squarely in the Rousseauian camp, since it makes freedom depend not only on what others actually do but also on what they can do. What distinguishes Pettit's view, however, is his insistence that what undermines freedom is not just any kind of capacity to interfere but specifically the capacity to interfere arbitrarily, and how he proposes to understand that idea. His general characterization is hardly controversial: he says that an agent has the capacity to interfere arbitrarily with one's choices if he can exercise the capacity or not "at [his] pleasure."⁴⁶ But he also proposes a more specific (and contentious) conception of the idea: he writes that "an act of non-interference [is] nonarbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference."⁴⁷

As one would expect, Pettit's theory has no trouble accounting for the slave's unfreedom. Regardless of how happy the slave might be, the master clearly has the capacity to interfere arbitrarily with his choices, since nothing forces her to take the slave's interests into account. The theory also tells us precisely what is needed to remedy the situation: the

45. *Ibid.*, 63.

46. See *ibid.*, 55.

47. *Ibid.*

master's power to interfere arbitrarily must be removed. Concretely, Pettit argues, this requires granting the slave adequate protection against the master's interference: the slave is free only when there is an agent who reliably prevents the master from arbitrarily interfering with his choices.⁴⁸ Indeed, that is what explains the need for the state on Pettit's view. A good state will be structured to provide each citizen with reliable protection against the interference of others and thus will guarantee the independence of all.⁴⁹ At the same time, since it will itself inevitably interfere in its citizens' lives, it must be set up so as to ensure that its own actions are not arbitrary. This will require institutional arrangements that are jointly effective in ensuring that state action is suitably responsive to the interests and ideas of citizens—constitutional checks and balances, effective processes of consultation and contestation, and so on.⁵⁰

I want to focus here on two aspects of Pettit's position: the claim that the notion of arbitrary interference should be understood in terms of interests and the claim that a person's freedom is ultimately a matter of the level of protection she enjoys against arbitrary interference. Consider first Pettit's position on arbitrary interference. Crucial to his view is the idea that interference does not compromise freedom, so long as it appropriately tracks the patient's "interests and ideas"; indeed, he goes so far as to suggest that interference *per se* has nothing to do with freedom, since nonarbitrary interference does not undermine freedom at all.⁵¹ This seems to me to conflate two ideas: how free a person is

48. On Pettit's view, the presence of an agent who protects the relevant individual is crucial: the sheer fact that your intervention is unlikely is not sufficient to make me independent. See *ibid.*, 74–75, where he distinguishes two senses in which one can be secure against outside interference: the probabilistic sense and the protection sense. Freedom requires security in the latter sense.

49. See *ibid.*, 92–95.

50. See *ibid.*, chap. 6.

51. More specifically, Pettit argues that the intervention of a well-structured state, because it is nonarbitrary, does not compromise the freedom of its citizens (see *ibid.*, 65–66). As he puts it, freedom as nondomination "is consistent, unlike freedom as non-interference, with a high level of nonarbitrary interference of the sort that a suitable system of law might impose" (84). Somewhat confusingly, Pettit adds that nonarbitrary interference nonetheless *conditions* freedom, by which he means that it "reduce[s] the range or ease with which people enjoy undominated choice" ("Keeping Republican Freedom Simple," 342). The ideal of nondomination requires that we remove both factors that compromise freedom and factors that condition it, Pettit claims (*Republicanism*, 77), although he seems to view the latter task as subordinate (as suggested by his remark that "provided that it is not arbitrary, state interference will not count as a serious loss—as a way of compromising liberty—in the republican's book" [76 n. 8]).

The distinction between compromising and conditioning freedom allows Pettit to forestall the worry that republicanism might be indifferent to how much a state interferes in its citizens' lives, so long as it does so in a nonarbitrary fashion (a worry raised by Steven

and how well her interests are served. A state may well serve its population's interests by adopting certain intrusive measures—say, a law forcing individuals to undergo painful dental operations that they badly need. But it seems a stretch to say that it does not restrict freedom by doing so. The point holds even if the state is structured to ensure that its actions will effectively track the interests of those subject to its power and, hence, even if the state's actions are entirely nonarbitrary by Pettit's standards. And it holds even if we insist, as Pettit does, that the state's actions must "track what the interest of . . . others require *according to their own judgments*."⁵² Each citizen may judge that it is in her interest to undergo the painful dental operation, but that hardly shows that the state does not affect her freedom when it forces her to do so.⁵³ Paternalistic intervention is still intervention, regardless of how beneficial it is and of how reliably it tracks one's interests.

The idea that interference that tracks one's interests does not restrict one's freedom may appear plausible if one thinks, as Pettit does, that a person's freedom is fundamentally a matter of the options that are open to her.⁵⁴ If one thinks that a person's degree of freedom depends on what options are open to her, and if one thinks that what matters is not just the sheer number of options but also their desirability

Wall in his "Freedom as a Political Ideal," *Social Philosophy and Policy* 20 [2003]: 307–34, 316). But I do not think that the distinction undermines the objection I present in the text, which concerns not the extent to which an ideal republican state would interfere in its citizens' lives but rather how we should understand the impact that nonarbitrary interference has on the freedom of individuals. As I will suggest in the text, it seems odd to think that my being forced to go to the dentist on pain of being fined simply "reduce[s] the range or ease with which [I] enjoy undominated choice" and much more plausible to think that the measure restricts my freedom, pure and simple. I am grateful to an anonymous referee for pressing me to clarify this point.

52. Pettit, *Republicanism*, 55; emphasis added.

53. One might reply here by stressing Pettit's claim that nonarbitrary intervention should track not only the interests but also the ideas of those subject to it. Insofar as this amounts to the claim I discuss in the text—that nonarbitrary intervention has to track an individual's interests as she understands them—it leaves my objection standing. But there might be more to the thought. It could also suggest that nonarbitrary intervention has to track what an individual thinks about the appropriateness of intervention. Now, this cannot mean that the state has to grant each citizen a veto right over its every intervention, since any disagreement over a proposed course of action would then be paralyzing. Rather, the point has to be that nonarbitrary intervention must track individuals' ideas concerning what means of intervention are appropriate in general (a reading that finds support in Pettit's discussion of taxation in *ibid.*, 55–56). Thus understood, the point does not affect the objection I present in the text. If the means that the state uses to force individuals to undergo painful dental operations seem eminently reasonable to the entire population—if those are the means that everyone agrees the state should use if it is going to intervene in such matters—then we may be more inclined to view the state's intervention as justified, but it is unclear why we should view it as any less of a restriction on freedom.

54. See *ibid.*, 103–6.

or importance, then it will be natural to think that interference that suitably tracks an agent's interests closes options that are irrelevant to the agent's freedom. So long as the agent interfering does this reliably, it would seem that its activity poses no threat whatsoever to the person's freedom. Unsurprisingly, Kant adopts a fundamentally different outlook. As we saw above, what compromises freedom on his view is the restriction of a person's agency, understood broadly as the ability to set and pursue ends for oneself. The sheer fact that you close off certain options that would otherwise be open to me—the fact that you stand somewhere, and hence prevent me from doing so, or that you hold an apple, and hence prevent me from eating it—does not count as restricting my freedom because such actions do not undermine my ability to set and pursue ends for myself. Rather, they are simply background conditions against which I must exercise that ability—much like gravity, say, or the weather. And note that the point holds even if I have made it my aim to stand precisely where you are standing or to eat the very apple that you are holding: on Kant's view, my freedom does not depend on my success at pursuing any given project; it only depends on my ability to adopt projects as I see fit and to pursue them as best I can.⁵⁵

What would interfere with my agency, of course, is if you took control of the entire world, since that would make it impossible for me to exercise my ability to choose. But this is just an indirect way of saying that you interfere with my agency when you take control of my body, since that is what taking control of the whole world with respect to me amounts to. The thought is obviously congenial to Kant. On his view, having control over my body is essential to my ability to set and pursue ends, since it is only by making use of my bodily powers that I can act in the external world. To the extent that you exercise control over my body, you straightforwardly subject my ability to set and pursue ends to your choices and, hence, make me unfree in the sense with which Kant is most directly concerned. Thus, in the most fundamental case, you interfere with my agency when you use force or the threat of force against my body to make me act as you choose—when you hold me

55. On this point, see Arthur Ripstein's illuminating discussion of external freedom in "Authority and Coercion," *Philosophy and Public Affairs* 32 (2004): 2–35, 8–11, and in *Force and Freedom: Kant's Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), esp. chap. 2. Not everyone agrees with this interpretation of Kant's position. Katrin Flikschuh, following Reinhard Brandt on this point, thus writes that "under conditions of unavoidable empirical constraint (i.e. the earth's spherical surface) any exercise of choice by one compromises the freedom of everyone else by removing from availability to them external objects of their possible choice" (*Kant and Modern Political Philosophy* [Cambridge: Cambridge University Press, 2000], 134). For Brandt's discussion, see his "Das Erlaubnisgesetz, oder: Vernunft und Geschichte in Kants Rechtslehre," in *Rechtsphilosophie der Aufklärung*, ed. Reinhard Brandt (Berlin: de Gruyter, 1982), 233–85.

down, tie me up, knock me out, or force me to do something at gunpoint. In such cases, you do not merely influence the conditions under which I make choices: you impose your choices on me.⁵⁶

On this outlook, there is no temptation to think that intervention does not undermine freedom so long as it tracks the patient's interests. If the agent who tied me up reliably tracks my interests, then we can certainly expect that my welfare will be better served than it otherwise would be, but my agency will be undermined all the same. Kant thus steers clear of the implausible thought that intervention does not interfere with freedom, and hence is trivially justified, so long as it is reliably paternalistic. On his view, as we saw above, the justification of intervention takes a completely different form: one has to show that the intervention is necessary to protect freedom itself. Moreover, when intervention is so justified, it does not follow that it is compatible with the patient's freedom; what follows is that it does not violate the patient's right to freedom, since that right does not extend to actions that are incompatible with universal freedom. On Kant's view, in short, a justified restriction of freedom remains a restriction of freedom.⁵⁷

VII

I now turn to Pettit's claim that a person's freedom ultimately depends on the level of protection she enjoys against arbitrary interference. As I said above, I think that Pettit is entirely correct when he stresses that a person's freedom depends on what others can do to her, not just on what they actually do, but I have doubts about the way he fleshes out the idea. As Pettit sees it, a person's freedom depends specifically on

56. I say "in the most fundamental case" to acknowledge, again, that once property and contract have entered the picture, you need not interfere with my body to restrict my freedom (see n. 14 on this point).

57. Kant seems to me more clearheaded than Rousseau on this point. Rousseau famously holds that constraint exerted in accordance with the general will does not restrict freedom at all because the general will is an individual's own true will (see *Of the Social Contract*, in *The "Social Contract" and Other Later Political Writings*, ed. Victor Gourevitch [Cambridge: Cambridge University Press, 1997], bk. 2, chap. 4, sec. 8). Kant does not go so far. As I say in the text, a restriction of freedom is justified to the extent that it is necessary for the protection of universal freedom, but it remains a restriction. Note that Kant does have room for the idea of a general will: on his view, the measures that a state takes to protect the freedom of its citizens constitute their general will because they are measures to which no one can coherently object (as I put it in Sec. III, an agent has nowhere to stand to reject such measures). But this does not warrant the conclusion that the state's actions do not restrict freedom. If a person's being jailed for a crime is justified, then it follows that his right to freedom is not thereby violated, but unless the person actually consents to being jailed, it would be foolish to deny that his freedom is restricted, since his ability to set and pursue ends for himself is clearly curtailed. I am grateful to David Miller for pressing me to clarify the distinction between Kant and Rousseau on this point.

what others have the power to do: having adequate protection against arbitrary intervention means being adequately shielded, as a matter of fact, against the intervention of powerful agents.⁵⁸ This is an extremely thin conception of the independence required for freedom, and I think that it leads to an impoverished articulation of the political ideal associated with freedom. Before I come to that point, however, I need to say a few words about the contrast I perceive between Pettit's and Kant's views.

Pettit paints a straightforward picture. An agent's degree of freedom is determined by the level of protection she enjoys.⁵⁹ Our goal as a society should be to maximize freedom as nondomination for all; hence, we should aim to provide each individual with the highest possible level of protection against arbitrary interference.⁶⁰ To do this, as we saw above, we need to put in place institutions that reliably protect each citizen against the arbitrary interference of others and that are structured to ensure that their own workings are not arbitrary. Concretely, for a society like ours, that will mean putting in place a state that protects the rights of individuals, that conforms to rule-of-law principles, and whose power is checked by constitutional constraints and democratic processes.

Now, it is important to be clear about the relation between the institutional structures that Pettit advocates and the freedom as nondomination that they are intended to secure. Pettit stresses that the relevant institutions stand not in a causal but rather in a constitutive relation to freedom as nondomination: as he puts it, the presence of institutions preventing others from interfering in my affairs is constitutive of my being free, much as the presence of certain antibodies in my bloodstream is constitutive of my being immune to a given disease.⁶¹ The point suggests an intimate relationship between institutions and freedom, but it should not make us forget that the relationship remains essentially instrumental: the different features that ideal institutions should have are ultimately so many means—constitutive means but means nonetheless—to the end of maximizing protection against arbitrary interference. Even institutional arrangements that may seem to have a more vital link to freedom—rule-of-law conditions, for instance, or the granting of legal rights to all—are justified instrumentally on this view: they are simply features whose presence in political institutions

58. See Pettit, *Republicanism*, 79.

59. On the idea that freedom is a matter of degree in this way, see *ibid.*, 75–77.

60. See, notably, *ibid.*, 102.

61. See *ibid.*, 106–9.

contributes to maximizing the protection against arbitrary interference enjoyed by individuals.⁶²

Once again, Kant takes a radically different view of the matter. As he sees it, rule-of-law conditions and legal rights are not simply components in the institutional apparatus that is most likely, as a matter of fact, to provide individuals with the best possible protection; they are constitutive of freedom in a much deeper sense than Pettit allows. His reasons for thinking so are complex and ultimately stem from a difficult idea underlying the entire argument of the *Doctrine of Right*, according to which an individual's rights can be *conclusive*—that is, determinate and enforceable—only in a civil condition.⁶³ I have discussed that claim at some length elsewhere;⁶⁴ here I only want to explain its main ramifications for the present issue. As I understand it, Kant's position is that rights cannot be conclusive in a state of nature because no private individual can enforce rights in a way that would be fully consistent with everyone's right to freedom. Individuals living side by side must realize conditions under which their rights can be enforced without violating anyone's right to freedom, and doing so simply amounts to establishing a state and thus to entering a civil condition. Now, although this point is explicitly about the enforcement of rights, it is important to note that it entails that the use of force in general is problematic in a state of nature. The right to freedom demands that the legitimate use of force be tied to the protection of freedom; since Kant understands rights simply as justified claims grounded in an individual's freedom, it follows that any legitimate use of force must be tied to the enforcement of rights.⁶⁵ In short, the implication is that any use of force in a state of nature will fail to be fully consistent with the right to freedom and, hence, will fail to be fully legitimate.⁶⁶ And of course, to the extent that protection against arbitrary interference requires the use of force, it runs into the same problem: it will also fail to be fully consistent with the right to freedom outside a civil condition.

If Kant is correct about all this, then conditions like the rule of law and the granting of legal rights to all do not stand in a merely instrumental relation to freedom. Such conditions are not means through which one promotes the existence of a civil condition: they are part of

62. On the rule of law, see *ibid.*, 174; on rights, see 101 and 304.

63. See Kant, *Doctrine of Right*, 6:255–57.

64. See my “Kant on Property Rights and the State.”

65. See Kant, *Doctrine of Right*, 6:232.

66. I say “fully consistent” and “fully legitimate” because I do not mean to deny that some uses of force may be justified in a state of nature. If putting in place a civil condition is impossible, then some rough and ready attempts at rights enforcement may be the best that can be done under the circumstances. The point is that such enforcement necessarily falls short of the ideal set by the right to freedom.

what makes the civil condition the normative ideal that it is. If the ideal set by freedom cannot be realized outside the civil condition, then the rule of law and the granting of legal rights are essential to its realization. This is not to deny that protection may be effective without legal rights or the rule of law; the point is that focusing on protection by itself makes no sense because it is not a coherent ideal for the realization of human agency.

All this suggests a picture that is strikingly different from Pettit's. As Kant sees it, the standing of a free person is essentially tied to her membership in a civil condition—a person's being free, we might say, depends on her having full legal standing. In particular, it is essential to the standing of a free person that she have effective legal rights—or to be more precise, since not just any rights will do, it is essential that she enjoy something like what Rawls has called a “fully adequate” scheme of legal rights, backed by a reasonably effective enforcement mechanism.⁶⁷ The contrast with Pettit's instrumental view of rights could not be sharper. Of course, since it is important on Kant's view that individuals' rights be backed by a reasonably effective enforcement mechanism, the concern with protection remains. But the aim is no longer to maximize protection, using whatever instruments might serve that end; it is to ensure that everyone's right to freedom is respected, something that can only be done, on Kant's view, by granting individuals a specific kind of protection—protection that meets a normative test, rather than a test of mere efficiency. It is also worth stressing that, on such a view, the granting of adequate protection is only part of what secures the standing of a free citizen. A civil condition worthy of the name must include a reliable police force that protects individuals, but it also must vindicate rights when wrongdoing occurs, by giving victims legal recourse against wrongdoers and by punishing wrongdoers when appropriate. That possibility is no less essential to the standing of a free individual than the protection whose importance Pettit emphasizes.

How is one to choose between these two conflicting pictures? A straightforward approach is to ask how well each picture does at capturing the contrast that was supposed to motivate the adoption of a Rousseauian outlook in the first place: that between freedom and slavery. On this point, I want to argue, Pettit's exclusive focus on power relations lands him in some trouble. To see this, consider that any human being living in society will be surrounded by agents sufficiently powerful to interfere with her capacity to make choices. Obviously, in any decent state, there will be limits to how much interference any given person can get away with, but except perhaps in a totalitarian state—hardly

67. See, e.g., Rawls, *Political Liberalism*, 5, where Rawls speaks of a “fully adequate scheme of equal basic rights and liberties.”

itself a paragon of freedom—there will always be some agents able to interfere substantially with one's choices. The effective level of protection one enjoys, and hence one's actual degree of freedom, will vary according to multiple factors: how powerful one is, how powerful individuals in one's vicinity are, how frequent police patrols are, and so on.

Now, we saw above that what makes a slave unfree on Pettit's view is the fact that his master has the power to interfere arbitrarily with his choices; in other words, what makes the slave unfree is the power relation that obtains between his master and him. The difficulty is that, in light of the facts I just mentioned, there is no reason to think that this power relation will be unique. A similar relation could obtain between the master and someone other than the slave: absent perfect state control, the master may very well have enough power to interfere in the lives of countless individuals. Yet it would be wrong to infer that these individuals lack freedom in the way the slave does; if they lack anything, it seems to be security. A problematic power relation can also obtain between the slave and someone other than the master, since there may be citizens who are more powerful than the master and who can therefore interfere with the slave's choices at their discretion. Once again, it would be wrong to infer that these individuals make the slave unfree in the same way that the master does.

Something appears to be missing from Pettit's view. If I live in a particularly nasty part of town, then it may turn out that, when all the relevant factors are taken into account, I am just as vulnerable to outside interference as are the slaves in the royal palace, yet it does not follow that our conditions are equivalent from the point of view of freedom. As a matter of fact, we may be equally vulnerable to outside interference, but as a matter of right, our standings could not be more different. I have legal recourse against anyone who interferes with my freedom; the recourse may not be very effective—presumably it is not, if my overall vulnerability to outside interference is comparable to that of a slave—but I still have full legal standing.⁶⁸ By contrast, the slave lacks legal recourse against the interventions of one specific individual: his master. It is that fact, on a Kantian view—a fact about the legal relation in which a slave stands to his master—that sets slaves apart from freemen. The point may appear trivial, but it does get something right: whereas one

68. I mean to acknowledge here that the legal recourse's actual effectiveness (or lack thereof) has to be taken into account when one says that my situation is comparable to that of a slave as far as vulnerability to outside interference is concerned. The point I am making is that, even if our levels of vulnerability are similar when everything is taken into account, the sheer fact that I have legal standing—even if it is standing in an egregiously ineffective system—marks a fundamental difference between our situations. I am grateful to an anonymous referee for pressing me on this point.

cannot identify a power relation that obtains uniquely between a slave and his master, the legal relation between them is undeniably unique. A master's right to interfere with respect to his slave does not extend to freemen, regardless of how vulnerable they might be as a matter of fact, and citizens other than the master do not have the right to order the slave around, regardless of how powerful they might be.

This suggests that Kant is correct in thinking that the ideal of freedom is essentially linked to a person's having full legal standing. More specifically, he is correct in holding that the importance of rights is not exhausted by their contribution to the level of protection that an individual enjoys, as it must be on an instrumental view like Pettit's. Although it does matter that rights be enforced with reasonable effectiveness, the sheer fact that one has adequate legal rights is essential to one's standing as a free citizen. In this respect, Kant stays faithful to the idea that freedom is primarily a matter of standing—a standing that the freeman has and that the slave lacks. Pettit himself frequently insists on the idea, but he fails to do it justice when he claims that freedom is simply a matter of being adequately (and reliably) shielded against the strength of others. As Kant recognizes, the standing of a free citizen is a more complex matter than that.

One could perhaps worry that the idea of legal standing is something of a red herring here—that it must ultimately be reducible to a complex network of power relations and, hence, that the position I attribute to Kant differs only nominally from Pettit's. That seems to me doubtful. Viewing legal standing as essential to freedom makes sense only if our conception of the former includes conceptions of what constitutes a fully adequate scheme of legal rights, appropriate legal recourse, justified punishment, and so on. Only if one believes that these notions all boil down to power relations will Kant's position appear similar to Pettit's. On any other view—and certainly that includes most views recently defended by philosophers—the notion of legal standing will outstrip the power relations that ground Pettit's theory.

VIII

The argument of the previous section suggests that a person is free in virtue of having full legal standing and, hence, that the right to freedom should be understood as entailing the right to have such standing—the right to have a fully adequate scheme of legal rights effectively recognized and enforced. In that sense, the right to freedom is a *right to have rights*.⁶⁹ A fuller characterization of the notion of legal standing would

69. The expression was famously used by the U.S. Supreme Court in *Trop v. Dulles*, 356 U.S. 86, 102 (1958). Note, however, that the Court seems to construe the right to have rights as a privilege that a country confers on an individual by making him a citizen. Justice Warren

be required to complete this discussion of the right to freedom; in particular, one would need to determine exactly what should count as a fully adequate scheme of rights. That task exceeds the confines of the present article, but note that our discussion has important implications for how it should be approached. It entails that the aim of a fully adequate scheme of rights is not to provide for citizens' security, prosperity, or happiness, considered as values to be promoted as such, but rather to allow rational agents living side by side to set and pursue ends for themselves without being subject to one another's choices. More precisely, given the constraints on state action set by the right to freedom, such a scheme of rights has to meet two conditions: it must consist of rights that are jointly sufficient to allow rational agents to live side by side without undermining one another's freedom, and it must only include rights that are necessary for this task—that is, there must be no right in the scheme that cannot be justified in terms of the need to protect universal freedom. The second condition, which follows directly from the right to freedom, sets narrow limits on the extent of power a state can legitimately claim, although as we saw above, the conception of freedom that Kant adopts goes some way toward alleviating the worry that the resulting conception of the state is uncomfortably thin for our sensibility.

Different sets of rights could presumably count as fully adequate in the present sense. A central task of political philosophy is to identify the elements common to all such sets—the rights that human beings must have if they are to coexist freely. Obvious candidates include the right to one's body, property rights, and contract rights, all of which are required for rational beings to secure the means necessary to set and pursue ends for themselves; slightly less obvious candidates include a right to state support for the poor, who are otherwise left to depend in the bleakest manner on the choices of others.⁷⁰ My concern here is not to establish any of these claims but merely to stress that doing so would be required to paint a complete picture of Kantian political philosophy.

Absent such a picture, our conclusions must retain a provisional character. I have tried to show that there are better grounds than has generally been assumed for thinking that we have a right to freedom,

thus writes of a person stripped of his citizenship: "While any one country may accord him some rights and, presumably, as long as he remained in this country, he would enjoy the limited rights of an alien, no country need do so, because he is stateless" (101). On the view I defend here, the right to have rights has deeper foundations than this suggests: it may be violated, but a person always retains it in virtue of her humanity.

70. On property rights, see my "Kant on Property Rights and the State"; on the right to state support, see Ernest Weinrib, "Poverty and Property in Kant's System of Rights," *Notre Dame Law Review* 78 (2003): 795–828; and Ripstein, *Force and Freedom*, chap. 9.

but what I have said is not intended as a conclusive argument in favor of Kant's approach. As I suggested above, whether it is sensible to think that we have a right to freedom ultimately depends on whether that claim's implications can be squared with our considered judgments about matters of justice.⁷¹ To go back to what was said at the beginning, if the more unsavory conclusions that Kant draws in the *Doctrine of Right* really did follow from our having a right to freedom, then we would essentially be back to the drawing board, as the considerations I have presented here are unlikely to overturn our considered judgment that, say, death and castration are barbarian forms of punishment. I do not believe that the right to freedom has such implications, but the point illustrates how any final judgment about Kant's approach to political philosophy must await a more worked-out version of the theory it leads to. Here I have merely tried to show that Kant's starting point is sufficiently plausible for its implications to be worth investigating.

71. On the notion of considered judgments and on the method of reflective equilibrium more generally, see Rawls, *Theory of Justice*, 506ff. Rawls contrasts the approach he advocates with two alternative ways of justifying normative principles: what he calls the Cartesian style of justification, which claims to proceed deductively from self-evident first principles, and justifications that aim to derive moral concepts from premoral ones. It should be clear that my argument for the right to freedom is meant to do neither of these things.