

**The Duty to Enter a Civil Condition:
Immanuel Kant's Argument in the *Metaphysics of Morals***

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Thesis submitted to the School of Graduate Studies
in partial fulfillment of the requirements of the degree of

Master of Arts, Philosophy

Memorial University of Newfoundland

May 2018

St. John's, Newfoundland and Labrador

Abstract

The problem of political obligation is the question of what justifies our obedience to the laws imposed upon us by a political authority, or alternatively, what makes a civil condition necessary. In this thesis, I provide an answer to this question through a study of Immanuel Kant's theory of right in his *Metaphysics of Morals*. My main claim is that, from a Kantian perspective, a civil condition is necessary we take ourselves to be rational beings. The crucial concept by which Kant establishes the necessity of a civil condition is the concept of freedom as independence from being constrained by another's choice. First, I argue that the concept of freedom is a demand of the very principle of our rational, free agency. I then show that a civil condition is necessary for our innate right to freedom.

The List of Abbreviations

In this research, the following abbreviations for Immanuel Kant's works have been used:

<i>CPR</i>	<i>Critique of Pure Reason</i>
<i>CprR</i>	<i>Critique of Practical Reason</i>
<i>DMM</i>	<i>Drafts for the Metaphysics of Morals</i>
<i>F</i>	<i>Natural Right Course Notes by Feyerabend</i>
<i>G</i>	<i>Groundwork of the Metaphysics of Morals</i>
<i>MM</i>	<i>Metaphysics of Morals</i>
<i>PP</i>	<i>Perpetual Peace</i>
<i>R</i>	<i>Reflections</i>
<i>TP</i>	<i>On the Common Saying: That May Be Correct in Theory, but it is of no Use in Practice</i>

The translations of *MM*, *G*, *CprR*, *PP*, and *TP* are Mary Gregor's in Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor. The Cambridge Edition of the Works of Immanuel Kant, (Cambridge: Cambridge University Press, 1996).

The translations of *DMM*, *F*, and *R* are Frederick Rauscher and Kenneth R. Westphal's in Immanuel Kant, *Lectures and Drafts on Political Philosophy*, ed. and trans. Frederick Rauscher and Kenneth R. Westphal. The Cambridge Edition of the Works of Immanuel Kant. (Cambridge: Cambridge University Press, 2016).

For the German text, I have used *Immanuel Kant: Gesammelte Schriften (Akademie-Ausgabe), I-XXIII. Electronic Edition. Band 6. Die Metaphysik der Sitten*. Past Masters. 1999.

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Introduction¹

As members of a political community, we find many aspects of our everyday lives conditioned by a system of laws enforced or imposed upon us by a political authority. What reasons do we have for obeying such a system? This question, known as the problem of ‘political obligation,’ can also be formulated in part as the question of how we are to justify the necessity of a state, or, in a more classical version of the question, how are we to justify leaving “the state of nature” in favor of a public authority and a legal system, that is, a civil condition? With this thesis, I intend to explain Immanuel Kant’s argument for the necessity of political authority for a community of human beings living together. In short, I will argue that Kant’s answer is that entering a civil condition is necessary because of our being rational, free agents.

Kant’s justification of political obligation in the ‘*Doctrine of Right*’ [*Rechtslehre*], later published as the first division of his *Metaphysics of Morals*, is not an *instrumentalist* theory. That is, by his account, political authority is not required merely because it comes with some benefits that result in a better condition of life.² My claim is that a civil condition is necessary for human life because we are rational, free agents. Our being

1. I would like to thank two anonymous readers for their constructive comments on the first version of this thesis.

2. For a brief comparison between Kant’s political philosophy and other utilitarian and Lockean approaches cf. Arthur Ripstein, *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge MA: Harvard University Press, 2009), Ch. 1.

rational, free agents requires an innate right to freedom, i.e. a right to have our actions determined by ourselves and not by others. This innate right to freedom requires establishing a civil condition.

The key notion in establishing such a necessity is the concept of freedom understood as the “independence from being constrained by another’s choice” (*MM* 6:237/393).³ As I aim to demonstrate, this dimension of freedom has various and crucial functions in Kant’s overall argument for the necessity of the civil condition, and can serve as the key notion by which we can understand the claim that a civil condition is necessary because of our being rational, free agents. Simply put, freedom in its external dimension cannot be consistently enacted without a public legal system. As Arthur Ripstein rightly insists, legal and political institutions, for Kant, are not “merely causal conditions to bring about the realization of the right to freedom,” but are instead the condition of the possibility for the exercise of our right to freedom.⁴

This conception of freedom understood as the independence from being constrained by another’s choice (*MM* 6:237/393) is crucial to the *Doctrine of Right*. According to Kant, this is “freedom in the *external* use of choice” (*MM* 6:214/375).⁵ It should be noted here that in the *Metaphysics of Morals*, Kant sometimes refer to this

3. The numbers before the slash refer to the standard academy page numbers. Those after the slash refer to the pages of the translations.

4. *Ibid.*, 9.

5. Unless noted, any emphasis is in the original texts.

conception of freedom as “outer freedom” [Äussere Freiheit].⁶ For this reason, when it comes to the discussion of Kant’s theory of right and political philosophy, many commentators use the expression “outer freedom” or “external freedom” in a purely functional sense without implying an ontological distinction.⁷ In the *Doctrine of Right*, Kant mostly uses “freedom” without modifying it with “external.” Therefore, I use it only in a functional sense and as shorthand for “freedom in the external use of choice” (*MM* 6:214/375).⁸

The concept of freedom in the *Doctrine of Right* has the function of overcoming the inevitable empirical limitations of human beings. Freedom is required to overcome another’s interference with our decisions, since a natural condition of human beings is that we live together. Kant refers to this external limitation in the *Natural Right Course Lectures*: “The will of a human being is not limited by even the whole of nature except by means of the wills of other human beings” (*F* 27:1319). In the *Doctrine of Right*, the duties of human beings are determined with regard to the *natural* condition that is their

6. For example, cf. *MM* 6:380/513 in which he asserts that the doctrine of right deals only with “the formal condition of outer freedom.” Also, in *MM* 6:406/534, he refers to the duties of right as “the duties of outer freedom,” while ethical duties are understood as “the duties of inner freedom.” Cf. also *MM* 6:254/408 and 6:396/526.

7. For example, cf. Ripstein, *Force and Freedom*, 80-82 and Katrin Flikschuh, *Kant and Modern Political Philosophy*, Ch. 3, in which she discusses “the morality of external freedom” and the distinction between internal and external freedom. Cf. also Jennifer K. Uleman’s discussion about the concept of external freedom and its relationship with freedom of will and internal freedom in her “External Freedom in Kant’s “Rechtslehre”: Political, Metaphysical,” in *Philosophy and Phenomenological Research* 68, no. 3 (2004): 578-601.

8. Hereafter, when I use “external freedom,” I merely mean what Kant understands as “freedom in the external use of choice,” which is “independence from being constrained by another’s choice.” Using this expression, I do not mean that external freedom is ontologically different from internal freedom. Rather, using the expression of “external” is only for the sake of clarity, to refer to freedom in Kant’s *Doctrine of Right*.

living together. It is inevitable for human beings to interact with each other, and thus to influence each others' actions. Consequently, Kant aims to show what actions are *right* when it comes to our reality of living with and amongst one another. It is in this context that Kant provides his argument for the necessity of entering a civil condition. My broad intention is to argue that a civil condition is a necessary as a demand of rational, free agency, using the concept of *freedom* we find in the *Metaphysics of Morals*.

To explain Kant's complex argument in the *Doctrine of Right* with a focus on the role of freedom in the external use of choice does not amount to overlooking other important concepts. On the contrary, due to the systematic character of Kant's work, any understanding of one concept requires showing its relationship to many others. Specifically, with regards to the concept of freedom, the concepts of right and possession are of particular importance. In explaining Kant's argument in this way, we shall see that freedom in the external use of choice may serve as a nexus for Kant's non-instrumentalist political philosophy.

Kant's own argument for this necessity takes up only one page of the first section of "Private Right." Here, Kant argues that rightful possession—a condition necessary for our freedom in the external use of choice—is possible only by and within a civil condition. On the face of it, it is not clear how possession could be related to the concept of freedom, let alone the nature of rational, free agency. That is, possession, according to the contemporary view, seems to be an empirical concept having nothing to do with human *rational* character. Kant's exposition of the human beings' right to choose and act freely gives us a clue to interpret this right as a demand of rational, free agency. As such,

in order to understand Kant's contention that a civil condition is necessary for us to have possession, I think, we must investigate the link between rational, free agency, freedom in the external use of choice, and possession.

To show that a civil condition is necessary because we are rational, free beings, I begin in the first chapter, by showing that the crucial concept of freedom—which is the keystone concept to justify the necessity of a civil condition—can be derived from a Kantian theory of rational, free agency. Emphasising the role of practical reason as the faculty that issues ends and rules for rational beings, I derive freedom in the external use of choice as a rational demand if we are to comply with the dictates of our reason. My claim is that we cannot rationally accept that we can be constrained by another's choice. The first chapter thus shows that freedom in the external use of choice, is a demand of our rational agency.

I then argue that what makes a civil condition necessary is human being's innate right to freedom. In the first section of chapter two, my claim is that freedom in the external use of choice has a twofold role in Kant's account of the concept of right. Through the exposition of the Universal Principle of Right, Kant suggests a criterion for the *rightfulness* of actions. I argue that this criterion is freedom in the external use of choice. As for the second role, freedom is the concept through which the authorization to coerce—which Kant claims to be connected with the Universal Principle of Right—can be justified. I then turn to the crucial concept of possession as a demand of freedom, as Kant proposes in the much-discussed "Postulate of Practical Reason with Regards to Rights." Having established the necessity of possession according to this Postulate, Kant

goes on to show that the right to possession cannot be consistent with our external exercise of freedom unless there exists a public lawgiving authority, that is, a civil condition. Through this analysis of the role of the notion of freedom for the necessity of possession, I come to this conclusion that a civil condition is necessary because we are rational, free agents.

Chapter One

External freedom and Rational Agency

Introduction

In the Introduction to the *Metaphysics of Morals*, Kant emphasizes some significant aspects of his theory of right. He first underscores the *metaphysical* aspect of the work in that it contains “a system of *a priori* cognition from concepts alone” (*MM* 6:216/371). This reveals that his theory of right is not an empirical investigation; rather it consists of concepts and principles that are derived independently from experience. However, he points out to a second character of the work as being at the same time an “application” of such *a priori* principles. By this application, he intends to take into account “the particular *nature* of human beings” that can be cognized by experience. Further in the Introduction to the *Doctrine of Right*, he makes clearer what he understands as the particular nature of human beings. His theory of right, as part of the *Metaphysics of Morals*, contains those *a priori* concepts that relate to the natural condition of human beings as beings that live together and have interaction with each other. The concept of right, he asserts, has only to do with external and practical relation of one person to another (*MM* 6:230/387). Then he suggests a principle that regulates this external relation of human beings with each other as the Universal Principle of Right, which contains a definition of the *rightfulness* of actions. My complete analysis of this Principle and the concept of right is in the second chapter of this thesis. Here for the purpose of the present chapter—which is to derive the concept of external freedom from

a Kantian theory of rational agency—it suffices to say that what serves as the criterion of the *rightfulness* of actions is the concept of external freedom defined as “the independence from being constrained by another’s choice” (*MM* 6:237/393). This means that actions are *right* if they can coexist with everyone’s freedom.

The conceptions of freedom familiar from Kant’s other major works are the freedom of will as being independent from the determinations of natural causality and from inclinations and desires. One might wonder where the concept of external freedom, which is crucial in the *Doctrine of Right*, comes from and why we should be externally free.

In the *Metaphysics of Morals*, one cannot find an answer for why we can claim that we should be externally free, except for a brief clue that Kant provides when he asserts that freedom in the external use of choice is the right belonging to a human being “by virtue of his humanity” (*MM* 6:237/393), which for Kant means by virtue of his personality independent from physical attributes. Using this brief clue, in this chapter, I suggest that Kant’s theory of rational, free agency, explained in his earlier works—including the *Critique of Pure Reason* and the *Groundwork of the Metaphysics of Morals*—can serve as a foundation for deriving the concept of external freedom—a concept which is then essential for Kant’s theory of right and eventually for his justification of the demand to enter a civil condition.

My analysis of external freedom (freedom in the external use of choice) as a demand of Kantian rational, free agency, I argue, can serve as an answer to the question of why we have a right to freedom. In the first section, I begin by explaining Kant’s

meaning of *humanity* as human beings' personality independent from physical attributes. Then, I explore the root of this understanding of human beings in the Third Antinomy of the first *Critique*, where we can find a Kantian theory of rational, free agency or what he calls "the causality of reason." I intend to show that reason produces rules and imperatives freely from any natural determination from without. Then in the second section, I argue that external freedom (freedom in the external use of choice) is required for our actions if we are to comply with the necessities imposed by hypothetical imperatives as the rules issued by our reason. My claim is that we cannot rationally accept that we can be constrained by another's choice, if we are to comply with the necessities we make for ourselves through hypothetical imperatives. If I am correct in this suggestion, we can conclude that external freedom is necessary because we are rational, free agents.

The Causality of Reason: Kant's Account of Rational, Free Agency

Freedom as independence from being constrained by another's choice, as we shall see, plays an important role in the formulation of the Universal Principle of Right. One is free insofar as one has decided for oneself what actions one wants to perform to achieve one's ends. However, it is not yet clear why Kant thinks that we have this right in the first place. In the *Doctrine of Right*, Kant provides a short yet significant clue. He writes that the exercise of freedom is "the only original right belonging to every human being *by virtue of his humanity*" (MM 6:237/393 [emphasis added]). But what is it about *humanity* that makes it such that those beings who are characterized by it have a *right* to exercise their capacity to freely choose actions in order to achieve ends?

In the Introduction to the Doctrine of Right, Kant asserts that

[i]n the doctrine of duties a human being can and should be represented 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*), as distinguished from the same subject represented as affected by physical attributes, *a human being* (*homo phaenomenon*) (*MM* 6:239/395).⁹

In other words, the capacity for freedom is related to the *intelligible* (supersensible) character of human beings, as opposed to their *sensible* character. This is in line with Kant's assertion that the innate right to freedom belongs to human beings *by virtue of their humanity*, which in light of the above passage can be taken as the claim that the innate right to freedom is related to the intelligibility of human beings. However, what is not clear is *how* they are related to each other. The above reference to the intelligible/sensible distinction leads us to Kant's theory of "the causality of reason" in the resolution to the Third Antinomy.¹⁰

9. Similar references to *humanity* as equivalent with noumenal aspect of human beings can also be seen in *MM* 6:418/544, 6:379/512, 6:423/547, and 6:429/552.

10. In the following reading of Kant's theory of rational agency, mainly based on the resolution of the Third Antinomy, I follow Henry Allison's interpretation of the text in his *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990). Also, Cf. Allison, *Kant's Groundwork of the Metaphysics of Morals: A Commentary* (Oxford: Oxford University Press, 2012), 149-175. Not all commentators agree with Allison's interpretation here. For a criticism of his interpretation and an entirely different account of the role of *humanity*, cf. Flikschuh, *Kant and Modern Political Philosophy*, Ch. 2 & 3. Regardless of the details of his interpretation, Allison's emphasis on Kant's "causality of reason" provides a ground, I argue, for the external concept of freedom.

An explanation of the intelligibility/sensibility distinction can be found in the Third Antinomy of the *Critique of Pure Reason*.¹¹ Here, Kant endeavors to resolve an apparent conflict between causality and freedom. The Third Antinomy details a conflict between two opposing claims about the transcendental idea of freedom. By the transcendental idea of freedom, Kant means “an **absolute** causal **spontaneity** beginning **from itself** a series of appearances” (*CPR* A446/B474). Kant regards the transcendental idea of freedom as the “real ground” of the imputability of the practical concept of freedom, or human freedom of the will. He thinks that, regarding the question of freedom of the will, what is puzzling for speculative philosophy is to accept “a faculty of beginning a series of successive things or states **from itself**,” and this faculty is exactly what he means by the transcendental idea of freedom. (*CPR* A448/B476). Kant regards this conflict as a threat of speculative reason against the moral use of reason. The moral use of reason, he claims, needs to be secured against any possible contradiction regarding the concept of freedom (*CPR* BXXV).

11. The antinomies are dialectical conflicts of reason with itself when it comes to the problems about the cosmological idea of the “world,” understood as the total of all appearances (*CPR* A420/B447). The Third Antinomy addresses the problem of whether it suffices to explain the idea of “world” with the concept of natural causality, as governing everything in appearances, or we need to assume a first beginning cause that is not itself caused by a further cause (that is, a *free* cause). Thus, he introduces his account of freedom in the context of a cosmological problem. A full elaboration of the Third Antinomy goes beyond the scope of this research. In what follows, I mostly focus on its resolution, as this is where the implications for the problem of human free will can be found. More specifically, I focus on his theory of “the causality of reason.” For Kant’s systematic explanation of how reason unavoidably ends up with such conflicts and his resolutions, cf. *CPR* A405/B432 – A567/B595. Also, in his other works, Kant refers to the same resolution. For example, cf. *CprR* 5:48-50/178-180, 5:65, and *G* 4:451-452/98-99. For an analysis of the antinomies and the dialectic of reason, cf. Michelle Grier, *Kant’s Doctrine of Transcendental Illusion*, (Cambridge: Cambridge University Press, 2004), 172-214; Allison, *Kant’s Transcendental Idealism: An Interpretation and Defense*, (New Haven: Yale University Press, 2004), 357-395; and Andrews Reath, “Kant’s Critical Account of Freedom,” in *A Companion to Kant*, ed. Graham Bird, (Chichester: Wiley-Blackwell, 2010), 275-290.

One side of the conflict affirms the necessity of an idea of freedom, while the other denies the possibility of freedom by claiming that “everything in the world happens solely in accordance with laws of nature” (*CPR* A444/B472; A445/B473). When it comes to the issue of human freedom of the will, the thesis of the Antinomy asserts that freedom can be attributed to human will. This means that human will can start a series of actions *from itself*, without being determined by anything external to itself. The antithesis, however, claims that since everything, including human will, is governed by the laws of causality, attributing freedom to human will would be inconsistent with the universality of causality.

Kant importantly sides with neither thesis nor antithesis. Instead, he attempts to resolve the conflict by finding a way to claim that both are true. The way he finds is to claim that both are true if they are assessed from different perspectives. In their “empirical” or “sensible” character, human beings—like other appearances in the world—are subject to the causal connections that govern the “world of sense” (*CPR* A540/B568). On the other hand, in their intelligible character, they “have to be declared free of all influences of sensibility... independent and free of all the natural necessity present solely in the world of sense” (*CPR* A541/B569). He thus concludes that “freedom and nature, each in its full significance, would both be found in the same actions, simultaneously and without any contradiction, according to whether one compares them with their intelligible or their sensible cause.” Thus, the problem of free will, Kant argues, can be resolved if we take these two perspectives into account. Human will is *free* from causal determinations because it belongs to the intelligible character of human

being, while at the same time the actions stemming from that will are subject to natural laws because they belong to the sensible character of human beings.

In its specifically *intelligible* freedom from the laws of nature, human will, according to Kant, operates according to its own kind of causality, one that differs from natural causality. Indeed, in the very formulation of the conflict, Kant refers to freedom as a kind of causality of its own (*CPR* A444/B472), indicating that freedom has its own laws. He proceeds to give an account of “the causality of reason.”¹² To use one of Kant’s examples, when a person voluntarily lies, one way to investigate her lie is to consider the probable sources of her action. These sources may include her bad upbringing, the bad company she keeps, her character as careless, or even the wickedness of her temper (*CPR* A554/B582). In considering these “empirical characters,” according to Kant, one investigates “the series of determining causes for a given natural effect,” which in this case is her will to lie. However, no matter how we deem her lie to be influenced by the circumstances of her life, we still *blame* her, as if the agent *herself* is the source of the series of consequences that follow from the lie. When we blame an agent—or in other words, when we impute her actions to her—we regard *reason itself* as “a cause that, regardless of all the empirical conditions...could have and ought to have determined the

12. When he uses the notion of “reason,” Kant often understands it as having either “speculative” or “practical” meaning. Setting aside whether the difference is plausible, in what follows I use “reason” in its practical function. A further terminological clarification worth mentioning is that for Kant “practical reason” and “will” are one and the same thing (*G* 4:412/66; *MM* 6:213/375): practical reason is reason insofar as its function is to produce actions in the world. It should also be noted that Allison’s account of rational agency is not limited to practical agency: it also goes to the speculative function of reason. But here I will concentrate on practical reason and thus addressing rational agency mostly from the practical point of view.

conduct of the person to be other than it is” (*CPR* A555/B583). In this way, we ascribe the actions to the agent’s *intelligible character*, that is, her reason. Without ascribing this alternative kind of causality to our rational, intelligible characters, we would be unable to impute actions to the agent *as a being endowed with reason*, and thus we would not be able to understand her as responsible for her actions. And without this possibility of imputability, the whole domain of morality becomes impossible to think. This example thus shows that to assert that human beings are *free* is equivalent to saying that human reason operates according to its own kind of causality: reason is the cause of our actions, but itself is not causally determined by empirical, sensible conditions.

To explain this account of the causality of reason, Kant’s distinction between *will* and *choice* needs to be considered. In the resolution of the Third Antinomy, Kant uses the notion of “the power of choice” [Willkür] as distinct from “practical reason,” the latter term taken to be equivalent with “will” [Wille].¹³ Practical reason, Kant defines, is reason considered as the cause that produces our actions and proposes imperatives “as rules to our powers of execution in everything practical” (*CPR* A547/B575). This power of execution is the power of choice, as he later adds that “reason exhibits a rule, in accordance with which one could... estimate the subjective principles of his power of choice” (*CPR* A549/B577). In other words, an agent acts according to a principle that she makes for her action. But this principle, in its own turn, is caused by practical reason, or

13. The same distinction is made in *MM* 6:213/375. It should be noted that Kant does not use these terms coherently throughout his works. For example, in the *Critique of Practical Reason*, he often uses the term *will* without distinguishing it from *choice*.

equivalently is formed according to the rules given by practical reason that is itself free from being determined from without. For example, imagine my action is that I am reading a book. In this account, the principle I have made for myself—using Kant’s terms, the principle produced by my power of choice— is that ‘I shall read this book.’ This principle, in its own turn, is produced according to a rule given by myself—again using Kant’s terms, the rule is issued by my *practical reason*. The rule produced for me by my practical reason in this case would be “I ought to read this book.”

This leads to an account of human rationality by which reason has two functions: one, in not being determined from without, it *gives* rules for effects it ought to produce; and the other, based on its self-generated rules, it generates *executive principles* that in turn produce actions. The power of choice [Willkür] that produces subjective principles for action is determined by the imperatives of practical reason. These subjective principles for actions Kant later calls *maxims* as distinct from the rules given by reason (*G* 4:402/56).¹⁴ The maxim is a principle for action that an agent makes for herself and can be in accordance with rules given by reason.

I used the example of reading a book to emphasise that practical reason in this account is not limited to produce merely moral laws. The rule that ‘I ought to read this book’ is not a moral law. This is important because when it comes to his account of free will, Kant is usually interpreted as giving an account of moral laws and moral laws alone. Although the example of the agent who lies regards moral law, the Third Antimony is by

14. Cf. also *MM* 6:225/379.

no means limited to ethics. As emphasized by Allison, this account of free agency includes *all* practical matters, not only moral laws.¹⁵ Kant explicitly refers to practical reason as giving general rules, orders, and imperatives which produce series of actions in general, without limiting it merely to moral laws such as ‘one ought not lie.’ Reason produces imperatives of any kind, not merely moral laws.

Regardless of their differences, all imperatives and rules given by reason have an important characteristic in common that is crucial to understanding Kantian rational, free agency. When reason commands a particular imperative, it *necessitates* an action, meaning that reason-generated imperatives accompanies a practical necessity. In the *Groundwork*, Kant distinguishes between two kinds of imperatives.¹⁶ Categorical imperatives are unconditional, as they represent the necessity of an action insofar as it is *good in itself*, not in order to achieve some additional end outside the action itself. Moral laws such as “one ought not to lie” are categorical, since their good does not lie in some end outside themselves. In contrast, *hypothetical* imperatives represent the necessity of an action as a means to something else (*G* 4:414/67).¹⁷ Using Kant’s own example, an imperative such as ‘one ought to save money when you are young so as not to be in need when you are old’ represents the necessity of saving money only to achieve another end (*CprR* 5:20/154). Despite the difference between them, both categorical and hypothetical

15. Allison, *Kant’s Theory of Freedom*. 36.

16. Cf. also *CprR* 5:20-21/154-155 and *MM* 6:222/377.

17. In *CprR* 5:20/154, Kant calls hypothetical imperatives *precepts*, and in *G* 4:416/69, he divides them into *rules* of skill (technical imperatives) and *counsels* of prudence (pragmatic imperatives). But all these imperatives are common in that they all necessitates an action.

imperatives make an action *necessary*, as they both come with a practical necessity. That is, a categorical imperative is unconditionally and universally necessary precisely because it does not aim towards an end other than itself, while a hypothetical imperative makes an action necessary for the agents who make a particular end for themselves. Categorical imperatives are so necessary that complying with them often requires resistance against our opposing inclinations.¹⁸ The necessary nature of hypothetical imperatives can also be observed in the fact that sometimes in complying with them, we find ourselves having opposing inclinations. To return to the example of reading a book, the hypothetical imperative can be ‘you ought to read this book *in order to* pass the exam.’ In complying with this order, I might be required to resist a strong opposing inclination to go hiking with friends. Therefore, both categories of rules, insofar as they are given by reason, are the same in their being experienced as necessary.

So far, we have seen that the human will, or in other words *practical reason*, produces imperatives that make some actions practically necessary. In producing such imperatives, the will is free in the sense that we cannot find a natural determining cause that necessitates the will to produce such imperatives. As Kant avers, no matter how many natural grounds we find that might affect the will, those grounds “cannot produce the ought” (*CPR* A548/B576).¹⁹

18. This is a famous contention of Kantian moral philosophy Cf. *G* 4:396-400/51-55.

19. Kant also explains that the freedom of the will has two meanings that mutually support each other: the negative meaning is independence from empirical conditions, while the positive meaning is that the will begins a series of occurrences *from itself* (*CPR* A553/B581). These two meanings of freedom are contained in the concept of “the freedom of will” or “human practical freedom.”

My emphasis in this account of rational, free agency is on that both categorical and hypothetical imperatives are freely produced by human will. One question that must be addressed is “what is required if an agent is to comply with these imperatives?” In the next section, focusing on the hypothetical imperatives, I argue that our compliance with imperatives issued by our reason would lead us to the external function of freedom as independence from being constrained by another’s choice.

External Freedom as a Demand of Rational Agency

We saw that the will gives itself rules and orders in the form of imperatives that in turn make some actions appear to us to be practically necessary. I emphasized that Kant’s account of the causality of reason suggests that every kind of imperative, including a hypothetical imperative, is freely issued by reason. Reading hypothetical imperatives as products of reason that at the same time aim towards specific end leads to an account of ends-oriented actions that are still explained by the causality of reason. External freedom (freedom in the external use of choice), I argue, can be derived as a demand of this account of how we are to comply with hypothetical imperatives.

Based on the account of the causality of reason explained above, reason freely gives hypothetical imperatives for whatever ends we desire.²⁰ Hypothetical imperatives

20. I should emphasise that the claim that even hypothetical imperatives, which aim towards an end, are freely issued by reason does not contradict the fact that in producing ends, we are *affected* by our desires and inclinations. The point is that no matter how much we are affected by our desires to produce ends and hypothetical imperatives, we have still produced them *freely* in the sense that the very production of such imperatives cannot be explained by natural causality—which is the fundamental outcome of the resolution to the Third Antinomy. Even in the extreme example of the criminal I have mentioned above, Kant contends that the criminal has made the principle of her action freely. This freedom of the will is what

are those that command us to act in a *specific and particular way* to achieve the specific ends we set for ourselves. As Allison asserts, if I want to conceive of myself as a free agent, I should also regard myself as “pursuing ends that I frame for myself and I regard as rational to pursue.”²¹ These imperatives, as I explained, make an action appear to reason as being practically necessary.

In the *Groundwork*, in which he mostly focuses on moral laws as categorical imperatives, Kant surprisingly gives a brief account of how the practical necessity arising from hypothetical imperatives is possible. Here, Kant appeals to what Kenneth Westphal calls “the Principle of Rational Willing,”²² according to which rational willing of an end requires rational willing of the means:

Whoever wills the end also wills (insofar as reason has decisive influence on his actions) the indispensably necessary means to it that are within his power (*G* 4:417/70).²³

makes it possible for us to blame the criminal, even though the end and the corresponding hypothetical imperative she has made for herself was affected by her desires, whatever they might have been.

21. Allison, *Kant's Theory of Freedom*, 41.

22. Kenneth R. Westphal, “A Kantian Justification of Possession,” in *Kant's Metaphysics of Morals: Interpretative Essays*, edited by Mark Timmons, (Oxford: Oxford University Press, 2002), 97.

23. This principle in the context of Kant's theory of right is emphasised by Guyer and Westphal. Guyer refers to this principle as “the canon of rationality that underlies all of Kant's claims about contradictions in willing.” Cf. Paul Guyer, “Kant's Deduction of the Principles of Right,” in *Kant's Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons, (New York: Oxford University Press, 2002), 57. Both Guyer and Westphal uses the principle in the context of Kant's discussion of the concept of possession. But as I shall explain, this principle does not refer to “means” as merely external objects required to achieve ends. I follow Westphal in calling the principle “the Principle of Rational Willing.” For Allison's detailed discussion of this principle, cf. Allison, *Kant's Groundwork*, 157-166.

Kant then explains that this principle is *analytic*: “in the volition of an object as my effect... the use of means is already thought, and the [hypothetical] imperatives extract the concept of actions necessary to this end merely from the concept of a volition of this end” (*G* 4:417/70). He finally adds that “when I know that only by such an action can the proposed effects take place, then it is an analytic proposition that if I fully will the effect I also will the action requisite to it” (*G* 4:417/70).

There are some points in this principle that help us to understand Kant’s account of hypothetical imperatives. By asserting that “reason has decisive influence on actions” and that it “fully wills the effect,” Kant shows that hypothetical imperatives make an action necessary when the agent decisively wills to achieve an end. This is evident from the fact that we do not actually act to achieve an end unless we have made a firm decision to do so. This observation is captured by Kant’s emphasis on the decisive influence of reason on our actions. Another significant point is that my knowledge of the indispensably necessary means is a condition of the possibility of willing those means. If I will some end, I also will the necessary means and actions for that end, but only if I am aware that some specific means are required to achieve the end. Finally, Kant’s contention that the principle is analytic means that willing an end without willing the necessary means is contradictory.

Taking these points into account, and following Allison’s reformulation, we can rephrase the principle as “if an agent fully wills an end and knows that a means is indispensably necessary for that end and the means is in her power, then the agent wills

the means.”²⁴ To explain more, as Allison suggests,²⁵ assume that an agent (fully) wills an end. Then she would ask herself ‘what should I do to achieve my desired end?’ The ground of asking this question is asserted in the principle as “willing the indispensably necessary means” to achieve the end. In other words, the agent is asking about the required means to achieve the end. Simply put, an agent cannot will an end without willing the required means and actions to achieve it. This is when the agent forms a hypothetical imperative: “*In order to* achieve the end that I desire, I should do such and such.”²⁶ Hence, the Principle of Rational Willing is what explains the possibility of hypothetical imperatives.

Now to see how this principle can explain the practical *necessitation* of hypothetical imperatives, as Allison argues, we can also assign a *prescriptive* role to this principle.²⁷ Since the agent wills an end and knows the indispensably necessary means to achieve the end, she tells herself: “Since I want that end and this action is the indispensably necessary action to that end, I *must* do this action.” This prescriptive form of the Principle of Rational Willing that the agent makes for herself is what necessitates her to enact the required actions to achieve her end.

24. Cf. Allison, *Kant's Groundwork*, 161.

25. *Ibid.*, 163.

26. Once again, I should emphasise that in forming such an imperative, the agent obviously is affected by her desires. However, the very willing of an end, and thus producing such an imperative, cannot be explained by natural laws of causality, which for Kant means that the agent freely produces the end and the imperative.

27. For his explanation of the prescriptivity and normativity of this principle, cf. *Ibid.*, 162.

Let us analyze this explanation of the possibility and the necessity of hypothetical imperatives in light of the account of rational, free agency explained in the previous section. Such an analysis leads us to a derivation of the concept of external freedom. We saw that reason gives imperatives of any kind to an agent, which simply means that an agent in her reason's imposition of any rule or imperative, is free from being *naturally determined*. The agent's end in the example of reading a book could be her passing the exam. Then she asks, "what should I do to achieve that end?" Her answer to this question is the hypothetical imperative produced by herself: "you should read this book *in order to* pass the exam." What is presupposed here, and what makes such an imperative possible, is the Principle of Rational Willing in its prescriptive form: "Since I want to pass the exam and I know that reading this book is an indispensably necessary means to pass the exam, I must read the book."²⁸ Based on this imperative, she makes maxims of her actions. Her principle would be "I shall read this book."

Recall that the power of choice has the function of executing the rules and orders legislated by the faculty of practical reason. In subsuming one's power of choice to categorical imperatives, there might be an obstacle from within oneself, such as one's own inclinations. Likewise, in compliance with hypothetical imperatives, there might also be some obstacles in the way of fulfilling the demand of the Principle of Rational Willing. One might think that here again the obstacle could be one's own inclinations.

28. Of course, she might be wrong in thinking that reading the book is an indispensably necessary means to pass the exam. But the point is not what really is necessary for passing the exam. Rather, it suffices that the agent considers a means as necessary for her to make an imperative.

However, the Principle of Rational Willing does not itself require that the agent resist those inclinations. Firstly because, in imposing the imperative upon herself, the agent *decisively* wills the end. In other words, because she decisively desires a particular end, she would resist any opposing inclinations. Second, even if those opposing inclinations are too strong to be given up, the agent might simply change her end and impose another practical necessity upon herself, now with a new hypothetical imperative in line with her inclinations. The Principle of Rational Willing does not preclude such a change in one's ends. Hence, in compliance with hypothetical imperatives, the agent's power of choice performs its executive function based on the particular demand of the imperative at a given time.

Instead, an obstacle in the way of our compliance with the demands of hypothetical imperatives would be anything external that may prevent us from performing an action we deemed as necessary to achieve a given end. Imagine that a prisoner who is forced to break rocks has a headache she desires to relieve. She knows that an indispensably necessary means to relieve the headache is to take a nap. The Principle of Rational Willing in this case would be: "Since I want to relieve the headache, and I know that taking a nap is the indispensably necessary means to relieve the headache, I must take a nap." Consequently, the hypothetical imperative she makes for herself would be "I ought to take a nap *in order to* relieve the headache." Now she decides and makes the principle of her action as "I shall take a nap." However, she is prevented from enacting these means by her situation of forced labor. That is, she cannot decide for herself, because a decision is already made for her that "she shall break rocks."

This obstacle against the complying with the prescriptivity of the Principle of Rational Willing is not an internal obstacle, but is instead an external one. Therefore, in order to comply with the demands of hypothetical imperatives, one's power of choice should make the principles of actions merely determined by one's own reason, and thus "independent from being constrained by another's choice."

This latter definition is freedom in the external use of choice as defined by Kant in the *Doctrine of Right*.²⁹ Freedom as the independence of one's choice from another's choice, in this account, is a rational demand of our compliance with hypothetical imperatives we make for ourselves. The idea is that an agent *should* be free—from constraint by *other* and *external* beings—to decide which actions are necessary to pursue her ends. The necessity of this "should" lies in the prescriptivity of the Principle of Rational Willing, which in its own turn explains the possibility and the practical necessity of hypothetical imperatives. These imperatives are the rules given by one's reason to pursue the ends one makes for oneself. Without having freedom in the external use of our choice, we neither can satisfy the prescriptivity of the Principle of Rational Willing, nor can we comply with the hypothetical imperatives we make for ourselves. In other words, without being externally free, hypothetical imperatives would not be practically

29. One should notice that unlike some commentators, I do not define external freedom as the independence of an agent's ability to *set ends* and pursue them. According to my reading, *deciding* what actions one wants to perform is *conceptually* different from *setting ends*. The latter is *conceptually* prior to the former, and cannot be *externally* limited. Hence, the proper definition of external freedom is the independence of my capacity to choose actions to achieve my ends from the same capacity in others. I will return to this point in the next chapter. Cf. n. 33.

necessary.³⁰ We thus should be able to decide for our actions independently from the power of choice of other human beings.

To explain more, assume that there is not such a prescription that I should be externally free. In this case, an agent accepts that anyone can decide for her what to do and what not to do. Now, since I am still free to set ends for myself, I will different ends based on my own desires. The Principle of Rational Willing demands that I make a hypothetical imperative for myself. The role of the hypothetical imperative I make is precisely to *decide* what actions I *must* do to achieve my end. But in the absence of external freedom (freedom in the external use of choice), I accept that my actions can be decided by anyone at any time. I have set ends for myself, and I have put myself under the necessity of the relevant hypothetical imperative, and I know what actions I must do to achieve my end; yet at the same time I have accepted that I am under the control of others to decide for me what actions I must do. The irrationality of this acceptance is that on the one hand I have put myself under the decisions of others, yet on the other hand, I have put myself under the practical necessity of the hypothetical imperatives I experience as the necessities of reason. This uncomfortable inconsistency makes it necessary to assume that I should be externally free from another's choice in order to adhere to the demands of the imperatives of reason.

30. A crucial point should be noted here to prevent misunderstanding. Here by relating external freedom to hypothetical imperatives, I am not suggesting that the duties of right, or juridical laws, are hypothetical imperatives. This is another topic of discussion. Here I emphasised on this straightforward observation that the ends we set for ourselves to pursue are of hypothetical kind. Indeed, this is in line with a benefit of Kant's legal doctrine, that the *rightfulness* of actions, and thus their being in accordance with the freedom of everyone, is not dependent on the moral requirement of being *internally* free.

Here, I have shown that we can derive external freedom (freedom in the external use of choice) as a demand of Kant's account of free agency. The freedom of will here is understood as a broad concept that explains Kantian account of "the causality of reason" as distinct from "the causality of nature." The freedom of will affirms that practical reason gives rules and imperatives of any kind *free* from the determinations of natural laws. This is the consequence of Kant's resolution to the Third Antinomy. Yet, to comply with the rules given by reason, freedom in the external use of choice is required to satisfy the prescriptivity of the Principle of Rational Willing. Thus understood, "the laws of freedom" are equivalent with the laws of causality of reason under the freedom of will, freely producing hypothetical imperatives. Thus, freedom in the external use of choice is a demand of compliance with hypothetical imperatives.

Conclusion

The concept of external freedom, as independence from being constrained by another's choice, is the most fundamental concept in Kant's theory of right. In this chapter, I have argued for a derivation of the concept of external freedom. External freedom can be derived from a Kantian rational, free agency. My claim was that external freedom from another's choice is a demand of rationally complying with hypothetical imperatives given by one's own reason. And based on Kant's explanation of the practical necessity of hypothetical imperatives, human beings decide which actions they want to perform to achieve their ends *free* from any constraints imposed by other human beings. The prescriptivity of the Principle of Rational Willing leads to this prescriptive concept

of external freedom. Therefore, everyone has the same claim to be externally free from others, because it is a demand that is essential to the possibility of rational, free agency.

I argued that external freedom is a demand of the rationality governing our compliance with the imperatives we issue for ourselves to achieve our desires and ends. This is a demand because there could always be an *external* obstacle in the way of our complying with those necessary imperatives—such as, in particular, the powers of choice of other human beings. In other words, our condition as living alongside others, taken with the necessity to comply with our own rules and projects—if we are to be deemed as rational beings—leads us to the requirement of being free from constraint by the wills of other human beings. We now understand the concept of external freedom as a normative concept by which we can regulate our external relations with each other. The principles that serve as this regulation of our external freedom is what Kant explores in his theory of right, to which I now turn.

Chapter Two

Entering a Civil Condition: A Demand of External Freedom

Introduction

Human beings cannot avoid living with each other. This might be the most straightforward experience we have regarding our natural condition of our life. We interact with each other and unavoidably have influence on other human beings. Yet our rationality requires that we live with each other in a way that we can be externally free from the choices of other human beings. Kant's theory of right, and within it, his labyrinthine argument for the necessity of a civil condition, aims at establishing the way in which human beings can live together without invalidating the rights of others to their own external freedom. Kant's ultimate contention regarding such a condition of living together is that "when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition" (*MM* 6:307/451). He further adds that this condition of individuals in relation to one another is called a civil condition (*MM* 6:311/455).

From this concise assertion about the necessity of a civil condition, we can see that this kind of condition *must* be established among human beings. The purpose of this chapter is to break down this assertion and analyze Kant's argument for such a necessity. I begin by showing that external freedom (freedom in the external use of choice) is the concept around which Kant builds his theory of right. Thus, in the first section, I argue

for a twofold role for external freedom in Kant's theory of right. My claim is that Kant establishes the *rightfulness* of the actions of human beings living together based on the concept of external freedom. In other words, freedom in the external use of choice is conceptually prior to the concept of right. The concept of right also justifies the coerciveness of juridical obligation, that is, the distinctive characteristic of the duties of right that they can be coercively imposed upon human beings. This second role can serve as an explanation of Kant's distinction between the duties of right and the duties of virtue in the *Metaphysics of Morals*, a distinction which is crucial to Kant's understanding of the nature of juridical obligation. Having defined the rightfulness of actions through the concept of freedom, Kant proceeds to show that to be externally free, human beings must be able to possess external objects. Thus, in the second section, I argue that *rightful possession*, by which we can forcibly exclude others from using the objects belonging to us, is a demand of external freedom. Kant's argument for the necessity of a civil condition will be discussed in the third section, in which I argue that even though rightful possession is a necessary condition for our having external freedom, it is not a sufficient condition. Kant interestingly argues that without a civil condition, the very concept of rightful possession would amount to an infringement upon external freedom. Thus, in the third section, I argue that rightful possession *without a civil condition* would infringe upon—rather than confirm—our external freedom. With this, the main line of my argument comes to the conclusion that a civil condition is necessary because we are rational, free agents.

External Freedom: Rightfulness and Coerciveness

The pivotal concept of Kant's political philosophy is the concept of right. If a political authority is to be understood as regulating the relations between human beings with each other, it is the concept of right that, for Kant, lays the foundation for explaining these relations and for justifying political authority, as well as for explaining the basis for rightful relations between separate states.³¹ This regulative function of right is clear in Kant's assertion that a system of rights [Das Recht]³² determines the conditions under which the choices of different individuals can be enacted in harmony with each other, or in other words without contradicting the enactment of the choices of others (*MM* 6:230/387). Kant understands this concept of right as an *a priori* rational concept that cannot be defined by an empirical investigation of what it means in different juridical systems (*MM* 6:230/387). Kant seeks an explanation of the concept that can distinguish what right *is* universally, no matter the specific juridical system in which we use the concept.

31. These are the subject-matters of the chapters of the *Doctrine of Right*, respectively Private Right, the Right of a State, the Right of Nations, and Cosmopolitan Right. To establish the necessity of a civil condition according to Kant, it suffices to focus on Private Right.

32. In reading Kant's *Doctrine of Right*, we should bear in mind that the word "right" can have three meanings that are not compatible with the meanings of the German word "Recht." The first meaning of "right" (in Kant's use "recht" and "gerecht") is an adjective to describe actions and their conformity with laws. The second meaning as a noun (In German "Recht") is in terms such as "a right to something." The third meaning, which makes troubles for translators, is a noun referring to "a system of external laws." This latter meaning is captured by the same German word "Das Recht." In English, translators use different word. "Law," "Right" (with a capital *R*), or simply "right" are among the suggestions. Here I used "system of rights" and mentioned the German word to avoid confusions with the concept of right as an adjective describing what actions are right. For a discussion of this difficulty, see Gregor's note on her translation in Immanuel Kant, *Practical Philosophy*, ed. and trans. Mary J. Gregor. The Cambridge Edition of the Works of Immanuel Kant, (Cambridge: Cambridge University Press, 1996), 358-59. For Kant's own clarification of different meanings of this term, cf. *DMM* 23:238.

External Freedom and the Rightfulness of Actions

The regulative function of the concept of right is captured by what Kant calls the Universal Principle of Right. In the “Introduction to the Doctrine of Right,” Kant gives his formulation of this Principle:

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 (*MM* 6:230/387).

This principle connects the concept of right with freedom in the external use of choice, as it is here that we see the rightfulness of an action revolves around the idea of freedom. Kant introduces *freedom in the external use of choice* in the articulation of what he calls our “innate right to freedom”:

Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity (*MM* 6:237/393).

Thus, we see that while *rightfulness* refers to actions as they are enacted, the *freedom of choice* grounds the *a priori* rightfulness of those actions. Consequently, the concept of right regulates actions by referring to the freedom of choice, which we have defined as independence from being constrained by another’s choice.

The broad notion under which Kant defines the concept of choice is our *faculty of desire*, and by this he understands “a faculty to *do or to refrain from doing as one pleases*” (MM 6:213/374). What Kant considers to be distinctive about choice is that when we desire to do something, as far as we are “conscious of our ability to bring about the *objects* of our desire,” our desire can be called a *choice*. Understanding the *objects* of our desire as the ends we want to pursue, when we *make a choice*, we decide to perform an action to achieve an end that we desire. Choice is the capacity by which we determine those actions that are suitable to achieve an end. Freedom of choice, then, refers to our innate capacity to independently choose an action for achieving our ends.³³ Consequently, the right to freedom is a person’s right to act so as to achieve ends *independently* from the enactment of the same capacity by others.³⁴

A crucial characteristic of this conception of freedom should be stressed here. Ascribing rightfulness to *actions* but freedom to *choice* means that while actions can be described as *right* or *wrong*, it is *choice* that can be *free* or not *free*. This means that in the Kantian conception of freedom, even if I *act* freely—or in other words without being interfered by others—I still might have been forced to act. For example, imagine a forced

33. In the literature, external freedom of choice is sometimes interpreted as the freedom to set and pursue ends without being constrained by the choices of others. For examples of reading external freedom as being able to *set ends* and pursue them independently, cf. Louis-Philippe Hodgson, “Kant on Property Rights and the State,” in *Kantian Review* 15, no. 1 (2010): 57, and Ripstein, *Force and Freedom*, Ch. 2. Hereafter, whenever I use the word *decide*, I mean to *choose an action*, not to *set an end*.

34. We should keep in mind that Kant’s theory of right and freedom is not a theory of human decision-making. He does not aim to explain *why* and *how* people end up having conflicting choices. Neither does he claim that in setting ends for ourselves, we *should* not consider other’s dependence on our choices. The Universal Principle of Right merely aims to give a criterion for the *rightfulness* of actions, should people make conflicting choices.

labour camp in which a prisoner is forced to break rocks. The prisoner can freely break rocks without interference from others, meaning that others are not limiting her action. But to break rocks is not her *choice*, as she has been forced to perform this action. In this sense, her action is not performed independently from others, as the decision is made by another person.³⁵

From this emphasis on the importance of choice for his notion of freedom, Kant proceeds to exclude other alternatives to the notion of choice—such as wishes or needs—from his theory of right. To see how wishes are excluded, recall that what Kant considers distinctive about choice is that when we desire to do something, as far as we are conscious of our ability to bring about the *objects* of our desire, our desire can be called *choice*. This means that when we *choose*, we decide to perform an action to achieve our ends. However, if there is no such consciousness, the desire is merely a *wish* (*MM* 6:230/387). The difference thus lies in the “consciousness of our ability to bring about the ends.” How we ought to read this qualification is important to grasp the difference between *choice* and *wish*. Intuitively, *choosing* to have a house is different from *wishing* to have a house. In the former case, I already set for myself the end of having a house and I choose my actions so as to achieve that end. In the latter case, there is no such acting to achieve the end. “Consciousness” here should be read as a condition Kant adds to emphasize that the difference lies in an agent’s own mental attitude to the possibility of

35. The importance to distinguish between the *independence* and the *lack of interference* is emphasised in Hodgson, “Kant on the Right to Freedom: A Defense,” *Ethics* 120, (2010): 806-807. He compares this understanding of freedom with a Hobbesian and Rousseauian conception of freedom. For more elaboration of the concept in comparison to contemporary liberal understandings of freedom, cf. Ripstein, *Force and Freedom*, 31-42.

bringing about the end she has set for herself. In other words, Kant here intends to make the difference between *choice* and *wish* by referring to the agent's own subjective attitude towards the end, rather than the possibility of the end's achievement according to the conditions of the outside world.³⁶

Having established the difference between *choice* and *wish*, Kant excludes the latter from his theory of right. This means that with regard to conflicts in the enactment of freedom by individual human beings, as long as it is possible for individuals to interact with each other, there can be conflicts between one individual's choice and another's wish, *without any implications for the rightfulness of the situation*. I make a choice to buy a house, while someone else wishes to have the same house. This kind of conflict, according to Kant's exposition of the concept of right, cannot be captured within a legal conceptual framework. To use Weinrib's phrase, whereas choice has the power to influence the external world, wishing on its own has no "external effect."³⁷ Just as in the case of wishing, the individual's "needs" are not included in the concept of right. Even if

36. Ripstein provides a different interpretation of this distinction. He does not interpret the difference as merely based on an agent's own attitude. Rather, he refers to the availability of "means" as marking the difference between *choice* and *wish*. He asserts that in *choosing* to do something, "having means with which to pursue purposes is conceptually prior to setting those purposes" (*Force and Freedom*, 14). However, reading Kant here as referring to the agent's own attitude rules out the actual means available to her. In other words, even if I do not have means available to achieve an end, if I have genuinely *chosen* to achieve them, I thereby must attempt to make the means available. This is indeed what we mean when we say that I *act to achieve my end*. Moreover, even if I have means available, it is still possible that I merely *wish* to achieve an end, for any other probable reason I might have *not* to choose an action, based on my own attitude towards actualizing my ends.

37. Ernest J. Weinrib, "Law as Idea of Reason," in *Essays on Kant's Political Philosophy*, ed. Howard Williams (Chicago: The University of Chicago Press, 1992), 25.

I am in urgent *need* of a house, my need cannot be settled in terms of rights until that need is actualized in the form of a choice to buy one.³⁸

This emphasis on the external effects of individual choices on each other brings us to Kant's understanding of the possibility of human interaction. Kant's conception of right presupposes that individual human beings are capable of coming together and forming a community. If there was only one human being in the world, it would be absurd to talk about any concept of right, because in that case there would be no *other's choice* that could be in conflict with those of the solitary individual, nor could her freedom be restricted by choices that are outside her own freedom of choice. Indeed, it would not make sense to talk about her external freedom, because in the very definition of external freedom, there lies *being constrained by another's choice*, the independence from which constitutes the individual's external freedom. Kant asserts that the concept of right has to do "only with the external and indeed practical relation of one person to another," and clarifies this by asserting that freedom concerns the actions of individuals only insofar as they have direct or indirect influence on those of others (*MM* 6:230/387).

Let us now recapitulate the main points. We have the capacity to choose actions to achieve our ends. Since we live in community and interact with each other, it is possible that one's capacity to choose actions to achieve ends can be restricted by those of others. The innate right to freedom asserts that it is my right to choose actions to

38. Of course, taking others' needs into account can be a moral demand. Likewise, if the social organization of a community is to be just, it needs to consider people's needs. But the point here is not that Kant requires us to ignore others' needs in our moral or economic considerations. Rather, he intends to scrutinize the fundamental concepts of right as such without any reference to other disciplines.

achieve my ends *independently* from others. Finally, the Universal Principle of Right says that the actions of others are right if they can satisfy the freedom (independence) of my capacity to choose actions to achieve our ends. We thus see that “rightful” actions are those which are in harmony with the freedom of choice of others, or in other words, insofar as they do not violate one’s *independence from being constrained by another’s choice*.

We can begin to see how important the concept of freedom is for Kant’s articulation of the concept of right. Indeed, without freedom in this sense, Kant would not be able to formulate the Universal Principle of Right, since establishing the rightfulness of actions presupposes *freedom in the external use of choice* as its criterion. In this sense, the concept of freedom is conceptually prior to the concept of right.

Kant is not explicit about the dependence of the Universal Principle of Right on the concept of freedom. Some commentators interpret the Universal Principle of Right as conceptually prior to the concept of freedom. For example, Gregor avers that the Universal Principle of Right *defines* the concept of freedom, while Ripstein recommends that the innate right to freedom is the “individualization” of the Principle, “applied to the case in which only persons are considered.”³⁹ In both cases, the Principle is taken to be conceptually prior to freedom.

One motivating factor for such interpretations is Kant’s own assertion that the Principle as a “postulate that is incapable of further proof” (*MM* 6:231/388). However,

39. Cf. Gregor, *Laws of Freedom*, 49 and Ripstein, *Force and Freedom*, 35.

strictly speaking, Kant does not describe the Principle itself as a postulate. After explaining the Principle, he proceeds to provide an *imperative form* of the Principle, now called “the universal law of right,” which says “so act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law” (MM 6:231/388). While the Universal Principle of Right provides a criterion of the *rightfulness* of actions, this latter imperative form “lays an obligation” on us. Kant immediately notes that the nature of this obligation is not that “I *myself should* limit my freedom” according to this Principle. Rather, he continues, “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” (MM 6:231/388). It is only this latter assertion that Kant describes as a postulate that is incapable of further proof. I will turn to this obligatory function of the Universal Principle of Right in a moment, but my point here is that strictly speaking, Kant does not describe the Principle itself as a postulate. Therefore, we can plausibly read freedom as being conceptually prior to the Universal Principle of Right. In short, the Universal Principle of Right defines a *criterion* for the rightfulness of actions by demarcating how those actions are to be consistent with the freedom of all human beings.

However, the role of freedom in Kant’s theory of right is not limited to its being a criterion for the rightfulness of actions. To see the second significant role of the concept of freedom for Kant’s doctrine of right, we need to investigate the obligatory function of the Universal Principle of Right that I have mentioned above. Kant’s claim, I argue, is that the concept of right is coercive for no reason other than the very nature of the

concept of freedom. To explain this significant role, we need to read the obligatory function of the Universal Principle of Right in the broader context of Kant's division between duties of right and duties of virtue.

External Freedom and Coerciveness

Kant's emphasis on the obligatory function of the Universal Principle of Right means that we have *duty* to act in a way that satisfies the demands of the Principle, or in other words by acting in a way that does not contradict the freedom of others. Kant clarifies the relation between duty [Pflicht] and obligation [Verbindung] in the Introduction to the *Metaphysics of Morals*, when he says "*Duty* [Pflicht] is that action to which someone is obligated [Verbunden].⁴⁰ It is therefore the matter of obligation" (*MM* 6:222/377). This means that every right has a corresponding duty: if I have a *right* to choose actions to achieve my ends independently from others, then others have a *duty* to refrain from infringing upon my freedom. Kant explains the distinctive nature of the duties of right when he asserts that the Principle

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... when one's aim is not to teach virtue but only to set forth what is *right*, one may not and should not represent that law of right as itself the incentive to action (*MM* 6:231/388).

40. Gregor's translation for Verbunden is "bound" which misses the connection with Verbindung or obligation. I have slightly modified the translation by suggesting the word "obligated."

Kant's concern here is to emphasize the obligatory function of the Principle and at the same time to avoid the conflation of right and virtue. There are duties of right but as distinct from duties of virtue.

Kant proposes a criterion for distinguishing between the two types of duties in the "Introduction to the Metaphysics of Morals." The duties of right are those into which the individual can be *coerced*, whereas the duties of virtue are those into which the individual *cannot* be coerced (*MM* 6:220/384). In other words, external lawgiving in the domain of rights is possible, whereas the kind of lawgiving that is at work in ethics is internal. The difference, Kant clarifies, lies in the different *kinds of obligation* we have towards laws. *Ethical* obligation is that by which the "incentive" to obey the law is the idea of the law itself. In contrast, *juridical* obligation is that which is indifferent to the incentives for the agent who obeys a law. My obedience to juridical law because of the external constraint means that it falls within the domain of right. In this domain, it does not matter what constitutes my incentives to obey laws. If I obey a moral law out of my fear from an external lawgiver, my obedience to that law is not ethical. However, since ethical obligation means obeying a law by making it my end, and since, as we saw, it is not possible for another person to *set my end* for me, it is not possible for another person to coerce me into fulfilling an ethical obligation (*MM* 6:381/514). Although it is possible that I *ethically* obey a duty of right by making it my own end, *juridically* obeying a duty of right does not require that I obey it for the sake of law by setting the fulfillment of that law as my end. Therefore, one can be coerced into the duties belonging to the domain of

right by an external source.⁴¹ In other words, coercion from an external source suffices to obey a duty of right, even if the agent herself does not make the duty her own law. Thus, we see that juridical obligation and ethical obligation are different in that the former, unlike the latter, may be coerced. Moreover, the obligation connected with the Universal Principle of Right is a juridical one, meaning that it is accompanied by coercion.

This coercive character for the Universal Principle of Right can be seen as a demand of freedom when we turn to Kant's argument for the justification of coercion in the domain of rights. Kant provides an argument for the contention that "right is connected with an authorization to use coercion." The argument, the crux of which I argue is reason's emphasis on the necessity of ensuring freedom, goes as follows. According to the Universal Principle of Right, any action is *right* if it can coexist with the freedom of everyone. Thus, any action that is *not* right in this sense is merely a *hindrance* to freedom, since based on the Principle, a *wrong* action is that which wholly *violates* a person's freedom. Now, Kant asserts that based on the principle of non-contradiction, a *hindering of a hindrance to freedom* is consistent with freedom, and thus must be *right*. *Hindering of a hindrance to freedom* is exactly what Kant understands by *coercion*. In other words, if a person, through freedom in her external use of choice, infringes upon my freedom, her own freedom can be justifiably restricted, since a *hindering of a hindrance to freedom* is itself in harmony with the concept of right. We all have a duty to

41. Kant here can be interpreted as having admitted that such a division is not exhaustive. It has also been argued that this division is not exclusive either. Cf. Onora O'Neill, "Enactable and Enforceable: Kant's Criteria for Right and Virtue," in *Kant-Studien* 107, no. 1 (2017): 111-124.

fulfil the demands of the right of the individual human being, and this can mean coercing others to adhere to the Universal Principle of Right in their actions and choices. In short, if my choice is in harmony with the freedom of others—that is, if it is *right*—every other human being can be justifiably coerced to fulfil her duty to accommodate my right action by limiting *wrong* actions.

This argument reveals a noteworthy characteristic of Kant's understanding of coercion. Both wrong actions and coercion are restrictions imposed upon a person's freedom of choice. In both cases, the person is forced to refrain from freely choosing and doing something. But coercion differs from a wrong action in that coercion is a restriction to a person's freedom of choice *only if* her enactment of her freedom of choice itself imposes a restriction on another's freedom of choice. What makes coercion a *rightful* action, then, is the very nature of the concept of external freedom. If I have a right to choose actions to achieve my ends freely, but in doing so I violate the same right of another person to choose actions to achieve her ends freely, I can be justifiably coerced to refrain from doing so for the sake of the universality of the concept of external freedom. Therefore, the coerciveness of the duties of right is justified by referring to the concept of external freedom. And since coerciveness, as we saw, distinguishes the domain of rights from that of virtues, we can see how significant the concept of external freedom (freedom in the external use of choice) is for the domain of rights in general.

In this section, I explained how the Universal Principle of Right serves as Kant's suggestion for the *rightfulness* of actions, and I analyzed different aspects of the concept of right. I argued that the concept of freedom plays a twofold role in Kant's theory of

right. First, the Universal Principle of Right presupposes the concept of freedom and suggests it as the criterion of the *rightfulness* of action. Second, freedom in the external use of choice is a concept that Kant uses to justify the coerciveness of the Universal Principle of Right, or the coerciveness of obligation that is operating in the domain of the duties of right, as opposed to ethical duties. In short, an agent's action is right as far as it does not infringe upon the capacity of others to choose actions to achieve ends, and anyone can be coerced to refrain from such infringement. The next step Kant takes towards establishing the necessity of a civil condition is the contention that the innate right to freedom cannot be fulfilled without external rights to external objects. We now turn to the concept of possession and its role in Kant's overall argument in the *Doctrine of Right*.

Possession as a Demand of External Freedom

We have seen that within the very concept of right, there lies the plausibility of coercion: everyone who has a right to do something also has the right to *coerce* others—that is, to limit others' freedom—so that she can *secure* her own right. However, this could lead us to a situation that appears to be fundamentally removed from security and stability making it more like the situation of war of all against all others. But the necessity of the civil condition, as Kant understands it, is not merely to ensure that we avoid this kind of insecurity. That is, the appeal to a civil condition has deeper roots in Kant's account of *possession*. His main contention is that the civil condition is the only condition in which possession is possible. In fact, he begins his argument for the necessity of a civil condition with the concept of possession. The difficulty, thus, is to

show how possessing external objects—or having external rights—can be interpreted as necessary for the innate right to freedom. My main focus in this section is to argue for such a necessity by showing that rightful possession is necessary because without it we cannot be externally free.

Neither the Universal Principle of Right—the principle that defines the rightfulness of actions as the conformity of actions with the freedom of everyone—nor the very concept of external freedom—as independence from being constrained by another’s choice—refer to “external objects” available for an agent to use. Thus, one might expect to see why a theory of right needs to discuss possessing of external objects. Indeed, Kant’s claim that the only innate right we have is freedom accompanies the claim that every other right we have to things belongs to the sphere of *external* or *acquired* rights. In other words, external freedom belongs to us *by virtue of our humanity* (understood as our personality independent of physical attributes), whereas every other thing that might belong to us is external and we have external right to them. This division between internal and external right, together with the fact that neither in the Universal Principle of Right, nor in the concept of external freedom, can we find an account of external objects that belong to us, leads us to the difficulty to explain the transition from external freedom to the acquired rights to external objects. And without such an explanation, it would not be clear why possession—and thus the civil condition—is a

demand of external freedom. The explanation of this transition can be found in Kant's argument for what he calls the "Postulate of Practical Reason with Regard to Rights."⁴²

Kant starts his discussion of possession by defining what is *rightfully mine* as "that is *rightfully mine (meum iuris)* with which I am so connected that another's use of it without my consent would wrong me" (*MM* 6:245/401 §1). In other words, another's use of something that is rightfully mine would infringe upon my freedom. Kant proceeds to show why this rightful possession is necessary and how it is possible that an object can be rightfully connected to the person. The Postulate of Practical Reason with Regard to Rights (§2) is provided to argue for this necessity.⁴³ This Postulate says that

It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice

42. There is a considerable debate regarding the correct place of the paragraphs containing the Postulate in the *Metaphysics of Morals*. Gregor's translation, following Ludwig's suggestion, changes the place of the Postulate from §2 to §6. The suggested correction has a crucial influence on how we are supposed to read the role of the Postulate in Kant's argument. I will return to this point later, but for now, it should be noted that regarding the proper place of the Postulate, I am following Westphal in that the Postulate belongs to its published place in §2. Cf. Westphal, "A Kantian Justification of Possession," 94.

43. It should be noted that Kant's discussion of possession should not be read as a defense of private ownership. Hodgson rightly emphasizes that the necessity of rightful possession should not be conflated with the form of private property found in capitalism. Rightful possession merely requires a rightful system in which the possessor can exclude others from using a certain external object. Cf. Hodgson, "Kant on Property Rights and the State," 62. Westphal notably insists that properly speaking the concept of "property" is different from "possession" in that the former contains a complex package of rights, including the right to manage, income, and capital, that cannot be attributed to the concept of possession as a general concept that only requires the exclusion of others from using an object. My reading of the concept of possession, in its avoidance of the term "property," is close to Westphal. For his discussion, cf. Westphal, "A Kantian Justification of Possession," 90-91. For an example of a conflation between possession and private ownership, and thus giving an anti-communistic reading of Kant's concept of possession, cf. Wolfgang Kersting, "Politics, Freedom, and Order: Kant's Political Philosophy," in *The Cambridge Companion to Kant*, edited by Paul Guyer, (Cambridge: Cambridge University Press, 1992), 348-349.

would *in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to right (*MM* 6:246/404).⁴⁴

This Postulate contains Kant's significant transition from *the innate right to freedom to the rights to external objects*. To see why Kant provides this contention as a Postulate, we need to see why the principles I have discussed so far cannot serve as a ground for the necessity of possessing external objects. Reviewing the Principle of Rational Willing, the Universal Principle of Right, and the innate right to freedom can help us with understanding the specific role of the Postulate in Kant's theory of right, that is, the necessity of possession for freedom.

We have seen that the Principle of Rational Willing—from which we can derive the concept of external freedom—asserts that rational willing of an end requires rational willing of the means, and that this requires the agent's awareness of the *indispensability* of particular means to achieve particular ends. It is also undeniable that human beings require external objects to perform actions. Whatever ends we have in our minds, and whatever actions we deem as necessary to achieve those ends, we need external objects to perform our actions.⁴⁵ Thus, the Principle of Rational Willing implies also that if we will an end, we also will that certain objects are indispensably necessary to achieve that end.

44. Following Guyer and Westphal, I have replaced “contrary to right” with Gregor’s “contrary to rights.” The German term is *rechtswidrig* and as Guyer notes there is no reason to use a plural word in the translation. This is important because the phrase “contrary to right” reads as referring to the Universal Principle of Right. Cf. Guyer, “Kant’s Deduction of the Principles of Right,” 55, and Westphal, “A Kantian Justification of Possession,” 92.

45. It might seem that, for example, a simple action such as taking a nap or talking do not require any external objects. However, even for these simple actions, there needs to be a piece of land on which we can rest or talk. Therefore, external objects are required for any kind of action.

Therefore, this Principle can explain why we require external objects: we cannot rationally will an end without willing the means. However, the *rightfulness* of the connection between an object and the possessor cannot be explained by the Principle of Rational Willing, since *using* objects is different from *possessing* them. As a concept belonging to the domain of rights, possession as we have seen, requires a restriction on everyone's use of an object except for the possessor. Such a restriction cannot be explained by the Principle of Rational Willing.

Neither can the Universal Principle of Right explain the necessity of rightful possession. We have seen that the Universal Principle of Right describes an action as *right* insofar as the action is consistent with everyone's freedom. Obviously using an external object is itself an action: I cannot use an object unless while I am using it I am performing an action. Applying the Universal Principle of Right to the use of external objects would merely lead to the assertion that every use of an object is right if it can coexist with everyone's freedom. The Principle is so general and formal that it cannot explain why it is necessary to *possess* an external object such that we can prohibit others from using it.

Moreover, the innate right to freedom, as we have seen, asserts that we have the right to choose our actions independently from others. Simply put, others have the duty to refrain from deciding what actions I shall perform to achieve my ends. With regards to the use of external objects, the innate right to freedom confirms that I should be able to decide, independently from others, which objects I want to use to achieve my ends. The innate right to freedom does not contain any reference to the necessity of excluding

others from using an external object. Therefore, the question why it is necessary to *possess* an external object, so that we can prohibit others from using the possessed object remains unanswered.

This is why Kant provides the necessity of rightful possession as a “Postulate,” hence indicating that such a necessity is not contained in the Universal Principle of Right, nor in the innate right to freedom. Nevertheless, Kant gives an argument for the Postulate that serves as the key to his understanding of possession as a right.⁴⁶

Kant provides us with some clarifications of the concepts contained in the Postulate. First, an “external object,” Kant defines, is an object *distinct* from an agent (*MM* 6:253/407). This means that even if an object is inseparably attached to my body, and thus is in the same space and time as I am, as far as I can distinguish it as distinct from myself, the object is “external” to me. Thus understood, to my own body—as something that is not distinct from myself—I do not have external right; rather, my right to my own body is an innate right. If one interferes with my use of my own body, one is violating my innate right to freedom. In other words, to establish my right to my own body, I do not need to establish that I *possess* my body and I have an external right to it. Any object except for my own body and as distinct from my body, is “external object” that I can possess and to which I can meaningfully say that I have an external right.

Second, an “object of my choice” in the Postulate refers to anything that an agent has “the physical power to make use of” (*MM* 6:246/405). In other words, when I decide

46. For an explanation of Kant’s use of the term “postulate” for some principles that still can be derived from other principles, cf., Guyer, “Kant’s Deduction of the Principles of Right,” 23–64.

to perform an action by my power of choice, my awareness that I have the physical power to use an object suffices for me to deem that object as an “object of my power of choice.”⁴⁷ We should bear in mind that thus understood, merely because I have something within my power to use, I cannot claim that I possess it, nor that I am entitled to own it. The physical power to use something is different from possessing something.⁴⁸

The Postulate thus clarified is an assertion not about the necessity for human beings to *use* external objects—to have the objects within their physical power. Instead, it merely refers to the necessity of *rightful possession* of external objects, so that the possessor can prohibit others from using the possessed objects. The Postulate asserts that a community of people in which it is not possible to possess external objects is “contrary to right,” that is, is a violation of the Universal Principle of Right. Thus, it is necessary, as a matter of rights, to be able to possess external objects.⁴⁹

Now, what is the most significant is to argue why it is necessary to possess external objects. Again, it is not because we need to *use* external objects to achieve our

47. Also recall from the previous section that choice is different from wish in that in the former there is a consciousness of being able to perform actions to achieve ends, while in the latter there is not such consciousness. The point here about being aware of our physical power to use an object, I think, is another emphasis on the same point Kant already discussed about the difference between choice and wish. In the *Drafts for the Metaphysics of Morals*, where he discusses the Postulate, Kant asserts that having this physical power is “the sole condition under which something can be an object of power of choice (not of mere wish)” (*DMM* 23:212).

48. Kant asserts that “in order to *think of* something simply as an object of my choice it is sufficient for me to be conscious of having it within my power” (*MM* 6:246/406). This is in line with my knowledge of indispensably necessary means as a rational condition of willing an end, as explained by the Principle of Rational Willing.

49. In the *Drafts for the Metaphysics of Morals*, Kant notes that “by nature no outer corporeal thing belongs to anyone at all, and thus all things are to this extent *res nullius* {ownerless things}. As a matter of right, however, no one can be necessitated to adopt a principle in accordance with which outer usable things as such would belong to no one” (*DMM* 23:287).

ends—this claim is contained in the Principle of Rational Willing. Kant’s claim is the stronger claim that without being able to possess external objects rightfully, we would end up violating the Universal Principle of Right.

Kant’s complex argument goes as follows:

An object of my choice is something that I have the *physical* power to use.

If it were nevertheless absolutely not within my *rightful* power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object, by putting *usable* objects beyond any possibility of being *used*; in other words, it would annihilate them in a practical respect and make them into *res nullius*, even though in the use of things choice was formally consistent with everyone’s outer freedom in accordance with universal laws (*MM* 6:246/405).

This dense paragraph shows that Kant’s argument for the necessity of rightful possession revolves around the concept of freedom. Kant emphasizes that if rightful possession is not possible, then freedom deprives itself from the use of objects by putting usable objects beyond the possibility of being used.⁵⁰

50. This dense argument, in the *Drafts for the Metaphysics of Morals* takes several pages with various explanations. The main point of the argument—that usable objects would not be usable and thus freedom excludes itself from using objects—can also be observed in 23:278. But in addition to this main claim, Kant argues also that the impossibility of rightful possession involves a contradiction (*DMM* 23:230). In a circumstance in which objects cannot be rightfully possessed, the mere using of an object is

This claim might seem to be strange considering Kant's explicit distinction between *using* an object and *possessing* it. While the Postulate is a claim about possession, the argument that Kant provides concerns the usable objects themselves. Therefore, the claim that possession is necessary because without it usable objects would not be usable does not explain why rightful possession is necessary for external freedom, nor why it may be that without rightful possession usable objects would be unusable.

Let us imagine a circumstance in which it is not possible for anyone to possess any external object. Recall that what is distinctive about rightfully possessing an object is that the possessor can exclude others from using the possessed object. On the face of it, it might seem that in such a circumstance, people are more free to perform whatever actions they want. In the *Drafts*, Kant uses this point as an argument against the necessity of rightful possession and contends that the power of choice that is limited to the condition of mine or yours "would not be a free power of choice" (*DMM* 23:230). But Kant's account of possession makes it such that it is in exactly this situation that external freedom is infringed. Moreover, the Postulate, as we saw, asserts that the absence of

not an infringement upon anyone's external freedom, and thus is right. However, since every external object is usable, and thus, everyone can rightfully use objects—without infringing upon anyone's external freedom—everyone in using the objects are infringing upon anyone's external freedom. In other words, using external objects in itself is right, because it is not an infringement upon the external freedom of others. Exactly because using external objects is rightful for everyone, everyone has the right to use external objects. If everyone has the right to use an object, then anyone who uses the object does wrong against anyone. It is self-contradictory to say that every use of an object is right and wrong. This argument is not inserted in the *Metaphysics of Morals*. However, the contention that the mere use of things is formally right is kept in the text when Kant asserts that "in the use of things choice was formally consistent with everyone's outer freedom in accordance with universal laws." It is also noticeable that Kant's discussion of the Postulate in the *Drafts* takes the form of an antinomy, the thesis of which is the Postulate. However, in the *Metaphysics of Morals*, the presentation of the Postulate and its argument is not antinomial.

possession is contrary to right. This indicates that an action that denies the reality of possession is not rightful, or alternatively is an infringement upon the freedom of others. Thus, we need to see how a circumstance in which no external object can be rightfully possessed is an infringement upon freedom.

Let us call the circumstance in which external objects “have to belong to no one,” that is, external objects are ownerless, the circumstance of *res nullius*. In such a circumstance, no one can claim that an external object is one’s own. This means that no one can rightfully prevent anyone from using an object. Even during the time in which I am using an object, I cannot claim that the object is mine. Using Kant’s own example, when I am using an apple, if a person grabs it from my hand, she is not violating my *external right*—because there is no mine or yours in a circumstance of *res nullius* (*MM* 6:250/404). Rather, she is restricting my *innate* right to freedom. This is important because as soon as she grabs it from my hand and starts using it, I cannot claim that she should give it back to me, because now the apple is in her use, and if I grab it from her hand, I now restrict *her* innate right to freedom. This means that I cannot rightfully exclude others from the use of any external object.⁵¹

In a circumstance of *res nullius* no one can exclude others from using an object. In such a circumstance, the maxim that everyone may make would be that “I shall use any external object that I want to use.” Let us examine the circumstance from the

51. I am insisting on the *rightful* exclusion of others, because it is obvious that I can exclude others from using an object *by force*. I can simply resist a person who tries to grab the apple from my hands.

standpoint of an agent. An agent who has set an end for herself, in order to comply with the corresponding hypothetical imperative that she has given to herself as practically necessary to achieve her end, she must be able to decide what actions she shall perform *independently from another's power of choice*.⁵² Furthermore, we have seen that performing actions requires using external objects. This means that when she decides what actions she wants to perform, she is already aware that she can use some external objects. Now in the circumstance of *res nullius*, the agent is aware that everyone else has the maxim to use any external objects they want, including the specific object she deems as necessary for performing her action. This means that she is aware that she cannot rightfully exclude others from using the object she deems as necessary. In this case, in order to decide what action she wants to perform, and what object she shall use, she needs to look at the actual availability of the object and see if the object is left unused by others. Without being sure that she can exclude others from using an object, she cannot *decide* what action she shall perform. This dependency of the agent's decision on the availability of the object is equivalent with the dependency of her decision on others' decisions. She is not sure if others are going to use the object she deems necessary for her action, nor is she sure if others are going to use the object *while* she is using it. She is not even sure that, when for any reason she wants to suspend her use of the object temporarily, others will not start using it. Taking this latter case into account, even deciding to stop an action would be dependent on the decisions of others. Therefore,

52. As I have shown in the first chapter, this concept of external freedom is a demand of the prescriptivity of the Principle of Rational Willing.

without a guarantee of possession, the agent cannot freely decide about her actions and her use of objects, nor can she freely decide to stop her action. That everyone is right to use any external object leads to a circumstance in which even deciding what action an agent wants to perform would be principally dependent on the decisions of others. Thus, in the circumstance of *res nullius*, external objects that are usable—within our physical power to use—would be unusable, because performing actions, or alternatively using objects, would be fundamentally dependent on another’s power of choice. And this dependency is prohibited by the concept of external freedom.

To return to the example of the agent reading a book, in order to make the choice that “she shall read the book,” she must be aware that she can exclude others from using the book in lieu of her own use of it.⁵³ But in the circumstance of *res nullius*, she knows that she cannot exclude others in that way. Therefore, she cannot decide to perform her action without being dependent on the decisions of others. Thus, external freedom (freedom in the external use of choice) requires that there should be a system of rightful possession, in which there is a boundary between what is mine and what is yours, so that before deciding an action, I can be assured that I can exclude others from using the object that I want to use.⁵⁴ In other words, while external objects are supposedly within my

53. Again, it should be noted that Kant’s account of possession is not about private property. The agent does not need to *own* the book in the sense that private ownership requires. Even borrowing a book from someone else requires that she can exclude others from the use of the borrowed book.

54. Recall that what distinguishes choosing from mere wishing, according to Kant, was that in choosing to act, I am aware that I am able to perform my action. This awareness requires that I should be aware that I can exclude others from using the object through which I shall perform my action. In other words, without such awareness, my decision to act would be a mere wish. Cf. n. 47.

power to use, without being able to exclude others from the use of them, I cannot use the objects and thus the circumstance of *res nullius* makes the usable objects unusable.

One might object that even in a system of rightful possession, where there is the rightful entitlement to exclude others from the use of certain objects, the decision of an agent is still dependent on the availability of external objects and thus on the decisions of others. Indeed, when there is a system of rightful possession, I would be rightfully prohibited from using some objects, and thus my decision would be dependent on whether or not an object is possessed by someone else. But the point of the argument is that in the circumstance of *res nullius*, every power of choice, and every decision would be fundamentally dependent on the decision of others. In that case, external freedom is principally violated. Thus, we need to have a system of rightful possession, even though it would be a limitation of freedom, a limitation that is necessary for the very concept of freedom. Thus, Kant's contention is that since human beings will to use external things, it is necessary to act in conformity to conditions of right, that is, to extend the rightfulness of actions to using external objects. Hence the need for such a Postulate "lies in human nature simply as rational beings" (*DMM* 23:226).

The Postulate has shown that an action based on the maxim that external objects have to belong to no one is *wrong* because it infringes upon our freedom. That is, it must be possible for human beings to have rights to external objects. We already know that if I have a right to something, others have a duty to act in a way that is consistent with my freedom. This obligation is related to the Universal Principle of Right as a principle that lays an obligation upon us. Hence, regarding the right to external objects, Kant also

provides a prescriptive form of the Postulate when he says that “it is a duty of right to act towards others so that which is external (usable) could also become someone’s” (*MM* 6:252/406). This means that rightful possession accompanies an obligation on everyone to refrain from using certain objects that are possessed by someone.⁵⁵

Kant avers that rightful possession is possible only if we assume an *intelligible* meaning for possession: in order to be able to say that “it is possible for any object of my choice to be reckoned as rightfully mine,” we need to extend the concept of possession beyond empirical possession (*MM* 6:252/406). While this empirical/intelligible distinction reminds us of Kant’s famous distinction in the *Critique of Pure Reason* between phenomenon and noumenon, the distinction here is less contentious: the basic difference between them is whether or not there is a physical connection between the possessor and the object. Empirical possession is *holding* an object, but intelligible possession includes possessing an object *without holding* it (*MM* 6:246/401). This means that if I want to claim meaningfully that I possess an external object, there must be

55. Regarding the obligation accompanied with the Postulate, it should be noted that after the argument for the Postulate, Kant refers to it as a *permissive law* that “gives us an authorization that could not be got from mere concepts of right as such, namely to put all others under an obligation, which they would not otherwise have, to refrain from using certain objects of our choice because we have been the first to take them into our possession” (*MM* 6:247/406). I have not relied on this assertion in my reading of the Postulate, mainly because the obligation to which it refers is about the first acquisition of external objects. For my current purpose to establish the necessity of rightful possession, the problem of the first acquisition is not of significant relevance. Moreover, the obligatory role of the Postulate, as I have explained, relates to its being a duty of right. In other words, the very argument for the *rightful* possession implies that, as a matter of right, others must be excluded from using an object—they are rightfully obligated to refrain from using a certain object. Consequently, the obligatory role of the Postulate does need a further justification.

another meaning of possession: intelligible possession that is a possession abstract from the empirical conditions of physical possession.⁵⁶

If possession merely means physical possession, then we can possess something *only as far as we have a physical connection with it*. This contention stands opposed to the Postulate of Practical Reason established above. Recall that it *must* be possible for an external object to belong to someone. If there is no intelligible concept of possession, that is, if I cannot possess something *even though* I am not holding it, the only condition to possess an external object would be to be physically connected with it. This would lead us back to the circumstance of *res nullius*. Imagine a system of rightful possession in which the condition to possess something rightfully, and thus the condition to rightfully exclude others from using an object, is that the possessor should be in physical connection with the possessed object. In this case, the claim would be that it is possible to own external objects, and others are obligated to refrain from using my object, but if and only if I am *holding* the object or I have a physical connection with it. However, as soon as I leave the object untouched, I have lost the condition of rightfully possessing it, and

56. As I mentioned earlier, it is important how to read the proper place of the Postulate in the text. I noted that, following Westphal, I have been interpreting the Postulate as belonging to its published order in §2. If we read the Postulate as belonging to §6, then Kant's discussion of intelligible possession as distinct from physical possession would be prior to the Postulate. Thus, the main claim of the Postulate would be interpreted as establishing the necessity of intelligible possession, rather than the more general concept of rightful possession. However, if we read the Postulate as belonging to §2, then the concept of intelligible possession can be read as a necessary condition for the possibility of rightful possession. As I noted earlier, I have been following this latter interpretation, by reading the Postulate as belonging to §2. Kant's own reference in §7 to the Postulate as belonging to §2 is also noticeable. Westphal notably emphasizes on the abstractness and generality of the Postulate, in which there is no reference to the concept of intelligible possession. For Westphal's discussion of this issue, cf. Westphal, "A Kantian Justification of Possession," 93-94. For examples of accepting the suggested correction, cf. Flikshcuh, *Kant and Modern Political Philosophy*, 114-116, and Hodgson, "Kant on Property Rights and the State."

thus I am not entitled to prevent others from using it. This is indeed the circumstance of *res nullius*, because again my decision to perform an action and use an object would be dependent on the decisions of others. This explains why Kant asserts that the real definition of what is externally mine is to be articulated as “something external is mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object)” (*MM* 6:249/403). We thus see that in the very definition of the concept of an external object as *possibly* mine, there lies the possibility of possessing it in a way that does not require only empirical possession. Otherwise, external objects cannot belong to anyone, which is in opposition to the Postulate of Practical Reason.⁵⁷

We have seen so far that having external rights is necessary for our innate right to freedom, and that the Postulate that contains that necessity imposes an obligation upon everyone to refrain from using a possessed object. It is a duty of right for us to refrain from using an object that is possessed by a person, and that person can use coercion to exclude us from using what belongs to her.

57. For a different argument for the necessity of rightful possession for external freedom, cf., Hodgson, “Kant on Property Rights and the State,” 60-62. Following the suggested correction, he reads the Postulate as an argument against a system of merely physical possession. Then, to demonstrate that physical possession is an unjustified restriction on external freedom, he argues that a system of mere physical possession “makes my (eminently restricted) ability to occupy space and to hold objects the measure of my ability to make objects into my means, and thus to set and pursue ends for myself.” The main point of his argument is that in a system of physical possession, my external freedom would be undermined because I am restricted to some natural limitations. However, my argument above is focused on the dependency of our choices on others in such a system of physical possession. It is true that in a system of mere physical possession, I would be limited to act in a way I please. But the limitation, strictly speaking, is more on the possible scope of decisions that I can make for myself than on my external freedom itself. To show that my external freedom would be infringed on a physical system of possession, we should argue that in such a system, our power of choice would be dependent on that of others. Only in this way can we show that external freedom—as independence from being constrained by another’s choice—would be undermined.

Having established the necessity of such a rightful exclusion of others from using objects belonging to us, Kant proceeds to point to a further requirement without which the rightful possession of external objects would be a further infringement upon freedom. This requirement is the existence of a civil condition, the necessity of which we can only now turn to.

The Civil Condition as a Demand of External Freedom

The necessity of a civil condition is captured in Kant's claim that all human beings who could come into relations of rights with one another *ought* to enter a civil condition (*MM* 6:306/451). I have shown so far that by virtue of the fact that we are rational beings, we must be able to decide our actions independently from the decisions of others. To satisfy the fulfilment of our right to be externally free, we should think of possessing external objects as necessary. Rightful possession is necessary if we want to avoid any infringements upon our freedom. From this point, Kant interestingly proceeds to argue for the necessity of a civil condition. Succinctly, the claim I argue for in this section is that the civil condition is necessary because without it our freedom would be infringed. Through this argument, it will be clear that although rightful possession is a necessary condition for external freedom, it is not the sufficient condition. The sufficiency condition would be satisfied only by establishing a public authority, that is, by entering a civil condition.

Kant's claim is that "it is possible to have something external as one's own only in a rightful condition, under an authority giving laws publicly, that is, in a civil condition" (*MM* 6:255/409), or as he maintains further, "only in a civil condition can

something external be mine or yours” (*MM* 6:256/409). What is distinctive about a civil condition, according to Kant, is the “authority giving laws publicly,” the absence of which is what defines the state of nature. Hence, we expect to see why it is that without such a public authority, rightful possession cannot be realized.

Kant begins his argument by repeating the obligatory character of the Postulate we already discussed:

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right (*MM* 6:255/409).

The point is familiar in that any claim to possess an external object includes coercing others from using the object, and that others are obliged to refrain from using it. It is also clear that the Postulate—like the Universal Principle of Right and the innate right to freedom—is a *universal* principle. This means that the obligation and the coercion connected with the Postulate apply to *all* human beings. Because of this universality, everyone who has claimed an object as belonging to her already accepts that she is under the same obligation to refrain from using what belongs to others. Hence, Kant continues the argument by asserting that

This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for

the obligation here arises from a universal rule having to do with external rightful relations (*MM* 6:255/409).

Simply, if it is necessary for an agent to exclude *everyone* else from using an object, she does so based on the principle that this is necessary for *everyone*, including herself.

So far in the argument, Kant has not added anything further to the Postulate. Rather, the important point added to the overall discussion is to exclude others forcefully from using our object, *without a civil condition* would amount to an infringement upon external freedom. This claim might seem to be surprising considering that the very Postulate we have been discussing so far is a demand of external freedom: the circumstance of *res nullius* is a violation of freedom. However, the rest of the argument interestingly reveals that without a civil condition, possessing external objects—and thus imposing force upon others to refrain from using them—would in turn result in a further violation of external freedom. Hence, even though rightfully possessing objects is a demand of external freedom, it is not possible to possess external objects unless there is a public lawgiving authority.

The problem with rightful possession in the state of nature is that its coerciveness is *unilateral*. Kant asserts,

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 (*MM* 6:256/409).

This is the crux of the relation between possession and the necessity of a civil condition in Kant's thought, and thus must be elaborated.⁵⁸

Why is the *unilaterality* of a will to possess an external object a violation of external freedom, and therefore *wrong*? To see what exactly it would look like to exclude others *unilaterally* from using an object, we need to see the situation from the standpoint of the agent who is forced to refrain from using the object. Assume a situation in which there are only two agents. As was established by the Postulate, it is necessary to possess something if we are to decide independently from each other and thus retain our external freedom. Imagine that you claim a book to be yours. We both agree that if either of us possess something, we can exclude each other by use of force to refrain from using the object. From your standpoint, using force to exclude me from using your book is justified because otherwise your external freedom would be violated. Recall that coercion as hindering of a hindrance to freedom is justified. From your standpoint, you are simply coercing me in the sense that you are hindering my action that you deem as a hindrance to your freedom. However, from my standpoint, by using force to prevent me from using the book, you are restricting my freedom. I agreed at the outset that you have a right to possess some external object, yet I did not accept your claim to possess this book. This means that when you use force against me to keep your book away from me, you obstruct my action that from my standpoint is not a violation of your external freedom.

58. In the following argument for why rightful possession would be an infringement upon external freedom, I am much in debt to Hodgson's interpretation. For his argument, cf., "Kant on Property Rights and the State," 72-76.

Consequently, your use of force against me—which is justified from your standpoint—is an infringement upon my external freedom: you are depriving me of exercising the action I have chosen for myself. Therefore, your using force against me is a *unilateral* coercion, which means that, unlike you, I do not agree with the judgment that such a force is justified.⁵⁹ None of us can compel each other that our use of force against each other is justified because from our different standpoints we are restricting each other’s external freedom while at the same time we are protecting our own external freedom. This situation of *unilateral* coercion, therefore, is in principle a violation of external freedom, and thus is not rightful.⁶⁰

The non-justifiability of this unilateral use of force—unilateral possession—amounts to the requirement for a reciprocal assurance between agents so that they all would be assured that their use of force against each other would be deemed as justified from the standpoint of all agents. Hence, Kant contends that,

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

This assurance does not require a special act to establish a right, but is

59. Cf. also Kant’s brief argument in the *Theory and Practice* that in this unilateral situation, a person can decide nothing about another person that “could not be wrong” (TP 8:295/295).

60. One can tell that the above line of argument is not fundamentally different from the argument I have used to establish the vulnerability of the circumstance of *res nullius*. Both arguments rely on the fact that external freedom should not be violated. The only difference was the shift in the focus on different standpoints. Methodologically, this shift in the argument is plausible owing to the universality of the Postulate of rightful possession.

already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule (*MM* 6:256/409).

This requirement of the reciprocal assurance should not be surprising, as Kant is clear in the very articulation of the Universal Principle of Right that actions are right insofar as they can coexist with *everyone's freedom in accordance with a universal law*. That this principle of right holds universally for everyone implies the requirement of reciprocal assurance. The idea is simply that if I regard myself as being able to exclude others by the use of force from wronging me, I should also regard others as being able to do the same. However, as far as the use of force is *unilateral*, this requirement cannot be fulfilled.

What is needed to fulfil the requirement of the reciprocal assurance, Kant argues, is a general will that puts everyone under such an obligation to refrain from wronging each other:

So it is only a will putting everyone under obligation, hence only a collective general (*common*) and powerful will, 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. (*MM* 6:256/409).

The claim here is that what can resolve the problem arisen from the situation of merely *unilateral* coercion is a general, powerful, external authority that can justifiably—and *universally*—prevent agents from violating each other's rights.

We should note that the problem of unilateral coercion cannot be solved merely through an agreement among agents that whenever one claims a possession, everyone should accept that the possessor is justified to use force against others. In other words, coercion is always unilateral in the absence of such a general, powerful, external authority. The reason is that without such an authority, the tension between the standpoints of the possessor and the excluded agent would remain. The excluded agent can still argue that, no matter how much a possessor regards herself as justified to use force and exclude others from using the possessed object, the possessor's use of force is a violation of my external freedom. Therefore, the only way to escape from such a tension and exit the situation of merely unilateral coercions is the existence of a third party that can use force on behalf of every agent.

Thus understood, the existence of the public authority as a third party does not mean that everyone should accept the boundaries between mine and yours. Rather, the authority can justifiably use force against those who do not accept those boundaries. In other words, the civil condition is not necessary to secure an agreement among people so that they respect each other's rights. Instead, it is required so that the use of force against agents—which is *per se* a violation of the external freedom of agents—can be justified such that it would no longer be deemed as a violation of external freedom.

How is this possible? The crucial difference between using force by a public authority and using force by individual agents needs to be emphasised. In a situation in which individual agents use force against each other, agents unilaterally follow their own judgements, which are in turn considered by other agents to be an infringement upon

their external freedom. The point was that from the standpoint of the excluded agent, the possessor's use of force is an external unjustified coercion that restricts her choice. This leads to a requirement for a reciprocal assurance that is absent in such a situation. However, a public authority is not an individual agent whose use of force would be deemed by others as her own choice and thus as an external unjustified action. Instead, the public authority, by definition, is a third party whose task is to use force equally against *any* violations of rights, and thus provides the assurance that is missing in a situation of merely unilateral coercion. Therefore, in order to fulfil the demand of our right to be externally free, we need to be under a public lawgiving authority.

I have been emphasising the problem of the non-justifiability of unilateral coercion as the main problem of the state of nature. However, there is also another problem that is termed in the literature as the problem of indeterminacy. This problem is that within the state of nature there is no boundary between mine and yours. In other words, the Postulate by itself does not determine what *in concreto* is mine and yours; rather, it only asserts that there must be a boundary, leaving the question of the exact determination of the limits between mine and yours unanswered.⁶¹ The point is that what is mine and yours cannot exist unless within a legal system.⁶² In the *Drafts for the*

61. For an example of this interpretation cf. Pippin, "Mine and Thine? The Kantian State," in *The Cambridge Companion to Kant and Modern Philosophy*, ed. Paul Guyer, (Cambridge: Cambridge University Press, 2006), 433-437. Hodgson points out to this problem, but suggests that the main problem of the state of nature is the unjustifiability of using force by individual agents. He asserts that his interpretation is independent from the indeterminacy problem. Cf. Hodgson, "Kant on Property Rights and the State," 75. I think the indeterminacy problem can be explained as a consequence of the deeper problem of unjustifiability of using force.

62. Pippin, "Mine and Thine?" 438.

Metaphysics of Morals, Kant here and there refers to this problem.⁶³ However, in the published text, as we have seen, he refers to the problem that unilateral coercion is an infringement upon external freedom.

I think the problem of indeterminacy can be viewed as a consequence of the problem of the non-justifiability of unilateral coercion. That an agent does not regard the possessor's use of force as justified is equivalent to the fact that she does not regard the possessed object as belonging to the possessor. This means that in a situation in which every agent has a similar standpoint towards each other, no one regards possessed objects as justifiably belonging to the claimants. In other words, the judgment that you are not justified to use force to exclude me from an object means that I do not recognize your claim to rightful possession. This means that from my standpoint the boundary you have set for yourself is not justified. And since everyone is in the unilateral situation of using force, everyone would take the same position towards everyone else. This results in a situation in which every agent claims to have right to some certain external objects, and yet, no agent recognizes those claims as justified, and thus no agent would recognize the determined boundaries of mine and yours, rendering the claims null and void. Thus understood, the problem of indeterminacy in the state of nature is a consequence of the unjustifiability of using force by individual agents.

Kant further adds that in the state of nature, external objects can actually be mine or yours, but only *provisionally* (*MM* 6:256/409). This assertion might seem to be

63. For example, cf. *DMM* 23:215, 23:236, and 23:279.

confusing, considering that we have established that rightful possession, and thus using force against others to refrain from using our objects, is justified and possible only in a civil condition. Thus, it is crucial how to understand this *provisionality* of rightful possession in the state of nature. This assertion, as we shall see, has significant implications for Kant's understanding of the state of nature and the duty to enter a civil condition.

One way to read this assertion is to take the claim to be that people in the state of nature are temporarily justified to possess external objects, and thus are justified to use force against others to exclude them from their belongings.⁶⁴ However, we have seen that Kant's argument revolves around the point that such a use of force is not justified because it amounts to an infringement upon external freedom.

We should bear in mind that the Postulate, which asserts that possession must be possible, is an *a priori* principle that holds independently of a civil condition. The Postulate must be satisfied for rational beings to be externally free. Adding the point that such a rightful possession is *provisionally* possible in abstraction from a civil condition, Kant seems to have in mind an independence of the principle from the actual establishment of a civil condition. In other words, although rightful possession is possible only in a civil condition, its necessity holds *a priori* even without a civil condition. As Kant contends, "prior to a civil constitution (or in *abstraction* from it), external objects that are mine or yours must therefore be assumed to be possible" (*MM* 6:256/410).

64. For an example of this interpretation, cf. Flikschuh, *Kant and Modern Political Philosophy*, Ch. 4.

However, any claim of possession is *comparatively* rightful (*MM* 6:257/410), or as he elsewhere suggests, any possession is *potential* (*DMM* 23:258). The point, therefore, is that it is necessary to possess objects, and because of this necessity, agents claim that they possess certain external objects, but their claim is merely provisional, and their claimed belongings are merely potential. This provisionality emphasizes the fact that the unilateral will to possess something is susceptible to being deemed as unjustified by other agents. The only way to make rightful possession *conclusive*, then, is to enter a civil condition.

Establishing that a civil condition is necessary because without it possession would be an infringement upon external freedom, Kant claims that it is a duty of right to enter a civil condition, which means we can justifiably force others to enter a civil condition. He asserts,

If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution (*MM* 6:256/409).

This assertion seems to be puzzling because it leads us back to the claim that prior to a civil condition we can justifiably use force against others. As we saw, the crux of the argument for the necessity of the civil condition is exactly to prevent such individual use of force against each other. This seemingly paradoxical assertion needs to be clarified.

The problem of the duty to enter a civil condition needs a full elaboration of its own. In the literature, there is considerable debate about the kind of duty to enter a civil condition. Some endorse the view that such a duty is not enforceable, and thus cannot coherently be taken as a duty of right, because the duty is prior to a civil condition and in the absence of a public authority it cannot be enforceable. A public authority is a precondition of enforcing the duties of right and itself cannot be a duty of right.⁶⁵

On the other hand, the division between the duties of rights and those of virtues suggests that if it is not a duty of right, it must be deemed an ethical duty. This means that the agents in the state of nature should make it their own duty, and should thus comply with it for the sake of the duty. This interpretation cannot be accepted. One reason is Kant's own explicit assertion that the Universal Principle of Right, as the crucial principle that defines what is juridically right and what is juridically wrong and thus defines the duties of right, is not an ethical principle. I repeat his assertions regarding this principle:

it cannot be required that I *make it the maxim* of my action... that I make it my maxim to act rightly is a demand that ethics makes on me... 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

65. For example, cf., O'Neill, "Enactable and Enforceable," 123-124.

idea of it and that it may also be actively limited by others (*MM* 6:231/388).

This implies that if a civil condition is necessary as a demand of external freedom, and as Kant asserts, if we can constrain others to leave the state of nature, then the duty to enter a civil condition cannot be a merely ethical duty, and thus can be rightfully enforced.

As I said, the problem is a difficult one that needs a full elaboration of its own.⁶⁶ But for our present purpose, let us accept that the duty to enter a civil condition is a duty of right, meaning that entering a civil condition can be rightfully enforced. If this understanding is correct, we should bear in mind that this enforceability of leaving the state of nature is limited to a specific conception of “the state of nature.” This state of nature, to which Kant refers in his argument for the necessity of a civil condition, has the specific characteristic of being *anticipatory*. In other words, “the state of nature” from which, according to Kant, we can be *forced* to leave is a pre-civil condition, or as he

66. A full elaboration of this problem needs to deal with two main problems among others. First, the very binding force of the duties of right—including the duty to enter a civil condition if we interpret it as a duty of right—needs to be explained. If the duties of right, as distinct from the duties of virtue, do not require that the agent obeys the duty for the sake of the duty itself, then we need to explain the prescriptivity of juridical laws. If the prescriptivity of the Universal Principle of Right is such that it does not require that we make it the principle of our actions, and as Kant asserts, “it cannot be required that I make it [*i.e. the Universal Principle of Right*] the *maxim* of my action,” (*MM* 6:231/388), then how can we explain the prescriptivity of the Principle? At least to consider the Principle as a prescription to agents, it seems that the agents should be aware of, and accept, such prescriptivity. A complete explanation of this problem can be found in Marcus Willaschek, “Which Imperatives for Right? On the Non-Prescriptive Character of Juridical Laws in Kant’s *Metaphysics of Morals*,” in *Kant’s Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons, (Oxford: Oxford University Press, 2002), 65-87. Second, the problem of the kind of duty to enter a civil condition needs an account of the concepts of duty and obligation of a *community* of people. It is obvious that, at least in the *Groundwork* in which one can find his complete theory of obligation, Kant explains duty and obligation as being addressed to individuals. However, a duty to enter a civil condition, if we take it as a duty addressing a *community* of people who ought to leave the state of nature *together*, requires an account of duty that cannot be done unless jointly by a community of people together. These two problems need to be explored in an independent research.

asserts “in anticipation of and preparation for the civil condition” (*MM* 6:257/410). It is in this state of nature that possession is *provisional*, waiting for an established public authority.

Let us pause on this specific understanding of the state of nature. Two points need to be stressed. First, the state of nature from which we can be forced by others to leave is a pre-civil condition. When he refers to the provisionality of rightful possession in the state of nature, Kant asserts that

Possession in anticipation of and preparation for the civil condition, which can be based only on a law of a common will, possession which therefore accords with the *possibility* of such a condition, is *provisionally rightful* possession (*MM* 6:257/410).

The qualification of “in anticipation of and preparation for the civil condition” shows that what Kant has in mind about the state of nature is a circumstance in which there is a *possibility* of establishing a civil condition. Arranged in any probable way, in an anticipatory state of nature, there is a possibility of the civil condition. Therefore, Kant’s assertion that we can force people to enter a civil condition is an assertion only about such a circumstance of an anticipatory state of nature. Consequently, Kant’s contention that we can use force for entering a civil condition cannot be taken as a claim for an imagined state of nature, in which there is no prospect of establishing a civil condition.

Furthermore, Kant clarifies what he means by this anticipatory state of nature when he asserts that “prior to entering such a condition [i.e. civil condition], a subject

who is ready for it resists with right those *who are not willing to submit to it* and who want to interfere with his present possession” (*MM* 6:257/410 [emphasis added]). As another example, in the *Reflections*, Kant contends that the proposition that one must leave the state of nature “means that one can force everyone to enter *in status civilis* {a civil condition} *with us*” (*R* 7735. 19:503 [emphasis added]). From these two assertions, we can understand that the justifiability of using force against some agents to enter a civil condition is when there is some unwilling agent who opposes the *willingness of others* to enter a civil condition. In other words, in a circumstance that for any reason there is the probability of establishing a civil constitution, if there are some resisting agents, others who are shaping the public authority can forcibly make the resistant agents to accept *with them* the authority of a public legal system.⁶⁷

This latter point reveals a further characteristic of Kant’s argument for the necessity of the public authority. The qualification that the state of nature at issue is an anticipatory condition, together with the assertion that we can force those who are not *willing* to enter *with us*—who are *willing* to enter—into a civil condition, indicates that the duty to enter a civil condition presupposes a pre-reflective awareness of at least the necessity of having external rights. Indeed, the requirement of the reciprocal assurance already indicates that agents come to the necessity of establishing a public authority if

67. Thus understood, the duty to enter a civil condition is *conditional* on whether the state of nature is anticipatory in the sense I explained. We should keep in mind that the conditionality of this duty does not diminish the *necessity* of the civil condition. The point is emphasised by Bernd Ludwig in his “Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant’s *Doctrine of Right*,” in *Kant’s Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons, (New York: Oxford University Press, 2002), 179.

they are *aware* of their obligations to each other to keep their belongings untouched. Therefore, the justifiability of forcing people to enter a civil condition can be interpreted as limited to the kind of state of nature that is anticipatory for an established public authority.⁶⁸

Setting aside the difficult issue of the state of nature in which there is no prospect of a public authority, Kant's contention is that the necessity of a civil condition is a dictate of our reason through the necessity of rightful possession if we are to be externally free. Therefore, if anyone intends to remain in the state of nature, and resists those who are entering a civil condition, she is doing wrong "in the highest degree" (*MM* 6:307/452) and can be justifiably forced to enter with others into a civil condition. Hence, it is a duty of right to enter the condition that is necessary by virtue of the fact that we are rational beings with an innate right to freedom.

68. If these characteristics does not exist in an imagined state of nature, the question of the justifiability of using force to enter people into a civil condition—or equivalently, the question of the kind of duty to leave the state of nature—gets more complex that goes beyond the scope of this research. I should merely mention in passing that Kant's elaboration of the issue in the *Perpetual Peace* gives us a clue to the contention that the duty to leave the state of nature where there is no prospect of a civil condition—and thus there is no awareness of the necessity of a civil condition—cannot be easily said to be rightful or ethical. It is not ethical because the establishment of a civil condition is soluble "even for a nation of devils" (*PP* 8:366/335). Neither is it a duty of right, because in the case where there is no prospect of a civil union the use of force against people (to use Kant's own example, such as the American Indians) is not authorized (*MM* 6:266/417). In the *Perpetual Peace*, Kant refers to a state of nature in which people *ought* to do what is required by the laws of freedom but for any reason they do not. In that case, Kant explains that *nature* does something that people ought to do but they do not. Although the establishment of a civil condition is a demand of reason, in a state of nature where there is no prospect of a civil union, nature "comes to the aid of the general will grounded in reason" (*PP* 8:366/335). Kant claims that nature does this through *war* that is based on the self-seeking inclinations of human beings. This latter assertion indicates that a Kantian account of the state of nature that is not an anticipation nor a preparation for a civil condition requires a different account, and probably investigating the history of human kind before the establishment of a civil condition.

One might object that if entering a civil condition is necessary because we are rational, free agents, then it does not seem plausible to claim that the duty to enter a civil condition is *limited* to those in an anticipatory state of nature explained above.⁶⁹ If the establishment of a civil condition is a necessary dictate of reason, it must hold for every human being, no matter whether or not they are in an anticipatory state of nature. I should admit that my emphasis in this thesis on the rational necessity of the civil condition might be susceptible to this criticism. However, regarding this problem, I should emphasize two points that might be illuminating. First, the derivation of the concept of external freedom from the Principle of Rational Willing—explained in the first chapter—relied on the awareness of an agent of the indispensably necessary means to achieve her ends. I argued

69. This problem has been addressed by Flikschuh in her interesting analysis of the duty to enter a civil condition in light of Kant's denial of the justifiability of forcing nomads to leave the state of nature. Cf. Flikschuh, "Kant's Nomads: Encountering Strangers," *Con-Textos Kantianos. International Journal of Philosophy* n. 5, (2017): 346-348. Accessed June 2017. <https://www.con-textoskantianos.net/index.php/revista/article/view/237>. In the previous note, I mentioned Kant's assertion about the unjustifiability of using force to enter American Indians—nomads—into a civil condition (*MM* 6:266/417). Flikschuh focuses on this assertion and gives an account of the duty to enter a civil condition that is not universal (350). She argues that nomads—as people who are not under a public authority—and European settlers are not together in the state of nature. Furthermore, she argues that nomads do not raise property claims against each other. My suggestion that even in Kant's own argument for the necessity of a civil condition, the state of nature to which Kant refers is an anticipatory state of nature and thus contains merely those who are *willing* and aware of the necessity and possibility of a civil condition would serve as a support for her claim about the non-enforceability of entering a civil condition for nomads. Having said that, she also observes that if one infers the necessity of a civil condition from the claim that every person *has* the right to be externally free, one cannot explain Kant's contention that forcing nomads to enter a civil condition is not justified. A full analysis of Flikschuh's paper goes beyond the scope of this research. For a supporting argument for her conclusion, based on Kant's distinctions between different modes of "holding-to-be-true," cf., James Scott Johnston, "Recursive Justification and Kant's Civil Condition: Some Comments on Flikschuh's Account of Nomadic Rights," *Con-Textos Kantianos. International Journal of Philosophy* n. 5, (2017): 369-374. Accessed June 2017. <https://www.con-textoskantianos.net/index.php/revista/article/view/238>. For a criticism of the implications of Flikschuh's paper, suggesting that Kant's analysis of encountering with nomads is "a momentary acknowledgment of diversity," not an endorsement of the *justifiability* of their culture, cf., Joël Madore, "Unsettling Encounters: A response to Katrin Flikschuh's 'Kant's Nomads,'" *Con-Textos Kantianos. International Journal of Philosophy* n. 5, (2017): 375-383. Accessed June 2017. <https://www.con-textoskantianos.net/index.php/revista/article/view/239>.

that if we put ourselves under the practical necessity of the imperatives we give to ourselves, we cannot rationally accept to put ourselves at the same time under the authority of others to decide for us, and thus we must be able to act freely from another's power of choice. In other words, external freedom would be necessary if human beings operate based on that account of rationality. This leaves an open space for the possibility of the existence of some human beings that do not operate based on that account of rationality. In other words, it is not *logically* impossible to imagine a species of human beings who either would not act based on the practical necessity of the rules they give to themselves, or would not deem both the necessity of their own-imposed rules and being under the constraint of others as unacceptable. How the rationality of this imagined species of human beings operates would be another issue. My main claim was the narrower claim that *if* human beings are rational in the sense I proposed, then external freedom cannot be dispensed with. Therefore, if any group of human beings can consistently act without being externally free, the establishment of a public political authority would not be necessary for them.

Second, in the argument for the necessity of the civil condition, I emphasized that a unilateral use of force against others to refrain from using a possessed object is not justified because an agent who is forced to refrain would deem that unilateral use of force as unjustified. Thus, the agent seeks for a reciprocal assurance that is not given unless by a public authority. This requirement of *assurance* with regard to the obligations that agents have towards each other implies that they are aware of the necessity of the rightful possession. They know that without rightfully being able to exclude others from using

some certain external objects they would not be able to act freely from others' constraints. The important point is that the establishment of a civil condition becomes necessary only if agents regard the situation of unilateral possession as unjustified. Consequently, if there is a group of human beings who can live without possessing anything,⁷⁰ or for any reason, who would not deem a situation of unilateral possession as unjustified, entering a civil condition would not be an enforceable duty.

Conclusion

Freedom, as independence from being constrained by another choice, is the fundamental concept through which Kant argues for the necessity of a civil condition. In this chapter, I started with explaining the role of the concept of freedom in Kant's theory of right. I argued for the priority of this concept over the Universal Principle of right, which defines the rightfulness of actions when people interact with each other. Moreover, I argued that through this concept we can justify the use of coercion, which is distinctive of the duties of right as distinct from the duties of virtue. The first section, thus, clarified the concept of freedom within the domain of rights. In the second section, I proceeded to argue that without possessing external objects, human beings cannot be externally free. Thus, the right to freedom, I argued, demands the necessity of rightful possession so that the possessors can rightfully force others to refrain from using their belongings. Rightful possession by itself, however, is not sufficient to fulfil the requirement of the right to freedom, as it might lead to an infringement upon freedom. Thus, in the third section, I

70. For Flikschuh's argument that nomads are not familiar with the category of property, cf. "Kant's Nomads," 356.

presented Kant's argument for the necessity of a civil condition, understood as a public lawgiving authority, if we are to be externally free. Having established that a civil condition is necessary if we are to be externally free, I have completed the second step of my main claim in this thesis that a civil condition is necessary because of our being rational, free agents.

Conclusion

A Kantian answer to the problem of political obligation, that is the problem of providing a justification for why human beings are to obey legal and political authorities, is distinctive in that it provides a non-instrumental account of such an obligation. A political authority, from a Kantian standpoint, is not required merely because it comes with some benefits that would result in a better condition of life for human beings. Rather, it is necessary because we are rational, free agents. My main purpose in this thesis was to provide arguments for this non-instrumental Kantian contention regarding the necessity of a civil condition.

To support this contention, I started with a derivation of the concept of external freedom from a Kantian theory of rational, free agency, since the crucial concept by which Kant justifies the existence of a political authority is the concept of external freedom, that is freedom in the external use of choice. With the first chapter, I intended to show that external freedom is not a mere unjustified presupposition Kant has about human beings. External freedom is not a given value that we should promote in political and social organizations. Instead, external freedom understood as independence from being constrained by another's choice—or alternatively as my right to decide for my actions myself and not to be decided upon by others—is a demand of our being rational beings. To argue for this claim, I relied on a Kantian theory of rational agency, in which the emphasis is that the products of our practical reason—that is, the imperatives issued by reason—come with a necessity that we impose upon ourselves. I argued that we

cannot consistently accept on the one hand that we are rationally bound to these necessities, and on the other hand that our decisions can be arbitrarily made by other human beings. In other words, I suggested the concept of external freedom as a requirement to overcome an unavoidable obstacle on our compliance with the demands of reason. The obstacle I took to be the external obstacle of others deciding for my actions.

Having suggested that external freedom is required to assure us against obstruction by others that we can comply with the practical necessities of our reason-issued rules, I turned to the Universal Principle of Right as Kant's suggested principle that regulates our interactions with each other. The core concept by which Kant provides this principle is the concept of external freedom. The Principle defines the rightfulness of actions as those actions that do not violate another's right to freedom. Moreover, what distinguishes the rightful duties we have to refrain from wronging our fellow human beings accompanies an authorization to coercion. This use of force to prevent others from wronging us is justified through the concept of external freedom. The idea is that if limiting freedom—according to the Universal Principle of Right—is a wrong action, it can be justifiably limited by the use of force, because limiting a limitation of freedom is equivalent with securing external freedom. This coerciveness of rightful obligations is the crucial criterion that Kant uses to distinguish the domain of rights from ethics. Therefore, the concept of external freedom can also serve as what establishes Kant's proposed distinction between rights and ethics.

However, as we have seen, the Universal Principle of Right does not suffice to assure our right to freedom. *Rightful possession* is interestingly required if we are to be

externally free. Thus, in the second section of the second chapter, I argued that without rightful possession, the demand of our right to freedom cannot be fulfilled. The main point is that, if we cannot rightfully possess external objects, that is if we may not forcibly exclude others from using the objects belonging to us, we cannot be externally free. Kant's argument for this tenet is provided in what he calls "The Postulate of Practical Reason with Regard to Rights," that asserts that a circumstance in which external objects may not be possessed is fundamentally an infringement upon our freedom. Thus understood, possession is not an instrumental innovation of human beings because they need to use external objects. Instead, possession is required *a priori* and independently from any empirical aspect of human life, merely because it is a demand of our external freedom.

In the final section, then, I argued for the necessity of a public lawgiving authority. The interesting point was that even though rightful possession is a necessary condition for our right to freedom, it is not a sufficient condition. The reason, I argued, is that without a civil condition, rightful possession is not possible, because it would in principle infringe upon our freedom. The problematic of rightful possession outside a civil condition is that it is a merely unilateral use of force to exclude others from using the possessed objects. This unilateral use of force, I argued, would always be deemed to be unjustified from the standpoint of the agent who is forced to refrain from using the possessed object. This situation of unilateral coercion, according to Kant, can be solved merely by a condition in which there is a public authority that provides the reciprocal assurance that agents need to deem the use of force as justified. This public authority

plays the role of a third party whose function is to assure that the use of force to exclude others from using the possessed objects will be always reciprocal. Therefore, by establishing that freedom in the external use of choice is a demand of our rationality, and the civil condition is a demand of our freedom in the external use of choice, I concluded that the civil condition is a demand of our rationality.

It is important to note in closing that in this thesis and in Kant's *Metaphysics of Morals*, the problem of political obligation, or the question of why we ought to obey laws, is asked from *within* a civil condition. In other words, our experience of political authority precedes asking the question. However, this experiential context is essential to the question, as the very experience of living under a political authority accompanies with an ambivalence between, on the one hand, being satisfied with the protections provided by the authority, and on the other hand feeling the imposition of such an authority as an obstruction to one's free exercise. We cannot live collectively without a political system regulating us; yet we cannot overlook our occasional dissatisfaction with the decisions made by that system. This discomforting ambivalence, this being *shadowed* by a political authority—experiencing the authority both as protection and darkness—fuels asking the question of political obligation, causing us to feel the particular uneasiness of inquiring into an answer for the question.

I have taken Kant's arguments to provide a satisfactory answer to the inquiry. However, this answer also comes with its own sense of uneasiness, a response to which would go beyond the scope of this thesis. The claim I have defended is that living outside a civil condition would result in irrationalities that we as free human beings could not

consistently endorse. The account of rationality I provided here, though it shows the systematic character of Kant's thought, leaves us with uneasiness when we consider that some human beings may not operate according to this account of rationality. What about those human beings who can accept the alleged "irrationality" of acting and choosing without being externally free? Furthermore, I have argued that the civil condition is necessary for those who live in an anticipatory state of nature, a claim that limits Kant's argument to those who are aware of the necessity of the civil condition. But what about those who live in a state of nature that is not waiting for a civil condition to-come?

Let us not take the answer provided in this research—that a civil condition is necessary because we are rational, free beings—to be an end to the ambivalent discomfort of being shadowed by a political authority. Proving the necessity of the establishment of a state, especially with the emphasis on its non-instrumental character, allows us to feel more comfortable with being shadowed by the regulating, protective laws in our collective life. And deriving such a necessity from our rational character seems to strengthen the uneasiness of that shadowing. Perhaps in another possible world, in a world in which our "rationality" was different, we would never bother to answer the question of political obligation, or we would find some justifications for the condition of our life without a political authority. Perhaps, in that case, our "political philosophy" would be different: within an existing civil condition a political philosopher thinks differently from outside.

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