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# Kantian Individualism and Political Libertarianism

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JAMES R. OTTESON

Immanuel Kant's political philosophy seems to involve a tension: a commitment to protecting individual agency and independence, yet an endorsement of state powers and duties that may impinge on that independence. The problem arises because Kant endorses a view of the individual human agent that implies a minimal, libertarian state, yet he endorses a state that seems in some cases to conflict with that agency. I maintain that Kantian individual agency does indeed suggest a minimal state and is inconsistent with a state that acts beyond the protection of that agency.

## Kantian Individualism and Personal Freedom

I begin with Kant's 1785 *Grounding for the Metaphysics of Morals* (1981). The essay's argument is motivated by Kant's concern for the dignity of the individual autonomous will, which has worth in itself only because it is an end in itself. Relevant here are two claims Kant makes: autonomy or freedom is necessary for an individual to be a "person," and this claim admits of no exceptions; that is, any admixture of heteronomy in one's moral maxims or any treatment by others as anything other than an end in oneself compromises one's moral personhood.

Kant's first claim centers on his concept of personhood, which itself rests on his notion of an autonomous will. "Rational beings," he says, "are called persons inasmuch as their nature already marks them out as ends in themselves, i.e., as something which is not to be used merely as a means and hence there is imposed thereby a limit

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on all arbitrary use of such beings, which are thus the objects of respect” ([1785] 1981, 36, hereafter cited as 1981). A *person*, unlike a *thing*, has the capacity both to construct laws for himself and to choose to follow them; hence, Kant argues, a person must be treated as an end, not simply as a means. Of course persons may be treated as means—when one pays someone else to mow one’s lawn, for example—but persons may never be treated *simply* as means. Respecting the mower’s personhood presumably entails making him an offer and allowing him to accept or decline it as he judges fit, consistent with his own rationality; forcing someone to mow one’s lawn against his will is treating him merely as a means.

Kant extends the argument by linking the notion of a *person* with the notions of *worth* and *respect*. The only thing whose existence has “absolute worth,” he says, is “man, and in general every rational being” (1981, 35). Only the rational being is subject to the moral law, and hence only such a being warrants our respect as an end in itself. The rational being alone is “autonomous” and hence alone has “dignity”: “Reason, therefore, relates every maxim of the will as legislating universal laws to every other will and also to every action toward oneself; it does so not on account of any other practical motive or future advantage but rather from the idea of the dignity of a rational being who obeys no law except what he at the same time enacts himself” (1981, 40). Kant goes so far as to say that in the kingdom of ends, “everything has either a price or a dignity” (1981, 40)—and apparently not both, and there is no third alternative—which means that everything that is not a person has a price; only persons, insofar as they are persons, have a dignity. “Now morality is the condition under which alone a rational being can be an end in himself, for only thereby can he be a legislating member in the kingdom of ends. Hence morality and humanity, insofar as it is capable of morality, alone have dignity” (1981, 40–41). Individual human beings have a dignity because of their natures as beings of a certain kind (namely, rational and autonomous), and this fact about them entails that these individuals must be respected, both by themselves and by others.

This conception of rational nature implies that my using you against your will to achieve an end of mine is immoral because it violates your dignity as a person. It uses you simply as a means to my end and, by making you adopt my maxim, induces heteronomy into your will. The end I wish to achieve by using you, whether good or bad, is irrelevant: not only must the law hold without exception if it is to count as a moral law, but, given the nature of a rational will, any use of the will simply as a means, whether by oneself or by another, disrespects it. So even if I enslaved you in order to force you to use your keen intellect to search for a cure for cancer that could benefit countless others, I have nevertheless violated your dignity as a rational being—and therefore, according to Kant, I have acted immorally.

This inference implicates the second part of Kant’s argument: for a law to be morally valid, it must be necessary and admit of no exceptions (1981, 2). Kant argues that “moral worth” comes only from acting out of respect for duty to such a moral law (1981, 11–12) and further that “reason in the consciousness of its dignity despises”

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“empirical inducements” that would lead it to act otherwise than from its duty (1981, 22). Just as the moral law itself can admit of no exceptions—because it would then compromise its universality and thereby its formal character as law—so too the rational will can admit of no exploitation as a mere means without thereby becoming compromised. Kant claims, moreover, that autonomy of the will is the “supreme principle of morality” (1981, 44); hence, one who violates another’s autonomy, *regardless* of the reason, has acted immorally and compromised the victim’s personhood. Charles Taylor has rightly claimed that for Kant “the moral will is necessarily autonomous. . . . It is impossible to state what morality consists in without making clear that it consists in freedom. So while morality is central to freedom, this involves no limitation of our possible freedom, because moral life *is* essentially freedom” (1984, 107; compare Korsgaard 1996, chaps. 6 and 7).

It is difficult to imagine a stronger defense of the “sacred” dignity of individual agency. Kantian individuality is premised on its rational nature and its entailed inherent dignity, and the rest of his moral philosophy arguably is built on this vision.<sup>1</sup>

Kant relies on a similarly robust conception of individuality in work other than his explicitly moral philosophy. The 1784 essay “An Answer to the Question: ‘What Is Enlightenment?’” (Kant 1991), for example, emphasizes in strong terms the threat that paternalism poses to one’s will. Kant argues that “enlightenment” (*Aufklärung*) involves a transition from moral and intellectual immaturity, wherein one depends on others to make one’s moral and intellectual decisions, to maturity, wherein one makes such decisions for oneself. One cannot effect this transition if one remains under another’s tutelage, and, as a corollary, one compromises another’s enlightenment if one undertakes to make such decisions for the other person—which, as Kant argues, is the case under a paternalistic government. Kant also writes in his 1786 essay “What Is Orientation in Thinking?” that “*To think for oneself*” means to look within oneself (i.e. in one’s own reason) for the supreme touchstone of truth; and the maxim of thinking for oneself at all times is **enlightenment**” (1991, 249, italics and bold in the original). These passages are consistent with the position he takes in *Grounding* that a person who depends on others is acting heteronomously, not autonomously, and is to that extent not exercising a free moral will.

These passages also help to clarify Kant’s notion of personhood and rational agency by indicating some of their practical implications. For example, on the basis of his argument, one would expect him to argue for setting severe limits on the authority that any group of people, including the state, may exercise over others: because individual freedom is necessary both to achieve enlightenment and to exercise one’s moral agency, Kant should argue that no group may impinge on that freedom without thereby acting immorally.

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1. Hans Reiss claims that Kant’s championing of “the individual in the face of authority” makes him “the philosopher of the French Revolution” (in Kant 1991, 3).

Kant expressly draws this conclusion in his 1793 essay “On the Common Saying: ‘This May Be True in Theory, but It Does Not Apply in Practice’”:

*Right* is the restriction of each individual’s freedom so that it harmonises with the freedom of everyone else (in so far as this is possible within the terms of a general law). And *public right* is the distinctive quality of the *external laws* which make this constant harmony possible. Since every restriction of freedom through the arbitrary will of another party is termed *coercion*, it follows that a civil constitution is a relationship among *free* men who are subject to coercive laws, while they retain their freedom within the general union with their fellows. (1991, 73, emphasis in original)

Kant insists on the protection of a sphere of liberty for each individual to self-legislate under universalizable laws of rationality, consistent with the formulation of the categorical imperative requiring the treatment of others “always at the same time as an end and never simply as a means” (1981, 36). This formulation of the categorical imperative might even logically entail the position Kant articulates about “right,” “public right,” and “freedom.” Persons do not lose their personhood when they join a civil community, so they cannot rationally endorse a state that will be destructive of that personhood; on the contrary, according to Kant, a person enters civil society rationally willing that the society will protect both his own agency and that of others. Robert B. Pippin rightly says that for Kant “political duties are a subset of moral duties” (1985, 107–42), but the argument here puts it slightly differently: political rights, or “dignities,” derive from moral rights, which for Kant are determined by one’s moral agency. Thus, the only “coercive laws” to which individuals may rationally allow themselves to be subject in civil society are those that require respect for each others’ moral agency (and provide for the punishment of infractions thereof) (see Pippin 1985, 121). When Kant comes to state his own moral justification for the state in the 1797 *Metaphysics of Morals*, this claim is exactly the one he makes: the state is necessary for securing the conditions of “Right”—in other words, the conditions under which persons can exercise their autonomous agency (see 1991, 132–35).

Consistent with this interpretation, Kant elsewhere endorses free trade and open markets on grounds that make his concern for “harmony” in the preceding passage reminiscent of Adam Smithian invisible-hand arguments. In his 1784 essay “Idea for a Universal History with a Cosmopolitan Purpose,” Kant writes: “Individual men and even entire nations little imagine that, while they are pursuing their own ends, each in his own way and often in opposition to others, they are unwittingly guided in their advance along a course intended by nature. They are unconsciously promoting an end which, even if they knew what it was, would scarcely arouse their interest” (1991, 41). This statement is similar to Smith’s statement of the invisible-hand argument.<sup>2</sup> Kant

2. Smith writes: “As every individual, therefore, endeavours as much as he can . . . so to direct [his] industry

proceeds to endorse some of the same laissez-faire economic policies that Smith advocated—for example, in his discussion in his 1786 work “Conjectures on the Beginning of Human History” of the benefits of “mutual *exchange*” and in his claim that “there can be no wealth-producing activity without *freedom*” (1991, 230–31, emphasis in original), as well as in his claim in the 1795 *Perpetual Peace* that “the *spirit of commerce*” is motivated by people’s “mutual self-interest” and thus “cannot exist side by side with war” (1991, 114, emphasis in original).<sup>3</sup>

Finally, although Kant argues that we cannot know exactly what direction human progress will take, he believes we can nevertheless be confident that mankind is progressing.<sup>4</sup> Thus, in “Universal History” he writes:

The highest purpose of nature—i.e. the development of all natural capacities—can be fulfilled for mankind only in society, and nature intends that man should accomplish this, and indeed all his appointed ends, by his own efforts. This purpose can be fulfilled only in a society which has not only the greatest freedom, and therefore a continual antagonism among its members, but also the most precise specification and preservation of the limits of this freedom in order that it can co-exist with the freedom of others. The highest task which nature has set for mankind must therefore be that of establishing a society in which *freedom under external laws* would be combined to the greatest possible extent with irresistible force, in other words of establishing a perfectly *just civil constitution*. (1991, 45–46, emphasis in original)

Kant’s argument in this essay runs as follows: human progress is possible, but only in conditions of a civil society whose design allows this progress; because the progress is possible only as individuals become enlightened, and individual enlightenment is in turn possible only when individuals are free from improper coercion and paternalism, human progress is therefore possible only under a state that defends individual freedom. Kant believes that individuals have the best chance to be happy under a limited civil government, and he therefore argues that even such a laudable goal as increasing human happiness is not a justifiable role of the state: “But the whole concept of an external right is derived entirely from the concept of *freedom* in the

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that its produce may be of the greatest value; every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor knows how much he is promoting it. . . . [H]e is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention” ([1776] 1981, 456). Kant read Smith’s *Theory of Moral Sentiments* ([1759] 1982) and *Wealth of Nations*, and he held both works in high esteem (Fleischacker 1991, 1996).

3. See also “Theory and Practice” (1991, 75–76) and “Universal History” (1991, 50–51). Kant also apparently referred to Smith as his “*Liebling*,” or “favorite” (Haakonssen 1996, 148–49).

4. See, for example, “Universal History” (1991, 41), “Enlightenment” (57–59), “Theory and Practice” (88–89), and especially “The Contest of the Faculties” (182–90).

mutual external relationships of human beings, and has nothing to do with the end which all men have by nature (i.e. the aim of achieving happiness) or with the recognized means of attaining this end. And thus the latter end must on no account interfere as a determinant with the laws governing external right” (“Theory and Practice,” 1991, 73, emphasis in original). The Kantian state is hence limited on the principled grounds of respecting agency; the fact that this limitation in his view provides the conditions enabling enlightenment, progress, and ultimately happiness is a great but ancillary benefit.

Thus, the positions Kant takes on nonpolitical issues would seem to suggest a libertarian political position. And Kant explicitly avows such a state. In “Universal History,” he writes:

Furthermore, civil freedom can no longer be so easily infringed without disadvantage to all trades and industries, and especially to commerce, in the event of which the state’s power in its external relations will also decline. . . . If the citizen is deterred from seeking his personal welfare in any way he chooses which is consistent with the freedom of others, the vitality of business in general and hence also the strength of the whole are held in check. For this reason, restrictions placed upon personal activities are increasingly relaxed, and general freedom of religion is granted. And thus, although folly and caprice creep in at times, *enlightenment* gradually arises. (1991, 50–51, emphasis in original)

In “Theory and Practice,” Kant writes that “the public welfare which demands *first* consideration lies precisely in that legal constitution which guarantees everyone his freedom within the law, so that each remains free to seek his happiness in whatever way he thinks best, so long as he does not violate the lawful freedom and rights of his fellow subjects at large” and that “[n]o-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a workable general law” (1991, 80, emphasis in original, and 74).

In a crucial passage in *Metaphysics of Morals*, Kant writes that the “Universal Principle of Right” is “[e]very action which by itself or by its maxim enables the freedom of each individual’s will to co-exist with the freedom of everyone else in accordance with a universal law is *right*.” He concludes, “Thus the universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law” (1991, 133, emphasis in original).<sup>5</sup> This stipulation becomes for Kant the grounding

5. Other statements of this law of equal freedom appear in the *Critique of Pure Reason* (Kant [1781] 1965, 312; see also 1991, 191, “Universal History,” 45 and 50, and “Theory and Practice,” 73 and 80).

justification for the existence of a state, its *raison d'être*, and the reason we leave the state of nature is to secure this sphere of maximum freedom compatible with the same freedom of all others. Because this freedom must be complete, in the sense of being as full as possible given the existence of other persons who demand similar freedom, it entails that the state may—indeed, must—secure this condition of freedom, but undertake to do nothing else because any other state activities would compromise the very autonomy the state seeks to defend.

Kant's position thus outlines and implies a political philosophy that is broadly libertarian; that is, it endorses a state constructed with the sole aim of protecting its citizens against invasions of their liberty. For Kant, individuals create a state to protect their moral agency, and in doing so they consent to coercion only insofar as it is required to prevent themselves or others from impinging on their own or others' agency. In his argument, individuals cannot rationally consent to a state that instructs them in morals, coerces virtuous behavior, commands them to trade or not, directs their pursuit of happiness, or forcibly requires them to provide for their own or others' pursuits of happiness. And except in cases of punishment for wrongdoing,<sup>6</sup> this severe limitation on the scope of the state's authority must always be respected: "The rights of man must be held sacred, however great a sacrifice the ruling power may have to make. There can be no half measures here; it is no use devising hybrid solutions such as a pragmatically conditioned right halfway between right and utility. For all politics must bend the knee before right, although politics may hope in return to arrive, however slowly, at a stage of lasting brilliance" (*Perpetual Peace*, 1991, 125). The implication is that a Kantian state protects against invasions of freedom and does nothing else; in the absence of invasions or threats of invasions, it is inactive.

Kant argues even more strongly that although frustration of a person's ability to effect his will damages or corrupts his will if fate, bad luck, or some other impersonal source is responsible, this frustration counts as *immoral disrespect* if it arises from interposition by other persons. His view seems to be that a good will requires exercise and that systematic thwarting results ultimately in atrophy. On this basis, his endorsement of strict limits on state power is both consistent with and implied by his conception of individual moral agency as contained in his notion of a "person." This endorsement is thus not a consequence of accidental features about Kant—for example, his natural disposition, his religious beliefs, or the times in which he lived (as Howard Williams suggests [1983, 194])—nor is it merely a "mirage" produced by a smattering of unconnected or misinterpreted passages (as Allen Rosen claims [1993, 197]). Rather, for Kant, moral agency both entails a minimal state and explains why he repeatedly takes a strong stance against anything beyond a minimal state.

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6. See the discussion of punishment in *Metaphysics of Morals* (1991, 154–59) and Gorner 2000.



## Kant on the State's Prerogative

Why then is Kant seldom viewed as a libertarian, and why are many political thinkers who draw on his views, such as John Rawls, liberals but not libertarians?<sup>7</sup> Part of the explanation may come from the occasional departures Kant himself makes from his own position. Despite the libertarian implications of his conception of rational autonomy, he nevertheless also suggests that the state may sometimes override that autonomy. Under what conditions does he endorse impingements on individual liberty? And can he do so consistently, given his defense of the individual's "sacred" inviolability?

One place where Kant makes an exception to this inviolability is in his conclusion to "Theory and Practice": "Thus if a people, under some existing legislation, were asked to make a judgement which in all probability would prejudice its happiness, what should it do? Should the people not oppose the measure? The only possible answer is that they can do nothing but obey" (1991, 80). He continues that "all resistance against the supreme legislative power, all incitement of the subjects to violent expressions of discontent, all defiance which breaks out into rebellion, is the greatest and most punishable crime in a commonwealth, for it destroys its very foundations. This prohibition is *absolute*" (1991, 81, emphasis in original). The language here seems just as strict as in his discussion of what counts as moral law, where he claims that any empirical reliance whatsoever introduces heteronomy and therefore destroys autonomy, with no middle ground.

In *Metaphysics of Morals*, Kant repeats the claim that people have no right to revolt, even against a tyrannical state, but he goes further by insisting that "[executing a tyrannical monarch] amounts to making the people, *who owe their existence purely to the legislation of the sovereign*, into rulers over the sovereign, thereby brazenly adopting violence as a deliberate principle and exalting it above the most sacred canons of right" (1991, 144–46, emphasis added). Now, the sovereign's legislation is not *literally* responsible for the citizen's existence, and it does not seem plausible that the sovereign's legislation can bring into existence the citizens qua rational, autonomous agents—which is what counts morally for Kant. Perhaps instead he means that the sovereign's laws are responsible for making individuals into *citizens*—that is, members of a particular political community. One might grant that claim, but still ask: Why should people not resist tyranny? Why does Kant not argue that tyranny conflicts with their moral agency and hence support their right—indeed, their "perfect duty" to themselves—to resist it? His argument is that a state composed of persons must operate on universal laws, and because attention to happiness can be only particular,

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7. Isaiah Berlin thought that the fact that many of Kant's followers were "totalitarian," despite Kant's own "severe individualism," required explanation (1969, esp. 148–54). Kant has long been considered one of the founders of liberalism, particularly the German liberalism of the nineteenth century, but this was classical liberalism, which is closer to today's libertarianism than it is to today's liberalism. Note, for example, how Wilhelm von Humboldt ([1854] 1993) sees and relies on Kant.

a state therefore cannot concern itself with the citizens' happiness. Moreover, it follows, Kant here suggests, that citizens who resist a state destructive of their happiness but respectful and protective of their moral agency are acting in a "self-contradictory" way by "denying the highest principle from which all maxims relating to the commonwealth must begin" (1991, 80). Even if we grant Kant's point about the impropriety of the state's concerning itself with happiness, his previous claim that "external" and "internal" freedom are linked is reintroduced here by his invocation of the state's "highest principle"—namely, the protection of moral agency in general.

Howard Williams echoes my argument when he writes that Kant "argues on *a priori* grounds that individual freedom is not possible without first of all creating the social conditions for its realization" and that therefore "civil society ought to be designed and constructed in such a way that it makes individual freedom possible" (1983, 192). Williams also writes that "Kant indeed argues strongly for moral self-determination and the autonomy of the individual within society"; he continues: "But these beliefs have to be balanced against his [Kant's] view that the individual owes an absolute allegiance to the State, which, of course, implies that he owes an absolute allegiance to the particular state to which he belongs" (137). Williams's reading of Kant has Kant taking a position like that of Socrates in the *Crito*, when Socrates argues that to disobey a law, even an unjust one, might shake the foundations of the state, leading to "general insubordination" ("Enlightenment," 1991, 56). Yet, for Kant, the primary concern is protecting individual moral agency; according to his argument elsewhere, when the state and the individual conflict, the state, not the individual, must bow. After all, individuals created the state precisely for the protection of their moral agency. If the state were then to become destructive of what it is meant to protect, it would seem justifiable on Kantian grounds to oppose it.

In "Theory and Practice," Kant grants the head of state special protections and the state itself special powers. He writes, "Each member of the commonwealth has rights of coercion in relation to all the others"—meaning, as we have seen, the largely negative right to coerce respect of each other's free moral agency—but he continues immediately thereafter, "except in relation to the head of state. For he alone is not a member of the commonwealth, but its creator or preserver, and he alone is authorized to coerce others without being subject to any coercive law himself" (1991, 75). In *Perpetual Peace*, Kant grants the state "plenary power" (1991, 101), and in "Contest" he argues that the state will have to develop a comprehensive system of education, the "whole mechanism" of which "will be completely disjointed unless it is designed on the considered plan and intention of the highest authority of the state, then set in motion and constantly maintained in uniform operation thereafter" (1991, 189).<sup>8</sup>

Yet, however benevolent the intentions that prompt the establishment of a system of government schooling, and however necessary granting the state plenary

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8. Kant does not endorse state-provided education, however, in the *Doctrine of Right*.

powers might be for the accomplishment of that end, it would seem that a Kantian should reject it as violative of the independence that is crucial to moral personhood. Remember Kant's argument in "Universal History" that "*man should produce entirely by his own initiative everything which goes beyond the mechanical ordering of his animal existence,*" that "*he should not partake of any other happiness or perfection than that which he has procured for himself without instinct and by his own reason,*" and that "nature intends that man should accomplish this [i.e., 'the development of all natural capacities'], and indeed all his appointed ends, by his own efforts" (1991, 43, 45, emphasis in original). Moreover, in addition to the indictment of paternalism in "Enlightenment" (1991, 54), Kant argues in *Metaphysics of Morals* that one of the characteristics of a citizen of a civil society is "the attribute of civil independence which allows him to owe his existence and sustenance not to the arbitrary will of anyone else among the people, but purely to his own rights and powers as a member of the commonwealth" (1991, 139). It seems that education falls within the realm of self-reliance and independence Kant is carving out here. The questions involved in deciding how to become educated—what exactly is to be learned, how it is to be learned, how much time is to be spent on various subjects, who is to teach, and so on—would depend on one's views about important matters such as what constitutes a happy life and how best to achieve it, precisely the decisions Kant declares necessary to leave to the individual's private judgment.

A final passage, however, has Kantian state power extend yet further. Kant writes in *Metaphysics of Morals*, "*Indirectly, i.e. in so far as he takes the duty of the people upon himself, the supreme commander has the right to impose taxes upon the people for their own preservation, e.g. for the care of the poor, for foundling hospitals and church activities, or for what are otherwise known as charitable or pious institutions*" (1991, 149, emphasis in original). It seems that, here at least, a Kantian might justify a state's requiring all of its citizens to contribute toward the support of whatever is necessary to protect everyone's moral agency.

Poor relief and charitable activities, however, cannot be supported on these grounds because such state activities violate Kant's law of equal freedom in at least two ways. The first way involves the people to whom such aid is provided. Kant has argued that each rational being must be allowed the freedom to make his own decisions about how best to lead his own life and how to achieve happiness. This freedom presumably includes the freedom to make even poor decisions because Kant's claim that freedom is necessary for progress to occur implies that people make and learn from their mistakes. But if the state steps in when one has made a mistake and protects him from the consequences of that mistake, as may happen in cases of state-sponsored poor relief, foundling hospitals, and so on,<sup>9</sup> then the state robs those citizens of the opportunity for the moral progress that the law of equal freedom is supposed to

9. Mark LeBar (1999) argues that the state is unable to track proper beneficence as required by Kant's rejection of the nonbeneficence maxim.

protect. Such state-sponsored activities, however well intentioned and whatever good they in fact may do, seem to be instances of the kind of paternalism that Kant elsewhere repeatedly rejects. The paternalism he disallows seems especially evident in the case of state-endorsed “church activities.”

The second way such state activities violate the law of equal freedom involves those whom the state calls on to provide the money, goods, and services in question. The alternative to having the state sponsor these activities is to allow them to occur (or not) according to private initiative, allowing individuals to decide on their own how much time or money to contribute, which people or charities to support, and so on. When Kant calls on the state to take over such activities, however, he is calling on the state—or the “supreme commander”—to substitute its judgment about such matters for individuals’ judgment. He thus grants to some a scope of freedom and authority that is denied to others, which would seem to violate the law of equal freedom.<sup>10</sup> Moreover, because the people now required to provide the goods and services did not freely choose to do so—which, by hypothesis, is the case because we are not considering private provision—a Kantian might then consider the state’s requiring them to provide such support as tantamount to the state’s forcing them to labor against their will: they must work either in a way they would not have chosen or to an extent they would not have chosen or for an end they would not have chosen. But each of these possibilities again seems a violation of the law of equal freedom, which, for Kant, is unacceptable: “For a human being can never be manipulated just as a means of realizing someone else’s intentions. . . . He is protected against this by his inherent personality” (*Metaphysics of Morals*, 1991, 155).

### Some Possible Resolutions

If I am right that Kantian agency entails a minimal state, both by logic and for Kant himself, then Kant’s occasional endorsements of a more expansive state constitute problematic passages. Several commentators have recognized this tension—or “dualism,” as Williams somewhat euphemistically calls it (1983, 128 and *passim*). Many contemporary scholars refer to a “standard” interpretation of Kant’s political philosophy as placing severe limits on the power of the state, although the consensus among scholars today is that this interpretation is wrong.<sup>11</sup> Let us now consider a few ways in which one might attempt to mitigate or resolve the tension.

10. Consider in this connection the following passage from Kant’s “Conjectures”: “Thus, man had attained a position of *equality with all rational beings*, whatever their rank, because he could claim *to be an end in himself*, to be accepted as such by all others, and not to be used by anyone else simply as a means to other ends” (1991, 226, emphasis in original).

11. No consensus exists, however, with regard to exactly what is wrong with the “standard interpretation.” Two thinkers commonly cited as holding the “standard” interpretation are William von Humboldt ([1854] 1993) and Friedrich Hayek (1960, 1976). See also Mary Gregor (1963) and Bruce Aune (1979). For recent accounts that explicitly reject this interpretation, see Rosen 1993 and Kaufman 1999.

One might first wonder whether Kant held his differing views at different points during his lifetime (as Rosen suggests [1993, 197]). Not so: Kant's concern for the individual was initially expressed early in his critical period, but then repeatedly throughout the subsequent years, including the years when he wrote all of his political essays. An early statement appears in the 1781 *Critique of Pure Reason*, and subsequent discussions may be found in the 1784 essays "Enlightenment" and "Universal History," the 1785 *Grounding*, the 1786 essays "Conjectures" and "Orientation," the 1793 essay "Theory and Practice," the 1795 *Perpetual Peace*, the 1797 *Metaphysics of Morals*, and the 1798 essay "Contest."

One might also wonder whether I am holding Kant to an inappropriate standard. Although he draws his libertarian principles from pure a priori considerations, one must bear in mind that political states exist in the imperfect empirical world, and therefore one must make allowances (see Williams 1983, 192–98). This consideration may well (and with justification) moderate *our* judgment of Kant's contribution to political liberalism, yet it does not square with Kant's own rejection of an "optimizing" conception of moral agency. He explicitly rejects arguments that justify political regimes because they provide a *somewhat larger* amount of autonomy than other regimes might. For him, such regimes remain unacceptable because they are immoral if they violate individual autonomy at all beyond what is necessary to maintain the largest sphere of autonomy compatible with everyone's having the same autonomy. Another way of stating this attempted resolution is to claim that Kant's conception of the dignity of personhood in his moral philosophy translates into a directive simply to *maximize* freedom in political regimes. That is, perhaps his view of individuality requires only maximizing individual freedom to the extent possible within a community of others—which will necessarily entail the curtailment of freedom to some extent (see, for example, Kersting 1992, 358–61; Korsgaard 1996, 31–35). This view seems right, but two qualifications are necessary. First, we must remember Kant's repeated claim that no exceptions are acceptable to the rule never to use a person merely as a means. So one would have to understand the term *maximal* as something like "full" or "complete." Second, as already discussed, the curtailment of individual freedom that community life requires may extend only as far as necessary to secure everyone's moral agency. Thus, the state may justifiably restrict people, but *only* from impinging on each others' agency.

The second point I have raised indicates a perhaps more promising way to resolve the problem—namely, to claim that the state coercion Kant endorses in fact pertains only to policies necessary for protecting individual moral agency. Several passages support this reading. For example, after articulating the "universal principle of right," Kant writes that "if a certain use to which freedom is put is itself a hindrance to freedom in accordance with universal laws (i.e. if it is contrary to right), any coercion which is used against it will be a *hindrance* to a *hindrance of freedom*, and will thus be consonant with freedom in accordance with universal laws—that is, it will be

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right” (*Metaphysics of Morals*, 1991, 134, emphasis in original).<sup>12</sup> Hence, when Kant claims that right entails the authority to use coercion, he must be understood to mean coercion whose design is to protect the individual freedom that the state was created to protect. Similarly, when he later writes that the “legislative power can belong only to the united will of the people” and that “since all right is supposed to emanate from this power, the laws it gives must be absolutely *incapable* of doing anyone an injustice” (*Metaphysics of Morals*, 1991, 139, emphasis in original), he must again be understood as intending “the united will of the people” as *both* that to which they would all freely consent *and* that which is rationally consistent with their moral agency—namely, protection of their moral agency. In this aim, if nowhere else, all citizens are rationally united, and hence, he might argue, it cannot be considered a violation of their agency to require them to support the institutions necessary to effect the end that they all as rational agents must endorse.

Because these provisions are the necessary protections for the individual liberty Kant endorses and thus for the existence of autonomous moral agency in *any* community, Kant would seem to have a clear justification for them and thus a plausible way to avoid inconsistency.<sup>13</sup> Justifying the state’s provision of this Kantian “justice” does not, however, seem to account for Kant’s blanket refusal of a right of resistance, his endorsement of government education, or his endorsement of state-sponsored poor relief and charities. These restrictions and activities go beyond the scope of mere Kantian “justice” and hence cannot be justified on the same grounds.

Perhaps, however, this reading misrepresents how Kant aims to protect freedom in civil society. Perhaps protecting a person’s freedom involves more than just leaving him alone: it may involve taking certain positive steps to ensure that he can make effective use of his freedom. In other words, perhaps Kant’s argument is that founding hospitals, poor-relief programs, and so on are in fact necessary to protect people’s autonomous agency.<sup>14</sup> Alexander Kaufman, for example, argues that certain “social conditions” are “inherently coercive” and therefore that “public welfare”—which may include in particular policies aimed at reducing economic inequalities—“is a requirement of [Kantian] justice” (1999, 32–33). Perhaps someone friendly to this argument might suggest that coercive transfer of some wealth from richer people to poorer people is justified on grounds that it enables the poor people’s free agency, which otherwise would be lacking or more limited.<sup>15</sup> According to this reading, for Kant, freedom and welfare are not opposed, but instead complementary. Several commentators interpret Kant in this way (see, for example, Rosen 1993, chap. 5;

12. I draw here on Gorner 2000.

13. Williams maintains that Kant still contradicts himself here (1983, 70ff).

14. As several contemporary defenders of state provision of “basic needs” argue; see, for example, Copp 1998.

15. I thank an anonymous reviewer for helping me formulate this thought. See also Pogge 2002.

Fleischacker 1999, esp. chaps. 4 and 11; Kaufman 1999, esp. chaps. 1, 2, and 6), and perhaps this formulation is what Kant intended to argue. Indeed, it may be true that (some) social conditions might be inherently coercive and that transferring wealth might expand the scope of free agency for the poor. But did Kant believe that claim? If so, then he faces a larger consistency problem. The state cannot provide the kinds of benefits under consideration here—poor relief, foundling hospitals, and other “charitable or pious institutions”—for one group of people without first taking them from another group of people. They must come from somewhere: the money to provide them or the services themselves must be provided by people with the wherewithal to do so. Whatever aims one has in mind in undertaking or endorsing such state-sponsored activity, carrying it out entails using the latter group merely as a means to the former group’s ends. As Kant emphatically states in many places, however, doing so is simply not allowed.<sup>16</sup> I suggested earlier that in his argument, poverty or indigence alone does not constitute an immoral compromise of rational autonomy—unless, that is, it results from other agents’ unjust actions. Hence, the state is not justified in (coercively) taxing all citizens to provide money or goods to the poor—even granting Kant’s claim that a citizen’s freedom depends on other citizens’ freedom and that in rationally willing one’s own freedom, one rationally wills that of others—because in so doing the state is using them, at least selectively or in some respects, simply as a means to others’ ends.

Yet suppose the members of a civil society *had knowingly consented* to a social contract stipulating that the society they thereby entered would engage in such activities. Would that consent justify the activities on Kantian grounds? Kant argues that a maxim endorsing suicide fails the categorical imperative because it is tantamount to an endorsement of fully ending one’s own agency (even if one decides to commit suicide absent any external coercion). On similar grounds, his argument would seem to commit him to the same judgment about endorsing a social contract providing for such state powers over individuals. Now we must take care here to distinguish this case from a private and voluntary contract requiring that aid be provided to a party to the contract should that party be in dire circumstances—because if the cases are the same, then Kant’s position forbids voluntary private insurance and similar agreements, which seems absurd.<sup>17</sup> The difference lies in the “plenary powers” granted to the state. Plenary powers by definition are not limited *ex ante*, which means that a state with plenary powers may act in indefinitely many ways to restrict individuals’ agency. The private contract, by contrast, limits the parties’ agency only in specified ways, which the relevant agents themselves presumably consider in advance and voluntarily choose. Hence, although the private contract limits agency in specific ways, it arguably enables a larger scope of agency overall and in any case results from deliberate

16. An exception is forcing someone to make restitution for a crime. In the case presented in the text, however, I am speaking of innocent adults.

17. I thank an anonymous referee for helping me to formulate this point.

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choice. By contrast, granting the state plenary powers, even if done voluntarily under a Kantian social contract, in effect uses one's free moral agency to empower the state to limit one's free moral agency in many ways, including ways that the individual agents cannot have known or foreseen—or thus have not chosen deliberately and voluntarily. This aspect makes the case of giving the state plenary powers analogous indeed to the case of committing suicide.<sup>18</sup>

The individual freedom Kant aims to protect in his political philosophy is simply the moral agency he aims to protect in his moral philosophy, and state-enforced welfare programs violate the former because they violate the latter. His injunction to respect people's moral autonomy entails forbidding not only all of the paternalistic measures he explicitly decries, but also the state provision of positive welfare because such provision similarly conflicts with the moral agency he believes civil states are supposed to protect. The proper Kantian social contract entails protections of individual liberty and private property, as well as of free trade and voluntary contracts and associations, but it cannot go beyond these protections without thereby violating them. So although Kant might claim that anything necessary for securing the conditions of "right" is therefore a justifiable state action, state-enforced welfare is not necessary for the conditions of Kantian "right," but rather conflicts with them.

For a similar reason, one cannot rely on the categorical imperative's rejection of the maxim of nonbeneficence (1981, 32) to justify state welfare provision, as Rosen suggests (1993, 199ff.). In the passage in question, Kant argues that an individual cannot rationally will a maxim whereby one never helps others in need because one often needs the help of others, and such a maxim would thereby contradict one's own agency. But this case differs from that in which one wills that the *state* take over (in part or in whole) the duty of beneficence from individuals. State welfare does not relieve individuals of their Kantian duty to help others, and it simultaneously violates the moral agency of those whom it undertakes to benefit and those from whom it takes the goods. In any case, in the passages from *Metaphysics of Morals* where Kant speaks of the right that the state's "supreme commander" has to tax affluent citizens for the benefit of the poor (1991, 149–50), the justification offered is that this redistribution of wealth is required for the state's stability, not out of respect for a maxim of beneficence (see LeBar 1999, esp. 244–49).

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18. Other cases remain, however, that are difficult to assess. Is a marriage contract, for example, allowable on Kantian grounds (as I have presented them here) or not? On the one hand, a typical marriage contract is deliberately chosen by the agents involved, and thus the restrictions on their respective agency are, though real, nevertheless limited, foreseen, and deliberately chosen—and not violative of Kantian protections of agency. On the other hand, one surely cannot foresee *all* the ways in which a marriage contract restricts one's agency; some instances surely take one by surprise and thus cannot specifically be foreseen and deliberately chosen. Proper analysis of such a case lies outside the scope of this article, but the example does suggest that the distinction I press between the "plenary powers" of the state and the "limited powers" of a private contract may be at least in part a matter of degree, not of kind.



## Progress toward Freedom?

A final way to resolve the tension between Kantian libertarianism and Kantian endorsement of state power draws on Kant's notion of human progress, wherein he argues that human nature will need to improve before it is, as it were, fit to be free.<sup>19</sup> As mentioned earlier, Kant argues in "Universal History" that human nature is slow to progress to a state of enlightenment. At present, "man is *an animal who needs a master*. For he certainly abuses his freedom in relation to others of his own kind" (1991, 46, emphasis in original). Although our ultimate goal is to live in a just society of "*freedom under external laws*" (1991, 45, emphasis in original), reaching that goal is a slow and painstaking process through which we must pass before we are prepared to establish and live in such a society: "All man's talents are now gradually developed, his taste cultivated, and by a continued process of enlightenment, a beginning is made towards establishing a way of thinking which can with time transform the primitive natural capacity for moral discrimination into definite practical principles" (1991, 44). Indeed, Kant argues that the "greatest problem for the human species" is to establish such a society (1991, 45), and "a perfect solution is impossible" because of the difficulty of fashioning a just state out of the "warped wood as that which man is made of" (1991, 46).

This point underscores a potential difference between Kant and much libertarian political thought. The latter usually maintains a certain optimism that once certain minimal institutions are in place, the freedom they allow will lead to flourishing and independence, not to anarchy and licentiousness. Kant's view seems more pessimistic. Human beings may one day reach the state where they can live in harmony with one another in freedom under external laws, but this condition lies far in the future—and is apparently not possible now, at least according to "Universal History." Perhaps, rather, mankind's current state is, as G. Felicitas Munzel puts it, a "state of barbaric or lawless freedom, a condition of wildness or unruliness (*Wildheit*) that, in degree and kind, is peculiar to just the animal capable of rationality and hence conscious of the concept of freedom, but whose aptitudes still lack the discipline and cultivation whereby it may realize the form of a rational and finally moral being" (1999, 279). Hence, perhaps Kant's realism about human nature prevents him from embracing libertarianism completely, at least for the time being, and explains why, despite his libertarian inclinations, he endorses state provision of certain welfare measures that will encourage people's progress toward the condition in which they can "realize the form of a rational and finally moral being." Munzel again: "the lawless exercise of human nature appears feverish and swollen and calls for discipline as the propaedeutic first step in bringing about a state of moral health by alleviating the symptoms" (1999, 280); "a good state constitution" centers first on "the 'moral formation of a people'" before allowing them freedom later (286).

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19. I thank Richard Velkley for helpful discussion on this point.

Yet under what conditions can mankind begin or continue its progress? If, according to Kant, self-discipline and cultivation are required for a person to be fully free, what exactly are the necessary first steps toward this end? He argues in “Universal History” that “the unsocial sociability of men” is necessary to their development: “It is this very resistance [that each person experiences from others in his society] which awakens all man’s powers and induces him to overcome his tendency to laziness” (1991, 44). So the “condition of wildness” plays a beneficial role as well, serving as the necessary spur to development. “Nature should thus be thanked for fostering social incompatibility, enviously competitive vanity, and insatiable desires for possession or even power. Without these desires, all man’s excellent natural capacities would never be roused to develop” (1991, 45). The character that Kant thus believes is necessary to fit mankind for the just state seems to be developed by trial and error and by competition, by “great experience tested in many affairs of the world” (1991, 47).<sup>20</sup> Perhaps, then, one prerequisite to the development of this character is the very “wild” or “unruly” freedom under question here.

Kant might then have believed that humanity is not yet prepared to be simply loosed under a just but minimal regime. Yet his own argument holds that humans will become prepared to use their freedom wisely only if they are allowed to exercise their judgment freely in the first place—and to make mistakes and learn from them along the way. He suggests that judgment is a skill that must be honed, which can happen only when people are required to use it, not when they are relieved of the burden of using it (see Fleischacker 1999, chaps. 3 and 4). Allowing people the freedom to make mistakes in the hope that they ultimately will develop sound free judgment would therefore be part of what is required in respecting their rational autonomy. Kant’s insistence on self-reliance, both in “Universal History” and elsewhere, seems to underscore his belief that relieving people from the consequences of their mistakes will not encourage them to learn from those mistakes and to undertake the arduous task of retooling their judgment appropriately, especially given the “laziness” he views as endemic to human beings. The paternalism of a state that provides welfare assistance might on the contrary insulate those receiving benefits from the consequences of their bad decisions and, as argued earlier, at the same time deprive those paying for the benefits of the opportunity to exercise their own judgment about how to help, how much to help, whom to help, and so on. Such a state, a Kantian should argue, would retard, not accelerate, the development of enlightenment and thus be subject to all the objections raised to paternalism in “Enlightenment” and elsewhere. Mankind’s progress, according to Kant, may be slow, but it apparently can take place only under conditions of freedom. If some “lawlessness” initially ensues, one who takes seriously

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20. Compare von Humboldt’s argument that “the soul only acquires this strength in a way similar to that which I described earlier—only by a mighty internal pressure, and a complex external struggle” ([1853] 1993, 78, see also 14 and 93).

the Kantian conception of the development of human character must, it seems, be willing to pay that price to respect human dignity.

Of course, not all people who might claim state assistance have made mistakes. That fact may not be relevant to *Kant's* argument, however, because his discussion pertains precisely to people who make mistakes and to their need to develop better judgment. But the fact I have acknowledged is relevant to *my* argument because one might plausibly suggest that people who because of misfortune through no fault of their own find themselves in conditions unsuitable to the proper exercise or development of judgment do indeed require assistance even to begin exercising or developing that judgment. And provision of such assistance might be the or a proper function of the state. My suspicion is that a Kantian should respond to such cases in two parts: first, helping such people is the or a proper function of individual calls to moral duty and virtue; second, the state should not undertake such activities because, as argued earlier, by doing so it compromises the autonomy of the persons from whom it gets the resources, services, and so on that it provides to those in need. Therefore, if some people cannot help themselves through no fault of their own, we should individually help them. In that way, everyone's personhood is respected. The state should refrain even if individual initiatives turn out not to reach everyone who needs assistance because otherwise at least some individuals' personhood will be compromised.

Kant's concern for the protection of individual autonomy thus does not square with granting the state powers that either do or reasonably might conflict with that autonomy. His conception of individual rational autonomy and the respect that he argues its dignity demands imply that only a minimal state is justified, and his individualism is what leads him to reject state-enforced paternalistic measures as violations either of the individual's right to judge for himself what will make him happy and how to achieve happiness or of his ability to develop the requisite judgment. It should also rule out other measures designed to serve the common good—such as positive welfare programs, poor-relief programs, and state or public education—because they violate both the individual's right to decide for himself whether and how to help others and the individual's right not to be used as a means to the ends or good of others. The most extensive state action that seems consistent with Kantian individualism is a universal system of police and courts designed to protect everyone's moral agency—a system of justice, in other words, that enforces only negative liberty.

## Conclusion

The link between Kantian agency and the limited libertarian state is plausible, and indeed the former *explains* the latter; moreover, the evidence suggests that Kant himself believed that the former implied the latter. That conclusion leaves us, however, with the final question of how exactly to characterize Kant's position.

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To approach this question, consider two claims. First, Kant believes that people create a state in order to protect their rational, autonomous agency and that this state is justified insofar as it protects that agency. Moreover, coercive state action can also be justified if it serves only to secure the conditions necessary for continued or more effective protection of this agency. A plausible extension of this argument is that the conditions of morality themselves are possible only within the protections of a Kantian minimal state. Given that extension, Kant's endorsement of limited, state-based welfare measures might have been motivated by a belief that they exemplify state coercion necessary to secure the conditions of agency. For the reasons explained earlier, I deny that such institutions can be defended successfully on these grounds, but the particular application notwithstanding, we may be able to endorse—consistently and rationally—Kant's principle of granting the state those, and only those, coercive powers necessary for the protection of "right."

Second, Kant may not have been as convinced as one might be today of intermediary "civil" institutions' ability to do the work of founding hospitals and so on. Substantial evidence now attests, however, to the perhaps surprisingly effective scope and reach of civil society's private institutions to find and meet the needs of society's most destitute (for a recent treatment, see Beito, Gordon, and Tabarrok 2002). Kant might well have been unaware of such institutions, or—for reasons owing to his particular time and place—he might have been positively suspicious of them, including organized churches.

I believe these two points absolve Kant of the claim of contradiction. He can claim consistently that the state's purpose is to protect individual free agency and that it is justified in using coercion to secure the conditions that allow such protection—but not in any other circumstances. If this account correctly represents Kant's position, then we may properly describe him as a political libertarian, though one sensitive to libertarianism's limitations. Thus, we might aptly call his position *constrained libertarianism*.

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## *The Empire Has No Clothes*

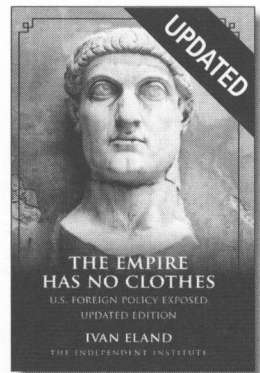
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