

Freedom and poverty in the Kantian state

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Abstract

The coercive authority of the Kantian state is rationally grounded in the ideal of equal external freedom, which is realized when each individual can choose and act without being constrained by another's will. This ideal does not seem like it can justify state-mandated economic redistribution. For if one is externally free just as long as one can choose and act without being constrained by another, then only direct slavery, serfdom, or other systems of overt control seem to threaten external freedom. Yet Kant endows the freedom-based state with considerable powers of economic redistribution. I argue that recent commentary has misunderstood both Kant's account of *why* poverty is a form of freedom-threatening dependence and the extent of the Kantian state's powers for remedying poverty. Criticizing Arthur Ripstein and the Kantianism of the "Toronto-School," I argue that the most salient notion of dependence at issue within the Kantian framework is not the direct control of the choice-making capacities of another but asymmetrical influence in a power relationship. For Kant, poverty is fundamentally a problem of structural disempowerment.

1 | INTRODUCTION: THE KANTIAN STATE AND POVERTY

According to Kant's political philosophy, the coercive authority of the state is legitimate only insofar as it constitutes and expresses the freedom of its members. In so doing, the Kantian state renders compatible two seemingly contradictory claims: (a) No human being is in charge of any other. That is, freedom is our "innate right" (1996a: 6:238).¹ (b) Our status as free can only be secured under a political condition in which each of us is in certain relevant respects no longer in charge of ourselves. As Kant writes, in order to realize our innate right to freedom, each person must "relinquish entirely his wild, lawless freedom in order to find his freedom as such undiminished in a dependence upon laws" (1996a, 6:316).

The form of freedom at issue in the political realm is what Kant calls freedom "in the external use of choice (*Willkür*)" (1996a: 6:214). Roughly, external freedom (*äussere Freiheit*) is the capacity to choose and act independently of being "constrained by another's choice" (1996a: 6:237). External freedom consists or inheres in a *relation* between agents. This means that external freedom is distinct from both freedom as the internal governance of inclinations by the rational will (i.e., the moral freedom most familiar from the *Groundwork*), and freedom as the practical idea of independence from the efficient-causal order of nature (i.e., freedom as treated most extensively in the first and second *Critiques*).² Our relational, political freedom is *external* because it pertains to what human beings can actually do or

manifest in the physical world, rather than to their inner maxims or intentions, or occupancy of an immaterial, noumenal realm.³

The power of choice expressed through external freedom is “one’s consciousness of the ability to bring about [desire’s] object by one’s action” (1996a: 6:213). Right (*Recht*) is “the sum of conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (1996a: 6:230). As such, right is the set of restrictions on action that constitute the external freedom of a plurality of embodied agents interacting in finite space. These restrictions provide the necessary conditions for the joint realization of the power of choice. In sum, *Recht* is equal freedom as it is expressed in and constituted by a system of legal and other public institutions.

This will all be familiar to students of Kant’s political philosophy. But Kant’s freedom-centered justification of state coercion raises the following question: Can the ideal of external freedom normatively ground the welfare functions of the modern state? More specifically, is the ideal compatible with redistributive state action aimed at a more just and equitable distribution of economic resources?

On first inspection, the prospects for incorporating economic redistribution within the normative framework of the Kantian state look rather dim. A state whose only mandate is to create the conditions necessary for the joint realization of the power of choice appears to have only minimal regulatory powers with respect to the economy. If one is free just as long as one can control one’s own life by making choices unimpeded by the wills of others, then only direct slavery, serfdom, or other systems of overt control seem to pose a salient threat. But the poor are not slaves. That the Kantian state rules out slavery need not by itself entail that it ought to alleviate poverty.⁴

Yet Kant endows the freedom-based state with considerable powers of economic redistribution. He writes:

To the supreme commander there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organizations providing for the poor, founding homes and church organizations, usually called charitable or pious institutions.

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens. This can be done either by imposing a tax on the property or commerce of citizens, or by establishing funds and using the interest from them, not for the needs of the state (for it is rich), but for the needs of the people (1996a: 6:326).

Kant’s suggestion that principles of redistribution follow from “reasons of state” is surprising for two reasons. First, as we’ve already seen, it is not initially clear how poverty threatens the joint realization of the power of choice. Second, poverty is often thought to be unjust not because it threatens freedom but because there is something normatively problematic about allowing the basic needs of people to go unmet, especially if such needs could be met at minimal social cost. But need cannot provide the normative basis for redistribution in the Kantian state. *Recht* “does not signify the relation of one’s choice to the mere wish (*hence also to the mere need*) of the other ... but only a relation to the other’s choice” (1996a: 6:230; emphasis mine). As we will see in more detail below, *Recht* concerns the form of relations between persons: “The concept of right ... has to do, first, only with the external and indeed practical relation of one person to another” (1996a: 6:230). At least on the Kantian understanding, need is not a relation between persons. Need, as “something internal to the needy person,” cannot generate a coercive claim on another (Weinrib, 1995: 96).

So although this passage mentions that the poor are unable to “provide for even their most necessary natural needs,” the bare fact of unmet needs cannot account for why Kant thinks that poverty impedes relations of right.⁵ The salient problem can only be that the poor *depend* on the rich in a way that threatens their capacity to make choices unhindered by the wills of others.⁶ The clearest case of such dependence is one where the rich use the state to secure nearly complete access to a limited stock of material resources. In such a case, the *only* way for the poor to meet their needs is to depend on the good graces of those who are not poor, for example, through acts of private charity. But it is far from clear that other cases of poverty that might be of concern to the more egalitarian forms of the welfare state clearly fit this model. For example, what about cases where the poor must spend almost all of their waking hours selling their labor on a market simply in order to meet their necessary needs, forgoing as luxury what other more fortunate individuals might regard as constituents of a minimally decent life? Is this situation really best understood as one of private dependence? In order to understand Kant's remarks on poverty relief in light of the overall project of *DR*, we must therefore understand why exactly he thinks that poverty creates dependence and how dependence threatens the joint realization of the power of choice. We will see that in addition to cases like private charity, systemically caused forms of dependence are also within the class of considerations germane to *Recht*.

In this paper, I join a number of commentators in arguing that Kant's political philosophy provides a conceptually powerful account of poverty as a form of freedom-threatening dependence.⁷ The bulk of my argument, however, will be spent showing that noted recent commentary has misunderstood: (a) Kant's account of why poverty is a form of unjust dependence and (b) the extent of the Kantian state's powers for remedying poverty. My task is less strictly interpretive than reconstructive. I aim to show what a state based on Kantian principles *should* be committed to with respect to poverty relief.⁸

1.1 | The limits of “Toronto-Kantianism”

The commentary with which I am most engaged below focuses on the dimension of dependence in which one individual or group of individuals (e.g., the rich) controls another group (e.g., the poor). It understands this form of control as one of direct domination, that is, cases where the choice-making power of the subordinated agent is controlled by the choice-making power of the dominant agent. In *Force and Freedom*, Arthur Ripstein provides the most developed version of this interpretation. Because it is shared by a group of commentators associated in some way with the University of Toronto (e.g., Ripstein, Ernst and Jacob Weinrib, and Helga Varden), I shall hereafter refer to this position as “Toronto-Kantianism.”⁹

In the specific context of poverty, Toronto-Kantianism gives the impression that the way in which poverty threatens external freedom is by creating a condition in which the poor must make themselves servile to a benefactor in order to survive. For example, in *Force and Freedom*, Ripstein writes:

Poverty, as Kant conceives it, is systematic: a person cannot use his or her own body, or even so much as occupy space, without the permission of another. The problem is not that some particular purpose depends on the choices of others, but that the pursuit of any purpose does. If all purposiveness depends on the grace of others, the dependent person is in the juridical position of a slave or serf (2009: 281).¹⁰

Based on this understanding of how poverty threatens external freedom, Ripstein offers the following argument for why the Kantian state must redistribute economic resources:

1. The aim of the Kantian state is to realize equal external freedom by guaranteeing individuals' immunity from personal relationships of dependence. In order to achieve this goal, the state's dictates must have their source in the “united will of the people” (1996a: 6:213).
2. In order to realize equal external freedom, the state must sanction a regime of property rights.¹¹

3. Once a property regime is sanctioned, the poor have no right to take what they need in order to survive, if what they need already belongs to another. Thus, the losers in such a regime may come to depend for their existence on the private generosity of the winners. So (2) looks to conflict with (1).
4. Citizens could not agree to such a regime. Private dependence is inconsistent with their equal worth, as this is codified and expressed in equal legal and political standing. Privately dependent individuals cannot form a public will.
5. In order to protect independence while still coercively enforcing property claims—that is, in order to reconcile (2) with (1)—the state must provide poverty relief.

(5) solves the conflict between (1) and (2) because poverty relief is authorized by a united will and is thus not a form of private dependence. In sum, in a publically authorized welfare state, a property regime in which some people own more than others does not violate the ideal of external freedom (Ripstein, 2009: 267–286).¹²

I do not contest Ripstein's basic claim that Kantian welfare rights must be grounded in the problem of dependence. But, against (3), I will argue that the form of dependence at issue within the Kantian framework is not exhausted by the direct control of the choice-making capacities of another but includes asymmetrical influence in a power relationship. Accordingly, relevant threats to external freedom include cases where one agent has the power to bind another in ways that do not leave the bound agent equal influence. As Kant writes, external freedom implies "equality, that is, independence from being bound by others to more than one can in turn bind them" (1996a: 6:238).

This more capacious understanding of dependence leads to a more capacious understanding of the scope of Kantian economic reform. I contend that the Kantian state is concerned with institutional and structural conditions that allow for or create asymmetrical concentrations of wealth and power. So the problem is not only that the rich may directly control the poor but also that the poor lack the power to influence the system of wealth that has generated the potential for that control in the first place. This places the role for state intervention into the economy prior to the point of direct domination of one agent over another. The Kantian state clearly prohibits slavery and other forms of total control, but—if my argument is correct—it can also counteract market-based concentrations of wealth if and when they threaten external freedom.

The plan of the rest of the paper is as follows: In Section 2, I argue that Ripstein's interpretation of the innate right to freedom obscures the systemic basis of *Recht*, that is, the way in which *institutions* are both a threat to, and the site of, external freedom. Drawing on Kant's discussion of "passive citizens," in Section 3, I show that Kant understands poverty as structural disempowerment. In Section 4, I consider objections to my interpretation of Kantian equality.

2 | INNATE RIGHT: KANT VERSUS RIPSTEIN

In order to substantiate my claim that Kant's political philosophy countenances systemic factors as threats to external freedom, we need to understand one of the foundational aspects of *Recht*: the innate right to freedom. Kant defines the right as follows: "*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" (1996a: 6:237).

According to one common interpretation, innate right protects each individual's entitlement to a sphere of external freedom immune from encroachment by others. For example, Paul Guyer suggests that innate right requires "the duty to preserve and protect from injury the freedom of others and their physical and moral being" (2000: 278).¹³ And Japa Pallikkathayil holds that innate right is grounded in each agent's entitlement "to an equal sphere of discretionary space in virtue of her capacity for self-directed action" (2010: 133).¹⁴

Were this interpretation correct, Kant's political philosophy would lack a systemic focus. The Kantian state would merely be tasked with protecting the inalienable rights that individuals have *qua* free, rational wills, rights that are

attributable to individuals prior to any system of interaction with others. (After all, for Kant, one's "capacity for self-directed action" stems from one's instantiation of the categorical imperative, the binding force of which involves no necessary relation to other rational agents.¹⁵) Other people would be but external *impediments* to or *enablers* of a conception of freedom defined in terms of the individual. Law would be but a means of protecting an antecedently defined set of entitlements.¹⁶

Yet it is profoundly at odds with Kant's methodology in *DR*—indeed, with the critical philosophy as a whole—to dogmatically assume discrete individuals, each with a natural right to freedom, who must then be protected from others by means of state-enforced laws. "Innate" does not mean "conceptually primitive," but simply "not acquired," in that it refers to rights that are located in the person rather than in the objects the person may possess through a declarative act (e.g., Kant, 1996a: 6:238; Kant, 1996b, 8:292). In fact, the basic concept of *DR* is not an innate right of individual freedom, but rather the Universal Principle of Right (UPR), which states, "any action is *right* if it can coexist with everyone's freedom in accordance with a universal law" (1996a: 6:230).¹⁷ As such, UPR defines a just system of interaction as a set of reciprocal limits on freedom. UPR is not a set of entitlements owed to each individual, but the purely formal ideal of balancing conflicts between exercises of external agency so as to constitute a discretionary sphere for each. What it demands is a system of regulations that enable agents with conflicting ends to jointly exercise the power of choice.¹⁸

Insofar as UPR provides the necessary conditions for the joint realization of the power of choice, it delineates a structure of practical reason that is manifest in and through individual rational agents. This means that the primary unit of freedom at issue in relations of right is the entire system of symmetrical choice itself. Individuals, that is, nodes in this system, are *free* insofar as they are granted the entitlements generated by the legal restraints on others necessary to secure symmetrical choice.¹⁹ Innate right is thus ultimately the right of each node to a public determination of a consistent set of legal freedoms through authoritative institutions (such as courts and legislatures); it is not a right to the protection of an essential nonrelational form of individual agency.

Ripstein recognizes that "innate right is the individualization of the Universal Principle of Right" (2009: 35) and is therefore internally related to the symmetrical choice of others, rather than being a property or entitlement of the isolated individual. For Toronto-Kantians in general, my innate right to freedom just is juridical standing *vis-à-vis* other people and so is relational through and through.²⁰ Nevertheless, Ripstein decomposes the idea of external freedom into individual pairwise relations of nondomination.²¹ Ripstein writes that Kant identifies the innate right of humanity with "the right to be your own master—that is, the right that no other person be your master" (2009: 31). And he explicitly connects the Kantian idea of innate right to the neo-republican conception of not being arbitrarily subjected to the choices of another person (2009: 42–50). For Ripstein, the paradigm case of external freedom is one in which each agent is not "subordinated to the choice of any *other particular person*" (2009: 4; first emphasis is Ripstein's, the second my own); accordingly, violations of innate right are ones in which "somebody does something to you" (2009: 42). The complete dependence of one will on another becomes the paradigm case of a violation of equal external freedom. Thus, Ripstein holds that "the wrongfulness of slavery is, in an important sense, the starting point for Kant" (2004: 8).

Ripstein's translation of innate right into the language of nondomination is not false, but incomplete. It is only a partial gloss of Kant's remarks on "a human being's quality of being his own master (*sui juris*)," because it neglects the fact that being subservient to a particular master is only one type of threat to the joint realization of the power of choice. Ripstein's approach focuses on individuals and their actions. Accordingly, he treats institutions as threats to external freedom only insofar as they enable the private domination of one individual by another. But Kantian *Recht* recognizes institutions themselves as threats to external freedom insofar as they operate according to rules that prioritize the freedom of some over others. Of course, such rules structure and make possible individual domination relations. But they are threats to external freedom even if individuals, operating within these rules, in some sense consent to the asymmetrical power wielded over them by certain agents, perhaps because they think that the rules of the game are inevitable or unchangeable. That is why Kant is explicit that *Recht* is not only a set of limits on action but also "the sum of the *conditions* under which the choice of one can be united with the choice of another" (1996a:

6:230; emphasis mine).²² Conversely, those institutional conditions that are necessary to ensure symmetrical choice are not means to external freedom, but external freedom itself, its institutional actuality. In the next section, I bring the structural, institutional dimensions of right, that is, its “conditions,” into sharper focus.

2.1 | External freedom and threats to the “form” of choice

Before proceeding further, let us briefly take stock of the key Kantian concepts discussed thus far. We have seen that realizing UPR through law constitutes equal external freedom by allowing each individual to exercise his power of choice consistent with the like exercise of that capacity in all others. In so doing, UPR grants to individuals an innate right to freedom, which, I have claimed, includes (but extends beyond) not being a slave to other individuals or other relationships of private dependence.

Obviously, this set of interrelated concepts only provides a coherent understanding of people's rights if it can elucidate what it means to jointly realize the power of choice. The concept of equal external freedom might seem so demanding as to be incoherent. After all, every action undertaken by one agent limits the options available to another. If a mere restriction of options counted as impairment of the joint exercise of the power of choice, then the ideal of equal external freedom would normatively prohibit all action. As soon as anyone moves or even occupies space, the choice of others is restricted, which would render equal external freedom impossible.

To answer this worry about overdemandingness, Ripstein distinguishes between the “form” and “matter” of choice. Picking up on Kant's statement that in relations of right “no account at all is taken of the matter of choice,” that is, the particular choices one makes, but only of “the form in the relation of choice on the part of both” (1996a: 6:230), Ripstein writes that relations of right:

abstract from what Kant calls the “matter” of choice—the particular purposes being pursued—and focus instead on the capacity to set purposes without having them set by others. What you can accomplish depends on what others are doing—someone else can frustrate your plans by getting the last quart of milk in the store. If they do so, they don't interfere with your independence, because they impose no limits on your ability to use your powers to set and pursue your own purposes. They just change the world in ways that make your means useless for the particular purpose you would have set (2009: 16).

For Ripstein, external freedom is realized when all parties to an interaction retain their basic capacity for making choices. In other words, external freedom concerns only the form and not the matter of choice. The actions of others almost always restrict the particular choices I can make, but I am externally free just so long as my capacity to choose, that is, to be a purposive agent, is not subordinated to the dictates of another (2009: 32–33).

Ripstein interprets the formal notion of a capacity for choice as follows: I have my capacity for choice just so long as (a) I can use my own powers and whatever means are currently at my disposal and (b) no agent compels me to use my powers or means for purposes to which I did not consent or that in some way violate my status as free and equal. In other words, I have freedom in the capacity for choice just as long as I can use what powers and possessions I *already have* (2009: 33–39), with the caveat that (c) my use of my possessions cannot create a condition in which others become entirely dependent on my good graces in order to maintain themselves. The form of my choice is preserved just so long as I retain—to put (a)–(b) in slogan form—*my powers for my purposes*.

A freedom-based political philosophy undoubtedly needs *some* distinction between the ordinary ways in which what one agent does limits what other agents can do, and the ways in which agents can threaten the capacity for agency in others—what Ripstein calls the difference between merely “changing the context in which that person acts” and “wronging a person” (e.g., 2009: 49). But it is unclear whether this distinction needs to be drawn precisely as Ripstein does.²³ It is not obvious that Kant must hold that the *only* ways to impair the form of another's choice is to (a) force that person to use their own powers for my ends, what Ripstein calls “usurping” the powers of another (2009: 43); (b) treat that person's means as though they were my own, what Ripstein calls “destroying” the powers of another (2009: 44); or (c) create the conditions of possibility for such usurpation or destruction.

These are certainly the key initial features of the form of choice at issue in external freedom. But *DR* begins with abstract initial conceptions of *all* its central concepts, external freedom included. These concepts gradually acquire greater determination as the argument proceeds. As Kant describes the method of critical philosophy more generally, “the definition in all its precision and clarity ought, in philosophy, to come rather at the end than at the beginning of our enquiries,” which means that in presenting philosophical ideas, an “incomplete exposition must precede the complete” (1929: A73/B759).²⁴ Thus, later aspects of *DR*'s progression of argument should shed light on the full meaning of its starting point: equal external freedom.

In assessing the continuing relevance of Kantian political philosophy for egalitarian understandings of the welfare state, we must ask the following question: can a Kantian view hold that (a) the basis of the state's coercive authority is its ability to realize equal external freedom, (b) individuals' rights to freedom must be determined in and through considerations of a *system* of equal external freedom, (c) the notion of a system of external freedom is only coherent if we draw a distinction between the form and matter of choice—without thereby being committed to (d) violations of external freedom occur only when one agent directly interferes with the persons and possessions of another?

Let me first give an independent argument to motivate why Kantian egalitarians should not accept Ripstein's way of drawing the distinction between the form and matter of choice. In Section 3, I turn to the question of whether Kant himself has the resources to draw the distinction as egalitarians might wish. Consider again Ripstein's example of buying milk, mentioned in the passage cited above. In explaining the difference between an attack on the form of one's choice and merely having one's choices constrained by another, Ripstein writes:

I make your trip to the store a waste of your labor if I buy the last quart of milk before you get there, but this interference is not a wrong to you. You wasted your efforts; I just exercised my freedom. I wrong you if I interfere with your person—pushing you out of the way as you reach for the milk (2009: 101).

If all the innate right to freedom entails is independence from those direct actions of another that threaten one's capacity to be an agent at all, then of course I am not wronged when somebody purchases the last quart of milk. But consider now the following amendment to Ripstein's example: Suppose a speculator comes along and buys up all the milk on the shelves in order to sell it at a higher price elsewhere (perhaps to an underserved, minority community without adequate grocery stores). For all Ripstein has said, the customer in this scenario has not been wronged in any way significant for his status as externally free. The speculator has not affected the customer's capacity to choose, merely restricted the choices he can make. For Ripstein's Kant, the customer is externally free just so long as he has discretion over whatever means *are currently at his disposal*. The customer's children might go undernourished because of the waning supply of milk, but as long as the speculator doesn't break into the customer's fridge to take what he has already purchased, he has done the customer no wrong.²⁵²⁶

The milk speculator's actions are not an attack on the property or person of the customer, but they will not strike egalitarians simply as a morally unproblematic limitation of the customer's options, akin to purchasing the last quart of milk on the shelves. The speculator's actions seem to severely constrain the customer's capacity to choose and so concern the form rather than matter of his choice. One hopes that the Kantian state can prevent the speculator's activities on the grounds that they create a condition of asymmetrical dependence between the customer and speculator. What might strike an egalitarian as problematic about this case is a market condition in which the speculator can constrain the choices of the customer, but the customer has no way to counter-constrain the speculator—for example, by purchasing milk from a competitor or state-sponsored milk subsidy program.

2.2 | Some Ripsteinian rejoinders

Before turning to the interpretive question of whether *DR* can account for indirect structural threats to external freedom such as the actions of the milk speculator, let me raise two rejoinders on Ripstein's behalf. In arguing that Ripstein decomposes a system of external freedom into pairwise relations of nondomination, it may appear as though I am charging him with restricting violations of external freedom to cases in which one agent *intentionally* wrongs another.

Many of Ripstein's examples do suggest that Kantian *Recht* pertains most centrally to cases where one agent self-consciously threatens the choice-making capacity of another: for example, use of force and fraud, nonconsensual touching, extortion, and property theft. But Ripstein's account also countenances threats to external freedom not intended by the offending party. At one point, Ripstein concedes that he has focused on intentional cases of restrictions of external freedom only in order to make his points "particularly vivid" and that everything he says applies "quite apart from [the offender's] state of mind" (2009: 50).²⁷

In this respect, Ripstein is true to Kantian *Recht*, which clearly considers the unintended consequences of intended acts. Kant writes that the concept of right has to do with the practical relation of agents, "insofar as their actions, as deeds, can have (direct or *indirect*) influence on each other" (1996a: 6:230; emphasis mine), and he defines fault as "an *unintentional* transgression which can still be imputed to the agent" (6:224; emphasis in original).²⁸ Both the Ripsteinian and the Kantian state can regulate or structure interactions where agents are not directly aiming at attacking others' external freedom, but where impairment of external freedom is an indirect result of what they do. So what exactly is my complaint?

To make more precise what is lacking in Ripstein's account, let us further develop the example of the milk speculator. Imagine that the vicissitudes of the market in milk speculation result in the complete absence of milk in one remote town. All customers in that town must now depend on the local speculator to try his best to obtain milk from a trading partner. Perhaps the speculator agrees, acting from good will and a sense of moral obligation to the community. Stipulate that the speculator did not directly strive for a situation in which the community members' wills are subordinated to his. He was simply playing by the rules of the milk market. That he played a central role in bringing about a condition of freedom-threatening dependence was the unintended consequence of his law-abiding, economically rational activity.

Faced with this case, the problem with Ripstein's account is not that it tries to build a notion of systemic restrictions on individual freedom out of intentional bad actions, but rather that it treats the notion of a system of interaction as morally significant only insofar as it enables one agent's direct control of another's resources. This can be unpacked into two separate points. First, Ripstein's account will locate the impairment to external freedom at the terminus of a structural problem. The threat is neither the rules that allowed the community to be dominated by the speculator nor the fact that the community could do little to revise those rules. Instead, Ripstein focuses on the asymmetrical power wielded by one of the agents whose role and authority is defined by that rule-governed activity. Second, because the speculator does not deprive the townspeople of something they already owned, the problem will have to be that in lacking milk they will have to grovel before him in order to feed their children—if not literally, then at least through being forced to buy milk from him at hugely inflated prices or of dubious quality.

Putting these two points together, for Ripstein's Kant, it is the speculator, not the market in milk speculation, who is the threat to external freedom, and the way in which the speculator dominates is by forcing the townspeople to debase their dignity before him, not by denying them milk through the highly preventable activity of market speculation. If one wishes to depart from Ripstein's framework in order to view the market as a threat to external freedom, then one must be committed to understanding external freedom as demanding something more than security in possessions. After all, markets do not deprive one of what one *already* has, but rather structure the terms on which one can acquire anything at all.

A second rejoinder Ripstein might make is that his multistaged or sequenced account of right provides resources to remedy the actions of the milk speculator. Ripstein's basic picture is that, as a matter of private right—that is, the domain of interaction between persons not acting as representatives of the state—the state cannot intervene in the economy. He writes, "private right protects each person's purposiveness by protecting each person in what he or she already happens to have" (2009: 275). But he concedes, "it is conceivable that there might be grounds of public right to restrict economic competition" (2009: 50)—restrictions, which would surely include limitations on the monopoly power of the milk speculator. Ripstein argues that a set of public coercive rules, such as rules structuring economic activities, can only be legitimate if they could be agreed to by each "consistent with his or her rightful honor," that is, one's equal worth with respect to all other rational agents, which means that "anything that could not be the object of

[such] agreement cannot give rise to enforceable private rights, including enforceable property rights” (2009: 277). Perhaps market-agreements that allow for the possibility that some people might have to debase themselves before others to feed their children violate the requirements of rightful honor. On this construal of Ripstein's Kant, as a matter of private right, the milk speculator can corner the market in milk and charge whatever he wants. But insofar as his activities threaten to create a condition in which he dominates others, the state can tax some of his profits and redistribute it back to the poor (perhaps through state-sponsored milk subsidies).²⁹

While it is undoubtedly true that the Ripsteinian state has *some* redistributive powers, they are extremely minimal, because its guiding aim is only to raise individuals out of a condition of semislavery—that is, a condition in which the poor are in “the juridical position of a slave or serf” (2009: 281).³⁰ It is unclear on Ripstein's account why having to purchase milk at hugely inflated prices would be inconsistent with one's rightful honor if all rightful honor entails is that my capacity to be an agent is respected.

At one point, Ripstein concedes that redistribution need not be limited “to what is required for biological survival” (2009: 284). But it is hard to see how more robust redistributive policies could find traction within Ripstein's framework. If the problem of dependence is structurally akin to the problem of slavery, why should the state redistribute beyond the minimal point necessary to ensure that individuals are not “*completely subject* to the choice of those in more fortunate circumstances” (2009: 274; emphasis mine)? We will avoid this result if it turns out that the Kantian approach need not assimilate the poor to slaves. In that case, Ripstein's equation of threats to the innate right to freedom with direct and total control over the choice-making capacity of another will be too narrow.

I will argue below that Ripstein's understanding of innate right does not give adequate weight to the relation between being one's own master (*sui juris*) and equality, which Kant defines as “independence from being bound by others to more than one can in turn bind them” (1996a: 6:237–238), or in another formulation, “the attribute of ... not recognizing among the people any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other” (6:314).³¹ We will see that for Kant, the independence of externally free agents is threatened not only when one agent usurps outright the powers and means of another but also when there is an asymmetry of power that the subordinated can do nothing to redress or influence.

3 | BEYOND TORONTO-KANTIANISM: THE CASE OF PASSIVE CITIZENS

As evidence of this broader conception of independence, consider Kant's infamous discussion of active and passive citizens. Active citizens sell their goods and services to the public by means of a market. Passive citizens depend for their existence on the financial support of other private agents. Kant's paradigm cases of active citizens are merchants and artisans. Passive citizens include domestic servants, day laborers, private tutors, tenant farmers, children, and most notoriously, women (1996a: 6:314–315). Putting aside the last two groups, the key distinction is that the active citizen sells what he owns or has made to a customer, whereas the passive citizen sells himself as labor power to a boss.³² Kant argues that although passive citizens must have their fundamental rights respected and receive appropriate government representation, they do not have the right to actively manage the affairs of the state, whether by participating in public office or voting. The passive citizen lacks the “attribute of civil independence, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not the choice of another among the people” (1996a: 6:314).

As we have seen, not being subjected to the choice of another is essential for membership in an order of equal external freedom. So although passive citizens are legally protected against classes of wrongs such as bodily violation, extortion, and property theft, technically speaking they are only partially included within an order of *Recht*. They are not *truly* citizens, but mere “cobeneficiaries of [the commonwealth's] protection” (1996b: 8:294). Yet Kant also argues that no state could be legitimate if it did not afford all passive citizens the opportunity to “work [their] way up from [a] passive condition to an active one” (1996a: 6:315).

Does Kant's discussion of passive citizens simply indicate his misogyny, class bias, or distrust in direct democracy? Is Kant simply defending the legitimacy of maintaining a political underclass, just so long as members of that underclass can strive for equal political status, and the best and brightest among them can attain it?³³ This position would be deeply inconsistent with Kant's own insistence on the equality of all rational beings. Alternatively, Kant's discussion of passive citizens might evince recognition of the impossibility of true political equality under conditions of gender and economic inequality. On this interpretation, Kant is *describing* nonideal circumstances rather than *prescribing* how things ought to be.³⁴ His worry is that those who lack economic independence will be coerced into voting the interests of those on whom they depend.³⁵ Under these conditions, widespread political participation might not produce greater freedom for those on the bottom rungs. Rather than pursue either of these interpretive options, in what follows, I discuss Kant's remarks on passive citizens only in order to show that his view of threats to external freedom is broader than Ripstein's.

Kant does not think that passive citizens are like slaves or serfs. He in fact explicitly contrasts day laborers, who have a definite contract and terms of service, with serfs, who are subject to the master's power to interpret the extent of their labor obligations (1996a: 6:330). Moreover, Kant even distinguishes the day laborer from the servant. The day laborer "does not give himself up as part of the other's belongings and so is not a member of the household" (1996a: 6:361)—that is, the day laborer is not literally an instrument to be used by the master.³⁶ Yet Kant excludes day laborers from full participation in the state, and thus from an order of equal external freedom, on the grounds that their lives are marked by pervasive dependence on other individuals. So clearly there is a notion of dependence here that awaits explication.

Recall Kant's statement that a fully free person "owe[s] his existence and preservation to his own rights and powers" (1996a: 6:314). Although Kant argues that passive citizens are not externally free, most of them exercise their choice-making capacities in the service of ends they have chosen. Many passive citizens even have occupations in which they exercise discretionary control over their own means. For example, Kant includes among passive citizens the "blacksmith in India, who goes into people's houses to work on iron with *his hammer, anvil, and bellows*" and the "woodcutter I hire to work in my yard," who presumably also brings his own tools (6:314; emphasis mine). Clearly then, Kant must think that external freedom is threatened even in conditions where individuals have certain spheres of independence from the wills of others. The discussion of occupations like the Indian blacksmith shows that slavery need not exhaust Kant's conception of what it means to fail to be externally free.³⁷

Toronto-Kantianism strains to incorporate the concept of passive citizens into its understanding of threats to external freedom. For example, Jacob Weinrib finds it puzzling that Kant classifies the Indian blacksmith and the woodcutter as passive citizens, because unlike apprentices and domestic servants, they do not seem to be completely dependent on private wills. He concludes:

[T]he Indian blacksmith and the woodchopper differ from the servant by degree and not by kind. Each requires the direction of another to authorize the use of his own powers. The relevant difference is the duration of the particular relation of dependence under which the blacksmith and woodchopper labor The Indian blacksmith and woodchopper are ... dependent on a series of masters, and, consequently, lack the ability to determine and protect their own purposiveness ... (Weinrib, 2008: 11)

On Weinrib's understanding, the Indian blacksmith's and woodcutter's professional lives are marked by a series of relationships in which they are directly dependent on a particular employer in order to survive.

There is undoubtedly something right about Weinrib's claim that the blacksmith is dependent on another person because he "requires the direction of another to authorize the use of his own powers." But what precisely does this dependence amount to? Is it really best understood as a form of control over the blacksmith's bodily powers or property, as Weinrib's analogy with the servant implies? Is the freedom-threatening dependence of the blacksmith on a particular employer really an attack on his purposiveness?

I think the answer to these last two questions is no—at least not unless our definition of the purposiveness at issue in external freedom is greatly expanded beyond Toronto-Kantianism. The blacksmith, unlike slaves or even

domestic servants (at least in Kant's time), cannot be rightfully restrained by his employer should he dislike his employer's terms and wish to work elsewhere. Moreover, while on the job, the employer is not authorized to use the blacksmith's tools without his consent. The blacksmith in no way depends on the permission of another to use what is his own. Recall that for Ripstein, I retain my capacity to choose, that is, my purposiveness, just so long as (a) I can use my own powers and whatever means are currently at my disposal and (b) no agent compels me to use my powers or means for purposes to which I did not consent or that in some way violate my status as free and equal. The blacksmith clearly retains his property and power to consent, and so retains his purposiveness. So the question of how his external freedom is threatened still remains to be answered.

Of course, it could very well be that Kant does not provide an adequate conceptual framework to ground his judgment that the Indian blacksmith suffers from freedom-threatening dependence. Kant was writing before the advent of modern capitalism. His conception of passive citizens may represent a strained attempt to distinguish between the ordinary interdependence of all economic agents under market societies and exploitative relations between antagonistic social classes.³⁸ Kant himself admits that, "it is ... somewhat difficult to determine what is required in order to be able to claim the rank of a human being who is his own master" (1996b: 8:296). In trying to find a principled basis for the criteria of passive citizenship, one is surely pushing against the limits of Kantian political philosophy. But it is at least possible that it is Toronto-Kantian's direct dependence paradigm, rather than the philosophical framework of *DR*, which creates obstacles to understanding why Kant thinks the Indian blacksmith lacks independence and so is not fully externally free.

To better understand the case in Kant's own terms, let us examine in more detail the contrast he draws between "the blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil, and bellows," with his active citizen counterpart, the European blacksmith, "who can put the products of his work up as goods for sale to the public." The former are "mere underlings of the commonwealth [*blos handlager des gemeinen Wesens*] because they have to be under the direction or protection of other individuals, and so do not possess civil independence" (1996a: 6:314). There are two salient things to notice about Kant's contrast between the two blacksmiths: (a) The Indian blacksmith faces two different forms of dependence: personal and structural. The particular head of household who hires him dominates him, but so does the structure of the feudal division of labor itself. With respect to the latter, what impairs his external freedom is the absence of a free market in which he "can put the products of his work as goods for sale to the public" (1996a: 6:315).³⁹ As we have seen, Toronto-Kantianism adequately discusses personal but greatly underplays structural forms of dependence. (b) What the Indian blacksmith lacks is not the ability to use what is his: his tools and labor power. Rather, what he lacks is iron, that is, the raw materials, which he can transform through his productive activity into something of exchange value. As Kant writes, he lacks "some *property* ... that supports him" (1996b: 8:295; emphasis in original).

Highly relevant here is Kant's remark that the day laborer is distinct from the craftsman because only the latter "makes a work that belongs to him until he is paid for it" (1996b: 8:295). Like the day laborer, the Indian blacksmith is dependent on his employer because without the employer, the blacksmith's tools and labor power cannot generate the goods or wealth necessary to sustain the blacksmith. Because the blacksmith lacks these necessary resources, he has few meaningful options to either exit or change the terms of the employment relationship, though he is formally free to do so. By contrast, the European blacksmith owns not only his tools and his labor but also necessary raw materials. If he does not like the terms a particular customer offers and cannot find another buyer, he is still free to consume the product for himself, perhaps by decomposing it into its raw materials and selling those on the market, or trading his product for food.

Recall two points made in earlier sections: (a) *Recht* does not concern need but only the relations between agents, and (b) the regulatory reach of *Recht* extends beyond intentional actions. In the context of our discussion here, (a) shows that if lacking iron is a threat to the blacksmith's external freedom, this cannot simply be because he needs iron in order to acquire the money necessary to feed himself. Rather, the problem must be that other agents deny the blacksmith access to raw materials to which he has a right. But why should the blacksmith have a right to these materials in the first place? Wouldn't favoring the blacksmith in this regard deny the rights of others to acquire those

materials? One way to understand the situation is to see the state rather than other private individuals as the moral culprit. Suppose other individuals have already claimed the materials that the blacksmith needs. In ratifying a regime of property, the state creates laws against theft. So exiting the state of nature has created the following condition for the blacksmith: either he can commit a crime by stealing what he needs (assuming non or only semifreedom of occupation), and so do wrong, or he can make himself privately dependent on another. Neither option is consistent with the rightful status of his external freedom. This account looks formally similar to Ripstein's, except that emphasis is placed on the cause of private dependency relations rather than on those relations themselves. Here, it is the deployment of the system of public rights themselves that threatens external freedom. The state has restricted the blacksmith's options, without leaving him any freedom-based alternative.⁴⁰ We will return to this point in 3.3.

(B) shows that in ascertaining whether the blacksmith's external freedom is threatened, it is irrelevant whether the employer's ownership of the raw materials stems from overt theft, which clearly violates UPR, or entrenched feudal privileges or speculative market activity, which I am arguing do violate UPR, albeit less clearly. The blacksmith can only be said to have a right to the iron if all three of these activities are inconsistent with equal external freedom. But these activities cannot be understood as restrictions of external freedom unless Kant recognizes that problems of dependence are created not only when one agent has direct and total control over the choice-making power of another but also when there are inequalities in productive relations that the subordinated can do nothing to influence, either by exerting counterforce or exiting the terms of the relationship. (a) shows that public institutions can threaten external freedom by creating private dependence relations, but (b) broadens the scope of private dependence relations, away from outright subjection to will of another and toward more structural cases of asymmetrical control.

Kant's ostensible point about the passive citizen is that because he is likely to feel pressured into voting the interests of his bosses, the laws by which he is bound are not the product of his own will. But underpinning this discussion are two key points about the way in which the passive citizen suffers from structural dependence. First, the onset of a property regime has restricted his external freedom. He must now either commit a crime or depend on the will of another. Second, the laws of the market have left him without the share of property necessary to exit employment relationships in which others wield undue power of him. In both cases, we see that it is first and foremost the political and economic systems, and only derivatively his individual relationships to those with more political and economic power, which threaten his external freedom.

3.1 | The implications of passive citizens for external freedom

Taken to its conclusion, Kant's discussion of passive citizens might imply that the freedom-protecting state should abolish the capitalist mode of production.⁴¹ After all, such a system of production depends on the structural position of the worker, who has nothing to sell but his labor power, to the capitalist, who owns the means of production. This is a version of the Indian blacksmith's dilemma writ large. But not all of Kant's examples of passive citizens place the emphasis on asymmetries in power stemming from lack of access to value-producing raw materials. For example, in the case of the private tutor (passive citizen) versus the public school teacher (active citizen; 1996a: 6:315), the contrast seems to be that the tutor might have to tolerate abuses from a particular pupil or parents, because the fees they pay are necessary to sustain the tutor's survival, whereas the school teacher depends on a state salary and so can meaningfully reject behaviors that violate the terms of contract. If dependence is fundamentally a matter of having to cater to private interests rather than being protected by the public will—a conception closer to the classical republican rather than Marxist tradition—then Kant's argument will imply that the state should be the ultimate employer, if only in the sense of having final authority over the workplace through labor law.⁴²

Let us assume that Kant's discussion of passive citizens rules out neither the capitalist mode of production nor the very possibility of private employers. At the very least, it still shows that external freedom is threatened not only when an employer uses an employee to do things that demean the employee's equal juridical standing—for example, sexual harassment—but also when market institutions give an employer control over the work relationship in ways which

deny the employee opportunity for counter-influence—for example, by imposing extremely long working hours and firing anybody who complains.

Freed from Ripsteinian minimalism, the Kantian ideal of equal external freedom might ground a variety of different state-based solutions to problems of dependence—for example, the right to a universal basic income or the use of the power of the state to coerce employers to recognize or bargain with a union. The ideal might also necessitate that the state create new employment opportunities for those currently working in “passive” occupations, such as undocumented day laborers.⁴³ On my interpretation of the Kantian freedom-based approach, such solutions will be justified on the grounds that they provide exit-options or counter-pressures to the asymmetrical force of workplace domination.

There is no a priori answer as to which inequalities of influence will count as violations of external freedom. What the ideal of external freedom demands is a right to a consistent and fair adjudication—in accordance with legal procedures determined by the general will—when those with unequal influence press claims regarding such violations. Kant's political philosophy directs us to concretize or actualize the formal idea of equal influence or symmetrical control, given the complex sociohistorical, economic, and institutional realities of the particular time and place.⁴⁴ This openness to context means that although Kant's explicit statements on poverty-relief pertain to those who are unable to meet their most basic needs—that is, the poorest of the poor—rather than to wealth inequality per se, how his formal, relational conception of poverty is to be implemented depends on sociohistorical factors. We have seen that poverty is a problem for the Kantian state because individuals should have enough so as not to depend on others. We have also seen that nondependence includes symmetrical control. But if the possibilities for symmetrical control change given the larger institutional and economic realities of the time (e.g., worker cooperatives might only be possible after thriving industries have already been built), then there is no reason why applying Kantian principles today will not necessitate wealth redistribution far beyond what is required for the bare survival of the poor.⁴⁵

I have argued that Kant's discussion of passive citizens reveals his sensitivity to structural and systemic forms of dependence. Although there is much more work to be done in understanding systemic dependence on Kantian lines, I have shown that his account of the powers of the liberal state outruns Toronto-Kantianism in the direction of egalitarianism.⁴⁶

3.2 | Poverty as a structural problem

Do Kant's remarks on passive citizens shed light on his understanding of poverty? I have argued that passive citizens lack independence because others own a necessary component of the value-generating process. But the poor as they figure in *DR* seem to lack much more: They have neither tools nor the ability to find a buyer for their labor power. So perhaps the poor person is in fact more like a slave than the Indian blacksmith.⁴⁷ In that case, Ripstein may be entitled to his way of framing poverty as a form of dependence in which “all purposiveness depends on the grace of others,” placing “the dependent person ... in the juridical position of a slave or serf” (2009: 281).

To answer this objection, let us return to the central passage on welfare cited in Section 1.1. Why exactly does Kant think that the state can legitimately coerce the wealthy to “provide for [the poor's] most necessary natural needs”? He writes:

The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens (1996a: 6:326).

In this passage, Kant does not locate the problem of poverty in the dependence of the poor person on the private charity of the rich. This is but an effect of a prior problem, which is that the wealthy have disproportionately benefited from the state. This is so for at least two reasons. (a) The state ratifies what the rich possess by defending it with police power. The state offers the rich its “protection and care” by actively suppressing the rebellion of the poor. (Kant, like Marx after him, clearly links the *Rechtstaat* to the violent protection of private property.)⁴⁸ (b) Because the rich own something, they derive more benefit than the poor from the infrastructure the state provides. Given

inequality in holdings, there is differential use made of the state's resources. Kant's *Lectures on Ethics* clearly express this second point:

Professor Kant maintains that in the State, a poor man has gained the right to demand support from the wealthy; for if it were left to his unrestricted choice, it would be perfectly open to him to earn so much for himself that he could make provision for hard times; but the State has now limited his wages and possible earnings by taxation, whereby the rich man gets more advantages than he could in a state of equality; thus the poor man earns only enough for his current needs, and his savings are taken away from him (2001: 299).

Here, welfare reform is a way of returning to the poor what the state appropriated without providing adequate compensation.

What these passages show is that, for Kant, the failure of *Recht* is that the poor person is asymmetrically positioned within a regressive economic system. He bears greater obligations than the rich person, which violates the equality granted by innate right. The rich person's taxes protect his wealth and provide an infrastructure for the increase of that wealth. The poor person's taxes merely fund the purposiveness and power of the rich. Without public welfare, the poor are in effect propping up a system in which the rich are able to amass value-producing resources, a system that has at its effect the dependence of the poor on the rich. What is at stake here is not a problem of private dependence, but the way in which private dependence results from a prior structural injustice.

Kant explicitly links private dependence to structural injustice in the following two passages:

Having the resources to practice such beneficence as depends on the goods of fortune is, for the most part, a result of certain human beings [the rich] being favored through the injustice of the government, which introduces an inequality of wealth that makes others need their beneficence. Under such circumstances, does a rich man's help to the needy, on which he so readily prides himself as something meritorious, really deserve to be called beneficence at all (1996e: 6:454)?

One can participate in a general injustice, even if one does no injustice according to laws and institutions. Now if one shows beneficence to a wretch, then one has not given anything to him gratuitously, but has only given what one earlier helped to take from him through the general injustice. For if no one took more of the goods of life than another, there would be no rich and no poor (cited in Wood, 2014: 85).⁴⁹

Welfare reform is thus a return of power to the poor, a way of giving them voice in a system that has not equally represented their interests.

If it is true that, as Toronto-Kantianism concludes, the "dependency relations are analogous" (Weinrib, 2008: 19) between passive citizens and the poor, this is not primarily because both live at the behest of another, but because both are disempowered by the economic system.

4 | EQUALITY: LEGAL, ECONOMIC, AND SOCIAL

By way of conclusion, I briefly consider two objections to my claim that Kantian welfare rights are justified because they correct for power asymmetries in social and economic relationships.

The first objection is that Kant's understanding of equality as "independence from being bound by others to more than one can in turn bind them" is merely a way of stating formal legal equality. This is the familiar idea that one is equal just so long as the law does not grant special immunities and privileges to particular individuals. Accordingly, the reciprocal "power to bind" at stake in Kantian equality refers narrowly to the juridical power to press a claim before the courts, or to have the state legally intervene on one's behalf by punishing aggressors. Some of Kant's formulations of equality explicitly bring out the concept's essentially juridical nature. For example, "external (rightful) equality within a state is that relation of its citizens in which no one can rightfully bind another to something *without*

also being subject to a law by which he in turn can be bound in the same way by another" (1996c: 8:349; emphasis mine). According to this objection, a philosophy of *Recht* has no principled basis from which to address extra-judicial asymmetries in social and economic power.⁵⁰

This objection raises large questions about the scope of *Recht* that I cannot address here. Clearly, Kant emphasizes formal legal equality because his main political target was hereditary monarchy and entrenched feudal privilege.⁵¹ But Kantian *Recht* should also be understood as pertaining to broader questions of social access to law. It can address how social asymmetries in power block certain classes of people from enjoying the full extent of their formal legal equality, and how existing positive laws might entrench asymmetrical social power. A broad variety of legal rights and obligations—for example, laws concerning minimum wage, inheritance, and squatters' rights—are inextricably connected to questions concerning the social and economic distribution of power. To be sure, a philosophy of *Recht* demands that courts and legislatures understand their own activity in terms of the concretization of a formal principle of symmetrical external freedom rather than resort to utilitarian calculations concerning the most effective distribution of resources. But this does not mean that it excludes economic and other extra-judicial considerations.⁵² Ultimately, Kant's *DR* is a transitional text. It is rooted in the essentially juridical framework of natural law, while also pointing forward to the tradition of German social theory.⁵³

The second objection is that Kant's first political treatise, *Theory and Practice*, explicitly contrasts legal with economic equality. Legal equality means that "each member of a commonwealth has coercive rights against every other," but

this thoroughgoing equality of individuals within a state ... is quite consistent with the greatest inequality in terms of the quantity and degree of their possessions ... thus the welfare of one is very much dependent upon the will of another (that of the poor on the rich) ... thus one serves (a day laborer) and the other pays him, and so forth. But in terms of right ... they are nevertheless all equal to one another as subjects; for, no one of them can coerce any other except through public law (1996b: 8:291).

Moreover, in *Theory and Practice*, Kant explicitly allows for market-based entrenchments of wealth that produce conditions of passive citizenship. A member of the commonwealth

may bequeath ... whatever ... can be acquired as property and also alienated by him, and so in a series of generations produce a considerable inequality of financial circumstances among the members of a commonwealth of hireling and hirer, landowners and agricultural laborers, and so forth (8:293).

In response, I would simply mention the 4 years between *Theory and Practice* (1793) and *DR* (1797). It is highly significant that such passages do not appear in Kant's mature expression of his political philosophy. Unlike *TP*, *DR* is acutely concerned with forms of economic dependence, such as that between hireling and hirer, which pose a threat to equal freedom. *TP* contains no discussion of the state's duty to provide welfare; *DR* does. *TP* is unconcerned with entrenched wealth; *DR* worries about the entrenched power of estates if they can pass on prior ownership of land unchecked by sovereign power (6:324). Moreover, the aims and vocabulary of the two texts are somewhat different. When in *TP* Kant justifies a state in which no concern is paid to the "welfare" of the poor, "welfare" refers to overall happiness rather than the conditions for symmetrical external freedom. All Kant means in *TP* is that the state has no obligation to redistribute to the extent necessary to secure equal well-being or satisfaction with one's life, which is consistent with the claim that it must redistribute to the extent necessary to realize external freedom.⁵⁴

The shift between the two texts will also affect one's interpretation of what it means to say that the state must allow passive citizens to "work their way up" to an active condition. *TP* suggests that equality of opportunity requires only that the state should not actively prevent the best and brightest from succeeding (1996b: 8:293). By contrast, on the interpretation of *DR* I have argued for here, equality of opportunity demands that the state provide conditions, such as education and early childhood nutrition, that enable passive citizens to have meaningful chances at social mobility.⁵⁵ Between *TP* and *DR*, Kant moves from a minimalist to more egalitarian form of liberalism.

5 | CONCLUSION

Toronto-Kantianism understands Kant's argument for welfare rights in terms of the threat to external freedom posed when one individual depends on another. Because the problem is one of private dependence, the solution is to redistribute up the point that the poor have *some* means of their own. This interpretation of Kant is meant to block the inference that programs such as welfare reform "are unstable stopping points on a path to a more thorough equalization of benefits and burdens" (Ripstein, 2009: 267, 292). Toronto-Kantianism wants to ensure a limited but respectable role for egalitarian ideas within the Kantian system.

By contrast, I have argued that Kant conceives of asymmetries of social power as a threat to external freedom. If this is correct, Kantian *Recht* is useful not only in reconstructing the reasoning of courts and legislatures in liberal states but also in understanding the normative aspirations behind many contemporary movements for social change. Surely, this is a strength rather than weakness of the account.

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ENDNOTES

- ¹ Immanuel Kant, *The Doctrine of Right*, Part I of the *Metaphysics of Morals* in *Practical Philosophy*, trans. and ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), 6:238. Hereafter abbreviated *DR*. See also Kant, *On the common saying: That may be correct in theory, but it is of no use in practice*, in *Practical Philosophy*, 8:290–291. Hereafter abbreviated *TP*. References to Kant's writings are to the Prussian Academy pagination appearing in the margins.
- ² In this paper, I do not discuss the relation between moral and political freedom, and so between ethics (*Ethica*) and right (*Ius*), in Kant's practical philosophy. Suffice it to say that the Categorical Imperative *qua* supreme principle of morality prevents internal threats to the capacity for the free exercise of choice, threats such as heteronomous rule by inclination, while the Universal Principle of Right, the governing principle of right, prevents external threats to the actualization of that capacity, such as asymmetrical coercion by others.
- ³ The language of the noumenal, however, is not absent from *DR*. For example, Kant describes an enduring claim to property in an object, as opposed to an entitlement that lasts only as long as the object is currently in one's grasp, as "*possessio noumenon*" (noumenal possession) (6:253). But in the context of *DR*, the noumenal just refers to the distinction between normative entitlement and physical possession, and so can be read in a metaphysically modest manner.
- ⁴ See here Kersting, 1992: 153.
- ⁵ Cf. Hodgson, 2013 and Mulholland, 1990: 20.
- ⁶ The closest contemporary analogue to the freedom-centered approach to poverty is Pettit, 1997: 129–170. For comparison of Kant and Pettit, see Hodgson, 2010b: 808–817.
- ⁷ I leave aside four common interpretations of the Kantian state's role in providing poverty relief. (a) The first holds that Kant is inconsistent in including redistribution within the powers of the freedom-based state. See Murphy, 1970: 145. (b) The second holds that Kant's argument is a prudential one concerning stability. In a regime that licenses huge wealth disparity, the poor will be likely to defect, meaning that over time the political order will devolve into the state of nature. See LeBar, 1999: 225–249; Murphy, 1970, 146; Williams, 1983: 196–197; Kersting, 1992: 164 n.7; Pogge, 2002: 157; and Aune, 1979: 157, 160. For a moral rather than prudential version of the stability interpretation see Holtman, 2004: 87. (c) The third interpretation holds that poverty relief is an ethical duty of benevolence, albeit one that falls on the state rather than individuals. See O'Neill, 1989: 231–233 and Rosen, 1993: 186–202. (d) The fourth holds that the right to welfare is based on the value of "access to the opportunity to develop one's capacity for unconditioned purposiveness." Kaufman, 1999: 153. See also Mulholland, 1990: 20, 250–251, 317–318, 395, and Holtman, 2004: 86–106. Against positions (a)–(c), I hold that Kant's remarks on poverty relief are: consistent with his overall normative project, moral rather

than prudential in their normative basis, and grounded in right rather than ethics. Against (d), I hold that poverty relief is not a way of protecting the non-relational aspects of a person, such as material requirements for the expression of the power of self-determination, but of preventing structural and interpersonal domination.

- ⁸ Kant may not always have consistently adhered to what his own principles require. After all, Kant acknowledges that his arguments concerning the state's public powers are "worked over less thoroughly" (1996a 6:209) than his arguments concerning the natural laws that form the ultimate basis of state authority.
- ⁹ I thank Martin Stone for encouraging me to use this term.
- ¹⁰ See also Ripstein, 2009: 274, 280.
- ¹¹ For the purposes of this paper, I simply grant this assumption. In Hasan (forthcoming), I reconstruct Kant's argument as follows: Kant shows that ownership of the material world is a necessary aspect of the external manifestation of free agency. What makes ownership rightful is that it can be rendered compatible with the external freedom of others, just so long as a state regulates ownership through equally binding laws. It is worth noting that Kant's argument for property rights need not imply the specific bundle of rights associated with property under modern capitalism. For example, Kant says nothing about the right to income or capital from ownership of a thing. See Hodgson, 2010a: 62; Westphal, 2002: 90–91,104; and Mulholland, 1990: 294, 316.
- ¹² For similar accounts of Kant's reasoning for state-sponsored poverty relief see Gregor, 1985: 49–59; Weinrib, 2012: 263–297; Varden, 2006: 270–271; Varden, 2010: 344–346; Varden, 2014: 259; Allais, 2014: 9–10; Weinrib, 2008: 17–18; and Hodgson, 2010b: 818.
- ¹³ See also Guyer, 2000: 237.
- ¹⁴ See also Pallikkathayil, 2017; Ebels-Duggan, 2011: 563; and Hodgson, 2010b: 800. For helpful critique see Flikschuh, 2017 and Ripstein, 2017.
- ¹⁵ See Thompson, 2006; Haase, 2014; and Stone, 2017.
- ¹⁶ For a prime example of this sort of reading, see Byrd & Hruschka, 2010: 77–81.
- ¹⁷ See Weinrib, 2012: 803. Cf. Ebels-Duggan, 2012: 897.
- ¹⁸ For similar accounts, see Flikschuh, 2008: 384–385; Flikschuh, 2017; Banham, 2007; and Uleman, 2004: 591–599. For a related canvassing of the interpretive alternatives, see Zylberman, 2016: 101–126.
- ¹⁹ The idea of the individual as an instance of a supra-individual structure of reason is also central to the first *Critique*, which charts *reason's* (not an individual reasoner's) task of securing its own "self-knowledge." Kant, 1929: Axi; see also 1996a: 6:206. Similarly, in the moral sphere, Andrews Reath has suggested that autonomy is a "normative standing of the rational will, which applies derivatively to individual rational agents." See Reath, 2013: 33.
- ²⁰ See also Weinrib, 1995: 124; Ripstein, 2017: 194–196; and Zylberman, 2016.
- ²¹ Weinrib is less guilty of this than Ripstein, but I save forensic analysis of the varieties of Toronto-Kantianism for another occasion. It is surprising that Ripstein decomposes external freedom into pairwise relations of non-domination, because in a different context, he criticizes consent-based theories of the state for "resolving the idea of a general will into a large series of bilateral relations between individuals and state" (2009: 190).
- ²² Kant often describes "conditions" of right as normative structures that confer significance on particular actions. For example, the state of nature is a "condition" under which an individual wrongs me just by standing too close to my body, because, absent a structure of coercive institutions, it is both instrumentally rational and morally legitimate for me to anticipate this as a threatening gesture (e.g., Kant, 1996c: 8:349). Ripstein does not deny the language of "conditions" but he makes little of it (e.g., 2009: 30).
- ²³ Ripstein's interpretation of the form/matter distinction is not the only one available in recent commentary. Consider Uleman's suggestion that in locating impairments to external freedom the relevant contrast is between cases where I deliberately thwart your ability to set your end (form of choice) and cases where the thwarting of your end is an accidental byproduct of my aim (matter of choice). If the distinction is drawn in Uleman's way, attacks on the form of choice are broader than attacks on another agent's *capacity* to set an end; for example, they include cases of market interaction where one agent deliberately sets out to thwart a competitor. Not surprisingly, on Uleman's understanding of the distinction, market interaction clearly falls within the regulatory reach of the Kantian state. See Uleman, 2004: 589.
- ²⁴ Kant, 1929: A731/B759. For helpful discussions of the philosophical form of *DR* see Weinrib, 1987: 490 and Weinrib, 2012.
- ²⁵ To be fair, Ripstein also classifies as violations of innate right cases in which one agent's use of what is their own deprives another agent of what they already have (2009: 242). Suppose the speculator owns the town's electricity supply. He would wrong the customer if he shuts off the electricity, causing the items in the customer's fridge to spoil. But the salient point here is that for Ripstein's Kant depriving the customer of what he *does not already have* cannot count as a violation of innate right.
- ²⁶ Hayek offers a similar example, concerning monopoly control of a spring in an oasis. He imagines that the area's residents settled the territory on the assumption that water would be available at a reasonable price. Due to unforeseen natural

circumstance (e.g., the drying up of a second spring), they had “no choice but to do whatever the owner of the spring demanded of them if they were to survive.” Hayek concludes that this would be a clear case of coercion (what I am calling a violation of external freedom), but only because water is an essential commodity tied to human needs (Hayek, 1960: 203). But as I have argued above, need is not an appropriate category for Kantian *Recht*. Indeed, given Hayek’s formal, essentially Kantian definition of coercion as involving the creation of conditions in which other agents must act to serve the purposes of another (1960: 71, 199), it is unclear how he can help himself to the notion of need. I thank Benjamin McKean for drawing my attention to this passage.

- ²⁷ See also Ripstein, 2009: 45 and 278. This is a major subject of Ripstein, 2016. Cf. Hayek, 1960: 200.
- ²⁸ This category picks out the unforeseen but foreseeable consequences of one’s actions.
- ²⁹ Ripstein’s critics often ignore his account of the stages of right, thereby construing his remarks on private right as definitive of his understanding of the scope of the state’s activity. See for example, Sangiovanni, 2012: 460–469; Valentini, 2012: 450–459; and Ebels-Duggan, 2011. In response, Ripstein insists that he is not making Kant “to be some sort of libertarian, with respect to politics, unwilling to permit redistributive taxation.” He rightly complains that this is to take his opening presentation of the form/matter of choice distinction “to exhaust the argumentative and analytical resources available to a Kantian view,” ignoring “the sequenced nature of Kant’s argument,” that is, the fact that public right may introduce restrictions on choice not warranted by private right. Ripstein, 2012: 488–489, and 2009: 224. For a helpful critique of Sangiovanni, Valentini, and Ebels-Duggan on this point, see Zylberman, 2016: 119–120.
- ³⁰ Toronto-Kantianism, and its fellow travelers, share this basic understanding of poverty. For example, Allais writes that for the Kantian state “poverty is inconsistent with the basic conditions of agency: having at least some basic means is necessary to survive, and to be able to make choices at all” (2014: 9). Similarly, Varden writes, “without unconditional poverty relief, destitute citizens will find themselves without any legal access to means that are not subject to non-destitute citizens’ private choices” (2014: 259). And Weinrib notes that the moral problem of poverty arises when “all the land may be appropriated by others, leaving me literally with no place to exist except by the leave of someone else,” the result of which is that I must make “myself into a means for [other people’s] ends, perhaps becoming their bondsman or slave” (2012: 815–816).
- ³¹ See also 1996c: 8:350; 1996b: 8:291.
- ³² See Kant, 1996b: 8:295, where Kant distinguishes between natural and economic obstacles to active citizenship. I do not take up the issue of whether Kant offers a consistent definition of passive citizenship broad enough to include women, children, and workers.
- ³³ See here Mulholland, 1990: 329; Beiner, 2011: 209–225; Uleman, 2004: 596; and especially Kersting, 1992: 153–154.
- ³⁴ See here Holtman, 2004: 96–97 and 1999: 45; Lanoix, 2007: 121–125; Varden, 2006: 271, 275 and 2015: 25–26; Schapiro, 1999: 719–721; and Weinrib, 2008. Williams, 1983: 144–149, 178–182 and Ellis, 2008: 85–91 incorporate aspects of both the critical and exculpatory interpretations.
- ³⁵ See Weinrib, 2008: 3, 11. John Stuart Mill provides a trenchant critique of this form of reasoning in his discussion of suffrage in *Considerations on Representative Government* (Mill, 1861). And Kant himself seems to reject it in *Religion Within the Boundaries of Mere Reason*, where he argues that formerly dependent subjects’ attempts at freedom “will be crude, and in general also bound to greater hardships and dangers than when still under the command but also the care of others; yet we do not ripen to freedom otherwise than through our own attempts.” See Kant, 1996d: 6:188 (emphasis in original).
- ³⁶ Of course, the master can only use the servant in ways consistent with the servant’s innate right. For clarifying accounts of Kant’s notion of status-relations, under which the relation between the head of household and servant falls, see Varden, 2006: 265–269, Varden, 2010, and Weinrib, 2008: 15–25.
- ³⁷ Holtman helpfully points out that Kant’s discussion of passive citizens gives broader content to his earlier, formal account of what it means to be *sui juris* (2004: 95). See also Banham, 2007: 76.
- ³⁸ See here Williams, 1983: 146, 238 and Ellis, 2008: 88–89.
- ³⁹ If the argument of this paper is correct, Kant anticipates Hegel and Marx in seeing the free market as both a partial realization of freedom and a potential threat to it.
- ⁴⁰ Within Toronto-Kantianism, the account closest to my own is Weinrib, 2012.
- ⁴¹ Even if Kant’s argument has this implication, it does not enjoin the withering away of the state. So resemblance to Marxism is superficial at best.
- ⁴² See Wood, 2014: 83–85.
- ⁴³ For a similar proposal, see Varden, 2006: 272.
- ⁴⁴ Weinrib, 1987: 503–505; Varden, 2012: 351.
- ⁴⁵ I thank an anonymous reviewer for pushing me to clarify my position on whether Kant’s concern for the poor implies concern for wealth inequality per se.

- ⁴⁶ Varden, 2012: 350, goes farther than most Toronto-Kantianism in including “property-determining systems” within the regulative scope of the Kantian state, but even she is worried primarily about private control over those systems rather than the systems themselves.
- ⁴⁷ Of course, there is another sense in which the poor are *better* off than passive citizens. If the poor receive welfare, then they are not dependent on the private wills of others. In that case, they are allowed the voting rights that passive citizens are denied. See Weinrib, 2008: 13. Because my project here is not to distinguish between the ideal and non-ideal theory elements of *DR*, I do not pursue this issue further.
- ⁴⁸ See Marx, 1978.
- ⁴⁹ See also Moran, 2017.
- ⁵⁰ See Kersting, 1992: 153–154; Byrd & Hruschka, 2010: 81. Cf. Hodgson, 2010a: 72.
- ⁵¹ See Williams, 1983: 137–138.
- ⁵² See here Stone, 2017.
- ⁵³ For similar points, see Mulholland, 1990: 316, 319; Williams, 1983: 221; Ellis, 2008: 90.
- ⁵⁴ See also Wood, 2014: 84–85.
- ⁵⁵ For the robust sense of fair equality of opportunity, see Varden, 2006: 272–275; Weinrib, 2008: 15; Kaufman, 1999: 147–152; and Mulholland, 1990: 315.

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