

The Body in Kant's *Doctrine of Right* Rafeeq Hasan¹

Kant's theory of rights says much about property, but little about the body. This is surprising. For Kant holds that the point of rights is to secure freedom from the wills of others, and surely bodily rights are more central to freedom than property. In this paper I develop Kant's brief remarks on the body in order to explain why the body matters for the politics of freedom. I do so by addressing the worry, familiar to post-Kantian political philosophy, that rights discourse misconstrues the body in overly proprietary or 'thing-like' terms, treating the body as what a person possesses rather than as what a person most essentially is. In response, I argue that conceptualizing the body in the possessory vocabulary of rights plays an essential role in securing social equality. Paradoxically, persons must become thing-like to themselves in order to become more fully person-like to others.

1. The Body as an Object of Right

Kant's political philosophy is based on the republican value of freedom as independence from the wills of others.² At the core of Kant's account of how to secure independence lies his theory of property rights. Kant argues that while free beings have natural rights to property, such rights can only be conclusively established through state authority. In the imagined state of nature, there is no way for individuals to claim ownership of things consistent with the freedom of others. So we stand under a collective duty to create and sustain the state.³

While Kant says much about property, he says little about the body. This is surprising. Bodily rights seem far more central to independence than property rights. Moreover, many of the conceptual problems that plague property rights in the Kantian state of nature—e.g., problems of enforcement, boundary drawing, and dispute resolution—plague bodily rights as well. Shouldn't Kant therefore treat our bodies, not just our possessions, as political constructions?⁴

¹ Forthcoming: *Philosophical Engagements with Modernity (Festschrift for Robert Pippin)*, eds. Daniel Conway and Jon Stewart (Brill, 2023).

² E.g., MM 6:237. References to Kant's works refer to the volume and page numbers of the German Academy text. Translations are from the *Cambridge Edition of the Works of Immanuel Kant*. Abbreviations are as follows: G=*Groundwork of the Metaphysics of Morals* (1785) and MM=*The Metaphysics of Morals* (1797).

³ See Stone and Hasan (2022) for elaboration.

⁴ As argued by Pallikkathayil (2017).

In what follows, I explore the largely submerged role of the body in Kant's *Doctrine of Right*. I do so by focusing on a fundamental yet underexplored question: What is the body when it is understood as an object of Kantian *Recht*? Kant repeatedly alludes to the rights-bearing body as what is "innately" or "internally mine."⁵ I want to know if the 'mine' that marks the relation between person and body is more like the mine of identity (e.g., 'my mind is mine'), or like the mine of ownership (e.g., 'my hammer is mine to use').

If the latter, one might worry that Kant's theory of right objectionably reifies the body, mischaracterizing it in fundamentally thing-like terms. Kant explicitly denies the familiar Lockean idea that persons literally own themselves.⁶ Still, adopting the Kantian framework of rights seems to require me to (mis)understand my body as my *means*, i.e., as equipment at my disposal, rather than as what is most essentially *me*. Imagine: I run to help someone in distress and throw them a life rope. Should I really conceive my relation to my own legs as no different from my relation to the rope?

These concerns about the reification of the body resonate with post-Kantian critiques of liberal rights discourse. Think for instance of the young Marx's charge that rights are merely an ideological mechanism for driving capitalist ownership relations into the core of the self.⁷ But could learning to view one's body in this distanced, property-like way also illuminate the place of the individual in a free society? Could the reification of the body be the beginning of political wisdom?

In what follows, I proceed on the assumption that figuring out what Kant thinks about the body is a way of figuring out what *we* (denizens of modern liberal societies) should think about

⁵ MM 6:238, 6:248, 6:250, 6:254.

⁶ MM 6:270, 6:359.

⁷ Marx (2000 [1843], ch. 6).

the body. Here, I take inspiration from Robert Pippin’s career-long insistence that engaging the history of philosophy can illuminate our contemporary predicament. More locally, this paper grapples with Pippin’s provocative remark that Kant’s *Doctrine of Right*, when read suitably against the grain, “suggests an alternative form of liberalism, one in which rational individuality is not ultimate, but derivative and an achieved social status.”⁸ Long after first encountering this line in graduate school, I find myself still processing Robert’s insight.

2. Action, Right, and the Body

If there are rights to anything at all, persons must have rights to their own bodies. Kant never says this outright. But it strikes me as implicit in his claim that the very concept of ‘mine and thine’ implies that non-consensual touching of the body and what it grasps is wrong, and this because of the “right of a person with regard to himself.”⁹ My aim in this section is to elucidate this idea. I do so by showing how two different points of view within Kant’s practical philosophy—the point of view of agency and the point of view of right—converge on the idea of the body. As it will turn out, these points of view are not as different as they first appear.

What I am calling the argument from agency and the argument from right each thematize different aspects of Kant’s definition of *Recht*: “Right... is the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom.”¹⁰ This definition says, roughly, that right refers to everything that is necessary (i.e., “the sum of the conditions”) for persons to interact on terms of freedom. The argument from

⁸ Pippin (2006, 440).

⁹ MM 6:250.

¹⁰ MM 6:230.

agency attends to the idea of choice (*Willkür*); the argument from right attends to the idea of ‘uniting’ people’s choices.

(i.) The Argument from Agency

In the Introduction to the *Metaphysics of Morals*, Kant defines choice as “the faculty of desire in accordance with concepts... insofar as it is joined with *one’s consciousness of the ability to bring about its object by one’s action*.”¹¹ Kant then contrasts choice with mere wish, the latter of which need not involve thought of what I can do or achieve given the nature and scope of my powers and the means at my disposal.¹² I can wish to fly, but I cannot choose to fly.

Kant is here rejecting a view of choice as a purely psychological act of preference formation with no necessary connection to action. For Kant, choosing something involves not just *thinking* about what one would like to do, but actually undertaking to do it. Choice initiates the process of self-conscious movement guided by reasons. My choice to get ice cream is displayed in and through my walk to the freezer. Because choice fixes on what is to be made actual, there is an intimate connection between choice and the setting of ends: “An end is an object of the choice (of a rational being), through the representation of which choice is determined to an action to bring this object about.”¹³

What is a successful exercise of choice? It is achieving an end that one has set for oneself. How do human beings do this? By moving their bodies in transaction with the world of things, both natural and human-made. Unless I move my feet against the floor of the kitchen and reach my hands to open the handles of the freezer, there is as yet no *choice* for ice cream, only

¹¹ MM 6:213 (emphasis mine).

¹² MM 6:213; G 4:394.

¹³ MM 6:381.

wish. Since choice is for Kant an action-based concept, there can be no theory of choice without thought of the body and the things with which the body interacts.

I find this idea implicit in Kant's remarks in the *Groundwork* on the hypothetical imperative (roughly: the principle of instrumental or means/ends rationality). Kant writes: "Whoever wills the end also wills (insofar as reason has decisive influence on his actions) the indispensably necessary means to it that are within his control...for in the volition of an object as my effect, my causality as acting cause, that is, the *use of means*, is already thought."¹⁴ Kant here claims that to will something already involves thought about one's means and how to use them. I return to the broader implications of this striking idea below.

But first we must ask, what exactly does Kant mean by 'means?' Surely not everything I do involves means in the sense of discrete, manipulable objects ('medium-sized dry goods,' in Austin's phrase). Sometimes, I simply move my body through the material environment: e.g., I take a walk in the park. In such cases, it is my body and its powers of movement that are my means; my body is the most basic expression of what Kant here calls "my causality as acting cause." But in that case, the hypothetical imperative seems to be telling me that in figuring out how to take the appropriate means to my ends, I should consider my body as my most basic means.

Suppose with Kant that the point of rights is to make it possible for everyone to exercise their freedom of choice without impinging on that freedom in other people. If the exercise of choice necessarily involves bodily movement, then any coherent set of choice-enabling rights necessarily requires bodily rights. The body must be central.

¹⁴ G 4:417 (emphasis mine).

(ii.) The Argument from Right

Consider again Kant's definition of Right: "Right is...the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom." This definition is purely formal. It tells us little about what it might actually mean to 'unite' people's choices. Immediately after providing this definition, Kant offers the "Universal Principle of Right," an abstract rule for classifying actions as right or wrong: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."¹⁵ From this classificatory rule Kant derives a formal injunction, the "Universal Law of Right," which directs persons to refrain from any actions that are not compatible with others' freedom of choice.¹⁶

The concept of right belongs to practical philosophy; its point is to guide action. Specifically, right must be put into practice by being embodied in systems of positive law.¹⁷ So all of the above mentioned formal concepts must be specified. Suppose I stop on the sidewalk to smell the roses. You must now wait or walk around me. Have I thereby restricted your capacity to choose and so wronged you? So far, we have no way to answer that question, but we need one.

One might think that the only way to fill these concepts in with action-guiding content is to advert to the idea of essential human interests.¹⁸ Choices that reflect a person's essential interests must be protected by rights; less significant choices need not be. You can stop to smell the roses, but you cannot block the entrance to the emergency room. This is because my interest in health is more essential than my interest in taking a leisurely stroll.

¹⁵ MM 6:230.

¹⁶ MM 6:231.

¹⁷ MM 6:229.

¹⁸ As suggested by Sangiovanni (2017) and Tadros (2011).

But such an interest-based account, whatever its potential merits, cannot capture the stringent necessity of rights-claims on which Kant (I think correctly) insists. This is because one can always drum up cases in which the interest would be better protected by violating the so-called ‘right.’ Maybe the best way to protect my interest in receiving urgent medical care would be to carry me against my will to the hospital. But doing so cannot possibly accord with my freedom of choice. If the concept of right must be specified in order to guide action, and if such specification cannot refer to essential human interests, then it must proceed internally, i.e., by way of further reflection on the concept itself.

What does such specification look like? The concept of right, as we have seen, enjoins a system of mutually free choices between distinct persons. One of Kant’s central political insights is that such a system requires that there be some domains about which each person has the authority to decide without needing to seek permission from others. It is surely a wonderful thing for persons to decide to cooperate. But no system of cooperation between you and me could be free if we each had to petition the other in order to, say, move.¹⁹

What could these relevant choice domains be? To repeat: our task is to create a system in which everyone can exercise their freedom of choice. But this conception of choice must be understood entirely formally: choice is the capacity to set ends and put one’s means to use in order to achieve them.²⁰ In seeking to specify the idea of rightful relations, we are thus of necessity led to the question: what can be used?

Kant’s sparse political ontology is populated only by persons and things.²¹ Whatever we may think about such an ontology (can it convincingly account for the status of natural resources

¹⁹ Cf. Julius (2017, 105), who argues that independence requires “cooperating for freedom.”

²⁰ Ripstein (2009, ch.2).

²¹ MM 6:223.

or animals?), it follows from it that there can only be three possible categories of ‘useables.’ Persons can use: their own person, things, or the persons of another. Accordingly, right must be specified into categories of body, thing (e.g., property), and certain limited forms of use of other people (e.g., contract and familial relationships).²² But these categories cannot be equally fundamental. Persons’ entitlement to put things or other people to use depends on their more basic entitlement to put themselves to use. The very act of pointing to unclaimed land and declaring it mine, or shaking hands with you to seal the deal, presupposes that I am the one authorized to control my own hands. To put the point slightly differently: before there can be rightful *actions*, there must be rights that fall to the *actor*.²³ We are thus led back to the conclusion that there could be no coherent agency-based theory of rights without a foundational right to one’s body.

Importantly, both the argument from agency and the argument from right suggest that bodily rights are natural not conventional. In other words, with respect to the body, the role of law and state is to allow everyone to exercise a right whose justification is derived from the conceptually prior idea of free choice between distinct persons.²⁴ Suppose Oedipus encounters Laius outside the walls of their respective *poleis*. For Kant, I am suggesting, each has a clear and unambiguously pre-legal obligation not to kill or maim the other—at least if both stay a good distance apart or otherwise pose no obvious threat.²⁵

²² MM 6:247, 6:259, 6:282.

²³ MM 6:237.

²⁴ On natural right, see MM 6:224, 6:237, 6:256, 6:297.

²⁵ Cf. Flikschuh (2010), (2017), (2022) who argues that for Kant *all* rights, and so also bodily rights, are derived from the idea of equal legal personhood.

(iii.) Connecting Action and Right

I initially framed the point of view of action and the point of view of right as distinct areas of Kant's practical philosophy. But our subsequent discussion has revealed a strong connection between the two. This matters for our purposes, because it suggests that the centrality of the body in one domain will carry over to the other.

To thematize this connection, let us return to Kant's claim that in rational and so free action "the use of means...is already thought."²⁶ Kant's reference here to 'means' suggests that acting freely depends on knowing what is mine to use. Such a claim, I think, carries the broad implication that action itself—*any* action, not just action specifically from duty—must be understood in moralized terms.²⁷ For a quick illustration of what I mean (one that in no way rises to the level of sustained defense), consider the following case: Jane picks the fruit hanging from a tall tree by non-consensually standing on John in order to reach it. What I am attributing to Kant is the following understanding of this situation: because Jane is here using what is absolutely not hers to use, this is not just morally bad action on Jane's part. Rather, it is in some sense deficient as *action*.²⁸ Jane is trying to act through John, which is morally impossible, because John is a separate person.

One might put this as a point about action-description, just as long as one remembers that what exactly was done and how exactly to describe it are not distinct topics. Within the moral space of action, Jane has not picked the fruit, she has assaulted John. (Whether one should accept this assessment if what Jane non-consensually uses is, say, John's ladder instead of John's shoulders is another question for another time.) But, of course, what allows free persons to

²⁶ G 4:417.

²⁷ Kant treats action as imputable deed as a "preliminary concept" (MM 6:221) to the entire *Metaphysics of Morals*.

²⁸ Korsgaard (2008, ch. 2).

determine the boundaries of mine and yours are, precisely, their rights. A complete theory of free action thus requires a theory of rights. Kant's *Doctrine of Right* is as much about action as it is about politics.

This interpretation helps explain why the two divisions of Kant's *Metaphysics of Morals*, the *Doctrine of Right* and the *Doctrine of Virtue*, belong together in one book. Action is putting means to use for the sake of ends. For Kant, morally acceptable and so free action requires both the appropriate use of means and the setting of morally appropriate ends. The *Doctrine of Right* emphasizes appropriate means; the *Doctrine of Virtue* emphasizes appropriate ends.²⁹ The unity of the *Metaphysics of Morals* is the unity of good action.³⁰

This understanding of the book warrants rather marked revisions to the standard account of Kant's moral philosophy. We often teach undergraduates that for Kant morality concerns the agent's reasons for action, not action's outward effects. This gets something right about Kant's views on moral value. But it neglects a question which Kant took as essential: What exactly is it that I have done? In his mature moral theory, I am suggesting, Kant thinks that to answer *this* question, it is not enough to grasp my inner principles of action; I must also know what is mine to use. But this 'mine' must be understood in the broadest possible sense—not only as my things, but also as my body. The question of where you begin and I end as practical agents depends on specification by legal and political institutions. We have a natural right to our bodies, but the movement of those bodies through action sets in motion a moral problem which calls for politics as the solution.³¹

²⁹ MM 6:381.

³⁰ Can we then lay to rest the well-known worry that unless the Universal Principle of Right can somehow be derived from the Categorical Imperative, the unity of Kant's practical philosophy teeters on the brink of collapse?

³¹ My thinking here is indebted to Herman (2021).

3. The Entanglements of Body and Property

Given the centrality of bodily action to Kant's theory of right, it is surprising that the *Doctrine of Right* contains little explicit discussion of the body. This section explains Kant's silence.

In the *Doctrine of Right* the body first emerges several sections into Kant's difficult property argument, specifically, in the context of Kant's much-discussed example of ownership of an apple. Kant wonders if one can have "intelligible possession" of the apple—i.e., an entitlement to it even though it is not currently within one's grasp. He writes:

I shall not call an apple mine because I have it in my hand (possess it physically), but only if I can say that I possess it even though I have put it down, no matter where...For someone who tried...to wrest the apple from my hand...would indeed wrong me with regard to what is *internally* mine (freedom); but he would not wrong me with regard to what is externally mine unless I could assert that I am in possession of the object even without holding it.³²

Kant is here trying to establish the possibility of acquiring rights to things external to one's person. Property is the paradigm case, although the concept of what can be rightfully acquired is broader. This passage makes a basic conceptual point: if it is morally possible to have the apple as my own, there must be a wrong to me that goes beyond the displacement of my hand if you grab the apple.

But notice the highly elliptical manner in which the body is introduced, as "what is internally mine (freedom)." One might have expected Kant to first state that I have a right to my hand and then ask if I can have a right to the apple my hand grasps. Instead, he suggests that to ask whether I can have a right to the apple *presupposes* that I have a right to my hand. The body—the 'internally mine' as expressed in my hand—is treated not as a given natural object but as something like a theoretical posit, a requirement of reason. The body is my agency at work. As

³² MM 6:247-248 (emphasis in original).

the first aspect of my transaction with world, it is a presupposition of any subsequent ownership claims I might make. I must have grasped the apple in order to be able to set it down and claim it is as mine. Importantly, the body as the engine of agentive transaction is only roughly contiguous with the physical body. The apple snatched is an affront to my body, even if you pluck it away so delicately that you don't actually displace my hand.

Why does Kant treat the body via such indirection? The interpretive hypothesis I venture—and I stress its tentative character—is that this is precisely Kant's way of grappling with the nature of embodied human agency. In acting, human beings do not just move their bodies in empty space; they move their bodies in transaction with the world of things. For instance, right now, I am pressing my fingers on a keyboard. When I tire, I will eat dinner and then lie down in a bed. Purposive agency is inextricable from thing use.³³

Crucially, what is at issue is not simply current use, but entitlement to put to use. In order to write this paper, the keyboard must be mine to use even when I take a pause from touching it in order to search for the perfect word. Perhaps Kant is wrong to think that considerations of freedom alone can establish the moral necessity of property as full dominion, i.e., as the right of the owner to “dispose of [the thing] as he pleases.”³⁴ Still, he is surely correct that independence requires some property-like relation to things.

But if bodily movement and thing-use are interrelated aspects of agency, then, from the Kantian point of view, it would be a mistake to think that we might well have been agents in a thingless world, and then we would have had some rights (e.g., to our bodies and the consensual agreements we might make with regard to them), but not others (e.g., property). Rather, in the thingless world we wouldn't even have in view a clear enough understanding of the human

³³ See Ford (2016).

³⁴ MM 6:270.

person as agent to speak of its rights, since we would be operating with a thoroughly denuded conception of agency. What is being expressed by bodily rights is thus the very same capacity as the capacity to use and manipulate the world of things and to interact with others with respect to them. In slogan: no property without body, no body without property.³⁵

4. Kant's Two Justifications of the State

I have suggested that Kant's relative silence about the body is his way of recognizing the inextricably object-involving nature of human embodiment. This interpretation, admittedly speculative, helps explain the otherwise puzzling fact that the *Doctrine of Right* moves freely between what look like two quite distinct justifications of the state.

According to Kant's official story, the state is justified because it is necessary to resolve problems with property and other acquired rights in the state of nature. But Kant also often suggests a more general justification, according to which the state is necessary to overcome problems with *all* rights, bodily rights included. Call the view that the state exists for property the *narrow justification*. Call the view that the state exists for both property and body the *broad justification*. Which one makes the best overall sense of Kant's argument?

The text alone will not settle the question. The narrow justification is supported by the explicit organizational structure of the *Doctrine of Right*, which transitions to the theory of the state from the section on rights than can be acquired. For an especially strong statement of the

³⁵ Here, I break with some of Kant's best commentators. Both Ripstein and Weinrib imagine the conceptual coherence of a condition in which nobody can rightfully acquire property, but in which there can be violations of rights to the body. E.g., Weinrib (2022, 101): "In the state of nature... independence is violated only when one person invades or threatens to invade another's bodily integrity"; Ripstein (2009, 58): Right "would govern the legitimate exercise of freedom by persons even if they were incapable of setting and pursuing purposes with anything other than their own bodies." But as I read Kant, the concept of right—or, at the very least, the concept of duties of right—already has the basic features of human nature in view. If so, the class of beings who could have rights to their bodies but to nothing else is, simply, null.

narrow justification, consider: “If external objects were not even provisionally mine or yours in the state of nature, there would also be no duties of right with regard to them and *therefore no command to leave the state of nature.*”³⁶ But there are also numerous passages supporting the broad justification. For example, Kant writes: “When you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition.”³⁷

Settling the interpretive question might seem to matter because both justifications express independently plausible ideas. The narrow justification captures the idea that property rights are more conventional than bodily rights, and so more legitimately subject to state determination. (Many people think that the state should redistribute property; few seriously think that the state should redistribute body parts.) The broad interpretation recognizes serious boundary drawing problems about the body that seem to stand just as in need of collective political solution as any disputes about property.

But if Kant’s view is that body and property are inextricably linked—and this because of the nature of human agency—then it explains why he does not distinguish between the two justifications. And, again, there is independent plausibility here too. Does it really make sense to draw clean lines between what people want when they want their bodies protected and what they want when they want their property protected? ‘Don’t touch my hair!’ need not involve my thinking that my hair represents what is me as opposed to what is just contingently mine. ‘Get off

³⁶ MM 6:313 (emphasis mine).

³⁷ MM 6:307. See also MM 6:263: only through a public will is it “possible for there to *any* right, and so too possible for any external object to be mine or yours”; MM 6:312: unless persons want “to renounce *any* concepts of right...[they] must leave the state of nature”; MM 6:314: “The legislative authority can belong only to the united will of the people. For since *all* right is to proceed from it...” (all emphases mine).

my lawn!’ may, at least in some cases, be my way of expressing anxiety not about my lawn but about your coming too close to the place where my body rests.

Aristotle reminds us that “precision is not to be sought for alike in all discussions, any more than in all the products of the crafts.”³⁸ To the worry that Kant vacillates between two distinct arguments for the state, this may simply be the most fitting response.

5. Reification and the Rights-Bearing Body

My discussion of the relation between body and property in Kant’s *Doctrine of Right* has proceeded at a high altitude. I have said nothing about Kant’s actual argument for the extension of rights from body to property. This argument, contained in Kant’s discussion of the “Postulate of Practical Reason with Regard to Rights,” is enigmatic even by Kant’s standards. Many doubt whether it succeeds.³⁹ Briefly, Kant there claims that because persons’ dominion over things does not in principle restrict the rights of others, the world cannot be put off limits for ownership. We have a moral entitlement to own things, from which Kant suggests that it follows that we have a collective obligation to create the conditions for that entitlement to hold.

Even without wading further into the details of this murky argument, we already have enough of Kant’s theory of right on the table to return to the reification worry. The worry is that by introducing the body as the first step in an argument on the way to property, the body itself becomes mischaracterized in overly proprietary terms. Kant warns us against personifying our relation to things.⁴⁰ But does he end up ‘thingifying’ our relation to our own person?

³⁸*Nicomachean Ethics*, 1094b.

³⁹ MM 6:246.

⁴⁰ MM 6:269.

To bring this concern more clearly into view, let us return to Kant's claim that intentional, non-consensual interference with my body "affects and diminishes what is internally mine (my freedom)."⁴¹ By characterizing my body as what is "internally mine," Kant may seem to be suggesting that my body is what is most my own and so to be identified with what is me. But this cannot be quite right. For the conception of freedom at stake throughout the *Doctrine of Right* is independence. And as I interpret Kant, independence is a fully relational idea—to be independent just means not having one's rights violated by others. Thus, the idea of what is 'internally mine' must be understood contrastively; it is 'mine' solely in the sense of 'not yours.' I shout 'my body is mine!', thereby signaling that it is I (not you) who is the one entitled to use it as I see fit. Within the framework of rights, my body appears as my most basic equipment.

This way of understanding the body has played an enormously useful role in political life. Who could deny that legal and social recognition of bodily rights represents major progress towards greater freedom and equality for all? At the same time, this view of the body is quite different from the view of the body latent in everyday action. The rights-bearing body seems essentially alienated and defensive: 'my body is my tool, not yours!' By contrast, the acting body seems more like the foundation of one's very being-in-the-world, to borrow a phrase. Beyond the protections afforded by bodily rights, what is the value of conceiving of oneself in this distanced manner?

6. Juridical Self-Consciousness

I don't think Kant himself has very well-worked out views about what I am asking after here, which is something like an account of the inner life of the juridical person. (There are

⁴¹ MM 6:250.

riches to be found in both Rousseau and Hegel.) So, before placing anything I say in conversation with Kant's text, I want to approach this question by looking to the wisdom of existing law.

Consider *Fisher v. Carrousel Motor Hotel* (1967), the famous 'plate-grabbing' case often taught to 1-L torts students. Emmet Fisher, a Black mathematician working for NASA, filed a complaint of battery against the Carrousel Motor Hotel and its employee Robert Flynn. While Fisher was waiting in line for a conference-related lunch buffet, Flynn tore a plate from Fisher's hand, exclaiming that "he, a Negro, could not be served in the club."

The most salient legal question before the court was whether the snatching of the plate constituted a battery, given that no actual physical contact was made with Fisher's body and that Fisher himself testified to no fear or apprehension regarding imminent physical injury. Reversing the decision of the appellate court, the Texas Supreme Court held that bodily contact is not necessary for assault and battery, since "the plaintiff's interest in the integrity of his person includes all those things which are in contact or connected with it."⁴² Because the forceful dispossession of Fisher's plate in an offensive manner was sufficient to constitute a battery, he was entitled to damages for mental suffering even in the absence of direct physical injury.

What does this decision look like from the theory of bodily rights I have extrapolated from Kant's text? The court's statement here seems to me deeply in accord with the idea that from within the framework of right the body must be understood as a practical concept—the body as the expression of agency is broader than the physical body and extends to the plate in Fisher's hand. Protection from intentional contact "extends to any part of the body, or to anything which is attached to it and *practically identified with it*."⁴³

⁴² *Fisher v. Carrousel Motor Hotel, Inc.*, 424 S.W.2d 627, 629 (Tex. 1967).

⁴³ *Fisher* (emphasis mine).

But I want to pursue a more speculative question, one that departs from the surface of the legal materials. What exactly does Fisher learn about his hand when he comes to file the claim? Might what looks to be a form of alienation or self-distancing—understanding one’s body through the concept of its infringement—be viewed instead as a form of insight?

In a word, yes. What Fischer learns is that his right to what is most his own—his hand—is part of a system of rights that relates him to others. The affront to Fisher’s hand, if not publicly articulated, will in fact contribute to a system of profound un-freedom, one in which white people have standing that others lack. When the framework of rights requires me to treat what is essentially *me* as what is *mine* in a proprietary sense, my body itself comes to circulate in a system that relates me to all others. One might say that within relations of right I come to see my body not simply as the expression of my own agency, but as the engine of social equality.

This provides a new way to understand debates about the body in contemporary political discourse. Take discussion of the right to abortion. Should this right be understood in individualistic terms as a woman’s right to decide what happens with her body, or in social egalitarian terms as a woman’s right to participate as an equal in society? From the view of the body I am extrapolating from Kant’s theory of rights, this may simply be a false dichotomy. Authority over one’s own body is inseparable from membership in a system of free interaction.⁴⁴

Returning to Kant’s text, I think this idea of a kind of juridical self-understanding helps explain Kant’s puzzling discussion of the duty of “rightful honor,” a duty which consists in “asserting one’s worth as a human being in relation to others,” i.e., standing up for oneself as a legal person.⁴⁵ The idea of a political duty to oneself seems oddly placed in a theory of legal coercion, since as Kant often reminds us, one can fulfill one’s legal duties simply for fear of

⁴⁴ See Varden (2023, ch. 5) for discussion of a right to abortion from a Kantian perspective.

⁴⁵ MM 6:236.

punishment; no internal recognition of the goodness of the law is required.⁴⁶ So what exactly is Kant asking us to do in acting from such a duty?

One could interpret this duty in a more narrowly legalistic spirit, as just a way of stating that certain kinds of relations between people (e.g., slavery) are legally barred because inconsistent with both parties equal standing.⁴⁷ But there seems to me at least a glimmer of a more internal dimension. In taking up a duty of right to myself, I am to cultivate a certain relation to myself—even, to my own body—as a member of a juridical community.

7. Beyond Kant?

Lurking here is a developmental reading of the *Doctrine of Right*—one in which the human spirit undergoes a kind of self-education by passing through the stages of right. On such an interpretation, it is only by the work’s end that we have learned what all is entailed in living as ‘one among many equally real,’ to borrow Nagel’s line. This view of the text gains support, I think, from Kant’s suggestion that the entirety of his practical philosophy, the theory of right included, should be understood as a form of “wisdom” available to the engaged actor.⁴⁸

Such dialectical twists—whereby persons must become thing-like to themselves in order to become more fully person-like to others—are often associated with Kant’s German Idealist successors. (Though is this not also the basic lesson of Kant’s admittedly dated discussion of the sublimation of sexuality through marriage?)⁴⁹ And my suggestions here are undoubtedly veering into Hegelian territory. To this end, it strikes me as significant that the duality of the body I have been tracing in Kant is made explicit in Hegel’s *Philosophy of Right*:

⁴⁶ MM 6:231.

⁴⁷ Ripstein (2009, 18).

⁴⁸ MM 6:217, 6:445.

⁴⁹ MM 6:278, 6:359.

As a person, I am myself an *immediate individual*; in its further determination, this means in the first place that I am *alive* in this *organic body*, which is my undivided external existence, *universal* in content, the real potentiality of all further-determined existence. But, as a person, I at the same time possess *my life and body*, like all other things, only *in so far as I will it*.⁵⁰

A translation: my body is both me—the conduit of everything I do—and mine, something I make my own. Making my body into my will places it in relation to others; what happens in and to it has consequences for you, and vice-versa: my body (and yours) are instances of the “universal.” As always, Hegel is bringing to greater clarity something that already lies nascent in Kant.⁵¹

⁵⁰ Hegel (1991 [1820], §47; emphases in original).

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