The Form and Matter of Choice: 
Kant on Poverty and External Freedom

[F]reedom of choice, as the capacity to determine oneself in this way or that, is certainly an essential moment of the will, which by its very concept is free. But it is not freedom itself at all; on the contrary, it is still only freedom in the formal sense. The will that is genuinely free, and contains freedom of choice sublated within itself, is conscious of its content as something steadfast in and for itself; and at the same time it knows the content to be utterly its own. 

—Hegel, Encyclopedia, §145A (emphasis mine)

1. Introduction: Kant’s Freedom-Based Approach to the State

Kant’s political philosophy grounds the coercive power of the state in its capacity to both constitute and express the freedom of its members.\(^1\) Kant justifies the state by demonstrating the compatibility between the following two seemingly contradictory claims: (1) No human being is in charge of any other. That is, freedom, understood as “independence from being constrained by another’s choice,” is our only “innate right.”\(^2\) (2) 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. That is, in order to realize one’s innate freedom, each person must “relinquish[e] entirely his wild, lawless freedom in order to find his freedom as such undiminished in a dependence upon laws” (6:316).\(^3\)

For Kant, our innate right to freedom is an essentially relational property; it refers to independence from the will of another. It is thus distinct from both freedom as the internal governance of inclinations by one’s own universalizing and rational will (i.e., the

\(^1\) See Arthur Ripstein, *Force and Freedom* (Cambridge: Harvard University Press, 2009). Hereafter cited in text as *FF*. Much of what follows in section 1 is simply a restatement of aspects of Ripstein’s groundbreaking and remarkable reading. Though by the end of section two my differences from Ripstein will have been made abundantly clear.


\(^3\) Although I do not have space to treat Kant’s well-known misogyny, the least one can do is not cover it over by altering his use of masculine pronouns to express a more egalitarian position.
moral freedom most familiar from the *Groundwork*, and freedom as independence from the efficient-causal order of nature (i.e., freedom as treated in the First and Second Critiques, as well as Part Three of the *Groundwork*).\(^4\) Kant describes this relational conception of freedom as freedom “in the external use of choice” (6:214), and its constituent norms as “the sum of those laws for which an external lawgiving is possible” (6:229). 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.\(^5\)

Obviously though, human beings affect one another in everything that they do. That every action constrains the possible actions of another is simply the consequence of human connectedness. So if external freedom is to be anything other than an empty ideal, it cannot involve total immunity from the actions of others. Rather, for Kant external freedom has a rather minimal content. We are externally free if our very capacity to choose, i.e., to be a purposive agent, is not subordinated to the dictates of another. As we will see in more detail below, external freedom concerns only what Kant

\(^4\) This distinction is also recapitulated in the introduction to *DR* (6:213). There is a huge interpretive debate as to how to connect the concepts of political and moral freedom. For an account stressing their relative independence see Allen Wood, “The Final Form of Kant’s Practical Philosophy,” in *Kant’s Metaphysics of Morals: Interpretive Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002), 1-21; as well as Marcus Willaschek, “Why the Doctrine of Right does not belong in the *Metaphysics of Morals*,” *Jahrbuch für Recht und Ethik*, 5 (1997), and “Which Imperatives for Right? On the Non-Prescriptive Character of Juridical Laws in Kant’s *Metaphysics of Morals*,” in Timmons, 65-87. For a response to Wood and Willaschek which stresses the strong continuity of political and moral freedom see Paul Guyer, “Kant’s Deductions of the Principles of Right,” in Timmons, 23-64. Thankfully, I need not enter into this morass here, though it is clear enough that for Kant relational freedom another stems from the fact that each point in that relation (i.e., each person) possesses an internal moral freedom that relates him to his own rational will (e.g., 6:239). Thus the second-personal nature of *DR* ultimately has a first-person grounding.

\(^5\) Of course, the language of the noumenal is hardly absent from *DR*. To give just one notable example, Kant describes an enduring claim to property of an object, as opposed to an entitlement to it only as long as it is currently in my 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. See Ripstein, *FF*, 95-96; 364.
calls the “form” of choice, the ability to be a choosing agent at all, rather than its “matter,” the particular choices that one makes (6:230). Consequently, my external freedom is only threatened when the actions of another affect my capacity for choice.

Given a plurality of mutually interacting, free agents, Kant argues that the only way to secure each agent’s innate right to freedom is by instituting an order of equal external freedom. Under such a condition of symmetrical constraint, each agent’s capacity to choose leaves intact the choice-making powers of all others. An order of equal or symmetrical external freedom, what Kant calls an order of right, 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” (6:230). In an order of right, there are no masters and slaves, only beings who are equally free because equally unhindered in their capacity to choose (e.g., 6:238). The *Doctrine of Right* shows that such an order can only be constituted by a state in which sovereignty is accountable to the people, structured through law, and constrained by the very rights it expresses.

Although Kant’s account elegantly derives a liberal, rights-protecting state with extensive coercive powers from a minimal conception of freedom as the unconstrained capacity to choose, one might wonder if it can adequately account for liberal-egalitarian intuitions concerning the redress of material inequality. Rival accounts of the philosophical foundations of liberalism, particularly those associated with John Rawls and his followers, base quite robust forms of economic redistribution on cherished ideals of liberty, equality, and fraternity. For many, Rawls represents a form of liberal self-critique that shows the critical potential of some of liberalism’s most valuable principles. Therefore, in assessing the relative merits of Kant’s *Doctrine of Right* for contemporary
political philosophy, it is only natural to ask if the Kantian project can handle redistributive aspirations.

At first glance, Kant’s freedom-based approach to the state does not seem to offer a particularly promising normative basis on which to ground the redress of economic inequality. Intuitively speaking, if all that matters for equal external freedom is that my power to choose is not hindered by another—i.e., if the state merely secures non-interference with the form of my choice—then my having less than another, even much less, is no threat to my freedom. Poverty impinges only on the matter of my choice, not on its form. However much a condition of poverty limits what I can choose, as long as my will is not directly enchained to another’s I am still free. Or to put the point more simply, the poor are not slaves, because they still have discretionary use of whatever little they possess. That the Kantian state rules out slavery thus says very little about its attitude towards poverty.⁶

Surprisingly, however, Kant includes poverty-relief as one of the tasks of a state aimed at the protection of equal external freedom. He writes,

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 (6:326).

In this paper I will consider the extent to which Kant’s approach to the justification of state authority can countenance domination stemming from economic inequality as

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⁶ Although it is true that in some cases the poor are bound to their employers or the state in relations that do resemble that of feudal dependence or even slavery, it is also the case that in most modern relations of domination, including the forms of domination that often attend severe wage inequality, “there is still a considerable measure of freedom.” See Georg Simmel’s classic essay, “Domination” (1908), in On Individuality and Social Forms, ed. Donald Levine (Chicago: University of Chicago Press, 1971), 97.
posing a threat to external freedom. I will argue that Kant can only make sense of the entitlement of the poor to economic redress insofar as he assimilates economic dependence to forms of direct domination by the will of another. Thus, all the Kantian state can mitigate is poverty so severe that it prompts the poor to enter into slave-like relations with those who can provide for their basic needs. Unfortunately, many of those who seek to defend the contemporary relevance of Kant’s political philosophy simply follow him in this respect. Thus Ripstein quite uncritically discusses Kant’s conception of poverty as follows:

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 (FF, 281) (emphasis mine).

To liberal egalitarians who want to adhere to a broadly freedom-based account of state authority, Ripstein’s remarks pose both a descriptive and a normative challenge. Normatively, how might one secure a more demanding account of economic equality based on the ideal of equal external freedom, such that forms of inequality less severe than those that lead to economic slavery are also ruled unjust? Descriptively, how might a freedom-based approach be more sensitive to the diversity of forms of domination within contemporary society? In both cases the answers depend, I contend, on re-drawing Kant’s distinction between the form and matter of choice. In his discussions of active versus passive citizens Kant himself gives us some hints as to how to do this. Radicalizing the conception of choice latent in these remarks brings Kant’s theory of freedom as non-domination closer to a more Hegelian conception of freedom as self-realization.
In making this argument, my plan is as follows: In section two I offer an account of the advantages of Kant’s argument for state-authority and explain why trying to incorporate a redistributive politics into a freedom-based account is a worthwhile philosophical task. In section three I discuss the limits of Kant’s understanding of a state duty to the poor. I argue that Kant’s account of economic domination collapses economic domination into slavery, despite certain passages that suggest Kant’s sensitivity to this distinction. In section four I consider some strategies for redrawing the distinction between the form and matter of choice, and briefly sketch the Hegelian directions in which such an inquiry tends. Let me now turn to a fuller account of Kant’s understanding of the authority of the state, what I call his tacit presupposition model of state authority.

2. The Tacit Presupposition Model of State Authority: The Internal Dialectics of Right

In brief, the tacit presupposition model of state authority runs as follows: a right is an authorization to coerce (6:231). But a plurality of agents, each acting from their innate right to be their own master, will run into moral conflict concerning the extent and bounds of this right. Absent a state, any solution to this conflict would involve mere force, or unauthorized (because asymmetrical) coercion, which would violate the very rights it aims to protect.\(^7\) So patterns of private interaction depend for their rightful

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\(^7\) Why is the *only* solution to the conflict of right a state with omnilaterally authorized coercive powers? Even if agents have the moral good will to resolve moral conflict, from the point of view of any one agent a non state-based solution will still count as being subjected to the will of another. Depending on another’s moral goodness for one’s security and moral good-standing is just as much a form of dependence as depending on a terrifying, vengeful master.
form on a *tacitly presupposed* normative structure. My innate right to freedom is internally self-undermining unless it is viewed as derivative on a public, legal condition.\(^8\)

In this section I further develop the dialectical structure of the tacit presupposition model by first contrasting it with two forms of instrumentalist justifications of the state: (a) a non-Kantian account of the state as a means to satisfy antecedently defined interests and (b) a neo-Kantian, ethical justification of the state as a means to help realize a moral ideal that can be specified without reference to institutions. After discussing the advantages of the tacit presupposition model over (a) and (b), I then turn to a comparison between the model and (c) a two-stage reading of *DR*, according to which public right merely completes already intelligible structures of innate and private right. Here I contend that the tacit presupposition model does a better job of accounting for Kant's remarks on state duties to the poor. But first, let us return to the model itself.

Interpreting Kant's justification of state authority through the tacit presupposition model has significant consequences for how understands the structure of *DR* as a whole. Consider the work's tripartite division between innate right, private right, and public right. Very roughly, innate right refers to each person's right to be his own master, at least insofar as this does not threaten to enslave others (6:237). Private right refers to the extent of those relations with other persons to which I am entitled just so long as such relations do not impair equal external freedom. It encompasses relations of property, contract, and status (e.g. 6:247-248). And public right refers to the sum of our explicitly legal, state-based relations (6:311). If the tacit presupposition model is

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\(^8\) In fact, the story goes back even further. For the very idea of right as an authorization to coerce can itself be developed or explicated (*entwickelt*), i.e., dialectically unfolded, from the idea of a moral agent, housed in a body, and thrown into a spatially finite world which contains a plurality of other such agents (6:239). Many thanks to Jim Conant for helping me better articulated my account of the dialectical structure of *DR*. 
correct, then not only are these stages not to be viewed temporally—as if first we have free individuals who then make claims to property which they subsequently ratify by signing on to the state—but they are not even independently intelligible, conceptually discrete stages.

One way to understand this is to think of the relations between the three forms of right as marked by two-way dependence relations. It is easiest to see the conceptual current as flowing from innate to private to public right. Clearly, Kant thinks that public, legal relations can only be legitimate if they preserve the innate right of each person to be his own master, and also some form of property-claims to mine and thine. But it is just as important to appreciate that the relation goes in the other direction too, such that not only property rights but even innate right itself are merely partial, not fully actualized, until completed by the state. Explaining the dependence relation from right to left Kant writes that the ground of our duty to enter into the state can be “explicated (entwickeln) analytically” from the bare concept of right in external relations (6:307). On the dependence relation from left to right Kant argues that until we have a republican state constitution, all right is merely provisional (6:340).

To better appreciate this idea of partial actualization and two-way dependence relations, recall for example Kant’s argument that because my innate right to freedom licenses the protection of my own decision-making power, it thereby also licenses the protection of my body, which is the form or being at work of that power (6:248). And recall, once again, that private right paradigmatically licenses property, which Kant understands as a normative entitlement to possess objects in the external world even when they are not currently connected to my body (248). If the tacit presupposition

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9 See here Ripstein, “Innate Right in Public Right” (unpublished manuscript) and FF, 51.
model is correct, then my entitlement both to my body and to property are incomplete or merely provisional if conceptualized in absence of the state-form.¹⁰ Importantly, in both cases this provisionality cannot be merely motivational. That is, Kant’s point cannot simply be that absent a state agents lack the rational motivation to adhere to the property claims of others or to avoid assaulting one another’s bodies. Rather, the point must be that in the absence of a state we do not yet have a determinate concept of property, or even of the body, as a genuine normative entitlement. These conceptions are partial, or not fully actualized, in the following sense: any attempt to enforce my own bodily or property right is morally ambiguous; in the state of nature what might look like morally legitimate self-defense threatens to turn into an imperious self-authorization of my own will.¹¹ No matter each agent’s moral good intentions, any attempt to conceptualize innate or private right “before a public lawful condition is established” will be self-undermining, because in such a condition “individual human beings, peoples, and

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¹⁰ Kant is undoubtedly more explicit about the provisionality of private right than he is about innate right. I discuss his argument for the provisionality of property in a pre-state condition, as well as some slice of the voluminous secondary-literature around how exactly to understand this claim, in “Property, Politics, and Personhood: Kant’s Rousseauian Return.” Suffice it here to note that my reading of the conceptual provisionality of property runs counter to Guyer, “Kant’s Deductions of the Principles of Right,” 54; Guyer, Kant (New York: Routledge, 2006), 252-303; and especially B. Sharon Byrd and Joachim Hruschka, Kant’s Doctrine of Right: A Commentary (Cambridge: Cambridge University Press, 2010), 25-26, 46. These authors read Kant’s point about provisionality as bearing only on rational motivation. For an account that explains the provisionality of even our right to our own bodies, and so of a key element of innate right, see Japa Pallikkathayil, “Persons and Bodies” (unpublished manuscript) and “Deriving Morality from Politics: Rethinking the Formula of Humanity,” Ethics, vol. 121, no. 1 (October 2010): 147. By contrast, Ripstein flatly denies this possibility, arguing that Kant’s view is that my right to my body is fully in place prior to the state-form. See FF, 177. Ripstein’s account of the body is thus plagued by a residual Lockeanism.

¹¹ In fact, in DR Kant does not begin with a primitive notion of a right to one’s body, but derives such a right as a necessary presupposition of thinking about the logically subsequent right to property. It is only in the course of establishing that a genuine right to property involves a claim on an object that persists after I have put the object down that Kant claims that I would be wronged in what is “internally mine,” i.e., wronged in my body, were someone to wrest away an object currently in my clutches (6:238; see also 254). Ernst Weinrib briefly mentions this point, though he does not bring out the significance of this latent critique of bodily immediacy for what he himself characterizes as the book’s “dialectical structure of argument.” See Weinrib, Corrective Justice (Oxford: Oxford University Press, 2012), 271-272.
states can never be secure against violence from one another, since each has its own right to do what seems right and good to it” (6:312). In other words, in the absence of a state both my body and my property move in a penumbral space between right and violence, where self-defence devolves into mere aggression, and the possibility of possession exists but without moral authorization to any particular claims to property (6:256-257).12

Before preceding further, let us briefly contrast the tacit-presupposition model with a few relevant alternative accounts of the state’s authority. On the instrumentalist model, associated with Locke and modern-day Lockeans, individuals sign on to the state in order to enforce an antecedently binding moral law of nature and conception of property.13 For prudential reasons, they loan their executive power to enforce such moral claims to a collective entity, the state. Thus, the state is instrumentally justified as the best means to achieve the ends of realizing the moral law and securing property. This leaves it open that if in principle another social form could meet these same ends it might be preferable to the state.14

Taking their cue from Kant’s moral as opposed to his political philosophy, Neo-Kantian forms of justification conceptualize the state as a means to promote the moral

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12 Matters here are quite complicated, since Kant does argue that in the state of nature individuals have a right to coerce others to exit that state and institute a public condition (e.g., 6: 264). So it might appear as if prior to the state we must already have the rights which authorize us in that coercive act. In “Politics, Property, and Personhood” I challenge this reading. I thank Kyla Ebels-Dugan for pressing me on this issue.

13 E.g., Locke, The Second Treatise, §127, in Two Treatises of Government, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988) and Robert Nozick, Anarchy, State, Utopia (New York: Basic Books, 1974). I leave aside any comparison of Kant with Rousseau and Hobbes, since their positions are much too complex to be encapsulated in an overly simplified portrait. And even this rudimentary account of Locke and neo-Lockeans is schematic at best.

14 Other forms of instrumentalist-justifications are epistemic in character, such that state has authority because it is better able to arrive at true answers to difficult questions. I leave these accounts aside as they are so far from the Kantian picture as to be irrelevant for our purposes.
ideal of autonomy, where this ideal in principle governs all members of a kingdom of ends
and has nothing specific to do with the institutions of the state. The state merely assists
individuals in overcoming their moral failings so as to better act from a sense of duty
and thus express their moral freedom. Paul Guyer expresses this view when he writes,
“political organization under public law is the collective use of threat of coercion to
enforce outward compliance with some consequences of the fundamental principle of
morality.”\textsuperscript{15} Similarly, Onora O’Neill attributes to Kant a view on which “because human
beings are not always well disposed towards one another, justice requires enforcing
institutions which unavoidably curtail external freedom.”\textsuperscript{16}

That Kant himself would reject all such ‘Kantian’ approaches to politics is made
clear by his claim that the state secures us from a condition of structural violence, which
obtains “however well disposed and law-abiding men might be” (6:312), i.e. no matter
the moral worthiness of individual agents. According to \textit{DR}, autonomy is not an
independent value which the state helps realize because of our individual moral failings.
Rather, autonomy is viewed as a collective property which is constituted in and through
the state. So the neo-Kantian approach shares with the Lockean approach a conception
of the state as an instrument to promote an independently intelligible end.\textsuperscript{17} By Neo-
Kantian lights, if we could realize our moral autonomy without a state, such a coercive
arrangement would in fact have no authority over us.

\textsuperscript{15} Guyer, “Kantian Foundations for Liberalism,” in \textit{Kant On Freedom, Law, and Happiness}
discusses this passage in “Kant’s Non-Voluntarist Conception of Political Obligations: Why Justice
\textsuperscript{17} For the differences between Kant and the Neo-Kantians, see Ripstein, \textit{FF}, 11, as well as Vaden,
“Coercion and the State,” \textit{Jurisprudence}, no. 2, vol. 2 (2011): 547-559 and “Kant’s Non-
Voluntarist Conception of Political Obligations.”
Kant’s account of the state has conceptual and practical advantages over both the Lockean and neo-Kantian alternatives. Conceptually, it establishes right as a reciprocal concept, based in an authorization to use force. Rights are thus not empty moral ideals—as they threaten to collapse into on the neo-Kantian approach—but instead specify those concrete political constraints on interaction which allow each agent to be non-dominated by the wills of others. Moreover, by untethering rights from any needs agents may have independently of or prior to a political condition, Kant’s position can account for the following intuitions about concrete rights-claims: my right to be fed is not per se a right to food. Rather it is a right to the conditions under which I need not depend on others to feed me. Similarly, my right to shelter is not a right to have a home over my head, but rather a right not to be exposed to the public gaze and the forms of exploitation that attend such exposure.18

Why is such an account of right analytically preferable to one in which rights are grounded in need? The basic idea is that if I starve due to a food shortage that was not manmade (assuming such a thing were possible), there is no violation of justice. So what makes my starvation morally unjust cannot be mere lack of food, but the fact that someone else is preventing me from obtaining it. Or suppose that the houses of all people in a community were built with the same quality materials and so equally fortified in all relevant ways from natural disaster. In this case, a hurricane that tears the roof off my house but not my neighbor’s is simply a terrible calamity which befalls me, rather than unjust. The Kantian account thus provides the right analysis of the moral wrongs at

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18 I borrow the first example from by Rainer Forst, “A Critical Theory of Human Rights,” a lecture delivered at Northwestern University, May 2, 2014. I borrow the second from personal conversation with Ariel Zylberman. One can extrapolate that Kant would hold these positions on concrete rights claims from his remark that “the well-being of a state must not be understood [as] the welfare of its citizens and their happiness” (emphases in original), but rather only as an order that “conforms most fully to principles of right” (6:318).
issue here. Conversely, the solutions it recommends track the constitutive role of political institutions in realizing the value of freedom. If rights were not at bottom relational, grounding in my standing vis-à-vis others, they could be secured by any means. It would be irrelevant whether they were realized by benevolently minded humanitarian aid agencies or through the internal democratic transformation of the state. If rights are mere needs, then they could in principle still be satisfied in a way that leaves the rights-bearer dominated by alien wills, albeit perhaps benevolent ones. So, once again, Kant’s relational conception of right rules out an instrumentalist view of the state as merely an efficient means to secure a conceptually separable end of delivering on rights.\textsuperscript{19}

It is because of the normative appeal of Kant’s approach to the state and right that it becomes particularly worthwhile to try to account for rights to economic welfare, or a more equitable distribution of resources, from within its framework. Nevertheless, even commentators sympathetic to the Kantian (as opposed to neo-Kantian) approach to the state often find it difficult to understand the passage cited in section one on the state duty to the poor.\textsuperscript{20} I have already briefly explained why this passage might appear to be out of sync with the aims and concepts of \textit{DR}. We can bring the potential worry further into view by examining Kant’s initial definition of right:

\textsuperscript{19} Kant’s view also tracks left-liberal rhetoric. Here is an example from the \textit{Jacobin}, a magazine of progressive news commentary: “[U]nmet needs debase people. Satisfying necessities is a precondition for self-determination and self-governance; for moving us beyond our most primordial needs. In injecting insecurity, anxiety, and circumspection into our lives, economic dependency saps us of our ability to lead dignified, autonomous existences. People are forced to grovel to get by, to accept whatever job they can find or stay in abusive relationships to stay afloat financially.” Shawn Guide, “In Defense of Entitlements,” \textit{Jacobin}, 12/17/2013; available online at https://www.jacobinmag.com/2013/12/in-defense-of-entitlements/ [accessed 5/16/2014]. Here the injustice of “unmet needs” is clearly tied to interpersonal domination.

\textsuperscript{20} See here the discussion of the relevant literature in Weinrib, \textit{Corrective Justice}, 266-267. Neo-Kantian interpreters could countenance such a duty, but they would have to construe it as an ethical duty to mutual aid.
The concept of right…has to do, first, only with the external and indeed practical relation of one person to another, insofar as their actions, as deeds, can have (direct or indirect) influence on each other. But, second, it does not signify the relation of one’s choice to the mere wish (hence also to the mere need) of the other, as in beneficence…but only a relation to the other’s choice. Third, in this reciprocal relation of choice no account at all is taken of the matter of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the form in the relation of choice on the part of both, insofar as choice is regarded merely as free (6:230) (emphases in original).

To briefly repeat a point I made in section one, if right is preserved just so long as one’s capacity to choose is not interfered with by another, then it is hard to see how the poor’s demand for an alleviation of their poverty is anything other than what this passage characterizes as an expression of “wish.” It might seem that this problem pertains even to the concrete entitlements to food and shelter I just mentioned above. After all, even the person with a destroyed house can still ‘choose’ to live in the street, or the starving man can ‘choose’ to dig for grubs. I take it though that in these horrible examples it is somewhat easier to see how the dire conditions of starvation or homelessness might make it more likely for an individual to enter into agreements in which he is directly dependent on the particular wills of others. And at least in the homelessness case, the wrong stems from a deprivation of something I once had rather than from something I generally lack and so perhaps could be construed as theft of property. Yet however exactly one might want to differentiate the normative status of poverty from starvation or homelessness, prospects for Kant’s philosophy as a form of social critique still look quite bleak. This impression is exacerbated by some of Ripstein’s ways of illustrating Kant’s distinction between the form and matter of choice. For example,

21 See Weinrib, *Corrective Justice*, 293-295.
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. The only way I can wrongfully interfere with your labor, then, is by wrongfully interfering with your person (FF, 101).

By Ripstein’s lights it might seem as though if a speculator comes and buy up all the milk on the shelves in order to sell it at a higher price elsewhere (perhaps to an underserved community without adequate grocery stores), the customer trying to purchase milk has not been wronged in any way significant for his or her status as free. (If it makes the example more vivid, imagine the customer as a mother or father trying to buy milk for their child.)²² The speculator has not affected the customer’s capacity to choose, but merely restricted the choices they can make. The general point is that if all that matters is interference with one’s bare capacity to choose, then one is free as long as one has discretion over whatever means are at one’s disposal. My children might go undernourished because of the waning supply of milk, but as long as the speculator doesn’t break into my fridge to take what I’ve already purchased, he has done me no wrong.

In fact, Ripstein has his own interpretation of Kant’s remarks about the state duty to the poor. On his reading, Kant’s position is that poverty prevents people from meeting on equal terms so as to form a shared political will. Extreme disparities of wealth lead to a condition in which the poor are coerced into asymmetrical dependence on the rich. Ripstein argues that in such relations the poor’s duty to preserve their status as free and non-dominated, what Kant characterizes as one’s duty to “be a person of rectitude” [Sei ein rechtlicher Mensch] (6:236; translation modified), i.e. to assert one’s

²² Whether this scenario poses an affront to the external freedom of the child is a complex matter concerning Kant’s conception of status relations. I cannot treat this issue here.
status as a juridical being, is threatened \((FF, 267-286)\). Ripstein’s account might thus seem to accord with my reading of \(DR\) as offering a tacit presupposition model of political authority, in that it hinges on the fact that poverty, by threatening the formation of a united political will, creates an internal contradiction in each agent’s attempt to express their innate right to freedom.\(^{23}\)

However, Ripstein does not consistently adhere to such a dialectical understanding of the \(DR\). Many of his formulations suggest a two-stage reading of the work. Sometimes this appears as the view that innate right is fully in place before the argument for the provisionality of private right and its completion in public right get off the ground. So there is a dialectic, but it occurs only between private and public right. Here are some of Ripstein’s formulations on the non-dialectical nature of innate right:

“Innate right is an incomplete account of independence, because it regulates only a person’s entitlement to his or her own person and reputation” \((FF, 19)\). In other words, innate right can already establish my rights to my person (and thus also to my body), and my duty to be a juridical person, which Ripstein here characterizes as my reputation. It is incomplete only in that other normative entitlements await the state. Or consider his claim that innate right merely “constrains the possible activities of the state in making

\(^{23}\) By contrast, although Weinrib’s treatment of poverty is close to Ripstein’s in many essential respects, Ripstein explains Kant’s views without making reference to rational consent. By contrast, Weinrib’s account hinges on the claim that if I myself have authorized a system of property I have thereby also licensed a condition in which I may fall into dependence. This could only be rational if I also will a condition in which this dependence is alleviated. This way of putting it looks like it might be too close to an instance of prudential reasoning. Or at the very least it raises the same worry of how to understand it non-prudentially as Kant’s infamous example of the non-beneficent man in the \textit{Groundwork}. Ripstein’s account looks less consent-based, and so closer to Kant’s dialectical unfolding of innate right in \(DR\), though Kant does make an argument closer in form to Weinrib’s at 6:314. See Weinrib, \textit{Corrective Justice}, 283-284
Once again, this makes it seem as though we already understand the precise meaning and scope of innate right prior to the state.

Ripstein’s understanding of the relation between innate right and private/public right also has consequences for his understanding of the relation between private and public right. His account sometimes threatens to sunder even that relation into discrete stages. Although Ripstein recognizes that the provisionality of property in the state of nature is not simply motivational but has to do with the very possibility of placing another under an obligation to respect my property (FF, 145-181), he still often argues as though Kant’s view is one on which individuals can claim whatever and however much as they want, an act which is then simply ratified by the state (e.g., FF, 277). Whether Ripstein has only a partially dialectical reading where innate right is immediately given, or a thoroughly non-dialectical one, in which private right also stands apart from and prior to public right, in both cases he conceives of the conceptual current as flowing unidirectionally: from innate to private right to public right. And in each transition, the role of the prior stage is simply to constrain the results of the latter.

Decomposing the conceptual interdependence of the three stages of right into independently intelligible moments affects how one understands Kant’s remarks on the regulation of poverty. The tendency of Ripstein’s view is one on which privately interacting agents can pursue extreme disparities of wealth. The state can intervene, making adjustments so as to promote equal external freedom, but only if private interactions produce outcomes on which the losers in the transaction, i.e. the poor, threaten to become enslaved to the winners, i.e., the rich. As Ripstein writes, in order to

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24 See also “Innate Right in Public Right.”

25 Though this reading of private right may seem to find some basis in Kant’s claim that “laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition” (6:313), Kant’s point here is simply that the civil condition does not create the concept of property ex nulvo.
ensure the continuity of conditions for political will formation, “the state intervenes in distribution” (FF, 268). But if there is an interdependence of the three stages, then Kant’s view must be that the state should not be thought of as intervening in already formed patterns of private interaction, but rather as structuring the very conditions under which even privately interacting individuals can be free.

Let us flesh out this abstract point by returning to Ripstein’s example and my extension of it. The idea is not that the milk speculator can pursue whatever purposes he wishes, with the state stepping as a mode of redress (say, by taxing the speculator and returning some of the money to the milk-deprived subjects in the form of subsidies or food stamps). Rather, the Kantian state can prevent the speculator’s activities on the grounds that they threaten to create an asymmetrical dependence of the consumer on the caprice of the speculator. So when Ripstein writes, “private right protects each person’s purposiveness by protecting each person in what she already has” (275) (emphasis mine), it is important to hear this in a properly dialectical key. Kant’s view is not one on which individuals can acquire whatever they want (stage 1), with the state make adjustments if such acquisition threatens symmetrical dependence (stage 2). Rather, if the full unfolding of my putatively ‘pre-political’ innate right to freedom reveals that it is always-already structured by the state in order to be what it is, then on Kant’s view the state can already set limits on what I “happen to have,” even before we pose the question of its redistribution. Thus the state does not find itself with a given content—what individuals already ‘have’—which it then regulates, but instead views this ‘having’ as already a product of its own activity. Ripstein is right that each person can keep what is ‘his,’ but he fails to properly emphasize that it is the state which decides the boundaries of mine and thine.
In fact, if the three stages of right are but three conceptually interconnected moments, then it is strictly speaking inaccurate to pose the state duty to the poor as a problem of redistribution. This way of formulating the issue makes it appear as though property acquisition and property distribution are based on separate, irreconcilable principles. On this reading, acquisition will look to be based on the universal principle of right, which states that “[a]ny action is right if it can coexist with everyone’s freedom in accordance with a universal law” (6:230), and what Kant calls the “postulate of practical reason with regard to rights,” both of which work together to establish that one is licensed to acquisition just so long as acquiring does not impinge on other’s capacity for choice. And property redistribution will appear to based on an extraneous principle of collective benefit and burden that can find no place in a freedom-based account. Such a separation of principles would fly in the face of Kant’s insistence that the principle justifying a right must be one and the same as the principle justifying the regulation of that right. In sum, the correct way to think of a state duty to the poor is as mandating that a distribution (not a redistribution) of resources must be managed so as to enable equal external freedom.

In this section, I have sought to establish that Kant’s argument can place concern with a more equitable distribution of resources at the core of its aspiration to secure equal external freedom. In some sense, Ripstein is correct that state distribution to the poor is a matter of public rather than private right. After all, Kant does write that it is “for reasons of state” that government can constrain the wealthy to support the poor (6:326). But public right should not be viewed apart from its role in structuring the conditions of private interaction. We must now ask whether Kant’s philosophy of the

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state can provide an adequate understanding of the precise nature of the inequity in unequal distribution. To answer this, we need to probe the distinction between slavery and economic domination. I take up this task in the next section.

3. The Forms of Domination: Slavery vs. Poverty

Although Kant’s view must be that state support for the poor is necessary even for individuals to privately interact on terms that preserve equal external freedom, slavery forms the basic picture of interaction that threatens such freedom. Thus, the principle that will allow the state to prevent the speculator’s activities can only be that his activities tend to result in the subordination of the wills of other’s to his own. So ultimately I agree with Ripstein’s assessment that the problem of poverty for Kant is the poor person’s situation is one in which “all purposiveness depends on the grace of others” (FF, 281), i.e. on in which the poor person’s “entitlement to use anything is entirely left to the discretion of others” (278).

But although Ripstein appears to endorse Kant’s view that redistribution is necessary only insofar as it is needed to prevent slavery-like relations, we need not follow either of them in this. In many cases, the poor in market-based societies are not directly enchained to the wills of particular masters, but to a system in which their domination comes from no one point. From a historical point of view, Kant’s under-theorization of such a condition is perfectly understandable. He simply could not have truly foreseen what life in complex market-societies would look like, and one of his underlying political aspirations was to criticize feudalism and praise newly emergent

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*I should note that I do no think that Kantian political philosophy should be tasked with trying to provide a complete account of the state that bypasses democratic decision-making. Rather, the problem is that the principle of non-domination that will be deployed by the state or judges in deciding what to do is woefully inadequate to account for forms of domination that, to put it in Rawlsian terms, citizens in reflective equilibrium might come to accept as unjust.*
capitalist property relations as the central instantiation of external political freedom. But this still raises crucial questions for what it might mean for any contemporary attempt to resuscitate Kant’s freedom-based political philosophy for a genuinely critical liberalism.

In trying to state Kant’s failure with appropriate care, it is important to make some conceptual distinctions. Let us call \textit{intentional, direct domination} a situation in which one agent or group of agents sets about to control the choice-making capacity of another agent or group of agents. Imagine here slave-owners, Mafia-like gangs aiming at unconditional obedience on the part of their members, torturers and other sadists, etc. By contrast, \textit{unintentional, direct domination} names a situation in which one person or group of persons is not directly aiming at enslaving others, but such enslavement is the result of their actions.\textsuperscript{28} So imagine that the milk speculator controls the entire market for milk. In this case, all customers directly depend on him for the well-being of their children. If the speculator decides to ship off the supply from one town to another that is so far away that driving would be impossible, the customers quite literally come to depend on his largesse for the survival of their children. Nevertheless, imagine that the speculator does not directly strive for this situation, and is in fact even saddened by it. He is happy to bring in some emergency rations for milk if need be, but only because doing so does not upset the overall profit he has made by shifting the milk elsewhere.

My claim is not that the Kantian state can only countenance the illegitimacy of intentional direct, domination. Clearly it can also criticize unintentional, direct domination as well. One can see this by noting an aspect of Kant’s definition of right to which Ripstein pays little attention. Kant writes that the concept of right has to with the

\textsuperscript{28} This bears some relation to Philip Pettit's distinction between intentional threats, which result from direct interference, and positional threats, which result from the greater position of others, whether they wish to interfere or not. See Pettit, “Agency-Freedom and Option-Freedom,” \textit{Journal of Theoretical Politics}, vol. 15, no. 4 387-403.
practical relation of agents, “insofar as their actions, as deeds, can have (direct or indirect) influence on each other” (emphasis mine). So the state can regulate or structure interactions where agents are not directly aiming at domination, but where domination emerges as an indirect effect of what they do.

Nevertheless, the Kantian state must still view domination as aiming at complete control over the choice-making capacity of another. Putting aside the technicalities of Kant’s political philosophy for the moment, a critically liberal philosophy should also be able to countenance the injustice of unintentional, indirect domination. This would be a condition in which agents who gladly adhere to state-based rules based on the value of equal external freedom end up producing a situation in which individuals are not free, not because their very capacity to be an agent is under threat, but because their options for meaningful activity are constrained in some marked way. So for instance imagine a case in which because of the speculator’s activities I must spend long hours driving to a far-away grocery store owned by someone else. This drive leaves me with little time to develop loving relationships with my children, to better myself through hobbies or other activities, etc., but it is not impossible for me to do it as often as my children need milk. The question is whether Kantian philosophy can make sense of the injustice of this, since after all, in scheduling my day around the long-drive for the milk I am certainly not having my choice-making capacity constrained by another. One is more tempted to say that the problem is precisely the opposite: the activities of the speculator have compelled me to over-exercise this capacity. The problem is that I cannot identify with or endorse those choices as meaningful to myself.

Interestingly, Kant himself appears to recognize that the equation of domination with direct control over the choice-making capacity of another might be too narrow. This
becomes clear from his infamous discussion of active versus passive citizens—roughly, free men who sell their labor power on a market versus women and all workers whose livelihood directly depends on the continued financial support of particular individuals (6:314). Notoriously, Kant argues that although passive citizens must have their fundamental rights respected and be appropriately represented in government, they do not have the right to actively manage the affairs of the state. It is hard to know what attitude one should take to these passages. Perhaps they should simply be excoriated as typical of Kant’s misogyny. Alternatively, perhaps they should be defended as indicative of Kant’s sensitivity to the impossibility of formal political equality against a background of severe gender and economic inequality. Here I want only to discuss the distinction in light of Kant’s general view of domination.

Kant cannot have thought that passive citizens—domestic servants, women, private tutors, and tenant farmers, etc.—are, literally, like slaves. People occupying any of these social positions constantly exercise their choice-making capacities in the service of ends they themselves have chosen. And yet he excludes them from the state on the grounds that because their lives are marked by pervasive dependence on other individuals, they remain outside an order of equal external freedom. So clearly then he must think of domination as potentially inhering even in a condition where I do have some discretionary use of my powers and means. But unfortunately, Kant’s way of drawing the distinction between the form and matter of choice makes it very difficult to see how to account for this insight. In the fourth and final section, I briefly consider an alternative strategy for drawing the distinction so as to allow for a more capacious conception of domination.
4. From Non-Domination to Self-Realization

Given the difficulties with Kant’s way of drawing the distinction between the form and content of choice, one might ask, why not jettison it entirely, instead conceptualizing freedom as pertaining only to the actual choices that I make? The problem with this approach is that not all restriction of my choices should be considered a meaningful restriction of my freedom. If the view is that one is freer simply to the extent that one’s choices are more unrestricted, then freedom looks to rest in the sheer quantity of choice. But this narrow view of freedom as option-freedom is absurd. To return once again to our example of the milk speculator, on this view one would have to conclude that one is freer if another company enters the market and adds to the stock of milk bottles with blue caps a beautiful, new, red-capped bottle. (One is freer still if yet a third company comes out with purple-capped bottles.) Were we to assume that the only alternative to Kant’s way of drawing the distinction is the adoption of an option freedom model, then we are left with two equally unattractive normative options for the freedom-based state. Either I am free just so long as I am not a slave, or I am the more free the more meaningless choices I have. We have rejected feudal domination only to deify the capitalist consumer.

Conversely, if we think that a more plausible view of option-freedom involves not the quantity of choice per se but the significance of the choices made, we obviously then need a good philosophical account of what makes a choice significant.²⁹ One

²⁹ Another option entirely would be to reject the emphasis on choice in favor of a neo-Aristotelian account centered on the value to each organism of maintaining itself as living. The problem with this approach, however, is that it loses hold of the insight that lacking what one needs is not unjust in and of itself. Rather, lack only becomes a concern of justice when it stems from the actions of another. And moreover, such an approach forces us to adopt a metaphysically anachronistic account of life-forms. See Rödl, “State Support for the Poor,” 23. Here Rödl approvingly cites Michael Thompson as providing a way out of the impasse of the Kantian
promising strategy is to adopt the Hegelian understanding of freedom as inseparable from its meaningful actualization. This idea, throughout the *Philosophy of Right*, finds an exceptionally clear formulation in the Additions to Hegel's *Encyclopedia*:

> [F]reedom of choice, as the capacity to determine oneself in this way or that, is certainly an essential moment of the will, which by its very concept is free. But it is not freedom itself at all; on the contrary, it is still only freedom in the formal sense. **The will that is genuinely free, and contains freedom of choice sublated within itself, is conscious of its content as something steadfast in and for itself; and at the same time it knows the content to be utterly its own.**

In other words, freedom involves securing conditions under which I can see the choices I make as meaningful, as my own. Because the will is essentially free, the criteria for what makes a choice meaningful is that it contributes to my realizing myself as the kind of being whose freedom can only be expressed in social partnership with others. The content of my choice is internally rather than externally related to its form in that my capacity to choose is only at work when it can make choices that are genuinely expressive of this self-determining, socially shared capacity.

One way to give this more content is to see my capacity for choice has having material, social, and institutional preconditions for its exercise. Just as it is highly implausible to imagine that as a rational agent I could meaningfully will a world in which I might starve, or fall ill, without ever being helped by others, so also perhaps I cannot imagine myself as actually choosing in conditions under which none of my choices express how I understand myself and wish others to understand me.\(^\text{30}\) The ‘choice’ between digging for grubs or starving, or between working in a sweatshop or foregoing elementary education for one’s children, is not a true choice in that neither can be

\(^{30}\) For a Kantian-inspired argument to the effect that rational agency requires the satisfaction of certain “true human needs” see Barbara Herman, “Mutual Aid and Respect for Persons,” *Ethics*, vol. 94, no. 4 (1984): 577-602.
endorsed by an agent seeking to actualize her freedom in institutions that express her demand to be recognized by others.

This account forestalls the slide into meaningless option-freedom because it preserves the distinction between the form and matter of my choice. Interference with the matter of my choice, no concern for justice, is interference with all and only those particular ends I have which do not refer to needs that must be satisfied in order for me to express my nature as free. Conversely, to interfere with those essential needs is in fact to interfere with the form of my choice.

All of this tends in the following direction: I cannot see myself as free unless I can identify with political institutions. But this is not only to see these institutions as preventing domination, but also as helping me realize essential ends that can be shared among all free beings. But if freedom depends on agents being able to endorse the content of their choice as genuinely expressive of their capacity to choose, we have moved from an essentially Kantian understanding of the distinction between the form and matter of choice to a Hegelian one.