

Learning from Kant: On Freedom

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Abstract: This article analyzes Kant's conception of freedom and discussions about it. It starts with Kant's early works and his search for the ways to overcome the limitations of the views of freedom as independence from one's own inclinations and from whims of others. Conception of moral freedom was developed in three formulations of the categorical imperative. Kant formulated the positive conception of freedom as the free capacity for choice. It asserts the unconditional value of the freedom to set one's own ends. Autonomy of the will is the supreme principle of morality and a necessary condition of moral agency. Attention is paid to the discussions about outer and inner freedom, and the differences between those who argue for the relations of right to morality and those who deny this. In Kant's philosophy, morality and right are intrinsically related. He criticized moral utilitarianism as related to servility and political paternalism, which lead to unfreedom. In today's world, imperial designs and neototalitarian tendencies are two sides of the same coin. The article holds that the real alternative to the hegemon-centric order will be not *for* the dominating power to change hands, but for a world free *from* any hegemonic domination. It shows the relevance of Kant's project of perpetual peace and cosmopolitan world order.

Keywords: autonomy, freedom, humanity, Kant, morality, perpetual peace, right.

*Edward Demenchonok, "Learning from Kant: On Freedom," *Revista Portuguesa de Filosofia* 75, no.1 (2019): 191–230,

In marginalia found in Kant's personal copy of his *Observations on the Feeling of the Beautiful and Sublime* (1764), a note entitled "On freedom" says:

But what is harder and more unnatural than this yoke of necessity is the [~~crosses out: dependence~~] subjection of one being under the will of another. No misfortune can be more terrifying to one who is accustomed to freedom, who has enjoyed the good of freedom, than to see himself delivered [~~crossed out: under~~] to a creature of his own kind who can compel him to do what he will (to give himself over to his will). It [~~crossed out: necessarily~~] requires a very long habitation to make the [~~crossed out: horrible~~] terrifying thought of servitude tolerable, for everyone must always feel that even when there are many adversities that one might not be pleased to shed at the risk of one's life, still in the choice between slavery and the risk of death one will have no reservation about preferring the latter.¹

Kant's note shows his view of freedom as an essential constituent of human beings. For Kant, domination and subjection trample human dignity and run contrary to human nature. He writes, "there is in subjection not only something extremely dangerous but also a certain ugliness and a contradiction that at the same time indicates its injustice,"² and "nothing can be more appalling than that the action of one human stand under will of another. Hence no abhorrence can be more natural than which a person has against servitude."³

This private note, written by a thinker living an almost ascetic life under the heavy-handed absolute monarchy in Germany, expresses a categorical rejection of domination and subjection as unconditionally as did Patrick Henry when he uttered the famous proclamation, "Give me liberty, or give me death!" at the Second Virginia Convention on March 23, 1775, paving the way to American independence.

Kant's note evinces the deep inner motivation underpinning decades of his works; it discloses the causes—internal and external—of domination and suggests remedies for it. It asserts the absolute value of freedom as a universal norm. This philosophical foundation of freedom became for many a theoretical basis for manifold practices—moral, legal, and political—of self-liberation in the struggle for freedom.

1. Ideas of Freedom in Kant's Early Works

Freedom is the central theme of Kant's moral philosophy. It emerged first in his early writings in the 1750s and was developed through different strategies in his mature works through much of his career. Kant's philosophy of freedom and its core conception of autonomy emerged as the result of more than two decades of research, preparatory work, exploration of various strategies, and

¹ Immanuel Kant, "Selections from the Notes on the *Observations on the Feeling of the Beautiful and Sublime*," in *Notes and Fragments*, eds. Patrick R. Frierson and Paul Guyer (Cambridge: Cambridge University Press, 2005), §24, p. 11, ISBN: 9780521884129.

² *Ibid.*, §26, p. 12.

³ *Ibid.*, §22, p. 11.

creativity. Studying this process of formation of Kant's theory, from his early works in the mid-1750s to his mature works, written in the mid-1780s, helps to better understand the meaning of his ideas in a context. Kant's notes and remarks provide an opportunity to enter into his "laboratory" and some additional insights and contexts of what later became published.

Kant's early notes show the development of the ideas of the absolute value of freedom. Put simply, he was against unfreedom and subjection; this belief fueled his motivation to strive for freedom. But how to ground it, to provide a philosophical, theoretical foundation for the practical striving for freedom?

Kant's early works addressed the problem of freedom and obligation. How is it possible that one ought to do something even if one is not so inclined? To find the answer, Kant embarked on a more than two decades long journey, during which he developed his conception of autonomy (and the view that reason is the source of its own moral principle). His earliest writings on cosmology, from the mid-1750s, had implications for his conception of autonomy. In contrast to the cosmologies of Christian Wolff, Nicolas Malebranche, and Christian Crusius, Kant tries to reconcile the determinacy of universal laws of nature with traditional religious notions of moral culpability and Divine power. He offers a resolution of the tension between understanding freedom as the determined rational inclination of the will and freedom as a capacity for morally culpable action based on a concept of the world that combines interaction and rational determination of the will with an ongoing worldly struggle, which has meritorious character.

By the early 1760s, Kant was dissatisfied with the predominant rationalist views asserted by Christian Wolff and Samuel von Pufendorf. He believed that moral perfection cannot be based on rational cognition alone, and that mere knowledge of good cannot be regarded as sufficient grounds for action. He turned to the Moral Sense Theories by the British Moralists (moral sentimentalism), with their naturalistic account of moral feeling. Their advantages and drawbacks are reflected in Herder's notes on Kant's lectures on ethics and metaphysics. Moral sense theory draws attention to material content and associates the content of moral duty with a natural feeling, which addresses the problem of moral motivation: "disinteresting feeling of concern for others" is "nobler than the self-interested one."⁴ Kant stressed that natural human perfection is related not to theoretical knowledge, but to moral endeavors, which is accompanied by an inner dignity that recognizes the equal worth of others.⁵ In contrast to Wolff, Kant's approach shifted from a material a posteriori principle to a formal a priori principle. Later, alternative to moral sense theory, Kant introduced respect for moral law.

Kant refers to the Stoics' and Rousseauian conceptualizations of the value of freedom understood as freedom from domination by one's own inclinations as well as from whims of others. According to them, we should first free ourselves from inclinations and desires that are likely to be frustrated

⁴ Immanuel Kant, "Kant's Practical Philosophy: Herder's Lecture Notes (selections)," in *Lectures on Ethics*, eds. Peter Heath and J. B. Schneewind (Cambridge: Cambridge University Press, 2001), §27, p. 3, ISBN: 9780521788045.

⁵ *Ibid.*, §27, pp. 6, 18, 39, 49.

in our lives, and increase natural desires that may be satisfied by means within one's own control, thus increasing one's chances for happiness.

Internal and external causes of unfreedom are interrelated. To be dominated by others is actually to be dominated by their drives and inclinations. As Kant noted, the will of others is the effect of their own inclinations. Others may manipulatively influence our views, causing us to perceive them as if they were our own inclinations, and causing the individuals to lose control over their own happiness. About this possibility Kant writes, "But if I was previously free, then nothing can open a grimmer prospect of misery and desperation to me than that in the future my condition should not lie in my own will but in that of another."⁶

Kant's principle of morality as perfection of the will, or independence from one's own inclinations, and from whims of others is still a negative "freedom from." We shall see that Kant also formulates a "positive conception of freedom" as the free capacity for choice and the *lawgiving of its own* on the part of practical reason.⁷

Kant focuses on moral freedom, explaining "how freedom in the proper sense (moral, not metaphysical) is the supreme *principium* of all virtue and all happiness."⁸ Moral freedom is related to virtue. Virtue is simplicity, living according with nature, the capability and desire to be self-sufficient, the willingness to be content with little. Virtue requires the transcendence of nature by adopting and acting according to moral principles.

By Kant's interpretation, virtue does not depend on happiness. He opposes it to utilitarianism saying, "in moral matters, the noble must not be considered from the viewpoint of utility," and further, "hence the moral goodness of action does not consist in utility to the self."⁹ Moral utilitarianism received a full-blown criticism in Kant's mature works, in which he elucidated his deontological moral philosophy.

Judgment about one's own desires and those of others presents a difficult challenge. In some early notes, Kant hints at a connection between freedom and testing our proposed actions by the criterion of universalizability. He mentions, "the sole naturally necessary good of human being in relation to the will of other is equality (freedom) and, with respect to the whole, unity."¹⁰

Kant also points to a positive conception of freedom: freedom of choice. He writes, "The feeling of pleasure and displeasure concerns either something with respect to which we are passive or our self as an active *principium* of good and evil through freedom." As he continues, the positive value of freedom comes from the exercise of freedom as such: "[T]he feeling for the goodness of the

⁶ Kant, *Notes and Fragments*, §25, p. 12.

⁷ Immanuel Kant, *Groundwork of The Metaphysics of Morals*, in *Immanuel Kant, Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 4:440, ISBN: 9780521371032; Kant, *Critique of Practical Reason*, in *Immanuel Kant, Practical Philosophy*, ed. Mary J. Gregor, 5:33.

⁸ Kant, *Notes and Fragments*, §9, p. 5.

⁹ *Ibid.*, §28, p. 14; §37, p. 17.

¹⁰ Kant, *Notes and Fragments*, §45, p. 21.

free capacity for choice must immediately be much different and also greater than all of the good consequences that can thereby be effected.” Kant further suggests that such freedom of choice has value not merely for individuals, but also in the case of all human beings. Hence, it has universal value: “Now this capacity for choice contains either the merely individual will as well as the universal will, or it considers the person at the same time in *consensu* with the universal will.”¹¹

However, in Kant’s early works, he did not elaborate on the connection between being free and acting in ways that could be universally accepted by others. Kant’s marginalia evince his search for the ways to overcome the limitations of the existing views of freedom and ways to transition to the moral philosophy found in his mature works.

2. Freedom of Choice and Autonomy

In Kant’s mature writings in the 1780s and 1790s, he shifted from the empirical concept of judgment to the a priori fundamental principle of morality to formulate his theory of the categorical imperative. In *Groundwork on the Metaphysics of Morals*, he proffered three formulations of the categorical imperative (CI), the first being, “*act only in accordance with that maxim through which you can at the same time will that it become a universal law.*”¹²

The universalization principle, which limits maxims to the condition of their validity for all rational beings, means that every rational being must be considered as the limiting condition of the maxim. The rational being considers itself as an end. Since this is true for each person, this principle is simultaneously subjective and objective, or universally significant. The practical imperative, therefore, includes the idea of a rational being as having its own end and the potential to be a subject of possible good will:

The human being and in general every rational being *exists* as an end in itself, not merely as a means to be used by this or that will at its discretion; instead, he must in all his actions, whether directed to himself or also to other rational beings, always be regarded *at the same time as an end.*¹³

Kant emphasized this important dictum in the second formulation of the categorical imperative, the formula of humanity: “*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*”¹⁴

This command to always to treat each human being as an end and never merely a means requires the intrapersonal and interpersonal use of freedom. Kant grounds this formulation of the categorical imperative on the status of humanity as the sole end in itself. He asserts that human beings are capable of freely setting their own ends, and freedom to do so is the central concept of Kantian morality. He writes, “the capacity to set oneself an end—any end whatsoever—is what

¹¹ *Ibid.*, §36, pp. 16–17.

¹² Immanuel Kant, *Groundwork*, 4:421.

¹³ *Ibid.*, 4:428.

¹⁴ *Ibid.*, 4:429.

characterizes humanity.”¹⁵ The ends must be set freely internally and externally, independent from influence by one’s own inclinations and free from domination by other agents.

For Kant, the formula of humanity is relational. When setting an end, which involves any action that might have an impact on others, one needs to consider the ends and interests of the others as well. One must try to set one’s ends without compromising one’s own freedom or compromising the freedom of others to set their own ends. As human beings, we have in our own person “the rational will, and so the duty, to make ourselves worthy of humanity by culture in general, by procuring or promoting the *capacity* to realize all sorts of possible ends.”¹⁶ The maxim of self-perfection is: “Cultivate your powers of mind and body so that they are fit to realize any ends you might encounter.”¹⁷ This requires the conditions of freedom, and a “human being’s choice of the occupation for which he should cultivate his talents very much a matter for him to decide as he chooses.”¹⁸

Facilitating the ends and happiness of others is also a duty. As Kant writes:

Since our self-love cannot be separated from our need to be loved (helped in case of need) by others as well, we therefore make ourselves an end for others; and the only way this maxim can be binding is through its qualification as a universal law, hence through our will to make others our ends as well.¹⁹

The formula of humanity is a universal practical law. Its ground is: “*rational nature exists as an end in itself,*” and for each human being representing his own existence—humanity or freedom—in this way it is thus a *subjective* principle of human actions. But other human beings also represent their existence on the same rational grounds; thus it is at the same time “an *objective* principle from which, as a supreme practical ground, it must be possible to derive all laws of the will.”²⁰

Kant presumes that freedom is integral to our very essence. He states the principle that the freedom of all is an objective end for all; and from it freedom as a subjective end for each is derived. Individual freedom derives from the unconditional value of freedom as such, and the freedom of all individuals is equally valuable.

Kant elucidated three formulations of the categorical imperative (CI) in *Groundwork*. With this, he further elaborated the development of the conception of freedom. Based on the definition of the categorical imperative in the first section of *Groundwork*, in the opening of its third section, he explains the difference between negative and positive freedom. He points out that freedom from

¹⁵ Immanuel Kant, *Metaphysics of Morals*, in *Immanuel Kant, Practical Philosophy*, ed. Mary J. Gregor, 6:392

¹⁶ *Ibid.*

¹⁷ *Ibid.*, 6:392.

¹⁸ *Ibid.*

¹⁹ *Ibid.*, 6:393.

²⁰ Immanuel Kant, *Groundwork*, 4:429.

the determination of the will by inclination can only be achieved by the determination of the will by universal moral laws:

Will is a kind of causality of living beings insofar as they are rational, and *freedom* would be that property of such causality that it can be efficient independently of alien causes *determining* it.... The preceding definition of freedom is *negative* and therefore unfruitful for insight into its essence; but there flows from it a *positive* concept of freedom, which is so much the richer and more fruitful.²¹

Freedom of the will as freedom from determination by external causes or inclinations is not lawless, “but must instead be a causality in accordance with immutable laws but of a special kind; for otherwise a free will would be an absurdity.” Freedom of the will is only possible if the will is determined by a law that is internal to it:

What, then, can freedom of the will be other than autonomy, that is, the will’s property of being a law to itself? But the proposition, the will is in all its actions a law to itself, indicates only the principle, to act on no other maxim than that which can also have as object itself as a universal law. This, however, is precisely the formula of the categorical imperative and is the principle of morality; hence a free will and a will under moral laws are one and the same.²²

Here, Kant makes clear that the key idea of his moral philosophy is the need for consistency in one’s own exercise of free choice and between one’s own exercise of free choice and that of all others, a necessity that derives from the unconditional value of freedom as such, and of my own only as one instance of that freedom in general.

According to Kant, “the proper worth of an absolutely good will—a worth raised above all price—consists just in the principle of action free from all influences of contingent grounds.”²³ A will that is to be moved by universal law must have an objective or universally valid and necessary end. He continues, saying, “what serves the will as the objective ground of its self-determination is an end, and this, if it is given by reason alone, must held for all rational beings.” The supposition is that there is “something the *existence of which in itself* has an absolute worth, something which as *an end in itself* could be a ground of determinate laws,” in which would lie “the ground of a possible categorical imperative.”²⁴

In a morality grounded on the intrinsic and unconditional value of the freedom to set one’s own ends, this freedom becomes autonomy. Autonomy is a cornerstone of Kant’s ethical theory, in which possessing autonomy of the will is a necessary condition of moral agency.

As obligors of the categorical imperative, we must select of all of our maxims only in ways that are compatible with the possibility that all of us may always freely set our own ends, according to

²¹ *Ibid.*, 4:446.

²² *Ibid.*, 4:446–447.

²³ *Ibid.*, 4:427.

²⁴ *Ibid.*, 4:428.

“the *principle* of every human will as *a will giving universal law through all its maxims.*”²⁵ This is the third formulation of the categorical imperative, the so-called formula of autonomy. Autonomy of the will as the supreme principle of morality “is the property of the will by which it is a law to itself.” Therefore, the principle of autonomy is: “to choose only in such a way that the maxims of your choice are also included as universal law in the same volition.”²⁶ It is further characterized as the principle “that all maxims from one’s own lawgiving are to harmonize with a possible kingdom of ends as with a kingdom of nature.”²⁷

Philosophers before Kant were unable to explain why and how law becomes duty. Kant found the solution to this problem in the autonomy of the will: the law to which a rational being obeys through duty is its own law. In other words, the autonomy of the will means that every rational being is a legislator in the moral realm. For Kant, the human being is bound to laws by his duty, but “he is subject *only to laws given by himself but still universal* and that he is bound only to act in conformity with his own will, which ... is a will-giving universal law.”²⁸ Kant stresses the voluntariness of self-legislating role: the “dignity of humanity consists just in this capacity to give universal law, though with the condition of also being itself subject to this very lawgiving.”²⁹

The principle of morality is represented in the three interrelated formulations of the categorical imperative. In this interrelation, the principle of humanity, which asserts human dignity, joins the principle of autonomy. As Kant explains, reason refers every maxim of the will as giving universal law to every other will and also to every action toward oneself, and it does so “not for the sake of any other practical motive or any future advantage but from the idea of the *dignity* of a rational being, who obeys no law other than that which he himself at the same time gives.”³⁰ A rational being—as an end in itself and a member of a possible kingdom of ends and “as lawgiving in the kingdom of ends,” —is free and obeys only those laws “which he himself gives and in accordance with which his maxims can belong to a giving of universal law (to which at the same time he subjects himself).”³¹ Lawgiving itself, which determines all worth, must have dignity, which is expressed by respect. “*Autonomy* is therefore the ground of the dignity of human nature and of every rational nature.”³²

The meaning of autonomy can be better understood in contrast to its opposite—heteronomy.³³ Autonomy means individual free agency: individual freedom of choice; freedom from coercion; the ability of individuals to decide for themselves on matters that concern them and to take

²⁵ Ibid., 4:432.

²⁶ Ibid., 4:440.

²⁷ Ibid., 4:436.

²⁸ Ibid 4: 432.

²⁹ Ibid.,4:440.

³⁰ Ibid., 4:434.

³¹ Ibid., 4:435.

³² Ibid., 4:436.

³³ Etymologically, the word “autonomy” derives from the Greek *αὐτονομία* (*autonomía*) and *αὐτόνομος* (*autónomos*), from *αὐτός* (*autós*, self) + *νόμος* (*nómos*, law). Heteronomy derives from *ἕτερος* (*heteros*, other, different) + *νόμος* (*nómos*, law).

responsibility for the consequences of their decisions and actions. Individuals evince their autonomy when they are able to reject an obligation imposed on them or to accept it from within their conscience and reason, transforming it as a law of their own behavior. In contrast, heteronomy means the subjection of the individual to the will of others and the law of others may be seen as a coercive imposition, external to the individuals and independent of their free will.

In Kant's ethics, the term "heteronomy" has a double meaning. The first refers to the motivation for acts, which are done not with an intention according to their direct meaning, but with an ulterior motive (the good deed that a person does, not out of a sense of duty or compassion, but from fear of the penalty of punishment or in order to gain the approval of others, as an example). The second meaning is about being ruled by an outside law. This refers to actions under the sway of another, outside authority, imposing rules without the internal consent of those who are forced to follow them. Kant's ethics are consistently anti-authoritarian, which is stressed by the principle of autonomy (literally meaning self-rule) of human behavior. No command has a moral meaning if a person cannot give a rational and conscientious consent agreement to it.

Kant characterizes autonomy and heteronomy as self-rule versus outside (foreign) law. Reading Kant, we can see that the two meanings of heteronomy—as ulterior motive and as submission to an outside law—are interrelated. If persons choose to act on the slippery track of heteronomy instead of choosing a path of autonomous freedom of will and self-rule, they may unwittingly subject themselves to outside orders or governance; they trade moral integrity for material benefits. Disregarding moral principles as a short-cut for materialistic gain can very well be a miscalculation and does not necessary guarantee the achievement of the goal.

3. Kant's Philosophy of Right: Internal and External Freedom.

The principle of autonomy links Kant's ethics to his doctrine of right. Autonomy is a natural competence and the right of a human being to self-formation as a person. The recognition of such by a governing power is a genuine or strict right. The strict right can take place only when each individual is given recognition of its dignity as a person and afforded the opportunity to develop one's capacities to the extent possible and allowed the opportunity to become fully the master of its own destiny. Kant's conception of a person was initially introduced in the second formulation of CI as a right-grounding ethical notion.

A frequently quoted passage from Kant's *Metaphysics of Morals* about the distinction between the Doctrines of Virtue and Right says:

This distinction, on which the main division of *the doctrine of morals* as a whole also rests, is based on this: that the concept of **freedom**, which is common to both, makes it necessary to divide duties into duties of *outer freedom* and duties of *inner freedom*, only the latter of which are ethical.³⁴

This statement remains the subject of discussions about outer and inner freedom, right and morality, showing different positions between those who argue for the relations of right to

³⁴ Kant, *Metaphysics of Morals*, 6:407.

morality, and those who think that the principles of right stand on their own as rational but not moral principles.

Here, two main positions can be discerned. One is represented by those who hold that the universal principle of right does follow, in some way, from the categorical imperative, and that Kant's system of right is, therefore, closely connected to his broader moral theory. Among them are Paul Guyer, Gerhard Seel, Michael Nance, Bernd Ludwig, and Erikh Soloviev. A contrasting view is represented by those who argue that the universal principle of right does not follow from the categorical imperative; rather, they hold that the domain of right is based on its own principle, the universal principle of right, which does not depend on the categorical imperative for its justification. Among them are Allen Wood, Marcus Willaschek, and Katrin Flikschuh.

Clarification of these positions is important. If it is true that the universal principle of right flows from the categorical imperative, that would provide a moral foundation for Kant's "Doctrine of Right," and morally justifying its most basic principle would be an important contribution to contemporary legal and political philosophy. On the contrary, if the universal principle of right does not flow from the categorical imperative, then CI would be left without a foundation. To these positions is related the interpretation of the concept of freedom.

Before considering how these ideas relate to the concept of freedom per se, first let us look at the positions of Willaschek and Wood, who argue for independence of the principle of right from the categorical imperative. With regard to the relationship between Kant's conception of right and his moral theory (with the CI as its fundamental norm), Willaschek wrote, "any attempt to derive Kant's conception of right from the Categorical Imperative must fail because of the analytic connection between right and coercion."³⁵ He argued that Kant's Universal Principle of Right (UPR) cannot be derived from the Categorical Imperative (CI), mainly because, according to his understanding of Kant, the UPR implies an authorization to enforce people's rights coercively, but this authorization is not, itself, entailed by the CI. In Willaschek's view, the UPR is on a par with the CI; they are both fundamental (non-derivable) expressions of the demands of pure practical reason. Both principles express the same feature of practical reason, which enables freedom by limiting it through normative universal laws. But while the CI does so for the will of each individual person and is constitutive of moral autonomy, the UPR does so for a society in which individuals interact; it is constitutive of the legally protected freedom of rightful agency.³⁶ He concludes that both spheres together form what Kant calls "morals" (*Sitten*): "So even though the UPR cannot be derived from the CI, the Doctrine of Right (and the UPR with it) is an integral part of Kant's moral system as a whole."³⁷

³⁵ Marcus Willaschek, "Right and Coercion: Can Kant's Conception of Right be Derived from his Moral Theory?," *International Journal of Philosophical Studies* 17, no. 1 (2009): 49, doi: 10.1080/09672550802610982.

³⁶ Willaschek, "The Non-Derivability of Kantian Right from the Categorical Imperative: A Response to Nance," *International Journal of Philosophical Studies* 20, no. 4 (2012): 564, doi: 10.1080/09672559.2012.669114.

³⁷ *Ibid.*, 564.

Wood holds that right and ethics have distinct and independent foundations even as they are two parts of a single whole, of a single system of morals. He rejects the view that they must necessarily be connected by one part (right) being dependent on and derived from the other part (ethics). He thinks that they can be unified, because they share the common ground—the concept of obligation, regarded as conformity to the universal criteria of reason in all its forms, namely universal law:

Right is united with ethics insofar as it borrows from ethics the concept of duty, so that the external coercion of right can be represented to those subjects to it as a legalization they are obligated, as well as compelled, to respect.... Ethics is grounded on ends that rational beings ought to set as a matter of universal law. Right is grounded on those limitations on external freedom to which all must be subject.³⁸

From this perspective, Wood analyzes the external and internal freedom. He argues that foundation of right cannot be related to serving any end. It must be wholly independent of the ethical principle that humanity in persons is an end in itself. “The sole ground of right is simply the protection of external freedom under universal law.”³⁹ This grounding identifies right with the conditions for protecting a rational being from constraint of its external freedom. Coercion “can be justified only to protect the external freedom of rational beings—their freedom even to behave heteronomously and immorally, to violate the moral law of autonomy—as long as they do not thereby infringe the same external freedom of others.”⁴⁰ The foundation of the entire sphere of right lies in the fact that human beings have good reason to protect rightful freedom.

Wood states that right is also grounded on humanity. Humanity is the basis for innate freedom as “the capacity to set ends according to reason and choose actions as means to them.”⁴¹ The difference between ethics and right is that the worth of humanity as an end in itself grounds only ethical non-coercive duties, whereas duties of right are subject to external coercion. Claims of right must be independent of the ends of action. For Wood:

Humanity is the ground of right in the sense that to recognize a person as having humanity is to appreciate the rational structure of action as a choice of means to an end set by the agent, and thus the rational requirement that the choice of any rational agent be independent of the constraining will of another in choosing actions as means to one’s own ends.⁴²

That rational requirement is the foundation of right.

Wood is concerned that exaggeration of the role of morality can obfuscate the principle of right, and thus, his emphasis on independence of right from morality. Kant himself was against

³⁸ Allen Wood, “Right and Ethics: A Critical Tribute to Paul Guyer,” in *Kant on Freedom and Spontaneity*, ed. Kate A. Moran (Cambridge University Press, 2018), 247, ISBN: 9781107125933.

³⁹ Allen Wood, *The Free Development of Each: Studies on Freedom, Right, and Ethics in Classical German Philosophy* (Oxford: Oxford University Press, 2014), 73, ISBN: 9780191508745.

⁴⁰ *Ibid.*, 72.

⁴¹ *Ibid.*, 81.

⁴² *Ibid.*

substituting rights for moralization, and he was critical of “despotizing moralists (erring in practice),” against political prudence, and “moralizing politicians” who were “glossing over political principles contrary to right.”⁴³ At the same time, Kant praised a “moral politician” who views as his duty to prevent and correct any defects “within the constitution of a state or in the relations of states” and bring them “into conformity with natural right,” and who practices “political prudence which agrees with morals” and “in accordance with laws of right.”⁴⁴ Of note is that Wood mentions the latter as an example of the correct relationship between right and morality.⁴⁵

In contrast, philosophers who hold that the universal principle of right does follow from the categorical imperative provide their arguments in favor of the close connection of Kant’s system of right to his broader moral theory. Next, we will briefly look at the views of Gerhard Seel and Michael Nance, and then focus in more detail on Paul Guyer’s arguments.

Gerhard Seel wrote that the debate about the question of whether the Law of Right can be justified by the Categorical Imperative has been flawed by confusion and misunderstanding of the crucial terms and principles, which he tried to clarify. He criticized the arguments that claim the independence of theory of right and moral theory. He showed that the Law of Right can be justified by using the testing method the Categorical Imperative prescribes.⁴⁶

According to Michael Nance, although the categorical imperative in itself is not sufficient to generate the universal principle of right, this does not prevent us from interpreting the universal principle of right as a specification of the Categorical Imperative. He examines the textual evidence for Kant’s view of the CI/UPR relation in relevant passages from *Metaphysics of Morals*. In particular, he draws attention to an illuminating passage from the Introduction to *Metaphysics of Morals* on laws of freedom:

As directed merely to external actions and their conformity to law they are called *juridical* laws; but if they also require that they (the laws) themselves be the determining grounds of actions, they are *ethical* laws, and then one says that conformity with juridical laws is the *legality* of an action and conformity with ethical laws is its *morality*. The freedom to which the former laws refer can be only freedom in the *external* use of choice, but the freedom to which the latter refer is freedom in both the external and the internal use of choice, insofar as it is determined by laws of reason.⁴⁷

Nance points out that in this passage, Kant first reviews his argument for why the CI is the basic principle of morality and the law that it prescribes, and then subdivides “these laws of freedom,”

⁴³ Immanuel Kant, “Toward Perpetual Peace: A Philosophical Project,” in *Immanuel Kant, Practical Philosophy*, ed. Mary J. Gregor, 8:373.

⁴⁴ *Ibid.*, 8:372.

⁴⁵ Wood, *The Free Development of Each*, 95.

⁴⁶ Gerhard Seel, “How Does Kant Justify the Universal Objective Validity of the Law of Right?,” *International Journal of Philosophical Studies* 17, no. 1 (2009): 71, 10.1080/09672550802610974.

⁴⁷ Kant, *Metaphysics of Morals*, 6:214.

which implies that juridical laws are part of the laws of freedom that follow from the CI, the most basic law of freedom.⁴⁸

Nance interprets the Principle of Right as a specification of the Categorical Imperative. He argues that the concept of right can be derived from the Categorical Imperative in conjunction with empirical premises about human nature: human persons have bodies, and acting from a moral motive contingently, not only from duty. The Categorical Imperative “formula of humanity” requires us to respect rational nature and the ability to pursue ends, and therefore to protect external freedom. Because human beings are not always motivated to act morally, this requires us to protect external freedom by a system of coercively enforceable rights in accordance with the Principle of Right.⁴⁹

In the 1792 essay, “On the Common Saying,” Kant stated, “the concept of an external right as such proceeds entirely from the concept of *freedom* in the external relation of people to one another.”⁵⁰ Later, in his 1797 *Metaphysics of Morals*, he stated, “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”⁵¹ Here, he appears to derive this “universal principle of right” from the fundamental principle of morality, formulated as the Categorical Imperative. He apparently applied that fundamental principle’s requirement to the external use of freedom, namely to our actions affecting other persons, in order to derive the rule that we act only in ways that leave others a freedom of action equal to our own, thus being subjects for legal rules.

According to Paul Guyer, Kant’s statements imply that the Categorical Imperative—the supreme principle of morality—is “the means by which we know of our freedom and also the principle by means of which we must restrict our freedom in order to determine both our legally enforceable rights against one another as well as our ethical duties to ourselves and to one another.”⁵²

This interpretation, however, is challenged by some, who argue that Kant did not intend to derive the principles of right from the fundamental principle of morality, and they are supposed to stand on their own as rational but not moral principles of human conduct. For example, Wood, alluding to Kant’s statement that “the supreme *principle of right* is therefore an analytic proposition,” but “the principle of the doctrine of virtue...is therefore synthetic,”⁵³ concludes that the analyticity of

⁴⁸ Michael Nance, “Kantian Right and the Categorical Imperative: Response to Willaschek,” *International Journal of Philosophical Studies* 20, no. 4 (2012): 544, doi: 10.1080/09672559.2012.668921.

⁴⁹ *Ibid.*, 547–548.

⁵⁰ Immanuel Kant, “On the Common Saying: ‘This May Be True in Theory, but It Does Not Apply in Practice,’” in *Immanuel Kant, Practical Philosophy*, ed. Mary J. Gregor, 8:289.

⁵¹ Kant, *Metaphysics of Morals*, 6:230.

⁵² Paul Guyer, “Kant’s Deductions of the Principles of Right,” in *Kant’s Metaphysics of Morals: Interpretative Essays*, ed. Mark Timmons (Oxford: Oxford University Press, 2002), 24–25, ISBN: 9780198250098.

⁵³ Kant, *Metaphysics of Morals*, 6:396.

the principle “renders redundant any derivation of the principle from the law of morality, since it would be nonsense to think that we need to derive an analytic proposition from a synthetic one.”⁵⁴

Guyer responds to these objections and relates the principle of right to the principle of morality. He examines claims about analytic judgments and shows that Kant’s application of the concepts to principles of right does not entail that those principles are independent from the fundamental concepts of morality. Upon examining some of Kant’s specific claims about the principles of right, Guyer shows that Kant does not imply the independence of these principles of the fundamental concept of morality and that he intends to deduce them from that concept. He argues that the claim that a principle of right is analytic is not incompatible with the assumption that it flows from the concept of freedom as the supreme principle of morality. For Kant, the truth of analytic proposition depends upon the justification of the concept that it analyses, and “in the case of a principle of right, its truth thus depends upon the objective reality of the fundamental concept upon which the supreme principle of morality depends, the concept of freedom.”⁵⁵ Kant’s philosophy of right asserts that the key principles of right, even if they are called analytic, “are consistent with and required by the most basic moral and theoretical conditions of human existence.”⁵⁶

For Guyer, it is obvious that the principle of right concerns not our maxims but only the compatibility of our actions with the freedom of others. However, he considers implausible “any broader claim that the principle of right is not derived from the fundamental principle of morality.”⁵⁷ He concludes:

The foundational assumption of Kantian morality is that human freedom has unconditional value, and both the Categorical Imperative and the universal principle of right flow directly from this fundamental normative claim: the Categorical Imperative tells us what form our maxims must take if they are always to be compatible with the fundamental value of freedom, and the universal principle of right tells us what form our actions must take if they are to be compatible with the universal value of freedom, regardless of our maxims and motivations. Thus the universal principle of right may not be derived from the Categorical Imperative, but it certainly is derived from the conception of freedom and its value that is the fundamental principle of Kantian morality.⁵⁸

Guyer discusses the concepts of internal and external freedom in terms of setting and pursuing ends. He interprets Kant’s concept of freedom not only as choice of ends (goal setting), but also as the freedom to pursue those ends. This includes the freedom of choice of the means for realization of ends. Freedom of choice is viewed not as static, but rather as dynamic—aiming for its expansion and maximization: “to maximize rather than to minimize freedom of choice” is

⁵⁴ Allen Wood, “The Final Form of Kant’s Practical Philosophy,” 7.

⁵⁵ Guyer, “Kant’s Deductions of the Principles of Right,” 27–28.

⁵⁶ *Ibid.*, 64.

⁵⁷ *Ibid.*, 26.

⁵⁸ *Ibid.*

considered the fundamental moral command.⁵⁹ It is from this perspective that Guyer interprets Kant's conceptions of ethics, rights, duties, and constraints.

In Kant, we cannot find a phrase that explicitly mentions "maximization of freedom." Nevertheless, Guyer sees this idea implicit in Kant's lectures and publications on ethics: "the greatest possible use of freedom is in fact what his statement of the foundational principle of morality in the form of his multiple versions of the categorical imperative prescribes as the goal of morality."⁶⁰ In analyzing Kant's "formula of humanity," and from the moral rule as stated in the lectures on ethics, "always to seek the greatest possible use of freedom," Guyer concludes, "one must always use one's own capacity to set ends in a way compatible with the greatest possibility of other exercises of this capacity by oneself and others, that is to say, in a way compatible with the greatest possible use of freedom."⁶¹

Guyer holds that both doctrine of virtue and doctrine of right are grounded on Kant's fundamental principle of morality. He shows that in spite of the several senses in which duties of right concern only the external use of our freedom of choice, nevertheless, they depend upon the status of freedom as our capacity to set ends as the moral end in itself. He also states that duties of virtue are actually part of what is required in order to maximize the freedom of all to set their own ends. In spite of the internal character of virtuous motivation, our duties of virtue are nevertheless duties to enhance our freedom of action in the external world.

In developing his concept of freedom, Guyer is dealing with some theoretical problems. For example, Kant defines humanity simply as the ability to set ends, any ends whatsoever. This concept of humanity does not say anything about the moral constraints on what ends we may permissibly pursue. However, the moral criteria for which ends are permissible to pursue arise from the general conditions stated by the second formula of the categorical imperative as the principle of humanity: always treating humanity in both oneself and in all others as an end and never merely as a means. This sets the criteria for distinguishing morally permissible and impermissible ends.

Regarding the derivation of duties, Kant makes it clear that both duties of right and all ethical duties derive from the status of humanity as an end in itself. Guyer interprets Kant's 1793–1794 lectures on the metaphysics of morals, transcribed by Johan Friedrich Vigilantius, as meaning:

While negative duties to both others and oneself are duties to avoid the restriction of freedom, the principle of positive duties to others as well as to oneself is that of the expansion of *freedom* itself, and thus all classes of duty can in fact be derived from the concept of freedom combined with some basic facts about the human condition that bear on the realization of freedom.⁶²

⁵⁹ Paul Guyer, *Virtues of Freedom: Selected Essays on Kant* (Oxford, UK: Oxford University Press, 2016), 98, ISBN: 9780191072253.

⁶⁰ *Ibid.*, 88.

⁶¹ *Ibid.*, 88.

⁶² Guyer, *Virtues of Freedom*, 107.

Based on Kant's *Metaphysics of Morals*, Guyer asserts, "all duties ought to be derivable from the law that humanity should always be treated as an end and never merely a means,"⁶³ despite that their fulfillment need not be motivated from respect for that law in every case.

Kant defines humanity only as the capacity to set one's own ends, without saying anything about the capacity to pursue those ends. But in reviewing Kant's catalogue of duties, Guyer argues that they also involve the capacity to pursue ends. Kant writes:

Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.⁶⁴

This principle of the innate right of all to freedom of their person includes certain authorizations, such as the human being's *equality*, to be *his own master (sui iuris)*, and to be *beyond reproach*. The principle of innate freedom concerns liberties which we in the pursuit of our own ends must also allow others to pursue their own ends. This includes freedom of expression and equal rights before the law.

Kant distinguishes between duties of right, which can be externally legislated, and ethical duties, which can be based only on internal lawgiving. According to Guyer, the application of this distinction between external and internal aspects refers only to motivations for the fulfillment of our duties, not to the content of our obligations. Kant also writes that the obligation is assigned to ethics not because the duty is of a particular kind (for there are external duties in ethics as well as in right) but rather "because the lawgiving in this case is an internal one and can have no external lawgiver."⁶⁵ This means that the description of juridical duties as external and of ethical duties as internal refers only to the incentive to fulfill them, not to the content of those duties. Ethical duties can concern external actions as well as internal choices.

Guyer is concerned about conditions of unfreedom and excessive control over individuals, including control over citizens by the state. He asserts that we have "the general duty not to restrict freedom unnecessarily" whether of ourselves or others.⁶⁶ He shows that the capacities to set and to pursue ends, which must be promoted in the name of humanity or the greatest possible use of freedom, are closely interrelated components of humanity: "the enhancement of the capacity to pursue ends with a reasonable prospect of success expands the range of ends that may be rationally set and thus expands the scope of freedom itself." He continues, "We can start from the minimal idea of humanity as the capacity to set ends freely, and then explicate all our duties as conditions necessary to avoid compromising the exercise of this capacity alone."⁶⁷ Of course, the ends should be not an idle wish, but an act of rational will.

⁶³ *Ibid.*, 94.

⁶⁴ Kant, *The Metaphysics of Morals*, 6:237.

⁶⁵ *Ibid.*, 6:220.

⁶⁶ Guyer, *Virtues of Freedom*, 95.

⁶⁷ *Ibid.*, 91; 96.

Guyer sees the duty to refrain from restricting freedom unnecessarily as inherent in Kant's universal principle of right.⁶⁸ The universal principle of right requires that we claim only as much freedom for ourselves as is compatible with the universal law. Guyer goes further, saying that the principle of right also means that one must claim no less freedom for oneself than anyone else, and thus, "it is a principle to maximize not only the freedom of others but also of oneself, to the degree compatible with the maximization of freedom for all."⁶⁹ He views right essentially as the avoidance of placing any constraint on the freedom of others to set their own ends if they act consistently, in accordance with a universal law. Otherwise, if they do not act consistently with this requirement, they can be rightfully coerced in accordance to juridical legislations.

With Kant, Guyer stresses positive freedom and the need for its enhancement. He points out the relation between the freedom to set ends and the availability of means for their persuasion. For example, according to Kant, it is rational for human beings to claim private property, but this needs to be done in a rightful way, so that each will claim private property consistently with the freedom of others to do so as well. Otherwise, if we deny ourselves the use of an object for any other reason than consistency with universal law, "we deprive ourselves of the freedom to set ends that could only be attained with those means, and that is itself a violation of the fundamental moral command to maximize rather than to minimize freedom of choice."⁷⁰

Guyer also highlights a *collective* aspect in Kant's idea of duty to self; for example, in cultivating one's own talents for the benefit of others. He writes:

My own perfection and cultivating means will make it possible for others to set all sort of ends for themselves. Although I do not have a direct duty to provide happiness to others, but there is a duty to provide the others means that will expand the range of ends they can rationally set for themselves and thereby secure their own happiness though with my help in this regard.⁷¹

4. The Categorical Imperative of Right

An important aspect of human rights movements in Western countries has been the struggle for religious freedom and toleration. Regarding the universal right to life, in *Second Treatise of Government*, John Locke wrote, "no one ought to harm another in his life, health, liberty, or possessions: for men being all the workmanship of one omnipotent, and infinitely wise maker ... there cannot be supposed any such *subordination* among us, that may authorize us to destroy one another."⁷² From the freedom of religion as a God-given right of every believer all other subjective rights obtain their status of sacred, natural, and inalienable. The right (as well as morality) is from God; but the state with all its "positive laws" is from human beings and is considered profane. A

⁶⁸ Cf., Kant, *The Metaphysics of Morals*, 6:230.

⁶⁹ Guyer, *Virtues of Freedom*, 116.

⁷⁰ *Ibid.*, 98.

⁷¹ *Ibid.*, 104.

⁷² John Locke, *Second Treatise on Government*, with introduction by C. B. Macpherson (Indianapolis, IN : Hackett, 1980), 9, ISBN: 9780915144938.

state has no moral worth per se, and can only obtain it by becoming governed by the rule of law. The sacredness of these fundamental rights gained recognition in the European culture. Kant defines the right of human beings as the most sacred “that God has on Earth.”⁷³ Human rights imply not only an interest, but also a moral obligation (an individual’s vocation from God), and therefore, they are superior to any socio-political or utilitarian considerations. Universal human rights are the ethical criteria for positive social rights. This trend of the ethical justification of rights was continued by Kant, Johann Gottlieb Fichte, Wilhelm von Humboldt, and other representatives of German liberalism.

Deviation from this trend, resulting in a more utilitarian interpretation of rights and the diminishing of the universal ethical meaning of human rights, can be traced to some interpretations of the basic subjective rights during the late Enlightenment; in the works of Claude Helvetius and the theory of physiocracy by the eighteenth-century French economists, as well as in the so-called utilitarian liberalism of Jeremy Bentham, we can see examples. The theorists of “rational egoism,” the physiocrats, and the free-traders abandoned the fundamental issue of the unconditional value of human rights and focused their attention on the justification of what makes the individual’s rights beneficial and profitable. These and other utilitarian justifications of human rights are questionable from the normative point of view. The interpretation of human rights in a utilitarian sense became a sort of rationalization of the economic practices of bourgeois society. The original meaning of human rights became overshadowed by the predominance of themes such as economic independence, private property, free enterprise, and a free market economy.

As result, since the early nineteenth century, the concept of human rights has become a target of criticism from legal positivists, socialists, and neoliberals. During the last decades of the twentieth century, human rights lost their “transcendental” or normative aspect and became viewed as firmly seated in governmental institutions and positive law. Human rights, newly redefined in terms of forcible democracy promotion and regime change, ironically became a challenge to international law.

Kant develops the ethical justification of rights. His formula of right espouses equal freedom for all in accordance with universal law. He differentiates three aspects: the universal concept of right; the universal principle of right; and the universal law of right. In this view of right, Kant is not concerned with delineating the content of relations between individuals, but only the *form* in relation to their free choice. This is expressed in the universal concept of right: “Right is therefore 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.”⁷⁴ From this, Kant deduces the universal principle of right. If freedom is to be restricted in accordance with right and if justice is to prevail, it must do so in accordance with this universal principle of right. He writes, “Any action is *right* if it can coexist with everyone’s freedom in accordance with 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.”⁷⁵ Then, he formulates the universal law of right: “so act externally that the free use of your choice can

⁷³ Kant, “Toward Perpetual Peace,” 8:353.

⁷⁴ Kant, *The Metaphysics of Morals*, 6:230.

⁷⁵ *Ibid.*, 6:230.

coexist with the freedom of everyone in accordance with a universal law.”⁷⁶ At the same time, he asserts:

a law that lays an obligation on me, but it does not at all expect, far less demand, that I *myself should* limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom *is* limited to those conditions in conformity with the idea of it and that it may also be actively limited by others.⁷⁷

He adds, “it says this as a postulate that is incapable of further proof.”⁷⁸

For Kant, ethics and right are intrinsically related. Some Kantian scholars conclude that the above quoted formula expresses the “categorical imperative of right,” while Kant, himself, never used this expression.⁷⁹

Analogous to the categorical imperative with respect to morality, the formula of right can be concisely paraphrased as: “Perform only actions that are universally acceptable.” This maxim can be interpreted as prohibiting yourself anything that you intend to prohibit to others, and permitting to others everything you permit to yourself. The requirement to conform one’s external behavior with the conditions of equality in freedom is of the same unconditionally binding nature as the universalization of maxims in the categorical imperative of morality. Both cases require self-control, the effort of self-coercion, and the duty to overcome inclinations, because no interests or considerations of profit can justify violation of the principle of equal rights.

At the same time, in Kant’s writings, we can see a nuanced difference between the universal law of morality and the universal law of right. The latter refers to actions in the outside world, which does not require that the intention to fulfill its instructions become the main motive of law-abiding individuals: the universal law of right requires only acting in compliance with the exact legal norms, regardless of motives. Kant’s philosophical reflections, encapsulated in the formula of right as equality in freedom under universal law, imply that human freedom as such is not determined by right. Right provides qualification of the measure of freedom only in social interrelations. The deepest meaning of the idea of right is that it *limits the very restriction of freedom*. Freedom finds its limit in the equal freedom of the other and only in it alone.

Any relations of people as morally autonomous persons are developed in the presence of the state and need a regulatory barrier protecting them against its attempts to usurp their freedom. Morally developed persons do not allow themselves to accept repressive arbitrariness. State repression is supposed to be limited through constitutional legal acts.

But just as the freedom of persons is limited by the state, this limiting force of equal right applies as well to the state itself. States should conform to principles of right as well as individuals, because, by the well-being of a state is understood “that condition in which its constitution

⁷⁶ Ibid., 6:231.

⁷⁷ Ibid., 6:231.

⁷⁸ Ibid..

⁷⁹ Erikh J. Soloviev, *The Categorical Imperative of Morality and Right* [in Russian] (Moscow: Progress-Traditsia, 2005), 157, my translation.

conforms most fully to principles of right; it is that condition which reason, *by a categorical imperative*, makes it obligatory for us to strive after.”⁸⁰

Kant did not elaborate about specific ways to limit state repression. From his works, we can find the general suggestion that the restriction of a sovereign state must have the character of self-restraint, similar to personal moral autonomy. He strongly suggested what we can call an open public policy debate. He states that the public right (in relations of individuals within a state or also of states to one another) requires publicity, “since without it there would be no justice (which can be thought only as publicly known) and so too no right, which is conferred only by justice.”⁸¹ Politics must be in agreement with morals in accord with the transcendental formula of public right: “All actions relating to the rights of others are wrong if their maxim is incompatible with publicity.”⁸² This principle is not only *ethical* but also *juridical*, bearing upon the right of human beings. Any project that cannot be publicly acknowledged is not right. Kant emphasized the crucial importance of “freedom of the pen.”⁸³ Freedom of the press on the side of society must be met by the requirement of publicity on the side of power. These requirements indicate the way toward what is today called democratic discussion and discourse. Kant advocates for broadening private freedom and holds that the state should present increasingly more opportunities for various forms of independent expression of will to its citizens.

Kant defends unconditionally the idea of freedom of thought. He opposes mixing the strict right with moralization or statist morality. He separates right from “the way of thinking.” He espouses that the state has no right to judge or assert control over citizens’ views or their way of thinking. The principles of right require unconditional obedience only to such historically established laws that meet the criterion of equality in freedom (they withstand the test of universal legal justice). They do not require blind submission and loyalty: being content with only a “legal” attitude toward the obligatory norm is sufficient. The principles allow the law-abiding citizens any way of thinking. The genuine, reasonable, and strict right implies freedom of thought.

In Kant’s philosophy, morality and right are not identical, but at the same time they are intrinsically related. He laid the ground for a new legal ethics and a new legal consciousness, which were alternative to the predominant judicial culture of that time.

Kant outlines the theory of right in accordance with the concept of freedom. A law-governed social order, however, doesn’t mean one based on external coercion only. External coercion is ethically justifiable only to the extent to which individuals are conscious of the limitations of their capacity for self-discipline, and thus voluntarily accept external (including legal and even coercive) assistance to their autonomy. This has nothing to do with a subjection to despotism. Insofar as individuals agree to be under the power of moral law, they may accept only an external coercion that is legitimate, that is, reasonable and regulated by law. Kant did not mean a blind acceptance of law: we are free only insofar as we obey the law to which we agree, and which is legally

⁸⁰ Kant, *The Metaphysics of Morals*, 6:318.

⁸¹ Kant, “Toward Perpetual Peace,” 8:381.

⁸² *Ibid.*, 8:381.

⁸³ Kant, “On the Common Saying,” 8:304.

exercised. We preserve our freedom by remaining our own law-givers. Kant defines the civil state as a lawful state, based on a priori principles according to which every member enjoys *freedom* as a human being, *equality* as a *subject*, and *independence* as a *citizen*.⁸⁴

The fundamental human right to freedom is correlated with the categorical imperative. Similar to the categorical imperative of morality, this human right implies a whole complex of meanings (not as obligations, but as independences—the freedom from). It negates any coercive arbitrariness of others, whether coming from a “collective egoism” (which restricts basic individual rights in favor of collective rights), authoritarian rulers, elected heads of state who abuse power, or state bureaucracy (which under the pretext of providing benevolent security and welfare keeps its citizens dependent). Kant consistently asserts his view of individuals as autonomous and able to establish relationships based on universal law in a civil society, which guarantees legislative protection of freedom and security.

5. Freedom versus Subjection

Kant addresses the problem of human relationships: both to oneself and to the others. He categorically opposes what Hegel will later term “master-slave” relationships.

The cultural-historical concept of a human person as an end in itself goes back to the idea of a special vocation, a mission that every person has from God. Finding one’s own purpose is the work of the believer, only discoverable through self-examination. Others can only help with suggestions as we search for self-realization. Kant’s conceptualization further espouses that every competent person has the right to make decisions without coercion. Therefore, it is necessary to reject any view of persons that suggests that they need a master.

The second formulation of CI, the formula of humanity, includes an ethical prohibition of enslavement, servitude, or despotic arbitrariness that, in the sixteenth- and seventeenth centuries, merged with a ubiquitous consumerism of emerging capitalism. Kant’s rejection of slavery refers not only to its traditional direct forms, but also in a broader sense, in its modern latent forms of economic, political, and ideological dependencies and manipulations. It categorically rejects the unboundedness of domination.

The notion of inalienable human rights means that an individual him/himself is not allowed surrender his/her rights or relinquish them for any pragmatic considerations. No citizen of the state governed by the rule of law is allowed, for example, to sell him/herself into slavery, receiving a modest income in exchange for freedom. One may choose to sacrifice his/her life, but not to surrender the freedom to be the master of his/her own life. In other words, as Kant wrote that every human being “has his inalienable rights, which he can never give up even if he wanted to and about which he is authorized to judge for himself.”⁸⁵ Since no one citizen is allowed to relinquish his freedom, thus, similarly a nation as a whole can not to do that either. A human being, by

⁸⁴ Kant, “On the Common Saying,” 8:290.

⁸⁵ Kant, “On the Common Saying,” 8:304.

recognizing his fundamental individual rights as “inalienable,” therefore has an obligation to exist politically free forever.

Master-slave relationships are in gross violation of the prohibition of using persons merely as a means. The evil nature of these relationships affects not only the slave but also the master. Ironically, however, within this social-economic system, masters also become dependent on the system: exploited exploiters.

The essence of servility is the abdication of one’s independence, which is a widespread vice found not only in traditional authoritarian but also in commercialized neototalitarian cultures. Servility begins with mild manifestations (false humility, flattery) and develops into acute, clinical forms: the willingness to profitably and advantageously subject oneself into servile dependency. “But belittling one’s own moral worth merely as a means to acquiring the favor of another, whoever it may be (hypocrisy and flattery) is false (lying) humility, which is contrary to one’s duty to oneself since it degrades one’s personality.”⁸⁶ An example is a voluntary decision to refuse personal independence, subjecting oneself for the sake of preserving or increasing one’s well-being: consenting to a comfortable slave existence. Kant’s concern is that subjection or enslavement is often accomplished with the consent of the enslaved, whom he considers perhaps even more guilty than the enslaver. Bribery is another example: when a giver of the bribe robs himself and humiliates himself by asking for the acceptance of his offerings.

Kant’s condemnation falls on both sides of the master-slave relationships, but he regards slaves who choose their slavery (despite whether they merit compassion) as the most contemptible and vile. Slavery is the essence of conformism: ultimately, the latter always contains a readiness for the exchange of freedom for profit.

To Kant’s prohibition of servility are related many other unconditional prohibitions grounded in his ethical theory. Violators of these ethical rules lose the respect of others and sometimes find themselves shunned from their society: “But one who makes himself a worm cannot complain afterwards if people step on him.”⁸⁷

In contrast to master-slave paradigm, Kant asserts a view of human beings as free persons with dignity, guided in their relationships with themselves and with others by moral principles:

But a human being regarded as a *person*, that is, as the subject of a morally practical reason, is exalted above any price; for as a person (*homo noumenon*) he is not to be valued merely as a means to the ends of others or even to his own ends, but as an end in himself, that is, he possesses a *dignity* (an absolute inner worth) by which he exacts *respect* for himself from all other rational beings in the world... And this *self-esteem* is a duty of the human being to himself.⁸⁸

Kant also suggests a remedy against this evil and the conditions for the path toward freedom. Only those who “from our capacity for internal lawgiving and from the (natural) human being’s feeling

⁸⁶ Kant, *The Metaphysics of Morals*, 6:436.

⁸⁷ *Ibid.*, 6:437.

⁸⁸ *Ibid.*, 6: 435.

himself compelled to revere the (moral) human being within his own person” are insured against slavery self-imposed by their own will.⁸⁹ In a positive vein, for them, “there comes *exaltation* of the highest self-esteem, the feeling of the inner worth (valor), in terms of which he is above any price (*pretium*) and possesses an inalienable dignity (*dignitas interna*), which instills in him respect for himself (*reverentia*).”⁹⁰

In relation to others, our duty is twofold: to avoid the arrogance of rating our worth above anyone else’s, and to avoid a servile disposition in relation to others in order to seek advantages. In order to avoid servility and to fulfill our “duty with reference to the dignity of humanity within us,” Kant offers these dictums: “Be no man’s lackey.—Do not let others tread with impunity on your rights.—Contract no debt for which you cannot give full security.—Do not accept favors you could do without, and do not be a parasite or a flatterer or... a beggar.”⁹¹

Only personal integrity can protect a person from the moral vice of voluntary submission to servility in modern times. Incorruptibility is the moral source of Kant’s rigorism, explaining the ethical principle of unselfish performance of duty for the sake of duty only. A strictly moral act is simply an honest act made without any ulterior motive to derive any sort of benefit. Kant explains:

But that the human being *ought to perform* his duty quite unselfishly and that he *must* altogether separate his craving for happiness from the concept of duty; in order to have this concept quite pure... for the true worth of morality is to be found precisely in this purity, and he must therefore also be capable of it.⁹²

This idea had been a running thread since Kant’s early works, and in the categorical imperative, the principles of incorruptibility and of the rejection of any form of servility are merged into an interrelated unity. Kant considers a way of behaving that excludes subjection to a master’s guardianship, supervision, or utilization to be a crucial component of morality. He insists that moral duty is not reducible to pleasure, benefit, or profit, and moral imperatives should never be compromised.

Morality is not just a means of social regulation of individual behavior. It has an existential meaning and “it is also a condition of the spiritual and personal survival of the individual him/herself.”⁹³ Faithful adherence of individuals to ethical imperatives and preservation of their inner autonomy helps them to preserve personal integrity, even while facing authoritarianism or extremely adverse situations (in existentialism, this is defined as a “border line” between life and death).

⁸⁹ Ibid., 6: 436.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Kant, “On the Common Saying,” 8:284.

⁹³ Soloviev, Erikh J., *The Categorical Imperative of Morality and Right*, 118, my translation. See also Fred Dallmayr and Edward Demenchonok, eds., *A World Beyond Global Disorder: The courage to Hope* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2017), ISBN: 9781443898829.

Kant's political philosophy has strong anti-paternalistic meaning. He opposed moral utilitarianism as related to political paternalism, because it becomes a source of unfreedom. Similarly, his philosophy of law was developed with systematic criticism of political paternalism (which keeps people dependent). A paternalistic government views members of society "like minor children," incompetent to decide what is good for them without the assistance of the authorities, and it is "the greatest *despotism* thinkable."⁹⁴

Paternalism commits a double violation of ethics: First, it denies autonomy, imposing the idea of heteronomy, meaning members of society can only live by someone else's rules and regulations set for them, and incentivized by punishments or rewards. Second, it is a form of a hypocritical and arbitrary use of persons merely as a means. According to Kant, this humiliating treatment of persons should be challenged by right. Heteronomy should be replaced with recognized autonomy, namely, self-rule. Even if a government were successful at providing for the people, its despotism would remain contrary to moral law that requires freedom. Instead, heads of state should treat individuals not as subjects, but "as citizens of the state, that is, in accordance with laws of their own independence: each is in possession of himself and is not dependent upon the absolute will of another alongside him or above him."⁹⁵

Kant confronts the widely disseminated publications of the seventeenth and eighteenth centuries, which portrayed a "natural individual" as guided by a utilitarian initiative in the "rational use" of social objects (including the other people). Christian Wolff and other representatives of this point of view attributed to individuals general capabilities and obligations necessary for self-perfection, but which were sponsored and monitored by the state, and they preferred to discuss the state subsidies, while ignoring the basic issues of religious freedom or freedom of the press.

Kant viewed the individual human being as an atom of political life. The natural individual, with a calculative desire for profit and happiness, faces society and the state, each of which have their own interests and utilitarian goals, and which have had calculated in advance of individuals' utilitarian motivations. Unethical parties play on individuals' desires and utilitarian calculation to entrap and exploit them in the interests of corporations or the state. People who utilize others as means to their own ends are doomed to be utilized as well; obsession with gaining profit is the best trap to become used by someone else who will extract their profit by profiting from them.

Raising moral and legal objections against the abuse of power by rulers, Kant equally rejects servility on the part of the citizens, seeing it as the flip-side of paternalistic despotism. When citizens are treated paternalistically by government, they become dependent on it and lose their freedoms. Kant argues against considering autonomy as a bargaining chip: freedom must not be exchanged for welfare. No money in the world can buy human dignity and freedom.

In contemporary states, under the pretext of providing security and protecting citizens from "terrorists" or other "enemies," their privacy is invaded and the civil liberties infringed upon, or taken away. But who will protect them from Big Brother's tyranny? For an authoritarian power, it

⁹⁴ Kant, "On Common saying," 8:291.

⁹⁵ Kant, *Metaphysics of Morals*, 6:460.

is easy to govern subjects who follow heteronomic motives out of fear or because of mercenary interests. Thus, in this way, voluntary slaves meet willing masters.

Kant detected the evil of slavery—the use of persons as means—in the emerging bourgeois society. In the nineteenth century, this was analyzed by Adam Smith and by Karl Marx, who showed that the capitalist economic system generates social inequality and exploitation. Contemporary countries with constitutional democracies have their systems of power and domination, which have been exposed by Heidegger and Critical Theory philosophers, among others. Michel Foucault described the “microphysics of power” of individualization techniques and totalization procedures of inner and outer control. In today’s high-tech society with sophisticated electronic technologies of surveillance and information collection the control and manipulation are called “neototalitarian.”

Kant philosophically justifies the individual’s right to political freedom. Individuals have both the opportunity and the responsibility to make use of their minds, thus becoming enlightened and active citizens. His philosophy gives the individual firm ground for moral autonomy and for striving to realize his or her rights and thus the possibility to be the master of one’s own destiny.

6. Perpetual Peace as an Alternative to Imperial Designs

Immanuel Kant was a true visionary. Writing more than two centuries ago, Kant accurately diagnosed the dangerous tendencies of modern civilization that remain with us today: authoritarian and paternalistic power structures in society, perpetual war among nations, and the imperial ambitions of powerful states. Kant rightly considered all of these to be threats to human freedom *as such*, and he warned that they might someday imperil the future of the human race unless they were properly confronted and dispatched.

Kant’s project of perpetual peace through the lawful alliance of states is the culmination of Kant’s philosophy of law. The movement for a peaceful alliance comes from the understanding of the threat of war. For Kant the imperative of peace has a categorical character and follows from the essence of the categorical imperative as “a formal principle of freedom.”⁹⁶

Kant calls the concept of the right of nations to go to war “unintelligible.” The people say “there shall be no war among us” and form a state with rule of law, which settles disputes peaceably; and a state says, “there shall be no war between myself and other states” and form a peaceful federation, “which seeks to end *all war* forever.”⁹⁷ Thus, this could be called “the categorical imperative of peace.”

Therefore, the categorical imperative is threefold: the imperatives of morality, right, and peace, with each of them given in the form of a categorical imperative. This shows the genuine ethical foundation of law and politics.

Scholars distinguish several attempts of implementation of Kant’s project of lasting peace, which are loosely correlated with the major “turning points” in the history of the twentieth and twenty-

⁹⁶ Kant, “Toward Perpetual Peace,” 8:350.

⁹⁷ *Ibid.*, 8:355–356.

first centuries. The international anarchy and imperialistic ambitions of the major powers unleashed the First World War. Its catastrophic outcome drove countries to establish the League of Nations (1920), which was the first attempt to implement a Kantian project. However, the triumphant powers' lack of commitment to the implementation of this alternative ended in failure, as the League member states' opportunistic attachment to self-interested power politics eventually resulted in World War II. The next significant attempt was the formation of the United Nations (1945), the express purpose of which was to maintain world peace and to promote human rights. The United Nations crystallized the morality of individual rights in international law. The International Bill of Human Rights, adopted by consensus at the United Nations, was the expression of the notion that human freedom and dignity is the nucleus from which a multidimensional, universally valid system of human rights might be derived. The UN Charter summed up the aspirations of most of the world's peoples for a new international order based on peace, respect for human rights, and cooperation among states in solving socio-economic and global problems.

Unfortunately, the UN's practical steps toward creating a peaceful world have been undermined by counter-tendencies of power politics and hegemonic geopolitical ambitions, which fueled the Cold War and nuclear arms race, bringing humanity to the brink of a nuclear holocaust. In order to avert this threat, there was the rise of global consciousness and the movements for peace and democratization, which led to the end of the Cold War. This opened new opportunities for a world order of peaceful international relations and cooperation in the search for solutions to existing social and global problems. In the decade of 1990s there was activation of the United Nations and the rise of the human rights movements, as well as nuclear nonproliferation treaties and measures toward disarmament.

The UN Charter, however, still reflected a certain dualism in the law's normative orientation. On the one hand, the orientation in international law is toward the preservation of peace by prohibiting the violation of the sovereignty of states. On the other hand, there is also a concern for universal human rights. In his political philosophy, Kant addressed the tension between these two orientations. In "Toward Perpetual Peace," he suggested a solution to this dualism as a project of a peaceful league of free nations (*foedus pacificum*) and he also called for a transformative progression from an international to a cosmopolitan order. Cosmopolitan law unifies peoples globally, thus yielding strong emancipative and pacifying effects.

In the quest to improve the future prospects for humanity, the 1990s were a time of a renewed interest in Kant's project of perpetual peace and ideas of cosmopolitanism. There followed a wave of publications and discussions on cosmopolitanism, which reflected an interest that is not merely academic or theoretical, but one teeming with ideas for progressive changes. That was the third attempt of implementation of Kant's project. As Habermas wrote, "The contemporary world situation can be understood in the best-case scenario as a period of transition from international to

cosmopolitan law,” while at the same time he warned that “many other indications seem to support a regression to nationalism.”⁹⁸ That was the third attempt of implementation of Kant’s project.

Unfortunately, instead of a world order grounded in the rule of law and comity among nations, the world remains overshadowed by a heavily militarized superpower that implements a strategy of global hegemony in a unipolar world. Hegemonic liberalism challenged international law and institutions and motivated “the discussion of whether the Kantian project still has a future.”⁹⁹ Hegemon-centric design opposed the Kantian project in its existing implementations in the world order based on the international rule of law and institutions, such as the United Nations, as well as in its cosmopolitan perspective.

The imperial order is at odds with the fundamental principles formulated in Kant’s categorical imperatives of morality, right, and peace. Kant’s project has freedom as its cornerstone, aiming for a society of free individuals, with democratic horizontal relations of free and equal citizens of a low-governed constitutional republic, voluntarily joining the peaceful federation of independent sovereign states. In contrast, an empire is based on authoritarian vertical relations of domination and subjection and “*divide at impera*.” In a polarized world the peripheric states are controlled by a dominating center and their sovereignty is limited.

In the current publications, some critics trace parallels between the empires of the past, particularly the Roman Empire, and the United States. Much closer historically in time is Kant’s warning of the possibility that a powerful republican state may spread its control over the other states to become a dominating world state. Kant strongly opposes a “world republic,” which he calls a despotic “universal monarchy,” and defends the right of nations to their independence. He acknowledges that the separation of neighboring states creates “a condition of war (unless a federative union of them prevents the outbreak of hostilities).” Even so, he considers that “this is nevertheless better, in accordance with the idea of reason, than the fusion of them by one power overgrowing the rest and passing into a universal monarchy,” which becomes “a soulless despotism, [which] after it has destroyed the seed of good, finally deteriorates into anarchy.”¹⁰⁰ As an alternative to universal monarchy, Kant believes that, despite differences of language and of religion, which can be pretexts for war, the “increasing culture and the gradual approach of human beings to greater agreement in principles, leads to understanding in a peace... by means of their equilibrium in liveliest competition.”¹⁰¹ Nations can preserve their sovereignty and cultural diversity, while joining a peaceful federative union.

Kant provides his arguments against the hegemonic world state and in favor of the free federation of states: “This would be a *league of nations*, which, however, need not be a state of nations.”¹⁰²

⁹⁸ Jürgen Habermas, “Kant’s Idea of Perpetual Peace, with the Benefit of Two Hundred Years’ Hindsight,” in *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal*, eds. James Bohman and Matthias Lutz-Bachmann (Cambridge, MA: MIT Press, 1997), 130, ISBN: 9780585345413.

⁹⁹ Jürgen Habermas, *The Divided West*, trans. Ciaran Cronin (Malden MA, Cambridge UK: Polity), 117, ISBN: 9780745635187.

¹⁰⁰ Kant, “Toward Perpetual Peace,” 8:367.

¹⁰¹ *Ibid.*, 8:367.

¹⁰² *Ibid.*, 8:354.

He explained that a world state “would be a contradiction, inasmuch as every state involves the relation of a *superior* (legislating) to an *inferior* (obeying, namely the people)” and this would contradict the presupposition since “we have to consider the right of nations in relation to one another insofar as they comprise different states and are not to be fused into a single state.”¹⁰³ The “contradiction” mentioned by Kant is that states—as an association of free and equal citizens under the constitutional law and in the ethical-political sense national communities with their own language and religion—would lose their sovereignty, becoming inferior vassals of the dominating empire. For their people it would be “the loss of the substantive ethical freedom they enjoy as members of national community organized as an independent nation-state.”¹⁰⁴

Kant’s criticism of paternalistic relationships between rulers and citizens is also relevant as an analogy to the relationships between the empire and the vassals. Raising moral and legal objections against the abuse of power by rulers, Kant equally rejects servility on the part of the paternalized, seeing it as the flip-side of paternalistic despotism. The dependent states could be not only the victims of the superpower’s domination, but also active accomplices of hegemonism as the superpower’s allies (condominium) or passively complicit in it. Nations which give up their sovereignty in exchange for the paternalistic promises of protection and economic benefits actually pander to the authoritarian and hegemonic trend of international power politics. For Kant, freedom must not be exchanged for welfare. The same is also true for the nations, which must not waive their independence for the humiliating benefits of becoming a paternalized vassal. The opposite of paternalism are relations based on international law, the basic principle of which is sovereign equality. The decisions on foreign policy are made by the government, which has its vested interests and does not necessarily act in the best interests of the nation. However, this cannot be an excuse for the citizens: in a formally democratic society with elections, citizens have voting rights and thus co-responsibility for state politics. People get the government they deserve.

Kant characterized the despotism of universal monarchy as “the graveyard of freedom.”¹⁰⁵ Authoritarianism is incompatible with freedom, and hegemony is at odds with the independence of other nations. The hegemon’s “hierarchical superiority” is incompatible with sovereign equality as a principle of international law. The hegemonic superpower tries to dismantle legal and institutional foundations, established since the end of the World War II by the international community as bulwarks against domination of the powerful states over less powerful states. International law and institutions are thus subject to hegemonic “capture,” and they have become a tool for the superpower’s domination. There is also the tendency to create a “hegemonic international law,” which asserts patron-client relationships in which loyal clients seek the hegemon’s security or economic support.¹⁰⁶ Of special concern have been the US legislative initiatives in the United Nations Security Council, which “may well be an imperial one.”¹⁰⁷ The

¹⁰³ Ibid., 8:354.

¹⁰⁴ Habermas, *The Divided West*, 127.

¹⁰⁵ Kant, “Toward Perpetual Peace,” 8:367.

¹⁰⁶ Detlev F. Vagts, “Hegemonic International Law,” *American Journal of International Law* 95 (Oct. 2001): 843–848, doi: 10.2307/2674630.

¹⁰⁷ José E. Alvarez, *International Organizations as Law-Makers* (Oxford: Oxford University Press, 2005), 200–201, ISBN: 9780198765622. See also Sheldon S. Wolin, *Democracy Inc.*

real alternative to the hegemon-centric order will be not *for* the dominating power to change hands, but for a world free *from* any hegemonic domination.

Kant believed that in a constitutional republic citizens (not monarchs) will be able to decide whether there shall be war, and naturally they “will be very hesitant to begin such a bad game,” since they would have to take upon themselves the costs and all the hardships of war.¹⁰⁸ But in a universal monarchy the governing elite, representing the military-industrial-political complex makes the decisions regarding military expenses and wars. The domestic side-effect of a war-prone policy—in the United States and in Europe—has been the burden of a heavy influx of refugees from war torn countries. Nationalistic isolationism in the name of self-protection is the flip-side of hegemonic dominance. Moreover, the hegemonic foreign policy has domestic parallels as evidenced by the infringement of civil liberties on the pretext of homeland security, including surveillance programs that invade the privacy of citizens, which amounts to authoritarian control over the people it purports to protect. Imperial designs and neototalitarian tendencies are two sides of the same coin. To break this vicious circle requires the struggle against both of these interrelated tendencies.

Military domination by the superpower is perceived as a threat by nations that do not want to be dominated; this provokes defensive reactions and spurs the arms race, increasing the risk of war. The US unilateral withdrawal from the Anti-Ballistic Missile Treaty and the decision to terminate the Intermediate-Range Nuclear Forces Treaty undermined the arms-control agreements. This has already triggered a new Cold War and an escalation of the nuclear arms race, threatening the future of humanity. In addition, militarism makes the collaboration of nations for the solution to the social and global problems impossible. There exist also the “time bombs” of climate change, of the ecological crisis, and of underdevelopment. The “end of history” of humanity can come “not as a bang but as a whimper”: an entropy-like, agonizing process of degradation.

Kant envisioned the historical development of humanity as dilemmas: the violent “state of nature” or a civilized society; subjection or a lawful freedom; a paternalistic despotism or the rule of law; wars or lasting peace aiming for a cosmopolitan world order. All this boils down to the existential dilemma: either follow the imperatives of morality, right, and peace and the peaceful league of nations or perish in a mutual destruction by yielding to unintelligible “unilateral maxims through force”—“if human beings so disposed destroy one another and thus find perpetual peace in the vast grave that covers all the horrors of violence along with their authors.”¹⁰⁹

Managed Democracy and the Specter of Inverted Totalitarianism (Princeton: Princeton University Press 2008); Bertram Gross, *Friendly Fascism: The New Face of Power in America* (New York: Open Road Media, 2016); Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for the Future at the New Frontier of Power* (New York: PublicAffairs, 2019); and Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003).

¹⁰⁸ Kant, “Toward Perpetual Peace,” 8:350.

¹⁰⁹ Kant, “Toward Perpetual Peace,” 8:357.

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