Leaving the State of Nature.
Strengths and Limits of Kant's Transformation of the Social Contract Tradition

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1. Introduction[1]

(Early) Modern social contract theories envisioned justice in terms of the protection and realization of each person's freedom and equality. Rejecting previous notions that legal and political institutions are grounded in an alleged natural hierarchy of human beings, these theories argued that only a *public* authority could (realistically or ideally) fulfil the idea of justice as freedom and equality for all. Interestingly in this context, although Kant's influence on our related, modern thinking cannot be overstated—especially with regard to issues of human dignity and freedom—his writings on legal-political philosophy received little scholarly attention for almost two centuries. In the last two to three decades, however, pathbreaking work on Kant's unstudied "Doctrine of Right" started to fill this lacuna in Kant studies. As with all areas of Kant research, several interpretive traditions have since emerged, and this paper participates most directly in what I call the liberal republican interpretive tradition.[2] Kant's "Doctrine of Right," on this interpretation, defends the claim that the public authority—the liberal republic—is an ideally necessary, complex legal-political institutional means through which we govern ourselves such that we all can realize justice as rightful freedom. Such a republic is grounded on a set of principles of freedom: the foundational Universal Principle of Right as well as the principles constitutive of innate, private, and public right.

This paper starts by showing how Kant arrived at his theory of justice as freedom by brilliantly reworking and transforming core proposals of his social contractarian predecessors—Hobbes, Locke, and Rousseau—to renew the possibility of a unifying social contract founded on each person's right to freedom (section 2). His deep appreciation of the strengths and weaknesses of other social contract theories is part of what makes his theory so robust—and also why we need to understand these alternative conceptions to move forward, in better ways, by using and then transcending Kant's own texts and ideas. I then briefly sketch Kant's four legal-political conditions (anarchy, barbarism, despotism, and republic) (section 3) before (in section 4) proposing a way to see Kant's two-layered non-ideal theory—his accounts of human nature ("moral anthropology") and historical societies ("the principle of politics")—as complementing his ideal theory of rightful freedom.[3] Doing so is in line with Kant's ambitions here, since he argues that complete theories of justice must strive to accommodate concerns of "moral anthropology" (MM 6: 217) and that the principles of rightful freedom need a "principle

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[2] The type of arguments characteristic of this type of interpretation can be found already in the works of Julius Ebbinghaus (1953) and Thomas Pogge (1988), but what we may call the Toronto school of interpretation took this approach to a new level both in terms of philosophical and interpretive complexity and influence. See especially Weinrib's (1995) and Ripstein (2009). For an overview of not only this but also the other interpretative and philosophical traditions, see the "Introduction to Part II" of Varden (2022b).
[3] I here build on the work begun in Varden (2022b).

of politics" drawn from "empirical cognition" of human circumstances in order to be applied to historical societies (SRL 8: 429).[4] We need not only understand rightful freedom but rightful *human* freedom in *particular* societies—with their histories—on planet Earth.

The paper finishes (section 5) by arguing that once we have this theoretical apparatus in place, we can also better appreciate the importance of realizing that Kant's four possible political conditions—anarchy, barbarism, despotism, and republic—are ideas of reason, which means that they are never perfectly realized. Hence, it is incorrect to maintain that in our historical societies, we are *either* in the state of nature *or* in civil society. In addition, in actual, historical societies founded on principles of freedom, there are pockets of oppressive or violently destructive injustice as well as pockets devoid of justice that can only be descriptively captured by means of one of the three political ideas (despotism, barbarism, anarchy) that are not constitutive of the liberal republican legal-political framework. In this way, Kant's project is similar to that of Rousseau in that searching for a(n ideal) theory of the state of nature, including through a "hypothetical history of governments" (Rousseau 2011: 43) is to think about "a state that no longer exists, that perhaps never existed, that probably never will exist, and yet about which it is necessary to have accurate notions in order to judge properly our own present state" (Rousseau 2011: 40).[5] The advantage of Kant's four ideas is that they give us additional tools with which to capture the nature of different political forces and challenges descriptive of and facing differently oppressed actors in our actual, historical societies.

2. Kant on the Possibility of Justice in the State of Nature

A central question for political thinkers is why we need legal and political institutions at all. As mentioned above, in the (early) modern, European social contract tradition, this question is commonly explored, in part, through the theoretical, hypothetical construct of a pre-state condition—"the state of nature"—which investigates how we fare when we do not have such institutions in place. Central to these thinkers' proposals are ideas about our (human) nature as well as freedom, equality, rights, and laws (of nature or of freedom) discoverable by our reasoning powers. These arguments, in turn, inform why and how each of their theories propose the public authority as the solution to the problems of realizing justice in the state of nature. I briefly outline central aspects of Hobbes's, Locke's, and Rousseau's theories so that I can show the ways in which Kant—on the liberal republican interpretation—draws on and transforms them in his corresponding theory.[6]

2.1 Hobbes's Absolutist Legal Positivism

Hobbes (1651/1996) famously argues that each person has a "right of nature," that is, a right to use their power to preserve themselves (64).[7] Moreover, as people interact, there are three insurmountable challenges—"three principall causes of quarrel"—that make the state of nature a state of war, understood not as constant fighting but constant preparedness to fight (62). These sources of quarrel are: "First, Competition; Secondly, Diffidence, Thirdly, Glory [...]

[4] All references to Kant's works are given by means of an abbreviation for the work in question as well as the Prussian Academy Pagination. The two texts referenced here are (1797) "The Doctrine of Right" in *The Metaphysics of Morals* and (1797) "On a Supposed Right to Lie from Philanthropy)," both of which are reprinted in Kant (1996).

[5] All citations are from Rousseau (2011).

[6] Given my limited aims here, it is unproductive and distractive to engage the vast secondary literatures that exist on each of these canonical thinkers. Instead, I stay much closer to the original texts than is commonly done, and insofar as possible, I avoid textual controversies in my interpretations; the aim is simply to make vivid how Kant on the liberal republican interpretation would engage these texts.

[7] Here and throughout this sub-section (2.1), I use the original pagination of *Leviathan* (Hobbes 1651/1996).

[where t]he first, maketh men invade for Gain; the second, for Safety; and the third, for Reputation" (61-62).

It is impossible to solve these quarrels authoritatively in the state of nature because each person ultimately must rely on themself in this condition. Consequently, Hobbes maintains that the state of nature is a condition in which the distinction between justice and injustice cannot apply:

> the notions of Right and Wrong, Justice and Injustice have [...] no place [in the state of nature]. Where there is no common Power, there is no Law: where no Law, no Injustice. Force, and Fraud, are in warre the two Cardinall vertues. Justice, and Injustice are none of the Faculties neither of the Body, nor the Mind. If they were, they might be in a man that were alone in the world, as well as his Senses, and Passions. They are Qualities, that relate to men in Society, not in Solitude. It is consequent also to the same condition, that there be no Propriety, no Dominon, no *Mine and Thine* distinct; but onely that to be every mans, that he can get; and for so long, as he can keep it. (63)

The two cardinal virtues of the state of nature are not, in other words, those we are likely to intuit as belonging in this category, such as justice or kindness; rather, they are force and fraud. In Hobbes's view, in the state of nature, only those willing to embrace this reality are likely to stay alive. Each person must learn that you have only what you possess at any given time and for as long as you can hold onto it without too much danger—and then you have to learn to let go. This also entails, however, that life in this condition is "solitary, poore, nasty, brutish, and short" (62). This doesn't mean, however, that there are no principles of justice discernable to individuals living in this condition. Instead, Hobbes's proposal is that here the principles of, for example, "*Justice*, *Equity*, *Modesty*, *Mercy*, and (in summe) *doing to others, as wee would be done to*" (85) can only bind our desires ("*in foro interno*") and not our interactions with others in the world ("*in foro externo*") because doing so would be terribly imprudent (79).

Given the basic facts of the state of nature, anyone living there will find both their "Passions" and their "Reason" urging them to seek peace by leaving this condition and entering civil society by establishing a public authority: the "Leviathan" (87-88). The Leviathan, in turn, establishes peace insofar as it can make effective the laws of nature (64-65). Moreover, because the establishment of the Leviathan must be understood as an "Artificiall" agreement to bring about a "Multitude [...] united in one Person" (87), the way in which this artificial person determines the distinctions between yours and mine *is* the establishment of the distinction between justice and injustice. This is also how Hobbes's position ends up being an absolutist legal positivist theory: insofar as the Leviathan establishes and maintains the rule of law, the posited legal distinctions the Leviathan draws *are* the distinctions between justice and injustice that all subjects are obliged to obey. The only thing subjects cannot be viewed as obligated to do is to let the sovereign kill them, by, for instance, remaining passive when subjected to the execution of a death penalty. Because the right of nature is constitutive of our being, we cannot be seen as committing (yet another punishable) wrong if we fight back when the Leviathan tries to kill us.

2.2 Locke's Libertarianism

Locke (1988) challenges Hobbes's account by, first, arguing that reason does more than merely enable us to navigate the world prudently in the state of nature; reason empowers us to determine and establish just interactions in this condition. Correspondingly, Locke introduces a distinction between *property in persons* and *property in things* before providing a theory that seeks

to show how each person owns themself and can obtain property in non-human objects and creatures through labor on a fair share of the natural resources of the world. This fair share, in turn, is understood as determined by leaving "enough, and as good" of the natural resources behind for others when one labors (II: 27).[8] In this way, Locke claims to show how each individual can justly acquire private property unilaterally or "without any express Compact of all the Commoners" (II: 25) or, more generally, that "the *Execution* of the Law of Nature" in the state of nature is "put into every Mans hands" (II: 7). In other words, contra Hobbes, Locke argues that each person has a natural executive right and that there is a "plain *difference between the State of Nature, and the State of War*" (II 19).

Although realizing justice is possible in the state of nature, Locke thinks that doing so is very difficult given our unruly natures. Entering civil society is the *prudent* choice because "the inconveniencies" of the state of nature (II: 127) make "the enjoyment of the property [...] [the individual] has in this state [...] very unsafe, very unsecure" (II: 123, see also 124, 149, 222). The "inconveniences of the State of Nature," Locke contends, "follow from every Man's being Judge in his own Case" (II 90). More specifically, we can view them as having three sources. First, people often lack the relevant knowledge: Because the laws of nature are "unwritten, and so no where to be found but in the minds of Men," there is no "establis'd Judge" in the state of nature. Second, there is the problem of bias: "Men [...] who through Passion or Interest shall mis-cite, or misapply the laws of nature, cannot so easily be convinced of their mistake" (II: 136). Consequently, third, we have a tendency to do whatever we can get away with. Since each person is "Judge, Interpreter, and Executioner" in the state of nature, it is difficult to ensure that right, rather than might, settles the boundaries of property (II: 136). In short, the three inconveniences characterizing the state of nature are the lack of knowledge (posited laws), the absence of unbiased judges, and the unequal distribution of power among individuals. In this condition, the specification of the laws of nature therefore fundamentally depends upon individuals' ability to identify them; the judgement of particular cases is dependent upon their ability to judge impartially; and the enforcement of the laws of nature is dependent upon their actual individual power to do so.

It follows from the above that although Locke agrees with Hobbes that entering civil society is the prudent choice, he disagrees with him that it is something we can be forced or coerced to do in the name of justice. Acting imprudently, Locke argues, is unwise, but it is not to do wrong from the point of view of justice. Correspondingly, political society starts as a "voluntary Union" (II: 102) among "Men" who are "free, equal, and independent" (II: 95). In turn, this political society is governed by a tripartite (legislative, judicial, and executive) public authority that is entrusted though citizens' actual (explicit or implicit) consent to realize the laws of nature on their behalf (II: 95-99). This also entails that the laws of a just state are co-extensive with the laws of nature ideally regulating individuals' interactions in the state of nature, which is a major reason why Locke is often described as defending a libertarian position.

2.3 Rousseau's Participatory Democracy

A major orienting objection of Rousseau's to his predecessors is, he explains early in his *Discourse on the Origin and Foundations of Inequality among Men*, that in virtue of their "speaking continually of need, avarice, oppression, desires, and pride, [they] have transferred to the state

[8] I refer to Locke (1988) by treatise and section number. For example, this reference is to Locke's 2nd Treatise, section no. 27.

of nature the ideas they themselves acquired in society" (DI: 46).[9] Rousseau continues by hypothesizing that human beings were *originally* solitary wanderers whose fundamental advantage vis-à-vis other animals concerns their "faculty of self-perfection" (DI: 53). Human animals can represent in such a way that they can not only "observe and imitate" other animals' skills but also organize and perfect these skills so that they can outperform competing animals in any environment (DI: 47). Moreover, "the only goods" known by man in this condition are "nourishment, a woman, and rest; the only evils he fears are pain and hunger" (DI: 47). Sexual desires, in particular, are not yet matched with emotions only available in society, and so, "any woman suits [each man's] purpose" and "each man peacefully awaits the impetus of nature, gives himself over to it without choice, and with more pleasure than frenzy; and once the need is satisfied, all desire is wiped out" and they both move on on their own (DI: 65). Moreover, Rousseau argues that "Hobbes failed to notice" that in the state of nature, the striving for self-preservation was accompanied by "an innate repugnance to seeing his fellowmen suffer," or "pity" (DI: 62), which, together with human beings' solitary nature is why the state of nature is not a state of war but a peaceful state.

The beginning of the end of this state (of nature), Rousseau then famously proposes, occurred when "The first person [...] having enclosed a plot of land, took it into his head to say, 'This is mine,' and found people simple enough to believe him"—indeed, this person, Rousseau continues, was "the true founder of civil society" (DI: 69). In short, as the planet started to get crowded and solitary wandering was no longer an option, it became necessary for many to settle, and the first demarcation of property started. With it started the moral transformation of human beings, which centrally involves developing a sense of community (living together as families and as a social group), a social sense of self with comparative social emotions (*amour propre*) and reasoning emerging (DI: 72). With time and because of natural inequalities and our social sense of self, however, this community became increasingly unstable and divided (DI: 76-77). Indeed, Rousseau argues, "the most frightful disorder" arose because "the usurpations of the right, the acts of brigandage by the poor, the unbridled passions of all, stifling natural pity and the still weak voice of justice, made men greedy, ambitious, and wicked. There arose between the right of the strongest and the right of the first occupant a perpetual conflict that ended only in fists and murders" (DI: 78). In other words, it is this early, communal stage in human development that Hobbes's state of nature actually refers to.

At this point in societal development, Rousseau then stipulates,

> a rich man, pressed by necessity, finally conceived the most thought-out project that ever entered the human mind. It was to use in his favor the very strength of those who attacked him, to turn his adversaries into his defenders, to instill in them other maxims, and to give them other institutions that were as favorable to him as natural right was unfavorable to him [...]. He easily invented specious reasons to lead them to his goal. "Let us unite," he says to them, "in order to protect the weak from oppression, restrain the ambitious, and assure everyone of possessing what belongs to him. Let us institute rules of justice and peace to which all will be obliged to conform, which will make special exceptions for no one, and which will in some way compensate for the caprices of fortune by subjecting the strong and the weak to mutual obligations. In short, instead of turning our forces against ourselves, let us gather them into one supreme power that governs us according to wise laws, that protects and defends all the members of the association, repulses common enemies, and maintains us in an eternal concord." (DI: 79)

[9] I use the abbreviations "DI" to refer to *Discourse on the Origin and Foundations of Inequality among Men* and "SC" to refer to *On the Social Contract*. Both texts are found in Rousseau (2011). I use the page numbers found in this work.

Rousseau thinks that a lot less would actually have to be promised to "seduce" such desperate humans who did not see any way out of their overwhelming conflicts, and so it was unsurprising that "[t]hey all ran to chain themselves" (DI: 79). A main problem, however, was that most people "did not have enough experience to foresee [...] [the political establishment's] dangers"; in fact, those "most capable of anticipating the abuses were precisely those who counted on profiting from them; and even the wise saw the need to be resolved to sacrifice one part of their liberty to preserve the other, just as a wounded man has his arm amputated to save the rest of his body" (DI: 79). This, Rousseau proposes, was the way "society and laws" could have originated, and "henceforth subjected the human race to labor, servitude, and misery" (DI: 79).

The next question orienting Rousseau's inquiries, now moving on to *On the Social Contract*, is "whether there can be some legitimate and sure rule of administration in the civil order, taking men as they are and laws as they might be" (SC: 156). His solution centrally involves what he calls "the general will," which is not the "private will" an individual has as a private person but their will "as a citizen" (SC: 166). In short, the transition from the state of nature to civil society involves the development of a "moral quality" that is lacking in the state of nature, namely an appreciation of the importance of a difference between "natural liberty (which is limited solely by the force of the individual involved) and civil liberty (which is limited by the general will)" (SC: 167). Moreover, if we do not get stuck in the horrific historical situation involving inequality and oppression described above, then we learn to reason together to find laws that can govern our interactions justly. We know that how we reason privately and how we reason together as citizens (publicly) are two different things, and we develop the needed legal-political institutions by means of public reasoning. In other words, we learn to govern ourselves through the general will and "direct" and maintain our "social compact" or "body politic" as a "sovereignty" (SC: 173). Rousseau furthermore thinks that whether or not a society is able to do this depends centrally on whether or not it develops a "legislator," who is able to "undertake the establishment of a people [...] to change human nature, to transform each individual (who by himself is a perfect and solitary whole) into a part of a larger whole from which this individual receives, in a sense, his life and his being" (SC: 180). For example, consider the importance of Abraham Lincoln in the US context. And, so, although likely to have been helped along by a (or some) remarkable legislator(s), in a free society, we govern ourselves through laws we find by reasoning together as citizens, which is a major reason why Rousseau often is described as the originator of the modern idea of participatory liberal democracy.

2.4 Kant's Liberal Republicanism

Turning now to Kant, as he is or can be understood by various liberal republican thinkers, a first thing to note is that although he agrees with Rousseau that we have an irreducible (unsocial) wandering side, we are also deeply social beings (more on our sociality below). Together these two elements become Kant's idea of our unsocial sociality (IUH 8: 20).[10] Kant furthermore sides with Rousseau in maintaining that we can have peaceful interactions and communities "devoid of justice" in the state of nature (MM 6: 312). Hence Kant disagrees with Hobbes that human life prior to civil society is inherently warlike. Nonetheless, Kant agrees that once we "cannot help associating with others," the issue of justice arises and cannot be solved in the state of nature (MM 6: 237).

[10] IUH is an abbreviation for Kant's "Idea for a Universal History with a Cosmopolitan Aim" (1784), which is reprinted in Kant (2007).

Like Locke and Rousseau, Kant furthermore thinks societies based on principles of freedom are better than other types of society, for only they harmonize with our deepest moral strivings (A 7: 324). Also, like Locke, Kant thinks that our practical reason enables us to identify (for Kant, *a priori*) principles of justice, which (again, for Kant) are principles of freedom—The Universal Principle of Right as well as principles of innate, private, and public right—that oblige all rational beings capable of moral responsibility and interacting in space and time. Relatedly, instead of appealing to a right to self-preservation as Hobbes and Locke do—and I return to Kant's analysis of this principle in our moral psychology below—Kant places the right to freedom (and not the right to self-preservation) at the foundation of his legal-political philosophy: "*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 human[11] by virtue of their humanity" (MM 6: 237). Moreover, because legal wrongs must track spatiotemporal wrongdoing, words as such cannot be a legal wrong because they do not have spatiotemporal causal power—and, so, Kant arrives at a very strong defense of freedom of thought and expression (MM 6: 238). The fact of our embodied existence, in turn, entails that the possessive relationship between my person and my body is *analytic* from a legal point of view—it is impossible to perceive an empirical (spatiotemporal) distinction between my body and my person—which means that my body is always only mine (MM 6: 249f.).

Kant proposes that there are three kinds of things we can acquire in accordance with the laws of external freedom because when we acquire objects distinct from us as our own, we use the relational categories of the understanding—namely "substance," "causality," and "community." More specifically, the category "substance" enables us to acquire things (property right), the category "causality" enables us to acquire claims on others' performances (contract right), while the category "community" enables us to acquire claims on other persons (status right) insofar as we can "make arrangements" about them (MM 6: 259f.). Although we can identify the principles of right also in the state of nature, like Hobbes and Rousseau and in contrast to Locke, Kant thinks justice cannot be realized in this condition; it's Locke's idea of rightfully *enforceable* rights in the state of nature—the notion of a natural executive power or right—that he rejects.

On my favored interpretation of Kant here, there are three reasons why these principles are not rightfully enforceable in the state of nature. First, these principles cannot be combined with an authoritative source of physical force that establishes them as a coercive legal-political framework of law within which people interact. This is a problem of assurance, which is, ultimately, solved by the public authority's monopoly on coercion and executive function. Second, these principles cannot be transformed into authoritative, general laws that, third, regulate specific instances of interaction. These two latter problems concern indeterminacy in general and specific application of the *a priori* principles of right, which, in turn, the public authority's legislative and the judiciary functions are a solution to. In other words, it is impossible, in this condition (or for private individuals), to objectively determine exactly how—in general or in specific cases—the *a priori* principles of freedom should regulate actual interactions. To use an example not already employed in the secondary literature,[12] assume that

[11] I've changed Gregor's "man" to "human" (and correspondingly "his" to "their") here to make it more consistent with the original German ("jedem Menschen").

[12] As the secondary literature amply illustrates, you can run this kind of example with regard to (innate) bodily rights (various kinds of bodily interactions) as well as each of the categories of private right (private property, contract right, and status right). The same type of problem arises every time because there is no one objectively correct way to value empirical objects in the world; there are only many reasonably good ways.

you and I like fishing in a lake in the mountains and that one day we both arrive at the lake at the same time. We might accidentally want to fish from different spots—and so our interactions will be peaceful and "devoid of injustice"—but what if we both arrive at the same spot at the same time because we want to use exactly this spot (as the experienced fishers we are). There is no one objectively correct answer as to who gets to use this particular fishing spot, but we do need an authoritative answer, one that is consistent with our right to freedom or the right not to have our freedom coercively subjected to another's arbitrary choices but to laws of freedom. Alternatively, if we were to accept Locke's proposal that we acquire a fair share of the natural resources if we leave enough and as good behind to others, the problem cannot be solved individually is: what counts as "enough" and what counts as "as good" natural resources? In Kant's words: "The indeterminacy, with respect to quantity as well as quality, of the external object that can be acquired makes this problem (of the sole, original external acquisition) the hardest to solve" (MM 6: 266). In turn, Kant also does not agree with Locke's (or any) labor account, but instead sides with Hobbes and Rousseau (and others) who argue that the significant action here is first possession. This, however, only gets us so far: I am not subjecting others to enforceable laws of freedom if I simply subject them to rules that protect whatever I possessed first. Hence, even if I happened to arrive first at the fishing spot, this is normatively relevant, but it is insufficient to determine and establish enforceable fishing rights at the lake.

As anticipated above, to solve all these problems, Kant proposes transformed ideal versions of Hobbes's conception of public authority (the Leviathan that provides assurance of interaction subjected to laws), Locke's laws of nature (principles discoverable by our reason), and Rousseau's general will (to determine the laws to govern our interactions): we establish a public authority that *re*presents the citizens by determining general laws of freedom to regulate and secure our actual interactions. In so doing, the public authority does not represent any one private person (a unilateral will) but only all of us together (an omnilateral will). Only a public authority, so understood, can solve these problems of interaction in ways consistent with each person's right to freedom. Hence, Hobbes's Leviathan, Locke's tripartite sovereign authority, and Rousseau's general will are individually insufficient because although they supply assurance (executive authority), provide a distinction between "thine and mine" in general (legislative authority) and in particular cases (judicial authority), and thereby envision a distinctly public (not private) authority, they do not envision it as reasoning in terms of or consistently with the fundamental principle of freedom, namely the Universal Principle of Right and the principles of innate, private, and public right. Only a public authority that coordinates and settles conflicts of interaction by determining the principles of freedom to regulate them in this way solves the problems of justice in the state of nature.

As we have also seen, one of Kant's objections to Locke is that his laws of nature are not principles of freedom. Another, on this approach, is that Kant maintains that once the public authority establishes, as it must, its monopoly on coercion, it must also reconcile this monopoly with each citizen's right to freedom. This, in turn, explains why there are systemic measures—to, for instance, regulate land, the economy, and finances—that the state must, and have a right to, put in place (though public right/law) even though private individuals do not have the corresponding authority (through innate or private right/law). Hence, in contrast to Locke, Kant does not think that the laws of the state (public right) are co-extensive with the principles governing individuals' interactions in the state of nature (innate and private right). Importantly, it is this argument that enables Kant's position to address central issues involving

systemic injustice, such as poverty,[13] in a way that distinguishes him from Locke—since Locke argues that the laws of the state are co-extensive with laws of nature individuals uphold in the state of nature. This is an argument that libertarians, in particular, should consider carefully since it proceeds as an *a priori* argument of freedom. It is not (as, for example, Nozick worries) an argument that appeals to need or charity; it merely states that once the state assumes a monopoly on coercion, it must reconcile this monopoly with each person's right to freedom and the right to freedom gives each person the right to exist somewhere and to access means without thereby necessarily committing a crime. Hence, the state must guarantee unconditional poverty relief because without it some citizens have the possibility of freedom subjected to another's arbitrary choice (to employ them or provide them with charity) rather than laws of freedoms—and this is inconsistent with their innate right to freedom.[14] Importantly, this entails that although Kant is correspondingly sympathetic to how both Hobbes and Rousseau argue that the laws of the state are not reducible to the laws governing individuals interacting in the state of nature, the way he insists on the laws of the state being consistent with the Universal Principle of Right and specifications of the principles of innate, private, and public right distinguishes his position from theirs.

The above also explains why Kant agrees with Rousseau, and to some extent Hobbes, that the establishment of civil society involves a moral change in human beings. For Kant, this moral change centrally involves learning to distinguish between two moral perspectives: our private perspectives of virtue (first-personal ethics) and our shared, public perspective of right. To lift ourselves up the necessary notch in terms of morality, in other words, citizens and public representatives must develop the ability to reason in terms of public principles and laws of freedom. Relatedly, Kant thinks that we do not yet really know life under conditions of freedom yet; we have only recently started to develop such societies on planet Earth, and so, we often mistake what is possible for what we have seen (MM 6: 217). In contrast to Rousseau, however, Kant does not think that a rightful state must be a participatory democracy. If the basic principles of a legal-political system are those of justice as freedom, a minimally just state can also be an aristocracy or a monarchy, for example (A 7: 330f). The choice of which form of government the people deem best always lies with the people. Kant furthermore argues that over time, if things progress rather than regress, people will transform their institutions such that they get rid of inherited privileges and increasingly govern themselves as active citizens through their public institutions—which is what realizing a republic involves—and no one has a right to stop them from doing so (MM 6: 370).

Although Kantian liberal republican interpreters differ in the degree to which they engage the other (early) modern theories that inspired Kant and also with regard to some of the interpretive details regarding Kant's "Doctrine of Right," the above shows core reasons why they agree that Kant's legal-political philosophy is neither libertarian (a la Locke), nor absolutist legal positivist (a la Hobbes), nor participatory liberal democrat (a la Rousseau).[15] The above is also an outline of predominantly ideal arguments on these accounts in that they theorize how our reasoning powers enable us to identify the laws that govern our interactions in an ideal, just world. The next section provides some further, distinctly Kantian philosophical tools we need before we turn to the complexity of non-ideal theory, including why and how we

[13] To the best of my knowledge, the first paper in the liberal republican tradition that proposes poverty as a systemic injustice is Weinrib's (2003).

[14] For more on all of this, including more details and useful references to relevant secondary literature, see Varden (forthcoming a, forthcoming b).

[15] Hence, the above capture some of how I object to central tenets of libertarian, legal positivist, and democratic readings of Kant's Doctrine of Right. For more on this, see the "Introduction to Part II" of Varden (2022b).

can go about giving up the binary between the state of nature and civil society when we analyze actual, complex historical societies that are very far away from the idea of the republic.

3. Kant's Four Legal-Political Conditions: Anarchy, Barbarism, Despotism, and Republic

There is a strong tendency in the existing liberal republican literature on Kant's "Doctrine of Right" to think of Kant's philosophy as staying consistent (and needing to stay consistent) with the state-of-nature vs. civil society binary. On this approach, the minimally just state—the state capable of issuing political obligations to the public authority—is typically identified with Kant's "republic."[16] Some Kantians view Kant's category of "despotism" as included among the minimally just states, which means that they end up with a fairly conservative, legal positivist version of Kant's legal-political philosophy. In contrast, the state of nature, on these interpretations, is identified with what Kant calls "anarchy" and "barbarism," where anarchy refers to peaceful conditions of interaction in a pre-state condition while barbarism refers to this condition insofar as violent conflict occurs. All these interpretations presume, however, that that there is no room for a political reality between anarchy (the state of nature) and civil society and this is what I challenge.[17] Recently, Oliver Eberl (2019) has suggested that barbarism, for Kant, is something that the state also undertakes—and, so, barbarism cannot simply be regarded as belonging to the state of nature. I agree with Eberl that not only (groups of) private individuals but also de facto or actual historical states can facilitate or engage in barbarism, and they do this in not only, as Eberl's examples assume, the international but also the domestic sphere.[18] In addition, consistent with more traditional liberal republican readings, I propose that there is something irreducibly private about this use of violence—and, so, insofar as a state acts in this way, on this approach, it is morally corrupt. In order to see why and how a third option can bring our theories forward, we need to understand these four political conditions more clearly, and this is the purpose of the next paragraphs.[19]

According to Kant, there are four possible legal-political conditions: anarchy, barbarism, despotism, and republic. The reason for this is, Kant proposes, that three principles constitute all possible legal-political conditions, namely, in German, "Gesetz," "Gewalt," and "Freiheit"—which, in my view, are best translated as "law," "violence," and "freedom."[20] These three

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[16] For example, I believe this is how Ripstein (2009) reads this distinction, and it is also how I read it in most of my own work prior to *Sex, Love, and Gender* (Varden 2022b), even if my bar for what counts as a minimally just state is higher than Ripstein's (and others').

[17] One way to read the argument in this paper—and my related earlier work—is that it takes on board Hannah Arendt's (1982) and Katrin Flikshuh's (2008) proposals that there is something philosophically unsatisfying about arguing that violently resisting a government *is* to engage in revolution. The argument in this paper agrees with this and then show one alternative way to analyze various ways in which individual and social groups may respond to state-organized or facilitated oppression. Alternatively, this paper can be seen as supplying more Kantian resources to spell out the perspectives of what Arendt calls "the spectators" (the observers from afar) and "the actor" (the people involved in the actual interactions at stake).

[18] There is a puzzle arising in Eberl's analysis here, since one could argue that since international relations at Kant's time clearly were in the state of nature—including according to Kant—and if his examples track states only in this sphere, then one can argue that Kant still links the concept of barbarism to the state of nature. My position avoids this problem.

[19] I started this work in Varden (2022b), and several of my articles since this time develop this position further.

[20] There is no agreement regarding how to translate "Gewalt"—and philosophical issues rides on this issue. For more on this, see Varden (2022a). One option not considered there is Jan C. Joerden's (1995) suggestion in that by "Staatsgewalt" Kant refers to state authority, in which case barbarism refers to an unjust state ("Unrechtsstaat") and this is why there is no Gewalt in anarchy. As with all the other interpretations, there are textual advantages and disadvantages to this reading, and I will not rehearse them here (see above article for this). Instead, simply note that a major philosophical disadvantage is that it would not explain how one individual can violate and

principles, he continues, can be combined in four different ways, yielding four distinct (*a priori*) ideas of legal-political conditions: anarchy, which is constituted by the principles of freedom and law, but not the principle of violence; despotism, which combines law and violence and excludes freedom; republic, which involves all three principles (law, violence, and freedom); and, finally, barbarism, which is violence, but no freedom and no law (A 7: 330f). Hence, public right is the establishment of rightful (public) uses of coercion ("Zwang") that limit possible interactions withing the parameters set by universal principles of freedom—a use of coercion that is backed up with the threat of violence (destructive force). Correspondingly, Kant argues that internally (domestically) only a republic prevents ("hinders hindrances to freedom under universal law") by subjecting all domestic interactions to coercive laws consistent with and required by each person's innate right to freedom (MM 6: 237). The republic's uses of "force" ("Kraft") or "power" ("Macht") are consequently "coercion" ("Zwang") that is "rightful" ("rechtlich") because it lets laws of freedom set the terms of the coercive framework within which people interact—and Kant correspondingly contrasts the republic's use of coercion with sheer violence (MM 6: 231).

If we now turn to the three other possible conditions—anarchy, despotism, and barbarism—then we may say that anarchy is the absence of violence and the presence of freedom and law, meaning that in the best of scenarios all we can achieve here is the absence of injustice and the presence of law and freedom. Anarchy is therefore "devoid of justice" on this analysis (MM 6: 312), because although the principles of freedom govern interactions (provisionally just laws that specify the *a priori* principles of innate and private right), they are not yet rightfully enforceable (conclusively just coercive laws) (MM 6: 256f, 305-313). In despotism, in contrast, there is law and violence—a monopoly on force that is regulated by laws—but no freedom, since the laws are not grounded on universal principles of freedom but on contingent laws (such as various religious laws or laws grounded on a particular cultural interpretation). Hence, in this condition, there will be injustice (since coercive limits on interaction are not constituted by laws of freedom) and at best provisional justice and prudential obligations. Finally, under *barbarism*, there is only violence and neither law nor freedom. In this condition, there is therefore necessarily destruction of embodied, social, rational being: There is no personality because personality is, exactly, the capacity to act freely in morally responsible ways (autonomy), namely, to set ends of one's own in accordance with laws one gives oneself either on one's own (virtue) or together with others (right).

In my view, the assumption that we are either in the state of nature or in civil society is, as mentioned above, a false dichotomy. It only holds true so long as we are exploring ideal theories, or distinguishing ideas of reason. Holding onto this binary in all legal and political theorizing hampers Kantian theorists' ability to provide philosophical ideas with which to capture both the complexity of our actual lives and our historical societies' attempts to transform our social contractual institutions.[21] To arrive at a more complex and useful theory,

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terrorize another or a group of others—such as, for example, cases of domestic abuse—regardless of whether or not the involved people live in a state.

[21] The minimally just states approach—which I defended for a long time—also enters into other philosophical puzzles. For example, Ripstein and I both argue that the Nazi regime did not issue political obligations because it was barbaric, understood as a bad version of anarchy. However, if this is the complete analysis, then during Nazi regime periods, the relevant territories found themselves in the state of nature? If so, then in virtue of what authority did these countries—as both Ripstein and I agree they did and were right to do—punish those who participated in these regimes (treason)? After all, according to Kant, there is no rightful punishment in the state of nature. In addition, of course, although the rights of Jewish people and disabled people were re-established after the war, the same cannot be said for other groups who were also sent to the Nazi concentration camps, such as Roma people or members of the LBGTQIA community. The minimally just state approach—when not

the next section shows two steps involved in complementing Kant's ideal theory of rightful freedom with non-ideal theory, that is, with considerations of our distinctly human nature ("moral anthropology") and historicity ("the principle of politics"). With these philosophical tools in hand, the final section shows one way to develop Kant's ideas such that we can see why it is a mistake to think that we find ourselves in only one of these conditions at any given historical time. Instead, recognizing how political forces can be excluding (anarchic), systemically oppressive (despotic), or violently destructive (barbaric) and yet subsist and reinvent themselves within societies that are not fundamentally or wholly cruel or unjust (a republic), provides useful philosophical resources. This recognition is necessary for our theories to assist both in our handling of oppression and in our attempts to accurately describe (as spectators) and wisely transform (as actors) our actual historical legal and political institutions (our social contracts). Hence, we should not let the analysis of state of nature vs. civil society be the last (Kantian) word on the matter.

4. Non-Ideal Kantian Theory

Let us, for the sake of argument, accept all of the above. A problem still confronting us is how to envision this ideal theory of abstract principles of practical reason regarding rightful freedom—the Universal Principle of Right as well as the principles of innate, private, and public right—as applicable and realizable in actual, human societies.[22] To describe this challenge with Hannah Arendt, Kant's "Doctrine of Right" is oriented toward questions of (constitutional) law and not politics—and a more complete account needs both (Arendt 1982: 15-16). In my view, the best way to take on this challenge begins with Kant's comments that "moral anthropology" and "the principle of politics" need to complement the ideal theory of rightful freedom presented in the "Doctrine of Right." As we develop this starting point, my proposal is that we need to appreciate how Kant's "moral anthropological" comments in various writings—whether the "Doctrine of Right" or political essays—are deeply informed by his account of human nature. Moreover, Kant's comments regarding the principle of politics should be developed with consideration for his concern that our theorizing is genuinely hampered by our not yet having seen a truly free society. Hence, we have all inherited cultures, institutions, and practices that have not let principles of freedom set the framework within which we realize ourselves. And, of course, some personal and cultural practices impose fierce oppression on various social groups. One way to thus reconcile abstract theory regarding rightful freedom, politics, and the lived realities of human societies is to use the ideas of anarchy, barbarism, republic, and despotism to identify and analyze different kinds of political forces present in historical societies. In addition, at this (non-ideal) level of theorizing, what is valuable is deeply contingent. Hence, we need to use a bottom-up approach here that involves careful listening to the lives and societies we are critiquing.[23] I start by sketching some of these features of Kant's thoughts on moral anthropology and human nature (in section 4.1) before (in section 4.2) outlining a few central complexities involved in theorizing actual, historical societies.

4.1 Rightful Human Freedom—Moral Anthropology & Human Nature

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complemented by other kinds of arguments, such as those I am presenting here, and a re-envisioning of barbarism—has too little to add here.

[22] Some, like Paul Guyer (2000) and Sarah Holtman (2018), think the Rawls's general approach—albeit adjusted to account of Kant's "Doctrine of Right," which Rawls himself was unfamiliar with—is the best way to go. Another approach is to do a more case-by-case or example approach, which Barbara Herman (2022) developed regarding specific topics such as homelessness.

[23] The first time I worked this approach out in more detail is found in Varden (2022b).

Hobbes and Locke, as we saw above, ground their theories in a right to self-preservation; Rousseau and Kant reject this idea by linking the striving for self-preservation to our animate nature while linking morality to freedom. For Kant in particular, self-preservation is one of three natural, conscious drives constitutive of our animality. The three natural drives are enabled by the relational categories of the understanding, which are here used teleologically and in relation to our animalistic being and natural vital force (CPrR 5: 162). The three relational categories of the understanding are substance, causality, and community, which when used in this animalistic way, become our strivings for self-preservation (substance), sexuality (causality), and affectionate, basic community (community) (R 6: 26).[24] Notice too that because one of these natural strivings is a striving for basic community, Kant rejects Rousseau's notion of human beings as originally being wanderers (rather than seeking to live with others in affectionate unions). Moreover, when our animate being is realized well, we feel our natural vital force as strong, yet peaceful and harmonious. This animalistic part of us, Kant argues in the *Religion*, should be seen as one of three predispositions constitutive of the "original predisposition to good" (R 6: 26). The other two are the predispositions to "humanity" and to "personality" (R 6: 26).

The predisposition to humanity is constituted by a social sense of self and a striving to set ends of one's own. More specifically, the social sense of self is deeply influenced by Rousseau's *amour propre*, with the addition that Kant thinks it is originally good. It is, he argues, the inclination "to gain worth in the opinion of others, originally, of course, merely equal worth" (R 6: 27) and an incentive to culture (R 6: 27). In contrast, the striving for freedom—for setting ends of our own—Kant argues in the *Anthropology*, is revealed in the fact that human babies are the only ones that scream when they are born. In screaming, babies reveal that they can represent in a way that non-human animals cannot, namely as being frustrated by our inability to act (set ends) (A 7: 268). It is this predisposition, in turn, that is developed through our capacity to act on maxims or "subjective rules of action" (GW 4: 401n). The predisposition to "personality," in turn, is experienced as a "moral feeling" that can only be philosophically explained, Kant thinks, by appeal to how we can be motivated by our practical reason (revealed in our recognition of the moral "ought"). If we relate all of this to the work most students have read, namely Kant's *Groundwork*, we now see that it is a metaethical exploration of one aspect of the predisposition to humanity (the capacity to set ends of one's own) and our predisposition to personality, namely our ability to act as motivated by our practical reason.

More generally, Kant thinks that the two first predispositions (animality and humanity) can be developed by means of different kinds of thought (aesthetic, teleological, associative, abstract conceptual) and only when we develop our freedom by means of our practical reason can we capture our capacity to act virtuously, namely our ability to do what is right because it is the right thing to do. In addition to the *Groundwork*, Kant explores this ability to act virtuously in his *Critique of Practical Reason* and in the "Doctrine of Virtue" in *The Metaphysics of Morals*. The "Doctrine of Right," in turn, explores our capacity for freedom as limited to the legal-political sphere, or what he there calls "external freedom," and thus is limited to what can be coerced. Hence, virtue is out of (direct) reach of the law and politics—and with it most of the arguments you find in his virtue writings—and because the foundation for a theory of freedom cannot be our animality, the starting point is, as we saw above, a right to freedom understood in contradistinction to slavery. And then, as we also saw above, instead of using the Categorical Imperative and perfect and imperfect duties as his main orienting principles, he develops this

[24] For more on all of this, see Varden (2020, 2022b).

account of right by considerations of the Universal Principle of Right and innate, private, and public right on the postulate that we interact in a limited special area and as governed by laws that bind reciprocally. When we do this, then the private right categories (property, contract, and status) are, yet again, using the relational categories of the understanding, not teleologically (as we do animalistically), however, but in relation to our capacity to set ends of our own (humanity) in a shared (spatiotemporal) world we are responsible for.

At this point, we can see a little more clearly why contemporary Kantians typically reject using Kant's (meta)ethical writings as the starting point for the legal-political writings. In addition, we can appreciate why Kant considers it very important to also keep the moral accounts (of right and of virtue) and the accounts of moral anthropology distinct. In the Introduction to *The Metaphysics of Morals*, he argues that the "counterpart of a metaphysics of morals" in a complete practical philosophy

> [...] would be moral anthropology, which, however, would deal only with the subjective conditions in human nature that hinder people or help them in *fulfilling* the laws of a metaphysics of morals [...]. It cannot be dispensed with, but it must not precede a metaphysics of morals or be mixed with it; for one would then run the risk of bringing forth false or at least indulgent moral laws, which would misrepresent as unattainable what has only not been attained just because the law has not been seen and presented in its purity [...] or because spurious or impure incentives were used for what is itself in conformity with duty and good. (MM 6: 217)

In other words, it is important to distinguish between arguments that merely use principles of freedom and those that appeal to our specific earthly features (human nature: animality, humanity, and personality) because the principles of freedom give us the objective framework within which we realize our distinctly, contingent human concerns (in general). Again, to get these human concerns into view, in turn, we must use a theory of moral anthropology, which, in turn, is only possible given a theory of human nature. However, our specific earthly, human features also involve the fact that we are born in particular human societies with distinctive histories. And this historical aspect of us is the topic of the next section.

4.2 Historical Justice: "The Principle of Politics"

The above account of moral anthropology and human nature is insufficient to get the complexities of actual, historical societies properly into view. In the "On a Supposed Right to Lie from Philanthropy," Kant proposes a "principle of politics" to capture this particular or historical level:

> in order to progress from a *metaphysics* of right (which abstracts from all conditions of experience) to a principle of *politics* (which applies these concepts to cases of experience) and, by means of this, to the solution of a problem of politics in keeping with the universal principle of right, a philosopher will give 1) an *axiom* that is an apodictically certain proposition that issues immediately from the definition of external right (consistency of the *freedom* of each with the freedom of everyone in accordance with a universal law); 2) a *postulate* (of external public *law*, as the united will of all in accordance with the principle of *equality*, without which there would be no freedom of everyone); 3) a *problem* of how it is to be arranged that in a society, however large, harmony in accordance with the principles of freedom and equality is maintained (namely by means of a representative system); this will then be a principle of *politics*, the

> arrangement and organization of which will contain decrees, drawn from experiential cognition of human beings, that have in view only the mechanism for administering right and how this can be managed appropriately. Right must never be accommodated to politics, but politics must always be accommodated to right. (SRL 8: 429, cf. TP 8: 277ff.)

In other words, to get from a metaphysics of right to historical societies with their complicated political histories and realities requires first postulating the rule of public law limiting us reciprocally (as equals) *and then* a principle of politics that relies on empirical cognition understood as knowledge of our societies (their histories, their institutional structures, etc.). If we combine the above concerns about how moral anthropology is necessary to make the rightful external freedom account in the "Doctrine of Right" in *The Metaphysics of Morals* distinctly *human*, then we here see that the "principle of politics" (empirical cognition) is necessary to make the account applicable to particular *historical* societies.

Notice too that Kant is very aware of the challenges that come from the fact that given the creatures we are, the development of actual historical societies starts with culture and then, insofar as possible, they transform themselves into societies of self-governance through principles of freedom. In his *Anthropology*, for example, Kant argues that

> In a civil constitution, which is the highest degree of artificial improvement of the human species' good predisposition to the final end of its destiny, animality still manifests itself earlier and, at bottom, more powerfully than pure humanity [...]. The human being's self-will is always ready to break out in aversion toward his neighbor, and he always presses his claim to unconditional freedom; freedom not merely to be independent of others, but even to be master over other beings who by nature are equal to him [...]. This is because nature within the human being strives to lead him from culture to morality, and not (as reason prescribes) beginning with morality and its law, to lead him to a culture designed to be appropriate to morality. This inevitably establishes a perverted, inappropriate tendency: for example, when religious instruction, which necessarily should be a moral culture, begins with historical culture, which is merely the culture of memory, and tries in vain to deduce morality from it. (A 7: 327–8)

In other words, animality is initially more prominent in our strivings, as individuals and as cultures, and the temptation to do what we want to do (brute freedom) rather than act as we need to do to realize virtue (internal freedom) and right (external freedom) arises only later. Similarly, in societies too, animality is more prominent than humanity and personality in the early stages of development. In addition, we have a tendency to generalize ("universalize") our contingent ways—whether as individuals or as cultures—rather than realize them within the bounds of morality (moral laws of freedom). Indeed, Kant argues in *The Metaphysics of Morals*, the "beginning of human wisdom" is to "know your heart"—an endeavour that is truly difficult yet constitutive of pursuing the highest good or realising ourselves fully (MM 6: 441).[25] To know your heart is not only to know how to argue by means of the principles of practical reason or, for that matter, the principles constitutive of the predisposition to the good, but also to know what motivates you, what your liabilities are, what is good for you, etc. It is similarly complex to develop a rich, sustainable culture. Hence Kant argues that the highest good, in turn, "consists" not only of morality but of "the union and harmony of [...] human morality

[25] I give a fuller interpretation and defense of this point regarding Kant on wisdom in Varden (2021).

[…] and human happiness" (8: 279)—and it is a union that we can never perfectly or stably obtain.

5. Concluding Remarks on the Transformation of Our Social Contract Theories and Realities

Historically, the social contract tradition—including the four classical thinkers above—has excluded a vast number of social groups from active participation in public life. Correspondingly, our public legal and political institutions—the social contracts of today's liberal democracies—are marked by deep problems of systemic injustice that are the result of long histories of intersectional, violent oppression that we do not fully understand. These institutions are, as we see above, supposed to enable us to interact as free and equal citizens, but their actual practices fall very short of these ideals and our available theories are unable to capture this. Without exception, these institutions and the theories of them have condoned, facilitated, and even participated in much wrongdoing against segments of their populations—wrongdoing that, in a profound sense, is not rational in its undermining of justifiable legal and political goals. And, of course, both philosophy as an academic—and, so, socially powerful—institution and the social contract theories have participated in these practices. In the philosophical practice that we currently, albeit misleadingly, call "Western Philosophy," understood as the philosophical tradition that goes back to Ancient Greece and developed through Europe's and, later, predominantly North American academic institutions, women, peoples of non-European descent, Jewish people, Indigenous peoples, non-settled European peoples (e.g., the Roma people), and members of the LGBTQIA+ community have been radically dehumanized.

Kant participated in this practice—as did Rousseau, Locke, and Hobbes, even if, in my view, not as terribly as Kant. Although this is not the place to get into this,[26] Kant excluded, attacked, and dehumanized. That is to say, although Kant did not make this mistake at the level of abstract freedom theorizing, he certainly did with regard to specific general human and specific historical phenomena involving sex, love, gender, and race. For example, Kant uses his account of human nature to argue that ways of being often associated with these groups are immature or perverted. With these philosophical tools at hand, an incredible set of options for dehumanization is available to him—and he uses many of them and also, of course, makes them available to others who have used or are using them actively. What Kant should have done—as this is what the above entails—is, once he switched focus from ideal theorizing involving a priori principles of freedom to non-ideal theorizing in general and as involving specific human phenomena, he should have listened carefully and actively to those whose lives he was describing. And then he could use the theory to give philosophical voice and awareness of various aspects of these phenomena that would accurately describe them and empower the oppressed and societies in their struggles to do better. Moreover, in my view, when we do this, we should give up a line of reasoning that stays dogmatically consistent with the binary between the state of nature and civil society. Let me briefly try to illustrate some of these complexities.

Rousseau, we saw, proposed that one reason our social contract theories include hypothetical histories of governments is that we need those histories to be able to judge what is going on in the present state. The social contract theory project, so understood, is important because it provides philosophical resources that allow us to describe with more nuance and accuracy what is going on and what we should aim for in our societies. As should be evident by

[26] For an excellent overview over the existing secondary literature on Kant and philosophy of race, feminist philosophy, philosophy of sex and love, see Pascoe (2022).

now, I agree. The addition of "moral anthropology" (human nature) and "the principle of politics" (historical societies), the relinquishment of the binary distinction between the state of nature and civil society, and the recognition of the four legal-political conditions as forces present in historical societies together add to the development of the liberal republican approach. These additions help us see that when we analyze our actual legal and political realities, it is important to beware that there can exist pockets of reality that may be devoid of justice or that are channeling injustice despite the fact that we live within the liberal-political framework of a republic.

For example, to gauge how the addition of "moral anthropology" (human nature) is useful to (Kantian) social contract theory consider first what the earliest versions of the liberal republican theories can and cannot do.[27] Early liberal republican analyses are excellent at capturing why slavery is always wrong (as it is inconsistent with the right to freedom); why bodily wrongs are particularly serious (since, from a legal point of view, one's person and one's body is one); and why being forced to engage in sexual trade is a systemic failure of justice (the system makes people's legal access to means dependent on trade and yet does not secure choices for all that do not involve selling sexual services). What such an account cannot explain, however, are things like sexual assault's heinousness; our bodies' importance to our social identities; the patterns of sexual and gendered violence involving or combining racism, sexism, or heterosexism; the temptation and power of sexual violence to unground us emotionally; or how sexual violence can be used for destructive political forces.

The above account of human nature (moral anthropology) is needed to overcome these problems in Kantian liberal republicanism. It shows how violent attacks on our animality—whether on our bodies, our sexual ways, or our affectionate loves—which are common in oppressively racist, sexist, and heterosexist conditions, can fundamentally unground us. Such violence attacks our presumption that the world is trustworthy and good, and that our bodies and private spheres are our safe havens. Moreover, since our animality fundamentally functions through associative and teleological thought, abstract conceptual thought (the fact that we know we were gravely wronged) often cannot on its own reach us there. These animalistic kinds of attacks are therefore non-accidental on this approach, just as it is non-accidental that they are often combined, on the one hand, with depriving people of access to any space where others are excluded (to accommodate our "unsocial" parts) or subjecting them to social shaming and very limited opportunities to exercise any end-setting of their own (humanity), as well as, on the other, with disrespectful treatment by moral authorities, including public authorities. In addition, because historically oppressed groups are already dehumanized in our cultures—the associations are already culturally fostered, such as that they are viewed as immature, immoral, or perverted—they are obvious targets for destructive political forces as these forces seek to move others to partake in the destruction. Blaming victims and dehumanizing them further function psychologically to make (active and passive) victimizers feel better about themselves, to make them feel as if their current problems are not their fault and they are better than those they dehumanize.

To illustrate also why and how earlier liberal republican analyses need to work with the principle of politics (historical societies), notice first that liberal republican analyses typically argue that whether political obligations exist or not depends on the basic principles the public legal-political institutions rest on. On such analyses, one can, for example, easily argue that when slavery was legally permitted in the US, or once Nazi Germany deprived Jews of private property rights, there were no political obligations (as a minimally just state did not exist);

[27] This, then, would be applicable to my own, earliest works as it would be to other work in this period, including the work that culminated in Ripstein (2009) and Flikschuh (2008).

large social groups were deemed criminals merely by virtue of existing somewhere, and legal access to means through their own efforts was made impossible. What is much more difficult for these approaches is to analyze things like sexist property laws that only recognize men as possible property holders; homophobic sodomy laws according to which being sexual in non-straight ways is a crime; or racist laws that make interracial marriages illegal. If we simply follow the more standard "minimally just" analysis, then either these injustices are deemed unimportant (a minimally just state exists despite them) *or* they undermine the entire public legal-political framework (no political obligations exist). This is clearly unsatisfying.

How can appealing to Kant's principle of politics ("empirical cognition") help us here? My general suggestion above has been that as we strive to develop this aspect of Kant's legal-political philosophy, a first step is to abandon the binary distinction between the state of nature and civil society once we move to analyze actual, historical societies and instead view historical republics as often having the other three—anarchic, barbaric, and despotic—political forces present. Once we accept that pockets of (barbaric, despotic, or anarchic) injustice can exist in otherwise just societies (republics), we can speak to these issues in more complex ways and hence offer a more complete liberal republican theory than those currently available.[28] For example, if interracial, same-sex, or polyamorous couples cannot marry, then these people are excluded from access to family law (a pocket of anarchism). Alternatively, if it is not a crime for slave holders to sexually violate their slaves or for husbands to have non-consensual sex with their wives, then these enslaved people and wives are subject to pure, destructive violence (a pocket of barbarism). Finally, in places where single persons, same-sex couples, or polyamorous people are denied the right to obtain children because single, same-sex, and polyamorous parents are inconsistent with teachings or a religion that stipulates that all children should have two parents—one a man and one a woman—these people are learning to deal with the tyranny of the majority (a pocket of despotism).

Finally, as we expand on this aspect of Kant's theory, we should utilize the insights gleaned from his engagements with his predecessors, namely, to take into account that when we are forced by the more powerful to withdraw or to violently resist in these ways, justice is impossible. The best we can hope for in any of the situations described in the preceding paragraphs is to create lives—on our own and together with others—that are devoid of justice. However, despotism and barbaric forces are inherently destructive, which makes it naïve to assume that they will not recur—and when they do, (violently) resisting them will involve either letting unjustifiable things happen to oneself or doing unjustifiable, violent things to others.[29] That there are no good ways out is an additional reason why living subjected to oppression is existentially exhausting. Hence, these old social contract discussions give us more tools with which to capture both the nature of different political forces and the challenges that face us in our historical societies and as we try to transform our inherited social contracts. And, I believe, they can offer resources to those who use philosophy to understand themselves and their societies, including the difficult choices facing them, and they can give voice to our efforts to transform our inherited societies into better instantiations of themselves—and to protect ourselves wisely in the meantime.

[28] As mentioned, I started developing this account in Varden (2020b) and further developed it in several related articles since then.

[29] In my view, the best way to analyze this involves utilizing Kant's distinction between formal and material wrongdoing, but for reasons of space I cannot go into this here. For more on this, see related work since *Sex, Love, and Gender* (Varden 2022b) onwards.

Works Cited

Arendt, Hannah, 1982: Lectures on Kant's Political Philosophy. Chicago: Chicago University Press.

Ebbinghaus, Julius, 1953: The Law of Humanity and the Limits of State Power. In: The Philosophical Quarterly 3(10), 14–22.

Eberl, Oliver, 2019: Kant on Race and Barbarism: Towards a More Complex View on Racism and Anti-Colonialism in Kant. In: Kantian Review 24 (3), 385–413.

Flikshuh, Katrin, 2008: Reason, Right, and Revolution: Kant and Locke. In: Philosophy and Public Affairs 36 (5), 375-404)

Guyer, Paul, 2000: Kant on Freedom, Law, and Happiness. Cambridge: Cambridge University Press.

Herman, Barbara, 2022: The Moral Habitat. Oxford: Oxford University Press.

Hobbes, Thomas, 1996: Leviathan. Richard Tuck (Ed.). Cambridge: Cambridge University Press.

Holtman, Sarah, 2018: Kant on Civil Society and Welfare. Cambridge: Cambridge University Press.

Joerden, Jan C., 1995: Überlegungen zum Begriff des Unrechtsstaats: Zugleich eine Annäherung an eine Passage zur Staatstypologie in Kants Anthropologie. In: Jahrbuch für Recht und Ethik/Annual Review of Law and Ethics 3, 253–265.

Kant, Immanuel, 1996: Practical Philosophy. M. Gregor (Ed. and Trans.). Cambridge: Cambridge University Press.

Kant, Immanuel, 2007: Anthropology, History, and Education. R. B. Louden / G. Zöller (Ed.). M. Gregor / P. Guyer / R. B. Louden / H. Wilson / A. W. Wood / G. Zöller / A. Zweig (Trans.). Cambridge: Cambridge University Press.

Locke, John, 1988: Two Treatises of Government. Peter Laslett (Ed.). Cambridge: Cambridge University Press.

Pascoe, Jordan, 2022: Kant's Theory of Labour. Cambridge: Cambridge University Press.

Pogge, Thomas, 1988: Kant's Theory of Justice. In: Kant-Studien 79, 407–433.

Ripstein, Arthur, 2009: Force and Freedom: Kant's Legal and Political Philosophy. Cambridge, MA: Harvard University Press.

Rousseau, Jean-Jacques, 2011: The Basic Political Writings. 2nd ed. Donald A. Cress (Ed. and Trans.). Indianapolis: Hackett.

Varden, Helga, 2020: Kantian Care. In: Asha L. Bhandary / Amy Baehr (Ed.), Caring for Liberalism: Dependency and Political Theory, New York: Routledge, 50–74.

Varden, Helga, 2021: Towards a Kantian Theory of Philosophical Education and Human Wisdom—with the help of Arendt. In: David Bakhurst / Martin Sticker (Ed.), Kant on Education and Improvement: Themes and Problems, special issue of Journal of the Philosophy of Education 55(6), 1081–1096.

Varden, Helga, 2022a: Kant's Four Political Conditions: Barbarism, Anarchy, Despotism, and Republic. In: Norsk Filosofisk Tidsskrift [Norwegian Journal of Philosophy] 57 (3-4), 194–207.

Varden, Helga, 2022b: Sex, Love, and Gender: A Kantian Theory. Oxford: Oxford University Press.

Varden, Helga, forthcoming a: Kant on Property. In: A. Gomes / A. Stephenson (Ed.), Oxford Handbook of Kant. Oxford: Oxford University Press.

Varden, Helga, forthcoming b: Nozick's Kantian Roots. In: R. Bader (Ed.), Nozick's Anarchy, State and Utopia at 50. Cambridge: Cambridge University Press.

Weinrib, Ernest J., 1995: The Idea of Private Law. Oxford: Oxford University Press.

Weinrib's Ernest J., 2003: Property and Poverty in Kant's System of Rights. In: Notre Dame Law Review 78, 795–828.