

# The Duty to Leave the State of Nature

Kant BPhil Seminar, MT 2024: week 7

Luke Davies (luke.davies@philosophy.ox.ac.uk)

Kant claims that we have a duty to leave the state of nature and enter into a rightful condition.

This is due to the fact that unavoidable interpersonal interaction in the state of nature is inconsistent with equal, external freedom. The state is meant to be uniquely able to address the problems that arise in the state of nature.

Two questions are important: i. How should we understand the problems that plague the state of nature? And ii. How does the state (and only the state) address those problems?

## 1 The problems of the state of nature

Recall the innate right: “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” (6:237).

The innate right “already involves the following authorisations”:

- To innate equality,
- To be beyond reproach, and
- To do what does not violate the rights of others.

At least in the literature, the problems of the state of nature are taken to be problems of how the acquisition, determinacy, and security of *acquired rights* can be compatible with the innate right.

Acquired rights expand our domain of choice and their acquisition imposes coercible constraints on others.

### 1.1 Unilateral choice

The problem of unilateral choice arises because the acquisition of external objects of choice is meant to be inconsistent with our innate freedom.

“Your right to exclude [others from your property] is established through your unilateral act, but the mere fact that you act unilaterally raises the question of how that action can bind me. As Kant puts it, a unilateral will is not a law for anyone else” (Ripstein 2009: 151).

That is, in order to acquire external objects of choice, I must have the authority to coercively bind you. But binding you in this way (without your permission) is inconsistent with your freedom, and so is ruled out.

#### Questions:

- What assumptions about the innate right need to obtain for this problem to arise?
- If we do not have an innate right to external objects of choice, how can another’s acquisition of such objects wrong us?



Source: [existentialcomics.com/comic/414](http://existentialcomics.com/comic/414)

This is roughly following Ripstein (2009), as his view has been the most influential.

“For a unilateral will (and a bilateral but still *particular* will is also unilateral) cannot put everyone under obligation that is in itself contingent; this requires a will that is *omnilateral*, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving” (6:263).

“How can an act done entirely of your own initiative, to which others are not parties, have binding effects on them?” (Ripstein 2009: 154).

- Acquisition is meant to be problematic because it imposes new duties on others. Plausibly, procreation also imposes new duties on others. Is it also ruled out according to the problem of unilateral choice?

## 1.2 Indeterminacy

Regardless of the status of acquisition, we might also worry about disagreements over the status of external objects of choice.

Kantians worry that, in cases of disagreement, innate equality removes the possibility of any private person adjudicating for others. Because we are equal, no one has the authority to make decisions for others in a way that those others lack.

“Any entitlement to restrain the conduct of others must be an instance of a universal law rather than a unilateral judgement. If you and I cannot agree about the terms of our contract or the boundaries of our respective property, or about how to resolve our disagreement, neither of us can have rights that are part of a systematic set of reciprocal limits on freedom” (Ripstein 2009: 169).

### Questions:

- Why think that disagreement is relevant to our entitlements? Isn't it possible that the moral law determines what is ours and one party to the disagreement just gets it wrong?
- What disagreements are relevant? Ripstein focuses on the indeterminacy of principles of right, but it seems we might also disagree about factual questions (such as who arrived at a plot of land first).

## 1.3 Assurance

“without public enforcement, people lack the assurance that others will refrain from interfering with their property and, as a result, have no obligation to refrain from interfering with the property of others” (Ripstein 2009: 159).

Kant claims that the state of nature is a state of war: the “non-rightful condition is a condition of war (of the right of the stronger), even if it is not a condition of actual war and actual attacks being constantly made” (6:344).

It is a state of war because we are entitled to view others as threats due to “the inclination of human beings generally to lord it over others as their masters (not to respect the superiority of the rights of others when they feel superior to them in strength or cunning)” (6:307).

Assurance requires a guarantee that our rights will be respected, and individuals cannot provide this on their own — that is, we don't have to take their word for it that they won't violate our rights.

### Questions:

- Ripstein claims that the problem of assurance only arises for acquired rights. But why? Are others not a threat to my innate right as well?

“However well disposed and right-loving human beings might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples and states can never be secure against violence from one another, since each has a right to do what seems good and right to it and not to be dependent upon another's opinion about this” (6:312; see also 23:278-79).

“When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. **I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine**” (6:255-56).

## 2 The state as a solution

Each of the problems of the state of nature arises due to the limits of the authority we possess as private individuals.

The state is meant uniquely to be able to solve the problems by instituting a public authority that binds us all. The will of the state is omnilateral, not unilateral.

Public acts are omnilateral because they are not any particular person's unilateral choice, but instead are exercised on behalf of the citizens considered as a collective body. They are also omnilateral in a further sense: a unilateral will always has some particular end, some matter of choice. The omnilateral will is different, because all that it provides is a form of choice, by providing procedures through which laws can be made, applied, and enforced ... when the state authorises the acquisition of private property, it does not make the having of property, or the accumulation of wealth, its purpose. Its purpose is to enable individual human beings to have things as their own as against each other. (Ripstein 2009: 196)

The relevant public acts are those that fall under the executive, legislative and judicial branches of the state.

The LEGISLATIVE branch solves the problem of unilateral choice by issuing laws to which we are all bound.

The JUDICIARY solves the problem of disagreement by making judgements in cases of conflict.

The EXECUTIVE branch solves the problem of assurance by enforcing the law.

Here are two serious problems for Kant's solution:

1. The insulation problem. Public acts are all carried out by individual agents, with biases, blindspots, etc. How can the state effectively insulate public acts of lawgiving from the private beliefs and motivations of civil servants at various levels of administration?
  - Possible solution: All Kant needs is that the state isn't necessarily dominating. Problem: where does that leave us in terms of the authority of existing states?
2. The guarantee problem. No state could possibly guarantee that the rights of its members will be secured. Does this mean that no state can solve the assurance problem?
  - Possible solution 1: All that is required is equal assurance. Problem: levelling down objection.
  - Possible solution 2: All that is required is the right incentive structure, and this is compatible with individual rights violations. Problem: do we really have a guarantee in that case?

"The arguments about the defects establish a negative claim: private interaction is morally incoherent without a public standpoint created through institutions" (Ripstein 2009: 183).

"The act by which a people forms itself into a state is the original contract. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of the state. In accordance with the original contract, everyone within a people gives up his external freedom in order to take it up again immediately as a member of the commonwealth, that is, of the people considered as a state. And one cannot say: the human being is a state has sacrificed a part of his innate freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will" (6:315).

See Sinclair (2018).

"How is a civil condition possible for corrupt human beings alone. Whoever ought to command and coerce must be without blame and, if not, could be coerced" (19:489).

"Even when the legislative power is present, the judge though is not possible, since humans are not infallible and not innocent. The difficulty is, how beings who must be coerced to be just, can produce for themselves a representative of justice" (19:498).

## 3 Koltonski on assurance

Central claim: certain failures of assurance cause 'localised illegitimacies' in the Kantian state, which permit those whose rights are infringed to respond with force and violence, but only in service of restoring justice.

### 3.1 Assurance

Koltonski understands the problem of assurance empirically: “The problem is that in this situation [the state of nature] you have available more power to coerce me than I have to coerce you (or vice versa)” (190).

Thus, in the state of nature I might have an incentive to respect your rights, but not vice versa. This is inconsistent with innate equality.

The state solves the assurance problem when it has more power than any individual citizen, and uses that power to ensure that no citizen is more likely than any other to suffer a rights violation (196-97).

“Now, to be precise, what matters for the question of assurance is not inequalities in coercive power but rather inequalities in the coercive threat persons pose to one another” (191).

“On my reading, then, a state secures citizens’ rights with adequate power when it has more coercive power than any particular citizen across a full range of situations and circumstances—it is able to oblige them to respect others’ rights—and when it wields that power in those situations such that the security it provides to the rights of those involved is distributed equally among them so that no one is specially vulnerable to an unremedied rights violation” (196)

Koltonski is explicit that this is not Kant’s position.

“When the failure to provide equal assurance is in this way local, the resulting illegitimacy will be as well” (204).

### 3.2 Wage theft

States regularly fail to solve the assurance problem. Koltonski draws attention to wage theft.

Employers regularly fail to pay employees what they are owed by law, and this is not effectively policed. This means that, while the law specifies what employees are owed, unequal social power makes it the case that employer rights are assured in a way that employee rights are not.

### 3.3 Principled Disobedience

This situation leads to localised illegitimacies — instances of state failure to secure equal assurance.

If the workers are experiencing a localised illegitimacy, then they are in a state of nature with respect to the employers. If this is so, they are entitled on Kant’s account to use force to bring them into a rightful condition.

**Questions:** Which defects result in illegitimacies? Can Koltonski make sense of the justice/legitimacy distinction? Is assurance best understood empirically? What actions would count as bringing the employers into a state? Is Koltonski providing a moral argument, or an argument restricted to principles of right?

4 Please go to <https://www.philosophy.ox.ac.uk/lectures> in order to provide feedback on the course.

Thank you!

## 5 References and suggestions for additional reading

- Christmas, B. 2021. Against Kantian Statism. *The Journal of Politics* 83(4): 1721–1733.
- Flikschuh, K. 2008. Reason, Right, and Revolution: Kant and Locke. *Philosophy & Public Affairs* 36(4): 375–404.
- Hasan, R. 2018. The Provisionality of Property in the Doctrine of Right. *Canadian Journal of Philosophy* 48(6): 850–876.
- Hasan, R. and M. Stone. 2022. What is Provisional Right? *Philosophical Review* 131(1): 51–98.
- Pallikkathayil, J. 2017. Persons and Bodies. In *Freedom and Force: Essays on Kant’s Legal Theory*, eds. S. Kisilevsky and M. Stone, 35–54. Oxford and Portland: Hart.
- Ripstein, A. 2009. *Force and Freedom: Kant’s Legal and Political Philosophy*. Cambridge: Harvard University Press.
- Sinclair, T. 2018. The Power of Public Positions: Official Roles in Kantian Legitimacy. In *Oxford Studies in Political Philosophy*, Volume 4, 28–52. Oxford: Oxford University Press.
- Stilz, A. 2011. *Liberal Loyalty: Freedom, Obligation, and the State*. Princeton: Princeton University Press.