

# External Freedom in Kant's *Rechtslehre*: Political, Metaphysical<sup>1</sup>

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External freedom is the central good protected in Kant's legal and political philosophy. But external freedom is perplexing, being at once freedom of spatio-temporal movement and a form of noumenal or 'intelligible' freedom. Moreover, it turns out that identifying impairments to external freedom nearly always involves recourse to an elaborated system of positive law, which seems to compromise external freedom's status as a prior, organizing good. Drawing heavily on Kant's understanding of the role of empirical 'anthropological' information in constructing a Doctrine of Right, or *Rechtslehre*, this essay offers an interpretation of external freedom that makes sense of its simultaneous spatio-temporality, dependence on positive law, intelligibility (or 'noumenality'), and a priority. The essay suggests that this account of Kantian external freedom has implications both for politics and for the metaphysics of everyday objects and institutions.

## I. Introduction

External freedom (*äussere Freiheit*)<sup>2</sup> is the central concept in Kant's 1797 *Rechtslehre* or 'Doctrine of Right'.<sup>3</sup> Our only innate right is to it (MS

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<sup>2</sup> '*Äussere Freiheit*' is sometimes also translated as 'outer freedom.' See e.g., Gregor at MS 6:246, 6:254, and 6:380 (*Metaphysics of Morals*, trans. Mary Gregor, Cambridge: Cambridge University Press, 1991). The first key reference to external freedom is at MS 6:214. References to Kant's works are by title initials (from the German original, noted in bold below) and volume and page number from the standard 'Akademie' edition (*Kants gesammelte Schriften*, ed. Königlichen Preussischen [later Deutschen] Akademie der Wissenschaften, Berlin: Georg Reimer [later Walter de Gruyter], 1900-). The only exceptions are citations to Kant's *Critique of Pure Reason*, which give page numbers for both 'A' (1781) and 'B' (1787) editions, e.g., 'A301/B358' (where a passage occurs in only one edition, only its page will be given, e.g., 'B131'). Translations are from the English editions listed here unless otherwise noted. *Metaphysik der Sitten* (MS): *Metaphysics of Morals*, trans. Mary Gregor, (Cambridge: Cambridge University Press, 1991); *Metaphysische Anfangsgründe der Naturwissenschaft* (MAN): *Metaphysical Foundations of Natural Science*, trans. James Ellington (Indianapolis, New York: Bobbs-

6:237). The Universal Principle of Right<sup>4</sup> governs it (MS 6:231). Positive ('juridical') law is justified just insofar as it protects it (MS 6:214). But what is it?

At first glance, external freedom might not seem puzzling. Kant uses 'external freedom' synonymously with 'freedom in external action' (MS 6:214), and we all know, more or less, what freedom in external action is. Right?

Not right. I, anyway, found myself perplexed. A look at the literature didn't help: most discussions of Kant's *Rechtslehre* treat its conception of external freedom as unproblematic.<sup>5</sup> Was external freedom meant to be a kind of freedom of movement, the freedom of a person to move her body as she pleased? Kant *does* tell us, in the *Rechtslehre*, that someone who tries "to drag me away from my resting place" injures my external freedom (MS 6:248). External freedom as freedom of movement would nicely echo the conceptions of freedom around which Hobbes and Locke built their theories of rights and the state—and Kant clearly means to be contributing to the social contract tradition of which these theories are a part. But a conception of freedom as freedom of movement does *not* echo the conception of freedom familiar to most of us from Kant's central practical writings, the *Groundwork of the Metaphysic of Morals* (G) and the *Critique of Practical Reason* (KpV). The freedom familiar to us from these works is a matter of the *will's* freedom from natural determination, not of a body's 'clearance' when it moves toward or away from objects.

The problem is not just that Kant normally predicates freedom of wills and not of bodies. The subjects of which freedom is predicated do vary with

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Merrill, 1970); *Grundlegung zur Metaphysik der Sitten* (G): *Groundwork of the Metaphysic of Morals*, trans. H. J. Paton (New York: Harper & Row, 1964); *Kritik der reinen Vernunft* (A/B): *Critique of Pure Reason*, trans. Paul Guyer and Allan Wood (Cambridge: Cambridge University Press, 2000); *Kritik der praktischen Vernunft* (KpV): *Critique of Practical Reason*, trans. L. W. Beck (New York: Macmillan, 1956); "*Zum ewigen Frieden: Ein philosophischer Entwurf*" (ZeF): "To Perpetual Peace: A Philosophical Sketch," in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett Publishing Company, 1983).

<sup>3</sup> The *Rechtslehre* is the first part of Kant's *Metaphysik der Sitten*, or *Metaphysics of Morals*. The second part is the *Tugendlehre*, or 'Doctrine of Virtue.' The *Rechtslehre* lays out 'juridical' laws, the *Tugendlehre* 'ethical' laws.

<sup>4</sup> Or *Recht*—which may also be translated 'justice' or 'law.' I follow Gregor in using 'Right' with a capital 'R' to indicate translation of the German '*Recht*.' For further discussion of this term, see "Translator's Note on the Text," Immanuel Kant, *Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991) x-xi.

<sup>5</sup> Two examples are Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999) 322-23, and Howard Williams, *Kant's Political Philosophy* (New York: St. Martin's Press, 1983) 57, 69. Paul Guyer, in his "Kantian Foundations for Liberalism," offers a discussion of external freedom that is more extensive than most (Paul Guyer, *Kant on Freedom, Law, and Happiness* (Cambridge: Cambridge University Press, 2000) 237, 239-42)—but it, too, is relatively short and does not find external freedom particularly puzzling.

context: in the third antinomy, for instance, Kant is interested in predicating freedom of causes in general. The problem is that freedom, in every Kantian context, is incompatible with *being an object in nature*, that is, with being a spatio-temporal object of experience. We know this story well in the case of the will.<sup>6</sup> For Kant, the only kind of will truly free from determination by nature is a non-spatio-temporal noumenal will, one that is transcendently free. Kant believes such freedom of the will is required for a meaningful notion of moral choice and for moral responsibility. Whether or not we accept Kant's arguments here, I was nonetheless surprised to find Kant employing a conception of freedom that involved the freedom of spatio-temporal bodies to move.

Perhaps, then, 'freedom of external action' was a mere etymological cognate, having nothing fundamental in common with the freedom of the free Kantian will. There is a venerable tradition of cataloging sorts of Kantian freedom—transcendental, practical, psychological, and so on—and of arguing about the extent of their independence from each other.<sup>7</sup> Perhaps we had here just another quasi-independent sense of 'freedom' to add to the list. But if external freedom was not fundamentally related to the freedom of the noumenal will so central to Kant's moral system, Kant's understanding the *Rechtslehre* as one half of his system of moral philosophy made less sense. Of course, some have argued that Kant's *Rechtslehre* does not properly belong to his moral system, being an essentially prudential doctrine detachable in principle from morality.<sup>8</sup> But this was a depressing conclusion, draining, as it did, much of the interest and originality out of Kant's legal and political thought. At least until shown the definite error of the strategy, I wanted to assume a deep relation, forged by freedom, between Kantian legal, political, and moral theory.

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<sup>6</sup> There is, of course, a sizeable and excellent literature that attempts to 'save' Kant from his own commitment to a non-natural, noumenal will. I do not attempt to decide the success of those efforts here.

<sup>7</sup> Lewis White Beck's famous "Five Concepts of Freedom in Kant" finds empirical (or psychological or practical), moral (or autonomously determined), spontaneous (or arbitrary), transcendental (or freedom as uncaused causality), and postulated (or 'as if') freedom. These of course are all species of freedom of the will. Lewis White Beck, "Five Concepts of Freedom in Kant," J. T. J. Szrednick and Stephen Körner, eds., *Philosophical Analysis and Reconstruction* (Dordrecht: Martius Nijhoff Publishers, 1987) 35-51.

<sup>8</sup> 'Detachability' has traditionally been bolstered by Kant's claim, in his essay, "Perpetual Peace," that "[a]s hard as it may sound, the problem of organizing a nation is solvable even for a people comprised of devils (if only they possess understanding)" (Zef 8:366). For a defense of the claim that Kant's *Rechtslehre* is detachable from his moral theory, see Thomas Pogge, "Is Kant's *Rechtslehre* Comprehensive?" *The Southern Journal of Philosophy* 1997, vol. 36 (supplement) 161-187. Also see Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999) 322-23.

The first task of this paper, accordingly, is to walk us toward what I hope will be a satisfying understanding of external freedom. I will claim that external freedom for Kant is a 'species' of Kantian freedom of the will, and can only be understood as such. The second task is to suggest some implications. The first is political. I argue that external freedom cannot be discerned and indeed has no 'concrete reality' absent a system of juridical law, making it a product, rather than a presupposition, of civil society. The second is metaphysical. I argue that, for Kant, action is conceptually dependent on free will, and that action *qua* action belongs not to the system of nature but to a system of freedom. This suggests a legal and political 'world of freedom' perhaps more extensive than many thinking about Kant imagine. Taken together, these implications forge a link not only between Kant's *Rechtslehre* and his moral theory as a whole, but also between the everyday world in which we live and Kant's 'moral' or 'intelligible' world of freedom.

Let us turn now to the first order of business, namely to the question: what is external freedom?

## II. What Is External Freedom?

### A. The context

Kant introduces external freedom in the opening pages of his *Metaphysics of Morals* (MS). As anyone familiar with Kantian usage will guess, the 'metaphysics' of the title refers not to inquiry into God, the immortal soul, or the free will, the triad that forms for Kant the subject of speculative metaphysics, but rather to inquiry into the set of a priori laws and concepts that fundamentally structure a domain,<sup>9</sup> in this case, the domain of morality.<sup>10</sup> (Think, as an analogy, of Kant's project in the *Metaphysical Foundations of Natural Science* (MAN). His aim there is to 'deduce' the most fundamental laws and

<sup>9</sup> For Kant, the part of any science or systematic doctrine that can be known a priori is 'metaphysical.' Because experience cannot give us God, the immortal soul, or the free will, whatever information we have about them will indeed be metaphysical—as will whatever we know about the laws and concepts that belong to the a priori portions of natural science and of morals. See Kant's descriptions of the task of providing a metaphysics, or set of 'metaphysical first principles,' at, for instance, MS 6:205-6, MS 6:214-17, G 4:388, Axx-xi, and B38.

<sup>10</sup> Kant: "If, therefore, a system of a priori knowledge from concepts alone is called *metaphysics*, a practical philosophy, which has not nature but freedom of choice for its object, will presuppose and require a metaphysics of morals..." (MS 6:216; emphasis in original). On Kant's understanding of the task of providing a 'metaphysics of morals' see Mary Gregor, "Translator's Introduction" (Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1991) 1-2), as well as the introductory paragraphs in her "Kant's Theory of Property," *Review of Metaphysics* 41 (June 1988): 757-787. Allen Wood suggests an evolution in Kant's understanding of the task in his *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999) 193-196, and in "The Final Form of Kant's Practical Philosophy," *The Southern Journal of Philosophy* 1997, vol. 36 (supplement) 1-20.

objects of natural science from a priori sources. These a priors will then explain empirical regularities.)

The domain of morality is, of course, most fundamentally structured by the moral law deduced and defended in Kant's *Groundwork of the Metaphysics of Morals* and *Critique of Practical Reason*. But this supreme law is not the end of the a priori story. Kant's first move in the *Metaphysics of Morals* is to divide moral law—to further specify it—into the a priori systems of juridical and ethical law (MS 6:214). This division is exhaustive, and will give rise to the work's separate *Rechtslehre* and *Tugendlehre* (or Doctrines of Right and Virtue) respectively. The two types of law are distinguished by what they aim to govern and by the incentives they employ (MS 6:214, 6:219-21). Ethical law first and foremost aims at intentions, or the adoption of ends by agents in 'internal acts of the mind' (MS 6:239). For this reason, it cannot employ external incentives, such as coercion, to motivate compliance. It is not clear that coercion *could* make me adopt ends—though it might make me pretend I have. But even if it could, the aim of ethical law is not only to get agents to adopt ends that agree with and foster morality, but to adopt those ends *because* they agree with morality—that is, to adopt morality as an end. But this is inconsistent with motivation by external incentives like coercion.<sup>11</sup> (See e.g., MS 6:214, 6:239, 6:381.) So, ethical law primarily aims at the adoption of ends, and can only employ incentives 'internal' to the autonomous subject. But the situation is different with juridical law. Juridical law aims not at 'internal acts of the mind' (MS 6:239) but at *external* actions. From the point of view of juridical law, all that matters is that the (juridically) right thing happen, whatever the agent's actual reasons for doing it (MS 6:218-221; cf. also MS 6:239). Juridical law therefore *can* and should employ external incentives—in particular, coercive force<sup>12</sup>—to bring about desired actions.

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<sup>11</sup> Kant writes: "No external law-giving can bring about someone's setting an end for himself (because this is an internal act of the mind)" (MS 6:239; see also MS 6:381). Kant may be read here as asserting a matter of fact, namely that external incentives cannot be effective in getting people to *think* in certain ways, because people can always think what they want. Thomas Pogge has argued that if this is what Kant means, Kant has erred. Laws have tried and have often succeeded in using external incentives to get people to adopt new ends, along with new attitudes, religions, political beliefs, etc. We might condemn such laws (at least the more heavy-handed of them), but it does not make sense to argue that they are inherently impossible. (Thomas Pogge, "Is Kant's *Rechtslehre* Comprehensive?" *The Southern Journal of Philosophy* 1997, vol. 36 (supplement) 161-187, pp. 182-183 n14.) For this reason, it seems to me better to read Kant's claim normatively. If the aim of Kant's supreme moral law is to get people to choose autonomously, and if all law must accord with this aim, then it is impossible to set up laws, *consistent with this aim*, that effect choice of ends via external incentives.

<sup>12</sup> Kant writes that juridical law must employ 'aversions' and not 'inclinations,' i.e., must employ coercion, "for it is a lawgiving, which constrains, and not an allurements, which invites" (MS 6:219). (Of course, most contemporary legal systems employ both, relying

More about the workings of coercive law can be found in the *Rechtslehre* itself.<sup>13</sup> Indeed, the *Rechtslehre* lays out and justifies a host of concepts and principles—like guilt, punishment, and desert—that belong precisely to the rational a priori structure of juridical law that follows, for us, from the supreme moral law. There are many others: deed, crime, contract, court, marriage, wage, and so on. They belong to the a priori structure ‘for us’ because they take anthropological information, or ‘matter,’ about human beings into account.<sup>14</sup> External freedom, or freedom in external actions, and the Principle of Right that governs it, are the first or rationally primary concepts and principles of Kant’s *Rechtslehre*.

Let us now turn our attention away from external freedom’s context, and directly to the thing itself. What does Kant say about external freedom? Very little that is direct, and alas, some claims that initially promise clues may instead puzzle. At MS 6:230, for instance, Kant tells us that the system of laws governing external freedom (or system of ‘Right’) has nothing to do with the relation of actions to others’ *needs or wishes*, but only to their *Willkür*, their ‘choice’ or ‘capacity for choice’<sup>15</sup> (MS 6:230). Kant elsewhere tells us that our innate right to external freedom authorizes us to deceive others, as deceiving “does not in itself diminish what is theirs” unless they believe our deception, which would be their fault and not ours (MS 6:238 and 238n). Restricting questions about rights to external freedom to questions about relations between *Willkür* seems a restriction indeed: relations between my actions and your needs, wishes, and actual choices can be extremely knotty. Supposing we sort that out, wouldn’t deception be in any case a classic case of fiddling with another’s choice [*Willkür*] in a way that compromises external freedom? Far from helping to clarify Kant’s conception of external freedom, comments like these can make it even harder to see what external freedom is supposed to look like, or what governing and protecting it might amount to.

So let us try this tack. Kant uses the expression ‘external freedom’ as a shorthand for what he also calls ‘freedom in external actions’ (MS 6:214). We

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not only on criminal and civil penalties, but also on tax incentives and public funds awards to motivate action.)

<sup>13</sup> As well of course as in numerous commentaries—see excellent discussions in those mentioned in note 5 above and throughout.

<sup>14</sup> Just as the system or domain of natural science has both a priori laws and ‘matter’—the stuff structured or organized by its laws—so does morality have both a priori laws and matter. Morality’s matter are the givens of human nature and the human condition, described for Kant in ‘anthropology.’ Kant’s *Anthropology from a Pragmatic Point of View*, trans. Victor Lyle Dowdell (Carbondale and Edwardsville: Southern Illinois University Press, 1978), contains Kant’s own lectures on anthropology, or what we are more likely to think of as psychology and sociology.

<sup>15</sup> *Willkür* is usually translated ‘choice’ or ‘capacity for choice.’ I indicate when ‘choice’ translates ‘*Willkür*’—and otherwise use the English ‘choice’ (as well as ‘will’) flexibly, as context and sense demand.

may begin by unpacking terms. Our first question will therefore be, ‘what is *external action*?’ Our second will be, ‘what is *freedom* in external action?’

### B. What is external action?

What is external action? *Action* is any movement of or change in an actor that is directed toward, and guided by, a goal the actor represents to himself as desirable—that is, action is movement or change that is guided by an actor’s choice or will [*Willkür*].<sup>16</sup> Kant sometimes calls such movement or change itself a ‘use of choice’ [*Gebrauche der Willkür*]. It is worth recalling that, for Kant, every use of *Willkür*, every choosing or willing, sets our bodies in motion.<sup>17</sup> This explains why, in key passages, Kant uses ‘action’ and ‘use of choice’ [*Willkür*] interchangeably (MS 6:214, 6:230-31): action is choice-guided motion.

*External* action, as might be supposed, is opposed to *internal* action. Internal action would include things like efforts of self-control, efforts of attention, efforts of respect and valuation—what we have seen Kant call ‘internal acts of the mind’ (MS 6:239). External actions, in contrast, are directed toward, take place in, and have effects in the ‘external’ spatio-temporal world of physical objects: I move a chair, I use the phone to place an order for some new sheets. External actions are close cousins to *deeds*, which are external actions together with their ‘imputable’ effects—that is, together with the effects that were either intended or would be readily predictable (MS 6:223, 6:227).<sup>18</sup>

Now, to say that external action is the will-guided movement of a body in the spatio-temporal world is to say that will, in action, is *causal*. And indeed, Kant frequently emphasizes the will as a kind of causality (MS 6:211-13; KpV 5:32, 5:47, 5:49; A444/B472-A448/B476). Of course, the precise relation between the causality belonging to will and natural causation remains a matter of much debate.<sup>19</sup> I leave much of this problem aside for now, turn-

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<sup>16</sup> See note 16 on the term ‘*Willkür*.’

<sup>17</sup> Even when we merely *wish*, notes Kant, our hearts pound harder and our blood rushes faster (KU 5:177-178n; see also MS 6:356-357).

<sup>18</sup> There are of course puzzles about imputation—but they need not detain us here. It is enough that we make imputations on a daily basis with a usually confident sense of where to draw the line between effects for which a person can be held responsible and those for which he cannot.

<sup>19</sup> This is so even when the will in question is unfree ‘animal will’ (MS 6:213; A534/B562). Will’s causality looks, in all cases, final or teleological. Consider Kant’s opening description, in the *Metaphysics of Morals*, of the capacity, which, in rational creatures, becomes will:

The *capacity for desire* is the capacity to be by means of one’s representations the cause of the object of those representations. (MS 6:211; emphasis in original)

This capacity is characteristic of *life* in general, Kant writes (MS 6:211). As a form of causality, it certainly looks teleological: its effects are caused by an end. Kant, how-

ing just to the question of how such causal external action is related, by Kant, to *freedom*.

### C. What is freedom in external action?

#### 1. Freedom in the spatio-temporal world

The freedom to which [juridical] laws refer can be only freedom in the *external* use of choice [*Willkür*]... (MS 6:214; emphasis in original)

These are the lines with which Kant introduces freedom in external actions, or external freedom—or, as here, ‘freedom in the external use of choice [*Willkür*].’ They appear immediately after Kant has rehearsed his familiar negative and positive characterizations of freedom of the will as independence from sensible determination and determination by pure reason respectively (MS 6:213-14). The first difficulty has already been mentioned. As well as Kant’s familiar negative and positive characterizations of freedom may apply to a will, how they might apply to external actions is not obvious. A will, for one, is outside space and time. How does Kant move, unflinchingly at that, from freedom of the will to freedom in external, spatio-temporal actions?

The first part of the answer is that *all* external actions, though in space and time, though effective in the natural world (and causal in ways that are consistent with its causal laws), must be regarded, *qua* actions, under a description that takes key terms from a system other than that of mechanistic natural law. In particular, actions can only be understood and individuated as the actions they are by reference to agents’ self-represented ends, that is, to their intentions. If, for example, I move the chair in order to block the door, my movements *can* be described according to natural laws. But if we are to understand what I have *done* (my deed), to understand my *action*, and not just where various things moved and now are in space and time (if we are to understand more than the, so to speak, efficient and material causes of the new furniture situation), we need to know what I intended to do. And knowing what I intended to do involves us in the whole ‘conceptual space’ of intentions, requiring judgments about, e.g., the relevant, plausible, or likely

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ever, does not describe matters this way. Indeed, in “Perpetual Peace” he writes of desire’s “self-seeking inclinations” as forces in “the mechanism of nature” (ZfE 8:366-367); and in the second *Critique*, Kant describes motions “impelled by ideas” as belonging as much to the *mechanism of nature* as those “impelled by matter” (KpV 5:97). For further discussion, see Ernest J. Weinrib, “Law as Idea of Reason,” in Howard Williams, ed., *Essays on Kant’s Political Philosophy* (Chicago: University of Chicago Press, 1992) 15-49, esp. 20-21. See also Allen W. Wood’s discussion of freedom and nature in his, *Kant’s Ethical Thought* (Cambridge: Cambridge University Press, 1999) 178-182, esp. n32 (p. 382).



intentions of others, about their and my own beliefs, and so on. Of course, we *also* need to know physical facts—about locations, alterations, etc. But unless this information is integrated into a story guided by ‘intentions talk,’ it won’t be about *action* proper. For this reason, to describe my movement as action is to describe it in terms of freedom.

How so? Actions as such are dependent—are what they are only, and can be known only—in terms of intentions. This is what I just claimed. Now, for creatures, such as ourselves, who have rational wills, intentions are always freely adopted. Even when we choose heteronomously—when we pursue inclination against the demands of reason, for example—we choose, we adopt our intentions, freely. This is why we hold people responsible for their actions: people freely choose (the intentions that inform) them. So the first thing we need to see in making sense of external actions as ‘free’ is that actions in general belong properly to the explanatory and descriptive context, the system, not of physical events, but of freedom.<sup>20</sup>

Such a system does not, as just noted, *ignore* or *exclude* information about physical events as such. But it organizes some of this information (and hence parses physical events) according to laws and concepts other than those of natural science. Now, a metaphysics of morals, of the sort Kant is offering here, is precisely an account of the basic system of freedom. The account begins with the fact of free will, and is elaborated by applying freedom’s fundamental laws and basic concepts to anthropological givens. Take as given, for instance, the fact that, *qua* living beings, we pursue satisfaction of desire (MS 6:211), and take as given the present capacities and limitations of our bodies, our technologies, and the finite globe on which we live (MS 6:352). Organize our external actions—taking account of these and other relevant givens—according to a priori laws and concepts, and you will generate a *Rechtslehre*, a systematic doctrine of the concepts related to, and the laws of freedom governing, external actions.<sup>21</sup> (Add a *Tugendlehre*, generated in a similar way but focused on organizing the adoption of ends, and you will generate the *Metaphysics of Morals* in its entirety.)

<sup>20</sup> A passage from the *Metaphysics of Morals* offers another vocabulary for making this point. “In speaking of laws of duty (not laws of nature) and, among these, of laws for men’s external relations with one another, we consider ourselves in a moral (intelligible) world...” Kant adds, “(on earth)” (MS 6:449). Rather than saying action belongs to a system of freedom, we might alternately say that it belongs to a system of the moral or intelligible world.

<sup>21</sup> Kant opens the *Metaphysics of Morals* with a discussion, “On the Relation of the Capacities of the Human Mind to Moral Laws,” that reviews freedom of the will (MS 6:211–214); he proceeds to divide the laws of freedom into juridical and ethical (MS 6:214); and he introduces a long inventory of “Preliminary Concepts of the Metaphysics of Morals” (MS 6:221–228), including obligation, imperative, law, merit, blame, reward, punishment, crime, fault, person, thing (as opposed to person), judge, and many others. These and related ideas, including ‘action,’ belong to a system of freedom, and not to a natural scientific description of the world.

What you also generate is an elaborated and refined set of terms for describing and explaining some spatio-temporal events in terms of freedom. Describing and explaining some such events according to the terms of a system of freedom does not, it seems to me, involve any suspect maneuvers. Our concern, recall, was that ‘freedom in external action’ was an illegal predication of a noumenal attribute to a phenomenal substance. But what we see here is that *qua* actions, events are not strictly phenomenal, that is, they are *actions* only under a description in terms of freedom. Only under such a description can an event be identified as action in general (intention-guided movement), and as the action it is in particular (moving the chair, placing the phone order). The transcendently free will may be outside of space and time—that is another story—but actions are spatio-temporal events identified, described, and explained in terms of freedom—in terms, that is, other than those given by natural law.

This raises the next question. If all actions are already part of a system of freedom, what is involved in predicating freedom of external action? What will ‘freedom in external actions’ mean?

## 2. *Freedom in external actions*

In writing about external freedom, Kant has something more in mind than the fact that human action belongs to an (explanatory, descriptive) system of freedom. Freedom in external action, here, is something that can be *compromised*. Kant writes that “anyone can be [externally] free as long as I do not impair his freedom by my *external action*” (MS 6:231; emphasis in original). Protecting external freedom is, indeed, the proper aim of juridical law. Our sole innate right, Kant tells us, is to external freedom (MS 6:237). Kant’s supreme Principle of Right demands actions able to coexist with the external freedom of others (MS 6:231). We have seen that external action itself belongs to the ‘conceptual space’ of freedom. But what is involved in conceiving some external actions as free and others not? What is, as Kant uses the term, ‘external freedom’?

Under the heading, “There Is Only One Innate Right,” Kant tells us that:

*Freedom* (independence from being compelled by another’s choice [*Willkür*]), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man [*Mensch*] by virtue of his humanity. (MS 6:237; emphasis in original)<sup>22</sup>

Context demands that we understand the freedom in question as external freedom. External freedom, then, is “independence from being compelled by

<sup>22</sup> I have altered Gregor’s translation here, preferring ‘compelled by’ to ‘constrained by.’ The German is, “*Freiheit (Unabhängigkeit von eines Anderen nöthigender Willkür)...*” (MS 6:237).

another's choice [*Willkür*]" (MS 6:237). To be externally free is to act as one wills to act, free from compulsion by others.

The first thing to notice is that the conception of external freedom Kant is offering is bound intimately to *rightfulness*. External freedom is something to which I always, *prima facie*, have a right. But the point is not just this. Further along in the passage just quoted, Kant tells us that the "principle of innate freedom" authorizes each to claim "innate equality" and "the quality of being his own master" (and so, we may suppose, to refuse slavery or servitude by birth) (MS 6:237-38). In making an *a priori* claim that all people are equal, or are their own masters, one asserts not a matter of empirical fact, but a matter of right. Moreover, empirical questions of whether a given person is being treated as equal to others, or is being treated as his own master, are not—at least not as Kant understands them—questions of natural fact, but questions about empirical juridical relationships in which one actually stands *vis-à-vis* others. Likewise, when I claim a right to external freedom I do not lay claim to a 'natural' state of independence from the wills of others, but assert the rightfulness of a certain juridical relationship to them. Further, the question about whether a given set of external actions *are* free or not must, likewise, be understood as a question about the juridical relationships in which the actor and the actions stand to others.

This is all worth noticing because it heads off a temptation into which ordinary usage may draw us, namely the temptation to think of external freedom as a physical state of affairs. But for Kant, external freedom is always a relation to the wills of others. For this reason, only *action*, and not physical obstacles, can impair external freedom: physical objects, mountains, oceans, no matter how high or wide, do not impair freedom of action properly speaking (and do not deprive us of something rightful), even if they set parameters on physical movement. If it makes sense, for Kant, to speak of chains or prison walls impairing someone's external freedom it does so only insofar as the chains or walls are imposed by another. Kantian external freedom is properly attributed (or denied) actions on the basis of relations between wills, that is, on the basis of relations between 'objects' that belong to the system of freedom, and not on relations between physical objects or forces (see MS 6:230 and 6:237).

Kant also tells us that only some relations between acting wills are relevant to judgments about whether a given external action is free or impaired. At MS 6:230, Kant writes that only "reciprocal relation[s] of choice [*Willkür*]" are of interest to Right—and I take this to imply that only these may affect external freedom. The restriction excludes as 'impairers' those actions that impede not another's ability to realize an object of her choice [*Willkür*], but rather her ability to satisfy a need or wish. Needing and wishing differ from choosing in that choosing, for Kant, is marked by an aware-

ness of one's power to attain the object (MS 6:213)<sup>23</sup>—which awareness is absent in wishing and merely needing. If I refuse to share the very nice take-out I just picked up with my roommate, I impair his ability to satisfy a wish or need (to have some of what I've got), but I do not impair his external freedom.<sup>24</sup> (I think restriction to 'reciprocal relations of choice [*Willkür*]' must also exclude actions that incidentally, in the manner of a natural event, impede another's ability to realize an object of choice. I intend to park in that spot, and do so, thwarting your intent to do the same. But so long as thwarting you was no part of my aim, my parking where I do does not interfere with your external freedom, any more than does the presence of all the already-parked cars.)<sup>25</sup>

These restrictions may clash with some ordinary usage, according to which anything that prevents me from doing what I want impairs my freedom. But I think they make sense enough if we keep clearly in mind that, for Kant, external freedom is something to which we always, *prima facie*, have a right. My ability to do what I want to may be impaired by many things—including greedy roommates and parked cars—but not all of these things can be said to impair my rightful freedom. Indeed, ordinary usage permits us to say that neither deprives me of freedom *simpliciter*. And think of it: if we *could* say greed and parked cars deprived us of freedom, then we could say practically *anything* did—the laws of gravity, the fact of not being able to be in two places at once, of competing desires. We may curse the greedy taker-outer, or the swift car-parker, but it would create more problems than it would solve—for ordinary usage and for a theory of freedom in external action—to claim that either had deprived us of freedom.

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<sup>23</sup> Kant here writes: "Insofar as [the capacity for doing or refraining from doing as one pleases] is joined with one's consciousness of the capacity to bring about its object by one's action it is called the *capacity for choice* [*Willkür*]; if it is not joined with this consciousness its act is called a *wish*." At MS 6:356, Kant gives "Would to God that man were still alive!" as an example of "intense but still consciously futile longings," or wishes. Now, since peoples' assessments of what they have the power to attain are sometimes inaccurate, we must allow that a subjective sense of capacity is enough to turn wish into choice: there is, after all, a real sense in which a person with, to our eyes, unattainable goals may nonetheless genuinely intend (or choose, or will) them.

<sup>24</sup> Nonetheless, depending on the details, my refusal probably violates the ethical duty to beneficence, that is, my duty to help others achieve their ends.

<sup>25</sup> Of course, where there is consistent competition for resources—whether parking spots, law school slots, or arable land—Kant thinks we must (and we often do) set up rules of fair play, intended to maximally coordinate and protect everyone's external freedom. Once such rules are in place, violations may be said to constitute impairments of external freedom in general, whether a specific injured party can be identified or not. Here, however, I am after something prior to and simpler than a case of rule-governed competition, namely, a case in which my action unintentionally affects your ability to carry out a plan of yours. I suggest that we interpret Kant's restriction to 'reciprocal relations of choice' in a way that permits such actions. This has the advantage of blocking the suggestion that, since every one of my actions potentially interferes with another action by another person, no action can ever be regarded as in the clear.

By restricting attention to ‘reciprocal relations of choice [*Willkür*],’ Kant makes clear that the external actions capable of interfering with freedom, and also vulnerable to freedom-impairment themselves, are pursuits proper, or what we might call *initiatives*. This in fact resolves our initial perplexity about wishes and needs and deception. When wishes or needs go unfulfilled, indeed even when their fulfillment is blocked, no external freedom is compromised. Wishing, recall, differs from willing in that only the willing is joined with an awareness of one’s capacity to bring about the object of one’s will—only willing, in other words, is part of an initiative, a pursuit proper.<sup>26</sup> It only makes sense, Kant is saying, to think external freedom can be interfered with when there is a pursuit, an initiative, underway. And deception? In arguing that deception generally is not in the province of Right, Kant—as in the wish/need cases—is drawing a line between the external freedom impairing, and the otherwise no good, the ‘merely’ mean, meddling, or otherwise unethical.<sup>27</sup> Of course, there are cases when deception crosses the line: when information is carefully formulated to seem authoritative, when its author occupies a role generally granted authority, etc., a lie may truly, Kant tells us, impair freedom (and, depending on the details, will be called ‘fraud,’ ‘slander,’ ‘libel,’ etc.) (see MS 6:238n). But generally, a lie is not sufficient by itself to derail external action.

Kant’s restriction to ‘reciprocal relations of choice [*Willkür*],’ may cause another sort of alarm. Restricting attention to actions that *aim* to thwart may blind us to important but unintended ‘impairings’ of others’ freedom. Excluding wish and need from consideration seems to sanction hoarding, protect the assets of the already rich and powerful, and generally sustain the status quo.<sup>28</sup> Any theory of Right or justice that lacks the resources to identify and condemn structural injustices—which are often not intended by identifiable actors and which are often sustained by ‘fair’ individual choices and one-to-one exchanges—is defective. For now, let me just acknowledge the concern. A response to it is offered later on in the paper.

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<sup>26</sup> See note 24 above.

<sup>27</sup> As Kant suggests in the MS 6:238 passage, we do expect people to make up their own minds about what to believe, and don’t generally regard lies as the province of Right—telling a customer that a terrible jacket is very cute on her may be lying, but few of us would regard it as properly actionable. Of course, lying in all cases violates ethical duty, and the evil of some ethical violations can be more profound, and more damaging, than that of some juridical violations. But the harm will not lie in the violation being an impairment of external freedom.

<sup>28</sup> The problem is this. People make whatever actual choices they make about, for instance, employment and education against the background of, say, existing labor and education practice and policy. People may wish for, or need, better jobs and better education—but they cannot *choose* them if they are not available for choosing. Any scheme that evaluates practices and policies in terms of consistency with actual choices therefore immunizes unjust, choice-limiting practices and policies from criticism.

Where does the main account stand now? External actions belong to—may be identified and described only in terms of—a system of freedom. Beyond this, external actions are free where they are neither intentionally forced nor impeded by the actions of others—where, that is, they are “independen[t] from being compelled by another’s choice [*Willkür*]” (MS 6:237). I wrote earlier that external freedom was a ‘species’ of freedom of the will. What I meant may become clear here. Freedom of the will is itself a species, a specification, of the more general concept, free causality. Any causality that is not externally determined is free. When we ‘specify’ this concept by applying it to will, we get free will, free choices and free ‘inner’ acts. When we further specify the concept of free causality by applying it to the intended effects of will (actions), we get external freedom. Human beings have, for Kant, an ‘inborn’ right to such freedom. The next part of the story has to do with the details of that right.

#### *D. What is a right to freedom in external action?*

##### 1. Why a right to external freedom?

First of all, we need to ask the very basic question of why juridical law should be interested in protecting external freedom, in protecting spatio-temporal pursuits of ends. What ground is there for the protection of such pursuits? The question may seem odd, but is important, as it goes to whether Kant’s *Rechtslehre* gains lifeblood, so to speak, from his moral theory, or whether it is in principle detachable. The argument for detachability claims that the laws presented in the *Rechtslehre* are essentially prudentially justified: in protecting external freedom, juridical law protects us in the pursuit of inclinations and we should endorse them for this reason. If juridical law is fundamentally prudential, it is hard to see its essential connection to Kantian morality. If such an essential connection is missing, it starts to seem more plausible that Kant’s legal and political theory, and with it his conception of external freedom, are add-ons fundamentally disconnected from his core moral principles and conception of freedom of the will.

There is, however, a connection. By protecting pursuits against interference, juridical law does, to be sure, protect our attempts to realize objects of desire. But it does more than this: in protecting us in the pursuit of whatever we have freely chosen, it protects free willing itself. Willing, recall, always sets our bodies in motion toward the realization of the object of our choice. For Kant, free (autonomous) willing is the only unconditioned, absolute good (G 4:393). This claim may of course be construed in different ways. But no one may deny that the moral demand to protect and promote this good (free willing) entails protecting and promoting it in its external efforts. Whatever stymied that motion, whatever interfered with those efforts, can rightly be

construed as interfering directly with Kantian freedom.<sup>29</sup> For this reason, such interference is a moral offense. Kantian pure practical reason thus underwrites a right to external freedom without recourse to prudential considerations. Reason underwrites juridical law's protection of external action against interference in order to protect freedom itself, externalized.<sup>30</sup>

## 2. To what do we have a right when we have a right to external freedom?

External freedom is external action that proceeds unimpaired by others. The Principle of Right, expressed as an imperative, says: "So act externally that the free use of your choice [*Willkür*] can coexist with the freedom of everyone in accordance with a universal law" (MS 6:231). Any action that can so coexist *is* (juridically) right for Kant (MS 6:230), and we may therefore claim a juridical right (MS 6:237) to proceed in it unimpaired. The question we face here is this: how are we to know whether a given action can coexist with everyone's freedom or not (and hence whether or not it is right-ful)?

The question is complicated by the fact that, for Kant, an action will be considered right if it *interferes with an interference* with external freedom. An action that interferes with an interference protects freedom overall, amounting, in the grand scheme of things, to non-interference. (As Kant writes, "[r]esistance that counteracts the hindering of an effect promotes this effect and is consistent with it" (MS 6:231).) For this reason, our innate right to external freedom comes with an authorization to use coercion against those who interfere with us (MS 6:231). (This authorization eventually underlies our right to compel others into civil society (MS 6:256, 6:312) as well as the legitimacy of coercive enforcement by the state (MS 6:312).)

Indeed, Kant tells us that Right may be understood as a system—a grand scheme—of coercion against any action that is not compatible with an overall coordination or harmonization of freedom in external actions. ("[O]ne can locate the concept of Right," Kant writes, "directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone" (MS 6:231).)<sup>31</sup> If this is our picture of Right—a realm of external actions, coordi-

<sup>29</sup> See also Kant's argument for property rights, where he claims that were reason to deny us the use of a usable object, it would (irrationally) contradict freedom. Reason therefore instead demands the conditions under which usable objects may be used—for Kant, a system of exclusive property rights (MS 6:246). The relevant idea here is that reason's interest in facilitating our pursuits is an interest in freedom itself.

<sup>30</sup> For an extended discussion of this issue, see Paul Guyer, "Kant's Deductions of the Principles of Right," in Mark Timmons, ed., *Kant's Metaphysics of Morals: Interpretive Essays* (Oxford: Oxford University Press, 2001). This excellent paper unfortunately came to my attention too late for me to take full advantage of it here.

<sup>31</sup> For this reason, Right can be 'presented' by analogy with "the possibility of bodies moving freely under the law of the *equality of action and reaction*" (MS 6:232; emphasis in original).

nated to push against each other in a way that maximally preserves freedom—we need some good way of identifying which actions are consistent with ‘overall’ freedom and which are not. Only these exercises of external freedom are ones to which we can claim rights. How are we to know whether a given action can coexist with everyone’s freedom or not? How are we to know when we are ‘within our rights’?

An example may serve to make the problem clearer. Suppose I am at the beach to fly a kite. This action sounds like the sort that could coexist with the freedom of everyone under universal law. But suppose there are so many sunbathers that in order for me to fly a kite without hurting anyone, they need to move. Are they impairing my external freedom? Would my kite-flying impair theirs? Why or why not?

I suspect many of us share the hunch that if I forced the sunbathers to move, or flew my kite injuriously, I would not be in the right — that I could indeed be rightly convicted of a juridical wrong. Let us suppose that Kant would agree with this hunch. What allows him to make the judgment that I impair external freedom, and that my actions are therefore the prohibited ones? Would it be that my action forces the sunbathers physically? Kant does suggest that control of one’s body is something to which an innate right to external freedom extends (MS 6:247-48).<sup>32</sup> But, after all, their presence is forcing *my* body to move a way it doesn’t want to: why should their lying there be protected when it interferes with my running around? And in any case, as the possibility of freedom-preserving coercion makes clear, force itself is not necessarily an infringement of freedom. A more Kantian basis for a hunch that I cannot rightfully move or trample the sunbathers is that we generally acknowledge a kind of ‘first-there’ (or ‘finder’s keepers’) convention, according to which the already-positioned sunbather has some informal right to stay put. If I had been there first, I would be the one whose will to move (or lay) my body could not rightfully be interfered with.

Now, a ‘first-there’ convention may work to determine who can assert a right to external freedom here. According to Kant, something like it also works in acquisition of land cases (MS 6:258-262). But a ‘first-there’ rule does not determine rights in general. It doesn’t matter how many hours before a performance I stake out a front-row seat: if I don’t have the right ticket, I must move, and I may claim no infringement of my external freedom. The same applies if I am sunbathing in an area designated for kite-flying: no matter how early in the morning I bring my sunbathing gear to the kite-flying area, I can claim no impairment of my external freedom when the kite-flyers insist that I pick up and go.

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<sup>32</sup> Kant: “[S]omeone who tried...to wrest the apple from my hand or to drag me away from my resting place would indeed wrong me with regard to what is *internally* mine (freedom)” (MS 6:247-48; emphasis in original).



The suggestion, then, is this. In order to determine the rightfulness of a given action, we need to locate it in a system of external actions, and inspect its harmony with that system as a whole. We can't do this in the abstract, that is, we can't do this without turning to the rules and practices that govern and inform action in actual local settings. In our beach case, a good judgment about what would impair whose actions will (let's assume) refer to a 'first-there' rule—in other cases, good judgment would refer to other rules and conventions. The point is that although we can abstractly describe rightful exercises of external freedom—those that can coexist with the freedom of everybody else—our ability to decide whether actual actions stand in rightful relation to other exercises of external freedom, our ability to decide whether proposed pursuits contribute to or detract from the overall freedom of the system, requires recourse to guidelines, to practical rules, that go beyond the abstract imperative to protect external freedom.

Now, what gives something like a first-there rule authority, when it has authority, to rule on which actions are rightful? A first-there rule assumes equal claim to external freedom abstractly defined (MS 6:237). A first-there rule takes into account the anthropological information that land (or beach space) is useful in the pursuit of all sorts of ends (MS 6:267, 6:250), that there is a limited amount of it (MS 6:352), and that, as Kant writes, "having an external object under my control" is "the subjective condition of its being possible for me to use it" (MS 6:268). It then says that because someone who begins pursuing ends on a previously unoccupied piece of land (or beach) is exercising external freedom in a way that (initially) interferes with no one, any (subsequent) disruption of his pursuit is a violation of Right.<sup>33</sup> Such a rule has authority because it solves a particular kind of spatial allocation problem in a way that accords with the demands of Right; it 'latches onto' the actual world, and gives us a way to make rationally warranted judgments about the actual world, by taking anthropological information into account. Other rationally warranted rules, other solutions to other allocation and coordination problems sanctioned by the Principle of Justice, must similarly begin with a commitment to equal rights to external freedom and then take relevant anthropological information into account.

What kind of anthropological information? Information about common empirical ends, about the kinds of moves that impede their pursuit and the resources that assist in them, and eventually about the legal practices and

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<sup>33</sup> Notice that a 'first-there' rule also accommodates our psychological tendency to regard things we are currently using or have recently used as proper to the field of our rightful external freedom. Locke accommodated this tendency by offering a labor theory of property, according to which one acquires property rights by mixing one's labor, and hence part of oneself, with land. Kant of course rejects labor theories which, in Kant's view, make rights a matter of physical relations between people and things, rather than of 'rational' or 'moral' relations between people and people. See MS 6:254, 6:269-70.

institutions that most effectively protect current and foreseeable exercises of external freedom. Of course, such information is not only empirical, but is also changeable: the ends it is even possible for me to freely make my own depend on my historical and social milieu; moves and resources that will impede or assist depend on existing technologies as well as things like informal social practices; effective legal practices and institutions will be responsive to all these and other locally and historically conditioned factors. But this is no objection—indeed, Kant’s Principle of Right is meant to be responsive to the conditions of real life at the same time that it is uncompromisingly committed to each person’s right to pursue freely-chosen ends as she sees fit.

We can thus see how actual, determinant judgments about the rightfulness of action require rules that constitute applications of the Principle of Right (and so ultimately of Kant’s moral law) to empirical information. It is perhaps easiest to formulate a basic set of rules that properly embody the Principle of Right by positing a hypothetical ‘initial’ state of human society, and making hypothetical judgments about ‘initial’ actions. We grant, to such a hypothetical state, the very general anthropological fact that people *have* ends, many of which are pursued via the body in one way or another; this is enough to identify ‘initial’ violations of external freedom. If we can affirm, for instance, that moving a body so that it is always in another’s way constitutes an initial violation of external freedom, we can endorse a general rule against ‘blocking.’ Judgment then proceeds, endorsing those rules—and eventually those laws and institutions—that generally support action in the pursuit of ends in general.

Indeed, if we proceed in this way, we will be constructing a *Rechtslehre*, working as architects of a rational legal system designed for human beings as we know them. To a basic structure of initial prohibitions against initial interferences with external freedom (as initially conceived), we add more anthropological information, say about the use of things in pursuing ends and about what ensures effective use.<sup>34</sup> These additions generate more complex conceptions of the ‘contours’ of rightful external freedom and more complex rules for its protection. As this elaboration proceeds, the analogy between a system of Right and a system of “bodies moving freely under the law of the *equality of action and reaction*” (MS 6:232; emphasis in original) grows increasingly metaphorical—my having the right theater ticket rightfully ‘pushes’ against your physical presence in a front-row seat, labor law pushes against management, my passport, 401(k), automobile registration, etc., all

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<sup>34</sup> For instance, we add the information that “All men...[have] by nature the *will* to use [the earth], which, because the choice [*Willkür*] of one is unavoidably opposed by nature to that of another, would do away with any use of it” in the absence of a system of property (MS 6:267).

'push' in myriad ways against myriad possible actions on the parts of people and institutions. Building a rational system to regulate pushes—building from 'simple' impairments of external freedom to laws governing property, contract, family, the state and eventually international right—is indeed just what Kant does in the *Rechtslehre*. (And it is indeed precisely thus that, as per our earlier discussion of the task of providing a metaphysics of morals, anthropological information is 'matter' that is 'formed' or 'informed' by a priori law, in this case, the Principle of Right.)

We are now in a position to see how a Kantian *Rechtslehre* would address questions of structural injustice. A procedure for deriving positive law such as that just described does not begin with the empirical 'now' full of existing institutions, practices, and agents shaped by them, but with a skeletal, hypothetical human situation, one that, if it is drawn correctly, will take into account things we know about all kinds of human needs, wishes, and longings. It therefore need not, in the name of protecting external freedom, invest 'today's' actual choices with authority or immunize actions that sustain a status quo against scrutiny. If I were sketching an initial hypothetical situation, I would include, for instance, the fact of a near universal desire for education and health, as well as the fact that neither of these goods is very efficiently or fairly distributed by a free market. I would take into account things we know about how different family and labor structures affect opportunities to pursue freely-set ends. I would recognize that only foreign policy responsive to democratically enacted international law stands a chance of preserving 'everybody's freedom.' These and other facts would inform my *Rechtslehre*.

Of course, not everyone will agree with me about 'the facts,' about what the relevant anthropological information is, and about its implications. People are of many minds.<sup>35</sup> Are exclusive property rights *the sole* subjective condition of use, or might we modify the starting point of Kant's theory of property? To take another case, we now generally regard as false Kant's anthropological claim that those without independent wealth cannot think independently enough to cast meaningful votes (MS 6:314), and have altered our election laws accordingly. If the form of a system of Right comes from reason, and its matter from anthropology, the determinate rights we discern will depend in large part on how we discern and integrate the relevant anthropological facts. And the justness of the overall structure we devise will depend on how apt our discerning and integrating is.

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<sup>35</sup> I think one cannot overstate (at least in the company of philosophers) how much debate about questions of Right will take place at the anthropological level. It is to my mind one of the oddest features of John Rawls's *A Theory of Justice* that he grants deliberators in the original position knowledge of "the general facts about human society," drawn from political science, economics, sociology, and psychology, as if there *were* such uncontroversial general facts. (John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) 137.)

Recall our task: discern, in a given case, whether an action could coexist with the freedom of everyone, that is, whether it was rightful. The result here is that, in real cases, telling whether an action can coexist with everybody's external freedom requires recourse to rules devised to preserve external freedom, as human beings are liable to exercise it, overall. Indeed, in all but the initial cases, determining whether *this* action is consistent with external freedom requires that we build or have built a *Rechtslehre*, that is, that we have applied the Principle of Right to anthropological facts, and developed guidelines for protecting external freedom in common, determinate situations.<sup>36</sup> This is not only an interesting result in its own right, but explains Kant's otherwise quite insane, or at least insanely pedantic, comment at MS 6:216. Kant here claims that we have a *duty to have a metaphysics*. But, in fact, he is right: in order to have a theory of right (and of virtue) that actually attaches to the world, we must have a metaphysics of morals, complete with *Rechtslehre* and *Tugendlehre*. Far from being the crazed utterance of a philosopher gone around the bend, the claim that we have a duty to have a metaphysics of morals makes perfect sense.

So where are we now? Our look at Kant's conception of external freedom has shown, first, that external freedom is freedom of action, where actions are events in the spatio-temporal world that are describable in terms of, and hence belong properly to, a system of freedom. It has shown that, beyond this, an action exhibits external freedom if it is not interfered with or impaired by others. Finally, it has shown that discerning determinate rights to external freedom will depend on the elaboration of an appropriate *Rechtslehre*. We are now in a position to turn to some implications.

### III. Politics, Metaphysics, and External Freedom

The first set of implications of Kant's conception of external freedom have to do with his conception of politics, the second with the metaphysics of the everyday world.

#### A. Politics

My first suggestion is this. Determinate judgment about whether an action is externally free or not is dependent on an elaborated legal system. We might start by noting that external freedom, like all Kantian freedom, is fundamentally defined in terms of law. Recall that for Kant, freedom of the will only made sense, could only be made intelligible, as determination of the will by a law of reason (the moral law). Freedom of the will might be negatively char-

<sup>36</sup> A view quite like this is suggested by Allen W. Wood, but he connects it to an argument that "juridical standards of permissibility are not moral standards," with which I disagree for reasons suggested above. Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999) 322-23.

acterized as independence from determination by natural law, but getting a positive handle on freedom required that we identify the law it followed. This was because, as a form of causality, freedom must be described as following a law to make sense at all. To conceive freedom as fundamentally *lawless* or arbitrary, an ‘anyway I want’ capacity, is not, for Kant, to conceive it at all, but to relegate it to the class of the inconceivable.<sup>37</sup> Analogously, external freedom may be negatively characterized as the absence of impairments to external action. But such a characterization is not useful if we are trying to see what external freedom *is*, what its contours and extent, so to speak, are like. For this, we need to positively characterize external freedom—and for this we need the Principle of Right and eventually the positive juridical law derived in a legitimate *Rechtslehre*.<sup>38</sup>

Now, if the contours and extent of external freedom depend fundamentally on evolved and evolving positive law, on a set of laws about property and contract and family and the state and so on, then so do the contents of any *right* to external freedom. The claim is not merely that, prior to civil society, there is no effective *enforcement* of rights to external freedom. It is also that, in the absence of positive laws (and a judiciary to interpret them), the ‘extension’ of protectable external freedom is indeterminate: external freedom is a coherent but abstract idea, the contours of its rightful reach still unspecified. Rights to external freedom are thus much like rights to property. We can have the abstract *idea* of rights to property—of rights to control and make use of things—before we have the conditions required for assigning actual property rights. The conditions required for property’s reality include rules governing acquisition and transfer, as well as the presence of a judiciary to decide disputes. Because these presuppose civil society, Kant allows only for ‘proto’-property, which he calls “provisional,” in a state of nature (MS 6:255-257).

Civil society not only determines but also ‘enlarges’ the contours of a right to external freedom. Because, Kant writes, I have no reason to imagine myself secure against attack in the state of nature, I do not infringe my neighbor’s right to external freedom if I make a preemptive strike against him (MS 6:307-8). My abstract right to external freedom thus only includes a

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<sup>37</sup> And indeed, Kant repeatedly writes that two things, both of which depend on arbitrary freedom, are inconceivable or incomprehensible (if everyday): evil, and the will’s capacity to ‘go either way’ when faced with two possible determining grounds. Nonetheless, the criminal who freely chooses to violate the external freedom of another is held responsible—all we need to know is that people *are* free, even if we cannot understand how they do what they do with the freedom they have.

<sup>38</sup> Notice that freedom of the will and external freedom characterized negatively (as absence of determination by nature and absence of impairment respectively) can both be ‘used’ for ill or evil. In their positive, lawful characterizations, each is cast in a light that shows them as inherently good. Managing this is no more or less tricky in the case of external freedom than in the case of freedom of the will.

determinate right to personal security in the context of civil society (MS 6:306), leaving the range of action to which I can claim anything like a state-of-nature right fairly nasty, brutish, and short.

Civil society, then, gives rights to external freedom determinate content at the same time that it secures and enlarges them. This is the origin of our duty to enter civil society: only in civil society can each “enjoy” his abstract right to external freedom (MS 6:306). But this makes Kant’s conception of law and politics quite different from that of his precursors. In employing a conception of rights to external freedom the contents of which are determined and enlarged by civil society, Kant breaks sharply with traditional social contract theory. According to such theory, as inspired by, say, Hobbes or Locke, people in a state of nature have ‘natural’ rights to external freedom.<sup>39</sup> In contracting to grant a government authority, with powers to make, apply, and enforce laws, traditional social contract theory has people agree to give up (some portion of) their natural rights to freedom. Civil society, and government authority, are *legitimated* by the fact that life in civil society is preferable to life in a state of nature, whatever loss of freedom it involves. What our discussion here makes clear is just how profoundly Kant turns this tradition on its head.<sup>40</sup> For Kant, civil society is legitimated not because we prefer to impose collective constraint on our free-all-too-free selves, but because external freedom is something that can be fully articulated and realized only in civil society. Freedom, on this view, is not a natural substance or power inhering in individual actors, in need of protection against freedom-ravenous neighbors and government. Freedom is rather something to be collectively negotiated and achieved. Only following such an achievement may rights to freedom be meaningfully and effectively invoked against neighbors, governments, and whomever else.

### B. *Metaphysics*

Kant’s conception of external freedom also has significance for metaphysics—not, now, in Kant’s sense of ‘metaphysics’ as inquiry into a priori systems, but in the contemporary philosophical sense of inquiry into modes of being. Kant’s chief contribution to metaphysics, in this contemporary

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<sup>39</sup> And external freedom, on these views, is conceived physicalistically. For Hobbes, a “Free-Man” is one who “in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to,” where hindering can be effected by “externall Impediments of motion” (Thomas Hobbes, *Leviathan* (1651), ed. Richard Tuck (Cambridge: Cambridge University Press, 1991) 145-146 (chap. XXI).) For Locke, likewise, a man is free when he moves as he wants to; as an example of someone who is unfree, because he moves otherwise than as he wants to, Locke gives “a man falling into the water, (a bridge breaking under him).” (John Locke, *An Essay Concerning Human Understanding* (1689), ed. Kenneth Winkler (Indianapolis: Hackett Publishing Co., 1996) 95-96.)

<sup>40</sup> Rousseau’s influence here of course warrants mention.

sense, has been his doctrine of transcendental idealism and the attendant distinction between the noumenal and phenomenal. There is of course no consensus on the merit of this contribution; many regard it an out-and-out confusion, if not a fatal liability. A clear picture of Kantian external freedom can, I think, help us to see how Kant thought a doctrine like transcendental idealism might fit with the world as we know it. In particular, external freedom shows us how extensive and everyday our traffic with the 'noumenal' is, and how inadequate strictly phenomenal—that is, natural scientific—descriptions and explanations are to our experience.

The first thing to notice is external freedom's peculiar relationship to space and time. On the one hand, external freedom is not itself physical. As we have seen, external freedom cannot be properly understood in terms of free-swinging limbs or wide open fields, in terms of physical clearance; it must rather be understood in terms of relations between actions undertaken by free actors. At the same time, such actions necessarily take advantage, so to speak, of spatio-temporal relations between physical objects and events. If I am to interfere with your actions, I must employ spatio-temporal movements of various kinds. I don't interfere just by thinking bad thoughts. Moreover, I can't be said to interfere if you are not yourself moving in some way. *Non-interference* likewise requires certain kinds of timing, and spacing, on my part.

When we decide whether given external actions are free or impaired, our judgments therefore 'integrate' information couched in terms of freedom and of nature. Many everyday actions likewise involve countless decisions and judgments that 'integrate' concepts and principles themselves proper to the separate Kantian systems of freedom and nature. The ordinary activity of, for instance, driving my car to school requires that I employ terms belonging to a system of freedom: I make countless attributions of intentionality to other drivers; I act with confidence in my own ability to slow and turn my car 'at will'; I change lanes, signal, and accelerate, in part, on the basis of my representations of (traffic) laws. At the same time, I employ the terms of nature, relying on knowledge of spatial locations, of the natural conditions affecting other cars and the roads in general (weather, speed) and of my own car's mechanics (clutch, brake, steering) in guiding my actions.

Whenever I perform such 'integrations,' I understand significant portions of the world of objects and events in space and time under descriptions not available under the terms provided by mechanistic natural law alone. Indeed, Kant's *Rechtslehre* gives us an entire world of objects and events that are what they are in virtue not only of their material and efficient causes, but of a system of external freedom, in virtue of legal and political codes and practices. Events like marrying, criminal sentencing, and purchasing, objects like

marriage licenses, electric chairs, and coins, all are what they are in virtue of concepts, rules and principles that belong to a system of external freedom.<sup>41</sup>

Such objects and events, and the concepts and principles describing them, are exceedingly familiar and everyday, and are as routinely maneuvered and negotiated as objects and events described by natural science. (If not more so: most of us know how to handle money (more or less), but few of us know our way around subatomic particles.)<sup>42</sup> But if this is true, then we have a lot more to do, in our everyday lives, with things that are (essentially if not exclusively) noumenal, or intelligible, than common accounts of the noumenal as a fundamentally mysterious 'beyond' suggest.<sup>43</sup>

I would hazard to guess, further, that the objects I mention—marriage licenses, electric chairs, and coins—could not exist at all for Kant if there were no freedom. Not only could they not exist as objects with juridical standing, that is, as the objects they essentially are, they could not even, insofar as they are artifacts created under conditions of freedom, by free designers for use by free agents, exist as physical objects. Making good on such a claim, however, is a task for another paper.

Whatever position we take on the question of physical existence, it is clear that external freedom, which goes 'beyond' nature, is involved in our most everyday lives. It is also clear that we need an account of the relationship between freedom and nature, between the Kantian noumenal and phenomenal, that can make sense of the integration of terms of nature and freedom required by concepts such as external freedom. In conclusion here, let me just say that I hope to have persuasively presented an understanding of Kantian external freedom as, in an infelicitous but telling turn of phrase, spatio-temporal pursuit of freely-set ends free of spatio-temporal interference by others with free wills. Attending to such a thing, I hope also to have suggested, may take us far, in politics and metaphysics both.

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<sup>41</sup> Kant's long inventory of "Preliminary Concepts of the Metaphysics of Morals" (MS 6:221-228), includes obligation, imperative, law, merit, blame, reward, punishment, crime, fault, person, thing (as opposed to person), judge, and many others. These and related concepts, including 'action,' belong to a system of freedom, and not, as we have seen, to a natural scientific description of the world.

<sup>42</sup> Thanks to Lanier Anderson for this example.

<sup>43</sup> It may be helpful to recall that what makes something noumenal or intelligible is that it cannot be known through appearances. Any anthropologist will tell you that recovered artifacts indeed cannot be known through appearances alone, that is, their phenomenal, natural features do not tell the story of what the object, as artifact, *is*. One needs to 'think' artifacts in another way, in terms of use and cultural context, for instance, in order to grasp them.