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Master's Thesis of Sol Kim

Kant's Justification of Welfare

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Abstract

In the recent wake of Kant's political philosophy, the topic of whether Kant's political philosophy can consistently embrace or derive at least basic social welfare provisions has been a matter of contention. Many have, in both the late 20th century and also in the last few years, argued that it cannot. Others have claimed that it can. Among them, some interpretations, frequently delegated by Ripstein (2009), —I will call them compensation justifications—are better received than others. They have been acclaimed in two ways: one, hermeneutically, for how compatible it is with Kant's system of philosophy; two, more generally, for how it can bring insights to the modern welfare debate where freedom and welfare are often posed against each other.

I believe that these compensation justifications (frequently represented by Ripstein) suffer from a consequential problem that renders their arguments not as Kantian as they claim to be nor fruitful for the welfare debate. The problem, at its core, is that these interpretations arbitrarily limit the kind of dependence eligible for receiving public welfare. I also believe that there is a possible alternative to these interpretations that would better them in both ways. The alternative, at its core, is that the structure of the civil condition presumes the necessity of a public safety measure against complete dependence. In this paper, I provide the context of the debate, raise the problem against the compensation justifications, and propose an alternative interpretation for Kant's welfare.

Keyword : Kant, public welfare, Weinrib, Ripstein, civil condition, original contract

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Introduction

Can Kant's political philosophy coherently entail at least basic public welfare? This is the question of Kantian¹ welfare, for which the answer is both elusive and significant. It is significant because (a) of hermeneutics, for Kant himself explicitly endorses public welfare in his major text; (b) of the feasibility of Kantian philosophy in general, as any theory of justice that cannot support minimum welfare becomes significantly less compelling than those that can; (c) of the insight the answer can provide to the modern welfare debate where freedom and welfare are often irreconcilable. Relatedly, the answer is elusive because as apparently impassable the rift between (complete) freedom and welfare is, Kant's political philosophy postulates only freedom as its fundamental normative value, seemingly leaving no normative source to justify welfare.

It is because of these reasons that, in the recent wake of Kant's political philosophy, the question of Kantian welfare has received a good deal of attention. There have been various attempts to answer the question, and while none of them—both negative and positive answers—has had the general consensus, an array of positive answers by Ripstein, Weinrib, Varden, Guyer and many others, frequently represented by Ripstein (2009)², has been acclaimed the most. They have been called the most “genuinely Kantian”³ answers for their coherence with Kant's philosophy, and have occasionally been deemed feasible as a general theory of welfare⁴ as well. I will call them ‘compensation-justifications,’ CJ for short.

The aim of this paper is twofold. First, I will show that, contrary to popular belief, CJ is incoherent with Kant's philosophy. A corollary to this would be that CJ is not only unacceptable as a Kantian theory but also as a welfare theory. Second, I will contend that there is a better way to answer the Kantian question than CJ.

Chapter 1. Context

Metaphysics of Morals is the doctrinal part of the *Critique of Practical Reason* and *Groundwork of the Metaphysics of Morals*.⁵ By ‘doctrinal,’ Kant means “application of the principles established in [the critique and groundwork].”⁶ The established principle is that of the categorical imperative—to act only on maxims that are universally lawful—and the project of the entire *MM* is to specify the ways in which the categorical imperative is applied to its objects (human beings as finite, corporeal rational beings). What the categorical imperative orders are duties, and as duties are divided into duties towards oneself and towards others (duties of virtue and of right, respectively), *MM* is divided into *Doctrine of Virtue* and *Doctrine of Right*. *Doctrine of Right*, therefore, writes how the

¹ ‘Kantian’ in this paper refers to Kant's, not to that which is based on Kant's philosophy.

² Hasan (2018) chooses to name the similar attempts “Toronto-Kantianism”; Davies (2020) chooses to classify them under similar categories; Sorin (2014) as well.

³ Sorin (2014), p.1.

⁴ An example of endorsing Ripstein's construal of Kant's *DR* and applying it to other cases in real life is: Allais (2015).

⁵ Kant (1998) *Groundwork of the Metaphysics of Morals*, 4:387-8. References to Kant's works are to the Prussian Academy pagination appearing in the margins; Kant (1996) *Metaphysics of Morals (Cambridge Texts in the History of Philosophy)*, 6:205 and editor's footnote 1 of 6:205. (Hereafter references to the *Doctrine of Right* are by academy pagination only); Kant (2002) *Critique of the Power of Judgment*. Ed. & trans. by Paul Guyer, Cambridge University Press, 5:170.

⁶ 6:205 fn.1 (editor's footnote).

categorical imperative (i.e. the moral law) is applied to human beings in terms of their duties towards other human beings.

It is during the second half of *DR* that Kant explicitly supports public welfare. According to Kant, the government is “authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. [...] [T]he state [...] [has the right to] contribute what is theirs (the wealthy’s) to maintaining their fellow citizens.”⁷ Kant also claims that the way for this contribution should be coercive taxation, and it should be taxation for all those who “live.” The kind of welfare Kant textually confirms here is that which satisfies most of the requisites for it to be considered as an acceptable minimum public welfare for the modern society: Kant’s welfare is (a) need-based, which means that the only qualification for the recipient of welfare is that, apart from the person being a citizen, the person is in dire need, and (b) funded by universal and legal taxation, which means that every capable citizen must contribute to providing welfare.

Kant’s rationale for justifying public welfare is that such a public welfare follows naturally from what he has already developed in *DR*. Specifically, *DR* starts with *Private Right*, in which Kant deals with duties towards other persons only as private individual entities; then, Kant argues that these duties entail duties towards others as part of one universal public entity, and discusses these latter duties under the title *Public Right*. This one universal public entity is that which Kant calls “the civil union” (the ideal state). *Public Right* starts with his development of the notion of the civil union and leads to the “General Remark [...] That Follow from the Nature of the Civil Union,”⁸ which is where Kant discusses specific empirical situations and how the notion of the civil union is applied to them.⁹ His endorsement of public welfare appears in the third subsection (C) of General Remark without any new argument; it is evident in its placement and in its demonstration that Kant thinks public welfare is a natural conclusion of what he has developed prior to it.

This has confused a few. Several have claimed that not only Kant’s notion of civil union but his entire philosophy is insufficient to entail what Kant writes in 6:325-6.¹⁰ Some argued that Kant’s civil union is sufficient and have presented their own understanding of *DR* in support. This is the debate surrounding Kantian welfare. As mentioned, this paper is concerned with the (often) most acclaimed group of answers among the latter side. In order to discuss and argue against their answers, it is necessary that I first provide the relevant understanding of Kant’s *DR* for context—which is what I aim to do for the remainder of this first section.

1.1. The Concept of Right

According to Kant, the concept of *right* is “a pure concept that still looks to practice (application to cases that come up in experience)”¹¹. What is *right* (*Recht*) is that which the moral law orders human beings (rational and corporeal beings¹²) to *act* in regards to *other* humans.

⁷ 6:326.

⁸ 6:318.

⁹ 6:205.

¹⁰ Murphy (1994, p.124): “it is by no means clear that this view [Kant’s welfare] is consistent with his general theory”; Humboldt (1969); Hayek (1976); Davies (2020).

¹¹ 6:205.

¹² Only rational beings can be held accountable; the concept of right is the concept of holding the subject accountable for its actions. See Höffe (2013) p.119 and Kant 6:222-3; 6:236; 6:239.

Two points. One, the pureness comes from the *a priori* knowledge of the moral law and the “looking to practice” comes from the fact that because what is *right* cannot be explained without its objects who are empirical beings (human beings), it is necessary to consider certain anthropological facts in order to explain *right*. These facts, however, cannot be any facts: they have to be universal invariant facts of the human condition¹³, for human beings are objects of *right* only as corporeal rational beings and not as someone from a particular culture or class or a time period. They have to be facts that are true for every human being in virtue of their being a corporeal rational being and not in virtue of their other factors. For example, the fact that all human beings have physical bodies whose existence is necessary for the exercise of their rationality (and hence their freedom) is an invariant human condition due to the corporeality of human beings, and is therefore the kind of anthropological fact necessary in explaining their right to their own physical bodies.¹⁴ The fact that human nature is violent and prone to violating others’ freedom without a powerful government¹⁵ is an irrelevant fact to *right*, as it is (if it is a fact) a fact irrelevant to human beings’ corporeal rationality.

Moreover, there is an important distinction between that which makes *right* morally obligatory and that which fills out the content of the concept of *right*: the former is without any empirical basis while the latter includes the above-mentioned anthropological facts. As the moral law (the categorical imperative) is purely the product of practical reason and with no empirical fact, the normative source of *right* is purely rational and completely non-empirical. Thus, if some nonhuman but corporeally rational alien appears, or if something of the human condition changes, the content of the concept of *right* will change as the concept’s application conditions change, but the moral obligation behind it (i.e. that which makes right morally obligatory) will not.

The second point is that right is only concerned with how one human’s action *affects* other humans; therefore, all that which does not affect others (for example, the intention of an action) are not in the realm of right. Kant writes: “The concept of right [...] has to do, *first*, only with **the external and indeed practical relation** of one person to another, insofar as their actions, as deeds [(imputable actions)] can **have (direct or indirect) influence** on another.”¹⁶

What constitutes this *influence*? *Right* is only concerned with the relation between humans’ *choices* and how each choice influences (affects) one another’s. The reason for this is definitional. The moral law is the universal law of freedom; that is, its orders are only about freedom. Freedom, to Kant, is only proved as the causal power of a rational being being able to determine one’s own choices based on Reason.¹⁷ Rational beings are capable of making their own choices, and it is because in their making they can resist their inclinations and self-determine to be rational that they can be free. In other words, only rational beings are capable of being free because they are capable of making their own choices. The universal law of freedom, applied to human beings, orders only that which is related to the humans’ freedom, which is their *choices*. Therefore, the universal law of freedom applied to the external relations between human beings (namely, *right*) orders only about the external relations between their choices.

Everything else of human beings—their needs and wishes, for example—are irrelevant to *right* as they are not those which are governed by the universal law of freedom. Nobody *wrongs*

¹³ Höffe (2013) says: *DR*’s anthropological facts necessary to explain *right* include facts about “the unavoidable social relationships that result from the invariant conditions of human being.” (120)

¹⁴ Höffe (2013), p.118.

¹⁵ For example, Hobbes.

¹⁶ 6:230; boldface mine.

¹⁷ 6:221.

another for not being able to fulfill others' needs and wishes. Needs and wishes are indistinguishable in relation to *right* as they are equally irrelevant. Kant writes: "[S]econd, [the concept of right] does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the other's *choice*."¹⁸

It is corollary to this that the concerned relations between choices are only the relations between what makes these choices free—that is, their self-determination of rational beings. *Right* is only concerned with the relations between what makes humans' choices free—that is, the humans' self-determination about their choices. Kant calls this self-determination structure of a human choice the "form" of human choice, and the content of individual choice the "matter." *Right* is thus only concerned with the relations between forms of choices and not their matter. He says: "Third, in this reciprocal relation of choice no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the *form* in the relation of choice on the part of both, insofar as choice is regarded merely as *free*, and whether the action of one can be united with the freedom of the other in accordance with a universal law."¹⁹

To summarize: *right* is the sum of what is ordered by the moral law to the external relations between the forms of human choices. The moral law, namely the universal law of freedom, orders the relations be in accordance with the law in question. *Right*, therefore, is the sum of conditions under which the relations between human choices (their form of it) are in accordance with the universal law of freedom. Kant writes: "Right is therefore the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom."²⁰

1.2. Public Right and the Obligation to form the Civil Union

All that is entailed from the concept of *right* defined as such is that: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."²¹ This is what Kant calls "The Universal Principle of Right"²² (henceforth UPR).

UPR entails that there is only one innate right to every human being. Every human being, in virtue of their humanity i.e. their rationality, is capable of being free. Against other rational beings and their freedom, every human being, as rational beings, also has the right to their own freedom. This is the innate right to freedom. As *right* is only concerned with the forms of choices between humans, the innate right to freedom is also defined to be the right to not have one's form of choices be violated. In other words, every human being has the innate right to not have one's self-determining of their choices be violated by other rational beings. Kant writes: "*Freedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in

¹⁸ 6:230.

¹⁹ 6:230.

²⁰ 6:230.

²¹ 6:230.

²² 6:230.

accordance with a universal law, is the only original right belonging to every man by virtue of his humanity.”²³

As *right* is the product of the moral law’s application to empirical human beings, their invariant human condition must be considered. One aspect of it is that humans coexist in a closed external world in which there are external objects, and that humans must make use of these external objects to sustain their own physical bodies. With this condition considered, the question of what is *right* in regards to human possession of external objects appears, to which Kant answers: suppose that there exists an external object of which no possession is rightful. That is, a *res nullius* is possible. If so, it follows that a person will commit a wrong if he possesses that object. This contradicts with UPR as the person’s possession does not violate any human being’s freedom. The UPR’s truth is an *a priori* knowledge, i.e. knowledge purely from Practical Reason. Therefore, Practical Reason orders that the premise is wrong—there can be no *res nullius*. In other words, Practical Reason orders that every external object must be possible to be possessed by humans. This is what Kant calls the “Postulate of Practical Reason with Regards to Rights” (henceforth PPR): “It is possible for me to have any external object of my choice as mine, that is, a maxim by which, if it were to become a law, an object of choice would *in itself* (objectively) have to *belong to no one* (*res nullius*) is contrary to rights.”²⁴

PPR says that every external object can rightfully be mine or yours, which means that objects that are not in my current physical possessions can also be claimed to be rightfully mine. This, combined with the human condition that humans coexist in a closed world, entails that everyone is obligated to enter the civil union.

To explain: because every human is equally capable to be free, every human’s innate right to freedom authorizes every human’s innate equality. This means that every human has the right to not be bound by others any more than she binds others.²⁵ A person having a *right* to possess an object means that everyone else *wrongs* him if they use that object without his consent. A *right* to possessing an object therefore also includes the *right* to exclude everyone else from using it. Because of everyone’s innate equality, a person can exclude everyone else from using an object only if he also is excluded from using their objects. In other words, rightful possession of objects is possible only if everyone can rightfully possess their objects in the same way as everyone else. As *right* is synonymous with the authorization to use coercion,²⁶ rightful possession of objects is possible only if everyone is authorized to coerce everyone else to refrain from using everyone’s possessions. This coercion is not something that can be executed by a private person, however, as he himself must also be coerced, and it is not something that can be executed by a third party as well, as if they do, they are binding those who do not bind them. The only possible subject authorized to coerce everyone is everyone altogether as one omnilateral will. Plus, because this omnilateral will must be authorized to coerce everyone, it must be a powerful will; that is, everyone must authorize the will to coerce everyone, which is what makes the will powerful. This omnilateral powerful will is what Kant calls the “civil union” or the “civil condition.”

The *right* to possessing objects is possible only if everyone submits themselves to the omnilateral powerful will, that is, if everyone enters the civil union altogether. Such a *right* must be possible, according to Practical Reason. Therefore, Practical Reason orders that everyone enter the civil union altogether; namely, everyone is morally obligated to enter the civil union altogether. It is

²³ 6:237.

²⁴ 6:246.

²⁵ 6:237.

²⁶ 6:231-2.

corollary to this that humans are also obligated to coerce others to enter the civil union with them, as the unilateral will is formed only when everyone is a part of it.²⁷

A point of clarification: exactly what is the domain of persons who must form the civil union together? The need for an unilateral powerful will exists *only* because of the human condition that everyone coexists in a closed world where there exists a possibility for someone to use someone else's possessions. If the human condition were that one human exists on Earth and another exists on Mars without any possibility of transportation between them, there would be no possibility of either of them violating each others' choices in regards to their use of objects. Therefore, each of them would rightfully possess objects from respective planets without needing an unilateral powerful will to assure that the other will refrain from using theirs. What this means is that the civil union is formed only in response to the possibility of conflict between different persons choosing to possess the same object; that is, the civil union must be formed by everyone who is in the realm of possible conflict. The upper limit to this realm would be all rational beings that coexist in the closed external world (since beings that do not coexist cannot be in conflict with them about their objects) and the smaller boundaries will be left undetermined, left to be decided and varied based on further empirical facts such as technological advancements (e.g. inventions of transportation devices between continents). As long as it is possible for a person to choose to use another's object, they are in the realm of conflict together.²⁸

This is the *civil union*, i.e. the civil condition, or the rightful condition (as it is the only condition in which human beings can execute their freedom rightfully). The condition in which there is no civil union is "the state of nature."²⁹ The civil union is formed by every human being in realms of possible conflict submitting their own individual will to one unilateral powerful will. Kant calls this act of submission the "Original Contract."³⁰

What constitutes this submission of individual will? The civil union is formed only if every participant submits their *entire* external freedom to be under the governance of the unilateral will. This is because property rights demand universal, comprehensive exclusion of others' choices; if there are some whose freedom is partly allowed to be lawless, then others' property rights are still left unprotected from their lawless choices of usage. Also, the civil union is formed only if every participant is governed only by law that is made by themselves and themselves altogether; because if a third party is involved in making of the law, he coerces the participants of the civil union without being coerced himself, which is against their innate equality; if only one or several of the participants make the law, then the others are being bound by them more than they bind the lawmakers. All of this can be summarized as: all participants of the original contract submit their entire individual external freedom in return for lawful freedom (which is "obeying no other law than that to which he has given his consent"³¹).

Kant calls both the civil union and the empirical application of it a "state," and all participants of the original contract that form the state "citizens."³² Kant considers the civil union the ideal state

²⁷ 6:256.

²⁸ "If it must be possible, in terms of rights, to have an external object as one's own, the subject must also be permitted to constrain everyone else with whom he comes into conflict about whether an external object is his or another's to enter along with him into a civil constitution." (6:256)

²⁹ 6:242.

³⁰ 6:315.

³¹ 6:314.

³² 6:314.

(“the state in idea”) to which all empirical states should emulate as much as possible.³³ The legitimacy of the empirical state can only be thought of through the idea of the original contract: if the state can be thought of as being formed via the original contract, then the state can be thought of as legitimate.³⁴

One point to clarify here is that the original contract is not an actual, empirical contract: it is rather a rational notion posited to think of the formation of the civil union in terms of what each participant must rationally do during it. The participants of the contract are all rational beings whose human condition is considered only to the extent mentioned above (that they are corporeal beings who are in the realm of possible conflict in regards to choosing to use the same external object); their act of entering the contract itself is also a rational act, as the entrance is what they are morally (i.e. rationally) obligated to do. Therefore, in order for the empirical state to be thought of as legitimate, the state cannot coerce its citizens to do something to which the citizens, considered as corporeal rational human beings coexisting in a closed world, would *not* have agreed. The state can, however, coerce its citizens to do something to which they have not *actually* agreed—that is, to which the citizens, considered as actual, empirical human beings, agreed. The Kantian ideal state is not a democratic state.³⁵

So far I have provided a brief summary of the relevant parts of *DR*. The Compensation Justifications would all agree with this understanding of *DR* without much dispute. Each of them base their arguments on this understanding of Kant with some additional premises of their own. In the next section, I will introduce three prominent CJ arguments and argue against them.

Chapter 2. Compensation Justifications

There are a number of answers to the Kantian welfare question that can be grouped under the label “Compensation Justifications,” including Ripstein, Weinrib, Guyer, Varden, Walla, and Hasan. In this paper, I will focus on the first three as they demonstrate their problem most clearly.

2.1. Guyer

According to Guyer, The “minimum standard for the rational acceptability”³⁶ of any state is that it satisfies minimum *equability*³⁷: that it provides all of its citizens with “an opportunity to maintain [their] own existence at least equivalent to that which would have been enjoyed in [the state of nature].”³⁸ In other words, it is irrational for any person to accept a state that provides them with less opportunity to maintain themselves than what they would have had in the state of nature. Moreover, Guyer claims that in the state of nature, because there is no private property, every object is available for everyone to use. (Everyone has an “undivided common possession of all the land and all that is upon it.”³⁹) He argues that this availability implies that every person at least has the opportunity to maintain their own basic sustenance in the state of nature. Combined with the first claim of

³³ 6:313.

³⁴ 6:315.

³⁵ Davies (2020), p.5.

³⁶ Guyer, p.254.

³⁷ Guyer, p.256.

³⁸ Guyer, p.254.

³⁹ Guyer, p.258.

minimum equability, Guyer argues that: it is irrational for a person to accept a state that does not provide at least that to which is equivalent to what he would have had in the state of nature, which includes the opportunity to maintain one's basic sustenance. Therefore, it is irrational for a person to accept a state that does not provide every citizen at least the opportunity to maintain their basic sustenance. A state that does provide such an opportunity is a state with public welfare. In other words, it is irrational for a person to accept a state that does not have public welfare.

If a state is something that its citizens cannot rationally accept, Guyer argues, then it is not the rightful condition. According to Guyer, in order for the rightful condition to be the omnilateral will that it is, everyone must defer to everyone else's property rights without exception. In order for people to defer as such, property rights should be something rationally acceptable. If not, they are not deferring to others' property rights but are rather coerced, as they are refraining from using others' objects without rationally agreeing to such refraining. Thus, a rightful condition presumes universal deference, which presumes universal rational acceptance.⁴⁰ Therefore, Guyer says, in order for the state to be the rightful condition, it must be something that is rationally acceptable to all of its citizens, which is a state that includes public welfare.

Guyer's claim can be paraphrased into saying that in order for the people to participate in the original contract, the contract must be that which is rationally acceptable to all of its participants. Universal rational acceptance as the necessary condition for the original contract is trivially true; as mentioned in the above section, the original contract itself is a notion "posited to think of the formation of the civil union in terms of what each participant must rationally do during it." By definition, the original contract is every participant's rational agreement. What is not trivial are Guyer's additional characterizations of rational acceptability as equability and of the state of nature as somewhere everyone at least has the opportunity to sustain themselves without depending on others.

2.2. Weinrib

According to Weinrib, in the state of nature, "[The] combination of the inviolability of the body plus the availability to everyone of everything means that no one's survival is dependent on anyone else's actions."⁴¹ In the state of nature, the only right everyone has is the right to freedom. This right to freedom combined with the anthropological fact that the continued existence of one's physical body is necessary for him to exercise his freedom entails the right to inviolability of one's physical body. If someone violates my body, they *wrong* me because they violate the necessary condition to the exercise of my freedom, which is in turn violating my freedom. Plus, in the state of nature, because there is no conclusive property right, there are no external objects from which everyone is excluded from using—hence, everything is available to use for everyone.

The absence of exclusion in the state of nature empirically⁴² allows every human to make use of objects necessary for their survival. The inviolability of the body makes it the case that what every human makes use of in order to sustain their bodies is inviolable by others. (If someone violates my bodily holding of an object, they are violating my body.) These, Weinrib claims, lead to the conclusion that in the state of nature, everyone is independent from others' actions in at least maintaining their own body for the exercising of their own freedom.

⁴⁰ Davies, pp.10-1.

⁴¹ Weinrib (2003) p.815.

⁴² Because it needs an additional empirical fact that there are enough available objects to use for everyone.

This non-dependence in the state of nature is true in virtue of every human's innate right to freedom. Weinrib writes that "[this] inevitable non-dependence [...] characterizes innate right."⁴³ It is based on this characterization of innate right that he argues the following.

- (1) The original contract cannot produce that which violates the participant's innate right to freedom.
- (2) Because every human being has non-dependence (on others for their survival) in virtue of their innate right, the state where there is possible dependence for its citizens violates their innate right.
- (3) According to 1 and 2, the original contract cannot produce the state that has possible dependence for its citizens. The civil union cannot be that which includes possible dependence.
- (4) Property right enforcement combined with the empirical world of finite usable objects necessarily entails possible dependence. For, property rights exclude others from using certain objects, and as long as the number of objects are limited, there is a possibility of some being excluded by all usable objects and thus having to depend on others for their sustenance.
- (5) The only solution for the civil union to both enforce property rights and not include possible dependence is for it to include public welfare. The civil union must enforce property rights. Therefore, it must enforce public welfare as well.

2.3. Ripstein

Three points. One, the duty of rightful honor is a duty of right towards oneself; it is a duty to make oneself to others an end and not a mere means.⁴⁴ This is a duty to every rational being in virtue of their freedom. Freedom is in itself an end; every rational being, because of their capacity to be free, is obligated to treat their own self with an attitude that fits the honor the rational self deserves. The rational self is free and can therefore not be a mere means, and his freedom creates a duty to the very person who has such a freedom in himself to treat it with the way it deserves. Because the duty of rightful honor is a duty of right and hence a duty about others, the duty obligates the subject to make herself, to others, an end and not a mere means.

Two, according to Ripstein, freedom (as he is discussing the matter of *right*, this freedom is external freedom, that is, freedom explained considering the external relationships between persons) is the ability to set and pursue one's own purposes, i.e. the ability to be the sovereign of one's own choices. Human beings, in virtue of their rationality, are innately free. To Ripstein, this means that human beings are, in virtue of their innate freedom, entitled to be the master of their own choices.⁴⁵ Ripstein calls this ability to set and pursue one's own choices "purposiveness,"⁴⁶ and calls human beings using this ability of theirs "exercising their purposiveness" or, as such purposiveness is granted in virtue of the personality within each human, "using their persons."⁴⁷

⁴³ Weinrib (2003), *ibid.*

⁴⁴ 6:236.

⁴⁵ Ripstein, p.4; Kant, 6:237.

⁴⁶ Ripstein, pp.33-4.

⁴⁷ Ripstein, p.279.

Three, according to Ripstein, if another person has complete discretion over your biological survival, you cannot use your own person, i.e. you cannot exercise your freedom. He says that, in this case, your “entitlement to set and pursue purposes [are] entirely subject to the choice of another”⁴⁸; you “are completely beholden to the choice of another.”⁴⁹ Your control over your own exercise of freedom is not yours but theirs (who have discretion over your survival), which is equivalent to your being a mere means to them and not an end. This is because, according to Ripstein, having control over one’s own biological survival is necessary for him to exercise his freedom. He makes a “spatial formulation”⁵⁰ of this point: “The person who is entirely dependent on the grace of another to occupy space, or to use physical objects, is not merely lacking in self-determination, or somehow on the losing end of the bargain that makes up the social contract, having perhaps given up more than he gained. [...] Instead, the person who can only occupy space with the permission of others has no capacity to set and pursue his own purposes. As such, the person in need is like a slave [to others].”⁵¹ This spatial formulation stands on the anthropological fact that no human being can use his freedom without physically existing, and no human can physically exist without occupying a piece of land.

Ripstein presumes that you are dependent on another for your survival if you do not have usable physical objects and they do. This presumes the anthropological fact that humans need physical objects to sustain themselves. He also presumes that the lack of physical objects to use is analogous to the lack of land to occupy. So far, Ripstein’s point is that: usable physical objects are as necessary as land is necessary for a human being to exercise his freedom; this necessity implies that if you have none of either of them (usable physical objects or occupiable land), you cannot exercise your freedom. It also implies that if others have control over either of them, others have control over your exercise of your freedom, which is equivalent to you being a mere means to them and not an end, i.e. a slave. In summary, if you are completely at others’ discretion for your biological survival, you cannot exercise your freedom, and they have control over the exercise of your freedom.

This third point is debatable. For, it can be said that: even if one is completely at others’ discretion for his biological survival, he can still exercise his freedom by choosing not to be dependent on others. The third point (or, henceforth “Ripstein’s premise”) is too strong because a human being’s agency is not fully compromised even when their biological survival is completely at others’ discretion. Davies⁵², similarly, contends that Ripstein’s premise is wrong because in order for you to be in complete control of my agency, you should have control of that which is *currently* necessary for the existence of my agency, such as the land on which I am existing. Any control less than that, including the control of one’s *continued* physical existence, is not enough for you to be in control of my agency. As long as the land on which I currently exist is not taken away from me, I can *currently* choose independently from your choices to either die or be continuously dependent on you. Your hold on me that my *future* existence depends on your choices does not affect my *current* ability to choose by myself.

The controversy at its core rests at the disparity between continued biological survival and concurrent biological existence in terms of their necessity for humans’ being able to exercise their freedom. Although Ripstein hinges on the analogy of land, as Davies points out, the analogy does not seem to work; concurrent physical existence and continued physical existence are different, and it seems like without the latter, a human can still exercise their freedom as long as they have the former.

⁴⁸ Ripstein, p.279.

⁴⁹ Ripstein, p.279.

⁵⁰ Ripstein, pp.279-280.

⁵¹ Ripstein, p.280.

⁵² Davies (2020), pp.8-9.

If this criticism stands, then Ripstein's entire argument fails, for (as I will explain later) he argues for public welfare based on the fact that those who are completely dependent on others for their ongoing survival are akin to slaves, as they cannot exercise their freedom, and that slave contracts are incoherent. Nonetheless, it is not clear what Ripstein would say in response to such a criticism, for he does not acknowledge such a disparity.

Specifically, he presumes without much explanation that in order for a person to be able to use their person, he should be able to use his own person to secure his ongoing purposiveness. "[A] person's entitlement to *use her own person* is subject to the choice of another [...] [if] your right to *use your own person to secure your own person's continued purposiveness* depends on another," because "your ongoing purposiveness just is your person."⁵³ In other words, according to Ripstein, a person using his own person necessarily includes him using his own person to secure his ongoing purposiveness. If a person is completely dependent on another for his biological survival, he cannot secure his ongoing physical existence by himself, which means (because of his corporeality) he cannot secure his ongoing purposiveness by himself. Ripstein thinks that your not being able to secure your ongoing purposiveness by yourself i.e. by using your own person is equivalent to your not being able to use your own person at all.

He says: "[...] the juridical significance of biological survival is that it consists in a person's keeping control of his or own person. Death, as such, is of no direct significance to right; your own person, like everything else, is subject to natural deterioration. But if another person is entitled to determine whether you will maintain control of your own person, you are subject to that person's choice in exactly the same way as the person who cannot occupy space except through the grace of another. Each is entirely subject to the choice of another. [...] Poverty, as Kant conceives it, is systematic: a person cannot use his or her own body, or even so much as occupy space, without the permission of another. The problem is not that some particular purpose depends on the choices of others, but that *the pursuit of any purpose* does. If *all purposiveness depends on the grace of others*, the dependent person is in the juridical position of a slave or serf. [...] The moral outrage of slavery is the way in which one person is subject to the choice of another; not only that what the slave must do, but that *what he or she may do, and whether he or she may even continue to exist*, is solely at the discretion of the master."⁵⁴

Evidently, Ripstein thinks biological survival is as necessary as space occupation for a person to even be able to use his person *at all* (be able to exercise his freedom at all) because he thinks the independent securing of one's own *ongoing* purposiveness is necessary for one to exercise his freedom at *all*. He, however, does not give an explanation as to why it is necessary, which is the explanation that is in need in order to successfully answer Davies' criticism and save Ripstein's entire argument. Ripstein's argument is lacking in such an aspect.

I believe there is a way to argue for Ripstein's premise, which I will show in what follows. (I do not have evidence to think if this is how Ripstein would answer Davies.) Ripstein's premise, briefly, is that a person can use his own person only if he can use his person to secure his own ongoing purposiveness. (The biological survival comes in with the anthropological premise that a person's purposiveness cannot exist without his physical existence.) I contend that this premise is tenable. The key is that (a) purposes (goals) are future-oriented and that (b) using the same person is the unifying principle of a person through time. To explain: a human being exercises her freedom when she sets and pursues her own purposes, says Ripstein; accepting such a characterization, it can be said that a

⁵³ Ripstein, p.279; italics mine.

⁵⁴ Ripstein, pp.280-1; italics mine.

human being exercises her freedom when she currently decides what her future person will have. This future person has to be someone that she, currently, identifies with her current person, for if she does not, she is not setting and pursuing her own goals—she is setting a goal for something else.

What would be the unifying principle of the current self and the future self? Say, every physical molecule of my current self is changed in my future self, through a medical procedure. It is still possible for the present self to set goals for that future self and think of the goal as entirely self-determined. In such a case, my current self thinks of my future self as *me* because of the identical purposiveness in both of us—that is, of the (numerically) identical ability to self-determine my own choices. Ripstein writes similarly: “As a being entitled to set and pursue your own purposes, you decide what your continuing body will do. That is why your deeds can be imputed to you even after every molecule in your body has changed, and even if you have forgotten what you did. The unity of your agency is created by the normative principle that makes your actions imputable to you.”⁵⁵ The normative principle would be that it is my person that decides my own choices, no matter the time my body is in.

Based on these points, a person sets and pursues goals only if he simultaneously affirms the future existence of his own future personality, that is, of his own future purposiveness. This affirmation can be thought of as a tacit goal included in every goal a person sets and pursues by themselves; a person setting and pursuing a goal is necessarily simultaneously pursuing a goal of affirming his own future purposiveness. It is conceptually impossible for a person to be pursuing a goal but not pursuing one’s own purposiveness at least until the time of the goal-realization. A person using his own person to affirm his own future purposiveness is him using his own person to secure his own ongoing purposiveness. Thus, Ripstein’s premise that a person can use his own person only if he can use his person to secure his own ongoing purposiveness stands.

To the proposed criticism, the answer based on this explanation would be as follows. Say, as the critic said, that you can still decide to not be dependent on others even when your biological survival is completely at others’ mercy. Say, as Davies says, that as long as you can occupy space and you currently have your limbs to use, you can still set and pursue goals using what you have (your limbs). According to this explanation, Ripstein can say: you can set and pursue goals that only ends before the time *t* when your biological survival is actually, truly completely at others’ mercy. If you can currently use your limbs and set goals, your survival is not truly at others’ mercy; you still are presuming that you will be alive to keep pursuing and maybe even realize that goal in the future. Your ability to use your person turns on the fact that you are, no matter how soon you will not be, still able to secure your own ongoing purposiveness using your own person. In other words, if others have complete discretion over your biological survival, it means that you cannot independently secure your ongoing purposiveness *every* moment of your life. This entails that you cannot use your own person *at all*, at every moment, because there is no single moment where you can independently secure your ongoing purposiveness, the securing of which is necessary for you to set and pursue goals.

Think of a specific situation where you have no resources whatsoever to sustain yourself, and others have the resources. If you think you can decide to not ask them for help and simply just exist, you are still assuming that you will be able to stay alive by yourself at least until the time in the future (moment *t*) until which you currently think you will be able to simply exist without help. Maybe you will be able to; then, you are not completely dependent on others for your survival; you still have had some resources (that which sustains your body until that moment *t*) to sustain yourself. If you cannot

⁵⁵ Ripstein, p.273.

stay alive by yourself for a single moment in the future, then you cannot set any goals concerning yourself, including the goal to stay alive without help.

Employing these three points, Ripstein argues:

- (1) All participants of the original contract cannot agree irrationally. Therefore, all participants of the original contract cannot agree to that which violates the duty of rightful honor.
- (2) If a human is completely dependent on others for his survival, his ability to exercise freedom is controlled by others, because others determine his physical existence and thereby determine how he exercises his freedom.
- (3) A human whose ability to exercise freedom is controlled by others is a human who is a mere means to others, i.e. a slave to others.
 - (a) To have control over one's ability to exercise freedom is a necessary condition for him to self-determine his choices, that is, to be a free being. If the control is in others' hands, they determine his choices. He is merely a means to them to use for their own choices.
- (4) Because of one's duty of rightful honor, a human being cannot agree to be in a situation where he can possibly be a slave.
- (5) Because of 1, 2, 3 and 4, all participants of the original contract cannot agree to that which includes the possibility for any of them to be completely dependent on others for their survival.
- (6) Because of 5, the original contract must produce something that does not include the possibility of complete factual dependence.
- (7) Enforcement of property rights combined with the anthropological fact that our Earth has finite numbers of usable objects and that we have to use objects to sustain ourselves necessarily entails the possibility of complete factual dependence. (Reason for this is the same for Weinrib's premise 4.)
- (8) That which is produced by the original contract i.e. the civil union must enforce property rights and at the same time not include possible complete dependence. The only way the civil union can satisfy both is if it includes public welfare as a means to preclude the necessary complete dependence created by property rights.

Chapter 3. The Problem

3.1. The problem of a loss-based welfare

My reason for donning these arguments the name "Compensation Justifications" is because of the fact that they all turn on the premise that public welfare is a compensation to a wrong created by property rights. Specifically, the only reason for the civil union to include public welfare, according to them, is because the civil union must enforce property rights and property rights necessarily entail wrongful dependence. Public welfare is justified only because it is the necessary solution to the necessary problem of property rights. In Guyer and Weinrib's case, the problem (the wrongful dependence) created by property rights is that it takes away from some people the non-dependence everyone would have had in the state of nature in virtue of their innate right. In Ripstein's case, the problem created by property rights is taking away from some people their ability to exercise their freedom by letting the wealthy control their entire existence. In all three cases, public welfare is

justified for its necessity to correct a wrong, or to compensate for the wrongful dependence created by property rights. The poor are entitled to receive welfare because they would have had the minimum independence without property rights, and they could not have agreed to losing that minimum independence. To them, public welfare is compensation for what they would have had without property rights. Hence, the name: “Compensation Justifications.”

Now, consider the hypothetical situation in which all human beings live on the planet Mearth. Everything else is the same apart from the fact that on Mearth, the usable external objects are infinite. In this situation, property rights enforcement will not necessarily entail dependence. Even though property rights exclude everyone else from using the object, because on Mearth there are infinite numbers of external usable objects, there will be no one who will be completely excluded from all usable objects. Therefore, there is no problem created by property rights in need of a correction or a compensation, at least in terms of losing what one would have had without property rights.

Nevertheless, there are still people whose survival is entirely dependent on others. Let us call them the “Invariably Dependents.” Their dependence is not that which is created by property rights but is created by other reasons, such as the force of nature. A prime example would be those who are severely disabled; those whose rationality is intact to be considered a human being but whose physical abilities are severely compromised to the point where they cannot maintain themselves. They would, regardless of the number of usable external objects, still be dependent on others for their own survival.

They still fall under “those members of the society who are unable to maintain themselves.”⁵⁶ Kant, in 6:326, mentions several times the qualifications for those to be recipients of welfare: “those [...] who are unable to maintain themselves”; “those who are unable to provide for even their most necessary natural needs”; “[public welfare is] for the needs of the people.” According to CJ, however, in Mearth, there is no justification for public welfare as there is no dependence created by property rights. CJ’s public welfare is justified only because it is the necessary solution for a necessary problem. In Mearth, the problem is not only not necessary but is nonexistent. What follows is that according to CJ, no public welfare to those who are dependent on others for their own survival is justified, no matter how destitute and in need they are.

This conclusion itself at first glance seems un-Kantian and also, apart from Kant, unacceptable. The conclusion claims that those who are in need are not entitled to receive welfare—this contradicts with Kant’s literal approval of a need-based welfare and with what is generally considered to be acceptable, which is a need-based social welfare that grants at least basic sustenance to all those in need.

The champions of CJ, however, can argue that: because the explanation of rights consists of invariant anthropological facts of the human condition, it is possible that the explanation changes if the facts change as well. (It is only the explanations of rights, i.e. the applications of rights that change, not the moral obligation behind them.) The fact that all humans live in a situation where the usable external objects are limited *is* the invariant anthropological fact of the human condition and is therefore reasonable to use in cases of considering the application of Kant’s notion of state to empirical situations of dependence. That fact is also that which Kant used to entail 6:325-6. The hypothetical situation of Mearth and its infinite objects changes this anthropological fact, and can therefore yield different applications other than what Kant has written in 6:325-6. Therefore, that the Mearth situation yields a conclusion different from Kant’s literal words is not sufficient evidence to claim that CJ is un-Kantian.

⁵⁶ 6:326.

There are two problems with this kind of counterargument. First, even if what it argues is true, it is still conceding the fact that CJ cannot explain a need-based Kantian welfare. What CJ claims is that public welfare is justified only as the necessary solution to the problem created by property rights. The kind of dependence CJ's public welfare solves is limited to the kind of dependence that is created by property rights. The case of Mearth illuminates this fact. The "Invariably dependents," those whose dependence are irrelevant to the creation of property rights, are still not the recipients of CJ's welfare, regardless of Earth or Mearth. What follows is that the kind of welfare CJ justifies is, rather than a need-based welfare, a loss-based welfare: the kind of welfare whose recipients are entitled to receive it in virtue of what they would have had without property rights.

The loss-based welfare of CJ's public welfare is, by itself and regardless of its being a Kantian theory, *not* a feasible social welfare for the modern state. The fact that only those who would have had some independence without property rights are entitled to receive welfare is followed by the conclusion that only those who have the basic physical ability necessary to sustain oneself if there are available usable objects are entitled to receive welfare. This ableist kind of welfare is by itself absurd. Nevertheless, even if one bites the bullet and accepts the possibility that such welfare is justified welfare, this kind of welfare is not feasible at all due to the impossibility of estimation. There is no adequate principle to differentiate between dependence created by property rights and dependence that isn't, and there is no adequate measuring criteria against which one's ability to maintain themselves without property rights can be estimated. These estimations, however, are something that is necessary for the CJ's public welfare to be put into practice, since they are necessary for the CJ's civil union to not tax the wealthy unjustly by bestowing welfare to the wrong person or by bestowing it more than to which they are entitled.

Second, even if Kant's writings in 6:325-6 are indeed not sufficient proof that the loss-based welfare is incoherent with Kant's philosophy (as the counterargument claims), the loss-based welfare of CJ itself is incoherent with Kant's philosophy. According to CJ's welfare, one's entitlement to receive welfare is determined based upon the fact that he, without property rights, would have had the basic independence necessary for survival. The state's right to grant welfare to its citizens is determined based on the citizens' hypothetical independence status in the state of nature. Different treatment is entitled to different citizens based on their hypothesized independence. This is where CJ cannot be coherent with Kant's philosophy—throughout the entire philosophy of Kant, the only normative source that determines *right* is the rationality of a being. This means that there can be no difference in right based on reasons other than the difference in rationality. If I am a rational being and you are not, then the fact that I have rights and you do not is coherent with Kant. If my rationality is intact, and your rationality is compromised because you are in a vegetative state, our rights differ because our rationality differs, according to Kant. CJ's welfare is that which grants different entitlements to people based on their aspects that are irrelevant to their rationalities. The severely disabled, for example, are as rational as the able-bodied. CJ's state, however, has the right to treat them differently. For the citizens to have different rights for reasons other than their rationalities is to treat *right* as something other than that which every rational being has in virtue of their rationality and nothing else. Kant's philosophy is incoherent with such a theory of right.

These consequences seem severe; it is odd that the widely acclaimed theories such as CJ have not yet been criticized for them. I think the reason for it is because many, both champions and audience of CJ, have overlooked an important anthropological fact used as an integral premise in all of CJ's arguments. It is a fact that is often overlooked both in scholarships and in everyday life.

3.2 The Overlooked Anthropological Fact

All CJ presumes a hidden anthropological fact that all human beings, once they are rational (once they are adults), at least have the basic physical ability to sustain themselves. CJ's problem exists fundamentally because of the fact that this anthropological fact is not the invariant fact of the human condition—the kind of fact that is justified to be incorporated into Kant's system of right—but rather an arbitrary fact picked out without justifiable reason.

In Guyer's case, he argues that the state providing everyone the opportunity to maintain oneself at least equally to what everyone would have had in the state of nature is public welfare. This is either presuming that everyone in the state of nature would have at least had the minimum provisions public welfare would provide, which would be presuming the anthropological fact that all are capable of acquiring those minimum provisions in the state of nature (the above-mentioned fact), or, that public welfare should only be limited to providing the environment in which everyone has liberty to procure objects for their own use. The latter kind of welfare is not a need-based welfare; it is the kind of welfare that will not be justified in Mearth, which means that it will not care for the invariantly dependents' inability to maintain themselves. As mentioned, the latter kind of public welfare is absurd and infeasible. It is therefore more likely that Guyer's case is the former, which assumes the arbitrary anthropological fact in question.

In Weinrib's case, he claims that the inviolability of the body and the availability of everything to everyone in the state of nature entails that everyone, in virtue of their innate right, has non-dependence at least for their own survival. There is a flaw to this argument.

Every person, in virtue of their innate right, has the right to not have one's body be violated. This is the inviolability of the body. Every person, in virtue of PPR and the nonexistence of property rights, has every external object available for them to make use of in order to sustain their own physical existence. This is the availability of everything to everyone in the state of nature. All these two entail is that every person, in virtue of their innate right and of the fact that all external objects are unowned, has the right to not have one's use of external objects for one's sustenance be violated. My right to not have my body be violated by others entails my right to not have the object that is connected to my body (what I hold) be interfered with. Because of the anthropological fact that my sustenance is necessary for the exercise of my freedom, I also have the right to not have my actions for maintaining myself be violated (insofar as it is in accordance with the moral law). Because no external object is owned in the state of nature, no person can claim ownership over what I choose to use to sustain myself. Therefore, in virtue of my innate right, I have the right to have my use of external objects for my sustenance *not be interfered with* by others.

In other words, all that follows from the right to non-interference in regards to one's freedom is the right to non-interference in regards to one's own choices to sustain themselves. Weinrib's argument, however, does not entail public welfare if this is the case. Weinrib's argument requires the fact that every human being, in virtue of their innate right, *has* "inevitable non-dependence."⁵⁷ As shown above, Weinrib's argument entails public welfare because without public welfare, people can lose what they already have in virtue of their innate right, which is irrational to agree to.⁵⁸ Therefore, if a person does not have basic independence in virtue of her innate right, there is no loss to which it is irrational to agree to, and public welfare is not called upon to solve the irrationality. Weinrib's

⁵⁷ Weinrib (2003), p.815.

⁵⁸ To explain this irrationality, Weinrib (2003) uses the duty of rightful honor. pp.817, 823.

argument must include the premise that every person, in virtue of their innate right, has non-dependence, for it to entail public welfare.

What has made Weinrib take the logical leap from the right to non-interference of one's self-preservation to the right to non-dependence? Weinrib must have assumed that everyone who has the right to self-preserve and not be interfered with it also, in virtue of that non-interference and empirical availability of usable objects, is non-dependent. Think of it: everyone can use whatever object that they choose to use for their own sustenance, and everyone's physical body, including the object that is connected to one's body, is inviolable by others. Everyone can simply take the object of their choice, use it for their sustenance, and nobody else can (rightfully) interfere with them about it. It seems like everyone can sustain themselves without having to rely on others in such a state of nature. I think Weinrib's leap has followed this trail of thought, for both assumes the same anthropological fact that: all human beings who have objects to use and have nobody interfering with them are capable of sustaining themselves without relying on others.

This fact is not an invariant fact of the human condition because humans, based on their different physical abilities, can sometimes have to rely on others to sustain themselves even when there are objects to use and nobody else obstructs them in any way. The assumed fact is an ableist fact, that is, a fact that presumes a certain *kind* of bodily capability, which is, like the fact that presumes a certain class, culture or race, an arbitrary anthropological fact that should not be incorporated into Kant's system and explanation of rights.

In Ripstein's case, the same fact is presumed, and in a way that is also true in Weinrib's case: Ripstein argues that the civil union must include public welfare because property rights necessarily entails complete factual dependence. Ripstein's argument assumes that the sort of dependence that is resolved by public welfare at least coextends⁵⁹ with the dependence that is entailed by property rights. The dependence that is entailed by property rights is, according to Ripstein, the situation in which a person has no external object to use for her sustenance because all usable objects are others' property. The dependence public welfare sets out to resolve is the dependence of all those who cannot survive by themselves. Ripstein's argument must presume that the two dependence at least coextend, or his argument entails the problematic loss-based welfare. The coextension is that: all those who are dependent on others for their survival coextend with all those who are dependent on others because of the lack of usable external objects. The hidden anthropological assumption that supports this coextension is that: all humans, if there are usable external objects, do not depend on others for their survival. This is the same arbitrary anthropological fact assumed by Weinrib; it is a fact that presumes a certain level of physical capability.

It is as a valid part of the human condition that, due to the corporeality of humans, some are less physically capable than others, so much so to the point where they cannot live without relying on others. It is as valid of a part as the fact that some humans can sustain themselves without relying on others if only they have usable objects. To the question of *right*, the only difference in answer must come from difference in rationalities, and because both humans from both physical abilities have the same rationality, their rights should not differ as well.

The overlooking of this ableist fact is equivalent to the neglect of the part of the human condition that some are, for example, severely disabled. CJ's loss-based welfare is problematic because there are the invariably dependent people who are left out by it; the fundamental reason for

⁵⁹ Ripstein seems to think that they do not simply coextend but are identical; it is favorable to Ripstein that I only treat it as a coextension.

them being left out by CJ is because CJ neglected that part of the human condition, and thereby forgot about the existence of those who embody that part of the human condition, i.e. the invariably dependent.

3.3. Suggestions for a Better Kantian Welfare Theory

Is there a way to justify a need-based welfare based on Kant's philosophy? Let us recapitulate what has been discussed and list the criteria a need-based Kantian welfare must suffice: a Kantian welfare theory must justify welfare in Mearth, especially to the invariably dependents; the only criteria for a person to be entitled to receive welfare must be that (a) they are a citizen and (b) they are in need. Let us construct a welfare theory based on these requirements and see if they are coherent with Kant's philosophy.

Think of: Mearth. Everything else is the same with Earth apart from the fact that there are indefinite numbers of usable objects in Mearth. The invariably dependents are the only ones who are unable to maintain themselves in the civil condition of Mearth. What of them can possibly justify their receiving of welfare? What of them can possibly justify the state's coercion of other members of the society to pay for their sustenance? As the only criterion other than their status of need is that they are citizens, a possible solution can turn on the contractualist idea. Namely, it can turn on the idea that the fact that they are citizens signifies that they have participated in a contract with others, and that they would not have agreed to a contract for a state in which their inability to maintain themselves were not supplemented. That is, they would not have agreed to a state without public welfare.

A contractualist idea as such is compatible with Kant's philosophy, as the contract can be thought of as the original contract, and the grounds for the hypothetical disagreement can be that to agree to a situation in which one can be possibly completely dependent on others is irrational or is against one's duty of rightful honor.

This kind of solution, however, is slightly problematic. It is not problematic in that it is incompatible with Kant's theory but that it is not hermeneutically satisfactory for it allows too much. To be specific: the civil condition that is formed by this hypothetical contract can be something that should or should not include a (what may seem to be too) wide range of state-enforced programs. For example, if one argues that political inequality or systematic economic inequality is irrational because it is against a person's innate equality, if this argument stands, then the proposed solution must also argue that the civil condition must include redistributive or corrective justice policies that can preclude such inequality. Kantian welfare theories justified along the lines of this are Hasan (2018)'s and Kaufman (1999)'s.⁶⁰ If one argues that the unequal possession of means of production is irrational because it is against a person's innate equality, if the argument stands, then the proposed solution must also argue that the civil condition should be something like Marx's communist state. Bo Fang (2022) mentions this possibility and argues that this is too much for a Kantian theory but that there is no metaphysical restraint in Kant's philosophy that argues against such a state.⁶¹ If one argues that, in order for the consent to be truly rational, every consenting individual should consent only after they put themselves behind a veil of ignorance, abstract all morally arbitrary factors from their possible

⁶⁰ Kaufman (1999); Hasan (2018).

⁶¹ Bo Fang (2022), p.198.

lives in the civil condition, and then deliberate about the kind of lives that they can accept, then the civil condition is the Rawlsian ideal state.⁶²

For some, this could be a reason to accept this as the Kantian welfare theory. I think this is, although not inconsistent with Kant's philosophy, slightly un-Kantian in that Kant, in his entire works of political philosophy, never explicitly endorses something stronger than the basic public welfare that he endorses in 6:325-6. Again, this is not a reason to say that Kant's philosophy is inconsistent with such conclusions nor Kant himself would not agree with such implications; Kant could simply have left them unmentioned because he was aware of the fact that the real, empirical world events can reveal the irrationality of certain circumstances that he would not have had any idea about, and because he wanted to leave the specifics of his welfare theory blank so that those new revelations and the welfare policies that correct them could always be consistent with his philosophy. However, it still is a reason to look for another solution if possible, and if there is another solution that only endorses basic public welfare and has all the other strengths of this current attempt, it is a reason to believe that the new solution is hermeneutically better than this one.

Can there be such a solution? I believe there is, hence my next and final proposal for the better Kantian welfare theory.

Chapter 4. A Better Explanation of Kantian Welfare

A Kantian welfare theory must justify welfare in Mearth as well. It has to be a need-based welfare. In other words, the theory's only criteria for welfare entitlement must be that the recipients are citizens and that they are in need. The sole fact that some are in dire need cannot be that which justifies Kantian welfare, for if the state coerces its citizens only because of the *need* of some people, the state is treating its people as a mere means to the needy's ends, which cannot be a Kantian state (the civil union) that treats every citizen equally in terms of their freedom. Then, a Kantian welfare theory must consider both grounds—being citizens and being completely dependent—as the justificatory grounds for welfare.

An easy solution would be that citizens acquire citizenship through the original contract, in which they would not have agreed to be in a completely dependent situation. A better solution would be that public welfare is necessary for those who are entitled to be citizens to be, in the empirical state, citizens. Let me explain.

As explained in the "Context" section, the concept of *right* is a purely rational concept applied to objects in experience. That which the Practical Reason commands—the moral law—is, by itself, not concerned with beings with physical attributes.⁶³ That which the moral law commands to the external relations between persons, i.e. *rights*, do have their objects as human beings ("*homo phaenomenon*"), who are humanities affected by their physical attributes.⁶⁴ Therefore, the content of *right* is explained only with certain anthropological facts—that is, the universal, invariable facts of the human condition such as the corporeality of human beings. Furthermore, the "General Remarks"

⁶² Rawls (1971).

⁶³ To be exact, the moral law's objects are finite beings, to whom Reason and its entailments are commands (imperatives) and not mere descriptions of themselves. The finiteness in humans can be caused by their physical attributes. The physical attributes, however, are only considered indirectly as such when it comes to explaining the moral law and not as directly as they are considered in explaining the content of *right*.

⁶⁴ 6:239.

under which Kant's explicit endorsement of public welfare resides is where Kant explains how his rational notions are applied in the empirical world⁶⁵; specifically, Kant endorses public welfare under the subsection "General Remark [...] That Follow from the Nature of the Civil Union." In other words, Kant's public welfare is the outcome of Kant applying his notion of the civil union to the empirical world.

The point that I am trying to make is that public welfare is an empirical application of the notion of the civil union. Turning on this idea, I propose that: the notion of the civil union by itself does not include public welfare. Public welfare is called for to solve the discrepancy between what an empirical state inevitably is and what it should emulate (the civil union).

To elaborate: as I have explained in section "Context," subsection 2, the civil union is formed via the original contract, and the original contract is held between all rational beings who are in the possible realm of conflict. The possible realm of conflict is the realm in which two or more rational beings can choose to use the same objects. This choice that can create conflict does not presume the ability to actually act on acquiring it. Kant, when explaining how all objects in existence can be mine or yours in that they can all be the objects of my or your choice, says: "But an **object of my choice** is that [...] whose **use lies within my power (*potentia*)**. This must be distinguished from having the same **object under my control** (*in potestatem meam redactum*), which presupposes not merely a *capacity* but also an *act* of choice. But in order to **think of something simply as an object of my choice** it is **sufficient for me to be conscious of having it within my power**."⁶⁶ That is to say, those who are in the realm of conflict are rational beings who can *think of* using the same objects. In summary, the original contract that forms the civil union are all rational beings who can *think of* using the same objects (which can be true because of many different empirical reasons, such as the geographical vicinity between people).

The notion of the civil union is this, and it does not include public welfare because the only anthropological elements considered are the fact that the citizens are rational beings that coexist within the realm of conflict. When applied to the empirical state, however, it requires the state to include public welfare in their structure for it to emulate the civil union at all.

This, I contend, is because of the fact that the original contract presumes that every participant of it has the kind of control over their own exercise of freedom that empirical human beings sometimes do not have. Specifically, those who are completely dependent on others for their survival do not have. In discussing the notion of the civil union and the original contract, all who are rational beings who can think of using the same objects as others must enter the original contract together and form the civil union. The empirical state is considered legitimate only if it can be thought of as something that went through the original contract and is hence an application of the civil union. In the empirical state, all those who are rational beings who can think of using the same objects as others, usually decided by geographical vicinities, must be considered as the hypothetical participants in the original contract. Those who are rational and are dependent on others for their survival are as equally entitled to be a member of the contract as those who are rational and are independent.

The problem is raised because there is a discrepancy between what the original contract presumes its participants can do in virtue of their freedom and what the citizens of the empirical state can do. As explained in section 1 subsection 2, what happens in the original contract is a completely self-determined submission of one's entire external freedom in exchange for lawful freedom. This

⁶⁵ 6:205.

⁶⁶ 6:251; boldface mine.

presumes that all participants of the contract have control over their own use of freedom. In the empirical world, however, those who are completely dependent on others for their survival do not have control over their use of freedom. Here, I employ Ripstein's premise (in section 2 subsection 3) and the way I argued for it; briefly, those who are completely dependent on others have their physical existence be controlled by others, which entails that others have control over their exercise of freedom. In the empirical world, the severely disabled, for example, cannot be thought of as those who completely self-determine to abandon their external freedom in return for lawful freedom because their current empirical status implies that they do not have the control to completely self-determine as such.

An analogy can be made in Kant's take on passive and active citizens. Passive citizens do not have the right to vote i.e. the right to participate in actively forming the society, despite being entitled to be citizens, because they are not economically independent enough to be believed that their votes are completely self-determined by themselves and not controlled by their employers.⁶⁷ Similarly, the completely dependent people in the empirical state are, despite being entitled to be thought of as the participants of the original contract, cannot be thought of as participants because their current situation deprives them of the control necessary for them to be the participants. Unlike passive citizens whose existence is not a problem to the state's legitimacy, if the completely dependent people cannot be thought of as members of the original contract, because the dependents are entitled to be considered as members of it, the empirical state containing those dependent people cannot be thought of that which is formed via the original contract and is hence deemed illegitimate. Thus, in order for the state to be considered legitimate, i.e. to be able to be thought of as something that is formed via the original contract, it must be able to make sure that all those who are entitled to be participants of the original contract should be able to be thought of as one. The empirical measure that guarantees this is public welfare; the completely dependent can gain control over their exercise of freedom only if they are not completely dependent on others, and the only way the state can solve such complete dependence is by providing them with public welfare to make sure that they at least has the minimum independence in maintaining themselves.

In 6:326, Kant writes: "The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves." The general will of the people has the duty to maintain itself perpetually because, as explained in section 1, it is a moral obligation of everyone to form the civil union, and the corollary of this would be that it is the moral obligation of everyone as a collective to retain the civil union and not regress to the state of nature. An empirical society that has some of its members being unable to be thought of as participants of the original contract would essentially be a society that cannot be thought of as a society formed with the omnilateral will—that is, the general will. It is the collective responsibility of all to make sure that their empirical society does not become a society that cannot be formed by the general will. Hence, all are obligated to contribute in making sure that the society does not have any member who cannot be thought of as a participant in the general will; in other words, all are obligated to pay taxes to contribute in making sure that even the most destitute can be thought of as those who participate in forming the society with the rest. Public welfare, therefore, is justified because without it, the general will of the people cannot be maintained.

This is my suggestion as the better theory of Kantian welfare. I would like to conclude this section with two points: first, a summary of this theory. One of the ways to justify our empirical

⁶⁷ 6:314-5; Hasan (2018).

society is Kant's way of thinking it as the civil union and thinking of all citizens as members of the original contract. Because all citizens must be participants of the original contract for Kant's civil union, in order to justify our society based on Kant's civil union, our society must include measures that allow every citizen to be the (hypothetical) participant of the original contract. Kant's public welfare is the empirical measure he predicted when applying the notion of the civil union to the general empirical state, based on the human condition that it is possible that some are completely dependent on others and are hence unable to be thought of as the participants of the original contract.

Second, the implication of this theory is as follows. Take the case of the severely disabled. This theory justifies their entitlement to receive welfare based on the fact that they are entitled and yet empirically impaired to be participants of the original contract. What entitles them to be the participants of the original contract? It is the fact that, as mentioned, they are rational beings who are in possible realms of conflict, which are often empirically defined based on geographical vicinities. These imply the following conclusion that I believe is an advantage to my theory: the severely disabled are entitled to receive welfare because they are rational beings in our vicinity, and the fact that they are rational beings—that they can merely *think of* using the same objects as all the other able-bodied beings—commands others to not ignore them, to not exclude them; their rationality commands others to include them in one society, and this command of rationality is all that, in the end, entitles the disabled people to their welfare. The severely disabled are entitled to their welfare not because they have lost something from the formation of the civil condition (they rather gain something); they are entitled because others cannot ignore their rationality as long as they are in the vicinity, that is, as long as they are perceived by others. Everyone deserves minimum welfare not because they have to be compensated but because they are rational beings who deserve to be included in a society with everyone else.

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국문초록

근래 칸트의 정치철학에 대한 관심이 급부상하면서, 칸트 철학 내에서 기본적인 수준의 사회복지라도 정당화가 가능한 것인지에 대한 논쟁이 불거졌다. 20세기 말부터 최근까지 정당화할 수 없다는 입장과 가능하다는 입장이 대립해 왔으며, 정당화가 가능하다는 입장 중에서는 립스타인 (2009)을 위시한 특정 종류의 칸트 해석 (이하 ‘보상-정당화 해석’)이 압도적인 호평을 받아왔다. 이 종류의 해석은 해석학적 측면에서 칸트의 철학을 잘 설명한다는 점에서도 좋은 평가를 받았고, 또 자유와 복지의 이분법적 대립을 앓고 있는 현대 복지 논쟁에 대해 자유에 기반을 둔 복지사회의 모델을 제공한다는 점에서도 그 장점을 인정받았다.

본고는 보상-정당화 해석의 중요한 문제를 지적한다. 보상-정당화 해석이 앓고 있는 이 문제는, 이 해석이 칸트의 철학을 잘 설명하지 못함을 드러내고, 또 현대 복지 논쟁에 대해 이 해석이 많은 기여를 할 수 없음을 보여준다. 더 나아가, 본고는 이 문제를 해결할 수 있는 새로운 칸트 해석이 존재한다는 점을 주장하고 또 그 해석을 풀어 설명한다. 보상-정당화 해석 문제의 핵심은 사회 복지의 대상이 되는 의존성을 임의적으로 제한했다는 점에 있으며, 문제를 해결하는 새로운 해석의 핵심은 시민상태의 구조 자체에 사회복지의 필수성이 이미 내재되어 있다는 점을 드러내는 데에 있다. 본고는 논쟁의 배경을 설명하고, 보상-정당화 해석의 중요한 문제를 드러낸 뒤, 새로운 해석을 제시한다.