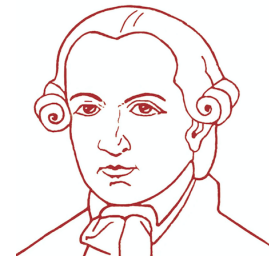


# Duties of Right to Others

Kant BPhil Seminar, MT 2024: week 3

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



**Basic question of Right: what is required for a system of equal external freedom?**

## 1 The Concept of Right

The central features of Right:

1. Right concerns the external and practical relation of one person to another. It's about what we do that has some impact on other's action and the world, not our motivations or beliefs or wishes other 'internal' states or actions.
2. Right excludes considerations of need.
3. It concerns the form of our choice, not the objects we choose. The question is not: does this interfere with you getting what you want? But rather, does this interfere with your entitlement to be independent from me?
4. Individual rights correspond to duties in others.

Right is not about protecting some value or attribute that we can speak about aside from our relation to others. It is about protecting our freedom from the wrongful interference of others.

Universal law of right: "act externally that the free use of your choice can coexist with the freedom of everyone in accordance with a universal law" (6:231).

Right is intrinsically connected to the possibility of coercion.

## 2 "Do not wrong anyone (*neminem laede*) even if, to avoid doing so, you should have to stop associating with others and shun all society" (6:236)

Kant divides individual rights up into

- i The innate right to freedom, and
- ii Acquired rights.

### 2.1 Innate right

The innate right to freedom: "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law" (6:237).

The innate right "already involves the following authorisations":

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

**Question: What does the innate right entitle us to?**

Consider:

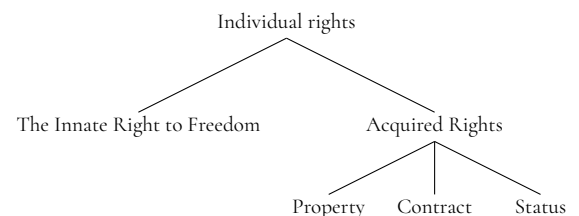
1. If you take the short road, I will bombard you with questions about your BPhil thesis topic, which you'll feel obliged to answer. The prospects of that conversation are so bleak, you take the long way.

"The concept of right, insofar as it is related to an obligation corresponding to it (i.e., the moral 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, can have (direct or indirect) influence on each other. But, *second* it 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*. *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 [...]. 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" (6:320).

On the relational nature of Right, see the exchange between Ripstein (2010) and Flikschuh (2010) in Jurisprudence.

"when it is said that a creditor has a right to require his debtor to pay his debt, this does not mean that he can remind the debtor that his reason itself puts him under obligation to perform this; it means, instead, that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with a universal external law. Right and authorisation to use coercion therefore mean one and the same thing" (6:232; 6:379).

All duties of right are "just duties of omission. The whole of law contains merely negative duties" (29:632; 27:512, 587).



The examples are modified from Sangiovanni (2012).

2. If you take the short road, I will take pictures of you for my private collection. You don't want that, and so take the long way.
3. I issue a threat to you, that I will break your legs if you take the short route. You take the long route instead.

The innate right is often taken to include a right against wrongful interference with one's body.

## 2.2 Acquired Rights

"something external is mine if I would be wronged by being disturbed in my use of it *even though I am not in possession of it* (not holding the object)" (6:249).

**Kant's central question about acquired right: how is such possession possible? How can we be so connected to an external object of choice that another's interference with it would wrong us even when we aren't holding it?**

There are three kinds of acquired right:

1. Property rights (corporeal things)
2. Contractual rights (another's choice to perform a specific deed)
3. Status rights (another's status in relation to me)

## 3 "(If you cannot help associating with others) enter into a society with them in which each can keep what is his (*suum cuique tribue*)" (6:237)

Kant claims that rights in a state of nature are merely provisional. A state is necessary for rights to be conclusive.

"No one is bound to refrain from encroaching on what another possesses if the other gives him no equal assurance that he will observe the same restraint towards him" (6:307; see also Reflection 7732 19:502).

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

**Question: Which rights are merely provisional? Only acquired rights or both innate and acquired rights?**

## 4 References and suggestions for additional reading

- Allais, L. 2015. What Properly Belongs to Me: Kant on Giving to Beggars. *Journal of Moral Philosophy* 12(6): 754–71.
- Flikschuh, K. 2010. Innate Right and Acquired Right in Arthur Ripstein's *Force and Freedom*. *Jurisprudence* 1(2): 295–304.
- Hasan, R. 2018. Freedom and Poverty in the Kantian state. *The European Journal of Philosophy* Advanced online publication: 1–21.
- Moran, K. 2016. Neither Justice Nor Charity? Kant on General Injustice. *Canadian Journal of Philosophy*: 1–22.
- Ripstein, A. 2010. Reply to Flikschuh and Pavlakos. *Jurisprudence* 1(2): 317–324.
- Sangiovanni, A. 2012. Can the Innate Right to Freedom Alone Ground a System of Public and Private Rights? *European Journal of Philosophy* 20(3): 460–69.
- Varden, H. 2009. Kant and Dependency Relations: Kant on the State's Right to Redistribute Resources to Protect the Rights of Dependents. *Dialogue* 45(2): 257–84.
- Weinrib, E. 2003. Poverty and Property in Kant's System of Rights. *Notre Dame Law Review* 78: 795–828.
- Zylberman, A. 2014. The Very Thought of (Wronging) You. *Philosophical Topics* 42(1): 153–176.

"if I am holding a thing (and so am physically connected with it), someone who affects it without my consent (e.g., snatches it from my hand) affects and diminishes what is internally mine (my freedom), so that his maxim is in direct contradiction with the axiom of right" (6:250).

"All propositions about right are a priori propositions, since they are laws of reason. A a priori proposition about right with regard to *empirical possession* is *analytic*, for it says nothing more than what follows from empirical possession in accordance with the principle of contradiction [...]. On the other hand, a proposition about the possibility of possessing a thing *external to myself*, which puts aside any conditions of empirical possession in space and time [...] is *synthetic*" (6:249-50).

"When people are under a civil constitution, the statutory laws obtaining in this condition cannot infringe upon *natural right* (i.e., that right which can be derived from a priori principles for a civil constitution); and so the rightful principle "whoever acts on a maxim by which it becomes impossible to have an object of my choice as mine wrong me," remains in force. For a civil constitution is just the rightful condition, by which what belongs to each is only secured, but not actually settled or determined" (6:256).