**Every person has an innate right to independence.**

**Ripstein** , Arthur. *Force and Freedom*. E-book ed., London, England, Harvard UP, 20**09**. [Bracketed for Gendered Language] ICWNW

Your sovereignty, which Kant also characterizes as **your quality of being your “own master** (sui juris),” **has as its starting point your right to your own person,** which Kant characterizes as innate. As innate, this right contrasts with any further acquired rights you might have, because innate right does not require any affirmative act to establish it; **as a right, it is a constraint on the conduct of others, rather than a way of protecting some nonrelational aspect of you. It is a precondition of any acquired rights because those capable of acquiring them through their actions already have the moral capacity to act in ways that have consequences for rights, that is, for the conduct of others.** That any system of rights presupposes some basic moral capacities that do not depend on antecedent acts on the part of the person exercising them does not yet say what the rights in question are, or how many such rights there might be. Kant writes that there is “only one innate right.” Freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every human being by virtue of his humanity.10 The innate right is the individualization of the Universal Principle of Right, applied to the case in which only persons are considered. The Universal Principle of Right demands that each person exercise his or her choice in ways that are consistent with the freedom of all others to exercise their choice; the innate right to freedom is then each person’s entitlement to exercise his or her freedom, restricted only by the rights of all others to do the same under universal law. No issues of right would arise for someone who succeeded in “shunning all society,”11 and if there were only one person in the world, no issues of independence or rightful obligation would arise.12 Kant offers different formulations of innate right, each of which elaborates an aspect of the idea that **one person must not be subject to the choice**13 **of another,** which Kant glosses in terms of one person being a mere means for another. This familiar Kantian theme is explained in terms of the classic distinction, from Roman law, between persons and things. **A person is a being capable of setting its own purposes. A thing is something that can be used in the pursuit of whatever purposes the person who has it might have. The classic example of a person being treated as a mere thing is the slave, for a slave is entirely at the disposal of his or her master.** The slave’s problem is that he is subject to the master’s choice: the master gets to decide what to do with the slave and what the slave will do. **The slave does not set his own ends, but is merely a means for ends set by someone else.** To call it “the” problem is not too strong: if the other problems a slave has—low welfare, limited options, and so on—were addressed by a benevolent master, the relationship of slavery would perhaps be less bad, but it would not thereby be any less wrong. **The right to be your own master is neither a right to have things go well for you nor a right to have a wide range of options. Instead, it is explicitly contrastive and interpersonal: to be your own master is to have no other master.** It is not a claim about your relation to yourself, only about your relation to others. The right to equal freedom, then, is just the right that no person be the master of another. The idea of being your own master is also equivalent to an idea of equality, since none has, simply by birth, either the right to command others or the duty to obey them. So the right to equality does not, on its own, require that people be treated in the same way in some respect, such as welfare or resources, but only that no person is the master of another. **Another person is not entitled to decide for you even if [t]he[y] know**s **better than you what would make your life go well, or has a pressing need that only you can satisfy.** The same right to be your own master within a system of equal freedom also generates what Kant calls an “internal duty” of rightful honor, which “consists in asserting one’s worth as a human being in relation to others, a duty expressed by the saying do not make yourself into a mere means for others but be at the same time an end for them.”14 Kant says that this duty can be “explained . . . as obligation from the right of humanity in our own person.”

**The state has a unique obligation and is key to making sure rights exist.**

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Kant characterizes the state of nature as a system of private rights without public right. The apparatus of private rights applies to transactions in it, but subject to three defects that make that application merely provisional. Each of the defects reflects difficulties of unilateral action. **Objects of choice cannot be acquired without a public authorization of acquisition; private rights cannot be enforced without a public mechanism through which enforcement is authorized by public law; private rights are indeterminate in their application to particulars without a publicly authorized arbiter.** Even **the innate right of humanity is insecure in such a condition, both because no remedy is possible in case of a completed wrong against a person, and because even the protective right to defend your person against ongoing attack is indeterminate in its application. These problems can only be solved by a form of association capable of making law on behalf of everyone, and authorizing both enforcement and adjudication under law.**

**Thus, the standard is consistency with a system of equal and reciprocal freedom.**

**Impact Calc:**

**Everyone is entitled to an innate right to not be dependent on the will of others and it is the government's job to enforce that. The government can authorize things like property because they are an omnilateral will since they represent everyone.**

**My framework does not care about intentions or consequences, just rights. E.g. if the government murders me because they want to save the world they have still violated my rights even if their will or consequences were good.**

**Prefer:**

**1. There is a distinction between harming someone and wronging someone. E.g. if you go in my yard and destroy my mushrooms that’s unethical but if you take down your garage and now I don’t have shade, the same thing results but you acted permissibly.**

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The second is that **harm**, as such, **is not a category of wrongdoing.** In particular, **interference with the successful attainment of a particular end is not an interference with external freedom.** Harms and benefits—the ad- vancing or setting back of the interests of a person—are only incidental to this analysis. Let me illustrate this with a pair of examples. **Suppose that you and I are neighbors.** You have a dilapidated garage on your land where our properties meet. **I grow porcini mushrooms in the shadow of your garage. If you take down your garage, thereby depriving me of shade, you harm me, but you do not wrong me** in the sense that is of interest to us here. **Although you perform an affirmative act that worsens my situation**—exposure to light destroys my mushrooms—**I do not have a right, as against you, that what I have remains in a particular condition.** Although I do have a right to my mushrooms, which prohibits you from doing such things as carelessly spilling fungicide on them, **I do not have a right that you provide them with what they need to survive, or that you protect them from things that endanger them apart from your activities.** Thus you do not need to protect them from light by erecting a barrier unless your use of the land is the source of that light. Nor do you need to continue to provide a barrier that has protected them in the past. The distinction be- tween depriving me of what I already have as opposed to failing to pro- vide me with what I need does not turn on the difference between action and inaction. **If I grow sunflowers in my yard and you put up a garage on yours, thereby depriving me of light, you harm me but do not wrong me,** because all you have done is fail to use your land in a way that provides me with something I need.

**2. Rights are a side constraint, the government can’t force you to do things that violate your innate right because you can’t give anyone the power to do that. E.g. I can’t make a contract where I agree to be a slave since that would be contradictory. I.e. if I agree to not make my own choices my agreement to that contract is not legitimate. Thus, the state can’t enslave me because I could never give them that power.**

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From a Kantian perspective, the problem with this form of reasoning begins with the question it tries to answer. **The question of whether torture could be authorized by law concerns the state’s lawmaking authority, not the rational or probable or even morally best course of action by a legally unconstrained actor** in a specific situation, or even the appropriate response, after the fact, of a court to someone who has saved lives through the use of torture. Considering the use of torture in confronting terrorism, President Aharon Barak, of the Supreme Court of Israel, remarked, “We are aware that this judgment of ours does not make confronting that reality any easier. That is the fate of democracy, in whose eyes not all means are permitted, and to whom not all the methods used by her enemies are open. At times democracy fights with one hand tied behind her back.”63 **In focusing on the question of whether such uses of force can be authorized by law, the only issue is whether the people over whom it is exercised could confer such a power on officials. People lack the authority to subject themselves to a power entitled to use a person for public purposes just because a lot else is at stake.** And if they cannot rightfully subject themselves to such laws, they also cannot rightfully subject any dangerous noncitizens whom they have in their custody to them. Again, it might be thought that torture would only be used against someone who had been independently identified as a terrorist, so that anyone who would not reveal the location of a ticking bomb about to kill thousands is already a wrongdoer who has forfeited whatever rights he would otherwise have. Such a suggestion fails to constrain a contractarian/consequentialist argument for the legalization of torture because any wrongdoing on that person’s part is incidental to its core analysis. **Torture to extract information from a suspect violates the right to be beyond reproach.** Like punishment for absolute liability crimes, a person’s vulnerability to coercion would depend exclusively on the expected consequences of coercion, and not on what that person had done. Moreover, the dramatic example of a ticking bomb makes the use of torture seem pressing but at the same time drastically narrows the opportunities for investigating those consequences. Any legal license to torture would have to apply to someone suspected of involvement, even if, as it turned out, the person being tortured had not done anything wrong. Again, **if the justification of torture turns on its expected results, it would extend to cases in which the terrorist is sufficiently strong-willed to be able to resist torture to himself but not to members of his family.** The same point applies even if some way can be found to restrict the argument’s application to those who have done wrong.64 If the tradeoff between security and individual rights is quantitative, it does not matter whose rights are being sacrificed. Whether citizens concerned to protect themselves would in fact agree to such a thing would have to depend on how likely the various outcomes were (or on how likely they believed them to be), and so, it might be thought, torture could only be legitimate provided that the numbers were high enough. **The German Constitutional Court addressed a related question of whether the constitution could authorize the minister of the interior to order a hijacked airliner to be shot down if it was in danger of being used as a missile against a populated area.65 The court held that such a law conflicted with the right of the passengers on the plane to human dignity, that legal system’s correlate of the innate right of humanity.**66 The passengers cannot be used to save the people in the building. The court explicitly considered the possibility that they would consent to being killed in such circumstances, particularly if, since the plane is being used as a missile, their death is all but certain. They rejected that form of reasoning, even on the assumption that all of its premises are true. These premises may or may not be factually satisfied, and the minister of the interior may or may not be in a good position to assure himself that they are. The court’s grounds for rejecting the reasoning do not depend on disputing the factual premises, however, but on the claim that the state is not entitled to make such a decision. The court is equally adamant in its rejection of the suggestion that the passengers would have agreed to it if they had been asked; the fact that it would be sensible for them to consent does not mean that they have consented. Their right to human dignity means that they cannot be conscripted into the project of the Ministry of the Interior any more than they can be conscripted into the project of the hijacker. The court concedes that matters might be different if the legal order itself were in danger. In cases of a defensive war, citizens can be conscripted into public purposes, the most familiar example of which is military service. Although death of civilians on a large scale is one of the familiar horrors of modern war, the mere possibility of such a death is not equivalent to the danger to rightful condition posed by war. As a result, even if war could justify conscription, including conscription to things with a significant risk of death, citizens could not consent to empower the state to use its citizens in this way to prevent a crime from happening. The German Constitutional Court’s reasoning reflects the underlying Kantian thought that **the state’s obligation to uphold a rightful condition and protect its citizens is unconditional, not simply because of some fondness for rules, but rather because the use of force is merely unilateral unless its authorization could proceed from an omnilateral will. People could only give themselves laws consistent with their innate right of humanity. As a result, the numbers cannot matter. If the state cannot order a person to stand in the path of a bullet that endangers an innocent person, it cannot order that person to stand in the path of a bullet that endangers many people.** And if the state cannot order a person to do so, then it cannot exempt itself from such a prohibition in the case of a person who is likely to die anyway. **The people give themselves laws not for their advantage, but for their independence, which they cannot trade against anything.** On the Kantian view, **the fundamental test of any law is whether all could consent to it given their inner duty of rightful honor, or, what comes to the same thing, their obligation to take responsibility for their own lives. You couldn’t agree to a law that suspended that obligation, even if you expected material gain, because the state is never a tool for pursuing private purposes.**