**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.**

**Ripstein 2**, Arthur. *Force and Freedom*. E-book ed., London, England, Harvard UP, 2009.  ICWNW

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.**

**I affirm the whole resolution, I’ll specify anything further in cross ex.**

**Contention 1) Privatization of healthcare is intrinsically wrong and inconsistent with an omnilateral will. Private healthcare providers make decisions that change the normative situation of agents and do so unilaterally which is a violation of freedom.**

**Cordelli**, Chiara. "What Is Wrong with Privatization." *The Wrong of Privatization: A Kantian Account*, www.law.berkeley.edu/wp-content/uploads/2016/01/What-is-Wrong-With-Privatization\_UCB.pdf. Accessed 8 Aug. 2022. ICWNW

Our reconstruction of Kant’s argument in the Doctrine of Right provides a clear and, in my view, compelling explanation for why, **in order to be consistent with freedom, acts or decisions that change the normative situation of others must be omnilateral,** in the twofold sense explained above. To assess the extent to which private actors’ decisions pose a threat to freedom, it is thus important to be clear about (a) what it means for a decision to change the normative situation of others and (b) what it takes, in practice, for a decision to be omnilateral in a way that renders it compatible with freedom. In the following sub-section I take up the first question, and assess how private actors’ decisions fare in this respect. The fact that my decision harms you -- i.e. it sets back some of your interests -- or restricts your options does not mean that it changes your normative situation. Again, if I decide to open a shop next to yours and, due to the better quality of my products, you go out of business, we can say that my decision both restricts your options and harms you.56 Yet, it does not change your normative situation insofar as it neither establishes your entitlements nor imposes upon you new obligations. Further, even decisions that do impose obligations on others cannot all be regarded as changing their normative situation in a relevant sense 57 For example, my giving you a gift imposes on others obligations, e.g. not to use the object of the gift without your consent, that they did not previously have in that exact form. But my decision to give you a gift already presupposes my right to the object of the gift and thus the correlative obligations of others, given the existence of that right. This decision, we may say, transfers certain entitlements from me to you thereby changing the addressee of other people’s obligations, but it does not establish new normative requirements (entitlements or duties) from scratch. Unlike my decision to give you a gift, **my decision to acquire property in the state of nature changes your normative situation in a relevant sense for it is meant to create a new entitlement, which thereby imposes on others new obligations.** It is meant to transform an object from something others could freely use to something I have the exclusive entitlement to use. **It is because of this that my decision to appropriate can only be compatible with your freedom if it is authorized in everyone’s name,** including your own, while my decision to grant to you as a gift what I already own need not be omnilaterally authorized in order to be compatible with freedom. With this distinction in mind, we can ask whether and when, in current cases of privatization, private actors make authoritative decisions that change the normative situation of citizens in the relevant sense. As cases of privatization are often described or justified, this would not seem to be the case. Formally, while private actors are delegated the responsibility to implement or execute state programs (e.g. welfare programs) or functions (e.g. the delivery of healthcare services or the administration of prisons), the lawmaking power to decide and adjudicate what people are entitled to as a matter of right remains in the hands of elected officials or the courts. It follows that while private actors can certainly harm citizens or restrict their options, their decisions are not entitlements-setting and do not therefore change the normative situations of others. Things are, however, more complicated. As legal scholars have shown “delegations of discretion [to private actors] are unavoidable because the power to implement and apply rules is inseparable from the power to set policy.”58 Further, **the transfer of discretionary decision-making power to private agents very often cannot be solved through mere monitoring and regulatory oversight.** As Gillian Merger puts it, “Close government oversight or specification of policies and procedures can limit the extent of discretionary authority delegated to private actors, but cannot eliminate it.”59 But is this authority of the kind that changes the normative situation of others? A concrete example might help answer this question. **Consider the question of who determines the public entitlements to healthcare** (an “all-purpose means”) **of American citizens. Under the US healthcare system, recipients of publicly funded health care services typically enroll in some form of private “managed care organization” (MCO).** The government then generally pays to the MCO a set amount for its services.60 **The MCO must often make decisions about what treatments to cover, since, given resource scarcity, it is impossible to cover all requests for treatment.** However detailed the directives specified in the contract, the organization may remain with a significant degree of discretion about how to both (a) interpret the meaning of these directives and (b) how to balance competing claims fairly. **Even if the organization is motivationally committed to act both fairly and reasonably, both fairness and reasonableness -- and the public reasons these values support -- may be in and of themselves indeterminate.** This means that **there can be multiple, equally fair and equally reasonable decisions and that the organization must necessarily pick one of them.** This indeterminacy, I am asserting, is an inescapable consequence of the fact that general principles of distributive justice are too indeterminate to establish determinate directives for private agents charged with making particular allocative decisions. 61 To illustrate the indeterminacy of rightful judgment in this case, **consider the case of two patients, A and B,** who claim access to different kinds of treatments, T1 and T2. Both patients advance reasonable claims and are prima facie owed the treatment, but because of the cost only one treatment can be covered. The private organization must decide how to balance their claims. **Now government could try to reduce to a minimum the organizational discretion by providing strict ethical guidance.** First, it could require the MCO to either adopt a prioritarian principle according to which priority ought to be given to those who are worst off in absolute terms. In this case, **however, the MCO would still unavoidably retain discretion in establishing whether A’s needs count as more urgent than B’s or vice versa.** More importantly, providing the MCO with this guidance would seem unreasonable. For it would seem that even if A’s need is more urgent than B’s, given the particulars of the situation, still if treating B would result in a much higher net health benefit, then B’s claim should be given priority. Alternatively, **government could require the MCO to adopt a maximizing principle and to prioritize the treatment with the highest chance of producing the greatest health net benefit per dollar spent. In which case the MCO would however have to establish what counts as the greatest net benefit.** But, like in the previous case, this guideline would provide unclear, if not unreasonable directives in some cases – e.g. in a case where A’s claim is much more urgent and B would only benefit marginally more from the treatment. Government would then have to provide guidelines that specify, exactly, how much net health benefit, exactly, the MCO would have to be willing to sacrifice in order to give priority to worse-off patients. **Providing this kind of specification in a way that leaves no discretion to the MCO is simply impossible.** The result is that, in the absence of such specification, **it will be up to the MCO to determine whether A or B should be entitled to be treated as a matter of public right. This, note, is not a decision that simply executes already determined entitlements. It rather determines the existence of certain entitlements -- precisely in the same way in which for Kant the state does not simply implement pre-institutional entitlements, but rather establishes them to begin with. By de facto establishing what is mine and what is yours when it comes to justice-required, healthcare resources, the MCO changes the normative situation of citizens in a relevant sense.** It provides them with entitlements that they previously had only prima facie (there is a sense in which both A and B are prima facie entitled to be treated but, all things considered, only A turns out to be de jure entitled to the treatment). **The MCO, simultaneously, determines that A’s fellow citizens are under an obligation to pay for A’s treatment but not for B’s.** In sum, **due to the unavoidably indeterminate nature of entitlements -- an indeterminacy that remains even after a system of general rules is in place -- what people are entitled to is often fixed by the discretional judgment of those administrators who apply general principles to particular cases at the “street level.”. Within a privatized system, these tend to be private actors.** But is it not the case that so long as the state judiciary retains the final authority to adjudicate disputes in accordance with the law that the decisions of private actors do not settle, in the end, anyone’s entitlement? For one thing, as it stands today, citizens do not always have private rights of action against private providers, and these providers are not bound by constitutional requirements of 29 due process that apply to state actors. 62 More importantly, even when citizens have a right to sue a private organization for violating a state-provider agreement -- the standards specified in the privatization contract -- our discussion has shown that it is precisely these standards that are necessarily undetermined, in a way that leaves the private actor with lawful (because implied in the state-provider agreement itself) discretion to interpret them in certain ways, by choosing among alternative reasonable interpretations which cannot be fully specified ex ante. It follows that, if there are multiple reasonable ways in which A’s and B’s heath care entitlements could be assigned (who should get what treatment), the fact that an organization authorized to define those entitlements selects one of the available competing interpretations should provide us with a reason to accept that interpretation as final. We would then have no reason to sue the organization in the first place. In order to prove that this is not in fact the case one needs to further show that either (1) the organization in question is not in fact authorized to make that interpretation (this, however, cannot be the case at least insofar as the organization is omnilaterally authorized through contract to exercise some discretion) or that (2), even if authorized through contract, whatever interpretation the organization makes necessarily remains unilateral. In this case, were we forced to accept this entitlements-setting decision we would be subjected to the unilateral will of another. In what follows I will argue for option (2), by demonstrating that the fact that a private organization is authorized by government, through contract, to make certain decisions is not sufficient to provide us with reasons to accept those decisions as omnilateral acts of law. ii. Privatization and the problem of unilateral choice Can we decide omnilaterally in isolation? **Every individual decision, it appears, is necessarily unilateral.** Even if I do my best to set aside my private purposes and I reason publicly in my decision, I unavoidably decide according to my own interpretation of the public interest or the nature of the public good. It follows that, if the decisions made in the name of the state were simply reducible to the aggregation of decisions made by particular individuals qua individuals, these decisions would necessarily remain unilateral. 63 This is why we must distinguish between, on the one hand, publicly constituted offices, and, on the other hand, the individuals occupying them who might have their own private purposes.64 **We can regard the decisions of an office as omnilateral, and consistent with the right of everyone, only because even if concrete individuals do the ruling, it is the law -- publicly authorized mandates exercised through state offices – that rules, not the unilateral wills of single individuals who might occupy those offices.** As Scott Shapiro puts it, “Impersonal authority relations allow for the possibility of offices because the normative relations are not tied to any particular holder of offices, but rather to the offices themselves.”65 So the crucial question becomes: what does it take for laws rather than for individuals to rule, given the fact that necessarily individuals are the ones doing the ruling? It could be argued that so long as the discretion exercised by private agents is authorized through voluntary contracts then discretion is exercised within the boundaries of “a mandate” and on behalf of everyone, for citizens can be regarded as having consented to its delegation. This is a powerful argument. Indeed, so powerful that those few who have attempted to reject it came across as rather unconvincing. Dorfman and Harel, for example, argue that even if private actors are authorized through contract by the government, as well as committed to reason publicly, they cannot nevertheless act “in the name of” the state, because only acts that are fully deferential to the principal can be said to be done in the name of the principal. But, as I have previously explained, it does not seem to be true that an agent’s act must be fully deferential to the principal in order to count as being done “in the name of” the principal. Similarly, the mere fact that private actors are not fully deferential to public officials does not entail that their action cannot count as done in the name of the state. And yet, I do agree that **authorization through contract is not sufficient to transform a private discretionary decision into an omnilateral one.** Notably, this is so **even if private actors are committed to exercise their discretion (which they rarely are) by appealing to public reasons or to the public good.** In other words, being motivated by the right kinds of reasons is a necessary but not sufficient condition for a decision to count as an omnilateral act of law rather than a unilateral act of man. **Recall that omnilateralness has two aspects -- rightful judgment and unity – which are both required to overcome the two-faced problem of unilateralism.** Therefore, in order for a decision (that changes the normative situation of others) to count as omnilateral it is not enough that (i) the reasons cited in support of it are public, that is, consonant to the juridical idea of right; it must also be (ii) carried out as a part of a unified practice of law-making. **In order to be consistent with the equal freedom of all, all relevant decisions that change the normative situation of others must fit together so as to establish a scheme of entitlements equally applicable to all, thereby overcoming the indeterminacy problem.** They must be regarded as acts of a unified system of law, rather than as the aggregate of separate individual acts, each made in the name of all or according to separate agents’ interpretations of what Right requires. To demonstrate that private actors’ contractually-authorized decisions remain unilateral private judgments, we must then explain under what conditions exactly an individual act or decision can be attributed to a unified, collective practice of law-making. As several legal theorists have pointed out, the law can be regarded as a collective social practice -- an instance of shared agency.66 So the question becomes: how can the disparate decisions made by individuals – decisions that affect the normative situation of others – be regarded as instances of a unitary, shared collective practice? In answering this question we need a theory of collective action. Here I will build on Christopher Kutz’s theory insofar as, unlike other theories of collective action, his theory can be extended to cases of large-scale and complex instances of shared institutional agency. 67 Before proceeding, however, a clarification is in order. I will refer to all the parts of lawmaking that can be categorized as social practices with the term “legal institutions.” These institutions include much more than what courts do. As one scholar puts it, “In modern legal institutions, the officials are not only judges and legislators but also are lawyers, police officers, officers of the court, and bureaucrats in administrative agencies that are created by legislation in order to apply policies that have been duly legislated.”68 As I understand it, legal activity includes all that activity of “governance,” including policy-making and the nitty–gritty implementation of policies, that changes the normative situation of citizens in a relevant sense. Such activity defines entitlements and imposes obligations, by de facto fixing their content at the last stage of application. Admittedly, this is a very broad interpretation of what law-making includes, but I believe that my previous section has provided reasons to adopt this expansive account. To explain how we can attribute separate individuals’ decisions to a shared, unitary practice of law-making, and thus to the state, I shall draw on Kutz’ example of how discrete decisions get to be attributed to an academic department as a whole. Suppose that members of the department are in the process of hiring a new member of faculty, and disagree about the purpose of hiring. Some think that hiring provides them with the opportunity to increase the number of historically underrepresented groups in their university, while others see in it the opportunity to strengthen their own field of research. Members also disagree about how to approach the process of decision-making in hiring. Some are committed to deliberating or voting according to moral reasons alone, while others will try to strategically predict how their colleagues will vote and will then cast their ballot accordingly. In spite of these differences, we would still attribute the final hiring decision to “the department.” Why can we say that “the department,” as opposed to its individual members, has hired a new person? Two main conditions, Kutz explains, are essential for this attribution to hold: (C1) the action of the members of the department constitutes an instance of “collective” action (C2) a set of rules and procedures structuring the institution, which assign roles (offices) and mandates to each member, must be in place. 69 C1 is met when each member of the department acts with a “participatory intention.” This is an intention to contribute to a collective end. When there is sufficient overlap among individuals’ conceptions of the end -- e.g. all members of the department are committed to make a hiring decision and agree on what hiring is -- and when all members (or the vast majority) share an intention to contribute to that end, the claim of collective authorship of the kind “we hired a new person” becomes justified. This can be captured by the following principle (P): P: “A group intentionally acts (performs joint activity G intentionally) when its members do their parts of intentionally promoting G and overlap in their conception of G.”70 Yet, P is insufficient to justify the attribution of the hiring choice to the department in a way that enables us to say that “the department” has chosen. This is because P fails to exclude decisions or acts by agents who do have the appropriate intentions but who do not count as members of the department. Imagine an agent, call him Peter, who always accompanies his wife to departmental meetings. Peter intentionally participates in the deliberations of the department, has great influence on those deliberations and is fully committed to hiring a good candidate. Because of his evident commitment to departmental life, the members of the department regard him as a colleague and a member. In spite of all this, what Peter does cannot be attributed to the department. The following “identity qualifier” (I) must therefore be added to P. I: “A group intentionally acts (perform G intentionally) when (a) its members do their parts of intentionally promoting G and overlap in their conception of G,” and when (b) its members satisfy the criteria of the institutions that identify them as members. 71 The latter criteria can be both procedural and substantive. Only those who are formally appointed count as members of the department. But formal appointment may not be sufficient in order to qualify as a member of the department in the sense required so that one’s actions can be regarded as actions of the department. As Kutz puts it “someone whose behavior was so out of line with institutional norms would also be excluded from the inclusive ‘we’.”72 The notion of “being in line with institutional norms” is admittedly vague. Certainly we want to regard as legitimate members of the department people who oppose existing institutional norms because they believe they are unjust or inappropriate. At the same time, however, it is hard to see how the isolated decision of a formal member of the department who never attends meetings, fails to deliberate with his colleagues and fails to act with the identity of the department in mind could fully count as the department’s action or decision. But assume that all those making the hiring decision qualify as members of the department in the relevant sense and that they all share a participatory intention so that the requirements set out by both P and I are met. We can then say that we, as members of the department, have collectively chosen the new faculty members. But how do we get from “we” have chosen to “the department” has chosen a new member? Here is where the second condition (C2) becomes essential. Institutional rules define what a department is and prescribes specific “mandates” for their members. They also establish a specific set of normative relations among the members of the collective – e.g. common procedures and shared “background frameworks” – as well as a space of unified, collective action.73 It is not only the participatory intentions of individuals but also the institutionally-framed relations among them that transform an aggregate of individual actors into a unified collective agent. In order for our acting to count as the department’s action, we must, “orient our action within that institutional space,” where “this orientation consists in part of agents’ acceptance of the norms constitutive of the institution,”74 as well as in being committed to the overall project of the collective, and in being related to the other members of the collective in a way that sustains that commitment. Without a shared institutional space there is no unified collective action that can be attributed to an organization made from different offices and members. Now, what I have called “law-making” is a form of collective action. Legal institutions, like departments, consist of a set of individuals each having a participatory intention to contribute to the collective project of defining and applying norms in an appropriate way (though rightful judgment). The unity of the legal system is unity through agents’ orientation towards a collective goal. This orientation in turn consists of the agents’ acceptance of the norms constitutive of the institution, including an acceptance of certain restraints with regards to what kind of reasons (i.e. public vs. private reasons) can be advanced in support of their decisions, as well as the project of determining law qua a collective project. But this shared orientation cannot exist without an institutional space and web of normative relations capable of directing the behavior of different officials through its constitutive norms. Without this space we cannot attribute separate actions of law-making to the collective practice of law-making. It is only when officials share an institutional space that provide them with a shared orientation that their decisions can count as acts of law, rather than of men.75 They are act of law because they result from a collective project. The relevant question then becomes whether, in the implementation of policies, private actors, within political systems where privatization is widespread, inhabit the same institutional space of “official” members of the law-making community. My contention is that they do not. They are not connected to official members through an appropriate web of relationships that serve to provide the necessary shared institutional orientation. It is because of this reason that their decisions, however well intentioned or even deferential, cannot be attributed to that law-making community that is responsible for interpreting and applying norms on behalf of the entire political community. They are not omnilateral acts of law, but rather remain unilateral acts of men. Let me explain. The law-making community, including the system of public administration, is a sort of “department” whose main purpose is to collectively define and implement a scheme of entitlements and obligations, and, more generally determine norms through rightful judgment. In a representative democracy premised upon a notion of popular sovereignty, however specified, the people are the ultimate head of the department. Elected officials and representatives are chief administrators of the department whose purpose is to represent the public point of view. It is from this point of view that the content of norms and the public interest must be articulated in a unitary way, through a shared social practice of law making. It is the task of elected officials to ensure that all participants in the law making practice maintain the appropriate institutional orientation and commitment. Since the definition and implementation of policies and norms are necessarily underspecified and always entail some discretion on the part of the people carrying them out, including unelected officials like state bureaucrats and civil servants, in order for these decisions to count as acts of the same “department” they must be made within an institutional authority structure that, through shared background frameworks, structures and unifies practical reasoning and deliberation between individual decision-makers and political offices. This structure must (1) shape what options are to be considered in a decision, (2) determine what count as a relevant consideration, and 3) provide effective mechanisms and channels of communication for the circulation of information and the meshing of individuals’ sub-plans. 76 Members of the law-making community must be responsive to one another’s participatory intention and must all act with an institutional identity in mind, which orients their action towards a common purpose. When the administration and implementation of policies is at stake, what are the practical means that secure this unitary institutional space, which provides the possibility of collective agency oriented towards a common purpose? The answer points towards bureaucracy, and in particular to those administrative procedures that establish stable relationships between bureaucrats and elected officials. 77 The purpose of administrative procedures is not reducible to securing fairness and accountability in decisions made by bureaucrats. Administrative procedures are not simply sanctioning and monitoring mechanisms of effective implementation and accountability through which independently defined rules are applied. They should also be thought as channels of public practical reasoning that contribute to the very definition and justification of those rules through a collective, shared practice. Through administrative procedures, democratically elected officials retain control over the decisions and deliberations of administrative bureaucracies, so that the latter can orient their decisions according to the actions and decisions made by public officials. In this way, these procedures create that shared institutional space and sustained institutional orientation which are both necessary to attribute the actions of unelected actors to the democratic state as a whole.78 Through which mechanisms do administrative procedures play this role? Beyond judicial review, as well as monitoring and sanctioning, an important, if neglected, function of administrative procedures is to create integrated deliberative relations between administrators and elected representatives. 79 In many states, including the USA, administrative agencies commonly solicit comments and provide all interested parties with an opportunity to communicate their views, and must allow participation in the decision-making process. Agencies are required to deal with the evidence presented to them and provide reasons, on the basis of that evidence, in justification of their decisions. The entire sequence of decision-making - notice, comment, deliberation, collection of evidence, and construction of a record in favor of a chosen action - provides political principals with opportunities to respond when an agency seeks to move in a direction that goes against the judgment of public officials. 80 These procedures also ensure that relevant political information is available to form the basis of the agency’s action. Through properly functioning administrative procedures, bureaucracy becomes an institutional space for collective public practical reasoning oriented towards shared public goals. Democratically elected representatives can orient and structure the political environment in which an agency operates to adopt the political point of view and interlock its participatory intention with the ones of political officials.81 While the broader system of administrative rules secures an appropriate institutional and relational connection between the individual decisions of bureaucrats and the law-making community as a whole, so that we can see their actions as a part of a broader collective practice of governance, that system does not frame the institutional space within which private actors operate.82 This leaves these actors outside of the collective project of law-making. Stand alone, ad hoc contractual agreements between government and private actors may include accountability requirements but they necessarily fail to establish a systematic, continuous and shared web of appropriate relationships between those actors and the law-making community. 83 Indeed, **privatization contracts could be regarded as having the very purpose of separating private actors’ decision-making from the institutional constraints imposed by a bureaucratic structure. Only in this way, defenders of privatization argue, can costs-effectiveness and innovation be achieved. This is why privatization is not merely a problem of accountability, but rather of attributability.** The point is not that private actors’ actions lack transparency or fail to follow principles of fairness. The problem is a deeper one. **Private actors’ decisions do not count as something that the law-making community has done together; for there is no shared collective project in which private actors participate. Their actions cannot therefore be attributed to the state – “the department” -- as omnilateral acts of law.** They unavoidably remain unilateral conclusions of men. **But why cannot we bring private actors within the law-making community by extending to them relevant administrative procedures and requirements? The answer is simple. If private actors were so included, they would cease to be “private” in the relevant sense of the term and would de facto become public bureaucratic agents.** This would make privatization a conceptually empty term. Further, this solution would also defeat its practical purpose, which is precisely to bring certain decisions outside of the bureaucratic structure. iii. Privatization as unfreedom If I am correct that (1) **private actors in many current privatization schemes do not limit themselves to making decisions that restrict citizens’ options or harm them, but rather make decisions that change their normative situation,** and if it is true that (2) **such private actors, no matter if contractually authorized, exercise their decision-making power in a way that unavoidably remains unilateral,** it follows that, for the reasons explained in Section II (3) **privatization is a condition of unfreedom, which fundamentally undermines the very legitimacy of political institutions. No matter how efficient private actors are at achieving desirable social outcomes, privatization, at least insofar as it extends to entitlements-setting decisions, generates a condition in which citizens are unavoidably subject to the unilateral will of others.** 41 **When the MCO decides that a patient is not eligible for a certain treatment and cannot be reimbursed for it, the MCO is effectively denying the citizen an entitlement to some of the resources** (as well as to other people’s performances) **necessary to constitute a rightful condition, and it is doing so unilaterally.** Similarly, **when a guard employed by a private prison forces an inmate to go back to his cell against his will, the guard is constraining the freedom of the inmate by an unilateral act of will.** The free pursuit of both the patient’s and the inmate’s ends and purposes, and the access to the very conditions that make this free pursuit possible, is made dependent on the unilateral will of others, the moral status of which is by no means superior to the ones subject to those restrictions. This is a condition of unfreedom (as well as a violation of relational equality). A system where privatization is widespread cannot therefore be a rightful condition. It is a regression (albeit partial) to the state of nature. It follows that (4) the very same reasons we have to exit the state of nature are also reasons to limit the extent of privatization, and restore a more unified system of public administration. **My argument therefore supports policies of non-delegation, as opposed to policies of increased regulation of private agents.**

**Contention 2) Healthcare is key to being an end in oneself which means there is a moral obligation to provide it.**

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Kant further argued that the duty to oneself requires, not only the preservation of one’s life, but also the utilization and development of one’s talents and capacities. A rational being, Kant states, “necessarily wills that all the faculties in him should be developed because they are serviceable and given to him for all kinds of possible aims.” 3 While one might choose to neglect one’s talents, one could not possibly will that such neglect could become a universal law of nature, because such neglect would at the same time be in conflict with humanity’s natural “dispositions to great perfection,” 4 and would fail to further the “ends of nature” regarding the perfection of one’s talents. **Rational beings, therefore, are morally obligated to (1) preserve themselves, and (2) develop their abilities and talents as far as they are able. Health is the necessary precondition for the fulfillment of both of these duties; therefore, a rational being is obligated to preserve, protect, and care for his or her own health.** At this point, it might be objected that healthcare is a hypothetical imperative, since it serves as a means to something else i. e., the preservation of one’s life, and the development of one’s talents. However, in our world, rational beings are also physical beings, and **our physical bodies may be considered as integral to our being. The health of the body is so bound up with the nature and duties of rational beings, that one might say that to preserve one’s health is also to preserve and develop one’s being.** While Kant’s philosophy deals with the duties of autonomous rational beings, he did not overlook the question of how such beings should live together in society. In thinking of a larger community, Kant introduced the idea of a realm of ends. A realm of ends is a “systematic combination of rational beings through communal objective laws.”5 Rational beings contain each of the other’s ends within themselves—that is, each being wills for the other what it would also will for itself, because an ethical will is universally legislative in nature. The “communal objective laws” in the realm of ends have as their aim the reference of these beings to one another as ends and means. Laws are designed to promote the ends of each member of the community, and to never use them as a means to an end. Since rational beings are categorically required to will for others what they would will for themselves, they must necessarily will the preservation of the lives and the development of the natural faculties of others. **Since health is a precondition for doing these duties, rational beings in community must necessarily will, and provide for, the health of others, as well as of themselves.** Kant distinguished in the realm of ends between those things which have dignity, and those which have value, or price. “What has a price is such that something else can also be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits of no equivalent, has a dignity.” 6 Things that have value are things that can be replaced by other things—material objects, goods, services, etc. But rational beings have dignity, not value. **Given the unity of health and being, it can be argued that health, and its preservation, falls into the category of those things that have dignity rather than value,** and are beyond all price. Since health has dignity, rather than value, it cannot be treated as a market good. It has no equivalent. **One might choose to buy an I-Phone, rather than a television set, or one might choose to buy neither. But one has no choice but to fix a broken arm, or to undergo treatment for a life-threatening disease.** One cannot choose to buy a new car instead. It might be argued that healthcare is the responsibility of each person, not the responsibility of the society. It is certainly true that each individual has an obligation to maintain his or her health. However, in spite of one’s best efforts to maintain one’s health, **everyone can be subject to illness or injury requiring a level of care which he or she cannot provide for him or herself,** because they lack the knowledge and skill, and, if they are sick, they lack the ability. They will necessarily require the services of some other person who has knowledge, skill, and sufficient health to provide for another. Therefore, they must have access to the knowledge, skills, and ability of another, which requires that someone be available, and that someone pay for it. It might be argued at this point that everyone should be responsible to pay for their own healthcare, just as they would pay for any market good. However, as noted above, **healthcare in not a market good like others, subject to the normal laws of supply and demand.** Further, healthcare has become so complex and expensive that many people, and not just the poor, can be excluded. **Many lack health insurance, and some are underinsured. Almost anyone could be vulnerable to a healthcare crisis that could drain all their resources.** In this sense, we are all behind what John Rawls called the “veil of ignorance,”7 in that no one can know when or if they will be confronted by a healthcare crisis that exceeds their ability to pay. Here one thinks of Kant’s example of a person who, endowed with prosperity, chooses not to contribute toward the needs of others less fortunate. While a society might subsist under such a principle, one could not possibly will that it could be a universal law, “for the case could sometime arise in which he needs the love and sympathetic participation of others, and where, through such a natural law arising from his own will, he would rob himself of all the hope of assistance that he wishes for himself.” 8 If healthcare is understood as an obligation so closely tied to the duties to preserve one’s life and develop one’s ability that it is in fact itself a categorical duty, and if in the realm of ends, every being necessarily wills that which is universally legislative, i. e., that which every other being would will for itself, then it follows that, members of a just society will seek to ensure that everyone has access to a sufficient level of healthcare to preserve their life and fulfill their greatest potential. The object of this paper has been to establish the moral obligation of a society to provide access to healthcare for all its members. **Healthcare is not a right or an entitlement, but a moral duty that touches all members of society.** It might be accomplished through a universal single payer system like Medicare, or it might be accomplished through some combination of government programs and market based approaches. By however means, Kant’s approach to ethics can be said to require that a just society develop a system of universal healthcare that is accessible to all of its members.

**Contention 3) Public health care is good because otherwise sick people are made dependent on the ends of others.**

**Ripstein 5**, Arthur. *Force and Freedom*. E-book ed., London, England, Harvard UP, 2009.  ICWNW

Although Kant focuses on the example of support for the poor, the force of his argument is concerned with the structure of the general will. As a result, it requires actual institutions to give effect to it—to set appro- priate levels and mechanisms of aid and introduce forms of regulation where necessary. As a philosophical account it is supposed to show what means are available to the state, consistent with the freedom of all; it is not supposed to micromanage social policy. In private right, questions about the limitations period for adverse possession, the standard of care in the law of negligence, or the proper speed limit in rural areas can only be an- swered through the exercise of determinative judgment by a properly constituted public authority. The same point applies here. The require- ments of a general will constrain the form of possible answers, but not their substance. **Any answers need to be consistent with equal freedom, so they cannot introduce mandatory forms of cooperation merely on the grounds that they will produce an aggregate increase in welfare.** Nor can citizens assert private rights which apply against other private persons as a bulwark against the public requirements of sustaining a rightful condi- tion. But within the appropriate structure, the answers must be imposed by the people themselves. Instead, The Metaphysics of Morals says only that provision must be made so as to preserve independence. The principle of right focuses ex- clusively on the relation between the choice of the person of means and that of the one in need, and requires that provision be public rather than private. A further “principle of politics” brings that structure to bear on particulars, taking account of the particular society to which the principle of right is to be applied, and guides officials in determining the level and manner of provision. The resulting forms of public provision will in turn reflect economic and political features of a particular society, provided only that they are carried out without violating any person’s innate right of humanity. In the past, societies with large amounts of habitable but un- inhabited land could make it available for homesteading, but could not rightfully deport poor people to those regions. To switch to a more modern example, **if illness and medical expenses regularly lead citizens to fall into conditions of dependency, a state can act proactively to provide publicly funded universal health care. Different countries have adopted different mechanisms to implement this solution, and whether forms of elective surgery are included depends in part on assessment of what is economically or politically feasible in a particular country at a particular time. Here, as elsewhere, the Kantian response must be that use of public power is both justified and restricted by the requirements of creating and sustaining a system of equal freedom under self-imposed laws**, but that those requirements demand certain institutions but do not dictate spe- cific results. Democratic politics has an ineliminable place in determining such matters, because the purpose of public institutions is to make the requirements of right apply systematically, not to discover some detailed blueprint that exists apart from those institutions.