#### Individuals must be considered to have a right to property, otherwise it’s impossible to consider them as volitional

Kant, Immanuel. Kant: The Metaphysics of Morals (Cambridge Texts in the History of Philosophy) 2nd Edition. by Immanuel Kant (Author, philosopher), Mary J. Gregor (Editor), Roger J. Sullivan (Introduction). Cambridge University Press 1996. 1797. NP 8/2/16.

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 [6:251] For an object of my choice is something that I have the physical power to use. If it were nevertheless absolutely not within my rightful power to make use of it, that is, if the use of it could not coexist with the freedom of everyone in accordance with a universal law (would be wrong), then freedom would be depriving itself of the use of its choice with regard to an object of choice, by putting usable objects beyond any possibility of being used; in other words, it would annihilate them in a practical respect and make them into res nullius**, even though** in the use of things choice was formally consistent with everyone’s outer freedom in accordance with universal laws. – But since pure practical reason lays down only formal laws as the basis for using choice and thus abstracts from its matter, that is, from other properties of the object provided only that it is an object of choice, it can contain no absolute prohibition against using such an object, since this would be a contradiction of outer freedom with itself. – But an object of my choice is that which I have the physical capacity25 to use as I please, that whose use lies within my power26 (potentia). This must be distinguished from having the same object under my control27 (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. – It is therefore an a priori presupposition of practical reason to regard and treat any object of my choice as something which could objectively be mine or yours.

#### Human beings can not reject their personality and ability to be free –reducing individuals to mere means makes ethics incoherent

Kant 2, Immanuel. Kant: The Metaphysics of Morals (Cambridge Texts in the History of Philosophy) 2nd Edition. by Immanuel Kant (Author, philosopher), Mary J. Gregor (Editor), Roger J. Sullivan (Introduction). Cambridge University Press 1996. 1797. NP 8/2/16.

A human being cannot renounce his [her] personality as long as he is a subject of duty, hence as long as he lives; and it is a contradiction that [s]he should be authorized to withdraw from all obligation, that is, freely to act as if no authorization were needed for this action. To annihilate the subject of morality in one’s own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one’s person (homo noumenon), to which man (homo phaenomenon) was nevertheless entrusted for preservation. To deprive oneself of an integral part or organ (to maim oneself) – for example, to give away or sell a tooth to be transplanted into another’s mouth, or to have oneself castrated in order to get an easier livelihood as a singer, and so forth – are ways of partially murdering oneself. But to have a dead or diseased organ amputated when it endangers one’s life, or to have something cut off that is a part but not an organ of the body, for example, one’s hair, cannot be counted as a crime against one’s own person – although cutting one’s hair in order to sell it is not altogether free from blame

#### The ability to lay claim to property rights necessitates the existence of a collective will that can have power over individuals

Kant 3, Immanuel. Kant: The Metaphysics of Morals (Cambridge Texts in the History of Philosophy) 2nd Edition. by Immanuel Kant (Author, philosopher), Mary J. Gregor (Editor), Roger J. Sullivan (Introduction). Cambridge University Press 1996. 1797. NP 8/2/16.

Bracketed for gendered language

When I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally [theirs]his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects belonging to others untouched unless everyone else provides me assurance that [t]he[y] will behave in accordance with the same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule. – Now, a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws. So it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance. – But the condition of being under a general external (i.e., public) lawgiving accompanied with power is the civil condition. So only in a civil condition can something external be mine or yours. Corollary: 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.Read more at location 1843

#### This outweighs – a) unilateral wills are only contingent – only an omnilateral will makes rights claims conclusive

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No insight can be had into the possibility of acquiring in this way, nor can it be demonstrated by reasons;21 its possibility is instead an immediate consequence of the postulate of practical reason. But the aforesaid will can justify an external acquisition only insofar as it is included in a will that is united a priori (i.e., only through the union of the choice of all who can come into practical relations with one another) and that commands absolutely. For a unilateral will (and a bilateral but still particular will is also unilateral) cannot put everyone under an obligation that is in itself contingent; this requires a will that is omnilateral, that is united not contingently but a priori and therefore necessarily, and because of this is the only will that is lawgiving. For only in accordance with this principle of the will is it possible for the free choice of each to accord with the freedom of all, and therefore possible for there to be any right, and so too possible for any external object to be mine or yours.

#### b) rights must be derived a priori rather than a posteriori – the aff framework is the only way to derive state obligations

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The concept of merely rightful possession is not an empirical concept (dependent upon conditions of space and time) and yet it has practical reality, that is, it must be applicable to objects of experience, cognition of which is dependent upon those conditions. – The way to proceed with the concept of a right with respect to such objects, so that they can be external objects which are mine or yours, is the following. Since the concept of a right is simply a rational concept, it cannot be applied directly to objects of experience and to the concept of empirical possession, but must first be applied to the understanding’s pure concept of possession in general. So the concept to which the concept of a right is directly applied is not that of holding (detentio), which is an empirical way of thinking of possession, but rather the concept of having,28 in which abstraction is made from all spatial and temporal conditions and the object is thought of only as under my control (in potestate mea positum esse). So too the expression external does not mean existing in a place other than where I am, or that my decision and acceptance are occurring at a different time from the making of the offier; it means only an object distinct from me. Now, practical reason requires me, by its law of right, to apply mine or yours to objects not in accordance with sensible conditions but in abstraction from them, since it has to do with a determination of choice in accordance with laws of freedom, and it also requires me to think of possession of them in this way, since only a concept of the understanding can be subsumed under concepts of right. I shall therefore say that I possess a field even though it is in a place quite different from where I actually am. For we are speaking here only of an intellectual relation to an object, insofar as I have it under my control (the understanding’s concept of possession independent of spatial determinations), and the object is mine because my will to use it as I please does not conflict with the law of outer freedom. Here practical reason requires us to think of possession apart from possession of this object of my choice in appearance (holding it), to think of it not in terms of empirical concepts but of concepts of the understanding, those that can contain a priori conditions of empirical concepts. Upon this is based the validity of such a concept of possession (possessio noumenon), as a giving of law that holds for everyone; for such lawgiving is involved in the expression "this external object is mine," since by it an obligation is laid upon all others, which they would not otherwise have, to refrain frm using the object.

#### c) it’s the only way to avoid property rights being contingent

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So the way to have something external as what is mine consists in a merely rightful connection of the subject’s will with that object in accordance with the concept of intelligible possession, independently of any relation to it in space and time. – It is not because I occupy a place on the earth with my body that this place is something external which is mine (for that concerns only my outer freedom, hence only possession of myself, not a thing external to me, so that it is only an internal right). It is mine if I still possess it even though I have left it for another place; only then is my external right involved. And anyone who wants to make my continuous occupation of this place by my person the condition of my having it as mine must either assert that it is not at all possible to have something external as mine (and this conflicts with the postulate §2) or else require that in order to have it as mine I be in two places at once. Since this amounts to saying that I am to be in a place and also not be in it, he contradicts himself.

#### Thus, the standard is consistency with the omnilateral will. Put away your generic Kant answers – the aff uses Kantian political philosophy, not moral philosophy.

Ripstein 9, Arthur. Force and Freedom: Kant’s Legal and Political Philosophy. Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 8/4/16.

In the same way, the Universal Principle of Right abstracts from the maxim on which a person acts, focusing instead on the purely external relation between agents. As a principle of inner determination, a person’s maxim is fundamental. But it has no bearing on the outer obligations that one embodied person owes another. I wrong you if I interfere with your rights, regardless of what maxim I act on, but I do not wrong you by acting on an immoral maxim unless I interfere with your person or property.43

#### To clarify, the framework does not value the ability to set any end, but rather the ability to decide which ends to pursue

Ripstein 9 2, Arthur*. Force and Freedom: Kant’s Legal and Political Philosophy.* Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 8/4/16.

Independence is the basic principle of right. It guarantees equal free- dom, and so requires that no person be subject to the choice of another. The idea of independence is similar to one that has been the target of many objections. The basic form of almost all of these focuses on the fact that any set of rules prohibits some acts that people would otherwise do, so that, for example, laws prohibiting personal injury and property dam- age put limits on the ability of people to do as they wish. Because differ- ent people have incompatible wants, to let one person do what he wants will typically require preventing others from doing what they want. Thus, it has been contended, freedom cannot even be articulated as a political value, because freedoms always come into conflict, and the only way to mediate those conflicts is by appealing to goods other than freedom. As I will explain in more detail in Chapter 2, such an objection has some force against freedom understood as the ability to do whatever you wish, but fails to engage Kant’s conception of independence. Limits on indepen- dence generate a set of restrictions that are by their nature equally appli- cable to all. Their generality depends on the fact that they abstract from what Kant calls the “matter” of choice—the particular purposes being pursued—and focus instead on the capacity to set purposes without hav- ing them set by others. What you can accomplish depends on what oth- ers are doing—someone else can frustrate your plans by getting the last quart of milk in the store. If they do so, they don’t interfere with your in- dependence, because they impose no limits on your ability to use your **p**owers to set and pursue your own purposes. They just change the world in ways that make your means useless for the particular purpose you would have set. Their entitlement to change the world in those ways just is their right to independence. In the same way, your ability to enter into cooperative activities with others depends upon their willingness to co- operate with you, and their entitlement to accept or decline your invita- tions is simply their right to independence

#### Prefer additionally:

#### Only a Kantian framework makes public education coherent – no public educational institutions can be free from the constraints of the omnilateral will.

Ripstein 9 3. (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) Force and Freedom Kant’s Legal and Political Philosophy Arthur Ripstein. Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 2/12/17.

The impossibility of a people giving itself a law that mandates full ma- terial equality does not, however, stand in conflict with many of the famil- iar programs that liberal democracies have introduced, such as universal and publicly funded education. Those programs are often characterized as egalitarian in their focus, and there is some truth in that characteriza- tion, so long as they are understood as contributing to equal republican citizenship, not as unstable stopping points justified only because they provide a fair approximation of material equality. Within Kant’s framework, the rationale for such programs is different, but both more familiar and more compelling. Education is both an effective means of achieving some basic public purposes, although in principle a contingent one, and also, at the same time, a necessary means of a right- ful condition perfecting itself. It is thus required both by a principle of politics, based on empirical features of the human situation and by a principle of right. A principle of politics designed to give effect to the princi- ple of right in a specific society can embrace publicly funded education on two distinct grounds. First of all, an educated population provides advance protection against poverty and the dependence it creates. Publicly funded universal education is an investment in preventing future individ- ual dependence. Second, the state’s ability to maintain itself also depends on its maintenance of its own material conditions. Those conditions are varied, but include protecting it “both internally and against external en- emies,”38 and so providing education needed to strengthen and stabilize the economy. (The same rationale could also provide a further ground for public provision of health care, on the ground of its long-term stabilizing effects.) The state also requires an educated population to fill out the nar- rower aspects of its mandate. Its ability to resolve disputes depends upon private persons trained in the law; its ability to manage the economy so as to sustain itself as a rightful condition depends upon private persons with requisite skills and abilities to develop novel opportunities, and, where necessary, to adapt to change. Publicly funded education can also be justified more directly in prin- ciples of right, both at the level of rights as between private persons and at the level of public right considered more generally. As we saw in Chapter 7, a condition of public right includes your right to speak in your own name, including the right to address not only those near you but the public. Others do not need to pay attention to you, but they must be the ones who decide for themselves whether to pay attention. Further, every citi- zen must be able to stand on his or her rights, both against other private persons and against the state. Each of these aspects of a rightful condition demands both literacy and civic education.39 Details of the implementa- tion of this requirement depend on empirical and anthropological fac- tors. The idea of the original contract provides a further rationale. Education is the principal means through which a rightful condition can bring itself more nearly into conformity with the idea of the original contract, through which the people more fully give laws to themselves. Even if rela- tions between private persons could be rightful under a despotic system of government, the form through which the laws are given to them is de- fective against the standard of the idea of the original contract. A fully republican system of government sees to it that the people rules itself, and taxes itself, through its representatives, but this in turn requires reflective citizens and voters, capable of accessing proposed laws and candidates for public office. Kant remarks that the duty to “make the kind of govern- ment suited to the idea of the original contract” can only be discharged in accordance with concepts of right. As a result, even improvements from that perspective must be self-imposed. A change in a state’s constitution “cannot consist in the state’s reorganizing itself . . . as if it rested on the sovereign’s free choice and discretion which kind of constitution it would subject the people to.” Such a mode of change “could still do the people a wrong.”40 Constitutional change from above seeks to enable the people to rule themselves by depriving them of the ability to do so. The only way that a rightful condition can improve itself is by cultivating educated and reflective citizens, which is just to say that it can only do so through education. None of this is to say that public education guarantees reflective voters and citizens; the Kantian claim is only that the only way that the process of the state bringing itself into conformity with concepts of right can be done in accordance with those very concepts is through an educated population that imposes laws on itself. A theory of the legitimate uses of state power cannot guarantee that the uses of those powers will in every instance bring a state more nearly into conformity with right, any more than it can guarantee that legitimate uses of public power will be prudent ones. For each of these reasons, the state has an interest in seeing to it that its citizens are educated. Like any other legitimate state purpose, public edu- cation is an instance of mandatory social cooperation, to which all can be required to contribute. We saw in the last chapter that the basic principle of public provision is that in cases of mandatory cooperation in sustain- ing a rightful condition, the state must see to it that burdens fall equally. Where cooperation is mandatory, people cannot negotiate specific terms, because none can withdraw from the agreement. In such situations, the only terms to which all could agree are ones that place the burdens of co- operation equally. Applied to the case of education, the legislature alone is competent to determine how exactly to characterize the requisite bur- dens and corresponding benefits, as well as how to interpret its mandate for equal distribution. These matters are obviously controversial in any particular case. At the same time, the state cannot provide education only to the children of educated parents, even if that would be more efficient. Public provision must satisfy the condition of formal equality of opportu- nity. Formal equality of opportunity in publicly provided education means education for all. This rationale for public education provides a further instance of the powers of a public authority, which entitle it to place requirements and regulations on private citizens. Parents can be compelled to send their children to school; citizens can be required to pay taxes to support edu- cational institutions. Kant thus has the conceptual resources to explain why public provi- sion of the means to full participation in society is both a legitimate state interest and, just as importantly, something that must be provided equally. He can do so without importing any assumption that the state must act in ways that will bring about some state of affairs that can be characterized as desirable apart from it, and **without attributing to the state any right or duty to make its citizens happy. Its only duty is to protect their freedom.**

#### I will defend the entire resolution but if you want me to specify further, ask in cross-ex.

My thesis is that restrictions on expression are first and foremost a restriction of right, not because all speech is good speech, but because it is you, and not public officials who should have the power to decide the right thing for you to say.

#### First, public universities and colleges are founded and operated by the state.

Collegebound “Differences Between Public and Private Universities and Liberal Arts Colleges” <http://www.collegebound.net/content/article/differences-between-public-and-private-universities-and-liberal-arts-colleges/18529/> JW

In the US, most public institutions are state universities founded and operated by state governments. Every state has at least one public university. This is partially due to the 1862 Morrill Land-Grant Acts, which gave each eligible state 30,000 acres of federal land to sell to finance public institutions offering study for practical fields in addition to the liberal arts. Many public universities began as teacher training schools and eventually were expanded into comprehensive universities.

#### Public officials must make laws consistent with their inner standard of consistency – i.e. the constitution. Otherwise, the sovereign is in a place of contradiction with itself.

Ripstein 9 4. (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) Force and Freedom Kant’s Legal and Political Philosophy Arthur Ripstein. Harvard University Press Cambridge, Massachusetts . London, England 2009. Page 201-203. NP 2/12/17.

The idea of the original contract extends the strategy of considering the pure case to public institutions charged with making arrangements for people, by articulating the structure through which the power to make and enforce those arrangements can be consistent with freedom, and so fully legitimate. We saw in the previous section that institutions can create an omnilateral will because they incorporate the distinction between the mandate of an office and the purposes of the particular person filling it. An official acting within his or her mandate will often have room to exercise judgment in determining what it requires in a particular situation, or how best to carry out its purposes. In so doing, the of fi cial will both exercise judgment and take account of empirical and anthropological factors that might be relevant to those purposes. Any such judgment, discretion, or consideration of facts has to be exercised within the terms of the mandate; an official is not entitled to use public office to pursue private purposes, nor to make the world better in ways unrelated to his or her mandate. That is the sense in which officials are public servants: they act on behalf of the public. We also saw that the entitlement to make arrangements for others is limited to the arrangements that those others would have been en titled, as a matter of right, to make for themselves. The structure of making arrangements that others could have made for themselves includes not only the particular laws that the state makes, but also the “constitutional” law that creates the institutional structure through which some make arrangements for others. The postulate of public right en ti tles of fi cials to make arrangements for citizens; the idea of the original contract represents citizens themselves as authors of the higher- order arrangement empowering those officials, so that all political power is exercised by the people themselves. The ideal case serves as a standard because it provides the only consistent way of organizing the use of power to guarantee ev ery one’s freedom under law. Institutions and their officials have a duty of right to act in conformity with it because they have a duty of right to act in conformity with ev ery human being’s right to freedom. Kant’s argument does not say that since of fi cials are making law, they should do the ideal version of lawmaking, or that in making law they are already committing themselves to some aspirational ideal of law. Such an approach is foreign to the Kantian project. The suggestion that the duty to rule in conformity with the idea of the original contract is a special case of a more general principle that requires you to do whatever you are doing in accordance with the standard internal to whatever you happen to be doing—as someone might imagine that the problem with making bad arguments is that person’s failure to live up to the proper standards internal to argumentation, and so to somehow ensnare herself in some form of performative contradiction—would fault the person who failed to live up to the ideal with some sort of nonrelational, self- regarding failure of rational consistency, rather than a wrong against others. A state that makes laws inconsistent with the idea of the original contract is defective because it creates a condition that is not rightful, not because it violates a norm of inner consistency.

#### Second, laws are only legitimate if individuals could agree to impose them on themselves. One could not agree to a condition of enforceable passivity where freedom of expression is abrogated – it would undermine rightful honor.

Ripstein 9 5. (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) Force and Freedom Kant’s Legal and Political Philosophy Arthur Ripstein. Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 2/12/17.

Innate right has the further implication that a people could not give themselves laws that are so open-ended that they effectively confer an unrestricted power on officials. A rule that created a broad set of presiden- tial or royal prerogatives, to be used for whatever purpose the president or monarch chose, would be inconsistent with self-rule; a provision enti- tling the majority to impose bills of attainder regulating the conduct only of specific individuals would face the same problem. So, too, would a rule that instructed officials to make determinations on the basis of facts that they were not in a position to ascertain.50 The same analysis captures the difficulties of rules that grant discretion to juries to distribute punish- ments on the basis of extralegal factors. Persons concerned with their right of self-mastery could not find themselves under a law that made punishment depend on such factors, even if, in the abstract, they might expect a reasonable prospect of being advantaged by consideration of those factors.51 Other restrictions on the means that the state may use are imposed by the public structure of lawgiving, and the correlative requirement that citizens could not bind themselves to a condition of passivity. The defects of a binding religious creed provide one example. Restrictions on public political expression provide another. Free beings could not put them- selves in a position in which they were prohibited from expressing their concerns about the rightfulness or even prudence of public laws.52 Con- versely, public officials may not deceive citizens.53 These restrictions on the exercise of state power are indirect requirements of rightful honor. To be passive because of disposition or even circumstances is consistent with rightful honor; you are under no obligation of right to exercise your rights, but rightful honor does not permit you to put yourself into an en- forceable condition of passivity. A law prohibiting you from speaking your mind about public issues, or one that granted officials the right to deceive you, would make a condition of passivity enforceable against you.54 Kant condemns a state in which “subjects . . . are constrained to behave only passively” as “the greatest despotism thinkable (a constitu- tion that abrogates all the freedom of its subjects, who in that case have no rights at all).”55 The idea that the people are the authors of the laws that bind them is thus a formal rather than material idea. A material principle would insist that people have a particularly strong or even overriding interest in their innate right, and so would never agree to something likely to compromise it. Kant’s formal principle focuses on the relation between innate right and legislation through the mediating idea of the authorization of coer- cion. The use of force is only rightful provided that it is consistent with the innate right of humanity; positive legislation is only legitimate if it could be a law that free persons could impose on themselves, where the test of the possible imposition is their rightful capacity to bind them- selves, that is, consistency with their rightful honor.

#### Third, freedom of expression is a necessary component of your status as a person and an entitlement of right – protected speech can not wrong others

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Instead of advantage, possible agreement is limited by each person’s innate right of humanity. Many individual rights are grounded in the “au- thorizations” that are “already contained” in the innate right to freedom; political rights are derived from the idea of the original contract. Freedom of expression follows from the innate right of humanity authorizing a per- son “to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it—such things as merely communicating his thoughts to them, telling or promising them some- thing, whether what [s]he says is true and sincere or untrue and insincere; for it is entirely up to them whether they want to believe h[er]im or not.”46 The right to say what you think is a reflection of the more general point that no person has a right that others conduct themselves in ways best suited to his or her preferred purposes. Short of depriving you of some- thing you already have a right to, I can use my words as I see fit. Other aspects of right determine the ways in which one person can be wronged by another’s words. Your right to a good reputation, which Kant argues extends even beyond your death, is one example. Others include the wrongfulness of fraud and even of speaking in another person’s name by publishing a copyrighted book without the author’s permission. Innate right also governs the presumption of innocence and the bur- den of proof when someone is accused of wrongdoing. Each person’s right to be “a human being beyond reproach” can be appealed to “when a dispute arises about an acquired right and the question comes up, on whom does the burden of proof fall, either about a controversial fact, or if this is settled, about a controversial right, someone who refuses to accept this obligation can appeal methodically to his innate right to freedom (which is now specified in its various relations), as if he were appealing to various bases for rights.”47 Most significantly, innate right includes “a human being’s quality of being [her]his own master (sui juris),”48 that is, the right not to be used for the purposes of others. This aspect of innate right means that people could not rightfully give themselves a law that made some official their master, and so precludes the use of public power to achieve merely private purposes. It also guarantees freedom of association. Part of your entitlement to set and pursue your own purposes is the entitlement to choose those with whom you will make arrangements, subject only to their entitlement to decline to enter into arrangements with you.

#### Fourth, censorship of criticism of the ruler’s political opinions would undermine their power and legitimacy

David 83 summarizes and quotes Kant 1. KANTS FOURTH DEFENSE OF FREEDOM OF EXPRESSION1 Michael Davis (Illinois State University, Michael Davis is a member of the Philosophy Department of Illinois State University, having received his Ph. D. from the University of Michigan. His research interests include social contract theory (where the contract is actual, not hypothetical), standards for just punishment, and morality as the work of a “moral legislature.”) March 1983. NP 2/13/17. [bracketed for gendered language]

“[The] citizen must,” Kant says in the passage already quoted, “with the approval of the ruler, be entitled to make public his opinions on whatever of the ruler’s measures seem to him to constitute an injustice against the commonwealth.”l0 To the question, why “must”a ruler (or government) approve such a right, Kant replies first (in a sentence omitted from the passage quoted) that “to assume that a head of state can neither make mistakes nor be ignorant of anything would be to imply that he receives divine inspiration and is more than a human being.11 Such an assumption seems sufficiently absurd for Kant to put aside the possibility that any rational ruler (of a civil state, at least) might accept it. The ruler must then recognize the possibility that in any particular matter before him **[s]**he may be ignorant of a crucial fact or may make a mistake even if he has all the facts. This recognition does not, however, seem to entail that the ruler “must”concede to his subjects the right to criticize his acts. All it seems to entail is that a ruler may stand to benefit from public debate in one way. It leaves open the possibility that he stands to benefit from censorship in others. That open possibility invites some cynical questions. Must a ruler not sometimes at least stand to benefit more from censorship? For example, if he makes a mistake, would a ruler not be more likely to preserve his subjects’ respect if he kept them from hearing of it? To such cynical questions, Kant makes, it seems to me, a double reply. Both parts attempt to provide a decisive motive for not censoring (rather than simply showing once again that censorship is morally wrong). The first half of the reply is that “to deny the citizens this freedom. . .means withholding from the ruler all knowledge of those matters which, if [s]he knew about them, [s]he would himself rectify. . .[for] h[er]is will issues commands to his subjects. . .only insofar as [s]he represents the general will.”I\* Free debate will, Kant seems to say, keep a ruler from doing what [s]he does not (and should not) wish to do. The second half of the reply is that “to encourage [the ruler] to fear that independent and public thought might cause political unrest is tantamount to making h[er]im distrust h[er]is own power and feel hatred towards his people.13 17 Censorship would, in other words, undermine the ruler’s power and self-assurance.

#### Fifth, censorship is inconsistent with the initial foundation of right and leads to contradiction with the basis for the government’s power

David 83 summarizes and quotes Kant 2. KANTS FOURTH DEFENSE OF FREEDOM OF EXPRESSION1 Michael Davis (Illinois State University, Michael Davis is a member of the Philosophy Department of Illinois State University, having received his Ph. D. from the University of Michigan. His research interests include social contract theory (where the contract is actual, not hypothetical), standards for just punishment, and morality as the work of a “moral legislature.”) March 1983. NP 2/13/17. [bracketed for gendered language]

What is the force of this double reply: Insofar as a people are rational, they know the terms of the original contract as well as their ruler does. In particular, they know that, because their ruler needs public debate in order to act in accordance with the general will, they could not consent to censorship and so, that his imposing censorship violates their rights. They must also **suppose** that their ruler knows that. He **is** in the same position to know the terms of the original contract as they, since he too is rational. So, when their ruler imposes censorship, they must take that act both as itself a violation of their rights and as an admission of other wrongdoing as well. The censorship itself is enough to put in question both the ruler’s good will and his past acts. Insofar as his subjects are rational, a ruler’s censorship instills in them a distrust at once specific and certain. If the purpose of censorship is to preserve the trust of the people, censorship is self-defeating. Kant’s double reply now has a certain cogency it did not have before. Even a would-be tyrant would have to admit that, insofar as his subjects are rational, censorship is self-defeating and that he would be better off permitting public debate and finding some other way to conceal his wrongdoing. Still, the argument is not yet all that cogent. There is something too philosophical about it, too much talk of what is rational. We can well imagine some would-be tyrant remarking to himself after hearing the argument, “If that is what it would mean to have rational subjects, I thank my lucky star for the wild, half-rational fools I in fact rule.” And we might well suppose that Kant did not imagine such a possibility. But, as a matter of fact, he did. Though his language shows his concern to be despots rather than tyrants, the following objection he raises is plainly the one we just imagined: The only objection which can be raised against this is that, although men have a mental notion of the rights to which they are entitled, their intractability is such that they are incapable and unworthy of being treated as their rights demand, so that they can and ought to be kept under control by a supreme power acting purely from expediency.\*s To this objection Kant makes the following short but suggestive response: But thiscounsel ofdesperation. . .means that, since there is no appeal to right but only to force, the people may themselves resort to force and thus make every legal constitution 21 insecure. If there is nothing which commands immediate respect through reason, such as the basic rights of man, no influence can prevail upon man’s arbitrary will and restrain his freed om .zb How does this response meet the objection? The response, though suggestive, is only suggestive as it stands. We cannot easily make out what Kant is getting at. The response is not an appeal to any right of revolution (though there is certainly a threat of revolution in it). To appeal to any such right would (as we have seen) presuppose rational agents and it is just the point of the objection that the subjects are “incapable. . .of being treated as their rights demand”. The response is also not an appeal to what would happen if one ruled over mere unthinking animals. Human beings, however debased, are never that debased (at least not while they maintain any kind of government). And, anyway, government does not exist among mere unthinking animals (at least in a sense of interest here). The response is equally not an appeal to any “law of the jungle”. No political questions arise unless there is a government of some kind. What then did Kant have in mind? It seems to me that he must have had in mind some interplay between what subjects are insofar as they are rational and what they are insofar as they are not. Given what Kant says here and in his other defenses of free expression, he might, I think, reasonably be supposed to be making something like the following argument: By acting against his duty and his subjects’ rights, the ruler who censors public debate puts him[her]self (to that extent) outside the community to which his subjects belong insofar as they are rational. To say that is not to say that his subjects have a right to revolt in consequence. Insofar as they are rational, his subjects have a duty to submit to the censorship; and insofar as they are not rational, they can have no rights at all. What it is to say is that, insofar as he acts wrongly, the ruler may provoke acts as wrong as his own. His wrongful acts may provoke wrongs from his subjects not insofar as they are rational but insofar as they are not. Insofar as his subjects are not rational (in Kant’s special sense connecting reason and morality), the ruler cannot call upon their sense of duty, only upon their interests and fears. For this reason, the cynical recommendation to depend upon the irrationality of one’s subjects is a “counsel of desperation”. “Expediency” is an uncertain guide in a way reason is not. To depend upon one’s subjects’ interests and fears is to be reduced to the desperate calculations of the Hobbesian soverign. A prudent ruler would not want to be reduced to such a condition. That may seem enough to dispose of our cynical questions, but there is, I think, a little more. Giving up the protection of reason may, we might suppose, sometimes be prudent in the short-run. But, Kant would say, ultimately it cannot even be that. What we called the argument from civil liberty can be reversed. Just as public debate would prepare subjects for full civil liberty by training them in the use of public reason, so (it seems) censoring public debate would tend to weaken the 22 subjects’ reasoning power by denying the public space necessary for its exercise. The ruler himself sets a bad example by acting against reason and then so arranges his domain that there is nothing to compensate for his example. Censorship thus does not leave the subjects as they were but actually tends to make them less reasonable. The spreading darkness must in time weaken the rational community upon which the ruler’s legal power (and therefore much of his actual power) depends. Censorship courts revolution. The revolution occurs only when the state can no longer call upon the rationality of its subjects for defense. A revolution is not (on this analysis) so much the overthrow of a state as its breaking up once enough of the foundation has rotted. That, of course, is not to say that censorship, however severe, inevitably leads to revolution. The consequences of one’s acts cannot be foretold with certainty, though their tendency can be demonstrated. Inertia may, as a matter of fact, serve in place of reason, people coming to prefer a “passive state to the dangerous task of looking for a better 0ne”.l7 No doubt such passivity is more likely in an old despotism than in a new tyranny. And no doubt too, in both, the ruler would have to take care not to do anything to shake his people out of their passivity. But, however that may be, the ruler who censors debate has lost one important prop of power. He has lost the capacity to call upon his subjects’ rationality.

# Frameworky stuff

### A2 Ideal Theory Bad

#### Ideal theory provides a fixed goal

Swift 1: (Adam Swift, British Poliicla Philosopher, Oxford University “Ideal and Nonideal Theory” Oxford Handbooks Online. June 2012. FT)

Suppose our ideal theory correctly identifies the long-term goal we want to achieve. We know from Rawls that this goal is realistic, in the sense that it is achievable, if only in the long, perhaps very long, run. As he says, ideal theory probes “the limits of practicable political possibility” (2001, 4, 13). Why would knowing this long-term goal be irrelevant to us here and now? It would be irrelevant if we were simply not interested in long-term goals, but this seems implausible. Or it would be irrelevant if we had reason to believe that all roads led, equally quickly and efficiently, to the long-term goal. But, for any given long-term goal, it seems very unlikely that it would be equally well pursued by all incremental short-term reforms. And in any case, how could we have reason to believe that all roads led to it if we had not yet identified what the long-term goal was? As A. J. Simmons (2010) has argued, without knowing [it] our long term goal, a course of action that might appear to advance justice, and might indeed constitute a short-term improvement with respect to justice, might nonetheless make less likely, or perhaps even impossible, achievement of the long-term goal. There is, then, some ambiguity in what it means for a reform to constitute an improvement with respect to, or progress toward, the ideal. In mountaineering, the climber who myopically tak[ing]es immediate gains in height wherever she can is less likely to reach the summit than the one who plans her route carefully. The immediate gains do indeed take her higher—with respect to altitude she is closer to the top—but they may also be taking her away from her goal. The same is true of normative ideals. To eliminate an injustice in the world is surely to make the world more just, but it could also be to take us further away from, not closer toward, the achievement of a just society. Rawls, as we have seen, sees ideal theory as having [has] both a “target” role and an “urgency” role, each of which can guide us when we engage in nonideal theory: It tells us where we are trying to get to in the long run, but it also informs our justice-promoting attempts here and now by providing the basis on which to evaluate the relative importance or urgency of the various ways in which the world deviates from the ideal. Even if Sen is right that we do not need ideal theory to do the latter, Simmons is right that we do need it for the former.

#### Ideals are necessary and inevitable to any human project – what’s most dangerous is avoiding the project of defining ideals altogether. We should engage in philosophical investigations as training.

Chesterton: (Gilbert K. Chesterton, “HERETICS,” John Lane Company, 1905//FT) \*\***Could also work with deep thinking argument - as the flip side – i.e. the lack of deep thinking. [bracketed for gendered language]**

There are people, however, who dig somewhat deeper than this into the possible evils of dogma. It is felt by many that strong philosophical conviction, while it does not (as they perceive) produce that sluggish and fundamentally frivolous condition which we call bigotry, does produce a certain concentration, exaggeration, and moral impatience, which we may agree to call fanaticism. They say, in brief, that ideas are dangerous things. In politics, for example, it is commonly urged against a man like Mr. Balfour, or against a man like Mr. John Morley, that a wealth of ideas is dangerous. The true doctrine on this point, again, is surely not very difficult to state. Ideas are dangerous, but the man to whom they are least dangerous [to] is the [person] man of ideas. He is acquainted with ideas, and moves among them like a lion-tamer. Ideas are dangerous, but the man to whom they are most dangerous is the man of no ideas. The [person] man of no ideas will find the first idea fly to his head like wine to the head of a teetotaller. It is a common error, I think, among the Radical idealists of my own party and period to suggest that financiers and business men are a danger to the empire because they are so sordid or so materialistic. The truth is that financiers and business men are a danger to the empire because they can be sentimental about any sentiment, and idealistic about any ideal, any ideal that they find lying about. just as a boy who has not known much of women is apt too easily to take a woman for the woman, so these practical men, unaccustomed to causes, are always inclined to think that if a thing is proved to be an ideal it is proved to be the ideal. Many, for example, avowedly followed Cecil Rhodes because he had a vision. They might as well have followed him because he had a nose; a man without some kind of dream of perfection is quite as much of a monstrosity as a noseless man. People say of such a figure, in almost feverish whispers, "He knows his own mind," which is exactly like saying in equally feverish whispers, "He blows his own nose." Human nature simply cannot subsist without a hope and aim of some kind; as the sanity of the Old Testament truly said, where there is no vision the people perisheth. But it is precisely because an ideal is necessary to man that the [person] man without ideals is in permanent danger of fanaticism. There is nothing which is so likely to leave a man open to the sudden and irresistible inroad of an unbalanced vision as the cultivation of business habits. All of us know angular business men who think that the earth is flat, or that Mr. Kruger was at the head of a great military despotism, or that men are graminivorous, or that Bacon wrote Shakespeare. Religious and philosophical beliefs are, indeed, as dangerous as fire, and nothing can take from them that beauty of danger. But there is only one way of really guarding ourselves against the excessive danger of them, and that is to be steeped in philosophy and soaked in religion.

### A2 Rejecting Bad Frameworks

#### We can untangle – this is necessary to combat the negative and problematic components of ethical theories that will continue to haunt us unless confronted

Stevedarcy: (Stevedarcy, “On Heidegger in Particular, and Racist Philosophers in General,” <http://publicautonomy.org/2015/01/22/heidegger/?utm_content=buffer440dc&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer>, Jan 22, 2015//FT)

But what conclusion should we draw about people like Hume, Heidegger, Frege, Kant, and JS Mill? Should we regard their intellectual output as thoroughly tainted, or even (more strongly) as completely discredited, by the entwinement or interweaving of their philosophical conceptions with racist (and/or colonialist and/or sexist, etc.) ideas and assumptions? Should we, indeed, stop reading these people and studying them or trying to learn from an engagement with their ideas? No doubt, this is a tempting posture, for some. But it seems not to be plausible, on reflection. To see why, notice that the activity of disentangling defensible from indefensible thoughts and ideas, which are at first apparently integral and interconnected, is not a special undertaking on which we might propose to embark in the special case of racist (etc.) philosophers. No, it is fundamental to our very understanding of rational inquiry and intellectual life. To think is to perform precisely this operation of disentangling. “I agree with you on this point, and this other one, but not on this third point; there I insist you have gone astray, and I can tell you why….” Isn’t the compulsion to repeat this performance, to cycle through this disentangling action again and again, the ultimate source of philosophy’s drama and its enduring appeal? Isn’t it, too, an inescapable obligation that everyone is saddled with, unavoidably and perhaps involuntarily, as soon as one takes up the task of thinking? Yes. Of course. To dislodge and debunk the tangle of error and confusion that weaves itself through even our best intellectual achievements is exactly what we mean by thinking. And so, why not respond to the interweaving of Locke’s “right of revolution” with his “defence of slavery” in the old-fashioned way: by thinking it through? No other response seems authentically available, in fact, since to respond by sweeping him under the rug only invites his spectral persistence, as a haunting presence that we quietly agree not to mention, much less to grapple with and to confront.

#### These steps are required --- you are shying away

Stevedarcy: (Stevedarcy, “On Heidegger in Particular, and Racist Philosophers in General,” <http://publicautonomy.org/2015/01/22/heidegger/?utm_content=buffer440dc&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer>, Jan 22, 2015//FT)

This, it seems, informs us about how to respond to Heidegger. Above all, we should resist the temptation to insist, as if in the grip of an unrelenting yet unacknowledged panic, that we can just forget him and all his fascist rantings. On the contrary, we really have to accept our responsibility to think our way through Heidegger. When he claims, for instance, that a chair or a work of art can only “be,” i.e., is only possible at all (as chair, as work), by virtue of unthematic but operative interpretive contexts that confer intelligibility by themselves retreating from intelligibility, like the language that only functions to illuminate a text so long as its own readability as a text is suspended or displaced, is this suggestion itself retrievable at all in the context of an anti-racist practice of inquiry and understanding? Or, by taking it seriously, by working with it intellectually, even in a critical or differentiated way, do we in effect bolster the forces of racial domination, or anti-Semitic demonization, etc.? There are those who presume this question to be settled in advance. I must admit (impolitely, I fear) that I regard such people as, well, a little bit unsophisticated, at least in this area. The idea that this question can be resolved without sorting through the particulars of Heidegger’s writings and the questions they raise is a crude and simplistic position: the sort of thing that one whispers to oneself, seeking comfort and reassurance, insulation from the unease of not-knowing and from the necessity to think things through. I’m reminded of Marx’s admonition: “There is no royal road to science, and only those who do not dread the fatiguing climb of its steep paths have a chance of gaining its luminous summits.”

#### We need to challenge it

Stevedarcy: (Stevedarcy, “On Heidegger in Particular, and Racist Philosophers in General,” <http://publicautonomy.org/2015/01/22/heidegger/?utm_content=buffer440dc&utm_medium=social&utm_source=facebook.com&utm_campaign=buffer>, Jan 22, 2015//FT)

This brings us back to Dr. Figal. Does he dread the fatigue of the steep climb? Does he worry about the absence of guard-rails or padding to cushion his fall? I assume he does not. I am sure that he will continue to think about Heidegger, and also about Kant, Hume, Frege, and the others. But thinking about them is not a matter of agreeing with them, or depicting them as special or great: the Heidegger Society, if such a thing is necessary, should not have any “investment” in defending or upholding the supposed “greatness” of Heidegger (an investment made all too evident by Figal’s resignation). Perhaps these “great philosophers” are persistently, pervasively wrong about one thing after another. Perhaps we have to fight them, or parts of them, by any means necessary. Certainly, they are, in each case, wrong about a great deal, often but not always in obvious ways. So be it. We don’t owe them any personal or intellectual loyalty. Rather, we owe our loyalty to the difficulty and the pleasure of thinking, and that makes us enemies of simplistic, superficial, ill-informed and otherwise indefensible ideas, whether they come from people we admire (Marx?) or people we find repulsive (Heidegger, Frege, etc.), or people whose character we neither know about nor care about. If there is to be a Heidegger Society, that should be its function: to insist on the need to disentangle insights from idiocy, because there is plenty of both in Heidegger’s body of work, as there is in the work of anyone who is fantasized by misguided “disciples” into the ludicrous position of being labeled a “great philosopher.”

# 1ar

#### Freedom of speech is not an instrument to serve other ends – it is an unconditional good

Ripstein 9. (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) Force and Freedom Kant’s Legal and Political Philosophy Arthur Ripstein. Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 2/12/17.

Applied to the level of legislation, each person’s rights generate a basic constraint on the ways in which the state may act. Their application is unconditional because rights are not tools for securing a result that can be described independently of them. If rights are conceived as instruments, it always makes sense, at least in principle, to ask, “Is this a situation in which constraining the conduct of others in this way advances the inter- ests it is supposed to?” even if the answer will typically be positive. The possibility of asking that sort of question makes the application of rights, or rules protecting them, conditional, because it depends upon whether the rule in question actually brings about the result desired. This sort of conditional analysis is potentially available with respect to exercises of the police power, so that it makes sense to ask whether a traffic rule should be enforced in unusual circumstances that the legislature overlooked in drafting the provision. If the Highway Safety Act contains no provisions regarding private citizens responding to emergencies, a court might well exempt someone from a penalty in those circumstances, on the ground that the case falls outside the rule’s purpose or range of application. The situation is different with rights that have their root in the innate right of humanity: freedom of expression and the presumption of innocence, as well as the more general right not to be subjected to the private purposes of another. The systematic realization of those rights provides the only basis for the state to make, enforce, or apply law at all; any use of force contrary to them subjects one person to the private purposes of another. This Kantian conception of constitutional rights as expressions of the innate right of humanity, rather than tools for protecting important inter- ests, conceives of those rights as unconditional because their grounds are not based on any claims about the conditions that normally hold. There is thus no space for asking whether the conditions fail to apply because so much is at stake for others. The state could not give itself a law that the people could not give themselves; the people can only give themselves laws that are within their rightful power. Fundamental human rights are constitutional, then, because they are the conditions of the state constitut- ing itself as an omnilateral will.

### A2 Hate Speech

#### Constitutionally protected forms of speech can not violate right – they change the contexts in which others act, rather than depriving others of something to which they are entitled

Ripstein 9. (Arthur Ripstein is a professor of law and of philosophy at the University of Toronto. He was appointed to the Department of Philosophy in 1987) Force and Freedom Kant’s Legal and Political Philosophy Arthur Ripstein. Harvard University Press Cambridge, Massachusetts . London, England 2009. NP 2/12/17.

The right to independence entitles each person to use his or her means to set and pursue his or her own purposes, consistent with the entitlement of others to do the same. Innate right also entitles you to tell others what you think or plan to do, without being held to account for saying so, and the right to be “beyond reproach,” the right to have only your own deeds imputed to you. These authorizations are fundamental to public right, because they constrain the possible activities of the state in making law. The former provides the basis for rights of freedom of expression, limited only by the rights of others; the latter is the basis of both the right to sue in defamation for damage to your reputation and the right to place the burden of proof on a person who accuses you of having done wrong. These are both “already” included in innate right and “not really distinct from it” because each is an aspect of independence of the choice of oth- ers. The right to communicate your thoughts to others is just a special case of the right to use your powers as you see fit. Kant remarks that this extends even to deliberate falsehoods, because it is up to others to decide whether to believe what they are told. The only untruth “that we want to call a lie in a sense bearing on rights” is one that deprives another of some acquired right, such as a fraudulent claim that a contract has been con- cluded. The right to say what you think does not preclude liability for fraud, or injuring another person’s reputation, or falsely shouting “fire” in a crowded theater when you know people will be trampled, because each of these deprives others of things to which they already had a right. To deprive you of property or get you to do something by lying to induce you to enter into an arrangement with me is not parallel to depriving you of property or getting you to do something with force.28 Such cases con- trast with those in which one person suggests that another do something, and the other follows the suggestion. In that case, the second person must be taken to act on his or her own initiative, because no person has a right that others use what is theirs in ways that most favor them. Using your power of speech is a special case of using your powers; saying things to others is ordinarily a matter of changing the context in which they act, rather than depriving them of what they already have.29

### A2 Constitution doesn’t apply

1. It’s a question of the omnilateral will – no public spaces can be free from the demands of omnilateral consistency, since then they would fail to be public spaces at all. Therefore, the idea of a public space not bound by constitutional protection is incompatible with conditions of right.
2. Constitution does apply to universities

Fire Intern 15. July 20, 2015, 7-20-2015, "The Case for Hate Speech," FIRE, https://www.thefire.org/the-case-for-hate-speech/, accessed 2-14-2017. NP

I. Freedom of Expression at Public Universities That the First Amendment applies on the public university campus is settled law. Public universities have long occupied a special niche in the Supreme Court’s First Amendment jurisprudence. Indeed, the Court has held that First Amendment protections on campus are necessary for the preservation of our democracy. Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957) In Sweezy, the Court was faced with the question of whether the Attorney General of New Hampshire could prosecute an individual for refusal to answer questions about a lecture delivered at the state university concerning the Progressive Party of the United States. In holding for the teacher, the Court wrote eloquently that: The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation… Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. Keyishian v. Board of Regents, State Univ. of N.Y., 385 U.S. 589 (1967) In Keyishian, the Court declared unconstitutional New York statutes and administrative rules designed to prevent employment of “subversive” teachers and professors in state educational institutions and to dismiss them if found guilty of “treasonable or seditious” acts. The Board of Regents of New York had prepared a list of subversive organizations, including the Communist Party, and determined that membership in these organizations was sufficient reason for a teacher’s disqualification. The Court held that the proscription of “treasonable or seditious” conduct and of “advocacy” of violent overthrow was unconstitutional for vagueness: A teacher could not foretell whether statements about abstract doctrine were prohibited, or whether only speech intended to incite action was grounds for dismissal. The Court observed: Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. Healy v. James, 408 U.S. 169, 180 (1972) Central Connecticut State College’s president had denied official status to a left-wing student group associated with violence on other campuses. The president said the group’s philosophy was “antithetical to the school’s policies,” its independence from the national organization was “doubtful,” and it “would be a disruptive influence at the college.” Without official status, the group could not announce its activities in the campus newspaper, post notices on college bulletin boards or use campus facilities for meetings. In this decision, the Court first affirmed public college students’ First Amendment rights of free speech and association, saying those constitutional protections apply with the same force on a state university campus as in the larger community. The Court stated: [T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” Papish v. Board of Curators of University of Missouri, 410 U.S. 667 (1973) Papish concerned a University of Missouri student distributing an underground student newspaper which contained an article entitled “Motherfucker Acquitted,” concerning the acquittal of a member of the radical group “Up Against the Wall, Motherfucker.” The student distributing the paper was expelled under a code of conduct that required students “to observe generally accepted standards of conduct” and prohibited “indecent conduct or speech.” The Court held that “the mere dissemination of ideas-no matter how offensive to good taste-on a state university campus may not be shut off in the name alone of ‘conventions of decency.'” Widmar v. Vincent, 454 U.S. 263 (1981) The University of Missouri at Kansas City ruled that its facilities could not be used by student groups “for purposes of religious worship or religious teaching,” believed that this prohibition was required under the Establishment Clause. A student religious group that had previously been permitted to use the facilities sued the school after being informed of the change in policy, asserting that their First Amendment rights to religious free exercise and free speech were being violated. The Court’s decision ensured greater access to public facilities by religious organizations, and held that the state was not assumed to be in support of all messages that were communicated in their facilities. In so ruling, **the Court reaffirmed its consistent recognition of the applicability of the First Amendment to the public university,** concluding that “With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”

### A2 not a part of the state

The question is not whether universities of government – it is merely if they are bound by a public will or a private will. There is no gov’t/non-gov’t distinction in Kantian philosophy, there’s only a public/private distinction. If I win that universities are public, then this argument goes away.

1. Argument in the ac – only I account for why the state is involved in education at all
2. It cant be a private person since it is dependent on public funding
3. If public education were private, then the government could not promote it through things like having special laws for it or subsidies, because if it were a private institution then they would prioritize some private will over the omnilateral will. Only under an understanding of educational institutions as public can we make sense of the idea of any government involvement in education
4. Education = necessary to conditions of right, which means that it’s bound by principles of right.