Kant, Ripstein, and the Circle of Freedom: A Critical Note*

Laura Valentini
The Queen’s College, Oxford
laura.valentini@queens.ox.ac.uk

I. Introduction

Arthur Ripstein’s *Force and Freedom*\(^1\) offers a comprehensive interpretation and defence of Kant’s political philosophy, seen as a valuable alternative to the dominant approaches in contemporary legal and political thinking. The book is extremely rich, covering many interesting aspects of Kant’s outlook on rights and justice. Perhaps the most striking feature of this outlook is its attempt to ground the whole of political (enforceable) morality in one right – the right to freedom – understood as the right to be independent of others’ choices. Whether this Kantian approach stands or falls, then, depends on whether:

i. the right to ‘freedom-as-independence’ can plausibly constitute the basis of an entire political morality;

ii. the idea of independence of others’ choices offers an appealing interpretation of the concept of freedom.

In this short note, I suggest that Ripstein’s *articulation* of the right to freedom-as-independence fails on both counts. My argument is structured as follows.

In section II, I offer a brief sketch of Ripstein’s Kantian approach. In section III, I show that there is a vicious circularity in Ripstein’s definition of the right to freedom, which prevents it from grounding all other rights. On the one hand, individual rights are said to derive from the right to freedom; on the other, freedom itself is defined by reference to individual rights. To be unfree/dependent on others is to have one’s own means or resources used by others for their, rather than one’s

---

* I am grateful to Ryan Davis and Kyla Ebels-Duggan for comments and discussion.

own, purposes. But in order to know what qualifies as *one’s own*, we need a prior account of a person’s rights, which is precisely what freedom is meant to deliver. Since Ripstein’s (Kantian) notion of freedom surreptitiously presupposes an account of justice, it cannot be the sole ground of political morality. In section IV, I further argue that Ripstein’s justice-based account of freedom is normatively unappealing. If freedom is defined by reference to persons’ rights, then only rights-violations can count as restrictions of freedom, which is counter-intuitive. There are many actions which restrict persons’ freedom without violating rights. Think of prohibitions on using others’ legitimate property. Such prohibitions clearly diminish one’s freedom, and yet are perfectly consistent with rights. In section V, I conclude by briefly suggesting how to modify Ripstein’s Kantian view so as to make it immune to the objections raised in this note. The modifications I suggest, however, bring the view much closer to contemporary theories of justice than Ripstein originally intended.

Before getting started, let me make two prefatory remarks. First, my argument is not of an exegetical nature. I do not comment on the accuracy of Ripstein’s interpretation of Kant, but only assess whether Ripstein’s Kantian approach successfully delivers what it promises. Second, there is much to admire in Ripstein’s book that I won’t have the time to discuss. I take my job to be that of a critic (not my fault – it’s the title of the panel!), and this is reflected in the character of the present piece.

II. Ripstein’s Kantian approach: a sketch

Contemporary political philosophy is overwhelmingly preoccupied with the question of how benefits and burdens of social cooperation ought to be distributed. The Kantian approach Ripstein defends has instead at its core a concern with individual freedom and the justification of coercion. From this perspective, what matters to the

---

2 Kyla Ebels-Duggan has independently detected, and discussed, a similar circularity in Ripstein’s view in a critical notice forthcoming in the *Canadian Journal of Philosophy*.
3 I do mean this. Although, as it will emerge in what follows, I have reservations about aspects of Ripstein’s Kantian outlook, this outlook has partly inspired some of my own work on justice and coercion in the international context: Laura Valentini, ‘Coercion and (Global) Justice’, *American Political Science Review*, 105 (1) (2011), 205-20, and *Justice in a Globalized World: A Normative Framework* (Oxford: Oxford University Press, 2011 forthcoming), esp. chs. 6-7.
4 This is famously the question at the heart of Rawls’s *A Theory of Justice* (Oxford: Oxford University Press, 1999 rev. ed.).
design of a theory of justice – the central task of political philosophy – is not the combination of harms and benefits befalling people, but the particular relations in which people stand vis-à-vis one another. So long as such relations are consistent with each being her own master – so long as they are consistent with everyone’s freedom – a (coercive) social order is justified.

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 (Kant, 6:237 in Ripstein p. 13).

The right to freedom-as-independence is the pillar supporting the whole of Kant’s political philosophy. It constitutes the ground on which individuals’ rights and entitlements are defined, and specifies the conditions under which the use of (state) coercive power is legitimate. As Ripstein says: ‘[t]he idea of independence carries the justificatory burden of the entire argument, from the prohibition of personal injury, through the minutiae of property and contract law, on to the details of the constitutional separation of powers’ (p. 14).

But what is freedom-as-independence? An agent enjoys freedom as independence when she is not subject to the will of others, i.e., when nobody uses her means for ends she has not consented to. In Ripstein’s words, ‘[y]ou remain independent if nobody gets to tell you what purposes to pursue with your means’ (p. 34). As anticipated, from this perspective, whether someone is acting unjustly towards you does not depend on the benefits you gain or the burdens you have to carry, but on whether their actions are consistent with your freedom.

For instance, Sam might make John much worse off by opening a shop right next to his, selling similar products at more competitive prices (p. 49). Yet, in so doing, Sam does not wrong John, he does not interfere with his freedom as independence. What happens to John might be regrettable, but does not constitute

---

5 To be precise, Ripstein offers an example with an identical structure, but without mentioning the names Sam and John.
an injustice, since John is still ‘his own master’, despite being made worse off. By contrast, the relationship between a master and a slave is paradigmatically one in which an agent’s (the slave’s) independence is violated. Although the slave might de facto enjoy a wide set of benefits and opportunities thanks to his master’s good will, the slave’s decisions are always ultimately subject to the master’s authorization. Non-interference in the pursuit of his ends is not ‘robust’, but extremely fragile, and this is why the slave is appropriately said to be unfree.6

A perfectly just Kantian social order is one where nobody is subordinated to the will of others, and all enjoy freedom-as-independence. Indeed, from Ripstein’s Kantian perspective, the preservation of this state of affairs constitutes the only basis for justified coercion. The state is justified in using coercion against law-breakers only to the extent that doing so is necessary to preserve the freedom of all, to ‘hinder hindrances to freedom’ (p. 30).

Ripstein’s Kantian view is appealing. Its focus on freedom sits well with the normative concerns animating most contemporary liberal thinkers. After all, a political philosophy based on freedom alone is quintessentially liberal, and more so than one based on other values (e.g., reciprocity, equality, happiness etc.). Moreover, the notion of freedom at the heart of this Kantian approach seems highly plausible, allowing us to account for judgments about freedom and unfreedom (e.g., the case of the slave with a benevolent master) which other conceptions of freedom (e.g., freedom as actual non-interference) fail to deliver.

This approach is not only substantively appealing, but also elegant and justificatorily powerful. It reduces the complex set of people’s rights and entitlements to one single master-right, the right to freedom, which grounds them all. As Ripstein asserts, “[b]y making the innate right to freedom the basis for any further rights, Kant imposes an extreme demand for unity on his account of political justice. The rights that each person has against others must be derived from it, as

6 The term robustness is not used by Ripstein himself, but is fully consistent with his view. Indeed, as he himself admits, the view has much in common with the republican account of freedom as non-domination (pp. 42-3). What is special about republican freedom is precisely its robustness. See, e.g., Philip Pettit, Republicanism: A Theory of Freedom and Government (Oxford, Clarendon Press, 1997), and Christian List, ‘Republican Freedom and the Rule of Law’, Politics, Philosophy & Economics, 5 (2) (2006), 201-20, the latter for a more technical treatment of the notion of robustness.
must the fundamental constitutional rights that protect political freedoms and freedom of religion’ (p. 31).

In light of the above, the Kantian outlook advocated by Ripstein seems to offer a powerful way of articulating the demands of a liberal political morality; so powerful as to put into question alternative, mainstream, approaches to the topic. But does this first appearance stand deeper scrutiny? In what follows, I suggest that it does not.

III. The circle of freedom – why freedom-as-independence cannot ground the whole of political morality

In this section, I argue that Ripstein’s ‘right to freedom’ cannot ground all other rights because the notion of freedom on which it relies presupposes the very rights it aims to establish. This is what I call the ‘circle of freedom’. This vicious circularity arises from Ripstein’s endorsement of the following claims:

a. The right to freedom grounds all other rights.

b. The right to freedom is the right of each individual to be his/her own master, to be independent of the will of others.

c. Independence of the will of others consists in the ability to use one’s own means to pursue one’s own purposes robustly unhindered by others.

d. One’s own means and purposes are the means and purposes one has a right to.

e. The right to freedom is therefore the right to use the means and pursue the purposes one has a right to, robustly unhindered by others.

As Ripstein puts it, a system where all have freedom as independence ‘is one in which each person is free to use his or her powers, individually or cooperatively, to set his or her own purposes, and no one is allowed to compel others to use their
powers in a way designed to advance or accommodate any other person’s purposes’ (p. 33, added emphasis). But how are we to determine what one’s powers and purposes are? Certainly not by looking at their actual powers and purposes. To be sure, when policemen stop a thief, they prevent him from using his (positive, as opposed to normative) powers for his (positive) purposes, yet we would hardly regard such an intervention as unjust, as a violation of the thief’s right to freedom. This is paradigmatically a legitimate intervention, aimed at ‘hindering a hindrance to freedom’ (i.e., the freedom of the victim, whose means would serve someone else’s, the thief’s, purposes).

The freedom referred to in the expression ‘hindering a hindrance to freedom’ cannot be any freedom, but must be the freedom one is entitled to on grounds of justice. Until we have an independent account of justice, then, we cannot know whether someone is free or unfree. Unless we know what is ours, we cannot know whether constraints on our de facto agency are violations of our independence or consistent with it. Rather than grounding all rights and entitlements, Ripstein’s Kantian notion of freedom is derivative of them (i.e., it presupposes them).

This appears clear once we notice that the cases Ripstein offers to illustrate instances of dependence and independence only work for his purposes if we assume a certain background account of justice. For instance, in the example offered earlier, involving market competition between Sam and John, a tacit assumption was made about the entitlement-generating character of free market processes. Recall that, in Ripstein’s view, Sam’s driving customers away from John does not constitute a violation of John’s freedom-as-independence. This can only be so on the assumption that free market exchanges are entitlement-generating independently of their outcomes. This assumption is controversial, and certainly not ‘implicit’ in the meaning of freedom. On some accounts of justice (Rawls’s, for instance), free market processes need to be regulated in order to be consistent with individuals’ rights. If such processes lead to excessive inequalities, Rawls argues, their outcomes need to be rectified in order to preserve free market exchanges over time.7

---

7 This is one of Rawls’s main arguments against Nozick’s libertarianism, recently reproposed by Miriam Ronzoni in the context of debates on global justice, see her ‘The Global Order: A Case of
Whether the interaction between Sam and John involves a breach of freedom as independence, then, depends on what particular account of rights and entitlements one holds. The right to freedom as independence is not the answer, but an independent (and necessarily controversial) account of persons’ rights is needed to know what freedom as independence is.

If my argument up to this point is correct, the unified nature of the Kantian approach offered by Ripstein is only illusory. The right to freedom cannot constitute the ground of all other rights because freedom itself is defined in terms of persons’ rights. Without a prior account of what those rights are, the notion of freedom as independence is empty; with such an account, it is expositionally parsimonious, but surreptitiously presupposes a complex theory of justice.

IV. Moralized freedom – why freedom as independence is counter-intuitive

I have suggested that Ripstein’s articulation of the notion of freedom presupposes an account of individual rights and thus cannot strictly speaking ground any such rights. Despite its lacking rights-grounding capacity, this notion may still be of value. That is, it may offer a plausible account of freedom, which we might want to employ in elaborating our all-things-considered theory of persons’ rights and entitlements. After all, as we saw earlier, this notion is more in line with at least some of our intuitive judgments about freedom than the popular notion of freedom as non-interference.8

Freedom as independence conceives of persons’ freedom in relation to their in-principle- subjection (or lack thereof) to the will of others. Recall that a slave with a benevolent master is still unfree because in principle subject to the master’s will. Even though the master does not interfere with the slave in the actual world, there are many nearby possible worlds in which such interference would occur, and this fact, says the proponent of freedom-as-independence, must be taken into account when judging whether the slave is free.

Although such a focus on the robustness of non-interference renders freedom-as-independence rather appealing, the appeal is significantly undermined by this notion’s reliance on a prior conception of rights. If to be independent of the will of another is to not have one’s rights violated (robustly across possible worlds), then limitations of one’s capacity to act that do not violate rights do not count as restrictions of freedom. On this view, my freedom is not restricted when I am not allowed to access property that is not mine. Or else, my freedom is not restricted whenever I am forced to pay taxes (if such taxes are demanded by justice). Even more strikingly, I cannot say that my freedom is restricted if I am justly incarcerated for violating others’ rights.

All of these judgments are deeply counter-intuitive, but they inevitably follow from an understanding of freedom according to which someone is free if she can robustly use the means and pursue the purposes she has a right to use and pursue. What we would intuitively call ‘justified’ restrictions of freedom are no restrictions of freedom at all, on Ripstein’s account.9

It is worth noting at this point that these counter-intuitive implications of freedom-as-independence are not fully transparent from Ripstein’s text. In fact, there are passages, discussing the use of coercion, which explicitly exclude them. Ripstein tells us that ‘Kant does not conceive of coercion in terms of threats, but instead as the limitation of freedom’ (p. 54). From this it would seem to follow that acts of ‘coercion’ that are consistent with freedom (i.e., with people’s rights) simply do not count as coercive because they do not limit freedom. Again, forcing a criminal to go to jail, on this view, would not be ‘coercive’ because it would be consistent with his freedom as independence (i.e., the freedom he has a right to). Yet Ripstein does not use the language of coercion in this way. Instead, he distinguishes between legitimate and illegitimate coercion, the former being coercion exercised in accordance with people’s rights, the latter being coercion exercised in breach of those rights. He illustrates this with the following example:

---

9 As an aside, I think a similar problem arises in the case of the republican ‘cousin’ of freedom as independence, namely freedom as non-domination (Justice in a Globalized World, ch. 7).
Using force to get the victim out of the kidnapper’s clutches involves coercion against the kidnapper, because it touches or threatens to touch him in order to advance a purpose, the freeing of the victim, to which he has not agreed. The use of force is rightful because an incident of the victim’s antecedent right to be free (p. 55).

In this quote, Ripstein appeals to a notion of freedom which differs from the moralized one we encountered in the previous section. If it is true that the use of force to free the victim limits the kidnapper’s freedom because it prevents him from using his resources to achieve his purposes, then ‘his resources’ and ‘his purposes’ have to be interpreted in positive rather than normative terms. ‘His’ resources and purposes are not those he has a right to, but those he happens to possess.

There thus appear to be two notions of freedom at play in Ripstein’s work, one (the dominant one, it seems to me) is moralized, the other non-moralized:

$$F_{\text{Moralized}} = \text{A is free if A can use the means and pursue the purposes A has a right to, robustly unhindered by others.}$$

$$F_{\text{Non-Moralized}} = \text{A is free if A can use the means A happens to possess and pursue the purposes A happens to have, robustly unhindered by others.}$$

The former notion of freedom presupposes an account of justice, and for this reason leads to rather counter-intuitive judgments (e.g., the use of force against the kidnapper does not limit his freedom). The latter notion delivers much more plausible judgments but can hardly form the basis of a tenable political morality. If a just society is one in which everyone’s right to freedom is respected, and the right to freedom is seen as the right to use the means one happens to possess and pursue the purposes one happens to have robustly unhindered by others, then no such society can ever exist. Indeed, as Ripstein himself notes, ‘[t]he Kantian right to independence ... is always an entitlement within a system of reciprocal limits on freedom’ (p. 34, emphasis added). The idea of reciprocal limits on freedom, I think, implicitly contains a solution to the difficulties discussed in the present piece.
V. Conclusion

The most fruitful way of reading Ripstein’s Kantian proposal, I suggest, is to see the right to freedom not as a right to freedom (or independence) simpliciter, but as a right to a certain ‘quantity of freedom’. From this perspective, each should robustly enjoy a sphere of agency, circumscribed by her rights and entitlements, in which to pursue her ends and goals without being interfered with by others. In turn, the principles determining how much freedom each should have (equal, sufficient etc.) are best kept ‘outside’ the notion of freedom itself. So understood, the notion of freedom would not surreptitiously presuppose an account of justice, it would not indicate ‘the freedom one has a right to’. The questions of (i) what freedom is and (ii) how much freedom each ought to have would be kept separate. This would of course make the account openly less unified, relying on a variety of different considerations, but would avoid the circularity and counter-intuitiveness problems highlighted earlier in my discussion.

A full development of an account of political morality based on a ‘right to a certain amount of freedom’ would also necessitate a defence of a particular metric of freedom. For instance, it would need to answer questions such as: Should freedom be measured only by reference to the quantity of options available to the agent, or should it also include reference to their quality (i.e., to specific freedoms)? Should considerations about quantities of freedom take into account the robustness of the options available to the agent (across different possible worlds), or simply focus on the actual world? And so forth.

Ripstein’s Kantian view does not directly engage with these questions, and unsurprisingly so, since these are precisely the sorts of questions that mainstream contemporary theories of justice ask (e.g., think of Sen’s and Nussbaum’s capabilities approach, or Rawls’s own theory – both of which can be seen as offering different accounts of how much freedom each person ought to have in a just society). On the view I suggest, freedom is not ‘self-limiting’ in the way Ripstein believes it to be (p. 32), and theories of political justice do deal with the ‘distribution’ of something (e.g., benefits and burdens in the form of freedom and unfreedom).
If I am correct in suggesting that this is a fruitful way of avoiding the difficulties with Ripstein’s Kantian approach, then it may very well be that that approach, in its original form, does not offer a viable alternative to existing, more ‘mainstream’, accounts of justice. There is much, I believe, we can learn from Ripstein’s book – and some of those lessons would be kept in the heavily revised version of his view I am suggesting – but it may be that the best we can draw from Ripstein’s Kant are precisely lessons, rather than a whole theory.