Between ethics and right:
Kantian politics and democratic purposes

Garrath Williams*

Abstract

Force and Freedom insists that, ‘Freedom, understood as independence of another
person’s choice, is [all] that matters’ politically. In this paper I suggest that this
premise leads Ripstein to an instrumentalisation of democracy which neglects a
properly public and collective notion of freedom. The paper criticises Ripstein’s use
of two arguments against any extension of public purposes, beyond the upholding of
persons’ ‘independence of others’ choice.’ Neither rightful honour, nor arguments
based in the impossibility of ‘mandatory virtue,’ rule out such an extension, so long as
constitutional rights are upheld. More constructively, the paper outlines how a space
between right and ethics may be opened up when people deliberate in order to form
and pursue democratic purposes. I suggest that Kant’s notion of an ethico-civil
condition (formally parallel to that of a juridical and rightful condition) might be
developed to articulate the shared project that citizens thereby engage in. They
participate in relationships, associations and institutions by which they promote
shared, ethical ends, without directly submitting to coercion or sacrificing mutuality
in human relations.

* g.d.williams@lancaster.ac.uk. This is an initial draft – please do not cite or circulate without
permission.
Between ethics and right: Kantian politics and democratic purposes

The only questions [the state] faces are questions of how to give effect to a rightful condition… Integrating the mandatory ends of a rightful condition with other purposes is prohibited, because the state has no other purpose but to be a rightful condition.¹

Several years before Kant set out his account of the juridical transition from a state of nature to a rightful condition (in the long-promised Metaphysics of Morals), he already discussed a parallel, ethical transition. Readers of the Metaphysics of Morals may be forgiven for some surprise at this, because that book contains no hints that the juridical transition is not unique. In particular, the Doctrine of Virtue says nothing about an ethical state of nature nor of an ethical equivalent of the ‘[juridical] civil condition’; nor does the Introduction suggest that a ‘civil condition’ might be one of the common concepts² that bridges and unites the Metaphysics of Morals’ two divisions. For readers aware of the ethical analogue, the fact that this concept plays no such role comes as no surprise, however, since the earlier discussion is found in Religion with the Limits of Reason Alone. There, the ‘ethico-civil [ethische=bürgerliche] condition’ refers to the ideal and necessarily imagined unity of human beings in a free yet universal church (6:101), which ‘visible church[es]’ may gradually come to approximate. While the Doctrine of Virtue repeats Kant’s familiar claim that we should ‘recognise all our duties as divine commands’ (6:444), it is otherwise entirely secular in spirit – no surprise, then, that the idea of such a church does not feature there.

¹ Arthur Ripstein, Force and Freedom, 204n (hereafter F&F).
² I am thinking of the section on ‘Preliminary concepts…’ which need not mean ‘common,’ of course.
That there is nonetheless genuine ethical interest to be found in the parallel has recently been shown in an illuminating article by Kyla Ebels-Duggan. Instead of attending to the necessarily never fully-realised idea of a truly universal church – a much more fully omnilateral institution than the state, it might be added (cf 6:96) – Duggan focuses on bilateral relations: between me and a stranger who asks for help, between the partners in marriage considered in terms of their friendship. Despite the vast difference in degree, what these have in common, says Duggan, is that we thereby enter in relationships where others’ choices (or needs, or ends) give us reasons to act. As we might also put it, in each case there is a material uniting of wills – and one that is evidently quite distinct from the bluntly coercible and perhaps nakedly self-interested unity involved in contractual relations, or indeed, from the juridical unity of the original social contract.

Despite my admiration for Duggan’s discussion, I do find something rather odd in looking to relations between two persons as even partly analogous to a civil condition. In both its juridical and ethical forms, Kant presents this as omnilateral, and with good reason. Following the transition from a state of nature to a civil condition, there are to be no outlaws; as we might put it: ‘no man [or woman, or child] left behind.’ This poses an obvious difficulty, however, which reminds us why the idea of an ethico-civil condition has been so widely ignored: how could we think of any such inclusiveness while nonetheless respecting everyone’s voluntariness?

---

3 It was Duggan’s essay that drew Kant’s parallel discussion in the Religion to my attention in the first place: ‘Moral Community: Escaping the Ethical State of Nature,’ Philosophers’ Imprints, 9:8, 2009.

4 I am fairly sure it is only a coincidence that both Kant and Duggan turn to such conservative institutions as church and marriage, but it is still remarkable.

5 The illegitimate child gets short shrift in Kant’s famous passage about maternal infanticide, but let’s set that aside.

6 We might note that a parallel problem arises for the federation between states that Kant envisages in ‘Perpetual Peace.’ Since states have such a distinct form of personality (which Arthur so elegantly deploys in his discussions of international right in F&F), we may not wish to pursue the parallel too far. (Perhaps I may recall, however, the functionalist arguments for international institutions that deal with very specific shared needs of all states – means to coordinate postal services, uses of the airwaves, and so forth – as important forms of
argued that More constructed *Utopia* on the idea of everybody being everyone else’s friend⁷ – but only a pretty crazed utopian could imagine that that is not a sheer contradiction in terms. Solidarity or civic friendship (that is, a certain regard and trust between persons simply as fellow citizens) or the shared deliberations of a democracy may come rather closer to capturing what might be possible here, however. At any rate, it is this direction that my remarks here will go.

*Force and Freedom on public and private purposes*

Somewhat disrespectfully, I have begun my discussion of Arthur’s remarkable book by discussing yet a third author. What I would like to do, however, is to explore whether there is not – beyond church and marriage – a way of making sense of Kant’s idea of an ‘ethico-civil’ condition, in a way that might help us address some of the discomfort that readers of *Force and Freedom* have felt at the relentless formalism and spareness of its account – as Katrin Flikschuh puts it (without at all endorsing this impression), of its apparent combination of libertarianism and authoritarianism.⁸ More specifically, I wish to explore the idea that there is a space for politics *between* law and ethics – one that the *Metaphysics of Morals* obscures in its structural division of right and virtue, and through its inevitable ignorance of democratic institutions. Despite Ripstein’s attempts to present a Kant who is compatible with democratic principles, I believe his analysis closes this space off, too.

As we know, *Force and Freedom* insists, as one of its fundamental premises, that right is indifferent to the ‘matter’ of people’s choices, so long as the ‘form’ of those choices is universalisable. The state, as the paradigm case of mandatory social cooperation between states, which may also serve as building blocks for further cooperation and, in their success in serving certain functions, as incentives not to act uncooperatively. Check/ref Mitrany, etc.)


cooperation uniquely backed by coercion, is subject to the stringent test that it not presuppose any particular purposes on the part of its citizens, beyond their on-going purposiveness itself. Freedom is all that matters to a rightful condition. Happiness, gross national product, collective support for the arts or sciences, protection of the natural or built environments, or the promotion of a public language⁹ – none of these are ends that the state may pursue, except insofar as they can be given a justification in terms of freedom. The mere fact that people may want any of these things does not matter.¹⁰ More remarkably: even if citizens may have argued with one another about their importance and reached some agreement on their importance, this does not seem to matter either. For all that would show is that people have persuaded one another that they each adopt certain ends. That these are ends that a plurality of uncoordinated individuals may be ill-equipped to pursue, that is, ends for which they lack the requisite means and thus on Ripstein’s account cannot actually choose, alters nothing, except perhaps to imply that the citizens should form themselves into some other sort of collective body, such as a charity or indeed a church. The state, by contrast, is theirs only to secure their freedom, that is, their ability to pursue whatever ends they may choose, compatibly with a like freedom for all. Material ends are one and all private purposes, whether they be the ends of some individuals or of many or even of all.¹¹

Let me say that I have a rare doubt about how consistent Ripstein is, here, in holding to this view. In response to the sorts of worry I will be raising, he tells us that ‘nothing in Kant’s account precludes overinclusive implementation [of public activities]’

⁹ [Refs, inc. Quebec (260n).]

¹⁰ At this point in the argument, I take it that private right’s hard teaching of the equivalence of ‘wish and need’ no longer holds: Needs become relevant to public right, though ‘invisible to private law’ (276), insofar as an unmet need leaves a person dependent on others’ private good will, or simply indigent. Hence the terms of equal freedom provide grounds for state assistance, which involves no infringement on the freedom of private persons.

¹¹ Eg, F&F 207: ‘[A person’s entitlement to decide on his or her own what his or her purposes may be] cannot be limited on material grounds, that is, on the basis of some particular purpose, such as social stability or religious salvation, that many, or even all, people happen to share. Material purposes are, in the requisite sense, merely private, no matter how common they are.’
(223). To be sure, there is a margin of error, that will make it very hard to decide what is actually overinclusive, as opposed an exercise of judgment as to the best means to uphold a rightful condition, or to implement a constitutive element of it. But I take it that once some use of state resources is recognised as not just fulsome but overinclusive, then it should be trimmed back to meet the less generous call of a rightful condition: that state activities be extended, but also limited, to those actually necessary. For otherwise it seems that state officials are wrongfully deploying others’ resources for private purposes, and citizens not only may but ought to rightfully object.

Of course, Ripstein can allow that the ‘matter’ of people’s choices – especially collective choices formed through public debate and democratic institutions – should guide much state activity. The balancing of benefits and burdens, considerations of convenience and efficiency and so forth – these have their part to play in Ripstein’s account, when it comes to the appropriate means by which to pursue a rightful condition. Representative institutions and public debate will be very useful in making these judgments. There will also be much room for judgment in how the different elements involved in a rightful condition should be adjusted to one another. Again, Ripstein can allow (to put it unkindly) that democratic debates are also useful means by which to adjudicate the balancing of those elements. Thus the ‘matter’ of people’s choices can matter in many important ways. What Ripstein’s account excludes, however, is that people’s actual choices might provide an authorisation for any state activities that exceed those necessary for, or constitutive of, a rightful condition. In the next two sections, I want to consider two arguments that his account offers for this exclusion. Despite their initial plausibility, I will argue that they do not

---

12 F&F 254: ‘Considerations of efficiency reflect the necessarily public nature of public purposes... Public officials... are not entitled to claim more than they judge in good faith to be necessary for those purposes.’

13 I say ‘unkindly’ because Ripstein is normally so consistent in resisting instrumental analyses of normative structures, though he is surely very deliberate (and indeed follows Kant: ‘Theory and Practice,’ 8:298f) in introducing it here. Political speech explicitly figures as ‘a tool’ at 264 [as does education, at 292]. As I mention in my conclusion, one motivation behind my remarks here is to be more consistent in resisting such an instrumentalisation of democracy.
hold – or at least, do not hold straightforwardly – once we consider a state which approximates the democratic ideal of a people ‘giving laws to itself.’

**Rightful honour**

One powerful argument for this restriction of public purposes is that unanimity on any material end is not to be expected. Plurality is the law of the world, as Hannah Arendt liked to say. If the state pursues a material end that even one citizen does not share, then it disposes of that citizen against rightful honour: it makes him or her into a means for others’ ends. (I do not think the echoes of Nozick’s hoary image of taxation as slave labour are entirely accidental.\(^\text{14}\)) We have a right and a duty to enlist every person in upholding the freedom of all – and that is all.

This argument seems compelling in the case of military conscription or similarly coercive and risky forms of enlistment. As Ripstein argues, those are appropriate when the very existence of a state, as some partial approximation of a rightful condition, is in danger. But other people’s decision that they would rather live amid greater prosperity, for example, is no basis their doing anything more to me than engaging in some light persuasion as to the reasons why this is an important end that I should also work toward; and these are reasons with which I remain free to disagree.

Such an argument is much less compelling, however, when we turn to taxation. *Pace* Nozick, this is a very long way from slave labour. An income tax still permits me to work at whatever job I please and use a large(ish) proportion of the money that is paid me for whatever purposes I wish. In the case of a sales tax, I may still buy whatever goods are within my means, though fewer of them, since they are more expensive than they would otherwise have been. Moreover, my ability to be a wage-earner or a

\(^{14}\) Cf Ripstein’s nice dig in ‘Three Duties to Rescue,’ 776: ‘Nozick quipped that taxation is on a par with forced labour; I want to accept the equivalence and argue that the forced labour involved in making an easy rescue is on a par with taxation – a duty of a citizen in virtue of the existence of legitimate political institutions.’
buyer of goods and services is itself a product of living in a civil condition.\textsuperscript{15} To speak rather loosely, taxation only takes away what was provisionally, not conclusively, mine.\textsuperscript{16}

It is therefore not obvious that my being made to pay for institutions or projects that have been agreed upon through democratic institutions (I am focussing, of course, on projects that, to some degree or other, exceed what can be justified as means to uphold a rightful condition, or as elements of such a condition) should be read as impositions upon my rightful honour. May we not think of such requirements, instead, as reflections of my membership of a democratic polity, whereby people are reasoning together as to what ends they should share and where each of them must be prepared to make quite deep compromises in order to uphold any sort of shared

\textsuperscript{15} I mean this as a constitutive rather than a causal point: cf Ripstein’s objection at 270n to ‘approaches which trace the power to tax to the causal role of society in producing all wealth.’

\textsuperscript{16} I am focussing on taxation as one of the most obvious ways in which public policies might weigh on citizens (who may well disagree with them, or reserve the right to do so, and thus might be inclined to reach for an argument against them based on rightful honour). Similar points would apply to the sorts of restriction and obligations placed on those holding roles within associations that are regulated by the state in line with democratic decisions (for example, the extensive requirements of employment, companies or charity law). Those requirements do not prevent commercial or other forms of association; but they undoubtedly govern the activities of those so engaged in line with priorities decided in democratic fora. They are ways of specifying conclusively people’s provisional rights to associate for commercial and other ends. As I argue with regard to taxation, political arguments about such regulation need not concern whether it is necessary to uphold a rightful condition: they will often take the more familiar form of arguments about their aims and success in achieving various substantive ends (as well, of course, as to whether they undermine or uphold right).

It is also conceivable that such arguments might apply to the sorts of mandatory contribution that Ripstein discusses in ‘Three Duties to Rescue’ – offering life-saving help, accepting with good grace that your mountain cabin be used by others in need so long as they make good, allowing a police officer to commandeer your vehicle – or in \textit{Force and Freedom} – for example, accepting the inconveniences of trespasses to your land if it can serve as the continuation of a public right of way that has been temporarily blocked.
decision-making in the face a plurality of opinions over many issues?\textsuperscript{17} Although the rather silly and finally impossible calculation will go differently for each person, it will be true for all members that a certain percent of their tax payments goes on purposes that they do not endorse.\textsuperscript{18} Well, one may say, that is the price – the cold hard cash price – of the privilege of sharing a democratic polity.

Perhaps this is a flippant way of putting matters, since it may make my point look as if it is based on an expectation that citizen should balance benefits and burdens, and come up with a particular answer. (– ‘Look at the benefits of untrammelled democracy\textsuperscript{19} – aren’t they worth a few tax dollars?!’) In line with the spirit of

\textsuperscript{17} Kant may seem to disagree in his remarks on majority rule (‘Perpetual Peace,’ 8:352), but there he refers to institutionally unstructured majoritarianism – hardly a favoured option in contemporary democratic theory. Although I mean my remarks to be compatible with most mainstream accounts of democracy, let me add that I have found Henry Richardson’s work on ‘democratic autonomy’ helpful in formulating some of these thoughts. Despite their rather different theoretical approaches, Ripstein and Richardson share an important emphasis on the constitutively institutional character of the public and democratic will.

\textsuperscript{18} This is a rather brief way of making the point that the extension of properly public purposes that I envisage as inherent in democratic agency does not contradict the requirements of reciprocity, equal division of burdens and systematicity (256ff) that Ripstein reasonably holds up as essential principles of mandatory cooperation. Of course, if it can be shown that some policies or public institutions systematically operate to advantage one group over others – as subsidised higher education is sometimes argued to unduly benefit the upper and middle classes – then that remains as a powerful political argument for revising those policies or institutions (though not for abandoning their aims).

\textsuperscript{19} I mean democracy untrammeled by this narrow conception of public purposes – not a crass majoritarianism untrammeled by the constraints of basic or constitutional rights. Of course, there is also a question of who is to do the trammeling. We can ask a highest court to strike out laws or executive decisions that conflict with basic rights, or somehow lack procedural warrant. But we can hardly ask the courts to assess whether a policy or project goes beyond the wider constraint imposed by rightfulness that is my concern here. Whether a policy or project does so is, of course, a political question. In exactly the same way, I will be suggesting, it is a political question, one that different polities may reasonably decide differently, whether our public purposes should be so trammelled, or indeed thought of in these terms. In other words, I think there is a confusion of levels involved in Ripstein’s attempt to delimit public purposes in terms
Ripstein’s analysis, I would rather present it as a more complex application of an idea that he occasionally deploys. Almost in passing, Ripstein remarks that the law may rightfully impute purposes to persons, even counter to their apparent intentions. Thus a physician is authorised to treat someone whose suicide attempt has failed, and even to exact payment for this, because the law imputes to each of us the purpose of maintaining our on-going purposiveness. Whatever the merits of this particular application, I think the underlying idea can be deployed in a more far-reaching and democratic way.

As we know, Kant frequently insists on the importance of laws being self-given, invariably in the form of a modal test: could the people give themselves such a law? To bring Kant closer to modern democracy, Ripstein seeks to extend this: active citizens participate in the institutions whereby the people gives itself those laws. I propose that the idea of democracy mandates a further, and theoretically no less significant, extension: a democracy may impute to its members the purpose of participating in collective self-rule. Such an idea is close to the surface of Ripstein’s text, when he points out that no citizen could accept – even if she wanted to – a principle which renders her status permanently that of a passive citizen. My thought is that to live as one active citizen among a plurality of others, citizens must empower one another by a willingness to compromise – that is, to participate in projects that they would not have chosen individually. Fellow citizens may not press-gang one another: that would be contrary to rightful honour if anything is. Fortunately, however, taxation is not impressment. In a democracy, taxation merely gives effect to our collective decision, as to what proportion of financial transfers may be taken conclusively as private property, in order that we may act together to pursue public

---

20 F&F 143n. Similarly, that since each person has an internal duty of right not to act against her rightful honour, the state may impute that purpose to him or her, in the limited sense that it prohibits others from treating her as if that were her purpose (37f). Or again, we are ‘entitled to treat the creating and sustaining of a rightful condition as one of the free-rider’s purposes, quite apart from what he may have to say about it’ (258).

21 F&F 212f.
purposes. So long as they are democratically decided upon, those purposes are not the purposes of any given individual or set of individuals; nor are they confined to the means or constituents of a rightful condition. While their pursuit is properly held in check by constitutional rights, and while they may not ignore the upholding of right, those purposes also include whatever purposes the people may choose to adopt in its democratic deliberations.

The enforcement of virtue

Another argument that might be offered for Ripstein’s spare conception of properly public purposes reflects the fundamental division of the *Metaphysics of Morals*. There is a mandatory end, the civil condition, which is coercible and for which we need not consider the motivations of participants. There are obligatory ends, personal virtue and others’ happiness, which are not coercible precisely because they can only be a person’s ends if he or she voluntarily adopts them. Insisting on this dichotomy, one might then argue that all state activity must be framed in terms of freedom, rather than presupposing or trying to foist particular ends on people. It may be granted that the sorts of political ends I have mentioned above are, insofar as they go beyond the demands of freedom, virtuous things to pursue. But that is exactly what they are. A virtuous person may adopt those ends. Maybe she will find like-minded persons with whom to act in concert – for example, to form a charity to pursue them or a pressure group to persuade others. In any case, there is only virtue so long as individual persons do the adopting. Imposing an end on someone, by enlisting her in some form of cooperation that she may not evade, is simply impossible: at best she or he simply goes through the motions, or hands over the taxes because that is what she has to do. But virtue is no business of the state, and we can exhibit many repellent examples of the tyranny of (supposed) virtue to shore up our intuitions here.

It is in this vein, I think, that Ripstein rejects the argument, made by O’Neill and others, that the state may, indeed should, act to alleviate all sorts of need, just because those who are more fortunate have a duty of virtue to help those in need.\textsuperscript{22} Even if all

\textsuperscript{22} F&F 268f.
those who were better-off accepted this view and were willing to engage in charitable activity, there are – so the argument goes – still grounds for the state requiring them to do so, and deploying their combined contributions. These grounds lie in familiar problems of coordination and generality – in the sheer difficulty a plurality of uncoordinated persons will have in addressing the many needs that give rise to these imperfect duties. While each individual might have some specific cases of need in mind, perhaps, for each to help as she or he deems fit would cause two obvious sets of problems: (i) all the issues of dependency and even patronage that are bound up with private charity, and (ii) the sheer chaos of duplication and omission arising from a lack of systematicity. (Cute animals and non-disfigured children may do well, but woe betide anyone who isn’t cute and adults who would rather stand on their right not to be treated like pets or children.) Only institutions can combine to address neediness in a systematic way and in its general form: ‘all those persons (whomever they may be) who are needy (in whatever way).’ I want to endorse Ripstein’s disagreement with O’Neill, insofar as such an argument might be taken to imply political conclusions that could be arrived at independently of political debate. Against Ripstein, however, I again want to suggest that they are entirely proper matters for such debate – and decision.

I have already discussed one objection – that we are talking about mandatory cooperation, and not all persons will be willing to accept and pursue such a duty of virtue, even if they ought; this implies conscription, which would go against rightful honour. But Ripstein also marshals an argument based on the impossibility of mandatory virtue, when he argues as follows:

> For Kant, the moral status of an action is never measured solely by its effects, neutrally specified… Nobody has a general obligation of either right or virtue to bring about a specified result, so no obligation could be discharged by bringing about such a result if it is brought about in the wrong way. (269)

In other words, if I understand aright: wherever the state acts to help persons or social causes in ways that exceed the demands of a rightful condition (‘to bring about a specified result’), results are brought about ‘in the wrong way.’
Now one can easily see the force of this point at a mundane level – many state-based forms of aid and social action are inept or mechanical or overly bureaucratic, and betray alarming indifference to the needs of those they are ostensibly meant to help. But that is only an argument for making state agencies more responsive – a difficult exercise that has nonetheless sometimes been achieved. Clearly the issue Ripstein has in mind is more theoretically fundamental: the argument is meant to demonstrate that citizens cannot discharge duties of virtue through the state.¹

Now, it seems to me that such an argument has force where citizens do not indeed rule themselves, but rather submit to a more or less enlightened autocrat who seeks to promulgate laws in a republican spirit, that is, laws that the people could have given to themselves had they been consulted. Who is such an autocrat to decide that the people should support (say) the most splendid and extensive public architecture? But that is not the polity that Force and Freedom considers, since it already fails the test of a rightful condition by consigning citizens to passivity. In a democratic polity, active citizens participate in formulating policies.²³ Freely idealising, may not the citizens decide as follows? – So far as we can see, this will not do anything to uphold the rightful condition to which we belong; but we do not want to belong to a wealthy nation which sits idly by while there is such indigence in a far-off land. We therefore mandate our representatives to offer judicious support which will, we hope, remove the causes of that need. Or: So far as we can see, the generous support for the arts that we propose is hardly needed to uphold the rightful condition to which we belong; but we see a thriving artistic culture as part of who we want to be, and we mandate our representatives to spend public funds in maintaining agencies to promote this.

Of course, one may object on political grounds to both sorts of decision. State aid has a sad record of being subjected to outrageous abuse by both donors and recipients; and even where not, of being deployed in ways that create dependency and corruption. Agencies to support the arts may provide governments with licence to

²³ In a more developed version of this argument, I would also want to dwell on their role in implementing such policies, as the persons who uphold – either in the roles they fulfil or the modes of accountability that they employ – the requisite institutional activity. I make a few gestures in this direction in conclusion, in referring to the notions of ‘profession’ and ‘citizen.’
meddle in the content of artistic endeavours; creativity and bureaucracy are uncomfortable bed-fellows; and perhaps there are more important things to spend money on anyhow. But it seems to me that this is the level at which democratic debates properly proceed, rather than at the level of freedom and right, understood in the individual terms that Force and Freedom usually deploys.

I just said that in Force and Freedom, freedom is the freedom of individuals, just as rights are usually the rights of individuals. But there is another sense of freedom at stake in my remarks above. Although he sometimes speaks of the freedom of states or peoples, I think it is fair to say that this is a sense that Kant – who had never seen universal suffrage and who identified democracy with mob rule – neither experienced nor anticipated. Where citizens rule themselves, their freedom may now be understood at a collective and democratic level; they are enabled to act together in order to decide on the purposes they will share. This is not to say that there are not obligatory ends – thus the upholding of rule of law and fundamental rights structured in terms of innate and acquired right. It is only to suggest, pace Ripstein, that there is no warrant for restricting their freedom to the choice and pursuit of only these ‘formal’ ends.

But is there a warrant for extending their freedom? In a democracy does a people really ‘acquire’ a right to determine its shared purposes, beyond its ‘innate right’ to uphold a rightful condition as it judges fit? In the case of individuals’ acquired rights, Ripstein argues that such an extension is legitimate because ‘any restrictions on the possibility of one person having objects as her own would restrict one person’s purposiveness for the sake of something other than freedom…’ (64). I suggest we can make a parallel argument for the democratic body politic. This cannot, of course, involve such a bald claim as the following: ‘any restriction on the purposes that they may pursue would restrict the collective’s purposiveness for the sake of something other than freedom.’ For the sake of individuals’ freedom, there are indeed strict limits on the means a collective may use, that in fact rule out a large number of ends (the ethnically pure state, the expansion of borders, a condition of total safety and

---

24 Not always: F&F does not forget rights of nations, and makes space to invest various corporations and collectives with legal personality and hence rights.
security). But if my arguments above are correct, freedom itself provides no grounds for restricting democratic purposiveness as tightly as Ripstein does, because freedom is not only an individual matter: it is also a matter of collective self-rule. If my argument in the previous section is correct, individual freedom provides some grounds for limiting this collective freedom, but not for invalidating it.

Granted all this, it seems to me that the charge that I discussed above does not hit the mark. The charge, to repeat, was that state action that somehow exceeds the demands of a rightful condition should not count as virtuous action: we might obtain more or less desirable results, but they would be ‘brought about in the wrong way.’ I suggest the reverse is the case: the results would be brought about in exactly the right way. Freely idealising once more: Citizens debate and decide commitments, exercising public reason as to the ways in which they collectively wish to pursue some of their wide duties of virtue. They acknowledge that many compromises are essential if they are to act together at all, so that in various ways none of them will endorse the resulting policies without reservations. Nonetheless, they thereby adopt ends that count as theirs.

The ethico-civil condition

I have suggested that processes of democratic will-formation, together with our ongoing participation in the institutional structures that are endorsed by that will, give us grounds to go beyond Ripstein’s picture. And I have also suggested that this can be framed in terms of freedom: not as its loss, but rather its exercise. In a famous passage, Kant writes:

one cannot say: the human being in a state has sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will.25

25 6:315.
By the participation that enables us to decide on and share ethical purposes through democratic institutions, we relinquish – in part – our formal freedom to pursue whatever ends we may wish. What we gain, however, is a degree of collective freedom, that is, a lawgiving will that counts as ours. Ripstein instrumentalises the democratic will, as a means – albeit the necessary means – to give effect to a rightful condition. No doubt, political speech (not to mention political action!) is uniquely qualified to promote a legal order that a people could have given to itself; and it may serve many other worthy purposes besides. Nonetheless, I suggest that democracy has a more fundamental meaning and rationale: by its political engagement, structured through its democratic institutions, a people constitutes itself as the bearer of a democratic will.

Of course, we may feel many worries about this picture. – We may have our doubts as to how far democratic debate and representative institutions live up to this idea of reason. No less than the rightful condition, however, it provides a standard to which our democracies must aspire and against which they may be assessed. – We may be concerned at creating a mandate for officious statutory meddling in every sphere of life. But what counts as meddling and what as proper direction or accountability are surely matters for political debate; no abstract delineation of properly political purposes will guarantee the absence of the former and the presence of the latter. Moreover, what we are envisaging is the pursuit of democratically decided goals through agencies which empower and entrust officials to show commitment to the relevant goals. But these remain open to various forms of democratic oversight and review. – Or again, we might object that this is only a picture of (Kantian) collective virtue insofar as citizens’ democratic deliberations are oriented by obligatory ends. That is as much as to say: this line of thought rests on trust in the citizenry; it would hardly be tenable for Kant’s famous ‘nation of devils.’ Yet the point of imagining a

26 In their hands – not to mention the hands of an electorate largely ignorant of the rest of the world – it might, for example, create a state who behaves like an unconstrained private actor, clomping over the earth’s surface in pursuit of more or less imperial ends. [In fact, it seems hardly possible for a rightful condition to be upheld by a nation of devils. Even if the citizens may be kept in check by coercive institutions, we will not have answered the old ‘custard question’ – who guards the guardians? A nation of devils can neither staff its institutions of
transition from a state of nature to a civil condition has always been to imagine the conditions in which we can have reasonable trust in one another. Entering a juridical-civil condition, we are given good grounds to trust (but no guarantees!) that others will respect our innate and acquired rights. Entering an ethico-civil condition, perhaps we may give one another good grounds to trust (but again, no guarantees!) that, not only that we will take duties of right seriously as ethical duties, but also that we will not show indifference to the obligatory end of one promoting one another’s ends.  

It is here, then, that I would like to return to the idea of an ‘ethico-civil condition’ with which I began these remarks. The spareness of Ripstein’s account begins and ends with the claim that we are not entitled to presuppose any particular (‘material’) ends on the part of our fellow citizens, nor to pursue them should we discover them. We may only impute, if need be as a legal fiction, the ends that are required by freedom itself. Awe-inspiring in its analytical simplicity and the richness of its ramifications, there remains a remarkable coldness to this account. For the purposes of political life, we may not count on any ethical commitments on the part of our fellow citizens – not even, if I have understood Ripstein aright, after citizens have declared those commitments in public and democratic debate, or shown their willingness to live with others in a spirit of solidarity, with all the compromises and entanglements that must entail. ‘Freedom, understood as independence of another person’s choice, is [all] that matters.’  

I agree that good fences make good neighbours, and I share many of the commitments to pluralism that motivate theorists government (cf F&F 193) nor can it people ‘the sole palladium of the people’s rights,’ (F&F 204) the public realm of democratic speech (and I would add, of democratic action).]

27 Kant generally speaks of the obligatory end that we should adopt by others in terms of happiness. Both for my argument and in general, I think, his other formulation is a much happier one: that we should promote others’ ends. Kant uses these words almost in passing (MM 6:449f) – as if unaware of the critical difference between them, since human beings (as free beings) may well choose ends other than happiness. I am again indebted to one of Kyla Ebels-Duggan’s papers for observing the distinction: see ‘Against beneficence: a normative account of love,’ Ethics, 119 (2008): 142–170, at 155ff.

28 F&F 266: I replace ‘the only interest’ by ‘all,’ since Ripstein is only using the language of interests in order to make contact with an approach that is opposed to his own.
who would prioritise ‘the right’ over ‘the good.’ But I think Ripstein has made the fences a little higher than they need to be, and put a limit upon our collective freedom that is not required by freedom itself. And I hold out the hope that democratic will formation may arrive at some shared moral commitments, above and beyond our many differences and proper scope for our private purposes.

Here, for simplicity, I have only mentioned the spending of tax revenues, alongside some gestures to participation in democratic structures. To develop the idea of an ethico-civil condition more fully, I would need to focus on the way our policies and projects – invariably pursed through social institutions – might facilitate the adoption of ethical ends, as well as our deliberation and reflection upon them. In Ripstein’s terms, we might think of this as acting, politically, to adjust the context in which each individual chooses. But ‘context’ is too neutral a way of putting the matter: different circumstances of chance or nature provide different contexts of action. What is at issue, rather, is the rational structure that we lend to the environment in which we exercise our freedom. This is not some mechanical exercise of steering human conduct in terms of more or less predictable inclinations – as if the state might solicit virtue like a vast corporation advertising moral goods and putting up the price of immoral ones. For one thing, as I have stressed, in a democracy, people and state cannot be separated in such a simple way. Just as important, in creating institutions for shared ethical purposes – as well as to uphold freedom – we encourage reflection on our ends and solicit thoughtful participation. It is said that you can lead a horse to water, but you cannot make it drink. For all that we cannot make one another into virtuous persons, we can, I think, lead one another to water, by creating institutions and fostering shared projects that provide channels for ethical action.29

Cf Richard Titmuss’s classic contrast between the US and British systems of obtaining blood for transfusion [ref]: A participant in the British system is led to understand his or her activity quite differently to one in the American one. To be sure, donation would still be possible in US – one might refuse payment, or donate the payment one received. But that would be an exercise of altruism, rather than participation in a structure of reciprocity and solidarity.

It is perhaps also worth noting that Kantian ethics does not share the common theoretical overvaluation of self-sacrifice (which is always liable to tip over into the sacrifice of others). So I believe that there is an important Kantian argument to be made in favour of structures of
These remarks are extremely sketchy. Elsewhere, I have tried to fill out a picture of health care institutions in Kantian terms, that recognises a division of acquired duties so that individual role-holders may attend to various, very particular aspects of human need within a systematic division of labour – one that addresses the variegated health care needs of an entire constituency. Role-holders are expected, here as elsewhere, as Ripstein observes of the person-office distinction, to do their jobs rather than exhibit moral merit. But so far as the notion of a profession is meaningful – and I take it that this notion will apply to anyone who bears a meaningful degree of responsibility for upholding and developing institutions that pursue democratically decided purposes – this does not imply an arid desert of institutional rules and mechanical incentives, devoid of virtue. In the first place, these professionals work within a structured form of reciprocity, whereby they receive both material compensation and moral recognition for their efforts. Second, these are structures that incorporate on-going individual and collective reflection on professional duties, and on the proper overall purposes of those institutions. In other words, they are animated by persons who continually invite one another to engage with the ends that the institution is meant to serve, and who are asked to do the same by the fellow citizens who hold them to account.

To sum up: I have suggested that democracy, as an ideal, is not just the necessary means to improve a rightful condition. Democratic institutions also embody our collective deliberations about the ethical purposes we will share. We thereby gain the collective freedom to leave behind an ethical state of nature, and enter a civil condition that is ethical as well as juridical. Here we are not only entitled to impute reciprocity (one not unrelated, despite my remarks above, to the valuable emphasis Ripstein places upon the innate duty of rightful honour), notwithstanding the appearance of purer virtue that some might discern – following some unfortunate *Groundwork* examples – in sheer altruism.

---


31 F&F 204n.

32 Parallel points might also be made about the role of ‘citizen.’
the end of maintaining a rightful condition to our fellow citizens. Instead, we gain something that is conspicuous by its absence in *Force and Freedom*: the right and the warrant to attribute particular ethical purposes to our fellow-citizens, and the assurance that – for all our differences – we will pursue some of those ends together.