

Resolving Complications of a Kantian Conception of Human Rights

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Abstract. Scholars have utilized Kant's philosophy in justifying human rights because it is based upon reason alone. However, his social/political philosophy raises complications. This essay responds to Sangiovanni's concerns as expressed in "Why There Cannot be a Truly Kantian Theory of Human Rights."

Introduction to Human Rights and Some Complications

Human rights are universal rights for all human beings. A claim to a human right grants individuals protection from the state and other actors which can deprive them of their human rights. When a state violates its subject's human rights, it risks losing its sovereignty as it opens itself up to the international community to intervene in defense of human rights. Because of the consequences that claims of human rights have in the world, scholars have debated the philosophy of human rights. Part of this debate involves explaining what human rights individuals hold and how individuals have these rights. As a result of this, one's understanding of human rights significantly depends on how one comprehends human nature as well as how one apprehends human rights. In order to determine which human rights individuals have, many scholars have turned to substantive accounts of human rights.

Substantive accounts of human rights are one method used for determining whether human rights claims are genuine.¹ Those who support a substantive account of human rights favor it because it allows them to know, generally, which human rights people have and why they have them. In theory, this is powerful as it allows one to assess the validity of a claim to a human right; however, these substantive accounts of human rights have flaws.

One popular substantive account of human rights is the political conception. Some of those who support a political conception of human rights are skeptical about universal rights that apply to all people across various cultures, but they are still seeking a justification for human rights.² In his political conception of human rights, John Rawls argues that human rights can be understood through identifying the role that they have in the political sphere. For Rawls, human rights serve as necessary conditions to having social cooperation.³ This relationship of human rights to the individual is problematic as the political conception bases human rights on being necessary for social cooperation. An unfortunate consequence of such an approach is that it leaves some human rights that only impact the individual to not be adequately grounded.

Another version of the political conception holds that human rights are to be respected as social constructions. This is flawed because it only provides a formal account of a list of human rights that the state recognizes. This version of the political conception does not explain why these rights exist.⁴ Furthermore, human rights, to sufficiently allow for action by other states when violations to human rights occur, must exist prior and independent from the state.

The capabilities approach is another popular substantive approach to grounding human rights. The capabilities approach is based upon people's real opportunities to choose and

¹S. Matthew Liao, "Human Rights as Fundamental Conditions for a Good Life," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 79.

²"Human Rights," Stanford Encyclopedia of Philosophy, April 11, 2019, <https://plato.stanford.edu/entries/rights-human/>.

³Liao, "Human Rights as Fundamental Conditions for a Good Life," 94.

⁴Liao, 99.

act on various functionings.⁵ Nussbaum argues that all human beings have central capabilities, such as life, bodily health, and control over one's own environment. Human dignity arises when one has enough of each of these capabilities. However, the capabilities approach cannot protect status rights — rights which protect human being's moral status as persons.⁶ One example of a moral status right is the right to be presumed innocent until proven guilty. Additionally, human rights are supposed to be inalienable rights, and the capabilities approach implies that people have a choice when it comes to these rights. In the end, the capabilities approach cannot explain the rights of children as they are focused on functionings — which are not yet developed in children.

S. Matthew Liao critiques the capabilities approach and the political conception approach with some of the arguments presented above. He remains determined to have a substantive approach to human rights, and his solution is the fundamental conditions approach. It asserts that human rights are those which are fundamental conditions to one being able to pursue a good life.⁷ It recognizes that there are certain basic activities that human beings need to be able to perform to have a good life. The goal of society is thus to protect these fundamental conditions and to ensure that people can have a minimally good life. Initially, it appears as if this framework can be used to determine what human rights people have and how these claims are to be justified.

Rowan Cruft raises complications with the fundamental conditions approach. He asserts that defining a minimally good life is much harder than Liao anticipates it being. Cruft asks why the pursuit of a good life is being protected over the activities which lead one to have a good life. Furthermore, it is difficult to define basic activities which must be respected as human rights. Applying the fundamental conditions approach is not as clean-cut as Liao makes it since some have lived minimally good lives without human rights. Thus, respect for human rights is not always necessary for one to have a minimally good life.⁸

⁵Liao, 91.

⁶Liao, 92.

⁷Liao, 81.

⁸Rowan Cruft, "From a Good Life to Human Rights: Some Complications," in *Philosophical Foundations of Human Rights*, ed. S. Matthew Liao and Massimo Renzo, First edition, Philosophical Foundations of Law

Furthermore, having a human right is not sufficient to guaranteeing that one has a good life. People vary, and so people have differing fundamental conditions when it comes to living a minimally good life. Because these three major substantive accounts of human rights all have issues, some have resorted to non-substantive accounts of human rights. One non-substantive account of human rights concerns respecting human beings' dignity and their capacity for freedom.

Many international treaties, including the Universal Declaration of Human Rights, appeal to the inherent dignity of human beings in justifying human rights. Naturalistic theories of human rights, of which dignity is one approach, assert that people possess human rights by their nature as a person. This method prevents human rights from being solely conventional since they exist prior and independent of the state.⁹ One advantage of this approach is that it makes human rights universal as all human beings, regardless of their abilities or conditions, hold these natural rights. These are innate rights which cannot be forfeited, unless one commits a heinous act. Even though natural rights are pre-institutional, they have implications for what political institutions should look like. For example, Kantians hold that rational beings have an innate natural right to maximal freedom.¹⁰ This right includes the right to be in a civil society with institutions that help to actualize full freedom. Kant's philosophy has been used by many thinkers to develop a justification for human rights.

A Kantian Conception of Human Rights

Katrin Flikschuh, in "Human Rights in a Kantian Mode: A Sketch," spells out what she believes a Kantian conception of human rights would look like. Flikschuh begins by recalling Kant's understanding of concepts. Concepts contain a set of marks, or other concepts, that are united analytically.¹¹ These concepts serve as the basis for recognizing objects. Con-

(Oxford, United Kingdom: Oxford University Press, 2015), 105.

⁹John Simmons, "Human Rights, Natural Rights, and Human Dignity," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 145.

¹⁰Simmons, 150.

¹¹Katrin Flikschuh, "Human Rights in a Kantian Mode: A Sketch," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, Philosophical Foundations of Law (Oxford, United Kingdom: Oxford University Press, 2015), 654.

cepts are best regarded as "subjects' cognitive judgements of sensible intuitions as objects of experience in accordance with certain rules of cognition."¹² Because of human cognitive fallibility, concepts are limited, and it is often unclear what is precisely contained within a concept. In reflecting on the concept of human rights, a Kantian would recognize the inherent restrictions in developing a philosophy of human rights. Moral concepts, like human rights, are especially vulnerable to being contested. Ultimately, following Kant's philosophical thinking leads one to derive a transcendent human rights conception which acknowledges this cognitive and moral fallibility.¹³

Kant asserts that there are juridical and ethical duties. Juridical duties, grounded in the moral law, hold without exception, and they impose restrictions on people's actions that transcend their intentions.¹⁴ For example, a juridical duty could demand that one not lie (since it could not be willed to be universal), even if their intention was to prevent somebody from getting hurt. On the other hand, ethical duties allow for discretion as one must consider the ends and other elements related to the ends. Human rights would be found within juridical duties as they are absolute restrictions. For Kant, claims to rights are reciprocal, and mutually non-enforceable. This means that one who makes a claim to a right against another person is also bound by this claim. Furthermore, the one making the claim is unable to enforce this right as that would involve asserting themselves over the other person. Because of this, people must enter into a civil condition as it allows for a coercive authority to ensure that people fulfill their duties. According to Kant's philosophy, human rights understood as a transcendent concept entails that a substantive rights legislation cannot be developed due to human cognitive and moral fallibility.¹⁵

A transcendent conception stands in contrast to a foundationalist approach. For Kant, the transcendent is beyond understanding with respect to the substantive components. The content of a transcendent conception of human rights would entail concepts that ratio-

¹²Flikschuh, 654.

¹³Flikschuh, 656.

¹⁴Flikschuh, 658.

¹⁵Flikschuh, 660.

nal beings must recognize lie beyond their understanding. Furthermore, rational beings would have to acknowledge that they have never experienced a clearly formed concept of human rights.¹⁶ At first, it appears as if transcendent concepts are not useful. However, Kant believes that a transcendent concept is valuable in helping understand certain concepts. For example, Kant holds that recognizing the concept of God as transcendent allows for a better understanding of God. He believed that rational beings could not truly understand something that is omnipotent and omniscient.¹⁷ Therefore, it is more appropriate, and even preferable, to recognize certain concepts as transcendent. A transcendent concept of human rights allows one to better understand that practical reason is attempting to grasp something indeterminable, and it reminds rational beings of their own moral fallibility. Under the transcendent conception, human rights arise from recognizing the moral necessity of having a coercive public law making body.¹⁸ This differs from the more typical notion of human rights which places them as antecedent conditions of a legitimate state.

For Kant, legislating is an activity that is beyond human capacities. This is not a critique of human beings and their mental abilities. Instead, it relates to how Kant understands rights as being reciprocal. With reciprocal rights, claims of rights hold for both parties: the one making the claim and the one who the claim is directed towards. The state is needed as it can enforce reciprocal rights since one cannot act on their own and thus claim to have authority over another. When one is legislating, or determining the content of human rights, they are entering into a morally problematic dilemma as they have institutional elevation over others in society.¹⁹ This is an unavoidable dilemma as there is no alternative other than human rule. All that can be done is for legislators to recognize that they are in a position which exceeds their human capacities. This calls for them to be humble in exercising their power.

The transcendent approach to human rights can be seen in those who appeal to human

¹⁶Flikschuh, 664.

¹⁷Flikschuh, 664.

¹⁸Flikschuh, 666.

¹⁹Flikschuh, 667.

dignity and respecting human beings as ends in themselves.²⁰ These philosophical justifications of human rights are also transcendent as it is often unclear precisely what is meant by these ideas. Perhaps the human rights discourse has been so divisive as thinkers have tried to come to understand a transcendent concept. Kant's philosophy aids scholars in recognizing that they are attempting to grasp something which is beyond their understanding. If human rights were to be spoken of with mechanical precision, they would lose some of their moral appeal.²¹ This would diminish the power of speaking about respecting human dignity as an integral part of this concept is its complexity.

A transcendent concept of human rights does not directly provide enforceable requirements for states to follow. Instead, it would remind those in positions of power of their fallibility. Many will see this approach as restricted as it carries non-substantive implications when applying human rights to the world. This is a necessary limitation when deriving a philosophy of human rights from Kant. This paper will not consider critics of a non-substantive approach of human rights. Instead, it will respond to those who raise challenges to employing Kant's philosophy to justify human rights. Specifically, this paper will respond to Andrea Sangiovanni's challenges as raised in "Why There Cannot be a Truly Kantian Theory of Human Rights."

The Argument Against the Possibility of Having a Kantian Conception of Human Rights

Sangiovanni posits that Kant's philosophy cannot be employed in seeking to construct a philosophical foundation for human rights. Her argument is threefold.²² She argues that Kant's division between the domain of morality and the domain of right prevents the categorical imperative from being employed as the basis for human rights. Next, she posits that Kant's argument for there being a moral obligation to exit the state of nature restricts

²⁰Flikschuh, 669.

²¹Flikschuh, 670.

²²Andrea Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," in *Philosophical Foundations of Human Rights*, ed. Rowan Cruft, S. Matthew Liao, and Massimo Renzo, First edition, *Philosophical Foundations of Law* (Oxford, United Kingdom: Oxford University Press, 2015), 671.

the ability of people to claim human rights under a Kantian conception. Lastly, she contends that Kant's assertion of unitary sovereignty prevents others from being able to raise human rights claims. Sangiovanni regards Flikschuh's construction of a non-substantive account of human rights as a product of the limitations of utilizing Kant's philosophy to construct a human rights conception.²³ In light of these constraints, Sangiovanni believes that Flikschuh should have acknowledged that there cannot be a Kantian basis for human rights.

As noted previously, human rights violations open the possibility, and justification of, unilateral infringement on a state's sovereignty by individuals, organizations, and the international community. Sangiovanni believes that this conflicts with Kant's assertion of there being a moral obligation to exit the state of nature. In *The Metaphysics of Morals*, Kant writes that rational beings have a moral obligation to enter into a civil condition. The state of nature is "*devoid of justice*, in which when rights are *in dispute*, [since] there would be no judge competent to render a verdict having rightful force."²⁴ The problem of the state of nature is that one *unilaterally* imposes their will against another. Because there is no sovereign authority, all claims to rights are unilateral impositions of an individual's will. Ultimately for Kant, this gives rise to a moral obligation to exit the state of nature and to live under a civil condition in which the state can act as the coercive force enforcing rights. Under the civil condition, the state gains a strong right to non-interference. Kant wrote in *Toward Perpetual Peace* that: "No state shall forcibly interfere in the constitution and government of another state."²⁵ Human rights claims justify states and entities to unilaterally impose their will against another. This precisely replicates the predicament that is encountered in the state of nature which Kant seeks to avoid.

Sangiovanni acknowledges that Kant also objects to a state of nature among nations as he calls for a voluntary federation to regulate the conduct of its members. For some Kan-

²³Sangiovanni, 672.

²⁴Immanuel Kant, "Doctrine of Right," in *The Metaphysics of Morals*, ed. Jens Timmermann, trans. Mary J. Gregor, Cambridge Texts in the History of Philosophy (New York: Cambridge University Press, 2017), 90.

²⁵Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 676.

tians, the federation could protect human rights. However, Sangiovanni argues that federations cannot be employed to protect human rights as it conflicts with Kant's call for unitary sovereignty. In exiting the state of nature, Kant calls for sovereignty to be unified under one authority. The same occurs with respect to states and how they are obligated to enter a federation. Sangiovanni raises her objection through a hypothetical situation. In this situation, a member state to a federation is determined to have violated a right by a court which members of the federation are subject to. However, the member state objects to the court's ruling. Sangiovanni describes the resulting dilemma:

If we assume that the higher-level Court was acting within its powers, and that its judgments are supposed to be ultimately binding on its member states, then clearly the member state should either change its law or leave the union. For a Kantian, if it leaves the union, it would be violating a moral duty. So it must change its law. But, according to Kant's unitary conception of sovereignty, if it changed its law, it would be effectively recognizing that it is no longer sovereign. Having lost the ultimate (normative) power to decide in all cases, it has either dissolved (and hence returned to a state of nature), or simply transferred sovereignty to the higher level.²⁶

This once again raises the issue of the unilateral imposition of the will against another. When sovereignty is divided, there is bound to be one entity unilaterally imposing its will against another entity.²⁷ For Sangiovanni, if member states become subordinate units to the federation, there is no federal league of states. Further Sangiovanni, holds that Kant believes the federation should only regulate matters arising between the states as opposed to matters that arise within them. Ultimately, the federation could issue recommendations, but not enforce or demand compliance with international human rights.²⁸

For Sangiovanni, another obstacle to constructing a Kantian account of human rights is

²⁶Sangiovanni, 677.

²⁷Sangiovanni, 678.

²⁸Sangiovanni, 679.

his argument that there is no right to revolution.²⁹ Even if the state is violating the original contract, people do not have a right to revolt as they would be regressing back to the state of nature. This grants the state absolute sovereignty and makes a revolution based off of human rights violations in contradiction with the moral obligation to exit the state of nature.

Lastly, Sangiovanni attacks the heart of utilizing Kant to conceive of a human rights conception by discussing human dignity. She notes that human dignity is one of the most pervasive ideas at the basis of the human rights discourse. In seeking to ground human rights in a universal and secular basis through valuing the dignity of humanity as an end in itself, many scholars resort to utilizing Kant's philosophy. However, Sangiovanni asserts that dignity is a moral notion which governs internal attitudes, reasons, and action.³⁰ Dignity does not govern the domain of right which places limitations on actions and is silent with respect to reasons or attitudes. Human rights would be a category within the domain of right, and so it would be improper to assert that human dignity can ground human rights. Sangiovanni believes that the idea of the dignity of humanity governs only the domain of morality. Dignity is used to refer to what has absolute worth, and Kant never speaks of the dignity in his political writings when addressing the domain of right. Even if one were to treat another as a mere means, they would be violating the moral law, but they would not be violating Right since no contract is broken. As Sangiovanni writes, "The duty to respect the dignity of humanity is a constraint on internal lawgiving, but no constraint on *external*."³¹ Because of this, dignity cannot be the basis for human rights with Kant's philosophy.

Furthermore, Kant's categorical imperative cannot be used to justify human rights since the categorical imperative makes no appearance in his political writings when he discusses the domain of right. Kant's universal principle of right from his political philosophy holds that: 'it cannot be required that *I make it the maxim* of my action; for anyone can be free so long as I do not impair his freedom by my *external action*, even though I am quite indifferent

²⁹Sangiovanni, 680.

³⁰Sangiovanni, 684.

³¹Sangiovanni, 684.

to his freedom or would like in my heart to infringe upon it.³² The universal principle of right, unlike the categorical imperative, thus does not require one to constrain their maxims of action. For Sangiovanni, applying the categorical imperative to human rights would be overlooking the other concerns which are raised about unitary sovereignty and the moral obligation to exit the state of nature. However, a careful reading of Kant's political philosophy will reveal that these concerns are misguided and that Kant's philosophy can still be used to derive a conception of human rights.

Human Rights are Compatible with the Moral Obligation to Exit the State of Nature

Sangiovanni holds that human rights cannot exist under Kant's philosophy because they would entail allowing one entity to unilaterally enforce its will against another. Ultimately, this gives rise to an obligation to enter into a civil condition. It should first be noted that a non-substantive account of human rights makes it more difficult for one to impose its will against another. Under a transcendent conception of human rights, it is impossible for one to determine precisely what is and what is not a human right. Flikschuh has derived a transcendent conception of human rights from Kant which "would function as a subjective reflective check on the moral quality of public law making in general, reminding legislators of the fallibility of their authority and judgment in relation to those over whom they exert coercive public authority."³³ Therefore, at least under Flikschuh's account of a Kantian mode of human rights, legislators would be reminded to carefully use their coercive power.

Sangiovanni contends that under Kant's philosophy, the state acquires a right of non-interference. The issue with human rights is that they justify external intervention which would involve a unilateral imposition of will against the sovereign state which is alleged to be violating human rights. Sangiovanni refers to Kant's *Toward Perpetual Peace* in which he writes that "No state shall forcibly interfere in the constitution and government of another state.' For what can justify it in doing so? It can much rather serve as a warning to them, by the ex-

³²Sangiovanni, 688.

³³Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 670.

ample of the great troubles the people has brought upon itself by its lawlessness; and, in general, the bad example that one free person gives another (as *scandalum acceptum*) is no wrong to it."³⁴ Sangiovanni interprets this to prevent action from a will which is external — such as that of a foreign state, a league of foreign states, or a non-state actor.³⁵ While there may be no unilateral action against states, states still have a moral obligation to exit the state of nature which exists at the international level. This entails joining a federation to regulate their conduct. Kant describes the moral obligation to exit the international state of nature in "The Doctrine of Right" from *The Metaphysics of Morals*:

So, unless it [the state] wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the [international] state of nature, in which each follows its own judgement, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined by law and is allotted to it by adequate power (not its own but an external power); that is, it ought above all else to enter a civil condition.³⁶

As Kant's writing displays, when states voluntarily enter a federation with others, it submits itself to "a public lawful external coercion."³⁷

For Sangiovanni, a federation still cannot be the basis for human rights. She argues that if a federation were to hold the ability to implement and enforce rights, it would divide sovereignty and violate Kant's principles. Recall the example that Sangiovanni provides with a federation being bound by the rulings of an international court. Once the federation rules against a member state, the state must either leave the federation to keep its law or change its law. If the state were to leave the federation in response to the court ruling,

³⁴Immanuel Kant, "Toward Perpetual Peace," in *Practical Philosophy*, trans. Mary J. Gregor, 1. paperback ed., 9. print, The Cambridge Edition of the Works of Immanuel Kant (Cambridge: Cambridge University Press, 2006), 319.

³⁵Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 676.

³⁶Kant, "Doctrine of Right," 90.

³⁷Kant, 90.

it would be regressing towards the international state of nature and thus violating Kant's assertion of there being a moral obligation to exit the state of nature. So, the state must change its law. In doing so, Sangiovanni holds that the state has lost sovereignty because sovereignty has effectively been transferred to the court and the federation.³⁸ For Sangiovanni, the dilemma of the state of nature persists as the federation's will is being unilaterally imposed against the state. However, with a federation of states, sovereignty has been united under a body which can regulate the states. For Kant, this is superior to having anarchy in the international order as states are subject to one higher authority: the federation. Instead of unilaterally enforcing their will against each other through war, states must resolve conflicts through the federation. Reason advocates that states form a federation for the same purpose as it demands that people exit the state of nature. In both cases, they must unite under a sovereign authority to mediate disputes between members. Regarding member states to a federation, Sangiovanni holds that there is no longer a federal league of states if member states must change their laws pursuant to the federation. This is not necessarily true. Member states can be subordinate to the federation while still being considered states.

Kant favors a federation because, "Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war."³⁹ The federation allows for sovereignty to be united such that nations can resort to a mechanism to resolve disputes. Nations would not have to unilaterally impose their will against each other through war or other means. Reflecting upon the United Nations today, it has come to resemble the federation which Kant was calling for in his writings as it has encouraged nations to resolve disputes without engaging in war.

³⁸Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 677.

³⁹Kant, "Doctrine of Right," 120.

Having no Right to Revolution Does Not Prevent Having Human Rights for Kant

For Sangiovanni, connected with sovereignty and the unilateral imposition of the will against another is the right to revolt against the state. Revolting against the sovereign state is prohibited in Kant's philosophy because the state holds the authority to resolve conflicts. Those who rebel against the state are regressing towards the state of nature because they are imposing their will against the state which exists to resolve conflicts that arise. Even if the state is corrupt and violating the constitution, people do not gain the right to overthrow it. Kant writes that "The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution."⁴⁰ At first, Kant appears to be mirroring Hobbes in writing that the state enjoys absolute authority. This would prevent there from being human rights as the state would be supreme in all matters. However, Kant reserves sufficient rights for citizens such that there is still space to develop human rights.

Along with holding that there is no right to revolt against the state, Kant writes there may be no active resistance from citizens. Active resistance would entail people trying to coerce the government through an act of executive authority.⁴¹ On the other hand, Kant reserves the right of the people to engage in negative resistance — which is a refusal of the people to accede to the demands of the government. Kant discusses negative resistance in the context of a parliament refusing to grant the government what it deems is necessary to administer the state. This can be interpreted more widely as granting people the ability to engage in civil disobedience. Later in the "Doctrine of Right," Kant holds that there is a categorical imperative to "obey the authority who has power over you (in whatever does not conflict with inner morality)."⁴² Here, Kant has expressly reserved the ability for people to disobey the sovereign when they are directed to do something contrary to their conscience.

⁴⁰Kant, 97.

⁴¹Kant, 98.

⁴²Kant, 136.

In discussing a state going to war, Kant argues that the sovereign alone cannot demand the citizens to participate in fighting.⁴³ This is because citizens "must always be regarded as co-legislating members of a state (not merely as means, but also as ends in themselves), and must therefore give their free assent..."⁴⁴ Interpreting this more broadly reveals that Kant is not as Hobbesian as he appears. Citizens do have rights under Kant's political system, and they must be respected as ends in themselves by their rulers.

Kant does grant the state a wide degree of sovereignty; however, he has provided adequate space for there to be human rights such that the state is not always just in acting simply because it holds the sovereign authority. Kant believes that the state must exist to resolve conflicts peacefully, but this does not give the state the absolute authority to impose its will without restriction. In writing that there cannot be a right to revolution, he is writing that it is wrong to overthrow a duly chosen government — even if it is abusing its authority — because that would involve a contradiction between the wills.⁴⁵ The will of the individuals, specifically the rebels, would triumph over the will of the state, and it is the duty of the state to resolve these conflicts.

Dignity Can Serve as the Basis for a Kantian Mode of Human Rights

Sangiovanni's last objection concerns human dignity as a moral notion that governs internal attitudes and thus not the external domain of right.⁴⁶ Because of this, Sangiovanni argues, one cannot appeal to human dignity to justify claims of human rights since human rights would belong to the domain of right as they concern the relations between people. Sangiovanni notes that Kant's moral philosophy discusses human dignity and thus respecting humans as ends in themselves. However, Kant's political philosophy does not discuss human dignity. She believes that the duty to respect human dignity restricts internal lawgiving, but not external relations.⁴⁷ Based on this, Sangiovanni concludes that human dignity

⁴³Kant, 116.

⁴⁴Kant, 116.

⁴⁵Kant, 97.

⁴⁶Sangiovanni, "Why There Cannot Be a Truly Kantian Theory of Human Rights," 685.

⁴⁷Sangiovanni, 687.

and the categorical imperative cannot be used to ground human rights.

The relationship between Kant's moral philosophy and his political/social philosophy is contested, and this could be further explored in another paper. The divide between Kant's political philosophy and his moral philosophy need not be so large. The domain of right and the domain of virtue have similarities. For example, there is certainly a relationship between how human beings create laws for themselves and how they act externally. Kant's *Groundwork for the Metaphysics of Morals* holds that the categorical imperative is the ultimate law over human deliberative actions. Therefore, some hold that the domains of right and virtue both have the categorical imperative as the highest principle.⁴⁸

Kant does refer to the categorical imperative in *The Metaphysics of Morals*, but it is perhaps in a different sense when compared to how it is used in *The Groundwork for the Metaphysics of Morals*. As mentioned previously, in "The Doctrine of Right," Kant asserts that there is a categorical imperative to "obey the authority who has power over you (in whatever does not conflict with inner morality)."⁴⁹ He is using the term categorical imperative in a general sense to refer to an absolute and universal requirement. This differs from the categorical imperative derived in *The Groundwork for the Metaphysics of Morals* which demands that rational beings only act according to maxims which could be willed to be universal.⁵⁰ Even though the categorical imperative is referred to in a different sense, this lends support to there being a connection between the moral and political/social philosophy as reason makes demands in both realms. Furthermore, the state, while it may appear to fall squarely under Kant's political philosophy and his domain of right, is connected to his moral philosophy. The state exists to maximize freedom and part of this entails respecting individuals as ends in themselves. Sangiovanni's analysis and subsequent division between Kant's moral philosophy and his political/social philosophy is unwarranted given the ambiguity and debate which exists between scholars on these topics.

⁴⁸"Human Rights."

⁴⁹Kant, "Doctrine of Right," 136.

⁵⁰Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed. Jens Timmermann, trans. Mary J. Gregor, Revised edition, Cambridge Texts in the History of Philosophy (Cambridge: Cambridge University Press, 2012), 17.

Conclusions

Many contemporary scholars resort to Kant and his moral philosophy in justifying human rights. This paper has sought to examine what a Kantian mode of human rights would look like, and it has responded to objections which have been raised against the plausibility of such a theory of human rights. Scholars have not always paid attention to the nuances within Kant's philosophy that create complications for using his philosophy to justify human rights. As has been displayed in this paper, interpretative differences of Kant's philosophy can lead to complications in seeking to derive a strictly Kantian theory of human rights. Many thinkers have not bound themselves to Kant's philosophy and have only referenced him and his moral philosophy in passing as they justify human rights as entailing respect for human dignity.

Even though it would complicate contemporary human rights as practiced, there is some merit to there being a transcendent and non-substantive conception of human rights. Flikschuh believes that a truly Kantian theory of human rights must be non-foundational and thus transcendent as Kant's philosophy as a whole rejects philosophical foundationalism.⁵¹ A transcendent theory of human rights recognizes that trying to derive human rights involves human beings using their cognitive abilities for something that is beyond understanding. The Kantian asks how can one come to truly grasp what it means to respect human dignity? Perhaps it is best to start by recognizing the most egregious violations of human dignity when people are treated as means opposed to ends in themselves. Flikschuh believes that if we completely understood human rights, they would lose their appeal: "So with human rights: if we really could give a full specification of its meaning and moral significance, it would cease to fulfill its moral function as a reminder, in the political context, of the fragility of humanly instituted legal relations."⁵² Because human rights are such a difficult concept to understand, it forces one to reflect on human nature and the world, and this is a good thing. Otherwise, human rights could be applied in a mechanistic nature which could over-

⁵¹Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 669.

⁵²Flikschuh, "Human Rights in a Kantian Mode: A Sketch," 669.

look some injustices.

Many would likely reject this human rights conception constructed by Flikschuh to be consistent with Kant's philosophy because of the challenges involved in a transcendent theory of human rights. One advantage of a strictly Kantian theory of human rights is that it recognizes the necessity of human beings establishing a government and having to subsequently elevate some above others who determine the laws. This results in an unavoidable dilemma as some human beings have too much power: they are responsible for creating laws which restrict others. Kant wants to remind those in positions of power to exercise their power diligently. In the end, it would be a mistake to quickly reject this approach as it provides much insight into the challenges of human rights.

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