

Kant on Citizenship and Universal Independence⁺

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‘A moral politician will make it his principle that, once defects that could not have been prevented are found within the constitution of the state or in the relation of states, it is a duty, especially for heads of state, to be concerned about how they can be improved as soon as possible and brought into conformity with natural right...’

—Immanuel Kant¹

Kant’s political philosophy draws a distinction between ‘passive’ citizens who are merely protected by the law and ‘active’ citizens who may also contribute to it. Although the distinction between passive and active citizens is often dismissed by scholars as an ‘illiberal and undemocratic’ relic of eighteenth century prejudice,² the distinction is found in every democracy that

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¹ *On the common saying: That may be correct in theory, but it is of no use in practice*, in Mary J. Gregor (trans.), *Practical Philosophy* (Cambridge: Cambridge University Press 1996) at 310. I will refer to this text as *Theory and Practice*. Page references to Kant’s work will refer to the pagination of the Prussian Academy.

² Elisabeth Ellis, ‘Citizenship and Property Rights: A New Look at Social Contract Theory’ (2006) 68 *The Journal of Politics* 551. For additional critical treatments, see J. Ansbro, ‘Kant’s Limitations on Individual Freedom’ (1973) 47 *New Scholasticism* 88-99; John Kenneth Baynes, ‘Kant on Property Right and the Social Contract’ (1989) 72 *The Monist* 433-453; Ronald Beiner, ‘Paradoxes in Kant’s Account of Citizenship’, Charlton Payne and Lucus Thorpe (eds), *Kant and the Question of Community* (Northwestern University Press, forthcoming); Rolf George, ‘The Liberal Tradition, Kant and the Pox’ (1988) 27 *Dialogue* 202-3; Joseph Grcic, ‘Kant on Revolution and Economic Inequality’ (1986) 77 *Kant-Studien* 454; Pauline Kleingeld, ‘The Problematic Status of Gender-Neutral Language in the History of Philosophy: The Case of Kant’ (1993) 25 *The Philosophical*

distinguishes between mere inhabitants—such as tourists and guest workers—and enfranchised citizens. The purpose of this essay is both interpretive and suggestive. First, I will argue that Kant's mature distinction between active and passive citizens follows from an institutional deficiency in the developing state rather than the natural deficiency of passive citizens, as Kant's critics have alleged. Second, I will draw on systematic features of Kant's political thought in order to claim that the state has a duty to create the institutional conditions of universal active citizenship.

I. Kant's accounts of citizenship

Kant's discussions of citizenship appear in *Theory and Practice* (1793) and in the *Doctrine of Right* (1797). It is my contention that these texts indicate a twofold progression in Kant's thought. While the account of citizenship in *Theory and Practice* is an immature expression of Kant's juridical thought that displays his prejudice, the account in the *Doctrine of Right* takes place in a mature and systematic legal work that is not infected by the prejudices that Kant harbored. The purpose of this section is to demonstrate that Kant's mature account of citizenship does not possess the flaws that have prompted scholars to reject his provisional account.

Citizenship in Theory and Practice

In *Theory and Practice* Kant explicates three *a priori* principles that enable the establishment of a rightful condition, the condition in which public coercion secures the rights of each person.³ The first principle is the '*freedom*

Forum 137-150; Wolfgang Kersting, 'Politics, freedom and order: Kant's political philosophy', in Paul Guyer (ed), *The Cambridge Companion to Kant* (Cambridge: Cambridge University Press 1992) 357-8; Susan Mendus, 'Kant: 'An Honest but Narrow-Minded Bourgeois'?', in Howard Williams (ed), *Kant's Political Philosophy* (Cardiff: University of Wales Press 1992) 166-190; Leslie A. Mulholland, *Kant's System of Rights* (New York: Columbia University Press 1990) 330; Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press 1988) 171; Thomas W. Pogge, 'Is Kant's *Rechtslehre* Comprehensive?' (1997) 36 *Southern Journal of Philosophy: Supplement* 179-180; Nelson Potter, 'Kant and Capital Punishment Today' (2002) 36 *The Journal of Value Inquiry* 269 ff.; Jennifer K. Uleman, 'External Freedom in Kant's *Rechtslehre*: Political, Metaphysical' (2004) 68 *Philosophy and Phenomenological Research* 596; Howard Williams, *Kant's Political Philosophy* (Oxford: Basil Blackwell 1983) 148.

³ Kant significantly reformulates these principles in his popular 1795 work, *Towards Perpetual Peace* at 349-50 and in his notorious essay of 1797, 'On a Supposed Right to Lie from Philanthropy' at 429. Both texts are available in *Practical Philosophy*.

of every member of the society as a human being.’⁴ According to this principle, free persons possess a right to pursue their happiness in a manner that is consistent with the rights of others to do the same. The second principle expresses the equality implicit in the first: ‘The *equality* [of each member of a state] as a subject’.⁵ Whereas the first principle establishes the freedom of the human being, the second brings this freedom under the rule of the state’s coercive laws. As subjects of a state, each person has the right to exercise their freedom in a manner that is consistent with the rights of others to do the same. The third principle of the rightful condition is itself more reasonable than the application that Kant foresees: ‘The *independence (sibissufficientia)* of every member of a commonwealth as a *citizen*, that is, as a legislator.’⁶ Upon positing this principle of the rightful condition, Kant remarks that ‘it is not the case that all who are free and equal under already existing public laws are to be held equal with regard to give these laws.’⁷ Whereas all human beings have a coercive right to pursue their happiness within the boundaries in which they do no wrong, only *citizens* have the right to vote. Thus Kant distinguishes between ‘*citizens*’ or ‘members of the commonwealth’, who are qualified to vote, and those who are merely equals under the law as bearers of coercive rights that are enforced by the state. Kant calls the latter group ‘*cobeneficiaries of this protection*.’⁸

A citizen is a subject that possesses certain qualities. The first quality is the ‘*natural one* (of not being a child or a woman)’.⁹ Kant does not elaborate on why one’s gender renders one unfit to vote, or what role gender plays in an *a priori* principle. The second quality of a voter is *conventional* and consists in the independence of the citizen, which Kant calls ‘*being one’s own master*’ or serving ‘no one other than the commonwealth.’¹⁰ This involves ‘having some *property*’, which Kant construes broadly as ‘any art, craft, fine art, or science’ that supports the citizen.¹¹ Kant’s concern here seems to be that those who lack independence, whether by nature or convention, may taint the public legislation by voting in accordance with their private interests or those of their employer, rather than voting for an interest that all could share.

Scholars have noted the problems involved in both the natural and the conventional qualifications that Kant posits. The objections to the natural qualification concern Kant’s dismissal of women, while the objections to his

⁴ Kant, above n 1, 290.

⁵ Ibid 291.

⁶ Ibid 294.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid 295.

¹⁰ Ibid.

¹¹ Ibid.

conventional qualification concern the status of those that are poor or employed by another. Mendus and Pateman explore the implication of Kant's account of natural qualification. For Mendus, in denying women the capacity to vote, Kant denies women all hope of independence and thereby makes them worse off than any dependent male citizen, whose dependency is either denied by his actions (either a criminal act or his dependency on others) or held out as an available prospect.¹² Similarly, in *The Sexual Contract*, Carole Pateman argues that Kant's purpose in his account of citizenship is to reduce women from the status of human beings to that of property.¹³ Whereas feminists have focused on the injustice done to women, Kantians have concerned themselves with the injustice done to the poor and to employees. Wolfgang Kersting, for example, judges Kant 'guilty of a serious theoretical error' in which he uses rational right to justify the 'political tutelage' of those who lack property.¹⁴ On the basis of Kant's statements about women and the poor, Mendus and Kersting conclude that Kant imports his prejudices into his metaphysics.

Let us formulate the criticisms of Mendus, Pateman and Kersting into two general criteria, which we can use to assess the account of citizenship given in the *Doctrine of Right*. The first rejects Kant's *natural* qualification for citizenship. The second rejects Kant's *conventional* qualification for citizenship.

Natural criterion:

Full citizenship must be attainable for all persons and therefore cannot be denied on the basis of gender.

Conventional criterion:

Full citizenship must not be withheld or awarded on the basis of economic status.

I believe that these rejections are based on the inaccurate assumption that Kant's discussions of equality and citizenship in *Theory and Practice* (1793) and the *Doctrine of Right* (1797) are consistent. This assumption culminates in the collapsing of Kant's mature position into his provisional account without noting the differences between the two. Thus, scholars invoke

¹² Mendus, above n 2, 174,180.

¹³ Pateman, above n 2, 171: 'Kant excludes women from the category of persons or individuals. Women can only be property.'

¹⁴ Kersting, above n 2, 357-8; cf. Williams, *Kant's Political Philosophy*, above n 2, 148; and Leslie A. Mulholland, above n 2, 330.

the sexism of the former in order to reject the latter.¹⁵ I will explicate Kant's mature and systematic juridical framework and then focus on his revised account of citizenship.

Kant's mature juridical framework

Kant conceives of legality as a set of norms that explain how persons can interact on terms of equal freedom. His account of legality originates from the principle of right,¹⁶ 'the sum of conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom.'¹⁷ The concept of right consists of three interrelated aspects: externality, choice and freedom. First, the concept of right has to do 'only with the external and indeed practical relation of one person to another, insofar as their actions, as deeds can have (direct or indirect) influence on each other.'¹⁸ As right concerns relation through external action, it can be distinguished from the internal perspective of Kantian ethics. Second, right 'does not signify the relation of one's choice to the mere wish (hence also to the mere need) of the other, as in actions of beneficence or callousness, but only a relation to the

¹⁵ Still more instances of Kant's misogyny are drawn from his *Anthropology from a Pragmatic Point of View* and his *Observations on the Feeling of the Beautiful and the Sublime*. I do not deny that Kant's writings reflect his sexism. The problem that I wish to consider is whether Kant's sexism infects the account of citizenship in his mature juridical theory. For examples of Kant's sexism, see 'The Character of the Sexes', in Victor Lyle Dowdell (trans.), *Anthropology from a Pragmatic Point of View* (Carbondale: Southern Illinois University Press 1978) 303 ff. For a historical account of Kant's interactions with women and the development of his sexism, see Zammito, *Kant, Herder and the Birth of Anthropology* (Chicago: University of Chicago Press, 2002) 120-135. Zammito argues that Kant's view of women soured when he realized that his poverty would prevent him from marrying. Kant then underwent a period of transformation in which he consciously attempted to repress his sexuality, which he believed could never be rightfully satisfied. His sexual repression gave rise to his denigration of women.

¹⁶ See Mary Gregor, 'Introduction' in Kant's *The Metaphysics of Morals* (Cambridge: Cambridge University Press 1996) at x: 'In the matter of terminology, there are special problems with translating the German word 'Recht'. Like the Latin 'ius', it can mean law or justice or right. Translated here by the noun 'right', it can refer to the ultimate moral law, or to a system of laws following from it, or to one of the parts of such a system. As an adjective 'right' describes behavior that accords with morally correct civil law and that may be coerced legitimately by legal authority. The sense generally is clear from the context'.

¹⁷ Kant, above n 1, 230.

¹⁸ Ibid.

other's *choice*.¹⁹ This second aspect follows from the first because both wishing and need occur *within* agents and so do not themselves constitute an external relation. Choice, however, is necessarily externalised insofar as it presupposes taking up means in pursuit of a purpose. A legal relationship arises from the externalised choices of persons rather than their private internal states. The first and second aspects of right, the externality of the relation and the choice of the agents, culminate in a third aspect:

In this reciprocal relation of choice no account at all is taken of the *matter* of choice, that is, of the end each has in mind with the object he wants; it is not asked, for example, whether someone who buys goods from me for his own commercial use will gain by the transaction or not. All that is in question is the *form* in the relation of choice on the part of both, insofar as choice is regarded merely as *free*, and whether the action of one can be united with the freedom of the other in accordance with a universal law.²⁰

Right abstracts from the *material* ends that each agent may have and instead concerns whether the *form* of the external relation is consistent with the freedom of each agent's choice. The principle of right combines these three aspects (externality, choice and freedom) into a whole: 'Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law'.²¹ As right, unlike ethics, sets no obligatory ends, the *principle* of right expresses that the legality of an action consists in it being compatible with the external free agency of others.

Whereas the concept of right highlights the permissibility of an *action*, innate right expresses the same concept from the perspective of a free actor. Innate right is defined as '*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'.²² Each person has an innate right to act in pursuit of their purposes without interference from another, as long as one's actions are consistent with the same freedom of others. Such a right is innate because it belongs to every person in virtue of their purposiveness. As persons pursue their purposes through their bodies, anyone who interferes with another's body does wrong to that person.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid 237.

Innate right entails a series of authorisations, ‘which are not really distinct from it’.²³ First, bearers of innate right possess ‘innate *equality*, that is, independence from being bound by others to more than one can in turn bind them; hence a human being’s quality of being *his own master*’.²⁴ That Kant conceives of persons as innately equal and independent will have important implications for his account of citizenship. Our innate equality generates reciprocal limits on freedom: every person is free to engage in any act that does not infringe the rights of another. Innate equality also imposes a duty, which Kant calls *rightful honor*. This duty consists in asserting one’s status as a juridical being by using one’s freedom to pursue one’s own purposes rather than subordinating it to the purposes of another. As a matter of right, persons have a duty to assert their own purposiveness in their interactions with others. Thus, a person who enslaves himself to a master violates his own duty of *rightful honor*, whereas the master’s subjugation of the slave violates the slave’s innate equality. Second, bearers of innate right are ‘*beyond reproach*’ because prior to committing an act affecting rights, one cannot wrong another.²⁵ One does not wrong another simply by being what one is.

Kant develops his conception of right in three stages: innate right, private right and public right. Innate right establishes that purposive beings have a duty to assert their worth in relation to others and a right to pursue their purposes without interference from others. But pursuing our purposes often requires adopting means external to our bodies. Thus, Kant’s theory of private law explains how persons acquire rights to things (property), rights to another’s performance (contract), and rights to persons akin to rights to things (status).²⁶ Property must be acquirable without the consent of another, because if consent was required, then one would be subject to the private will of another, which would be inconsistent with one’s own innate equality. But if external things can be acquired unilaterally, then disputes about rights to external things may arise. In the event of a dispute, the duty of *rightful honor*, which consists in asserting one’s innate equality, requires that each party affirm their right and refuse to capitulate to another person’s contrary claim. As innate right authorises the acquisition of external things and demands that persons stand up for their rights, a stalemate arises between private parties with conflicting claims. In the absence of an impartial authority to resolve disputes about rights, no resolution can be consistent with the innate equality

²³ Ibid.

²⁴ Ibid 237-8.

²⁵ Ibid 238.

²⁶ Ibid 259-60. Distinguishing between property ownership and status relations, on the one hand, and the differences between *Theory and Practice* and the *Doctrine of Right*, on the other, are the keys to diffusing Pateman’s claim that the purpose of Kant’s account of citizenship is to provide women with the legal standing of property. See n 55, below.

of each party because one violates one's own rightful honor by dropping one's claim and the other's innate equality by *forcing* him or her to capitulate. Although persons in the state of nature need not wrong one another, they do injustice by failing to live in a condition in which disputes can be resolved rightfully. The solution to this stalemate between equal but conflicting private wills is to find an impartial and common authority to adjudicate disputes. Just as innate right entails private right, insofar as persons must be permitted to acquire external things in order to pursue their purposes, so private right entails public right, insofar as persons must be able to both acquire external things and to resolve conflicts about rights in a manner that is itself consistent with innate right.

Persons who associate with others are under a duty to enter into a rightful condition and to maintain that rightful condition, in which the rights of all are secured: 'when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition' in 'which what belongs to each can be secured to him against everyone else'.²⁷ The duty to enter into the rightful condition does not depend on the state of nature being as horrific as Hobbes imagined, nor would it be rendered unnecessary if the state of nature were as idyllic as Rousseau conjectured. Although the state of nature need not be a state of violence, it is necessarily a condition '*devoid of justice*' insofar as there is no authority that can *rightfully* resolve disputes between private wills.²⁸ The state of nature *itself* is a condition in which one's rights are insecure because 'each has its own right to do *what seems right and good to it* and not be dependent upon another's opinion about this.'²⁹ In the rightful condition private wills remain, but the omnilateral will prevails by providing binding resolutions to disputes about rights that are consistent with the innate right of the conflicting parties. As the state consists of a legislative branch that makes law, an executive branch that implements the law, and a judicial branch that adjudicates disputes in accordance with the law, the state reconciles the entitlements of innate right and resolves conflicts without subjecting anyone's rights to the private will of another.

Kant's mature account of citizenship

In what follows I will explicate Kant's mature account of citizenship in the *Doctrine of Right*. I will then argue that the criticisms made of *Theory and Practice* cannot be applied to the *Doctrine of Right*.

²⁷ Ibid 307, 237. Kant calls this principle the postulate of public right.

²⁸ Ibid 312.

²⁹ Ibid.

As the ‘only qualification of a citizen is being fit to vote’, we must develop an account of the legislative authority.³⁰ Since it would be inconsistent with innate equality if private persons adjudicated disputes involving rights or imposed law on other private citizens, all rights depend upon the *public* legislation of an omnilateral will. A public or general will is the source of law and ‘cannot do anyone wrong by its law’.³¹ It is the source of law because all right proceeds from its legislation. Public legislation distinguishes between the rightful condition and the state of nature, which is necessarily devoid of justice. That the source of law can do no wrong follows from Kant’s conception of what it is to wrong another. A wrong is a violation of another’s freedom to pursue their purposes. Wrong therefore always involves a relationship between the wrongdoer and the victim. The source of law can do no wrong because there is no person that is external to it that can be wronged. In this context the perpetrator and the victim of the supposed wrong are both aspects of ‘the general united will of the people’.³²

The rightful condition transforms the innate right of its citizens into civil personality. Citizens are the members of a state ‘who are united for giving law’.³³ Citizens have three attributes. The first attribute is ‘lawful *freedom*, the attribute of obeying no other law than that to which he has given his consent’.³⁴ Lawful freedom is contrasted with the natural or lawless freedom that bearers of innate right possess in the state of nature. The rightful condition transforms a person’s ‘wild, lawless freedom’ into the lawful freedom of a citizen that arises from his own will.³⁵ Such a transformation is consistent with rightful honor as one does not become dependent on another’s private will but rather on the omnilateral will to which one contributes. The second attribute is ‘civil *equality*, that of not recognizing among the *people* any superior with the moral capacity to bind him as a matter of right in a way that he could not in turn bind the other’.³⁶ This attribute expresses the status of innate equality in the rightful condition. The entire people has reciprocal limits on their freedom and coercive rights against all other persons. A citizen cannot have a juridical obligation to another private person, whether a citizen or a subject, that the other could not have towards him. The third attribute unifies lawful freedom and civil equality. As the citizen contributes to the general will and cannot be bound by another citizen in a relation that cannot be reciprocated, the ‘third attribute is civil *independence*, of owing his existence and preservation to his own rights and powers as a member of the

³⁰ Ibid 314.

³¹ Ibid 313.

³² Ibid 314.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid 316.

³⁶ Ibid 314.

commonwealth, not to the choice of another among the people.³⁷ Kant calls this independence 'civil personality', which consists in 'not needing to be represented by another where rights are concerned.'³⁸

The qualifications for citizenship in the *Doctrine of Right* differ from those in *Theory and Practice*. Unlike *Theory and Practice*, the *Doctrine of Right* posits no natural qualification for voting. A conventional qualification, however, remains: 'The only qualification for being a citizen is being fit to vote',³⁹ that is, fit to contribute to the general will. Although the general will *represents* the entire people, Kant insists that the entire people are not suited to *contribute* to the general will. Kant differentiates between 'active and passive citizens' on the basis of whether they possess civil personality,⁴⁰ that is, whether a person's 'preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state).'⁴¹ So, for example, civil servants are active citizens because their existence and preservation does not depend on the choice of another within the people, but rather on the state. Similarly, the 'school teacher' depends for his preservation on the fees paid by the families of a large pool of students, and so does not owe his existence to the choice of any *particular* private will.⁴² Alternately, as the idea of a citizen who cannot contribute to the laws to which they are bound seems to involve a contradiction, Kant proposes to overcome this difficulty by offering a series of examples. Passive citizens include children (who are undeveloped and therefore must rely on others for their existence and preservation),⁴³ domestic servants, the woodcutter who works in the yards of his employers, the Indian blacksmith who works in the houses of his employer's, the apprentice who works for a merchant, and private tutors. That women are counted among the passive citizens reflects a contingent fact rather than a natural deficiency. Women were dependent on others for their existence and preservation in 18th century Prussia.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² 'As *magister lengers* Kant received no salary from the university; faculty of his rank depended entirely upon student subscriptions to their courses for income. These courses were not even listed in the university catalogue at the time Kant was serving in this rank. Instead, instructors had to print up their own course advertisements, obviously at their own expense'. Even as a low-ranking university teacher, Kant was not dependent on the university or any particular student. See Zammito, above n 15, 89-90.

⁴³ I will discuss the dependency of children in the second section.

This raises a conceptual puzzle. If the qualification for voting is being fit to contribute to the general will, then what supports Kant's view that the independent are fit and the dependent are unfit to contribute to the general will? There are two sources from which private considerations might infect a person's contribution to the general will. First, persons might vote in accordance with their *own* private interests. Second, persons might vote in accordance with *another's* private interest. All persons—whether masters or servants—are capable of succumbing to the first source and voting in accordance with their own private interest. But persons dependent on others are particularly susceptible to the second. In the relationship between a master and a servant, the servant is *required* to act in the interest of the master, indeed, the servant's livelihood depends on it, but the master is not required to act in the interest of the servant. As servants are required to advance another's private interests and require the leave of that other to use their own powers, servants cannot achieve the requisite level of impartiality to contribute to the general will. As this problem results from the non-reciprocal relationship between master and servant, it remains intact even if the servant is granted permission to vote.

This explains why domestic servants, private tutors and apprentices in the service of merchants are passive citizens, but what about the Indian blacksmith who uses his tools in another's home or the woodchopper who chops wood in another's yard? Neither worker is dependent on the private will of any particular person. However, the Indian blacksmith and the woodchopper differ from the servant by degree but not by kind. Each requires the direction of another to authorise the use of his own powers. The relevant difference is the *duration* of the particular relation of dependence under which the blacksmith and woodchopper labor. The servant is unfit to vote because he is bound to use his powers to further the interests of his master. The Indian blacksmith and woodchopper are unfit to vote because they are dependent on a series of masters and, consequently, lack the ability to determine and protect their own purposiveness, which is a prerequisite for attaining the level of generality required to contribute to the general will. Kant maintains the generality of the public will by stipulating that those who are dependent on a private will cannot contribute to it.

We are now ready to respond to criticism of the distinction between active and passive citizenship. Beiner rejects Kant's distinction between active and passive citizens as based on 'dubious...theoretical grounding'.⁴⁴ Insofar as teachers and tutors have identical skills, Beiner finds no reason to consider the former as active and the latter as passive.⁴⁵ In the absence of a principled

⁴⁴ Beiner, above n 2.

⁴⁵ Howard Williams makes a similar comment on the relation of independence and skill: 'For Kant it depends very much on the skill being sold, and the

distinction, Beiner suggests that Kant arbitrarily privileges his own profession in order to retain his civil personality.⁴⁶ Civil personality, however, does not differentiate between types of skill but rather between independence from or dependency on the choice of another in issues pertaining to one's preservation and existence. Beiner then reflects on Kant's examples of active and passive citizenship and proposes that the distinction between active and passive citizens concerns self-employment. But as Beiner then points out, self-employment cannot serve as the basis of the distinction because civil servants are active citizens but are not self-employed. Once again, the distinction between active and passive citizenship does not reflect whether one is an employee or an employer but rather whether one is dependent for his or her existence and preservation on the choice of another private will. The civil servant is an employee *and* an active citizen because his existence and preservation depends on the *state* rather than a private will. From the perspective of civil personality, the civil servant is no different than the self-employed active citizen because both owe their 'existence and preservation to' their 'own rights and powers as a member of the commonwealth, not to the choice of another among the people'.⁴⁷

Having clarified Kant's distinction between active and passive citizens, we can now return to the above criteria that were posited in response to the criticisms of Kersting and Mendus.

The distinction between dependence on the state and dependence on the choice of a private person provides a response to Kersting's criticism. Kersting conceives of the qualifications for active citizenship as consisting in an

person who is selling it, whether or not it establishes the person's independence.' See Williams, *Kant's Political Philosophy*, above n 2, 145.

⁴⁶ The view that Kant arbitrarily privileges his own profession also appears in Elisabeth Ellis' *Kant's Politics: Provisional Theory for an Uncertain World* (New Haven: Yale University Press, 2005) 197. It is doubtful that Kant's classification of teachers as active citizens merely reflects his own self-interest. Rather, it was Kant's commitment to being independent that prompted him to advance from a private tutor (who lived and worked in the houses of wealthy families) to a professor. During this time, he insisted—in spite of his considerable poverty—to keep an emergency fund of twenty gold pieces, so that even in the event of illness he would not be dependent on the charity of others. Some scholars believe that Kant was forced to sell books from the collection that he acquired as a private tutor to avoid depleting this fund. See 'Kant's Career and Economic Condition', in Zammito, above n 15, 87-91; cf. Kant, *Doctrine of Virtue in Practical Philosophy*, above n 1, 436.

⁴⁶ Kant, *Doctrine of Right*, above n 1, 314.

⁴⁷ Ibid.

individual's ownership of property and self-sufficiency.⁴⁸ Consequently, he criticizes Kant for degrading the poor into 'second-class political beings' subject to 'political tutelage.'⁴⁹ Kersting's criticism, which draws support from *Theory and Practice*, is at odds with Kant's mature position in the *Doctrine of Right*. As the state has a duty to support the poor,⁵⁰ the poor are dependent on the rightful condition for their existence and preservation rather than on the choice of someone among the people. Accordingly, the poor have the status of active citizens for the same reason as civil servants: *all* independent persons are dependent on the general will of the state. Dependency on the general will is consistent with contributing to the general will, which requires that one is not dependent on the choice of a private will. Kant's mature distinction between active and passive citizens is not made on the basis of wealth but rather on the difference between dependence on the choice of a private citizen and dependence on the impartial state. Kant makes this point explicit in the *Doctrine of Right* when he describes those lacking civil personality as 'anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (*except the state*).'⁵¹ As the poor are supported by the state, and possess civil personality, the accusation of economic prejudice is at variance with the reasoning at work in Kant's argument. Accordingly, Kant's mature account meets the conventional criterion:

Conventional criterion:

Full citizenship must not be withheld or awarded on the basis of economic status.

As needy persons who are dependent on the state may vote, but rich persons who are dependent on the choice of another may not, active citizenship is not awarded on the basis of economic status. Kant does not import a prejudice about the poor into his theory of rational right as Kersting alleges.

Kant's mature account of citizenship also provides the resources to meet the natural criterion:

⁴⁸ Howard Williams' interpretation resembles Kersting's: 'Kant's principal reason for excluding the propertyless from sharing voting rights is that they are not of an independent disposition'. See Williams, *Kant's Political Philosophy*, above n 2, 148.

⁴⁹ Kersting, above n 2, 357-8. Beiner echoes this criticism by differentiating between active and passive citizens on the basis of 'economic dependence'. See above n 2.

⁵⁰ I will discuss the state's duty to support the poor in the third section. For Kant's account of the state's duty to support the poor, see *Doctrine of Right*, 325-7 and n 55, below.

⁵¹ Ibid 314; my emphasis.

Natural criterion:

Full citizenship must be attainable for all persons and therefore cannot be denied on the basis of gender.

This criterion can be met because the conception of the juridical person in the *Doctrine of Right* precludes the view of women's natural inequality that Kant presents in *Theory and Practice*. Withholding the right to vote on the basis of gender would be inconsistent with the authorisations of innate right. It would violate innate equality, as it would make women bound to men in a manner that men could not be bound to women. It would violate one's right to be beyond reproach, insofar as the right to vote would be precluded prior to the commission of any wrong. Unlike a criminal act, gender is not a deed that can be imputed to a person and so there can be no natural qualification for citizenship. If citizenship was excluded on the basis of gender, rightful honor would require that women assert themselves as innately equal juridical beings. Kant does not and cannot import his misogyny into his theory of citizenship because it is at odds with his juridical conception of human beings.

Although the women in Kant's own society lacked independence, there is nothing about women *as such* that render them perpetually dependent. Thus, Kant closes his discussion of citizenship by stating that

whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one.⁵²

The natural inequality that Kant accepts in *Theory and Practice* has been abandoned. Thus, Mendus errs when she alleges 'a sinister and far-reaching implication of Kant's political thought', namely, that 'woman is denied not only the vote but also all hope of aspiring to it. Independence is eternally withheld from her.'⁵³ She concludes that women are more disadvantaged than male passive citizens who at least have the prospect of advancing to active citizenship. This criticism fails to note that Kant's mature account of citizenship posits no natural qualification for voting and therefore does not exclude women—or any other class of persons (with the exception of children, who are excluded on the basis of their dependency). Thus, Kant does not import the sexism of *Theory and Practice* into his mature account of

⁵² Ibid 219; my emphasis.

⁵³ Mendus, above n 2, 174, 180. Beiner discusses and accepts this criticism. See above n 2.

citizenship. As all people can work their way up from dependence on another to independence and active citizenship, the natural criterion is met.

So, the criticisms that scholars raise against Kant's account of citizenship may be decisive against *Theory and Practice*, but pose no threat to the *Doctrine of Right*. The account of citizenship given in the *Doctrine of Right* differs from that given in *Theory and Practice*, which means that the former cannot be subsumed by the latter, as the interpretations of Beiner, Kersting and Mendus, attempt.

II. The state's duty to the dependent

Demonstrating that the *Doctrine of Right* does not share the flaws of *Theory and Practice* is not sufficient to establish the merits of Kant's mature account of citizenship. The intuitions of most readers demand more than the mere possibility of universal citizenship resulting from passive citizens working their way towards independence, on the one hand, and active citizens not hindering this effort through legislation, on the other. In the above passage about the transition from passive to active citizenship, Kant provides no account of how this transition would occur. I believe that the *Doctrine of Right*, taken as a systematic whole, allows us to make a stronger argument in which the legitimacy of the state requires that it create the conditions of universal active citizenship for its adult inhabitants.⁵⁴ Considering this prospect more closely may provide a glimpse of a distinctly Kantian political possibility.

The account of citizenship in the *Doctrine of Right* makes reference to dependency relations between parents and children, and between the state and the poor.⁵⁵ These two dependency relations may shed light on the status of

⁵⁴ I therefore disagree with Mika LaVaque-Manty, who responds to Kant's claim that 'anyone can work his way up from this passive condition to an active one' with the following comment: 'The cheerful phrasing suggests a kind of American Dream where plucky individuals can pull themselves up by their bootstraps, but that is too strong a reading, given what Kant has said.' The purpose of this section is to substantiate an even stronger reading of Kant's claim by drawing on the systematicity of the *Doctrine of Right* in order to argue that the state has a juridical duty to create the conditions of universal independence of its persons. See his 'Kant's Children' (2006) 32 *Social Theory & Practice* 384.

⁵⁵ These references are regrettably obscure, even by Kant's standards. At 314 of the *Doctrine of Right*, Kant invokes status relations by referring to the existence of passive citizens as *inherence* and the existence of active citizens as acting in *community* with others. Readers of the *Critique of Pure Reason* will recognize these terms as pure categories of the understanding that fall under the heading of relation. As the *Doctrine of Right* explains the possible

passive citizens in Kant's republican state. I will explicate these dependency relations in turn.

Parents act unilaterally by bringing children into the world without their consent. The child, who is a free being and a bearer of innate right, has a 'right to the care of their parents until they are able to look after themselves.'⁵⁶ Thus, the parents acquire a duty to care for the child that is correlative to the child's right to be cared for by his or her parents. It is not the neediness of children that confers an obligation on their parents but rather their dependence, which arises from the parents' unilateral act. The parents' unilateral act of making another dependent is made rightful by their duty to 'make the child content with his condition so far as they can' and to promote the child's

juridical relations between persons, it is not surprising that these terms reappear in Kant's account of private right. Kant's three categories of relation are inherence, causality, and community. In private right, these categories constitute the formal basis of Kant's account of property, contract and status, respectively. By referring to the existence of passive citizens as inherence, and active citizens as in community with one another, Kant invokes a status relation in which the active citizens, possess the passive ones. Possessing a person—a bearer of innate right—is far different than possessing a thing. When one possesses a thing, one can use it for one's own purposes. When one possesses a person, one is limited to possession but not use, 260. So if a child is kidnapped and recovered, it must be returned to his or her parents. But the parents' possession of the child does not entitle them to use that child to pursue their own purposes or destroy that child without committing a wrong, 281-2. Thus, when Pateman accuses Kant of reducing women to property, she disregards the distinctiveness of the account of citizenship in the *Doctrine of Right* and she conflates status relations, in which one has possession *but not* use, to property ownership, in which one has possession *and* use. See Pateman, above n 2, 171. That the parent-child relation is the status relation that Kant has in mind in his discussion of citizenship becomes evident in § 49, which I will discuss below.

The sections that constitute the *Doctrine of Right*, particularly public right, were published out of order. I will rely on Ludwig's plausible and helpful reordering of the text: § 45, § 48, § 46, § 49, § 47, § 51, § 52, General Remark, § 50. See Bernd Ludwig, "'The Right of a State" in Immanuel Kant's *Doctrine of Right*,' (1990) XXVIII.3 *Journal of the History of Philosophy* 410. In Ludwig's reconstruction of the order of Public Right, § 49 falls immediately after Kant's discussion of citizenship in § 46.

For Kant's table of categories, see Allen Wood and Paul Guyer (eds), *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1998) A80/B106.

The obscure reference to the state's duty to support the poor arises in Kant's discussion of citizenship at 314 of the *Doctrine of Right*, when he indicates that passive citizenship follows from dependency on another '(except the state)'.

independence.⁵⁷ So parents cannot destroy or abandon a child as if he or she was a piece of property rather than a bearer of innate right. Parents must care for their children without using them for purposes that their children may not share. From the parents duty to care for the child comes their right to ‘*manage and develop the child*’.⁵⁸ Parents have a duty to develop the child pragmatically ‘so that in the future he can look after himself and make his way in life’.⁵⁹ By creating a dependent being that has rights, the parents incur a legal duty to develop their child until he or she is no longer dependent upon them. When this process is completed, the child is emancipated from the parents care and the parents are relieved of their juridical duty to the child. The creation of dependent children is rendered rightful by the parents’ duty to develop independent adults.

Just as parents have an obligation to support their dependent children, so too the state has a duty to support the poor in order to prevent their unrightful dependence.⁶⁰ In the rightful condition, property rights are conclusive and can be acquired unilaterally through acts that do not require the consent of all others. As the earth’s surface is finite it can be rightfully acquired by some with the result that others would be excluded. Persons who owned no land would be left without a space in which their bodies could subsist without the consent of another, which could rightfully be refused. The result is that persons without land might become dependent on the charity of another, be exploited by the other as a slave in exchange for survival, or do wrong by merely occupying the space in which their bodies subsist. In any of these cases the innate right of the poor person is violated. One cannot be dependent for one’s existence on another’s charity, to which one has no right, as this would be inconsistent with the *innate equality* of poor persons. One cannot be dependent on another’s exploitation as a slave, because the duty of *rightful honor* consists in asserting oneself as a purposive being rather than becoming a tool for the achievement of another’s purposes. Finally, as one is *beyond reproach* and does no wrong independently of one’s deeds, one cannot wrong another simply by occupying space.

Although everyone who associates with another is under a duty to enter into the rightful condition, a society cannot be rightful if it does not provide for the poor. The duty to enter the rightful condition follows from the interaction of bearers of innate right. But the rightful condition contains the possibility that persons who lack property will become dependent on another for their

⁵⁷ Ibid 281.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ The following interpretation of Kant’s account of the duty to support the poor is drawn from Ernest J. Weinrib’s ‘Poverty and Property in Kant’s System of Rights’ (2003) 78 *Notre Dame Law Review* 795.

existence, which is itself inconsistent with innate right. Persons could not enter the rightful condition if doing so allowed for the possibility of depending for their existence and preservation on the choice of another. This problem is resolved by the state's duty to support the poor, which it pursues through coercive taxation of the wealthy (who are indebted to the state for securing their property rights). The state that is generated by the requirements of innate right must govern itself in consistency with innate right.

Parents have a duty to care for their children and the state has an obligation to support the poor. Neither parents nor the state are bound by the need of the dependent, which being internal to the dependent has no standing in the juridical world of external relations. A child is not supported because he is in need, but because his parents acquire a juridical duty by creating a dependent bearer of rights. The poor are not supported because they are in need but because dependence on another for that which the other has no juridical duty to provide is inconsistent with their innate equality. The duty of parents to support children and of the state to support the poor is generated by the right of the dependent person to be free from the choice of another. In the rightful condition, persons cannot be dependent for their survival on private citizens who lack juridical duties to them. This would make their entrance into the rightful condition from the state of nature, in which all are independent and innately equal, unintelligible.⁶¹

The question now arises about passive citizens, whose existence and preservation depends on the choice of another. The case of the duty owed to children allows us to consider the juridical nature of dependency from the perspective of the agent that creates a dependent relation. Like a child whose dependency is created by the act of another, passive citizens are brought into a condition where they are dependent on others for their existence and preservation. In the state of nature, there are private wills—which every individual possesses—but no general will and therefore no distinction about who can contribute to it. In such a condition, persons do what seems good or right to them and so do not require their rights to be represented by another. In the rightful condition, the character of the general will makes dependents unfit to vote and requires that their rights be represented by another. If these cases are analogous, then in creating dependent persons, the state incurs a duty to create the conditions of universal independence, just as parents incur a duty to develop the dependent children that they create.

While the parent-child relation allows us to consider dependency relations from the perspective of the agent that creates that relation, the

⁶¹ For Kant, the original contract is not a historical event but an 'idea of this act, in terms of which alone we can think of the legitimacy of the state'. See *Doctrine of Right*, 315.

example of the duty to support the poor allows us to consider dependency from the perspective of the dependent agent. Like the condition of the poor in a state that does not support them, the existence and preservation of passive citizens depends on the choice of another, which is inconsistent with their innate right and so too with the legitimacy of the state that is generated by the requirements of innate right. If these dependency relations are analogous, then the state must have a duty to create the conditions of universal independence amongst its people, who otherwise could not consent to live within the rightful condition. Indeed, like its support for the poor, enabling the independence of the people would be a condition of the state's legitimacy.

These analogies suggest that there may be an attractive Kantian argument in support of the view that the state has a duty to enable the conditions of universal independence. Is there any textual evidence in the *Doctrine of Right* that indicates whether Kant endorses this view? I believe that two considerations can be adduced, each of which concerns the original contract and the systematicity of Kant's text. The first consideration is revealed by analyzing the technical vocabulary in Kant's account of citizenship. The second consideration emerges in Kant's account of the dynamism of the rightful condition. I will assess these considerations in turn.

Kant defines the state as 'a union of a multitude of human beings under laws of right.'⁶² This definition can be elucidated through the categories of quantity that Kant deduced in the *Critique of Pure Reason*: unity, plurality and totality.⁶³ These categories parallel the progression from innate right to private right, and from private right to public right. A single bearer of innate right is a unity. Several bearers of innate right constitute a plurality. Finally, a plurality of bearers of innate right *considered* as a whole is a totality. In his account of the original contract, 'the act by which a people forms itself into a state', Kant distinguishes between the plurality of persons and the collective that they become.⁶⁴ In the original contract 'everyone...within a *people* gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state (*universi*).'⁶⁵ Thus, in describing the state as a 'union' of persons or a 'whole of individuals',⁶⁶ Kant indicates that the state or the rightful condition is a totality. Alternately, a 'multitude of human beings' and 'individuals' is a plurality of persons.

The distinction between the totality of the state and the plurality of its occupants appears in the discussion of active and passive citizens in the

⁶² Ibid 313.

⁶³ Kant, *Critique of Pure Reason*, above n 55, A80/B106.

⁶⁴ Kant, *Doctrine of Right*, above n 1, 315.

⁶⁵ Ibid 315-6.

⁶⁶ Ibid 313, 311.

Doctrine of Right. Kant distinguishes between active citizens, who are 'members' of the state, and the passive citizens, which he calls the 'associates' who 'together make up a people'.⁶⁷ Passive citizens must be treated rightfully by the state because they live within the boundaries of the rightful condition. But they are not *members* of that rightful condition since they are not 'united for giving law'.⁶⁸ That passive citizens live within the state without being members of it explains Kant's description of the freedom of passive citizens. In the original contract, people give up their natural lawless freedom 'in order to find [their] freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from [their] own lawgiving will'.⁶⁹ However, Kant's account of citizenship indicates, on two occasions, that passive citizens still possess their 'natural freedom'.⁷⁰

Passive citizens are neither in the state of nature nor in the rightful condition. They occupy a limbo in which they receive the protection of the rightful condition without being members of it. As we saw with the state's duty to support the poor, persons could not enter the rightful condition if provisions for their independence were not made. But passive citizens do not enter the rightful condition knowing that they may be excluded from contributing to the law because passive citizens do not enter the rightful condition at all. Recall the postulate of public right: 'when you cannot avoid living side by side with all others, you ought to leave the state of nature and proceed with them into a rightful condition'.⁷¹ As passive citizens do not live in a state of nature but rather *within* the rightful condition in which their rights are secure, they are under no juridical duty to become members of the rightful condition.

Although passive citizens are under no duty to contribute to the laws that bind them, the rightful condition is under a duty to create the conditions of their inclusion. The presence of passive citizens conflicts with the idea of the original contract. The state creates the dependency of passive citizens by removing them from the state of nature, where private wills are not subject to an omnilateral will, and forces them to live within the rightful condition, in which their private dependencies render them unfit to contribute to the general will. As with the parent-child relation and the duty to support the poor, forcing another to be dependent can only be rendered rightful if the agent that creates the dependency of the other acquires a duty to establish the conditions of the other's independence. As the rightful condition transforms the provisional rights of the state of nature into conclusive rights, it both creates and solidifies

⁶⁷ Ibid 314-5.

⁶⁸ Ibid 314.

⁶⁹ Ibid 315-6.

⁷⁰ Ibid 315.

⁷¹ Ibid 307.

dependency relations. Accordingly, just as parents acquire a duty to develop their children until they are no longer dependent and the state acquires a duty to prevent the dependence of the poor by providing economic support, so too the state acquires an additional duty to establish the conditions of universal independence, in which dependent occupants can become independent persons. As the rightful condition is generated by the requirements of innate right, which include ‘innate *equality*, that is, independence from being bound by others to more than one can in turn bind them’, the state must establish the conditions in which passive citizens can shed their dependency and become active citizens.⁷² For Kant, universal citizenship is attained not by allowing dependent persons to vote and potentially particularizing the generality of legislation, but rather as a consequence of the state’s duty to enable universal independence.⁷³

I now turn to the second consideration in support of the view that the systematic features of the *Doctrine of Right* indicate that the state has a duty to enable the conditions of universal independence.

⁷² Ibid 237-8.

⁷³ This raises a practical problem in Kant’s account. The dependence of passive citizens reflects their potential to particularise the general will. If I am correct that Kant’s account of citizenship entails that the state has a juridical duty to establish the institutional conditions of independence, then two conclusions may follow. The first suggests that states should establish the conditions of universal independence, but in the interim, deny citizenship and the right to vote to those who are dependent. The second suggests that states should establish the conditions of universal independence and retain any present system of universal citizenship. The second possibility provides the prospect of transforming the partial will that currently prevails in liberal states back into a general will without rescinding anyone’s rights. Perhaps Kant would affirm that the second possibility better accords with the idea of the original contract and the postulate of public right. As Kant puts the point in *Religion Within the Limits of Reason Alone*: ‘I cannot really reconcile myself to the following expressions made use of even by clever men: “A certain people (engaged in a struggle for civil freedom) is not yet ripe for freedom”; “The bondmen of a landed proprietor are not yet ready for freedom”... For according to such a presupposition, freedom will never arrive, since we cannot ripen to this freedom if we are not first of all placed therein (we must be free in order to be able to make purposive use of our powers in freedom)... [W]e never ripen with respect to reason except through *our own* efforts (which we can make only when we are free).’ See Theodore M. Green and Hoyt H. Hudson (trans), *Religion Within the Limits of Reason Alone* (New York: Harper & Row Publishers 1960) at 188.

Kant's theory of the state breaks with the tradition of political theory by attempting to unite ideality with stability.⁷⁴ Upon sketching the ideal republic, Plato devotes books eight and nine of the *Republic* to the degeneration of the state into more imperfect modes of government. Hobbes concludes the *Leviathan* with 'The Kingdom of Darkness', which discusses the danger or destruction that religious heresy poses for the state. Locke ends his *Second Treatise of Government* with a set of chapters discussing the state's dissolution. Finally, Rousseau claims that his social contract regime inevitably degenerates every few hundred years.

Kant does not posit the perfect state and then discuss its degeneration and dissolution. Rather, he argues that stability is achieved when the state continually makes reforms to bring its governance into consistency with the rights of the people. That the state must reform itself is prudential and, more importantly, obligatory. Recall the postulate of public right, which requires that persons who associate with others enter into a rightful condition in which the rights of each are secure. Throughout his legal and political philosophy, Kant argues that because it is a duty to realize the conditions of public right, the state must continually strive to better approximate that ideal.⁷⁵ As rights are provisional in the state of nature and become conclusive in the rightful condition, Kant calls the true republic in which 'each can be assigned *conclusively* what is his' the 'final end of all public right'. In comparison with the true republic, all other forms of government provide merely *provisional* right and are therefore likened to the state of nature, which one is obligated to leave.⁷⁶ The state does not satisfy the 'final end of all public right' once and for all but gradually approaches it through 'approximation by unending progress'.

Thus, in the *Doctrine of Right*, once Kant distinguishes between the three branches of government, he turns his attention to the reform of the state. The state has an obligation to govern in accordance with the 'idea of the original contract', the idea of the act in which a people transforms itself into a state.⁷⁷ Although the original contract is an idea of reason and cannot be *fully* approximated by any existing civil condition, a state that reforms itself to enable universal independence approximates that normative idea more closely than a state that remains undeveloped because the existence of passive citizens

⁷⁴ I take this comparison and the accompanying examples from Ludwig, "'The Right of a State" in Kant', above n 55, 414.

⁷⁵ Kant, *Doctrine of Right*, at 340-1, 369, 370; *Towards Perpetual Peace*, at 349-50, 352-3, 372, 386; *Theory and Practice*, at 304-5, 310; and *What is Enlightenment?*, 36. Each of these texts appears in *Practical Philosophy*, above n 1.

⁷⁶ Kant, *Doctrine of Right*, above n, 341.

⁷⁷ *Ibid* 340.

cannot be reconciled with the idea of the original contract. The idea of the original contract stipulates that it includes ‘everyone (*omnes et singuli*) within a *people*’ but as some are unfit to contribute to a general will, they cannot be admitted at once.⁷⁸ Nevertheless, their exclusion is at odds with the idea of the original contract’s universality. In addition, the idea of the original contract suggests that everyone exchange their natural freedom for lawful freedom, but passive citizens are not party to the original contract and retain their natural freedom although they live under public legislation. As no party to the original contract loses anything by entering the rightful condition, it conflicts with the idea of the original contract that independent persons are forcibly excluded from a contract that entails their subordination. In order to better approximate the idea of the original contract, the state must reform itself by bringing the dependent persons (that it has created) into the rightful condition. The state can perform this duty by making institutional reforms that enable the independence of dependent persons.

Because the duty to create the conditions of universal active citizenship cannot be reconciled with every civil condition, Kant can draw a distinction between those civil conditions that *merely* satisfy the postulate of public right (which requires that interacting persons live in a rightful condition) and those that *also* approximate the idea of the original contract. Kant suggests that a state can assume one of three forms: autocracy, aristocracy, and democracy. In an autocracy, the autocrat ‘*rules by himself*’ and ‘has *all* the authority’ within the state.⁷⁹ Persons within an autocratic state are all ‘passive’ citizens who must ‘obey *one* who is over them’.⁸⁰ Alternately, in an aristocracy, the number of active citizens swells to include the ranks of the nobility, but the subjects remain passive. Autocracy and aristocracy are both defective versions of the rightful condition because the form of the state entails that either one or some rule all others. As autocracy and aristocracy require that the people remain passive citizens, these regimes cannot be reconciled with the state’s duty to create the institutional conditions of universal active citizenship.⁸¹ In a democracy, in contrast, “*all* together have command over each and so over themselves as well.”⁸² A democratic state approximates the idea of the original

⁷⁸ Ibid 315.

⁷⁹ Ibid 339.

⁸⁰ Ibid 338.

⁸¹ Autocracy’s inconsistency with the original contract lies in its denial of the people’s freedom rather than the denial of their equality. As the people are all ‘*subordinated to*’ the autocrat, they stand as ‘equals since they are subject to common laws.’ As Rousseau strikingly puts it, under a despot ‘all private individuals become equals again, because they are nothing.’ See *Doctrine of Right*, above n 1, 307 and Jean-Jacques Rousseau’s *Discourse on the Origin of Inequality* in Donald A. Cress (ed), *The Basic Political Writings* (Indianapolis: Hackett Publishing Company 1987) 79.

⁸² Kant, *Doctrine of Right*, above n 1, 338.

contract more closely than an autocracy or an aristocracy because in a democracy the form of the state stands in harmony with the duty to enable universal active citizenship. Although autocracy and aristocracy satisfy the postulate of public right, only democracy satisfies the postulate in a manner that is consistent with the duty to approximate the idea of the original contract.

The state's juridical duty to enable universal independence does not license despotism. In both *Theory and Practice* and the *Doctrine of Right*, Kant distinguishes between a despotic and a patriotic state. In the despotic state, the ruler treats the people like a father who insists that he knows what will make his child happy better than the child does. In such a condition, the people must subjugate their own purposiveness and 'wait upon the judgment of the head of a state as to how they *should be* happy and, as for his also willing their happiness'.⁸³ As such an imposition disregards the freedom and purposiveness that human beings embody, the state that imposes a conception of happiness upon the people commits 'the greatest *despotism* thinkable' by denying the self-determining character of human beings.⁸⁴ In the section following the distinction between active and passive citizens, the *Doctrine of Right* distinguishes between the despotic state and the patriotic one as follows:

[B]y a patriotic government is understood not a *paternalistic* one (*regimen paternale*), which is the most despotic of all (since it treats citizens as children), but one *servng the native land* (*regimen civitatis et patriae*). In it the state (*civitas*) does treat its subjects as members of one family but it also treats them as citizens of the state, that is, in accordance with laws of their own independence: each is in possession of himself and is not dependent upon the absolute will of another alongside him or above him.⁸⁵

The patriotic state treats its subjects as members of one family *and* as citizens of the state. Insofar as the state treats its subjects like a family, it must provide an institutional framework that enables the independence of passive citizens, which it unilaterally creates, just as parents enable the independence of their unilaterally created children by promoting their development. Insofar as the state treats its subjects like citizens, it enforces reciprocal limits on freedom that provide persons with a domain in which to freely pursue their

⁸³ Kant, *Theory and Practice*, above n 1, 291; cf. *Anthropology*, above n 15, 209.

⁸⁴ Kant, *Theory and Practice*, above n 1, 291.

⁸⁵ Kant, *Doctrine of Right*, above n 1, 316-7. This excerpt is from § 49, which falls immediately after Kant's discussion of citizenship in section § 46 according to Ludwig's reordering of the *Doctrine of Right*. See Ludwig above n 54.

purposes. The state must recognize the purposiveness of the people without imposing purposes upon them.

I must be clear that I not claiming that the state has a duty to *promote* or *establish* universal independence. A state that *imposed* independence on its inhabitants would despotically violate the freedom of its inhabitants to set and pursue their own purposes. In doing so, a state would pursue equality by undermining freedom. Rather, my claim is that the state creates and solidifies dependency relations and so has a duty to create the *institutional conditions* that enable universal independence. If my argument is correct, then the performance of such a duty is not merely consistent with the freedom and equality of persons but is required by it.

This raises a question about how this duty is to be performed in practice. Passive citizenship results from a particular structure of interaction between dependent and independent private persons. The state performs its duty by enabling dependent persons to assert themselves as bearers of rights in their interactions with other private persons. As relations of dependency have an economic character, the state performs its duty by creating labor and employment law that requires employers to provide accommodation, enables persons to stand up for their rights, and that permits collective bargaining. So universal independence need not be achieved by every adult in the state joining the civil service, starting their own business, or relying on the state for support. If adequate legal provisions are in place, active citizenship is consistent with employment. Universal independence is achieved progressively through the ongoing development of the state and the efforts of its free and equal inhabitants.

Conclusion

My purpose in this essay has not been to provide a general defense of Kant's account of citizenship, but to offer a faithful interpretation of his *Doctrine of Right* and to demonstrate how it eludes the criticism of scholars. The merit of Kant's account of citizenship is that it provides the resources for establishing a juridical duty of the state that exceeds those recognized by contemporary forms of liberalism. If Kant's account of innate right, the postulate of public right, and the idea of the original contract are correct, then the state does not discharge its duty to the dependent merely by permitting universal citizenship and supporting the poor. As persons are innately equal and lose nothing by living within the rightful condition, the rightful condition, which is generated by the requirements of innate right, acquires a duty to establish the conditions of universal independence. Far from being a prejudiced relic of the eighteenth century, Kant's mature account of citizenship provides a program for the future of liberalism.