Kantian Cosmopolitanism

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This paper is an essay in the literal sense of the word—a rough and tentative attempt to develop Kant’s idea of cosmopolitanism. It is well known that Kant is not the clearest of writers, but his writings on cosmopolitanism suffer from this defect in the extreme. One of the reasons for this obscurity is that the culmination of his efforts on political philosophy, the *Doctrine of Right* in the *Metaphysics of Morals*, suffers from textual corruptions that are universally acknowledged in the literature\(^1\). A second reason is that, when the time comes for Kant to explicate fully his theory of cosmopolitanism, he defers, claiming either that this theory can be easily derived from his views on international right (*PP*, 384) or that they still require some working out. Kant writes:

Toward the end of the book [the *Doctrine of Right*] I have worked less thoroughly over certain sections than might be expected in comparison with the earlier ones, partly because it seems to me that they can be easily inferred from the earlier ones and partly, too, because the later sections (dealing with public right) are currently subject to so much discussion, and still so important, that they can well justify postponing a decisive judgment for some time.” (MM, 209).

Kant’s commentators over the past two centuries have found the derivation of his political views somewhat more challenging than Kant suggests. Indeed, I am not the only student of Kant who cannot help but to think that a fear of censorship could have had a significant influence on his choice of whether to publish his complete views on politics\(^2\).

The fundamental problem for an explication of Kant’s cosmopolitanism is that Kant provides us only with the empirical arguments against, for example, establishing a world state, without furnishing the normative arguments, which are the real point of interest. A full treatment

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of this would require a great deal of exegesis, which is the business of a seminar on Kant, and is not the concern of a seminar on global justice. Hence, some of my arguments here, while following from what I believe to be Kant’s normative claims, may lack the textual support that would be wished for in a seminar on Kantian exegesis.

And now with these preliminaries out of the way, we can turn to the task at hand, Kant’s cosmopolitanism. As Rawls pointed out, when constructing a philosophical theory about political institutions, it is an important first step to be clear about the kinds of entities with which one is dealing. In political philosophy, it is generally agreed that we are concerned with two kinds of entities: human beings and states. It is also generally agreed that both of these entities should be modeled as rational agents in some sense. This gives us the concepts of a private, individual will that models a human being and a public, general will that models the state. While even these minimal assertions are contested, I shall be concerned with the debates arise when we assume these concepts and begin to theorize about them.

My aim is to explicate the concepts of the public and private will by presenting these debates in a Kantian form, modeled after the antinomies that can be found throughout his texts. Ideally, such an antinomy would begin with a concept that is at the ground of a philosophical debate. The two sides of the debate would be shown to be both mutually exclusive and exhaustive, and yet equally compelling. This fact makes the concept itself appear to be inherently contradictory and indispensable.

Kant has two strategies for handling these antinomies. His first strategy is to deny the coherence of the concept itself, along with its indispensability, and to reject both sides of the debate. Obviously, since he has his own theory of rational agency and of public right, Kant does not believe that the antinomies in the concepts of the private and public will are the result of the incoherence inherent in these concepts themselves. This leaves us with his second strategy for solving an antinomy. He shows that both sides of the antinomy contain a great deal of truth, which accounts for their attractiveness. However, he also shows that what appears to be contradictory in the concept is actually the result of dogmatic presuppositions on both sides of the debate. When these dogmatic positions are critically exposed, the concept can be analyzed properly and used as the foundation for further theorizing.

I take Kant’s view to be that the intractable debates in political philosophy are based upon the failure to properly distinguish the public general will from the private individual will and then determine the appropriate relation between the two. Kant claims that his political theory, “republicanism,” makes a clear distinction between the public and private will, while also
making clear the appropriate relation between them: “representation.” He calls all other forms of
government that fail to make this distinction “despotic.” He writes:

Republicanism is the political principle of separation of the executive power (the
government) from the legislative power; despotism is that of the high-handed
management of the state by laws the regent has himself given, inasmuch as he handles the
public will as his private will (PP, 352).

In order to understand this claim, it is of course necessary to understand the concepts of the public
and private will. Thus, the first part of this paper is dedicated to a presentation Kant’s theory of
human nature, based on the concept of the individual, private rational will. Kant can be read as
developing his theory as the resolution to an antinomy of the private will, with the two conflicting
positions represented as “rationalism” and “empiricism.” After exposing the dogmatic
presuppositions of these positions, he goes on to develop his own critical analysis of the private
will. This analysis will show that there is one fundamental moral fact in Kant’s ethics: that every
rational agent has a pure rational interest in intrinsic goodness.

The discussion of the private will takes up a significant portion of this paper, which might
seem inappropriate for a presentation in a seminar on global justice. However, since Kant’s claim
is that the fundamental error in political theory is the confusion of the public and private will, this
extended analysis will hopefully pay off. With his conception of human nature in hand, Kant
goes on to construct his theory of political institutions for a community of such agents united in a
public will. In the second part of this paper, I shall develop a Kantian antinomy of the public will
between what I shall call, for the sake of roughly fixing ideas, “communitarian” and “liberal-
cosmopolitan” views.

An ideal version of this antinomical exercise would show conclusively that the particular
philosophical debate is based on a particular concept, that the two sides of the antinomy exhaust
all possible options, and that Kant’s critical solution of the antinomy, which would show that the
antinomy is due to dogmatic presuppositions on both sides, is the only possible solution to the
conflict.

While this is an ideal goal for some future version of this paper, my ambitions in this
paper will be more modest. I do not pretend that my characterizations of empiricism, rationalism,
liberalism and communitarianism exhaust all possible nuanced permutations of these views, or
that I am sufficiently sensitive to the various formulations given to them by accomplished writers
on ethics and politics. The antinomies can be seen as an attempt to fix our ideas and make Kant’s
position clearer by contrasting it with rough caricatures of traditional views. My hope is that
while my presentations of these views are admittedly caricatures, that is, exaggerations of certain
characteristic features that they have, they will not be straw men, and the Kantian criticisms of them will be valid nonetheless.

1. **Human Nature: The Private Will**

At the basis of the antinomy of human nature is the concept of the private will, which Kant calls a “finite rational being.” Kant assumes that all parties to the debate will at least agree to this much: “Whoever wills the end also wills (insofar as reason has decisive influence on his actions) the indispensably necessary means to it that are within his power. This proposition is, as regards the volition, analytic.” (GMM, 417). Both the empiricist and the rationalist agree with this concept of rational agency, that is, they agree that reason does have at least some motivational force. A being that is in no way susceptible to this minimal motivational force of reason is simply not a rational agent. However, the two sides have fundamental disagreements with regard to the nature and degree of this motivational force.

The empiricist holds that human nature is fixed by natural laws. Human beings have a certain set of characteristic desires of varying degrees of complexity, and reason is merely an instrument developed by nature for the maximal satisfaction of these natural desires. The maximal satisfaction of these desires is, all things considered, good for the agent. Reason by itself cannot set these ends or provide any motivation to action on its own. This would lead to metaphysical absurdity, since it would entail that reason would be some supernatural faculty that was capable of intervening in the causal nexus of the world, of which our natural desires are an integral part. Reason is just as natural as desire, and any motivational force that reason does have is derivative from some desire.

The rationalist, on the other hand, holds that reason is not only capable motivating an agent to use the necessary means for some end given by natural desire, but it is also capable of setting and end, namely, perfection. Human nature is not fixed by natural laws and reason is capable of changing and perfecting it through spontaneous acts of freedom. Human beings are also equipped with a special faculty for rationally intuiting the intrinsic goodness of certain empirical objects and states of affairs, which can be developed through proper education.

Kant’s criticism of this antinomy takes three steps, the first concerning the metaphysical possibility of reason being a cause and intervening in nature, the second concerning the practical possibility of reason motivating actions, and the third concerning the epistemological problem of identifying ends that are good.

Kant takes up the problem of the possibility of reason acting as a free cause in nature in the Third Antinomy in the *Critique of Pure Reason*. This metaphysical question must be answered for a full account of rational agency, but an examination of the Kantian solution to the
problem would take us too far afield in a discussion of his views on cosmopolitanism. I shall only mention the sides of the debate here, along with Kant’s critical solution, and then move on.

The empiricist position argues for the causal closure of nature, saying that any ostensibly free cause would take place in nature, in which case it would be governed by natural laws and not be free, or it would be totally lawless and be essentially nothing at all, since a lawful freedom is an absurdity. The rationalist position argues that the idea of a chain of causes and effects without some spontaneous, free beginning that is unconditioned by any further cause is nonsensical. Kant claims that, contrary to the claims of the rationalist, it is not necessary that there be some free rational cause to explain the causal nexus of experience. The principle to which the rationalist appeals is only a regulative principle for the guidance of research into nature, and not a constitutive principle of experience as such. Contrary to the claims of the empiricist, there is no contradiction in the thought that reason can be a cause, since, as we shall see, lawful freedom is indeed possible. Kant explains his results as follows: “[W]e have not even tried to prove the possibility of freedom;” only “[to show] that this antinomy rests on a mere illusion, and that nature at least does not conflict with causality through freedom—that was the one single thing we could accomplish, and it alone was our concern” (CPR, A558/B586).

The second antinomy is practical, and deals more specifically with the possibility of reason motivating action. This antinomy is the subject of Kant’s analysis of rational agency and judgments of goodness in the second book of the *Groundwork for the Metaphysics of Morals*. All principles that can be taken from this point of view are either empirical or rational. The first, taken from the principle of happiness, are built upon physical or moral feeling; the second, taken from the principle of perfection, are built either upon the rational concept of perfection as a possible effect of our will or upon the concept of an independently existing perfection (the will of God) as the determining cause of our will (GMM, 441-2).

While Kant speaks in terms of morality here, it is important to note that this is a discussion of mere rational agency and judgments of goodness. The discussion of moral agency and judgments of rightness, the subject of the first section of the *Groundwork*, is not yet on the scene. Both rationalists and empiricists agree that reason is capable of being a motive. Rationalists believe that the rational perception of the fact that something is intrinsically good creates a motive to act. Empiricists claim that any motivational force that facts might have has to be derived from some desire given by our human nature that makes that fact relevant.

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3 “Division of all possible principles of morality take from heteronomy assumed as the basic concept,” GMM 441ff.
4 Commentators on Kant, both friends and enemies alike, almost universally read Kant as importing moral premises into his discussion of rational agency, thus turning him into a dogmatic rationalist. I hope that the analysis here will show that he is not, even when his supporters present him as such.
In his criticism of these claims, Kant looks to the concept of rational agency as such for guidance. A rational agent who wills an end wills at the same time the necessary means available to it to achieve that end. If we somehow cognize that something is good (in a way yet to be determined), and we also cognize that some action is a necessary and indispensable means to that good (through empirical experiments), then this creates an interest in using those indispensable means for our purposes. To be motivated by the first and not by the second is to be practically irrational in a strict sense. The judgment that results in this created interest is a practical syllogism. The first premise contains some entity that is cognized as good: “y is good.” The second contains the means to that end, described by an empirical law of nature: “x is a means to y.” The conclusion drawn by reason takes the form of an imperative or command: “do x!” This imperative captures the motivating force of reason. Not to respond to this motivating force of this imperative through action is, all things considered, not to be rational.

Kant’s first target in his analysis of rational agency is the rationalist. According to the concept of rational agency, reason can tell us by means of an imperative that engaging in a particular activity is good given that we cognize that some worldly state of affairs is good. The form of such an imperative is a hypothetical imperative: if some object is represented as good, and if a particular action possible for the agent is an indispensable means to that end, then reason tells us that these means are good in the form of an imperative. However, the concept of rational agency does not give us any way to assess the goodness of states of affairs in themselves without further analysis. Everyone agrees that we are conscious of extrinsic goodness through the motivating force of a hypothetical imperative—this is the minimal motivating force of reason that even the empiricist will grant. However, if the rationalist is to avoid the dogmatic assertion based on an appeal to brute intuition of intrinsic goodness, the rationalist intuition of an intrinsically good state of affairs would require an account of the consciousness of the motivating force of a categorical imperative. As Kant writes:

Now, if the action would be good merely as a means to something else the imperative is hypothetical; if an action is represented as in itself good, hence as necessary in a will in itself conforming to reason, as its principle, then it is categorical (GMM, 414).

Up to this point, the concept of rationality is only capable of explaining the consciousness of an extrinsic good by means of a hypothetical imperative. The rationalist position provides no argument for the existence of such a categorical motive to account for the intuition of intrinsic goodness, and therefore rests on dogmatic presuppositions.

Against the empiricist, Kant uses the same objection that the empiricist used against the rationalist: facts by themselves are not motivating. When we make choices, we are aware of the
fact that we desire to do a number of things and that we must choose one over another. In deliberation, some desires must be seen as in conflict, for otherwise the opportunity for choice would never arise. The important thing to note here is that when I deliberate, the motivational force of these desires is bracketed. I am conscious of my desires as facts about me and from which I take a certain distance. The question that the empiricist has difficulty answering is how these desires can move from their status as factual candidates for action to the status of actual motives to action.

The empiricist response to this objection is that these desires must be seen in the context of interests that we already have. When I choose to act on one desire over another, I do so with reference to some more general desire contained in a project or idea of myself. Of course, this only puts the question back one step, for as soon as we consider this context of interests and identities that we have, they appear as mere factual candidates for action as well that are disengaged from motivation. Obviously, the threat of regress looms. One option to avoid this impasse would be to posit some essential nature or identity of a human being derived from empirical observation. Popular examples are, for example, one’s identity as a natural product of evolution, a consumer, a sexual being, a member of a particular community, or a needy being. However, as soon as this essentialist interpretation of human nature is admitted, empiricism accepts that there are some intuitively evident principles that guide action, which makes it possible for it to be analyzed as a form of rationalism.

To avoid this, an empiricist posits an intuitive faculty, a “moral sense,” that would allow him or her to intuit or cognize which desire that he or she passively has would be good or admirable for him or her to act on. But then as soon as moral sense begins to issue its verdict, it would become just one desire among others, stronger perhaps, but there would have to be some more general moral sense to keep tabs on the first one. This regress would continue without the empiricist ever being able to explain how we ever get around to actually making a choice. The point is not a moral one, i.e., the problem is not that the empiricist cannot account for how we make “good” choices that overcome our “selfish animal nature” from the point of view of some exterior framework of value. The point is that empiricism cannot explain the fact of choice at all, since it fails to see that, even on its own account, the mere fact of the strength or admirability of a desire or affection alone cannot provide an incentive for action. Even from a purely theoretical perspective, these desires must be seen in the context of interests that we already have.

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5 See Christine Korsgaard “Kant’s analysis of obligation: the argument of Groundwork I” in Creating the Kingdom of Ends, (Cambridge: Cambridge University Press, 1996), 43ff. Although she is considering moral motivation here, what is of value in her discussion of the British Sentimentalists is valid here as well.
point of view, abstracted from any moral considerations, the empiricist theory of rational agency cannot provide an adequate account of choice and the private will.

These facts bring up a cluster of points that are fundamental to Kant’s conception of rational agency. Kant agrees with the rationalist against the empiricist that in practical deliberation, I must regard myself as actively and freely making choices, not just passively moved by ever more remote sentiments that come over me. As Kant claims, a rational agent must act "under the idea of freedom" (*GMM*, 448). He writes:

> [O]ne cannot possibly think of a reason that would consciously receive direction from any other quarter with respect to its judgments, since the subject would then attribute the determination of his judgment not to his reason but to an impulse (*GMM*, 448).

This passage is a formulation of Kant’s doctrine of “practical freedom.” This is not an extravagant rationalist metaphysical thesis about some kind of self-constituting subjectivity. It is a practical thesis about the possibility of conceiving of choice from the agent’s perspective at all. Kant’s objection to the empiricist is that in order to conceive of choice at all, I must regard myself as being able to take a distance from my natural desires, evaluate them, and then freely choose to act on them.

Kant also agrees with the rationalist against the empiricist that this free choice must be exercised within a context of value given in rules and ends. A desire is acted upon by incorporating it into a rule for action, a “maxim” in Kant’s terminology, which contains an end to be achieved by acting on that desire. Maxims have the form: “I shall do x in order to y” or “I shall do x under conditions C.” The form of a maxim shows that it is the disposition of an agent to act in certain characteristic ways under certain conditions, that is, it is a property of the will. Hence, rational choice amounts to the capacity to choose the properties of one’s own will. This claim captures the purposiveness inherent in action: choices cannot be regarded as brute, isolated, and random events, but as directed toward some end. As the objects of choice, maxims are the ultimate bearers of goodness, not states of the will (e.g., pleasure or desire satisfaction) (*CPrR*, 60).

It is an act of practical freedom that incorporates a desire that is given as a candidate for action into a maxim and allows an agent to move from deliberation to action. Kant commentator Henry Allison refers to this essential feature of Kant’s theory of rationality as the “Incorporation Thesis,” which Kant formulates in his *Religion within the Boundaries of mere Reason*:

> [F]reedom of the power of choice has the characteristic, entirely peculiar to it, that it cannot be determined to action through any incentive except so far as the human being has incorporated it into his maxim (has made it into a universal rule for himself,

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accordin which he wills to conduct himself); only in this way can an incentive, whatever it may be, coexist with the absolute spontaneity of the power of choice (of freedom) (R, 23-4).

Kant’s point is that to deny the Incorporation Thesis is to admit of the possibility of conceiving of oneself as acting without a purpose in mind, which, he claims, is a contradiction.

There are two more points to be made here to distance Kant from the rationalist position. Kant agrees with the empiricist that the motive to action must be somehow internal to the agent, and not imposed by some external rational principle. The first point that Kant makes against the rationalist is that, while we must regard ourselves as freely acting according to rules, these rules are not external to us and intuited by some rational faculty. As we saw above, according to the concept of a rational agent, we are conscious of these rules in the form of imperatives, which we must regard as commands issuing from our own practical reason. We must regard ourselves as acting according to principles and ends that we ourselves have chosen, not ends that are given by some naturalistic or essentialist description of human nature. Kant calls this property of choice “autonomy.” We saw already that if rationalism wants to claim that reason can set ends by itself, without any “heteronomous” empirical content, it must provide an account of how a categorical imperative, and hence an interest in an intrinsic good, can be derived from the concept of a rational agent as such.

It is Kant’s critical position that every rational being as such has a categorical interest in an intrinsic good. To prove this, he must derive the concept of a categorical imperative from the meager resources of the concept of a rational agent as such (GMM, 427). Kant’s strategy is to presuppose that both the rationalist and the empiricist agree that reason has some minimal capacity to motivate (as in the case of a hypothetical imperative), and that once this capacity is granted, they must grant the existence of a categorical interest in an intrinsic good in all rational agents. It is important to notice is that no maxim describing an empirical state of affairs could provide this necessary categorical motivation. Any positive description of the good in this way leads to a regress of conditions, and ultimately a rationalist, perfectionist account of motivation and intuitionist epistemology.

Since any maxim asserting a positively good action ends in regress, Kant's strategy at this point is to investigate whether there is a maxim that is unconditionally and necessarily irrational to adopt. If there is such a maxim, then he could generate a categorical imperative that would show that all finite rational agents have an unconditional interest not to adopt such a maxim. If the adoption of some maxim entails a direct contradiction, then the contradictory of that maxim put in the imperative form is an unconditioned practical law. By analogy with what we have
already observed with hypothetical imperatives, the consciousness of this unconditional, categorical imperative would be the consciousness of an interest in an intrinsic good. Not to be motivated by such an imperative and not to incorporate it into one’s maxim would be strictly irrational.

Once again, if this contradiction is to produce a categorical imperative, then the maxim can make no reference to any object of choice outside the power of choice itself. Kant explains:

Here, however, it is a question of objective practical laws and hence of the relation of a will to itself insofar as it determines itself only by reason; for then everything that has reference to the empirical falls away of itself, since if reason entirely by itself determines conduct (and the possibility of this is just what we want now to investigate), it must necessarily do so a priori (GMM, 427).

Hence, this practical law can make reference to nothing but the mere capacity for choice itself, which Kant refers to as "humanity."

The capacity to set oneself an end-any end whatsoever-is what characterizes humanity (as distinguished from animality) (MM, 392).

We can derive Kant’s famous "Formula of Humanity" of the categorical imperative through the following practical syllogism:

Maxim: I shall use my capacity to set myself an end in order not to set myself an end.
Means: In order not to set oneself an end, one uses one's capacity to set oneself an end.
Analytic Part of a Practical Syllogism: "Whoever wills the end also wills (insofar as reason has decisive influence on his actions) the indispensably necessary means to it that are within his power" (GMM, 417).

Conclusion: Use your capacity to set yourself an end as a means in order not to use your capacity to set yourself an end!

This is a practical contradiction-a command to do something and not to do something at the same time. Since it is universally, necessarily and unconditionally irrational to adopt this maxim this in all cases, this contradiction gives rise to a practical law and, according to the theory of rational motivation that both the empiricist and rationalist agree to, a categorical interest in an intrinsic good.

To derive this law in the way that Kant formulates it, we have to keep in mind that there is no contradiction in using one’s will as a means-this happens in every choice. The contradiction arises when the will is used as a means to the end not to choose-this involves choosing and not choosing at the same time. By choosing not to choose, one is not making one's capacity for choice an end. Hence, the contradiction arises from using one's choice merely as a means and not at the same time as an end. If we remember that Kant refers to the capacity to set ends not only
as humanity, but also as "rational nature," then we can see how these considerations lead to the conclusion that

The ground of this principle is this: rational nature exists as an end in itself. The human being necessarily represents his own existence in this way; so far it is thus a subjective principle of human actions (GMM 428-9).

It is important to notice here that this is still only a subjective principle. By this, Kant means that there is as of yet no necessary connection between this motive and an interest in treating other rational agents as intrinsically good ends in themselves. It is still only a principle governing self-regarding rational agency, and has not magically become a principle of other-regarding moral agency. The extension of this interest to other agents into an objective principle will be discussed below in the section on the epistemological antinomy, and will lead us into the discussion of the public will. As an objective principle, that is, a categorical imperative, Kant substitutes "humanity" for its equivalent "rational nature" and expresses it as follows:

So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means (GMM, 429).

Kant remarks that the extension of representing one's own humanity as an end to representing all rational agents as ends is "put forward […] as a postulate" (GMM, 429n.). We are still concerned with rational agency as such at this point, so the move to incorporate all of humanity into one's maxim has to wait for an explanation of how we identify humanity in others and how we are to treat humanity as an end, and not merely as a means. The postulates to which Kant refers and which must be presupposed for the correspondence of rational agency and moral agency are discussed at the end of this section.

At this point I shall make a few observations to help make the meaning of this rational interest more clear. The claim is that we must regard ourselves as acting according to principles of our own choosing, and we have a categorical interest in doing so, which is Kant’s objection to empiricism. One way of bringing the significance of this interest to light is that the empiricist cannot explain why we take an interest in resolving conflicts in choice through hard-wrought and painful deliberation, rather than just giving up. The empiricist cannot explain why we are interested in making choices at all, instead of throwing up our hands and exiting the game of life at the first sign of resistance. Empiricists must always appeal to a disinterested spectator that, like a benevolent and just god, takes a special, inexplicable interest in the welfare of a particular agent and selects the most admirable inclination that occurs to the agent. What motivates this internal god’s actions the empiricist cannot explain.\footnote{See Korsgaard, op. cit., p.43ff.}
Kant has a ready answer to this puzzle: the reason we choose is that choosing not to choose is a practical contradiction. Based on the concept of rational motivation that the empiricist accepts, the consciousness of such a contradiction is immediately and unconditionally motivating. This is captured by the idea that there are certain situations where one has to choose, and this necessity of choice, regardless of the content of that choice, is a rough manifestation of this interest. Appealing to a feeling of pain resulting from conflicting desires to account for this motivation does not work, for if we appeal to feeling, it would be much easier for the disinterested spectator to not choose at all, and for the ghost to leave the machine. The idea is that I am not a disinterested Cartesian spectator to my desires, a pure res cogitans mirroring a res extensa: these desires are mine, and in addition to having an interest in these desires being fulfilled, I have an ineradicable interest in being and continuing to be identical to the agent whose interests are satisfied. This is not a theoretical claim positing some spiritual substance underlying desires. Rather, it is a practical claim asserting the need to regard one’s choices, interests, and projects as taking place within the career of a persisting agent. This idea of a persisting agent provides a context of choice without which it would be impossible to make rational choices at all.\(^8\)

We could see Kant’s development of the third, epistemological antinomy of the private will as taking place in his Critique of the Power of Judgment. Many of the epistemological objections to rationalism and empiricism are clear from what has come before. Rationalists believe that good states of affairs are facts that can be perceived by an appropriately cultivated intellect according to certain marks of perfection. In this case, perceiving goodness is like perceiving other natural properties, and just as eyes are capable of perceiving light, reason is capable of perceiving goodness. Kant calls this kind of empirical knowledge “theoretical.” Theoretical knowledge claims are made in virtue of descriptions, called “schemas,” which consist of a set of empirical marks that allow us to pick out empirical objects falling under the description. Knowledge claims are made by subsuming objects exemplifying the appropriate marks under such schemas (CPR, A130/B169ff., CPJ, 351ff.)

The trouble with this account is that it introduces ad hoc marks of perfection and knowledge that are external to the concept of a rational agent. There is no convincing account of the nature of this perception or how this purported fact could ever connect up with the

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\(^8\) This claim could provide the basis for a Kantian objection to reductionist-impersonalist theories of personal identity espoused by some utilitarian thinkers like Derek Parfit. John McDowell is one author who sees the Cartesianism inherent in utilitarianism and points out the problems it poses for an intelligible account of rational agency. See his “Reductionism and the First Person” in Mind, Value, and Reality. (Cambridge: Harvard University Press, 1998), pp.359ff.
epistemological resources available to a rational agent. Kant claims that there is only one moral fact—the fact of a categorical interest in intrinsic goodness that characterizes all finite rational beings. This is the fact that a finite rational agent represents intrinsic goodness not positively, in virtue of a schematic representation of good empirical states of affairs, but only negatively, through a symbolic representation of its interest in intrinsic goodness (CPrR, 70-1, CPJ, 351-4).

The “cash value” of this interest is that every rational agent has some fundamental commitments that provide a context for choice that give meaning to all other choices. However, contrary to the claims of the rationalist, this interest does not refer to any positive, empirical state of affairs in virtue a positive empirical description (a “schema” in Kantian terms). The analysis of the rationalist position showed that any assertion of such empirical moral facts leads to incoherence. On the contrary, this interest refers negatively to intrinsic goodness in virtue of a symbolic representation. If we recall the results of the criticism of empiricist Cartesianism above, we can see that we represent the continuant that provides the context for our choices symbolically. The symbolic, negative representation of intrinsic goodness provides the context for all of our other choices.

Kant refers to the ultimate symbolic context for judgment as “culture,” or “common sense,” which is the central theme of the Critique of the Power of Judgment. Common sense is the cumulative scientific and practical knowledge of a community, which is oriented by commonly shared symbolic representations of value. Kant claims that common sense is not a mere refinement of taste that is required for entrance into society, but a necessary condition for understanding and communication of judgments at all (CPJ, 237-240, 293-296). In anticipation of our next discussion, he claims that the crowning jewel of culture is a republican constitution and a cosmopolitan world order (CPJ, 429-434).

The second point to be made against the rationalist is that, while we must regard ourselves as acting autonomously, we do not in fact succeed in this aim. If we were in fact fully rational, we would be perfect gods and have no desires (GMM, 413n.). But the fact is that we do have interests and desires, and that ultimately we fail to be fully autonomous and rational. Now, given that we do have an interest in being rational, as Kant claims to have shown, it follows that if we knew at what point our practical reasoning broke down, and if we were capable of rectifying

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9 This is Kant’s famous “Fact of Reason,” which is the subject of much debate in Kantian circles and often criticized as a lapse into rationalistic intuitionism. For a good introduction to the issues at stake and references to the fact of reason in Kant’s work, see Lewis White Beck: A Commentary on Kant’s Critique of Practical Reason. (Chicago: University of Chicago Press, 1960), 167ff.

10 For a discussion of the symbolic significance of the human body in constituting personal identity along these lines, see Arnold Burms’ essays in Roland Breuer and Arnold Burms: Ik/Zelf: Essays over Identiteit en Zelfbewustzijn. (Leuven: Peeters, 2000), 130 ff.
the situation, then we would be immediately motivated to do so-to fail to take this interest would be to fail to be a rational agent. Thus, at the heart of the issue is, on the one hand, an epistemological problem and, on the other, a problem of adequate power. The “fact of reason,” as Kant calls this categorical interest, tells us only that we are not fully rational and that we have an interest in being fully rational, but it does not tell us why.

The interpretation differs from the view traditionally associated with Kant, where we come to know moral facts through thought experiments of universalizing our maxims in order to see if they involve a contradiction. It is important to point out these mistakes, since if they are not exposed, the connection of this discussion with the discussion of the public will might not be clear. There are two problems with the standard interpretation, one motivational and one epistemological, and the hints of which we have already seen in the discussion of empiricism and rationalism. Exposing these difficulties will show the uniqueness of Kant’s position and provide a transition into a discussion of our main issue: Kant’s cosmopolitanism.

The motivational problem that faces the traditional interpretations of the universalizability test is similar to the disinterested internal spectator problem that faces the empiricist. According to the traditional interpretation, the agent tests a maxim for universalizability, and the consciousness of a contradiction in the universalization of a maxim is supposed to create a subsequent categorical interest in removing this contradiction from the will. The problem with this interpretation is that it assumes an interest in testing a maxim for universalizability in the first place. That is, it presupposes the rational interest in knowing whether or not one is purely rational that, on its own account, is only created after a contradiction in the will occurs. This presupposes that it would be possible for a finite rational agent to not have contradictions in our choice, which itself is a contradiction. If I do not have any contradictions in my will, then I am by definition a god and have no interests in testing my maxims. This gives rise to the ghost in the machine once again: this time it is a ghost that for some reason cares about being rational. For Kant, the question is not whether there are contradictions in the will, since every finite rational agent has contradictions in is will by definition. The question is more properly how to find out what these contradictions are.

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11 For a criticism of Kant as a monological philosopher of subjectivity, see Habermas: “Eine genealogische Betrachtung zum kognitiven Gehalt der Moral” in Die Einbeziehung des Andern (Suhrkamp: Frankfurt am Main). In the remarks that follow it should be clear that I believe that Habermas’ criticisms are misguided.
12 For a good summary of these different interpretations, see “Kant’s Formula of Universal Law” in Korsgaard, op. cit. Korsgaard’s “practical contradiction” account ultimately suffers from rationalist intuitionist presuppositions as well.
The second objection to the traditional interpretation, put forward by Hegel, is that it is possible to universalize any maxim as long as one is willing to suffer the consequences\(^{13}\). If a contradiction is to be derived in the universalization of a maxim, then a context of value must be presupposed already. Of course, this would require that we follow Hegel in falling back on a rationalist, intuitionist practical epistemology that would allow for the perception of the goodness of this background of value. This is obviously not Kant’s position.

Hence, the question is not whether human beings have contradictions in their wills that give rise to a pure categorical interest, for this is included in the very concept of finite rationality as such. In order to know what the following question should be, we must return to Kant’s Incorporation Thesis. Given that all finite rational beings have an interest in intrinsic goodness, how does a human being incorporate this interest into a maxim and act upon it, thereby working to eliminate this contradiction in the will?

It is helpful here to draw an analogy with choices that incorporate desires for empirical objects. When a desire for an empirical object is incorporated into a maxim, there is some end that is presupposed, some empirical law describing an action that would bring about that end, and then an interest is created in that action in the form of a hypothetical imperative. This is as far as the instrumentalist empiricist rational epistemology reaches, for it denies the existence of a rational interest as such. However, in the case of Kant’s pure rational interest, neither the means to the end nor the end itself are given by experience. The only given is the fact of this rational interest. So the question is not, as with an empirically given end, “What must I do to pursue this given and yet arbitrary end?” but “Given that it is irrational not to incorporate this interest into my maxim, what end must I pursue in order to incorporate this given and necessary interest into my maxim?”

This investigation of Kant’s concept of rational agency is already running long, so I shall give the upshot. In the first section of the *Groundwork*, Kant demonstrates that judgments of the rightness of actions presuppose and appeal to the existence of a purely rational interest. When you tell me that a certain action is objectively right, and that not doing it would be objectively wrong, you expect and demand that I am able and willing to act on this fact, regardless of what my private interests might be. For it to be possible for me to act upon this judgment, it must be presupposed that I as a finite rational agent have a pure interest that does not refer to any private, empirical object of my choice. Our analysis of rational agency and judgments of goodness has shown that all finite rational agents do, as a practical law, have such a rational interest. Hence, it

is by making it my maxim to perform right actions because of their rightness that I can incorporate this pure rational interest in intrinsic goodness into my maxim.

There are a few essential features to notice about judgments of rightness according to this reading. They refer to actions that are public, spatio-temporal items, and only indirectly to private maxims. These judgments themselves are public, intersubjective, and dialogical as well. Thus, when I refer to the rightness or wrongness of an action, I must do so by means of a concept to which every rational agent must, as a rational agent, agree. This concept to which all claims to right must refer is what Kant calls the “Realm of Ends.” It is the idea of a systematic union of autonomous rational agents united through common laws (GMM, 433). The claim of right will have no meaning if the agents are not equal under laws that they have autonomously. It is in virtue of this idea that I can make a claim of right-without it, these claims have no sense. In making a claim of right, I make the realm of ends my end and I incorporate my pure rational interest into my maxim. Hence, it is in performing my duty for its own sake that I am able to pursue the end of intrinsic goodness.

In order to perform one’s duty, the conditions for making valid claims of right must obtain. Hence, it is a mistake to interpret Kant’s claim to be that rational agency and moral action are identical. Given the facts of rational agency discussed above, Kant can begin constructing the conditions under which claims and judgments of right can be valid. Kant calls theoretical principles describing the construction of objects that are necessary conditions of possibility for the execution of some practical aim “postulates” (CPrR, 122ff.) The three postulates of pure practical reason reflect features of rational agency that we have seen already: practical freedom and the Incorporation Thesis (the postulate of freedom of the will), the requirement to identify with a persisting agent of choice (the postulate of immortality) and the need for a context of choice (the idea of God). Kant cashes out the meaning of these postulates in his political philosophy, where he uses his theory of the private rational will to construct a context wherein it is possible for rational agents to come together and to make claims of right and thereby incorporate their interest in intrinsic goodness. It is to this project of construction of a public will that we now turn.

II. The Public Will

This part of my paper attempts a Kantian-style antinomy of the public will in order to show how he constructs his conception of the public will. It begins by presenting the concept of the public will that lies at the basis of the controversy. Then it develops the antinomy of the public will by suggesting that the two dominant conceptions of the general will, communitarianism and liberalism, arise naturally from the conceptions of rational agency
presented in the first part of this paper, rationalism and empiricism. Once again, a caveat: the characterizations of these positions here are rough caricatures, but hopefully they are close enough in resemblance to make the essential point. This section goes on to show what conclusions these conceptions lead to with regard to global justice. Finally, it lays out Kant’s critical solution to the antinomy of the public will in his theory of the public will, which culminates in his conception of cosmopolitanism.

The concept of a public will is the basis for the Kantian antinomy I intend to sketch in the following pages. Just as with the concept of a private will, the first task at hand is to establish what concept lies at the ground of the controversy. The public will is constituted by an original contract: “This basic law, which can arise only from the general (united) will of the people, is called the original contract” (TP, 295). The essence of this original contract is the concept of external right as such, which is “the limitation of the freedom of each to the condition of its harmony with the freedom of everyone insofar as this is possible in accordance with a universal law” (TP, 290). In what follows, I shall use this concept of a public will in conjunction with the three theories of rational agency above to generate an antinomy of the public will.

Communitarian theories of the public will tend to emphasize the importance of a context of cultural values, institutions, traditions and social roles for guiding the choices of individual agents. The substance of the original contract is regarded as the sum of these cultural values. It is an empirical fact that everyone in the community shares these values. This fact expresses the aspect of equality under universal laws laid down in the original contract. Freedom is not exercised in actually choosing to enter into this social contract, since choice is only intelligible once the context of choice provided by the culture is presupposed. Freedom is thought of in a positive sense, as a capacity that must be developed through education and the performance of civic duties. It is through this process that one appropriates one’s identity as a member of the community and realizes one’s true self. Hence, the value of recognition for the performance of these duties by others in the community is also very important for communitarianism. It is the responsibility of the state to use its coercive powers to defend and promote these cultural values that constitute the original contract through educational activities and through encouraging civic involvement. The communitarian state can be thought of as a substance having its matter consisting in a people with its own particular homeland, and its form given by the historical and cultural traditions that constitute its original contract.

Communitarianism is most compatible with the rationalist theory of agency presented above. We saw there that, for rationalism to make any headway, it required that there be intrinsic values that could be intuited by reason in order to provide a context of action. The
institutionalized values and traditions of a community appear to provide rationalism with what it needs here. Rationalism also agrees with communitarianism’s views on the perfectibility of human nature in accordance with these values. All that is required for this perfection is the proper use of education and coercion.

While communitarian theories begin with the concept of equality in constructing their theory of the general will, liberals begin with the concept of external freedom of choice. The general will is constituted by the free contractual agreement of a group of individuals in order to secure their external freedom and private property under coercive laws. The social contract is not regarded as having any intrinsic value or necessity, as the communitarian would argue. Rather, it has merely instrumental value as an unfortunate curb on freedom that, in the long run, ensures that the use of freedom will be maximized.

Liberalism can be regarded as a natural consequence of accepting the empiricist theory of human nature above. For the empiricist, the unimpeded, spontaneous choices of individuals based on natural desires and natural human functioning are the wellspring of all that is good. Hence, individual freedom is intrinsically good for the liberal, and the fruits of this use of freedom, which are made possible by the original contract, are the closest approximation of the public good for the liberal theory. Liberalism starts from this fact of natural human functioning and construct political institutions in such a way that this function is realized. The state should keep its regulative activities to an absolute minimum, for fear of detracting from this public good.

Consequently, the state should not impose any particular conception of the good on private citizens. The normative basis of the contract is not some positive, concrete, and communal conception of the good life, but an agreement in the intrinsic value of negative, formal, and individual freedom of choice. The fact that there are some things that are universally detrimental to the use of freedom, namely, violent conflict and the incapacity to enforce contracts securing private property, provides the contract with content. Hence, the state should perform only the negative function of curbing those uses of freedom which are not compatible with the same use by all others according to a universal law. This amounts to a minimalist conception of the state, which sees to internal and external security, along with ensuring the enforcement of contracts. Once this is established, the invisible hand will take care that the public good, as the sum of private goods, is maximized.

The antinomy with regard to the public will between liberalism and communitarianism can be regarded as an antinomy between the fundamental human right to freedom on the one hand and the equality of the members of the state under the laws of the sovereign public will on the other. Kant’s fundamental criticism of both communitarian and liberal interpretations
of the original is that they hold that the principles of freedom and equality under law contained in the contract must be actual and constitutive in some sense. Kant’s position will be that both of these principles are ideal and regulative. This mistake causes both liberals and communitarians to confuse the concept of a private and public will.

A purely liberal theory of state regards the original contract as no different in kind from a private contract among private individuals. The logical consequence that is drawn from this claim is the right to withdraw from this contract when the terms have not been honored. Since there is no higher authority to judge adherence to this contract, each member becomes a judge in his own case, and can withdraw from the original contract at will. It is according to this line of reasoning that the right to revolution is asserted. This is incoherent on a theoretical level, Kant claims, because all private contracts presuppose a public will constituted by a public, original contract with the authority to recognize, judge, and enforce contracts. Including the right to revolution in such a contract would lead to absurdity. As Kant writes:

[T]hat the constitution should contain a law for such a case authorizing the overthrow of the existing constitution, from which all particular laws proceed (even presupposing the contract violated) is an obvious contradiction; for then it would also have to contain a \textit{publicly constituted} opposing power, so that there would have to be a second head of state to protect the people’s rights against the first, and then yet a third to decide between the two, which of them had right on its side (TP, 303).

And this prohibition is \textit{unconditional}, so that even if that power or its agent, the head of state, has gone so far as to violate the original contract and has thereby, according to the subjects’ concept, forfeited the right to be legislator inasmuch as he has empowered the government to proceed quite violently (tyrannically), a subject is still not permitted any resistance by way of counteracting force (TP, 299-300).

This is Kant’s infamous prohibition of the right to revolution, to which I shall return below. His theoretical point is that in order to avoid a regress of conditions and even to explain the possibility of private contracts, the sovereign power must not be constituted by an original contract that includes the right to revolution.

From this theoretical fact, it follows that the original contract constituting this sovereign power must be different in kind from other contracts-while this contract must be freely chosen, it must have the force of some kind of unconditionally binding practical necessity as well. Kant writes:

Among all the contracts by which a multitude of people unites into a society (\textit{pactum sociale}), the contract establishing a \textit{civil constitution} among them (\textit{pactum unionis civilis}) is of such a distinctive kind that, although with respect to its \textit{application} it has much in common with any other (which is likewise directed to some discretionary end to be promoted by common effort), it is essentially different from every other in the principle of its institution (\textit{constitutionis civilis}). (TP, 289).
I shall develop Kant’s idea of the uniqueness of the original contract below by contrasting his view with that of communitarianism. What is important to notice here is that the liberal interpretation of the original, public contract as a private contract is the first example of what Kant considers to be the fundamental sin of any political theory: the confusion of the public and private will.

The theoretical incoherence at the basis of a pure liberal theory is usually ignored. In order to avoid the logical consequence of its interpretation of the original contract and the public will, that is, the social instability arising from a right to revolution, the liberal state essentially bribes its subjects to remain obedient by instituting a welfare state\textsuperscript{14}. The public good of a liberal state emerges from the free choice and industry of its subjects. However, in order to maintain stability, those who do not enjoy the expected benefits from the social contract, and who would, according to liberal premises, be justified in withdrawing from this private contract, must be provided with an incentive not to withdraw from this scheme of social cooperation. Hence, transfer payments are arranged and justified with reference to the idea of equality under law contained in the concept of the original contract. Those who are too productive to enjoy these transfer payments perform a civic duty by paying taxes into the system of social cooperation. The state is justified in enforcing this civic duty with coercive laws, since these tax revenues are a necessary condition for the existence of the state as such.

But now the coercive powers of the sovereign are used to compel subjects to perform civic duties in order to realize a social good that is recognized by the community, for example, equality of welfare or opportunity. Consequently, it appears unavoidable that any real-world version of liberalism, i.e., one that can survive the threat of revolution by promoting some ostensible public good, can be analyzed as a form of communitarianism in terms of basic principles. This appears to be, at any rate, Kant’s view on the liberal welfare state (cf. TP, 290ff.).

The communitarian interpretation of the original contract emphasizes the fundamental equality of the subjects of a sovereign state under laws. The original contract is constituted by the set of cultural values and traditions upon which every member of the community does, as an empirical, historical fact, agree. The community itself, as embodied in these positive values, is sovereign. Individuals must see their lives as fitting into this larger context of value, which they appropriate by performing their civic duties. Representatives of the sovereign culture are

\textsuperscript{14} Habermas observes how the welfare state can serve as a stopgap form of social integration when political forms of integration fail: op. cit. 143ff.
authorized to coerce individuals who refuse to fulfill these civic duties, whether these duties be as minimal as paying taxes for essential public works or as intrusive as obligatory military service and forced labor to support wars of aggression.

The fundamental presupposition shared by liberals and communitarians is that there must be some material, empirical conception of the public good if the original contract is to have any content and give rise to a concrete state with a functioning legal system. Kant calls the conception of the public will as imposing a conception of the good “paternalism” and rejects it as incoherent and unjust. Kant writes:

A government established on the principle of benevolence toward the people like that of a father toward his children—that is, a paternalistic government (imperium paternale), in which the subjects, like minor children who cannot distinguish between what is truly useful or harmful to them, are constrained to behave only passively, so as to wait only upon the judgment of the head of state as to how they should be happy and, as for his also willing their happiness, only upon his kindness—is the greatest despotism thinkable (TP, 290-1).

Given Kant’s theory of rational agency, it is evident why he would reject a paternalistic interpretation of the public will. From an epistemological point of view, it is impossible to give an empirical description of intrinsic value that paternalistic constitutions need to get off the ground. And from a motivational point of view, the Incorporation Thesis, which claims that we must regard ourselves as acting according to principles we have autonomously chosen, shows that no amount of coercive education can force a rational agent to adopt this purportedly intrinsic good as its end. Paternalism demands that we ought to do something that we cannot do. Kant concludes that the coercive efforts of the paternalistic state are incoherent and ultimately self-defeating.

In addition, as Kant remarks at the end of this passage, it is impossible to explain why the head of state would take an interest in being benevolent toward its subjects. We once again posit some well-disposed, judicious spectator—a deus ex machina analogous to the ghost in the machine that we have already seen in the analysis of the empirical theory of rational agency. Such an invisible hand interpretation of the public will is the analogue of the Cartesian pineal gland or moral sense interpretation of the private will.

Hence, we see how a hard-nosed empiricism actually presupposes the existence of the angels and gods that it officially denies. On Kant’s view, the ideas of God and the immortal soul only function as regulative ideas to guide the construction of political institutions. He does

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15 On the distinction between Kant’s anthropocentric worldview and this theocentric worldview, see Henry Allison’s “Transcendental Realism and Transcendental Idealism” in Kant’s Transcendental Idealism: an interpretation and defense (New Haven: Yale University Press, 1983), pp. 14ff.
not, as the empiricist does, have to presuppose the actual existence of angelic subjects and divine
sovereigns. With this in mind, Kant famously sets the agenda for his project of political
construction as follows:

The problem of establishing a state, no matter how hard it may sound, is *soluble* even for
a nation of devils (if only they have understanding) and goes like this: “Given a multitude
of rational beings, all of whom need universal laws for their preservation but each of
whom is inclined covertly to exempt himself from them, so to order this multitude and
establish their constitution that, although in their private dispositions the strive against
one another, these yet so check one another that in their public conduct the result is the
same as if they had no such evil dispositions” (PP, 366).

It is important to note that Kant writes somewhat misleadingly here. When he speaks of “evil
dispositions,” this does nothing to diminish the claim that every finite rational agent has an
interest in intrinsic goodness. The point is that, once rational intuitionism is denied as a
legitimate moral epistemology, there is no necessary connection between this interest and a
describable, empirical state of affairs. We can cash this out by saying that for Kant, rational
agents all have categorical interests and fundamental commitments, but there is no principle
uniting them as to what this means in the world. Kant writes that human beings,

even with the good will of each individual, because of the lack of a principle which unites
them, they deviate through their dissensions from the common goal of goodness, as
though they were *instruments of evil* (R, 97).

Hence, it is crucial not to confuse the issue by calling this interest a “moral” interest or an
“altruistic,” other-regarding motive. This interest has no necessary reference to any empirical
fact, and one’s fundamental commitment could manifest itself just as easily in the form of
genocidal zealotry, the lust for power and profit, and consumerist frenzy as it could in
benevolence or quietist repose. The construction of political institutions must take this fact into
account.

It is comparatively easy to show how paternalism fails on Kant’s premises, but it is quite
another thing to develop Kant’s theory of the public will itself. It seems that, if a public will is to
legislate at all, these laws will be totally devoid of content. They cannot refer to anything
empirical, but only to the mere idea of public legislation as such. As soon as a law actually refers
to any case, the conclusion that it entails paternalism seems unavoidable\(^\text{16}\). Indeed, when Kant
does actually mention the public good that is the object of the public will, he only refers once
again to the mere idea of the original contract:

\[^{16}\text{See Jean-Christophe Merle, “Funktionen, Befugnisse, und Zwecke der Staatsverwaltung” in Höffe, op.}
\[^{16}\text{cit. where he argues that Kant must and does introduce teleological and moral elements into his theory of}
\[^{16}\text{the minimalist state. I hope to show below that this is because he misses the meaning of the public good of}
\[^{16}\text{independence in Kant’s account.} \]
The saying *Salus publica suprema civitatis lex est* [The public well-being is the supreme law of the state] remains undiminished in its worth and authority; but the public well-being must *first* be taken into account is precisely that lawful constitution which secures everyone his freedom by laws, whereby each remains at liberty to seek his happiness in whatever way seems best to him, provided he does not infringe upon that universal freedom in conformity with law and hence upon the right of other fellow subjects (TP, 298).

As I mentioned in my introductory remarks, Kant gives arguments for why paternalism is theoretically incoherent and will even fail by its own lights, but he fails to give the positive theoretical formulations of his own theory, saying that “they can be easily inferred from the earlier ones.” In what follows, I shall attempt to provide an outline of how this project could proceed by contrasting his view with communitarianism and liberalism in order to bring clearer resolution to the ideas.

What I take Kant’s point to be is that, in the final analysis, all coercive power that a state has over its citizens is paternalistic. To be just and non-paternalistic, any use of coercion must be made with reference to an ideal state of affairs where this coercion is no longer necessary. This ideal is contained in the concept of the original contract itself: it is the idea of a community of free rational agents under universal laws. If these laws are truly universal, then there is no ultimate right for one person to be sovereign over another.

Hence, my proposal is that this legal ideal is that of a community of autonomous individuals who are, at the same time, individual sovereign states with no sovereign above them. Notice that this ideal is not the *ethical* ideal of the realm of ends that was discussed above. This is a *legal* ideal which secures external freedom according to laws. It is not a philanthropic duty of virtue to bring this ideal about, but it is a coercible duty of right to do so. It has nothing to do with the goodness or evil of one’s internal maxims of action, but only with securing the necessary conditions under which one could freely choose to pursue the ethical ideal (MM, 352). It derives its ultimate legitimacy from the fact that it removes obstacles that make the realization of the ethical ideal of the realm of ends impossible, and then leaves it up to individuals to decide whether to adopt this ethical end as their own. This, I believe, is the content of Kant’s conception of the original contract. Since it concerns the ideal of the relation between states and individuals with each other and with individuals of other states, it captures his concept of cosmopolitan right. According to this interpretation, the ideal relation between human beings and states, between the private will and the public will, is one-to-one, that is to say, it is a relation of identity.

That liberalism and communitarianism both admit the validity of this principle of the identity of the public and private will is apparent in their failure to interpret it properly. They fail theoretically because they regard this ideal, regulative principle of identity between the public
will and the private will as a real, constitutive fact of identity. This is the same mistake that Kant’s critical technique exposes throughout his philosophical writings, from metaphysics to aesthetics: the mistake of confusing theoretical principles gathered from experience (“appearances”) with rationally constructed regulative principles (Kant’s unfortunately dubbed “things-in-themselves”){17}. By exposing how communitarian and liberal theories misconstrue the features of the original contract and the public will, we can see how Kant’s theory emerges in opposition to them.

The failure of liberalism to recognize the difference in kind between the original contract and private contracts arises from its empirical interpretation of human nature and freedom. There is no human nature a priori for empiricism, and any theory of human nature can only be derived from observing the various needs and desires of actual, individual, private individuals who appear to be acting freely, that is, naturally and spontaneously, given some arbitrary cultural presuppositions about the meaning of freedom. This research can be done, for example, by means of an election, a poll, a plebiscite, marketing research, or psychological and sociological experiments. It is through this empirical research into the behavior of “actually” free citizens that the general will is discovered. This is also the point where the confusion between the regulative and constitutive function of the idea of freedom, and consequently the confusion between the aggregate of private wills and the united public will, takes place. The results of this empirical research are interpreted as reflecting the general will, which can then be imposed on the subjects as law. The empirical problem with this is that votes and polls are never unanimous, and that such methods always produce significant minorities which do not fall under this description. This, in turn, leads to the forcing of this minority to be happy in a way that is not of its own choosing, that is, paternalism.

While Kant objects to the consequences of this liberal scheme, the core of his theoretical criticism lies at the conception of human nature that gives rise to it. Any contract that has as its basis an empirical description of human nature derived from experience will be contingent for its validity upon private interests and desires and will be by definition a private contract. As we have seen, any private contract requires a public, original contract for its validity that differs in kind from the private contract. But, given the observations above, the validity of such a public contract would require that there be some theory of human nature derivable a priori, which liberalism’s empiricist anthropology denies out of hand.

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{17} See p. 183 of Ludwig, op. cit. for this. The discussion of representation that follows here owes much to Ludwig’s account.
Kant objects to this that there are certain facts about human nature are derivable a priori. Namely, all finite rational beings have some fundamental commitments expressed in an interest in an intrinsic good. It is the fact that all rational agents as such have this categorical interest that allows Kant to construct the idea of a constitution a priori. This a priori construction is the idea of a cosmopolitan constitution that we have already seen.

It is helpful to note an objection to this claim that will provide a useful transition into the discussion of communitarianism and then to Kant’s conception of the state. The natural objection to making the cosmopolitan ideal the basis for an actual constitution is that individual human beings would have to be immortal to realize this goal, and we are not. Any obligation implies the capacity to fulfill that obligation, so Kant’s claim is nonsense. Even if we could contribute to the realization of this fanciful dream by some distant generation, we will not be around to enjoy the fruits of executing this duty, so we would have no motivation to do it. It is best to stick with the second-best theory with which liberalism provides us.

The communitarian answer to such a motivational deficit focuses on the artificial abstraction of the agent from its natural cultural context. An agent requires a lasting, sovereign community with given duties and so on, and any motivational deficit will be supplemented by the coercive educational resources of the state. The reduction of human interests to the spontaneous, biological reflexes of a human animal is a crass abstraction from concrete forms of communal human life. A rational agent’s role in society is what provides meaning to its life in the first place, and if the recognition received from other members of the society is not incentive enough to perform its civic duties, a little remedial education will always do the trick. Hence, it is no problem at all to explain how a rational agent would find the motivational resources to perform its civic duties and see to the preservation of this culture for future generations.

Kant recognizes the fact that political communities are given and not created ex nihilo according to a plan, on pain of revolution and anarchy. The implementation of any constitution must work from the given cultural resources and traditions of a community. He writes:

The different forms of states are only the letter (littera) of the original legislation in the civil state, and they may therefore remain as long as they are taken, by old and long-standing custom, (and so only subjectively), to belong necessarily to the machinery of the constitution (MM, 340).

To this extent, Kant agrees with communitarianism. It follows from Kant’s theory of rational agency that an agent requires a persisting context of culture within which choices are possible. However, Kant disagrees with communitarianism in that it takes this shared political culture to be a positive and constitutive presentation of some intrinsically good public will, to which the subject must accommodate itself. Kant has already shown that there is a formal and
regulative idea of the public good contained in the constitution that makes no reference to the cultural resources of particular communities. This is the idea of a system of equal and sovereign autonomous states in a cosmopolitan community. Communitarianism misconstrues the incoercible, ethical duty of private citizens to recognize each other within a state according to some arbitrary conception of a private good with the juridical duty of sovereign states to recognize each other as sovereign equals under the concept of the public good of sovereignty. Thus, communitarianism commits the opposite mistake of liberalism: it treats private wills as if they were public wills by interpreting the regulative ideal of equal recognition of sovereign public wills by each other in the international realm as identical to the constitutive fact of the recognition of private wills in the private realm.

III. Kant’s Theory of Public Right

Kant’s theory of public right consists of three parts: the right of a state, international right, or, more appropriately, inter-state right, and cosmopolitan right. He claims that all three of these forms of legality are necessary conditions for individuals and states to leave the state of nature and enter into the civil condition (MM, 311).

A. The Right of a State: Republicanism

Kant’s claim is that the proper relationship between the public and private will is indeed one of identification, but identification through symbolic representation, not schematic identity according to empirical description. The private wills of the citizens of a state are legislative and are represented as a united public will in the head of state (MM, 338). However, contrary to communitarianism, the head of state does not represent some positive intrinsically good and essential property of the state to which one must submit in order to realize one’s true self and positive freedom. It is a negative and symbolic representation of the highest public good contained in the idea of the original contract. It is by making claims of right against this head of state, with the ultimate aim of sovereign autonomy, that citizens incorporate their interest in intrinsic goodness into their maxim.

[Freedom of the pen […] is the sole palladium of the people’s rights. For to want to deny them this freedom is not only tantamount to taking from them any claim to a right with respect to the supreme commander (according to Hobbes), but is also to withhold from the latter-whose will gives order to the subjects as citizens only by representing the general will of the people-all knowledge of matters that he himself would change if he knew about them and to put him in contradiction with himself (TP, 304).

While the citizens have no right to revolution, they do have the incoercible right to make public use of their reason with the end of public good of independence as a republican state. Since the public will is representative of its citizens, this criticism of the head of state by its citizens is self-
criticism. Instead of the descriptive procedures used by paternalism to characterize the public will, this activity could be better described as interpretive. This is the self-criticism required to discover the contradictions in one’s willing and, I submit, it is what Kant ultimately means by testing one’s maxims for universalizability.

The norms governing this public criticism can be derived from the duties of the sovereign. We can see the three basic norms governing the state’s use of coercive power as relating to the three basic conditions for its continued existence as a state at all (MM, 347). The state, as a thing, requires form, matter, and a spatial location.

First, the state requires a determinate position in space that is defined by a bordered land area. The first duty of the head of state is to ensure the perpetual existence of the state within these borders. This involves most fundamentally protection against external and internal enemies. The state has the right and duty to put down any internal revolution and to resist any attempts at violent intervention from outside (PP, 346).

Second, the state requires matter, a population of human beings, for its preservation. This justifies the state seeing to the minimal preservation of each citizen through redistributive taxation. This redistribution is not paternalistic since redistribution might be required for the mere preservation of the state as such, and not for promoting happiness. Any distribution of private property must ultimately be justified with reference to the public good of independent sovereignty (TP, 298-9; MM, 325-6).

And third, a state requires a form, which is given by a representative republican constitution (PP, 352). The essence of this constitution is representation: it involves the separation of the legislative power of the people and the executive power of the head of state, which symbolically represents the public will of the united people. The legislative power of the people is exercised through this public criticism and is always guided by the objective, public good of independence. Hence, the state has a duty to allow a free public realm where criticisms are made of the state’s discharge of its duties18. Without a representative, republican constitution, a state has no form and ceases to be a state in the proper sense of the word.

While various public policies can be proposed within the context of these three duties, there is ultimately one policy under which all politics can be subsumed: this is the maxim to seek the public, international recognition as an independent state. Hence, Kant writes of the only public policy that is capable of combining politics, which is aimed at the happiness of citizens, and right,

18 See Merle in Höffe, op. cit., p.203 for a discussion of these three duties.
“All maxims which need publicity (in order not to fail in their end) harmonize with right and politics combined” [...] I must leave the further elaboration and discussion of this principle to another occasion; but that it is a transcendental formula can be seen from its exclusion of all empirical conditions (of the doctrine of happiness), as the matter of the law, and its having regard only for the form of universal lawfulness (PP, 386).

I believe that this passage is the best single textual support that can be given for my interpretation of the devolutionary telos in Kant’s cosmopolitanism, and it is another possible example of his reluctance to fully elaborate his theory for fear of censorship. If my analysis so far is correct, the only maxim that refers to lawfulness as such with no regard for any private good is one that refers to the public good of independence. The only maxim of a private citizen that would require by definition public recognition as a necessary condition for its success would state the intention to seek international public recognition as a sovereign state.

It should be evident that since independent citizens are not capable of fulfilling the three duties of the state on their own, it is actually groups that seek the public good of sovereignty under laws in a republican state. Once a group attains the public good of sovereignty, it is subject to the same norms of a republican constitution as the original state. New minority groups within the new state have the right to secure their own independence as well, given that they can discharge the duties of a sovereign state. If a new state failed to adopt a republican constitution, it would be a state without form and thwart its own purposes by entering into the state of nature.

B. International Right: The Federal Congress of States

In order to understand Kant’s theory of the norms regulating states in their relations to each other, it is helpful to contrast his view once again with communitarianism and liberalism. With regard to relations with other states, the problem that faces communitarianism is that it lacks any ground for claims of justice between states. According to communitarianism, claims of justice require a shared context of values, but it is apparent that this shared context of values does not obtain on the global level. If it did, then there would be no principled reason for communitarianism to reject liberal cosmopolitanism. It follows that communitarian theories have a difficult time avoiding the conclusion that the international realm is a juridical state of nature populated by rationally egoistic nation-states. Once again, communitarianism provides us with an example of the confusion of the public and private will. The best that can be hoped for is a modus vivendi among states, who will seek peace with each other only insofar as it ensures the preservation of the culture of each.

There are two basic consequences that flow naturally from the confusion of the public and private will with regard to relations among states. There is a legitimate and rightful state interest in self-preservation and reform of its public constitution. However, when the public will
is regarded as a private will, these duties interpreted in terms of the self-preservation and self-perfection of an individual private will. Just as private wills must acquire and consume private property for its self-preservation, a paternalistic state must appropriate public property for its preservation. Hence, non-republican states are inclined to aggressive warfare (PP, 350, 367).

Just as a private will seeks to eliminate or constrain desires and interests that conflict with its goal of moral perfection, a paternalistic state must rid itself of those minority populations that are unwilling or unable to be subsumed under the concept of the public good or concrete ethical life. These minorities must either be coercively educated to adopt the majority culture, liquidated, or expelled. If minorities do secede, this is done completely ad hoc and there is no guarantee of the rights of the minorities within the newly created state or of its stability.

The natural extension of the liberal theory to global justice is a liberal cosmopolitanism of the global state or global institution variety. The thought is that warfare and violence are the only universally agreed upon hindrances to the full exercise of the fundamental human right of free choice. Experience has shown us that unifying into a state under coercive laws is a good way to secure domestic tranquility. Thus, it stands to reason that the best way to eliminate violence on the international level and human rights violations within sovereign failed states is not to have an international level in the first place and to unite the world into one state under coercive laws. Any liberal theory that denies this would have to do so on the basis of ad hoc empirical considerations, but admit that it would be the best arrangement in principle and make it a policy to work toward that aim. But then, of course, liberalism becomes despotic paternalism writ large, governed by the same principles of the private will that were just discussed. The world state would actually be a world corporation based on an illegitimate private contract. If theoretical arguments are not convincing, we could consider consequences: while despotism in the present world must fear invasion from outside if they implement purifying genocidal schemes on their citizens, such a world sovereign would have no such fears. The head of state of such a world state would have to be divine indeed if a cosmopolitanism advocating global institutions with coercive power were not do degenerate into Kant’s predicted “soulless despotism” (TP, 312; PP, 367).

Kant agrees with liberal cosmopolitanism that there are juridical norms governing the relations among states, he only disagrees about their nature. The community of states at the interstate level is representative of but not identical to the cosmopolitan ideal community of states, and this ideal norm governs the states’ relations. Since states relate as equals and not as subjects and sovereigns, the norms governing their action differ from the norms governing the
relation between the sovereign and the citizen (PP, 354). This difference is with regard to the rights, duties, and sanctions contained in these laws.

The fundamental duty of a state at the international level is to form a peaceful congress of states with and only with other republican states (MM, 350). It is by joining the congress of states that states at the same time receive and distribute the public good of distributive justice—the mutual recognition of sovereignty. The congress of states is an interstate public realm, where states can peacefully air their grievances and make claims of right against each other (MM, 350). Outside of this congress of states is a state of nature, which is equivalent to a state of war (MM, 343).

The fundamental rights of a peaceful republican state that are ensured by membership in the congress of states are the right to neutrality, the right to guarantee of peace treaties, and the right to defensive alliance (MM, 349). This last right is the most important for our concerns here. According to Kant’s definitions, a state without a republican constitution is technically without form, that is, it is not a state at all (PP, 352). As a mass of matter without form, it is, in a very strict sense, impossible for the members of the congress of states to recognize it as a sovereign state—it is in the state of nature. We saw above that a formless paternalistic state, guided by the principles of a private will, always and already poses a violent threat. The members of the congress of states have the right and the duty to defend itself against this threat. While the subjects of a tyrannical regime have no coercible right to revolution over this tyrant, other states have not only the right and the duty but the interest to isolate this state politically and, if it is threatening global peace, compel it to enter the civil condition and give it a republican constitution (MM, 349-50).

This claim does not contradict Kant’s principle against intervention into sovereign states for human rights violations. If my analysis is correct, a community that is liquidating some of its members or engaging in offensive warfare shows unmistakable signs of having constituted itself according to the principles of a private will instead of the principles of a public will and is consequently in a state of nature. States have the right and the duty to compel this community to organize into a republican state. This fact alone provides an incentive for the adoption of a republican constitution for communities that do not yet have one. Hence, while private citizens of states have no right to rebellion against a despotic head of state, there are instruments of coercion at the international level that would eliminate the force of this objection to Kant’s theory.

Finally, Kant claims that there is also a right to a balance of power between states (MM, 346). This would provide the legal justification for members of the congress of states to require
each other to devolve into smaller, equal sized states. The fundamental instrument of coercion to ensure these rights is expulsion from the congress of states and political isolation. The fact that states would have a significant interest in remaining in the congress of states and in enforcing this right to a balance of powers makes this more persuasive that they would support republican constitutions, since it is only in virtue of a republican constitution that a large state can rightfully devolve into a small one. This provides Kant with an indirect form of human rights intervention that does not sacrifice state sovereignty.

C. Cosmopolitan Right: the right to hospitality and to visit

Above the right of states is a third and final form of law that governs the juridical relations among all citizens of the world and states and citizens of other states. This is cosmopolitan right. In the cosmopolitan ideal, states are fully autonomous and self-sufficient and are no longer dependent for their survival upon occupying a particular territory. Once again, it is helpful to show the consequences of liberalism and communitarianism with regard to these commercial relations in order to contrast Kant’s view with them.

Kant’s view admits of two kinds of actors on the world stage: sovereign states in interstate right and sovereign states and individuals in cosmopolitan right. At the present time, there are three additional kinds of world actors that reflect the paternalistic political institutions of our day. The first are various quasi-world-state authorities such as the World Bank and the U.N. which exercise coercive powers worldwide. We have already seen Kant’s objections to these in the discussion of the congress of states.

However, there are two more institutions that are also play a role on our world stage: the multinational corporation and the non-governmental organization. Kant’s argument against these stateless institutions would seem to run as follows: These are both private corporations that must be constituted by private contracts. Since they are multinational, the validity of these private contracts must extend over sovereign borders. If this is granted, there would have to be a sovereign above these sovereigns in order to enforce this private contract against these sovereigns, who would consequently become subjects of this higher sovereign. But then, there would no longer be a multiplicity of states, but only one state, and hence a multinational corporation is a contradiction in terms. Sovereigns are not bound to each other by private contracts, but by the terms of the peaceful alliance of the congress of states set out in interstate right. If one insists on granting the existence of multinational corporations, logical consequence is the one-world private corporation of the liberal cosmopolitan.

Analogously, non-governmental organizations and lobbying committees that would claim to promote human rights on a world scale suffer from problems characteristic of
communitarianism. In addition to sharing the incoherence of the multinational corporation described above, their existence would presuppose that the members of these organizations possess a faculty of moral intuition that could discover moral facts common to the world community, and yet still remain outside the critical deliberative processes of the congress of states and the public realms within individual states.

Kant’s cosmopolitan right reflects the right to original ownership of the whole earth that is part of the cosmopolitan ideal. Kant’s interpretation of cosmopolitan right is noteworthy more for what it does not allow, i.e., international private corporations that float freely above sovereign states. Kant thus expresses cosmopolitan right as a restriction: it is restricted to the right of individuals to seek commerce in other states and to be received with hospitality (PP, 357ff; MM, 352). This is the right to visit other states and to engage in commerce while not being treated as an enemy by the foreign state or the citizens of that state. While the duties of the host state do not extend to allow the visitor to remain as a guest, if expelling him or her from the territory would lead to his or her destruction the state is legally obligated to allow him or her to remain (PP, 358). Hence, cosmopolitan right would allow for a coercible right to political asylum. The instrument of coercion for this form of law would be the commercial isolation of states that refuse to show hospitality.

The last problem of international justice that I shall discuss is the unequal distribution of natural resources among states. The fact that independence and sovereignty are the public goods of a Kantian state, instead of consumption and maximization of utility or gross national product, makes this less of an issue. However, if the continued existence of a state is threatened by lack of resources, it seems that the only alternative according to cosmopolitan right would be the emigration of its citizens to other states. The acceptance of these immigrants could be legally enforced through commercial coercion according to cosmopolitan right because the survival of the individuals in question is at stake. Furthermore, the fact that large, resource-rich states would be as a matter of right continuously devolving into smaller states would mean that this inequality would be continuously reduced.