GEORGETOWN UNIVERSITY
SCHOOL OF CONTINUING STUDIES
BACHELOR OF ARTS IN LIBERAL STUDIES PROGRAM
ELECTRONIC THESIS RELEASE FORM

Student name: James K. Kitchel
Thesis title: Kant or creator: Toward a basis for human rights

I hereby grant to Georgetown University and its agents the non-exclusive license to archive and make accessible my thesis in whole or in part in all forms of media, now or hereafter known. I retain all ownership rights to the copyright of the thesis, including the right to use it in whole or in part in future works. I authorize Georgetown University to archive my electronic thesis and to release the entire work immediately for access worldwide.

Author signature: [Signature]
Date: 5/8/2014
GEORGETOWN UNIVERSITY
SCHOOL FOR SUMMER AND CONTINUING EDUCATION
UNDERGRADUATE LIBERAL STUDIES PROGRAM

The thesis of James K. Kitchel entitled
KANT OR CREATOR?
TOWARD A BASIS FOR HUMAN RIGHTS

submitted in partial fulfillment of the requirements for the
degree of Bachelor of Arts in Liberal Studies in the School
for Summer and Continuing Education of Georgetown University
has been read and approved.

________________________
Mentor(s)

________________________
Director, Liberal Studies Program

________________________
Date
KANT OR CREATOR?
TOWARD A BASIS FOR HUMAN RIGHTS

A Thesis
submitted in partial fulfillment of the requirements for
the degree of
Bachelor of Arts in Liberal Studies

By

James Kent Kitchel

School for Summer and Continuing Education
Georgetown University
Washington, D.C.
May 1, 1996
KANT OR CREATOR?
TOWARD A BASIS FOR HUMAN RIGHTS

James K. Kitchel

Mentor: John A. Reuscher, Ph.D.

ABSTRACT

My purpose in writing "Kant or Creator?" was to determine if Immanuel Kant's theories of rights and justice could be combined to form a viable basis for human rights in the United States. I was motivated by my impression that a Supreme Being is the current foundation of human rights in this country and has been so since at least 1776. I sought to confirm that impression and I have attempted to outline possible problems that could result. I was not, however, trying to prove that a Creator was an invalid foundation.

My evaluation of Kant's theories focused on two questions. Were they substantially logically consistent? Are there any features of the theories which would render them inappropriate for use in this country?
I used two methods in my research. The first, and primary, was textual analysis and discussion with my mentor of Kant's applicable writings, various commentators and copies of source documents in American history. My second method involved conducting an informal survey of 35 people in order to get some idea of their understanding of human rights and their basis.

My research did not uncover any substantial logical or theoretical defects in Kant's theories. I did, however, discover that his basis for full suffrage was inappropriate for this country. Kant maintains that both a property and gender qualification are necessary. After more research and discussion, it was decided that these features could be removed from the theory without harm. It was also noted that the United States has successfully dealt with similar issues during its political development.

I conclude that: a) Kant's theory of rights is a viable alternate basis for human rights in the United States; b) that a Creator was, and still is, the basis for human rights in this country; and c) that there is at least an indication that some U.S. citizens do not have a working understanding of human rights and their basis.
CONTENTS

ABSTRACT ......................................................... 11

CHAPTER ONE
   WE ARE ENDOWED ............................................. 1

CHAPTER TWO
   UNIVERSAL PRINCIPALS ......................................... 7

CHAPTER THREE
   FROM CATEGORICAL IMPERATIVE TO
   EXTERNAL POSSESSION ......................................... 17

CHAPTER FOUR
   FEATURES OF THE STATE ......................................... 25

CHAPTER FIVE
   SO WHAT? .......................................................... 38

APPENDIX
   HUMAN RIGHTS ATTITUDE SURVEY RESULTS ................... 43

SELECTED BIBLIOGRAPHY ........................................... 54
CHAPTER ONE
WE ARE ENDOWED . . .

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. . . .

We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, . . . And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.¹

Nature's God, Creator, Supreme Judge and Divine Providence: some of the innumerable and unknowable faces of the Deity. Their use in the Declaration of Independence seems to provide explicit and prima facie evidence that God was the Official Sponsor of the 1776 establishment of the

United States of America. More importantly, God seems to be considered the direct source of human rights.

I will argue that the Founding Fathers and the society in general did believe, at least publicly, that God was definitely that source. I will investigate whether Immanuel Kant's theories of rights and justice could be combined to form a viable alternate basis for American human rights. Finally, I will outline five issues that might be considered problematic for our deity-based human rights system.

Given the Declaration of Independence's status as a founding document and the fact that the Constitution does not address the basis for rights, it is hard to dispute that a deity of some sort was considered the basis for human rights when our country was established. Add to that the fact that nothing has been done officially to change the basis, we can reasonably assume that a deity is still the official basis for human rights in the United States.

As tempted as I am to now move directly to Chapter II, I need to clarify four things. First of all, I am not stating that the Founding Fathers or anyone else believed that God would enforce these rights on a daily basis in the temporal world. The Declaration of Independence says that
governments are constituted for that very reason. Secondly, the type of deity is irrelevant. I will suggest problems later that plague all deity-based human rights systems.

Third, it is important to remember that, unlike the French and Russian Revolutions, the American one did not overthrow an existing government and replace it. Actually, "revolution" is somewhat of a misnomer. It was more the case that legal subsidiaries of the British Empire forcibly detached themselves. It should be call the American Secession. Or the First American Secession. Anyway, this means that there was a great degree of continuity in thought and law. To the extent that the English human rights tradition is based in on a deity, then there might be some unofficial relevance. Because, however, the American Revolution did ultimately result in a new political state that was very different from England, I did not concern myself with their basis for rights. Finally, this thesis does not necessarily have any relationship, positive or negative, to my personal beliefs.

Mostly, I am not done with this chapter because it is important to indicate that this belief was not just a
property of the small group of men directly involved with founding the country.

Section 1. That all men are by nature equally free and independent and have certain inherent rights . . . Section 16. That religion, or the duty which we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, . . . and that it is the mutual duty of all to practise Christian forbearance, love and charity toward each other.
- Excerpts from the Virginia Declaration of Rights, adopted 12 June 1776.²

Whereas all government ought to be instituted and supported for the security and protection of the community, as such, and to enable the individuals who compose it to enjoy their natural rights; and other blessings which the Author of existence has bestowed upon man; . . . We, the representatives of the freemen of Vermont, in general convention met, for the express purpose of forming a government - confessing the goodness of the Great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this state, by common consent and without violence, deliberately to form for themselves such just rules as they shall think best for governing their future society; . . . - Excerpts from the Constitution of Vermont, adopted 8 July 1777.³

³Ibid., 485.
We, therefore, the people of Massachusetts, acknowledging with grateful hearts the goodness of the great Legislator of the universe in affording us in the course of His Providence an opportunity . . . and devoutly imploring His direction in so interesting a design . . . II. It is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. — Excerpts from the Massachusetts Bill of Right. Ratified on 15 January 1780.4

The petition of a great number of blacks detained in a state of slavery in the bowels of a free and Christian country humbly show that your petitioners apprehend that they have in common with all other men a natural and unalienable right to that freedom which the Great Parent of the universe has bestowed equally on all mankind and which they have never forfeited by any compact or agreement whatever. — Petition against Slavery presented to the Massachusetts House of Representatives on 13 January 1777.5

As usual, the American people speak best for themselves. The selections above are varied by geography, "race" and economic class. They differ somewhat in tone and directness of appeal to a deity. I realize that some of the selections are religious freedom clauses that don't directly state a deity as the human rights basis. I believe they are, however, good indicators of the place and

4Ibid., 532.
5Ibid., 482.
importance a deity held in the official deliberations and actions of the various states.

I must mention that John Locke greatly influenced the American intellect of the 18th Century. Locke often did not mention a deity explicitly when he wrote specifically about human rights. I think, however, that we can draw a reasonable inference from the two quotes below that Locke considered God the foundation of Man and of his rights.

77. God having made such a creature, that in his own, it was not good for him to be alone, put him under strong obligations of necessity, convenience and inclination to drive him into society, . . .
95. Men being, as has been said, by nature, all free, equal and independent, . . . ⁶

In closing this chapter, I want to draw attention to the petition against slavery. Legally and actually, Africans or African-Americans had the least access to education and government, whether they were free or enslaved. The fact that many used arguments such as the one in the petition helps to show just how broad and deep the belief in deity-based rights was.

CHAPTER TWO
UNIVERSAL PRINCIPLES

What rights do human beings have? Are those rights affected or changed by the individual's entry into the state? If so, how does the state mediate the exercise of individual rights? What is the proper balance of power between person and the state?

These are four questions that I believe I must answer in order to have a clear, albeit limited, knowledge of Kant's theory of rights. Furthermore, I need to consider those answers in the context of the United States if I wish to assert that Kant's theory is a viable alternative to a deity-based rights system.

What I am searching for, then, are not simply "human rights" as they are popularly construed. The first goal of my search is to understand the general environment for rights provided by the general moral principle. Secondly, I need to understand and outline a human's rights in the context of the individual alone. Finally, I will need to understand and outline a human's rights in the context of the individual in the state. Given the differences in rights in and outside the state, it would more appropriate to say that I'm investigating innate rights and political
rights. I will use those terms as appropriate to help delineate the issues.

The general moral principle precedes any system of rights. Through the formula of universal law, the general moral principle provides for a recognition of the equality of rights of all people as they interact through the medium of this law. The formula of the end-in-itself provides a recognition that people are never simply means to an end. Because of the worth of human beings, based on rationality and autonomy, the formula of the end-in-itself, along with the universal law formula, is a human rights foundation that is not a deity, a government, emotions nor a communal desire for convenience.

It is, therefore, necessary to outline freedom, the dignity of humanity, the concept of duties which correlate to rights, the potential morality of humanity and universality. The last is important because the general moral principle, by analogy, will provide support to the Universal Principle of Justice (UJP).

Although innate rights will be divorced from political rights, they provide the context against which political rights can be formed. Furthermore, the innate right of freedom, combined with the desire to move from
provisional to peremptory property rights, will be the vehicle through which individuals are motivated to form a state.

Finally, there is one imperative which immediately commands a certain conduct without having as its condition any other purpose to be attained by it. This imperative is categorical. It is not concerned with the matter of the action and its intended result, but rather with the form of the action and the principle from which it follows; what is essentially in the action consists in the mental disposition, the consequences be what they may. This imperative may be called that of morality.\(^7\)

Hence there is only one categorical imperative and it is this: Act only according that maxim whereby you can at the same time will that it should become a universal law.\(^8\)

The ground of such a principle is this: rational nature exists as an end in itself. In this way man necessarily thinks of his own existence; thus far it is a subjective principle of human actions. But in this way also does every other rational being think of his existence on the same rational ground that holds for me also;\(^9\) hence it is at the same time an objective principle, from which, as a supreme practical ground, all laws of the will must be able to be derived. The practical imperative will therefore be the following: Act in such a way that you treat humanity, whether in your own person or in the

---


person of another, always at the same time as an end and never simply as a means.⁹

In the first quote, Kant explains the Categorical Imperative (CI) briefly and accessibly. The CI is able to command action, is not concerned with results and is the basis for morality. The other quotes are the two important CI formulae. These formulae add in the concepts of universality and respect for people as ends in themselves that were mentioned earlier. Although not explicitly stated in itself, the CI presupposes a free will.¹⁰ For that reason and because of the importance of freedom to justice as Kant evinces below, I begin with freedom.

Justice is therefore the aggregate of those conditions under which the will of one person can be cojoined with the will of another in accordance with a universal law of freedom.¹¹

In the footnote to section 448 of the *Grounding for the Metaphysics of Morals*, Kant explains he isn't going to bother proving the theoretical basis for freedom because it doesn't matter if there is or isn't one. His point, paradoxically, is that we have no choice but to be free.

---

⁹Ibid., 36.
¹⁰Ibid., 50.
The freedom of rational beings is a postulate. I hold it is also a fact, however, because humans cannot act other than as if they are free. Humans make choices by thinking about them, i.e., through reason. Also, humans know not only their choices but also that they are choosing. Finally, their choices can be counter to their desires or instincts, which means that reason is not acting as a cover for those motivators. Therefore, freedom is a reality.

It should be noted that critics sometimes challenge the existence of freedom because no one is "truly free" and many people on the planet are sore oppressed. I reject this criticism because the degree to which a person may actually be allowed to exercise his/her freedom does not alter freedom's reality anymore than a person's inability to play an instrument alters music's reality.

Similarly, I reject the contention that what humans perceive as freedom is actually control of our thoughts, actions and destinies by a superior being. There simply is no way to prove or disprove the contention. In any case, it is irrelevant because, if freedom is the plan of a superior, he/she/it has done such a good job that any difference between what "actually" is freedom and what we experience is not perceptible.
A final observation about freedom must be made vis a vis the importance of human dignity which is, for Kant, the formulation of the worth of a human being. A rational being's autonomy is what establishes his/her dignity.

What then is it that entitles the morally good disposition, or virtue, to make such lofty claims? It is nothing less than the share which such a disposition affords the rational being of legislating universal laws, so that he is fit to be a member of in a possible kingdom of ends, . . . Accordingly, his maxims can belong to a universal legislation to which he at the same time subjects himself. For nothing can have any worth other than what the law determines. But legislation itself which determines all worth must for that very reason have dignity, . . . Hence autonomy is the ground of the dignity of human nature and of every rational nature.\(^{12}\)

As outlined in the quoted material, the fact that the relationship of a good will to the CI results in duties will be important to innate rights. The first quote in this chapter, from the *Metaphysics of Morals*, expresses the idea that the CI "issues" commands to the good will which cannot be ignored. The quote below suggests the reason and mechanism for this. According to the "ordinary reason of mankind", a rational being will strive for morality. He/she will not always succeed because of the unity of

\(^{12}\) Kant, *Grounding for the Metaphysics of Morals*, 41.
physicality with intellect. There will be times that the will fails because reason is overwhelmed by emotion or instinct.

But what sort of law can that be the thought of which must determine the will without reference to any expected effect, so that the will can be called absolutely good without qualification? Since I have deprived the will of every impulse that might arise for it from obeying any particular law, there is not left to serve the will as principle except the universal conformity of its actions to law as such, i.e. I should never act except in such a way that I can also will that my maxim should become a universal law.\textsuperscript{15} Here mere conformity to law as such (without it having as its basis any law determining particular actions) serves the will as principle and must so serve it if duty is not to be a vain delusion and a chimerical concept. The ordinary reason of mankind in its practical judgments agrees completely with this, and always has in view the aforementioned principle.\textsuperscript{13}

To the extent, however, that the will does succeed in using reason to compare maxims with the CI, its duties will become immediately apparent. First of all, the will is not impeded by desires. Secondly, because the CI is a reflexive law, i.e. it contains the only formal principle (of law) that actually has an end, it is able issue commands to the will. Finally, this relationship of the

\textsuperscript{13}Ibid., 14.
will to the law is one of respect. In other words, the will is capable of injuring its own self-love to follow a command from the CI.

The final CI issues of morality and universality are combined. A good will, acting from reason which nullifies other impulses, must adopt the principle of universality and the universal law as its general moral principle, as has been shown in a number of the quotes above.

The argument, contained in material at footnote 12, seems a bit circular. In other words, now that the will is a good will, it will be able to participate in universal legislation. The will became good, however, by acting on maxims it could will to be universal laws. The appearance of circularity is semantics and, in any case, is not an issue for my purposes. What is important and apparent from it is that universality is necessary for morality and that morality can be determined by whether or not the maxim of a specific action can be willed to be universal law.

To clarify, both the CI formulae are useful to the cause of rights. The first obviously deals with universality. The second is the mechanism whereby the subject can ensure that the dignity, i.e. autonomy, of
other rational agents not constrained by the subject's maxim.

Innate and political rights both benefit from the establishment of the CI:

1) because it is the criterion of rightness, the CI provides a mechanism for determining right and wrong actions in ethics. This is important, even for justice, because there is no other way to evaluate another's actions regarding a person's innate right to freedom;

2) the CI, due to the formal principle of law, was needed to test that the UJP is, in fact, a law;

3) the CI provided the concept of duties and the correlation of duties to rights. The principle is necessary even for duties of justice where the "incentive" is not respect for the form of the law itself;

4) by defining ethical duties, the CI provided the criterion for defining juridical duties. I realize that Kant provides an explicit definition of juridical duties, but I hold it would not have made much sense unless there were pre-existing ethical duties with which the juridical ones could be contrasted; and
5) the CI serves, through analogy, to strengthen the UJP. It does so by being the foundational principle that explicitly brought universality to the fore.

The CI will now essentially be put aside in that there is no direct correlation between it and the concepts of justice and state. It does, however, continue to provide the support outlined above.

The next four moves are to: 1) investigate innate rights; 2) review the UJP, including the elements of the concept of justice; 3) trace the mechanism through which individuals become motivated to enter a state; and 4) describe the features of Kant's state, highlighting any problem ones.
CHAPTER THREE
FROM CATEGORICAL IMPERATIVE TO EXTERNAL POSSESSION

Freedom (independence from the constraint of another's will), insofar as it is compatible with the freedom of everyone else in accordance with a universal law, is the one sole and original right that belongs to every human being by virtue of his humanity.\(^{14}\)

In the same passage where he says that freedom is the sole innate right, Kant does outline subsidiary innate rights. This is because those rights relate to specific aspects of freedom that can be impinged upon without completely restricting all the person's freedom. Those rights, which I have paraphrased from Kant,\(^{15}\) are:

1) the right to equality, i.e., the freedom to not be bound to others for more than you can bind them to you.

2) the right to be your own master, along with the right to be innocent until proven guilty; and

3) the liberty to do anything to others, as long as what you do does not detract from the others' rights.

Other writers make longer lists of innate rights.\(^{16}\)

I had three problems with that:

\(^{14}\)Kant, *The Metaphysical Elements of Justice*, 44.

\(^{15}\)Ibid.

1) Mulholland, specifically, derives part of his list from an 1887 translation titled *The Philosophy of Law* because he believes John Ladd's edition is not complete;

2) perhaps due to varying translations, I felt some of their readings were not supported by the text; and

3) I do not need all of my concepts to be innate rights in order to progress. Consequently, I adhered strictly to innate rights as quoted above.

   Innate rights are most important as Kant's way of establishing that human beings were free prior to becoming citizens of the state. Secondly, innate rights only apply to internal issues. Even the right to one's body is based on the physical and intellectual unity of humanity and is, therefore, internal. By violating a person physically, the criminal also violates that person's humanity. In the state of nature, there is no true rights enforcement mechanism. It follows, then, that innate rights and the state of nature cannot provide peremptory rights to property. (Provisional property rights depend on the individual's or, perhaps, the general will's ability to defend them. Peremptory property rights are guaranteed by the state's use of coercion.) In fact, the opposite is

\[17\] Ibid., xvi.
true. Until a state is formed, land is "owned" by individuals only through the general will.

In that case, what is the positive force that leads humans into a state? In nature, individuals cannot impose general obligations because people are bound only by laws they give themselves.\textsuperscript{18} Furthermore, Kant asserts that in order to make a property claim to something, the person must be in possession of the object.\textsuperscript{19} He does allows that there must be both sensible and intelligible possession:

[This postulate asserts that:] it is possible to have any and every external object of my will as my property. . . . An object of my will is a thing that I have the physical power to use. Let us suppose that it were absolutely not within my power de jure to make use of this thing, that is that such power would not be consistent the freedom of everyone in accordance with universal law. In that case, freedom would be robbing itself of the use of its will in relation to an object of the same will inasmuch as it would be placing all objects outside the possibility of being used.\textsuperscript{20}

Kant then, however, states that:

The condition of being subject to general external (that is, public) legislation that is backed by power is the civil society. Accordingly, a thing can be externally yours or

\textsuperscript{18}Kant, The Metaphysical Elements of Justice, 24.  
\textsuperscript{19}Ibid., 53.  
\textsuperscript{20}Ibid., 52.
mine only in a civil society.\textsuperscript{21}

This issue of enforcement motivates people to enter civil society, to protect both property and self. We know the will is not forced to be moral, therefore even the innate right to freedom does not have practical value outside civil society.\textsuperscript{22} Let's see what Kant means by civil society, beginning with the UJP and concepts of justice.

The concept of justice, insofar as it relates to an obligation corresponding to it ... First, it applies only to the external ... Second the concept applies only to the relationship of a will to another person's will, ... Third, the concept of justice does not take into consideration the matter [content] of the will, that is, the end that a person intends to accomplish by means of the object he wills; ... \textsuperscript{23}

(The active definition of justice is quoted at the beginning of the discussion on freedom.)

"Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law." ... Hence the universal law of justice is: act externally in such a way that the free use of your will is compatible with the freedom of everyone according to a universal law.\textsuperscript{24}

\textsuperscript{21}Ibid., 65.
\textsuperscript{22}Ibid., 43.
\textsuperscript{23}Ibid., 34.
\textsuperscript{24}Ibid., 34-35.
The difference between ethical and juridical duties has been alluded to. Kant states clearly\textsuperscript{25} that duties are ethical if the incentive is the respect of the formal principle of law. Duties are juridical if the incentive is outside that respect, specifically coercion.

But that lawgiving which does not include the incentive of duty in the law and so admits an incentive other than the Idea of duty itself is juridical. It is clear that in the latter case this incentive that is something other than the Idea of duty must be drawn from sensibly dependent determining grounds of choice, inclinations and aversion, and among these, from aversions; for it is a lawgiving which constrains, not an allurement, which invites.\textsuperscript{26}

The justification for coercion and the general will are the last foundation concepts needed prior to a discussion of the features of the state.

Coercion is possible, but is it moral? Kant provides an elegant justification\textsuperscript{27} which works like this: Hindering freedom is an unjust thing, unless the exercise of that freedom is, in and of itself, hindering the freedom of the others. If the state then hinders the exercise of the first person's freedom, it is, in effect, furthering

\textsuperscript{25}Ibid., 19.
\textsuperscript{26}Kant, The Metaphysics of Morals, 46.
\textsuperscript{27}Kant, The Metaphysical Elements of Justice, 35-36.
the freedom of the person previously hindered. Given that some system has to be used and that the first person's use of freedom would have to considered wrong because it hindered freedom, then hindering the hindrance is just. It is a variation on the "the enemy of my enemies is my friend" theme.

The general will is necessary to forming the state in two ways: 1) through original acquisition of the land, the general will is able to "transfer" the right to the land to the state; and 2) as the mechanism through which the people consent to the imposition of the state's authority.

Kant outlines²⁸ the first move of general acquisition as requiring that any piece of land can be acquired originally and that it is possible to do so because of the way the land is set-up, i.e. it is at once finite and contiguous. (Additionally, it has already been shown that it is not compatible with freedom to put all objects outside the possibility of use.) This means that humans literally cannot get away from each other and therefore must possess the land in common. He explains that there is no way to prove this but that the principle is rational and the only way to provide for eventual property rights.

²⁸Kant, The Metaphysics of Morals, 83.
He also introduces the idea that any right to possession of land is based on a relation to other people, not the land itself. The next act required of the general will is to assent to the state.

Part of the concept relates to the capacity of the general will to bind everyone to the recognition that the acquisition of the land is rightful. Kant states this is necessary as part of the duty to move toward the principle of peremptory external acquisition.

The final act of the general will is to facilitate the forceful takeover of itself by the state. Kant states this is done by making the transition from provisional private property to peremptory property. As part of the fact of the state of nature, Kant claims that even one person can authorize coercion because he/she doesn't have a reciprocal guarantee of non-interference from the others. The general will gives an assent through the original contract to the formation of the state. Coercion is necessary and permissible due to the nature of the general will. Although he uses the term original contract, Kant doesn't mean actual assent by each individual. It is based

---

29Ibid., 88. 
30Ibid., 87. 
31Ibid., 120-122. 
32Ibid., 127.
more on the idea of an expectation that all humans, by
their nature, would face the decision in the same fashion,
although privately. (See the postulate in the formula of
the end-in-itself.) The state is now formed.

What does it contain?
CHAPTER FOUR
FEATURES OF THE STATE

Kant explicitly\textsuperscript{33} describes the three authorities of the state. One is external judge, the next is external lawgiver and the third is the executive. The people are the basis for these authorities as the fundamental source of lawgiving. All are constrained to make, judge and execute laws based on the principles of law, not on personal whim.

Kant wants to make it clear that the government should not be despotic. At the same, he does not want individuals to think that the legitimate authority of the government constitutes an unjust impingement of their. In fact, regarding the individual's responsibility to submit, Kant is very\textsuperscript{34} forceful. He will not put the state's status above that of the person but, just as strongly, he subordinates any person's specific interests, but not their innate rights, to that of the state.

Kant might concern me at this point by seeming to lean toward the state. He has, however, said that the supreme law giver cannot make state, or positive, laws that violate the state of nature. This makes sense because: first, the

\textsuperscript{33}Ibid., 125.
\textsuperscript{34}Ibid., 131.
supreme lawgiver is human or humans. As such, they have an ethical duty to follow the CI when legislating. If the lawgiver has the authority and responsibility for making laws that operate on people's freedom, and moral people are so only through the operation of their good will, which incurs obligations under the CI, the only way for a lawgiver to create laws that violate natural law is by being immoral.

In any case, it is probable that an immoral legislator under a Kantian system or any other will be so regardless of how freedom is linked to the state.

I am not ignoring Kant's feelings on revolution. I just cannot find them dangerous enough to worry about. Quick proof: People are not obligated to those who do not guarantee to leave their external objects alone. Given that all political rights are acquired, hence external, if the state doesn't fulfill its end of the guarantee, then no one is obligated to obey it.

Furthermore, the practical aspects of state power mean that any "right" to rebellion would be practically useless. In other words, it is doubtful that the state would dissolve itself based merely on the spoken assertion of that right. Force would be required. In the same fashion,
people who want to revolt do not forego the effort simply because they have no right to do so.

Either the state will have sufficient coercive power to stop them, as it should all violators of the law, or it will lose. If it loses, it becomes immediately irrelevant, especially given that Kant feels the way in which a government was created has no effect on its legitimacy. I hold that revolution is a concept outside the scope of the state. Attempted "revolution" is in the scope of the state but that is just a common crime like all others.

To return to the issue at hand, the basic points of Kant's state are as follows: 1) each member still have freedom based in a legal sense on the UJP and the constraint of the CI on authorities and citizens; 2) also due to the UJP, all subjects are equal to each other; 3) almost all people have civil independence.\(^{35}\) I will examine the exclusions at the end; and 4) the form of government is republican with separation of powers.

There are two subsidiary ideas which must be acknowledged. When lawgiving is an internal exercise, the lawgiver and subject, by virtue of being the same person, know what the rules are. A vital component of public law

\(^{35}\)Ibid., 125-126.
is that it must be publicized. The members of the society cannot very well be expected to follow laws that they know nothing about. Nor can they effectively defend their guarantee through the action of the authorities if they don't know who and where they are.

Secondly, public law's express purpose is to regulate interpersonal actions. Which means, that unlike in a state of nature, the people must follow the law and thereby govern their own conduct through reason, not emotion. Obviously not everyone can, although they must, hence the need for coercion and penalty.

In my opinion, one of the best things for the United States about Kant's theory is the implication for actual legislation. The fact that, in this system, the only check on individual freedom is the obligation to not interfere with the rights of others means that the state is very limited in what it can do to and for the citizens. But, and this is important, that check imposes a strict obligation on the people and the state. Everyone must respect other people's rights. If this isn't done, the state, in order to defend the guarantee, can force people to comply.
The equality of persons as subjects is consistent with inequality in the content and degree of their possessions. So far as the formal principle of rights is concerned, however, we all are equal.\textsuperscript{36}

This point also, as Kant develops it, has great consequences for legislation. On the one hand, an understanding of the explicit statement that people are not guaranteed opportunity of result is, in my opinion, vital if the United States are going to survive financially and politically. It is readily and publicly apparent that governments can no longer afford to alleviate the natural differences of ability or luck in their citizens. Also, state-fostered dependency would be immoral in a Kantian world because it would damage the freedom of the dependents.

On the other hand, because freedom can only be exercised by the living and because the general will of the people has submitted to the state in order to make freedom practically useful, Kant holds that this means the state has an obligation, correlative to a right, to provide at least a minimal level of welfare.\textsuperscript{37} In the United States, many legislators use the code words "welfare

---

\textsuperscript{36}Mulholland, 314.  
\textsuperscript{37}Kant, The Metaphysics of Morals, 136.
reform" when they mean the abolishment of assistance to all but the most pathetic. Under a Kantian system, there would be far less room for the politicization of welfare because it would be a right. In my opinion, this type of balance is necessary for this country. Legislators could not put people in fear for their economic survival while those people who do abuse the system would face stern moral and practical penalties.

I stated at the outset that I needed to evaluate this system as to its appropriateness for the United States. There are two issues that are inappropriate, but I do not believe they invalidate the system. Interestingly enough, the United States ran into essentially the same two problems in its political development.

I excuse Kant for three reasons: 1) nobody's perfect; 2) actually, the faults are in political application of the theory, not the system itself; and 3) all theories must be modified upon contact with reality.

Kant states\(^{38}\) that "all women . . . lack civil personality". Kant's basic position is that women are incapable, simply because they are women, of possessing or exercising rights related to active participation in the

\(^{38}\)Kant, *The Metaphysical Elements of Justice*, 79.
affairs of state. I must simply declare him wrong and move on. There is no fix or suggestion to be made here. In his defense, I should point out that Kant does believe that women have passive equality and freedom in the state.

The second problem is similar. Kant imposes\(^{39}\) a property restriction on the right to vote and other aspects of participatory civil independence. He does this because he does not think that a person who owes his existence to another can have an independent will.

When I first read this I thought he was talking about people on welfare, which would be bad enough, but he is actually talking about most people in society. According to Kant, the only people having full civil independence are those who can support themselves by selling products they make or by selling (or, I presume, renting) things that they own, such as land. Not only does this exclude all labor not leading to tangible products, it excludes those people who make tangible products at the direction of someone else.

I think, however, given that Kant bases the right to full civil independence on the possession of property, then it follows that full civil independence is also an acquired

\(^{39}\)Ibid.
right. This means that it is improper to refuse civil independence, based on possible control of one's humanity, because rights to property and civil independence are not part of one's humanity because they are not innate rights.

I would like to invalidate the entire idea, which I think I can do by a closer investigation of the empirical consequences of Kant's definition. (As far as I can tell, I didn't derive this criticism from any source material. I am not saying it is original, just "original" to me.)

I hold that Kant's idea must result in the situation that the only people who have full civil independence are those who are economically independent solely and directly through their own efforts, without participation of others.

Is labor the problem? Kant holds that as soon as someone controls a person's labor, they control a person's entire humanity. Why? Because he/she is economically dependent on them. Really then, Kant is saying that anyone who is economically dependent on another cannot have civil independence. Not having control of one's labor, however, is just one way of becoming economically dependent. I base this statement on the following thought experiment.

People who are incapable of working have a right to welfare, as we've seen above. This right makes them
economically dependent on the state. Yet they don't work. Ergo, economic dependence cannot be based only on control of labor. The quoted material makes that clear. In fact, that's why I thought he was talking about welfare. Kant never mentions labor, just the acquisition from others of what is necessary for survival.

If that is the case, I believe his idea fails. People who sell anything acquire what they need to live from others. That's the whole point of the division of labor which results in buying and selling. When people choose to specialize by no longer producing absolutely everything they need to live, they then enter into a deal with everyone else which goes something like this:

"O.K., it's easier and more productive if I concentrate on building shelter while you specialize in food production. So, I agree to make sure that you get a shelter if you agree to make sure I have something to eat."

Barter or sale is irrelevant. Money is just a convenient way to multiply bargains by number and distance.

Ergo, people who sell things are economically dependent on their customers. The reverse is also true to the extent that sellers must buy raw materials or tools.
Consequently, because laborers and producers are now ineligible, the only people having a right to civil independence are those people who, solely and directly, produce enough of what they need to live such that they are not economically dependent on others.

There are a number of ways to quantify this. The simplest rule is: Everyone with civil independence must directly produce enough food and shelter to survive. By directly produce, I mean to include those items necessary to produce food and shelter also. If a person buys lumber to build a shelter, that shelter is dependent on the purchase and, therefore, the buyer is dependent on the sales system. The same holds true with purchases of farm tools, seed, etc.

Even if Kant wanted to stick to his guns and accept losing buyers and sellers from the civil discourse, he could not. People choosing representatives is part of civil independence. Losing buyers and laborers would reduce "the people" to such a small number that "the people" could not logically be the basis of authority. And "the people" is one of Kant's few concepts where number is important.
To finish our examination of Kant's theory of rights, I need to make a limited defense against some criticism. To a certain extent, I have done so throughout the investigation. Because a complete defense is impossible, I'm limiting myself to four major criticisms outlined by Onora O'Neill.40

The first charge she describes is "formalism". By this she means those criticisms which say that the CI is ethically meaningless because many types of immoral action can be universalized. The problem here is that the critics aren't playing on the same field. The CI requires more that simple universalization. It requires that maxims can be willed to be universal laws, which is not at all the same. Universal law contains the concept of consequence which simple universalization does not.

The second charge is somewhat opposite. Some critics say that the system is so harsh as to not take into account people's differences. This is poor criticism. Universal law does not, and cannot mandate equivalent ends, so proportional responses are legal and moral.

Thirdly, critics say the CI is too abstract. This is a category mistake. The CI is a strategy for determining morality, not a laundry list of permissions or prohibitions. It must, by definition, be abstract. Criticizing the CI for being too abstract is unfair given that Kant's goal was to create an abstraction.

The next group goes even further. It is a fact of life that, depending on the circumstances, two moral principles could be in opposition. This isn't the fault of the CI. Kant also provides a way to deal with most conflicts. His solution is to weigh the relative violations. The violation that would cause the greatest damage is not performed. In any case, there is not, and cannot be, a theory of rights that prevents this type of problem.

Q. What rights do human beings have?
A. The completely founded right to freedom and other such rights as may be acquired through positive legislation, including the right to acquire property.

Q. Were those rights affected or changed by the individual's entry into the state?
A. Yes, in that the enforcement of them was made possible. In a practical sense, people only received use of their rights by entering civil society.

Q. If so, how does the state mediate the exercise of individual rights?

A. Through the UJP and coercion for individuals. There is also a strong obligation placed on each individual to respect rights. The government is constrained by ethical principles applicable to people and also through the UJP.

Q. What is the proper balance of power between the person and the state?

A. The individual's right to freedom is inviolable, but state interests outweigh desires of a specific person.

At this point, I feel confident that Immanuel Kant's theory of rights and justice can be combined to form a viable alternative basis for United States human rights. But why is this important?
CHAPTER FIVE
SO WHAT?

There is truth in Richard Robinson's contention: 'Jesus says nothing on any social questions except divorce, and all ascriptions of political doctrine to him are false. He does not pronounce about war, capital punishment, gambling, justice, the administration of law, the distribution of goods, socialism, equality of income, equality of sex, equality of colour, equality of opportunity, tyranny, freedom, slavery, self-determination or contraception. There is nothing Christian about being for any of these things nor about being against them if we mean by 'Christian' what Jesus taught according to the synoptic gospels.'

A wise man once said that every philosopher has a duty to say "So what?" when exploring the questions of life, so as to remain grounded and relevant. My response follows.

How can a deity be the basis for our political rights given separation of church and state? The Constitution does not exclude religion from public life, but the prohibition against establishing a state religion seems to be a problem. The U.S. Deity must have features, at least those of creative agent and determiner of good and evil. Otherwise, it could not be a foundation. This raises two issues.

\[41\text{Ibid., 97.}\]
Features allow identification of the deity. If those features correspond to one or more religions' definition of their deities, the U.S God could be said to be that god.

Secondly, religions such as Buddhism do not view the creative force in the universe in the same fashion. In other words, there aren't "enough" features in the Buddhist system to allow for God as an active, particular creative force, definer of good and evil and foundation of rights.

Given that the United States Deity can not help but conflict with definitions of other deities and that it is the only recognizable official foundation for political rights, I think we have a state god, if not an entire religion. Only by officially defining the basis for rights as something else can we correct this problem.

Secondly, there is no method for determining human rights through the deity. Robinson's remark is true in that there is no strategy equivalent to the CI to help us make rights assessments. The Golden Rule is not equivalent because of the potential for an immoral will to desire that something dangerous be done to it.

Thirdly, in a multi-ethnic, multi-cultural society, a deity-based system could be incendiary. Here I am referring to inter-group relations, not those of groups to
the state. Unfortunately, humanity's bloody history of sectarian violence is too well-known and too continuous for anyone to say that it could not grow worse here.

And I say "worse" because the long history of KKK violence based on religion and recent events such as the incident at Waco demonstrate that religious violence in this country is already a problem. Furthermore, how is a state legitimately going to mediate an problem when it's deity-based system may conflict with one or both of the groups?

Most importantly, our deity-based system affects the people's relationship to each other and the government. Because our political rights are deity-based while our political system is supposedly separated from religion, our government has shied away from any action related to a core set of values and rights that apply to all.

Core values and rights are not defined only by the government, but the people themselves and their various organizations have also been unable to perform this task. Because there is no common ground which can be evaluated through reason, the emotional content of rights discussions have lead to an unnecessary and artificial polarization.
With a rational foundation for rights, the commonalty of humanity without subjective details, we might be able to discuss, educate and legislate in a truly just fashion.

As the results of my informal survey (see appendix) show, people do not share any common understanding of the basis for rights, what those might be or how to evaluate a rights claim. I found it interesting, to say the least, that 35 people gave 10 different bases for human rights. Additionally, they described a wide variety of rights, from food and employment to speech and protection from torture.

Given the increasing fragmentation of the commonweal, I do not believe that we, as citizens, can remained confused and in the dark. We must know what our society will protect as a political right, what the basis for them is, how to evaluate new rights claims and how to determine the justice or injustice of an action affecting rights. We must have a persistent and general discussion of what our common values and rights should be. Then we need to act on the results, not in a partisan way, but an American one.

I find it ironic and inspiring that Immanuel Kant, a tiny, frail man who never married, never left Prussia and died over 190 years ago, provided the theories of rights and justice that are our most robust, modern and
cosmopolitan tools for furthering the causes of justice and humanity.
APPENDIX

HUMAN RIGHTS ATTITUDE SURVEY RESULTS

The Questions

Question A. When I say the words "human rights," what is the first thing that comes to mind?

Question B. Name three human rights.

Question C. Where do human rights come from?

Question D. What, if anything, does someone have to do to qualify for human rights?

Question E. Can a person do something, under any circumstances, to forfeit his or her human rights?

Response Summary, by Respondent

1. Male, age 35, some post-graduate study.
   A. Liberal political action groups.
   B. Freedom of expression; physical security, well-being; safety.
   C. From faith and religious beliefs of a culture.
   D. Everyone has them.
   E. Yes.

2. Female, age 43, some college.
   A. Amnesty International.
   B. Freedom of movement; freedom of political expression; freedom of decision-making.
   C. From God or Nature -- definitely not from government.
   D. Be alive.
   E. Yes, by violating someone else's.

3. Male, age 40, MA.
   A. Discrimination.
   B. Right to privacy; freedom of expression; equality.
   C. Basic human need that society recognizes.
D. Nothing. It's basic.
E. Certainly, by criminal behavior.

4. Male, age 44, MA.
A. Everyone's right "to be."
B. Employment; equality; freedom of expression.
C. Man's moral values.
D. Be.
E. Yes, by criminal actions that endanger others.

5. Female, age 44, some college.
A. Minority discrimination.
B. Right to vote; liberty; freedom of religion.
C. God.
D. Nothing.
E. Yes, by committing bad crimes.

6. Male, age 27, MA.
A. Fundamental freedoms, regardless of government.
B. Life; freedom of movement; freedom from persecution.
C. Collective values, across cultural lines.
D. Nothing.
E. Yes.

7. Female, age 21, BS.
A. Systematic violations of human rights, such as Apartheid.
B. The right not to be murdered, raped, unjustly imprisoned.
C. Official declarations, organizations, actions, such as the U.N. Declaration, and world courts, such as the Hague, Nuremberg Trials.
D. Nothing.
E. No.

8. Female, age 25, some college (recent immigrant).
A. Freedom.
B. Right to shelter, food and medical help.
C. From the hear, knowing what is right for your fellow human beings.
D. Just being human.
E. No, not even a killer's.
9. Female, age 21, undergraduate student.  
A. Constitution.  
B. Right to vote, to live freely and to live where you want.  
C. Should come from simply being a human being, but they really come from the government.  
D. Just being alive should be enough.  
E. Yes, by not respecting rights of others.

10. Female, age 21, undergraduate student.  
A. Implied rights that everyone has.  
B. Freedom of speech; privacy.  
C. Basic human need.  
D. Be born.  
E. No.

11. Male, age 45, MA.  
A. Social issues.  
B. Liberty; freedom of speech; freedom of religion.  
C. Basic to man.  
D. Be born.  
E. No.

12. Female, age 36, some college.  
A. Women.  
B. Life, liberty, justice.  
C. Declaration of Independence.  
D. Be conceived.  
E. No.

13. Male, age 27, BA.  
A. African-Americans.  
B. Liberty, justice, peace.  
C. Enlightenment thinking.  
D. Nothing.  
E. Yes.

14. Female, age 32, some college.  
A. Freedom of speech.  
B. Freedom of speech; freedom of choice.  
C. People's beliefs.  
D. You don't have to qualify. They come naturally.  
E. Yes.
15. Female, age 25, high school.
   A. Equality.
   B. Freedom of speech; freedom from taxation; freedom from the judgment of others.
   C. Man made them up.
   D. Be honest.
   E. No.

16. Female, age 20, undergraduate student.
   A. South Africa.
   B. Food; personal safety; freedom of speech.
   C. Nature.
   D. Exist.
   E. No, but there are times when this is done anyway.

17. Female, age 20, undergraduate student.
   A. Abortion.
   B. Right to life; freedom of speech; right to bear arms.
   C. Defined in the Constitution. Ideas of people living now who uphold the Constitution.
   D. Nothing.
   E. Yes, by not respecting others' rights.

18. Female, age 18, undergraduate student.
   A. Activists.
   B. Privacy; freedom; well-being, right to live.
   C. The Constitution. Granted at birth, but not in all countries/societies.
   D. Nothing.
   E. Yes, by taking someone else's human rights (e.g., murderers).

19. Female, age 25, BA.
   A. Freedom.
   B. Freedom of religion; freedom of movement; freedom of political expression.
   C. Democratic government, taking into account people's desires and rights.
   D. Each country has different ideas about this.
   E. Yes, by violating another's human rights (e.g., killing someone, abusing a child).

20. Female, age 36, MA.
A. Justice for prisoners.
B. Right to eat; access to the law; right to an education.
C. Outgrowth of our reflections on our relationship to one another and to God.
D. By being a human being.
E. No. Other rights, yes, but not one's human rights.

21. Male, age 23, BA.
A. Violations thereof.
B. Right not to have your family beaten up by Brownshirts; right not to have stuff taken from you; right not to have your life taken.
C. Convenience. Not from God.
D. You don't even have to be born.
E. Yes.

22. Female, age 29, some college.
A. The underprivileged.
B. Freedom of speech; pursuit of happiness; right to achieve your potential.
C. We are born with them; they come from our being free thinkers.
D. Nothing. Everyone is entitled to be treated fairly.
E. Yes, by taking someone's life.

23. Female, age 39, BA.
A. Torture.
B. Freedom from torture; freedom of movement; freedom of religion.
C. God.
D. By being human.
E. Not all of them. Someone might be sentenced to death, but is still entitled to a fair trial.

24. Female, age 40, high school.
A. NAACP
B. Right to live; freedom of speech; freedom to pursue goals.
C. People have always had them, but not everyone has always been allowed to use them (e.g., before Mr. Lincoln).
D. God.
E. Some rights can be taken away if you do something bad.

25. Female, age 40, BA.
   A. China.
   B. Freedom of religion; right to bear arms; freedom of speech.
   C. Human experience and beliefs.
   D. By having a soul, which distinguishes us from animals.
   E. No.

26. Female, age 45, MA.
   A. Quality of life.
   B. Freedom of religion; dignity; privacy.
   C. From people living together. They evolve because some system or order has to come about.
   D. Be born.
   E. Some but not all. Everyone is always entitled to dignity, for example.

27. Female, age 37, MA.
   A. Russia.
   B. Freedom of speech; right to a decent standard of living; right to eat.
   C. God.
   D. Be born.
   E. No.

28. Female, age 64, high school.
   A. Women's rights.
   B. Freedom of religion; right to vote; right to bear arms.
   C. God.
   D. Be born.
   E. Yes, sometimes.

29. Male, age 65, BA.
   A. Freedom of movement.
   B. Freedom of religion; freedom of movement; right to vote.
   C. From the development of government, and agreed upon by society.
D. Be born. Not true in all countries.
E. Yes, by committing atrocities or crimes against humanity. Also, if a society is apathetic, not vigilant, human rights can be lost.

30. Female, age 62, BA.
A. Freedom.
B. Freedom of speech; freedom of religion; right to vote.
C. Society.
D. Be born.
E. No.

31. Male, age 72, MA.
A. Right to privacy.
B. Freedom of religion; protection against illegal search and seizure; right to privacy.
C. From human experience and realizing that oppression is bad for humanity.
D. Be alive.
E. Yes, by abrogating the human rights of another person.

32. Male, age 36, BA.
A. Martin Luther King.
B. Freedom of religion, speech and movement.
C. From society; people's attitudes.
D. Be a human being -- that's first, before sex, race, etc.
E. Yes, sometimes; for murdering someone.

33. Female, age 36, BA.
A. Women's rights.
B. Right to vote; right to employment; freedom of speech.
C. From the government.
D. Be a human being.
E. Yes.

34. Female, age 32, BA.
A. Amnesty International.
B. Freedom from oppression; freedom of religion and expression.
C. From the collective; from the human need to be one's own person.
D. Be.
E. Sure.

35. Male, age 33, MA.
A. Martin Luther King.
B. Freedom from fear, hunger and discrimination.
C. Part of human nature.
D. Be.
E. Yes, sometimes.

Response Summary, by Number Of Respondents Giving a Particular Answer

Question A. When I say the words "human rights," what is the first thing that comes to mind?

NAACP; African-Americans; Dr. Martin Luther King, Jr. 4
Freedom. 3
Rights of all people to be who they are. 3
Women, women's rights. 3
Amnesty International 2
Discrimination 2
Violations of human rights; systematic, such as apartheid, and other. 2
Liberal political action groups. 1
The Constitution. 1
Social issues. 1
Freedom of speech. 1
Equality. 1
South Africa. 1
Abortion. 1
Activists. 1
Justice for prisoners. 1
The underprivileged. 1
Torture. 1
China. 1
Quality of life. 1
Russia. 1
Freedom of movement. 1
Right to privacy. 1

**Question B.** Name three human rights.

Freedom of expression; freedom of speech. 19
Freedom of religion. 11
Freedom of movement; liberty. 10
Right to life; not to be murdered. 7
Right to vote. 7
Safety, physical security, right not to be raped or robbed. 7
Right to privacy. 5
Right to food/to eat. 5
Right to justice; not to be unjustly imprisoned. 4
Well-being, decent standard of living. 3

Freedom from discrimination; freedom from the judgment of others. 3

Freedom from persecution, oppression, torture. 3

Right to bear arms. 3

Employment. 2

Pursuit of happiness, goals. 2

Equality. 1

Freedom of decision-making. 1

Right to shelter. 1

Right to medical care. 1

Peace. 1

Freedom to choose. 1

Freedom from taxation. 1

Right to education. 1

Right to dignity. 1

**Question C.** Where do human rights come from?

Government, society. 9

God. 8

Constitution, Declaration of Independence, other official documents. 4

Nature, basic to humanity. 4
Basic human need. 2
Convenience or made-up. 2
Faith. 2
Good feelings for other people. 2
Moral values of man. 1
Enlightenment thinkers. 1

**Question D.** What, if anything, does someone have to do to qualify for human rights?

Do nothing. 11
Be born. 7
Be a human being. 7
Be or exist. 7
Be conceived. 1
Be honest. 1
Each countries has different ideas about this. 1

**Question E.** Can a person do something, under any circumstances, to forfeit his or her human rights?

Yes. 23
No. 12
SELECTED BIBLIOGRAPHY


