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ARTICLE

The Right to Freedom

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Abstract

The foundation of the Kantian theory of right is the one innate right to freedom. Here, I offer a comprehensive philosophical comparison between Kantian rightful freedom and the conception of freedom as negative liberty or non-interference, a hugely influential view in terms of which Kantian rightful freedom is often understood. This fruitful comparison clarifies the fundamental differences between the two views, emphasizing the resources the Kantian approach offers for contributing to contemporary debates on freedom as a distinctive rights-based republican view. This Kantian perspective also offers a useful lens for critiquing negative-liberty-based views, revealing a dilemma they face.

Keywords: freedom; Kantian theory of right; negative liberty; republicanism; rights

1. Introduction

The Kantian right to freedom, the one innate right which serves as the foundation for a full Kantian system of right, is often understood as securing something like a right to negative liberty. With a negative liberty or non-interference conception of freedom, one is free to the extent that they are able to act as they choose without interference. This conception of freedom as non-interference is intended as a descriptive, non-moral definition of freedom that we should seek to maximize for independent moral reasons. We might understand the Kantian theory of right in similar terms as maximizing independence by securing a maximal equal share of independence for each person.

But the conception of rightful freedom at the heart of the Kantian theory of right is fundamentally unlike a negative liberty or non-interference conception of freedom. Within this Kantian framework, we are all free when we stand in rightful relationships of mutual respect, where each person respects all others' rights to govern their own wills. This idea of rightful freedom is a directly moral understanding of what it means to be free. And the Kantian right to freedom is universalizable: each person's freedom is consistent with the freedom of every other. The role of government within this Kantian framework is to fully secure everyone's rightful freedom rather than to maximize freedom.

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While scholars have previously emphasized differences between these two understandings of freedom,[1] many continue to understand Kantian rightful freedom in negative liberty terms.[2] Here, I offer a comprehensive comparison between these two very different ideas of freedom and the views that employ them. While previous scholars' efforts to differentiate the two views have been largely interpretative, my aims here are primarily philosophical. Clarifying their fundamental differences highlights the distinctive features of Kantian rightful freedom and clears the path for fuller appreciation of Kantian theory's distinctive contribution to contemporary political theory, both in the compelling critiques offered of particular relationships of subordination[3] and as a rights-based form of republicanism in general.[4] Furthermore, this Kantian perspective also offers a novel and philosophically rich lens for critiquing negative-liberty-based views.

In Section 2, I articulate the negative liberty conception and emphasize the distinctive features of negative-liberty-based views, arguing that the Kantian perspective reveals a dilemma facing them. In Section 3, I articulate the Kantian right to freedom and the foundational role it plays in grounding a full and coherent system of rights, emphasizing the many fundamental differences between this view and negative-liberty-based views. In Section 4, I situate Kantian rightful freedom within the landscape of conceptions of freedom in contemporary political philosophy. I conclude in Section 5 by highlighting the far-reaching implications of understanding freedom in Kantian rather than negative liberty terms.

Since on a negative liberty view, all interference with people's activities constitutes unfreedom, this conception of freedom brings with it a general presumption that all interference, and especially government interference, should be kept to a minimum. On this view, while we may prefer some government interference in our lives for the sake of securing other values (e.g. security, equality, and public health), whatever interference we tolerate will cost us some of our freedom. As I will show, the Kantian view gives us reason to reject these common presumptions about what it means to be free.

2. Negative liberty

With a conception of freedom as negative liberty or non-interference, I am free to the extent that I can do what I choose without interference from others, and I am correspondingly unfree to the extent that 'I am prevented by others from doing what I could otherwise do' (Berlin 2002: 169).[5] This conception of freedom is ubiquitous in political philosophy – it is employed by not only libertarians and classical liberals, but also by liberals and even socialists. Here, I will first articulate and then criticize views that rely on conceptions of negative liberty or non-interference.

2.1 Basic features of negative-liberty-based views

Many related conceptions of political freedom fall under the negative liberty umbrella. While they differ in significant ways, views that rely on a conception of negative liberty generally share the following key basic features.

First, conceptions of negative liberty or non-interference are typically intended as merely descriptive conceptions of political liberty. A conception of negative liberty

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tells us only whether someone is unfree. To generate morally prescriptive claims about whether a person has the right to be free in particular situations, such a conception of freedom must be incorporated into a broader moral framework where freedom is taken to be valuable for independent moral reasons.

Second, since with a conception of freedom as negative liberty one is unfree to the extent that one is interfered with in acting as one chooses, all sufficiently robust interference with one's activity makes one unfree. With most negative liberty views, this is true regardless of what action is being interfered with: just as stopping someone from walking down the street makes them unfree, stopping someone from murdering another also makes them unfree.

Third, with a classic conception of freedom as negative liberty, interference that makes one unfree can only come from other people. As I will discuss later on, some non-interference views may not include this focus on interpersonal restrictions of activity; these views share the other basic features of negative liberty, though, and so are still within the same broad family of views.

Fourth, with a conception of freedom as negative liberty, different individuals' freedoms come into conflict. If we take a right to do a thing to include an enforceable claim right against others not to interfere with doing it, then it is not possible to secure two such conflicting rights. As Berlin (2002: 171) puts it, with a conception of freedom as non-interference, 'the liberty of some must depend on the restraint of others'.

Fifth, as a consequence of the necessary conflict between persons' freedoms, there can be no unlimited right to negative liberty. It is not possible for everyone to be completely free at the same time; instead, freedom comes in degrees, and we are all only more or less free. Negative liberty views typically argue that it is possible to compare the relative freedom of different individuals and that societies can be said to be more or less free based on how much negative liberty their individual citizens have.

Sixth, because all interference constitutes unfreedom, a broader moral framework that values negative liberty will include a general presumption that all restriction on individuals' activity is a bad thing and to be avoided if possible. These views thus typically argue that freedom should be restricted as little as possible.

Seventh, following from this general presumption against interference, these negative-liberty-based views typically carry a presumption that coercive government activity in particular should be kept to a minimum. This concern with minimizing governmental interference is especially pronounced within the classical liberal and libertarian traditions. As one prominent libertarian puts it, according to 'liberals', 'all restrictions on liberty are presumed wrong and unjust until shown otherwise', and so '[i]t follows that political authority and all laws are assumed unjustified until shown otherwise' (Brennan 2012: 36).

Finally, for negative-liberty-based views, governmental decision-making is concerned with making trade offs. Since with this conception different freedoms are in conflict, some freedoms must be restricted in order to secure others. And since with this conception freedom can conflict with other moral values, such as justice and equality, trade offs must also be made between negative liberty and these other values (Shnayderman 2013: 719).

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2.2 Negative liberty's dilemma

A core commitment of the negative liberty approach is to provide a non-moral, merely descriptive definition of freedom. The advantages of being able to provide such a merely descriptive definition of freedom would be considerable. To start, such a conception would allow us to separate the description of freedom from its moral evaluation. It would thus be compatible with a wide variety of normative frameworks and accounts of the moral worth of freedom. We could also employ this conception of freedom in policymaking without bringing in any normative commitments.

Critics of negative liberty have largely refrained from challenging this aim of offering a merely descriptive conception of freedom. This is unsurprising, given the advantages articulated above and given that the non-interference approach's primary competitor – neo-republicanism, with its conception of freedom as non-domination – shares this core commitment to providing a merely descriptive definition of freedom. In contrast, the Kantian approach that follows rejects this central commitment, offering a unique critical perspective on the negative liberty approach.

In general, non-interference views seek to offer:

(1) a merely descriptive, non-moral conception of freedom (Carter 1999);
(2) that captures our intuitions concerning freedom and unfreedom (Carter 2008: 64); and
(3) can play a foundational role in moral theory, being invoked as a value that can be weighed against other values to determine what we ought to do (Carter 2011: 491; Shnayderman 2013: 719).

One prominent criticism of many negative liberty views is that they are implicitly moralized, implicitly presupposing the moral theory they are meant to help construct. A second criticism of different negative liberty views is that they fail to offer an intuitively compelling conception of freedom that captures our intuitive understanding of what it is to be free and unfree. While these criticisms have thus far been offered separately, from the Kantian perspective, we can view them as the two horns of a dilemma facing negative-liberty-based views:

The Moralized Approach: If one appeals to an account of morality or rights beyond a bare principle of non-interference to specify what constitutes unfreedom, then freedom is defined in terms of this moral theory and so cannot play a foundational role in this theory without circularity.

The Bare Non-interference Approach: If one jettisons these moral presuppositions and defines freedom simply in terms of non-interference, the resulting conception of freedom will no longer be intuitively compelling.

Here, I present each horn in detail and then close with a restatement of the overarching dilemma.

2.2.1 Horn 1: the moralized approach. Some negative liberty views explicitly define freedom and unfreedom in terms of a separate account of rights. These are moralized accounts of freedom where one is unfree only when one is being interfered with *in doing what one has a right to do*.[6]

These moralized views often resonate with our intuitions about freedom and unfreedom more than would a bare non-interference view, where anything that

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interferes with a person's chosen action makes them unfree. While a bare non-interference view is incredibly broad, these moralized views significantly narrow down the class of constraints that constitute unfreedom. Furthermore, a bare principle of non-interference cannot specify which forms of interference should be prohibited and which should be permitted. For example, assault and interfering with assault are both interference, so a principle of non-interference does not in itself have the resources to distinguish these actions. But a moralized view does: since on a moralized view, interference only makes someone unfree when they are doing something they have a right to do, interfering with assault (something we do not have the right to do) will not make the would-be assailant unfree.

But while these moralized views may resonate with our intuitions, they sacrifice freedom's foundational moral role. On these views, freedom is defined in terms of an account of rights, and so freedom cannot play a foundational role in that system of rights without circularity. As G. A. Cohen (1988: 294-6) explains, such views often invoke freedom as a justification for other rights while also defining what constitutes freedom in terms of those other rights. Moralized views can avoid this circularity by not invoking freedom as a justification for other rights. But if they do, 'freedom loses its status as one of the fundamental moral values grounding a liberal theory of justice', as with a moralized view, 'the burden of justification rests instead on the moral values in terms of which freedom is defined' (Carter 2011: 491). So, while a moralized conception of negative liberty may resonate with our intuitions about freedom and unfreedom, it does so at the cost of sacrificing freedom's foundational moral role.

One could be perfectly content to deny freedom this foundational role, seeing freedom as a derivative concept that depends on other values for its meaning and worth. However, proponents of negative liberty have largely sought to preserve this foundational role for freedom, seeking instead to avoid this problem of circularity by refraining from defining freedom in terms of a separate account of rights.

At the same time, many of these views still do not take a bare non-interference approach, classifying only a narrow subset of obstacles that interfere with our activities as unfreedom. To start, these views tend to classify as unfreedom only those constraints imposed by other people.[7] These views also tend to narrow their focus a step further, arguing that only constraints that can be causally traced to the activity of others in a particular way can make us unfree. A bare causal responsibility view is incredibly broad, as virtually all constraints are to some degree the result of other persons' activity.[8] These views tend instead to focus more narrowly on those constraints that others are morally or causally responsible for in some more robust sense.

In winnowing down what counts as unfreedom, some of these views openly appeal to external moral theory. For example, some proponents of negative liberty argue for a moral responsibility view, where only those actions people are morally responsible for can constitute constraints on freedom (Miller 1983; Kristjánsson 1996, Shnayderman 2013). Other views appeal to external moral theory less openly; for example, some views argue that only persons' actions and omissions can constitute constraints on freedom,[9] while still others assert that social and political theory is simply concerned with what people do to one another, and no further justification for negative liberty's focus on the interpersonal is necessary or appropriate.[10]

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While these conceptions of freedom are not explicitly defined with reference to a full system of rights, I argue that they are still moralized. Explicitly or implicitly, these views rely on moral theory external to the principle of non-interference to specify what constitutes unfreedom. The principles that justify this narrowed focus are inevitably principles of moral responsibility: principles that hold us responsible for certain consequences that follow from our choices to act in ways that affect others. With these conceptions of freedom, external moral theory demarcates the boundaries of freedom and unfreedom.[11]

While their moralization is less obvious, these views face the same problem of circularity facing more overtly moralized views. In narrowing down the source, magnitude, and causal connection of interference that constitutes unfreedom to resonate with an intuitive idea of political freedom, these moralized conceptions of freedom presuppose the moral theory in which they are meant to play a foundational role. So, while these conceptions of freedom may resonate with our intuitions, they still deny freedom a foundational role in moral theory.

2.2.2 Horn 2: the bare non-interference approach. In contrast, a bare non-interference conception of negative liberty can avoid the problematic moral presuppositions of the moralized conceptions. On a bare non-interference view, one is free when one can act as one chooses; there is no specific focus on interference from others and no differentiation between the different actions one might choose. With views of this sort, such as Ian Carter's prominent account, non-interference is a foundational value in a broader moral theory, and we should seek to maximize our freedom by minimizing interference.[12] With a scalar conception of freedom of this sort, the more choices you can make, the freer you are. Since a bare non-interference conception does not take on moral presuppositions to specify what constitutes unfreedom, such a merely descriptive and non-moral conception of freedom can play a foundational moral role.

But as even proponents of this view sometimes concede, when more freedom is understood as a higher number of available choices, 'it can seem puzzling that this should have *intrinsic* value' (Hurka 1987: 362). Proponents can and do offer reasons why we might value having more choices as such; for example, Carter (1999: 42) draws on Hurka in asserting that 'we value having *more* choices rather than *less*' because this gives us more impact on the world.[13] But such a conception of freedom runs into trouble insofar as it is intended as a comprehensive conception of freedom that coheres with our key intuitions concerning what it is to be free, as some key examples make plain.

Intuitively, you can be free in an important sense even when you have very few choices available to you: for example, choosing to receive a particular medical treatment is still an important free choice to make even when it is the only promising treatment that exists. Furthermore, critics have extensively argued that non-interference conceptions fail to capture a central intuition concerning unfreedom in the case of slavery. On this view, there is an essential sense in which a slave is unfree in virtue of the master-slave relationship itself, even if a slave happened to have a higher number of available choices as a slave than they would unenslaved. Negative-liberty-based views can give an account of why a condition of slavery will tend to reduce the number of possible choices available to the slave, but they still must

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concede that on their view the connection between slavery and unfreedom is 'a contingent one' (Carter 2008: 69). Thus, this view can never comport with the foundational intuition that a slave is fundamentally and wholly unfree. These examples highlight a dimension of common intuitive ideas of freedom as autonomy, where freedom consists at least partly in living one's life as one chooses and not simply in having the highest possible number of available choices. Insofar as a conception of freedom is, as Carter (p. 64) argues, flawed if it 'conflicts with a basic intuition about unfreedom', the bare non-interference view is wanting in its dissonance with this intuitive idea of freedom as acting and living as you choose.

2.2.3 The dilemma. Many of the worries discussed above have been raised separately before. The novel worry I raise here is the overlooked dilemma facing negative-liberty-based views: if you eliminate the moralized aspects of negative liberty so that it can serve as a foundational moral value, you end up with a conception that conflicts with basic intuitions about what it means to be free. Proponents of negative liberty seek to offer a non-moral, merely descriptive conception of political liberty that both resonates with our intuitions and can play a foundational role in a broader moral theory or theory of rights. But these goals are inconsistent: a truly non-moral conception of political freedom lacks appeal as a foundational moral concept, while an intuitively appealing conception of negative liberty inevitably takes on moral presuppositions that render it unable to play a foundational moral role.

There are multiple ways to resolve this dilemma. To start, a proponent of a moralized approach could give up on freedom playing a foundational role in moral theory, being satisfied instead with a conception of freedom that is simply derivative of other values. And a proponent of a bare non-interference approach could be satisfied with a merely descriptive definition of freedom that conflicts with basic intuitions about what freedom is and why we value it.

But we might instead think that this dilemma reveals that our intuitive ideas about what it is to be free in this sense – in the sense pertaining to juridical rights – are fundamentally moral. If this is so, then we might instead seek to avoid this dilemma by abandoning the goal of providing a merely descriptive, non-moral definition of this sense of freedom. Again, the non-interference approach has historically not been challenged on this front, as the view's main interlocutor, the neo-republican view, shares the central commitment of providing a non-moral, merely descriptive definition of freedom. However, as we will see in what follows, the Kantian perspective rejects this central commitment, offering instead an essentially moral conception of rightful freedom.

3. The Kantian right to freedom

In articulating their conceptions of freedom, prominent contemporary theorists often share a standard approach: they first articulate a purportedly descriptive, non-moral conception of freedom, and then separately articulate a moral framework in which freedom of that sort has value. The Kantian theory of right offers a fundamentally different approach. Rather than proceeding from a non-moral, descriptive conception of freedom, this view starts instead with an account of what rights are and why we

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have them, and from there develops an account of freedom as the one innate, fundamental right.

Here, I start by articulating the Kantian right to freedom in detail, explaining its origins in Kantian practical philosophy more broadly.[14] I then detail the key features of the Kantian theory of right built on the foundations of this one innate right to freedom, contrasting in detail these features with those of a non-interference-based political theory. Finally, I conclude by explaining how this Kantian view avoids the dilemma facing non-interference views.

3.1 The right to freedom and its foundations

The foundation of the Kantian theory of right is the one innate right to freedom. Here, I will explain why we have rights within the Kantian framework, what this framework tells us about the nature of rights, and finally, what it means to have the innate right to freedom.

3.1.1 Why do we have rights?. Kant's overarching moral theory, encompassing his ethical and political theory,[15] begins with recognizing human beings' capacity for free choice, which Kant also refers to as our humanity. Our humanity consists in our rational nature: we have the capacity to set ends for ourselves and pursue them at will.[16] To set an end is to set an objective to be pursued in action. As rational beings, we are not determined by our instincts. Instead, we set our own ends: we *choose* what we do.

This rational nature, our humanity, is the ground of moral obligation within the Kantian view.[17] Each person should be treated with the respect they are due as a rational being. Treating a person like a rational being means respecting their authority to set their own ends for themselves. While one need not be committed to Kantian ethics in order to endorse the account of rights described below, these basic Kantian moral principles offer one compelling view of why we should endorse such an account.

3.1.2 What is a right?. As embodied beings who live in the world together, our external actions can affect one another. Rights are essentially *relational*: they delineate boundaries in our relationships with one another in the external world, specifying the choices we can and cannot rightfully make (*MM*, 6: 230).

Right governs how the exercise of our choice relates to others' exercise of their choice. In asking whether an action is consistent with the rights of others, the question is not whether the action undermines the desires or wishes of another; instead, the question is whether it undermines another's choice – whether it undermines making one's own decisions for oneself (*MM*, 6: 230).

If one believes, for Kantian or other reasons, that people have the right to be treated as the rational, self-governing beings they are, then one will be committed to an account of rights of this sort. On this account, rights: 1) dictate the boundaries of people's relationships with one another in the external world, and 2) demand that each person exercise their choice in a way that is consistent with the free exercise of choice of all others (*MM*, 6: 230).

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3.1.3 Freedom: the one innate right. Within the Kantian framework, all persons innately possess the right to freedom in virtue of their humanity, understood as the capacity to set ends for oneself and choose how and when to pursue them. As Kant puts it, '[*f*]*reedom* (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity' (*MM*, 6: 237). This right to freedom is the right to direct your own will in the world *consistently with the rights of others to do the same*. Importantly, each person's right to freedom is fully compatible with the rights of others: the right of each to govern their own will does not include a right to govern the wills of others.[18] The foundational principle of Kant's theory of right, the universal principle of right, commands that this right to freedom be respected (6: 230). This right thus serves as the foundation for all rights within the Kantian theory of right.

First and foremost, this right to freedom protects one's humanity itself – one's deliberative capacities and the ability to decide for oneself what one will do. Many actions can destroy or inhibit one's rational capacity to set and pursue one's own ends, thereby violating the right to freedom.[19] Murder, for example, is flatly inconsistent with the free choice of another, because it destroys their very capacity to make decisions for themselves. A person can also act in ways that inhibit, rather than fully destroy, others' capacities to set and pursue their own ends; for example, drugging someone without their consent would wrongfully inhibit their capacity for choice. Beyond protecting the mere capacity to set ends, the innate right to freedom protects the exercise of this capacity: so as long as your actions are consistent with the free choice of all others, you can choose to do whatever you want to do. You can set your own ends and pursue them as you will.

While the *right* to freedom is the foundation of the Kantian theory of right, we can develop from this one innate right a conception of what it is to be free. I am free in this sense when others act consistently with my governing my own will in the world, and I am correspondingly unfree whenever this rightful boundary in my relationships with others is transgressed. This idea of rightful freedom is thus distinctly relational, as it is a function of a person's relationships with others. This idea of rightful freedom is also distinctly moral, as the boundaries of freedom and unfreedom just are the rightful boundaries in our relationships with one another. And this rightful freedom is also universalizable: since each of us has the right to direct only our own will in the world, we can all be free at the same time.

3.2 Basic features of a Kantian theory of right

Here, I will outline the basic features of the Kantian system of rights that flows from the one innate right to freedom. In doing so, I will contrast this Kantian theory with negative-liberty-based views.

3.2.1 A moral conception of freedom. To start, Kantian rightful freedom differs fundamentally from a conception of freedom as negative liberty. Perhaps the most important difference between the two ideas of freedom is that Kantian rightful freedom is a directly moral conception of freedom, while negative liberty is intended as a non-moral, merely descriptive definition of freedom.

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One might worry that a comparison between this Kantian view and negative liberty is inapt. If negative liberty offers a descriptive conception of freedom while the Kantian view offers an account of our rights, then we might see the two accounts as answering distinct questions, one telling us what it is to be free while the other offers a moral view of which freedoms are rightful. If this were the case, then we might think a negative liberty conception could still be compatible with a Kantian theory of right: negative liberty tells us when we are free in relation to others (tells us, we might think, when we are independent of the choices of others), while the Kantian account tells us which freedoms to prioritize over others. We could see the right to freedom as securing a maximal equal share of unrestricted freedom of choice for everyone, where each person's sphere of freedom is restricted only insofar as this is needed to secure an equally large sphere of freedom for everyone else.

But this view misses the essential insight of the Kantian approach, which is that the question of when we are free in relation to others – when the free choice of all others is compatible with our free choice – is a question of right.[20] The Kantian framework begins with recognizing the capacity each person has to freely choose their own actions. This is not an account of when we are free in relation to others; instead, it is an account of the relationship between a person's will and action that flows from it. The Kantian theory of right then proceeds to a view of what it means to respect this capacity for choice in the external world and an account of why we are rightfully obligated to do so. From here, the view yields a conception of one's rightful freedom as that condition where one's capacity for choice is respected in the external world.

Our right to freedom is not a right to as much unrestricted choice as possible, as if that were something valuable in itself that we want to maximize. Instead, each person has the right to direct only their own will in the world. We are all free when we stand in this *relationship* of mutual independence from one another, where each person's independence *coexists* with each other person's independence.[21] Rightful freedom just is the condition where one's freedom of choice is respected in the external world; in other words, one is free in this sense when one's rights are respected. This sense of freedom cannot be articulated in merely descriptive, non-moral terms because it is the very concept of what it is for us to rightfully relate to one another.[22]

3.2.2 A universalizable conception of freedom. This brings us to a second fundamental difference between Kantian rightful freedom and a conception of freedom as negative liberty: Kantian rightful freedom is universalizable. If being the purposive rational agent that you are means that you have the right to direct your own will in the world, then all other purposive rational agents have the same right to direct their own wills in the world, and no person can have the right to direct the wills of others. Unlike with negative-liberty-based views, where 'the universal quest for greater personal liberty is, indeed, a zero-sum game' and securing one person's freedom means limiting another's, there is no conflict between different persons' rights to freedom and so no conflict between the full realization of everyone's rightful freedom on the Kantian view (Steiner 1983: 88-9).

To understand this difference between the two views, consider how each applies to a case of assault. With a negative-liberty-based view, prohibiting me from assaulting another person makes me unfree. When we put in place laws that prohibit assault, we

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choose to restrict the would-be assaulter's freedom to assault in order to secure the would-be victim's freedom from assault. We trade off one freedom for the sake of another that we value more. In contrast, the universalizable right to freedom does not include the right to violate another person's right to freedom by assaulting them. The would-be victim has the right to direct their own will in the external world, which entails basic bodily rights. If I attack them, I violate their right to freedom. Prohibiting me from attacking them does not restrict or curtail my right to freedom; it secures theirs. Unlike negative liberty, this universalizable right to freedom thus enables one to fully explain why assault is wrong without appeal to any other right or value beyond the right to freedom.

3.2.3 Freedom as the sole foundational right. Within the Kantian framework, the one innate right to freedom is the sole foundation for a complete and coherent Kantian system of rights. Some of the rights that flow from the right to freedom are innate rights that have determinate content simply in virtue of the right to freedom and the simple facts of our embodied existence. At the most abstract level, having the right to freedom means having other fundamental rights, such as rights to innate equality and self-mastery (*MM*, 6: 238). From these abstract rights, we can derive within this Kantian framework a set of basic innate human rights, such as basic bodily rights.[23]

Many of our rights, though, are not determinate solely in virtue of innate right. As fragile and mortal embodied beings, we exist in and depend on the world and the objects in it for our survival. At the same time, everything we do in the world affects and constrains the actions of everyone else. We must have some way to interact rightfully with the world around us and coordinate our activities in it. But these rights are not innately determinate:[24] since right governs relationships between persons as freely choosing subjects, there can be no innate rightful relationships with external objects that lack this capacity for choice. For these rights to be made determinate, we must extend our rightful relationships with one another to include rights regarding these external objects of choice.

Though innate right does not fill out the content of such indeterminate rights, it does tell us how indeterminate rights, including rights regarding external objects of choice, can be made determinate. If these rights were to be structured unilaterally, if one or some were able to structure the rights of all others, those with the power to structure the rights of others would be, to that extent, their masters, in violation of the right to innate equality under law that flows from the right to freedom (*MM*, 6: 257). Within the Kantian framework, rights must instead be structured omnilaterally: they must be structured through a will representing the wills of all who are governed by it and representing them equally. Through the state, we can unite our wills and make our rights determinate (6: 264).

As many Kantians have argued, omnilateral lawgiving requires a democratic system of governance through which we can structure these indeterminate rights[25] (Hanisch 2016; Rostbøll 2016; Stilz 2009). Once we have chosen through democratic processes to organize our society in a particular way, we have rights and duties to act in accordance with that decision. For example, there is nothing in innate right that dictates that we should drive on the right as opposed to the left side of the road, but once we select a side of the road through legislation, each of us has a duty to drive on the selected side and a right that others do so as well.

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The Kantian framework thus yields a constitutionally constrained democratic system of government. Innate rights are basic human rights that must be secured by any rightful system of government. The right to structure our indeterminate rights democratically is itself an innate right, but our democratic decision-making is still constrained by innate right – the scope and content of democratic decision-making must be compatible with innate right.

In this way, a full Kantian system of rights flows from the one foundational innate right to freedom. In providing resources to develop a full theory of right, this right to freedom and the Kantian theory of right more broadly differ fundamentally from negative liberty and negative-liberty-based views, where negative liberty is neither meant to play nor capable of playing such a foundational role.

This Kantian framework also differs from negative-liberty-based views in that the right to freedom can be violated not only by individual actions but also by legally structured conditions (*MM*, 6: 230-1). Individual actions, such as assault, can violate the right to freedom. But conditions established through action can also violate the right to freedom: an undemocratic system of government, for example, will violate the right to freedom, as will state-structured relationships of subordination such as slavery or indentured servitude. The Kantian approach thus differs fundamentally from negative-liberty-based views, on which only interfering actions can make us unfree and we can never be considered unfree solely in virtue of a subordinating relationship.[26]

3.2.4 No conflicts of right. Another distinctive feature of a Kantian theory of right is that a conflict of rights is not possible within the system of rights built on the foundation of this right to freedom.[27] This feature follows from the features articulated above. The universalizability of the Kantian right to freedom means that each person's right to freedom is compatible with every other's right to freedom. And since the right to freedom is the sole foundation for all rights within this framework, there are no competing rights for this right to freedom to come into conflict with.

There are also no conflicts between the different rights that flow from the foundation of this one innate right to freedom. Take innate right: while it may be difficult to ascertain the precise content of all of our innate rights, our innate rights are not in conflict with one another; instead, specifying the full content of innate right entails reconciling different aspects of what it means to have the right to freedom into one 'coherent doctrinal whole' (Ripstein 2009: 214).

Consider, for example, freedom of expression. Within the Kantian framework, there is no right to freedom of expression as such. Instead, to have the right to freedom is to have the right to say whatever we choose to others so long as our doing so 'does not in itself diminish what is theirs' (*MM*, 6: 238). We can, through our words, violate the innate rights of others: we can, for example, lie under oath or threaten others with physical injury. When we prohibit such actions, we do not trade off one right, freedom of expression, for the sake of other rights, such as bodily rights. Instead, we are reconciling innate right with itself: the right to freedom of expression does not include the right to usurp control of others' decision-making by threatening to violate their bodily rights.

Beyond innate rights, there is also no conflict between the rights that we establish through positive lawgiving. In deciding which rights to establish, we do make trade offs, but these are trade offs between interests and values, not between rights.

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Instead, we sacrifice some interests for the sake of others we value more highly, putting in place laws that reflect this priority. For example, in deciding where and how to place streetlamps, we balance our interest in reducing light pollution against our interest in increased safety, making regulations that reflect the value we assign to each. Our consequent rights are the product of this decision-making process, not something we trade off during this process.

This is another key difference between this Kantian theory of right and negative-liberty-based views. For those employing a non-interference conception of freedom, different persons' freedoms are in conflict, and a right to freedom will typically be understood to be in conflict with other rights, such as equality and welfare rights. While preferences and values will always come into conflict, there are no conflicts between rights within this Kantian framework.

3.2.5 Freedom and the role of government. All of these features of this Kantian theory of right yield a vision of the role of government that differs widely from that of negative-liberty-based views. The role of government, for a negative-liberty-based view, is to make trade offs: we must choose to trade off some freedoms for the sake of others, and we must trade off freedom for the sake of other rights that freedom conflicts with. And since all interference, including government interference, is unfreedom, this view carries with it a presumption that government interference should be kept to a minimum.

In contrast, within the Kantian framework, the role of government is not to trade off some rights for others. Instead, the role of government is to make determinate and secure the right to freedom, which is the sole foundation for a full and coherent system of rights. Our government represents our united will, and through our government we act together to make the right to freedom determinate. The right to freedom must also be secured omnilaterally: here, the role of government is to put in place legal mechanisms that recognize, adjudicate, and enforce the right to freedom and the many rights that flow from it.

And this Kantian framework carries no presumption that government activity should be kept to a minimum. On this view, those government actions that make our rights determinate and secure do not undermine our rightful freedom, and we have no reason to minimize interference of this sort. Instead, there is a general requirement that the government take whatever action is required to make determinate and secure the right to freedom. For example, if certain rights that flow from the right to freedom can only be established and secured through democratic processes, then we have a right that these democratic processes be carried out. The right amount of government activity is exactly that amount of government activity that is required to make determinate and secure the right to freedom, no more *and no less*. Within this framework, we have just as much reason to be sceptical of a lack of government activity as we do of its presence.

All the many government actions that are typically said to restrict freedom as negative liberty because they interfere with citizens' lives, then, cannot be presumed to violate this universalizable right to freedom. Instead, the question with any particular government action is whether taking this action is required by the right to freedom. The universalizability of this right to freedom thus opens the door for rethinking what a fundamental right to freedom entails.

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3.3 Returning to negative liberty's dilemma

Recall that negative-liberty-based views face a dilemma in attempting to offer a merely descriptive, non-moral conception of freedom: 1) defining freedom in terms of a separate moral theory deprives freedom of its foundational moral role, but 2) defining freedom without reference to moral theory sacrifices what made the conception of freedom intuitively compelling.

Here, I explain how this Kantian conception of rightful freedom avoids this dilemma by abandoning the goal of centring a merely descriptive, non-moral conception of freedom. Within the Kantian framework, each of us has the right to freedom: each of us has the right to direct our own (and only our own) wills in the world. Rightful freedom, on this view, just is this rightful relationship with others, where others respect one's governance of one's own will.

While this is a moral conception of freedom, it is not moralized. A conception of negative liberty is moralized when it takes a broad non-interference view and narrows down what constitutes unfreedom by referencing a separate account of our moral rights and duties. A negative-liberty-based view is circular when it then employs this conception of freedom as a foundational moral concept by means of which we can specify our moral responsibilities. In contrast, the Kantian right to freedom is itself the foundational moral concept for a full Kantian theory of right. As the foundational right of a complete and coherent system of rights, all juridical rights and duties are specified with reference to this one innate right. On this view, rightful freedom just is that condition where one's right to direct one's own will in the world is respected. The question of whether someone is free in this sense just is the question of whether their rights have been violated – it is not a separate or distinct question. There is no circularity when we build a complete system of rights on the foundation of the one innate right, as this one innate right does not presuppose the theory of rights it grounds.

And while the Kantian theory of right is systematically motivated rather than intuition-driven, this conception of rightful freedom arguably fares well with our intuitions. To start, unlike negative liberty, this Kantian conception of rightful freedom is not intended as a comprehensive definition of what it is to be free. There are many different ways in which we could be said to be unfree, each with its own corresponding conception of freedom. This conception is intended as one among many conceptions of freedom; as such, it vindicates the intuitions of those who would reject a monistic definition of freedom. And it offers an intuitively compelling account of the specific form of freedom that we have a right to: this essentially relational conception of freedom captures the intuitive importance of self-government as well as the intuition that we are made unfree by the choices of others, including by simple choices to act on others directly and by choices to structure oppressive relationships and conditions.

This Kantian account does abandon the goal of providing a merely descriptive, non-moral definition of freedom, and as such, this juridical conception of freedom cannot do all of the things that those searching for a merely descriptive conception of freedom would want a conception of freedom to do. On this view, we cannot separate the description of this sense of freedom from its moral evaluation. One will have to take on board at least some foundational Kantian moral commitments in order to

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employ this conception of freedom.[28] This conception of freedom is, therefore, not suitable as a general description of what it is to be free that could be employed by any moral theory. We also cannot employ this conception of freedom in policy analysis to evaluate how free people are independently of normative commitments.

But we might think that the dilemma of negative liberty shows us that the goal of offering a merely descriptive definition of the sort of freedom that we have a right to is misguided in the first place. Moralized conceptions of negative liberty claim to offer a purely descriptive conception of freedom that can play these roles, but the resulting judgements and views are not in truth free from moral commitments. Claims that such a conception can serve as a neutral criterion in policy analysis are false, and moral theories built using these moralized conceptions are circular. And while a bare non-interference conception of freedom arguably can play a neutral role in policy analysis and a foundational role in moral theory, the conception of freedom it offers is not an intuitively compelling account of the form of freedom we have a right to. Such a view sacrifices the very moral commitments that make an account of this form of freedom compelling. We might think, then, that we are ultimately better off with a conception of rightful freedom that wears its moral commitments on its sleeve.

4. Situating Kantian rightful freedom within the contemporary landscape

For the reasons articulated above, the Kantian conception of rightful freedom differs fundamentally from a conception of freedom as negative liberty or non-interference. We might naturally wonder, then, how this Kantian conception of freedom should be situated within the landscape of conceptions of freedom in contemporary political theory. I carry out this inquiry here, ultimately arguing that this Kantian conception of freedom can be understood as a distinctive rights-based republican conception of freedom.

4.1 Positive liberty

To start, the Kantian conception of freedom is not a conception of freedom as positive liberty. But amongst popular conceptions of freedom in political theory, Kant has often been closely associated with positive liberty. In his classic discussion of positive and negative liberty, Isaiah Berlin (2002: 191) pointed to the ideal of autonomy from Kantian ethics, rational governance of one's own will in accordance with the moral law, as a prime example of positive freedom. Adding to the confusion, or perhaps the ultimate cause of it, is the historical lack of attention Kant's theory of right has been paid since his death until recent decades, with many instead arguing for juridical rights on the basis of Kantian ethics.

It is thus important to emphasize that a right to rational self-mastery, or a duty to ensure people achieve rational self-mastery, is fundamentally inconsistent with the Kantian moral framework. What those who would articulate a Kantian right to positive liberty overlook is the critical distinction that is drawn in Kantian moral theory between ethics and right.[29] The coercive enforcement of *ethical* duties, such as the rational self-government of one's will, would be not only unjust but also impossible within the Kantian framework: in order for an ethical duty to be fulfilled, the motive for the ethical action must be duty itself; such a motive must be supplied

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internally and cannot be provided by coercion (*MM*, 6: 220, 239). The Kantian theory of right is concerned instead with the external relationship between persons' free choices and whether we restrict the free choice of others through the exercise of our own free choice.

The Kantian framework is thus fundamentally opposed to employing within a theory of right any such positive conception of freedom. This includes any positive conceptions where one is considered unfree in virtue of failing to act in accordance with ethical obligations or with one's own true or authentic preferences.[30] More generally, the Kantian framework is incompatible with a juridical right to any non-relational form of freedom. As a result, the Kantian approach is incompatible with John Christman's (2015: 177) influential contemporary conception of positive freedom, where one can be made unfree simply in virtue of the lack of 'basic resources' as well as by internal inauthenticity. The Kantian framework is also incompatible with the non-relational conception of freedom as the 'freedom to achieve well-being' at the centre of the capabilities approach to political theory popularized by Amartya Sen and Martha Nussbaum (Sen 1985: 201).

Importantly, while the Kantian theory of right is incompatible with a right to any such positive form of freedom where freedom is understood in non-relational terms, the Kantian framework arguably still has the conceptual resources to claim that lack of access to basic resources can violate the right to freedom. As many Kantians argue, the choice to deny people access to resources that are required for agency or equal democratic citizenship is a choice to undermine their agency or equal citizenship, violating their right to freedom (Love 2020: 150-1; Pinheiro Walla 2019; Varden 2006; Holtman 2004).

4.2 Republican freedom

In political theory, republicanism is both a historical tradition, most prominently exposited by Quentin Skinner (2002), and a thriving contemporary research programme, popularized especially by Philip Pettit (1997). It has been well established that Kant is a part of the republican historical tradition, as his views share in key republican commitments.[31] Here, I focus on situating the Kantian theory of right amongst contemporary republican views.

The general intuition motivating republicanism is that domination can make us unfree even in the absence of interference: a slave is fundamentally unfree even if their master chooses not to interfere with them. Contemporary republicanism largely builds on Pettit's neo-republicanism, where you are dominated and so unfree whenever another has power over you that is not ultimately 'subject to your control', and you are correspondingly free to the extent that you are not controlled by others in this way (Pettit 2012: 57). This conception of freedom, like negative liberty, is intended as a non-moral, merely descriptive definition of freedom. Non-domination is then situated within a broader consequentialist political framework, where non-domination is the sole goal that political institutions should seek to promote (Pettit 2012: 123), as maximizing non-domination secures not only freedom but also all other values that are characteristic of 'an intuitive, left-of-centre, account of the demands of justice' (Pettit 2012: 127).

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The Kantian theory of right is broadly republican, as it shares this basic republican view that freedom can be undermined by a relationship of domination even in the absence of active interference. But Kantian republicanism differs fundamentally from Pettit's neo-republicanism.[32] Most importantly, the Kantian framework rejects the aim, shared by neo-republican and negative-liberty-based views, of providing a non-moral, merely descriptive conception of freedom. As a directly moral view, the Kantian account avoids the dilemma that results from trying to articulate the form of freedom we have a right to without reference to moral commitments.[33] And this conception of rightful freedom gives us different answers about what it is to be free, as not all relationships where one has alien control over another will violate the right to freedom and many actions and conditions that are not naturally or best described as domination, such as murder and assault, also violate the right to freedom.

The Kantian theory of right thus offers a rights-based republicanism that provides a compelling alternative to Pettit's consequentialist republicanism.[34] While Pettit's neo-republican framework seeks only to minimize domination and cannot yield a right to be free of any particular form of domination, within the Kantian framework a relationship of subordination that violates the right to freedom is unjust and categorically impermissible. Those who would argue that we have a right to be free of a particular form of domination will thus find a better home for their arguments within the Kantian framework (Love 2023, 2025). This rights-based Kantian republicanism also resonates with the position of a growing group of republican theorists who see rights as indispensable to understanding what freedom from domination is and why it matters, and it offers a compelling alternative republican framework for articulating such rights-based republican views.[35]

5. Conclusion

In contemporary political philosophy, those seeking to explicate the form of freedom we have a right to have overwhelmingly sought to give non-moral, merely descriptive accounts of what it is to be free. But, as I have argued above, proponents of negative liberty's attempts to supply such a non-moral conception have been fraught: either these conceptions implicitly rely on the very moral theories in which they are meant to play a foundational role, or they jettison these moral presuppositions and, in doing so, undermine the conception's appeal as a foundational moral concept.

When we recognize that having the right to live your own life as you choose entails respecting others' rights to do the same, so many of the common assumptions of what a right to freedom entails fall away. Because our rights to freedom (and all the rights that flow from the right to freedom) are consistent with one another, these rights can be fully respected rather than maximized. The role of government is to make determinate and fully secure the right to freedom rather than to trade off some freedoms for others or for other rights beyond freedom. And this view carries with it no presumption that the government that best secures our freedom will be as small as possible. With this universalizable right to freedom, it no longer suffices to point out that government activity interferes with the lives of citizens in order to establish that government activity makes us unfree. We can just as easily be made unfree by a lack of government action as we can by its presence.

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Rather than presuming government action makes us unfree, we must develop a full account of what it takes to secure our rightful freedom, re-examining each right and policy in light of this end. For example, activity taken to secure subsistence rights, even if substantial, will not violate the right to freedom if we can show that we do indeed have subsistence rights of this sort. And public health measures that restrict our activity do not necessarily make us unfree if these measures are required to secure everyone's right to freedom. Instead of aiming to keep government activity to a minimum, we must instead aim to have exactly the amount of government activity that the right to freedom requires. This task is unquestionably more complicated than simply aiming at a minimum of government activity, but only by carrying it out can we fully understand what it means to have the fundamental right to freedom.

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Notes

1 See Kisilevsky (2016), Rostbøll (2016: esp. 795-7), James (2016: esp. 302-6), and Ripstein (2009: 33, 42-3).
2 For a list of scholars who give a negative liberty reading of Kant's theory of right, see Kisilevsky (2016: 42n2). This understanding persists, even amongst prominent Kant scholars; Paul Guyer (2018: 604), for example, understands the Kantian theory of right as similar to Rawls' theory of justice in that on both views 'we are all free agents whose freedom ought to be maximally but equally preserved in all our interactions.'
3 See, for example, Basevich (2022, 2023), Pascoe (2022), Varden (2020), Pinheiro Walla (2019), Mills (2017), Allais (2015, 2016), and Holtman (2004).
4 A growing contingent of prominent republican theorists persuasively argues that rights are essential to articulating the ideal of freedom as non-domination (Pala 2024; Costa 2022; Layman 2021).
5 Importantly, 'this prevention can be either *actual* or *subjunctive*: one is negatively unfree to do *x* not only if someone has *already* foreclosed the option of doing *x*, but also if, *were* one to attempt to do *x*, someone *would* act so as to foreclose one's doing *x*' (Carter 2008: 67).
6 See, for example, Nozick (1974).
7 John Lawless (2018) insightfully explicates this challenge for negative views in detail.
8 With a bare causal responsibility view, 'the scope of mere inability will shrink almost to vanishing point; for who can say what impediments to individual action might not be removed by the concerted efforts of men?' (Miller 1983: 74).
9 See, for example, Narveson (1988).
10 For example, Hillel Steiner (1983: 74) asserts that '[l]iberty is a social relation, a relation between persons.' See also Kramer (2003: 368).
11 For more on different ways that conceptions of negative liberty can be moralized, see Bader (2018).
12 Carter defines freedom as 'the absence of preventing conditions on agents' possible actions' (1999: 5) and argues that we can evaluate the overall freedom of groups of people by evaluating 'the physical possibility of sets of actions' (p. 245).
13 Critics argue, however, that it is well known that 'too many alternatives can have psychological costs', and so this claim 'is thus in desperate need of empirical underpinning' (Dowding and Van Hees 2008: 102).
14 Importantly, my purpose in developing this account is not to argue for a particular interpretation of Kant's own views. Though I believe that my account is a viable reconstruction of Kant's own conception of rightful freedom, I do not defend this belief here.
15 I provide citations to Kant's work referencing the volume and page number of the Academy edition, to be found in the margins of the translations used, and as abbreviated: G = *Groundwork of the Metaphysics*

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of Morals (in Kant 1996); MM = *The Metaphysics of Morals* (in Kant 1996).

For an explanation of Kant's use of 'morality' as a term encompassing all of practical philosophy, which breaks down into duties of right and ethical duties, see (*MM*, 6: 379). In asserting that a Kantian theory of right is part of the broader project of Kantian moral theory, I am not claiming that the basic principles of this theory of right can be derived from the categorical imperative. For an insightful discussion of this relationship between morals, ethics, and right, see Tomassini (2023). Despite its moral roots, Kantian political theory is not perfectionist (Pallikkathayil 2016).

16 For Kant's explication of humanity as an end in itself, see (*G*, 4: 428-9).

17 Kantians disagree about how exactly rational nature grounds moral obligation. Many argue for a constructivist view: the categorical imperative, the supreme moral principle, is the law of practical reason itself, and so it is constitutive of our very nature as rational agents to be bound by this universal moral law. See, for example, Engstrom (2009) and Reath and Timmerman (2010). The account I offer here is compatible with this constructivist view, although not committed to any metaethical view in particular.

18 We can, however, govern our wills together, as this Kantian theory of right includes collective self-government through the state; see the discussion below in Section 3.2.

19 See Ripstein's (2009: 43-5) account of the destruction of agency as one of two ways that the right to freedom can be violated.

20 As Kisilevsky (2016: 43) puts it, 'freedom as independence is a distinctly juridical ideal.'

21 This account can explain why our political freedom is 'undiminished' within a rightful condition (*MM*, 6: 316).

22 For this reason, this Kantian account is incompatible with List and Valentini's (2016: 1067) non-moral account of 'freedom as independence'.

23 For a Kantian account of human rights, see Gilabert (2018).

24 On the necessity of the state for omnilateral lawgiving that can rightfully make rights such as these determinate, see Ripstein (2009: 145-81) and Stilz (2009: 27-56).

25 Arguably, Kant himself did not view procedural democracy as required by the right to freedom (Hanisch 2016).

26 The Kantian approach can thus avoid criticism faced by both negative and neo-republican conceptions of freedom. A common neo-republican criticism of negative liberty is that it cannot adequately accommodate cases of domination without interference, and a common negative liberty criticism of neo-republican freedom is that it cannot adequately accommodate cases of interference without domination. But the universalizable right to freedom explains the wrongness of both individual actions that are not naturally or best described as cases of domination, such as assault, *and* cases of domination where one has disproportionate power over another, even in the absence of interference.

27 As Kant puts it, 'a *collision of duties* and obligations is inconceivable' (*MM*, 6: 224).

28 But there are arguably still good reasons to endorse a Kantian right to freedom even if one does not endorse Kantian ethics (Hodgson 2010: 801-2).

29 See note 15 above.

30 For an example of the latter sort of view, see Taylor (1979).

31 A number of Kant scholars offer insightful discussions concerning Kant's place in the historical republican tradition (Caranti 2013; Maliks 2014; Zöller 2023).

32 For more on the differences between the two views, see Hodgson (2010).

33 Although this is beyond the scope of my arguments here, Pettit's neo-republicanism arguably suffers from a dilemma analogous to that facing negative liberty. Neo-republicanism also seeks to offer a non-moral, merely descriptive yet intuitively compelling conception of freedom that can play a foundational role in moral theory. But perhaps the most prominent criticism of neo-republicanism is that its definition of domination is moralized, as it implicitly relies on moral presuppositions in claiming that obviously power-imbalanced relationships such as imprisonment and the parent-child relationship do not constitute domination (Costa 2007; Carter 2008). If it is moralized, then it cannot be used, as Pettit uses it, as a foundational moral concept with reference to which we specify our moral theory, since it implicitly presupposes this moral theory. At the same time, if we accept Pettit's simple definition of domination as non-alien control, we might think, as others argue, that this conception of domination lacks the conceptual resources to generate intuitively compelling determinate policy recommendations (McMahon 2005).

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34 For a thorough critique of relationships of subordination within the Kantian theory of right that goes beyond Kant's own views and an explanation of how this Kantian view avoids key criticisms of neo-republicanism, see Love (2025). For an explanation in particular of why this Kantian view better accounts for the injustice of domination than does the neo-republican view, see Love (2023).
35 See Pala (2024), Costa (2022), and Layman (2021). Along similar lines, Rainer Forst (2013) argues that Pettit's republicanism must presuppose a Kantian notion of respect to be convincing.

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