COSMOPOLITANISM AND COLONIALISM:

Marriage, Race, and Kant's Philosophy of the Family

By

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This dissertation has been read and accepted for the Graduate Faculty in Philosophy in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

Kant's vision of cosmopolitanism and his claims to universalism have been attacked by feminist theorists, critical race theorists, postmodernists, and African philosophers, and have been defended -- just as adamantly -- by contemporary moral and political philosophers who argue that his mature cosmopolitanism involves both a rejection of his racist views and a critique of European colonialism. This project counters those claims through an examination marriage and the family as central elements of the institutional order that shapes Kant's political vision. By asking how, concretely, Kant thought a juridical cosmopolitan world might be achieved and examining his own vision of the transformations necessary to achieve global juridical cosmopolitanism, this project shoes that while Kant criticizes the colonial practices of his day, his cosmopolitan vision involves a justification of the colonial processes that would emerge a century later, and thus fails to meet his own standards of universalism.

Marriage is, at first glance, an odd pathway into an interrogation of Kant's universalism. I argue that, to understand Kant's universalism, we must examine the institutions that organize his political thought and condition his account of personhood, independence, and equality. By focusing on Kant's philosophy of the family, which I understand as a particular construction of marriage, labor, and the household that organizes political spaces and subjectivities, this project shows, first, that Kant's political subject is conditioned by a particular construction of family and the domestic sphere, and that the exclusions that undermine his universalism depend not simply on his own racist

and sexist views, but on a structural argument internal to his account of Right. Second, by introducing a distinction between colonial forms of racism, and by highlighting the differences between early and late colonial practices, it demonstrates that Kant's mature cosmopolitanism is not a rejection of colonialism but a move towards the emerging logics of late colonialism. It argues that contemporary theorists who draw on Kantian claims about the importance of well-functioning institutions to cosmopolitanism must engage with the raced and gendered assumptions built into Kant's account of institutions, and consider alternative institutional constellations. By offering African feminist challenges to Kant's philosophy of the family, this project suggests one method for a more radically inclusive de-colonial cosmopolitan philosophy.

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And finally, this dissertation is for my mother, who I suspect wouldn't agree with a word of it, but would be so, so proud of me for writing it. I have often thought of the afternoon I applied to graduate school and she sealed my envelopes for me, more fully committed to my future than I was.

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INTRODUCTION

> "THE WHOLE INTEREST OF REASON, SPECULATIVE AS WELL AS PRACTICAL, IS CENTERED IN THE THREE FOLLOWING QUESTIONS: WHAT CAN I KNOW? WHAT OUGHT I TO DO? WHAT MAY I HOPE FOR?" Kant, *Critique of Pure Reason.* A805

In 1784, just three years after Kant posed these questions in the First Critique, he gestures towards a possible answer to the third. In the *Idea for a Universal History with a Cosmopolitan Aim*, Kant offers us "the hope that, after many revolutions, with all their transformative effects, the highest purpose of nature, a universal *cosmopolitan existence*, will at last be realized as the matrix within which all the original capacities of the human race may develop."[1] In the final decade of his life, Kant would explore, develop, and defend this vision of a cosmopolitan future as a "matrix" within which natural and moral capacities might develop, leading mankind towards his hoped-for end: eternal peace and a state of collective enlightenment.

Kant is a familiar figure in cosmopolitan discourses about justice. Kantian universal values like dignity, autonomy, self-legislation and equality ground contemporary cosmopolitan arguments, and are often taken to suggest a moral vision of a global kingdom of ends. This project has little to say about this abstract vision of moral cosmopolitanism. Instead, it takes on Kant's own vision of cosmopolitanism imagined as a world united universally by shared values, principles and political institutions. A cosmopolitan world, Kant tells us, is one in which all persons adopt both the values of justice and the central institutions of the rightful constitutional state.

This vision has been attacked by feminist theorists, critical race theorists, postmodernists and African philosophers. It has been defended just as adamantly by contemporary moral and political philosophers, who argue that his mature cosmopolitanism involves both a rejection of his racist views and a critique of European colonialism. Pauline Kleingeld and Sankar Muthu have recently

[1] Kant, *Idea for a Universal History with a Cosmopolitan Aim.* [Henceforth: IUH.] (In Reiss, 1991), p. 51.

argued that the mature Kant was a critic of colonialism, and that the cosmopolitan world he envisions is thus as universal and inclusive as he suggests.[2] This project counters those claims by asking how, concretely, Kant thought a juridical cosmopolitan world might be achieved. By examining Kant's own vision of the transformations necessary to achieve global juridical cosmopolitanism, I argue that while Kant criticizes the colonial practices of his day, his cosmopolitan vision involves a justification of the colonial processes that would emerge a century later. In this way, we will see that Kant's juridical cosmopolitanism involves a rationalization of late colonial policies, and thus fails to meet his own standards of universalism.

To make this argument, this project asks three questions whose answers suggest that Kant's cosmopolitan vision is not as universal as one might hope. First, I ask what a juridical cosmopolitan order would look like by examining the institutional structure on which his account of the rightful juridical order depends. This shows that Kant's account of the rightful state entails a particular pattern of the institutions of everyday life and that participation in this rightful order is, on Kant's account, not optional: to choose to remain outside a rightful order is "wrong in the highest degree."[3]

Second, this project explores the construction of Kant's political subject by analyzing his philosophy of the family, which it understands as a particular construction of marriage and the household that plays a critical role in organizing political spaces and subjectivities. By drawing out the critical role the family and domestic space play in Kant's political arguments, it argues that the Kantian political subject is dependent upon a particular institutional pattern of family life.

Third, this project explores the empirical projects that shape Kant's cosmopolitan arguments by turning to his historical and anthropological arguments, with particular emphasis on the relationship between the teleological method he defends and his theory of race. I argue that the

[2] Kleingeld, Pauline. (2007). "Kant's second thoughts on race." *The Philosophical Quarterly, 57*(229), 573-592; Muthu, Sankar (2003). *Enlightenment Against Empire.* Princeton University Press.
[3] Kant, MS 6:308, 344.

cosmopolitan world Kant envisions is shaped by assumptions carried over from his theory of race, and that Kant therefore advocates a cosmopolitanism led by Europeans. I present an account of Kant's juridical cosmopolitan vision as informed by his theory of race, arguing that it would take the form of a European-led civilizing project which introduces a particular set of "rightful" juridical and institutional practices designed to produce recognizable political subjects and enhance global trade. Drawing on my account of Kant's philosophy of the family, I show that this "rightful coloniality" entails a radical transformation of the family, and that, in this way, Kant's cosmopolitan vision is strikingly similar to the model of colonialism developed in Africa in the late 19th century. By turning to a concrete colonial encounter in 19th century Africa that closely models Kant's vision of rightful juridical cosmopolitanism, this project interrogates those claims from the perspective of those Kant's project seeks to civilize.

In connecting Kant's cosmopolitanism to his account of marriage and the family, this project offers an innovative approach to evaluating Kant's cosmopolitan vision. Marriage is, at first glance, an odd pathway into an interrogation of Kant's universalism. Marriage, in the form of the curiously named "right to a person akin to a right to a thing", is one of the three fundamental institutions of Private Right developed in the *Rechtslehre.* There, in the first part of the *Metaphysics of Morals*, Kant develops the "practical" application of his moral philosophy by constructing *Recht*, a rightful juridical order grounded in an obligation to *coercively* protect freedom of action. This universal conception of *Recht* grounds and necessitates Kant's account of the state, which in turn is positioned as the starting point for a global cosmopolitan order. To understand this cosmopolitan vision within the *Rechtslehre*, we must first examine the institutions that organize Kant's political thought and condition his account of political personhood. Thus marriage, far from being peripheral to Kant's political thought, in fact provides a unique vantage point from which to critique Kant's cosmopolitanism and his universal claims. By positioning marriage squarely within Kant's political arguments, we can

examine the structural impact that Kant's account of marriage has on his vision of moral and political personhood.

Very few scholars have examined Kant's account of marriage within his political philosophy. Most philosophers who focus on his political thought treat Kant's view of marriage as an anachronistic curiosity or as a peripheral element of his account of the state.[4] With the rise of feminist scholarship on Kant, however, there have been a number of discussions about Kant's account of marriage.[5] While most of these accounts have offered critical insights into Kant's arguments about sexuality and his account of moral friendship - and have frequently challenged his views about women - rarely have they situated marriage within the broader context of Kant's political philosophy. Often, these arguments even seek to rescue Kant's account of marriage, either by demonstrating that Kant's concerns about sexuality are not so different from contemporary feminist concerns about sexual objectification, or by "correcting" Kant's account of marriage in

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[4] See: Byrd, S. (2002). Kant's theory of contract. In M. Timmons (Ed.), *Kant's metaphysics of morals: Interpretive essays* (pp. 110-131). Oxford: Oxford University Press; Cronin, C. (2003). Kant's politics of enlightenment. *Journal of the History of Philosophy, 41*(1), 51-58; Flikschuh, Katrin. (2002). Kantian desires: "Freedom of choice and action in the *Rechtslehre*." In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press; Green, Ronald. (2001). What does it mean to use someone as "a means only": Rereading kant. *Kennedy Institute of Ethics Journal, 11*(3), 247-261; Guyer, Paul. (2002). Kant's deductions of the principle of right. In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive essays* (pp. 23-64). Oxford: Oxford University Press; Hill, Thomas. (2002). Respect, Pluralism, and Justice: Kantian Perspectives. Oxford: Oxford University Press; Kleingeld, Pauline. (1993). The problematic status of gender-neutral language in philosophy: The case of Kant. *The Philosophical Forum, XXV*(2), 134-150; Louden, Robert. (2002). The Second Part of Morals: Kant's Moral Anthropology and its Relationship to his Metaphysics of Morals. *Kant e-prints 1 (2002) 1-13;* Wood, Allen. (2002). The final form of Kant's practical philosophy. In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press.
[5] See: Mendus, Susan. (1992) "Kant: 'an honest but narrow-minded bourgeois?'" In H. Williams (Ed.), *Essays on Kant's Political Philosophy*. Chicago: University of Chicago Press. Pp. 166-190; Herman, Barbara. (1996). *The Practice of Moral Judgment*. Harvard University Press; Singer, Irving. (2000) "The Morality of Sex: Contra Kant." *Critical Horizons* 1:2. Pp. 188-189; Denis, Lara (2001) "From Friendship to Marriage: Revising Kant." *Phenomenology and Social Research* vol. 63, no. 1 pp. 1-12; Wilson, Donald. (2004), "Kant and the marriage right." *Pacific Philosophical Quarterly, 85*. Pp. 106-107; Brake, Elizabth. (2007), "Marriage, Morality, and Institutional Value." *Ethical Theory and Moral Practice* 10 (3). Pp. 251-252; Herman (1993), pp. 61-63; Papadaki, Lina (2010), "Kantian Marriage and Beyond: Why It Is Worth Thinking About Kant on Marriage." *Hypatia* 25 (2):276-294.

order to produce a "morally sound" argument more in line with contemporary Kantian accounts of morality and human dignity.[6]

This project raises questions about Kant's account of marriage for rather different reasons: I am as interested in what the *Rechtslehre* can tell us about marriage as I am in what marriage can tell us about the *Rechtslehre* – and, by extension, about Kant's universalism. Kant's political subject is conditioned by a particular construction of marriage, family, and the domestic sphere: a constellation of everyday institutions that structure the division of labor, determine the limits of the public sphere, and organize access to public life. I will show that in Kant's political philosophy, dignity, autonomy, and self-legislation are possible only given this particular pattern of the institutions of everyday life.

My analysis focuses on the link between broad, universal political values and concrete institutional structures, arguing that a given theory of justice must be evaluated in the light of the concrete everyday institutions on which it depends. Kant's juridical cosmopolitanism must be understood through a careful analysis of the institutional order on which the rightful order, according to Kant himself, depends. Because the juridical order is tied to concrete institutional structures, a cosmopolitan world will entail that these institutional structures, as well as the broad principles of right, are adopted. This project problematizes this assumption by asking what concrete juridical transformations Kant's vision of cosmopolitanism will entail. I argue that although Kant criticized the colonial projects of his time, his own cosmopolitan vision is strikingly similar to the forms of "administrative" colonialism that would emerge a century later. Kant's cosmopolitan arguments, therefore, should be understood *not* as a rejection of colonialism, but as a move towards the emerging emphasis on juridical transformation that would characterize late colonialism, particularly as it developed in Africa in the 19th century.

In order to analyze the relationship between Kant's broad cosmopolitan philosophy and the

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[6] See: Denis (2001), Herman (1993), Papadaki (2010), Singer (2000).

concrete and particular institutions on which that philosophy depends, this project develops in two moves. In the first half of this project, I examine the institutional order that grounds and shapes Kant's political vision, with a particular emphasis on marriage, the family, and the production of domestic rights. Kant's moral and political philosophy involves a curious philosophy of the family, in which a particular family structure conditions and produces a particular conception of the political self. My analysis of the family assumes that the *family*, in political philosophy, is a particular organization of marriage and the household. Accordingly, my analysis centers on two elements of the philosophy of the family: first, marriage structures and law, and second, the makeup of the household. Taken together, these two structural elements of the family shape family labor and parenting practices, and provide insight into the role of domestic space in social and political life. I refer to the pattern of domestic rights structured by a particular construction of marriage and the household as Kant's *philosophy of the family* in order to emphasize the critical role this normative structure plays in organizing political rights, spaces and subjectivites.

In the second half, I turn to the broader vision of justice enshrined in Kant's cosmopolitan arguments, and to the historical, anthropological, and geographical arguments that shape and influence that vision. By examining Kant's theory of race in the context of his cosmopolitan arguments, I argue that Kant's mature theory of race is an institutional racism: inclusion and exclusion in the political order turn on acceptance of the institutions central to Kant's account of right. By returning to Kant's philosophy of the family I show how these institutional exclusions operate while at the same time offering a concrete example of the juridical transformations required by his cosmopolitan vision.

This examination of Kant's juridical cosmopolitanism asks how Kant thinks that a cosmopolitan world might be achieved. What concrete processes are necessary to transform the world in the ways Kant envisions? My project offers one tangible account of these transformations

by showing how colonial policies in Africa at the end of the 19th century transformed a particular set of precolonial family structures in the name of producing a rightful society and recognizable political subjects. My analysis of this historical example focuses on the family and thus offers a concrete account of the institutional transformations required to produce a society organized by recognizable juridical structures. In doing so, it maps the relationship between Kant's universal cosmopolitan vision and the concrete institutional order on which it is premised, and asks what an examination of marriage and the family as organizational elements of Kant's political philosophy reveal about the limits of his universalism. To answer these questions, I turn to Kant's arguments in the *Rechtslehre*, which presents the most specific account of the juridical order grounding his cosmopolitan vision.

1. THE CONCRETE CONDITIONS OF MORALITY: AN OVERVIEW OF THE *RECHTSLEHRE*

"I intend some day to publish a metaphysics of morals," wrote Kant in the preface to the Groundwork;[7] the *Metaphysics of Morals*, published in 1797, a decade after the *Groundwork*, might be seen as the culmination of Kant's practical philosophy. Kant worked on the *Metaphysics of Morals* throughout the last productive decade of his life, during which he also developed his final thoughts on history and religion, and wrote numerous essays on his vision of cosmopolitanism. It is an open question whether the *Metaphysics of Morals* is indeed the promised "metaphysics of morals" from the *Groundwork.*[8] Throughout the *Critiques* and the *Groundwork,* Kant had maintained a strict separation between a promised metaphysics of morals, which would contain a full system of a priori moral duties, and a 'practical anthropology' within which moral principles would be applied.[9] But in the

[7] Kant, *Groundwork for the Metaphysics of Morals* [Henceforth, GMM] 4:391.
[8] Wood, (2002), pp. 2-5.
[9] "Now the moral law in its purity and genuineness (which is of the utmost concern in the practical realm) can be sought nowhere but in a pure philosophy. Therefore, pure philosophy (metaphysics) must precede; without it there can be no moral philosophy at all. The philosophy which mixes pure principles with empirical ones does not deserve the name of philosophy." In Kant, GMM 4:390.

introduction to the *Metaphysics of Morals,* Kant tells us that "a metaphysics of morals cannot dispense with principles of application, and we shall often have to take as our object the particular *nature* of human beings, which is cognized only by experience, in order to *show* in it what can be inferred from universal moral principles."[10] The project of the *Metaphysics of Morals* is accordingly not a *pure* practical philosophy, but one concerned with the empirical nature of human beings, and with their concrete desires, needs, and relationships. The *Metaphysics of Morals*, as we will see, is as concerned with the internal life of man as a moral being as it is with his external choices, freedom, and rights. The moral agent of the *Metaphysics of Morals* is a man both in the world and of it.

But even given these empirical considerations, the *Metaphysics of Morals*, by Kant's own admission, is not by itself the culmination of the project of practical philosophy. "The counterpart to a metaphysics of morals," Kant reminds us, "the other member of the division of practical philosophy as a whole, would be moral anthropology, which, however, would help only with the subjective conditions in human nature that hinder people or help them in *fulfilling* the law of a metaphysics of morals."[11] Though this moral anthropology must be distinguished from the metaphysics of morals, Kant forcibly reminds us that "it cannot be dispensed with."[12]

Kant, of course, had not dispensed with it: from the earliest period of his lecturing career, Kant had been developing a geography, a history, and an anthropology that, taken together, presented an account of the empirical conditions in which mankind found himself. They offered a multi-dimensional map of the characteristics that hindered and helped moral development. By the 1790s, Kant was engaged in a philosophical project capable of synthesizing the two branches of practical philosophy. Kant's vision of a "practicable" cosmopolitan world, which was most explicitly developed in the 1795 *Towards Perpetual Peace*, hinges on a normative account of a cosmopolitan

[10] Kant, *Metaphysics of Morals* [Henceforth, MS] 6:217.
[11] Kant, MS 6:217.
[12] Kant, MS 6:217.

global order as the full expression of moral obligation, an anthropological account of the challenges facing mankind in achieving this vision, and a concrete account of the conditions within which mankind might achieve his enlightenment.

Kant reiterates his vision of a practicable cosmopolitan world in the *Metaphysics of Morals,* where he positions this cosmopolitan future as a duty "having to do with rights."[13] In doing so, Kant emphasizes the ways in which the cosmopolitan vision of the 1790s entails a complicity between his practical and empirical projects. Given the presence of this claim in the *Metaphysics of Morals,* I suggest that we read this text as part of a body of work developed in the final decade of Kant's life, when the distinct moral and anthropological questions that concerned him in the 1780s were finally married into a range of political, historical, and cosmopolitan inquiries.

The *Metaphysics of Morals* divides moral questions into two distinct regions of inquiry. Where the *Groundwork* delineates the legislation of the moral law, the *Metaphysics of Morals* distinguishes between two kinds of moral lawgiving: external, or juridical lawgiving, and internal or ethical lawgiving. Accordingly, the text is divided into two parts, the *Doctrine of Right* and *The Doctrine of Virtue;* the first is concerned with external lawgiving and the corresponding domain of right, while the latter takes on internal lawgiving and its attendant ethical questions. By organizing his arguments in this way, Kant hints at the foundational role juridical lawgiving plays in organizing ethical possibilities.

This project analyzes the arguments developed in the first part of the *Metaphysics of Morals*, also known as the *Doctrine of Right* or the *Rechtslehre*. The *Rechtslehre* presents the *Universal Principle of Right*, or the underlying principle of rightful juridical lawgiving. It holds that "an action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the

[13] Kant, MS 6:352.

freedom of choice of each can coexist with everyone's freedom in accordance with universal law."[14] My project asks how concrete institutional structures work to define and protect external freedom by focusing on the role of the family in Kant's theory of justice. This analysis argues that Kant's philosophy of the family entails a particular construction of marriage and specific structure of rights in the household.

Chapter One analyzes the Introduction to the *Metaphysics of Morals* and the *Rechtslehre*, where Kant distinguishes between juridical and ethical lawgiving and defines the domain of external freedom. It argues that that the institutional order of the Kantian state is designed to manage the inevitable conflicts that arise in human life by coercively and reciprocally protecting external freedom. To clarify the distinctions between Kant's ethical and political arguments, it examines Kant's concerns about sex in order to argue that in the *Rechtlsehre,* sex does not pose a moral problem, but a threat to external freedom. Chapter One argues that, as a juridical institution, marriage is designed to contain this threat by transforming external freedom through *domestic right.*

Chapter Two focuses on the second part of the *Rechslehre*, where Kant offers his account of Private Right, or the cluster of institutions necessary for the juridical protection of basic possessive rights. Kant's justification of the state hinges on the necessity of coercively assuring and enforcing possessive rights through fundamental juridical institutions. In the section of the *Rechtslehre* on Private Right, he outlines the three basic forms of possessive right that necessitate this kind of juridical structure. For Kant, possessive rights are conventional: they require that "when I declare (by word or by deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice".[15] These relationships take three general forms: property right, contract right, and domestic right. Chapter Two explores each

[14] Kant, MS 6:230.
[15] Kant, MS 6:255.

of these forms of possessive right in order to show that possessive rights entail a right to "exclusive use" to argue that rights hinge on a scheme of reciprocal recognition that necessitates the existence of coercive institutions.

Chapter Two presents an account of Kant's philosophy of the family by analyzing the structure of the household and the organization of domestic relationships, and demonstrating that the domestic realm forms a *third sphere* in Kant's political philosophy which buffers the public realm from the requirements of intimacy and care. In the household, domestic right transforms both external freedom and juridical equality. By contrasting Kant's claims about the inferiority of women and the juridical equality of spouses and domestic workers, it argues that domestic right transforms *natural inferiority* into *juridical inequality* and show that in this way, inequality is *institutionally organized.*

Chapter Three turns to the third section of the *Rechtlsehre,* where Kant presents his account of Public Right, or the coercive public authority with the power to enforce and assure the range of rights entailed by his concept of external freedom. The arguments in this chapter focus on a peculiar moment within Kant's well-known discussion of retributive punishment, where Kant suggests that in cases where a mother kills her illegitimate infant, the state should consider leniency. This chapter uses this argument to develop an account of Kantian *political personhood*, or the category of persons granted recognition, rights, and protections by the state. By asking how the illegitimate child is excluded from this category, I argue that political personhood is not a status given to persons as such, but one granted to those who enter the juridical order through the correct institutional pathways. The threat to the juridical order posed by the infanticidal mother and her illegitimate child suggests that political personhood is shaped by the institutional order of the state, and that marriage and the family are central elements of the institutional structure that determines who is, and is not, recognized as deserving of political recognition and rights.

This account of political personhood distinguishes between two Kantian articulations of the

concept of the person. The first, and most abstract, is the account of the autonomous agent developed in Kant's moral works of the 1780s, namely in the *Groundwork* and *Critique of Practical Reason*. In these arguments, persons are ends in themselves replete with a fundamental human dignity, and the moral autonomy necessary to legislate the categorical imperative is grounded in internal freedom or freedom of the will. In the political works of the 1790s, however, Kant complicates this account of the person. In these works, Kant distinguishes between the internal freedom of the will and the external freedom necessary for acting for the sake of ends in the world. While the good will "shine[s] by its own light, as a thing which has its whole value in itself,"[16] actions *in the world* are always bounded by the actions of others. Because this political understanding of action is fundamentally relational and concerned with questions of justice, a juridical framework is necessary to protect the possibility of external freedom. In the juridical order Kant presents, political persons must not only be *autonomous*, in the sense of having internal freedom in the form of a will guided by reason, but also *independent,* in the sense of being externally free to choose individual ends in the private sphere and collective (democratic) ends in the public sphere. This independence, I will argue, is nonetheless dependent on a particular institutional framework premised on a division of dependency and labor, and on a particular construction of family, privacy, and public space.

Tracing the arguments of the *Rechtlsehre* in this way allows us to see that Kant's political arguments hinge on a particular philosophy of the family. The constellation of domestic relationships enclosed within the juridically produced domestic space play a critical but largely underexamined role in Kant's account of right, of political personhood, and of our obligations and responsibilities to others. In mapping the arguments of the *Rechtlsehre*, these first three chapters thus develop an account of the family as central to the construction of the political subject in Kant's rightful republican state.

[16] Kant, GMM 4:394

1. COSMOPOLITANISM, COLONIALISM, AND KANTIAN MODELS OF EXCLUSION

Kant's account of Public Right in the *Rechtslehre* culminates in his claim that all possessive rights find their full realization in "the possible union of all nations with a view to certain universal laws for their possible commerce, [which] can be called *cosmopolitan right*."[17] Because external freedom and possessive rights are premised on the necessary recognition and respect of others, Kant argues that, ultimately, only a global cosmopolitan order can fully enforce and assure juridical rights and make rightful trade and global communication possible. Therefore, he argues, "the rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle *having to do with rights*."[18] In emphasizing the distinction between an ethical and a rightful form of cosmopolitanism, Kant seems to suggest that a juridical cosmopolitan vision is the ultimate end of the arguments in the *Rechtslehre*, as opposed to the kind of moral cosmopolitanism suggested by his vision of a "kingdom of ends" in the *Groundwork*. The second half of this project, accordingly, develops Kant's vision of a universal, juridical cosmopolitanism as the necessary culmination of his view of possessive rights.

Kant's political cosmopolitan arguments were developed most consistently in the 1790s and represent the culmination of his life's work: in them, the multiple "projects" he had undertaken in his intellectual career find a collective home. The cosmopolitan arguments draw on Kant's moral and political visions, on the methods developed in the course of his critical project, and on the range of historical, anthropological, and geographical investigations he had undertaken since early in his career. In envisioning a universal cosmopolitan *future* for the human race, Kant developed a moral,

[17] Kant, MS 6:352.
[18] Kant, MS 6:352.

political, and teleological account of what, as he put it in the first Critique, man may hope for.

These arguments present a unification of two intellectual projects that had remained largely distinct in Kant's writings during the 1770s and the 1780s: on the one hand, Kant's moral, political, and historical arguments and, on the other, his work in geography and anthropology. Thus, although this project examines Kant's mature cosmopolitan philosophy, particularly as it is developed in the *Rechtslehre* and *Perpetual Peace*, these texts are explored in light of the full body of Kant's work. I approach Kant holistically and historically, focusing on the three decades during which he was engaged in his critical and post critical project.

This vision of a unified cosmopolitan world is described in the moral, political, and historical essays of the 1780s, including the *Idea for a Universal History with a Cosmopolitan Aim* (1784), *What is Enlightenment?* (1784), the *Conjectural Beginning of Human History* (1785), the *Groundwork for the Metaphysics of Morals* (1785), and the three *Critiques* (1781, 1787, and 1790). In the *Idea*, he extolls this cosmopolitan world as "the matrix within which all the original capacities of the human race may develop."[19] This vision depends upon a teleological account of human history, in which the species as a whole, guided by "Nature" and "Providence" is propelled forwards on its journey towards maturity and enlightenment. This moral and teleological vision would find its final expression in the political essays of the 1790s, where Kant develops a more concrete account of the republican constitutional state as the basic unit for a universal juridical cosmopolitanism.

But Kant's mature cosmopolitanism depends on a second set of arguments. A cosmopolitan world is achievable, Kant argues, only given an understanding of the globe and its inhabitants. Accordingly, in his work in physical geography and anthropology, Kant maps the empirical terrain of cosmopolitanism. As Thomas McCarthy, Barbara Herman, Allen Wood and others have pointed out, the cosmopolitan essays of the 1790s seek to balance the tensions between the moral universals

[19] Kant, IUH. (In Reiss, 1991), p. 51.

developed in Kant's moral and political philosophy with his pragmatic understanding of the human race as diverse and flawed.[20] In 1775, Kant posed geographic and anthropological questions as pragmatic knowledge essential to citizens of the world.[21] These empirical fields of study posed questions about diversity, and drew on methods of inquiry that would ultimately inform his understanding of the achievability of a cosmopolitan world.[22] Therefore, a full understanding of his arguments must appeal to both the practical and empirical projects.

This project, therefore, underscores the holistic nature of Kant's cosmopolitan arguments. I take it as a given that we cannot unproblematically distinguish the "central" from the "peripheral" readings, and that a full understanding of his critical, moral, and political philosophy must also account for the anthropological, geographical, and historical work developed during the same period. Taken together, the anthropological, geographical, and historical arguments present a complete account of Kant's now infamous theory of race. I argue that a full understanding of Kant's cosmopolitan arguments entails an exploration of the role his geographical and anthropological essays plays in informing the assumptions built into the cosmopolitan arguments. The cosmopolitan arguments of the 1790s are dominated by a concern with history that had largely *replaced* the interest in geography and anthropology that shaped Kant's cosmopolitan inquiries of the 1770s and 1780s.[23]

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[20] Herman, Barbara. (2009). A Habitat for Humanity. In Rorty and Schmidt (Ed). *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide.* Cambridge: Cambridge University Press; McCarthy, Thomas (2009). Race, Empire, and the Idea of Development. Cambridge University Press; Wood, A. (2009). Kant's Fourth Proposition: Kant and the idea of Unsocial Sociability. In Rorty and Schmidt (Ed). *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide.* Cambridge: Cambridge University Press.
[21] Kant, *Of the Different Races of Human Beings* [Henceforth, ODR] 2:443
[22] As David Harvey and Eduardo Mendieta point out, Kant's approach to cosmopolitanism entails that we must understand the geographic and human diversity of the world. Harvey, David (2011). "Cosmopolitanism in Kant's *Anthropology and Geography."* And Mendieta, Eduardo (2011). "Geography is to History as Woman is to Man: Kant on Sex, Race, and Geography." Both in eds. Mendieta and Elden. *Reading Kant's Geography*. SUNY Press, 2011.
[23] David Harvey (2011) has suggested that this transition marks a general victory of historical and narrative inquiry over spatial and geographic inquiry in Kant's thought, and Pauline Kleingeld (2007)

By examining the teleological and anthropological arguments together, this project argues that the two projects are consistent, and that the latter develops from the former as Kant developed his teleological method in the late 1780s.[24] Given the consistency between these projects, it is critical that we evaluate Kant's cosmopolitan arguments in the light of his theory of race.In the second half of this project, I explore Kant's cosmopolitan vision against his empirical inquiries to offer an account of how Kant thought a cosmopolitan world could be achieved in the light of his concerns about race and human development.

Chapter Four explores Kant's anthropological and geographical work together, in order both to map the terrain of cosmopolitanism and to present an account of the role of Kant's theory of race within the cosmopolitan arguments. In developing this holistic and cross-textual account of Kant's mature cosmopolitanism, I read these texts in the light of contemporary debates about Kant's racism and sexism and concerns about just *who*, concretely, is included in the category of political persons. As Pauline Kleingeld has argued, "Kant did not think inclusively,"[25] and his universalist arguments ought to be read in tension with the raced and gendered exclusion built into them. I approach this problem with an awareness of the ways in which these raced and gendered arguments take similar forms in Kant, particularly in arguments focused on rights and exclusion.

Chapter Four examines the development of Kant's theory of race between the 1770s and the 1790s, in order to highlight a shift from a *hierarchical model of race*, in which non-whites are biologically excluded from the status of full personhood, to an *institutional model* of political personhood, in which

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has argued that it points to Kant's own rejection of the particularism of geography and anthropology in favor of cosmopolitan universalism. Kleingeld, P. (2007). Kant's second thoughts on race. *The Philosophical Quarterly, 57*(229), 573-592.

[24] See also Robert Bernasconi (2000), John Zammito (2002), and Alix Cohen (2009), who highlight the key role Kant's essays on race played as the space in which he developed his teleological method in the 1780s. Bernasconi, Robert. (2001). "Who Invented the Concept of Race?" In Bernasconi, ed. *Race*. Wiley-Blackwell; Cohen, Alix (2009), *Kant and the Human Sciences*. Palgrave Macmillen; Zammito, John (2002). *Kant, Herder, and the Birth of Anthropology*. University of Chicago Press.

[25] Kleingeld, (1993), p.146.

non-whites may have the ability in a cosmopolitan order to enter into the community of political persons. By examining the final form of Kant's theory of race against the arguments of the *Rechtslehre,* Chapter Four argues that in Kant's juridical arguments, inequality is institutionally organized.

Chapter Five then traces the development of Kant's cosmopolitan thought between the 1780s and 1790s to show that Kant's mature cosmopolitan arguments are troublingly "raced." These arguments suggest that the concrete mechanisms through which a cosmopolitan world might be achieved would bear a striking resemblance to the processes and practices of late colonialism that would emerge in the next century, and that, therefore, Kant's criticisms of colonialism are not as thoroughgoing as one might hope.

Thus, Chapter Five presents an account of the concrete mechanisms through which a Kantian colonial cosmopolitanism might be achieved by examining Kant's defense of cosmopolitan right in the *Rechtslehre* against his theory of race as it stood in the 1790s. By focusing on Kant's claims that no one can choose to remain outside a rightful juridical order, since to do so would be "wrong in the highest degree,"[26] this chapter argues that Kant's mature cosmopolitanism is inclusive but infused with concerns about the raced difference of those who "stand outside" the civilized order. If Kant's theory of race posits a global racial hierarchy in which only Europeans have developed their capacities, his vision of a cosmopolitanism is one in which non-European "natives" follow Europe's lead, and adopt the constellation of rightful institutions necessary to support perpetual peace and rightful global trade. In the *Rechtslehre*, Kant focuses on the plight of the "native" who stands "outside" the rightful juridical order, and argues that, while Europeans have an obligation to extend rightful institutions globally, these "natives" have a corollary obligation to

[26] Kant, MS 6:352.

"consent" to participate in this rightful global order.[27] Chapter Five traces Kant's most concrete claims about how this rightful cosmopolitan order might be achieved and argues that, in his insistence on the global adoption of the institutions of right to support global trade and hospitality, Kant is *both* committed to a truly universal, all-inclusive global cosmopolitanism, *and* that his plan for achieving this global cosmopolitan order is strikingly similar to the forms of "administrative" colonialism developed in Africa and parts of Asia in the 19th century.

Chapter Six explores Kant's cosmopolitan arguments from a different perspective, asking how the achievement of a cosmopolitan world would concretely transform the lives of the "natives" it seeks to civilize. To do this, it presents a particular historical colonial encounter in 19th century Africa as a model of Kant's concrete cosmopolitan arguments. First, I demonstrate that Kant's cosmopolitan arguments present a "civilizing mission" strikingly similar to that developed by Lord Frederick Lugard in colonial Nigeria. Second, I trace the impact of the juridical transformations wrought by Lugard's Indirect Rule on a particular set of precolonial African cultural practices. By imagining Kant in Africa through an exploration of Lugard's colonial project and its impact on Igbo and Yoruba families in Northern Nigeria, I demonstrate that Kant's cosmopolitanism entails not simply an *adoption* of rightful juridical practices but a *transformation* of existing practices, with particular emphasis on transforming the philosophy of the family.

This encounter between Lugard's articulation of colonial law and precolonial Igbo and Yoruba families allows me to explore the "underside" of Kant's cosmopolitan arguments, asking what concrete transformations are entailed by his insistence on the institutional structure of a rightful juridical order in a cosmopolitan setting. I return to my analysis of the philosophy of the family by focusing on marriage practices and the structure of the household among the Igbo and Yoruba, who were the targets of Lugard's colonial transformation. Drawing on arguments

[27] Kant, MS 6:353.

developed by Nkiru Nzegwu and Oyeronke Oyewumi, I demonstrate that precolonial Igbo and Yoruba society was organized by a radically different philosophy of the family than that defended by Kant.[28] The Igbo and Yoruba placed less emphasis on gender difference, marriage and the distinction between domestic and political realms, and in doing so, they resisted the rigid and patriarchal pattern of life present in Kant's political arguments. By showing how colonial laws transformed Igbo and Yoruba families, I demonstrate that the patterns of family life advocated by Kant entail an unyielding emphasis on the distinction between the domestic and the political that systematically undermines women's access to the public realm. This exploration of Kant's cosmopolitan arguments through the lens of a concrete historical colonial encounter that models his cosmopolitan methods allows me to challenge the universality of his claims by examining them from the perspective of the African "natives" his cosmopolitanism sought to civilize. In doing so, I challenge Kant's insistence that those outside a civilized order must be given the opportunity to consent to participate in the juridical patterns of cosmopolitan rights by asking whether, given Kant's philosophy of the family, women could be said to have been offered this choice.

3. Kantian Institutional Constellations: On Race and the Family

"Although this political body exists for the present only in the roughest of outlines, it […]

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[28] Nzegwu, Nkiru (2004). Feminism and Africa: Impact and limits of the metaphysics of gender. In K. Wiredu (Ed.), *A companion to african philosophy* (Vol. 28, pp. 560-569): Blackwell.
Nzegwu, Nkiru (2005). Questions of identity and inheritance: A critical review of Kwame Anthony Appiah's *In my Father's House*. In Oyewumi (Ed.), *African gender studies: A reader*. New York: Palgrave Macmillan; Nzegwu, Nkiru. (2006). *Family Matters: Feminist concepts in African philosophy of culture*. Albany: SUNY Press; Oyewumi, Oyeronke. (1997). *The Invention of Women*. Minneapolis: University of Minneapolis Press; Oyewumi, Oyeronke. (2000). Family bonds/conceptual binds: African notes on feminist epistemologies. *Signs, 25*(4), 1093-1098; Oyewumi, Oyeronke. (2005a). (Re)constituting the cosmology and sociocultural institutions of Oyo-Yoruba. In Oyewumi (Ed.), *African gender studies*. New York: Palgrave Macmillan.

encourages the hope that, after many revolutions, with all their transformative effects, the highest purpose of nature, a universal *cosmopolitan existence*, will at last be realized as the matrix within which all the original capacities of the human race may develop,"[29] wrote Kant in 1784. By exploring Kant's vision of a cosmopolitan world in the light of the particular institutional constellation on which his account of the rightful order depends, this project offers a concrete account of the "many revolutions, with all their transformative effects" necessary for the achievement of a global cosmopolitan future. By exploring Kant's cosmopolitanism through a particular African colonial encounter, this project demonstrates that Kantian cosmopolitanism entails a juridical restructuring of the institutions of everyday life that would radically reduce the rights of women in order to produce recognizable political subjects.

My thesis is unique in its analysis in that it positions the family at the center of its interrogation of Kant's political philosophy and his vision of cosmopolitanism. By illustrating the importance of domestic space in structuring political rights, this project shows that Kant's vision of the rightful state entails a particular and concrete philosophy of the family. The juxtaposition between Kant's philosophy of the family and African understandings of the family suggest that Kant's political philosophy clearly entails a gendering of space, labor, and political subjectivity. As African philosophers Nzegwu (2006) and Oyewumi (1997) argue, no particular construction of the family and its attendant gender and labor practices is either necessary or universal. By placing the family at the center of my analysis of Kant's political philosophy, I demonstrate that Kantian conceptions of equality and political personhood are embedded in particular and historically bounded constructions of the family, of public and private, of gender, and of the value of particular kinds of work and participation. This *anti-universalist* tendency arises not simply out of Kant's racist and sexist views, but out of a structural element of his own conception of right.

[29] Kant, IUH. (In Reiss, 1991), p. 51.

This analysis of the family and of the institutional structure of political personhood offers us a window through which to explore the development of Kant's theory of race in his cosmopolitanism. In the arguments of the *Rechtslehre,* Kant's cosmopolitanism extends rights to those persons who have consented to a particular institutional order in which recognizable political subjects are produced. Through this institutional order, I argue Kant's "philosophy of the family" is central to the "civilizing project" of his cosmopolitanism. By drawing attention to the complicity between Kant's cosmopolitanism and a particular set of late colonial projects, this project makes visible the raced assumptions built into Kant's cosmopolitan arguments, and suggests an explanation of the resilience of this form of racism in cosmopolitan and colonial discourses.

Before embarking on this analysis of Kant, however, I wish to suggest that the method of analysis used in this dissertation points to a possible complementarity in the ways that concepts of "race" and "family" operate in cosmopolitan discourses. This project emphasizes the relationship between a broad theory of justice and the particular institutional order on which it depends, and it maps this relationship through a careful analysis of the role the family plays in constructing political subjects. In doing so, it shows that through a rightful institutional order may produce political equality, it may *also* enshrine and institutionalize inequality, thus making certain forms of inequality and exclusion invisible from a universal, rightful, and cosmopolitan perspective.

Chapter One:

A Particularly Thorny Problem: Sex, Marriage, and External Freedom

Introduction:

I begin my analysis of the role of the family in Kant's cosmopolitan thought with an examination of the sex and marriage in Kant's moral and political philosophy. The question that guides this chapter is quite simple: should we read marriage as a moral or political project for Kant? This chapter is, therefore, an argument in two acts. Kant offers two thorough discussions of sex and marriage, first in the *Lectures on Ethics*, where he frames sex as a moral problem, and later in the *Rechtslehre*, where sex is positioned as a legal problem in political philosophy. I analyze each of these arguments in order to distill Kant's claims about the threat posed by sex, and to outline his account of marriage as a necessary juridical institution in the *Rechtslehre*.

In the first act, I examine a range of arguments that address Kant's account of sex as a moral problem, and that work to frame marriage as a moral project designed to make sex morally acceptable. I ask whether we should accept the assumption frequently made in contemporary scholarship that for Kant marriage is capable of morally redeeming sex.

In the second act, I focus on Kant's claims about sex in the *Rechtslehre*. I argue that, to fully understand Kant's arguments about marriage as a juridical institution concerned with Right, we need to abandon the assumption carried over from the *Lectures on Ethics* that marriage is a moral project concerned with sex as a moral threat. To understand the central role the family plays in Kant's political philosophy, we need to understand how sex threatens the political order. Thus, we need to explore Kant's account of marriage by positioning it within the context of the overarching project of the *Rechtslehre*.

I position sex and marriage in the *Rechtslehre* in three moves. First, I explore the concept of

external freedom, which grounds Kant's account of juridical law and the state and I argue that Kant's account of justice is relational. Second, I explore the transformation of possessive rights into the institutions of Private Right, in order to show how Kant's conception of relational justice is instantiated through the institutional order. Third, I give an account of marriage as a juridical institution, primarily concerned – like all juridical institutions – with protecting external freedom. As a juridical institution, marriage is not designed to morally transform sex. Like other institutions, it is concerned with protecting external freedom. However, unlike the other institutions in the *Rechtslehre*, marriage entails a transformation of external freedom itself, and it is for this reason that we ought to examine Kant's arguments about marriage in order to understand the broader political project of the *Rechtslehre*.

This examination of marriage in the *Rechtslehre* tells us two critical things about Kant's philosophy of the family. It allows us to see first, why marriage is both a necessary and inevitable constituent of rightful juridical law, and second, why marriage (and with it, domestic right) is a unique and critically transformative element of Kant's political philosophy.

1. MARRIAGE AND KANT'S MORAL PHILOSOPHY

1.1 Sex and the *Lectures on Ethics*: Impermissible Use

Discussions of Kant's account of marriage most often position it within the scope of his widely-read moral philosophy.[30] To explore marriage through this lens is to ask, first, why sex is a moral problem for Kant, and second, in what way marriage offers a moral solution to this problem.

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[30] See for example: Brown, Wendy. (1995). *States of injury*. Princeton: Princeton University Press; Denis, Lara (2001) "From Friendship to Marriage: Revising Kant." *Phenomenology and Social Research* vol. 63, no. 1 pp. 1-12; Herman, Barbara. (1996). *The Practice of Moral Judgment*. Harvard University Press; Korsgaard, Christine. (1996) *Creating the Kingdom of Ends*. Cambridge University Press. Papadaki, Lina (2010), "Kantian Marriage and Beyond: Why It Is Worth Thinking About Kant on Marriage." *Hypatia* 25 (2):276-294, Pateman, C. (1988). *The Sexual Contract*. Stanford: Stanford University Press.

Many scholars, in approaching this question, begin with the early *Lectures on Ethics* (1775-1780), and draw heavily on the moral arguments developed in the *Groundwork*. In the *Lectures on Ethics* Kant offers his most comprehensive account of the moral problem posed by sex: through sexual desire, we treat others as objects, and thus fail to treat others as persons. Read against the background of the *Groundwork*, this account of sexuality is presented both as an example of the conflict between duty and inclination, and it is situated as an explicitly moral problem: our sexual desires conflict with our moral obligations to respect each other as persons and ends in ourselves.

In the *Groundwork*, Kant argues that we have the capacity to act as moral beings because our rational, noumenal self has the ability to compel our sensible, phenomenal self to act in accordance with duty rather than out of mere desire or inclination. This noumenal self is pure practical reason and has the ability to conceive of moral standards governed by the laws of freedom and independent of empirical motivations. Our phenomenal self, governed by emotions, desires, and the laws of nature, cannot act morally because without the rational ability to grasp the moral law, we cannot choose our actions for the right reasons.

Criticism of Kant's moral theory often focuses on this dichotomy within the self, arguing that it produces a kind of schizophrenia in which the self is always at war with its own nature.[31] Upon encountering Kant for the first time, students often raise similar concerns, objecting that our schoolmarmish rational nature must repress our natural emotions, desires, and responses to the world around us to such a degree that the latter play no role in our moral reasoning, leaving us with a phenomenal nature that, in order to be dutiful, must be cold and miserly.

However, a close and careful reading of Kant reveals a warmer side to this argument, one not entirely out of line with arguments from the care tradition. From this perspective, Kant's claim

[31] See, for example, Sedgwick, Sally. "Can Kant's Ethics Survive the Feminist Critique?" In Robin May Schott, ed., Feminist Interpretations of Kant. Penn State Press (1997).

is not that inclination and duty will always be at odds, nor that a miserly nature is required so that all good deeds are performed purely from a sense of duty. Our inclinations are not *bad* – they're merely morally irrelevant. We may, indeed, do good deeds out of pure inclination and the goodness of our hearts, and these actions may bring us pleasure and make us happy. But if we choose good deeds for no reason other than that we enjoy them, we cannot be counted on to choose good deeds when we don't feel like it. If we care about others only when doing so pleases us, then we can't be relied upon to care for others when doing so is difficult, painful, or otherwise contrary to inclination. If our only reason for caring about others is the pleasure it brings us, what is to stop us from using others or abandoning them when the mood suits us?

Read in this way, Kant's concerns about moral agency and choosing actions for the sake of duty can be understood as concerns about constancy and reliability. While good deeds may be the result of inclination, the categorical imperative requires that we test our personal, subjective ends against objective ends that demand care and concern for other moral beings as ends in themselves.

Given such an understanding of Kant's morality, the role that marriage ought to play in regulating sexuality should be readily understood. Though sexual desire is a "natural end", it is an appetite of the phenomenal self, governed by inclination and desire and directed towards subjective ends including, but not limited to, our own pleasure. If this were the case, we could read sexual desire in the same light as other inclinations: it's not bad, it's merely morally irrelevant. It may lead us to care deeply for another, to desire to bring them great pleasure and perform other good deeds because doing so adds to our pleasure. However, like other inclinations, what sexual desire cannot produce is constancy: if my concern for my lover is contingent only on my desire for him, then I cannot be relied on to care for my lover when my desire for him has ceased. Moreover, I cannot be relied upon to treat my lover as an end in himself, nor to adopt his ends as my own when they conflict with my own subjective ends. Given these concerns, marriage works to yoke my

inclinations and sexual desire to my rational self such that my desires are governed by a sense of duty, and my concern for my lover takes on the character of constancy. The marriage relation demands that I treat my partner as an end in himself, and that each of us act out of concern for mutual ends, adopting each other's ends as our own. Through this relation, which can only be understood and entered into by my rational, noumenal self, my sexual desires are retrained and given moral worth.

There is, however, a problem with reading marriage and sexual desire in this way. If sexual desire is like other inclinations and desires, why isn't the categorical imperative enough to restrain and retrain us? If we can be relied upon to act out of a sense of duty in order to retrain other desires, why not this one? Isn't duty enough?

To draw out the particular difficulties posed by sex, most scholars turn to Kant's claims in the *Lectures on Ethics*. Here, sexual desire for another is always contrary to love and respect for that other. Kant's account of sex in the *Lectures on Ethics*, as Barbara Herman points out, centers on the familiar problem of the objectification persons. Sex, for Kant, always involves the objectification of the other, since sexual desire is described as "an appetite" like other appetites: the object of my desire is something to be consumed and used. Sexual desire is fundamentally at odds with my obligations to respect others and treat them as ends. The difficulty with sex is not merely that it cannot be transformed by the categorical imperative alone, but that it might not be possible to make sex morally acceptable in any way at all. And this, as Kant admits, poses a problem, since sex is both a natural end and a necessary one, if the human race is to survive.

We have good reason to be skeptical about Kant's account of sexuality in the *Lectures on Ethics*. We can certainly argue, as many contemporary Kantians do, that his arguments are out-dated, overly conservative, and conditioned by his personal tastes and general feelings about

women.[32] We might even argue, as numerous critics do, that Kant's arguments about sex are conceptually confusing and lack the consistency that is central to his moral system.[33] But before we dismiss Kant's claims about sexuality, we should first draw out the nature of his concerns.

In the *Lectures on Ethics*, Kant introduces sex as an impulse fundamentally different from other impulses towards others: sex is a desire "immediately to others as the object of his enjoyment" rather than a desire to enjoy the "works and circumstances" of others.[34] Sex is an appetite for another: through sex, I hunger for another as a thing to be enjoyed and consumed. For Kant, sex deserves special attention because it is the *only* instance in which my desire for another is direct and objectifying in this way. He describes sex thus:

> The sexual impulse can admittedly be combined with human affection, and then it also carries with it the aims of the latter, but if it taken in and by itself, it is nothing more than appetite. But, so considered, there lies in this inclination a degradation of man; for as soon as anyone becomes an object of another's appetite, all motives of moral relationship fall away; as the objects of the other's appetite, the person is in fact a thing, whereby the other's appetite is sated, and can be misused as such a thing by anybody. There is no case where a human being would already be determined by nature to be the object of another's enjoyment, save this, of which sexual inclination is the basis.[35]

There are three critical elements to this argument. First, sex is a unique moral problem for Kant: there is *no other case* where a person is naturally transformed into an object for another's enjoyment. Other instances of enjoyment or use do not entail making *direct use* of another as an object of the appetite.

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[32] Mendus, Susan. (1992) "Kant: 'an honest but narrow-minded bourgeois?'" In H. Williams (Ed.), *Essays on Kant's Political Philosophy*. Chicago: University of Chicago Press. Pp. 166-190; Herman, Barbara. (1993). Could it be worth thinking about Kant on sex and marriage? In L. A. a. C. Witt (Ed.), *A mind of one's own* Westview Press. Pp. 53-72; Papadaki, (2010), pp. 277, 288.
[33] Mendus (1992), p. 183-183; Herman (1993), p. 50-51; Singer, Irving. (2000) "The Morality of Sex: Contra Kant." *Critical Horizons* 1:2. Pp. 188-189.
[34] Kant, LE 2001, p. 155.
[35] Kant, LE 2001, p. 156.

Second, it is unlikely that normal affection or moral concern for others can successfully temper my desire to use another as an object of my enjoyment. Though Kant admits that it might be possible to combine sex with love or affection, he remains deeply concerned about issues like constancy and respect. After all, if sex is an appetite, and appetites by their very nature can be sated, it is unlikely that I will have the same concern for the object of my lust after my lust is sated. My sexual desire for another, for Kant, is likely to be at odds with my moral concern for the other, and even the best moral intentions are likely to be corrupted by the appetitive nature of sexuality.

Third, sexual use is transformative: through it, persons become objects or things. This claim is particularly difficult to swallow, given both Kant's insistence elsewhere on the clear distinction between persons and things,[36] and the sheer improbability that sex has the capacity to transform us in this way. Yet Kant's argument here is forceful: sex is problematic not merely because partners use each other for pleasure in the moment, but because through sexual use, we make ourselves into objects at the disposal of the appetites of others, and in doing so, we transform ourselves into things that can be used by anybody. The concern is not only that through sex, I make another person into an object for use, but that I make *myself* into an object for use. I have failed both in my duty to respect the humanity in my partner *and* to respect the humanity in myself. Or, as Kant puts it, "humanity here is set aside."[37] Sex, though a natural end, is positioned here as both a violation of my duties to others and a violation of my duties to myself.

Sex, then, is inherently objectifying. It leads us to objectify both others and ourselves. In fact, Kant argues that we will "endeavor to lend attraction, not to [our] humanity, but to [our] sex, and to direct all actions and desires entirely towards it. If this is the case, humanity is sacrificed to

[36] Kant, MS 6:223.
[37] Kant, LE 2001, p. 156.

sex."[38] This seems hyperbolic, of course: we don't commonly think that we sacrifice our humanity to our sexual desires. As Barbara Herman points out, this argument is not so far removed from arguments about sex developed by feminist thinkers in the 1980s. She highlights Catherine Mackinnon's and Andrea Dworkin's claims that sex inherently involves the objectification of women, and that sex inevitably leads to exploitation that degrades the personhood of women.[39]

Of course, these arguments, too, are hyperbolic,[40] and they lack the symmetry of Kant's claim that sex is objectifying to both partners. But I think we need not dismiss Kant's concerns about sexuality as hyperbole. Kant is concerned that, when we move through the world as sexual objects, motivated by sexual appetite, we treat ourselves and others differently. When we are "on the prowl," as it were, we present ourselves differently and we engage with others differently, and too often we think and behave in ways that are contrary to our moral obligation to treat others – and ourselves – as persons possessing dignity and deserving respect. Sexual impulse is a particular kind of orientation towards the world, and if unrestrained, it threatens to undermine our duties to ourselves and others. The trick, then, is to find a way of restraining sexual impulse so that we are not tempted to objectify ourselves and others: we must determine "to what extent anyone is entitled to make use of their sexual impulse without impairing their humanity."[41]

In posing this question at all, Kant rejects the possibility that we might simply have to do away with our sexual impulse, even as he argues "there is something contemptible in the act itself, which runs counter to morality."[42] This is to say that, unlike other inclinations and desires that may be morally irrelevant but are not necessarily contrary to duty, sexual desires are *always* contrary to

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[38] Kant, LE 2001, p. 156.
[39] Herman, (1993), pp. 56-58.
[40] For Dworkin, the natural conclusion of this argument is the claim that, for women, all sex is rape. See Dworkin, Andrea. *Intercourse*. Free Press (1987).
[41] Kant, LE 2001, p. 156.
[42] Kant, LE 2001, p. 157.

duty. It follows that sex poses a particularly difficult moral problem because it heightens the schism between our phenomenal and noumenal selves, setting them against each other and "[exposing] mankind to the danger of equality with beasts."[43] Thus, he argues that "conditions must be possible, under which alone the use of *facultates sexuales* is compatible with morality."[44] The condition he proposes is, of course, marriage.

1.2 Marriage and the *Lectures on Ethics*: An Imperfect Solution

In the *Lectures on Ethics*, sexual desire is a necessary fact of human life, but it involves a moral failure to treat others as ends in themselves. Marriage is presented as a solution to the unique and difficult moral problem posed by sex. But if sex is such a thorny moral problem, can even marriage redeem sex?

Scholars are divided on this question. Irving Singer and Donald Wilson argue that sex within marriage is wholly moral.[45] Wilson distinguishes between the "animal" sex Kant describes here in the *Lectures on Ethics* and the "principled" sex made possible through marriage, and emphasizes that, for Kant, even sex for pleasure alone is morally acceptable within marriage.[46] Lara Denis and Linda Papadaki argue that sex is transformed not by marriage alone, but by the respect for persons entailed in a *morally robust* account of Kantian marriage. They suggest, therefore, that it is moral friendship, rather than marriage, that has the capacity to transform the moral nature of sex.[47] Against this, Barbara Herman, Elizabeth Brake, and Susan Mendus argue that it is precisely because

[43] Kant, LE 2001, p. 164.
[44] Kant, LE 2001, p. 157.
[45] Singer (2000), p. 176; Wilson, Donald. (2004), "Kant and the marriage right." *Pacific Philosophical Quarterly, 85*. Pp. 106-107.
[46] Wilson, (2004), pp.105-106.
[47] Denis (2001), pp. 17-26; Papadaki (2010), pp. 289-292.

of the legal and institutional nature of marriage that it has the capacity to transform sexuality.[48] Allen Wood and Mendus, however, argue that even marriage cannot make sex morally acceptable. They argue that sex for Kant is inherently exploitative, and while marriage might make objectification voluntary and thus minimize the effects of that exploitative dynamic, it cannot succeed in making sex consistent with respect for persons.[49]

Kant's account of marriage as a solution to the moral problems posed by sex turns on the distinction between sexual use and other forms of use. As I have said, the problem with sex is in fact the familiar concern about the objectification of persons, though the problem here is clearly more severe. After all, Kant argues that there are plenty of morally acceptable ways in which I can make use of the body of another – I can hire someone to build something for me, or to lift something which I cannot, or to give me a massage; I can use "his hands, his feet, and even all his powers"[50] – but the sexual use of another cannot be morally acceptable in any form other than marriage. I can enter into an agreement to make use of the body of another to achieve my own ends for a limited period of time – as long as the use I intend to make of that body is not sexual in nature. By the same token, I may contract out any part of myself, as long as I do not contract myself for sexual use, since this form of use – and this form of use *only* – renders me "an object." Kant argues that "the body is a part of the self; in its togetherness with the self it constitutes the person; a man cannot make of his person a thing"[51] – and yet it is only the use of the body in a sexual capacity that threatens the self; other forms of use are acceptable if governed by contract or agreement.

Because sexual use is not included within the general scope of acceptable contracts, it

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[48] Brake, Elizabth. (2007), "Marriage, Morality, and Institutional Value." *Ethical Theory and Moral Practice* 10 (3). Pp. 251-252; Herman (1993), pp. 61-63; Mendus (1992), pp. 176.
[49] Mendus (1992), 176; Wood, Allen. (1999). *Kant's Ethical Thought.* Cambridge: Cambridge University Press. P. 256.
[50] Kant, LE 2001, p. 163.
[51] Kant, LE 2001, p. 166.

requires a special and different kind of agreement to render it morally acceptable. Purely contractual sexual arrangements – prostitution, for example, or concubinage – are not sufficient. Persons do not have the right of disposal over themselves, he argues, because persons are not things, and I do not, therefore, have the right to rent myself out for sexual use. The only arrangement through which sexual use is permissible is matrimony, which is described in the *Lectures on Ethics* as "an agreement between two persons by which they grant each other equal reciprocal rights, each of them undertaking to surrender the whole of their person to their other with a complete right of disposal over it."[52] Marriage, then, is a monogamous, equal, legal agreement that produces an exchange of equal and reciprocal rights.

However, as numerous critics have pointed out, this account of matrimony is a curious thing. After all, didn't Kant just say that I do not have rights of disposal over myself? And if I can't dispose of myself, how can I surrender myself to another, and give that person rights of disposal over me? And what does a *complete* right of disposal mean – do I retain any rights at all against my spouse? Barbara Herman understands this "right of disposal" as a "right of free use" tied up with Kant's conception of sex as involving mutual surrender.[53]

Does this solve the moral problems posed by sex? Irving Singer argues that it does: as long as marriage meets the standards Kant lays out, sex within marriage is wholly moral. Marriage entails that each partner reciprocally surrenders his whole self to his partner – and since a person is a "totality," part of what is surrendered is the right to sexual use (even, Singer notes, wholly selfish sexual use). As both a legal and contractual institution, Singer argues, marriage "unites autonomous wills," and since spouses possess equal and reciprocal rights over each other, they can have sex with

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[52] Kant, LE 2001, p. 167.
[53] Herman, (1993), p. 59.

no threat to personhood, respect, or dignity. [54]

Barbara Herman is less convinced that Kant's account of marriage solves the problem of objectification in this way. When I allow someone to use me for sexual pleasure, the power they gain over me is not merely sexual power: since the "person is a unity," my partner gains domination over all of me. But, as Herman argues, Kant doesn't offer a solution that solves the domination problem: he merely argues that, though marriage, the renunciation and domination is reciprocal, and that in renouncing myself to my partner, I thereby gain rights over my partner, which entails that I regain rights over myself.[55]

There are two ways we might understand this argument. We could argue that in the "unity of wills" produced through marriage, partners *reciprocally* have rights over each other – but renunciation and domination are still at work, though they are now equal and symmetrical. In this case, the problem of objectification and domination has been equalized, but it does not follow that sex has thus become consistent with moral obligations and respect for persons.[56] Alternatively, we can understand the "unity of wills" as a kind of "romantic blending" of partners,[57] so that spouses *jointly* have rights over each other such that they thereby have mutual rights over themselves. But, as Herman points out, this suggests that married persons have in some sense fused and become two sexual bodies joined as one unified self, and this poses a serious threat to autonomy.[58]

Like Herman, Linda Papadaki is concerned with the threat to autonomy posed by this language of unity, surrender, and disposal. Papadaki argues that the right to disposal over my partner is inconsistent with Kant's prior claim that "a person cannot be a property and so cannot be a thing which can be owned, for it is impossible to be a person and a thing, the proprietor and the

[54] Singer, (2001), p. 185.
[55] Herman, (1993), p. 61.
[56] Herman, (1993), p. 60.
[57] Herman, (1993), p. 61.
[58] Herman, (1993), p. 61.

property."[59] How, she asks, can marital partners acquire each other as objects for use if they cannot be both things and owners? Or, to put it more forcefully: if sexual use entails that persons become objects of use, how can one spouse, as an object, be said to own the other spouse? Wouldn't this make her both a thing and a person, and both property and proprietor? For Papadaki, Kant's account of marriage in the *Lectures on Ethics* contains serious conceptual difficulties.[60]

Papadaki proposes a solution to this difficulty, arguing that we ought to take Kant's notion of objectification less literally, and instead assume that marriage involves a different sort of transformation: through marriage, spouses become a "unified agent".[61] As such, they are still separate and autonomous (and neither has been reduced to the status of objects), but they now share ends and engage in decision making together.[62] Similarly, Herman concludes that, in creating a unity of wills, marriage "blocks" the objectification that sexual desire normally entails, by embedding that desire within a relationship in which partners are bound to respect each other as persons.[63] Or, to put it differently, marriage makes possible a kind of "psychological transformation" of the partners' relation to each other in such a way that sex becomes morally permissible.[64]

But why should we assume that marriage will morally transform sex in this way? As both Singer and Herman point out, Kant's account of marriage is not an account of love.[65] Kant tells us nothing about how partners ought to treat each other or regard each other beyond the basic, universal requirement that they are bound to respect each other as persons. Kant does not, as Singer argues, give us any account of what makes a marriage "good."[66] Surely, Herman asks, deeper

[59] Kant, LE 2001, p. 165.
[60] Papadaki, (2010), pp. 280-282.
[61] Papadaki, (2010), p. 284.
[62] Papadaki, (2010), p. 284.
[63] Herman, (1993), p. 62-63.
[64] Brake, (2007), p. 251.
[65] Herman, (1993), p. 63; Singer, (2001), p. 186.
[66] Singer, (2001), p. 185.

moral work is necessary to make sex morally permissible?

For this reason, Laura Denis argues that while marriage might be necessary to make sex morally permissible, it is not sufficient. A sufficient account of a relationship capable of transforming the morally problematic nature of sex, she argues, would involve an account of practical love and moral friendship.[67] Both Denis and Papadaki highlight the similarities between Kant's accounts of marriage and moral friendship. Though only marriage is legal, both relationships turn on the notion of reciprocal surrender and the unity of will. But while the moral requirements of marriage stop there, moral friendship entails a more robust account of respect, affection, mutual care, and even delight. Denis argues, therefore, that a robust account of marriage as a moral solution to sexual impulse would involve an account of marriage as also a moral friendship.[68] Papadaki makes the opposite claim: she argues that if the unity of wills is the critical ingredient in countering the moral threat of sexual use, then moral friendship ought to be sufficient to do the work of making sex morally permissible. If this is the case, then marriage as a legal agreement is no longer necessary: as long as sexual partners participate in a relationship consistent with mutual moral regard and shared ends, sex would be consistent with moral obligations.[69]

Kant, however, thought that such a solution was insufficient: the legal and institutional elements of marriage are critical to the work marriage does to counter the moral harms of sexuality. Yet as these arguments make clear, Kant's account of marriage in the *Lectures on Ethics* is both conceptually confusing and too limited to provide a robust solution to the problems posed by sexuality. To see how Kant thought marriage could deal with the threat of sexuality, we must go beyond his moral claims about marriage, and explore his account of marriage as a fundamental and necessary juridical institution. I will begin with an overview of Kant's account of sex and marriage in

[67] Denis, (2001), p. 12.
[68] Denis, (2001), p. 17-23.
[69] Papadaki, (2010), p. 289-291.

the *Rechtslehre*.

2. MARRIAGE AND KANT'S POLITICAL PHILOSOPHY

2.1 Sex and the *Rechtslehre*: A Threat to External Freedom

Much of the confusion present in Kant's account of sexuality and marriage in the *Lectures on Ethics* is clarified in the arguments developed in the *Rechstlehre*. The *Rechtslehre* is Kant's final word on marriage, both in the sense that it is his last discussion of the issue, and in the sense that it is the most rigorous account of marriage he offers anywhere in his philosophical writings. Here, marriage is one of the juridical institutions that organize Kant's conception of right and his account of the state.

In the *Rechtslehre,* Kant introduces marriage within his discussion of possessive rights. He defines possession as "the subjective condition for any possible use"[70] of an object, and adds that there are only three types of objects distinct from myself of which I can be in possession: 1) corporeal things, 2) the deeds/acts of another, and 3) the status of another (i.e. as wife, servant, etc.). These types of objects correspond to three types of possessive rights: 1) property right, or the rights to corporeal things, 2) contract right, which is a right against a person, or against the deeds of a person, and 3) "rights to persons akin to rights to things."[71] The right to persons akin to rights to things is also referred to as 'the right of domestic society.' It encompasses three sorts of relationships: marriage, parenthood, and the retention of domestic servants. I will have more to say about each of these relationships, and the critical relationship between them, in the next chapter. For now, I focus on Kant's arguments about sex and marriage.

In the *Rechtslehre*, Kant describes sexual union as "the reciprocal use that one human being

[70] Kant, MS, 6:245.
[71] Kant, MS, 6:246-248.

makes of the sexual organs of another."[72] He distinguishes between "animal" sex and sex in accordance with law – in other words, sex within marriage. Thus, Donald Wilson argues that sex within marriage is no longer a mere animal instinct: marriage works here to transform the very nature of sex.

Kant's account of sexual objectification does not suggest so optimistic a reading, however. The arguments about sexual objectification in the *Rechstlehre* differ in subtle but important ways to those in the *Lectures on Ethics*. In the *Rechstlehre*, Kant argues that sexual use entails offering oneself up for the enjoyment of another, and that in doing so, one makes oneself into an object. The concern is not that my partner treats me as an object, but that there is *no way* for me to engage in sex without objectifying myself, and thus to fail to respect the humanity in my own person.[73]

The only way to make sex permissible is in a reciprocal relationship in which each partner acquires the other 'as if it were a thing.'[74] The 'as if' does critical work here: we need not worry that persons are both persons and things, or both proprietor and property. Rather, Kant is squarely positioning marriage in the language of possessive right, and maintaining the critical distinction between persons and things in the process. The ontology of the *Rechtslehre* is rigorous on this distinction: persons are those beings that have the innate right of freedom,[75] while "any object of free choice which itself lacks freedom is therefore called a thing."[76] A person cannot be an object without being wholly denied freedom, and thus ceasing to be a person altogether. The "as if" works to make it clear that the possessive right entailed in marriage allows both partners to retain their status as persons even as sexual objectification is taking place.

Marriage in the *Rechtslehre* is defined as neither an agreement nor a contract, but as a legal

[72] Kant, MS, 6:277.
[73] Kant, MS, 6:277-279.
[74] Kant, MS, 6:278.
[75] Kant, MS, 6:237.
[76] Kant, MS, 6:223.

institution. The necessity of marriage, Kant argues, is in accordance with "reason's pure law of right."[77] Marriage must be an equal, monogamous, lifelong relation, and it must be consummated: just as marriage is necessary for permissible sex, sex is necessary for marriage.

We might note that, once again, Kant has said nothing about what makes a marriage good: his arguments simply delineate the formal features of marriage as a necessary legal institution and a constituent of Right. As Elizabeth Brake argues, Kant's account of marriage in the *Rechtslehre* is designed to *structurally* transform sexuality through marriage – he makes no intimation of the deeper sorts of psychological transformations hinted at in the *Lectures on Ethics*.[78] Thus, contrary to Donald Wilson's claim that marriage fundamentally transforms sex in the *Rechtslehre*, Lara Denis and Linda Papadaki argue that this account of marriage is not morally robust enough to fundamentally alter the moral permissibility of sex, and that we would need to turn to the *Doctrine of Virtue* in order to find the arguments that might do this work.[79]

I argue that the moral transformation of sex is simply not Kant's project in the *Rechtselehre.* To fully grasp the reasons for the inclusion of marriage as one of the basic constituents of Kant's account of Right, we must relinquish the assumption carried over from the *Lectures on Ethics* that marriage is designed to morally redeem sex. In the *Rechtslehre,* marriage is not the sort of robust ethical relation that Hegel suggested, but a legal institution concerned with juridical rights.[80] In the remainder of this chapter, I develop an account of juridical law and the role of institutions in the *Rechtlsehre* in order to show that sex poses a critical threat to the juridical order, and marriage is a necessary and coercive institution that contains that threat. I argue that in the *Rechtslehre*, sex is not a moral threat but a threat to external freedom.

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[77] Kant, MS, 6:278.
[78] Brake, (2007), p. 251.
[79] Denis (2001), p. 3; Papadaki (2010), p. 288.
[80] See Hegel's discussion of marriage in the *Philosophy of Right* Section 142.

2.2 External Freedom and Rightful Relations: A Relational Account of Justice

Kant's political philosophy offers a relational account of justice which is primarily concerned with protecting external freedom. In the *Metaphysics of Morals* Kant carefully distinguishes between two kinds of lawgiving, which hew to the division between the *Doctrine of Right* (the *Rechtslehre)* and the *Doctrine of Virtue* (the *Tugendlehre).* The former analyzes justice (right), while the latter analyzes ethics (virtue). Kant delineates the respective jurisdictions of ethical and juridical law in two ways.

First, he argues that "all lawgiving can … be distinguished with respect to the incentive."[81] Ethical laws, like the moral law developed in the *Groundwork*, have duty as their incentive, and are thus concerned with both actions and intentions.[82] Ethical lawgiving does not distinguish between *what* I choose and *why* I choose it. The jurisdiction of juridical lawgiving, on the other hand, is limited to my external freedom. My reasons and motivations for action are, quite simply, outside the scope of juridical lawgiving. Juridical laws cannot require that duty be the incentive for action: I can be coerced into acting in accordance with juridical law (indeed, the purpose of law is often to coerce me in precisely this way), but I cannot be required to adopt particular ends or reasons. My external actions belong within the scope of juridical law, but from a juridical standpoint, my internal willing and deliberation is wholly my own.[83]

Second, ethical and juridical lawgiving can be delineated by the kinds of lawgiving they allow.

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[81] Kant, MS 6:218.
[82] This is to say that it is concerned with both my external freedom (my ability to choose an action in the world) and my internal freedom (my ability to choose an action in the face of my own inclinations and desires). Kant argues that ethical lawgiving is thus necessarily internal lawgiving, since "no external lawgiving can bring about someone's setting an end for himself (because this is an internal act of the mind), although it may prescribe external actions that lead to an end without the subject himself making it the end." (MS 6:239).
[83] Kant rigidly delineates strict right from ethical lawgiving: "that is to say, just as right generally has as its object what is external in actions, so strict right, namely that which is not mingled with anything ethical, requires only external grounds for determining choice." (MS 6:232).

Ethical lawgiving can *only* be internal, while all laws that can be coercively enforced by an external lawgiver are juridical.[84] The jurisdiction of right encompasses those laws that must be coercively enforced and that thus require the existence of an external lawgiving body.[85]

The *Rechtslehre* is primarily concerned with defining and protecting external freedom. External freedom is innate to humanity[86] and is relational: because it defines itself as a freedom that can only be compromised by the actions of others, it presupposes that we find ourselves in relationships with others. This freedom is definitive of persons: the distinction between persons and things in the *Rechtslehre* rests on the claim that persons have freedom, while things do not; thus, respecting persons means recognizing persons as those beings with external freedom.[87] Because

[84] "The sum of those laws for which an external lawgiving is possible is called the *doctrine of right."* (MS 6:229). Kant offers the example of the duty I have to keep a promise given in a contract: it is an external duty, but if my only incentive for keeping my promise is an internal one (i.e. that to break the promise would be wrong), then this duty is ethical insofar as it is only governed by internal lawgiving. If the contract is juridically enforced, however, then I can also be externally coerced (i.e., in a court of law) to keep my promise, then this is a duty of right. Note that I may thus have *both* a juridical and an ethical duty to keep my promise. (MS 6:220). Marcus Willaschek ((2002), 73-74, 87) has accordingly suggested a "dual perspective" reading of obligations: laws may be coercive from a juridical perspective and prescriptive from an ethical perspective.

[85] Kant defines the jurisdiction of right in three ways (MS 6:230). First, right is concerned only with those actions through which one person affects another. External freedom can be compromised only by the actions of others. If my parents prevent me from going to Europe, they have compromised my external freedom – but the fact that the Atlantic Ocean lies between Europe and I, and might similarly prevent me from traveling there, does not pose a threat to my external freedom. As a natural obstacle, it cannot compromise my external freedom, though it may make actions difficult or impossible. The actions that fall within the domain of external freedom are human, affective actions: to speak of external freedom at all, we must already find ourselves in a condition in which persons affect one another. Second, it is concerned only with actions that may limit other's freedom to act: we are *not* concerned with actions that affect the needs or desires of others, since these do not fall within the scope of external freedom. We are concerned only with actions: if my action happens to thwart someone's wishes or desires, I have not compromised their external freedom. Third, right is concerned purely with the freedom to make choices and to act. It is not concerned with the content of those choices. In other words, right protects external freedom, but it does not prescribe a proper use of that freedom.

[86] Kant, MS 6:237.

[87] Kant, MS, 6:223. We might contrast this to the requirements for respecting persons in Kant's moral philosophy. In the *Groundwork*, respecting persons means respecting humanity as an end in itself, or having a duty to adopt the humanity of all persons as an end. In the *Rechtslehre*, respecting

they have external freedom, persons are innately equal and are each their own master.[88] Thus, external freedom entails that I can choose for myself and set my own ends, rather than being arbitrarily subject to the will of another.

External freedom is man's one innate right, but it must be consistent with equal universal external freedom.[89] The Universal Principle of Right, accordingly, holds that "any action is right only if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice can coexist with everyone's freedom in accordance with universal law."[90] The principle places a structural and symmetrical limitation on the exercise of external freedom: my external freedom must be consistent with equal, universal external freedom. This tells us two things. First, my actions are consistent with right as long as they do not infringe upon the external freedom of others: the principle of right does not obligate me to limit my freedom, but rather defines my freedom as limited. There is for Kant no concept of unlimited or unlawful freedom, and the normative force of the principle of right is thus embedded within Kant's account of freedom.

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persons means only recognizing that humanity entails the innate right to external freedom. I need not adopt other persons as ends in themselves (since juridical law can't dictate ends), but I am required to recognize that persons *qua* persons possess a right to external freedom that I am bound not to transgress.

[88] Kant, MS, 6:238. Jennifer Uleman has noted, this account of external freedom fits curiously into Kant's broader philosophy. Contrary to Kant's account of freedom elsewhere – namely, in the *Groundwork* and the *Critiques* -- freedom here is not inconsistent with the experience of being in the world: rather, external freedom necessarily involves the freedom of spatio-temporal movement in the world. Moreover, it presupposes a social, relational world in which I stand in relationships to others. In this sense, it stands in opposition not only to Kant's own account of the freedom of the will, in which empirical conditions play no role, but also to the accounts of natural freedom that dominate the political arguments of Hobbes and Locke. Kant's notion of external freedom cannot exist in pure nature, since it presupposes that I stand in relations to others such that my freedom can be compromised by their actions. External freedom is neither the purely noumenal freedom of the will, nor the purely phenomenal natural freedom of savage man in the state of nature. Uleman, Jennifer (2004). "External freedom in Kant's *Rechtslehre:* Political, metaphysical." *Philosophy and Phenomenological Research, LXVIII*(3), pp. 579-580.

[89] "Freedom (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with universal law, is the only original right belonging to every man by virtue of his humanity." Kant, MS, 6:237.

[90] Kant, MS, 6:230.

Second, the protection of external freedom is *structurally universal*: laws must coercively prevent *all others* from infringing upon my external freedom.

Accordingly, universal rightful coercion is necessary to freedom: "if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws, coercion that it opposed to this … is consistent with freedom in accordance with universal laws, that is, it is right."[91] So, if someone's action infringes on my external freedom, that action is wrong. To coercively limit an action that infringes on my external freedom would then be right. Coercion is thus essential to lawful external freedom: "right and authorization to use coercion mean one and the same thing."[92] Marcus Willaschek argues that coercion not only makes external freedom possible, but also makes us more likely to choose actions that are consistent with right. Drawing on Kant's model of dynamical laws, Willaschek defines freedom as a lack of resistance, and argues that coercion places resistance on actions that are not in accordance with universal external freedom.[93] Right actions -- those consistent with universal external freedom -- will not meet resistance.[94] In this way, coercive juridical laws do more than restrain us: they may retrain us by providing a structure in which we are encouraged to make choices consistent with universal rights for all.

So, rightful external freedom is a competitive and lawful freedom subject to coercive

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[91] Kant, MS 6:231.
[92] Kant, MS 6:232.
[93] Willaschek, Marcus. (2002). "Which Imperatives for Right? On the non-prescriptive character of juridical laws in Kant's *Metaphysics of Morals."* In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays* Oxford: Oxford University Press, pp. 82-85. Kant says, "the law of a reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the construction of that concept, that is, the presentation of it in pure intuition *a priori*, by analogy with presenting the possibly of bodies moving freely under the law of *equality of action and reaction*." (MS 6:233)
[94] Just as the relationship between coercion and external freedom can be understood through analogy to dynamical laws, Kant argues (MS 6:233) that the concept of right is structured like "formal concepts of pure mathematics." "Analagously to this," he argues, "the doctrine of right wants to be sure that *what belongs to each* has been determined (with mathematical exactitude). Such exactitude cannot be expected in the doctrine of virtue, which cannot refuse some room for exceptions."

restraint. These restraints must take the form of universal, symmetrical laws,[95] and the *Rechtslehre* is primarily concerned with delineating the coercive structures necessary to enforcing equal external freedom in this way. Kant divides these arguments into two parts: Private Right, which develops the three core juridical institutions that manage possessive rights, and Public Right, which develops the institutions of public justice, including citizenship, legislation and sovereignty, punishment, and cosmopolitan right. I will return to the institutions of Public Right in Chapter 3. In the remainder of this chapter, I explore the relationships between external freedom and the institutions of Private Right in order to show how these institutions operate as instantiations of the principle of right by concretely defining, protecting, and transforming external freedom.

2.3 Possessive Rights and the Justification of the State: Balancing Inevitable Conflicts

Allen Wood and Barbara Herman offer a useful starting point for considering Kant's arguments in the *Metaphysics of Morals*. They argue that in this text, Kant offers a blueprint for weighing and prioritizing conflicting but necessary duties, and for navigating moral dilemmas that are unavoidable, given the empirical facts of our lives as human beings.[96] Within this, Barbara Herman argues, Kant introduces a particular category of dilemmas, in which there are things we need to be able to do (for example: have sex, raise children) that will necessarily conflict both with the equal freedom of others and with the broader range of our moral obligations to others. The inevitability of these conflicts necessitates the establishment of a coercive juridical condition.

To say that we are persons with an innate right to external freedom is to say that we have a right to a domain of unilateral choice. Japa Pallikkathayil has called this domain a "sphere of

[95] "One can locate the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone else." Kant, MS 6:232.

[96] Herman (1993), p. 53; Wood, A. (2002). "The final form of Kant's Practical Philosophy." In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press, p. 5.

discretionary space" that each person has in virtue of their ability to engage in self-directed action.[97] When I interfere with the discretionary space of another, I wrong them, both because I fail to recognize their right to set their own ends (a moral wrong) and because I fail to respect their right to external freedom (a juridical wrong). I have a duty not to wrong anyone – but, Kant intimates, it's unlikely that I can fulfill this duty simply by avoiding all contact with others. I will interact with others, and in doing so, it is likely that we will infringe on one another's discretionary space in a range of ways. The only way to interact with others and at the same time to avoid wronging them is to enter into a civil condition, in which coercive laws will symmetrically protect our discretionary spaces. The fact of our external freedom and the inevitability of interactions with others thus necessitate establishment of the state and its coercive structures.

Kant argues that possessive rights arise because of the unavoidable conditions of human life: we live on a shared and continuous globe with finite, relatively scarce resources.[98] External freedom necessarily involves the rightful use of things in the world: external freedom is spatio-temporal, and concretely posits individuals as embodied beings acting and choosing in a world of limited resources. The use of these resources is necessary for our survival: we are finite beings who cannot

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[97] Pallikkathayil, Japa. (2008). *Your Money or Your Life: Coercion in personal or political contexts.* Dissertation: Harvard University. P. 140 and (2010). "Deriving Morality from Politics: Rethinking the Formula of Humanity*." *Ethics* 121.1: pp. 116–147.

[98] Kant lays out three general duties of right that in the introduction to the *Rechtslehre.* First, "do not make yourself a mere mean for others but be at the same time an end for them." Second, "do not wrong anyone" – even if the only way to do so is to avoid all association with others and shun society. Third, if this is impossible, and one cannot avoid interacting with others, you must "enter a condition in which what belongs to each can be secured to him against everyone else." (MS 6:236-237). The first entails that persons must interact with one another as persons (i.e. as beings with an innate right to external freedom whose actions can be imputed to them). Persons cannot offer themselves up as objects for use. The latter duties are closely related: we have a strong obligation not to wrong others, but the only way to ensure this, Kant suggests, is to avoid all contact with others. Of course, as Kant points out elsewhere, this is not possible: we find ourselves on a shared globe with limited resources, and we inevitably come into conflict. The only way to avoid conflict, then, is to enter into the civil condition, characterized by a coercive juridical authority.

spontaneously will into existence the resources we need for survival, so we must make use of the things in the world. We are populous enough that we will inevitably come into conflict over the use of these resources.[99] Because the use of these resources is both possible and necessary, it must be possible for us to use things in a way that respects external freedom.[100]

External freedom thus entails possessive rights: because making choices in the world necessarily involves the use of objects outside myself, possessive rights allow me to extend my sphere of unilateral control beyond myself. Possessive rights take the same form as our basic right to external freedom: my right to a thing entails, very simply, that everyone else recognize that they have no right to it, just as my external freedom entails that no one has a right to hinder my legitimate exercise of freedom.

Examining the right to property can help us to understand the necessary relationships between external freedom, possessive rights, and the institutions of the coercive state. Property right allows me to extend my sphere of discretionary space beyond my own corporeal form by allowing me to use objects in the world. But like all Kantian rights, property right is relational: it defines a relationship between persons, rather than a relationship between persons and objects. Accordingly, Kant distinguishes between two species of possession: physical (sensible) possession and intelligible (noumenal) possession. In the first case, possession is defined by empirical conditions: I possess the things I am holding, using, or defending.[101] Yet this appeal to empirical conditions cannot yield a

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[99] Kant, MS 6:262, 311; Westphal, Kenneth. (2002). "A Kantian Justification of Possession." In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press, pp. 98-99.

[100] "That outside me is externally mine which it would be wrong (an infringement on my freedom which can coexist with the freedom of everyone else in accordance with a universal law) to prevent me from using as I please." Kant, MS 6:246,249.

[101] This emphasis on a direct spatial or temporal relation to the object in question draws on natural law tradition: for Hobbes, I may call something mine only so long as I actively defend it; for Locke, I may call something mine when I have worked or transformed it in some empirically discernible way.

rightful account of possession: we must distinguish between *holding*, in which possession is empirically understood, and *having,* "in which an abstraction is made from all spatial and temporal conditions."[102] For Kant, rightful possession necessarily entails an abstraction from empirical conditions.[103] Kant's argument is a compelling challenge to natural law accounts of possession: on his account, ownership is a rightful relationship between persons that cannot be empirically determined in the way that mere physical possession can.

Intelligible possession, or ownership,[104] depends on a shared understanding that "something external would be mine only if I may assume that I could be wronged by another's use of a thing even *though I am not in possession of it."*[105] Unlike physical possession, intelligible possession describes

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[102]Kant, MS, 6:253.

[103] For this reason, he actively rejects Locke's argument, instead arguing that transforming a piece of land cannot entail rightful acquisition, but that possession must be derived from ownership. (MS, 6:268.) On Kant's account, we will inevitably stumble upon the need for intelligible possession while we are yet in the state of nature: we are finite beings, and we are dependent on making use of things in the world for our survival. However, we can't possibly use all the things necessary for our survival simultaneously. For example, I need both a place to sleep and food to eat, but I can't defend the place where I sleep while I go out in search of food. Physical possession of objects isn't enough to support human survival. Unlike physical possession, however, intelligible possession cannot be discovered empirically or maintained through force. How can you know that my house is mine if I am not in it? What will prevent you from entering it if I am not defending it? These problems can't be solved with a merely physical account of possession, and it is for this reason that Kant argues that possessive rights in the state of nature are merely provisional. Kant perhaps draws from Rousseau here, who famously remarked "the first man, who after enclosing a piece of ground, took it into his head to say *this is mine*, and found people simple enough to believe him, was the real founder of civil society. (Rousseau, Jean Jacques. *Discourse on Inequality.* (Washington Square Press, 1967), p. 211).

[104]Howard Williams argues that the Kantian distinction between intelligible and empirical possession amounts to the distinction in English between possession and ownership, arguing that "we are perhaps more fortunate than Kant here in that the English language specifically refers to [intelligible] possession: 'ownership.' Williams suggests that we distinguish in English between 'possession' for sensible possession and 'ownership' for intelligible possession. Williams, Howard. (1977). "Kant's concept of property." *Philosophical Quarterly, 27*(106), p. 32. Kenneth Westphal, on the other hand, argues that both intelligible and sensible possession are 'species' of ownership. He distinguishes between 'ownership' (as describing conditions for use or possession of an object) and 'property,' arguing that while the conditions for ownership can be delineated in a treatise on Right, specific rules for individual private property can be determined only within the legal framework of a specific society. Westphal, (2002), pp. 90-93.

[105]Kant, MS, 6:245.

not only a relationship between a person and an object for use: rather, it describes a relationship between persons such that persons are bound to recognize others' exclusive rights to use things. Kant defines this relationship thus:

> when I declare (by word or deed), I will that something external is to be mine, I thereby declare that everyone else is under obligation to refrain from using that object of my choice, an obligation no one would have were it not for this act of mine to establish a right. This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule."[106]

We should note several things about this argument. First, a right to something entails simply that other recognize that they do not have the make use of that thing. Second, this right holds only if it is reciprocal: unless I am willing to respect the possessive rights of others, I can have no possessive rights of my own. This reciprocal relation is derived from the principle of right itself, which also takes the form that I have rights only if I reciprocally recognize the rights of others.

Intelligible possession describes a relationship that respects exclusive rights to use, defined as a right *to* something made possible through a right *against everyone else*. Possessive rights are inherently relational and structurally universal: they take the form of *a right against all other persons such that all other persons recognize my rights against them, and I reciprocally recognize their rights against me*. They describe relationships between persons: all rights to things are in fact rights against persons.[107]

[106]Kant, MS, 6:255-256.
[107] For example, Kant reminds us that property right is concerned not merely with the acquisition of things but with "the sum of all the laws having to do with things being mine or yours" (Kant, MS,

Accordingly, merely declaring that something is mine is not enough to establish a right to it, since my right is not a right *to that thing* but a right *against others*.[108] I can call something mine only if others agree to reciprocally recognize my right to it, which is to say that possessive rights are inherently relational. But a reciprocal agreement between private individuals is not enough to ensure my right to a thing: even if all members of a community in a state of nature agree to respect one another's possessive rights, these rights would not be assured. Thus, Kant argues: "it is only a will putting everyone under obligation, hence only a collective general (common) and powerful will, that can provide everyone this assurance."[109] Only a shared, common will can produce the kind of reciprocally coercive relation Kant envisions: possessive right, in other words, will require a public authority that requires all parties to reciprocally recognize the possessive rights of others.

But even a shared reciprocal understanding of rights isn't enough: even if a community peaceably agreed on the possessive rights of its members, disputes may arise in particular cases.

6:261). And these laws, Kant points out, are laws describing relationships between persons. If a person were alone on the earth it would make no sense to talk of that person having property, since property is only those laws governing how other people should respect my right to use what is mine. Therefore, he tells us, there is no direct right to a thing; property right is rather the set of laws that govern my rights against everyone else. Kant says, "it is clear that someone who was all alone on the earth could really neither have nor acquire any external things as his own, since there is no relations whatsoever for obligation between him, as a person, and any other external object, as a thing. Hence, strictly speaking and literally, there is also no (direct) right to a thing. What is called a right to a thing is only that right someone has against a person who is in possession of it in common with all others (in the civil condition)." MS, 6:261. I disagree here with Katrin Flikschuh, who distinguishes between Kant's ethical and political thought on the grounds that the ethical thought is concerned with subject-subject relations, while the political arguments are concerned with subject-object relations. Flikschuh, Katrin. (2002). "Kantian desires: Freedom of choice and action in the *Rechtslehre*." In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays*. Oxford: Oxford University Press, pp. 188-189. The relationships described in the *Rechtslehre* are always relationships between persons, even if they involve the use of things. Kant, in fact, posits no relationship between persons and things: things can be used, but they are not the sort of objects that can enter into relations.

[108] Kant argues, "a unilateral will cannot serve as a coercive law for everyone with regard to possession that is external and therefore contingent, since that would infringe upon freedom in accordance with universal laws." MS, 6:256.

[109] Kant, MS, 6:256.

Public institutions are necessary not only to offer assurance of rights, but to solve problems of indeterminacy.[110] Rightful possession requires not only a common will but a public authority capable of providing assurance and solving problems of indeterminacy.[111]

Moreover, even if all individuals agreed about the basic principles of possession and no disputes arose, possessive rights would not be rightful. Just as an agreement is not sufficient to make consensual sex consistent with right, an informal agreement of this sort cannot provide the coercive force that makes possession possible. Kant distinguishes, accordingly, between three conditions of human life: a state of nature, in which no such agreement exists and possessive rights are purely provisional; a social condition, in which such an agreement may exist privately but cannot be publicly enforced and possessive rights are therefore still only provisional;[112] and a civil condition, in which rights are organized "under a general external (i.e.) public lawgiving accompanied with power."[113] Only in the civil condition, Kant says, is rightful intelligible possession possible.[114]

The civil condition transforms the relationships of possessive right into the rightful juridical institutions of Private Right so that ownership is universally recognized and coercively enforced. Just as external freedom is possible only given the authorization to use coercion against infringements on that freedom, possessive rights are possible only given the existence of a public

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[110] Kant's concerns about indeterminacy and the importance of juridical interpretation were perhaps responses to the Prussian Legal Code of 1794, which attempted to legislate every possible dispute in order to make judges and courts unnecessary. For Kant, general principles were not sufficient: rightful relations entail actual lawmaking bodies, judges, and decision procedures. I will have more to say about the Code, and its influence on Kant's political philosophy in Chapter Three.

[111] Helga Varden argues that problems of assurance and indeterminacy is central to Kant's justification of the state: even in a perfectly peaceful state of nature, problems of assurance and indeterminacy would arise. Varden, Helga. (2010). "Kant's Non-Absolutist Conception of Political Legitimacy: How Public Right 'Concludes' Private Right in "The Doctrine of Right"." *Kant-Studien (2010),* p. 334.

[112]Kant, MS, 6:242, 6:306.

[113]Kant, MS, 6:256.

[114]Kant, MS, 6:257. All pre-civil acts of possession are provisional in that they occur "in anticipation of and preparation for the civil condition."

authority with the authorization to use coercion when those rights are threatened. The establishment of the civil condition, then, entails that provisional possessive rights are transformed into the institutions of Private Right. In the next section, I argue that the institutions of Private Right instantiate the principle of right in order to provide coercive guidelines for particular conflicts in human life.

2.4 Private Right and the Role of Institutions in the *Rechtslehre*: Instantiating the Principle of Right

If the *Metaphysics of Morals* offers an account of balancing conflicting but inevitable duties, then institutions are the concrete juridical arrangements that negotiate these unavoidable moral conflicts. As we have seen, these conflicts can't be rightfully resolved in the state of nature, so Kant's account of the state entails a transformation of these relationships from *provisional rights* to *institutionally ordered and enforced relationships*. In this sense, the institutions laid out in the *Rechtslehre* are derived from the nature of external freedom and designed to transform natural possessive relationships into rightful ones.

Institutions, in other words, do the concrete work of right. They presuppose that we find ourselves in relationships with one another, that we come into conflict with one another, and that our natural ends and needs come into conflict with our basic moral obligations. As Herman argues, we need to be able to do things with the stuff of the world, and therefore we need institutions guiding property arrangements.[115] We need to be able to do things together, and therefore we need an institutional account of agreements or contracts. And of course, we need to have sex with each other, to have and raise children, and to educate those children, and therefore, we need an institutional account of the family.

But do we need these particular institutions? Some contemporary Kant scholars – among

[115] Herman (1993), p. 53.

them Linda Papadaki and Jennifer Uleman – argue that we can accept Kant's broad vision of Right without accepting the particular institutional arrangements that make up the *Rechtslehre*. Uleman describes a *Rechtslehre* as "a rational legal system designed for human beings as we know them" and argues that, as empirical facts about the human condition change, so too must the institutions that populate such a *Rechtslehre*.[116] She imagines constructing a *Rechtslehre* that takes into account the structural nature of injustice in modern life, arguing that, if the *Rechtslehre* is simply law as an idea of reason applied to the facts of human life, then the structure of the *Rechtslehre* must change as facts about human life change. Or, if our understanding of the facts of human life change – if, for example, we now take seriously the fact that family and labor structures seriously disadvantage women – then the institutions designed to bring about right would also change.[117]

Uleman's argument is appealing. It suggests that Kant's political arguments offer only the broadest blueprints for a rightful juridical condition, and that we can reinterpret the institutional arrangements derived from the principle of right as our circumstances and our understanding of ourselves change. This is certainly an argument in line with contemporary neoKantian moral arguments that detach Kant's universal moral claims from his historical and anthropological arguments in order to fashion a Kantian morality that remains alive and adaptive.[118]

While I am sympathetic to moral arguments that interpret Kantian morality in this way, we ought to tread carefully when making similar claims about his juridical arguments.We might argue, as numerous contemporary Kantians do, that even if the institutions that make up the *Rechtslehre* are necessary, they remain open to interpretation. Surely we can accept that property is necessary

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[116] Uleman (2004), p. 595.
[117] Uleman (2004), pp. 595-596.
[118] Cf. Herman (1996); Korsgaard (1996); O'Neill, Onora. (1990). *Constructions of reason: Explorations of Kant's practical philosophy*. Cambridge: Cambridge University Press; Varden, Helga. (2007) "A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage, and Prostitution." Social Philosophy Today 22, pp.199-218; Wood (1999).

without agreeing that a private, capitalistic account of property follows from this?[119] Surely we can accept that an account of citizenship and civil participation is necessary, without agreeing that we ought to distinguish between active and passive citizenship in the way Kant does? Surely we can accept that a just system of punishment is necessary without agreeing that execution is the only acceptable punishment for murderers and traitors? And surely we can accept that some account of permissible, respectful sexuality is necessary without agreeing that legal, heterosexual, monogamous marriage is the only way to organize this?[120] Surely, in other words, we can accept the basic list of necessary institutions while dismissing the particular contours and specific juridical arrangements that Kant so painstakingly constructs and defends in the *Rechtslehre*?

This is a difficult line to walk. On the one hand, we must remember that, as purely juridical institutions, the institutional arrangements described in the *Rechtslehre* cannot dictate ends. They can only protect external freedom, or the domain within which I may set ends and make unilateral choices. Concerns about the particular elements of Kantian institutions often arise because we have imbued those institutions with ethical content that has no place in purely juridical arguments.[121]

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[119] Kant suggests as much when he introduces Mongolia as a place where land is owned communally. Even here, however, communal ownership is held in tension with individual rights of use: "since all the land belongs to the people, the use of it belongs to each individual." (MS, 6:266).

[120] Allen Wood has argued that in the *Conjectural History of Human Nature* (1786) Kant refers to marriage and agriculture as the socio-cultural shifts that make possible the civil condition. Because the acquisition of land marks the origin of the civil condition, "Kant's entire theory of right thus presupposes a post-agricultural form of society and takes for granted the social relations appropriate to a mode of human life centered on urban civilization." Wood, (1999), pp. 239-240, 249. I have argued that external freedom, which is the foundation for Right, is the product of the civil condition, and the civil condition itself, Wood suggests here, is the product of a particular material condition in which persons need to be able to acquire stuff in the world, and be free to use that stuff without infringing on the freedom of others to do so. If external freedom entails an account of the spatio-temporal and relational contexts of action, then the possessive rights in the *Rechtslehre* do the legwork of providing that context. The scheme of possessive rights is not tangential to the central arguments in the *Rechtslehre*. Rather, it provides the justificatory force of the *Rechtslehre*.

[121] Elizabeth Brake gives several examples of this in the case of marriage, highlighting arguments that defend marriage on the grounds that it brings about some desirable end or supports the development of a particular set of virtues. She argues that Rousseau, Hegel, and Harold Bloom

Actions may conform to the principle of right without being virtuous. So, for example, if I acquire extensive property or wealth in a manner permitted by juridical law, then my status as a property owner is rightful, even if it is also unfair, morally problematic, or ethically troubling. My actions may be inconsistent with the categorical imperative's injunction that I should act only on those maxims I could will to be universal – surely, selfish, competitive acquisition of stuff, and an unjust distribution of wealth isn't consistent with a universal kingdom of ends – but as long as my actions adhere to the conventions of property right, my actions are right. There are many ways in which I could rightfully acquire property, some of which may be selfish and morally undesirable, and some of which may be consistent with robust moral principles. As a juridical institution, property right simply lays out the rules of acquisition and use. The moral interpretation of those rules, however, remains open, and in this sense, it is true that the interpretation of the institutions of the *Rechtslehre* remain open to interpretation.[122]

On the other hand, however, the institutions laid out in the *Rechtslehre* are designed to transform relationships and interactions, and often to make those relationships and interactions permissible.[123] They do this not by obligating us to act in certain ways, but by defining permissible

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praise marriage for its capacity to bring about moral education and virtue, while Roger Scruton argues that it morally transforms the nature of erotic love. Brake argues that these arguments blur the distinction between juridical and ethical lawgiving, arguing that "virtue concerns internal psychological states which cannot be brought about by external legislation. No institution can compel agents to adopt virtuous ends, or any ends, as their own." (Brake, (2007), p. 246-247). Ralph Wedgewood similarly critiques conjugalist defenses of marriage, arguing that juridical law cannot define particular life choices as virtuous, and certainly cannot coerce citizens to choose these modes of life. (Wedgewood, Ralph. (1998). "Same Sex Marriage: A philosophical defense." In (eds.) Cahn and Kasachkoff, *Morality and Public Policy.* Prentice Hall, pp. 103-107).

[122] There are, for example, limited rules about what I can do with my property. And, by the same token, property ownership might be organized in a variety of ways, including collective or communal property ownership. Shared rights to property, however, are derived from individual rights to property: because Kantian property rights are derived from external freedom, all property right is initially individual.

[123] See Brake (2007), p. 244; Herman (1993), p. 53-54 for a developed account of marriage as an institution designed to transform sexual relationships.

forms of relationships between free persons, and authorizing specific forms of coercion when rules are broken. Herman points out that "there is an air of paradox here, for the claim is that political institutions can be morally creative in exactly those areas where we have learned to see the role of such institutions as repressive."[124] As is always the case in Kant's account of right, only lawful freedom is morally creative, and lawful freedom exists only given coercive juridical arrangements. Institutions are particular instantiations of right: they apply the general principle of right, along with its justification of coercion, to those relationships that inevitably arise given the conditions of human life.

But which relationships inevitably arise given the conditions of human life? Is Uleman right: should the *Rechtslehre* change as the conditions we think relevant change? The rights delineated in Private Right refer to those relationships that inevitably arise prior to the establishment of the civil condition. Though these rights are merely provisional in pre-civil society or the state of nature, the necessity of securing these rights through public law is what justifies and necessitates the state and coercive juridical laws.[125]

Possessive rights arise provisionally in the pre-civil condition out of the inevitable conditions of human life. The essential condition for making use of things in the world in a manner consistent with external freedom is the right to exclusive use. This right is conventional rather than natural: it turns on the recognition and participation of others. It denotes a right to exclusive use: other people must recognize and respect my right to exclusive use, and refrain from interfering with my right to make use of the objects within my control. We are free to make use of things in the world only if we are protected from the incursions of others, which is to say that we are free to make use of things only given coercive institutional structures that prevent others from hindering our freedom and

[124] Herman (1993), p. 53.
[125] Kant, MS 6:242, 6:256-257.

rights to use. These institutional structures correspond to the basic needs that arise necessarily and inevitably in the state of nature.

Of course, our most basic needs aren't limited to the use of things: as Kant admits, our basic needs include sex. Fulfilling this basic need entails the use of people, and this presents significant difficulties.[126] After all, I can use things in whatever way I please as long as I'm not infringing on the external freedom of others, but the use of a person poses far deeper conflicts to external freedom. Given this background, we can now return to Kant's concerns about sex in the *Rechtslehre*, and with this emphasis on sexual use as a threat to external freedom, we can finally position marriage as one of the institutions central to Kant's account of Right.

2.5 Marriage as a Juridical Institution in the *Rechtslehre*: Transforming External Freedom

Thus far, I have argued that the central project of the *Rechtslehre* is to provide a justification for the state grounded on an account of the relational nature of external freedom. Kant's concerns about sex in the *Rechtslehre*, then, are best understood as concerns about the threat sex poses to external freedom. Sex involves the use of another person, and this use compromises their external freedom. We might think that the only way I can make sexual use of someone without infringing on their external freedom is with their consent, but to use someone in this way, as we have seen, is to fail to treat them as a person, and thus to make use of them as a thing.[127] Recall that, for Kant, the distinction on which the possibility of right turns is the distinction between persons (who have freedom) and things (which don't).[128] And recall, also, that I fail to consider someone as a person

[126] Kant, LE 2001, p. 156.
[127] Helga Varden, for example, presents a Kantian account of sex that holds that "Kant's considered opinion must be that […] insofar as he voluntarily and continuously consents, the sexual deed must be legally permissible if we are to be consistent with Kant's account of justice." Varden (2007), p. 202.
[128] Kant, MS 6:223.

not only when I make use of them for sex, but also when I desire them for sex.[129] Sexual desire, for Kant, is the desire to treat a person as a thing – and sexual desire, therefore, entails a failure to respect the freedom of the object of my desire. My failure is not simply the moral lapse of failing to recognize and respect the humanity of the object of my desire as an end in itself. When I see the object of my desire as a potential object for use – as, in other words, a thing for use – I fail to recognize and respect his external freedom.[130] And when my desire leads me to treat myself, too, as merely an object for use, I have likewise failed to respect my innate right to external freedom.

In the *Rechtslehre,* sexual desire involves a failure to respect the personhood, and thus the external freedom, of oneself and another. This problem can't be solved by consent, since consenting to sexual use would entail consenting to be used as an object. Persons can't renounce their personhood and innate right to external freedom in this way, since such consent would be possible only given the freedom to choose.

Sexual desire is inevitable. It's natural. But it infringes on external freedom, and it does so in a way that consent alone can't manage. Therefore, it must be organized in such a way that the threat to external freedom is contained and balanced by coercive laws. These coercive laws take the form of the institution of marriage, which structurally contains sexual desire so that partners acquire each other 'as if' they were things, and all others are coercively bound to respect these rights of exclusive

[129] Kant's comments in the *Lectures* clearly link sexual desire itself to objectification: "because sex is not an inclination which one human being has for another as such, but is an inclination for the sex of another, it is a principle of the degradation of human nature, in that it gives rise to the preference of one sex to the other and to the dishonoring of that sex through the satisfaction of desire." Kant, LE 2001 p. 164.

[130] Kant rejects the notion of property in the person from a juridical perspective, arguing that persons never have the right to disposal over themselves or others. In doing so, however, he sidesteps the familiar "humanity in his own person" argument of the *Groundwork*, saying that "this is not, however, the proper place to discuss this point, which have to do with the right of humanity, not that of human beings." (MS 6:270). The moral right of humanity, in other words, is outside the scope of a juridical argument, which deals only with the rights of human beings as those entities with external freedom.

use.

Juridical marriage, organized in this way, hasn't necessarily transformed the nature of sex: it hasn't made sex any less objectifying, and it hasn't solved the inherent threat that sexual use poses to moral personhood or external freedom. What it has done, instead, is to contain that threat and to *institutionally transform the nature of external freedom*. In one sense, marriage protects against infringements on external freedom: marriage defines my partner as mine, and mine alone: any attempt by another to make use of my partner would be an infringement on both of our external freedom. But in another sense, marriage fundamentally alters the structure of external freedom: within marriage, I may make use of my spouse without infringing on his external freedom in any juridically significant way. I can use him, in fact, 'as if' he were a thing – even though this sort of use is inconsistent with respect for external freedom. The principle of right, in other words, operates differently within marriage than it does outside it. The rights I have against my partner are fundamentally different than the rights I have against anyone else: as Kant puts it, domestic right "must be a right lying beyond any rights to things and any rights against persons."[131] In acquiring each other 'as if' we were things, my spouse and I have become a united juridical person, and the rules of right operate in only a very minimal way within that relationship.

We might object that this paints a rather miserly picture of what marriage is. Where is the psychological transformation of sex that Herman and Wilson describe?[132] Where is the loving, respectful similarity to moral friendship that Denis, Singer, and Papadaki argue for?[133]

Each of these arguments assumes that marriage is morally robust or morally creative. This assumption misunderstands the juridical project. Juridical institutions aren't themselves morally creative: they merely define the concrete conditions in which moral creativity becomes possible. As

[131] Kant, MS 6:276.
[132] Herman (1993), p. 62-63; Wilson (2004), p. 105-106.
[133] Denis (2001), p. 17-23; Papadaki (2010), p. 284; Singer (2000), p. 187-189.

a juridical institution, marriage merely coercively protects external freedom. What makes marriage (and with it, all the relationships that make up domestic right) unique within the scheme of possessive rights is that it does this not only by coercively protecting rights to exclusive use, but also by transforming the way external freedom works within the marital relationship.

As a purely juridical institution, marriage does not morally transform sex. Rather, it structurally transforms private life, creating a space within which the Principle of Right and its coercive protection of external freedom are vastly limited. Barbara Herman argues that "what is most remarkable in Kant's account is the argument to the necessity of public rules for what we think of as the most private relationships."[134] Yet the privacy Herman refers to is in fact the result of the transformation of external freedom that marriage entails. Kant does this in two moves. First, marriage law defines sex as a matter of juridical interest because it poses a serious threat to external freedom. Second, it contains sex within an institutional structure that makes this infringement on external freedom juridically acceptable within the relationship it defines.

We should note that, like all juridical institutions, marriage is defined in a remarkably limited way. This account of rightful marriage tells us nothing about the way partners ought to treat each other or about the ethical duties involved in the relationship. It tells us nothing about the religious or social customs involved in marriage. In this sense, the particular rules of the institution of marriage remain open. But it does tell us that particular kinds of relationships, such as sexual relationships, involve a structural transformation of external freedom. It tells us that, because sexual desire and use is inevitable, this structural transformation of right is both inevitable and necessary. It tells us, in fact, that like other forms of possessive right, the institutionalization of this transformation – the institutionalization of marriage, in other words – is one of the central justifications of the coercive political state.

[134] Herman (1993), p. 63.

Conclusion

By carefully distinguishing between Kant's moral and political arguments, this chapter has argued that in Kant's political philosophy, sex poses a threat to external freedom. Kant's arguments in the *Rechtslehre* present a rightful a coercive juridical order capable of balancing the conflicts that inevitably arise in human life. Kant's conception of justice is thus inherently *relational*: conflicts arise only as persons interact with one another, and in doing so, infringe upon one another's external freedom. The juridical order is designed to coercively manage infringements on external freedom through external lawgiving, which takes the concrete form of an institutional order through which relationships are made consistent with equal and enforceable external freedom for all. In this juridical scheme, rights are protected only if they are *structurally universal*: others must be coercively required to recognize and respect my rights.

Sex poses a threat to the rightful order of the Kantian state because it entails an impermissible infringement on the external freedom of another, and marriage is the institution designed to contain this threat. This chapter argues that as a juridical institution, marriage cannot morally transform sex, and it cannot make sex morally permissible. Instead, by producing a special juridical relationship within which spouses have a "right to a person akin to the right to a thing," marriage creates a realm into which coercive law can only minimally enter. In doing so, marriage creates an enclosed juridical space within which external freedom is transformed: in marriage, spouses may infringe on one another's external freedom in ways that are impermissible in other relationships.

In the next chapter, I argue that marriage is not the only relationship in this enclosed juridical space, and I situate marriage within the range of relationships that make up the household in order to offer a concrete account of how and why external freedom is transformed within domestic space. By examining marriage within the broader context of the household, I show how

Kant’s philosophy of the family entails a strict distinction between domestic and political rights.

CHAPTER TWO:

KANT'S PHILOSOPHY OF THE FAMILY: DOMESTIC RIGHT AND THE TRANSFORMATION OF EXTERNAL FREEDOM

INTRODUCTION:

The *Rechtslehre* is divided into two sections that reflect the organization of Kant's juridical order: Private Right lays out the institutional structures necessary to make relationships consistent with external freedom, and Public Right delineates the source of coercive law and the relationship between the citizens and the state. The previous chapter argued that the institutions of Private Right, like external freedom itself, are inherently relational; the next chapter examines the structures of Public Right. In this chapter, I focus on the role of the family in Kant's political arguments by distinguishing his account of domestic right from property and contract right. In the Introduction, I defined Kant's philosophy of the family as entailing a particular construction of marriage and a particular pattern of household relationships. Chapter One examined Kant's account of marriage; this chapter analyzes the range of relationships within the household in order to show how this philosophy of the family shapes Kant's account of political participation and equality.

In the previous chapter, I argued that marriage is one of the critical juridical institutions in the *Rechtslehre* concerned with making human life consistent with the requirements of the principle of right. Marriage is unique among these institutions in that it does this by creating a juridical space within which external freedom is transformed. By contrasting domestic and contractual relationships this chapter shows that within the domestic realm, both *external freedom* and *equality* are transformed.

This chapter positions marriage alongside the other relationships within the household by showing that sex is not the only form of use that dangerously infringes on external freedom: the

various caring relationships that Kant positions within the household similarly threaten external freedom and must by contained within domestic right. By producing a "right of exclusive use," domestic right allows for forms of use that would be impermissible in merely contractual relationships. Domestic right operates as an enclosed juridical space within which external freedom transforms the kinds of rights persons may have against one another.

By delineating the various relationships within domestic right, I show that as external freedom is transformed within the domestic realm, is juridical equality. I explore the structure of labor and employment within the household to explain Kant's claim that the household is "a society of unequals."[135] In doing so, I examine Kant's arguments about the status of women in order to argue that, through marriage, the "natural" inferiority of women is transformed into the rightful and juridically organized inequality of wives.

Because external freedom and equality are transformed within the household, domestic right functions as a 'third sphere' in Kant's political philosophy, alongside the public and private realms so nicely delineated by the structure of the *Rechtslehre*. By fleshing out the work this division does for Kant, I explore the role of the household in Kant's account of the state in order demonstrate that his account of citizenship and public personhood is tied to a bifurcation of labor practices organized by his philosophy of the family.

1. The Institutions of Private Right: An Overview

In the previous chapter, I argued that all forms of possessive rights are relational. In a civil condition, possessive rights become institutions organized by coercive law through which individuals reciprocally recognize intelligible possessive rights. For Kant, each form of possessive right will arise inevitably in the state of nature, and a primary task of the state is to organize these

[135] Kant, MS 6:283.

relationships through coercive juridical law such that external freedom is symmetrically protected.[136] Let's begin by considering how this works in property right and contract right.

As we saw in the previous chapter, property right is concerned with a relationship between persons such that others respect my right to make use of things in the world, and I reciprocally recognize their rights to make use of things in the world. There are, as we saw above, two key characteristics of property right as a relational form of right. First, property right is a necessary extension of external freedom, since it allows me to extend my sphere of unilateral control beyond myself. Second, property right entails intelligible possession: empirical possession of an object is not sufficient to assure my right to it. Rightful property ownership thus entails an abstraction from empirical conditions, such that my intelligible possession of an object is reciprocally recognized and respected by others, and coercively protected by a public authority. Therefore, this form of possession is rightful only given the existence of a civil condition, and property right entails a public authority designed to solve problems of assurance and indeterminacy.

Contract right delineates relationships that allow persons to exchange labor, services, objects, or promises. Like property right, contract right cannot be understood empirically, as the exchange of an object or action between one person and another. Instead, it must be understood as creating a united act of choice wherein the ends of each person are aligned. Accordingly, Kant argues "transfer of the *property* of one to another is *alienation*. An act of the united choice of two persons by which anything at all that belongs to one passes to the other is *contract.*"[137] Contract is defined not as the physical exchange, but as the "act of united choice." Through contract, what I acquire is not a thing, nor a right to a thing, but a promise arrived at through this act of united choice: it is a right against the person making the promise. Contract, as an institution of private right, should be

[136] See Chapter One Section 2.3
[137] Kant, MS, 6:271.

delineated from more informal agreements: contracts are relationships between individuals that are enforceable through juridical law, or subject to a public authority. Just as consensus about the acquisition of property is not sufficient to ensure rightful property ownership, consensus about the terms of a contract cannot make it rightful: only enforcement by a public authority in a juridical condition can ensure that one contracting party is not subject to the arbitrary will of another.

Having developed these two forms of possessive right, Kant argues in the *Appendix* to the *Doctrine of Right* that by bringing these two concepts of rights together, two more concepts are opened up: "that of a right to a thing akin to a right against a person and that of a right to a person akin to a right to a thing."[138] While Kant quickly drops the former, arguing that "no such right of a *thing* against a *person* is conceivable," he develops the latter into the third category of possessive rights: the right to a person akin to a right to a thing, which Kant defines as "the right of a human being to have a *person* other than himself as *his own*."[139] The emphasis here is useful in drawing out Kant's central concerns: this right is possible only given an understanding of intelligible possession ("*his own*") and it is both a right to the *status* of a person (as my husband, child, or servant) and a right to the use of the person *as a person* – use, in other words, in such a way that personhood is maintained or regained. [140]

This third type of possessive right seems to be a "special case" of possessive right, more limited in application than either property or contract right. While property right and contract right organize relationships between private persons, this third form of right applies only to the domestic condition, which Kant defines as "a relation of persons who live in community with one another called a household." I will henceforth refer to this third category of possessive right as *domestic right*,

[138]Kant, MS, 6:357.
[139]Kant, MS, 6:358.
[140] We should remember that a *person*, in the ontology of the *Rechtslehre*, is a being with freedom (i.e., as opposed to a thing). Maintaining or regaining personhood, then, involves recognizing and protecting this innate right to freedom.

since it is defined as a form of right possible only in the domestic realm, and because it is the form of right that constitutes the domestic realm.[141]

The role of domestic right in Kant's account of Private Right difficult to parse, and both the structure and purpose of domestic right in Kant's account of juridical law remains controversial.[142] The difficulties in elaborating an account of domestic right are evident when we try to distinguish domestic right from contract right. At first glance, the distinction Kant draws seems clear: the relationship of a servant to his master is of a different nature than that between an employer and his employee in that the former is an example of domestic right, while the latter is an example of contract right. Yet at the same time, Kant argues that contract plays a role in *both* relationships: he distinguishes between domestic servitude and slavery by arguing that "it is only by contract that [the master] has brought [the servant] under his control."[143] If the servant's employment, like the employee's, is constituted by contract and its terms dictated by contract, why is the master's right over the servant considered a right to a person akin to a right to a thing, rather than as a right against a person (i.e., in contract right)? Why does contract right become the right to a person akin to the

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[141] This form of right is sometimes referred to as "status rights" since it entails rights to the status of another (c.f. Varden (2011). I use the term "domestic right" in order to emphasize the necessary relation between this form of right and the sphere it produces.

[142] Helga Varden develops an account of domestic right that extends juridical rights to those in the domestic sphere so that individuals have a juridically recognized status in the private life of others. In this way, she argues, members of a household can share a unified domestic life without infringing on each other's basic rights or being subject to the will of the stronger. While I think Varden offers a compelling Kantian account of domestic right, I do not see the textual support for the claim that Kant envisions a domestic realm that extends juridical protections and rights to relationships within the household. Thus, while Varden argues that domestic right entails greater juridical protections for the weaker members of the household, I argue that the domestic realm is buffered from juridical incursion precisely because it contains the elements of human life that are inconsistent with the rights and responsibilities Kant imputes to the other spheres of society. See Varden, Helga (2007). "A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage, and Prostitution." Social Philosophy Today 22, pp. 199-218, and Varden, Helga (2006). "Kant and Dependency Relations: Kant on the State"s Right to Redistribute Resources to Protect the Rights of Dependents." Dialogue - Canadian Philosophical Review XLV, pp. 257-284.

[143]Kant, MS 6:283.

right to a thing when exercised within the domestic realm?

This difficulty is precisely that found in any discussion of Kant's conception of marriage. Like the master-servant relationship, marriage is described first as a contractual relationship, constituted through contract and defined in the terms of contract. But it is also Kant's prime example of this right to a person akin to a right to a thing in the domestic sphere. Again, we see that contract, when applied to relations that exist primarily in the domestic sphere, are transmuted into this third form of possessive right, or domestic right.

The domestic realm is differentiated from the public and civil realms precisely by this "special case" of possessive rights: it is constituted through a transformation of contract right. Relationships that would be, in the public or civil realm, merely a right against a person, are transformed in the domestic realm into this right to a person akin to the right to a thing. This transformation of contractual relationships into domestic relationships produces a structural transformation of external freedom within the domestic sphere.

To show how this transformation occurs, I begin with an examination of Kant's arguments concerning contract right. I will draw out the critical distinctions between contract right and property right in order to situate domestic right in the scheme of possessive rights. I will then return to Kant's account of marriage in order to show that, though matrimony itself takes the form of contract, the relationship it produces is no longer a contractual arrangement, but one that produces a separate sphere in which external freedom itself is structurally transformed.

1.1. Contract Right: Of Transfers and Transformations

In this section, I develop a detailed account of contract right in the *Rechtslehre* in order to draw out the critical distinctions between property right and contract right, and to highlight the conceptual space in which domestic right operates. This analysis will emphasize two elements of

contract right which will be important for our discussion of domestic right: the first is the *abstraction from empirical conditions* necessary to producing juridical obligations, and the second is the role of *abstract equality* in producing rightful relations between persons.

Like all possessive rights, contract right can be understood from two perspectives. From one perspective, contract right is concerned with the acquisition of something external: through contract, I come into "possession of another's choice."[144] From another perspective, contract right, like property right, simply describes and delineates a set of relationships: Kant emphasizes that "what I acquire directly by a contract is not an external thing but rather his deed."[145] Like all forms of intelligible possession, contract right hinges on the rightful abstraction of what it means to call something one's own. In the case of contract, however, this abstraction from empirical conditions hinges on an in-depth exploration of the empirical procedure of contract.[146] For Kant, every contract can be understood as four separate acts of choice, two preparatory and two constitutive:[147]

Preparatory (i.e. negotiating)

1. offering
2. assent

Constitutive (i.e. concluding)

3. promise
4. acceptance

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[144] Kant, MS, 6:271.
[145] Kant, MS, 6:273.
[146] For this reason, Susan Byrd has characterized Kant's account of contract as an account of rightful rules guiding the transference of property, rather than as a comprehensive account of contract. While Byrd is right to emphasize the mercantilist assumptions present in Kant's account of contracts and acquisitions, contract right is not limited to exchanges of goods and commodities. I argue, instead, that Kant understands contract as a transitional form of possessive right, and that his emphasis on the rules of transference reflect this. See Byrd, Susan. (2002) "Kant's Theory of Contract." In M. Timmons (Ed.), *Kant's Metaphysics of Morals: Interpretive Essays.* Oxford: Oxford University Press, p. 116-117.
[147] Kant, *MS*, 6:272.

These four acts of choice are the necessary preconditions of rightful transfer.[148] A promise becomes contract only when these preliminaries occur, because these four acts of choice are necessary in order to create the *united will*, which is the metaphysical basis of contract, and allows the empirical conditions of contract to be abstracted such that the relation occurs in accordance with pure practical reason. The united will, as Kant understands it, is created when two wills are declared simultaneously. But Kant's emphasis on the four acts of choice poses a problem for his understanding of contract right: such simultaneity is clearly impossible, since the four acts of choice must occur at separate moments in time.

The united will thus produces an abstraction from empirical conditions that simulates simultaneity and solves the problem of obligation posed by the pause between promise and acceptance during which "I may …. come to regret having promised, since I am still free before he accepts."[149] Kant's emphasis on abstracting from empirical conditions in order to represent distinct declarations as occurring simultaneously is thus an answer to the question *why should someone keep a promise?*[150] Kant's answer here does not draw on any account of moral obligation: the very problem he wrestles with is the *absence* of moral obligation to bind each party to their promises. As a form of juridical right, contract delineates a relationship that is consistent with external freedom and that

[148]These four acts of choice create the contract, but not the transfer: the conditions under which transfer takes place, Kant argues, are wholly empirical, and do not belong to a metaphysical account of contract. Kant, MS, 6:286. They are, moreover, positive acts of choice: one party cannot merely renounce ownership so that the other may declare it. Kant, MS, 6:271. A negative exchange, in which I simply renounce my right to a thing, and someone else claims it, would be merely alienation, and not consistent with contract right, since it involves two separate acts of will, rather than an act of two wills united together through contract. Kant, MS 6:272.

[149] Kant, MS, 6:272. This problem with the temporal lapse between promising and accepting is illustrated by the acts through which contracts are finalized, such as breaking a piece of straw or shaking hands. These acts simulate simultaneity, and thus symbolize the creation of the united will. The formalities of contract, as they exist in Kant's time and in ours, are concerned with representing two separate declarations as occurring simultaneously, abstracting the four temporally situated acts of choice that constitute contract.

[150] Kant, MS, 6:273.

authorizes a public authority to use coercion when that freedom is hindered. Like all possessive rights, contracts are possible in a provisional form in the state of nature, but they are rightful and enforceable only in a civil condition. What contract right creates, then, is not a moral obligation to keep a promise, but a juridically recognized relationship in which a promise is coercively enforceable by a public authority.

The united will also produces abstract equality. In rightful contract, the objects concerned are understood to be commonly owned by the united will. Once this is clear, it becomes apparent that my "possession of another's choice" is not, strictly speaking, *my* possession at all: it is mutual possession, governed by the united will. The united will is an abstraction from empirical factors such as 'mine' and 'yours', and it thus creates an abstract equality between contracting parties. This is necessary, since equality must exist in order for a contract to occur in accordance with pure practical reason. Thus, the mutuality of the united will renders the parties equal within the terms of the contract, creating a symmetrical relationship. It does not matter if a rich man buys a horse from a poor one, or if a wealthy man hires a poor man to shoe his horse; their mutual possession of the other's promise makes them equal for as long as it takes to complete the transaction. In other words, the united will transforms the relationship between parties: through abstraction from empirical conditions, a relationship between an otherwise unequal buyer and seller or employer and employee is represented as a relationship between juridical equals.[151]

These abstractions from empirical conditions allow the performance of the contract, or *transfer*, to take place through the continuity of ownership entailed by the united will so that "possession of the object is not interrupted for a moment during this act."[152] A contract is complete

[151] Kant, MS, 6:273-4.
[152] Kant, MS, 6:274. Transfer, then, is neither renunciation nor abandonment, but an act "in which an object belongs, for a moment, to both together." Again Kant's emphasis on the role of the united will belies a concern about the temporality of contract. What if a delay occurs between contract and

when mutual possession reverts to property right: in this sense, contract is a *transitional* form of right.[153]

1.2 Parsing Contract Right and Property Right: Particular and Universal Obligations

Given this account of contract as it applies to the transfer of property from one party to another, we can now begin to tease out the relationship between property right and contract right. Neither property right nor contract right entail a direct right to a thing: both describe the conditions for relationships that make the use of things possible. Both describe a set of relationships that become, in the juridical condition, rights against persons. Both are institutions concerned with protecting external freedom by authorizing coercion when others fail to respect my rights against them, and both turn on the existence of the general united will, through which all persons in a civil

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performance? Does the united will persist until the moment of transfer? If, for example, I make a contract to buy something, but do not immediately acquire the thing (it is being 'held by' the seller), then what I have acquired is only a right against the seller, and not a right to the thing itself. My right is a right only to the performance of the seller. I can gain possession of the thing only through a separate contract that delineates the terms of transfer: when, how, where, etc. This second contract, which delineates the terms of transfer, including liability during this delay, gives us an account of the persistence of the united will. But what is the substance of this secondary contract? Kant does not fully work this out, but we can safely assume that it conforms to the nature of contract already laid out. It must consist of the four acts of choice, and produce the united will. But this contract, being by its very nature concerned with temporality (the delay between the promise and performance of the original contract), must produce a united will that persists, so that intelligible possession (of the buyer) and empirical possession (of the seller) are governed by the mutuality of the united will, thus abstracting the contract from empirical conditions and assuring that it is made in accordance with pure practical reason. Given the existence of both contracts (the original contract and a contract delineating transfer), it would seem then that the united will persists from the moment the contract is made, to the moment the transfer is completed, when contract right is transmuted into property right. Kant, MS 6:302-303.

[153] This final transformation, however, can occur only given the existence of a civil condition: the buyer can be said to rightfully own the object in question only when his right to the object is enforced as property under juridical law. (Kant, MS 6:303). Notably, all of the examples of contract right offered by Kant belie a set of mercantilist assumptions. Contracts occur between buyers and sellers (MS 6:287, 301-303), employers and employees (MS 6:290), writers and publishers (MS 6:290). Even the cross-cultural examples (MS 6:288-289) Kant gives focus on market-based relationships.

condition are juridically required to reciprocally respect possessive rights.

Property and contract right differ in that contract right is "only a right *against a person*, namely a right against a *specific* physical person, and indeed a right to act on his causality (his choice) to perform something for me; it is not a *right to a thing* …. which is nothing other than the idea of the *choice of all united a priori* by which alone I can acquire *a right against every possessor of the thing*, which is what constitutes a right to a thing."[154] On the other hand, property is an institution defined through exclusion – in other words, the *right to* is premised upon a *right against all others*. I own something only if everyone else recognizes that they have no right to it. So, property right is possible only if the terms of ownership – that what is mine is not yours – are transparent and set publicly. Property right, in other words, is an institution in which the terms of use are universally applied, accepted, and recognized. This entails both a general agreement about rights, and a public authority capable of symmetrically and coercively enforcing these rights.

Unlike property right, contract right entails a non-transferable right against a specific person and a specific united will created by the terms of the contract. In contract right the parties involved set the terms of their rights against each other such that these rights are subject to a public authority capable of solving problems of assurance and indeterminacy. Unlike property rights, these rights are specific rather than universal, and they are neither necessarily public nor transparent.[155]

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[154] Kant, MS, 6:274.

[155] There remains an important relationship between these two forms of right. In contract right, property right is still clearly at work if the contract is concerned with property: ownership of the object in question is still defined through exclusion in the sense that no one else has a right to it. Thus, contract right is externally transparent insofar as it is concerned with property. Internally, however, the terms are clear only to the participants, and to the public authority acting as guarantor. For example, if the object in question is a horse, then the horse is mutually owned through the united will, and property right *as exclusive right* remains transparent (no one else has a right to the horse), but internal liability, as defined by the terms of the contract, is clear only to those privy to these terms, and to the public authority with the right to enforce the terms of the contract. Contracts are necessarily adjudicated by a public authority and subject to the conditions of juridical law, but they need not be public in the same sense as property rights need to be public. For

The distinction between property right and contract right is not then a question of *who* or *what* I have a right *against* or *over*. All possessive rights are rights against persons; none entail a direct right to a thing. Rather, the distinction turns on whether these terms are universal and transparent or specific and nontransferable.[156]

Contract right is temporary and transitional form of right. So, Kant says, "if I conclude a contract about a thing I want to acquire, for example, a horse, and at the same time put it in my stable or otherwise in my physical possession, then it is mine, and my right to it is a *right to a thing*."[157] When the terms of the contract are fulfilled and the transfer is complete, the united will dissolves, and contract right is transformed into to property right.

This transformation is possible only in a juridical condition. Just as the conventions of possession become the institutions of Private Right only in a civil condition, contract alone cannot secure rightful acquisition. Only public law can determine whether my right against a person constitutes a rightful acquisition. Therefore, Kant says, an agreement that "is *in itself* a right against a person, *when brought before a court*, holds as a right to a thing."[158] Kant's concern here is with the validity and honesty of trade relations, but it further highlights the critical distinction between contract right and property right. The transformation of a right against a specific person into a right against all persons (i.e. a right to exclusive use) entails the transformation of a private agreement into a public, universal, and transparent one. Others can be required to respect my exclusive right to

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example, I can say that I own an apple, and this entails that others who come into contact with this apple must have some way of knowing that the apple is mine (i.e., not theirs) in order to interact rightfully with the apple. However, if I am at the Farmer's Market buying an apple from a seller, the woman standing next to be need not be privy to the terms of the contract between myself and the seller (i.e. the negotiated price of the apple, or the terms of transfer) in order to know that the apple belongs, at that moment, jointly to us (and therefore, she has no right to it). The internal terms of a contract need not be transparently public in the same way that property right necessarily is.

[156] Kant, MS 6:284.

[157] Kant, MS, 6:275.

[158] Kant, MS, 6:302-303.

something only when the law has recognized and institutionalized my right to it. Possessive rights can be transferred and transformed through contracts, but rights to exclusive use are possible only given the recognition and coercive support of public law.

1.3 The Table of Rightful Contracts: Towards a distinction between Contract Right and Domestic Right

It is with this understanding of the relationship between contract right and property right that I return to the third institutional arrangement in Kant's scheme of possessive rights. I have focused, thus far, on contracts concerned with the transfer of external objects. Contract right, however, also concerns employment contracts, where the same rules delineating consent, equality, and the united will apply.[159] An employment contract, as delineated by contract right, abstracts from empirical conditions in order to represent the relationship between an employee and employer as abstractly equal and symmetrical with regard to the terms of the employment contract. This equality is, in turn, coercively maintained by the public authority that adjudicates the contract, holding both parties accountable for violations of the terms of contract. As is the case with contracts delineating transfer, this adjudication by a public authority need not entail that the specific terms of the contract are transparent to all. Rather, public law ensures that both parties are reciprocally bound by the employment contract, so that one party (the employee) is not subject to the arbitrary will of the other (the employer), since this would be a slave contract. Only an impartial, public authority capable of representing both parties under universal law can ensure that the parties are reciprocally bound, and that the terms of the contract accord with the basic requirements of external freedom.

Kant is careful to delineate an account of contract right that allows individuals to enter into contractual relationships without infringing on their external freedom. Towards the end of the

[159] Kant, MS 6:361.

section of the *Rechtslehre* devoted to Private Right, Kant develops a "dogmatic division of all rights that can be acquired by contract."[160] He delineates 12 permissible types of contracts, divided into four subsections: gratuitous contracts, onerous contracts, contracts to let and hire, and contracts providing security. Sharon Byrd argues that we should approach this table as a dynamic account of interrelated contracts so that "each group relates to aspects of contracting that can be combined with relevant aspects in the various other groups producing a wealth of different individual contractual relationships."[161] Byrd sketches such an account, demonstrating that the contracts in each section represent a pattern of progression in terms of the reciprocity of the participating parties. So, for instance, in the third section of the table, the contracts concerned with letting and hiring are, first, a contract to lend someone a thing for use (acquisition of a corporeal thing for limited use), second, an employment contract (acquisition of another's performance) and third, a contract empowering someone to act as my agent (acquisition of the status of another in relation to my own status.).[162] By combining the three forms that contracts concerned with letting and hiring might take, numerous potential contracts can be imagined. The same is true for the other subsections, which are concerned with contracts delineating acquisition and those delineating security arrangements.[163]

Taken as a dynamic and interrelated table, numerous contractual relationships can be instantiated from the categories laid out, and Kant carefully delineates the form of each contract on the table such that it does not entail and infringement on external freedom. Marriage, however, is not included as one of the acceptable form of contract. Nor are the other relations that make up

[160] Kant, MS, 6:284.
[161] Byrd (2002), 122.
[162] Byrd (2002), 128; Kant, MS, 6:285-286.
[163] Contracts delineating security arrangements could be used in conjunction with any of the other contracts on the table. For this reason, Byrd reminds us that this group of contracts occurs on a 'metalevel' and should not be understood as a distinct type of contract. Byrd (2002), p. 130.

domestic right: parenthood, domestic servitude, and the rights of the head of the household cannot be derived from Kant's systematic table of permissible contracts. What, then, are the characteristics of a permissible contract, and why aren't familial or domestic relations included in Kant's systematic scheme of possible contracts? What does this exclusion tell us about the relationship between domestic right and the broader institutional scheme of Private Right?

Taken together, property right and contract right delineate a series of relationships that allow me to interact with others while maintaining the sphere of unilateral choice necessary to enacting my external freedom. Property right ensures that I have an embodied and extended sphere of unilateral control, while contract right allows me to engage in relationships with others without infringing on my unilateral sphere of choice by creating a shared united will (or, put differently, a bilateral sphere of choice). By adjudicating these two forms of right, juridical law ensures that I can interact with others while maintaining my right to external freedom.

Kant describes domestic right, or the right to a person akin to the right to a thing, as the result of joining contract right and property right,[164] yet he also describes domestic right as "lying beyond" both rights to things and rights against persons.[165] As I will argue, domestic right indeed borrows from the logic of both property right and contract right, but it works to maintain external freedom only by transforming it.

1.4 The Marriage Contract: Transforming Contract Right

Kant refers to marriage as a contract, but does not include it in the systematic table of permissible contracts. To understand why, we should look at the language Kant uses in the section of the *Rechtslehre* where he positions sex as a threat to external freedom. The small section on

[164] Kant, MM, 6:358.
[165] Kant, MM, 6:276.

domestic right is the only place in the *Rechtslehre* where Kant raises concerns about protecting our humanity: domestic right "must be a right lying beyond any rights to things and any rights to persons. That is to say, it must be the right of humanity in our own person."[166] The relationships within the domestic right are the only relationships in the scheme of Private Right deemed to have the capacity to threaten our very humanity, and for this reason, Kant gives them special attention. This is consistent with Kant's claim in the *Lectures on Ethics,* that sex is unique in its ability to compromise our humanity.[167] Because marriage is designed to contain this unique threat, it cannot be subsumed under the rubric of permissible contractual relationships: it requires a distinct form of right.

As Kant explains in the *Appendix* to the *Doctrine of Right*, "in this sort of use by each of the sexual organs of each other, each is actually a consumable thing … with respect to the other, so that if one were to make oneself such a thing by contract, the contract would be contrary to law."[168] Here we are given the key to understanding Kant's conception of domestic right: domestic right preserves and protects respect for personhood (or humanity) by *law* and *not by contract.* Note that even a juridically enforced contract would not be sufficient to protect parties from the kind of use sex entails. The marriage law Kant envisions thus necessarily goes beyond the terms of lawful contract:

> Acquisition of this status, and within it, therefore takes place neither by a deed on one's own initiative nor by a contract alone but by law; for, since this kind of right is neither a right to a thing nor merely a right against a person but also possession of a person, it must be a right lying beyond any rights to things and any rights against persons. That is to say, it must be the right of humanity in our own person.[169]

Kant's description of this category of right belies his underlying concern: in claiming that "it is the

[166] Kant, MS, 6:276.
[167] Kant, LE 2001, p. 156.
[168] Kant, MS, 6:360.
[169] Kant, MS, 6:276.

right of humanity in our own person," and that it must be "the use of the person *as a person,*"[170] he makes it clear that the purpose of this category of possessive right is to protect and preserve external freedom and respect for personhood. In order to avoid treating the body of another as a thing, we must have a right to *the whole person* that is akin to our right to things. Like property right, this right must be a right to exclusive use: it is premised on a universal right against others. Thus, the terms of domestic right are not private and apparent only to those privy to the term of contract, but, like property right, they are legally defined and, as such, universally applicable and transparent.

This allows us to understand domestic right in the scheme of possessive rights. Domestic right resembles property right in the sense that it is defined by law through exclusion. Marriage right, as an example of domestic right, defines who has the right to sexual use. As Kant describes it,

> that this right against a person is also akin to a right to a thing rests on the fact that if one of the partners in marriage has left or given itself to someone else's possession, the other partner is justified, always and without question, in bringing its partner back under its control, just as it is justified in retrieving a thing.[171]

Marriage defines *who does not* have the right to sexual use, and this right is defined publicly by laws that are transparent to all. Persons are like property not in the sense that persons can be owned, but in the sense that rights to use are defined through exclusion. Kant's point is not that a man's family is a man's property, but that the function of the family is defined through exclusion. Through marriage, I become my partner's sexual property in the sense that no one else has a right to my sexuality – and thus no one else has the right to objectify me as a sexual object. Like property right, marriage right defines rightful use through exclusion.

Kant's claims about other contracts that organize sexual use further illuminate this distinction. In the *Lectures on Ethics*, Kant argues that prostitution and concubinage are not

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[170]Kant, MS, 6:358.
[171] Kant, MS, 6:278.

acceptable solutions to the problem of sexual inclination because they "presuppose a contract,"[172] and "this contract deals only with the enjoyment of a part of the person and not with the entire circumstances of the person."[173] As it is defined here, contract is merely an agreement in which the terms of (partial) use are dictated by the parties involved. As he argues in the *Rechtslehre*, "even if it is supposed that their end is the pleasure of using each other's sexual attributes, the marriage contract is not up to their discretion but is a contract that is necessary by the law of humanity."[174] The reason that contract right is not, in itself, sufficient to legitimize sexual use is thus revealed: contract, wherein the terms are dictated by participating parties, does not go far enough to preserve the humanity of the participants. The terms of marriage are set universally and publicly, and are more concerned with exclusivity ("no one else has these rights") than with the relation between the two parties. Only marriage *as a public institution* in which the terms are transparent and determined by law can preserve respect for personhood by producing domestic right.

Thus, the relationships that make up domestic right do not fit squarely within the domain of property right or contract right, neither of which can do the work of managing the threat to humanity that domestic relationships entail. Though domestic right does not fall within the domain of contract right, there are contracts at play in domestic right. First and foremost, weddings remain contractual, and a "marriage contract" clearly does exist – even Kant refers to marriage as contract in the selection above. But this contract consists of the promise to marry, and the terms of transfer: engagements and weddings are the stuff of contract in the sense that they are private agreements in which the terms of the contract need only be apparent to those involved in the promise and the transfer. Rings and kisses are exchanged, symbolically abstracting the agreement from empirical conditions, and a united will is produced. But as Kant makes clear in the *Rechtslehre,* "a marriage

[172] Kant, LE 2001, p. 166.
[173] Kant, LE 2001 p. 166.
[174] Kant, MS, 6:277-278.

contract is *consummated* only through *conjugal sexual intercourse*" (emphasis in original)[175]; furthermore, rightful marriage is concluded only through " possession of each other's person, which is realized only through the use of their sexual attributes by each other."[176] In the terms of contract, sexual consummation completes the transfer; each partner is now in empirical possession of the objects they mutually own via the united will. Consummation is not the production of the united will but its dissolution: through consummation, contract right is transmuted into property right – or in this case, into the right to a person akin to the right to a thing. At the moment of consummation, the terms of the marriage cease to be private and contractual and become public and transparent: what is owned now is no longer a promise, but rights to exclusive use. Just as the performance of any contract before the law transmutes contract right into property right, consummation of the legal marriage contract transmutes contract right into domestic right.[177]

As the form of right that transforms relationships, contract right makes domestic right possible – but domestic relationships themselves are not instances of contract right. To manage the threat to external freedom posed by the range of relationships within the household, a separate body of law is necessary.

2. Domestic Right: Transformations of Law Within the Household

As I argued in Chapter 1, marriage is designed to contain the threat of sexuality in Kant: through marriage, we are allowed to use our partners – and ourselves – in ways that would never be acceptable within other relationships. Kant's concern with sexuality is that *there is no way* to make sexuality (as he sees it) consistent with the requirements of the categorical imperative, since sex entails a fundamental failure to treat oneself and others as ends in themselves. This chapter has

[175]Kant, MS, 6:279.
[176]Kant, MS, 6:280.
[177] Kant, MS 6:303.

shown that through domestic right, we are rescued from compromising our moral selves through sexual use by publicly – and juridically -- relegating our sexuality to the domestic realm, and defining our right to the sexuality of our spouse as a right of exclusive use. In this way, my right to the sexuality of my spouse is similar to a property right: my right to it consists only in the fact that others recognize that they have no right to it. In this way, sexuality is safely positioned within domestic right, and can no longer endanger our capacity for reason or our right to external freedom out in the public realm. In what follows, I situate marriage within the broader range of relationships delineated by domestic right, asking what the other relationships that make up the household might tell us about the ways in which domestic right transforms external freedom. I argue that the relationships within domestic right entail a structural inequality that undermines the possibility of equal external freedom for all.

2.1. *"A Society Under the Head of the Household":* Equality and External Freedom in Domestic Right

Domestic right, as we have seen, consists of several different relationships. Though I have focused on marriage as the relationship most heavily discussed in scholarship on Kant, and as the relationship most likely to produce a domestic realm, it is equally important to situate marriage alongside the other relationships that make up domestic right. Domestic right is concerned with all the relationships that make up the household: "what is mine or yours in terms of this right is what is mine or yours *domestically*, and the relation of persons in the domestic condition is that of a community of free beings who form a society of members of a whole called a *household*."[178] This community includes not only marriage, but also the relationship between parents and children as well as the right to retain domestic servants. Beyond this, there are relationships with other members

[178] Kant, MS, 6:276.

of the household, such as relations and grown children.[179] What unites all of these relationships within domestic right is their position relative to the head of household: together these relationships make up "a society *under the head of the household*."[180]

The relationships that make up domestic right each pose a threat to external freedom; withinn the domestic realm, persons have rights to each other that make actions that are otherwise incompatible with external freedom permissible. The actions themselves, however, are not transformed. We have seen that for Kant, sex is inherently objectifying. Even within marriage, sex remains an objectifying use of another person. We confine sex within marriage through rights to exclusive use in order to protect external freedom outside of marriage. Thus, even though marital partners are juridically bound to each other, sex within marriage remains a dangerous infringement on external freedom. Juridical laws can't transform the fundamental nature of sex; they can only confine sex within the domestic realm. Within the domestic realm, however, marital partners are making use of one another in ways that would conflict with their general external freedom. Within the domestic realm, therefore, external freedom is structurally transformed, and actions that are otherwise impermissible are both permissible and necessary.

Domestic relationships conflict with the basic principles of external freedom in a second way. External freedom involves an assumption of equality and reciprocity: my right to external freedom is premised on my willingness to respect equal external freedom for others. In Section 1.1, I argued that rightful contractual relationships involve an abstraction from empirical conditions in order to represent the parties as equal via the united will. Only given this abstract equality can both parties contract in ways that are consistent with external freedom. Kant, however, explicitly describes domestic relationships as unequal: domestic society, he says, is "a society of unequals (one

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[179] Kant lumps these under the general heading of "free persons" who are members of the household. Kant, MS, 6:276.
[180] Kant, MS, 6:283.

party being in *command* or being its head, the other *obeying*)."[181]

This account of the inherently unequal nature of relationships within the household is often sidestepped by scholars who focus on marriage as the central example of domestic society. Kant works hard to represent the marital relationships as abstractly equal, since equality and reciprocity are necessary to make sexual use permissible. Marriage is, for each partner, a radical reorientation of the self such that what was once "mine" – including property, personhood, and juridical rights and obligations – is now "ours." Linda Papadaki and Christine Korsgaard argue that through marriage, partners have unified their wills, becoming through this transformation "a new entity: a unified agent."[182] Married partners embody this unified agent through shared deliberation, shared ends, and mutual ownership of all possessions.

This unity of ownership renders both partners equal, regardless of what each person brought into the relationship. But because it is an equality produced by the united will and the unity of possession, the equality in marriage, like the united will itself, is only an abstraction from empirical conditions. We must say that the marriage relation (like all contract) is equal so that it accords with pure practical reason; this does not mean, of course, that this equality of possession is reflected in empirical conditions. This allows Kant to pay lip service to gender equality in marriage via the claim that partners are equal because they share in a "unity of possessions" while simultaneously claiming that this unity does not

> conflict with the equality of the partners for the law to say of the husband's relation to the wife, he is to be your master: this cannot be regarded as conflicting with the natural equality of a couple if this dominance is based only on the natural superiority of the husband to the wife in his capacity to promote the common interest of the household, and the right to direct that is based on this can be *derived from the very duty of unity and equality* with respect to the end. [emphasis added][183]

[181] Kant, MS, 6:283.
[182] Korsgaard (1996), pp. 194-195 footnote 14, 215n14; Papadaki (2010), p. 284.
[183] Kant, MS, 6:279.

The useful metaphysical nature of the united will permits Kant to theorize marriage as an equal relation while obscuring inequalities that occur on the ground. In the next section, I examine the relationship between the inequality characteristic of domestic right and Kant's claims about the inferiority of women.

2.2 Natural Inferiority and Juridical Inequality: From Women to Wives

In this section, I argue that the *abstract equality* implied by the united will of a marriage does not work to undo the gender inequities already in place, nor to reorganize the sexual division of labor. The *abstract equality* of married persons works to both obscure and reify these inequalities by enclosing them within the domestic sphere and couching them in the language of obligations and shared ends.

Kant's concession that marriage is an unequal relationship troubles contemporary feminist scholars, who often turn to Kant's comments elsewhere about the inferiority of women in order to contextualize his claims about marital equality in the *Rechtslehre*. Lara Denis points to Kant's remarks in the *Observations of the Feeling of the Beautiful and the Sublime* (1764) and the *Anthropology* (1798) in order to ground his claim that women's inferiority justifies matrimonial inequality and makes marriage a less morally fertile relationship than friendship.[184] Linda Papadaki argues that "feminists are right to worry about the status of the wife in marriage, given Kant's outrageous views on women and their natures in his *Anthropology* and *Observations*."[185] Susan Mendus draws on Kant's claims in the *Anthropology* to argue that, for Kant, women are not ends in themselves, and that the natural inequality of women means that they can find freedom only within the terms of domination in

[184] Denis (2000), p. 14-15.
[185] Papadaki (2010), p. 277.

domestic life.[186]

We ought to notice, however, that these claims about the inferiority of women are largely drawn from elsewhere in his writings. I do not mean to deny that Kant has a pretty low opinion of women: Kant is unquestionably sexist, and he makes some pretty horrific claims about women in both the *Observations* and the *Anthropology* which, taken together, mark the earliest and latest periods of his writing.[187] His political writings are not immune from this prejudice. He clearly argues in *Theory and Practice* that women are disqualified from full citizenship simply on the grounds that they are women: the sole qualification for citizenship is the status of being an independent man.[188] But curiously, these sorts of claims about the natural inferiority of women play a less obvious role in Kant's account of the necessary inequality of the household or in his account of citizenship in the *Rechtslehre*.

To understand the way in which inequality is organized within domestic right, we need to look further than Kant's infamous prejudices against women. Marriage is not the only domestic relationship described as unequal: *all* relationships between the head of the household and members of the household – be they wives, children, servants, or other relations – are explicitly described as unequal.[189] Accordingly, of all the members of a household, only the head of household qualifies as independent, which is the central condition Kant attaches to full citizenship in the *Rechtslehre*.

I will return to questions about citizenship in Chapter Three, but for now, I want to

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[186] Mendus (1992), p. 177-178.
[187] See Kant, OBS 2:228-230 and Kant, AA 9:303-310. Kant had a particularly disdainful opinion of women's intellectual capacities, arguing in the *Observations* that "laborious learning or painful grubbing, even if a woman could get very far with them, destroy the merits that are proper to her sex, and on account of their rarity may well make her into an object of cold admiration, but at the same time they will weaken the charms by means of which she exercises her great power over the opposite sex" (OBS 2:229). In the *Anthropology*, he adds "as concerns scholarly women: they use their *books* somewhat like their *watch*, that is, they carry it so that they will be seen that they have one; though it is usually not running or not set by the sun" (AA 9:307).
[188] Mendus (1992), p. 171-173.
[189] Kant, MS, 6:283.

highlight the ways in which Kant's infamous account of active and passive citizenship in the *Rechtslehre* might help us to understand the ways in which equality and external freedom are organized within the household. In the *Rechtslehre* Kant attaches three central qualifications to citizenship: to be a full or active citizen, one must be free, equal, and independent.[190] Equality here turns on the idea that no one has the right to bind us in ways that we are unable to bind them:[191] it turns, in others words, on the notion that while we may be bound within varying contractual relationships, we are neither independent nor equal if we find ourselves bound in an asymmetrical relationship – a relationship, in other words, like those the head of the household has with members of the household. As Susan Mendus argues, Kant understands independence very literally, and he grounds this on a seemingly reasonable insight: those who participate in determining the law should not be in a position to be ruled or coerced by others.[192] Thus, the inequality present in domestic relationships entails that only the head of household would meet the criteria for being a full and active citizen. The structure of inequality within the household limits other household members from achieving this status: their required obedience to the head of household makes them unfit to be citizens. It is not simply women's natural inferiority that makes them unfit to be citizens in the *Rechtslehre*. Rather, women lack access to full citizenship for the same reasons that domestic servants do: they are not their own masters. Kant here excludes women on the grounds that they are an example of "anyone whose preservation in existence (his being fed and protected) depends not on the management of his own business but on arrangements made by another (except the state)."[193]

We might stop here and argue that it is then only *wives* who are unfit to be full citizens, while women-as-women would not be barred from full political participation on this argument. If a

[190] Kant, MS 6:314.
[191] Kant, MS, 6:314.
[192] Mendus (1992) p. 172-173
[193] Kant, MS, 6:314.

woman were independent – if she ran her own business and provided for herself – then she would meet the conditions for full and active citizenship, and in fact, such a law was on the books in Konigsberg in the 1790s.[194] On this reading, the inequalities on which Kant's juridical order depend rest on structural or institutionally produced inequalities rather than on essentialist or anthropological claims. Kant hints at such an argument in his discussion of citizenship in the *Rechtslehre* where he distinguishes between the case of "the Indian blacksmith" and "the European woodcutter" – a distinction that suggests, as Susan Mendus has pointed out, that the qualifications for independence might be dependent on the given social and economic order.[195] In a social order in which women had the capacity to be independent, women could hold the status of active citizens.

Of course, even if we accept the neoKantian leap that, in a modern society in which women are socially and economically independent nothing would bar them from full citizenship, we would still have to grapple with the pesky head of household rider. Women could be full and active citizens, on this account, only if they were the head of a household. It is not possible, given Kant's construction of the household, for both husband and wife to be full and active citizens, since all relationships within domestic right entail obedience to the head of the household, and only the head of the household meets the standards of independence.

Kant's exclusion of women from the class of full and active citizens, in other words, tells us

[194] Gray, Marion (2000). *Productive Men, Reproductive Women*. Berghan Books, pp. 241-243. In an 1808 version of this law, which likely drew on Kant's account of citizenship, Konigsberg laws distinguished between "citizens" and "the protected" where citizens meant property owners or business owners who met a certain income requirement. "Among those eligible for citizenship were "unmarried persons of the female sex" who resided in the city, otherwise met the qualifications, and chose to make an application." Gray notes that the 1808 law was "a continuation of an old-regime practice of regarding widows and daughters as the bearers of their deceased husbands' or fathers' status. Under the new law, as under the old, marriage always eliminated females from the possibility of citizenship." Gray notes that in 1809, the first year of application for this status under the new law, 24 out of 443 applicants were women, and all but one of those women were listed as a "widow and property owner."

[195] Kant, MS, 6:314; Mendus (1992) p. 170-171.

not that Kant has a woman problem but that Kant has a domestic problem: Kant has argued not simply that women are unequal to men, but that an entire dimension of society entails only unequal relationships. Equality, which so fiercely grounds Kant's account of external freedom and thus organizes both property right and contract right, does not extend to the relationships within the household.

Through the transformation of equality within marriage, the natural inferiority of women becomes that juridical inequality of wives. This transformation offers us a key insight into the work that the united will does for Kant: equality is defined through abstraction, and then is re-deployed in public and legal discourses such that, as Wendy Brown puts it, "it produces and positions gendered subjects whose production and positioning it disavows through naturalization …. and produces abstract, genderless, colorless sovereign subjects."[196] The inequality within the household thus shapes access to the public sphere: the juridical entity produced by the united will in heterosexual marriage is coded male, producing a gendered public sphere from which women are excluded. Despite Kant's claims that the threat posed by sex is symmetrical and his emphasis on the juridical equality of married partners, his allusion to the "natural superiority" of the husband points to the patriarchal assumptions that inform his account of domestic right. In Chapter Six, I will further explore the relationship between the transformation of women into wives and the production of a masculine public sphere. In the next section, I examine how this transformation of equality affects those employed within the domestic sphere.

2.3 Distinct Labor Practices: The Rights of Domestic Servants

I have argued that relationships within the domestic sphere work differently than relationships outside it. I can enter a contract in accordance with contract right and maintain both

[196] Brown, (1995), p.142.

my equality and independence. The united will renders contracting parties abstractly equal until the contract is completed. The contracts that create the household, on the other hand, resist such abstracted equality, and produce necessarily asymmetrical and unequal relationships.

An example illustrates this. In the *Appendix* to the *Doctrine of Right*, Kant argues that the head of the household can also acquire domestic servants *through contract*, though this employment contract differs from employment contracts in the public realm. Kant describes the domestic employment contract thus:

> such a contract is not just a contract to let and hire, but a giving up of their persons into the possession of the head of the house, a lease. What distinguished such a contract from letting and hiring is that the servant agrees *to do whatever is permissible* for the welfare of the household, instead of being commissioned for a specifically determined job.[197]

The domestic contract delineates a relationship, rather than setting out a specific set of services and compensation. The domestic servant has entered a domestic relationship governed by shared ends rather than an employment contract in which rights, responsibilities, duties, and compensation are clearly laid out in advance. The servant must act "for the good of the household"; what kinds of work this will entail is left undetermined. Only one element of the contract is clearly laid out: the head of the household "can fetch his servant back and demand them from anyone in possession of them, as what is externally his."[198] Once again, the sense in which this right is akin to property right is revealed: the employer's right to his servant is an exclusive right, defined through the universal understanding that *no one else* has a right to him. Domestic relations are legally defined in terms of exclusive, transparent property rights, while the contracts that organize the domestic realm *internally* are opaque and resist the rigorous equality entailed by Kant's account of Right. This, of course, is because a different set of rights are at work in the domestic realm, and contract right works

[197] Kant, MS, 6:360-361.
[198] Kant, MS, 6:284.

differently within the terms of domestic right.

Kant's claim that the head of the household can 'fetch his servant' if he should run away illustrates another element of the transformation of external freedom in the domestic sphere. Domestic right includes the right to forcefully retrieve an erstwhile spouse,[199] and Kant argues, too, that parents are justified in "taking control of" a runaway child and "impounding them as things (like domestic animals that have gone astray)."[200] Domestic relationships entail an authorization to use coercion to maintain the relationships of the domestic sphere. This kind of authorization to coerce – literally, a right to coercively retrieve a member of the household who has run away – is very out of step with the limitations placed on the other kinds of relationships delineated in Private Right. It is perhaps for this reason that domestic relationships are excluded from the table of permissible contracts: the sorts of coercion authorized by domestic law would not be permissible within the terms of contract law. Entering domestic society seems to entail an acceptance of the use of coercion that is parallel to the authorization of coercion involved in juridical society as a whole: just as my rights and innate freedom are transformed when I enter a rightful juridical condition, my juridical rights and external freedom are transformed when I enter a domestic society. Domestic right is not then merely a third form of possessive right, but is also a distinct sphere within society. In order to see why equality and external freedom work so differently in the relationships that make up the domestic realm, I argue that we must first explore the role that domestic relationships play in the broader political project of the *Rechtslehre*.

2.4 A Separate Sphere: Domestic Right and the Transformation of Contract Right

We have seen that relationships conform to different juridical rules in the domestic realm

[199] Kant, MS, 6:278.
[200] Kant, MS, 6:288.

than they do outside of it. Domestic right entails a distinct set of labor arrangements. The exclusion of domestic contracts from the table of permissible contracts emphasizes the distinction between domestic right and other forms of Private Right.

Thus, though domestic servitude involves a kind of employment contract, the rules of contract have been radically refigured within the domestic realm. Domestic servitude involves not a limited contract to let and hire, but a comprehensive agreement to do whatever is necessary for the good of the household, and to enter into a relationship of servitude to the head of the household.[201] This arrangement is different in critical ways to the employment contracts described elsewhere in the *Rechtslehre*, in which employers merely have the right to expect performance of specific tasks for a specific price.[202] The employment contract, in other words, is radically refigured in the domestic realm.

In marriage, contract right is similarly transfigured. As we have seen, the story goes something like this: through contract, partners set the terms for entrance into the public institution of marriage. Through consummation, transfer is completed and contract right is transmuted into a right akin to property right, defined publicly through exclusive use. Externally, then, marriage is a public institution that organizes exclusive rights to use of persons akin to the use of things. Internally, it may be organized by agreements subject to the partners' discretion that produce a set of shared ends and concerns akin to those produced by a united will.[203] Externally, partners are publicly defined as equals in the sense that they have exclusive and equal rights to each other; internally, partners are "equal" through recourse to united ends.

[201] From a perspective outside the household, the head of household has a right to the status of the domestic servant: he can use coercion and retrieve her if she attempts to leave, and he has a right to expect exclusive use of her service and her time.
[202] Kant, MS, 6:285.
[203] In this sense, Papadaki and Korsgaard may be right about the shared end and obligations involved in marriage, but those are *internal* features of a marriage: they are not necessary elements of the coercive and public institution. Korsgaard (1996), pp. 194-195n14; Papadaki (2010), p. 284.

I have argued that these internal agreements need not produce equality on the ground; they may instead reproduce and reify existing inequalities. Just as domestic servants agree to do whatever is necessary for the good of the household, so wives and husbands may agree to do whatever is necessary for the good of the marriage and the household. But just as in the case of domestic servants, though this contract defines a relationship, and produces a claim about shared ends and concerns, it does not clearly lay out what kinds of duties it actually entails. As a juridical institution, marriage law can prescribe neither ends nor duties. Marriage creates juridically equal partners only externally; internally, Kant's account of domestic right actually buffers the domestic realm from civil concerns about equality. In this sense, though domestic relationships are defined by law, they are internally resistant to the reach of law.

External freedom is likewise radically transfigured in domestic relationships. Sex is permissible within marriage not because sex is no longer a threat to external freedom, but because the threat to external freedom is acceptable within the bounds of marriage. Kantian scholars focus on the ways in which marriage produces shared ends and shared deliberation in order to explain the work marriage does to make sex permissible. But juridical marriage, as we have seen, does not organize marriage internally: it can neither legally require partners to have the kind of moral concern and respect that this argument requires, nor ensure the kind of abstract equality normally brought about through the united will. From a juridical perspective, domestic right tells us nothing about what makes a marriage good: though spouses may share ends and have duties to one another, this is outside the scope of juridical concern. Rather, marriage is an enclosed juridical space in which partners can live intimately and interdependently even though intimacy and interdependency are not consistent with external freedom and the juridical requirements of right. Domestic right, in other words, is that juridical space in which inevitable yet impermissible everyday acts of intimacy can take place.

Kant's account of right, we should remember, requires us to respect the external freedom of others. Domestic relationships, however, pose far greater threats to respect for external freedom than do the other relationships in Private Right: domestic relationships undermine not only respect for external freedom, but respect for humanity as well. What does such respect entail? In the *Doctrine of Virtue*, Kant offers a definition of respect by carefully distinguishing between love and respect. He argues that "love can be regarded as attraction and respect as repulsion, and if the principle of love bids friends to draw closer, the principle of respect requires them to stay at a proper distance from each other."[204] If respect for persons entails this kind of distance or repulsion, then relationships that involve intimacy and interdependency threaten the possibility of respect. An example illustrates this: certainly, the relationship between a mother and an infant undermines the external freedom of the mother. The relationship in question is not reciprocal: we can't expect an infant to respect the mother's external freedom, but we nevertheless expect the mother to care for her child in ways that drastically undermine her external freedom on a daily basis. The intimacy, interdependency, and labor of care required to sustain the infant's life undermine the mother's right to expect her external freedom to be respected, but the relationship in question is both natural and necessary. Thus, the inevitable intimacy and interdependency of relationships within the household cannot retain the "proper distance" that respect requires.[205] The everyday labor of care is necessary but inconsistent with respect for external freedom. There is no way for law to transform the relationship between the mother and the child in order to restore and protect the mother's external

[204] Kant, MS, 6:470.

[205] Of course, those who carry out this kind of domestic labor aren't necessarily women – in Kant's home, domestic labor was largely carried out by his beloved domestic servant Lampe. Likely, however, Lampe's service to Kant often entailed forms of labor that infringed on his dignity and external freedom, and sometimes left Lampe subject to Kant's arbitrary will. The example offered here, or the relationship between the breastfeeding mother and her infant, suggests that sex may not be the *only* relationship that involves the impermissible use of another, as Kant argued in the *Lectures on Ethics* (see Chapter 1 Section 2). Many forms of caregiving also take this form.

freedom. Instead the relationship is relocated within an enclosed juridical space within which law does not adjudicate external freedom.

Thus, marriage doesn't make intimacy or interdependency morally unproblematic, any more than it makes sex morally permissible. Rather, marriage, as a member of domestic right, creates a space in which external freedom is radically transformed. Within this space, small, everyday transgressions on the external freedom of fellow household members are perfectly permissible, since these transgressions are what make intimacy, interdependency, and the labor of care possible. Likewise, domestic right can't make motherhood consistent with external freedom.

We see a similar transformation at work in the relationship between the domestic servant and the household. The domestic servant has a different set of responsibilities to her employer than does the contracted employee. The domestic servant, Kant tells us, has agreed to do whatever is necessary for the good of the household. In other words, the domestic servant has agreed to act in ways that might otherwise be transgressions of external freedom: her work is concerned with the most private, most intimate parts of her employer's lives. The domestic servant performs labor that is both necessary and inevitable, but that conflicts with the distance that for Kant creates moral regard and makes respect for external freedom possible. A relationship of this sort, which entails such intimacy and interdependency, and which involves such an extensive and undefined set of responsibilities, can't conform to the requirements of Right through contract alone. Like marriage, it must occur within a juridical space in which these sorts of transgressions of equality and external freedom can occur.

Thus, parenthood, marriage, and domestic servitude cannot be included in the table of permissible contracts Kant lays out: each involves an intimacy that necessarily conflicts with external freedom. Rather than transforming the nature of these relationships, domestic right creates a space within which the law does not coercively demand respect for external freedom. Beyond this, it

makes a particular set of otherwise impermissible responsibilities permissible: domestic right makes the labor of care, intimacy, and dependency possible within the household without undermining the distance required for respect in other, non-domestic relationships. In this sense, domestic right gets to the heart of the project of Private Right: it institutionalizes and enshrines practices that are both necessary and inevitable for human life, and it does so in a way that maintains external freedom in the other spheres of society. The domestic sphere involves a different set of rights and responsibilities in order to contain the treat that intimacy and the everyday labor of care pose to the respect on which Right rests.

Domestic right, in other words, entails a "third sphere" in Kant's political project. Understanding the nature of this third sphere requires a rethinking of the binary between *public* and *private* in Kant's political philosophy, and a consideration of the relationship between the domestic realm and the public realm that Kant envisioned. In the next chapter, I will more carefully consider the requirements of public personhood and citizenship in the *Rechtslehre*. In what follows, I will offer a brief sketch of the relationship between the domestic, private, and public realms in order to argue that the structural transformation of external freedom produced within the domestic realm is essential to Kant's account of public personhood and active citizenship.

3. The Rechtslehre's 'Third Sphere': intimacy, interdependency, and the labor of care

In the final section of this chapter, I show that the transformation of external freedom that occurs through domestic right entails that the domestic realm makes up a 'third sphere' of the society Kant envisions in the *Rechtslehre*. Kant's understanding of *public* and *private* draws not on the Greek division between the public *polis* and the private household, but on the emerging distinction between public, political life and the private autonomy of property owners in the capitalist,

bourgeois society that emerged in Europe in the second half of the 18th century.[206] The emergence of this new private sphere alongside the public or political sphere of the authority of the state is nicely mapped by the structure of the *Rechtslehre*, where Kant divides his account of right into Private Right and Public Right.

A number of tensions and contradictions are held in balance by this division. The distinction between Public Right and Private Right allows Kant to make room for the necessary and inevitable competition that arises between property-owning individuals while theorizing a political order in which citizens are equal and governed by a shared understanding of Right.[207] The juridical equality entailed by a rightful civil condition allows us to abstract from empirical conditions so that the wildly unequal relationships between private persons take the form of rightful relationships between equals. Through this distinction, Kant is able to reconcile the necessary and inevitable competition entailed by possessive rights in an emerging bourgeois capitalism with a civic equality that meets the standards of practical reason.

In *What Is Enlightenment?* Kant characterizes the confrontation between public authority and

[206] Habermas notes that the German noun *Offentlichkeit* was formed in analogy to the French *publicite* during the eighteenth century, while the German term *privat* emerges after the middle of the sixteenth century. (Habermas, Jurgen. (1989). *The Structural Transformation of the Public Sphere*. Polity Press, pp. 2, 11). As Hannah Arendt has argued, the rise of capitalism and bourgeois society corresponded to the rise of the "social," or a new private sphere in which the market operates, and which deserves to be distinguished both from the formerly private sphere of the household and the emerging sphere of public authority of the modern state. Arendt, Hannah. (1958). *Lectures on Kant's Political Philosophy*. University of Chicago Press, pp. 45-46; Habermas, (1989) p.19.

[207] This explains Kant's otherwise curious claim, in *Theory and Practice* that the "uniform equality of human beings as subjects of a state is, however, perfectly consistent with the utmost inequality of the mass in the degree of its possessions, whether these take the form of physical or mental superiority over others, or of fortuitous external property and of particular rights (of which there may be many) with respect to others" (Kant, TP. In Reiss, 1991, 75). The separation of public and private right produces two distinct spheres in civil society: in one, the legal equality of citizens ensures the rightful nature of juridical law while in the other, vast disparities of wealth and ability render us unequal in the competitive scheme of possessive rights. Correspondingly, in one sphere we are law-abiding citizens and equal before the coercive laws of public authority, while in the other sphere we are autonomous property owners engaged in vastly unequal economic relationships and labor practices.

private individuals who come together to form a public as occurring through a new and peculiar medium: the public use of reason. Kant's account of public reason turns on private persons publicly communicating with one another in accordance with universal rules of communication.[208] In this way, the public sphere turns on transparency, or what Hannah Arendt has called Kant's "principle of publicness."[209] According to this principle, the maxims of law meet the standard of right if they can be transparently made public. This principle of publicness allows Kant to reconcile the coercive nature of law with an account of public consent and participation.[210]

The spheres of private and domestic right protect the equality and independence of persons in the public sphere, but in order to do so, they cannot be subject to the same standards of transparency. Domestic relationships are more tightly buffered from juridical interference: though the independence of the public citizen or the private commodity owner is dependent on the labor

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[208] To be fully public, persons must communicate as "scholars," speaking outside the varying offices of power and authority that they might hold, and arguments attain the status of public reason when they are intended to be universally intelligible to a wide audience. Kant, WE. In Reiss, 1991, pp. 56-58. Public reason thus functions as a kind of moral check on sovereignty by holding public authority up to the open critique of private, autonomous persons. I do not focus heavily on Kant's account of public reason here, both because it is not central to the arguments in the *Rechtslehre* and because it is not the focus of my arguments here. However, the assumptions at work in Kant's account of public reason reveal the same concerns with institutionally organized inclusion as do Kant's claims about active and passive citizenship in the public sphere. In both cases, inclusiveness must be universal in order to meet the standards of Right, but the structural inequalities produced in the private sphere strategically limit this inclusiveness. Kant tells us that through public reason, private persons enter the public realm as "scholars." Practically speaking, the ability to participate in this kind of public debate entails two minimal qualifications: a basic level of education and independence. The ability to "speak from nowhere" as "one human amongst others" that public reason entails is as dependent on being independent and not subject to the coercive authority of another as it is on renouncing the power associated with a particular office. Thus, access to participation in public reason is limited in precisely the same way that active citizenship is limited.

[209] Arendt (1958), p. 48.

[210] This grounds Kant's famous notion that laws are justified only if all members of society could hypothetically consent to them: through the transparency of the principle of publicness, private persons as reasoning citizens engage with, critique, and accept public laws. In the public realm, citizens are cast as equal and independent beings subject only to laws they themselves could consent to, and laws themselves accord with the Principle of Right only if they are transparent and subject to (hypothetical) public consent.

done within the household, if this very labor were performed in the public or private sphere the illusion of independence would be undermined. Thus, just as the public realm turns on the principle of publicness or transparency, the domestic realm turns on opacity and the necessarily hidden nature of domestic labor.

Because of this opacity, domestic right produces sets of rights, responsibilities, and duties that differ fundamentally from public and private conceptions of rights. As I have argued, within the household labor is organized by an agreement to act for the sake of shared ends loosely defined as "the good of the household," rather than in accordance with contract right in the public sphere in which specific acts are promised in exchange for specific kinds of compensation. The domestic/private distinction produced by Kant's theory of domestic right, then, enshrines a distinction between wage-labor and domestic labor, as well as between access to rights for workers in these respective realms. The labor practices in the domestic realm need not meet the standards of the principle of publicness: relations within the household are truly private in the sense that they are not vulnerable to public definitions of rights and equality. In the sense that the dichotomy between wage-labor and domestic labor is also (in most modern liberal societies) a gendered division of labor, domestic right does the work of limiting women's access to public rights and equality.

The structural transformation of external freedom within the domestic sphere thus plays two critical roles in the broader structure of Kant's political philosophy. First, it absorbs much of the tension between the competitive private sphere and the equal public sphere by providing an institutionally enclosed space into which private persons can retreat and cultivate their sense of themselves as members of a common humanity.[211] At the same time, it confines the everyday labor

[211] Habermas makes this argument in *The Structural Transformation of the Public Sphere*. Habermas' account of the *family* as the conjugal, bourgeois "intimate sphere" in which intimacy is tied to the production of a non-competitive humanity should be distinguished from Kant's account of the *household*. Several elements of Kant's political philosophy – including the status of women and the

of care within this enclosed domestic space, allowing both public and private persons to emerge in the world already raised, educated, fed, clothed, and cared for. If this labor were performed in plain view, it would undermine the illusion of autonomy and independence on which both Public Right and Private Right turn.

The domestic realm successfully (and necessarily) resists the transparency dictated by the principle of publicness inherent in Kant's account of Right. External freedom, equality, and the labor contract itself are transformed within the domestic sphere, where rights *against* persons become rights *to* persons, and the "exclusive use" rider functions to buffer the domestic realm from intrusion from outside. The domestic sphere, as that space where individuals interact in ways that are inconsistent with equality, independence, and respect for external freedom, is necessarily opaque.

CONCLUSION

In this chapter, I have examined the structure of the household in conjunction with Kant's account of marriage in order to argue that domestic right is critical to Kant's juridical order in three ways. First, it transforms external freedom in order to contain the threats posed by impermissible relationships. Because domestic right is organized by a principle of exclusive use, it produces an enclosed realm of society where persons have rights to one another that are not otherwise consistent with external freedom.

Second, it transforms equality. Though the contractual elements of marriage and domestic employment produce an abstraction from empirical conditions such that contracting parties may

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bifurcation of labor– are obscured by the collapse of the *family* and the *household*. This is because the range of relationships involved in Kant's account of domestic right – what he terms "the right to a person akin to the right to a thing" – are broader than the family alone.

negotiate "equally," the domestic realm is explicitly defined as "a society of unequals."[212] In this way, domestic right transforms the "natural inferiority" of women into the juridical inequality of wives.

Third, domestic right produces an opaque and enclosed juridical sphere that contrasts with the transparent nature of the public sphere. The equality and independence of persons in the public sphere is shaped by the inequality and dependence that characterizes the domestic sphere.

Thus, domestic right does not transform intimate relationships so that they are consistent with the broader requirements of right. Rather, it creates a separate, institutionalized space in which intimate relationships and the labor of care can be hidden away or quarantined. In this way, the domestic realm functions as a juridical ghetto within which all elements of life contrary to public notions of independence and equality must be hidden away. Domestic right is defined in the interests of public and private right: only the quarantining function of domestic right makes possible the equality and independence on which the public and private spheres turn. The corollary, of course, is that only those with access to the privacy afforded by domestic right have the ability to reemerge in the public realm as independent and autonomous persons. What happens when the carefully delineated distinction between these spheres begins to break down? In the next chapter, I explore the impact of this kind of blurring of the boundaries on Kant's account of right.

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[212] Kant, MS 6:283.

CHAPTER THREE:

POLITICAL PERSONS, PROTECTION, AND PROMISCUITY: INFANTICIDE AND THE INSTITUTIONAL ORDER

INTRODUCTION

In what can only be described as one of the stranger moments in the *Rechtslehre*, Kant suggests that in cases where a woman bears a child out of wedlock, she and the child find themselves in 'a state of nature' and that, therefore, she ought not to be punished under the legal code for killing that child.

Kant embeds this suggestion in his discussion of Public Right, where he develops his retributive argument. The punishment for all homicide, he famously argues, ought to be death; this is the case even if "civil society were to be dissolved by the consent of all its members… the last murderer remaining in prison would have to be executed."[213] Kant is intractable on this point -- yet he then suggests that there are two cases where "it remains doubtful whether legislation is also authorized to impose the death penalty."[214] These cases, he argues, are killing a fellow soldier in a duel and an unwed mother killing her child. Both are cases of honor, says Kant, and therefore, "in these two cases people find themselves in a state of nature, and these acts of killing, which would not then even have to be called murder, are certainly punishable but cannot be punished with death by the supreme power."[215]

This discussion of the duelist and the infanticidal mother signals a rare moment of ambivalence for Kant. In the end, his position is clear: the state is justified in executing both the duelist and the infanticidal mother – and given his insistence on consistency in law, this comes as no

[213] Kant, MS, 6:333.
[214] Kant, MS, 6:335.
[215] Kant, MS, 6:336.

surprise. What merits examination is the odd moment of ambivalence: what might these cases tell us about the bounds of Kant's juridical order? Far from being a speculative departure, Kant's contemplation, and ultimate rejection, of mercy in the case of the duelist and the infanticidal mother offer key insights into the role that institutions play in organizing his construction of political personhood and his account of the state.

Chapters One and Two explored marriage and the structure of the household, which together provide the basic elements of Kant's philosophy of the family. This chapter uses Kant's consideration of mercy for the infanticidal mother in order to examine the strategic role that the family and domestic right play in Kant's political philosophy. By asking why the illegitimate child might not warrant juridical protection, this chapter shows that the illegitimate child stands outside the institutional order of the state, and thus does not warrant the protection offered to recognized political persons. This failure to recognize the rights of the child suggests that the institution of marriage plays a critical role in organizing access to juridical rights in the state.

I will begin with a discussion of Kant's account of Public Right and the institutional order of the juridical state. I then turn to the relationship between his account of rights and his retributive theory of punishment. Taken together, these arguments highlight the logic of Kant's justification of punishment and some of the quirks in his account of citizenship and political personhood. From there, I turn to Kant's discussion of the infanticidal mother. I highlight several weaknesses in contemporary interpretations of this argument, and I argue that given the public debates about infanticide in Prussia at the time, Kant's discussion is not particularly compassionate. This clears the way for my own interpretation, which holds that political personhood and access to rights are tied to the institutional structure of the state. I argue that by linking Kant's ambivalence about the plight of the infanticidal mother to his account of domestic right, we may learn a great deal about who is, and is not, a person deserving of rights and protections – and why. Kant's ambivalence about infanticide

conceals a concern about what to do with those who threaten the institutional order of the state.

1. RETRIBUTION, RIGHTS, AND RECIPROCITY: PUNISHMENT AND PUBLIC RIGHT

Kant's claims about retributive punishment in the *Rechstlehre* are well known: he argues that capital punishment is a categorical imperative, and that anyone "who has committed murder must die."[216] This discussion comes in Section I of Part Two of the *Rechtslere*, which delineates Public Right, or the right of the state. In what follows, I first develop an account of Public Right in Kant's account of the state. From there, I turn to an examination of the relationship between the retributive argument and Kant's account of rights.

1.1 Public Right and the Institutional Framework of the Republican State

In Chapters One and Two, we traced the structure of Private Right in Kant's account of the state. In Chapter One, we saw that rights are merely provisional unless they are backed by the coercive power of a public authority. The necessity of a public authority thus stems from Kant's account of relational justice. Because persons are embodied beings with an innate right to external freedom, and because they find themselves competing over resources and freedom, they will inevitably come into conflict. In a state of nature, there can be no justice: there is only, as Rousseau put it, the law of the stronger. And, accordingly, all possessive rights are merely provisional in the state of nature. Possessive rights are concluded only when they are transformed into the institutions of Private Right, and backed by coercive, juridical law. In other words, rights are concluded only given a public authority with the power to assure and adjudicate those rights. The institutions of Private Right must be regulated and enforced by a public authority.

[216] Kant, MS 6:333.

This public authority is delineated in Part II of the *Rechtslehre,* where Kant defines Public Right as "the sum of the laws which need to be promulgated generally in order to bring about a rightful condition."[217] Public Right outlines constitutional law, which delineates the legal and institutional arrangements necessary to juridically instantiate the principle of right.[218] Constitutional laws and the capacity to coercively enforce them are necessary *a priori*, Kant argues, and not owing to some fact about human nature: the state is not a prudential solution offered in the face of human malevolence, but a necessary precondition for the possibility of rightful interactions between persons.[219]

The legitimacy of the state, and the justification of the public authority's right to coerce rests on the rightful nature of a republican institutional framework.[220] Public Right requires the state to provide an institutionalized system for assuring both possessive rights and the more general rights to "freedom, equality, and independence" guaranteed to each citizen.[221]

The public authority can ensure rightful interactions only if it is structurally public: the public

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[217] Kant, MS6:311
[218] Kant, MS6:311
[219]Conversely, Kant argues, the fact that possessive rights and their attendant conflicts arise in the state of nature is a precondition for the establishment of the state. MS6:313; see also Chatper One Section 2.2. My interpretation of Kant here is in agreement with Helga Varden's account of Kant's non-prudential defense of the public authority. Varden argues that on Kant's account, even if individuals in a state of nature agreed on basic principles of possession, and conflicts did not arise, the state of nature is fundamentally a state "devoid of justice": the possibility of justice, in other words, rests on the establishment of a public authority, and cannot exist in relations between individuals. Varden argues, moreover, that Kant's concern about conflicts arising in the state of nature is not a Hobbesian concern about violent and unreasonable conflicts, but a concern about inevitable instances of reasonable conflict, such as problems of indeterminacy in property and contract relations. See Varden, Helga (2008). "Kant's Non-Voluntarist Conception of Political Obligations: Why Justice Is Impossible in the State of Nature." Kantian Review 13.2, pp. 1-45.
[220] I am defending a non-voluntarist conception of the Kantian state, in which the legitimacy of the state is tied not directly to the consent (hypothetical or otherwise) of the people, but on the capacity of the state to coercively support institutions designed to ensure and enforce external freedom. For a defense of a non-voluntarist account of the Kantian state, see Varden, Helga (2010). "Kant's Non-Absolutist Conception of Political Legitimacy: How Public Right 'Concludes' Private Right in "The Doctrine of Right"." Kant-Studien, pp. 331-51.
[221] Kant, MS6:314; TPP. In Reiss (1991), p. 100.

authority, as an abstraction from empirical conditions, represents the will of each member of the state, so that all juridical coercion takes the form of the "universal reciprocal coercion" authorized by the Principle of Right.[222] The public authority must operate through an institutional order that is representative of the will of the people.[223] This general united will, Kant argues, takes the form of three "persons" or governing bodies: a legislative authority, an executive authority, and a juridical authority. The legislative authority must "belong to the will of the people,"[224] and the executive and juridical authority are bound by the laws it lays down.

The public authority must be *structurally* public, capable of consistently embodying law as equal, symmetrical, and universal. It can rightfully coerce only if it is embodied in an institutional order that acts as a representative apparatus, and is therefore best understood as institutionally constituted, rather than as peopled by private persons. The sovereign, as a public authority, is transformed from a private person to an agent of the state: he must stand outside coercively enforced relations, since there can be no authority capable of settling disputes between sovereign and subject.[225]

We might ask what it means, concretely, to say that constitutional law must proceed from the will of the people: Kant was not, unlike Rousseau, overly concerned with questions of deliberative democracy. He delineates between active and passive citizens (a distinction I will examine later in this chapter), arguing that only active citizens have the right to vote[226] but he does not offer a concrete account of the relationship between the right to vote and the establishment of

[222] Kant, MS 6:232
[223] In this way, Kant's account of the public authority rests on a Rousseauean notion of a general will.
[224] Kant, MS 6:314.
[225] Kant, MS 6:324. He cannot own private property, since private interests might interfere with his capacity to enact law in a manner consistent with Public Right. As long as the sovereign takes the form of a representative public authority that proceeds from the general will of the people he can neither be overthrown nor punished.
[226] Kant, MS 6:314.

laws.[227] The general will, instead, derives from the principle of right: each person has as much external freedom as possible without infringing on the external freedom of others, and the general will operates as an "omnilateral will"[228] which collectively coerces each to reciprocally respect the external freedom of others. To object to this universal coercion is to assert my right to unilaterally coerce others in order to expand my own freedom at the expense of the external freedom of others. There can, accordingly, be no right to object to laws promulgated by the general will, since the general will is an extension of the principle of right.[229] And, accordingly, Kant argues that there is no right to revolution: the public authority has the right to coercively enforce law, regardless of its historical origins.[230]

Government takes the form of a public authority when it conforms to the principle of right by taking the protection of external freedom as its end. The public authority must provide and enforce a republican institutional framework capable of coercively instantiating external freedom. So, for example, the public authority can levy taxes[231] in order to fund this institutional order. In addition to assuring the range of rights entailed by Private Right, the state must provide services and

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[227] Kant himself admitted that the section on Public Right was underdeveloped. Kant, MS 6:209. For a discussion, see Fenves, Peter (2003). *Late Kant: Towards Another Law of the Earth*. Routledge. P. 173.

[228] I borrow this term from Arthur Ripstein. Ripstein, Arthur (2004), "Authority and Coercion." *Philosophy and Public Affairs.* Vol. 32, no. 1, p. 33

[229] Arthur Ripstein points out that there is a subtle distinction between the claim that "all must agree" with the omnilateral will and the claim that there can be no right to object to it. Ripstein (2004), p. 33. Kant's argument, in other words, turns not on the claim that the general will is the result of a hypothetical agreement, but on the claim that any objection to a will derived from the principle of right would be wrong. This is, we should note, structurally similar to the claim that individuals are free to choose to enter a civil condition, but that refusing to do so would be "wrong in the highest degree."

[230]Kant, MS6:319. No imagined social contract is necessary, in other words, to ground the authority of a regime. If law is consistent with the Principle of Right (i.e. it must have as its purpose the protection of external freedom), then it is legitimate.

[231]Kant, MS 6:325. Kant argues that "this must…be done in such a way that the people taxes itself, since the only way of proceeding in accordance with principles of right in this matter is for taxes to be levied by those deputized by the people."

institutions capable of ensuring order and protecting external freedom.[232] The institutional order must include a police force to "provide *security, convenience,* and *decency,*"[233] as well as a criminal justice system with the capacity to try and punish criminals.[234] As an extension of the public authority, the penal system must take the form of *public* justice. Courts are administered by judges appointed by the sovereign who act as representatives of the people.[235] Taken together, the police force and the courts work to regulate and coercively maintain the institutions of Private Right, as well as ensuring the more general scheme of rights guaranteed to all citizens.

1.2 Retribution and Rights

The authority to punish is amongst the most important functions of Kant's state. If rights are conclusive only given universal reciprocal coercion, and this coercion is rightful only when enacted by the public authority, then the authority of the state to execute coercion in the form of punishment is essential to the possibility of conclusive rights. Kant argues that public justice must be

[232] Thus, Kant distinguishes between charitable (private) and public institutions, arguing that state-supported poverty relief is a necessary obligation of the rightful state, since the conditions of extreme poverty undermine the enactment of external freedom. Kant claims "for reasons of state the government is therefore authorized to constrain the wealthy to provide the means of sustenance for those who are unable to provide for even their most necessary natural needs. MS 6:326. Helga Varden develops Kant's account of necessary poverty relief, arguing that the state must ensure that "no private person finds herself without any means whatsoever with which to set and pursue ends, since external freedom is impossible without means." Varden, 2010, p. 345. Unconditional poverty relief, Varden argues, is a necessary obligation of the state if individuals are to be able to realize their innate right to external freedom. Arthur Ripstein argues that a person in a condition of extreme poverty is wholly dependent on others, which means that they become a mere means for others. To be wholly dependent on others is to surrender external freedom, and so poverty relief is necessary in order to ensure the right to external freedom. Ripstein, 2004, p. 33.
[233]Kant, MS6:325 "decency" in this context, means preventing "uproar on the streets, stenches, and public prostitution" in order to prevent "the feeling of decency" from being "deadened by what offends the public sense." The police also have the right to inspect any association that threatens the well-being of society. MS6:325.
[234] Kant, MS6:331-332.
[235] Kant, MS6:317. Kant argues that a strict separation between the legislative and executive branches (particularly as embodied by the sovereign) and the judicial branch is necessary to ensure that criminal justice takes the form of reciprocal coercion for and by the people.

guided by the principle of equality, also known as the law of retribution.[236] In order to understand the relationship between the retributive argument and the principle of equality, it is useful to map Kant's account of punishment against his formulation of rights throughout the *Rechtslehre*.

Take, for instance, the argument grounding property right. Though in a state of nature, I may come to possess things – either because I am using them or defending them -- my right to these things is not secure. To say that I own something is to say that I have a right to it in the sense that other people recognize and respect my right to it: my right to a thing is premised on the fact that no one else has a right to it. Rights are possible only in a society in which others have agreed to recognize and respect that right, and in which we have all recognized the right of the public authority to coercively enforce those rights. This notion of recognition and consent backed by a coercive public authority is why, for Kant, we are obligated to leave the state of nature and enter the state, through which our natural (or provisional) rights become juridical (or enforceable) rights. As I argued in Chapter One, this means that rights are *structurally universal*. If others do not recognize my rights, then my rights are merely provisional.

Other rights, like the right to life, work in the same way: I have a right to life only if others recognize and respect this right. If others don't recognize and respect my right to life, then that right is merely provisional: it's not enforceable, so doesn't behave as a right at all. By the same token, my right to life is premised on the fact that I recognize and respect the right to life of others. If I commit murder, I have failed to recognize and respect the right to life of others, and thus I have forfeited my own right to life. Worse still, by failing to recognize the rights to life of others I have in fact denied the right to life of all others: I have made the right to life provisional. And in order to restore this right, Kant argues, I must be killed.[237]

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[236] Kant, MS 6:332.

[237] Kant lays out retributive punishments for other offenses, too. He argues, for instance, that the

Thus, as Kant makes clear, the criminal has not simply subverted the law, he has *made crime his law*: he has made breaking the law the maxim of his actions (since he is autonomous). He does this either by universalizing this maxim or by treating himself as an exception to the law; either way, he has broken with the social contract.[238] In the case of the murderer, this break is so severe that it constitutes a forfeiture of his right to life. And, conversely, it entails an obligation on the part of the state to execute those who have forfeited their life in this way. As Kant infamously argues, "even if a civil society were to be dissolved by the consent of all its members, the last murderer remaining in prison would first have to be executed… for otherwise the people can be regarded as collaborators in this public violation of justice."[239] In the same way that my possessive rights must be ensured by a coercive public authority, my right to life is conclusive only given the coercive enforcement of a public authority. My right to life is conclusive, in other words, only if the public authority is authorized to execute murderers.

1.3 Retribution and Civil Personality: Towards an Account of Political Personhood

The retributive argument for capital punishment hinges on the claim that punishment must be applied for the right reasons: the murderer must be executed "*only because he has committed a crime*"[240] As Kant argues, "a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from

punishment for verbal abuses (or causing humiliation) ought to be public judgment and apology (or public humiliation), rather than a fine (MS 6:332). Someone who steals has disrespected the right to property, and thus has (for some determined length of time) forfeited his own right to property. As one who cannot own property, but who still needs to survive, the thief would have to perform "convict or prison labor" and might be "reduced to the status of slave for a time" (MS 6:333).

[238] Kant, MS 6:320, footnote.

[239] Kant, MS 6:333

[240] Kant, MS 6:331.

this, even though he can be condemned to lose his civil personality."[241]

I want to draw attention to the juxtaposition between the "innate personality" and the "civil personality". Kant's argument here speaks to a tension in his conception of personhood: as a human being, the criminal clearly deserves respect as an end in himself. He is still an object of moral concern: this is his "innate personality", and clearly, it is something he retains even though he has committed murder. But on the other hand he has forfeited his "civil personality". What does this entail? Kant defines "civil personality" in a number of ways.[242] In his definition of citizenship, he describes civil personality as following from one's independence – and on this ground, he distinguishes between active citizens and passive citizens, saying that passive citizens (women, apprentices, domestic servants, and minors) "lack civil personality and their existence is, as it were, only inherence."[243] Passive citizens, in other words, have only innate personality; they lack civil personality. Civil personality, then, is a characteristic only of those qualified to be active citizens; innate personality is the quality of "being a human being" as Kant puts it here – or, more precisely, it's the quality of being the object of moral concern as an end in oneself.

There are two difficulties with this argument. First, Kant's justification of retributive justice hinges on the insistence that the criminal has forfeited his civil personality but not his innate personality. But this is to say merely that the criminal is no longer an active citizen. It's difficult to see how this can justify execution: surely, we can't execute people on the grounds that they have forfeited their status as active citizens. At the same time, in order for justice to be truly retributive, we must be able to say that the punishment in question respected the criminal as a moral end in

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[241]Kant, MS 6:331.
[242] Kant refers to several other instances of "personality" in the Rechtslehre. In the Introduction to a Metaphysics of Morals, he contrasts "moral personality" as "the freedom of a rational being under moral laws" to "psychological personality" as "the ability to be conscious of one's identity in different conditions of one's existence" (MS 6:223).
[243]Kant, MS 6:315-315.

himself: accordingly, execution is justified precisely because it takes the murderer seriously as an autonomous person who has taken murder as his maxim. Thus, we seem to want to say that the murderer has forfeited his civil personality, and his right to life, but not his innate personality.

So: there is "innate personality," which makes us objects of moral concern,[244] and "civil personality" which makes us independent, active citizens. I am unconvinced by the completeness of this rubric, largely because it seems to collapse juridical and moral concerns in ways that are inconsistent with the distinctions Kant draws between them: it seems clear that juridical law applies to those within a given state or political order, while moral law applies universally, to all persons regardless of citizenship, location, or status in relation to a civil order.[245] It seems necessary, then, that between these two there is the category of *political persons*: those beings recognized by the state as persons, who bear rights and warrant legal protection, even though they do not have the status of full, active citizenship.[246] These are the persons who – citizens or not – find themselves within the jurisdiction of juridical law.

I use the term *political person* here as distinct from *citizen* for numerous reasons. First, I am concerned only with basic legal protections, rights, and recognition, which would seem to belong to some persons who are not citizens. Second, Kant's account of citizenship – and the distinction between active and passive citizens – is notoriously complicated, and I will examine it more closely in section 3.1. Third, the present discussion deals with children, whose status as citizens is particularly tenuous, and thus some other term seems necessary. Political personhood, then, refers

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[244] Kant describes freedom as man's one innate right. A possible way to delineate "innate freedom" would be to say that those beings with this innate right of freedom have "innate personality." MS 6:237.

[245] This category seems particularly important in relation to Kant's arguments about cosmopolitanism and his ambivalence about those who are – and are not – capable of entrance into the cosmopolitan order.

[246] If innate persons are those persons within the jurisdiction of the moral law, and civil persons are those who participate in the framing of juridical law, then juridical persons are all those within the jurisdiction of the juridical law.

to persons recognized *as persons* by the commonwealth, who are thus granted legal protections, rights, and who are subject to punishment and legal restrictions.

The jurisdiction of juridical law, accordingly, extends to all those recognized by law as juridical persons. Yet in the case of the duelist and the unwed mother, Kant suggests that one might find oneself outside of this jurisdiction.[247] What might this "outside" tell us about the bounds and structure of juridical law?

1.4 Kant and the Ethics of Dueling *(or, Notes from a Swashbuckling Kant)*

In his account of exceptions to the law of retributive punishment, Kant offers two examples of cases where people might find themselves outside the jurisdiction of juridical law. Given Kant's insistence on the necessity of retributive punishment as a fundamental requirement of public justice, his ambivalence in the case of the duelists and the unwed mother calls for examination. Before turning to the case of the unwed mother, I will explore the case of the swashbuckling military officers, and Kant's rather curious take on the ethics of dueling.

Kant likens the two cases thus: "legislation cannot remove the disgrace of an illegitimate birth any more than it can wipe away the stain of suspicion of cowardice from a subordinate officer who fails to respond to a humiliating affront with a force of his own rising above fear of death."[248] Because both cases are concerned with shame and humiliation, both have an oddly public character. He argues that in these two cases, "people find themselves in a state of nature."[249] What does it mean to find oneself in a state of nature, and what might this tell us about the permeability of the juridical order, and those protected within it?

In the case of the duelist, the humiliation of being branded a coward can't be settled in court,

[247] Kant, MS 6:336.
[248]Kant, MS 6:336
[249] Kant, MS 6:336

but only through the public spectacle of a duel. I want to draw attention to three elements of Kant's argument. First, the military officer's actions are described in ways that mirror Kant's retributive argument: the duel is described as a form of necessary punishment, and it is therefore necessary that, like other forms of justice, it be public. This points to a second oddity: the duel is necessarily public – but it is also outside the jurisdiction of juridical law.

Kant defends the public nature of the duel thus: in cases where a military officer has been publicly branded a coward, he cannot seek justice in court, but only as part of a public spectacle. Kant admits that the officer, like the infanticidal mother, finds himself in a quandary: penal justice can't restore honor; only a public and conventionally understood act of courage (the duel) can allow the officer to reclaim his honor.

The duel, however, is inconsistent with the requirements of rightful juridical law. The state cannot protect the external freedom of persons while allowing them to fight one another to death, and so Kant contends that "if the killing that occurs in this fight which takes place in public, and with the consent of both parties, though reluctantly, cannot strictly be called murder."[250] It occurs, in other words, both in public *and* in a state of nature. The emergence of a state of nature around the duelists, in other words, is tied to the public nature of the duel.

Kant offers two requirements for the emergence of this state of nature: it emerges both because of the consent of the participants, and because it is public. The very publicity of the duel, however, suggests that the consent involved concerns more than the duelists themselves: only through *public* consent can the duelists find themselves in the state of nature, outside the bounds of the juridical order.

In this way, the right to exit a juridical order is consistent with other juridical rights: it involves the collective consent and reciprocal recognition of the members of the community. Every

[250] Kant, MS 6:336.

element of political right that Kant develops shares this characteristic of publicness: property right, contract right, and domestic right are institutions that organize collective consent and reciprocal recognition by dictating intelligible and public procedures of participation, position, and recognition of rights. And this, in turn, entails that collective consent and reciprocal recognition organize the right to both enter and exit a juridical order. In other words, before we can recognize your right to participate in any of these institutions, we would first need to have recognized you as a member of our community. From this, it follows that one finds oneself in a state of nature, outside the bounds of the legal order, only if the community has consented to let one go.

The emergence of the state of nature follows from the public nature of the duel: it concerns both the participants and the community at large, who have a role to play in the creation of this temporary and fundamentally public state of nature. Kant's description of the duel suggests that, in order to "remove the stain of humiliation," the duel must be witnessed by a wider public acting as spectators. It is precisely because others are implicated in the duel in this way that it would be unjust if the community then legislated death for the duelists.[251]

The "state of nature" arises, Kant argues, because of a fissure in public justice. Dueling is inconsistent with rightful law, since a fight to the death cannot be consistent with the protection of external freedom -- but the duelists *must* fight, in order to escape humiliation and restore their honor. In this argument, we have two competing understandings of justice, both of which have a decidedly public character.

We might understand this fissure as a reflection of Kant's account of rightful law and his understanding of social custom. In this sense, Kant's discussion of the dueling and infanticide marks a rare moment of permeability in the systematic logic of the *Rechtslehre*: what should rightful law do in the face of entrenched social conventions? In posing this question, Kant was likely responding to

[251] Kant, MS 6:337

the transformation of law that was occurring in East Prussia in the 1790s, as the ambitious and far-reaching Prussian General Law Code (*Allgemeines Landrecht)* took effect in 1794.

I suggest, however, that we might best understand Kant's ambivalence in the cases of the duelist and the infanticidal mother as a reflection of his desire to produce a system of public law that was *both* systematically consistent with the principle of right *and* could be said to proceed from the will of the people. Kant is not merely signaling a troubling distinction between law and social convention. By tying public justice and the boundaries of the juridical order to the notion of public consent and recognition, he is framing an institutional order capable of internal juridical consistency.

1. ILLEGITIMACY, INFANTICIDE, AND INSTITUTIONS

In the 1790s, the post-critical Kant became overwhelmingly concerned with political and historical questions. This shift, I argue, was in part in response to two historical events: the French Revolution and the adoption of the Prussian General Law Code of 1794. Kant's response to the French Revolution has been well explored by scholars, but the influence of the transformation of the legal code on his political philosophy has been more widely ignored. The Code was the most lengthy and complex attempt at institutionalizing civil law of the late Enlightenment – it contained more than 17,000 detailed provisions and articles (more that 8 times the number offered in the Napoleonic code). It aimed to provide judgment on every possible case, and judges were forbidden from interpreting it.[252] It was the juridical legacy of Frederick the Great, and the debates surrounding its adoption in the early 1790s were both fraught and far-reaching. Kant's regular dinner companion (and mayor of Konigsberg) Theodor von Hippel, engaged directly in the debate: his most well-known works, *On the Status of Women* and *On Marriage* were published anonymously in 1792 and 1793 in an attempt to influence elements of the Code, and to grant women greater freedom and

[252] Merryman and Perez-Perdomo, The Civil Law Tradition Standford University Press 1969, p.39.

equality in marriage.[253]

Statutes concerning marriage played a central role in the Code. The goal of the Code was, in part, to encourage the re-population of an extended territory created by a series of bloody conquests that were, by the late 18th century, underpopoulated. The Code takes it that the central purpose of marriage is procreation, though it provides that marriages are valid for mutual support alone. It included provisions such as "married couple are *olibgated*, as far as it lies within their power, to offer mutual assistance in all difficult situations," "they *must* live together,"and "even in times of great difficulty they *must not* leave one another,"[254] which suggest that marriage was also a means to prevent poverty and abandonment.

Given the nature of the debates surrounding marriage, procreation, and abandonment, Kant's ruminations about infanticide in the *Rechtslehre* ought not to surprise us, as they would not have surprised his contemporary readers. Infanticide held a critical place in the emerging field of legal philosophy in Germany in the 18th century; the famed German legal scholar Gustav Radbruch referred to it as "the key delict to all efforts in criminal law reform in the eighteenth century."[255] Isabel Hull, writing on the history of sexual law in Germany in the 18th century, argues that discussions of law and sexuality "centered around a single offense, which then served as a metaphor for the sexual system and its legal ramifications as a whole." That offense was infanticide.[256] Arguments for more general legal reform and the abolishment of the death penalty focused on the plight of the infanticidal mother, and so debates about infanticide became debates about the

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[253] Sellnor, Timothy. Introduction to *Hippel: On Marriage*. Wayne State University Press, Detroit, 1994, p. 52.
[254] Sellnor, Timothy. Introduction to *Hippel: On Marriage*. Wayne State University Press, Detroit, 1994, p. 52.
[255] Hull, Isabel. Sexuality, State, and Civil Society in Germany, 1700-1815. Cornell University Press, 1996, p. 111.
[256] Hull (1997), p.111.

criminalization of sexual activity more broadly.[257] Criminal law in the mid 18th century required women who found themselves unmarried and pregnant to report their pregnancy to the local authorities, who were required to punish them for fornication;[258] failure to report such a pregnancy put one under suspicion of infanticide, for which the punishment was death.[259] Infanticide accounted for half of all executions in Prussia in the second half of the 18th century, inspiring Frederick the Great to initiate legal reforms in 1765 to decriminalize fornication first for pregnant women, and then for all women by the time Kant was writing in the 1790s.

The public debate about infanticide and legal reform from the mid 18th century highlighted the asymmetry of infanticide law, which defined infanticide as a crime only the mother could commit, and often positioned the infanticidal mother as defending her honor in the face of an unfair and oppressive legal and social system.[260] An essay competition in 1780 received over 400 essays on the subject (a large number even for essay prize-loving Germans), and the literature of the period is littered with sympathetic unwed mothers contemplating infanticide. That Kant includes infanticide in his discussion of retributive punishment, therefore, ought not to come as a surprise, although his arguments, as we will see, break with the dominant reasoning of his day.

2.2 Cruelty, Compassion, and Contemplations of Mercy

Kant's discussion of infanticide turns, like his discussion on the duelist, on the idea that mother and child find themselves outside the bounds of juridical law:

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[257] Hull (1997), p. 111.
[258] Often by beating, imprisonment, or public humiliation. Hull (1997), pp. 79-80.
[259] Though the 1532 criminal code called for execution by being drowned in a sack (often with a dog, a cat, and a viper, depending on local tradition), the most common method of execution by the mid 18th century was the sword. Ulbricht, Otto (1985). "The Debate About Foundling Hospitals in Enlightenment Germany: Infanticide, Illegitimacy, and Infant Mortality Rates." *Central European History*. Vol 18, no. ¾, p. 220.
[260] Hull (1997), p.116.

> So it seems that in these two cases people find themselves in the state of nature, and that these acts of killing *(homicidium),* which would then not even have to be called murder *(homicidium dolosum)*, are certainly punishable but cannot be punished by the supreme power. A child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law. It has, as it were, stolen into the commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not right that it should have come to exist in this way), and can therefore also ignore its annihilation; and no decree can remove the mother's shame when it becomes known that she gave birth without being married.[261]

At first glance, this seems to hint at a cruel and unfeeling tendency in Kant's vision of the state. As Annette Baier argues, "Kant's reason for advocating leniency toward those unmarried mothers found guilty of infanticide is not a humane concern for the mother's situation, faced as they were with social disgrace; but rather a legalistic point that the victim of the killing, in such cases, is not a person whom the law need protect."[262] As Baier frames it, "this is a pretty shocking and cruel bit of Kantian reasoning, cruel in its apparent disregard of the fate of innocent victims."[263] Baier's analysis hinges on the anti-humanistic claim central to Kant's suggestion here: that the child, because it is born out of wedlock, has no right to exist, and thus has no rights in the state.

Jennifer Uleman offers an alternate reading: she argues that Kant's reasoning is "surprisingly compassionate."[264] Because the law cannot solve the problem of competing demands posed by divergent legal and social norms, and because it cannot protect her from the disgrace and social censure that follows from bearing an illegitimate child, a woman in this position must have the right to defend 'the honor of her sex'. Uleman's reading positions the mother at the center of a terrible

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[261] Kant, MS 6:336. In fact, the public humiliation associated with out of wedlock pregnancy had been produced and reified through two centuries of criminal law that punished fornication with public humiliation. See Michalik, Kerstin (2009). "Development of the Discourse on Infanticide in the Late Eighteenth Century and the New Legal Standardization of the Offence in the Nineteenth Century." In Gleixner & Gray (ed.) Gender in Transition: Discourse and Practice in German-Speaking Europe, 1750-1830. University of Michigan Press.
[262] Baier, Annette. "Moralism and Cruelty: Reflections on Kant and Hume." *Ethics* 103 (April 1993), p. 445.
[263] Baier (1993), p. 446.
[264] Uleman, Jennifer. "On Kant, Infanticide, and Finding Oneself in a State of Nature." *Zeitschrift für philosophische Forschung* 2000, vol. 54, n°2*, p.*174.

conflict between what is legally and morally right and what is socially required.

Uleman's reading sidesteps the question of cruelty to a child the law cannot protect and focuses instead on the leniency offered the mother – a leniency that is compassionate because it recognizes that she is embedded in a social system in which she has limited choices. Uleman suggests that this mercy reveals a feminist resistance to misogynist social norms where one's honor is relative to one's sex. But her argument turns on a rejection of the true nature of Kant's formalistic argument: in Uleman's reading, it is the mother that finds herself in the state of nature because the law cannot protect her from social disgrace. The unmarried woman's position is deserving of mercy precisely because the social norms that constrict her are oppressive; the child's position in the state of nature is secondary. I argue that for Kant, the illegitimate child occasions this temporary state of nature because he has no right to recognition from the state; the mother's place in the state of nature is secondary.[265]

Kant's compassionate consideration of mercy for the mother was not as surprising as Uleman suggests – it was the dominant narrative about infanticide at the time. Though the winner of the 1780 essay prize argued against preventative measures for infanticide on the grounds that it led to moral permissibility and corruption, the story most often appealed to in those essays was that of a young woman abandoned and deceived by her lover, who finds herself pregnant and, instead of enduring the public humiliation, life-long shame, and limited life chances for her illegitimate child that such pregnancies promised, desperately commits murder.[266] The woman in question was, in other words, the object of great sympathy and compassion among German essayists and literati of the time, who censured the cynical lovers who abandoned these women, the cruel and unfeeling

[265] Kant, MS 6:336.
[266] Michalik, (2009), pp. 57-59.

fathers, the double-standard of society, and the mercilessness of law.[267] By the 1790s, the Prussian General Law Code not only decriminalized fornication for all women, but offered unwed mothers unprecedented legal and social protections, allowing them to seek reimbursement, ongoing financial support, name and status from impregnators, giving them (effectively) the social status of an innocently divorced wife.[268]

In the face of this, Kant's contemplation of mercy for the unwed mother is surprisingly *un*compassionate. Though he gestures towards a criticism of the harshness of punitive law and the unfairness of the social standard, he ultimately upholds capital punishment and defends the rigid social order that drove women to infanticide to begin with. In comparison to the legal reforms already on the books in Prussia in 1794, his claim that mother and child merely find themselves in a "state of nature" is startlingly unprogressive.

Uleman's reading fails to consider the progressive historical moment in which Kant was writing and to position his comments on infanticide in the context of the institutional order of the *Rechtslehre*. The social order that stigmatizes illegitimate birth is not amoral for Kant – rather, it is central to his moral conception of the state. The sense in which infanticide occurs outside the bounds of law is not due to the *social* stigma the mother faces for bearing a child out of wedlock. It is not a compassionate resistance to barbaric social norms but rather a political claim about legal recognition and identity. Indeed, Kant in the end condones these social norms, mapping them into the institutional order of the state, and condemning the infanticidal mother to death in the name of retributive justice and consistency in law.

Instead of critiquing social norms, Kant is offering an account of the boundaries of the juridical community. It is not, as Uleman argues, the case that "a state of nature opens up when a

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[267] Hull (1997), pp. 111-113; 280-281.
[268] Michalik (2009), p. 55.

system of juridical law is not generally effective."[269] The state of nature is not simply a response to a failure of law to offer protection from social disgrace, or a failure of the penal code to correspond to the moral law. Rather, the state of nature opens up because of an exclusion of law: the child in question is not recognized as a member of the community, and is therefore not automatically offered the protection of the law. This exclusion of the illegitimate child, I argue, is premised on Kant's rigid designation of marriage and the domestic sphere as the institutions that make sexuality and child rearing possible.

2.3 Marriage, Domestic Right, and the Threat of Promiscuity

My contention, then, is this: the sense in which the illegitimate child is outside the protection of law is not a "shocking and cruel" anomaly in Kant's arugment, but rather indicative of the central role that juridical institutions play in determining how persons find themselves within the jurisdiction of the legal order. In this case the key institution is marriage, which, as I have argued, entails a transformation of external freedom so that partners may make use of one another in ways that would otherwise be impermissible. Through this transformation, dependency, intimacy, and care, are quarantined within the domestic sphere.

Marriage can transform external freedom in this way because it entails a right to exclusive use. But like other rights to exclusive use, my rights are secure only if they are recognized by all others and backed by the coercive power of the public authority. Marriage is a juridical institution that depends on the participation and recognition of the community as a whole.

Marriage, as we know, is not the only relationship included in domestic right: rights to domestic servants and children are also covered by this rubric. But marriage is *definitive* of domestic right in a way that these other relations aren't: as marriage transforms contract right into domestic

[269] Uleman (2000), p. 185.

right, it constitutes the domestic realm. Marriage, therefore, is the publicly recognized, juridically enforced institution that offers access to the other relations of domestic right.[270] Marriage, in other words, entails the right to bring children into the community.[271] The community, correlatively, is bound to recognize and respect those children born within publically recognized marriages.

Thus, the community produces, through its recognition of and participation in the institution of marriage, domestic realms in which children can be reared, and in which the responsibility for their wellbeing is cordoned off from the public realm. Marriage serves not only to quarantine the messy intimacy that occurs through sexuality, but also the equally messy interdependency that parenthood requires. Just as sexuality is not compatible with public moral personhood, child rearing is incompatible with the autonomy and independence that is central to Kant's account of the civil person. Within the domestic realm, actions that would be inconsistent with external freedom in any other realm of society (sex, for example, or child-rearing) become permissible, not because those actions themselves are transformed, but because external freedom doesn't operate within the household in the same way it does outside it. Domestic right is a transformation of external freedom in that it changes the discretionary space of individuals by creating a kind of closed, collective discretionary space in which persons are allowed to affect each other in more invasive ways.

This allows us to understand the case of the unwed mother in a different light. It is not simply the sexual indiscretion involved in illegitimacy that poses a problem for the social order – it is also the very problem of what position as illegitimate child can hold in that social order, and how that child is to be raised outside the lawfully produced domestic sphere. The illegitimate child threatens the social order by making some public acknowledgement of the burdens of child rearing

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[270] I think this claim is less clear in the case of domestic servants: Kant, for instance, was unmarried, but retained a domestic servant over whom he must have had some version of domestic right. I focus, therefore, on the right to bear children, which does seem to follow from marriage.

[271] Importantly, this is a *right* and not an *obligation:* marriage is not necessarily procreative for Kant.

necessary. In other words, the unwed mother finds herself outside the law precisely because there is nowhere within the institutions of law for her child. It is the child, rather than the mother, who embodies a juridical anomaly that threatens to undermine the carefully constructed Kantian juridical order.

3.INSTITUTIONS, POLITICAL PERSONHOOD AND MEMBERSHIP IN THE COMMUNITY

Thus, when Kant claims that the illegitimate child has 'stolen into the commonwealth (like contraband merchandise)' he means literally that the child has entered the commonwealth outside the institutional pathways organized through marriage and the production of domestic right. Marriage (and chastity outside of it) is not simply a social norm, as Uleman suggests, but is also the institution that grants membership in civil society. In this sense, marriage functions as a kind of social contract: all citizens gain membership in the community either through immigration (an explicit social contract) or legitimate birth (the implied social contract of marriage). Practically speaking, it's likely that marriage is the most common way that the community accepts and recognizes new members. I will return to this idea of marriage standing in for the social contract in Chapter 6.

In suggesting leniency for infanticide, Kant explicitly says that since the child has not entered the community legally (i.e., through the institutionally mediated consent of the community), the law need not acknowledge the existence of the child. The state can not only ignore the existence of the child, but "can therefore also ignore its annihiliation."[272] If the child is born outside the law, it is born into a state of nature – a state in which it has neither juridical nor natural rights to protection. It is this claim that Baier and others find cruel and shocking: this is to say that the illegitimate child

[272] Kant, MS 6:336.

does not produce moral obligation on the part of the community.[273]

This tells us several important things about a Kantian account of political personhood. Persons are, in a Kantian philosophy, the only things that obligate absolutely: they are the only ends in themselves. Persons are defined in Kant's moral philosophy as beings with the capacity to be rational and self-legislating beings, and Kant's political philosophy carefully constructs the state in such a way that civil persons are just this: rational and capable of autonomy.

So what about children: what makes a child a person for Kant? It seems clear that children – despite being neither fully rational nor capable of autonomy – are ends in themselves, deserving of moral concern and juridical protections. In fact, Kant carefully constructs a realm in the juridical order in which children will be protected and cared for while they develop their capacities, without either muddying the civil definition of personhood (since the domestic realm contains them outside of public space), nor infringing on the external freedoms of their parents and caretakers (since external freedom does not operate this way within the domestic realm).

It might seem, then, that *all* children are potential persons – that one's status as a human being entails at the very least potential personhood. Certainly, this is what most Kant scholars assume. But Kant's infanticide argument hints at something else: personhood is granted when one enters the community through the proper channels. Political personhood, in other words, is *institutionally constructed*. One's status as a human being does not automatically entail that one has rights or warrants protection; these are extended through institutions that turn on public recognition and consent.

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[273] Thus, the illegitimate infant is not an end in himself – or to put it differently, it's not clear that the illegitimate infant is a person, as Kant's moral philosophy understands it.

3.2 Citizenship, Institutions, and Inequality *(Or, More on the Plight of Wives)*

Thus far, I have argued that Kant's consideration of infanticide suggests that political personhood is institutionally constructed: a child is recognized by a juridical order, and granted rights and protections within that order, only if it entered that order through the correct institutional pathways. In this section, I turn to Kant's notoriously complex account of citizenship, in order to argue that access citizenship is similarly tied to one's positions in the institutional framework of the state.

In the *Rechtslehre,* Kant defines citizens as "the members of … a society who are united for giving law,"[274] which concretely means that citizens are those members of a society who can vote. A citizen is qualified to vote if (1) he is lawfully free, (2) he has reached a basic level of moral maturity or equality, and (3) he is independent.[275] Independence in this case should be distinguished from autonomy: Kant means a concrete form of material or financial independence. Property owners, the self-employed, and those employed by the state are independent.[276] Those who are independent have civil personality, or the "attribute of not needing to represented by another where rights are concerned."[277] Voting citizens, in other words, are their own masters, both in the sense that they are subject only to laws they themselves could consent to, and in the sense that they cannot be asymmetrically bound by another.

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[274] Kant, MS 6:313. I focus here on Kant's account of citizenship in the *Rechtslehre*, rather than on the arguments he offers in *Perpetual Peace* and *Theory and Practice.* In *Theory and Practice*, in particular, Kant identifies citizens as those who could be said to hypothetically consent to laws: citizenship need not entail a concrete right to vote. In the *Rechtslehre*, on the other hand, "the only qualification for being a citizen is the right to vote" (6:314). Moreover, the *Rechtslehre* is the only text in which Kant introduces the category of passive citizens as such. In *Theory and Practice* he refers to those who are "not entitled to this right" but are nonetheless required to comply with laws, and offered protections of law: these are "co-beneficiaries" of law (TP (in Reiss 1991) p. 77).

[275] Kant MS 6:314.

[276] Susan Shell suggests that in tying active citizenship to forms of employment rather than to leisure, Kant's argument is radical for his day. Shell, Susan (1980: The Rights of Reason, University of Toronto Press) p. 158.

[277] Kant, MS 6:314.

The emphasis on independence leads Kant to distinguish between "active" and "passive" citizens, arguing that dependents cannot be active citizens. His argument faces two difficulties, however. The first he admits himself: "the concept of a passive citizen seems to contradict the concept of a citizen as such."[278] If the requirements of citizenship are threefold (self-legislating freedom, moral equality, and independence), then one could fail to meet the standards of active citizenship on any of these grounds – a distinction which suggests that some passive citizens might be morally unequal to active citizens. To answer this objection, Kant distinguishes between political and moral equality: "this dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality *as human beings*."[279] Active citizenship, in other words, entails that one meet the standards of political -- rather than moral -- freedom, equality, and independence. And accordingly, Kant argues that it is necessary that anyone be able to "work his way up from this passive condition to an active one."[280]

This leads us to the second difficulty with Kant's argument: who, exactly, can work their way up to active citizenship? As we saw in Chapter Two, Kant claims to clear up this difficulty by presenting the following examples of passive citizens: "an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (*natrualiter vel civiliter);* all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state)."[281] In *Theory and Practice,* Kant tells us that an active citizen must "be his own master," and argues that those who support themselves with "any skill, trade, fine art, or science" qualify, whereas

[278] Kant, MS 6:314.
[279] Kant, MS 6:315.
[280] Kant, MS 6:315.
[281] MS 6:314. Or, at the very least, women as wives. See Chapter Two, section 2 for further discussion of this.

those who can earn a living only by "allowing others to make us of him" would not.[282] And, perhaps in response to the rise of a new class of civil servants in Prussia at the time, he distinguishes between those employed by the state (civil servants) and those employed by anyone else.[283] Presumably, the apprentice, the employee, the domestic servant, and the minor must be able to work their way up to active citizenship: this mobility is required by both their "natural equality as human beings" and "the laws of freedom."[284] But what about women?

Here, Kant is ambiguous, and contemporary scholars are divided on his intentions in this passage. I have argued (Chapter Two section 2) that Kant is best read as denying women active citizenship on the grounds that they are wives, rather than on the grounds that they are women, but this bears further examination. The question, as it is posed by scholars, seems to hinge on whether we take Kant to include women in the category of those whose preservation is dependent on others, or whether we take the "all women" as a stand-alone category. Susan Mendus and Helga Varden, for example, include women in the "dependent on others" category, and conclude, accordingly, that Kant includes women when he argues that anyone must be able to work his way up to active citizenship.[285] But this argument, as we saw in Chapter Two, entails that only women who are the sole head of a household could achieve active citizenship. In other words, this reading allows for the

[282] TP. In Reiss (1991), p. 78. Kant clarifies, in a footnote, the distinction between "selling a commodity" and "guaranteeing one's labor," arguing that the former involves an exchange of property while the latter involves "someone else to make use of him." We might note that these two forms of labor contract correspond to two distinct sections of the Table of Contracts at MS 6:285: the exchange of property corresponds to category IB, "Onerous Contracts" whereas the right to make use of one's labor corresponds to category II, "Contracts to Let and Hire." Kant's arguments suggest a hierarchy of labor practices in the Private Realm, in which labor contracts as contracts of limited use undermine the political independence of the laborer.
[283] As Ronald Beiner has pointed out, Kant's examples seem to take his own position into account: he offers the teacher/private tutor example, and argues that those employed by the state (like a professor) are independent, since they do not serve two masters. Beiner, Ronald. "Paradoxes in Kant's Account of Citizenship." In Charlton Payne and Lucas Thorpe (eds.), *Kant and the Concept of Community*, University of Rochester Press, p. (213).
[284] Kant, MS 6:315.
[285] Mendus (1992), Varden (2006).

possibility that a few women in exceptional positions might be able to work their way out of passive citizenship, but certainly does not suggest that women, as a class, could easily achieve political equality with men.[286]

Ronald Beiner argues that the "all women" category stands alone, and that women *as women* are precluded from active citizenship. Certainly, this is the argument Kant makes in *Theory and Practice*, where the requirements of citizenship are "being an adult male" and being "his own master."[287] Beiner argues that Kant never explicitly explores the position of an unmarried woman attaining the status of active citizen, which leaves open the question of whether such a move is possible.[288]

So, are women excluded from active citizenship on the grounds that they are dependent, or on the grounds that they are born women? I suggest that rather than extrapolating from Kant's claims about women elsewhere in his philosophy, we consider passages in which Kant considers how birth and positions within institutions determine rights.

Some basic freedoms are attached to birth. The right to external freedom, for example, is defined as "innate" in the *Rechtslehre* and described in *Theory and Practice* as the "birthright of each

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[286] The distinction between active and passive citizenship, and institutional exclusion of women that Kant delineates would be inscribed in Prussian law in 1808, when the law was revised in order to explicitly contain a division between "independent" and "protected" citizens. Women who lived in cities and met the qualifications were allowed to apply for full citizenship (although as "female citizens" they were denied the right to vote), but married women were automatically precluded from application. In 1809, when the first round of applicants for citizenship were considered in Konigsberg, 24 of 443 were women, all but one of which applied as a property owning widow (Grey (2000), pp. 239-242.)

[287] Kant, TP. In Reiss (1991), p. 78. Beiner points out that Kant drew heavily on Rousseau for his account of citizenship, but that Rousseau didn't explicitly exclude women from full citizenship in the *Social Contract*: scholars have extrapolated this exclusion from his comments about women elsewhere. In this sense, we have more reason to accuse Kant of explicitly contradicting his account of equality than even Rousseau (214-215).

[288] Beiner (2011), 215.

individual in such a state."[289] Kant goes on, in *Theory and Practice*, to argue that "since birth is not as act on the part of the one who is born, it cannot create any inequality in his legal position and cannot make him submit to any coercive laws except insofar as his a subject, along with all the others, of the one supreme legislative power."[290] Lawful hereditary hierarchies, in other words, are inconsistent with the rightful state. Kant makes similar claims in *Perpetual Peace,* where he argues that attaching rank to birth is contrary to the original contract, and in the *Rechtslehre,* where he argues that neither rank nor punishment can be inherited by birth.[291] Thus, though an individual may (as a result of punishment or poverty) become a serf, this position cannot be inherited by his children: this would be slavery. Similarly, in *Theory and Practice,* Kant argues that it would be unjust "if only those belonging to an arbitrarily selected class were allowed to acquire land."[292]

Thus, thought basic rights (like the innate right to freedom) are attached to birth, the capacity for independence and the citizenship rights that go with it, are tied to one's position in the institutional structures of Private Right. The examples Kant offers to illustrate the distinction between active and passive citizens suggest that this distinction turns on labor practices. Those who engage in forms of labor that require one to sell one's time or one's labor are dependent, while those who exchange the product of their labor for a price may qualify as independent. Kant admits that this distinction reflects the structure of the market system in question: the blacksmith in India, for example, is a passive citizen, while the European blacksmith, who "can put the products of his work up as goods for sale" may be an active citizen.[293] The correlation between one's position in domestic right and access to active citizenship, however, remains constant: only the head of the household is

[289] Kant, MS 6:237; TP (in Reiss, 1991), p. 76.
[290] Kant, TP (in Reiss, 1991), p. 76.
[291] Kant, PP (in Reiss, 1991), p. 99n; MS 6:330.
[292] Kant, TP. In Reiss (1992), p. 78.
[293] Kant, MS 6:315

eligible for active citizenship:[294] wives, children, and domestic servants are necessarily passive citizens.

Eligibility for active citizenship is determined by property rights, the nature of employment and trade contracts, and one's position in domestic right. On this account, passive citizens are those who find themselves in positions of dependence in rightful private relations. Therefore, the distinction between active and passive citizenship is rightful because it is attached to positions in juridical institutions that are (theoretically) open to all.[295] Kant defends the possibility of mobility within the institutional order, arguing that offices and dignities must be merit-based, rather than attached to hereditary rights.[296]

Though Kant ties the fundamental moral equality of persons to an innate birthright of freedom, he attaches rightful inequalities to one's position in an institutional structure. In doing so, he transforms the "natural" inferiority of women into the rightful inequality of wives: the structure of the domestic realm disqualifies wives (and domestic laborers) from active citizenship. No biological claim about the inferiority of women is necessary to justify this exclusion. These inequalities are rightful because they are backed by an open and equal institutional structure in which privilege is the result of merit and not birth.[297]

The illegitimate child, likewise, is excluded from the category of juridical persons owing to his position outside the institutional order of the state. Since his birth cannot be accounted for within the institutional order, he is "smuggled into the commonwealth like contraband."[298] Within the logic of the *Rechtlsehre*, this exclusion is neither compassionate nor cruel: it is simply right. Kant's

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[294] Not all heads of households qualify for active citizenship, however, since they would also need independence as property owners, civil servants, or artisans.

[295] As Kant argues in *Theory and Practice*, because birth is "not an act on the part of the one who is born, it cannot create any inequality in his legal position." Kant, TP. In Reiss (1991), p. 76.

[296] Kant, MS 6:329; TPP. In Reiss (1991), p. 99n.

[297] Kant, MS 6:329; TP. In Reiss (1991), p. 76.

[298] Kant, MS 6:336

ambivalence about the rights of the illegitimate child suggest a tension between his understanding that persons have an innate and equal right to freedom, and his claims that rights are connected to institutional structures. Though Kant ultimately defends the illegitimate child's right to be protected by the laws of the state, his initial ambivalence signals an uncertainty about the political status of those with no intelligible position in the institutional structure of the state.

3.3 Rescuing the Illegitimate Child

As I have argued, there is some ambiguity in Kant's account of the illegitimate child and the infanticidal mother. If the illegitimate child does not obligate the community – if they are justified in ignoring its annihilation -- the possibility remains that the illegitimate child does obligate the mother. Certainly, Kant does not argue that infanticide is morally *right* in these cases; he argues only that infanticide may not warrant the 'supreme punishment' – but his abrogation of the act still permeates the argument.

Most discussions of this argument focus on the case where the mother, to protect herself from disgrace, kills her child and reenters society – to be punished, Kant says, but perhaps not as a murderer.[299] But what if the mother *doesn't* kill the baby? Are she and the child relegated to the state of nature forever? This doesn't seem to be Kant's argument – rather, the mother and child would take their (inconvenient, socially problematic) places in the community. Can the illegitimate child be rescued and accepted as a full member of the community?

Elsewhere in the *Rechtslehre*, Kant explicitly refers to these illegitimate children as "unwelcome additions to the population" and begrudgingly muses about the state's obligation to care for them.[300] In his sole nod to preventative measures against infanticide, he suggests that

[299] Kant, MS 6:336.
[300] Kant, MS 6:326.

perhaps the state could fund foundling homes by "taxing elderly unmarried people of both sexes generally (by which I mean *wealthy* unmarried people), since they are in part to blame for there being abandoned children."[301] This odd singling out of "elderly wealthy unmarried people" as liable for illegitimacy implies that the threat to the social order brought about by illegitimacy is the responsibility of those who have, in turn, threatened the social order by refusing to marry.[302]

Kant's arguments are prescient in that they focus on the juridical threat invoked by the illegitimate child rather than on the moral lapse of the mother. His emphasis on the unwelcome illegitimate child bears closer resemblance to the legal codes of the 19th century, which offered differentiated legal rights and protections to legitimate and illegitimate persons, than to German legal practices of his own day, which focused on the predicament and moral failure of the unwed mother but treated legitimate and illegitimate children as juridically equal, even going so far as to claim support and status from absent fathers.[303]

His contemplation of mercy for the unwed mother presages another coming shift in German law. The unwed mother, in this narrative, is given the opportunity to decide whether the illegitimate child is a person: if she recognizes it as such, the community will be obligated to recognize it as well.

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[301] Kant, MS 6:327. Foundling homes are not to be confused with orphanages – they were designed only to care for illegitimate infants through their first year of life. Kant offers no suggestion as to what might happen to illegitimate children after this first year of life and his comments are otherwise very sparse on producing institutional support for illegitimate children: he neither suggests the kind of legal support provided by the 1794 legal code, nor intimates support for foundling hospitals, which had been around for three decades in Prussia as a state-sponsored preventative measure against infanticide. For further discussion of foundling homes in Germany at the time, see Ulbricht, Otto (1985). The Debate about Foundling Hospitals in Enlightenment Germany: Infanticide, Illegitimacy, and Infant Mortality Rates. In Central European History (1985), 18: 211-256.

[302] Kant, MS, 6:326-327. Presumably, unmarried persons who were both elderly and wealthy had had the opportunity to marry and refused. Marriage was, by the 1790s, a universally accessible institution in theory, but in practice certain qualifications of wealth and property made it unattainable for a significant portion of the population.

[303] In this sense, the justifications Kant draws on hew more closely to those offered in support on 19th century illegitimacy laws than to the religious and moral justifications that supported most sexual delicts in German law in the 18th century. Hull (1996), pp. 65-70; Michalik (2009), p. 55.

By locating this choice in an imagined "state of nature," outside the juridical order, Kant offers the unwed mother a *moral* choice: while he might hope that she recognizes a moral obligation to recognize her child's right to life, the "state of nature" opens up in order to prevent the state from coercing her to do so.[304] The married mother, on the other hand, has no such choice: her child is born an already recognized member of the juridical order with institutionally ordered rights already in place; she never finds herself "in a state of nature" where she alone has jurisdiction over her body and her child. This distinction between married persons and unmarried persons, and between those born within domestic right and those born outside, would be codified first in the Napoleonic Code, and later in the German criminal code of 1871 (which remained on the books until 1998), which differentiated between married and unmarried women in both infanticide and abortion law, retaining the death penalty for married women, while softening punishments for unmarried women.[305]

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[304] These arguments here suggest a possible starting point for developing a Kantian account of abortion law. This account might look something like this: persons are whatever the community says they are; personhood is ordered through recognition and not dependent on one's status as a human being. Personhood, in other words, is not a natural kind. Second, community recognition is structured through institutional practices that stand in for the original contract. A political order needs institutional practices to determine who is within its jurisdiction. In the case of concemporary legal practices, this act of institutional recognition seems to take place at birth, or through the birth certificate, when the state formally recognizes a child as a person in its own right. Third, until the child is granted the status of person, it is in a state akin to the state of nature, where the mother has full jurisdiction over it, just as she has full jurisdiction over herself. If she chooses to recognize the fetus as an end in itself, as a being that morally obligates, she may ask the community to extend this recognition also. If the mother's relation to the fetus is a situation akin to the state of nature: outside the bounds of law, and unintelligible to law, then the choice to recognize the fetus as a person deserving of moral protection, or not, rests with the mother. It is explicitly a moral, rather than a juridical, choice, and the state cannot coerce her to recognize the fetus. This recognition of moral worth cannot be granted by anyone other than the mother.

[305] The advances offered by the Prussian General Law Code were reversed by the adoption of the Napoleonic Code (adopted as civil law in 1804 following the juridical failure of the Prussian General Law Code.), which shifted the emphasis from the mother's rights to support to the father's right to privacy. The infamous paragraph 340 of the Napoleonic Code held that that in instances of pregnancy out of wedlock, the state was forbidden to investigate paternity and required to investigate maternity. Women were once again forbidden to conceal pregnancies: while paternity was protected under the emerging rubric of privacy under civil law, the pregnant woman's status was wholly public, subject to public declaration, investigation, and punishment (Hull, (1996), pp. 387-

If infanticide was the key delict of Prussian law reform between the 1740s and 1780s, by the 1790s, marriage itself had become a tersely debated legal institution. The growing interest in marriage as a universal legal institution grew out of reformer's interests in infanticide. For most of the 18th century, marriage was an estate open only to those the state deemed financially qualified;[306] by the 1790s, legal reformers throughout the German provinces had ceased to believe that heavy punishment could reform people's sexual behavior and were calling instead for authorities to encourage marriage among the poor – a remarkable shift in social and legal thinking made possible by a burgeoning faith in economic expansion which would allow for marriage to become a universally accessible.[307] The new emphasis on universal marriage was tied up with legal and economic reforms designed to bring about the rise of the bourgeois class. Rather than assuming productive work and wealth were prerequisites for marriage, the assumption now seemed to be that marriage would produce people eager to work hard to provide for their families. Marriage ceased to be a privilege for the propertied and the organizing principle of state-enforced sexual repression, and became a civil institution that tied individuals not only to each other and their prospective children, but to the state itself, and produced citizens who were beholden to the law for the right to sexually express themselves, procreate, and raise families.[308] By the early 1790s, unmarried adults were

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388). Because of its emphasis on male privacy and property rights, the legal shifts in the Napoleonic Code hew more closely to Kant's account of domestic right than do the arguments of the Prussian Code of 1794: by protecting potential fathers from investigations into paternity, the law defined his property (and his sexual practices) as private. The unwed pregnant woman, on the other hand, was classified as public, a position that made her nearly rightless. Isabel Hull describes this public status, which was given to unwed mothers and "vagrant" women, thus: "they were "public" in several of its senses: they did not keep the secret of their sexual intimacy, or they engaged in commerce (including nonsexual commerce), or they were not domestic (i.e. attached to their home or to someone else's, as servants). The condition of being "public" in any of its guises condemned them to rightlessness on an axis that appeared increasingly to identify rights with private condition" Hull (1996), p. 392.

[306] In 1739, Baden introduced an edict in response to the rise in infanticide rates: women guilty of sexual crimes were encouraged to marry. Hull, (1996), p. 117.

[307] Hull (1996), p. 142-143.

[308] Hull (1996), p.144.

strongly stigmatized; a 1793 observer called the single estate "civic death."[309]

Kant was writing at a turning point in legal discourse, as authorities, scholars, and commentators debated the role of marriage in society, the purpose of sexual criminal law, and the relationship between the state and morality. Kant's emphasis on marriage as the key organizing institution of the emerging modern liberal state, however, was startling prescient. The central role that marriage plays in Kant's argument, organizing participation in the political community, legal protections and rights, and recognition of juridical personhood, would be inscribed in law in the 19th century, when legal differentiations between legitimate and illegitimate children and married and between unmarried mothers would become standard elements of civil law.

3.4 Two Public Justices: Kant's Rejection of the Infanticide Argument

Kant ultimately abandons his ambivalence about infanticide. Having considered the possibility of granting leniency to the unwed mother guilty of infanticide, he concludes that all killing – even for the duelist and the unwed mother -- is murder and thus requires the supreme punishment. But this concession turns, I would argue, not on a sudden desire to protect the illegitimate child, but on a desire for consistency in law and a refusal to make exceptions. In arguing for consistency in this way, Kant denies that social norms, even in the powerful forms of honor and shame suggested by the plight of the dueling soldiers and the unwed mother, should have any influence on juridical conceptions of right.

Kant's final move in the infanticide argument entails a distinction between two layers of justice. The state, he argues, is just in executing in the infanticidal mother, while this same punishment is unjust "from the perspective of the justice arising from the people."[310] The

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[309] Hull (1996), p. 285-286.
[310] Kant, MS 6:337.

discrepancy between these two layers of justice suggests to Kant a state that has not fully realized the requirements of right. Execution is a categorical imperative, he reiterates, even in cases where public sentiment might have a more compassionate bent. Only in a state where the civil constitution "remains barbarous and undeveloped" would ambivalence about the plight of the infanticidal mother be necessary.[311] Kant's conclusion is therefore clear: the execution of the infanticidal mother is required by retributive law *regardless* of the social norms and attitudes of society.[312]

4. Concluding Public Right: Towards An Account of Juridical Cosmopolitanism

This chapter has presented an overview of Kant's account of Public Right in the *Rechtslehre*. Kant begins this section by connecting the scheme of rights in the *Rechtslehre* to the extension of those rights in a cosmopolitan order. Since the second half of this project engages with Kant's vision of juridical cosmopolitanism, I turn now to Kant's cosmopolitan arguments within the section of Public Right in order to show how those arguments grow out of Kant's account of rights and institutions in the *Rechtlsehre*. Kant introduces Public Right thus:

> under the general concept of public right we are led to think not only of the right of a state but also of a *right of nations (ius gentium)*. Since the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a *right for all nations (ius gentium)* or *cosmopolitan right (ius cosmopoliticum)*. So if the principle of outer freedom limited by law is lacking in any one of these three possible

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[311] "The knot can be undone in the following way: the categorical imperative of penal justice remains (unlawful killing of another must be punished by death); but the legislation itself (and consequently also the civil constitution), as long as it remains barabarous and undeveloped, is responsible for the discrepancy between the incentives of honor in the people (subjectively) and the measures that are (objectively) suitable for its purpose." MS 6:337.

[312] Kamt, MS 6:336. Kant distinguishes between "the categorical imperative of penal justice" and "the barbarous and undeveloped" civil constitution or legislation itself. One might also understand this distinction between layers of justice in Rousseauean terms as a distinctions between the General Will and the Will of All; certainly, Kant's distinction between objective and subjective justice suggests that he had this kind of distinction in mind here. For more on the mother's predicament in the face of Kant's conclusion, see Pascoe, Jordan (2011). "Personhood, Protection, and Promiscuity: Some Thoughts on Kant, Mothers, and Infanticide". APA Newsletter on Feminism and Philosophy Vol. 10, No. 2, pp. 6-7.

> forms of rightful condition, the framework of all the others is unavoidably undermined and must collapse.[313]

As they are positioned in the section on Public Right, Kant's cosmopolitan arguments thus follow from his account of rights in the *Rechtlsehre*: if rights are relational, then I have rights only if they are recognized by others. Since all of mankind shares the globe, then I have rights in relation to the rest of mankind: unless my rights are recognized by all others, they are merely provisional. It is in this sense that Kant's scheme of juridical rights are *structurally universal*. This recognition by all others is of course merely an idea of reason, but it entails, Kant tells us, a duty to work towards a global scheme in which our rights are assured.

Thus, Kant's scheme of rights leads "inevitably" to a concern with international and cosmopolitan rights. In this section, I wish to highlight a useful distinction between Kant's understanding of the "right of nations" on the one hand, and "cosmopolitan right" on the other. First, however, I turn to Kant's arguments for why a juridical conception of right "inevitably" poses the question of right beyond its own borders.

Kant famously rejects the justificatory role of the state of nature in social contract theory by arguing that such a contract is merely hypothetical. "It is not some fact," such as a state of nature, "that makes coercion through public law necessary," Kant tells us; "however well disposed and law-abiding men might be, it still lies *a priori* in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples, and states, can never be secure against violence from one another."[314] Accordingly, "individual human beings, peoples, and states" must "subject itself to a public lawful coercion" and leave the state of nature.[315] In making this claim, Kant emphasizes that this state of nature need not be a state of

[313] Kant, MS 6:311.
[314] Kant, MS 6:312.
[315] Kant, MS 6:312.

injustice, but is necessarily "a state *devoid of justice*."[316] Because of this absence of justice, parties may use force to entice others out of such an unjust state: "each may impel the other *by force* to leave this state and enter a rightful condition."[317]

This claim about the use of force to compel others to join a rightful condition must be examined in any analysis of Kant and colonialism, and I will explore the implications of this argument in Chapters Five and Six. First, however, let us note two things about this claim that are connected to Kant's justification of Public Right. The first is that Kant explicitly ties this right to compel others to the inevitability of possessive rights: he says, in the same sentence, that "though each can acquire something external by taking control of it by contract in accordance with its *concepts of right*, this acquisition is still only *provisional* as long as it does not yet have the sanction of public law."[318] Only in given a shared rightful order can possession be more than merely provisional.

Second, Kant's claim about the absence of justice in a state of nature justifies the use of coercion since, on his account, it can never be right to refuse to enter a rightful civil condition: such a refusal, Kant argues, would be "wrong in the highest degree."[319] Though the state of nature is merely a state *devoid justice*, choosing to remain in that state when presented with the option to join a rightful condition is *always* wrong, and this warrants the right to use force to compel the correct choice.

Kant's account of cosmopolitan rights in the *Rechtslehre*, however, rests on a distinction that may soften this right to use coercive force. In Chapter II of Public Right, Kant outlines the *right of nations*, or a form of international right premised upon the claim that without laws to unify them,

[316] Kant, MS 6:312.
[317] Kant, MS 6:312.
[318] Kant, MS 6:312.
[319] Kant makes this claim about both individuals (6:308) and states (6:344). To refuse to enter a rightful order is to impose one's will unilaterally against the united will of those already incorporated into a rightful order.

individual states find themselves in an international state of nature which is also a condition of war.[320] To choose to remain in such a condition is "wrong in the highest degree," so the right of nations holds that states ought to unite into an *association* to prevent war between themselves.[321] Kant admits that though there can be no right to remain in an international state of nature, "perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea."[322] Nevertheless, "the partial principles directed towards perpetual peace, of entering into such alliances of states, which serve for continual *approximation* of it, are not unachievable."[323] This approximation, Kant argues, is a duty achieved through a voluntary congress of nations that can be dissolved at any time.

Thus, the *right of nations* outlines the necessity of establishing external rightful relations between states to avoid war. In Chapter III of Public Right, Kant outlines a second form of international rights that focus explicitly on *possessive rights* rather than on bringing about perpetual peace. Here, Kant presents *cosmopolitan right*, which organizes international rights through a "thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other."[324] This right, Kant tells us, "has to do with the possible union of all nations with a view to certain universal laws for their possible commerce."[325]

Where the *right of nations* is focused on securing peace, *cosmopolitan right* concerns the structures needed to facilitating rightful global trade. Concerns with global trade will arise

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[320] Kant, MS 6:344.
[321] Kant, MS 6:344-345. Kant emphasizes that this alliance must "involve no sovereign authority, but only an *association* (federation); it must be an alliance that can be renounced at any time and must be renewed from time to time." MS 6:345.
[322] Kant, MS 6:350.
[323] Kant, MS 6:350.
[324] Kant, MS 6:352.
[325] Kant, MS 6:352.

"inevitably," Kant argues, because "the earth's surface is not unlimited but closed"[326] and "all nations stand *originally* in a community of land, though not of rightful possession."[327] Developing an account of the framework necessary for "rightful possession" in global trade is the primary concern of cosmopolitan right.

Kant's account of cosmopolitan right as an account of rightful global trade is often taken as a criticism of colonial practices, since Kant denies the right to make *settlement* on the land of others, but requires instead that a contract be formed, conforming to the rules of right.[328] In this way, Kant's account of cosmopolitan right in the *Rechtslehre* is explicitly an argument for *juridical cosmopolitanism*. It is not an argument for a world allied under a global government or federation, but rather an argument for *a world united by shared principles and institutions of right* in order to facilitate global trade and a universal recognition of property rights.

Kant's juridical cosmopolitanism, rather than his vision of perpetual peace maintained through a global alliance of states, is the subject of this project. I understand Kant's juridical cosmopolitan arguments as developing out of his theory of right, taking seriously Kant's claim that "the rational idea of a *peaceful*, even if not friendly, thoroughgoing community of all nations of the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle *having to do with rights*."[329] Kant's juridical cosmopolitan arguments are an extension of his arguments in the *Rechtslehre*: they ask what institutional frameworks are necessary to ensure reciprocal recognition of rights and protection of external freedom in a world united by global trade relations.

In his account of juridical cosmopolitanism, Kant softens his claim that "each may impel each other by force." In the cosmopolitan context, the settlement of non-European lands (Kant

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[326] Kant, MS 6:311.
[327] Kant, MS 6:352.
[328] Kant, MS 6:353.
[329] Kant, MS 6:352.

gives the example of the "Hottentots, the Tungusi, or most of the American Indian nations"[330]) "may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands.[331] Given the institutionally structured scheme of rights Kant develops in the *Rechtslehre*, what is involved in ensuring that the "Hottentots, the Tungusi, or most of the American Indian nations" are indeed capable of entering into such a contract as parties fully informed and versed in the rules of right? And, given Kant's own claims elsewhere about the lack of moral and intellectual development among African and American peoples, what is involved in his claim that Native Americans and underdeveloped others could participate in such a scheme of right? These questions are at the heart of the second half of this project, which explores Kant's juridical cosmopolitanism in order to ask how a juridical cosmopolitan world might concretely be achieved.

My questions about cosmopolitan right in the second half of this project focus not on the forms of governance necessary to ensure global peace, but on the kinds of juridical transformations necessary to ensure that all participants in global trade share an understanding of the scheme of rightful relations. If Kant's scheme of rights is institutionally structured in the ways my analysis in Chapters One, Two, and Three suggest, what transformations of the structures and practices of everyday life will be necessary to ensure that the "Hottentots, the Tungusi, [and] most of the American Indian nations" are prepared to participate in these practices? Chapter Four takes up these questions by examining Kant's anthropological and geographical projects in order to present a detailed account of his theory of race and its impact on his cosmopolitan arguments. Chapter Five maps Kant's cosmopolitan arguments in both the *Rechtslehre* and *Perpetual Peace* in order to show how, concretely, Kant thinks a juridical cosmopolitan order might be achieved. Chapter Six presents a

[330] Kant, MS 6:353.
[331] Kant, MS 6:353.

historical example of the kinds of juridical transformations entailed by Kant's juridical cosmopolitanism by examining British colonial rule in Africa. In doing so, it returns to the questions posed in the first three chapters about the link between institutional structures of right and Kant's philosophy of the family in order to show how Kantian juridical cosmopolitanism entails a radical transformation of the patterns and practices of everyday life.

CONCLUSION

Thus far, this project has analyzed the role of the family in Kant's political arguments by tracing the structure of rights delineated in the *Rechtslehre*. Chapter One analyzed Kant's account of marriage in order to show that juridical institutions are designed to manage threats to external freedom. It argued that sex poses a serious threat to external freedom, and that marriage is designed to contain this threat by producing an enclosed juridical sphere within which external freedom is transformed. Chapter Two examined marriage in conjunction with the other relationships within the household in order to show that within the domestic sphere, both external freedom and equality are transformed: the juridical structure of domestic right transforms natural inequality into abstract juridical equality. This chapter asked how this philosophy of the family organizes access to juridical rights and protections by examining Kant's contemplation of mercy for the infanticidal mother.

Kant's discussion of infanticide merits examination for several reasons. First, it offers an example of the role that contemporary debates played in the construction of Kant's political philosophy, and reveals the degree to which his ruminations on juridical law were reflective of a particular set of legal debates that churned in Konigsberg in the 1790s. It provides a window through which to examine the relationship between the public authority and retributive law, both of which turn on the structural universality of juridical rights.

Second, Kant's striking description of the illegitimate child as "born outside the protection

of the law,"[332] suggests that the institutions of Private Right play a central role in delineating and organizing citizenship and rights. I have argued that, for Kant, juridical personhood is organized through institutional participation and recognition. In the previous chapter, I argued that marriage is a central organizing feature of Kant's account of juridical law. In this chapter, we saw that the plight of the illegitimate child highlights the critical role that marriage plays in constructing juridical identity, organizing citizenship, and providing access to full rights and protections. Kant's account of citizenship entails that the institutions of Private Right, including marriage, transform biological inequalities into rightful and institutionally produced inequalities. In the Kantian state, rights and privileges attached to birth are "arbitrary" while those attached to institutional rights are rightful.[333] Kant's ambivalence about the infanticidal mother and the illegitimate child suggest a troubling predicament for those who find themselves in the sticky space outside of these institutional arrangements.

Finally, Kant's appeal to an emergent "state of nature" raises questions about the bounds of the juridical order, and about his claims that those inside a juridical order may "use force" to impel others to join them. This claim, together with Kant's cosmopolitan arguments, raises questions about the relationship of those within a juridical order to those outside it. In the next three chapters, I turn to Kant's own ruminations about those who live "outside" the civilized order by turning to his cosmopolitan, anthropological, and geographical arguments. In these texts, Kant presents an account of the terrain of the world inhabited by those who have not yet incorporated into a rightful juridical order. In the next chapter, I explore the relationship between Kant's account of institutionally constructed personhood and his theory of race in order to ask who, concretely, is eligible for recognition as a political person and participation in the scheme of cosmopolitan juridical

[332] Kant, MS 6:336.
[333] Kant, TP. In Reiss (1991), p. 78

rights.

CHAPTER FOUR:

KANT'S RACED COSMOPOLITANISM: TWO MODELS OF EXCLUSION

INTRODUCTION

The first half of this project examined Kant's philosophy of the family in the *Rechtslehre* in order to draw out the relationship between Kant's account of justice and the concrete institutional order that organizes justice and juridical rights. In the second half of this project, I turn from the *Rechtslehre* to a broader examination of Kant's cosmopolitan arguments in order to answer the question *is a cosmopolitan world to be hoped for?* By building on my account of the relationship between Kant's theory of justice and the institutional order of the rightful state, I present Kant's arguments for how, concretely, a cosmopolitan world might be achieved. Chapter Three demonstrated that participation in the institutions of private and domestic right determined eligibility not only for full citizenship but also for the right to be recognized and respected as a political person. In this chapter and the next, I ask how the institutions mediate access to the cosmopolitan juridical order by examining the relationship between race and exclusion in Kant's cosmopolitan vision.

By turning to a detailed reading of the development of Kant's theory of race I examine the relationship between Kant's practical and empirical projects. Though Kant held that the latter were always open to revision and accordingly revised and refined his theory of race throughout his lifetime, I present a detailed account of these revisions in relation to his practical project in order to show that his empirical projects informed his universal arguments and shaped his cosmopolitan vision as it stood in the 1790s, producing a "raced cosmopolitanism." Therefore, an account of how juridical cosmopolitanism might be concretely realized requires us to account for the ways in which Kant's theory of race informs and shapes that vision. In this chapter, I present an account of the

relationship between Kant's practical and empirical projects and then argue first, that in the 1790s Kant did not repudiate his theory of race, and second, that his political philosophy during this period reflects a new dimension of his theory of race.

1. On Optimism: Kant's Popular Philosophy

To explore Kant's accounts of race and cosmopolitanism, I will leave the arguments of the *Rechtslehre* and turn to Kant's popular philosophy – namely, his essays on anthropology, history, and political philosophy. These texts take us back to the middle period of Kant's career, or to the two decades (1775-1795) when Kant was both wrestling with the development of his critical project and, in his popular works, participating in the most fertile and fraught philosophical questions of the day. In these chapters, I take up the anthropological and political essays together because they share a set of concerns and conceptual frameworks that characterize Kant's cosmopolitan project. Both bodies of work are marked by a distinctly Kantian optimism, as Kant developed and deployed his method of teleological judgment in order to offer a progressive and hopeful account of the history of the human race.

Kant's anthropological work emerged out of his studies of biology and physical geography in the 1750s, 60s and 70s, which were marked already by a distinctive theoretical optimism.[334] It was in the essays on race, however, that Kant developed and defended his teleological approach to the study of history and the human sciences, as well as his account of the development of human beings as the ultimate purpose of nature. This method would be fully expressed and defined in the *Critique of Judgment*, where Kant explicates a twofold method for the study of history, and defends the

[334] In these texts – as early as the 1755 *Universal Natural History* -- Kant first engaged with the scientific theories of Newton, Spinoza, and Buffon. Against the historical pessimism of Newton and Buffon, who theorized a world rapidly cooling and degenerating, Kant defended an optimistic account of historical progress. See Zammito, John (2002). *Kant, Herder, and the Birth of Anthropology.* University of Chicago Press p. 302.

interpretive value of teleological optimism in both natural and human history. In the years after the publication of the third critique, Kant deployed his teleological method in essays on history, politics, and cosmopolitanism. The shift from the anthropological essays of the 1780s to the cosmopolitan essays of the 1790s is, accordingly, neither a shift of method nor a change his account of human development and the purposes of nature.[335] In both bodies of work, the teleological method is defended in the name of cogently organizing empirical data, producing a coherent account of development, and defending the possibility of human progress. In both, we see Kant grappling with the final question posed at the outset of the critical project: *what can we hope for*? The teleological works, in their anthropological and political incarnations alike, develop historical narratives designed to map a pragmatic account of the possibilities of human progress.

In this chapter, I scrutinize Kant's anthropological writings on race; in the next chapter, I examine Kant's political writings on cosmopolitanism. I draw this distinction not because I see these as part of two distinct philosophical projects: rather, I argue that they are conceptually and methodologically linked. However, given that the cosmopolitan work generally builds upon the conceptual and methodological framework of the anthropological work, I will examine the latter before turning to the former. Exploring these arguments together, I argue, gives us a new vantage point from which to return to the *Rechtslehre* and map the implications of Kant's moral and political

[335] Both bodies of work were also responses to the most fraught questions of popular philosophy of the day. The anthropological essays of the 1770s and 1780s emerged, as I will argue, out of the debate over monogenesis and Buffonian (and later Blumenbachian) pessimism, and out of Kant's own debates with his critics, while the political and historical essays of the 1790s engaged with the political questions that emerged in the wake of the French Revolution and the juridical questions that were debated in Germany during the adoption of the *Prussian Legal Code of 1794*. The shift from anthropological to political subject matter may be a reflection of the close connection between the natural and human sciences that Kant identifies in the *Critique of Judgment (*sections 67 and 68; discussed in Cohen, Alix (2009). *Kant and the Human Sciences: Biology, Anthropology and History*. Palgrave Macmillan, p. 110-115.), but it may also be a reflection of the direction of popular debate in the intellectual circles in which Kant moved. Certainly, Kant's interest in the French Revolution suggests an explanation for the shift in his popular writings from anthropology to politics after 1789.

philosophy in a world that is both cosmopolitan and raced.

In this chapter, I explore the philosophical significance of Kant's theory of race in three moves. First, I examine the main lines of argument for grappling with the discrepancy between Kant's moral universalism and his theory of race, and I argue that we ought to take Kant's theory of race as seriously as he himself did and treat it as an important thread of his broader philosophical and cosmopolitan project. Second, I argue that to understand the relationship between Kant's theory of race and his philosophical projects, we must relinquish the assumption that his views on race remained static over time. I offer a historical account of Kant's changing theory of race in order to argue that while his views on race develop throughout the critical period, Kant remains committed to the principle tenets of his theory through the late 1790s. Third, I examine the theory of race as it stood in the 1790s against the political philosophy of the *Rechtslehre* in order to argue that Kant has shifted from a biological account of racial inferiority to an institutional account of inequality that remains consistent with the central tenets of his theory of race.

2. The Paradox of Race and Universalism in Kant: 5 Contemporary Approaches

How should we read Kant's philosophy in light of his views on race? Scholars have suggested five broad approaches to this problem.

2.1 The Exclusivist Approach

At one end of the spectrum, we have the claim that Kant is racist, and his universalism fails on these grounds. The argument goes like this: Kant's moral and political philosophy turn on central assumptions of equality. Persons are equal because they are rational and they are ends in themselves; the Principle of Right defines external freedom as consistent with equal external freedom for others. Therefore, if Kant's claims about race posit a fundamental inequality between

persons, then Kant's moral and political philosophy is in trouble. The solution, then, is either that the egalitarian principles that ground Kant's moral and political philosophy fail (in which case his theory is in rather serious trouble), or that Kant's moral and political philosophy is not universal: non-whites are not included in the scope of Kant's egalitarian principles.[336]

If this is so, should we reject Kant's moral and political philosophy altogether on the grounds that it is either inconsistent or deeply bigoted and anti-universal? Charles Mills argues that we ought to value universal claims on the grounds of their universalism, and that the question of "who and what makes the cut" in a moral theory tells us a great deal about the kind of moral theory it is. We (rightly) reject exclusive moral theories, he argues: we should reject a moral theory that requires us to respect others, value others, and help others flourish if it turned out that by 'others' we mean 'only the Aryan race.'[337] The question of who counts as a member of a moral community is not an "incidental detail" of a theory: it's a question we must answer in order to determine whether to adopt a theory.[338] If a racist and exclusive theory doesn't pass this test, then we have good reason to reject that theory.

Critics of this position point out that, in order to justify this sort of radical across-the-board rejection we would also have to show that there is nothing in Kant's theory worth saving. Pauline Kleingeld argues that we would first need to say that there is no moment where Kant transcends his racist views and makes claims that are truly universal, and we would then need to argue that there is

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[336] Charles Mills develops the argument in the following way: if Kant defines 'persons' as beings with certain basic rational capacities, and then claims that non-whites lack these basic rational capacities, then non-whites are not persons. If this is so, then, the only way to rescue Kant's egalitarianism is to assume that 'persons' is a non-universalist term: i.e., that 'person' is not coterminus with 'human', and that non-whites are non-persons. However, as we will see, Mills' claim oversimplifies Kant's classification of racial capacities. Mills, Charles (2005). "Kant's Untermenschen." In ed. Valls, *Race and Racism in Modern Philosophy*. Cornell University Press, pp. 170-172.

[337] Mills (2005) p. 89.

[338] Mills (2005), p.89.

no way to use Kantian arguments in order to combat anti-universalist racist thought.[339] Though Kleingeld argues that the first claim is difficult to support since Kant does, in the later texts, critique colonialism, slavery, and the oppression of native peoples,[340] I argue that this criticism of contemporary colonial practices does not go far enough to support the claim that Kant has overcome his raced exclusions. Kleingeld suggests that the second claim is unsustainable: Kantian arguments about the value of persons as ends in themselves have been essential to anti-racist discourse. But Mills' critique points to the work necessary to make Kant's empirical project consistent with his purported universalism, and in doing so, undermines the direct application of that universalism to anti-racist discourse. He suggests that we should not excuse the exclusions built into Kant's thought simply by importing our own inclusive assumptions.

2.2. The Universalist Approach

At the opposite end of the spectrum, a second approach holds that Kant's thoughts on race are not central to his philosophical arguments, and thus do not pose a challenge to his universalism. There are, broadly, two versions of this argument. The more extreme denies that we ought to be concerned with Kant's views on race at all: these were merely personal idiosyncrasies, the argument goes, and ought not to be afforded the status of 'theory' at all. While few responsible scholars of Kant hold this position explicitly, it remains a relatively common practice to sidestep this tension by mentioning broadly that though "Kant had terrible things to say" about women or about nonwhites,

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[339] Kleingeld, Pauline. (1993). The problematic status of gender-neutral language in philosophy: The case of Kant. *The Philosophical Forum, XXV*(2), pp. 139-140.
[340] Kant, *Towards Perpetual Peace.* [Henceforth, TPP.] In Reiss (1991) pp, 106-108; Kant, MS 6:353; Kleingeld, Pauline. (2007). "Kant's second thoughts on race." *The Philosophical Quarterly, 57*(229), p. 586-7. Though Kleingeld argues that Kant should be rescued from the exclusivist charge in the case of race, she argues that the charge may hold in the case of women, citing Kant's repeated exclusion of women from his moral and political arguments, and drawing out his anthropological claims about the natural inferiority of women. Kleingeld (1993), p. 139.

this is not critical to understanding Kant's arguments, in much the same way that we ought not take trivial personal likes or dislikes into account in evaluating the strength of a person's arguments. This move suggests that raising concerns about Kant's views on race or gender is an *ad hominem* attack, rather than a serious philosophical objection.

The less extreme position admits that Kant developed a theory of race, but holds that this theory is peripheral to his philosophical arguments, and that we ought to minimize the importance of his claims about race when dealing with his 'central' philosophical arguments. Thomas Hill and Bernard Boxill, for example, distinguish between the universalism of Kant's "basic" moral theory and the opinions of "Kant the historical man," arguing that, regardless of Kant's own beliefs, his basic moral theory provides a rigorous procedure for assaulting racism.[341] On these grounds, they defend Kant's moral theory as anti-racist even as they admit Kant *himself* held problematic views about race. Their claims turn on a pair of distinctions within Kant's philosophy: first, a distinction between the basic moral theory, defined as a set of formal fundamental moral principles, and the teleological claims about the ends of humanity and their empirical application (particularly as developed in Kant's works on race),[342] and second, a distinction between the "central" philosophical principles and Kant's theory of race. Even if we could demonstrate that Kant's theory of race is derived from Kant's central philosophical principles, Hill and Boxill argue, it would not follow that the central principles strictly entail the theory of race, and thus we can isolate and hold onto the central philosophical principles.[343]

Two sets of assumptions are smuggled in with these distinctions, however. First, the arguments turn on assumption that we can easily distinguish what is 'basic' or 'central' to Kant's

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[341]Hill, Thomas and Boxill, Bernard. (2001). "Kant and Race". In B. Boxill (Ed.), *Race and Racism*. Oxford: Oxford University Press, p. 468.
[342]Hill & Boxill (2001), p. 462.
[343]Hill & Boxill (2001), p. 452.

philosophy from what is not. The 'basic' deliberative procedure Hill and Boxill describe seems limited to the claims made in the first and second chapters of *The Groundwork for the Metaphysics of Morals* – a very basic delineation of Kant's moral theory indeed.[344] As most contemporary Kant scholars agree, the arguments in the *Groundwork* are best understood against the background of Kant's broader philosophical claims, and accordingly, very few scholars limit their discussion of Kant's morality to those arguments. The second distinction – between what is "central" and what is "peripheral" – is even more difficult to delineate, and Hill and Boxill give no clear criteria of which elements of Kant's theory ought to be taken as central. Even if we could clearly distinguish which works are central and which peripheral to Kant's philosophy, however, there remains a second assumption at work: that the 'central' or 'basic' philosophical arguments do not borrow assumptions from the 'peripheral' arguments.[345] Moreover, given that the theory of race was developed prior to

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[344]Hill & Boxill (2001), p. 468.

[345] Moreover, Kant's racist assumptions make cameo appearances in the very texts Hill and Boxill designate as part of the 'basic' philosophy: in the second chapter of the *Groundwork*, Kant discusses the lifestyle of the South-Sea Islanders, referring to them as an example of human beings who have failed to fulfill the duty of developing their capacities. Hill and Boxill describe objections to Kant's deployment of the South Sea Islanders as going something like this: "Kant disapproves of the Tahitians because they fail to meet a parochial, historically conditioned, European and male biased Enlightenment ideal of reason" (Hill & Boxill (2001), p. 460). The objection is painted as an overly limited reading of Kant, in which Kant deploys the moral turpitude of the South Sea Islanders as a justification for the imperial extension of the European ideal. Instead, they argue, Kant's reference to the South Sea Islanders is evidence of Kant's *anti*-racism: in criticizing the Tahitians for failing to morally develop themselves, Kant clearly asserts a belief that the Tahitians have talents and are morally responsible for developing them. Thus, they suggest, the South Sea Islander cameo ought to be taken as evidence of the universalism of Kant's 'basic' theory and the absence of a racial hierarchy therein – regardless of Kant's own claims about the talents of the various races.

In making this argument, however, Hill and Boxill fail to see a second set of racist assumptions that inform Kant's reference to the South Sea Islanders. Kant refers to the Tahitians as devoting themselves only to "idleness, amusement, procreation – in a word, to enjoyment" (Kant, GMM, 4:423). Certainly, as we know, Kant had never been to Tahiti, and drew his knowledge from travel narratives that painted Tahiti as a kind of hedonistic paradise (which raises a separate set of concerns about Kant's anthropological methodology – but I will leave those aside for now). He did not know that the South Sea Islands boasted very little in the way of ready access to nutrition, and that the simple work of obtaining sustenance required great skill, much inventiveness, and a considerable proportion of one's waking hours. Perhaps, indeed, Kant could not have been aware of

the moral (or cosmopolitan) philosophy, it is difficult to know what constitutes the "primary" theory.

Robert Louden both admits that Kant's anthropological writings on race were a serious scholarly project and that these anthropological claims are inextricably intertwined with his moral philosophy, yet like Hill and Boxill, he concludes that Kant's philosophy can be rescued from his thoughts on race. Louden writes extensively about the relationship between Kant's moral and anthropological writings, and highlights both the tension between and the inextricability of the two philosophical projects. He argues that we can distinguish between the *Groundwork* and the *Metaphysics of Morals* on the one hand, where Kant is concerned with "human beings in general" as an *a priori* conception that admits minimal empirical information, and the anthropological writings, which involve an empirical study of human beings in particular contexts in order better to apply the moral law.[346] Thus, while the two can be distinguished, Louden argues, and the *a priori* conception of human nature should be understood as universal, we should also note that for Kant, "moral theory is inapplicable to the human situation without a massive infusion of relevant empirical knowledge."[347] Accordingly, Louden points out, the anthropological writings contain very few surprises: Kant's claims about race and women are scattered throughout the moral texts.[348]

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this. But his remarks reveal a blindness to the skill and labor involved in the lives of distant others, and this, in turn, reveals a blindness built into his claims about moral duties in the second chapter of the *Groundwork*. In this case, this is a blindness to the fact that the duty to morally cultivate one's talents is conditioned by a set of empirical assumptions, but more broadly, it is a blindness to the role empirical assumptions play in Kant's moral theory more generally. Certainly, we could read those empirical assumptions out of the argument (thereby producing a *Kantian* account of duties), but this does not excuse their presence in Kant's own conception of those duties. Even the 'basic' moral philosophy, therefore, is conditioned by arguments supposedly 'peripheral' to it.

[346]Louden, Robert. (2002). The Second Part of Morals: Kant's Moral Anthropology and its Relationship to his Metaphysics of Morals. *Kant e-prints 1 (2002),* p. 12.

[347]Louden (2002), p. 168.

[348]Like Hill and Boxill, Louden cites the 'South Sea Islanders' example in the *Groundwork*, and points also to Kant's claims about women and citizenship in the *Metaphysics of Morals*. (Louden, 2002, p. 102).

However, while Louden admits that Kant's views on women and nonwhites are "abhorrent"[349] and rejects the clear delineation between the "central" moral philosophy and "peripheral" anthropological texts suggested by Hill and Boxill, Louden nevertheless concludes that "Kant's theory is stronger than his prejudices, and it is the theory on which philosophers should focus."[350] In making this move, Louden in the end seems to deny the theoretical nature of Kant's views on race, demoting them to mere "prejudices," and to assume, like Hill and Boxill, that an unproblematic line can be drawn between Kant's "theory" and his "prejudices."[351]

It is difficult to deny the theoretical nature of Kant's views on race. Certainly, as Todd Hedrick and Pauline Kleingeld have recently pointed out, it is difficult to deny that Kant's theory of race was an important theoretical project *to Kant.*[352] Though Kleingeld suggests that we ought to understand Kant an "inconsistent universalist" who formulated universal principles, but made the error of *applying* them against the background of his racist assumptions, we should ask why we assume that the "background assumptions" suggested by his empirical project would not have been operative when he was formulating the principles. Given the interconnections between Kant's anthropological and moral projects, and the relationship between the theory of race and the critical project, the assumption that one theory should so easily "trump" the other misses the complexity of Kant's intellectual project.

2.3. The Internal Tension Approach

[349] Louden (2002), p. 102.
[350] Louden (2002), p. 105.
[351] Kleingeld (2007), p. 584.
[352] Hedrick, T. (2008). "Race, difference, and anthropology in Kant's cosmopolitanism." *Journal of the History of Philosophy, 46*(2), p. 265; Kleingeld (2007), p. 579. Kant devoted a significant amount of energy to his anthropological theorizing, and taught more classes on anthropology and physical geography than on any topic. Eze, Emmanuel (1997a). "The color of reason: The idea of "race" in Kant's *Anthropology*." In Eze (Ed.), *Postcolonial African philosophy: A critical reader*. Cambridge: Blackwell Publishers, p. 104.

A third approach to managing the paradox between Kant's views on race and his universalism contends that we can admit both that Kant was racist, and that his theory of race was a serious epistemological and philosophical project. We can admit that there is a serious contradiction posed by his universalism and his theory of race, and we can work to retain this tension within Kant's philosophical arguments. There are several ways that we might manage this tension; I'll give an account of two.

Emmanuel Eze poses the contradiction within Kant's teleological arguments: either human nature, and the human capacity for reason, is fixed, universal, and essential, or race, and its biologized scheme of different capacities, is fixed and essential. Thus, the normative essentialism of Kant's account of human nature is not compatible with the normative essentialism of Kant's account of race, since human nature cannot be both universal and hierarchical/exclusive.[353] But this paradox need not be impassible: we can argue that the normative essentialism of the first claim trumps the normative essentialism of the second, since they have different epistemological values. Within Kant's philosophy, the first claim is meant to be a synthetic *a priori* truth, while the second is an empirical a posteriori claim.[354] Thus, while we have an obligation to hold the two in tension for the reasons discussed above, we need not assume that the empirical claims that ground Kant's theory of race trump the theoretical claims that ground his universalism.

Todd Hedrick suggests that we might manage this tension by positioning it as an instance of Kant's philosophical preoccupation with inscribing necessary difference within a unified system.[355] Kant's political philosophy, he argues, assumes that difference plays an instrumental role in cultural progress, and his scheme of political institutions thus relies on a persistent distinction between

[353]Eze (1997a), pp. 125-127.
[354]Mills (2005), p. 181.
[355]Hedrick (2008), p. 249.

formal equality and substantive inequality.[356] In the *Rechtslehre*, as we saw in Chapter One, Kant argues that formal equality of citizens in the public sphere is consistent with a substantial inequality of resources in the private sphere. Likewise, as we saw in Chapter Two, the necessary substantive inequality between a husband and wife is consistent with the juridical equality of the married couple. Kant's theory of race, then, may simply posit a substantive inequality that is both consistent with and necessarily positioned within a broader scheme of universal formal equality.

Yet, like the previous set of arguments, each of these moves assumes the primacy of Kant's universalism, and positions Kant's theory of race and his claims about women as secondary anomalies to be reconciled within or held in tension with the primary philosophical arguments. Though each of these moves admits both that we ought to take Kant's theory of race seriously, and that Kant himself took his theory of race seriously, they foreground the universal arguments in such a way that wrestling with the tension between Kant's universalism and his theories of race and gender becomes a subsidiary project.[357] I argue that we cannot unproblematically distinguish between the "primacy" of Kant's theoretical claims and the prejudices inscribed in his empirical project. We saw in Chapter 2 that Kant's empirical prejudices against women shape the fundamental structure of the rightful state, thus concretely impacting his universal principle of right. Kant's prejudices against women map a particular structure of equality and independence against a set of gendered assumptions about what activities count as "political." In this way, Kant's "background assumptions" about women affect not merely the *application* of his universal principles, but their very

[356] Hedrick (2008), pp. 251-253, 267.

[357] This may, of course, be a matter of standpoint: those of us who work on Kant from within philosophy will tend to foreground his philosophical, universal arguments, while assuming that the anthropological, geographical, and other empirical projects are of secondary importance. But for those who encounter Kant from the standpoint of the history of race, where his work offered critical epistemological grounding for pervasive hierarchical theories of race, it is difficult to take Kant's philosophical universalism seriously. It is difficult to know, from either of these standpoints, how to reconcile the tension between these arguments.

formulation. In this chapter, I will argue that a similar dynamic shapes the interplay between Kant's theory of race and his cosmopolitan principles.

2.4. The Kantian Universalism Approach

A fourth approach suggests an alternative to managing this tension: we can accept that Kant was a racist, but we can simply read this out of his moral and political theory, and project our own conceptions of universalism onto his arguments. This, for example, is the approach taken by numerous Kant scholars on the role of sexism in Kant's philosophy.[358] We know, from Kant's own claims about women, that Kant considered women to be only minimally more rational than non-whites,[359] and that in most cases where Kant speaks of 'persons' he is in fact speaking of 'male persons.' But Kantian morality wouldn't make much sense to us if 'persons' were only male, and so we assume a gender-neutral framework in order to make Kant's arguments intelligible to us. Likewise, if 'person', for us, includes humans of all races, then we can simply read that assumption into Kant's moral and political philosophy.

If we take this approach, however, are we still talking about *Kant*'s philosophy? Or have we written *Kant himself* out of the arguments? As Mills suggests, we are no longer dealing with Kant's philosophy, but with Kantian philosophy – a Kant-like set of arguments infused with our own background assumptions about universality.[360] This is not always a problematic practice. Certainly, the Kantian arguments that emerge from a generous and inclusive reading are of great use not only

[358] Cf. Herman (1992), Korsgaard (1996), O'Neill (1989), Varden (2011), Wood (1999).
[359] Though even this varies throughout Kant's work. In *Observations on the Beautiful and Sublime*, for example, Kant compares the ways in which men of different races treat women, concluding that a "haughty" treatment of one's wife is a sign of reason (though not one that trumps the lack of reason signified by one's race) while equal treatment of women is always a sign of the lack of reason. (Kant OBS 2:254-255.) The implication seems to be that men, regardless of race, are always more rational than women. But it is difficult to know whether Kant thought European women were more rational than non-white men.
[360] Mills (2005), p. 190.

to contemporary moral philosophy, but also to both anti-racist and feminist discourse, and perhaps this is reason enough to read Kant generously, sidestepping his own racist and sexist arguments.

But we must tread carefully: to fail to distinguish between our Kantian assumptions and Kant's own arguments obscures critical tensions in those arguments. When writing about *Kant*'s philosophy, uncritically using gender-neutral or racially inclusive language and assuming universal inclusion verges on dishonesty. It is a distortion of Kant's own arguments, and if we attribute these universalist arguments to Kant, we become complicit in reproducing the invisibility of his racist and sexist assumptions.

Rather than dismissing Kant's arguments entirely, we might hold inclusive and universalist Kantian arguments in tension with Kant's own raced and gendered exclusions.[361] In doing so, we should recognize the degree to which Kant's arguments are structured by these exclusions: if Kant's use of 'persons' refer only to European men, then Kant's construction of the world is limited in a whole host of ways. As Emmanuel Eze and Tseney Serequeberhan argue, Kant assumes a European humanity and takes it as humanity itself, and then treats this as a universal standard of humanity that non-whites fail to achieve.[362] Because it is limited both by its eurocentrism, and by implicitly defining the moral and political spheres as masculine spheres, it limits the importance of both the reproductive and domestic labor generally performed by women, and the importance of the colonial and slave labor performed by non-Europeans.[363] Kant's eurocentric and sexist assumptions are not incidental to his theory: they work together to produce an assumption that the masculine

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[361]Kleingeld (1993) p. 140-141; Bernasconi, R. (2002). "Kant as an unfamiliar source of racism." In J. K. a. L. Ward, Tommy Less (Ed.), *Philosophers on race: Critical Essays*. Wiley Blackwell.

[362]Eze (1997a) p. 117; Serequeberhan, Tseney (1997). "The Critique of Eurocentrism and the Practice of African Philosophy." In Eze (ed.) *Postcolonial African Philosophy: A Critical Reader*. Wiley Blackwell.

[363]Kleingeld (1993) develops the argument about reproductive labor; Susan Buck-Morss develops the argument about colonial and slave labor, though she is discussing Hegel's, rather than Kant's, silence on the issue. Buck-Morss, Susan (2000). "Hegel and Haiti." *Critical Inquiry* Vol. 26, no. 4, pp. 821-865.

public sphere (made possible by a gendered division of labor in the domestic sphere) is a necessary element of the moral life of humanity as such. Because of the collusion of these arguments, Kant's practical philosophy assumes the ubiquity of European constructions of gender and posits these as universal moral and juridical norms. Therefore, because Kant's raced and gendered exclusions have a deeply structural impact on his account of moral and political norms, universalist Kantians must be careful to rigorously reconstruct moral arguments without smuggling in Eurocentric and gendered assumptions.

2.5. The Late Universalist Approach

Simply put, the claim is this: Kant *himself* solved the paradox by the last decade of his life, when he renounced his racist views and became whole-heartedly committed to a post-racial universalism. If this shift in Kant's views on race in fact occurred, then we would need to re-evaluate both his later writings and contemporary claims that he was an unrepentant racist.

A number of scholars argue that Kant's theory of race was developed in the pre-critical years, and suggest that the critical shift also entailed a radical rejection of his racist views in favor of the universalism that characterizes Kant's moral philosophy.[364] According to these arguments, we can dismiss Kant's views on race as foolish youthful prejudices, and read Kant's mature moral and critical philosophy as egalitarian and universalist.[365]

[364] Susan Shell argues: "Kant's most unqualified published remarks on racial inferiority precede the appearance of the *Critique of Pure Reason* (1781). Such remarks precede, in other words, his considered, final view as to the ultimate radical independence of our intelligible character and its sensible, or physically conditioned embodiment. There is, in short, a pattern of diminishing public reliance on empirical conclusions as to the mental or spiritual inferiority of nonwhite races, following on Kant's discovery of the transcendental principle of autonomy, which imposes an unconditional moral duty on all human beings whatever their physical make up or temperament." Shell, (2006) p.56. Sankar Muthu argues, "in Kant's later years […] the biological and hierarchical concept of race disappears in his published writings […] Kant makes no arguments about the preeminence of whites or Europeans over other races." Muthu (2003), p. 184.

[365] If there is a discrepancy between the arguments made by a young Kant and a mature one, the argument goes, there are good reasons for privileging the latter: as most scholars agree, Kant was a

In fact, the critical Kant was still a racist Kant: Kant wrote more on race during the critical years than he had done in the decades that preceded them, and he carefully refined his theory of race in light of the critical philosophy. Pauline Kleingeld, therefore, locates the shift in Kant's theory of race at the end of the critical period, arguing that by the time he writes *Towards Perpetual Peace* in 1795 and *The Metaphysics of Morals* in 1797, he has ceased to include his theory of the hierarchy of the races in his political philosophy. This silence suggests to Kleingeld that Kant's mature cosmopolitanism has shifted from a racially exclusive model to a universally inclusive model that is not racist.[366]

In what follows, I give a brief history of Kant's theory of race in order to offer a challenge to these historical claims about Kant's views. I begin by situating Kant's arguments within the discourse on race that had emerged in 18th century Germany. I highlight the key elements of Kant's theory of race, and demonstrate that Kant revised, refined, and defended his hierarchical theory of race in light of the critical project. I argue that Kant developed and refined the teleological method presented in the *Critique of Judgment* while defending his theory of race in the 1780s, and that this method undergirds the political and cosmopolitan essays of the 1790s. Finally, I counter Kleingeld's arguments about Kant's view on race in the 1790s by turning to critical questions about the historical relationship between Kant's theory of race and his emerging theory of cosmopolitanism. This history, I argue, reveals that Kant's theory of race and his cosmopolitanism *share a set of theoretical origins*. Given this relationship, we should be wary of the ways in which his mature cosmopolitanism retains imprints of the influence of his theory of race regardless of how his views on race may have changed.

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late bloomer, and his critical and post-critical work is markedly more rigorous and soundly argued than his earlier work.

[366] Kleingeld, Pauline. (2009). "Kant's Changing Cosmopolitanism." In Rorty and Schmidt (Ed). *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide.* Cambridge: Cambridge University Press.

3. A Brief History of Kant's Theory of Race

3.1 Race and Anthropological Discourse prior to 1775.

The use of the term "race" crystallized over the course of four decades in the second half of the 18th century.[367] Curiously, this debate occurred largely amongst German scholars rather than in those countries instrumental to the slave trade, suggesting, as Robert Bernasconi has argued, that the 18th century debate over race was motivated by an interest in scientific classification rather than imperial or economic interests.[368] The history of the term "race" offers a useful frame for approaching Kant's anthropological work, since he situated himself at the center of the debate about anthropological terminology and, in particular, the use of the term "race."[369]

References to race in the 17th century[370] fall short of forming a clearly defined discourse of race. The term "race" was introduced to classify humans into four or five types based on geographic location and skin colour, and to explain this difference through reference to "seeds" and degeneration, and this laid the groundwork for the emergence of race theory in the 18th century.

The two central figures in the discourse of race in the mid 18th century were Carolus Linnaeus, a Swedish botanist, physician, and zoologist, and the great French naturalist (and director of the *Jardin du Roi)* the Comte de Buffon. Linnaeus developed the modern system of biological

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367 Bernasconi, Robert (2001). Who Invented the Concept of Race? In Bernasconi, ed. *Race*. Wiley-Blackwell, p. 12; Egan and Larrimore, (2006). *The German Invention of Race*. SUNY Press, p. 1; Larrimore, Mark, (2008). Antinomies of Race: Diversity and Destiny in Kant. *Patterns of Prejudice, Vol. 42, Nos 4-5*.p. 343-344. Mark Larrimore points out that "Rasse" was imported to German from English and French, where it most often referred to the husbandry and breeding of dogs and horses.

368 Bernasconi (2001), p. 21.

369 Robert Bernasconi has argued that Kant may well be the inventor of the term "race" – and while I think there were others shaping this debate in the second half of the late 18th century, it is difficult to deny that for Kant, the term itself, and the methodological frame it seemed to denote, was of tremendous importance. Of course, "race" as Kant and his contemporaries is not necessarily "race" as we know it today, and the so-called science of race of the 18th century must be carefully distinguished from its contemporary cousins.

370 i.e. as they appear in Liebniz and Bernier. See previous footnote for details.

classification in his *Systema Naturae*, which was revised through twelve editions between 1735 and his death in 1778.[371] Biological taxonomies of classification had been the cornerstone of natural science for several centuries, but Linnaeus' system was remarkable in that it squarely placed man within the animal kingdom: *homo sapiens* were classified as primates, based on Linnaeus' observation that their anatomies were basically undifferentiated. He further classified *homo sapiens* into 5 distinct classes, which were defined both in terms of physical characteristics and stereotypical character.[372]

Buffon rejected Linnaeus' system of classification as arbitrary and unclear and developed a comprehensive critique of biological taxonomies, preferring the method of natural history.[373] Buffon's 36-volume *Histoire Naturelle generale et particulaire*, published between 1749 and 1788, was amongst the most widely read texts of the mid-18th century, and it was certainly read and discussed by those in Kant's circle.[374]

Buffon's method focused on the physical study of organisms in order to develop an empirical account of generation: in other words, classification involved *natural history* rather than mere *observation of difference* – a distinction that shaped Kant's approach to the subject.[375] Buffon's widely-disseminated definition of a species held that "*species* is an abstract and general term, to which a corresponding object exists only in considering Nature in the succession of time, and in the

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[371] Linnaeus developed and consistently used the earliest version of modern biological nomenclature. Zammito (2002), p. 235.
[372] Bernasconi, (2001), p. 15.
[373] Buffon developed both a metaphysical and an epistemological critique of taxonomies such as Linnaeus', arguing that such a criterial account of nature could tell us nothing about nature itself, but could only provide the arbitrary map of nature in the mind of the observer: "this manner of thinking has made us imagine an infinity of false relationships between natural beings . . . It is to impose on the reality of the Creator's works the abstractions of our mind." Buffon, *Premier discours de la maniere d'itudier et de traiter 1'histoire naturelle* (Histoire naturelle, 1, 1749; Oeuvres philosophiques, pp. 9a-b). Quoted in Sloan, Phillip. The Buffon-Linnaeus Controversy *Isis* Vol. 67, No. 3 (Sep., 1976), 360.
[374] Zammito (2002), p. 28, 69, 302
[375] In the *Anthropology*, Kant called Buffon "the great author of the system of nature"; in *Of the Different Races of Human Beings,* Kant refers to "Buffon's rule" in his definition of race. See APP AK 7:221 and ODR AK2:429.

constant destruction and renewal of beings…. the species being thus only a constant succession of similar individuals which reproduce themselves."[376] The study of species-difference, in other words, was necessarily the study of generation, and species were defined in terms of the limits of generation. However, though Buffon held that the designation of a species was a fixed and constant classification, he offered no such clear definition of classes, races, or types within a given species.[377] Those distinctions would be the subject of debate in the 1770s and 1780s, when Kant entered the discussion.

Buffon's emphasis on generation as the source of species-identity made him the most prominent monogenist of the mid 18th century. The debate between monogenism and polygenism would not be settled until Darwin's theory a century later: many prominent 18th century figures, Voltaire and Hume among them, held that the different races of mankind had distinct origins and lineages.[378] One of the most influential polygenists was Henry Home, Lord Kames, a Scottish philosopher who argued in the 1734 *Sketches on the History of Man* that since environmental influences aren't sufficient to explain racial difference, the different races must have been created by God as already distinct races. Kames' essay is of particular importance for a history of Kant's theory of race, since it was translated into German in 1775 and spurred the development of German anthropology, influencing both the rise of polygenism among the philsophers at the University of Gottingen, and the defense of monogenism developed by Kant and his contemporary, Blumenbach.[379]

In what follows, I divide the progression of Kant's theory of race into three distinct eras: first, the period between 1775 and 1784; second, the most prolific years of Kant's writings on race,

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[376] Bernasconi, (2001), p. 16.
[377] Bernasconi, (2001), p. 16.
[378] Even after Darwin, the debate over monogenism continued for several decades. For a discussion, see Chapter Six, section 1.2
[379] Zammito, John, (2006). "Policing Polygeneticism in Germany, 1775: (Kames), Kant, and Blumenbach." In Eigan and Larrimore (eds.), *The German Invention of Race*. SUNY Press, p. 39-40.

or the period between 1785 and 1790; third, the largely silent period of the 1790s.

3.2. A Most Adaptable Race: Kant's Theory of Race, 1775-1784

Kant's first significant essay on race[380] was published in 1775, the same year that Johann Friedrich Blumenbach defended his thesis, "Natural Variety of Mankind," also a defense of monogenesis, at the University of Gottingen, where he went on to teach medicine. Though Kant and Blumenbach would become two of the most influential defenders of monogenesis in the late 18th century, in 1775 they were unaware of each other. The near-simultaneous emergence of their theories of race is best explained as independent responses to Lord Kames' essay and the fraught discussion about polygenesis in German intellectual circles in 1775.[381] Together, however, these two essays might be said to inaugurate what Robert Bernasconi has called "the scientific theory of race" and what John Zammito has described as the birth of anthropology as a distinct field of inquiry in Germany.[382]

Kant's essay *On the Concept of Race* was orginally published in 1775 as an announcement for his lectures on physical geography and anthropology, and was reprinted in 1777 as part of the second edition of the wildly popular *The Worldy Philosopher,* a collection of popular philosophical essays largely dealing with utilitarian philosophy published by Johann Jacob Engel.[383] As John Zammito has persuasively argued, it is curious that in the middle of the so-called "silent period" that immediately preceded the critical turn, Kant turned his attention to publishing popular essays defining his concept of race: Kant had been teaching the physical geography and anthropology

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[380] While some scholars turn to Kant's remarks in the 1764 *Observations on the Beautiful and Sublime*, as an "easy" source of evidence of his racist views, I have chosen to omit it from this discussion, since Kant isn't articulating a systematic theory of race in this text.
[381] For a discussion of the relationship between these two texts, see Zammito (2006).
[382] Bernasconi (2002), p. 17; Zammito (2002), p. 221.
[383] Zammito, (2006), p. 40.

courses for nearly two decades by 1775, and he was no longer a poor magister, dependent on student enrollment for his pay, and so did not need to advertise his anthropology lectures. That Kant suddenly publishes an announcement for these courses, and one that focuses almost entirely on race, rather than the broader subject matter of those lectures, and that he then actively sought the essay's inclusion in *The Worldly Philosopher*, where it would be read by a wide and popular audience is curious indeed.[384] Kant's sudden interest in publishing on the topic is likely a response to the vociferous popular debate between monogenists and polygensists that followed the translation of Kames' *Sketches* into German, and indicates Kant's interest in popular philosophy during the so-called silent period that preceded the critical turn.

Kant's first published essay on race, *Of the Different Races of Human Beings* (published in 1775; revised and republished in 1777) bears careful examination, both because of the light it sheds on his interest in anthropology as popular philosophy, and because it introduces his most persistent claims about race. In the 1775 version of the essay, Kant introduces the study of anthropology as a form of "pragmatic knowledge" designed to prepare students as "citizens of the world."[385] In doing so, he clearly distinguishes between the fields of physical geography and anthropology, and defends the pragmatic importance of the latter as a distinct field of study. John Zammito has argued that, in pursuing a popular audience for his essays on anthropology, Kant not only sought to establish a new

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[384] Zammito, (2006), p. 36-37.

[385] Kant, *Of the Different Races of Human Beings* [Henceforth, ODR] 2:443. Kant goes on to define the purpose of this pragmatic education for his students: "this knowledge of the world serves to procure the *pragmatic* element for all otherwise acquired science and skills, by means of which they become useful not merely for the *school* but rather for *life* and through which the accomplished apprentice is introduced to the stage of his destiny, namely, the world." Kant backs off this defense of anthropology as pragmatic in the 1777 edition of the essay, but reasserts it in the 1798 *Anthropology from a Pragmatic Point of View,* where he frames this knowledge as necessary for a citizen of the world(AA 7:120). For a discussion of the 1775 edition and its connection to the 1798 essays, see Shell, Susan, (2006). "Kant's Conception of a Human Race." In Egan and Larrimore, eds. *The German Invention of Race*. SUNY Press, p. 65.

field of inquiry, but also worked to position himself as a public authority in this field.[386]

Kant's five most persistent claims about race are introduced in *Of the Different Races of Human Beings*. While the methodology and theoretical underpinnings of his theory of race would evolve, the basic tenets of his theory remain remarkably persistent.

The first of these is his defense of monogenism: Kant believed that all human beings developed from a single origin, and that all the human races were biologically related.[387] Drawing on Buffon's emphasis on generation as the key to an account of species difference, and his own observations about racial hybridity, Kant argued that "all human beings on the wide earth belong to one and the same natural species because they consistently beget fertile children with one another, no matter what great differences may otherwise be encountered in their shape."[388] The best explanation for this generative principle, Kant argued, was that the human race was descended from a single origin (*phylum)*, within which a discrete subset of races could be identified.

Second, Kant's unique intervention into the discourse on race in the late 18th century was the definition of the term "race" itself. Though previous theorists had deployed the term in a variety of unspecified ways, Kant consistently pushed for a clear delineation of racial difference. He drew, first, on the Comte du Buffon's definition of a species. Buffon defined a species in terms of the limits of generation: animals that could successfully breed with one another were members of the same species. Drawing on a linguistic history that tied "race" to breeding lines in horses and dogs,

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386 Zammito (2002) p. 293. In the 1770s, Kant both distinguishes anthropology from physical geography and pragmatic anthropology from physiological anthropology, although in distancing himself from the "philosophical physicians" who studied physiological anthropology, Kant did not go so far as to relinquish the scientific status of anthropology as a discipline. In the 1770s, he defined anthropology as an empirical science based on "observation and experience" (Kant, AA 25:1:243) and defended it as part of a theoretical study of knowledge. For a discussion of Kant's definition of anthropology in the 1770s, see Zammito (2002), pp. 292-307.

387 See the discussion at Kant, *Determination of the Concept of a Human* Race. [Henceforth, CHR.] 8:98-99.

388 Kant, ODR 2:429-430.

Kant added a new layer to this account of generation and difference: within a given species there are races, defined by a set of inevitably heritable characteristics.[389] Race, in other words, defined a particular and necessary pattern of generation; it is a necessary biological distinction. Individuals of different races could produce offspring (since they are of the same species) but these offspring would be "half-breeds": they would *necessarily* inherit the characteristics of both races, but would remain "half-breeds," somewhere between the two races in question, rather than a new variety of human being.[390] Thus, race was a limited generative principle, which followed consistent and necessary patterns of heredity. Skin colour was the "necessarily heritable characteristic" Kant most often referred to in defending his concept of race, and the incidence of mixed-race children offered the empirical evidence that motivated his account of race.[391] Kant insisted, throughout his writings on race, on a stringent distinction between "race" and "variety,"[392] and by the 1790s, this distinction had been incorporated into the emerging science of race, making Kant, as Robert Bernasconi has argued, the inventor of the concept of "race."[393]

Third, Kant argued that racial difference developed in the species as an adaptive response to climate, geography, and life practices. He posited that there was an original "stem race" which

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[389] Kant, ODR 2:430, CHR 8:94.
[390] Kant, ODR 2:430, CHR 8:95.
[391] Kant described this "discovery" thus: "Negroes and whites, while not different kinds of human beings (since they belong presumably to one phylum), are still two different races, because races because each of the two perpetuates itself in all regions and both necessarily beget half-breed children or blends (mulattoes) with one another. By contrast, blondes and brunettes are note different race of whites, because a blond man can have entirely blond children with a brunette woman…" ODR 2:430; CHR 8:95; UTP 8:165.
[392] Kant clarifies his definition of race by contrasting skin colour and hair colour. Hair colour, is a variably heritable characteristic: because a blond man and a brunette woman could produce entirely blond children, hair colour was evidence only of "variety" within a race. ODR 2:430.
[393] Bernasconi, (2001), pp. 11-36. The use of the term "race" lay at the heart of the dispute with Blumenbach, whose theory of race offered the most significant challenge to Kant's throughout the 1780s. In the 1790s, Blumenbach adopted Kant's use of the term, and race became the dominant term of the discourse going into the next century.

contained a range of "seeds" (*Keime)* and "predispositions" (*Anlagen).*[394] As the human species spread across the globe and settled in disparate regions requiring various modes of life, these seeds and predispositions developed together, adapting human beings to their environments and, in the process, forming four distinct races.[395] The structure of this account meant that race offered an account of permanent human difference: the development of racial characteristics was necessary, permanent, and irreversible. Kant most consistently defined racial difference in terms of climate, geographical location, and skin colour, as is evident in the taxonomy of racial difference published in the 1777 edition of the *Of the different races of human beings*:

> *Stem genus: Whites of brunette color*
> First race, High blondes (northern Europe), of humid cold
> Second race, Copper-reds (America), of dry cold
> Third race, Blacks (Senegambia), of humid heat
> Fourth race, Olive-yellows (Indians), of dry heat.[396]

Curiously, there is some confusion in the actual racial taxonomy Kant develops here: the four races described in the body of the 1775 essay don't match the above taxonomy, which was added to the 1777 revision.[397] The later taxonomy bears greater resemblance to the schemes of racial difference that Kant develops in his later works, but he gives no clear reason for the shift, and he clearly retains assumptions from the earlier taxonomy in his later works.[398]

Fourth, Kant defined racial difference in terms of *development* rather than *degeneration*. This was a marked difference from other monogenists: Buffon and Blumenbach, for example, defined racial

[394] Kant increasingly uses these terms interchangeably; by the late 1780s, they are used as synonyms.
[395] Kant, ODR 2:442; CHR 8:105; UTP 8:167.
[396] Kant, ODR 2:441.
[397] The races described in the body of the 1775 essay are: the White race (including Moors, Arabians, Turks, and Persians); the Negro race; the Hunnic race (including both Mongolians and Americans – though the latter are not fully developed); and the Hindustanic race. Kant, ODR 2:432-433.
[398] For example, in the first taxonomy, (Native) Americans are considered under-developed examples of the Hunnic race. In the later taxonomy, of course, Americans are described as a race unto themselves, but Kant retains the claim that the rapid dispersal of the American peoples makes them the least developed of the races. Kant, ODR 2:437-438.

difference in terms of degeneration from an ideal.[399] For Kant, the races develop from a now-extinct, ideal stem-race, which contained the predispositions (or 'seeds') of all the races. This is key to understanding the nature of Kant's theory of race: some races are "below" others in this taxonomy not because of a degeneration from the original race, but because of a failure to adequately develop the appropriate seeds, predispositions, or capacities. The full development of race is thus an achievement.[400]

Fifth, because racial development is variable, the taxonomy of the races entails a hierarchy of racial development. Kant repeatedly argues that because of the too-rapid migration of the Americans from Asia, the appropriate seeds and predispositions did not have the opportunity to fully develop, making the Americans an "incompletely developed" race.[401] Kant describes this lack of development as contributing to a "half extinguished life power" evidenced by the fact that American slaves in Surinam were comparatively weaker than African slaves, and unable to do field work.[402]

The white/European race, on the other hand, is presumed to be the most fully developed of the races, hewing most closely to the stem race. While the precipitous migration of the American race led to an underdevelopment of their natural predispositions, the geographic stability of the European races allowed all its predispositions to develop in balance, which allows Europeans to

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[399] Larrimore (2008) pp. 344-345. Larrimore also notes that in 1788, Kant argued that 'race' in Latin should be *progenies* rather than *degeratio*, and that he consistently used the term *Abartung* rather than *Ausertung*.

[400] Kant's concerns with miscegenation, which remain evident in the writings on race in the 1790s, derive from this understanding of race as development: from Kant's earliest writings on race, he describes "half-breeds" as incompletely developing their racial characteristics. Some scholars have expressed surprise that Kant's post-critical vision of a universal cosmopolitan world appears to have entailed a strict prohibition against race mixing, rather than calling for increased race mixing, as a method for increasing diversity and unifying humanity. Once we understand Kant's account of race as achievement, however, this objection can be answered: if the purpose of a cosmopolitan world is the further development of capacities and predispositions, then race mixing would prevent the full development and achievement of race. See Bernasconi, (2001); Eze, (1997a); Larrimore, M. (2008).

[401] Kant, ODR 2:437-438; UTP 8:175-176.

[402] Kant, ODR 2:438.

retain the developmental flexibility of the stem race. Europeans are uniquely developed to adapt to any part of the planet: "that portion of the earth between the 31st and 52nd parallels in the Old World … is rightly held to be that in which the most happy mixture of influence of the colder and hotter regions … and where the human being must have diverged least from his original formation, given that he is equally well prepared for all transplantings from there."[403] The white race is the most fully developed race, owing to the slowness of its geographic dispersal, and the most highly adaptive, given its proximity to the stem-race. In other words, Kant posits a white race which is not merely superior to other races, but which is uniquely able to settle anywhere in the world. Once fully developed, racial characteristics "resist all transformation:" [404] race, once achieved, ceases to be a matter for generative development. Thus, Mark Larrimore argues that Kant develops not only a theory of race but an account of 'whiteness' as that race which is outside of race, and which offers the possibility of transcending race.[405] Certainly, Kant's vision of a cosmopolitan world assumes this unique ability of the white race to adapt and settle anywhere in the world.

Kant expressed a more troubling vision of the unique adaptability of Europeans in his notes for the Physical Geography and Anthropology courses in the late 1770s, where he envisioned a future world in which "all races will be extinguished […] only not that of the Whites."[406] While this is consistent with the implicit assumption in *Of the Different Races of Human Beings* that cosmopolitanism will be a project of the white race, this more extreme claim suggests an emerging

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[403] Kant, ODR 2:440-441.
[404] Kant, ODR 2:442.
[405] Larrimore, M (2008) Antinomies of Race: Diversity and Destiny in Kant. *Patterns of Prejudice, Vol. 42, Nos 4-5.*, p. 346.
[406] From *Reflexion #1520 (xv 875-79),* entitled "The Character of Race," drawn from Kant's notes for his classes during the 1770s and 1780s. Here Kant gives his most detailed account of the character of the races and a defense of natural slavery ("Americans and negroes cannot govern themselves. Thus are only good as slaves.") For a detailed discussion of *Reflexion 1520*, see Larrimore, Mark (1999), "Sublime Waste: Kant on the Destiny of the 'Races'." In Wilson, Catherine, *Civilization and Oppression*. Pp. 99-125.

tension between Kant's account of an organized natural scheme of difference and unity and his developing philosophy of history.[407]

By the early 1780s, Kant's account of racial development had made its way into his emerging philosophy of history. In the *Idea for a Universal History with a Cosmopolitan Aim* Kant draws on his account of the development of seeds and dispositions to explain the development of reason in the species. "The human being was destined for all climates and for every soil […] he would become suited to his place in the world and over the course of generations would appear to be as it were native and made for that place," argues Kant in 1777; in 1784 he would begin his earliest account of cosmopolitanism with the proposition that "all the natural capacities of a creature are destined sooner or later to be developed completely and in conformity with their end."[408] The full development of racial characteristics is not the only form of development required for the human race: the development of reason, Kant tells us in the *Idea*, also turns on the development of "seeds" or "predispositions." In both *Of the Different Races of Human Beings* and the *Idea,* nature has positioned us in a world to which we must adapt, and she has provided us with basic predispositions that we must develop in order to adapt and survive.[409] Race and reason are offered as distinct examples of these predispositions: they are seeds, implanted in us by nature, which come to fruition through multiple generations. In the *Idea,* Kant describes this development thus: "if nature has fixed only a

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[407] Kant tied this argument to a more explicitly hierarchical account of the races: "In the hot countries, the human being matures in all aspects earlier, but does not, however, reach the perfection of those in the temperate zones. Humanity is at its greatest perfection in the race of the whites. The yellow Indians do have a meagre talent. The Negroes are far below them and at the lowest point are a part of the American peoples." (Kant, *Physical Geography.* Translated in Eze (1997b), p. 63.) Kant ruminates on the origins of blackness, enshrining skin color as the central feature of the races, and he explicitly mentions (but does not critique) slavery numerous times, both as the dominant form of interaction between Europeans and the peoples of Africa, and as evidence of the moral weakness of the Negro race, claiming the fact that "the Negro slave from Guinea drowns himself if he will be forced into slavery" as evidence of the irrational fears and weak-heartedness of the race. (Kant, *Physical Geography.* Translated in Eze (1997b), p. 64.)

[408] Kant, IUH. In Reiss (1991), p. 42.

[409] Kant, ODR 2:434; IUH. In Reiss (1991), p. 43

short term for each man's life (as is in fact the case), then it will require a long, perhaps incalculable series of generations, each passing on its enlightenment to the next, before the seeds implanted by nature in our species can be developed to that degree which corresponds to nature's original intention."[410] As Kant argues in the *Idea*, the ultimate development of these predispositions will require the creation of a cosmopolitan world order. And, as we know from *On the Different Races of Human Beings*, such a world is possible precisely because of the unique racial adaptations of the European race.

3.3. Race as Metaphysical Concept: Kant and his critics, 1785-1790

In the 1780s, Kant's theory of race came under fire from a range of critics, including his fellow monogenist Blumenbach, his former student Herder, and the explorer and essayist Georg Forster. Kant's essays on race in the 1780s refine his theory and defend it in the face of these criticisms; that Kant rushes to defend his theory against critics tells us just how committed to it he remained throughout the critical period.[411] Though Kant remained faithful to the basic tenets of his theory of race laid out in the 1777 essay, he reframed his methodology for thinking about race in response to the criticisms from Herder and Forster. What emerges is a new defense of race as a metaphysical concept, an increased emphasis on skin colour as the key marker of racial difference, and the introduction of concerns about race mixing.

Arguably, Kant's most vehement critic was his former student, Johann Gottfried Herder. Herder had been one of Kant's favorite students in the 1760s – noting Herder's promise, Kant remitted the fees for attending his lectures so that Herder could attend. Following his departure from the university, Herder became a Lutheran clergyman in Riga, Latvia, where he wrote a series of

[410] Kant, IUH. In Reiss (1991), p. 43.
[411] Bernasconi, (2000), p. 14.

essays on literature and language; he met Geothe in 1770, and together, they launched the *Sturm & Drang* movement.[412] Herder was profoundly influenced by Kant's precritical philosophy, and wrote a series of anthropological, political, and literary essays throughout the 1770s and 1780s. His opus was the four volume *Ideen zur Philosophie der Gesichte der Menschheit (Ideas Toward a Philosophy of History of Humankind)*, published in 1784, 1785, 1787, and 1791.[413] Herder evidently assumed that his arguments were consistent with those of his former teacher, Kant, and was surprised when Kant published an enthusiastic but critical review of the first volume of his opus in 1785.[414] Herder retaliated, levying philosophical and *ad hominem* attacks on Kant in subsequent volumes; Kant, in turn, published a series of anti-Herderian essays in the 1780s, including *On the Concept of a Human Race* (1785), *Conjectures on the Beginnings of Human History* (1786), and *On the Use of Teleological Principles in Philosophy* (1788), in addition to the reviews of Herder's book published in 1785 and 1786.[415]

Herder followed the method for doing anthropology developed by Kant in 1775, focusing on empirical observation, physical geography, history, and travel narratives, but disputed the theory of race Kant developed. The dispute would lead Kant to actively redefine his own method for anthropology, rejecting the empirical approach he himself had employed a decade earlier.[416] The

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[412] Zammito, John, (1992). "*The Genesis of Kant's Critique of Judgment."* University of Chicago Press, pp. 34-36.

[413] Each volume was divided into five books; Herder intended to publish another volume, which was never written. (see Muthu (2003), p. 226).

[414] John Zammito has argued that Herder's essays are in fact largely consistent with Kant's precritical philosophy, and that the Kant-Herder dispute can thus be read as a dispute between Kant's precritical and critical philosophies. For more on Herder and Kant's precritical philosophy, see Zammito, (2002).

[415] Kant also included critiques of Herder in both the second and third Critiques. Zammito argues that the origins of the 3rd critique lie in Kant's rivalry with Herder, and that the critique is "almost a continuous attack on Herder." Zammito (2002), p. 9-10. For a discussion of the Kant-Herder debate in Kant's critical philosophy, see Zammito (1992) (esp. pp. 187-188 on the second Critique).

[416] In his review of Herder, Kant criticizes the use of "ethnographical descriptions of travelogues," pointing out that these descriptions are so varied and contradictory that "the philosopher is at liberty to choose whether he wishes to assume natural differences or to judge everything with the principle *tout comme chez nous*, with the result that all the systems he constructs on such unstable foundations

method he outlines in the 1785 *Determination of the Concept of a Human Race* draws on the principles of his critical philosophy, and on the importance of using metaphysical principles to guide and organize empirical observation. In the opening of this essay, Kant argues "it is of great consequence to have previously determined the concept that one wants to elucidate through observation before questioning experience about it; for one find in experience what one needs only if one knows what to look for."[417] The dispute with Herder, in other words, led Kant to do more than simply defend his theory of race: it led to a rethinking of scientific and anthropological inquiry more generally, and it spurred Kant to develop a theory of race and philosophy of history that was informed by his critical philosophy.

Herder rejected both the content and the method of Kant's theory of race. He argued that the concept of race was inappropriate to humanity and supported instead a unified account of humanity marked by multiple adaptive differences.[418] He rejected the strict division into four distinct races Kant had developed in *On the Different Races of Human Beings,* focusing instead on the wide variations amongst geographically dispersed human beings, and arguing for an account of human difference at the level of *Volk* (nation or people).[419] As such, he argued that race could not be discerned through natural history, as Kant argued, but through a physical-geographical history that focused on the history of the nation.[420]

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must take on the appearance of ramshackle hypotheses." Kant, Review of Herder. (translated in Eze, p. 68). The 1785 *On the Concept of a Human Race* opens with the scathing observation that "the knowledge which the new travels have disseminated about the manifoldness in the human species so far have contributed more to exciting the understanding to investigation on this point than to satisfying it." Kant, CHR 8:91.

[417] Kant, CHR 8:91.

[418] Herder was a pluralist and relativist for whom human capacities and happiness were relative to culture. The happiness and wellbeing of the individual was relative to his circumstance in life, as if "Nature took him in hand, and formed of him what was most fit for his country, and the happiness of his life. Herder, *Organization of the Peoples of Africa*. Translated in Eze (1997b), p. 78.

[419] Larrimore, (1999), p. 106; Muthu (2003), p. 224; Shell (2006), pp. 56-57.

[420] Larrimore, (1999), p. 106.

The central argument of the 1785 essay is both a response to Herder's objections and a theoretical clarification of the arguments Kant had made a decade before. Here Kant defines race as a necessary *a priori* concept revealed through the fact of necessarily hereditary characteristics, drawing on Buffon's definition of a species as those creatures capable of reproducing basic hereditary characteristics.[421] Race, Kant argues, is a necessary classification of the human species because racial characteristics are necessarily hereditary in the same way that human characteristics are necessarily hereditary.[422] Only a concept of race as an organizing feature of natural history can explain the patterned division of the races; mere description of racial variety, Kant argues, isn't sufficient.[423] In defending the concept of race, Kant introduces the distinction between natural history and empirical descriptions of nature that would be developed in the second part of the *Critique of Judgment.*

While defending race as an a priori concept essential to natural history, Kant reasserts the central tenets of his theory of race. First, he defends monogenesis and offers a clarification of his understanding of the role of seeds or predispositions in producing the development of racial difference. Against Herder, Kant took the variety of human difference as evidence of monogenesis and a strict taxonomy of race: all racial characteristics, Kant argued, originated in a single, original stem race as seeds or predispositions that would develop in response to climate and migration. That these characteristics are inherited unfailingly proves that four different patterns of development produced four different races; that a broader range of human variety exists is evidence of race

[421] For a discussion of Buffon's influence on Kant's definition of race in terms of necessary hereditary characteristics, see Shell (2006), pp. 59-61.
[422] Kant, CHR, 8:99. The "necessarily heritable characteristic" Kant refers to most often in this essay is skin color. He suggests that skin colour is a result of the cleansing of the blood of phlogiston and volatile alkali, arguing, for example, that Negro skin is organized "such that the blood, since it does not by far sufficiently remove enough enough phlogiston through the lungs, could dephlogistize itself much more strongly through the skin than is the case with us." CHR, 8:103.
[423] Kant, CHR, 8:96-97.

mixing. If race mixing is possible, then following Buffon's Law, all races must belong to a single species, with a single origin; if race is patterned, then it must be the result of a limiting generative principle such as the predispositions or seeds.[424]

In this essay, race is once again defined as development rather than degeneration, though Kant's arguments here focus on the adaptability and capacity for development of the races, rather than on descriptions of racial difference. His emphasis is on the link between human adaptability and the necessity of developing racial characteristics. He emphasizes the irreversible nature of this project, arguing that "after one of these predispositions was developed in a people, it extinguished all the others entirely" and that therefore, "one cannot assume that a mixing of different races according to a certain proportion could restore still the shape of the human phylum."[425] Kant would develop these concerns about race mixing and return to the idea of a hierarchy of racial development in 1788; the 1785 essay is best read as his first step towards defending the theory of race as a form of natural history and making this form of inquiry consistent with the critical philosophy.

Kant's response to Herder revealed an anxiety about the role of generation in developing racial characteristics. Herder argued that there is an infinite array of human variation, all emerging from "a vital principle which modifies itself from within."[426] Kant noted, in his *Review*, that this vital principle was similar to his own account of seeds or predispositions, but was concerned that Herder's account suggested an unlimited range of developmental possibilities. Kant demands, instead, that "the cause which organizes *from within* [is] limited by its nature to only a certain number or degree of differences in the development of the creature which it organizes."[427] As Susan Shell,

[424] Kant, CHR, 8:98-100.
[425] Kant, CHR, 8:105.
[426] Translated in Eze (199b), p. 68.
[427] Translated in Eze (1997b), p. 68.

John Zammito, and Catherine Wilson have argued, Kant's response to Herder belies a panic at the thought of an unlimited generative plasticity.[428] Against Herder's vision of a promiscuous nature, Kant emphatically reasserts his taxonomy of four races defined by a limited set of necessarily heritable characteristics. The development of race, for Kant, is evidence of a purposive but limited nature, not an unlimited and promiscuous nature.[429]

Kant levies another criticism against Herder in the 1786 *Conjectures on the Beginning of Human History*, where he plays on Herder's appeal to Genesis to defend historical theodicy by showing that, using Genesis, one could also reach the opposite conclusion. Where Herder argued that man was given all his capacities by a transcendental power, Kant emphasized the role of human initiative in propelling history.[430] Kant offers a vision of a teleological natural history, arguing that the human race "develops gradually from the worse to the better; and each individual for his own part called upon by nature itself to contribute towards this progress to the best of his ability."[431] Here, Kant ties his defense of monogenesis to a purposive account of human history, arguing that only if all of mankind is descended from a single original pair would a universal human "family" be the ultimate

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[428] Susan Shell (2006), pp. 61-62; John Zammito (2002); and Catherine Wilson, "What Was Kant's Critical Philosophy Critical Of?" Delivered at the British Society for the History of Philosophy Annual Conference at Sussex University, March 30, 2011.

[429] In doing so, he elevates skin colour as the critical marker of race: "the skin … carries in itself the trace of this diversity of the natural character which justifies the division of the human species into visibly different classes." Kant, CHR, 8:93.

[430] For a discussion of the Kant-Herder dispute in the Conjectures, see Reiss, H.S. (1991). *Kant's Political Writings*. Cambridge University Press, pp. 195-197.

[431] Kant, CBH. In Reiss (1991), p. 234. "Nature," in this text, is tied to a philosophical reading of history, and is used interchangeably with "providence." Man is not determined by nature: our capacity for reason breaks us free from the tyranny of nature and natural instinct. Kant describes a terse equilibrium between freedom and nature, one that seeks to balance his teleological account of human history with his emerging moral theory. Because we have reason and are therefore free, we are responsible for the outcomes of our actions, but we should not become discouraged by the negative course of human history: we act freely within the broader plan of nature, which guides us ever towards the good. This account of the balance between freedom and providence reappears in the early 1790s in *Theory and Practice*, where Kant suggests that the possibility of a cosmopolitan world depends as much on the actions of individuals as on the "highest wisdom" of providence. Kant, TPP. In Reiss (1991), p. 91.

human destiny.[432] This intimates a connection between the racial theory of monogenesis, which posits a singular (if racially divided) human race, and the possibility of universal colonialism: if a universal cosmopolitan order is the goal of nature's plan, then a shared origin would provide "the most appropriate measures to promote sociability as the principle end of human destiny."[433]

Kant's playful appeal to scripture in the *Conjectures* earned him a new critic: the explorer and naturalist Georg Forster, whose ethnographies of Polynesia were cited by Herder and likely used by Kant. Forster published a two-part criticism of Kant's work in 1786[434] in which he criticized both Kant's hypotheses and his method, charging Kant with introducing theological considerations into scientific inquiry and misusing travel reports.[435] Forster thought Kant's arguments were too metaphysical to ground solid empirical observations, and denied that a purposive natural history was possible. He rejected the concept of race, and defended the German physician Sommering's polygenetic claim that Africans were "a second species of mankind."[436]

Kant came to the defense of both monogenesis and his own method in his final significant work on race, where he most explicitly develops a teleological, practical account of race and lays the groundwork for Part II of the *Critique of Judgment.* Kant criticizes Forster (and, by extension, Herder) for misunderstanding the teleological principles that guide his account of human history: any careful

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[432] Kant, CBH. In Reiss (1991), p. 222. Because the *Conjectures* is a playful text which maps a Biblical origin story onto Kant's account of natural history, it is difficult to know how seriously we should take this claim about the "original pair" as an accurate account of Kant's vision of monogenesis. The strategic link between a monogenesis and the possibility of a cosmopolitan world is clearly assumed in Kant's various claims about the unity of the human race.

[433] Kant, CBH. In Reiss (1991), p. 222.

[434] The criticism was published in the *Teutsche Merkur*, the same journal in which Reinhold published a spirited defense of Herder against Kant, also in 1786. Forster evidently assumed that Kant was defending a literal interpretation of Genesis as scientific truth, rather than playing on the arguments developed by Herder. For more, see Zammito (1992), p. 208.

[435] For a discussion of Forster's critique of Kant, see Zammito (1992), pp. 208-211 and Larrimore (1999), p. 108.

[436] Larrimore (1999), p. 108. Sommering was a physician and anatomist, and a colleague of Forster's at the University of Mainz.

investigation of nature, Kant argues, must begin from principles in order to guide observation. Kant distinguished between the study of nature that Forster advocated and the study of natural history,[437] arguing that the former was pure observation, while the latter had the capacity to explain empirical data. Against Forster's charge that his approach to science was too metaphysical, Kant defends the role of metaphysical principles in organizing observation, maintaining objectivity, and making possible a natural history capable of presenting a coherent account of causal relations between observed phenomena.[438] The distinctions delineated here would be further developed in the third *Critique*, where Kant distinguishes between a mechanistic and teleological account of nature, arguing that only the teleological method can offer a satisfactory explanation of natural phenomena, and defending the right of the "archeaologist of nature" to rely on reflective judgment in order to seek out final causes in nature.[439]

Accordingly, in *On the Use of Teleological Principles in Philosophy*, Kant defends race as an a priori concept necessary to natural history, rather than a thing found in nature: in the language of the critiques, race is a concept fruitful for the reflective, rather than the determinant, judgment. Race, in other words, is a metaphysical term, a concept crucial to a teleological understanding of history. Empirical observation of racial variety, as offered by Herder and Forster, cannot sufficiently explain the patterned persistence of racial difference.[440]

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[437] Natural history, Kant argues, which "concern[s] itself with investigating the connection between certain present properties of the things of nature and their causes in an earlier time in accordance with causal laws that we do not invent but rather derive from the forces of nature." Kant, UTP, 8:161

[438] Kant, *On the Use of Teleological Principles in Philosophy*. [Henceforth, UTP.] 8:160-161.

[439] See CoJ, section 80.

[440] Kant, UTP, 8:160-161, 163. The method of studying race that he defends here is a teleological metaphysics which is not meant to explain "how the line of descent itself might have come into existence" but to develop a theory of original predispositions that organize the teleological development of the human race. In this sense, Kant's claims in the *Use of Teleological Principles* can be seen as a critical prolegomena to his account of human predispositions in the *Religion within the Limits of Reason Alone* (1793).

From this starting point, Kant clarifies the basic tenets of his theory of race. He once again defends monogenesis, this time against the attacks by Forster: he and Forster agree on the empirical data (there are great differences between European and African peoples) but disagree on the explanation. Forster attributes this to a distinction in species; Kant attributes it to a racial division of a single human species. Kant defends the monogenetic argument on the grounds that it is more economical to suppose that nature created a single species with the capacity to adapt.[441] This explanation is superior, moreover, because it is capable of explaining *why* racial difference occurs (as a method for adapting human beings to life in variable conditions) rather than simply *that* it occurs.[442] Kant's theory, in other words, emphasizes the developmental nature of race, rather than a purely empirical account of race difference. Thus, the monogenetic argument can explain the geographical isolation of the races and the variation of races across a given climate and latitude: patterned generation, rather than climate alone, explains the dispersion of races on different continents. The seeds and dispositions that make this differential development possible are preformed in the species as a whole, but developed differently in each of the different races as they migrated around the world. Given this capacity for adaptation, "a special, wise act of Providence is not, therefore, required to bring them to such places to which their predispositions are fitted."[443] By making human beings fit to live anywhere on the planet, the development of predispositions into racial characteristics both is the simplest explanation for patterns of human diversity, and is essential to nature's plan for the human species.

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[441] Kant, UTP, 8:169.

[442] In making this distinction, Kant hews closely to Buffon's appeal to patterns of generation as the explanation of difference, while critiquing Forster's appeal to a Linnean style of explanation, which emphasized skin colour alone, rather than differential development. Kant now argues that skin color is an imprecise marker of race, but repeats his arguments that "the skin is the great instrument for discharging everything that should be eliminated from the blood" – an argument also deployed to defend the 'purity' of whiteness compared to the other races. Kant, UTP, 8:170.

[443] Kant, UTP, 8:173.

Yet the development of the races did not occur evenly. Kant tells us that the seeds of racial differentiation developed in response to migration and changes in climate. However, he seems committed to the view that, while nature foresaw an initial development of the races, a second development or migration (except, presumably, a migration of the highly-adaptable white race) would run counter to the purposes of nature. He reiterates his account of the retardation of the American race, claiming that if a race changes climate during its development, development ceases, and the race becomes 'unsuitable for any climate' – which is why, Kant says, "this race, too weak for hard labor, too indifferent for diligence, and unfit for any culture, still stands – despite the proximity of example and ample encouragement – far below the Negro himself, who undoubtedly holds the lowest of all remaining levels by which we designate the different races."[444] The full development of racial characteristics and basic human capacities, in other words, is variable: some races, like the Americans and Negroes, lag behind.[445] The development of racial characteristics is here explicitly tied to drive, skill, and capacity for work: the underdevelopment of racial characteristics corresponds to weakness of will and lack of skill.[446]

The development of the races is threatened not only by sudden migrations or changes in climate, but also by race mixing, which would weaken the adaptive advantages of each race. Kant argues that nature permits "but does not encourage" racial mixing, since this would lead to races less perfectly adapted to a given climate.[447]

Taken together, the concern about race mixing and the argument that further migration

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[444] Kant, UTP, 8:176.

[445] Though Kant does his best to develop a taxonomy of race as clear as those developed in the 1770s, he struggles with evidence brought forward by Forster. He is troubled, in particular, by the presence of members of the Negro race in the South Pacific Islands, and claims that they may have come to be there from Madagascar owing to a "powerful upheaval of the earth," before suggesting that his theory of race ought to be confined to racial difference on the major continents, since the inhabitants of islands appear to be troubling anomalies. Kant, UTP, 8:177.

[446] Bernasconi (2011). Pp. 308-309.

[447] Kant, UTP, 8:166-167.

might retard the development of non-white races suggest a continued presumption that global cosmopolitanism should remain a white enterprise. If race mixing diminishes the potential for development for each race, then racial difference has become a normative requirement of human development. If only whites can migrate, adapt, and settle without delaying further development, then a cosmopolitan world would be one in which whites settle around the planet and non-whites remain in the climate or region suitable to their further development. Certainly, as I will argue, this presumption should be taken into account when examining Kant's claims about cosmopolitan hospitality and global citizenship in the cosmopolitanism of the 1790s.

The culmination of Kant's account of race as a concept necessary to natural history comes in Part II of the *Critique of Judgment*, where the arguments about teleological method offered in *On the Use of Teleological Principles in Philosophy* find their place in the final phase of the critical project. Here, Kant develops the distinction between a description of nature and natural history that had characterized his anthropological arguments since his first defense of Buffon's natural history against Linneaus' biological taxonomy in 1775, and which had been refined throughout his debates with Herder and Forster in the 1780s. Though Kant doesn't explicitly invoke his theory of race, the arguments defending the theoretical efficacy of teleology are almost identical to the defense of race as a concept of natural history offered in 1788. In the *Dialectic of the Teleological Judgment*, Kant argues that the two modes of inquiry are neither inconsistent nor contradictory,[448] but that explanation of pheneomena can only occur at the level the teleological method of natural history.[449] As a necessary

[448] "We should judge nature according to two different kinds of principles without the mechanical way of explanation being shut out by the teleological, as if they contradicted one another." Kant, CoJ section 77.
[449] "To explain is to derive from a principle, which therefore we must clearly know and of which we can give an account… Mechanism, then, and the teleological (designed) Technic of nature, in respect of the same product and its possibility, may stand under a common supreme principle of nature in particular laws. But since this principle is *transcendent* we cannot, because of the limitation of our Understanding, unite both principles *in the explanation* of the same production of nature… we

constituent of natural history,[450] race belongs to the reflective, rather than the determinant judgment.

This distinction marks a turning point in Kant's theory of race in two ways. First, it marks Kant's final defense of his theory against his critics. The only critic Kant explicitly mentions in the *Critique of Judgment* is Blumenbach, and Robert Bernasconi has convincingly argued that Kant is seeking Blumenbach's conversion to his own account of the distinction between *race* and *variety* – a distinction that hews, as Kant explains in his response to Forster, to the distinction between natural history and mechanistic descriptions of nature. While Blumenbach, like Kant, had always been a monogenist who focused on patterns of generation, he used the term *variety*, rather than *race*, to account for human difference. In 1780, Blumenbach rejected preformation as an explanation of patterns of generation and developed his own account of *Bildungstrieb*, or a formative drive.[451] By the late 1780s, Blumenbach's theory of human variety was significantly more accepted and widely-read than Kant's own theory of race: both Forster and Herder, for example, preferred Blumenbach's language of *variety* to Kant's notion of *race*. By praising Blumenbach's account of *Bildungstrieb* in the *Critique of Judgment*, calling it "an indispensible principle of an original organization" Kant both suggests that it is consistent with his own principle of original organization (seeds or predispositions) and recasts it as a principle of natural history rather than as a description of nature. In this recasting, Bernasconi argues, Kant is seeking Blumenbach's conversion to the language of race and the method of natural history, perhaps judging that the best way to ensure the continued relevancy of

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revert then to the above fundamental proposition of Teleology." Kant, CoJ, section 78. "Hence we do not know how far the mechanical method of explanation which is possible for us may extend. So much only is certain that, so far as we can go in that direction, it must always be inadequate for things that we once recognize as natural purposes; and therefore we must, by the constitution of our Understanding, subordinate these grounds collectively to a teleological principle." CoJ section 78.

[450] Or an *archaeology of history,* as Kant calls it here: CoJ, section 80.

[451] Blumenbach's refutation followed an experiment in which he cut the tentacles off polyps and noted that they regrew, but also pointed to the existence of half-breeds like mulattoes – an argument Kant himself had published 5 years earlier. Blumenbach's refutation of preformation was also a rejection of Kant's notion of *Keimes*, or seeds, but Kant does not seem to have noticed the import of Blumenbach's argument. Bernasconi (2006), p. 77.

his own theory was to tie it to Blumenbach's. If this was Kant's intention, it worked: in the 1797 *Handbuch der Naturgeschichte*, Blumenbach argues that Kant had correctly identified the distinction between a variety and a race, and following Blumenbach, race became the dominant term for defining human difference in the 18th century.[452]

The arguments in the *Critique of Judgment* mark a second shift in Kant's theory of race. Having distinguished between a description of nature and natural history (of which race was a necessary element), and located this distinction in the antinomy between the determinant and reflective judgment, Kant proceeds to develop his account of natural history, following the teleological argument to its inevitable conclusion: the moral development of man as the ultimate purpose of nature. The emphasis on drive, skill, and capacity as markers of (differential) human development already evident in the 1788 essay are explicitly developed here, as Kant argues that the development of aptitude and skill are "the ultimate purpose which we have cause for ascribing to nature in respect to the human race."[453] Kant explicitly ties the development of these aptitudes to the formation of the civil condition and, ultimately, to a cosmopolitan world order.[454] Politics, history, and a future cosmopolitan world, in other words, are questions that emerge out of natural history: they belong, methodologically, to the same form of inquiry, organization, and judgment that produced the theory of race.

3.4 The Silent Years, Take One: Kant's account of race in the 1790s

Kant published no major works on race in the 1790s, though his interest in race is evident in much of his moral and political writing of this period. Scholars have suggested three broad explanations for Kant's silence on race during the 1790s. Pauline Kleingeld argues that this silence

[452] For more on Kant's influence on Blumenbach, see Bernasconi (2006).
[453] Kant, CoJ, section 83.
[454] Kant, CoJ, section 83.

suggests a radical shift in his views: the Kant of the 1790s, she argues, has rejected his theory of race in the name of a universal cosmopolitanism.[455] Robert Bernasconi suggests that Kant may simply be responding to the controversy following his debates with Herder and with Forster: perhaps Kant recognized that his views on race were controversial, and kept them distinct from his moral and political philosophy for this reason.[456] Mark Larrimore argues that Kant didn't publish on race in the 1790s because he didn't have to: his previous writings on race were by now well-established (particularly following Blumenbach's conversion) and frequently republished. Larrimore contends that the section on race in the *Anthropology* is abbreviated for precisely this reason – it was the one piece of his anthropological arguments that he could assume his readers already knew.[457]

The only piece devoted to race appears in the 1797 *Anthropology*, where Kant devotes just a single paragraph to the topic, and focuses entirely on the dangers of race mixing. Miscegenation, he argues once again, threatens to undermine the development of human capacities.[458] Kant opens the chapter on race with reference to his already well-established theory of race "with regard to this subject, I can refer readers to what Herr Privy Councilor Girtanner has presented so beautifully and thoroughly in explanation and further development in his work (in accordance with my principles."[459] Just the previous year, Girtanner had published his *Uber die Kantische Prinzip fur die Naturgeschichte*, in which he delineated Kant's theory of race and demonstrated that Blumenbach's account of race had adopted several of Kant's core arguments.[460] Kant's endorsement of

[455] Kleingeld (2007). Robert Bernasconi points out that Kant was silent about many of his previously published views in the 1790s, arguing that "if silence is evidence of recantation, who knows how much of Kant's theoretical work survived the final decade of his life?" Bernasconi (2011), p. 301.
[456] Bernasconi (2001), p. 27; Bernasconi also suggests that this may also be the reason Kant did not explicitly discuss race in the *Critique of Judgment*, despite his implicit references to it. Bernasconi (2006), p. 80.
[457] Larrimore (2008), p. 358.
[458] Kant, AA 8:321.
[459] Kant, AA8:320.
[460] For a discussion of Girtanner's book, see Robert Bernasconi, (2001), "Who Invented the Concept

Girtanner's account cannot suggest that he had wholly repudiated his theory of race, as Kleingeld and others suggest.[461] Kant's brief comments about race in the *Anthropology* suggest a continued commitment to his position in the previous essays on race, and a presumption that his readers would already be familiar with those positions. In his warning against any kind of race-mixing he implicitly reiterates his argument about the purposive nature of racial difference, signifying that race remained a form of difference with normative value.

We should hold the reiteration of this argument against racial mixing in tension with the concept of cosmopolitan hospitality. While some Kant scholars have argued that Kant's reliance on the value of difference and the importance of hospitality suggest a commitment to cultural pluralism,[462] I argue that it hints at the ongoing influence of his theory of race in his mature cosmopolitanism. The reiteration of the prohibition against racial mixing suggests, first, that race remains a normatively important category of human difference, and second, that because this prohibition against racial mixing is borne out of a concern for protecting the purity of the white race, whiteness retains its status as that racial category which transcends race and makes cosmopolitanism possible. Moreover, given Kant's claim that a member of an insufficiently developed race would slow the development of their predispositions if they migrated to another part of the world, it is likely that only Europeans would be sufficiently developed to travel, and thus to enjoy the right to cosmopolitan hospitality.[463] Thus, even in the late 1790s, the cosmopolitan ideal of

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of Race?" in *Race* Bernasconi, ed.., pp. 16-19 and (2006) "Kant and Blumenbach's Polyps" in *The German Invention of Race* eds. Larrimore and Egan, pp. 74-76, as well as John Zammito, (2006), "Policing Polygeneticism in Germany" in *The German Invention of Race* eds. Larrimore and Egan, p. 42

[461] Moreover, his endorsement suggests that he agreed with Girtanner's premise that his own theory and that of Blumenbach were by now largely consistent.

[462] Cf Muthu, S. (2003). *Enlightenment Against Empire*. Princeton: Princeton University Press.

[463] Kant, UTP, 8:175. Kant argues that, if a "small band" of a race group migrates from one climate to another, "then the development of this variant form must gradually come to a standstill." He returns to the example of the American race, who migrated south across the American continents, arguing that "the fact that their natural disposition had not yet reached a complete fitness for any

"citizens of the world" must be held in tension with the normative force of both racial difference and whiteness. However, as I will argue in the next chapter, the ongoing influence of his writings on race need not suggest that Kant was not committed to a universal cosmopolitanism.

4.3.5. The Silent Years, Take Two: Two Models of Exclusion

Kant's views on race in the 1790s are seemingly contradictory: on the one hand, as I have argued, the evidence suggests that Kant did not disavow his theory of race. On the other hand, however, Kant writes very little directly about race in the 1790s, and focuses instead on developing his account of cosmopolitanism. This apparent contradiction disappears, however, if we understand the cosmopolitanism of the 1790s as introducing a new phase of Kant's thinking about race.

Kant's views on race evolved and were continuously refined over the course of his career. The theory of race in the 1770s is unabashedly biological, and draws solely on empirical sources. In the 1780s, as Kant attempts to defend his theory of race and bring it into line with the critical project, he ties the theory of race more closely to his account of natural history and the philosophy of history. Race, like reason, is a predisposition that must be developed in the species as a whole, and accordingly, it occupies the dynamic space between an understanding of history as purposive and an account of human freedom, initiative, and endeavor. Race remains a concept explaining biological diversity, in other words, but it is increasingly tied to broader questions about the development of human capacities as a whole. By the late 1780s, the theory of race suggests an explanation for the uneven development of human capacities, and Kant is concerned with the

one climate provides a test that can hardly offer another explanation why this race, too weak for labor, too indifferent for diligence, and unfit for any culture, still stands – despite the proximity of example and ample encouragement – far below the Negro himself, who undoubtedly holds the lowest of all remaining levels by which we designate different races." This passage is particularly telling, given that Kant hints that if the development of racial adaptation has not been achieved, then no proximity to civilization can encourage the development of other capacities. See Shell (2006), pp. 66-67 for further discussion of the role of capacities in Kant's theory of race.

natural and historical forces that might slow or speed this process of development.[464]

The question of what conditions are necessary to facilitate the full development of human capacities is first explicitly posed in the third *Critique*, and becomes the overriding concern of the cosmopolitanism of the 1790s as it appears in *Theory and Practice* (1793), *Toward Perpetual Peace* (1795), and the *Rechtslehre* (1797). Kant's concern with the development of human capacities has not changed since the 1780s, but the questions Kant asks in these late texts signifies an important shift in his thinking on race: he asks not what geographical or climactic forces might speed the development of racial predispositions and human capacities, but what political and cultural conditions might spur the development of all capacities and predispositions, making the political unification of the human race possible. This shift does not entail, as I have argued, that Kant relinquishes his biological theory of race, but it does suggest that Kant had integrated these concerns into his broader practical project of envisioning the human race unified into a cosmopolitan whole.

Why does Kant turn from biological questions about the development of the human race to political ones? One explanation is that, as he argued in 1788, no further migration or climactic shift can effect the further development of the races: once developed, these predispositions can't be effected by a second migration. If this is the case, then the global migrations of the races taking

[464]*On the Use of Teleological Principles in Philosophy* is peppered with accounts of peoples whose development of natural capacities was slowed or stunted by migration or other "natural forces": "If through [natural] causes a small band of people of the old world is driven from southern regions to northern ones, then the development of this variant form must gradually come to a standstill... Consequently, a race would then be established which, in the event that it most south again, is forever one and the same for all climates. But, in actuality, this race would belong suitably to no climate, because of the change in the southern variant form was interrupted in the middle of its development, before its departure, by the northerly climate" (UTP 8:175). On the American race: "the fact that their natural disposition has not yet reached a complete fitness for any one climate provides a text that can hardly offer another explanation why this race, too weak for hard labor, to indifferent for diligence, and unfit for any culture, still stands – despite the proximity of example and ample encouragement – far below the Negro himself" (UTP 8:175-176). Similarly, the Papuans and other South Pacific Island people were "driven from the regions where they had previously lived" (UTP 8:177).

place in Kant's day (except in the case of the highly developed white race) could only have the effect of further retarding racial development. In order to explain how further development was possible, Kant needed a non-geographic account of the conditions that encouraged the development of human capacities.[465]

In the *Critique of Judgment*, Kant offers such an account, arguing that human capacities are best developed through culture, which harnesses the drive to work and enhances the development of skill. This development of skill will entail inequality, Kant tells us, echoing his 1788 claim that skill develops unevenly in the human race. The only way to prevent inequality of skill from producing a conflict of freedoms is to enter first into a civil community, and then into a cosmopolitan whole: "only in this can the greatest development of natural capacities take place."[466] Kant's final defense of his method of studying natural history (of which race is a necessary concept), in other words, leads him to lay the groundwork for the cosmopolitan arguments of the 1790s.

In the *Critique*, the anthropological and practical projects are explicitly linked, both methodologically and narratively: just as the cultivation of mankind's basic capacities is the ultimate purpose of nature, the final purpose of nature is the development of man's moral capacities. The central thesis of the political arguments of the 1790s link these projects together: the form of life most likely to enhance the development of human capabilities, and make possible the development

[465] A second possible explanation is that Kant was influenced by the French Revolution and the reformation of Prussian law in the 1790s, and that this interest shifted his focus to political, rather than anthropological, questions. David Harvey suggests that we might also understand this silence as a shift away from the "particulars" present in the study of geography as Kant took up "universal" historical questions. Harvey, David. (2011). "Cosmopolitanism in Kant's *Anthropology* and *Geography*." In Mendieta and Elden (eds.) *Reading Kant's Geography*. SUNY Press, pp. 280-281.The cosmopolitanism of the 1790s has a distinctly historical bent, suggesting that Kant's primary mode of analysis had shifted, but not that he had therefore denounced his prior arguments.
[466] Kant, CoJ, section 83. Robert Bernasconi argues that this reference in the *Critique* to *skill* and *discipline* as essential to culture entails an oblique reference to Kant's theory of race: Kant adds that "skill cannot be very well developed in the human race except by means of inequality among people," suggesting, Bernasconi argues, that the differential development of skill is operative in Kant's implicit defense of slavery. See Bernasconi (2011), pp. 308-309 and footnote 107.

of morality, is republican constitutionalism, preferably organized into a cosmopolitan whole.[467] Only participation in coercive political structures consistent with republican constitutionalism can bring about the final phases of human development.[468] At first glance, this emphasis on the development of human capacities is not explicitly raced. But if we return to the geographical and anthropological arguments of the 1770s and 1780s, we see that raced difference is explicitly defined as a difference in the development of capacities. Therefore, although Kant's historical analysis does not explicitly refer to his theory of race, his emphasis on the role of political institutions in developing human capacities entails an implicit reference to his theory of race. Through the political structures that encourage the development of these human capacities, raced difference becomes juridical difference.

To his biological theory of race, Kant has added a political, or institutional, dimension: just as racial development occurs unevenly, the development of culture or skill occurs unevenly. The deficiencies of inadequate racial development might be mitigated through participation in a political order that encourages the further development of capacities and culture. This was already hinted at in 1784, where he suggested that Europeans might ultimately legislate for non-whites in order to bring about the "matrix in within which all the original capacities of the human race might develop."[469] In the 1790s, Kant envisions universal, rightful institutional order that can help *all*

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[467] See, in particular, the language of *Towards Perpetual Peace*, where Kant argues that only coercive political law (in the form of a republican constitution) can compel men to live peaceably as good citizens. (In Reiss, 1991, pp. 112-113.

[468] When Kant argues in the *Rechtslehre* that European settlement of foreign lands must occur not through force but through contractual relations with the natives, he does not necessarily presume that the Europeans and natives in this story have achieved similar levels of development: it is entirely likely, I think, that his hierarchical account of race still stands even in his arguments against colonialism. In requiring Europeans to enter into contractual relations with the natives, Kant offers these natives the opportunity to participate in the political structures he thinks are most likely to enhance their further development. In other words, the natives in question demonstrate their capacity for further development when they make the choice to enter into contractual relations with Europeans.

[469] Kant, IUH. In Reiss (1991), pp. 51-52.

members of the human race "attain a good level of moral character."[470] The corollary, of course, is that those "natives" who remain outside this rightful institutional order have no hope of developing their human capacities or moral capabilities. In the philosophy of the 1790s, race can be achieved only through participation in a rightful political order. Yet in this very political order, race itself becomes invisible, transformed into institutionally structured forms of inequality. This does not entail, as Peter Fenves has argued, that race is "erased" from the political arguments of the 1790s, but rather than it has been embedded in political structures within which it remains operative but invisible.[471]

We mapped a similar transformation in Chapter Two, where I demonstrated that, within the juridical order of the *Rechtslehre*, the natural inferiority of women is transformed into the juridical inequality of wives. Likewise, as Kant shifts from geographical and anthropological studies to historical and political arguments in the 1790s, the theory of race explicitly developed in the anthropological and geographical arguments is implicitly embedded in the historical and political arguments. To his *biological account of racial inferiority*, Kant has added an *institutional account of inequality*. As we saw in the previous chapter, full equality and inclusion in Kant's state turns on one's position in the institutional order of that state. The Kantian state, in other words, purports to be blind to biological difference: relevant inequalities are institutionally produced and structurally maintained.

The arguments developed in the first half of this project emphasize the necessary relationship between Kant's universal principle of right and the institutional order and philosophy of the family through which rights are protected and produced. In doing so, these arguments offer a map of the political structures through which biological inferiority is transformed into juridical inequality.

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[470] Kant, TPP. In Reiss (1991), p. 113.
[471] Fenves, Peter. (2003). *Late Kant: Towards Another Law of the Earth*. Routledge, p. 101-105.

As we saw in Chapter One, Kant's account of the juridical state begins from an assumption that those beings with external freedom are embodied beings, and that embodiment entails a concrete set of problems for humans in the world that lead, inevitably, to the rise of possessive rights, competition over limited resources, and the delineation of individual discretionary space. Yet, as we saw in Chapter Two, as possessive relationships are transformed in the juridical order into the institutions of Private Right, the concrete nature of embodiment is institutionally transformed. Rightful relationships, as we saw in both the case of contract and domestic right, entail equality, and given the concrete inequalities between individuals, rightful equality entails an *abstraction from empirical conditions*. This abstraction occurs in three ways.

First, rightful relationships produce an *abstract equality.* Though men are presumed to be "naturally superior" to women, rightful marriage entails that both spouses are abstractly equal, with equal rights to one another, to legal protections, and to shared property. Yet husbands and wives are not equal as citizens: because only one member of a household can be independent, only husbands are eligible for active citizenship. Thus, through marriage, the biological inferiority of women is transformed into the political inequality of wives as dependent, passive citizens. The resulting inequality is both disembodied and consistent with right: the inequality of wives is an inequality produced through a rightful institutional order, not a direct result of embodied inferiority.

Second, rightful relationships produce a *transformation of external freedom*. As we saw in Chapter Two, the needs and dependencies of the body are managed within the domestic sphere, and organized under the distinct juridical rubric of domestic right. Within the domestic realm, external freedom is transformed, and this transformation produces an enclosed juridical space in which intimacy and embodied needs are contained. The individuals who emerge from the domestic sphere into the public and private realms have already been raised, fed, clothed, and cared for: fundamental embodied needs are confined within the domestic sphere, freeing public and private right from

fundamental embodied concerns. The independence and equality of active citizens in the public sphere turns on this structural *abstraction from embodied needs*.

Third, Kant's public sphere depends on the *abstract independence* of political subjects. As we saw in Chapter Three, access to equal citizenship and to full participation in the public sphere turns on a distinction in property ownership and labor practices. Those who must rent out their labor – those who are not the sole master of their embodied selves – do not qualify for full active citizenship. Embodied labor, like embodied need, is inconsistent with full independence and equality in the public sphere. Active citizens, in other words, are those who qualify not only for full independence but also for an institutionally disembodied equality.[472] In order to treat citizens equally, the state must organize rights, responsibilities, and protections according to positions in rightful institutions, rather than biological or embodied differences. Individuals are embedded in institutions designed to support, manage, and contain embodied needs; citizens, whose equality before the state is an abstraction from empirical conditions, are disembodied beings.

Thus, the absence of raced bodies from Kant's political arguments in the 1790s ought not to surprise us: bodies themselves are strikingly absent from this discourse. As we saw in Chapter Three, Kant's liberalism entails that inequalities are not determined at birth, but that all persons be capable of mobility within the institutional order that recognizes them as a member.[473] In the next chapter, I

[472] The disembodied equality of full citizens is structurally similar to Kant's account of "scholars" in *What is Enlightenment*: public reason, he argues, must be engaged in by private individuals rather than public officials. When public officials (or clergymen) speak as officials, in the voice of their office, they speak not as individuals in the domain of public reason, but as institutional voices speaking from an arbitrary source of authority embedded in an institutional framework. Public reason, as an open, public discourse between citizens as equals, entails an abstraction from empirical conditions: the official or clergyman must speak "as a scholar." In the same way, citizens in the public realm must interact as independent and equal persons: biological inequalities, intimacies, and interdependencies are inconsistent with this abstracted equality, just as political office is incompatible with equality in public discourse. WE. In Reiss, (1991), p. 56.
[473] Noting, of course, that there remains the possibility that Kant intended to exclude women *as women*. But I have argued (see Chapters Two and Three) that it is more plausible that Kant excluded

argue that Kant's cosmopolitanism entails that these liberal principles be extended to persons of all races, and that it does so by systematically transforming the political nature of raced difference. As Kant's interest shifts from anthropology to cosmopolitanism in the 1790s, a new discourse of race, equality, and human progress emerges. In this discourse, biological exclusions are transformed through the juridical order into institutional exclusions.[474] As I will argue in the next chapter, race has not disappeared from Kant's philosophy: it has been structurally embedded in his vision of a cosmopolitan world.

CONCLUSION

This chapter presented three arguments about the relationship between Kant's empirical and practical projects as they inform his cosmopolitan arguments in the 1790s. First, this chapter showed that Kant's interest in popular philosophy, despite a shift from geographical and anthropological arguments to historical and political arguments in the 1790s, retained a consistent set of concerns and theoretical frameworks. It argued that Kant rehearsed his teleological method in his arguments on race in the 1780s, and then deployed these arguments in the cosmopolitan philosophy of the

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women as wives because of their position in the institutional order. While the discussion of women in the earlier texts (most notably *Observations on the Beautiful and Sublime,* 1764), clearly expresses concerns about their biological inferiority, by the 1790s, Kant focuses on their institutional position as wives (with occasional jabs at the "natural superiority" of men). In the case of women, too, we see a shift from a biological model of exclusion to an institutional one, though there is also reason to believe that Kant's views on women did not change drastically over the course of his career.

[474] Where might this emphasis on institutional inclusion leave non-Europeans, with their less-developed natural capacities in Kant's cosmopolitan order? "Skill cannot be developed in the human race except by means of inequality among men," Kant tells us in the third *Critique*, suggesting that distinctions in developmental capacities will correspond to structural inequality in the political state. He argues that the vast majority will work "mechanically," selling their labor to provide the necessities of life to furnish the "convenience of leisure of others who work at the less necessary elements of culture, science, and art." CoJ section 83. In the rightful state as Kant lays it out in the 1790s, those who work "mechanically" are, for the most part, passive citizens; those skilled in culture, science, and art, who are their own masters, are active citizens. In the move from a state of nature into a political community, "natural" inequalities become rightful structural inequalities.

1790s. In this way, Kant's practical philosophy remained influenced by his empirical projects even in the 1790s.

Second, this chapter argued that because of the connections between Kant's empirical and practical projects, we cannot easily divorce Kant's universal principles from his empirical claims. I presented a detailed and historical account of the development of Kant's theory of race in order first to argue that Kant did not renounce his theory of race in the 1790s, and second, to show how the methodological framework Kant developed to articulate his theory of race would ultimately shape his cosmopolitan arguments in the 1790s. In doing so, I showed why a detailed understanding of Kant's empirical projects is essential to understand how he thinks a cosmopolitan world might be achieved.

Third, this chapter demonstrated that not only Kant did not renounce his theory of race in the 1790s, he added a new element to his theory of race by embedding it in his political arguments and thereby transforming raced inferiority into rightful juridical difference. In this move, Kant shifts from the explicit, biological account of race presented in his anthropological writings to an implicit and institutional account of inequality in the political arguments of the 1790s. By returning to the relationship between Kant's universal political principles and a concrete set of institutional structures mapped in the first half of this project, I argued that the institutional order that shapes Kant's political theory of right is designed to transform natural inferiority into rightful juridical inequality.

Thus, Kant does not reject his theory of race in the 1790s: his mature cosmopolitanism in fact ushers in a new iteration of his theory of race – one that is structurally embedded in his political philosophy and which turns on access to and participation in the institutional order. A detailed understanding of the role of Kant's empirical arguments in his mature practical philosophy is thus essential to an understanding of how he thinks a cosmopolitan world might concretely be achieved. In the next chapter, I look more closely at the intricate relationship between Kant's theory of race

and his cosmopolitanism, in order to argue that Kant's purported rejection of colonialism in *Perpetual Peace* and the *Rechtslehre* is not what it seems: far from presenting a cosmopolitanism which is opposed to colonialism, Kant maps a cosmopolitanism that presages a new form of colonialism.

CHAPTER FIVE:

TOWARDS A NEW COLONIALISM:
COSMOPOLITANISM AND THE TWO MODELS OF EXCLUSION

INTRODUCTION

This project engages with Kant's juridical cosmopolitan arguments in order to answer the question *how does Kant think a cosmopolitan world might be achieved?* The previous chapter explored this question by presenting the close connection between Kant's practical and empirical arguments in his cosmopolitan project. Kant's cosmopolitan arguments and his theory of race rest on a teleological understanding of human development so that Kant's theory of human difference, and by extension, his theory of race, is embedded within the teleological framework of the cosmopolitan arguments. Having traced the development of Kant's theory of race, and suggested that it has a significant impact on his conception of cosmopolitanism, I turn in this chapter to the development of his cosmopolitan arguments. Kant's political philosophy of the 1790s is predominantly concerned with developing a political framework to ground a world cosmopolitan order, and these arguments are infused with an awareness of colonialism, the spread of global capitalism, and the inevitability of interactions between Europeans and non-white others. Building on the arguments developed in Chapter Four, this chapter asks: how should we read the cosmopolitan arguments given Kant's continued defense of race as a normative category in the *Anthropology*? By tracing Kant's most concrete claims about how a cosmopolitan world might be achieved, this chapter argues that the mature Kant is working to develop a truly universal and inclusive account of a cosmopolitan world, and that he is doing so in light of his theory of race.

This chapter begins by examining the shift in Kant's accounts of race and cosmopolitanism between the 1780s and 1790s, which should complicate our understandings of both Kant's theory of

race and his mature cosmopolitanism. It then explores Kant's account of cosmopolitan law and his critique of colonialism in order to argue that the cosmopolitan arguments in the 1790s fall short of a thoroughgoing critique of colonialism. Finally, it explores Kant's most concrete claims about how a cosmopolitan world might be achieved in order to argue that he positions juridical cosmopolitanism as a "civilizing tool" for a raced world. I argue that, in the light of his theory of race, Kant's cosmopolitan arguments -- his concern with the "native" who stands outside this rightful order – rest on a particular form of colonial racism.

This examination of Kant's cosmopolitan arguments builds on several claims made in the first half of this project. First, in Chapter One, I presented Kant's account of the reciprocal and relational nature of external freedom in order to show that rights in the Kantian state are *structurally universal*: my rights are assured only if others recognize and respect them; if others fail to recognize my rights, then those rights are merely provisional. This will be important to Kant's claim that to opt to remain outside the juridical order is "wrong in the highest degree" since to do so is to refuse to recognize the rights of others.

Second, in Chapter Two I examined the construction of marriage in Kant's arguments and demonstrated that, though married spouses are "juridically equal," this equality is consistent with the "natural superiority" of husbands to wives. I argued that the structure of the household encloses this inferiority within the domestic realm, and in doing so, transforms the *actual* natural inferiority of women into the *abstract* juridical equality of wives. This chapter will show how a similar transformation renders race invisible but intractable within Kant's juridical state.

Third, in Chapter Three I examined the case of the infanticidal mother in order to argue that the illegitimate child does not warrant juridical protection in Kant's state. The illegitimate child is born outside marriage and thus outside the institutional framework of the juridical order. I argued that Kant's denial of protection to this child reveals the role marriage plays as a concrete social

contract, offering recognized entrance into the juridical order, and suggests that access to rights and recognition in the political order hinges on one's relationship to the institutional structures in that political order. In this chapter, I argue that those outside the juridical order may gain entrance only by agreeing to participate in the institutional structures that organize right. In this chapter and the next, I will examine Kant's claim that cosmopolitanism can be achieved only given the consent of the "native," and I will argue that, in making this claim, Kant's cosmopolitan arguments resemble a particular set of late colonial projects.

1. KANT'S CHANGING THEORY OF COSMOPOLITANISM

In the decade between 1784 and 1795, Kant reworked many of the core elements of his idea for a cosmopolitan world, including the relationship between politics and morality and the structure of cosmopolitan law itself. The differences are significant enough that we might think of Kant as having developed two distinct accounts of cosmopolitanism, and contemporary scholars who draw on a Kantian account would do well to discern carefully between the two.[475] The first section of this chapter considers the shift in Kant's cosmopolitanism between its earliest iteration in 1784's *Idea for a Universal History with a Cosmopolitan Aim* and its development in the political essays of the 1790s, with particular emphasis on the 1795 *Towards Perpetual Peace*, in order to lay the groundwork for a consideration of the structure of cosmopolitanism in the *Rechtlsehre.*

1.1 1784: Colonial Cosmopolitanism

Kant's first foray into cosmopolitan philosophy came in the 1784 *Idea for a Universal History*

[475] Pauline Kleingeld goes so far as to argue that Kant develops two distinct – and inconsistent – accounts of cosmopolitanism. Kleingeld, Pauline. (2009). Kant's Changing Cosmopolitanism. In Rorty and Schmidt (Ed). *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide.* Cambridge: Cambridge University Press, pp. 171-186.

with a Cosmopolitan Aim, which was likely the first of the anti-Herderian essays of the 1780s.[476] Kant's arguments in the *Idea*, like the theory of race developed in the 1770s, map the development of human predispositions guided by an optimistic, teleological understanding of nature.[477] In the *Idea,* the development of our predispositions is necessary for basic survival: without developing the capacity for reason, for example, we could not discover the basic diet and lifestyle that will allow us to survive. Though Kant doesn't say so here, the development of reason would need to occur alongside the development of race, since it is racial development that allows people to adapt to their particular climate or region: while the development of race allowed humans to live dispersed across the globe, the development of reason allowed them to build techniques of survival wherever they found themselves.[478] Along with reason, Kant highlights another natural predisposition key to our development: unsocial sociability, or our twin tendencies towards antagonism and seeking relationships with others, which draws humans closer and closer to one another, so that conflicts inevitably arose, until the moment of civilization becomes inevitable.[479]

Civilization, which Kant understands here as the development of culture within a law-governed social order, will have a curious effect on these dispositions: under the coercive conditions of law, our selfish tendencies will be redirected, leading us to develop culture, science, and moral principles:[480] "all man's talents are now gradually developed, his taste cultivated, and by a continued process of enlightenment, a beginning is made toward establishing a way of thinking which can with time transform the primitive natural capacity for moral discrimination into definite practical principles; and thus a *pathologically* enforced social union into a *moral* whole."[481] A lot of human

[476] In Larrimore (2008), p. 352.
[477] See Chapter Four, section 3.2
[478] Kant, ODR 2:431; CHR 8:99; UTP 8:177, IUH. In Reiss (1991), p. 42-43.
[479] Kant, IUH. In Reiss (1991), p. 44-45.
[480] Kant, IUH. In Reiss (1991), p. 46.
[481] Kant, IUH. In Reiss (1991) pp. 44-45.

development is packed into that sentence: not only will human beings be driven to live together in a social union, but they will develop moral reasoning which will, in turn, encourage a necessary moral transformation of that pathological social union, bringing about the creation of the just state. In the *Idea*, the capacity for morality is the prerequisite of the just state – or, as Kant famously puts it, "from the crooked timber of mankind nothing straight can grow."[482] Kant is already hinting at the moral arguments of the *Groundwork* here, when he argues that no enterprise is good unless it is "grafted onto a morally good attitude of mind."[483]

This transformation of the social union into a moral whole is the result of the development of our predispositions under conditions of civilization. If the greatest problem of the human species is the establishment of a just political condition, as Kant argues in the *5th Proposition*, we may rest assured that nature has designed us for this: the culmination of the development of human predispositions will be the development of moral capacities.[484] The moment of civilization, as Barbara Herman has argued, marks the "watershed" moment in the development of human predispositions in the *Idea*.[485] Prior to civilization, our capacities are developed by necessity: we find ourselves in difficult conditions, and we adapt our given predispositions in order to survive. The conditions of civilization will speed the development of our dispositions because, as Kant argues in the sixth proposition, "man needs a *master* to break his self-will and force him to obey a universally valid law under which everyone can be free."[486]

A master of this sort is necessary for both individuals and for states, and accordingly, Kant argues in the seventh proposition that "the problem of establishing a perfect civil constitution is

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[482]Kant, IUH. In Reiss (1991), p. 46.
[483]Kant, IUH. In Reiss (1991), p. 49.
[484]Kant, IUH. In Reiss (1991), p. 45.
[485]Herman (2009), pp. 155-156.
[486]Kant, IUH. In Reiss (1991), p. 49

subordinate to the problem of a law-governed external relationship with other states."[487] Kant envisions a strong and coercive world federation, wherein the relationship between states is analogous to the relationship between individuals: just as wayward individuals in the state of nature will enter a coercive political order to escape the state of nature and preserve their self-interest, states (or, at least, the rulers of states) will opt to enter a coercive world federation in order to avoid war and to preserve their self-interests.[488] Of course, the coercive, state-like world federation that Kant describes in the *Idea* isn't the final end of human history: it's a necessary step towards the full development of the capacities of mankind.[489] Once the moral capacities develop, man can work to transform coercive law into a just state.

The early account of a juridical cosmopolitan order emerges in an essay devoted to developing a unified account of human history: the purpose is not the legal order itself, but the conditions it provides for enhancing the development of human reason. The legal order provides the conditions in which the "crooked timber of mankind" can be cultivated, and the cosmopolitan world order is, accordingly, described as "the matrix within which all the original capacities of the human race may develop." Given Kant's claim that the development of moral capacities is a prerequisite for a just state, however, a troubling circularity seems to arise: a just cosmopolitan world order would seem to depend on the moral development of those involved. How is a cosmopolitan world to be hoped for in the light of Kant's account of race as it stood in 1784? How can a just world be imagined if the 'timber of mankind' is so crooked, and so many members of the race lag behind in the development of reason and rightful political constitutions?[490]

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[487]Kant, IUH. In Reiss (1991), p. 50.
[488]Kant, IUH. In Reiss (1991), p. 48.
[489]"The highest purpose of nature – i.e. the development of natural capacities – can be fulfilled for mankind only in society, and nature intends that man should accomplish this, and indeed all his appointed ends, by his own efforts." IUH, In Reiss (1991), p. 45.
[490]Kant, ODR 2:437-438; Kant, UTP, 8:176

We already know Kant's suggested solution: Europeans, he thinks, will simply have to legislate for everyone else.[491] This move clarifies the way in which our predispositions develop under conditions of civilization in the *Idea*. This relationship might seem to be circular: only through the development of moral capacities can a just state (and then a just world order) emerge, and the purpose of the just world order is to provide a setting in which all capacities – including moral capacities – can develop. But, in the light of Kant's writings on race during the same period, another picture emerges: Europeans, as the most developed of the human races, have the most highly developed capacity for reason, and the most developed political constitutions. This (combined, remember, with the unmatched capacity of Europeans to adapt to any climate) obligates Europeans to work to bring about a universal cosmopolitanism, in which they will legislate for non-Europeans in order to bring about a coercive legal order in which the natural capacities of non-Europeans might finally be realized.[492]

Kant's early account of cosmopolitanism, then, is explicitly and essentially racialized. The cosmopolitan project is possible only because white Europeans have developed sufficiently to undertake it. Europeans are sufficiently developed for this in two distinct ways: first, owing to geographical advantages, they have fully developed their racial characteristics, enabling them physically to move and settle anywhere in the world. Second, because of this racial advantage, Europeans have, over generations, developed their capacity for reason, culture, and politics, culminating in a civilization capable of legislating for a global political order. This development of reason, moreover, makes Europeans aware of the moral necessity of bringing about a cosmopolitan world in order to enhance the potential for the development of reason universally. Kant's early

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[491]Kant describes the achievement of a just cosmopolitan order thus: "we shall discover a regular process of improvement in the political constitutions of our continent (which will probably legislate eventually for other continents.)" IUH. In Reiss (1991). P. 52. The intimation is that this is a necessary but temporary step.
[492] Kant, IUH. In Reiss (1991). P. 53.

cosmopolitan arguments draw on the theory of race, and give an account of a universal, coercive state-like world federation that depends heavily on a racialized map of the world. The early cosmopolitanism, in other words, is a heavily raced and colonial cosmopolitanism.

1.2 1795: Republican Cosmopolitanism

Let's compare these arguments to those made in *Perpetual Peace* (1795). Kant's preoccupation in this essay (as in *Theory and Practice,* 1793) is to theorize the relationship between moral theory and political practice – in this case, to argue for the practicability of a future perpetual peace.[493] In the urgency of his call for a practicable, expanding world federation, and his impassioned critique of colonialism, we find a Kant optimistically committed to the possibility that a cosmopolitan world is indeed to be hoped for.

Kant defines global peace as a state formally instituted and shaped by shared principles of right, which must operate simultaneously at the levels of national, international, and cosmopolitan constitutions.[494] This multi-layered account of global politics is a marked departure from the arguments in the *Idea*. The *Idea* relied on a symmetrical relationship between national and

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[493] In *Theory and Practice*, Kant argues that a teleological or providential understanding of history is key to the possibility of progress. In his first discussion of cosmopolitanism of the 1790s, Kant says that "the success of this immeasurably long undertaking will depend not so much on what *we* do … and upon what methods *we* use to further it; it will rather depend upon what human *nature* may do in and through us, to *compel* us to follow a course which we would not readily adopt by choice. We must look to nature alone, or rather to *providence* (since it requires the highest wisdom to fulfill this purpose), for a successful outcome which will first affect the whole and then the individual parts. The schemes of men, on the other hand, begin with the parts, and frequently go no further than them." (Kant, TP. In Reiss, p. 90.) Genevieve Lloyd frames the providence argument as a powerful narrative device that allows Kant to reconcile freedom and necessity. Lloyd, Genevieve, 2009. "Providence as Progress: Kant's Variations on a Tale of Origins." In Rorty and Schmidt (Ed). *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide.* Cambridge: Cambridge University Press. p. 205; Alix Cohen has argued that the appeal to providence in the political essays of the 1790s is an extension of the teleological approach to studying history, and argues that *providence* plays a similar role in human history that *nature* plays in natural history (Cohen, 2009).
[494]Kant TPP. In Reiss, 1991. P. 99.

international law, wherein both are coercive systems of law, and international law draws on the justifications of national or civil law. In *Perpetual Peace,* Kant explicitly rejects the kind of world state defended in the *Idea*, arguing that the analogy between states in a lawless international situation and individuals in the state of nature doesn't hold up: states cannot be compelled to join a coercive legal order in the same manner as individuals, because states are already political entities.[495]

Instead, states might voluntarily join a world federation shaped by shared principles and an interest in peace.[496] National law and international law operate differently: the first is a coercive body of civil laws, while the second regulates interactions between states. Because individuals and states are different kinds of juridical entities, civil laws will function differently from international laws. A third form of law is introduced for the first time: *cosmopolitan law*, which governs "individuals and states, coexisting in an external relationship of mutual influences, [who] may be regarded as citizens of a universal state of mankind."[497] As it is described in *Perpetual Peace*, cosmopolitan law entails a world united *universally* by shared principles and structures of law.[498]

Kant's argument for the practicability of perpetual peace turns on twin claims, which reflect the dual nature of his account of cosmopolitan government in *Perpetual Peace*.[499] First, bringing about perpetual peace in the form of a universal political order governed by principles of right is a moral

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[495]Kant TPP. In Reiss, 1991. P. 102.

[496]Though Kant uses the word "federation" (*Föderation)* in both the *Idea* and *Perpetual Peace,* the entity he describes is clearly different. For this reason, I distinguish between the "coercive, state-like" federation of the *Idea* and the voluntary federation of *Perpetual Peace*. For further discussion of these two conceptions of federation in Kant, see Pauline Kleingeld, "Kant's Changing Cosmopolitanism", in *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide* eds. Amélie Oksenberg Rorty and James Schmidt. (Cambridge University Press 2009). Pp. 181-184.

[497]Kant TPP. In Reiss, pp. 98-99n.

[498]Kant TPP. In Reiss, 1991. P. 100.

[499]For further discussion of Kant's cosmopolitanism as a non-voluntarist scheme, and a clear framing of the tension between Kant's prudential, voluntarist and rightful, non-voluntarist accounts of cosmopolitan law, see Helga Varden, (2008). "International and Cosmopolitan Political Obligations." In *Coercion and the State* eds. Reidy and Riker, Springer Science and Business Media, pp. 239-250.

duty, required for the possibility of enforceable rights at all.[500] At the same time, it is a realistic and practical political proposition that both individuals and states would form an expanding, voluntary federation in order to escape war, further trade, and support their own self-interests. By supporting the first claim with the second, Kant claims to be developing a markedly practical cosmopolitanism. Because a universal world state is not immediately practicable, he suggests a voluntary, expanding world federation capable of preventing war as a prudential immediate step.[501]

We need not assume that this admission entails that he abandons his commitment to a universal rightful cosmopolitanism, which remains intact in his claims that any state which refuses to join this federation compromises the security of everyone else.[502] The universal necessity of participation in cosmopolitan and international law is required because "if even one of the parties were able to influence the others physically and yet itself remain in a state of nature there would be a risk of war."[503] Kant introduces the intermediate step of a voluntary world federation because the question of the practicability of perpetual peace is his prime concern in this essay. In the first supplement, he argues that the "essential question" of perpetual peace is how nature makes perpetual peace a realistic possibility.[504] If people aren't motivated by duty to submit to public laws, he argues, nature will compel them to do so through war. Just as in the *Idea*, Kant thinks that the twin tendencies of social unsociability will lead inevitably to civilization, in *Perpetual Peace,* the twin

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[500]Kant TPP. In Reiss (1991), 122. The distinction between moral and juridical law developed in the *Rechtslehre*, is already emerging here: in both cases, actions are guided by a universalizing formal principle, but only in the case of moral law can we be concerned with ends.
[501]Kant TPP. In Reiss, (1991) p 105.
[502]Kant admits that, because of the will of each nation, the realization of a world republic may not be possible. Thus, he presents what I have called, following Helga Varden, a "prudential intermediate step": "if all is not to be lost, this can at best find a negative substitute in the shape of an enduring and gradually expanding *federation* likely to prevent war." TPP. In Reiss, (1991), p. 104, 99n. That Kant continues to argue that a world republic is the ideal suggests that this "expanding federation" is both prudential and intermediate. For a discussion of the "intermediate" nature of this step, see Varden (2008), pp. 239-250.
[503]Kant TPP. In Reiss, (1991), pp. 99n.
[504] Kant TPP. In Reiss (1991), p. 112.

forces of commerce and war will lead the world towards the establishment of perpetual peace. International law will arise because "nature wills that this…. should happen, this does not mean that nature imposes on us a *duty* to do it, for duties can only be imposed by practical reason acting without any external constraint. On the contrary, nature does it herself, whether we are willing or not."[505]

In the *First Supplement*, Kant outlines three ways in which nature (or human nature) ensures the practicability of a cosmopolitan perpetual peace. First, the proximity of distinct peoples, and the limited resources over which they compete ensure that war will arise. States will work to avoid war in the same way that individuals in the state of nature avoid conflict: they will opt to submit to coercive public laws that ensure peace and external freedom. Second, though states have a tendency to try to avoid war through world domination, the diversity of peoples makes a global empire untenable. In the final edition of *Perpetual Peace*, Kant points to only two sources of unconquerable diversity: linguistic and religious differences; in the first edition, he included race as a source of difference that prevented intermingling.[506] These forms of diversity, he argues, do not prevent nations from agreeing on principles of peace, but they do discourage the unification of distinct peoples.[507] Third, though nations are often hostile and necessarily separate, they are drawn together by commerce, and will tend to seek peace in order to further their financial interests. Thus, international right, which

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[505]Kant TPP. In Reiss (1991), 112.

[506]For a discussion of the erasure of race from this passage in *Perpetual Peace*, see Fenves, (2003), pp. 100-104.

[507] This argument may help explain Kant's introduction, in the *Rechtlsehre*, of two distinct rubrics of comsopolitanism, in the forms of the *right of nations*, which works towards a world united for peace under a voluntary global federation (MS 6:343-351) and *cosmopolitan right*, which seeks the universal adoption of juridical institutions in the name of further rightful global trade (MS 6:353-353). For a discussion of this distinction, see Chapter Three, section 4. In this passage in *Perpetual Peace*, Kant emphasizes the difficulty of *uniting* people with linguistic and religious differences (i.e. under a global federation) – but he remains committed, I think, to the idea that different linguistic and religious groups can and should adopt the basic institutions of right. For discussion, see Chapter 5, section 2.1.

can only ensure a minimal limit to hostility, isn't sufficient to bring about the kinds of relations between states that ensure perpetual peace: cosmopolitan law, with its interest in encouraging commerce between stable states, is also necessary.[508] I will return to the relationship between cosmopolitan law and commerce in a later section; I turn now to Kant's curious defense of republican constitutionalism as the only framework capable of bringing about a cosmopolitan world.

1.3 Cosmopolitanism and the *Volk von Teufeln*[509]

Perpetual Peace outlines the legal framework necessary to bring about a united cosmopolitan world. Kant begins with a preliminary introduction to his conception of right, arguing that perpetual peace is possible only if every civil constitution is a republican one, governed by three central principles of freedom, democracy, and equality (principles that will be significantly developed in the *Rechtslehre).*[510] He argues that the republican constitution is the only form of political constitution consistent with right:

> the republican constitution is the only one which does complete justice to the rights of man. But it is also the most difficult to establish, and even more so to preserve, so that many maintain that it would only be possible within a state of angels, since men, with their self-seeking inclinations, would be incapable of adhering to a

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[508]Kant, TPP. In Reiss (1991), pp. 112-114.
[509]This phrase is sometimes translated as "race of devils" (i.e. Reiss, 1991), as "nation of devils" (i.e. Gregor, 1999), and as "people of devils" (i.e. Kleingeld, (2006)). For the purposes of this paper, I will use the "peoples" translation, since it seems most consistent with Kant's use of *Volk* elsewhere. For a discussion of Kant's use of the term *Volk*, see Louden, Robert, (2000). Kant's Impure Ethics: From Rational Beings to Human Beings. Oxford: Oxford University Press, pp. 88-91. Louden argues that *Volk* for Kant is reducible neither to nation nor race, but rather to a people delineated by a shared set of collective character traits, though he sometimes uses the term to refer to a failure to fully develop racial characteristics (i.e. in Asians and Greenlanders). Kant also uses *Volk* to refer to people within a nation state, as well as those loosely organized in a savage or barbaric state, (MS 6:353). In Perpetual Peace, Kant refers to the *Volker der Erde* (peoples of the earth) in his discussion of colonialism, suggesting that his use of the term in this text is particularly tied to cultural and race difference. (TPP, in Reiss (1991), p. 107.)
[510]Kant, TPP. In Reiss (1991), p. 99.

constitution of so sublime a nature.[511]

However, instead of repeating the claim from the *Idea* about the relationship between the goodness of a constitution and the moral development of its citizens, Kant now makes the opposite claim:

> but in fact, nature comes to the aid of the universal and rational human will, so admirable in itself but so impotent in practice, and makes use of precisely those self-seeking inclinations in order to do so. It only remains for men to create a good organization for the state, a task which is well-within their capability, and to arrange it in such a way that their self-seeking energies are opposed to one another, each thereby neutralizing or eliminating the destructive effects of the rest … so that man, even if he is not morally good in himself, is nevertheless compelled to be a good citizen. As hard as it may sound, the problem of setting up a state can be solved even by a people of devils.[512]

Much has been written about Kant's people of devils claim: it has been gingerly dealt with by a generation of Kantians. The dominant interpretation of this passage is that it refers to a Hobbesian moment in Kant where mankind is motivated by selfish inclinations.[513] Read in this way, it appears to be a departure from Kant's other moral and political arguments: in the midst of an essay about the moral obligation to bring about a voluntary global cosmopolitan order, Kant offers an account of law that positions persons as "devils" in a competitive scheme of nature, who must be forcibly compelled by coercive law to live peaceably with one another. Law then entails only coercively applied negative constraints.[514] The difficulty facing this interpretation is thus twofold: first, it is difficult to make this passage square with his claims about coercive law and political right elsewhere in the political philosophy of the 1790s. This interpretation hews closely to the original "crooked timber of mankind" claim in the *Idea*, where Kant does suggest that only a forcible, coercive legal

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[511]Kant, TPP. In Reiss (1991), p. 112.

[512]TPP. In Reiss (1991), p. 112.

[513]Cf. Arendt, Hannah (1989). *Lectures on Kant's Philosophy*. University of Chicago Press, p. 17-18; Guyer, Paul, (2006). *Kant.* Taylor and Francis, 2006)p. 367; Herman, Barbara (2007). *Moral Literacy*. Harvard University Press, p. 66n20; Korsgaard, Christine. (1996). *Creating the Kingdom of Ends.* Cambridge University Press, p. 34; van der Linden, Harry, (1988). *Kantian Ethics and Socialism*. Hackett,p. 145; O'Neill, Onora (1989)*Constructions of Reason.* Cambridge University Press, p. 114; Wood, Allen, (2005). *Kant.* Wiley-Blackwell, pp. 123-124.

[514]O'Neill, (1989) p. 114

order is possible where the timber of mankind grows so crooked.[515] In *Perpetual Peace,* however, Kant develops and defends an account of right that is inconsistent with the forcible institution of coercive law, arguing that states must *voluntarily* participate in a world federation, and that right must be consistent with the freedom of individuals.[516]

Second, this interpretation seems wildly at odds with Kant's claims about the dignity and freedom of persons developed in his moral and political philosophy. In the *Religion*, for example, Kant argues that we cannot choose to be devils: even the worst human being can't repudiate the moral law.[517] And the very possibility of a cosmopolitan world that Kant hopes for in *Perpetual Peace* will require a more optimistic account of man's moral development.[518] This inconsistency is sometimes managed by arguing that in this passage, Kant distinguishes between a practical understanding of man's freedom (which squares with his moral philosophy) and a theoretical understanding, within which man's possibilities are determined by external causes.[519] Yet this seems to suggest a dual reading of human nature: from a practical perspective, we are Kantian persons, rational agents capable of developing our moral capacities and conforming to our duty to bring about a condition of right, while from a theoretical perspective, we are selfish devils driven by competitive forces and a will to survive to forcibly coerce one another to submit to a legal order. This interpretation, in other words, cannot answer the objection that Kant's account of the justifications of law is importantly different from Hobbes'.

We might frame the difficulty with this interpretation in another way: as I have argued, *Perpetual Peace* is a remarkably optimistic text. In it, Kant is centrally concerned with developing the

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[515]Kant, IUH. In Reiss (1991) p. 46.
[516]Kant, TPP. In Reiss (1991), p. 99.
[517]Kant, *Religion within the Limits of Reason Alone.* 6:35.
[518]For a discussion of Kant's optimism about human freedom (and the problems this poses for the "people of devils" passage) in the political philosophy in the 1790s, see Korsgaard, (1996*)*, pp. 34-36.
[519]Cf. Korsgaard, (1996*)*, pp. 34-36; Wood, (2005) pp. 123-124.

following two claims: first, that a universal cosmopolitan order is to be hoped for, and second, that we have reason to believe that the first steps towards this cosmopolitan world are practicable and within reach. In the *First Supplement*, where the *Volk von Teufeln* passage is located, Kant defends his claim that there is a "guarantee of a perpetual peace"[520] and defines the practicability of this project as the "essential question" of the essay.[521] I suggest, therefore, that we might read the *Volk von Teufeln* passage in this light, as offering evidence that perpetual peace is possible even under the most inhospitable conditions. And I think we can read it in this way without resorting to an account of human nature that undermines Kant's broader moral project. We can do this, I argue, by recognizing that Kant's theory of race remains operative in his arguments in *Perpetual Peace*, and that the *Volk von Teufeln* passage may offer Kant's most powerful account of why a universal cosmopolitan world is to be hoped for.

Kant's arguments in the *Volk von Teufeln* passage turn on his account of the republican constitution as the mechanism of nature. Given a properly organized republican constitution, Kant argues, a developed moral capacity in all is not a prerequisite for citizenship in the rightful state. This is so because the republican constitution is *both* subjectively determined by principles of right and objectively motivated by providence or our purposive nature.[522] Kant argues that forming a republican constitution

> does not involve the moral improvement of man; it only means finding out how the mechanism of nature can be applied to men in such a manner that the antagonism of their hostile attitudes will make them compel one another to submit to coercive laws, thereby producing a condition of peace within which laws can be enforced.[523]

As a mechanism of nature, a republican constitution can be effective anywhere: it is not possible only where the "timber of mankind" already grows straight. The republican constitution can compel

[520] Kant, TPP. In Reiss (1991), p. 108.
[521] Kant, TPP. In Reiss (1991), p. 112.
[522] Kant, TPP. In Reiss (1991), p. 113.
[523] Kant, TPP. In Reiss (1991), p. 113.

even the most (savage, barbaric, and) immoral men to be good citizens. The *Volk von Teufeln* argument is offered as a worst case scenario: if *even* a people of devils could adopt a republican constitution, then a cosmopolitan world united by shared juridical principles can be hoped for.

In this way, the *Volk* passage is perhaps best read as offering a "worst case scenario" for the development of a rightful condition: it suggests that the full development of moral capacities is not a prerequisite for the ability to abide by rightful law. While Kant may have had in mind here self-interested and mercantilist Europeans, we might also find in this passage the specter of his concerns about raced difference and human development. Given what we know about Kant's theory of race and its corresponding account of the development of natural capacities and predispositions, it is possible that the "*Volk von Teufeln*" Kant describes are those peoples who have yet to fully develop their predispositions and capacities. First, as I have argued, Kant's theory of race shapes his cosmopolitan arguments in the *Idea.* Kant remains committed to his theory of race throughout the 1790s, and frames his arguments in the 1798 *Anthropology* as relevant knowledge for the citizen of the world,[524] so it is unlikely that these arguments would play no role in shaping his account of the plausibility of a cosmopolitan world in *Perpetual Peace.* Kant, after all, refers to his theory of race earlier in *Perpetual Peace*, when he reiterates his claim that "in taking care that people *could* live everywhere on the earth, nature at the same time despotically willed that they *should* live everywhere, even if against their inclination."[525] In the first edition of the text, Kant included race, along with language and religion, as the sources of necessary diversity that limit the intermingling of the peoples of the earth. Though scholars are divided about why Kant excluded the reference to race from the final edition, I argue that it suggests that it signals Kant's changing understanding of the relationship between race and cosmopolitan politics. Race, unlike language or religion, is a form of normative

[524]Kant, AA 7:120.
[525]Kant, TPP. In Reiss (1991), p. 110.

difference that precludes desirable *biological* intermingling, as Kant argues in the *Anthropology*, but not necessarily *political* intermingling: access to a rightful political order is the key to overcoming the differential development of racial difference, and bringing about the development of capacities in the species as a whole.

Second, though Kant does not use the term "race" (*Rassen)* in the final edition of *Perpetual Peace,* he does use the term *Volk von Erde* (peoples of the earth) in his description of peoples subject to colonialism: the term *Volk* is used more often in this essay to refer to nonEuropeans.[526] That Kant defends the rights of non-Europeans in his criticism of European colonial practices does not entail that he presumes any leap forward in the development of predispositions or moral capacities. Of course, this isn't to say that underdeveloped races are necessarily *Volk von Teufeln.* The *Volk von Teufeln* would not simply be the "natives" whose rights Kant defends in both *Perpetual Peace* and the *Rechtslehre*. Rather, the *Volk von Teufeln* might be made devilish through a barbarous social order that meets none of the standards of right. That they are described as a *Volk* (a people, or a nation) suggests that we are concerned not with natives in a state of nature, but with a people whose natural capacities or predispositions have been corrupted by a savage or diabolical barbarous civil order.[527]

Third, that the *Volk von Teufeln* is radically other to the European audience for whom Kant was writing is also suggested by his optimism about the practicability of perpetual peace: if mankind itself were a *Volk von Teufeln*, then we would have little reason to hope for a cosmopolitan future. If

[526]Kant, TPP. In Reiss (1991), p. 107. This usage is particularly interesting, given that in the later *Anthropology from a Practical Point of View* (1797), Kant would return to the clear distinction between the races (*Rassen)* and peoples *(Volk)*, wherein the latter referred to the characters of European nations. In *Perpetual Peace*, Kant distinguishes between "states" (*Staat)* and "peoples" (*Volk)*, where the former refer to developed constitutional orders and the latter refer, variably, to peoples of nations, peoples in savage states, and peoples exploited by colonialism. Though this is perhaps a tenuous claim, it seems possible that *Volk* carries a nonEuropean, or pre-civilized connotation within the context of *Perpetual Peace.*

[527]For a discussion of the position of barbarous or nonrightful civil orders in Kant's cosmopolitanism, see Varden, (2008), pp. 239-250. More work needs to be done to establish an account of relations between rightful and barbarous states in Kant's account of cosmopolitan law.

some part of mankind is "on the right track," as it were (as Kant hints in the *Idea)*, and if the republican constitution can transform *even* a people of devils, then Kant's claim that universal perpetual peace is practicable is considerably stronger.

Finally, Kant continues to frame the necessity of bringing about a cosmopolitan juridical order in terms of providing the conditions under which the predispositions of the human race can be developed. The development of moral capacities is not a prerequisite for participation in the republican political order: "we cannot expect their moral attitudes to produce a good political constitution; on the contrary, it is only through the latter that the people can be expected to attain a good level of moral culture."[528] The republican constitution thus produces a setting in which men become more likely to develop their moral capacities, (and, because the republican constitution is described as the "mechanism of nature," it is in this way that nature helps man to develop his natural predispositions.)

The *Volk von Teufeln* argument, read in this way, not only strengthens Kant's claim that a universal cosmopolitan order can be hoped for, but also remains consistent with his claims that the larger task of a legal cosmopolitan order is to provide the conditions under which mankind can develop his predispositions and moral capacities. It also strengthens the claim that the republican constitution can produce a rightful juridical order anywhere, regardless of the stage of moral development of its citizens.[529] The Kant of *Perpetual Peace* is an optimistic and pragmatic Kant, intent on mapping a practicable account of universal cosmopolitanism. Having mapped the transition

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[528] Kant, TPP. In Reiss (1991), p. 113.

[529]Here, Kant introduces the principle of publicness as a test of Right in the national, international, and cosmopolitan arenas of law, in much the same way that the principle of Right functions as a test of law in the *Rechtslehre*. Any juridical order whose laws pass these tests, and who instantiate the principle of right via a structured institutional order would meet the standard of right. The principles of publicness and right are described here as the formal condition of the moral law, in that each takes the form of a universal law, although they do not meet the material condition of the moral law, since they cannot prescribe ends. Kant, TPP. In Reiss, pp. 125-128.

between the cosmopolitanism of the 1780s and that of the 1790s in order to give an account of the *purpose* of Kant's cosmopolitanism, I return in the next section to the cosmopolitan arguments in the *Rechtlsehre* in order to investigate the *structure* of Kant's cosmopolitanism.

5.2 Juridical Cosmopolitanism in the *Rechtslehre*

In *Perpetual Peace*, Kant argues that the republican constitution is organized by three central principles: the *freedom* of all persons, the *dependence* of all subjects upon the law, and the *equality* of all citizens under the law.[530] He outlines some key features of juridical republicanism as derived from an account of right,[531] but the arguments in *Perpetual Peace* are only a preliminary discussion of right: a full discussion of right as the ground of a juridical constitution is developed two years later, in the *Rechtslehre*.

The arguments in the *Rechtslehre*, in other words, can be read as giving a developed account of the juridical constitution which "springs from the pure concept of right" and works as the "mechanism of nature" that constrains even evil men to behave as good citizens. Kant's account of right holds that rightful law is necessarily coercive, and that there are certain structures of law necessary to the protection of external freedom. Juridical constitutionalism, as the form of government ideally derived from an account of right, outlines the juridical and institutional framework necessary to protecting external freedom.

Kant's account of right, as we have seen, begins with a relational understanding of justice in which embodied individuals with an innate right to external freedom come into conflict with one another. Only a public authority can rightfully settle disputes and coercively enforce rightful relations between individuals as equals. To do so, however, it must abstract from empirical

[530] Kant, TPP. In Reiss, pp. 99-100.
[531] Kant, TPP. In Reiss, p. 99-101.

conditions in order to represent particular, embodied individuals as equal before the law. The institutions of Private Right both protect the external freedom of individuals as embodied beings and produce the conditions of abstract equality in the public realm. These juridical institutions presuppose that people live together, form relationships, and find themselves in conflict with one another (see Chapter One, section 2.3). The relationships Kant is concerned with in his account of the juridical order are assumed to arise inevitably in nature: the juridical order is a *response to* natural and inevitable conflicts that arise around property, contract, and intimate relations. By making these natural and necessary relationships consistent with right, the juridical order acts as the "mechanism of nature": it harnesses the self-interests that motivate these conflicts to create an institutional structure that instantiates the principle of right and coercively constrains individuals to become "good citizens."

A juridical constitutional order, accordingly, is a political order that defines an individual's "discretionary space" through a set of coercive institutions (see 1.2.3). These coercive institutions structure society in order to harness, restrain, and redirect selfish urges so that "the public conduct of citizens will be the same as if they did not have such evil attitudes."[532] This, in turn, produces a minimally rightful order in which external freedom is protected, and in which the necessary activities of human life are organized through institutions defining and adjudicating criminal law, property rights, contract rights, and domestic rights.[533] The institutions that provide this coercive constraint and organize access to citizenship entail a particular pattern of labor, intimacy, and equality.

[532]Kant, TPP. In Reiss (1991), p. 113. For a discussion of the Kantian juridical order and the coercive protection of discretionary space, see Chapter One, Section 2.3 and Pallikkathayil, Japa, (2010). "Deriving Morality from Politics: Rethinking the Formula of Humanity*." *Ethics* 121.1: pp. 116–147.

[533]He argues, for instance, that while republican governments may take numerous forms (autocratic, aristocratic, or democratic), they escape being despotic only if the governing body that legislates is distinct from the body that executes law. Kant, TPP. In Reiss (1991), p. 101. Kant offers his most robust account of these institutional rights in the *Rechtslehre*. See, in particular, MS 6:246-288 and 6:320-335.

Participation in a juridical constitution involves adopting a way of life consistent with maximum external freedom for all; participation in the constitutional juridical order thus entails the adoption of institutions necessary to defining and defending external freedom and discretionary space. These institutions, as we have seen, are not unintrusive: they structure permissible relationships in every area of life, and organize rights, responsibilities, and protections accordingly.

In Chapter One, I argued that a central premise of right as it is developed in the *Rechtslehre* is that our rights are protected only if they are reciprocally recognized and thus *structurally universal*.[534] This gives us a duty to work towards a universal cosmopolitan condition of right. Kant thus concludes his account of Public Right with an argument for the extension of the rightful order through juridical cosmopolitanism.[535] In this section of the *Rechtslehre*, Kant is concerned with extending the scheme of rights in order to support rightful global trade, rather than positing a global association of states (see Chapter Three, section 4). In his defense of perpetual peace, Kant argues that we have the right to coerce others into participating in a rightful order. We have this right, of course, because rights in the *Rechtslehre* are structurally universal: the very possibility of interactions with people who do not recognize my rights threatens to undermine my rights, making them merely provisional. To refuse to participate in the rightful order is to refuse to recognize my rights and the possibility of rights more generally, and is thus "wrong in the highest degree."[536] The republican constitutional order is right not because we consent to it, but because refusing to consent to it would

[534] Kant describes the structural universalism of possessive rights thus: "This claim involves, however, acknowledging that I in turn am under obligation to every other to refrain from using what is externally his; for the obligation here arises from a universal rule having to do with external rightful relations. I am therefore not under obligation to leave external objects untouched unless everyone else provides me assurance that he will behave in accordance with the same principle with regard to what is mine. This assurance does not require a special act to establish a right, but is already contained in the concept of an obligation corresponding to an external right, since the universality, and with it the reciprocity, of obligation arises from a universal rule." MS 6:255-256.
[535] Kant, MS 6:352-353.
[536] Kant, MS 6:307f.

be wrong.[537]

In this way, the cosmopolitan arguments Kant develops in the 1790s are necessarily inclusive: unless rightful law is extended universally, our rights are merely provisional. Kant highlights the necessary relationship between juridical and cosmopolitan rights in the *Rechtslehre*, where he argues that

> since the earth's surface is not unlimited but closed, the concepts of the right of a state and the right of nations lead inevitably to the idea of a *right for all nations* or *cosmopolitan right*. So if the principle of outer freedom limited by law is lacking in any of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must collapse.[538]

This argument holds that the stability of the republican constitution, in other words, is dependent on the extension of its principles to international and cosmopolitan law. A cosmopolitan world requires that all three levels of law function simultaneously: without cosmopolitan law a world governed only by civil and international law would likely revert to war.[539] But, as I argued in Chapter Three, Kant's distinction between the *right of nations* and *cosmopolitan right* suggests that he is not only concerned with peace, but also with the growing inevitability of global trade, commerce, and war. In the next section, I look first at Kant's account of juridical cosmopolitanism and rightful global trade before turning to his critique of colonialism.

2.1 Juridical Cosmopolitanism and Rightful Global Trade

In the *Rechtslehre*, Kant distinguishes between the *right of nations* and *cosmopolitan right*. Cosmopolitan right is concerned with the necessary conditions for rightful global trade, defined as

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[537] Kant, MS 6:307n

[538] Kant, MS 6:311.

[539] Cosmopolitan law entails a world united universally by shared principles; it is necessary, Kant says, because "if even one of the parties were able to influence the others physically and yet itself remain in a state of nature there would be a risk of war." Kant, TPP. In Reiss, pp. 99n.

the "thoroughgoing relation of each to all the others of *offering to engage in commerce* with any other."[540] In this argument, the *right* to seek out rightful relations with others is undergirded both by an *obligation* to seek out rightful relations with others, and the growing inevitability of global trade and travel. If Kant's juridical cosmopolitan arguments are consistent with his arguments about juridical right in this way, then the questions that motivates his cosmopolitan arguments seems to be *what would rightful global trade look like?* In this sense, Kant's cosmopolitan project remains alive and relevant for contemporary cosmopolitans, economists, and political theorists.

This question is an extension of Kant's central claims in the *Rechtslehre*, which concern how rightful possessive relations are possible if "the earth's surface is not unlimited but closed"[541] and persons will inevitably come into contact with one another. Kant's juridical cosmopolitan arguments thus build on his claim that a shared conception of rights hinging on the protection of external freedom and reciprocal recognition of possession can balance the conflicts that inevitably arise where persons (or states) come into conflict with one another.[542]

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[540] Kant, MS 6:352.

[541] Kant MS 6:311.

[542] By collapsing the distinction between individuals and states as juridical agents, Kant imagines a rubric of law capable of producing rightful relations even given the often hazy distinction between state and corporate interests abroad, which was emerging as a serious political and economic problem by the late 18th century, as corporate interests such as the East India Trading Company were increasingly supported by state military power. Kant's rubric of cosmopolitan law offers an interesting intervention into this dilemma, by assuming that commerce and trade are the business both of states and of individuals. Trade relations, after all, may entail agreements between nations, or between a nation and an individual or private entity, or between individuals and private entities. In both the *Rechtslehre* and *Perpetual Peace,* Kant presents a three-tiered structure of law (civil, international, and cosmopolitan) which admits a distinction in coercive power: this three-tiered account rests on the premise that a strict analogy between national and international law (such as that developed in the *Idea)* doesn't square with the nature of states: states cannot be compelled to join a coercive legal order in the same manner as individuals, because states are already political entities, structured internally by a constitutional conception of right. Because individuals and states are different kinds of juridical entities, civil laws will function differently from international laws: we don't have the right to coerce other *states* in the same way that we have the right to coerce non-civilized *individuals*. This clear distinction, however, holds only in the arena of international law: while the distinction between civil and international law carefully distinguishes between the juridical nature

A Kantian account of what rightful global trade relations might look like belies the claim that cosmopolitan right is merely concerned with the right to hospitality. A number of Kant scholars have recently argued that Kant's account of cosmopolitan law is limited in scope: cosmopolitan law, they argue, entails merely the right to hospitality – namely, "the right of a stranger not to be treated with hostility because of his arrival on someone else's soil."[543] In the most minimal sense, it is simply a right to seek refuge in cases where being refused hospitality would result in one's death.[544] It is not a right to settle, but it is consistent with a right to visit other lands and to seek relations with them, though it also entails that those overtures may be refused.[545]

These accounts, however, sidestep the central role of global commerce and trade in Kant's rubric of cosmopolitan law. Like any rightful trade, rightful global trade entails both a shared conception of rights and some form of public authority to assure those rights. Within a given state, contract, trade, and property rights are secure only if those rights are reciprocally recognized and coercively enforced: rightful relations require that all participants recognize, understand, and are bound by the same set of rules. Rightful trade at the global level likewise requires all participants to conform to the rules of right. If, as Kant argues in the *Rechtslehre*, rights are possible only given reciprocal coercion, then some form of cosmopolitan "public authority" is necessary to ensure rightful trade relations.[546] This need not entail any form of global governance: Kant's cosmopolitan

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of individuals and state, cosmopolitan law reunites the two. Within the rubric of cosmopolitan law, individuals and states function as similar juridical agents.

[543] Kant, MS 6:358 and TPP (In Reiss, 1991, pp. 105-107). Cf. Kleingeld (1999), pp. 513-515; Lloyd (2009), pp. 213-214; Varden (2008), p. 245-247.

[544] In this sense, Genevieve Lloyd argues that cosmopolitan hospitality is markedly similar to contemporary debates about refugees, asylum, and migrants laborers. Lloyd (2009), p. 214.

[545] Cf. Kant's discussion of the right to refuse hospitality, as in the cases of China and Japan (TPP. In Reiss (1991), p. 103. As I argued in the previous chapter, given Kant's claims about the developmental hazards involved in migration for non-whites, it is likely that the right to cosmopolitan hospitality is designed to be primarily enjoyed by Europeans travelling to non-European lands.

[546] As Helga Varden argues, if Kant's account of rightful relations requires the existence of an

arguments do not posit a necessary global federation. Instead, cosmopolitan right seems to call for the juridical structures that ground a shared conception of right to be adopted within distinct nation states. Thus, if cosmopolitan law is designed to bring about rightful global trade, then it entails far more than a mere right to hospitality: it entails the adoption of juridical structures that support a shared understanding of the rules of right.

Kant's rubric of *cosmopolitan right* thus suggests a radical transformation of the possibilities of juridical right: because it traverses borders, the rubric of cosmopolitan law creates new opportunities for commerce, capitalism, and the transformation of previously closed societies. Therefore, as I will argue in the next section, although Kant criticizes the colonial practices of the 18th century, his juridical cosmopolitanism offers a justification for the juridical transformation of non-European societies in the name of human development and rightful global trade. These arguments present a new model of international law that focuses on the "civilizing" possibilities of juridical transformation, and has a unique capacity to radically reorder the social, legal, and political practices of nonEuropean societies. In the next chapter, I will examine a particular colonial encounter to show that arguments like Kant's operated as justifications of colonial policy in the 19th century, when a colonialism emerged that focused on juridical transformation in order to develop "rightful" global trade.

5.2.2 Cosmopolitan Hospitality and Kant's Critique of Colonialism

There is little doubt that the early Kant maintains a troubling silence on colonialism and

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impartial public authority to adjudicate and coercively enforce those relations, then a rightful account of global trade would likewise entail an impartial and coercive global public authority capable of adjudicating disputes between individuals, nations, and private entities. In this way, a cosmopolitan public authority must have the capacity to permeate borders and coerce both individuals and nations. Varden (2008), p. 246.

slavery that, as Robert Bernasconi has argued, amounts to an implicit approval of those practices.[547] As late as 1788, Kant drew on pro-slavery tracts to support his theory of race and described Africans as incapable of working unless forced to do so by others – a comment that comes remarkably close to rationalizing the enslavement of Africans. In the 1770s and 1780s, then, Kant not only failed to criticize colonialism and slavery, but his own accounts of the racially hierarchical world order come close to defending and justifying these practices.

It is unfair, however, to accuse Kant of *never* having criticized slavery or colonialism. Though the cosmopolitanism of 1784 is an explicitly racialized and colonial cosmopolitanism, as I argued above, we do have reason to hope for a more universally egalitarian cosmopolitanism in the 1790s. In *Towards Perpetual Peace*, Kant makes his most impassioned criticism of colonialism with the sweeping claim that injustice anywhere in the world is felt everywhere.[548] He criticizes the conquest of the native peoples of the Americas, where the "native inhabitants were counted as nothing"[549] and the exploitation of India, which led to "oppression of the natives … and the whole litany of evils which can afflict the human race."[550] He points to the failure of slavery in the Caribbean, calling it "the cruelest and most calculated form of slavery," and argues that it was an economic failure.[551]

Kant's critique of colonialism, however, must be held in tension with his vision of a world united by cosmopolitan trade. As I argued in the previous chapter,[552] cosmopolitan hospitality

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[547]Bernasconi (2000), p. 151. Bernasconi argues that as late as 1792, Kant seemed to condemn the slave trade without condemning the practice of slavery itself – a critical distinction in European discourse at the time. See Bernasconi (2011), pp. 302-305.
[548]Kant, TPP. In Reiss (1991), pp. 107-108.
[549]Kant, TPP. In Reiss (1991), p.106.
[550] Kant, TPP. In Reiss (1991), p.106.
[551]Kant, TPP. In Reiss (1991), p. 107.
[552] In section (4.2.4), I argued that, given Kant's continued commitment to his theory of race, it is likely he presumed that only Europeans would be sufficiently developed to travel, and thus to enjoy the right to cosmopolitan hospitality. See Kant, UTP, 8:175, where Kant argues that, if a "small

largely entails the rights of Europeans to move around the globe and to enter into trade relations with non-European natives, since only Europeans have sufficiently developed their capacities to remain unharmed by further migrations.[553] In fact, Kant argues that European states have an *obligation* to "attempt to enter into relations with the native inhabitants" in order to "enter into peaceful mutual relations which may eventually be regulated by public laws."[554] This obligation underscores both the greater freedom of Europeans to move about the globe and seek out beneficial trade arrangements, and the necessity of a shared conception of law to make trade arrangements rightful. Since only Europeans have established a rightful system of law, this entails that non-Europeans must accept a foreign legal system in order to rightfully engage in trade. We should note that, in making this argument, Kant remains focused on the subjectivity and obligations of Europeans in producing a cosmopolitan world; despite a nod towards the importance of "self-governance" for the natives, Kant has troublingly little to say about the transformation of native subjectivities required by this new world order. I explore this problem in more depth in the next chapter.

Kant maps this global extension of the republican constitution in the *Rechtslehre.* Though he argues that we have the right to coerce others to participate in a rightful legal order, he suggests that in the case of cosmopolitan law, no coercion will be necessary: in his reference to the "Hottentots,

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band" of a race group migrates from one climate to another, "then the development of this variant form must gradually come to a standstill." He returns to the example of the American race, who migrated south across the American continents, arguing that "the fact that their natural disposition had not yet reached a complete fitness for any one climate provides a test that can hardly offer another explanation why this race, too weak for labor, too indifferent for diligence, and unfit for any culture, still stands – despite the proximity of example and ample encouragement – far below the Negro himself, who undoubtedly holds the lowest of all remaining levels by which we designate different races." This passage is particularly telling, given that Kant hints that if the development of racial adaptation has not been achieved, then no proximity to civilization can encourage the development of other capacities.

[553] See Chapter 4.3

[554] Kant, TPP. In Reiss (1991), p. 106.

the Tungusi, and most Native American nations" needing to enter into informed contracts about land use,[555] Kant suggests that non-Europeans will voluntarily consent to participate in a rightful scheme of trade. The obligation to extend republican constitutions universally thus "is not, however, a right to *make settlement* on the land of another nation; for this, a specific contract is required."[556] This contract, moreover, must not "take advantage of the ignorance of those inhabitants with respect to ceding their lands."[557] This participation need not entail any form of global governance, but it will involve the adoption of the basic rules of right. Because the republican constitution successfully defends external freedom and grants basic rights to all participants, *even* a *Volk von Teufeln* would opt to adopt this order, "if only they had understanding."[558]

Thus, though Europeans have a duty to bring about a juridical cosmopolitan order, and this duty includes a right to visit all regions of the globe, it also entails an obligation to make fair and reasonable contracts with foreign others.[559] In making these claims, Kant is primarily concerned with interactions concerning trade and thus, he wants non-Europeans to enter into informed contracts about those property rights.[560] Kant has made a critical assumption about the possibility of

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[555] Kant, MS 6:353; for a discussion of this passage, see Chapter Three section 4.
[556] Kant, MS, 6:353.
[557] Kant, MS, 6:353.
[558] Kant, TPP. In Reiss (1991), p. 113.
[559] Kant, MS, 6:353. I do not wish to suggest that Kant's defense of the right of non-European peoples to consent is meaningless, or that it entails a false choice. In *Perpetual Peace*, he commends China and Japan for refusing Europeans the right of trade and entry. Certainly, his claim that these contracts must be fair and informed is commendable. But I cannot agree (i.e. with Muthu, Kleingeld, and others) that Kant's account of cosmopolitan hospitality and trade expects an equal and reciprocal relationship between Europeans and their Others, nor that the "native peoples" in question would have the equal rights to determine the terms of the contracts in question. That consent to trade is tantamount to accepting European institutions of property and contract, with no expectations that Europeans would modify their own understanding of these institutions and practices, makes it unlikely that the natives in question could participate in a cosmopolitan order without a radical restructuring of their society, law, and rights.
[560] In the brief section on Cosmopolitan Right in the *Rechtlsehre*, Kant defends the necessity of cosmopolitanism on the grounds that "all nations stand *originally* in a community of land" (6:352), argues that this is not "a right to make a *settlement* on the land of another nation" (6:353), and

a juridical cosmopolitan order: it will turn on the willingness of non-European others to accept the conventions of both property and contract. It will entail, in other words, that non-European others recognize, accept, and participate in the institutions central to Private Right. The question of precisely how this informed consent can be achieved is explored in the next chapter.

A stable cosmopolitanism entails not only that non-Europeans must eventually adopt republican constitutionalism: as Kant argues in *Perpetual Peace*, the stability of a cosmopolitan world rests on the participation of nations ordered by stable republican constitutions. To participate in cosmopolitanism, non-European nations must be *internally* governed by rightful juridical constitutions. In this way, cosmopolitan right entails the juridical transformation of non-European societies in order to make rightful global trade possible.

Given Kant's account of the relationship between the rightful protection of external freedom and a rightful institutional order, this transformation will involve the voluntary acceptance of the institutions necessary to the possibility of right. This means that Kant's cosmopolitanism has a civilizing mission: participation in trade, as well as access to legal protections from war and armed hostility, will involve the adoption of a way of life designed to enhance external freedom, protect individual rights to property, and support the freedom to make contracts concerning land, labor, and commerce. It will entail the adoption of a juridical constitution, complete with institutional access to citizenship that organizes access to rights, responsibilities, and protection based on divisions in land ownership and labor practices. Encouraging non-Europeans to adopt these practices is the duty of Europeans, and it is in their financial interests, in order to further trade and protect them from war.

Cosmopolitan hospitality gives Europeans the right to travel the globe and seek out

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considers whether Europeans have an obligation to seek the consent of neighboring peoples in order to settle "newly discovered lands" (6:353), only to conclude that even nomadic peoples must consent to allow others to makes settlement on the land necessary to their survival (6:353). Though Kant also refers to relationships of commerce, the overwhelming examples concern the use and settlement of land.

opportunities for commerce and trade with other nations, individuals, and peoples, while cosmopolitan right requires them to encourage the adoption of the practices and institutions central to republican constitutionalism. By requiring that non-Europeans consent to having their lands settled, Kant is not advocating a pluralist worldview; he is arguing for the universalization of the market-based institutions central to his account of rightful law.

Given Kant's concerns about the development of moral capacities in nonEuropeans, we might ask: in what concrete ways should this transformation of "native" or "savage" societies take place? I take up this question in more detail in the next chapter, but for now, let us note that as we saw in Chapters One, Two, and Three, property rights and contract rights are not the only institutions central to Kant's account of the rightful juridical order: domestic right and the distinction between active and passive citizens (and the division of labor these institutions entail) are equally central to Kant's account of the rightful republican constitutional order. Together, these are the "mechanisms of nature" that transform even immoral men into good citizens. Because this institutional order rests on a necessary distinction between public and domestic rights, acceptance of a Kantian scheme of rights will involve the adoption of Kant's particular philosophy of the family. As the next chapter will show, in this way, the forms of acceptance Kant maps as essential to the voluntary adoption of right hinge upon a set of hegemonic and colonial assumptions, and entail an epistemological transformation of nonEuropean subjectivities.

5.2.3 Achieving Cosmopolitanism: The Role of the Moral Politician

Before exploring the impacts of the transformations involved in Kant's cosmopolitan project, we need first to outline that concrete means by which Kant thought a cosmopolitan world might be achieved. As Kant argues in the *Anthropology*, "the human being is destined by his reason to live in a society with human beings and in it to *cultivate* himself, to *civilize* himself, and to *moralize*

himself."[561] Only the adoption of rightful institutions can produce this cosmopolitan end – and, as Kant argues in *Perpetual Peace*, even the most uncivilized *Volk von Teufeln* would adopt these practices "if only they had intelligence."[562] But adopting these institutions is not the same as operationalizing them; as Kant's arguments above suggests, some collusion between "expediency" and "moral principles" is needed for this experiment to be successful. Kant offers two suggestions as to how this arrangement might be achieved: first, he tells us that the presence of force may inculcate respect for rightful authority, and second, he tells us that only a "moral politician" could combine coercive expediency with rightful constitutional principles. Taken together, I suggest that these arguments present a defense of a particular form of rightful colonialism through which Europeans will, indeed, legislate for other continents.[563]

Kant's emphasis on the obligations of Europeans to participate in bringing about a cosmopolitan world suggests a kinship between Kant's cosmopolitan project and the rhetoric of late colonialism. To flesh out these obligations, I draw on Kant's account of colonialism and rightful cosmopolitanism in *Perpetual Peace,* the *Rechtslehre*, and *Anthropology from a Pragmatic Point of View* to suggest the concrete processes through which Europeans might participate in the achievement of a cosmopolitan world.

In *Perpetual Peace,* Kant argues that the success of the republican constitution depends on the "moral politician:" an administrator capable of reconciling political expediency and the moral principles of the constitution.[564] Kant admits that "expediency" is often critical to the adoption of

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[561] Kant, Kant, AA 324.
[562] Kant, TPP. In Reiss (1991), p. 113.
[563] Kant, IUH. In Reiss (1991), p. 52.
[564] Kant, TPP. In Reiss (1991), pp. 120-121. The problem of administrating cosmopolitanism is also discussed in the *Idea*, where Kant argues that a just state entails a just government: because man needs a master to force him to obey universally valid laws, a state is just only if those who legislate and enforce laws have the capacity to do so in a just manner: "the highest authority has to be just *in itself* and yet also a *man*." (IUH p. 46) For an extended discussion of the moral politician in *Towards*

rightful institutions: "the only conceivable way of executing the original idea *in practice*, and hence of inaugurating a state of right, is by *force*. On its coercive authority, public right will subsequently be based."[565] Accordingly, Kant enumerates several non-ideal ways a state may arrive at a rightful constitution: first, they may be led by a moral politician willing to sacrifice selfish interests to develop institutions that conform with right; second "a state may govern itself in a republican way, even if its existing constitution calls for a despotic ruling power; and it can gradually come to the stage where the people can be influenced by the mere idea of the law's authority … so that they will be able to create for themselves a legislation ultimately founded on right"; third, a violent and unlawful revolution may lead to a more lawful constitution, in which case there is no right to reverse the project, no matter how unlawful the revolution may be.[566] The arguments here are girded by Kant's teleological account of human history: the end result of the lawful society that conforms to right is desirable even when it has been attained in non-ideal ways.[567] Embedded in this argument is a second important point: the presence of coercive law, even in a despotic or non-ideal form, lays the ground for right, and prepares individuals to submit themselves to rightful authority.

In these arguments, we are offered an intimation of the forms of leadership required to bring about a cosmopolitan word. This cosmopolitan vision would combine some form of consent and self-governance with European juridical administration. Given Kant's account of the slowed development of the predispositions and moral capacities of nonEuropean races, it is likely that the

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Perpetual Peace, see Guyer, "The Crooked Timber of Mankind" in in *Kant's 'Idea for a Universal History with a Cosmopolitan Aim': A Critical Guide* eds. Amélie Oksenberg Rorty and James Schmidt. (Cambridge University Press 2009). Pp. 134-143.

[565] Kant, TPP In Reiss (1991), p. 117. Kant then links this origin of political societies to colonialism decrying traditional colonial domination as an example of the worst form of despotism: "even a whole continent, if it feels itself in a superior position to another one will not hesitate to plunder it or actually to extend its rule over it, irrespective of whether the other is in its way or not."

[566] Kant, TPP In Reiss (1991), p. 118.

[567] This does not entail that these non-ideal means are themselves right or desirable. Kant simply suggests that if a rightful order is achieved in unjust ways, we have no right to undo or reverse those processes. Embedded in this argument, perhaps, is a Kantian justification of the French Revolution.

"moral politicians" in question might be imported from Europe (given – as we've seen -- both the accelerated development of European political reasoning, and the unique capacity of Europeans to live anywhere in the world). Moreover, given the universal obligation to work towards bringing about a cosmopolitan world, Europeans would face a strong moral obligation to offer this kind of political assistance.

These arguments present a rough sketch of how Kant though a juridical cosmopolitan world might be concretely achieved. In Kant's claim that remaining in a state of nature is "wrong in the highest degree" and his suggestion that those living outside a rightful order may be coerced into accepting the structures of right, we have a liberal justification of coercively encouraging natives to participate in the institutions of right. In this way, Kant's juridical cosmopolitan arguments offer insight into the relationship between colonial racism, cultural difference, and juridical transformation under colonial law. As I will argue in the next chapter, in Kant's vision of a cosmopolitanism that entails the "consent" of natives to the juridical structures, trade and property practices of Europeans, we have a model for the system of indirect rule that organized West African colonies and transformed juridical practices through the development of "customary" law.[568]

5.3 JURIDICAL TRANSFORMATION AND COLONIAL RACISM

In the previous chapter, I distinguished between the biological exclusions of Kant's anthropological arguments and the institutional exclusions of his cosmopolitan arguments, and I argued that Kant's account of the institutional state produces a form of political disembodiment that transforms biological inequalities into "rightful" inequalities. In the final section of this chapter, I show first that institutional exclusion remains a form of raced exclusion, and second, that this form

[568] Kant, MS 6:344, 353; Chanock, Martin. "A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Africa." *The Journal of African History*, vol. 32, no. 1 (1991), pp. 65-88.

of institutional exclusion, in the context of Kant's most concrete cosmopolitan claims, is markedly similar to the forms of colonial law and racism that emerged in sub-Saharan African colonies in the late 19th and early 20th centuries.

I then turn to Kant's own account of the concrete mechanisms through which a juridical cosmopolitan order might be achieved. By examining these arguments in the light of his theory of race, I show that the principles, policies, and processes Kant advocates are strikingly consistent with the forms of colonial rule that would emerge a century later. Like the imperial colonialism designed in the second half of the 19th century, Kant's juridical cosmopolitanism focuses on developing global trade by assuring a shared scheme of rights; the adoption of this scheme of rights would entail a juridical transformation of the institutions of everyday life justified in the name of producing a voluntary entrance into a civilized rightful order. Kant's insistence on this form cosmopolitan juridical transformation rests, I will argue, on a particular form of colonial racism.

3.1 Two Forms of Exclusion: Kant's Colonial Racism

I have argued that the political essays of the 1790s are conversant with Kant's theory of race: in mapping a world of differential development, the theory of race provides a concrete set of problems that the cosmopolitan philosophy is designed to solve. From its earliest inception, cosmopolitanism was presented as a method of furthering the development of predispositions and capacities, and positioned as a necessary step in the full moral development of mankind. Chapter Four argued that race and concerns about human difference are embedded in Kant's cosmopolitan arguments, and we know from the *Anthropology* that he had not altered his view that race is a normative form of human difference even in the late 1790s (see Chapter Four, section 3.4).

So what, then, are we to do with the conspicuous absence of race from the political texts of the 1790s? Kant explicitly referred to racial difference only in the first edition of *Perpetual Peace*,

where he argued that race, along with religion and language, was a form of difference that prevented the comingling of peoples. In the final edition, the reference to race is removed (see Chapter Five, section 1.3). I have argued that its removal hints at Kant's faith in the ability of a political order to overcome racial difference, but race is absent from these essays in a second sense. Having spent the previous decade cataloging the differences between the races (the lack of drive of the Negro; the lack of skill of the American), Kant makes no reference to capacities of Negroes or Americans in entering into contracts or offering cosmopolitan hospitality. The relevant categories of difference in the cosmopolitan essays of the 1790s are those who are civilized and those who are "natives." The natives of whom Kant speaks are implicitly raced, but are defined by a lack of civilized culture and juridical law. The anthropological topography of the political essays, in other words, highlights distinctions between those who are subjects of a political order, and those who are not. And, accordingly, the status of "native" can be overcome: by adopting the political structures and institutions of rights, natives are transformed into civilized men.[569]

As I argued in Chapter Three, the source of equality, inclusion, and status in Kant's account of the state is the structure of the institutional order: one's position in the institutions of the state determines one's status as a citizen. In the cosmopolitan arguments, the dividing line between civilized men and natives is also demarcated by one's position inside, or outside, a rightful institutional order. In Kant's juridical arguments, the relevant forms of difference are dictated by one's position in the institutions of domestic, private, and public right. Biological differences, as we have seen, are transformed into institutional inequalities. As markers of institutional positions, inequalities are consistent with right: the exclusion of women from the public sphere, for example, is

[569] Moreover, Kant's use of the term "native" rather than "savage" in these contexts allowed him to sidestep the common 18th century practice of ruminating about the limited capacities of savages. As Pauline Kleingeld argues, "Kant stands out amidst eighteenth century philosophers who discuss the question whether "savages" are capable of forming treaties at all. Any human being is the potential subject of covenants and the bearer of certain basic rights." Kleingeld, (1999), p. 514.

not a product of the biological difference between men and women (though Kant had much to say about these differences) but, through the institution of marriage, of women's position as wives in the domestic realm.

The Kantian state, in other words, purports to be blind to biological difference. Relevant inequalities are structural and are institutionally produced; because "everyone must have the capacity to work his way up" in the institutional order of the state,[570] biological differences can (theoretically) be overcome as one maneuvers in the institutional order. The absence of raced bodies from Kant's political arguments in the 1790s ought not to surprise us: bodies themselves are strikingly absent from this discourse. The absence of race and of bodies from Kant's political arguments, however, does not mean that the political arguments are not raced. The racism of Kant's mature political philosophy is less a body racism than a racism tied to cultural practices and institutional structures.[571]

Thus, the absence of these juridical and cultural structures of civilization hampers the native's ability to develop his own capacities. If the native can be "saved" from his own inferiority by consenting to participate in the institutional order of a rightful juridical state, then Kant's racism has taken a distinctly cultural or institutional form. By contrasting this distinctly cultural form of racism with forms of racism that focus exclusively on the body, we may better understand how Kant can critique one set of colonial practices while developing cosmopolitan arguments that retain racist and colonial assumptions.

Kant's criticism of colonialism in *Perpetual Peace* focuses, not surprisingly, on the forms of colonialism that predominated in the New World. Racism in the New World functioned as an ontological project necessary to carve out a new civilization for a new (and shifting) race of whites. By denying personhood to the native peoples encountered on the "new" continent, whites took

[570] Kant, MS 6:315.
[571] These cultural practices include, but are not limited to, language and religion. See Kant, TPP. In Reiss (1991), p. 113-114.

possession of the land and built settlements; by importing and denying personhood to African slaves, whites obtained dominance over the land, along with greater economic power and freedom.[572] New World racism, produced through the violent subjugation of native peoples and the legally enshrined slavery of Africans, emerges in a particular historical, geographic, and economic context. The racism of Kant's political philosophy, then, is not the body-racism that predominates in the New World, where the body is constructed as the sign of inequality and colonial history defined political exclusion based on the raced body.[573] New World practices of colonization and racism are precisely what Kant critiques in *Perpetual Peace*, where he argues that whites cannot simply make settlement on populated lands, nor enslave and exploit native populations.[574] But New World racism is a historically specific form of racism that neither limits nor defines racism *per se*. African philosopher Nkiru Nzegwu distinguishes between the body-racism of New World colonialism and the colonial racism that emerged in sub-Saharan African colonies (predominantly in West Africa) under the late European colonialism of the late 19th and early 20th centuries, arguing that colonial racism flourishes in contexts where the introduction of colonial social, political, and institutional practices, rather than an influx of white bodies, shape the structure of colonialism.[575]

Accordingly, my arguments in the next chapter will focus on the raced and colonial policies

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[572] Cf. Harris, Cheryl. "Whiteness as Property" Harvard Law Review, Vol. 106, No. 8, (1993) p. 1707; Mills, Charles. *The Racial Contract.* (Princeton University Press, 1997)

[573] As Nkiru Nzegwu argues, "racism in the United States, as African American theorists have consistently and correctly argued, is a supremacist ideology of power that exploits visible physiognomical and phenotypic differences to promote a political relation of dominance." Nzegwu, Nkiru. "Colonial Racism: Sweeping Out Africa with Mother Europe's Broom." In eds. Babbitt and Campbell, *Racism and Philosophy.* (Cornell University Press, 1999) p. 127.

[574] Kant, TPP. In Reiss (1991), pp. 106-108.

[575] For Nzegwu, "racism is about the sociopolitical institutionalization of racial prejudice and the implementation of social policies from that base." Nzegwu, (1999), p. 127. As Nzegwu notes (p. 128), because of the structure of European settlement and the nature of colonial and apartheid law, the South African context may bear more similarities to New World racism than its West African cousins. Colonial racism, as she defines it, emerges in colonial contexts in which Europeans do not seek settlement, and therefore white bodies do not become entrenched signifiers of difference.

that emerged in West Africa, where malaria and other environmental challenges earned it the name "white man's grave." Because of this inhospitable environment, Europeans did not seek settlement or land ownership, and colonial dominance was shaped not by a fetishized presence of white bodies, but through the introduction of political, institutional, and economic practices. In this context, the West African was not the "Negro" of American racism or Kantian race theory, but the "native," in need of civilization in the form of commerce, juridical law, and the moral and political leadership of colonial administrators. The inferiority of the "native," in other words, is not essentially biological, but is tied to cultural and social practices: the "native" is the object of colonial racism.

The "native" is also the object of Kant's cosmopolitan arguments: the native stands outside of the rightful order – a position that, we should remember, is "wrong in the highest degree."[576] But this, of course, is misleading: the African "native," for example, did not stand outside civilization, but was embedded in and constituted by his own social, political, and economic order. In denying both the existence and the validity of this alternate political order, Kant's arguments embody a distinct form of colonial racism that emphasizes access to a "civilized" sociopolitical order as the key to overcoming raced difference and cultural backwardness.[577] Because colonial racism does not rest on the biological premises of body-racism, and it cannot appeal to scientific evidence in justifying the negation of the black body and the denial of full personhood to non-whites, it is often replicated by the colonized themselves, becoming a tool for self-abnegation and for justifying a range of inter-cultural despotisms. In Africa, those who adopted Western cultural norms & practices also adopted a prejudicial stance against those who did not – creating a multi-layered coloniality wherein much of the discipline was done *by* "natives" *to* "natives," such that, as Nzegwu argues, "in pre-independence

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[576] Kant, MS 6:307f.

[577] Nzegwu notes that this emphasis on cultural and juridical backwardness produces an insidiously vague set of raced assumptions: Nzegwu notes that, "nebulous things such as cultural norms and patterns, socialized behaviour, legal entitlements, and the environment may be attacked once the focus is shifted from skin pigmentation to the community and the society." Nzegwu (1999), p. 134.

Africa, the emphasis has been the negation of African culture and cultural dignity" to the point that "African culture has become the site of shame and aversion for many Africans, who now see their culture as primitive."[578] Through the negation of culture that colonial racism entails, in other words, the "native" comes to see *himself* as living outside a rightful cultural and social order.

Colonial racism sidesteps essentialism by negating the cultural and sociopolitical order of the "native," only to suggest that this negation can be overcome: natives can, simply by entering a rightful juridical order, become subjects. Colonial racism is tied to the liberal presumption of mobility within an institutional order: inequalities can be overcome through acceptance of and maneuvering within the institutional order of the civilized state. Kant's silence on embodied race in the political essays of the 1790s, and his insistence on developing an institutional order from which no exclusion can be rightful, suggests that the possibility of universal cosmopolitanism is undergirded by colonial racism. The object of Kant's cosmopolitan racism is neither the "Negro" nor the "American" of his anthropological arguments, but the "native." This construction of the "native," whose backwardness can be overcome through the acceptance of the institutions of rightful constitutional cosmopolitanism, offers a raced justification for the obligation to expand rightful institutions across the globe.

3.2 Colonial Cosmopolitanism

The role of colonial racism in Kant's political arguments in the 1790s points to a new way of understanding Kant's own criticism of colonial practices in *Towards Perpetual Peace* and *The Doctrine of Right*. I have argued that the shift from biological exclusion in the anthropological writings of the 1780s to institutional exclusion in the political writings of the 1790s mirrors the shift from the forms of body racism that organized colonial rule in the New World to the colonial racism developed in

[578] Nzegwu, (1999), pp. 133-134.

colonial Africa in the 19th and 20th centuries. Accordingly, Kant's mature cosmopolitanism criticizes the earlier form of colonialism, while simultaneously moving towards the emerging assumptions of late colonialism, particularly as they were manifested in Africa in the late 19th and early 20th centuries. This shift does not mean that body racism was not operative in the colonial African context (or, indeed, in Kant's mature writings). For Europeans, visibly embodied difference remained operative in race discourse and colonial rhetoric throughout the imperial era. But the embodied racism enshrined in American law to organize slavery could not be replicated in the African context, where a more complex range of race and cultural differences were operative.

To show how these processes were consonant with the role of race in Kant's mature political philosophy, I focus in the next chapter on a particular set of colonial practices in West Africa. Because Europeans were largely unable to settle in West Africa, the presence of white bodies did not shape race discourse as it did in the New World, and Europeans instead developed colonial principles and processes designed to juridically transform "native" culture in the name of facilitating trade and advancing civilization, rather than supporting European settlement and expansion.

Likewise, Kant's account of the necessary juridical transformation of "native" societies into rightful, civilized societies thus rests on both biological and colonial racisms. Kant presumes that the superior development of Europeans both obligates them to lead others towards a cosmopolitan future through the introduction to rightful juridical practices and suits them to the global travel that this project will entail.[579] At the same time, he assumes that Africans are incapable of disciplined or skilled work, and that they lag so far behind in the development of their capacities that it will take the introduction of European juridical practices to spur this development.[580] Kant's theory of race is clearly operative in this distinction between the roles Europeans and Africans would play in the

[579] See Chapter Four, section 2.4

[580] See Chapter Five, section 1 and Bernasconi, (2011) p. 308.

emergence of cosmopolitanism.

These arguments suggest that Kant's juridical cosmopolitan vision might be realized through a juridical colonialism intent on producing the range of rightful institutions essential to the production and protection of external freedom in the name of supporting rightful global trade and a broader moral "civilizing mission." Though the goal of this juridical transformation is consensual "self-rule" by the natives, it would initially require an administrator already schooled in the logic and practice of rightful juridical institutions to play the role of the moral politician. In this way, the institutional framework on which Kant's cosmopolitan rests is startlingly parallel to the institutional constellation that organized colonial law and imperialist thought in the 19th and early 20th centuries.

The similarity between Kant's cosmopolitan vision and late colonial practices, and the absence of a thorough egalitarian ethic in that cosmopolitanism ought not to surprise us: it is consistent with Kant's political arguments elsewhere. As Robert Bernasconi has argued, "Kant did not think that cosmopolitanism was about giving equal weight to all people."[581] Just as Kant's vision of a rightful political state depends on the insistence on a distinction between active and passive citizens, his cosmopolitan vision, from its earliest iteration, assumed that Europeans would remain the world's "active citizens" in the march towards progress, while the "backward states" of Africa and elsewhere would become the "passive citizens" of the cosmopolitan project.

CONCLUSION

This chapter has shown that while the coercive colonialism Kant critiques in *Perpetual Peace* is inconsistent with his account of cosmopolitan right, the administrative model of institutional republican constitutional cosmopolitanism he describes in *Perpetual Peace* and develops in the

[581] Bernasconi, Robert. "Kant's Third Thoughts on Race." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY (2011), p. 294.

Rechtslehre anticipates a new form of colonialism. In the *Rechtslehre,* Kant argues that foreign nations can enter into relationships only contractually, given a fair understanding of the conventions of contract. The cosmopolitan order, therefore, must be the result of contract, not outright conquest. A cosmopolitan world will ultimately entail that rightful republican constitutions must be adopted universally. More immediately, however, participation in the expanding cosmopolitan order entails acceptance of the institutional order of republican constitutions.

Kant's essays on race in the 1780s work together with his political and cosmopolitan arguments in the *Idea for a Universal History* to suggest an account of a colonial-cosmopolitanism, in which fully developed Europeans will legislate for non-Europeans in a global order designed to bring about the moral development of all races. By the 1790s, Kant rejected the assumption that only morally developed people can form a just state, and he refined his account of human history in order to present the global cosmopolitan order as a realistic possibility.

I have argued that the political essays of the 1790s are conversant with Kant's theory of race: in mapping a world of differential development, the theory of race provides a concrete set of problems that the cosmopolitan philosophy is designed to solve. From its earliest inception, cosmopolitanism was presented as a method of furthering the development of predispositions and capacities, and positioned as a necessary step in the full moral development of mankind. By the 1790s, Kant's preoccupation with race had been embedded into his concern with the "native" who finds himself outside a rightful juridical order.

In making this argument, I am accusing Kant of a particular brand of colonial racism that emphasizes the backwardness of culture and tradition, rather than being inscribed upon the body: the "natives" of the *Rechtslehre* and *Perpetual Peace* can be rescued from their own backwardness by accepting the juridical institutions of right. The presence of colonial racism in Kant's political arguments in the 1790s points to a new way of understanding Kant's own criticism of colonial

practices in *Towards Perpetual Peace* and *The Doctrine of Right.* An examination of Kant's account of republican constitutional cosmopolitanism in the light of the theory of race suggests that Kant is *both* committed to a truly universal, all-inclusive global cosmopolitanism, *and* that his plan for achieving this global cosmopolitan order is strikingly similar to the forms of "administrative" colonialism developed in Africa and parts of Asia in the 19th century.

In the next chapter, I offer an example of this kind of Kantian moral politician and explore his Kantian justifications for institutional transformation in colonial Africa. In order to highlight the kinship between Kant's arguments and the projects of late colonialism, I focus on a particular moment in colonial history: the institution of Indirect Rule in colonial Nigeria, a form of administrative colonial rule which combined "self-determined" native law with a centralized public authority in a manner that closely echoes Kant's call for a cosmopolitanism guided by a "moral politician." By showing how this juridical transformation affected the pre-colonial practices of two specific West African peoples, I present an account of how Kantian juridical cosmopolitanism might concretely transform the lives of the "natives" in was designed to save. This history illustrates the ways in which European juridical frameworks were introduced to African colonies and pre-colonial practices were radically reordered by a colonial rule concerned with producing identifiable political subjects, laborers, and consumers.

Just as Kantian cosmopolitanism requires, the introduction of these colonial juridical institutions was premised on an account of consent: colonial law would operate alongside traditional law, allowing Africans to "choose" between competing juridical structures.[582] As we will see,

[582] This bifurcated system of law is still in use today, particularly in South Africa, where the legacy of the creation of "homelands" to disenfranchise blacks during apartheid resulted in a complicated map of juridical inclusions and exclusions. The contemporary South African Constitutional Court has settled on a novel approach to using this bifurcated legal system in order to undo the legacy of colonial racism, by working to make constitutional law and customary law consistent with constitutional principles, to develop customary law in accordance with basic constitutional principles,

tensions between the two forms of law most often manifested around the institutions central to Kantian Private Right: property ownership, inheritance and labor practices, and, most centrally, marriage.[583] By focusing on how this transformation affected the structure of the family and the lives of women, I show that though this juridical transformation operated through a juridically organized form of "consent", the gendered assumptions built into the juridical order effectively blocked women from consenting to – or refusing to consent to – this new political order. Thus, we ought to ask just whose "consent" matters in Kant's cosmopolitan world. Thus, in Chapter Six I examine the concrete structure of juridical cosmopolitanism by offering a careful analysis of how juridical transformation radically reshapes the family.

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and to inform constitutional law with the practices, customs, and ethics present in customary law. Cf. Cornell and Muvangua (2011).

[583]Nzegwu, Nkiru. "Gender Equality in a Dual Sex System: The Case of the Onitsha." *JENdA: A Journal of African Women Studies,* vol. 1, no. 2 (2001) pp. 366-377; Nzegwu, Nkiru. *Family Matters*. (SUNY University Press, 2006) Pp. 103-157.

CHAPTER SIX:

THE *RECHTLSEHRE* IN AFRICA:

COLONIAL LAW AND KANT'S (CURIOUS) PHILOSOPHY OF THE FAMILY

INTRODUCTION

> "Changing the questions means changing the conversation. Therefore, instead of engaging with Kant with his own rules and to question the content [of his arguments], I propose to change the rules of the game, de-link from his presuppositions, and change the terms of the conversation." – Walter Mignolo, "The Darker Side of the Enlightenment: A De-Colonial Reading of Kant's Geography"[584]

Thus far, these pages have explored Kant's juridical, cosmopolitan, and empirical arguments to answer the question *how does Kant think his juridical cosmopolitanism might concretely be achieved?* I have argued that Kant's juridical cosmopolitanism is necessarily universal, and that the necessity of extending the institutions and juridical practices of rightful republicanism entails that other modes of life must be transformed by adopting these structures and practices. In the previous chapter, I suggested that to answer this question, we need to ask a second question: How would this cosmopolitan project concretely transform the lives of "natives" (or non-European others)? This question requires us to position ourselves differently in relation to Kant's arguments. To answer it requires us, as Mignolo puts it, to "change the terms of the conversation." This chapter will change those terms by narrowing the focus of the conversation from abstract cosmopolitan theory to a particular set of juridical transformations during a specific colonial encounter.

To explore how the lives of Kant's "natives" would be concretely transformed by the cosmopolitan world he envisions, the arguments in this chapter build on the analysis of the family developed in chapters One, Two, and Three and the account of Kant's raced cosmopolitanism

[584] In eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY Press (2011), pp. 326-327.

presented in chapters Four and Five. By engaging with Kant's arguments in this way, it asks what form "native consent" would need to take in order to make the cosmopolitan extension of Kant's juridical principles rightful. But to do so, it must leave the domain of abstract cosmopolitan theory and turn to a concrete set of historical events. To present a detailed account of the concrete juridical transformations required by Kant's cosmopolitan arguments, therefore, I turn to the historical encounter between British colonial law and the Igbo and Yoruba people in late 19th century Africa. By tracing the transformation of Igbo and Yoruba pre-colonial structures through the introduction of a particular articulation of colonial juridical law that echoes Kant's cosmopolitan arguments, this chapter demonstrates that Kant's juridical cosmopolitanism entails not the *adoption* of rightful juridical patterns but the *transformation* of existing practices.

By examining Kant's arguments through the lens of this particular colonial encounter, this chapter offers a new perspective from which to evaluate Kant's claims about cosmopolitanism, universality, and right. To borrow an expression from Walter Mignolo, it offers us a way to think "from the underside" of Kant's cosmopolitan arguments. For Mignolo, this means reading Kant from what he calls a "de-colonial epistemic platform." This requires that we first question the nature of Kant's own epistemic platform, which assumed, Mignolo argues, not only that "knowledge was universal, but [that] the knower was also equally a universally endowed epistemic subject who embodied the universality of sensing and experiencing."[585] This project has argued that these assumptions of universality become particularly troubling as Kant turns to cosmopolitan questions in the 1790s and extends his account of juridical right to "natives" who live in a condition of cultural and moral backwardness outside the juridical order. Therefore, this chapter challenges the universalist assumptions of Kant's epistemic framework by examining the concrete conditions of

[585] Mignolo, Walter. "The Darker Side of the Enlightenment: A De—Colonial Reading of Kant's Geography." In eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY Press (2011), p. 324.

cosmopolitanism from the perspective of the "native."[586]

This chapter works to "change the terms of the conversation" by engaging in several subversive moves. First, it engages in a bit of time travel: the historical encounter explored in this chapter took place nearly a century after Kant wrote his last text on cosmopolitanism. This time travel is necessary, I will argue, in order to show that Kant's critique of contemporary colonial policies need not entail a thoroughgoing critique of colonial policies *per se*.

Second, to situate Kant's broad cosmopolitan claims in a particular historical context, and to illustrate the concrete ways in which the lives of non-European "natives" would be transformed by Kantian cosmopolitanism, I present a"stand-in" for Kant in Africa in the figure of Lord Frederick Lugard, the author of Indirect Rule in British colonial Africa. I will argue that Lugard's own articulation of his colonial policies suggest a kinship between the principles of Indirect Rule and Kant's juridical cosmopolitan arguments, particularly as they are understood in the light of his theory of race. By using Lugard as a "proxy" for Kant in Africa, this chapter asks what form abstract Kantian arguments would take in particular encounters between colonial juridical structures and specific African societies.

Third, to challenge the universality and plurality of Kant's cosmopolitan vision, I examine his arguments through the lens of two particular African philosophies of the family. I draw on the

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[586] Mignolo suggests that we might make ourselves able to think from this perspective if, instead of asking "*What can I know? What ought I to do? What may I hope? What is the human being?"* we were instead to ask:

1. Who is the knowing subject and what is his or her material apparatus of enunciation?
2. What kind of knowledge/understanding is he or she engaged in generating and why?
3. Who is benefiting or taking advantage of such and such knowledge or understanding?
4. What institutions (universities, media, foundations, corporations) are supporting and encouraging such and such knowledge and understanding

See Mignolo, W. (2011), p. 325.

work of two contemporary Nigerian thinkers, Nkiru Nzegwu and Oyeronke Oyewumi, who argue that cosmopolitan and colonial processes radically transformed African gender and family structures in the name of producing a recognizable set of sociopolitical patterns and agents. By exploring their accounts of pre-colonial Igbo and Yoruba family structures and their claims about colonial law and the "invention of women," this chapter examines Kant's cosmopolitan arguments from an angle that may help us to think from the perspective of those "natives" whose lives would be most intimately transformed by it. Building on these claims, I argue that no analysis of colonial or cosmopolitan modernity is complete without a nuanced understanding of the attendant transformation of the family.

1. A Very Modern Model of Colonial Cosmopolitanism: Kant in Africa

1.1: Why Kant in Africa?

I position Kant in dialogue with colonialism in Africa despite his own silence on the matter. Because colonialism was not yet fully developed in Africa, and would not be until the latter half of the 19th century, Kant himself had a great deal more to say about colonialism in the Americas than in Africa. His engagement with Africa emerges largely out of a concern with the slave trade, which he first condones and later critiques.[587] Kant admitted that Europeans had a very limited knowledge of Africa, which he linked to a collective guilt, arguing in the *Physical Geography* that "the cause, for

[587] See Chapter 4 and the discussion of Kant and slavery. Kant appealed to pro-slavery tracts until as late as 1788, and refers to Africans as vulnerable to only the kind of "education" inflicted through slavery **(**Bernasconi (2000), p. 151.**).** Though he critiqued the slave trade in the 1792 *Lectures on Physical Geography* and in the 1795 *Towards Perpetual Peace*, he does not go so far as to criticize the institution of slavery itself. As Robert Bernasconi has argued, this is a critical distinction in late 18th century Europe, where the slave trade was abolished in most complicit countries long before the practice of slavery itself was outlawed. In the 1798 *Metaphysics of Morals*, Kant defends the use of slavery to punish criminals, suggesting that some justifications of slavery were sound, and his public silence on the practice of slavery suggests that he did not, perhaps, wholeheartedly reject the practice. For an excellent discussion of Kant's views on slavery, see Bernasconi, Robert. "Kant's Third Thoughts on Race." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY (2011).

which the interior of Africa is as unknown to us as the lands of the moon, lies more with us Europeans than with the Africans, in that we have let ourselves be made so shy, through the Negro trade."[588]

The shyness Kant describes would not hold Europeans back for long in Africa. Though malaria and other diseases slowed the exploration of the interior of the continent, these obstacles would transform the nature of colonialism itself. The colonies of sub-Saharan Africa (with the notable exception of South Africa) developed not as settler colonies but as colonies of exploitation, designed to maximize the possibilities of commerce and enrich the mother country.[589] This is to say that the colonial transformation of Africa was not so much a transformation of space (as was the case in the Americas)[590] as it was a transformation of cultures, customs, and practices designed to provide resources, labor, and favorable trade conditions. As I argued in the previous chapter, West Africa, in particular, was so hostile to European settlement that an entirely new colonial project had to be invented to support the expansion of global trade without requiring Europeans to venture into the interior of the continent, which had earned itself the moniker "white man's grave."

It is this set of characteristics that makes West African colonialism particularly useful in examining the underside of Kant's cosmopolitan project: because European settlement and

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[588] *Physique Geographie,* AK 9:229. Translated in Mignolo, Walter. "The Darker Side of the Enlightenment." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY (2011), p. 328.

[589] As Albert Demangeon, the French geographer and theorist of colonialism put it in 1923, "colonization has not met everywhere with the same geographical conditions, the same problems to be solved, the peoples to be ruled, or the same resources to be exploited. Sometimes it is applied to hot lands where the European finds it difficult to live, and sometimes to temperate lands where he can settle. Colonies of exploitation and colonies of settlement are therefore to aspects of the colonial work of Great Britain; they are also, as a matter of fact, two original types of civilization." In exploitative colonialism, Demangeon argues, "colonial activity takes the form of organizing the production of these commodities under white supervision." (Demangeon, Albert. *The British Empire: A Study in Colonial Geography*. 1923, pp. 123-124. Quoted in Taiwo (2010) p. 36.) South Africa was a settler colony, rather than a colony of exploitation.

[590] See, for example, Charles Mills' discussion of the norming of space in colonial practices in the Americas. Mills, Charles. *The Racial Contract.* Cornell University Press, 1997. Pp. 41-53.

governance was impossible, colonial authorities invented a new form of colonial rule that resemble the principles of juridical cosmopolitanism laid out by Kant. Colonial authority would be largely indirect, vested in the hands of those "natives" who had already accepted and become versed in the juridical structures of the modern political state; those juridical structures would gradually work to reorganize the lives of Africans, ultimately producing political subjects and economic agents able to enter into "rightful" trade relations with Europeans. In positioning Kant's arguments in Africa in this way, I am not using Kant to explicate African colonialism, and I recognize that other Enlightenment thinkers had much more to say about colonialism in Africa. Rather, I have chosen to examine a particular colonial encounter in West Africa because the particular pattern of juridical rule developed in response to the inhospitable environment hews so closely to Kant's account of juridical cosmopolitanism, and therefore offers a new perspective from which to consider Kant's cosmopolitan arguments.

Colonialism in West Africa proceeded in three distinct phases; because this project examines juridical transformation as a tool for producing a cosmopolitan world, I will focus on the third phase.[591] The first was the arrival of traders and missionaries, who traveled both along the coasts and into the interior, and who began the transformation of Africa. This transformation was moral, religious, linguistic, and historical. The second phase was the development of imperial and corporate agencies, which established administrators in urban centers, extracted resources from the interior, and transformed commercial and labor practices in order to enrich European corporations and governments. This intermediate phase of colonialism was critical in that it shaped the imperial structure of late colonialism: African (and Asian) colonies were primarily valued as commercial outposts and as sources of cheap labor and goods. In the third phase, the African protectorate,

[591] Taiwo, Olefumi, *How Colonialism Preempted Modernity in Africa* (Indiana University Press, 2010). P. 5.

already developed by missionaries and commercial interests, became a colony. As government interests took over, corporate administrators were replaced by government administrators who began the work of juridically transforming the lives of Africans in the name of opening these societies to global trade.

This chapter focuses on a particular form of administrative colonialism developed by the British in West Africa to organize the production and distribution of resources and to open new trade routes. Accordingly, the governing principle of British colonialism in Africa was Indirect Rule, as envisioned and developed by Lord Frederick Lugard, the High Commissioner of the Protectorate of Northern Nigeria. The cornerstone of Indirect Rule, as developed by Lugard, was the Native Court System, which drastically cut the number of administrators required in inland Africa by designing a system through which Africans governed themselves within already established communities. The native courts operated not under British law, but under "customary law" – so-called because, in theory, it developed customary practices into a juridical framework consistent with the wider rule of colonial law.

This chapter uses Lugard's Indirect Rule to offer an account of the concrete transformations required by Kantian cosmopolitanism. This examination will show that Lugard's colonial project, like Kant's juridical cosmopolitanism, entails a radical transformation of these African family structures designed to produce recognizable political subjects through transformations in family, labor, and property rights that opened African societies to the incursions of imperial capitalism.

1.2 Kant's Theory of Race in Africa

This chapter involves a little bit of time travel: the articulations of race and coloniality explored here take us a century forward from Kant's day. Though Europeans, in the form of

missionaries, traders, and military adventurers, had been in West Africa since the mid 19th century, Nigeria, Ghana, Guinea, and the Cote d'Ivoire were formally colonized only at the turn of the 20th century.[592] The colonial processes I examine in this chapter, therefore, belong to the era of late imperialism, and the forms of racism and raced exclusion explored here remain operative even into the 21st century.[593] However, they remain strikingly consistent with both Kant's own theory of race and with his claims about juridical cosmopolitanism and the condition of the "native." The arguments for juridical transformation that gird the late colonial project in West Africa are premised on assumptions of colonial racism rather than on the strictly embodied racism that organized the colonialism of the previous two centuries. By positioning Kant in Africa a century after his time, I am able to offer some explanations for the curious resiliency of Kant's theory of race.

Though race theory had begun to coalesce by the late 19th century, the categories and claims defended by Kant remained central to this discourse. By the end of the 18th century, the discourse of classical race theory had emerged in the hands of Kant and of Blumenbach, who mapped race according to both observable heritable characteristics and a theoretical generative power (*Bildunstrung* in Blumenbach's taxonomy; *Keime* in Kant's),[594] and coalesced around a taxonomy of 4-5 distinct

[592] with the exception of Lagos, which was declared a colony in 1862.

[593] The colonial practices we will examine in this chapter, which are located in the British colonies of modern-day Nigeria and Ghana, and in the German/Belgian colony of Rwanda-Urundi, emerge in the final phases of colonialism. This final phase of colonialism can be divided into two distinct phases: first, in the periods between the Berlin Conference and the First World War, and second, in the inter-war period. The transformation of Central and West Africa from its place in the European imaginary as trading outposts and lawless lands teeming with natural resources into colonies occurred at the end of the 19th century, when European nations were moving towards the post-industrial age and shifting the language of race, citizenship, labor, and resources accordingly.

[594] The importance of *observable* racial characteristics in both Kant's and Blumenbach's taxonomies deserves to be noted. Kant's theory emphasized skin colour while Blumenbach's centered on craniology and anatomical distinctions. Blumenbach places particular emphasis on the visual contours of his theory of race in the *Abbildungen Naturalhistrisher Gegenstande*, the atlas of race published in four editions between 1796 and 1810, where Blumenbach uses a series of illustrations and portraits. (For a discussion of the visual framing of Blumenbach's theory in the *Abbildungen*, see Eigen, Sara. "Self, Race, and Species: J. F. Blumenbach's Atlas Experiment" in *The German Quareterly*,

races.[595] While the monogenetic account of race developed by Kant and by Blumenbach was ascendant in the German academy by the early 19th century, the debate between polygenists and monogenists, and between biological and cultural theories of race, continued in Britain through the late 19th century.[596] While scientific racism began to consolidate in the 1890s, early sociologists challenged the emphasis on biological accounts of race, and called into question the category of "race" itself.[597] The shifting terrain of race theory in Britain during this period suggests that the racial justifications of colonial expansion were similarly underdetermined, and tended to reiterate the basic tenets of classical race theory. Thus, the operative theory of race at the end of the 19th century was – despite developments by Darwin and Mendel – largely dependent on the taxonomies and premises laid out by Kant and Blumenbach a century earlier.

Thus, what is remarkable about this classical formulation of race is how resilient it has proven itself to be: despite a series of scientific discoveries that transformed our understandings of race theory, the categories laid out by Kant and Blumenbach continue to be constitutive of race discourses in the early 21st century. As Thomas McCarthy has argued, by the time the scientific

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Vol. 78, No. 3 (Summer 2005), pp. 277-298). While Kant and Blumenbach each purported to develop a "biological" theory of race, their account of observable phenomena fell short of the standards of "scientific" racism that would emerge in the late 19th century, and the biological intervention into these racisms presented by Mendel's theory of genetics and generation.

[595] Kant, as we know, recognized four: Europeans ("high blonde"), Africans ("blacks"), Asians ("olive yellow"), and Americans ("cooper red"); Blumenbach added to this taxonomy the Malay race. See Chapter 4.

[596] The lack of consensus was striking: between 1863 and 1870, race scholarship in Britain was divided between the monogenetic Royal Ethnographic Society and the polygenetic Royal Anthropological Society. Even the publication of Darwin's *Origin of the Species* (published in 5 editions between 1859 and 1869) did not consolidate the debate: Darwin's theory largely offered an explanation for why race difference occurs, but did not substantively change the taxonomies of race in question. When the two Societies merged in 1871 to form the Royal Anthropological Instititute, ethnographic accounts of cultural racism were in the ascendancy; by the late 1880s, as more and more scholarship focused on race and colonialism in Africa, biological accounts of racism began to predominate. Lorimer, Douglas. "Theoretical Racism in Late-Victorian Anthropology, 1870-1900." *Victorian Studies*, Vol. 31, No. 3 (Spring 1988), pp. 416-419.

[597] Lorimer, Douglas. "Theoretical Racism in Late-Victorian Anthropology, 1870-1900." *Victorian Studies*, Vol. 31, No. 3 (Spring 1988), p. 429.

advancements of the 20th century called the very concept of scientific racism into question, cultural constructions of race were so ingrained that they survived its demise and produced, instead, new forms of ethnonationalism and neoracism.[598]

The Kantian (and Blumenbachian) iteration of classical race theory proved so resilient in part because it was embedded in the colonial policies of the 19th century. For instance, the colonial policies launched by Lugard at the end of the 19th century reflect some subtle shifts in the relationship between race theory and imperial liberalism that echo the shifts in Kant's political philosophy in the 1790s. In the hands of Lugard, the rhetoric of Indirect Rule, with its defense of the nominal independence and equality of the native, rested on a form of institutional racism that more closely resembled the cosmopolitan racism suggested by Kant in the late 1790s than the "purely biological" theory of race developed by Blumenbach and transformed by Darwin. Because it relied on both an account of "natural" and cultural race difference, the racism undergirding Indirect Rule squared would prove particularly responsive to 20th century conflicts over race and the legitimacy of colonial rule. Because the colonial racism of Indirect Rule emphasized the role of cultural backwardness in maintaining raced difference, it squared neatly with the civilizing narrative of late imperialism and with shifts in race theory in the 20th century, as biological theories of race were tied to and interwoven with discourses of nationalism, ethnicity, purity, and whiteness.

The forms of racism that shaped the policies of Indirect Rule were already prefigured in Kant, whose final variant of cosmopolitanism had developed the theory of race into a cosmopolitan nationalism undergirded by a sense of both raced and cultural superiority.[599] As I argued in Chapter

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[598] McCarthy, Thomas. *Race, Empire, and the Idea of Huamn Development.* 2010, pp.6-7.

[599] In this sense, Kant's final iteration of race theory is more complex than Blumenbach's, which mapped race on the body. This nationalism finds its expression in the political thought of the 1790s, which valorizes republican constitutional states as the only rightful political order. The *Anthropology* offers an empirically grounded variant of Kant's cosmopolitan nationalism in his assertion that only European nations have "national character."

Five, Kant's raced cosmopolitanism envisions an inclusive but nationalist politics for a hierarchically raced world. This cosmopolitanism is designed to contain raced difference in a political structure in which natural inequalities are managed by rightful institutions, producing politically rightful hierarchies that redirect man's violent and selfish tendencies, creating a "matrix within which all capacities may be fully developed," and in which individual rights to property and trade are coercively protected. In the next section, I lay the groundwork for my consideration of Kant in Africa by demonstrating that Kant's account of African backwardness, and of juridical transformation as the necessary remedy for it, hews surprisingly closely to the arguments advanced by the father of Indirect Rule in Africa, Lord Lugard.

1.3: "A Kantian Lugard": Kant, Lord Lugard & Indirect Rule in Nigeria

Frederick Lugard, a military officer, imperial adventurer, and colonial administrator shaped British colonial policy in Africa over several decades from his tenure as an explorer for the British East Africa Company in the 1890s to his role as High Commissioner of the Protectorate of Northern Nigeria from 1899-1907. Lugard published several works on colonial policy in Africa that develop the philosophical justifications for Indirect Rule, which are strikingly reminiscent of the arguments Kant put forth, both in his writings on race and in his cosmopolitan essays. In drawing this comparison, I argue not that Lugard's vision of colonialism was directly shaped by Kant's cosmopolitan claims, but that the similarity between their arguments positions Lugard as a useful stand-in for Kant in Africa.

First, Lugard's colonial policies were premised upon a theory of race that resembled Kant's claims more closely than it did contemporary constructions of raced difference.[600] While the debate

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[600] When Lugard's view on race and colonialism are viewed in the light of the fractious contemporary debates over race occurring among members of the Royal Anthropological Institute

between polygenism and monogenism carried on in late 19th century Britain, Lugard like Kant, was committed to monogenism, and this shaped his attitudes towards the "civilizing mission" in which he was engaged.

Second, though Lugard recognized Africans as members of the human race, he described them, as did Kant, as inhabiting the bottom rung of a racial hierarchy.[601] Just as Kant defined the hierarchical nature of raced difference according to the development of human capacities, Lugard described Africans as full – if not "adult" -- members of the human race who lagged behind the development of key capacities. Echoing Kant's claims about the African's lack of skill and discipline,[602] Lugard's repeated reference to the discipline required for educating the native echo Kant's claim that Africans are essentially lazy, and can be motivated to work only through servitude.[603] Lugard, like the mature Kant, was a critic of slavery: he had embarked on his adventures in Africa as a hired gun willing to be used in any way to suppress the slave trade.[604] Just as Kant criticized European involvement in the slave trade, and gestured towards a collective European guilt for their involvement in it,[605] Lugard reminded European colonial administrators,

> we must recollect how the African has been wedded to slavery through centuries on

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(see section 6.1.2), the similarity of his arguments to those developed by Kant nearly a century earlier fall into sharp relief.

[601] "The African", he wrote, "hold the position of a late-born child in the family of nations, and must as yet be schooled in the discipline of the nursery." Lugard, *The Rise of Our East African Empire*, p. 75. Quoted in Taiwo, p. 135.

[602] For a discussion of the role of skill and discipline of the African in Kant's theory of race, see Bernasconi, Robert "Kant's Third Thoughts on Race." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY (2011), pp. 306-307.

[603] Kant, ODR 2:438; TPP n5; see also the discussion in Bernasconi (2011) of Kant's account of the lack of discipline and skill amongst Africans. Bernasconi (2011), pp. 291-318.

[604] Lugard says of slavery: "of all African problems there is none more engrossing than that of slavery, and to assist in its solution has been the consistent object of my efforts since I first entered tropical African in 1888." Lugard, *Our Dual Mandate in British Tropical Africa*. London: Frank Cass & Co, 1965, p. 354. Originally published in 1922.

[605] See the passage from the *Physical Geography* quoted in the previous section. (*Physique Geographie,* AK 9:229. Translated in Mignolo, Walter. "The Darker Side of the Enlightenment." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY (2011), p. 328.)

> centuries, so that it has become the product, as it were, of the blood-stained soil of the land … Let us accept all this, and clear the ground of all high-coloured nonsense – of "kingly hearts" beating in the bosoms of slaves, and so forth; and taking the African as he is – as centuries of wrongs have made him – apply ourselves to raise him to a higher level.[606]

Third, for Lugard as for Kant, Europeans find themselves with an obligation to "raise the African to a higher level."[607] In both cases, this obligation is informed by assumptions of colonial racism: for Kant, the lack of development of native capacities is the result of a collusion of biological difference and cultural "backwardness;" likewise, Lugard argues, "there is in him, like the rest of us, both good and bad, and that innate good is capable of being developed by culture."[608]

Fourth, for both Lugard and Kant, this obligation must take a particular form: Europeans must lead the way not by directly ruling the "native," but by introducing him to the rightful juridical structures that were the cornerstone of the civilizing mission.[609] Thus, the remedy for the African's lack of development is the same for Lugard as it is for Kant: only the introduction of European culture and institutions can further the development of African capacities.[610]

Fifth, Kant's cosmopolitan arguments and Lugard's framework for Indirect Rule share a commitment to consent and self-determination on the part of the native. Lugard articulates his

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[606] As a result, natives found themselves, in the colonial encounter, in a "natural" hierarchical relationship with Europeans: "In brief, the virtues and defects of this race type are those of attractive children, whose confidence once it has been won is given ungrudgingly to an older and wiser superior, without question and without envy." Lugard (1965), p. 616.

[607] Kant MS 6:353; Lugard (1965), p. 616.

[608] Lugard. *The Rise of Our East African Empire*, p. 75. Quoted in Taiwo (2010), p. 134.

[609] For Kant, the native must "consent" to enter into a rightful juridical order. MS 6:353.

[610] This is so both because of the hand Europeans played in the slave trade and because Europeans represent the most advanced portion of the human race, and thus the obligation to offer Africans a road map to modernity falls to them. In this story, Europeans must lead the way, modeling civilization, if necessary, "legislating for other continents" (Kant, IUH. In Reiss (1991), p. 52.), though Lugard warns that "the danger of going too fast with native races is even more likely to lead to disappointment, if not to disaster, than the danger of not going fast enough." Lugard (1965), p. 198. Lugard, *The Dual Mandate*, p. 618. Quoted in Taiwo (2010), p. 131. And, just as Kant added the necessity of "cosmopolitan hospitality," opening foreign nations to European commerce, Lugard added, "while ministering to the needs of our own civilization." See also Kant, MS 6:352. See Chapter 5.2 for a discussion of this obligation.

commitment to these principles, arguing that while the presence of British legal principles was important, "if our aim be to raise the mass of the people of Africa to a higher plane of civilization, and to devote thought to those matters which … most intimately affect their daily life and happiness, there are few of greater importance than the constitution of the native courts."[611] As Lugard articulates it, the goal of Indirect Rule is to make the native courts " an integral part of the machinery of government" as an essential first step towards developing African self-governance.[612]

But Lugard's commitment to Kantian principles of self-determination and consent are most clear when we contrast his articulation of Indirect Rule with the colonial methods employed by other European colonial powers in West Africa. For example, for the French, one of the goals of African colonialism was a permanent and consistent legal system premised on French juridical practices; to be understood, this juridical transformation would require the French to "totally change the Negro mentality."[613] The stated goal of French colonial legislation was to "to bring civilisation, moral and social progress, economic prosperity" even though "for a long time yet our subjects must be led to progress despite themselves, as some children are educated despite their reluctance to work."[614] Accordingly, French colonial administrators explicitly denied natives any right to self-rule: "we must thus confine ourselves to practising direct administration, which is in any case the most moral system in Negro countries, for it involves far fewer of those excesses which are the undeniable consequence of any participation by natives in public affairs."[615]

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[611] Lugard (1965), p. 547.
[612] Lugard (1965), p. 548.
[613] G. L. Angoulvant, governor of French West Africa, in instructions written for civilian administrators in November 1906. In John D. Hargreaves, ed .. France and West Africa: An Anthology of Historical Documents (London: Macmillan, 1969), p. 201.
[614] G. L. Angoulvant. In Hargreaves (1969), pp. 200-206.
[615] G. L. Angoulvant, governor of French West Africa, in instructions written for civilian administrators in November 1906. In John D. Hargreaves, ed. *France and West Africa: An Anthology of Historical Documents* (London: Macmillan, 1969), p. 206. German colonial practices, likewise, emphasized the rights of German settlers and developed a militaristic strain of colonialism that

Lugard's memos to his administrators, by contrast, stress the importance of self-determination for the native at the local level, and the necessity of flexibility and variability in the administration of colonial policies. Under Lugard's system, colonial law would coexist with customary law, which would be developed by Africans themselves under the guidance of colonial officials. In a memo to his officers, Lugard argued that British rule must be carried out with "as little interference as possible with native customs and modes of thought. Where new ideas are to be presented to the native mind, patient explanation of the objects in view will be well rewarded, and new methods may often be clothed in a familiar garb."[616] Lugard articulated the policy of Indirect Rule as offering native communities the right to self-determination and the juridical space in which to develop a system of customary laws which reflected traditional political, social, and economic practices, and placed juridical legislation of local issues in the hands of local chiefs rather than distant colonial administrators.

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quelled native attempts at self-governance, rather than encouraging them through the development of native law. By the turn of the 20th century, German colonies were ruled under German military, rather than civilian, law – a far cry from the extension of juridical institutions to native others advocated by Kant. (See Hull, Isabel (2005). *Absolute Destruction*. Cornell University Press.) For these reasons, neither French nor German colonial practices offer a helpful model of Kant's cosmopolitan assumptions; of the forms of colonial rule developed in the 19th century, Lugard's hews closest to Kant's vision of a cosmopolitan world.

[616] Accordingly, Lugard offers a "patient explanation" of the benefits of a contract labor system in lieu of slave-based or lineage-based labor practices. Frederick Lugard, *Political Memoranda: Revisioll ofInstructions to Political Officers all Subjects* Chiefly Political and *Administrative*. 191.3-1918, 2nd edition (London: Waterlow and Sons. 1919), Memo No. 1: Duties of Political Officers, Section 3. Lugard stressed not only self-determination, but the variability within customary law and the flexibility thus required of colonial law: "This does not mean a rigid adherence to the letter of a ruling. Among such diverse races in widely varying degrees of advancement, it is inevitable and desirable that there should be diversity in the application of a general policy by the Resident, who knows the local conditions and feelings of his people. It does mean, however, that the principles underlying the policy are to be observed and the Resident in modifying their application will fully inform and obtain the approval of the Governor." (Lugard, 1919, Memo No. 1: Duties of Political Officers, section 5). Customary law must be consistent with basic tenets of colonial law: the self-determination allowed by Indirect Rule was limited by paternalistic assumptions on the part of colonial administrators and the tremendous coercive and military power held by the colonial government.

This method of governance, Lugard hoped, would have far-reaching consequences. Just as Kant suggests that the introduction of the institutions of right may lay the groundwork for the moral development of non-civilized people, Lugard ties the development of the native court system to the development of African autonomy. In the *Dual Mandate*, he writes

> it may perhaps hardly seem worth while to set up a crude tribunal consisting of primitive pagans, who can hardly be called chiefs, and have but a limited control over a few families, but from such small beginnings alone it is possible to create the rudiments of law and order, to inculcate a sense of responsibility, and evolve among a primitive community some sense of discipline and respect for authority.[617]

Given Lugard's often dismissive references to Africans as "primitive pagans," scholars are divided about Lugard's intentions for setting up the native courts system. While some see it as evidence of Lugard's respect for African self-determination, others argue that Lugard was actively working to deny Africans access to the institutions of modernity.[618] Lugard's own articulation of the principles guiding Indirect Rule hinged on a rhetorical defense of the potential political equality of the "native," and subtly suggested that access to European juridical practices, and institutions could transform the native from "savage" to "subject." This transformation occurred primarily through the development of customary law within the native courts system, through which the "native" could be said to consent to participate in rightful juridical practices and to adopt them as his own. In this way, Lugard's Indirect Rule offers a concrete model of the process through which Kant's juridical cosmopolitanism might persuade the "native" to voluntarily participate in a rightful juridical order.

In what follows, I draw on African feminist arguments to show that the development of customary law, far from freezing African social and legal practices in place, in fact transformed those practices in order to make them intelligible to European colonial administrators. Both Lugard's and

[617] Lugard (1965), p. 548.
[618] Taiwo (2010). P. 141.

Kant's arguments hinge on assumptions of colonial racism, through which they view this "native" as fundamentally uncivilized and situated "outside" a rightful order. From this perspective, they frame the introduction of juridical rule as an *adoption* of new, rightful practices, rather than the *transformation* of already developed practices. The Native Courts effected a radical transformation of family, labor, and property arrangements – producing, as a "Kantian Lugard" might have hoped, a legal framework organized by the central institutions of a Kantian conception of right.

2. Colonial Cosmopolitanism and the Family

2.1 A Word on Method: Two Difficulties

Before turning to an exploration of the restructuring of the family wrought by juridical transformations in colonial West Africa, I want to note several challenges present in a project like this one. The first is a problem of scope. Africa is an enormous and radically diverse place, and any attempt to engage with Africa as a monolith is bound to fail. I agree whole-heartedly with Kwame Gyeke, Ifi Amadiume, Oyewumi, and a range of others who criticize Western scholars who treat "Africa" or "African women" as a monolith, and who call for nuanced, historical, and ethnically specific scholarship on Africa.[619]

At the same time, my project examines European colonial and cosmopolitan policies and epistemologies that often treat Africa as a monolith. We have seen that French and British colonial policies in Africa differed in both principle and practice, but both appeal to a deeper set of justifications that were deployed consistently by colonialists across the continent. The uniformly primitive, underdeveloped and unknown "Africa" of Kant's *Physical Geography* remained the "Africa"

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[619] See, for example Amadiume, Ifi (1987). *Male daughters, female husbands*. London: Zed Publishing; Gyekye, Kwame. (1997). *Tradition and modernity: Philosophical reflections on the african experience*. Oxford: Oxford University Press; Masolo, D.A. (2000). *Philosophy as Cultural Inquiry.* Indiana University Press; Nzegwu (2006); Oyewumi (1997); Wiredu, Kwasi (1985). "The concept of truth in the Akan language." In Philosophy in African: Trends and Perspectives, ed. Bodunrin. University of Ife Press.

of the colonial imagination more than a century later, and the arguments Kant presented calling Europeans to spread the benefits of civilization to the most "backward" parts of the world remained a clarion call to African colonialists well into the 20th century.[620] When I refer to *colonialism in Africa*, I do not assume Africa as a monolith; rather, I gesture towards the monolithic nature of coloniality and the "Africa" of the colonial imagination.

This chapter attempts to manage this problem of scope by focusing on a specific set of colonial encounters between Lugard's British colonial rule and the Yoruba and Igbo of modern-day Nigeria. It is not possible, in a single chapter (nor a single book) to engage sufficiently the complexities of the Igbo alone, let alone the Yoruba, and I shall attempt nothing of the sort. This chapter presents no original field research, and relies entirely on scholarship from studies conducted in Igboland and Yorubaland. I have chosen to focus on the Igbo and Yoruba for two main reasons: first, because they were amongst the groups most affected by Lord Lugard and the development of Indirect Rule and the native court system, which suggests, as I have argued above, a concrete example of a possible Kantian colonial-cosmopolitan framework.[621] Second, and perhaps more importantly, I place my emphasis here because the feminist scholarship on the Yoruba and Igbo is excellent, nuanced, and contentious, and it develops a range of challenges to Western feminist and cosmopolitan thought.

The arguments in this chapter take up two theorists: the work of Oyeronke Oyewumi (writing on the Yoruba) and Nkiru Nzegwu (writing on the Igbo), each of whom presents a

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[620] Kant: IUH. In Reiss (1991), p. 52; MM 6:352.

[621] Lugard himself noted that the Yoruba and the Igbo presented two radically distinct challenges for the implementation of Indirect Rule. The Yoruba were a large and bureaucratically organized people with a political hierarchy already in place; the Native Courts system easily grafted itself onto this structure, but faced more resistance in the transformation of law. The Igbo were a small and geographically dispersed people among whom political organization was structured at the local and lineage level, making the introduction of the Courts more structurally challenging. Perham, "Introduction to *Our Dual Mandate in East Africa.*" Lugard (1965), p. xliii.

philosophical framework for challenging the ubiquity of Western constructions of gender and the universality of the Kantian construction of the political subject and its attendant philosophy of the family. Oyewumi's and Nzegwu's arguments are not meant to be representative of "feminism in Africa," and they do not consider the position of African women across the continent. Both arguments are geographically, historically, and culturally specific, and this specificity is critical to my arguments in this chapter. The family practices described the second half of this chapter are understood as specific to the Igbo of the Ontisha region and the Yoruba of Old Oyo, since these are the only cultural configurations under consideration in these texts.

This chapter is plagued by a second persistent problem. As Nzegwu, Oyewumi, Amadiume, and MacIntosh point out, given the nature of colonial transformation and the historical record it produced, we must ask constantly and carefully when an institution is "traditional," and when it is already undergoing some form of colonial transformation.[622] Because the "historical record" – in the form of legal and commercial documents, missionary accounts, and early anthropological texts – emerges in the wake of colonial contact, that record tends to present African institutions and social patterns in a form already shaped by European education, commercial interests, and juridical transformation. The juridical patterns reflected in so-called customary law had already been radically transformed by several decades of missionary education and conversion, and were limited by both the explicit requirement that they be minimally consistent with colonial law and the implicit requirement that they be intelligible to colonial administrators, whose presumptions about family, gender, and labor further transformed "customary" practices.

The co-production of a European-informed patriarchal juridical order and a system of "customary" law supposedly grounded in pre-colonial tradition produced both an ontological and an

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[622] Amadiume (1987); McIntosh, Marjorie Keniston. (2009). *Yoruba Women, Work, and Social Change.* Indiana University Press; Nzegwu (2006); Oyewumi (1997).

epistemological crisis through which new categories of "traditional" being were invented even as traditions themselves became unintelligible to those whose lives were shaped by them. This colonial epistemological framework shapes the literary record, which reflects the difficulty of retrieving pre-colonial institutional orders. Chinua Achebe's *Things Fall Apart* (1958) is perhaps the most well-known Nigerian work of literature in the 20th century. It presented an account of a "traditional" patriarchal Igbo family that squared with the anthropological accounts that preceded it, but this account of the family is a product of Nigeria in the 1950s, when it was written, rather than a reflection of pre-colonial family practices.[623]

In this sense, Achebe's novel strikes the same tone as feminist anthropological accounts of the Igbo developed over the next several decades: it presented traditions both *from* and *to* a Western perspective. In doing so, they map African traditions with Western tools.[624] As Oyewumi and Nzegwu argue, gender is amongst the most persistent of these tools: because Westerners assume

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[623] In Achebe's novel, the Igbo family was patriarchal, patrilineal, and polygamous, and revolved around the desires of its patriarch, Onkonkwo. The women in the story are subordinate not only to their husband, but to other men in the lineage as well. Christian missionaries and warrant Chiefs appointed by the colonial government lurk in the background of the story, reminding us that colonial transformations are already underway. Onkonkwo's power as the patriarchal head of his family is as much a product of colonial juridical policies as his polygamous marriages are of Igbo tradition. As Nzegwu argues, the book struck a nerve with Western readers in part because "the family experiences … approximated the experiences and type of relations that white, middle-class feminists identified in the nuclear family." Nzegwu (2006), p. 12. Like Achebe's novels, Buchi Emechata's *The Joys of Motherhood* (1979) present Igbo gender roles in the wake of colonial transformation. Set in the decades preceding Independence, Emechata's novel explores the jarring transition of moving from one's rural lineage to a conjugal household in colonial Lagos, and the resulting tension between incommensurate philosophies of the family. Yet here, too, the lineage that lingers in the background of the novel is already altered by a century of colonial transformation: it, too, is presented as a patriarchal space in which returning daughters have no rightful place. Both *Things Fall Apart* and *The Joys of Motherhood* depict the waning of Igbo lineage traditions in the face of modernity, but theses traditions are themselves already shaped by the colonial world emerging around them.

[624] See, for example, Helen Henderson, *Ritual Roles of Women in Onitsha Igbo Society*. PhD. Diss, University of California, Berkeley, 1969 and Helen Henderson, "Onitsha Woman: The Political Context for Political Power." In *Queens, Queen Mothers, Priestesses, and Power: Case Studies in African Gender*, ed. Flora Edouwaye S. Kaplan. New York Academy of Sciences, vol. 810, 1997, 215-243.

that gender is universal, they tend to find it everywhere in a form both familiar and presumed to be universal. As the arguments in this chapter will show, Western engagements with Igbo and Yoruba traditions, from the earliest missionary encounters to contemporary feminist explorations of "African women" have tended to import a particular construction of gender, and to understand lineage structures through the lens of naturalized patriarchy.[625]

In the face of these difficulties, I do not intend in this chapter to offer a comprehensive account of African colonialism, juridical transformation, or the place of gender in de-colonial African studies. Rather, I hope that by exploring arguments that offer resistance to Kant's vision of a unified and universal world of cosmopolitan right, I might suggest tools for developing a more inclusive and discursive de-colonial cosmopolitanism. My discussion of these arguments is, therefore, neither complete nor comprehensive.

2.2 Colonialism and Modernity: Why the Family?

This chapter examines a specific juridical and social transformation wrought by colonial processes in order to develop an account of the concrete means through which the kind of cosmopolitan juridical transformations Kant envisions take place. While the transformations Kant envisions would radically alter a whole range of structures in African society – land ownership, labor and agricultural practices, religious and spiritual practices, medicine, language, history, and education and, more fundamentally, knowledge practices of all kinds – I focus on the transformation of the family, and on the attendant shifts in gender, labor, and public and private spaces. This emphasis on the family is not arbitrary: as my analysis of Kant's philosophy of the family in Chapters 1-3 shows, inequalities embedded in a given articulation of justice are often revealed when we ask what work family structure does to conceal and institutionalize those inequalities.

[625] Amadiume (1987); Nzegwu (1994), (2005), and (2006); Oyewumi (1997) and (2005).

Lugard's policy of Indirect Rule, likewise, explicitly focused on domestic and family law: "the courts are chiefly engaged in settling questions which arise out of the domestic relations, such as matrimonial disputes, petty debts, trespass, assaults, and inheritance – where both parties are natives subject to its jurisdiction."[626] As Lugard's argument suggests, the family was the primary contested terrain for missionary efforts, colonial law, and property rights from the earliest colonial interactions in West Africa. Early Christian missionaries in Africa saw the introduction of monogamous, Christian marriage, with its attendant sexual mores, gender roles, domestic space, and inheritance practices as the primary goal of missionary efforts. By the 1880s, the emerging colonial juridical system would follow suit with the introduction of the Gold Coast Marriage Ordinance of 1884, which influenced marriage law in the region through the late 20th century.

So, what does the "adoption" of the family structure Kant advocates mean for a society with developed and distinct family, labor, and gender practices? I have emphasized that Kantian juridical cosmopolitanism entails not simply the *adoption* of rightful juridical structures but the *transformation* of already developed sociopolitical practices. Transformations of property rights, inheritance, education, labor practices, and the market economy would all be brought about through this transformation in the African family.

In developing this analysis, I am arguing against a set of articulations of neo-Kantian cosmopolitan liberalism and of the relationship between colonialism and modernity. Olefumi Taiwo has argued that colonialism prevented the development of modernity in Africa, and points to Lugard's policies, in particular, as embodying a form of "sociocryonics" designed to freeze African practices in a premodern state.[627] For Taiwo, African colonialism broke the promises made by early missionaries in Africa, who he credits with introducing modernity to Africa and encouraging

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[626] Lugard (1965), p. 550.
[627] Taiwo, (2010). Pp. 10-15, 144-154.

Africans to develop modern institutions of their own.[628] Taiwo's argument turns on a careful and important distinction between colonialism and modernity, which holds that a critique of colonialism need not also entail a rejection of the values of modernity. Taiwo valorizes the values of modernity as the road forward for a backwards Africa, and accuses colonizers of actively and purposively denying Africans direct access to the benefits of modernity. His indictment of colonialism points to its failure to successfully introduce and institutionalize the values of modernity: colonialism is to be criticized not simply because of the ways it transformed non-Western societies, but because of the ways it failed to do so. Thus, he points to a failure of the colonists to fulfill their obligation, as Kant would put it, to bring about a rightful modern state everywhere.

Kwame Anthony Appiah also distinguishes colonialism from modernity but more explicitly endorses the European introduction of modernity to Africa. For Appiah, the crucial gift offered by European missionaries was literacy, which Appiah describes as the essential condition for modernity.[629] Those early missionaries who brought European languages along with their vision of God, and who built schools, and who dedicated themselves, like Samuel Ajayi Crowther, to developing written forms of African languages which could then be translated into European tongues, are thus to be credited with making cultural progress possible in Africa.[630] The story of modernity Appiah presents draws on Kant's cosmopolitan narrative: modernity is the site of the rational, autonomous individual; the modern society is one in which the individual has the freedom to choose his culture and his position for himself.[631]

Both Taiwo's and Appiah's arguments valorize modernity and its attendant liberal values as humanistic and universal, and suggest that the essential project of African liberalism is to rescue

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[628] Taiwo, (2010). Pp. 3-10.
[629] Appiah, Anthony Kwame. *In My Father's House.* Oxford University Press, 1992. Pp. 129-136.
[630] Appiah, (1992); Taiwo, (2010), pp. 110-115.
[631] Kwame Anthony Appiah. "Cosmopolitan Patriots." *Critical Inquiry* Vol. 23, No. 3, Front Lines/Border Posts (Spring, 1997), pp. 617-639; Taiwo, Olefumi (2010), p. 10, 80-85.

modernity from colonialism, distinguishing the universal humanism of the one from the oppressive methods of the other. While Taiwo holds out hope for distinctly African instantiations of modernity, for Appiah modernity is always a process of hybridity as cosmopolitan values transform claims to cultural difference.

Though Taiwo's and Appiah's critiques of colonialism and modernity are importantly different, both draw on Kantian assumptions about the values of modernity, and both involve a troubling silence on the transformation of the family through the development of colonialism and modernity. Taiwo's account of "sociocryonics" rests on a faulty framing of the processes set in motion by the development of the native courts: only an analysis of customary law that does not take up questions about marriage, the family, and gender could come to the conclusion that customary law amounted to a total denial of modernity.[632]

Taiwo's analysis hinges on the raced attitudes of Europeans towards Africans, and sidesteps the patriarchal assumptions built into those attitudes. This leads Taiwo to defend early missionaries as offering autonomy and modernity to Africans, ignoring the radically inegalitarian model of marriage, family, and gender that missionaries offered Africans at the same time. The autonomy of which Taiwo writes is offered only to African men, and it is offered at the expense of the equality of African women. This exclusion is visible only given an analysis that explores the transformation of the family through the colonial encounter.

As Nzegwu's and Oyewumi's arguments will demonstrate in the next section, an analysis that emphasizes the transformation of the family demonstrates that patriarchy is embedded within liberalism, and that the colonial emphasis on conjugal marriage was critical to the transformation of

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[632] As Nzegwu notes in her review of Appiah's *In My Father's House,* his bibliography contains only one text by a woman (by Ifi Amadiume); Taiwo's recent book, *How Colonialism Preempted Modernity in Africa*, is likewise short on supporting texts by women. These patterns reflect, perhaps, a lack of interest in asking questions about gender and family structure.

economic and political subjectivity. In her account of Yoruba women, Marjorie Keniston McIntosh advocates a distinction between two senses of "patriarchy": on the one hand, the term can refer to the ideology that characterizes women as distinct from and inferior to men, and on the other, it can refer to a range of practices and institutions that enshrine women's inequality and limit their agency and choices.[633] The colonial project introduced patriarchy in both these senses. In the next section, we will see two variations of this claim: on Oyewumi's account, patriarchy introduced the concept of "women" itself; on Nzegwu's, patriarchy produced a new measurement of gender inequality and introduced a set of practices and institutions that undermined women's agency.

3. African Philosophy of the Family: Two Challenges

The scholarship of African feminists Oyewumi and Nzegwu offers a powerful starting point for critiquing Western and Kantian assumptions about gender, the family, and constructions of public, private, and the political. In the Introduction to this project, I defined Kant's philosophy of the family as consisting of a particular form of marriage and a particular structure of labor and the household that shapes the boundaries of the political. In this section, I present Oyewumi's account of pre-colonial Yoruba society and Nzegwu's account of pre-colonial Igbo society and examine, in particular, patterns of marriage and the construction of the household in order to outline a Yoruba and an Igbo philosophy of the family. This allows me to articulate the criticisms of Western liberal and feminist thought embedded in Oyewumi's and Nzegwu's arguments. The critical point here is that Western and Kantian political spaces are gendered, and the restructuring of the family (and of gender, sexuality, and marriage) is an integral part of remaking a society in order to make in conversant with Kantian conceptions of political right. In the next section, I turn to an example of colonial legislation that radically restructured those families, in order to show how Western

[633] McIntosh (2009), p. 17.

presumptions about gender, family, and public and private produce new matrices of equality and domination within a differently constituted society, and how they radically restructured political practices and juridical access along gender lines. This analysis shows that, because Western and Kantian liberalism is deeply entwined with patriarchal structures and assumptions of cultural racism, it often fails to translate across different conceptions of equality.

3.1 Gender Fluidity Among the Yoruba: Oyeronke Oyewumi's *On the Invention of Women*

The fundamental distinction between Yoruba and Igbo families and Kant's philosophy of the family is the purpose and role of marriage and domestic space. Although the kinship structures of the Igbo and Yoruba were distinct and varied from region to region, two features were remarkably consistent: first, that the nuclear family was de-emphasized, with rights, responsibilities, property, and labor distribution organized across broader lineages, and second, that in this cosanguineal structure, status was conferred primarily according to seniority rather than gender.[634] This meant that gender identity did not determine access to political and economic rights and marital relations did not organize a distinction between domestic and public space. Nzegwu and Oyewumi argue that only by excavating these political and social structures can we appreciate what a radical transformation of basic categories was produced by colonialism; to this, I add that an examination of African philosophies of the family might offer a starting point for de-linking Kant's claims about universal rights and his claims about the structure of public and domestic space.

In *The Invention of Women* (1997), Oyeronke Oyewumi argues that gender categories played

[634] For kinship structures among the Yoruba, see Bakare-Yusuf, Bibi. (2003). "'Yorubas don't do gender': A critical review of Oyewumi's *The Invention of Women." African Identities*. Vol. 1, Issue 1; Denzer, La Ray (1994). "Yoruba Women: a historiographical study." *The International Journal of African Historical Studies,* vol. 27, no. 1; McIntosh (2009), and Oyewumi (1997); for kinship structures among the Igbo, see Amadiume (1987), Nzegwu (2006), and Okonjo, Kamene (1976). "The dual-sex system in operation: Igbo women and community politics in midweatern Nigeria." In Eds. Hafkin and Bay, *Women in Africa: Studies in Social and Economic Change*. Stanford University Press.

such a small role in determining identity and opportunity among the Yoruba that the category of "woman" itself is a colonial invention. Oyewumi's argument rests, in part, on a linguistic claim: Yoruba dialects do not admit consistent gender references, and rarely refer to gender difference in everyday speech.[635] As Yoruba is translated into English, gender is inserted into the Yoruba world-sense, Oyewumi argues, and this becomes particularly problematic in the field of law, where distinctions are produced in translation that transform the nature of rights, responsibilities, and relationships.[636] In Yoruba, denoting the gender of a person was less important than denoting seniority.[637] Gender was important, Oyewumi argues, only in activities that related directly to reproduction; economic, political, and social status was determined by a range of other factors. Thus, Oyewumi argues that the pre-colonial Yoruba did not have concept that corresponded directly

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[635] Yoruba, like Igbo, consists of multiple dialects, but was largely unified into Standard Yoruba by early linguistic scholars like Samuel A. Crowther in the 1850s. See Taiwo (2010), pp. 110-115. Oyewumi argues that Yoruba is a non-gendered language: pronouns like "o" and "won" do not specify gender (though they are most frequently translated into English as "he");"omo" means child or offspring, rather than son or daughter. The non-gender-determinate nature of relational identities is often blurred by English translations. O*yo* and *aya* are often translated as *husband* and *wife*, respectively, but given the structure of Yoruba lineages, these terms do not connote gender as clearly as they might in English. Yoruba society is patrilineal: men marry exogamously, bringing wives (*aya*) to live in their lineage; children of marital unions belong to their father's lineage. Once she has come to live in the lineage of her conjugal partner, all members of that lineage are referred to as the *aya*'s *oko* (though only her conjugal partner may engage with sex with her). An *aya* refers to her conjugal partner, his siblings, parents, and cousins, as her *oko*. This is one sense in which the Yorbua recognize the concept of a "female husband," and one example of the decentering of gender in describing relationships and identities.

[636] See Adeleke Adeeko's playful take on Oyewumi's arguments, in which he seeks to translate Yoruba terms for familial relationships into an American vernacular, highlighting the differences between a gendered and non-gendered way of framing these relationships. Adeeko, Adeleke, "Ko Sohun ti Mbe ti o Nitan (Nothing Is that Lacks a [Hi]story): On Onyeronke Oyewumi's *The Invention of Women*." In Ed. Oyewumi, *African Gender Studies: A Reader*. Palgrave Macmillian (2005). Pp. 121-127.

[637] Status is determined not by gender but by seniority within the lineage, which must be distinguished form age: seniority is determined by the length of time one has been a member of a lineage. For sons and daughters of a lineage, seniority is determined by age. For those marrying into a lineage, the time of marriage determines seniority. Other factors, like the number of children one bears, also affect one's status in the lineage.

to *woman* in the Western sense.[638]

Oyewumi's central argument is thus a radical one: colonial processes effectively invented women among the Yoruba, for no corresponding concept organizing social, political, and economic difference was operative among the pre-colonial Yoruba. The lack of stable and pervasive gender constructs is reflected in the non-gendered nature the Yoruba language, which does not rely on gendered pronouns, and in the matrix of kinship relations, which emphasize seniority rather than gender. In arguing that the Yoruba had no concept that corresponded to "woman," Oyewumi frames the Western definition of woman as "(1) those who have no penis …(2) those who have no power; and (3) those who cannot participate in the public arena."[639] This definition of "woman" rests on a critique of the patriarchy embedded in the Western worldview, and it critically links the construction of gender with the production of a limited public or political arena. In doing so, it highlights the transformation of biological difference into juridical inequality and lack of access to the public realm so clearly laid out in Kant's political arguments. Oyewumi's arguments thus challenge the Kantian assumption that biological difference should be embedded into institutional structures.

Oyewumi argues that, in the absence of a coherent construction of "women," Yoruba society did not admit a clear distinction between public and domestic spheres.[640] Domestic labor, for example, was organized based on seniority, rather than by gender, and was performed collectively by many members of the lineage. Marital partners shared neither wealth nor earnings: each earned

[638] Because *obinrin* and *okunrin* refer only to reproductive capacities, she argues, *okunrin* does not entail a lack of agency or political and economic empowerment. Oyewumi argues that, insofar as "woman" in the Western, patriarchal sense, denotes "a lack of a penis, a lack of power, and a lack of political participation," the Yoruba had no concept that corresponded to this construction. While McIntosh and Bakare-Yusuf disagree that there was no concept of "woman" among the Yoruba, they emphasize the fluidity of gender, kinship, and labor practices, and agree that seniority is of greater importance than gender.
[639] Oyewumi (1997) p. 34.
[640] Oyewumi (1997), p. 148.

separately, and both invested in the future bridewealth of their children.[641] Though marriage did not produce an economic unit, it involved an economic exchange essential to formalizing paternal rights: unless a man has formally married the mother of his children, those children are not members of his lineage – they remain members of her lineage.[642] Likewise, following the death of her husband, a woman might choose to remain in his lineage as his *aya* (wife), and bear children in her husband's name – as his wife, those children would belong to his lineage, regardless of biological paternity. This pattern of paternal rights, like the destable concept of "woman" itself, underscores the ways in which biological and sociocultural identities are decoupled in the Yoruba lineage.

Oyewumi argues that the fluidity of marital and reproductive practices were designed to support agency and choice.[643] Accordingly, she emphasizes that though the Yoruba practiced polygamy, it was a polygamy decoupled from patriarchy, and it supported women's reproductive agency. She points to the practice of post-partum abstinence, which was practiced across Africa in the pre-colonial period, and was the target of numerous missionary and colonial policies.[644] Following the birth of a child, women would abstain from sex with their husband (*oko)* thus ensuring that they did not become pregnant for a reasonable period, and allowing them to nurse infants for several years (a particularly important practice in times of economic and agricultural scarcity). Polygamy allowed women this freedom, and also ensured that the duties and labor of a wife (*aya)* would be shared with other women. In the multiply-constituted Yoruba lineage, no

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[641] Oyewumi (1997), p. 64-71.
[642] The only way for men to expand their lineage, therefore, is though marriage, which must be formalized by both lineages, and involve bridewealth, which is a transfer of (often extensive) wealth from the groom's family to the bride's in exchange for her coming to live in, and produce children for, his lineage.
[643] Oyweumi (1997), p. 43-51.
[644] Cf. Nancy Rose Hunt, "Le Bebe en Brousse." In Eds. Cooper and Stoler, *Tensions of Empire*: *Colonial Cutlures in a Bourgeois World.* University of California Press, 1997. Pp. 287-321.

enclosed juridical space existed, and domestic labor was shared by all members of the lineage.[645]

Oyewumi's framework of a "pure" ungendered Yoruba society has been contested by Bibi Bakare-Yusuf, La Ray Denzer, and Marjorie Keniston McIntosh, who argue that, while Yoruba practices were open and fluid, they did admit some fundamental distinctions between men and women, though these are not necessarily clearly delineated in Yoruba language, with its complex range of genders.[646] Whether the Yoruba admitted a concept like "woman", it is evident from each of these accounts that gender did not determine access to spheres of economic agency or political participation. In this sense, pre-colonial Yoruba society seems to have resisted a social or political distinction between public and domestic mapped on to a fixed construction of gender. Political power and offices were determined according to status within a lineage, as mapped by seniority and contributions to the lineage (including children and wealth). Thus, many pre-colonial Yoruba rulers were anatomically female,[647] and there were political offices in the Oyo kingdom traditionally held by women, such as the *Iyalode*, who oversaw the markets and determined trade policies.[648] Without a consistent distinction between public and domestic spheres, women were active economic agents, barred from no region of political or economic life.

The fundamental premise of Oyewumi's argument remains powerful: if gender is socially constructed, then there is no reason to believe it is identically constructed in all social and political orders. There is no reason to believe that gender, and the social, political, and economic frameworks

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[645] Oyewumi (1997), p. 56-57.

[646] Adeeko, Adeleke. "Gender in Translation: Efunsetan Aniwura." In Oyewumi, Ed. *Gender Epistemologies in Africa: Gendering Traditions, Spaces, Social Institutions, and Identities*. Palgrave Macmillan (2010). McIntosh argues that the fluidity and flexibility of Yoruba practices meant that the gendered labor and trade practices in place when missionaries began keeping records may have been recent innovations in response to the rise of civil warfare and urbanization in the Yoruba states in the first half of the 19th century. McIntosh (2009), p. 34.

[647] Oyewumi points out that this fact was obscured by early historians like Samuel Ajai Crowther, who assumed that political leaders were male – a mistake encouraged by the fact that Yoruba names do not connote gender.

[648] McIntosh (2009), p. 221-225.

built around it in Western societies, would arise in the same constellation among the Yoruba. The presence of anatomical and reproductive gender distinctions among the Yoruba does not admit a system distinguishing rights, responsibilities, or access to the spheres of autonomy and agency. Once gender is radically decentralized from the process of producing political and economic agency, Oyewumi argues, there is no need for a gendered division between public, private, and domestic spheres. What Oyewumi envisions, in other words, might be understood as a society that values political participation and agency *without* depending on a distinction between public and domestic rights, roles, and spaces.

2.3 Gender Complementarity in a Dual-Sex Society: Nkiru Nzegwu's *Family Matters*

Nzegwu's account of the Igbo of Onitsha builds on Oyewumi's insight about the social construction of gender in order to make a powerful claim about the relationship between gender and the basic structure of society. For Nzegwu, gender was a feature of pre-colonial Igbo society, but it was a socially determined, rather than a biologically fixed, construction of gender, which admitted a range of practices designed to keep this structure fluid, open, and responsive to the needs of lineages and individuals. Gender organized economic and political institutions among the Igbo of the Onitsha region. While Igbo lineages are cosanguineal, and patrilineal, Nzegwu emphasizes the dual political lines *within* a given lineage, which correspond to a complementary division of political, economic, social, and spiritual power. The cosanguineal lineage admitted two kinship categories: sisters/daughters (*umuada)* and brothers/sons (*umu okpala).* These parallel and symmetrical lines were not strictly ordered by sex difference, nor were they strictly matriarchal or patriarchal, since either a mother or a father could be the dominant ancestor of a given lineage.[649] Together, they

[649] The chief distinction in wifehood between matrilineal and patrilineal systems is that, in matrilineal systems, husbands are responsible for providing their wives and children with economic support

formed the essential political, social, and economic structures for Igbo society, and in doing so, offered women opportunities for agency and participation not common outside societies with a dual-sex political structure.

Nzegwu's challenge to a Kantian conception of right introduces a distinction between *mono-sexed* and *dual-sexed* political structures. Kant's juridical state is *mono-sexed*: only men, as the head of household, are political agents. On Nzegwu's account, Igbo society is *dual-sexed*: the *umu okpala* and *umuada* form the dual political poles of society, and through them, men and women have equal access to rights, responsibilities, and participation. As a member of an *umuada* (sister/daughter kinship structure), women had equal access to political and economic participation, which extended to the distribution of wealth and labor, as well as political offices and military decisions. In Onitsha, political authority is shared by both a male monarch (the Obi) and a female monarch (the Omu) carried out the policies of their respective governing councils: through this parallel structure, men's labor and women's labor were of equal concern to those in power. The characterization of these organizations as political institutions points to the absence of a distinction between the political and the domestic: women's grievances, no matter how personal, were shared and politicized.[650]

(even though she has no rights to his property); this is the case even where wives have economic means. Such a system of economic dependency is largely absent from patrilineal systems, in which women tend to live in sex-segregated households and function as economically autonomous agents. Manuh, Takyiwaa. "Wives, Children, and Intestate Succession in Ghana." In Ed. Mikell, Gwendolyn. African feminism: the politics of survival in sub-Saharan Africa. University of Pennsylvania Press. 1997. (Pp. 77-95)

[650] If they were not representatives of the Omu's governing council (the *ikiporo ani*), women's primary political standing derived from their position as a daughter of their birth lineage as a member of the *umuada* (council of daughters/sisters). Though women had less power in their marital lineage that in their natal lineage, all wives who had married into a given lineage were members of that lineage's *inyemedi*, or council of wives. Thus, though women were politically organized as wives, their primary source of political agency remained their identity as sisters, daughters, and mothers. Kamene Okonjo offers a more comprehensive account of the various dual-sex political organizations that structured pre-colonial Igbo life. Women participated in political decisions as representatives of the *ikporo ani*, a kind of "women's council" made up of women known to "speak well" drawn from each section of a village or town as members of the *umuada* of their native lineage,

Economic rights and duties were also divided between the two kinship categories, with each managing distinct agricultural projects: the *umu okpala* grew yams, while the *umuada* grew cocoyams, cassava, plantains, maize, and melons, which sustained the community during the planting season.[651] Men's crops were labor-intensive, prestigious, and required special, ritualized knowledge, but it was women's crops that provided the bulk of the food.[652] In addition to farming, women maintained the gardens and livestock and did most of the marketing, selling all surplus crops except for yams and palm wine, which were distributed by men.[653] The markets, accordingly, were governed by women's political organizations.

While Kant's emphasis on the necessary distinction between public and domestic spheres produces a mono-sexed public sphere, the dual power structure of the Igbo lineage resists any political conception of "public" and "private" or "domestic": all spheres of labor and participation were directly within the scope of the political.[654] Nzegwu repeatedly emphasizes the public nature of homes, sexuality, and forms of reproductive labor like cooking and childrearing,[655] arguing that in a dual-sex society, neither women nor their labor were measured against a male (mono-sexed) standard. While men and women engaged in separate forms of labor, lived in separate spaces within a lineage compound, and participated in separate political organizations, the principle organizing this separation was complementarity.

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and as members of the *inyemedi* of their marital lineage. Okonjo (1976), p. 51. This organization, run by the senior wife in the lineage, provided a space where women could collectively deal with marital discord and breaches of marital law, as well as health and economic issues Okonjo, (1976), pp. 45-58.

[651] Amadiume (1987), p. 38; Nzegwu (2005), pp. 186-188.

[652] Amadiume (1987), p. 29-30. Ifi Amadiume, studying the Igbo of the Nnobi region, argues that although marriage is patrilocal, meaning that men stay on the land of their patriliny while daughters are sent off as wives elsewhere, fluid gender practices allow women to own property. Amadiume highlights the practice of 'male daughters': where there were no sons to inherit the land, a daughter who took the place of a son could own land. In doing so, she held the social status of a son.

[653] Amadiume (1987), p. 39.

[654] Nzegwu (2006), pp. 222-225.

[655] Nzegwu (2006), pp. 162-163, 188-192.

Thus, the *umu okpala* and *umuada,* rather than marital relationships, operate as the organizing principle of Igbo society: unlike the fixed, lifelong bonds within a lineage, marriage was open, fluid, and could be organized in multiple ways, not all of which were strictly procreative.[656] Nzegwu highlights a range of community-sanctioned, transmarital relationships through which women could engage in sex with men who were not their husbands.[657] Through these practices, marriage was largely de-linked from sex, allowing women to seek "husband helpers" in order to have children; any children born to a married woman belonged to her husband's lineage, regardless of biological paternity.[658]

The Igbo practiced both polygamy and woman-woman marriage: a woman (married or single) could take a wife. If she was single, any children born by that wife would be born to the lineage of the "female husband." If the she was married, the children would belong to the lineage of her husband (thereby increasing her status as the mother of more children); if she were unmarried, the children would belong to her own lineage. Polygamy was thus an option open to *both* men and

[656] Marriage was fluid, both in the sense that it could be dissolved, and because children of a given marriage could be claimed by either the mother's *umuada* (more common) or the husband's *umu okpala* – even in cases where the children did not biologically belong to the husband. This was common, since women often became *idigbe*, taking paramours in order to have children, whether they were married or not. Wealthy women could take wives of their own, further complicating the construction of sex-difference in kinship structures.

[657] Nzegwu (2006), pp. 44-45. A "transmarital relationship" involves sexual activities beyond the conjugal union; Nzegwu distinguishes those that are sanctioned by the community and those that are not. She lists at least 14 instances of these relationships, including woman-woman marriage and various instances of women seeking a "husband helper" to have children, including cases where "spouses such as Awka blacksmiths and Nri ritual specialists, undertook journeys that kept them away from their conjugal units for months on end" (44) and "when a groom died without the birth of a male child to continue his line, and the widow selected a paramour with whom to produce an heir and continue the line" (p. 44). Nzegwu notes that in highlighting these cases, she is in disagreement with Amadiume, who stressed the importance of conjugal fidelity for wives. (P. 44n27). Nzegwu suggests that the evidence Amadiume relies on is drawn from a period after sustained contact with Western missionaries, and that the sexual morality of the Igbo had already been transformed by that contact.

[658] Nzegwu (2006), pp. 168-172. In cases where a woman remained within her own lineage, either as a "male daughter" or in an idigbe relationship, her children belonged to her own lineage.

women: just as a man capable of paying the bridewealth for more than one wife might do so to enhance his status in children, a woman capable of paying bridewealth might do so, too, taking a wife and claiming any children produced as her own.[659] Igbo practices allowed for gender fluidity in other ways: a woman could opt to remain within her own lineage (becoming, if necessary, a "male daughter," inheriting her father's land) and could enter into an *idigbe* relationship, a non-formalized conjugal union which allowed her to remain in her own lineage rather than moving to the lineage of her partner.[660] In this way, the fluid nature of marriage and social gender identity, coupled with a dual-gender political and economic system, afforded Igbo women a range of choices not available in Western and conjugal societies.

Practices like polygamy, woman-woman marriages, bridewealth, and post-partum abstinence were attacked first by missionaries and then by colonial authorities for whom these practices were counter to both the "natural order of things" and to the institution of rightful, Christian marriage. The economic, social, and political agency of women proved more resistant to colonial attempts at reform despite European assumptions that practices like polygamy undermined women's social position. In the end, conjugal marriage and the juridical production of the domestic sphere would introduce a gendered distinction of rights, labor, and identity and radically limit women's access to agency in the public sphere.

Thus, for Nzegwu, the critical transformation wrought by colonialism was not the "invention" of women, as it is for Oyewumi, but the transformation of women from members of the *umuada* (as mothers, sisters, and daughters) into wives. In Nzegwu's account, the transformation of the family effected by missionary engagement and colonial law radically limited the range of possibilities for both women *and* men, rigidly redefining marriage, parenthood, and access to political

[659] Nzegwu (2006), pp. 49-51.
[660] Any children from an *idigbe* union would be recognized as members of her own lineage, producing a matrilineal space within a larger patrilineal structure. Nzegwu (2006), pp. 34-35.

and economic agency. By foreclosing the range of sexual and marital options available to women and men, valorizing conjugal unions at the expense of the lineage, and systematically limiting access to the political sphere, Western interventions undermined the dual-sex system, remaking families on a familiar and gendered model, and producing "man and wife" as a new set of political subjects with radically unequal access to political participation and protection.

Nzegwu's account of Igbo society thus produces a critique of the social and juridical structures through which women become unequal. She argues that the symmetry characteristic of this dual-sex political system entails that "even though biological sex constituted the basis of political differentiation, women's sexual and reproductive capacities did not translate into a source of second class status."[661] In a dual-sex system, women's identities and status were not defined solely through a sexualized identity: the source of political and social position was one's role as a mother, a sister, a daughter; *wife* was not a political category.[662] Both Oyewumi and Nzegwu emphasize the role that the term "wife" – and its attendant emphasis on reproduction, sexualized identity, and second-class status as a political subject, wage earner, and lineage member – plays in producing a new form of subordinate identity which is tied to the production of a domestic realm. As Oyewumi puts it, "in much of Africa, "wife" is a four-letter word… [it] is quintessentially a subordinate category."[663] Certainly, this critique can be directed at Kant, for whom the *natural* inferiority of women become rightful when transformed into the *juridical* inequality of wives. As I argued in Chapter 2, it is *as wives* that women are explicitly expelled from the public sphere in Kant's juridical state.

In the next section, I explore the juridical transformation of the African family through a set of colonial processes that are, as I have argued, premised on justificatory arguments that echo Kant's

[661] Nzegwu (1994), p. 93.
[662] Each lineage had an organization devoted to the rights and grievances of wives (the *inyemedi*), but women's primary political identity remained tied to their status as a sister/daughter in their natal lineage.
[663] Oyewumi (2000), p. 1096.

vision of a cosmopolitan world. The most striking feature of Lugard's native courts system was the emphasis on family law and attendant focus on producing the distinction between public and domestic spaces through the creation of conjugal families and the invention of the wife as an essential social identity.

4. Colonial Encounters: Indirect Rule and the Transformation of the Family

4.1 Inventing Marriage: Christianity and the Early Transformation of the Family

Though the Native Court system is often presented as an ingenious solution to the limited number of British personnel in Northern Nigeria, Lugard's own account suggests that the Courts were part of a method of governance designed to encourage African self-determination and participation in juridical institutions. In this way, Lugard's native courts conform to Kant's requirement that natives must have the opportunity to consent to join a rightful institutional order.[664] But just as Kant tempered this claim by suggesting that Europeans might initially need to "legislate for all other continents,"[665] Lugard limited this right to rule by ensuring that the courts operated under the aegis of British courts, which determined the limits and structure of customary law.[666]

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[664] Kant, MS 6:353.

[665] Kant, IUH. In Reiss (1991), p. 52. In Chapter 5, I pointed out that this legislation could occur directly, or with the guidance of a "moral politician."

[666] For Lugard, the courts were one of two institutional frameworks essential to the advancement of the African race: an education system, also administered by Africans and overseen by the British, was also critical. Together, Lugard argued, schools and the courts would encourage the development of native capacities and lay the groundwork for self-governance. To understand the development of customary law, however, it is crucial to note that a European education system preceded the Native Court system by nearly half a century. Missionaries had arrived in Northern Nigeria in the mid 19th century and had busied themselves educating the natives: education in Nigeria was always tied to Christian prosletizing, and as late as 1922, Lugard was advocating integrating missionary and government education in order to systematize what remained largely a Church-run school system. Lugard (1965), p. 430. One might compare Lugard's concern with educating the native with Kant's own arguments on education, but that is beyond the scope of this chapter.

To understand the development of customary law, however, it is crucial to note that a European education system preceded the Native Court system, which was developed in the 1890s, by nearly half a century. Missionaries had arrived in Northern Nigeria in the mid-19th century and had busied themselves educating the natives: education in Nigeria was always tied to Christian proselytizing.[667] For the Africans they sought to convert, the key benefit missionary organizations offered in the middle of the 19th century was not salvation but access to trade routes and European markets. Missionaries often tied themselves to commercial ventures as they moved into the hinterlands, irrevocably linking the new religion and the new economy in the minds of converts.[668] Because African belief systems like those of the Igbo and Yoruba were characterized by openness, fluidity, and a tolerance for differing beliefs, Christian beliefs were sometimes integrated into African spiritual practices without incident;[669] in other cases, the missionary education system wrought a subtle but permanent transformation of sexual morality, marriage, and gender relations that would have a critical impact on the later development of customary law.[670]

The missionaries introduced two key institutional transformations that radically refigured gender relations among the Igbo and Yoruba. The first was Christian marriage, defined as a

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[667] As late as 1922, Lugard was advocating integrating missionary and government education in order to systematize what remained largely a Church-run school system. Lugard (1965), p. 430.
[668] Amadiume (1987), p. 120.
[669] Oyewumi (1997), p. 136.
[670] It also produced a new class of African who occupied a unique position in relation to juridical colonialism. As Taiwo argues, where the "autonomy model" of missionary education was fully realized, a new educated and Christian class of African emerged. Taiwo (2010), p. 10. Though they were concentrated in urban centers like Lagos, the "educated African" was essential to the success of Indirect Rule; as Lugard put it, "there is no colour bar in British Africa, and the educated native enjoys the fullest liberty." Lugard (1965), p. 86. The educated African operated as middle man between the British colonial administrators and native institutions, sometimes as lawyers whose familiarity with both legal systems made them vital intermediaries, and sometimes as officials within the colonial administration. By the time the Native C ourt system took hold in the 1890s, however, urban educated Africans saw themselves as subjects of British law and custom, and resisted the implementation of customary law. Lugard (1965), p. 544; Mann, Kristin. (1983). "The Dangers of Dependence: Christian Marriage among Elite Women in Lagos Colony, 1880-195." In *The Journal of African History*, Vol. 24, No. 1, pp. 37-56.

monogamous institution carrying different rights and responsibilities for men and women, and organized outside the domain of the lineage. The second was education, which was strictly gendered throughout colonial Africa: it was designed to produce, on the one hand, recognizable political subjects, and on the other, desirable wives.[671] Accordingly, girls' schools offered "character training" and practice in the "domestic arts," which tended to divide the "domestic arts" from the activities of the market and the political sphere, producing a distinction in the value of particular kinds of labor and responsibility, and shaping a new set of attitudes about the basic structure of social and political space.[672] In this way, missionary education supported the juridical production of distinct political and domestic spheres.[673] The exclusive emphasis on the "domestic arts" in educating desirable wives suggested a troubling corollary: desirable wives were neither economic agents nor political subjects, itself a radical transformation of both Igbo and Yoruba attitudes.

Thus, significant transformations of gender roles, marriage, and household structure were already underway by the time Lugard's native courts system entered the picture in the 1890s. The "self-determination" allowed by the native courts thus operated within an already transformed

[671] The popularity of boys' schools grew relatively quickly as they were offered in new regions, as parents realized that a basic education would radically transform their sons' trading and earning power and provide new civic and political opportunities. Boys' schools covered basic academic subjects and offered vocational trading appropriate to the region. McIntosh (2009), p. 44.

[672] Women in the new market economy resisted the gendered implications of missionary education by continuing to engage in trade and craftwork. For example, palm oil, a cornerstone of the late industrial British economy, was largely produced by women in rural Nigeria: though it was a labor-intensive product, it could be included with other forms of domestic labor. McIntosh (2009) describes the surprise expressed by missionaries at this division of labor: they had assumed that commercial production would be controlled by men. The production of palm oil, like the continued dominance of women as traders in the marketplace, was an example of the agency of Yoruba and Igbo women in the face of a hostile education and juridical system (McIntosh, 2009, p. 54).

[673] McIntosh (2009), p. 44; ; Nzegwu (2006), p. 84, 151. McIntosh (2009), p. 70. The emphasis on the "domestic arts" and "desirable wives" remained remarkably consistent through the late 1930s, and only began to be challenged in the 1940s as feminist education reform developed in Britain. Highly gendered missionary education remained prevalent throughout Africa well into the second half of the 20th century. See also Nancy Rose Hunt, "Domesticity and Colonialism in Belgian Africa: Usumbura's Foyer Social, 1946-1960."*Signs* Vol. 15, No. 3, (Spring, 1990), pp. 447-474.

cultural space, and the "customs" enshrined in law bear the marks of the gendered and patriarchal assumptions introduced by Europeans, rather than reflecting Igbo or Yoruba assumptions about gender practices. In the next section, we will see that the collusion of missionary education and the development of customary law would enshrine and institutionalize patriarchy in the name of modernity.

6.4.2 Inventing Patriarchy: The Native Courts and Juridical Transformation

I have argued that the policies of the Native Courts are best understood as grafting onto Igbo/Yoruba society *as already reconstituted by missionary projects*. In other words, by the time colonial administrators under Lord Lugard began appointing warrant chiefs and developing a juridical body of "native custom" at the turn of the 20th century, missionaries had been educating and proselytizing in the Nigerian region for half a century or more. Far from being a form of "sociocryonics," the customs that were written into "customary law" had already been subjected to missionary critiques and transformed through new economic opportunities and the introduction of monogamous, Christian marriage, complete with neuroses about women's sexuality, an increasingly enclosed domestic sphere, and the emergence of virtuous wives and powerful husbands.[674]

In addition to the transformations wrought by the missionaries, Lugard's native court system followed on the heels of another colonial legal project, which would offer a surprising roadmap for the production of native "consent" through juridical transformation. I refer to 1884 Gold Coast Marriage Ordinance, which, though never formally adopted in Northern Nigeria under Lugard's administration, nevertheless shaped juridical and institutional practices, and its presumptions about

[674] The Courts themselves could not have functioned without the presence of a basic education system: though the Native Court system was developed in part to minimize the number of British officials necessary to maintain order, the requirement that all courts maintain a record of cases entailed a class of literate Africans to work as clerks in the courts.

conjugality, property, and inheritance influenced court cases through the end of the 20th century.[675] The Ordinance defined Christian, monogamous marriage under colonial law as an alternative to customary (often polygamous) marriages, constructing a two-tiered system of law that operated as a critical precedent for the development of customary and colonial law in Lugard's Nigeria. In doing so, it presented Africans with a choice: they could marry under colonial law, in which case their marriage, conjugal property, and inheritance would be legislated by the colonial courts, or they could marry under customary law.[676] The Marriage Ordinance thus situated marriage at the center of the civilizing efforts of juridical law, and produced a framework in which Africans could be said to freely consent to participate in the colonial institutional order. In doing so, it provided Lugard with a roadmap for claiming that Africans consented to take part in the new colonial order, and positioned marriage as the gateway to acceptance of and participation in the rightful juridical order.

Under Lugard, the mandate of the native courts system was to develop local customs into a juridical system with oversight from the British colonial courts. In this way, Lugard's juridical framework for Indirect Rule is consistent with Kant's vision of a cosmopolitanism in which natives voluntarily consent to the basic structure of juridical rights while adapting those principles to their own needs and practices. Because it was based on particular iterations of cultural practices, customary law was both local and variable, and the court system accordingly was organized into

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[675] The Ordinance drew on models developed under British rule in St. Helena and Hong Kong, and shaped marriage practices throughout colonial Africa. See Zabel, Shirley. "Legislative History of the Gold Coast Marriage Ordinance." *Journal of African Law* Vol. 23, No. 1 (1979), pp. 10-36. Zabel argues that the Gold Coast ordinance did not follow the Hong Kong precedent in defining marriage as a secular institution because doing so might discourage Christian marriage amongst Africans. The Ordinance offers an excellent example of the ways in which colonial juridical practices were shaped by the reports and concerns of missionaries. Zabel (1979), pp. 10-12. See also Mann, Kristin. (1983). "The Dangers of Dependence: Christian Marriage among Elite Women in Lagos Colony, 1880-195." In *The Journal of African History*, Vol. 24, No. 1, pp. 37-56.

[676] For a discussion of inheritance law under the Marriage Ordinance, see Toungara, Jeanne Maddox (1997). "Changing the Meaning of Marriage: Women and Family Law in Cote d'Ivoire." In Ed. Mikell, Gwendolyn. African feminism: the politics of survival in sub-Saharan Africa. University of Pennsylvania Press, pp. 53-76.

administrative provinces, each subdivided into several districts but overseen by distant colonial authorities who ensured that customary laws adhered to basic rightful principles. In what follows, I show that this framework produced both a series of *structural transformations* that broadly affected Igbo and Yoruba conceptions of politics, and a series of *institutional transformations* that altered the concrete institutional structure of everyday life.

The first *structural transformation* produced by the native courts system was the delineation of the juridical itself: as Lugard put it, "the courts are chiefly engaged in settling questions which arise out of the domestic relations, such as matrimonial disputes, petty debts, trespass, assaults, and inheritance – where both parties are natives subject to its jurisdiction."[677] But this delineation does not entail that this range of disputes had been previously defined as "juridical." Oyewumi argues, "the establishment of native courts in Yorubaland was not about taking preexisting courts and updating them, as legal scholars tend to suggest – it was the development of a new way of thinking about justice and a new place for administering it.[678] While in theory, customary law entailed that Courts mediated domestic disputes from within the logic of local conventions, in practice, the rubric of customary law was inventing a new structure of everyday life that drew on European understandings of the delineation of the juridical. Pre-colonial village life was not organized by a clear distinction between "public" and "domestic,"[679] and so the definition of some problems as "judicial" and others as "extra-legal" had the effect of transforming the structure of political agency,

[677] Lugard (1965), p. 550. This delineation of the juridical jurisdiction of the native courts in notably organized around the same juridical questions as Kant's account of Private Right: domestic rights and disputes, contracts and commercial exchanges, and inheritance and property rights are the central elements of customary juridical law.
[678] Oyewumi (1997), p. 147.
[679] McIntosh (2009) argues that the notions of "public" and "private" spheres are not useful analytic tools for studying the Yoruba, and advocates the use of a variety physical and social "domains" to describe the organization of society. McIntosh (2009), p. 79. For more on public and private among the Igbo, see the Conclusion.

taking decisions out of the hands of the lineage and placing it in a newly formed "juridical public."[680]

Customary law, in other words, invented new categories, subjectivities, and loci of power, and framed them as "tradition" in opposition to the "modern" framework of colonial law. But because customary law was developed in the wake of nearly half a century of transformative missionary education, these "customs" were often themselves already in a state of flux. The "customs" around which the Native Courts were organized were in many cases drawn from the "historical record" – and since written histories and cultural analyses were introduced by early missionaries, the written record of "tradition" was already suspect. Given this framework, juridical principles of customary law were often mediated by questionable interpretations of traditional practices, languages, and identity, and shaped by the interests of those given power under the new legal system.

The second *structural transformation* effected by customary law was the production of a new power structure and a new kind of political figure as colonial authorities appointed local warrant Chiefs and judges with the power to shape and define customary law within a juridical district.[681]

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[680] I distinguish this claim from those made by Peter Ekeh, who argues that colonial and postcolonial African in fact has two public spheres: the primordial and civic public, and Kwasi Wiredu, who develops a similar distinction between civic society (which is local and embedded in particular cultural practices, and tied to direct participation in public dialogue) and the civil society produced through the colonial encounter. The *juridical public* to which I refer does not neatly fit into these distinctions, since it was largely administered in the local context through the native courts, it is a transformation of what Peter Ekeh calls the "primordial public" rather than simply the introduction of a new "civil public" under colonial law. For discussions of the two publics in colonial law, see Ekeh, Peter (1975). "Colonialism and The Two Publics in Africa: A Theoretical Statement." *Comparative Studies in Society and History*, vol. 17, no. 1; Wiredu, Kwasi (1995). "Conceptual Decolonization in African Philosophy." In Olusegu (ed.) Conceptual Decolonization in African Philosophy: Four Essays. Hope Publications; and Coetzee (1998). "Particularity in Morality and its Relation to Community." In Coetzee and Roux (eds.) *The African Philosophy Reader*. Routledge, particularly pp. 284-286.

[681] Though each district had a British officer to oversee the jurisdiction, most juridical matters fell within the purview of a warrant Chief appointed by colonial authorities who could appoint judges. Where customs were in dispute, judges and warrant Chiefs from neighboring districts might weigh in. McIntosh (2009), p. 58.

This new political figure was often educated by missionaries and handpicked by colonial administrators and therefore had little investment in traditional hierarchical structures. The very category of a "public official" in this sense was an invention, since political power in the African villages had otherwise been organized through lineages. Because warrant Chiefs were vested with the power to both make customary law and to enforce it in the courts, they accrued an unprecedented amount of power.[682]

The third *structural transformation* followed from the second: as power was consolidated in the hands of male chiefs and appointed judges, a newly gendered political sphere emerged. These warrant chiefs, bolstered by a colonial legal system that understood gender relations through a patriarchal, systematically stripped women and women's organizations of their political power and economic agency. Offices previously held by women, such as the *Iyalode* for the Yoruba, were treated as "symbolic" seats of power, and excised from the growing colonial bureaucracy.[683] The radical transformation of Igbo and Yoruba political practices entailed by this new gendered structure is apparent only given an awareness of the gender dynamics and philosophy of the family that predominated prior to the colonial encounter. For the first time, women had no direct access to political power: among the Igbo and Yoruba, this was the first time that political, economic, and social policies were decided by one gender alone. Even in cases where questions arose about a particular custom, they were settled by a tribunal of nearby male chiefs who attested to the tradition in question. If a case fell afoul of colonial law, it would be settled by (male) British judges who drew

[682] The principle of separating legislative and judicial powers that organized the British courts was not operative in the Native Court system – a fact that has led Olefumi Taiwo (2010) and Mahmood Mamdani (1996) to argue that the juridical structure of the native courts was designed to withhold the basic tenets of modern juridical law from African subjects. By concentrating both the legislative and juridical powers in the hands of the appointed Chiefs, the Native Courts affirmed a tendency towards despotism which would have an impact on postcolonial African experiments in governance. See Mamdani, Mahmood (1996). "Indirect Rule, Civil Society, and Ethnicity: The African Dilemma." *Social Justice*, Vol. 23, no. 1/2.

[683] McIntosh (2009), pp. 221-225.

on the overwhelmingly patriarchal tradition of early 20th century British law for guidance.[684] The production of a newly gendered public sphere was aided by the introduction of gendered language through the courts: though the proceedings of the courts were conducted in local languages, they were recorded entirely in English.[685] Because neither Igbo nor Yoruba relies on a dual-gender linguistic system, these translations introduced new gendered categories into customary law. Thus, in order to make customary law intelligible to colonial oversight, gender categories were inserted into non-gendered customs even as colonial administrators concentrated all juridical power into the hands of men.

From a Kantian perspective, the production of a public, juridical sphere, populated by recognizable (male) political subjects is the first step towards acceptance of and participation in a rightful juridical order. The native courts introduced precisely this transformation by producing and then gendering the public, juridical sphere. By imposing gender categories into law, while introducing new patterns of political and economic life, the native courts introduced a new philosophy of gender and the family and a new construction of the political into Igbo and Yoruba society. In doing so, they produced a range of *institutional transformations* within customary law that, collectively, transformed the structure of everyday life and radically undermined women's access to political, social, and economic agency.

Many of the *institutional transformations* produced by the native courts were the result of the requirement that customary law be broadly intelligible to British officials and missionary translators, it faced numerous problems of translation that resulted in the imposition of new categories, values,

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[684] Under British law, women could not inherit from a family estate until 1925 under the Law of Property Act.

[685] These translations were set down by a clerk who had at least a primary school education in English, and drew on the translations from indigenous languages developed by missionaries that tended to impose European assumptions in translation. McIntosh (2009), p. 15, 59; Oyewumi (1997).

and concepts. Some of these transformations were purposeful: while customary law was determined and framed by local Chiefs, it was subject to review by British colonial authorities. As Lugard put it, customary law must be "consonant with the dictates of humanity and of natural justice."[686] Accordingly, customary law was subject to the infamous "repugnancy clause," which allowed British administrators to alter or abolish any customary practice deemed "repugnant to justice, equity, and good conscience."[687] The repugnancy clause was a critical tool in the transformation of Igbo and Yoruba families, since it enshrined conjugal marriage in law and outlawed a range of marital and reproductive practices that had offered African women so much agency. In this system, gender-fluid practices like *idigbe* and woman-woman marriage were subjected the standards of both patriarchy and colonial racism and became juridically suspect and socially unstable.[688]

Customary law produced a range of institutional transformations around property and inheritance rights. Some of these transformations were perhaps unavoidable, since the native courts had to grapple with a range of discourses and concepts that had simply not existed prior to colonial transformation. As the capitalist market entered village life, a new range of commodity and property relations became possible, which could not be adequately delineated under "custom." European understandings of property, labor, and commodities were thus "superimposed" upon traditional practices, affecting "a new discourse about things."[689] Once *things*, such as food, crafts, and

[686] Lugard (1965), p. 550.
[687] Quoted in McIntosh (2009), p. 60.
[688] We should note that Kant, too, offers a model for testing cultural practices against juridical accounts of right: in Chapter Three, section 3.4, I examined Kant's claim in the *Rechtslehre* that there is sometimes a distinction between the justice of the rightful state and "the justice arising from the people" (MS 6:336). In his discussion of the duelist and the infanticidal mother, however, Kant concludes that when these two justices come into conflict, the justice of the people must be subordinated to the justice of right – a position that suggests Kant would fully support the reshaping of customary law in order to meet requirements of colonial law like those laid out by the repugnancy clause.
[689] Chanock, Martin (1991). "A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Africa." *The Journal of African History*, vol. 32, no. 1,p. 67.

agricultural products, could be sold in the new colonial markets, rights to them became important. The collusion of these economic and juridical developments produced a new rubric of proprietary rights. But because the Native Courts derived their legitimacy from an appeal to "custom," these new concepts had to be embedded in traditional practices in ways that were often disruptive and incoherent. In this process, rights to things (or, as Kant would put it, *rights against all other persons*) became the essential rubric of rights.[690] In the Native Courts, *individuals* faced one another in domestic disputes and quarrels about inheritance: for the first time, members of a lineage could have proprietary rights against one another, which required an outside source of assurance.

As Martin Chanock argues, this transformation produced a highly destructive inter-generational conflict that further transformed Igbo and Yoruba philosophies of the family. Because wealth and power could be accrued outside the structure of the lineage, younger generations were encouraged to build households outside traditional kinship structures, which contributed to the

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[690] Through this transformation, the very nature of proprietary rights was turned on its head. In lineages, wealth and status were measured in *persons* rather than in *things*: status rights, as Kant called them, were the dominant form of possessive rights. This structure of rights, and its corresponding map of obligations, was the backbone of the lineage: since wealth and status could only be measured in terms of one's relationship to others, there was little impetus to leave the lineage and strike out on one's own. Following the colonial encounter, rights to persons became subsidiary to rights to things – a transformation encouraged by the European-based colonial legal system, which presumed that rights to persons were a juridical subset of rights to things. While the subject of juridical law is persons, and rights to things are framed (as they are in the Kantian model) as "rights against persons," it is rare in European systems that we have a direct right *to* persons. Status claims tend to be defined in the language of property rights (so that slaves must be defined as property, since no corresponding right *to a person* is recognized). Igbo and Yoruba practices did allow for "rights to persons," in the form of marriage and other kinship rights, but these were often misinterpreted by early Europeans. Thus, Amadiume argues that the practice of *igba ohu* is a marital practice through which a person (either male or female) takes a wife. Because the direct translation suggests that one gains a right to a person, early Europeans translated this as "buying a slave" and likened woman-woman marriage to a slave trade. Amadiume, (1987), p. 127). For a discussion of persons as the subject, but not the object of European law, see Gray, John Chipman, *The Nature and Sources of the Law*. The MacMillan Company, 1931. For a discussion of persons as the subject of American law, see the Harvard Law Review "What We Talk About When We Talk About Persons." Vol. 114, No. 6 (Apr., 2001), pp. 1745-1768.

development of nuclear households.[691] In this new market, the value of commodities and the assurance of trade relations were guaranteed by a new juridical "public sphere" rather than through the authority of the lineage.[692] With these new rights and new forms of proprietary commodity came an increased need for juridically-enforced privacy rights: for the first time, the disposal of an individual's earnings and property were a private matter, and interference by another member of the lineage was grounds for juridical intrusion.[693]

In this process, marriage was a critical tool in producing the transformations of rights required for the new juridical order. The native courts borrowed from the juridical structures produced under Ordinance law, and marriage law in the native courts was shaped these precedents, which offered a choice: marriages were defined as either 'customary contracts' or 'ordinance contracts' – with property and inheritance rights ordered accordingly. Because ordinance contracts were subject to British laws of inheritance, they juridically transformed lineage property into conjugal property.

Taken together, the structural and institutional transformations produced by the development of customary law in the native courts system in the shadow of the Marriage Ordinance brought about the invention of a new and critically important formation of the subject: the male individual as head of household. This new figure corresponded to a new kind of social space: the enclosed domestic sphere organized through conjugal marriage. The consolidation of power and rights into the hands of the head of household, combined with the transformations of labor and property brought about by the colonial transformation of juridical categories further undermined the

[691] Chanock, (1991), pp. 67-68. This process was speeded in the early 20th century, as the building of the railroad brought wage labor to the hinterlands of Northern Nigeria, transforming the nature of labor power and the structure of household labor, and offering young men access to cash and the independence it provided. Oyewumi (1997), 149-151.
[692] Chanock, (1991), pp. 76-77.
[693] Chanock, (1991), p. 78.

kinship-based political and economic systems of the Igbo and Yoruba, with dire consequences for women's rights and agency.

This section examined these transformations from the perspective of pre-colonial Igbo and Yoruba cultural practices in order to demonstrate that the production of a new juridical order entailed a radical transformation of everyday life and an imposition of family and gendered structures that undermined women's equality and agency and the fluid, open nature of Igbo and Yoruba family and political structures. From this perspective, it becomes possible to see that Kant's cosmopolitanism imports a particular set of patriarchal sociopolitical structures and a correspondingly gendered understanding political subjectivity and presents them as necessary conditions for right. Just as Kant placed the sanctity of domestic right and the corresponding independence of the head of household at the center of his account of the rightful juridical order, the civilizing mission of Lugard's colonialism hinged on the production of patriarchal family units in which individual rights, vested in the head of household, finally trumped the cooperative and collective scheme of rights that structured the pre-colonial lineage system.

This triumph of patriarchal individualism, organized by the new distinction between political and domestic spaces, and an attendant division of property and labor, signaled the success of the civilizing mission. Igbo and Yoruba practices had been restructured by juridical law and thus rendered intelligible to colonial officials, and the basic institutions of property, contract, and domestic right had been widely accepted and operationalized, thus opening villages to the global market and to European cultural influences. We might say that, in this process, Kant's cosmopolitan goal has been realized. Through systematic juridical transformation, the "native" has been rescued from his place outside the juridical order, which was "wrong in the highest degree."[694] His participation in these juridical patterns and in the newly created public sphere signaled his consent to

[694] Kant, MS 6:311.

join a rightful cosmopolitan order and participate in rightful global trade: unlike "the Hottentots, the Tungusi, and most of the American Indian nations"[695] the political subject of Lugard's Indirect Rule is prepared to enter into "informed contracts" about property rights and global trade. Through this process, the "native" has transformed himself through his consent to the rightful order, and in turn, he has been transformed into a head of household, poised to take on his role as a full and active citizen.

We have seen that the collusion of missionary education and the development of customary law under the aegis of Lugard's native courts system brought about a systematic disciplining of women's agency and sexuality. As kinship practices that challenged colonial gender constructs, such as woman-woman marriages and *Idigbe* practices, fell afoul of the repugnancy clause, and of the newly patriarchal understanding of "custom," women were increasingly construed as wives (a sexualized identity) rather than as members of a lineage.[696] As wives, women were subject to male authority and were denied autonomy and status within both their natal and marital lineages. The rise of conjugal marriage, the production of nuclear families and distinct domestic spaces, and the consolidation of wealth and power in the hands of the male head of household worked to disenfranshise women and limit their access to political, social, and economic agency.[697] I have argued that these shifts were presented as "traditional" and became entrenched in both colonial law and social consciousness. Given the radical reduction of the political rights of women through this

[695] Kant, MS 6:353.

[696] McIntosh (2009), pp. 85-86. See also Manuh, Takyiwaa (1997) "Wives, Children, and Intestate Succession in Ghana." In Ed. Mikell, Gwendolyn. African feminism: the politics of survival in sub-Saharan Africa. University of Pennsylvania Press, pp. 77-95.

[697] Widows and children were disinherited through the co-emergence of conjugal marriage and private property: women no longer had lineage-based rights to land, and the labor of women and children were increasingly seen as "exploitable and alienable." A widow's sexuality became an object for discipline: to retain rights as her husband's widow, including the right to live and raise her children in her conjugal home, her sexual behavior had to meet the standards of her husband's male relatives. Manuh, (1997) p. 129.

process, we should return to Kant's claims about the importance of native consent in joining this new juridical order, and ask whether *all* "natives" are required to consent to this new institutional order. In particular, based on the transformation of the rights of Igbo and Yoruba women through colonial rule, can Kant's cosmopolitanism claim to extend rights and agency to African women?

4.3 Inventing Wives: Women and Cosmopolitan "Consent"

> "Treating the Igbo as lacking in political institutions, British officials failed to see that within the Igbo sociopolitical tradition, women were one of the politically constituted groups. They possessed the power to back up their demands and objectives. Within this political culture, lack of representation, *ewe onu okwu* (not to have a voice/say) meant powerlessness; it also implied loss of personhood. We can then begin to understand the intensity of women's anger when they discovered they had been politically reclassified into the category of the enslaved." – Nkiru Nzegwu, Family Matters, (2006). P. 95.

We have seen that in the colonial encounter, conjugal marriage and the production of new political and domestic spaces produced a gendered hierarchy and limited the political and economic agency of women. A range of colonial apparatuses contributed to the disenfranchisement of Igbo and Yoruba women, from the gendered structure of missionary education to the concentration of power into the hands of men, first through the native courts themselves, and then through the new pattern of rights produced through the invention of customary law. Through these colonial projects, Igbo and Yoruba women were transformed into wives, an identity that carried with it a new and limited set of rights in the emerging juridical and economic order.

I examined another transformation of women into wives in Chapter Two, where I explored Kant's distinction between active and passive citizenship, and argued that, in Kant's rightful juridical order, women's disenfranchisement is produced through their identity as *wives* rather than their identity as *women*. Though Kant has much to say about the natural inferiority of women,[698] this

[698] See, for example, his arguments in the *Observations on the Feeling of the Beautiful and Sublime* (1764)

natural inferiority cannot directly justify a rightful juridical inequality. Thus, women are denied the status of active and equal citizenship on the grounds that, *as wives*, their "preservation in existence depends not on [her] own management but on arrangements made by another"; therefore, their existence is "only inherence."[699] Wives, in other words, are juridical dependents, and though individual women might have the capacity to "work his way up" to full citizenship, women *as wives* are systematically denied access to full equality and participation in the public sphere.[700]

Just as women *as wives* are passive citizens in Kant's account of the rightful state, the transformation of women into wives through the colonial project meant that women were treated as minors under both customary and colonial law. This disenfranchisement took several simultaneous forms. First, and most directly, the power to make and administrate law was placed solely in the hands of men by colonial administrators, which upset the balance of power between women's and men's political organizations, producing, for the first time, a mono-sexed public sphere.

Second, the native courts invented a range of fictitious customs designed to further concentrate wealth, power, and status in the hands of men. A central assumption of the native courts system, bolstered by both the British colonial legal system and the accounts of "tradition" offered by male warrant chiefs, was that women did not own land. This assumption was entrenched as land ownership and inheritance practices were being crystallized in customary law, and women's claims to land ownership were written out of existence through a new legal view of "tradition" that produced and entrenched male privilege.[701] At the same time, marital property was recognized as joint property with the right to disposal firmly in the hands of the husband.[702] Thus, as wives,

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and in *Anthropology from a Pragmatic Point of View* (1798), and virtually every reference to women in his writings in the intervening years. See Kant, OBS 2:228-230 and Kant, AA 9:303-310.

[699] Kant, MS 6:314.

[700] Kant, MS 6:315. For discussion, See Chapter Two, Section 2.2 and Chapter Three, Section 3.2

[701] Oyewumi (1997), pp. 143-147.

[702] Chanock, (1991), pp. 80-81.

women were denied direct access to political participation and economic agency, and as collective lineage property rights were consistently undermined by new forms of individual juridical property rights, their access to land was severely limited.[703]

Third, the native courts, backed by colonial authorities and the pervasive presence of missionary education, transformed marital and family practices in ways that would have dire effects on the reproductive choices available to women. Conjugal marriage was entrenched as practices like post-partum abstinence, woman-woman marriage, *idigbe* and trans-marital relationships were undermined by a new legal system with a vested interest in institutionalizing patriarchy.[704] Colonial policies supposedly designed to "protect" women and bolster their inheritance rights often worked to discipline women by relegating them to the status of wives. The Gold Coast Marriage Ordinance, for example, was often upheld as a model of rightful juridical law by colonial administrators on the grounds that it was designed to protect wives and children, who did not inherit under customary law.[705] But too often, this project backfired when women found themselves stuck between the two inheritance systems: as Ordinance marriage gained currency, it was not uncommon for Nigerian men to marry under both Ordinance and customary law, leaving wives without the juridical protection of

[703] As we have seen, among the pre-colonial Igbo and Yoruba, land was collectively owned by the lineage, and both men and women had rights to work the land. The transformation of marriage from a lineage-based model to a conjugal model involved a transformation of communal land ownership to individual land ownership, and the inheritance practices presumed by colonial courts relied upon a conception of individual land ownership. British colonial law had transformed the nature of land ownership in Lagos colony from as early as 1861, defining ownership as belonging to any person who "had been in occupation either by himself or his subtenant." As Oyewumi points out, women were unlikely to have been in occupation "by himself," and so the possibility of female land ownership was rendered juridical unrecognizable. Oyewumi (1997), p. 143.

[704] Nzegwu notes that by 1920, when women were collectively protesting colonial policies and the native courts, one of their demands was a return to a system of family law that did not criminalize trans-marital sex, nor make it a cause for divorce. Nzegwu (2006), p. 92.

[705] Widows had rights to the dwelling of their deceased husbands, but all property was inherited by the husbands' siblings in order to keep lineage property within the lineage. See Nzegwu (2005), pp. 363-366.

either.[706]

In these processes, however, Western and colonial forces were not alone in disciplining women and transforming them into wives. Oyewumi and Nzegwu argue that this transformation was effected by an unholy collusion of forces: Christian missionaries, colonial administrators, the African men who participated in rewriting tradition in order to consolidate patriarchal power, and the Western ethnographers, anthropologists, and feminists who approached the Igbo and Yoruba as providing another example of native patriarchy run amok.[707] Customary law, as we have seen, was developed under the guidance of African men, who were complicit in grabbing for power, property, and patriarchy when offered the opportunity to do so by the Europeans, and who participated in

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[706] This practice was known as taking an "outside wife": one wife, married in a church under Ordinance regulation, was granted special status, but other wives were taken under customary law. In Lagos, the Ordinance sought to limit this practice, decreeing that any person already married under customary law could not be married to another person under colonial law, and that any person already married under colonial law could not be married to another person under customary law. However, since Ordinance marriages needed only to be performed by a minister to be recognized, it was not uncommon for this clause to go unenforced, particularly in the hinterlands, away from colonial administrators. Those who were already married under customary law were guilty of bigamy, which held a maximum sentence of 5 years imprisonment; those who married under customary law after they were married under the Ordinance were guilty of a lesser offense, which carried a maximum term of 2 years imprisonment. See Manuh, (1997) pp. 77-95.

[707] Nzegwu offers a particularly powerful account of this in an imagined dialogic engagement between pre-colonial Igbo women rulers and Western feminists and anthropologists including Simone de Beauvoir, Germaine Greer, and Helen Henderson. Through this imaginative device, she demonstrates that because Western feminists approached the Igbo presuming fixed (and Western) constructions of gender, equality, and patriarchy, they both asked the wrong questions about the Igbo, and misunderstood the answers they received. The dialogue covers the central questions Nzegwu poses through the latter half of the book: marital norms and the structure of public and private; polygamy and monogamy; mono-sex and dual-sex societies; the socio-political structure of equality; the structure of identity and value in society; and women's freedom, agency, and autonomy. As the dialogue unfolds, the Western delegation of feminists pose the kinds of questions that Western anthropologists posed throughout the colonial construction of the Igbo family and the postcolonial feminist interrogation of so-called "traditional" Igbo practices, and the Igbo leaders often respond, but more often reject the premise of the question itself. This revelation – that the questions posed by Western feminists about Igbo practices need not be answered but rethought and reformed from a perspective that is wise to local history, practices, and perspectives – suggests that Western patriarchy is a flawed critical lens through which to develop and understanding of socio-political structure of equality in societies not constituted by its assumptions about gender. Nzegwu (2006), pp. 157-198.

constructing an account of "tradition" shaped in their own interests.

That patriarchy and a mono-sexed public sphere were inventions sparked by the colonial encounter is evidenced in the range of disciplinary forces necessary to entrench patriarchy as a moral and juridical norm in societies that had never been organized by gendered political assumptions. This is demonstrated in Nzegwu's and Oyewumi's rigorous accounts of the transformations wrought by missionary education and the native courts which highlights the range of institutional structures necessary to reshape life in this way. Nancy Rose Hunt offers examples of government programs in colonial and postcolonial Africa that were explicitly designed to produces wives and domestic spaces, such as the *Usumbura Foyer* in Belgian Ruanda-Urundi in the mid 20th century.[708] The *Foyer* was a state-supported, missionary-run institution that taught middle class African women European domestic arts like cooking, housekeeping, and mothering, and held contests like the "clean baby" and "clean house." The *Foyer* had a dual role: to produce recognizable male African subjects with families at home, and to produce a class of consumers for European goods. The *Foyer* accomplished this through training women in the arts and obligations of middle class wifehood, inculcating them with both the desire to emulate European women and a corresponding prejudice against "traditional" African family structures.

As Hunt's arguments show, colonial and postcolonial authorities continued well into the 20th century to link modernity and the success of the civilizing mission with the production of wives

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[708] Nancy Rose Hunt, "Domesticity and Colonialism in Belgian Africa: Usumbura's Foyer Social, 1946-1960."*Signs* Vol. 15, No. 3, (Spring, 1990), pp. 447-474. Hunt also ties the production of "wives" to the destruction of African fertility regulation and child spacing in the Congo in the mid 20th century In an effort to increase population, the Belgian colonial government discouraged the practice of postpartum abstinence by distributing baby formula, and disseminating public health information that claimed formula was healthier, as well as more "modern" and "European" than nursing. Together with the colonial insistence on monogamous marriage and state-supported missionary education that impressed upon women their obligation to fulfill their husband's sexual needs, rates of postpartum abstinence precipitously declined throughout Africa. Nancy Rose Hunt, "Le Bebe en Brousse." In Eds. Cooper and Stoler, *Tensions of Empire*: *Colonial Cutlures in a Bourgeois World.* University of California Press, 1997. Pp. 287-321.

and recognizable domestic spaces. As colonial racisms were replicated by Westernized Africans, patriarchal structures and claims to modernity became even more intertwined. In this way, colonial transformations were nearly always patriarchal transformations. Nzegwu describes the key features of this transformation:

> The four key required system-wide features [of patriarchy] are, first, the concentration of powers in the hands of men over women as a group; second, the division of a society into public and private spheres and the restriction of women to the private space of the home; third, the domestication and exploitation of women, including the control of their sexual and reproductive powers; and last, the systematic devaluation of women.[709]

The institutions central to the "civilizing mission" were overwhelmingly patriarchal social institutions, which reordered property, labor, and inheritance practices, opening them to the incursions of the global market. In the context of African colonialism, this patriarchal transformation was undergirded by assumptions of colonial racism, which assumed that African practices could not, in their traditional form, meet juridical standards of right.

But we might ask why the success of the civilizing mission was bound up with the production of domestic spaces and domestication of women, and why colonial juridical transformations were nearly always patriarchal transformations. The answer, it seems to me, is suggested by Kant's clear delineation of the requirements of public personhood and the juridical structure on which these requirements depend. Public persons, or full citizens, are for Kant lawfully free, equal, and independent.[710] Public persons, in other words, have a protected right to external freedom (they are lawfully free) commensurate with an obligation to respect the external freedom of others (they are equal), and they have achieved economic self-sufficiency which allows them to participate in public spaces as their own master. This account of the public person directly conflicts with Kant's own account of human life, where conflicts necessarily arise, and persons inevitably

[709] Nzegwu (2006), p. 28.
[710] Kant, MS 6:314. See also Chapter Three, section 3.3.2.

have needs that undermine their claims to self sufficiency, and therefore engage in relationships activities that necessarily infringe on external freedom.[711] To manage this conflict, Kant's account of public personhood depends upon the existence of an enclosed juridical sphere in which persons may engage in intimate, interdependent, and infringing relationships with one another. In order to maintain the illusion of freedom, equality, and independence for public persons, the domestic sphere must be an enclosed juridical space in which external freedom and equality are transformed, producing a society of *unequals* "under the head of the household."[712] The head of household emerges from this enclosed sphere, his needs met and his wants satisfied without undermining his claim to self-sufficiency, equality, or dignity. Kant's construction of the necessary requirements for participation in political life, in other words, entails an enclosed domestic space and its corollary: the political disenfranchisement of wives.

The emphasis on the disciplining and disenfranchisement of women in the colonial project, therefore, may be explained through a Kantian lens as the fundamental requirements for producing the political subject of the rightful juridical order. But, as Nzegwu and Oyewumi's arguments have shown, this transformation destroyed a set of sociopolitical practices through which women actively participated in all levels of political, economic, and social decision making. Neither the Igbo nor the Yoruba admitted an organizing distinction between public and domestic spaces, and the result, in both cultures, was a political structure that could be characterized as *dual-sexed* in that both men and women had integral roles to play, individually and collectively, in shaping political life. Women's political and economic agency was institutionally organized: among the Igbo, men and women each

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[711] See Chapter One, section 1.2.4. and Kant, LE 2011, p. 156.
[712] Kant, MS 6:283. See Chapter Two, section 2.2.1. This is described as "a society of unequals (one party being in *command* or being its head, the other *obeying*)." MS 6:283. We should remember, too, that the head of household has, through this arrangement, a right to coerce members of his household impossible in any other realm of a rightful society. See Chapter Two section 2.3 and Kant, MS 6:284, 278, 288.

operated through a range of political organizations that organized access to all forms of sociopolitical and economic decision making (see section 3.2), while the Yoruba women organized access to the markets and had a number of public offices held by women, such as the *Iyalode* (see section 3.1). Thus, from the perspective of Igbo and Yoruba women, whose equality had been enshrined in institutional practices and whose political and economic participation had been vital to the functioning of their communities, this transformation was a radical and abhorrent reduction of their rights. From the perspective of colonial administrators who shared Kant's assumptions about the gendered nature of the political sphere and the essential distinction between public and domestic rights, this transformation was a necessary element of the civilizing process.

But if Kant would celebrate the juridical transformations that so radically reduced the rights and agency of Igbo and Yoruba women in the name of producing a rightful public sphere and recognizable political subjects, we should ask whether this juridical transformation might not undermine his claim to universal cosmopolitan principles. In Chapter Five, I showed that Kant's vision of a rightful juridical cosmopolitanism hinges on his claim that the "native" who stands outside the rightful order must enter into the contracts and agreements that signal participation in a rightful order through informed consent.[713] In the previous section, I contended that the native court system, under Lugard, was structured in such a way that it could be said to produce consent on the part of its African subjects, thus meeting the requirements of Kant's rightful cosmopolitanism. But if this process also entailed that women were transformed into wives and thus radically disenfranchised in the emerging juridical order, in what sense were women offered the opportunity to consent to participate in this new juridical pattern of life?

We might argue that, since women were treated as minors under customary and colonial law, they were simply denied the opportunity to consent to this new juridical order. But despite this

[713] See Chapter Five, section 2.2 and Kant, MS 6:353.

disenfranchisement, Igbo and Yoruba women were full participants in the emerging order in other ways. They flourished in the new market economy: palm oil, a cornerstone of the late industrial British economy, was largely produced by women in rural Nigeria. Even as women were relegated to new conjugal households, the production of palm oil could be included with other forms of domestic labor. Palm oil was a labor-intensive product, but one that often put women in the position of being the primary breadwinner in the conjugal household. Marjorie Keniston McIntosh describes the surprise expressed by missionaries at this division of labor: they had assumed that commercial production would be controlled by men.[714] The production of palm oil, like the continued dominance of women as traders in the marketplace, was an example of the agency claimed by Yoruba and Igbo women in the face of a hostile education and juridical system, and it suggests that women did find ways to participate in the emerging order.[715]

But does this participation constitute "consent" in Kant's sense? The rise of women's unrest following several decades of colonial rule suggests that it does not, and that Igbo and Yoruba women did not see themselves as having consented, in any sense, to the new juridical patterns introduced through the native courts. Between 1915 and 1935, Igbo and Yoruba women engaged in a range of protests against the new order, culminating in the Igbo conflict Lugard dubbed the "Women's War" in late 1929.[716] Though these protests were often framed as economic disputes over the taxation, which disproportionately affected women, whose income from palm oil trade made often made them the only member of the household with liquid assets, Nzegwu, Oyewumi, and McIntosh emphasize the political nature of these campaigns. In a series of protests between 1925 and 1935, Igbo women "dumped refuse in the courts, placed obstructions on the roads, roughed up

[714] McIntosh (2009), p. 54.
[715] McIntosh, (2009), p. 54.
[716] For an overview of the conflict among the Igbo, see Nzegwu (2006), pp. 89-102; for discussion of Yoruba women's protests, see McIntosh (2009), pp. 221-225.

the collaborators, and picketed the offices of colonial officials to wrest from them some form of representation."[717] In doing so, they clearly targeted the officials and infrastructure of the local native courts, rather than focusing their ire on distant colonial administrators. Their frustration was directed not only at colonial legal practices that systemically ignored their voices, but at the administrators of local native courts who were complicit in inventing a set of traditions in which they had no voices. This frustration culminated in the set of skirmishes known as the Women's War in 1929, when Igbo women organized a mass protest, burning native courts and destroying the homes of court officials.[718] Colonial officials retaliated, opening fire on the women, killing fifty-five women and injuring at least another fifty.[719]

At the Aba Commission of Inquiry, which investigated the cause of the conflict, the women repeatedly referred their complaints to the native courts, indicting both the gendered structure of this new juridical order and the traditions invented and transformed under its administration. In her letter to the tribunal, Nwanyiriwa, one of the protesters, petitioned to have "a white man in every Native Court because our black men are [treating people] very badly."[720] Igbo women were evidently aware that their disenfranchisement had been produced not only by the patriarchal presumptions of colonial officials who had a constructed a juridical realm in which they had no official role to play, but through the complicity of their own men who, as the administrators of the native courts and the legislators of customary law, had transformed tradition and invented customs in which women were treated as minors and denied at political voice. In the 1930s, colonial officials would make small gestures towards recognizing women's place in the political structure: following the imposition of a particularly harsh tax that again primarily affected women's income from markets and palm oil trade,

[717] Nzegwu (2006), pp. 91-92.
[718] The uprising spread through the Owerri and Calabar provinces, an area covering 6,000 square miles. See Nzegwu (2006), pp. 93-94 and Mba (1983), pp. 83-84.
[719] Nzegwu (2006), p. 94 and Mba (1983), pp. 83-84.
[720] Mba (1983), p. 91. Quoted in Nzegwu (2006), p. 94.

colonial officials reinstituted the Yoruba office of the *Iyalode*, in the hopes of currying favor with women and lessening opposition to the tax. For the first time, *Iyalodes* received a government stipend, just like male chiefs.[721]

The political and economic protest campaigns organized by Igbo and Yoruba women between 1915 and 1935 and their own articulation of their complaints against the new political and economic order suggest that Igbo and Yoruba women did not think of themselves has having had the opportunity to "consent" to this new institutional order. Rather, these protests emerge from a place of disenfranchisement and exclusion, and point to a fundamental lack of political representation. Moreover, the protests suggest not only that women wanted a place in the new economic and political order, but more profoundly, that they rejected the patriarchal structure of this order and advocated a return to a political system that valued the voices and labor of women, and that institutionally organized women's collective access to the public sphere. In this sense, the protests lodged by Igbo and Yoruba women imply a more far-reaching critique of the patriarchal assumptions of Western political liberalism than do a majority of Western feminist critiques: Igbo and Yoruba women lobbied for the enfranchisement of women *as a class* through a transformation of the political order itself, not simply for the right of all women to individually "work their way up."

In her account of the Igbo Women's War, Nzegwu distances her reading of this conflict as fundamentally political from the predominant interpretation, which suggests that it was primarily an economic protest against new taxes.[722] She emphasizes that Igbo women were contesting the invention of customs by the native courts that enshrined patriarchy within Igbo culture. In making

[721] McIntosh (2009), pp. 221-225. The office, like the tax on women, remained controversial, and the political power in entailed dwindled steadily over the colonial period. In the postcolonial period, the office of *Iyalode* is eagerly sought by women as a symbol of honor which offers access to participation in political parties as well as social standing.

[722] Nzegwu (2006), p. 97. Nzegwu concedes that though taxation may have been "the straw that broke the camel's back," decades worth of political disenfranchisement were the true root of the conflict.

this move, Nzegwu distinguishes her understanding of Igbo culture from accounts presented by Nina Emma Mba (1982) and Ifi Amadiume (1987), who, as she puts it, "seem to have subscribed to the feminist view of human development, and to the idea that patriarchy was pervasive."[723] This view assumes, first, that patriarchy was endemic to the Igbo, and second, that the native courts practices what Taiwo has called "sociocryonics," freezing indigenous customs in some untouched, "original" form. It then tends to assume that Western interventions into African cultures were designed to liberate women from oppressively patriarchal pre-modern cultural practices. These assumptions overlook the collusion of disciplinary forces that systematically supported the invention of patriarchy through the colonial encounter, and obscure both the motivations that drove women to the Women's War, and the powerful critique of Western patriarchy embedded in Igbo women's protests.

Nzegwu's account of the reasons motivating the Women's War suggests two compelling critiques of Kant's cosmopolitanism. The first concerns his requirement of "native consent" to juridical cosmopolitanism: as I have argued, the Women's War suggests that, as Igbo women were systematically disenfranchised through the juridical production of the gendered public and domestic spheres, they were also denied the right to consent (or to withhold their consent) to this new juridical order. The gendered structure of Kant's juridical order, therefore, entails that the "native consent" required to rightfully extend juridical institutions to produce a cosmopolitan world is in fact only the consent of native *men*.

The second concerns the gendered assumptions built into Kant's account of the rightful juridical order. I have argued that, from the perspective of Igbo and Yoruba women, the institutionalization of these gendered assumptions entails a radical loss of rights: through the imposition of a gendered public sphere, Igbo and Yoruba women lost equal status, lawful freedom,

[723] Nzegwu (2006), p. 265n50.

and political and economic independence. Far from rescuing Igbo and Yoruba women from a position outside a rightful juridical order (which is, in Kant's words, "wrong in the highest degree"), Kantian cosmopolitanism would seem to systematically disenfranchise women, thus effectively denying them access to juridical rights by relegating them to the newly produced domestic realm. From the perspective of Igbo and Yoruba women, then, Kant's juridical order entails a *loss* of right. In making this claim, I am arguing against contemporary feminist Kantians who have suggested that the Kantian juridical order is designed to institutionally protect women and domestic workers by enshrining domestic relationships in public law.[724] The complaints of Igbo and Yoruba women suggest, instead, that Kant's juridical order is *not* designed in the manner most likely to institutionally enshrine the rights and freedoms of women *as a class*, and that the universal extension of a Kantian scheme of juridical rights in a cosmopolitan world is likely to contribute, instead, to the collective disempowerment of women. If this collective disempowerment of women is built into the basic structure of Kant's juridical arguments, then a truly universal and inclusive contemporary Kantian theory would need to rethink the construction of public and political spaces in Kant's arguments.

Kant's account of cosmopolitan right is, perhaps unsurprisingly, blind to the patriarchal assumptions embedded in his juridical arguments. And, given the colonial racism built into his cosmopolitan claims, we should suspect that he would be equally blind to the non-patriarchal political possibilities suggested by Igbo and Yoruba arguments. But Nzegwu and Oyewumi suggest that this blindness is replicated in contemporary cosmopolitan and feminist arguments in ways that should give us pause. Because feminist arguments read the world through the lens of gender, they tend to find gender everywhere, and to therefore regard the oppression of women as a result of patriarchy. When this perspective is informed by assumptions drawn from the tradition of modern

[724] Helga Varden makes a particularly compelling version of this argument. Varden, Helga. "A Kantian Conception of Rightful Sexual Relations: Sex, (Gay) Marriage, and Prostitution." *Social Philosophy Today* Vol. 72 (2007), pp. 199-218. See, in particular, her claims on p. 206.

political liberalism which is itself shaped by colonial racisms, feminist arguments tend to find patriarchy embedded in a range of nonwestern social practices. Thus, Western feminists have often been too easily persuaded that patriarchy is endemic among the Yoruba and Igbo, since this position valorizes universalizing critiques of patriarchy and despotism. Just as colonial discourses read Igbo family structure through the lens of their own conjugal patriarchal family structures and structured rights accordingly, contemporary feminist critiques have misinterpreted Igbo and Yoruba kinship structures because of their own dependency on patriarchy as the fundamental object of critique.[725] In this way, colonial projects that imagined themselves introducing a new, "rightful" order capable not only of introducing civilization, but also of rescuing African women from the dangerous African men and dehumanizing marital practices like polygamy are replicated by contemporary cosmopolitan, humanist, and feminist projects. The juridical transformations described in this chapter, then, are ongoing: they remain central to the policies of the postcolonial state and its bourgeois elite, of transnational governing bodies, the international community, and the various forces of liberalism and capitalism, and of human rights and women's rights organizations, NGOs and religious organizations that voice concerns about the domination of women through a variety of patriarchal traditions. These policies and discourses are shaped by a failure to recognize that patriarchy and the disenfranchisement women were not endemic to pre-colonial African practices, but imported by Europeans and produced through the institutionalization of the juridical law.

Conclusion

This chapter has examined "the underside" of Kant's cosmopolitan arguments by examining the colonial encounter between Indirect Rule and Igbo and Yoruba philosophies of the family. In doing so, it offered a concrete account of the ways in which Kantian cosmopolitanism would entail a

[725] Nzegwu (2006), pp. 7-11, Oyewumi (1997), pp. 15-16.

transformation of institutions, practices, and subjectivities. In the story of Lord Lugard and the principles of Indirect Rule, we saw an example of "native self-governance" that conformed to Kant's requirements for the rightful extension of cosmopolitan right. By examining the policies of the native courts, I demonstrated that for colonial law, as for Kantian cosmopolitanism, conjugal marriage and a strict distinction between public and domestic spheres were tools for reshaping identities, systems, and practices in the interests of cosmopolitan modernity. In this way, Lugard's policies echo Kant's account of marriage and domestic right as key architectural elements of the rightful juridical order.

As Oyewumi and Nzegwu suggest, embedded in both these arguments is a dual complicity between juridical transformation and colonial racism, and between modernity and patriarchy. I have argued that this complicity is most clearly revealed when we examine colonial transformations through an analysis of marriage, gender, and family structures. This method of analysis offers some resistance to colonial and cosmopolitan claims that modernity can be distinguished from coloniality. Far from practicing a form of "sociocryonics" or promoting native self-governance, "customary" laws systematically transformed African social, political, economic, and gender structures, inventing wives, producing patriarchy, and rendering unintelligible the structures of equality and inclusion around which pre-colonial societies were structured. In this way, colonial racisms operated on institutions and cultural practices as much as it operated on bodies, and the assumptions of colonial racism have been embedded into the rhetoric of cosmopolitanism and liberalism in the postcolony.

This chapter juxtaposed Kant's account of the family with that of the pre-colonial Igbo and Yoruba, where marriage neither generated a separate sphere of rights nor determined the rights and opportunities of married partners, and did not produce a comprehensively gendered social

structure.[726] This juxtaposition highlights the ways in which Kant's account of the political subject is conditioned by a particular and gendered construction of family and the domestic sphere. By examining Kant's political arguments from the perspective of Igbo and Yoruba women, this chapters demonstrates that Kantian conceptions of equality and political personhood are embedded in particular and historically bounded constructions of gender, of the family, of public and private, of gender, and of the value of particular kinds of work and participation.

By asking how Kant's requirement of native consent might operate in a concrete process of juridical transformation, this chapter showed that the acceptance of rightful juridical institutions would not only lead to a radical restructuring of property, commerce, and labor, but would also create the gendered private and domestic split that is central to Kant's vision of the political order. It demonstrated that through the Marriage Ordinance that shaped colonial law throughout West Africa, marriage was often the institution through which this consent to the new juridical order was organized. However, the very institutional transformations wrought by colonial marriage laws produced and maintained the structural exclusion of women, who were thus denied the opportunity to consent to this new juridical order. This denial, I argued, reveals a gendered exclusion built into Kant's cosmopolitan arguments, and suggests that this arguments cannot be made more inclusive simply by assuming that women, like men, might operate as equals in the public sphere. A truly inclusive Kantian political philosophy must rethink the relationship between access to the public sphere and the philosophy of the family.

In making these arguments, this chapter suggests three elements of a method for developing a de-colonial Kantian cosmopolitanism. It asks us, first, to explore Kant's cosmopolitan arguments from the perspective of the "native," who is himself defined through the colonial racism built into

[726]Nzegwu, (2006), Pp. 157-199; Oweyumi, (2005), Pp. 100-116.

Kant's theory. In doing so, it asks us to think from a perspective that it invisible from within the terms of Kant's theory. Second, by focusing on the family as the lens through which to compare Kantian and colonial projects, this project calls into question the necessary distinction between the "political" and the "domestic" that shapes Kant's understanding of political rights. Third, by focusing on two particular African cultures in which women enjoyed a wide range of political and economic rights prior to the colonial encounter, it suggests that the gendered division between public and domestic spheres that shapes Kant's conception of the rightful state may not be consistent with a broader and more egalitarian conception of right, and it raises questions about who, specifically, must "consent" to the adoption of new juridical practices. In the conclusion of this project, I will show how, in the hands of Oyewumi and Nzegwu, this confrontation offers a set of normative possibilities for transforming the gendered structure of Kant's political arguments.

CONCLUSION:

THE FAMILY & DE-COLONIAL COSMOPOLITANISM

> "THE THIRD QUESTION: IF I ACT AS I OUGHT TO DO, WHAT MAY I THEN HOPE? – IS AT ONCE PRACTICAL AND THEORETICAL."[727]

In asking whether a cosmopolitan world is to be hoped for, Kant takes on two intertwined and subsidiary sets of questions. The first concerns the normative order of a cosmopolitan world, while the second examines the hurdles and barriers to the achievement of this vision due to empirical human nature. The first set of questions requires us to examine Kant's moral and political philosophy, in which he develops a normative vision of a cosmopolitan world, while the second set

[727] Kant, *Critique of Pure Reason.* A806.

of questions demand that we turn to his anthropological and geographical work, where he explores the bodies and spaces on which this cosmopolitan world will be mapped. I have argued that Kant's cosmopolitanism should be understood through *the cooperation of these projects*, and that what emerges from this collusion is a vision hinted at in the *Idea for a Universal History with a Cosmopolitan Aim*, where Kant tells us that Europe, as the most advanced of continents, will lead the way towards a cosmopolitan future. However, having brought these two sets of questions together, a third question about the cosmopolitan project emerges: in what concrete ways does Kant envision Europe bringing about this cosmopolitan world? Through an examination of the institutional order that shapes Kant's juridical cosmopolitanism, this project has sketched an answer to this third question.

1. Examining the Institutions of Everyday Life: Towards a De-colonial Kant

By focusing on the central role that the family plays in Kant's account of the rightful state, this dissertation has demonstrated that Kant's account of external freedom and the political subject is premised upon a rigid and gendered distinction between the public and domestic spheres. The juxtaposition of Kant's account of the family with contemporary accounts of the pre-colonial African family suggests that the Kantian construction of the family is neither necessary nor universal. Universal participation in the cosmopolitan order that Kant envisions may be theoretically possible, but *only* at the cost of a radical reordering of the most intimate elements of human life, all the way down, producing not only public, private, and domestic spheres with their attendant division of moral and political labor, but also the categories of gender and identity that make this division of labor possible.

In asking what "series of revolutions" might make Kant's vision of a cosmopolitan world possible, this thesis has argued that Kant's juridical cosmopolitanism entails a form of "rightful

coloniality." This project hinges on the universal and "voluntary" acceptance of the fundamental institutions of right, and on a European-led juridical transformation of the institutions central to everyday life, such as marriage, the family and attendant property, labor, and education practices, in order to produce recognizable political subjects. To explain the concrete effects of these projects, I have examined the necessary transformative processes entailed by Kant's argument through the lens of a similar set of policies that organized Indirect Rule in colonial Nigeria.

If Kant's cosmopolitanism sketches a civilizing project resembling the projects and processes of late colonialism in the ways that these arguments suggest, then contemporary theorists who draw on Kantian claims about the importance of well-functioning institutions to cosmopolitanism ought to take note. They must engage with the raced and gendered assumptions built into Kant's account of institutions and be careful rigorously to reconstruct moral arguments without smuggling in Eurocentric and gendered assumptions.

By placing Kant in dialogue with contemporary African philosophy, I also ask how Kantian cosmopolitanism *should* be transformed by de-colonial projects, questions, and practices. As Walter Mignolo might put it, we must also ask what it would mean to shift the "geography of reason" in Kant's cosmopolitan map of the world. If those in the "unknowable spaces" of the interior of Africa can reclaim a set of practices and patterns rendered mute by colonial transformation in order to posit different practices of life and patterns of the self, what should contemporary cosmopolitanism do?

This project has demonstrated that a de-colonial cosmopolitanism must work to de-link universalist schemes of right from the particular and culturally bounded family and domestic structures that shape them, and therefore must be cognizant of the ways in which the specter of colonial racism is operative in Western liberal claims to universalism. In this conclusion, I argue that a rigorously universal cosmopolitanism must consider alternative institutional constellations. A truly

cosmopolitan political theory should draw on the institutional legacies of diverse cultural and political traditions, and should be cognizant of the ways in which colonial practices radically and violently reorganized those traditions. By positioning Kant's philosophy of the family in dialogue with pre-colonial African family and institutional structures, this project suggests one method for a more radically inclusive contemporary cosmopolitan philosophy, and it highlights the role of colonial racism in universalist discourses that valorize Western institutional frameworks as the only juridical structures capable of organizing egalitarian access to rights.

2. Producing Political Subjects: Another model

In the previous chapter, I explored arguments by Nkiru Nzegwu and Oyeronke Oyewumi that turn on the critical insight that if gender, and its attendant social and political structures, is socially constructed, there is no reason to assume it is universal or necessary. By placing the family at the center of their examination of the confrontation between Igbo and Yoruba practices and Western interventions, Nzegwu and Oyewumi demonstrate that colonial juridical transformations involved both raced and gendered assumptions. In doing so, they show that the introduction of patriarchy and the emphasis on conjugal marriage was critical to the transformation of economics and political subjectivity under colonial rule. In these arguments, explorations of Igbo and Yoruba society offer a powerful critique of the assumptions of universality built into the Western worldview and into political arguments that assume a necessary distinction between the public and the domestic, and a gendered division of labor and agency.

In their accounts of precolonial Igbo and Yoruba societies, Nzegwu and Oyewumi offer a vision of an alternative institutional framework that organizes equal and universal access to rights and political agency without resorting to patriarchal gender constructions. In doing so, they suggest

that an egalitarian scheme of rights might be de-linked from Kantian and Western assumptions about the role domestic space and the family play in conditioning the political subject. Nzegwu and Oyewumi each imagine a distinct political society in which pre-colonial Igbo or Yoruba gender constructions might be wedded to a truly inclusive and humanist scheme of rights, thereby offering a normative image of a modern, rightful society in which the equal value of women's labor, agency, and political activity is enshrined in the structure of the political itself.

While contemporary feminists and cosmopolitans might learn much from Nzegwu's and Oyewumi's arguments, these claims need not be universally applicatble to be effective. Rather, against the universal thrust of Kantian cosmopolitanism and rightful coloniality, Nzegwu and Oyewumi suggest that cultural specificity might play a greater role in a de-colonial cosmopolitan world, allowing postcolonial societies to draw on their own pre-colonial institutional frameworks to organize political participation, labor, and family structures. At the same time, they suggest that Western societies might learn to evaluate and rethink their own institutional frameworks by considering the political possibilities suggested by the development of pre-colonial and pre-patriarchal practices in accordance with modern political principles.

Accordingly, in her account of the pre-colonial Yoruba, Onyeronke Oyewumi presents a vision of a politically androgynous society in which political agency and labor are organized according to seniority, and no political category of "woman" is necessary. Where no one is relegated to the status of "woman," no one is devalued as a woman: political participation, economic agency, and the reach of rights are thus de-linked from constructions of gender.

Likewise, Nkiru Nzegwu argues that the political structure of Igbo society might offer some powerful normative lessons for Western liberalism. In Nzegwu's philosophy of the family, pre-colonial Igbo society turned on the complementary dynamic between two fluidly gendered poles of political participation (the *umu okpala* and *umuada*) organized within and across lineages. These

parallel organizations were the fundamental organizing principle of both the family and of society as a whole, and they mediated labor, economic activity, and political participation by placing equal and complementary worth on the forms of labor and participation engaged in by women and men as distinct groups. This structure is a dual-sex society, which assumes gender difference but *not* a distinction between public and domestic spaces, labors, and reasons: women's activities, like men's, are political, public, and important.

This dual-sexed society hinges on a conception of equality importantly different from the notion of equality operative in Western liberal and patriarchal societies. The modern liberal state structures access to political and economic agency through a clearly gendered and institutionally organized public/domestic split. Though the household is a dual-sex system in which husbands and wives have different but (in a world shaped by feminism) equal roles in decision making and running the family,[728] the public realm remains mono-sexed. Women claim access to this public realm, not by radically reordering its gendered presumptions but by participating in a public sphere still rooted in male assumptions about politics and political agency. The political agent of Western liberalism is coded male, but contemporary concerns with gender equality have rendered this coding invisible. Nevertheless, Nzegwu reminds us that even abstract Western political agents are assumed to be male, and the political realm remains mono-sexed.

The powerful possibilities suggested by the androgynous society suggested by Oyewumi and the dual-sex society Nzegwu presents offer a normative project for what I have called de-colonial cosmopolitanism. Western liberals and cosmopolitans, Nzegwu argues, should rework their notions of equality by rethinking the ways in which the family and the political co-constitute one another and, inspired by the androgynous structure inspired by the Yoruba and the dual-sex model suggested by the Igbo, *challenge the mono-sexed assumptions built into patriarchal liberalism*. This critique is productive,

[728] Nzegwu (2006), p. 212.

offering both evaluative and normative criteria for shifting Western assumptions. This need not entail that Western societies adopt either androgynous or dual-sex models, but it does suggest that undermining the assumption that the Western mono-sexed model is universal might be the first step toward a more inclusive and de-colonial cosmopolitanism. Reclaiming pre-colonial practices in this way, and offering them as both a challenge and a viable alternative to a Kantian and cosmopolitan vision of the universally rightful political state presents a model of the kind of epistemic disobedience de-colonial cosmopolitanism requires.

Thus, drawing on her account of pre-colonial Igbo institutions, Nzegwu imagines a modern political society organized not through the strict division between public and private spaces organized through marriage, but through two parallel and symmetrical lines of political power, one in the hands of "men", the other in the hands of "women" (assuming, of course, a fluid construction of sex difference). In building her alternate framework, Nzegwu describes a set of values consistent with Western feminist practices: a restructuring of public/private and the sexual terrain of the family, an enlarged set of life possibilities and opportunities for full social, economic, and political participation for women, and an account of radical gender equality. These values can be arrived at not by adopting Western valuations and practices but by returning to those practices and perspectives already embedded in Igbo (or other nonwestern) culture. In Nzegwu's imagined society, these two lines operate cooperatively and collaboratively, and entail a rethinking of equality:

> equality is not accorded to individuals simply because they are individuals, but because they are the bearers of rights that derive from social, political, and religious roles and offices. They have duties to perform, whatever they may be. Because of this link between equality and duties, equality can be exercised and enforced without interference from others.[729]

For Nzegwu, then, true political equality is produced not when difference is written out of equality and gender is moved out of the public sphere, but when a we politicize both "public" and

[729] Nzegwu, (2006), p. 226.

"domestic" rights and obligations. The cooperative dual-sex structure she suggests would do this by de-centering conjugal marriage, which configures women's status and identity through a sexual relationship and instead focusing on fluid and cooperative kinship structures in which the duties of care are not relegated to a private, non-politicized realm.[730]

Embedded in this argument is a powerful critique of Western liberal and feminist practices. As Douglas Ficek has put it, for Nzegwu, "the world is contingent – a product of free human beings – and can therefore be changed. And while this change can be entirely innovative, it can also be informed by indigenous values and institutions; it can take old traditions seriously, revise them and revive them."[731] If the world is radically contingent in the way Nzegwu's account of the Igbo suggests, then Western conceptions of equality, too, are embedded in particular constructions of the family, of public and private, of gender, and of the value of particular kinds of work and participation. Nzegwu's focus on the family as the nexus of the socio-political realm highlights the ways in which social and political structures into which we are born literally make us who we are. I mean this not only in the sense that our value scheme and our own identities and self-representations within those schemes emerge from the familial and political structures that are intelligible to us, but also that the map of the family and its relationship to the political literally *produces* the conception of the person onto which we will graft our senses of ourselves as persons, agents, and individuals. By asking us to consider our own assumptions in the light of pre-colonial

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[730] Nzegwu's normative argument is in fact more radical than this: she advocates the normative value of this transformation in all mono-sexed cultures. "The catch here," she argues, "is that the racialized, mono-sexed system of the United States and Canada fosters the myth that this course of action is both unintelligible and impossible."[730] Such a radical refiguring of personhood and the political are unlikely to occur in Western liberal societies already constituted by Enlightenment conceptions of personhood, autonomy, and the family. This kind of political order is more possible in a political structure already informed at some level by its values. What Nzegwu envisions may not be a feminist project feasible in the West, but one central to the broader project of decolonizing African institutions.

[731] Ficek, Douglas. "On familial and socio-political possibilities." *Philosophy Social Criticism* 2011 37: 947, p. 953.

Igbo or Yoruba practices, Nzegwu and Oyewumi ask us to rethink the universality of Western constructions of equality by recognizing that this concept emerges our of a mono-sexed, historically patriarchal construction of society and of the self.

3. Colonial Racism and the Blindnesses of Right: A Dual-Sex Kant?

Kant's account of the rightful state is undoubtedly mono-sexed in precisely the manner Nzegwu describes: it hinges upon a rigid and gendered distinction between the public and the domestic, and expressly constructs political agents as heads of households, who are, even in contemporary iterations of the Kantian state, coded male. But in both the early (1764) *Observations on the Beautiful and Sublime* and the late-published (1798) *Anthropology from a Pragmatic Point of View*, Kant presents an account of gender difference that hints towards the flavors of complementarity Nzegwu describes.[732] In the *Observations*, Kant genders the complementary relationship between the beautiful and the sublime, arguing that women embody the orderly and agreeable principles of the beautiful, while men personify the boldness and exaltation of human nature associated with the sublime.[733] Nature has positioned the two principles in tension with one another to achieve her own ends: both principles are essential for the development of human nature and for the possibility of morality. But though the relationship between them is both complementary and symbiotic, it does not entail the radical rethinking of equality Nzegwu's argument suggests; the sublime and the beautiful, like the

[732] See Kant, OBS 2:228-230 and Kant, AA 9:303-310. Eduardo Mendieta comes close to developing this claim in an essay in which he argues that man is to woman as history is to geography; he, too, points to the limited complementarity suggested in the arguments on gender in the *Observations* and the *Anthropology*. Mendieta, Eduardo. "Geography is to History as Woman is to Man: Kant on Sex, Race, and Geography." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY University Press, 2011, pp. 345-368.
[733] It is important to note, as Mendieta also points out, that "man" and "woman" in this case are coded white.

male and female principles they exemplify, are positioned hierarchically, with the masculine and sublime offering the sole possibility for true human exaltation and development. The beautiful can merely "refine" and "civilize"; only the sublime can propel man towards the discovery of his own moral capabilities.

When Kant argues in the *Anthropology* that "the human being is destined by his reason to live in a society with human beings and in it to *cultivate* himself, to *civilize* himself, and to *moralize* himself,"[734] the *cultivation* and *civilization* he refers to will occur in response to the orderly "refinements" offered not only by the rightful juridical order itself, but by exposure to the beautiful. Eduardo Mendieta notes that women may thus have a critical role to play in this civilizing project, though their role will be limited to embodying the refinements of culture (as they cannot hope to inspire the sublime realization of man's innate moral capacities).[735] But as we have seen in our examination of the cultural and juridical transformations wrought in colonial Africa, where women were called upon to embody the civilizing principle, they were most often called upon to produce a distinct domestic space against which the obligations of the public sphere would fall into sharp relief. As the patterns of missionary education and juridical reform described in Chapter Six suggest, women's role in the civilizing mission did not entail *active participation as a complementary force in the political sphere*, but turned upon the maintenance of a differently-ordered, distinctly non-political domestic sphere.

In the *Anthropology*, these gendered principles are mapped onto the mono-sexed political order, where the complementarity of male and female principles holds only within the household,

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[734] Kant, AA 324.

[735] Mendieta, Eduardo. "Geography is to History as Woman is to Man: Kant on Sex, Race, and Geography." In Eds. Elden and Mendieta, *Reading Kant's Geography*. SUNY University Press, 2011, pp. 352-356.

where the wife "dominates" and the husband "governs."[736] Only masculine "governance" is consistent with the juridical rights and duties of the rightful state; feminine "dominance" is useful within the household, but incommensurate with respect for external freedom in the public sphere. Whatever complementarity Kant posits between the sexes, then, must be contained within an enclosed domestic space: it has no place in the public or political realm.

Even Kant's ruminations on the nature of the sexes, then, do not provide sufficient groundwork for envisioning a dual-sex society with fully integrated public and domestic spheres. And this, in turn, may shed light on Kant's puzzling claim in the *Rechtslehre* that, though women are passive citizens, "each must have the ability to work his way up" to an active state.[737] In Nzegwu's terms, Kant's public sphere is mono-sexed, and all claims to equality are measured against a male standard: women, as passive citizens, may make a claim to equality only when they can prove themselves on par with (male) active citizens. When women enter the public sphere, they do so in the political garb of men: there is no political "female principle" and thus no place for women *as women* in the public arena. While individual women may venture out of their domestic role as wives and participate in political pursuits and the discourse of public reason, they do so as *individuals* and never as a collective and gendered group. This is not to say that Kant's political sphere is androgynous in the manner that Oyewumi advocates: given the critical role the domestic sphere plays in limiting and shaping public activity, Kant's society is strictly gendered, and the political realm – with its emphasis on independence and freedom from embodied need – is explicitly coded male. In this scheme, women are valued as political agents only when they operate within this public, male sphere.

I suggest, therefore, that even Kant's most liberal vision offers limited hope for

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[736] Kant, AA 9:304.
[737] Kant MS 6:314.

contemporary Kantian feminists: even if individual women could, on Kant's account, achieve standing as full and active citizens, the mono-sexed nature of the political measures their equality against a male standard. The construction of this public sphere precludes the possibility of a society that could value *women as a class* directly able to shape and participate in politics: where women enter the public realm, they do so individually, and never as a class. In this scheme, domestic labor, rights, and relations are understood to be non-political, and the external freedom of those who labor and care in the domestic realm is only minimally protected by the coercive structures that organize political rights. As a class, women are constitutive of the domestic realm, and of the transformation of external freedom made possible by the rigid distinction between those labors, activities, and reasons that are public, and those that are inconsistent with the independence and autonomy of political subjects.

Kant's commitment to a mono-sexed public sphere thus ensures that his liberalism is always consistent with the fundamental assumptions of patriarchy. Likewise, liberal feminist arguments that assume a patriarchal model in order to challenge the inequality of women often fail to transcend the possibilities of patriarchy. Nzegwu's advocacy of the dual-sex society entails an important set of concerns about Western feminism, which is too often consistent with the Kantian liberal assumptions described here; these assume that equality must be measured against a male, mono-sexed standard. As Nzegwu puts it,

> […] the very real hope of feminists is that change will come, but it is still a long way off. If feminists are really desirous of change they would have to take the radical step of withdrawing from the male-privileging system and push for another system that equally values the sexes as they did in the sphere of marriage.[738]

In making this claim, Nzegwu points to contemporary developments in marriage practices in the West as a model for the transformations still needed in the public sphere. Western feminists have

[738] Nzegwu (2006), p.218.

been successful in reordering the principles of equality within the domestic sphere, she suggests, but have often not understood that the very public-private split on which the domestic sphere is premised is the true loci of women's collective political disenfranchisement.

As we have also seen, the vibrant political possibilities present in Oyewumi's account of an androgynous political scheme and in Nzegwu's vision of a dual-sexed society are invisible from the standpoint of Kantian cosmopolitanism. In imagining Kant's cosmopolitanism in Africa, I offered an account of the concrete means by which his vision of a universally accepted cosmopolitan world order might be achieved. By examining this vision in light of Kant's theory of race, I demonstrated that a particular Kantian form of colonial racism grounds his presumption of the universality of juridical institutions and, through colonial-cosmopolitan juridical transformation, forecloses alternate possibilities by linking them to a raced and spaced cultural backwardness.

Kant's anthropological claims about women demonstrate that his account of the institutions necessary to the rightful juridical order are mapped onto presumptions of natural difference. In this way, his raced and gendered exclusions have a deep structural impact on his account of moral and political norms. Kant's account of marriage offers a particularly clear example of the interplay between "natural difference" and the structure of institutional equality. Chapter Two showed that Kant's account of marriage in the *Rechtlsehre* produces a "rightful equality" between husband and wife that is consistent with "the natural superiority of the husband to the wife:"[739] within the domestic realm, the husband remains "naturally superior." Marriage is thus premised on natural inequality, but this inferiority is recast through juridical relations as a reasonable and necessary inequality between men, who are independent, and wives, who are dependent. Kant's institutional order thus effects a political transformation of naturalized differences while assuming that such differences are natural and part of the inevitability of history.

[739] Kant, MS 6:279.

Kant's cosmopolitan philosophy effects a similar political transformation of race. While Kant's theory of race entails that race is "natural" and corresponds to an uneven development of basic capacities, his cosmopolitan politics flattens the map, as it were: as Chapter Five argued, the rightful republican state is organized so that anyone can participate, regardless of the relative development of their capacities. Indeed, only through participation in a rightful juridical order can one hope to develop underdeveloped capacities: this institutionally organized juridical order is precisely the "matrix within which all the original capacities of the human race may develop."[740] Yet once we are within the rightful juridical order, those without fully developed capacities will find themselves in positions of dependence (as laborers, domestic servants, employees in service industries, or apprentices, mapped through raced and gendered labor patterns); they become "passive citizens," denied access to the public sphere and full rights to political participation. In this way, "natural" inequalities are transformed by the juridical realm into rightful inequalities necessary for the maintenance of a public sphere in which active citizens participate as independent equals. Natural inequalities inform and shape a political realm that transforms them into institutional exclusions and ensures that neither women nor nonwhites will have full or equal access to the public realm.

As the arguments in this project have shown, "race" and "family" operate at the intersection of a range of natural, normative, and institutional claims. By linking the role of family and the role of race in Kant's cosmopolitan philosophy, this project suggests a broader critique of Kantian cosmopolitan liberalism. As McCarthy (2011) and Mendieta (2011) have argued, race holds a remarkable discursive place in Western liberalism in that it has managed, over nearly two and a half centuries since Kant defined the term, to withstand major paradigm shifts: race has been defined in a range of biological, cultural, legal, and political forms but has, as a concept, proved remarkably

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[740] Kant, IUH. (In Reiss, 1991), p. 51.

tenacious. Despite two centuries of rabid contestation of its terrain and a series of game-changing paradigm shifts, race has managed to operate in remarkably consistent ways. In this sense, the facticity of race is found not in its content but in its function.

As the African feminist philosophers discussed in this work suggest, the concept of the family organizes the terrain of Western liberalism in ways that are remarkably similar to the concept of race. Like race, the family (and with it a whole range of gender and labor practices) has been widely challenged and contested, subjected to a range of paradigm shifts,[741] but has remained remarkably tenacious as a fundamental organizing principle for Western liberalism and political subjectivity. Like the concept of race, the family and its attendant concepts have operated as a key tool for organizing patterned political exclusion and the allocation of wealth and opportunity.[742]

Taken together, the concepts of race and the family work to ensure the global dominance of white, Western, capitalist and bourgeois family structures, both by juridically foreclosing alternate constructions of the family and by politically and economically disadvantaging those who opt to retain non-Western and pre-colonial family structures.[743] Practices of cultural and colonial racism ensured that the family structures of non-Europeans were destroyed or transformed through colonial law rather than developed in accordance with it. These processes continue in contemporary

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[741] i.e. the rise of universal marriage and the bourgeois family, transformations in sexual morality and the rise of psychoanalytic understandings of sexuality and the family, a decline in the influence of the church, the commercialization of the domestic sphere, the rise of children's rights and required education, two centuries of cross-Atlantic immigration, birth control and other family planning practices, the rise of divorce and the decline (in the West) of multi-generational families, several waves of feminism and progressively increased access to the public sphere for women, and, most recently, queer theory, gay rights, and the fight for same sex marriage.

[742] While at the same time contributing to narratives of "self care" and "personal responsibility" that blame those most disadvantaged by the political and economic systems informed and organized by these concepts.

[743] i.e. the economics of polygamous, single-parent, and multigenerational families; the destruction of traditional marital and bridewealth practices in southern Africa; the racial divide in marriage rates in Europe and the U.S.; marriage and tax law in the postcolony; WHO, World Bank, and microloan policies which recognize conjugal family units.

cosmopolitan systems, ensuring that the gendered, conjugal family retains its status as one of the core institutions of liberalism.

As the arguments in this project show, the liberal and Kantian philosophy of the family is not universal, but produced through a specific set of historical, sociopolitical and economic patterns. This suggests, then, that any claim to universal values must interrogate the deep familial and personhood structures on which Western and Enlightenment conceptions of equality are built; it must question the degree to which supposedly universal values rest on socially constructed and contingent institutional practices A de-colonial cosmopolitanism committed to combating racism and patriarchy in their many variant forms must therefore place the multiply-constituted family at the center of its analysis in order to creatively and courageously imagine a truly cosmopolitan construction of the political subject.

4. Cosmopolitan Institutional Constellations: Towards a De-colonial Model

Despite the systemic exclusions built into Kant's political, anthropological, and even moral, thought, there is reason to believe that a de-colonial cosmopolitanism need not leave Kant behind. In this project, I described an imagined confrontation between a Kantian cosmopolitan vision and a set of African values and practices by way of a particular colonial encounter. In fact, a similar confrontation is currently underway in South African constitutional law, where Kantian notions of dignity are in dialogue with the African philosophy of uBuntu.[744]

Ubuntu is an ethical philosophy that articulates an African understanding of humanity. Like the moral frameworks that undergird Igbo and Yoruba worldviews, uBuntu emphasizes the

[744] This confrontation has been notably explored by Drucilla Cornell, both in *Symbolic Forms for a New Humanity* (2010) and in *uBuntu and Law*, (2011). Because Cornell develops her account of Kantian values from Kant's moral philosophy and the *Critiques*, she does not engage with Kant's mature cosmopolitan arguments, where abstract moral and political values are embedded in a concrete and particular institutional order.

relational nature of human experience, holding that persons are born into already constituted communities: the oft-stated fundamental tenet of uBuntu ethics is that a person comes to be a person only through other people. As a result, uBuntu places particular importance on obligations to others, and tends to hold that rights must be the result of responsibilities. Because of its emphasis on community in shaping the experience of the individual, uBuntu is both an ethical philosophy and a set of practices and institutions. While "uBuntu" is used in a wide variety of ways, it has emerged as the primary articulation of an African worldsense in post-revolutionary South Africa. It played an important role in framing a distinctly South African articulation of democratic values in the interim constitution (1994-1996), where uBuntu was deployed along with neo-Kantian liberal values to shape the fundamental values of the post-revolutionary state.

The interplay between Kantian and uBuntu ethical principles and institutional frameworks is in the process of transforming contemporary South African jurisprudence in ways that may have far-reaching consequences across Africa. Through the commitment of several key justices to uBuntu principles, the South African Constitutional Court has chosen to take a new approach to managing the tension between colonial and customary law by helping customary law to develop in accordance with uBuntu-informed constitutional law. In these cases, the Constitutional Court models de-colonial jurisprudence by engaging two distinct sets of institutions, of family practices, of valuations of labor, identity, and of access to participation in public life in order to lay the groundwork for a concrete account of what rightful, shared South African institutions and values might look like.

Where the Kantian language of dignity, autonomy, or self-legislation is deployed in contemporary cosmopolitan and liberal settings, we should examine how these values are shaped by and embedded in particular institutional structures. I have argued that when we place the family at the heart of an analysis of Kant's cosmopolitan thought, the relationship between the abstract principles that motivate Kant's cosmopolitan vision and the concrete institutional structures on

which they depend emerge particularly clearly. The confrontation between Kantian values and the philosophy of uBuntu suggests that dialogue between culturally distinct theories of justice can yield a fruitful transformation of values, provided that this dialogue is cognizant of the role everyday institutions play in shaping and producing political personhood and relational identity.

As my exploration of Kant in Africa suggests, colonial difference is often produced through hegemonic transformations of intimate and everyday practices. Thus, the necessity of interrogating the relationship between abstract principles and the concrete institutions of everyday life through which they are realized is present in any analysis of a theory of justice or governance, and is an essential element of de-colonial cosmopolitanism.

A SELECTED LIST OF ABBREVIATIONS:*

ODR: *On the Different Race of Mankind* (1777). Translated by Zoller in (eds.) Louden and Zoller, *Anthropology, History, Education (The Cambridge Edition of Immanuel Kant in Translation)*. Cambridge University Press, 2008. PAP pagination.

IUH: *Idea for a Universal History with a Cosmopolitan Aim* (1784). Translated by Nisbet in (ed.) Reiss *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991.

WE: *What is Enlightenment* (1984). Translated by Nisbet in (ed.) Reiss *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991.

CHR: *On the Concept of a Human Race* (1785) Translated by Zoller in (eds.) Louden and Zoller, *Anthropology, History, Education (The Cambridge Edition of Immanuel Kant in Translation)*. Cambridge University Press, 2008. PAP pagination.

CBH: *Conjectures on the Beginnings of History* (1786) Translated by Nisbet in (ed.) Reiss *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991.

GMM: *Groundwork for the Metaphysics of Morals*. Translated by Mary Gregor in (eds.) Gregor and Korsgaard. (The Cambridge Texts in the History of Philosophy). Cambridge: Cambridge University Press, 1998. PAP pagination.

UTP: *On the Use of Teleological Principles in Philosophy* (1788) Translated in (ed.) Bernasconi, *Race*. Blackwell, 2002. PAP pagination.

CoJ: *Critique of the Power of Judgment*. Translated by Guyer. Cambridge University Press, 2001.

Rel: *Religion Within the Boundaries of Mere Reason* (1793). Translated by Wood and di Giovanni in (eds.) Wood, di Giovanni, and Adams. Cambridge University Press, 1999.

TP: *Theory and Practice* (1793). Translated by Nisbet in (ed.) Reiss *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991.

TPP: *Towards Perpetual Peace* (1795) Translated by Nisbet in (ed.) Reiss *Kant: Political Writings*. Cambridge: Cambridge University Press, 1991.

MS: *Metaphysics of Morals* (1797) Translated by Mary Gregor. Cambridge University Press, 1996. PAP pagination.

AA: *Anthropology from a Pragmatic Point of View*. Translated by Robert Louden. Cambridge University Press, 1996. PAP pagination.

PG: *Physical Geography*. No full English translation of the text exists, though one is due in a future edition of the *Cambridge Edition of the Works of Immanuel Kant*. I have relied on sections translated by Emmanuel Eze, Holly Wilson, and Werner Stark. See footnotes for the provenance of any particular quote.

LE: *Lectures on Ethics*. Translated by Peter Heath in (eds.) Heath and Schneewind. (The Cambridge Edition of Immanuel Kant in Translation). Cambridge: Cambridge University Press, 2001.

*Where possible, I have used the PAP pagination that corresponds to the Academy Edition of Kant's collected writings (*Kant's Gesammelte Schriften*, edited by Wilhelm Dilthey.) In other cases, the page numbers refer to the texts above. Only the texts referenced in this project appear in the list above.

Bibliography

Achebe, Chinua. *Things Fall Apart*. Heinemann, 1996.

Adeeko, Adeleke. "Gender in Translation: Efunsetan Aniwura." *Gender Epistemologies in Africa: Gendering Traditions, Spaces, Social Institutions, and Identities,* Ed. Oyewumi. Palgrave MacMillan, 2010.

---. "Ko Sohun Ti Mbe Ti O Nitan (Nothing Is That Lacks a [Hi]story): On Onyeronke Oyewumi's The Invention of Women." *African Gender Studies: A Reader, (*ed.) Oyewumi. Palgrave MacMillan, 2005.

Alcoff, LM. "The Problem of Speaking for Others." *Cultural Critique* 20 (1991): 5–32.

---. "What Should White People Do?" *Hypatia* 13.3 (1998): 6–26.

---. "Mignolo's Epistemology of Coloniality." *CR: The New Centennial Review* 7.3 (2007).

---. "Towards a Phenomenology of Racial Embodiment." *Radical Philosophy* (1999): 15–26.

---. *Visible Identities: Race, Gender, and the Self*. Oxford University Press US, 2006.

Alcoff, LM et al. *Identity Politics Reconsidered*. Palgrave Macmillan, 2006.

Alcoff, LM., and E. Potter. *Feminist Epistemologies*. Routledge, 1993.

Alcoff, Linda, and Eduardo Mendieta. *Thinking from the Underside of History: Enrique Dussel's Philosophy of Liberation*. Rowman & Littlefield, 2000.

Amadiume, Ifi. "Theorizing Matriarchy in Africa: Kinship Ideologies and Systems in Africa and Europe." *African Gender Studies* (2005) : 83–98.

---. *Male Daughters, Female Husbands: Gender and Sex in an African Society*. Palgrave Macmillan, 1987.

---. *Re-inventing Africa: Matriarchy, Religion, and Culture*. Zed Books, 1997.

Ameriks, Karl. "The Purposive Development of Human Capacities." *Kant's "Idea for a Universal History with a Cosmopolitan Aim": A Critical Guide, (eds.) Rorty and Schmidt.* Cambridge University Press, 2009.

Amoo-Adare, Epifania. "Engendering Critical Spatial Literacy: Migrant Asante Women and the Politics of Urban Space." *Gender Epistemologies in Africa: Gendering Traditions, Spaces, Social Institutions, and Identities,* Ed. Oyewumi. Palgrave MacMillan, 2010.

Appiah, Kwame Anthony. *In My Father's House: Africa in the Philosophy of Culture*. Oxford University Press US, 1993.

---. "African Identities." *Postcolonial Discourses: An Anthology* : 222–31.

---. "Cosmopolitan Patriots." *Critical Inquiry* 23.3 (1997) : 617-639.

---. *Cosmopolitanism: Ethics in a World of Strangers*. W. W. Norton & Company, 2007.

---. *The Ethics of Identity*. Princeton University Press, 2007.

Arendt, Hannah. *Lectures on Kant's Political Philosophy*. Chicago: University of Chicago Press, 1989.

Baier, A. C. "Moralism and Cruelty: Reflections on Hume and Kant." *Ethics* 103.3 (1993) : 436–457.

Bakare-Yusuf, B. "Beyond Determinism: The Phenomenology of African Female Existence." *Feminist Africa* 2 (2003) : 02–2003.

Baron, M. W. "Love and Respect in the Doctrine of Virtue." *The Southern Journal of Philosophy* 36.S1 (1998) : 29–44.

Beiner, Ronald. "Paradoxes in Kant's Account of Citizenship." *Kant and the Concept of Community, Eds. Payne and Thorpe*. University of Rochester Press, 2011.

Beitz, C. R. *Political Theory and International Relations*. Princeton University Press, 1999.

Benhabib, S., and D. Cornell. *Feminism as Critique: On the Politics of Gender*. University of Minnesota Press, 1991.

Bennett, T. W. *Customary Law in South Africa*. Juta & Company, 2004.

Bernasconi, Robert. "African Philosophy's Challenge to Continental Philosophy." *Postcolonial African Philosophy: A Critical Reader, (*ed.) Eze. Wiley-Blackwell, 1997. 185–96.

---. "Kant and Blumenbach's Polyps: A Neglected Chapter in the History of the Concept of Race." *The German Invention of Race*. Eds. Eigan and Larrimore. SUNY Press, 2006, 73–90.

---. "Kant as an Unfamiliar Source of Racism." *Philosophers on Race: Critical Essays*. Eds. Ward and Lott. Wiley-Blackwell, 2002. 145–66.

---. "Will the Real Kant Please Stand up: The Challenge of Enlightenment Racism to the Study of the History of Philosophy." R*adical Philosophy* (2003): 13–22.

---. "Kant's Third Thoughts on Race." R*eading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

---. "Who Invented the Concept of Race?" R*ace*. Ed. Bernasconi. Blackwell, 2001. .

Bernasconi, R., and S. Cook. *Race and Racism in Continental Philosophy*. Indiana University Press, 2003.

Bernasconi, R., and T. L Lott. *The Idea of Race*. Hackett Publishing, 2000.

Bogues, A. *Black Heretics, Black Prophets: Radical Political Intellectuals*. Psychology Press, 2003.

Bonilla-Silva, E. "The Essential Social Fact of Race." *American Sociological Review* 64.6 (1999): 899–

906.

Brake, E. "Justice and Virtue in Kant's Account of Marriage." *Kantian Review* 9.1 (2005): 58–94.

---. "Marriage, Morality, and Institutional Value." *Ethical Theory and Moral Practice* 10.3 (2007): 243–254.

Brown, W. *Politics Out of History*. Princeton University Press, 2001.

---. *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton University Press, 2006.

---. *States of Injury: Power and Freedom in Late Modernity*. Princeton University Press, 1995.

Buck-Morss, Susan. *Hegel, Haiti, and Universal History*. University of Pittsburgh Pre, 2009.

Bujo, Benezet. "Springboards for Modern African Constitutions and Development of African Cultural Traditions." *African Ethics: An Anthology of Comparative and Applied Ethics, Ed. Murove*. University of KwaZulu-Natal Press, 2009.

Byrd, B. S. "Kant's Theory of Contract." *The Southern Journal of Philosophy* 36.S1 (1998) : 131–153.

Byrd, B. S, and J. Hruschka. "Kant on Why Must I Keep My Promise." *Chicago-Kent Law Review* 81 (2006): 47.

Charlesworth, H. "Human Rights as Men's Rights." *Women's Rights, Human Rights: International Feminist Perspectives*. Psychology Press, 1995. 103–13.

Chiba, S. "Hannah Arendt on Love and the Political: Love, Friendship, and Citizenship." *The Review of Politics* 57.03 (1995): 505–536.

Coetzee. "Particularity in Morality and Its Relation to Community." *The African Philosophy Reader,* (eds.) Coetzee and Roux. Routledge, 1998.

Cohen, A. *Kant and the Human Sciences: Biology, Anthropology and History*. Palgrave Macmillan, 2009.

Cohen, AA. "Kant on Epigenesis, Monogenesis and Human Nature: The Biological Premises of Anthropology." *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences* 37.4 (2006) : 675–693.

Comaroff, J, and JL Comaroff. *Millennial Capitalism and the Culture of Neoliberalism*. Duke University Press, 2001.

Cornell, D. *Transformations: Recollective Imagination and Sexual Difference*. Psychology Press, 1993.

---. *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence*. Fordham Univ Pr, 2011.

Cornell, D., and S. Murphy. "Anti-racism, Multiculturalism and the Ethics of Identification." *Philosophy & Social Criticism* 28.4 (2002) : 419–449.

Cornell, D., and K. Van Marle. "Exploring Ubuntu: Tentative Reflections." *Afr. Hum. Rts. LJ* 5

(2005) : 195.

Cornell, Drucilla, and Kenneth Michael Panfilio. *Symbolic Forms for a New Humanity: Cultural and Racial Reconfigurations of Critical Theory*. Fordham University Press, 2010.

Cronin, C. "Kant's Politics of Enlightenment." *Journal of the History of Philosophy* 41.1 (2003) : 51–80.

Dahbour, Omar. "Advocating Sovereignty in an Age of Globalization." *Journal of Social Philosophy* 37.1 (2006): 108–126.

Demangeon, Albert. *The British Empire: A Study in Colonial Geography*. Harcourt, Brace, 1925.

Denis, L. "From Friendship to Marriage: Revising Kant." *Philosophy and Phenomenological Research* 63.1 (2001): 1–28.

Dworkin, Andrea. *Intercourse*. Free Press, 1987.

Edwards, Jeffrey. "Original Community, Possession, and Acquisition in Kant's Metaphysics of Morals." *Kant and the Concept of Community, Eds. Payne and Thorpe*. University of Rochester Press, 2011.

---. "'The Unity of All Places on the Face of the Earth': Original Community, Acquisition, and Universal Will in Kant's Doctrine of Right." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Eigen, Sara, and Mark Larrimore. *The German Invention of Race*. State Univ of New York Pr, 2006.

Eigen, Sara. "Self, Race, and Species: J. F. Blumenbach's Atlas Experiment." *The German Quarterly* 78.3 (2005): 277-298.

Ekeh, Peter. "Colonialism and The Two Publics in Africa: A Theoretical Statement." *Comparative Studies in Society and History* 17.1.

Elden, Stuart. "Reintroducing Kant's Geography." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Emecheta, Buchi. *The Joys of Motherhood*. W. W. Norton & Company, 1985.

Eze, E. C. *Achieving Our Humanity: The Idea of the Postracial Future*. Routledge, 2001.

---. *African Philosophy: An Anthology*. Wiley-Blackwell, 1998.

---. *Postcolonial African Philosophy: A Critical Reader*. Blackwell Cambridge, MA, 1997.

---. *Race and the Enlightenment*. Blackwell, 2000.

---. "The Colour of Reason: The Idea Of 'race' in Kant's Anthropology." *Philosophy from Africa: A Text with Readings*. Oxford: Oxford University Press, 2002. 430.

Fenves, Peter David. *Late Kant: Towards Another Law of the Earth*. Psychology Press, 2003.

Flikschuh, K. *Kant and Modern Political Philosophy*. Cambridge Univ Pr, 2000.

---. "Kantian Desires: Freedom of Choice and Action in the Rechtslehre." *Kant's Metaphysics of Morals: Interpretive Essays,* (ed.) Timmons. Oxford: Oxford University Press, 2002.

---. "On Kant's Rechtslehre." *European Journal of Philosophy* 5.1 (1997) : 50–73.

Foucault, Michel. *Care of the Self: The History of Sexuality, Volume, III*. Vintage Books USA, 1988.

---. *The History of Sexuality: An Introduction (History of Sexuality Vol. 1)*. Vintage Books USA, 1990.

---. "What Is Enlightenment?" *The Foucault Reader*, (ed.) Rabinow. Pantheon Press, 1984.

---. *Use of Pleasure: The History of Sexuality Volume two*. Random House Trade, 1985.

---. *Introduction to Kant's Anthropology*. Semiotext(e), 2008.

Fraser, D. *Frederick the Great: King of Prussia*. Frommer International, 2001.

Fricker, Miranda. "Epistemic Justice and a Role for Virtue in the Politics of Knowing." *Metaphilosophy* 34.1-2 (2003) : 154–173.

---. "Powerlessness and Social Interpretation." *Episteme: A Journal of Social Epistemology* 3.1-2 (2006) : 96–108.

---. "Rational Authority and Social Power: Towards a Truly Social Epistemology." *Proceedings of the Aristotelian Society (Hardback)*. 1998. 159–177.

---. *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford University Press, 2009.

Frierson, Patrick R. *Freedom and Anthropology in Kant's Moral Philosophy*. Cambridge University Press, 2003.

Garcia, E. V. *Nature and Freedom in Kant's Ethics: The Historical Development of Kant's Moral and Political Philosophy, 1775-1798*. Columbia University, 2006.

Gardner, J. F. *Family and Familia in Roman Law and Life*. Oxford University Press, USA, 1998. .

Geyer-Kordesch, J. "Infanticide and Medico-legal Ethics in Eighteenth Century Prussia." *Clio Medica (Amsterdam, Netherlands)* 24 (1993): 181.

Gleixner, Ulrike, and MW Gray. *Gender in Transition: Discourse and Practice in German-speaking Europe, 1750-1830*. University of Michigan Press, 2006.

Gould, Carol. *Does Global Justice Presuppose Global Solidarity*. 2010.

---. "The Woman Question: Philosophy of Liberation and the Liberation of Philosophy." *Women and Philosophy: Toward a Theory of Liberation*, ed. Gould. Putnam, 1976: 5–44.

---. *Beyond Domination: New Perspectives on Women and Philosophy*. Rowman & Allanheld, 1984.

---. *Globalizing Democracy and Human Rights*. Cambridge University Press, 2004.

---. “Group Rights and Social Ontology.” *Arsp-beiheft*-67 (1997): 56–63.

---. “Private Rights and Public Virtues: Women, the Family, and Democracy.” *Beyond Domination: New Perspectives on Women and Philosophy* (1983): 3–18.

---. *Rethinking Democracy: Freedom and Social Cooperation in Politics, Economy, and Society*. Cambridge University Press, 1990.

---. “Self-Determination Beyond Sovereignty: Relating Transnational Democracy to Local Autonomy.” *Journal of Social Philosophy* 37.1 (2006): 44–60.

---. “Structuring Global Democracy: Political Communities, Universal Human Rights, and Transnational Representation.” *Metaphilosophy* 40.1 (2009): 24–41.

---. “Transnational Solidarities.” *Journal of Social Philosophy* 38.1 (2007): 148–164.

Gray, JC. *The Nature and Sources of the Law*. The Macmillan Company, 1921.

Gray, MW. *Productive Men, Reproductive Women: The Agrarian Household and the Emergence of Separate Spheres During the German Enlightenment*. Berghahn Books, 2000.

Gray, M, and Ulrike Gleixner. *Gender in Transition: Discourse and Practice in German-Speaking Europe 1750-1830*. University of Michigan Press, 2006.

Green, R. M. “What Does It Mean to Use Someone as‘ a Means Only’: Rereading Kant.” *Kennedy Institute of Ethics Journal* 11.3 (2001) : 247–261.

Guyer, Paul. *Kant*. Taylor & Francis, 2006.

---. “The Crooked Timber of Mankind.” *Kant's “Idea for a Universal History with a Cosmopolitan Aim”: A Critical Guide,* (eds.) Rorty and Schmidt. Cambridge University Press, 2009.

Gyekye, K. *An Essay on African Philosophical Thought: The Akan Conceptual Scheme*. Temple Univ Pr, 1995.

---. “Person and Community in African Thought.” *The African Philosophy Reader. London: Routledge* (1998).

---. *Tradition and Modernity*. Oxford University Press, 1997.

---. *Tradition and Modernity: Philosophical Reflections on the African Experience*. Oxford University Press, USA, 1997.

Habermas, Jürgen. “Further Reflections on the Public Sphere.” *Habermas and the Public Sphere* 437 (1992).

---. *Knowledge and Human Interests*. Beacon Press, 1971.

---. *The Theory of Communicative Action: Lifeworld and System: A Critique of Functionalist Reason*. Beacon Pr,

1987.
---. *The Structural Transformation of the Public Sphere: An Inquiry Into a Category of Bourgeois Society*. MIT Press, 1991.
Hampton, Jean. "Feminist Contractarianism." *A Mind of One's Own: Feminist Essays on Reason and Objectivity*. Ed. Witt. Westview Press, 2002. 337–368.
Hansen, K. T. *African Encounters with Domesticity*. Rutgers University Press, 1992.
Hargreaves, John D. *France and West Africa: An Anthology of Historical Documents*. Macmillan, 1969.
Harris, Cheryl. "Whiteness as Property." *Harvard Law Review* 106.8 (1993).
Harvey, David. "Cosmopolitanism and the Banalities of Geographical Evils." *Millennial Capitalism and the Culture of Neoliberalism, Eds. Comaroff and Comaroff*. Duke University Press, 2001.
---. "Cosmopolitanism in the Anthropology and Geography." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.
Hausen, K. "Family and Role-Division: The Polarisation of Sexual Stereotypes in the Nineteenth Century—An Aspect of the Dissociation of Work and Family Life." *The German Family: Essays on the Social History of the Family in Nineteenth-and Twentieth-Century Germany* (1981): 51–83.
Hedrick, T. "Race, Difference, and Anthropology in Kant's Cosmopolitanism." *Journal of the History of Philosophy* 46.2 (2008): 245–268.
Hegel, G.W.F. *The Philosophy of Right*. Dover Philosophical Classics, 2005.
Henderson, Helen. ""Onitsha Woman: The Political Context for Political Power."" *Queens, Queen Mothers, Priestesses, and Power: Case Studies in African Gender,* Ed. Flora Edouwaye S. Kaplan. 1997.
---. "Ritual Roles of Women in Onitsha Igbo Society." 1969.
Henry, Paget. *Caliban's Reason: Introducing Afro-Caribbean Philosophy*. Psychology Press, 2000.
Herman, Barbara. "Can It Be Worth Thinking About Kant on Sex and Marriage." *A Mind of One's Own: Feminist Essays on Reason and Objectivity*. Ed. Witt. Westview Press, 1993. 49–67.
---. "On the Value of Acting from the Motive of Duty." *The Philosophical Review* 90.3 (1981): 359–382.
---. *The Practice of Moral Judgment*. Harvard University Press, 1993.
---. "A Habitat for Humanity." *Kant's "Idea for a Universal History with a Cosmopolitan Aim": A Critical Guide,* (eds.) Rorty and Schmidt. Cambridge University Press, 2009. .
Heyd, D. "Justice and Solidarity: The Contractarian Case Against Global Justice." *Journal of Social*

Philosophy 38.1 (2007): 112–130.

Hill Jr, T. E, and B. Boxill. “Kant and Race.” *Race and Racism,* ed. Boxill. Oxford University Press, USA.

Hill, T. E. “Kant on Wrongdoing, Desert, and Punishment.” *Law and Philosophy* 18.4 (1999): 407–441.

Horkheimer, Max, Theodor W. Adorno, and Gunzelin Schmid Noerr. *Dialectic of Enlightenment: Philosophical Fragments*. Stanford University Press, 2002.

Hsiung, J. C. *Human Rights in East Asia: A Cultural Perspective*. Washington Inst Pr, 1985.

Hudson, Nicholas. “From ‘Nation’to ‘Race’: The Origin of Racial Classification in Eighteenth-Century Thought.” *Eighteenth-Century Studies* 29.3 (1996): 247-264.

Hull, Isabel V. *Sexuality, State, and Civil Society in Germany, 1700-1815*. Cornell University Press, 1996.

---. *Absolute Destruction: Military Culture and the Practices of War in Imperial Germany*. Cornell University Press, 2005.

Hunt, Nancy Rose. “Domesticity and Colonialism in Belgian Africa: Usumbura Foyer Social, 1949-1960.” *Signs* 15.3 (1990): 447–74.

---. “Noise over Camouflaged Polygamy, Colonial Morality Taxation, and a Woman-naming Crisis in Belgian Africa.” *The Journal of African History* 32.03 (1991): 471–494.

---. “‘Le Bebe En Brousse’: European Women, African Birth Spacing and Colonial Intervention in Breast Feeding in the Belgian Congo.” *The International Journal of African Historical Studies* 21.3 (1988): 401-432.

Hunt, N. R, T. P Liu, and J. H Quataert. *Gendered Colonialisms in African History*. Wiley-Blackwell, 1997.

Jacobs, Brian, and Patrick Kain. *Essays on Kant’s Anthropology*. 1st ed. Cambridge University Press, 2007.

Kant, Immanuel. *Anthropology from a Pragmatic Point of View*. Cambridge University Press, 2006.

---. *Critique of Practical Reason*. CreateSpace, 2010.

---. *Critique of Pure Reason*. Cambridge University Press, 1999.

---. *Critique of the Power of Judgment*. Cambridge University Press, 2001.

---. *Groundwork of the Metaphysics of Morals*. Cambridge University Press, 1998.

---. *The Metaphysics of Morals*. Cambridge University Press, 1996.

Kant, Immanuel, Karl Ameriks, and Steve Naragon. *Lectures on Metaphysics*. Cambridge University

Press, 2001.

Kant, Immanuel, Infield. *Lectures on Ethics*. Hackett Pub Co, 1981.

Kant, Immanuel, and Allen Wood, George di Giovanni, Robert Merrihew Adams. *Religion Within the Boundaries of Mere Reason*. Cambridge University Press, 1999.

Kant, Immanuel, Werner S. Pluhar, and Patricia Kitcher. *Critique Of Pure Reason*. Hackett, 1996.

Kant, Immanuel, and H.S. Reiss. *Kant: Political Writings*. Cambridge University Press, 1991.

Kant, Immanuel, Günter Zöller, and Robert B. Louden. *Anthropology, History, and Education*. Cambridge University Press, 2007.

Kaphagawani, D. N, and J. G Malherbe. "African Epistemology." *The African Philosophy Reader*. Oxford: Oxford University Press, 1998. 205.

Kaphagawani, D. N. "Some African Conceptions of Person: A Critique." *African Philosophy as Cultural Inquiry*. Indiana University Press, 2000. 66–79.

Karp, Ivan, D. A. Masolo, and International African Institute. *African Philosophy As Cultural Inquiry*. Indiana University Press, 2000.

Kirkland, F. M. "Modernisms in Black." *A Companion to African-American Philosophy* (2003) : 67–86.

Kleingeld, Pauline. ""Kant's Changing Cosmopolitanism." *Kant's "Idea for a Universal History with a Cosmopolitan Aim": A Critical Guide,* (eds.) Rorty and Schmidt. Cambridge University Press, 2009.

---. "Kant, History, and the Idea of Moral Development." *History of Philosophy Quarterly* (1999): 59–80.

---. "Kant's Cosmopolitan Law: World Citizenship for a Global Order." *Kantian Review* 2 (1998): 72–90.

---. "Kant's Second Thoughts on Race." *The Philosophical Quarterly* 57.229 (2007): 573–592.

---. "Kantian Patriotism." *Philosophy & Public Affairs* 29.4 (2000): 313–341.

---. "Six Varieties of Cosmopolitanism in Late Eighteenth-century Germany." *Journal of the History of Ideas* 60.3 (1999) : 505–524.

---. "The Problematic Status of Gender-Neutral Language in the History of Philosophy: The Case of Kant." *Philosophical Forum*. 1993. 134–134.

Kleingeld, P., and E Brown. "Cosmopolitanism." *Stanford Encyclopedia of Philosophy* (2006).

Korsgaard, C. M. *Creating the Kingdom of Ends*. Cambridge University Press, 1996.

---. *The Constitution of Agency: Essays on Practical Reason and Moral Psychology*. Oxford University Press, USA, 2008.

Korsgaard, C. M, and O. O'Neill. *The Sources of Normativity*. Cambridge University Press, 1996.

Kuehn, Manfred. *Kant: A Biography*. Cambridge University Press, 2001.

Landes, J. B. *The Public and the Private Sphere: A Feminist Reconsideration*. 1995.

Larrimore, Mark. "Antinomies of Race: Diversity and Destiny in Kant." *Patterns of Prejudice* 42.4-5 (2008): 341–363.

---. "Substitutes for Wisdom: Kant's Practical Thought and the Tradition of the Temperaments." *Journal of the History of Philosophy* 39.2 (2001): 259–288.

---. "Substitutes for Wisdom: Kant's Practical Thought and the Tradition of the Temperaments." *Journal of the History of Philosophy* 39.2 (2003): 259–288.

Lee, W.R. "Family and'Modernisation': The Peasant Family and Social Change in Nineteenth Century Bavaria." *The German Family* (1981): 84–119.

---. "Bastardy and the Socioeconomic Structure of South Germany." *The Journal of Interdisciplinary History* 7.3 (1977): 403–425.

Linder, Harry van der. *Kantian Ethics and Socialism*. Hackett Pub Co, 1988.

Lloyd, Genevieve. *The Man of Reason:" Male" and" Female" in Western Philosophy*. Routledge, 2002.

---. "Providence as Progress: Kant's Variations on a Tale of Origins." *Kant's "Idea for a Universal History with a Cosmopolitan Aim": A Critical Guide,* (eds.) Rorty and Schmidt. Cambridge University Press, 2009.

Lorimer, Douglas. "Theoretical Racism in Late-Victorian Anthropology, 1870-1900." *Victorian Studies* 31.3 (1988) : 405-430.

---. "Black Slaves and English Liberty: A Re‐ examination of Racial Slavery in England." *Immigrants & Minorities* 3.2 (1984): 121-150.

Louden, Robert. *Morality and Moral Theory: A Reappraisal and Reaffirmation*. Oxford University Press, USA, 1992.

---. "The Second Part of Morals." *Essays on Kant's Anthropology,*. Cambridge University Press. 60–84.

---. "Anthropology from a Kantian Point of View: Toward a Cosmopolitan Conception of Human Nature." *Studies in History and Philosophy of Science* 39.4 (2008): 515-522.

---. "'The Play of Nature': Human Beings in Kant's Geography." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Louden, Robert, and Manfred Kuehn. *Kant: Anthropology from a Pragmatic Point of View*. Cambridge University Press, 2006.

Louden, Robert, and Günter Zöller. *Anthropology, History, and Education*. Cambridge: Cambridge University Press, 2008.

Ludwig, B. "Whence Public Right? The Role of Theoretical and Practical Reasoning in Kant's Doctrine of Right." *Kant's Metaphysics of Morals: Interpretative Essays*. Cambridge University Press, 2002. 159–84.

Lugard, BFJD. *The Dual Mandate in British Tropical Africa*. Archon Books, 1965.

---. *The Rise of Our East African Empire: Early Efforts in Nyasaland and Uganda*. W. Blackwood and Sons, 1893.

Mackenzie, C., and N. Stoljar. *Relational Autonomy: Feminist Perspectives on Automony, Agency, and the Social Self*. Oxford University Press, USA, 2000.

Mamdani, M. "Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism (Princeton Series in Culture/Power/History)." *Thinking* (2005).

---. "Indirect Rule, Civil Society, and Ethnicity: The African Dilemma." *Social Justice* 23.1/2 (63-64) (1996) : 145–150.

Mann, Kristin. "The Dangers of Dependence: Christian Marriage Among Elite Women in Lagos Colony, 1880–1915." *The Journal of African History* 24.01 (1983) : 37-56.

---. "Women, Landed Property, and the Accumulation of Wealth in Early Colonial Lagos." *Signs* 16.4 (1991) : 682-706.

Manuh, Takyiwaa. "Wives, Children, and Intestate Succession in Ghana." *African Feminism: The Politics of Survival in sub-Saharan Africa*, (ed.) Mikell. University of Pennsylvania Press, 1997.

Marcuzzi, Max. "Writing Space: Historical Narrative and Geographical Description in Kant's Physical Geography." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Martin, Rex, and David A. Reidy. *Rawls's Law of Peoples: A Realistic Utopia?* Wiley-Blackwell, 2006.

Mba, Nina Emma. *Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900-1965*. Institute of International Studies, University of California, Berkeley, 1982.

McCarthy, Thomas. "Kantian Constructivism and Reconstructivism: Rawls and Habermas in Dialogue." *Ethics* 105.1 (1994) : 44–63.

---. "The Critique of Impure Reason: Foucault and the Frankfurt School." *Political Theory* (1990): 437–469. .

---. *Race, Empire, and the Idea of Human Development*. Cambridge University Press, 2009.

McFadden, Patricia. "Cultural Practices as Gendered Exclusion: Experiences from Southern Africa." *Keynote in Proceedings from Power, Resources and Culture in a Gender Perspective* (2000) : 26–27.

McIntosh, Marjorie Keniston. *Yoruba Women, Work, and Social Change*. Indiana University Press, 2009.

Mendieta, Eduardo. "Geography Is to History as Woman Is to Man: Kant on Sex, Race, and Geography." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Mendus, S. "Kant:'An Honest but Narrow-Minded Bourgeois'?" *Essays on Kant's Political Philosophy*. Chicago: University of Chicago Press, 1992. 166–90.

Merryman, J. H, and R. Pérez-Perdomo. *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*. Stanford University Press, 2007.

Michalik, K. "The Development of the Discourse on Infanticide in the Late Eighteenth Century and the New Legal Standardization of the Offense in the Nineteenth Century." *Gender in Transition: Discourse and Practice in German-speaking Europe, 1750-1830* (2006).

Mignolo, Walter. "Cosmopolitanism and the De-colonial Option." *Studies in Philosophy and Education* 29.2 (2009): 111-127.

---. "'The Darker Side of the Enlightenment: A De—Colonial Reading of Kant's Geography.'" *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press.

---. *The Darker Side of the Renaissance: Literacy, Territoriality, and Colonization*. University of Michigan Press, 2003.

---. "Epistemic Disobedience, Independent Thought and Decolonial Freedom." *Theory, Culture & Society* 26.7-8 (2009) : 159 -181.

---. *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking*. Princeton University Press, 2011.

Mikell, Gwendolyn. *African Feminism: The Politics of Survival in sub-Saharan Africa*. Univ of Pennsylvania Pr, 1997.

---. "Pleas for Domestic Relief: Akan Women and Family Courts." *African Feminism: The Politics of Survival in sub-Saharan Africa,* (ed.) Mikell. University of Pennsylvania Press.

Mills, C. W. "' Ideal Theory' as Ideology." *Hypatia* 20.3 (2005): 165–183.

---. *Blackness Visible: Essays on Philosophy and Race*. Cornell Univ Pr, 1998.

---. "Kant's Untermenschen." *Race and Racism in Modern Philosophy* (ed.) Valls. Cornell University Press, 2005. 169–193.

---. "Race and the Social Contract Tradition." *Social Identities* 6.4 (2000): 441–462.

---. "Racial Exploitation and the Wages of Whiteness."." *The Changing Terrain of Race and Ethnicity* (2004): 235–262.

---. *The Racial Contract*. Cornell University Press, 1997.

Morris, D. "The Place of the Organism in Kantian Philosophy: Geography, Teleology, and the Limits of Philosophy." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press.

Morris, HF. "The Development of Statutory Marriage Law in Twentieth Century British Colonial Africa." *Journal of African Law* 23.01 (1979): 37-64.

Morris, RC. *Can the Subaltern Speak?: Reflections on the History of an Idea*. Columbia University Press, 2010.

Mudimbe, V.Y. *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge*. Indiana University Press, 1988.

Muthu, S. *Enlightenment Against Empire*. Princeton University Press, 2003.

---. "Humanity and Culture in Kant's Politics." *Enlightenment Against* (2003).

Mvududu, S. C, and P. McFadden. *Reconceptualizing the Family in a Changing Southern African Environment*. Southern African Research, 2001.

Nagel, T. "The Problem of Global Justice." *Philosophy & Public Affairs* 33.2 (2005): 113–147.

Nussbaum, M. C. *From Disgust to Humanity: Sexual Orientation and Constitutional Law*. Oxford University Press, 2010.

Nzegwu, Nkiru. "Crossing Boundaries: Gender Transmogrification of African Art History." (2000).

---. "Cultural Epistemologies of Motherhood: Refining the Concept 'Mothers'." *JENdA: A Journal of Culture and African Women Studies* 5 (2004): 29.

---. *Family Matters: Feminist Concepts in African Philosophy of Culture*. State Univ of New York Pr, 2006.

---. "Gender Equality in a Dual-sex System: The Case of Onitsha." *Canadian Journal of Law and Jurisprudence* 7.1 (1994): 73–95.

---. "O Africa! Gender Imperialism in Academia." *African Women and Feminism: Reflecting on the Politics of Sisterhood* (2003): 99–157.

---. "Questions of Identity and Inheritance: A Critical Review of Kwame Anthony Appiah's In My Father's House." *Hypatia* 11.1 (1996): 175–201.

---. "The Politics of Gender in African Studies in the North." *Women in African Studies Scholarly Publishing* (2001): 111–146.

---. "Colonial Racism: Sweeping Out Africa with Mother Europe's Broom." *Racism and Philosophy,*

(eds.) Babbitt and Campbell. Cornell University Press, 1999.

---. "Recovering Igbo Traditions: A Care for Indigenous Women's Organizations in Development." *Women, Culture, and Development: A Study of Human Capabilities,* (eds.) Nussbaum and Glover. Oxford University Press, 1995.

O'Neill, O. "Agents of Justice." *Metaphilosophy* 32.1-2 (2001): 180–195.

---. *Bounds of Justice*. Cambridge University Press, 2000.

---. *Constructions of Reason: Explorations of Kant's Practical Philosophy*. Cambridge University Press, 1989.

---. *Faces of Hunger: An Essay on Poverty, Justice and Development*. Allen & Unwin, 1986.

---. "Instituting Principles: Between Duty and Action." *The Southern Journal of Philosophy* 36.S1 (1998): 79–96.

---. "Justice, Gender and International Boundaries." *British Journal of Political Science* 20.04 (1990): 439–459.

---. "Kant: Rationality as Practical Reason." *The Oxford Handbook of Rationality* (2004): 93–109.

---. "Practical Principles & Practical Judgment." *The Hastings Center Report* 31.4 (2001).

---. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge Univ Pr, 1996.

---. *Bounds of Justice*. Cambridge University Press, 2000.

---. "Kant's Conception of Public Reason." *Kant and the Concept of Community,* (eds.) Payne and Thorpe. University of Rochester Press, 2011.

---. "Oientation in Thinking: Geographical Problems, Political Solutions." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Okin, S. M. "Justice and Gender." *Philosophy & Public Affairs* 16.1 (1987): 42–72.

---. *Justice, Gender, and the Family*. Basic Books, 1996.

---. "Reason and Feeling in Thinking About Justice." *Ethics* 99.2 (1989): 229–249.

---. *Women in Western Political Thought*. Princeton University Press, 1979.

Okonjo, Kamene. "'The Dual-sex System in Operation: Igbo Women and Community Politics in Midwestern Nigeria.'" *Women in Africa: Studies in Social and Economic Change,* (ed.) Hafkin and Bay. Stanford University Press, 1996.

Oyewùmí, O. *African Gender Studies: A Reader*. Palgrave MacMillan, 2004.

---. *African Women and Feminism: Reflecting on the Politics of Sisterhood*. Africa World, 2003.

---. "Conceptualizing Gender: The Eurocentric Foundations of Feminist Concepts and the Challenge of African Epistemologies." *Jenda: A Journal of Culture and African Woman Studies* 2

(2002).

---. “Decolonizing the Intellectual Quotidian: Yoruba Scholar(ship) and Male Dominance.” *Gender Epistemologies in Africa: Gendering Traditions, Spaces, Social Institutions, and Identities,* (ed.) Oyewumi. Palgrave MacMillan.

---. “Family Bonds/conceptual Binds: African Notes on Feminist Epistemologies.” *Signs* 25.4 (2000) : 1093–1098.

---. “The Translation of Cultures: Engendering Yoruba Language, Orature, and World-Sense.” *Women, Gender, Religion: A Reader,* (eds.) Castelli and Rodman. Palgrave MacMillan, 2001.

---. “Ties That (un) Bind: Feminism, Sisterhood and Other Foreign Relations.” *Jenda: A Journal of Culture and African Women Studies* 1.1 (2001): 1–18.

---. “Translating Cultures: The Role of the Writing Class in Engendering Yoruba Discourse.” *The International Journal of African Studies* (1997.

---. “Visualizing the Body: Western Theories and African Subjects.” *African Gender Studies: A Reader*. Palgrave MacMillan, 2004.

---. *The Invention of Women: Making an African Sense of Western Gender Discourses*. Univ Of Minnesota Press, 1997.

---. *The Invention of Women: Making an African Sense of Western Gender Discourses*. Univ Of Minnesota Press, 1997.

Pallikkathayil, Japa. “Deriving Morality from Politics: Rethinking the Formula of Humanity*.” *Ethics* 121.1 (2010) : 116–147.

---. *The Possibility of Choice*. University of Michigan Publishing, 2011.

---. “Your Money or Your Life: Coercion in Personal or Political Contexts.” (Dissertation: Harvard University), 2008.

Papadaki, L. “Kantian Marriage and Beyond: Why It Is Worth Thinking About Kant on Marriage.” *Hypatia* 25.2 (2010): 276–294.

Pateman, C. “Feminist Critiques of the Public/private Dichotomy.” *Public and Private in Social Life. London: Croom Helm* (1983): 281–303.

---. *The Problem of Political Obligation: A Critique of Liberal Theory*. Univ of California Pr, 1985.

---. *The Sexual Contract*. Stanford Univ Pr, 1988.

Pateman, Carole, and Charles Wade Mills. *Contract and Domination*. Polity, 2007.

Piers, M. W. *Infanticide: Past and Present*. New York: WW Norton, 1978.

Ramose, Mogobe. "Toward Emancipative Politics in Modern Africa." *African Ethics: An Anthology of Comparative and Applied Ethics,* Ed. Murove. University of KwaZulu-Natal Press, 2009.

Rawls, J. *A Theory of Justice*. Belknap Press, 1999.

---. *Political Liberalism*. Columbia University Press, 1993.

---. *The Law of Peoples: With "The Idea of Public Reason Revisited."* Harvard University Press, 2001.

Rawls, J., and E. Kelly. *Justice as Fairness: A Restatement*. Belknap Press, 2001.

Reath, A. *Agency and Autonomy in Kant's Moral Theory*. Oxford University Press, USA, 2006.

---. "Self-legislation and Duties to Oneself." *The Southern Journal of Philosophy* 36.S1 (1998): 103–124.

Reinhardt, Olaf. "Translating Kant's Physical Geography: Travails and Insights into Eighteenth Century Science (and Philosophy)." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press.

Richter, J. S. "Infanticide, Child Abandonment, and Abortion in Imperial Germany." *Journal of Interdisciplinary History* 28.4 (1998): 511–551.

Riley, P. "Hannah Arendt on Kant, Truth and Politics." *Political Studies* 35.3 (1987): 379–392.

---. "On Kant as the Most Adequate of the Social Contract Theorists." *Political Theory* 1.4 (1973): 450–471.

Ripstein, A. "Private Order and Public Justice: Kant and Rawls." *Virginia Law Review* (2006): 1391–1438.

Rorty, Amélie, and James Schmidt, (eds.) *Kant's Idea for a Universal History with a Cosmopolitan Aim: A Critical Guide*. Cambridge University Press, 2009.

Rousseau, Jean-Jacques. *The Social Contract and Discourse on the Origin of Inequality*. Washington Square Press, Inc., 1967.

Scanlon, T. *Moral Dimensions: Permissibility, Meaning, Blame*. Belknap Press, 2008.

Schaff, K. "Equal Protection and Same-Sex Marriage." *Journal of Social Philosophy* 35.1 (2004): 133–147.

---. "Kant, Political Liberalism, and the Ethics of Same-Sex Relations." *Journal of Social Philosophy* 32.3 (2001): 446–462.

Schwarzenbach, Sibyl. "Contractarians and Feminists Debate Prostitution." *NYU Rev. L. & Soc. Change* 18 (1990): 103.

---. "Contractarians and Feminists Debate Prostitution." *Review of Law & Social Change* 18: 103.

---. "Locke's Two Conceptions of Property." *Social Theory and Practice* 14.2 (1988): 141–172.

---. "On Owning the Body." *Prostitution: On Whores, Hustlers and Johns* (1998): 345–51.

---. "Rawls and Ownership: The Forgotten Category of Reproductive Labor." *Science, Morality and Feminist Theory. Supplementary Volume of the Canadian Journal of Philosophy,* (ed.) Hanen and Nielsen. University of Calgary Press (1987).

---. "Rawls and Ownership: The Forgotten Category of Reproductive Labor." *Science, Morality and Feminist Theory* : 139–167.

Schwarzenbach, SA. "Civic Friendship: A Critique of Recent Care Theory." *Critical Review of International Social and Political Philosophy* 10.2 (2007): 233–255.

---. "Democracy and Friendship." *Journal of Social Philosophy* 36.2 (2005): 233–254.

---. "On Civic Friendship." *Ethics* 107.1 (1996): 97–128.

---. *On Civic Friendship: Including Women in the State*. Columbia University Press, 2009.

---. "Rawls, Hegel, and Communitarianism." *Political Theory* 19.4 (1991) : 539–571.

---. "The Limits of Production: Justifying Guaranteed Basic Income." *IX BIEN Meeting, Geneve September*. 2002. 12–14.

Sedgwick, S. "Can Kant's Ethics Survive the Feminist Critique?" *Pacific Philosophical Quarterly* 71.1 (1990) : 60–79.

Sedgwick, SS. *The Reception of Kant's Critical Philosophy: Fichte, Schelling, and Hegel*. Cambridge Univ Pr, 2000.

Serequeberhan, Tseney. "'The Critique of Eurocentrism and the Practice of African Philosophy.'" *Postcolonial African Philosophy: A Critical Reader,* (ed.) Eze. Wiley-Blackwell, 1997.

Shaw, Flora Louisa, and L Lugard. *A Tropical Dependency: An Outline of the Ancient History of the Western Sudan with an Account of the Modern Settlement of Northern Nigeria / [Flora S. Lugard]*. Black Classic Press, 1997.

Shell, SM. "Kant's Conception of a Human Race." *The German Invention of Race* (2006): 55–72.

---. "Kant's Theory of Property." *Political Theory* 6.1 (1978): 75–90.

---. *The Embodiment of Reason: Kant on Spirit, Generation, and Community*. University of Chicago Press, 1996.

---. "Kant's Conception of the Nation-State and the Idea of Europe." *Kant and the Concept of Community*. University of Rochester Press, 2011. 226-244.

Shorter, E. "Illegitimacy, Sexual Revolution, and Social Change in Modern Europe." *Journal of Interdisciplinary History* 2.2 (1971): 237–272.

Shutte, Augustine. "Politics and the Ethic of *Ubuntu*." *African Ethics: An Anthology of Comparative and Applied Ethics, (*ed.) Murove. University of KwaZulu-Natal Press, 2009.

Singer, Irving. *Explorations in Love and Sex*. Rowman & Littlefield Pub Inc, 2001.

---. *Sex: A Philosophical Primer*. Rowman & Littlefield Pub Inc, 2001.

---. "The Morality of Sex: Contra Kant." *Critical Horizons* 1.2 (2000).

Sloan, Phillip. "The Buffon-Linnaeus Controversy." *Isis* 67.3 (1976).

Stark, Werner. "Historical and Philological References to the Question of a Possible Hierarchy of Human 'Races,' 'Peoples,' or 'Populations' in Immanuel Kant -- A Supplement." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

---. "Kant's Lectures on 'Physical Geography': A Brief Outline of Its Origins, Transmission, and Development: 1754-1805." *Reading Kant's Geography,* (eds.) Elden and Mendieta. SUNY Press, 2011.

Táíwò, Olúfémi. "' The Love of Freedom Brought Us Here': An Introduction to Modern African Political Philosophy." *South Atlantic Quarterly* 109.2 (2010): 391.

---. "Colonialism and Its Aftermath: The Crisis of Knowledge Production." *Callaloo* 16.4 (1993): 891–908. .

---. "Reading the Colonizer's Mind: Lord Lugard and the Philosophical Foundations of British Colonialism." *Racism and Philosophy*: 157–86.

---. *How Colonialism Preempted Modernity in Africa*. Indiana University Press, 2010.

Thomas Jr, E. "Hill Jr. and Bernard Boxill,' Kant and Race,'." *Race and Racism, Ed. Bernard Boxill (Oxford: Oxford University Press, 2001)*: 469–470.

Timmons, M. *Kant's Metaphysics of Morals: Interpretative Essays*. Oxford University Press, USA, 2002. .

---. "Motive and Rightness in Kant's Ethical System." *Kant's Metaphysics of Morals: Interpretative Essays*. Oxford University Press, 2002.

Toungara, Jean Maddox. "Changing the Meaning of Marriage: Women and Family Law in Cote d'Ivoire." *African Feminism: The Politics of Survival in sub-Saharan Africa, Ed. Mikell*. University of Pennsylvania Press.

Ulbricht, O. "The Debate About Foundling Hospitals in Enlightenment Germany: Infanticide, Illegitimacy, and Infant Mortality Rates." *Central European History* 18.3-4 (1985): 211–256.

Uleman, J. K. "External Freedom in Kant's Rechtslehre: Political, Metaphysical1." *Philosophy and Phenomenological Research* 68.3 (2004): 578–601.

---. *Kant and the Value of Free Rational Activity*. University of Pennsylvania, 1995.

---. “On Kant, Infanticide, and Finding Oneself in a State of Nature.” *Zeitschrift F\ür Philosophische Forschung* (2000): 173–195.

Valls, A. *Race and Racism in Modern Philosophy*. Cornell Univ Pr, 2005.

---. “Racial Justice as Transitional Justice.” *Polity* (2003): 53–71.

Van Allen, Judith. “‘Aba Riots’ or Igbo ‘Women’s War’? Ideology, Stratification, and the Invisibility of Women.” *Women in Africa: Studies in Social and Economic Change, Ed. Hafkin and Bay*. Stanford University Press, 1976.

Varden, Helga. “A Kantian Conception of Global Justice.” *Review of International Studies* 37.05 (2011): 2043-2057.

---. “A Kantian Conception of Rightful Sexual Relations: Sex,(Gay) Marriage, and Prostitution.” *Social Philosophy Today* 22 (2007): 199–218.

---. “Diversity and Unity An Attempt at Drawing a Justifiable Line.” *Archiv Fuer Rechts- Und Sozialphilosphie* 94.1 (2008): 1-25.

---. “International and Cosmopolitan Political Obligations.” *Coercion and the State*. Ed. David A. Reidy, Walter J. Riker, & Mortimer Sellers. Springer Netherlands, 2008. 239-250.

---. “Kant and Dependency Relations: Kant on the State’s Right to Redistribute Resources to Protect the Rights of Dependents.” *Dialogue: Canadian Philosophical Review/Revue Canadienne De Philosophie* 45.02 (2006): 257-284.

---. “Kant’s Non-Absolutist Conception of Political Legitimacy – How Public Right ‘Concludes’ Private Right in the ‘Doctrine of Right’.” *Kant-Studien* 101.3 (2010): 331-351.

---. “Kant’s Non-Voluntarist Conception of Political Obligations: Why Justice Is Impossible in the State of Nature.” *Kantian Review* 13.02 (2008): 1-45.

---. “Kant and Lying to the Murderer at the Door . . . One More Time: Kant’s Legal Philosophy and Lies to Murderers and Nazis,” *Journal of Social Philosophy, Journal of Social Philosophy* 41, 41.4, 4 (2010): 403, 403-421, 421.

Von Hippel, T. G, and T. F Sellner. *On Marriage*. Wayne State University Press, 1994.

---. *The Status of Women*. Xlibris Corporation, 2009.

Vuorela, U. “Motherhood in the Naming: Mothers and Wives in the Finnish/Karelian Cultural Region.” *JENdA: A Journal of Culture and African Women Studies* (2009)

Watson, A. *The Spirit of Roman Law*. Univ of Georgia Pr, 1995.

Wedgewood, Ralph. "Same Sex Marriage: A Philosophical Defense." *Morality and Public Policy. In (eds.) Cahn and Kasachkoff.* Prentice Hall, 1998.

Westphal, K. R. "A Kantian Justification of Possession." *Kant's Metaphysics of Morals–Interpretive Essays,* (ed.) Timmons*, Oxford*. 2002.

---. "Is Kant's Table of Contracts Complete?" *The Southern Journal of Philosophy* 36.S1 (1998): 155–160.

"What We Talk About When We Talk About Persons: The Language of a Legal Fiction." *Harvard Law Review* 114.6 (2001) : 1745-1768.

Whitman, J. Q. *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change*. Princeton University Press, 1990.

Willaschek, M. "Right and Coercion: Can Kant's Conception of Right Be Derived from His Moral Theory?" *International Journal of Philosophical Studies* 17.1 (2009): 49–70.

---. "Which Imperatives of Right? On the Non-Prescriptive Character of Judicial Laws in Kant's Metaphysics of Morals." *Kant's Metaphysics of Morals: Interpretative Essays*, (ed.) Timmons. *Cambridge University Press,* 2002.

Williams, H. "Kant on the Social Contract." *The Social Contract from Hobbes to Rawls* (1994): 132–47.

---. "Kant's Concept of Property." *The Philosophical Quarterly* 27.106 (1977): 32–40.

---. "Kant's Critique of Hobbes: Sovereignty and Cosmopolitanism." University of Wales Press, 2003.

---. *Kant's Political Philosophy*. Blackwell, 1983.

---. "Politics and Philosophy in Kant and Hegel." *George Friedrich Hegel (1770-1831).* (1998): 276.

---. *Essays on Kant's Political Philosophy*. University of Chicago Press, 1992.

Wilson, C. *Civilization and Oppression*. Calgary University Press, 1999.

---. "Savagery and the Supersensible: Kant's Universalism in Historical Context." *History of European Ideas* 24.4-5 (1998) : 315–330.

---. "What Was Kant's Critical Philosophy Critical Of?" Delivered at the British Society for the History of Philosophy Annual Conference at Sussex University, March 30, 2011.

Wilson, D. "Kant and The Marriage Right*." *Pacific Philosophical Quarterly* 85.1 (2004) : 103–123.

---. "Kant and The Marriage Right*." *Pacific Philosophical Quarterly* 85.1 (2004) : 103–123.

---. "Moral Deliberation and Desire Development: Herman on Alienation." *Canadian Journal of Philosophy* 39.2 (2009) : 283–308.

Wilson, Holly. "The Pragmatic Use of Kant's Physical Geography Lectures." *Reading Kant's*

Geography, (eds.) Elden and Mendieta. SUNY Press.

Wiredu, Kwasi. "The Concept of the Mind with Particular Reference to the Language and Thought of the Akans." *Readings in African Philosophy*, (ed.) Kwame. University Press of America, 1995.

---. "'The Concept of Truth in the Akan Language.'" *Philosophy in African: Trends and Perspectives,* (ed.) Bodunrin. University of Ife Press, 1985.

---. "The Need for Conceptual Decolonization in Africa Philosophy." *Studies in Intercultural Philosophy* 3 (1997): 11-22.

Wood, Allen W. *Kant's Ethical Thought*. Cambridge University Press, 1999.

---. *Kant*. Blackwell, 2005.

---. "Kant's Fourth Proposition: The Unsocial Sociability." *Kant's "Idea for a Universal History with a Cosmopolitan Aim": A Critical Guide,* (eds.) Rorty and Schmidt. Cambridge University Press, 2009. .

---. *Kantian Ethics*. 1st ed. Cambridge University Press, 2007.

---. "Religion, Ethical Community, and the Struggle Against Evil." *Kant and the Concept of Community,* (eds.) Payne and Thorpe. University of Rochester Press, 2011. 138-149.

---. "The Final Form of Kant's Practical Philosophy." *Kant's Metaphysics of Morals: Interpretive Essays*, (ed.) Timmons. Oxford: Oxford University Press, 2002. .

Zabel, Shirley. "Legislative History of the Gold Coast and Lagos Marriage Ordinance: III." *Journal of African Law* 23.01 (1979): 10-36.

---. "The Legislative History of the Gold Coast and Nigerian Marriage Ordinances: I." *Journal of African Law* 13.02 (1969) : 64-79.

Zammito, J. H. *Kant, Herder, and the Birth of Anthropology*. University of Chicago press, 2002.

---. "Policing Polygeneticism in Germany, 1775:(Kames,) Kant, and Blumenbach." *The German Invention of Race,* (eds.) Eigan and Larrimore. (2006): 35–54.

---. *The Genesis of Kant's Critique of Judgment*. Cambridge University Press, 1992.

Zammito, J. H, and H Kant. "The Birth of Anthropology." *Chicago, London: U of Chicago P* (2002).