

What's the Point of Liberalism? From Kantian Moral to Liberal Political Philosophy

As with any other philosophical system, it is difficult to pin down exactly what we mean when we talk about 'liberal' political philosophy. The common use of the word in contemporary political discourse is, for example very different from how it is used by political philosophers. Conservative political commentators deride as 'liberal' everything from social policy which redistributes wealth from one group of people to another to foreign policy which emphasizes the efficacy of dialogue and diplomacy over military action. Leftist political thinkers associate exploitive corporations and the destruction of the environment with 'liberal' ideas like the Washington Consensus and the heartless thinkers who sought to give a full philosophical justification to capitalism, such as Milton Friedman and Ayn Rand.

I believe that there is a need to clarify what we mean by liberalism, both for purposes of practical and theoretical debate. Political philosophers use the term to classify a type of thought traceable through modern political philosophers such as John Locke, Immanuel Kant, and J.S. Mill which emphasizes religious toleration, inalienable individual rights, and the hypothetical justifiability of political principles to each individual. Both contemporary conservatives and liberals lay claim to these ideas as forming the heart of their political philosophies but it often doesn't take too much inspection of their respective positions to discover areas in which some of their positions are inconsistent with other core liberal principles. Conservatives argue for minimal intrusions on individual choice regarding economic matters but not regarding a woman's choice whether to have an abortion or government recognition of a same-sex couple's life commitment. 'Liberals,' ostensibly starting from the same core values, generally arrive at opposite positions on these same issues.

In this paper, I would like to derive a conception of liberalism from Immanuel Kant's moral philosophy and suggest ways in which we can develop broader social and economic policies from this set of fundamental

commitments. I will start with a rough definition of liberalism which I believe to be uncontroversial: liberalism holds as its core tenet the idea that each individual has a core dignity and inviolability and that there is a scheme of fundamental rights which must be protected in order for a government to be able to say that it fulfills a commitment to being liberal. The main purpose of my paper will show these basic elements of liberalism to be rooted in a Kantian conception of persons as autonomous agents. Kant's moral philosophy grounds the dignity of each individual in their capacity to act from and will universal law. Each individual is to be considered an "end-in-himself" in virtue of this capacity and I will argue that from this moral status, we can derive a scheme of political rights and liberties. We are essentially defined by our rational capacity and it is in virtue of this capacity that we come to have importance as individuals inherent in my basic definition of liberalism. It is a necessary of our being able to value anything that we choose in accordance with Kant's Categorical Imperative. If the government is to regard each individual as inviolably important, I argue that it must present a scheme of basic rights and liberties necessary to ensure this capacity. What we value most highly in ourselves and most wish the government to respect is our capacity to choose our own ends and best means to these ends in accordance with our best judgment. Commitment to the liberal ideal of the importance of every individual means commitment to a Kantian conception of persons as rational and reasonable agents because these are the prerequisite conditions for them to be able to hold any conception of the good.

In the second section, I will argue that in moving from moral to political philosophy, the Kantian Conception requires the assurance of basic matters of physical sustenance and right to a scheme of basic liberties, which are given priority over other considerations. The most fundamental right of persons is freedom of conscience, which implies a right to non-interference and a list of basic liberties (such as speech, expression, and the press) instrumental to non-interference and freedom of conscience. I will also argue that if the state has sufficient wealth to do so, it is required to provide a basic safety net of subsistence such that its members, whether by lack of mental capacity or bad fortune, cannot fall to a level of destitution such that they do not have the basic means (food, shelter) to physically support themselves. These basic liberties and provisions are

required in order for individuals to be able to exercise their Kantian capacity of autonomy, which is required by the treatment of individuals as ends-in-themselves.

In the third section, I will examine the meaning and importance of equality under the Kantian conception of persons. As with the concept 'liberal,' equality is open to many different interpretations. Classical liberals and libertarians hold a minimal conception of equality as procedural equality before the law. Contemporary egalitarians believe that society should meet a more substantive standard of equality of wealth or welfare. I will argue that we should interpret the meaning of equality based on the Kantian conception of persons. All rational agents are equal because they all have dignity in virtue of their capacity for autonomy. The state expresses the equality of each as rational agent when it provides the physical prerequisites and liberties necessary for Kantian autonomy and ensures that wealth and power do not deny access to these liberties. I will present a basic theory of equality which defines equality as a philosophical ideal of recognition, not as a call for making all citizens substantively equal in one dimension or another. Citizens are equal in virtue of being rational agents and the state expresses this equality by providing the physical and institutional prerequisites for Kantian autonomy. Once these are provided, the state treats citizens as equals by respecting the choices they make, provided that they don't infringe on others' liberty to do the same.

From Kantian Moral to Liberal Political Philosophy

Kant conceives individuals as rational agents with the power of practical reason, the capacity to decide what to do in accordance with a conception of what to do. Morality is an a priori law of practical reason, concerned with the conditions necessary for individuals to will maxims *solely* as rational agents, independent of contingencies of nature. The moral law is not empirically contingent but is derived from "the Idea and principles of a possible pure will."¹ It is the basic rational foundation which Kant argues must be determined antecedently to and create the basis of any principles with practical application. When we form our will on any matter, it is by

¹ Immanuel Kant. Groundwork of the Metaphysic of Morals. P. 58.

choosing in accordance with the moral law that we meet the conditions of a pure will; the moral law provides the conditions under which we determine our will solely by reason. Kant believes that our capacity of reason cannot be primarily concerned with our welfare as this “would have been mapped out for him far more accurately by instinct” (63). Despite the fact that other natural capability sets are more well-suited to attaining our own welfare, reason has an undeniable grip on our will and because it is so poorly suited to the end of our welfare and happiness, “its true function must be to produce a will which is good, not as a means to some further end, but in itself” (64). The purpose of reason must be to determine what to do “by reason alone” (ibid).

This requirement leads Kant to his formulation of the fundamental principle of morality, the Categorical Imperative, which states in its initial form to act in such a way “that I can also will that my maxim should become a universal law” (70). The one condition rationality places on behavior is that it take the form of law, something which could hold for all given the circumstances the deliberating agent is faced with. This amounts to a fundamental requirement to “act for reasons;” if anything is to have rational authority over our actions, it is the requirement that we act on the best reasons that can be given, which are ipso facto those which could hold as universal law.² If we are to act according to reasons, this means disregarding inclinations or desires which are not held to the formal conditions of the Categorical Imperative.³

This is an intuitive model of reason-giving. When we act, unless we act in a way which we know to forsake justifiability for some other end, we give reasons which we believe could hold for all individuals when confronted with the question of what to do or believe given the range of options they face. Reasons have an inherently public structure; in order for something to purport to be normative, it must be able to have some claim on others’ actions. In order for this to be possible, it must first be possible that our reasons are based on

² See David Velleman “A Brief Introduction to Kantian Ethics” in *Self to Self*, pp. 16-44. P. 22.

³ I do not believe, however that Kantian morality requires us to disregard desires and inclinations as potentially reason-giving altogether. A maxim formed primarily on the basis of desire can meet the conditions of the Categorical Imperative, it is just required that if one is to formulate their will on the basis of that desire, it must be a desire with every other person could will acting on that desire as universal law.

grounds which are comprehensible to others.⁴ Emotions, which on the Kantian scheme are sensible matters, contingent on personal circumstances, cannot be the basis of a scheme of morality because they are not inherently public. Some people may become depressed by the coming of fall whereas others find the idea incomprehensible.⁵ We recognize this publicity requirement when we try and justify principles to each other. Even when principles are based on articles of faith, such as the belief that God endows us with metaphysical dignity at the moment of conception and that abortion in any circumstance is a categorical wrong, proponents of these positions often cloak their reasons in more publicly justifiable form, such as when they claim that abortion should be prevented because a fetus in early development can feel pain or that we shouldn't allow individuals a "get out of jail free" card when the pregnancy was the result of personal irresponsibility. That normativity requires universalizable reasons seems to be part of its inherent nature because otherwise we act on principles which assume reason can have a private structure, in which case it would be impossible to conceive how they could make any claim on others.

Acting in accordance with the Categorical Imperative is our duty qua rational beings. The Categorical Imperative is the law derived from "the general concept of a rational being as such" and only a rational being "has the power to act in accordance with his idea of laws;" only he "has a will" (Groundwork, 78-9). As beings who can decide what to do based on what we see as being most in accordance with reason, we are required to act on the basic principle that our actions be in conformance with reason. As rational creatures, this is our most basic normative obligation. It doesn't require that we forsake our personal happiness,⁶ but it does require that

⁴ For a further discussion of the inherently public nature of reasons, see Christine Korsgaard, The Sources of Normativity, ch. 4.

⁵ It isn't true however that because we have different emotions, that we can't include these emotions as reasons for action with the necessary publicity structure. One could argue that they have a chemical predisposition to being depressed at certain times of the year and use this as the basis of an argument that they should be entitled extra time on an assignment. It may be completely consistent to will the maxim "Anyone who has a chemical imbalance which causes seasonal depression can be entitled to special exemptions on their assignments." This isn't an inherently non-public reason; it just requires that the individual acting on it make others aware of how they are affected by it.

⁶ Contrary to some interpretations of Kant, his moral philosophy is not ascetic; it doesn't require us to sacrifice our happiness. Kant even says several times that we have a duty to ensure some level of personal happiness as otherwise it will

we subordinate happiness if what we deem to be instrumental to our happiness is not in accordance with the Categorical Imperative.

So far however Kant has just shown that if there is a requirement on us qua rational beings, it is that we act for reasons which we could will as universal law. This doesn't however demonstrate that the a priori law of rational capacity has inherent normativity for us. We may be more essentially characterized by our sentient nature as creatures able to feel and intrinsically directed by pleasure and pain. So far we have a hypothetical imperative of the form "if you wish to fulfill your rational nature, you must act in accordance with the Categorical Imperative" but not that reason is our highest capacity and that as its a priori law, the Categorical Imperative makes an absolute normative requirement on us.

But even if we don't recognize this, we are committed to it. When choosing what to do, we feel a need to make our action, whatever it is, conformable to some 'good' reasons. A smoker who is trying to quit justifies his decision to smoke another cigarette after three days of going cold-turkey by saying to himself that this cigarette is a 'reward' for having such a strong will, despite the fact that he is acting on a chemically-induced urge. But not only is rational justification something we 'feel' compelled to give, it is a necessary condition for being able to say we have chosen anything at all. Even if we act on impulse, at the moment of action, we have chosen to act on that impulse.⁷ Desire is not the final court of action; we have the ability to critically reflect on our desires and determine whether they are supported by moral reasons, such as whether acting on that desire treats someone else in a way which we would consider unacceptable if done to us.⁸ Our rational nature is the

not be possible in reality for us to act on the moral law (Groundwork of the Metaphysic of Morals, p. 67; Critique of Practical Reason, p. 81).

⁷ This, of course opens the Pandora's Box of people with mental illnesses who cannot feel the weight of any reasons for action other than those which they are chemically compelled to feel. Mental illness is a major problem for Kantian moral philosophy because neuroscience has made us aware that there are many brain ailments which make individuals incapable of responding to reasons the way that those of more normal functioning can. You can't require these people to act on reasons that are universalizable because their chemical makeup prevents them from being able to feel the force of the same reasons as others.

⁸ An excellent discussion of the regulative primacy of reason over desire in determining action can be found in T.M. Scanlon, What We Owe to Each Other, ch. 1.

highest standard for living our lives because, as Kant postulates, it is the ground of our freedom. Reason is capable of being “the author of its own principles independently of alien influences” and therefore as practical reason, or as the will of a rational being, “it must be regarded by itself as free” (116). It is only when we act on the Categorical Imperative that our will is elevated above nature and we act as part of the supersensible world, the world where our will has the power of “exercising causality in regard to its objects” (ibid).

Reason is an end-in-itself because it makes possible a moment of independence from the laws of nature, a moment in which we are an uncaused cause. It is in virtue of this potential freedom that we can make autonomous choices about anything and it creates the conditions for which there can be morality and a moral law. Kant views human nature as characterized by an essential duality. Man is at once part of a sensible world of desires and inclinations and as such is subject to the laws of nature. When he acts in accordance with the Categorical Imperative however, he “finds in himself a power which distinguishes him from all other things-and even from himself so far as he is affected by objects” (119). Although on one hand man is restricted as a condition of his rational agency to acting in accordance with the Categorical Imperative, it is also the condition by which he has an essential moment of freedom from determination.⁹ It is the condition by which he is truly capable of being an individual and bringing something that is wholly his own into the world; the condition, as Rawls would say, of being able to hold a ‘conception of the good’. As rational beings, we are capable of choosing plans for life which are more than just physical reactions to physical necessity and we make these truly our own by determining them in accordance with what we believe to be right reasons. As such, reason is an end-in-itself and in deciding what to do, we are bound by its law, the Categorical Imperative.

Kant gives further explication of this compelling argument in the Critique of Practical Reason. Principles can be determined by either “the senses or the understanding;” the former can only concern the “agreeableness or disagreeableness that he expects from any cause” and this ground can only differentiate principles on the

⁹ To say that one has a moment of freedom from determination by nature is not, of course to say that he is free from determination by nature, which would be to say that he has free will. Kant believes the problem of free will is intractable.

basis of “how much and how great pleasure they will give for the longest time.”¹⁰ Pure sensibility cannot be the grounds of laws of freedom because in this case the maxim of action results not from the exercise of reason, but from inclination by desire. If this were the most we could accomplish in developing a maxim, we would be no different from animals, which determine what to do directly from sensible impulse. If we are to be capable of making judgments about whether or not to act on desires, we must be capable of forming our will in accordance with a conception of principles. We can furthermore only ensure that our will is unconditioned by these external causes when forming our maxim in accordance with the Categorical Imperative.

This is a particularly powerful thought because it gives a strong philosophical explanation of the intuitive core capacity we take as essential to our lives, our ability to meaningfully author our own actions. Even if we believe that the highest state we can achieve is to delegate our actions to the will of God, we author the will by which we resolve to do this. And since we can’t force ourselves to feel sensations not caused by us, we still have to make our own determination as to whether what we feel is truly the will of God. There is still a moment in which we have to author something; we have to choose given uncertain sentiments. The Categorical Imperative requires us to meet the highest possible standard of authorship: that we author maxims which could hold as universal law. Although many of our actions are for our personal benefit and may not accord with the Categorical Imperative, they still fit with some conception of ‘best’ reasons. As we can’t escape our condition of authorship, we must likewise recognize the Categorical Imperative as the reasoning ideal for rational agents. A maxim which meets the formal conditions of the Categorical Imperative is one which could be willed by anyone in your position; it cannot contradict the existence of the underlying practice (lying) nor can it violate practices which are necessary for our good as individual and social beings (benevolence, development of talents). The Categorical Imperative does not, of course dictate exactly which actions are required (it is an ideal procedure), but it helps us understand what we are committed to as rational agents when we choose what to do. As morality is concerned with the law of freedom, the Categorical Imperative is the law for any being which is faced

¹⁰ Immanuel Kant. Critique of Practical Reason. Pp. 7-8.

with the decision of “what to do.” It is an obligation for anyone in a deliberative standpoint and as rational agents, we are inextricably in a deliberative standpoint.¹¹

It is further important to note that we cannot abdicate this standpoint, even if we wish to hand our decision making power over to another. Just as a covenant into slavery is a contradiction in terms because it invalidates the future possibility of your being able to make a covenant, handing over to someone else the power of deliberation in your name is invalid because you will still be an agent faced with the question “what to do.” Even if someone else is making decisions for you, you don’t automatically enact these actions as if you were an automaton; you still have to develop the specific intention of committing the action to which you were directed and direct your body parts to physically perform the tasks necessary to completing it. The deliberative standpoint forms the core of your individuality as it is the one capacity which we cannot jettison regardless of whether we want to or not.

In Kant’s moral philosophy, individuals do not just have duties as rational agents, they also have rights. Man as a rational being exists “not merely as a means for arbitrary use by this or that will: he must in all his actions, whether they are directed to himself or to other rational beings, always be viewed at the same time as an end” (Groundwork, 95). If we were to treat man as a means, then his value would be contingent and “nothing *at all* of absolute value would be found anywhere” (96). It is a subjective requirement because it “is the way in which man conceives of his own existence” but it becomes objective because “it is also the way in which every other rational being conceives his existence on the same rational ground which is valid also for me” (ibid). Every rational being conceives of himself in this way because he is conscious of the fact that in deciding what to do, he can be an autonomous cause of action in accordance with his conception of it and is thus a member of the intelligible world. As every other rational being is capable of this, they must be treated as ends-in-themselves.

¹¹ For further discussion on this point, see Christine Korsgaard, “Personal Identity and the Unity of Agency: A Kantian Response to Parfit.” Philosophy and Public Affairs, Vol. 18, No. 2 (Spring, 1989), pp. 101-132.

The status of each individual as an end-in-himself emanates from the capacity to will and follow universal law, by which it is possible that he become a member of the Kingdom of Ends. When we act on universal law, reason “relates every maxim of the will...to every other will and also to every action towards oneself: it does so, not because of any further motive or future advantage, but from the Idea of the dignity of a rational being who obeys no law other than that which he at the same time enacts himself” (102). Agents have dignity, which is a value above all price, both because they are at once capable of willing and obeying universal law and because they are also capable of recognizing others as having such capacity and thus similar dignity.

How does this require we treat other rational agents? We are required to treat them with the respect attributed to agents with dignity. In order to know what this requires, we have to inquire into the grounds on which their dignity is based. Their dignity is based on their capacity of autonomy, the ability to will and follow universal law. This means that we must treat them as ends-in-themselves, allowing them to exercise their rational capacity such that they can determine what universal law is.¹² Individuals with the capacity of autonomy must be treated in a way which allows them to use their own judgment to make their own decisions; the imposition on them of specific plans violates their status as ends capable of self-legislation because it amounts to treating them as not capable of deciding what is most within the requirements of the Categorical Imperative.¹³

¹² This means respecting their choices even when they make mistakes. Kant holds that it is a duty of virtue “not to censure his errors by calling them absurdities...but rather to suppose that his judgment must yet contain some truth and to seek this out...to preserve his respect for his own understanding.” To do otherwise is to suppose that “he could never be improved, and this is not consistent with the idea of a human being, who as such (as a moral being) can never lose entirely his predisposition to the good.” *The Metaphysics of Morals*. P. 210.

¹³ This type of treatment is, according to Stephen Darwall, a failure to respect the standpoint of the other agent as a equal, which is required by the Kantian formulation of autonomous agents as ends-in-themselves. It is in effect to deny their standing as “a member of the moral community whose members understand themselves as demanding that people not interfere with one another’s autonomy.” Autonomous agents are entitled to what Darwall calls “second-personal authority,” which entitles them to make claims on others to respect their choices regarding themselves, even when they may be detrimental to personal well-being. See Stephen Darwall, “The Value of Autonomy and Autonomy of the Will” *Ethics*, Vol. 116, No. 2 (Jan., 2006), pp. 273-4.

At this point, we can make the transition from Kantian moral philosophy to liberal political principles. I attributed to liberalism at the outset an axiomatic regard for the equal importance of each individual. The Kantian conception of persons shows how this is possible by developing an account of how we are able to be autonomous authors of our own actions and how this requires us to attribute to others a similar standpoint. What is most 'us,' the grounds by which something about us is to be important if anything is to be important at all, is our capacity to choose in accordance with our conception of 'best' reasons. In deciding what to do, we are committed to the Kantian conception of autonomy as this is how it is possible for us to be able to author our own plans in full independence of the laws of nature. These are the grounds by which we should each be regarded as important because almost by definition, what we choose to author is what we consider to be important and that which we want others to regard of us as being important. If we are able to develop a scheme of political rights and liberties necessary for authorship, we will have created a foundation for liberal political theory which makes good on what seems to be the axiomatic aim of liberalism.

The Kantian conception also allows us to pin down a commitment to a certain level of political liberty and equality as prerequisites for developing our own ideas about what to do. In order to do so, we need to have an account of the mental faculties connected to developing any conception of the good and how certain liberties are fundamental to the development and protection of these faculties. In liberal society, we take for granted that individuals will hold different conceptions of the good and thus not be able to agree on similar conceptions of freedom and equality from which to derive rights. In "Kantian Constructivism in Moral Theory," John Rawls attempts to bridge this difficulty by addressing the question "which traditionally recognized principles of freedom and equality, or which natural variations thereof, would free and equal moral persons themselves agree upon, if they were fairly represented solely as such persons and thought of themselves as citizens living a complete life in an ongoing society?"¹⁴ He settles on the two principles of justice which he believes are necessary in order to ensure citizens' moral powers of a capacity for justice and a conception of the

¹⁴ John Rawls, "Kantian Constructivism in Moral Theory," in Collected Papers. Pp. 303-358. P. 305.

good. I believe that the Kantian conception of the person fulfills this task of finding “deeper bases of agreement...embedded in common sense” because as I have argued, it provides the grounds on which individuals can author their own life plans independent of the laws of nature as well by which others are required to refrain from interference with their choices (306). This furnishes the possibility of a common political currency between individuals holding different conceptions of the good.¹⁵

Kant’s argument creates the grounds for two basic political concerns, liberty and equality. The state has to posit something which is shared and connected with our deepest sense of self; the capacity to be autonomous choosers is this thing because it is both a common highest-order interest, providing the grounds by which we can be considered equals. Our capacity to function as autonomous beings gives us basic claims to the liberties as well as the physical prerequisites necessary to develop our own conception of the good. The status of each rational agent as an end-in-himself creates the grounds on which the state should treat its citizens as equals. Notice that for Kant autonomy furnishes the grounds for equality. Rational agents are to be treated as ends-in-themselves because they have the capacity to will and follow universal law. One person cannot demand to be treated as an end-in-himself and refuse another’s claim to such treatment when that person possesses all of the relevant features by which the first person is entitled to this treatment.¹⁶ On a Kantian conception of the person, the purpose of equality is achieved when each is ensured the institutional provisions necessary to develop and exercise his own life plans. It is not a perfectionist doctrine which seeks to maximize each individual’s capacity for self-authorship both because this would require the state to make determinations about what it would take to do so person by person, at the same time weaken that individual’s responsibility to do so for himself and because the maximization of life plans would cause them to come into conflict with each other.

¹⁵ On this point generally, see John Rawls, “Social Unity and Primary Goods,” in Collected Papers. Pp. 359-387.

¹⁶ I thank MacInnis! for clarification on this point.

A Kantian Conception of Liberty

The purpose of a scheme of political liberties is to allow citizens to make autonomous choices regarding life plans. Autonomy is, however open to several different interpretations. David Johnston distinguishes between three types of autonomy: 1) the capacity to value things outside of experience; 2) autonomy₁ plus the capacity for a sense of justice (recognition of others' claims to a like autonomy); 3) A person who actively chooses their own values, fashioning them into what they see as a consistent whole. This last type of autonomy doesn't presuppose autonomy₂.¹⁷ Stephen Darwall's four-part distinction shares Johnston's definition of personal autonomy (autonomy₃) but otherwise breaks autonomy down into 1) Agential ("the agent's behavior being a genuine action and so attributable to him as an agent"); 2) Rational ("the agent's acting on the basis of what he believes to be the weightiest reasons"); 3) Moral ("the agent's choosing in accord with his own moral convictions or principles").¹⁸ I believe that the Kantian conception of autonomy rules out personal autonomy because it requires allowing people the all-purpose goods necessary to maximize their realization of their own life plans, which will inevitably come into conflict. Kantian autonomy is closest to Johnston's autonomy₂ and Darwall's moral autonomy because it requires that the agent's maxims treat others as ends-in-themselves, *and limit their self-authorship in respect of others' like capacity*. This requires us to give an account of liberties which are robust enough to allow expression of different types of self-authorship, required by the treatment of individuals as ends-in-themselves, yet fairly basic such that they only strictly protect the basic faculties necessary for Kantian autonomy, ensuring that they fulfill only the basic condition of being a prerequisite for holding a conception of the good.

The purpose of basic liberties on the Kantian conception of persons is to furnish the prerequisite resources necessary for holding any conception of the good, whether reflective or unreflective.¹⁹ Kantian

¹⁷ David Johnston. The Idea of a Liberal Theory: A Critique and Reconstruction. Pp. 72-5.

¹⁸ "The Value of Autonomy and Autonomy of the Will," p. 265.

¹⁹ The choice of an unreflective conception of the good is still a choice; you still have to *choose to pre-commit yourself from making further choices* and in doing so, you choose for a reason and are subject to acting in accordance with the Categorical

autonomy requires both that the agent formulate his maxims in accordance with what could be willed as universal law and that he treat all agents, himself included always as ends-in-themselves. We cannot, however start by developing an account of the basic liberties because we must first acknowledge basic physical functioning as a prerequisite in order for liberty to have any value as well as explain the core philosophical functioning the basic liberties are intended to protect.²⁰ There are two types of resources necessary in order for individuals to be able to hold and, if judged necessary, revise any conception of the good: necessities for physical functioning (including nutritional sustenance and basic shelter), which are a prerequisite for moral functioning and for freedom of conscience which is required to meet the dual conditions that you be able to will universal law and that in doing so, you are treated as an end. The latter category is intended to be basic and broad; the Kantian conception requires that we be able to exercise our capacity of autonomous choice, but doesn't specify a scheme of political liberties necessary for this. We have to interpret the concept of freedom of conscience as a part of the Kantian conception of persons and present a scheme of derivative basic liberties, explaining how the value of these is to be practically guaranteed by law.

Despite the fact that the Kantian conception of persons is concerned with intellectual faculties, prior to this we are beings with physical needs which must be fulfilled in order to be able to exercise conscience. There is, of course no point in having any political liberties if your calorie intake is so low that your brain can't function. Kant recognizes the legitimacy of the state as a matter of right "to maintain those members of the society who are unable to maintain themselves."²¹ The government "is authorized to constrain the wealthy to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs" (ibid). In order to be able to be able to deliberate about what would be required for a certain maxim to be willed as

Imperative. Of course, to do so is tantamount to committing yourself to slavery and is a contradiction in terms. You can't separate yourself from the deliberative standpoint. You might pretend that you are delegating yourself to a higher power, but you really aren't. Your body won't undertake actions without your mentally resolving to physically undertake those actions.

²⁰ On this conception of liberty, the basic liberties are viewed as being of instrumental value, necessary to realizing the Kantian conception of the person as autonomous.

²¹ The Metaphysics of Morals. P. 101.

universal law, individuals need basic nutrition, provision of bodily security (shelter from exposure to the elements), and minimal health care.²² This requirement commits any liberal state wealthy enough to be able to afford it to providing a basic safety net of essentials for physical sustenance. The basic safety net is not significant of a commitment to a comprehensively egalitarian program, but is rather derived solely from the state's commitment to the basic assurance of each citizen's capacity for autonomy.

Any list of basic liberties has one broad philosophical purpose: to secure adequate freedom of conscience such that citizens can form and revise a conception of the good.²³ Freedom of conscience is not itself a basic liberty, but is the *aim* of derivative basic liberties, which help us build the institutional structure to guarantee freedom of conscience and the ability to act on it within reasonable bounds. We derive a list of basic liberties from an idea of the necessities for Kantian agency, which is to be able to make decisions independently of natural contingencies or social coercion. The first derivative liberty is freedom of association coupled with materials necessary to give it value (freedom to share literature, freedom of communication, etc.). I believe this liberty to be self-explanatory; freedom of conscience requires individuals to be able to associate and share ideas with others. If this weren't allowed, they would not have adequate means to make and further a conception of the good which is truly their own. A further derivative freedom is that of expression. Expression is often required as an aspect of conscience, such as when an Orthodox Jewish male wears a yarmulke or a Muslim woman wears a headscarf. Freedom of speech is similar to freedom of expression except that it refers specifically to spoken or

²² The latter is obviously a very contentious issue and I refrain here from attempting to determine what degree of health care relative to what is available the government is committed to providing to its citizens on my Kantian interpretation of basic entitlements. It seems plausible to me that this doctrine could require an equal, universal health care system on the grounds that treating all as ends requires doing whatever is technologically necessary to ensure that they can continue living, but I leave this matter aside here.

²³ John Rawls argues that when presented a range of principles in the original position, "if but one of the alternative principles of justice available to the parties guarantees equal liberty of conscience, this principle is to be adopted" because the parties "cannot take chances by permitting a lesser liberty of conscience to minority religions" as "it may also happen that these persons belong to a minority faith and may suffer accordingly." Political Liberalism. P. 311. The parties in the original position embody rational autonomy and choose freedom of conscience because they may end up a religious minority when the veil of ignorance is lifted. Although the conception developed here doesn't use the original position device, we can make the argument that parties would choose freedom of conscience as the overarching purpose of a scheme of basic liberties because it is a basic necessity for agency, whose power of choice depends on free conscience.

written word whereas the latter refers to all forms of expression. Citizens must be allowed to express their conscience publicly otherwise society expresses disrespect for their capacity to develop and share well-reasoned arguments in favor of a position.

Although not liberties 'to do' things as with the aforementioned freedoms, individuals also require the right to a degree of privacy and general security. Some right to privacy is necessary in order to prevent unwanted influence on individuals' will formation. If, for example we were required to spend one hour a day listening to propaganda about the talents and accomplishments of government officials, our ability to formulate a position meaningfully our own on this matter would be diminished. This intrusion on our decision-making process would be illegitimate because it would deny our freedom to choose our own political associations. Provision of general security is also a requirement of freedom of conscience because ideas are often controversial and the individuals who espouse these need to be able to know that they will not be subject to physical harm on the grounds that there are people who disagree with them to the point that they are willing to cause them physical harm.

It is also important, however that these basic liberties *not* be regarded as ends-in-themselves. The basic liberties are of instrumental value; they exist to help realize the Kantian conception of the person in liberal society. I therefore follow John Rawls in holding that the basic liberties are not to be maximized, but should be "adjusted to give one coherent scheme" as "various basic liberties are bound to conflict with one another."²⁴ One person's exercise of a liberty can impede on another's ability to exercise that or another liberty in a basic sense. We can, for example, plausibly treat campaign donations as a form of freedom of expression because they allow individuals to use their wealth to express and further their interests through politicians and political parties. This is as much a part of freedom of conscience as being able to donate money to your church or a charity which helps a cause you consider dear to your heart. The problem with unlimited campaign donations

²⁴ Political Liberalism. P. 295.

however is that it makes politicians and political parties beholden to small groups of individuals, effectively preventing others from having their needs heard and incorporated into policy. This is not acceptable under the Kantian conception, which recognizes dignity solely on the grounds that an individual be able to will universal law, which can be done by the “commonest intelligence,”²⁵ and not on the grounds of skill, diligence, wit, imagination, or humor, which can only have either a “market price” or “fancy price.”²⁶ That one person has more money than another shouldn’t allow him to buy influence to the point that it renders the latter’s political voice silent because what should matter to a liberal government, starting from the axiom that it considers each individual inviolably important, is each individual’s rational agency, on which all have equal standing regardless of wealth or skills and should not be denied effective opportunity to have their voices heard.

The important point to be made here is that when basic liberties clash, we need to revert to the conception of the person which we have regarded as fundamental. Although regarding specific questions it will always be a matter of interpretation as to how the Kantian conception actually applies (as it is with Constitutional issues), we have an idea of where we can draw the boundaries between liberties when issues arise. We can see, for example that the sphere of basic liberties is determined in part by the recognition that their practical realization must be subject to the demand of equality. Kant demonstrated that dignity does not depend on intelligence or skills and the derivative freedoms which are necessary to realize freedom of conscience must as a result be considered subject to demands of substantive equality.²⁷ The Kantian conception is concerned primarily with the capacity for functioning and that the basic liberties which secure the practical functioning of conscience express citizens’ standing as equal rational agents.

²⁵ Critique of Practical Reason. P. 23.

²⁶ Groundwork of the Metaphysic of Morals. P. 102.

²⁷ By substantive equality, I mean that we require a certain degree of equality in citizens’ capacities to effectively realize their basic liberties, not just that we enumerate a list and let market forces or social coercion exert their full influence on them. This Kantian conception of equality requires that there be a minimum of institutional guarantees for the expression of conscience for all because conscience is the manifestation of our rational agency, by which all are attributed equal dignity and should not be constrained by others’ having greater material resources. I will talk more about equality under the Kantian conception in Section III.

I have argued thus far that the basic liberties are the institutional guarantees necessary for individuals to fulfill the Kantian conception of the person which is itself a prerequisite for being able to hold any conception of the good. As the institutional vanguard of Kantian autonomy, the basic scheme of liberties is a prior consideration to any discussion of equality or economic efficiency. In A Theory of Justice, John Rawls asserted a similar priority of liberty, arguing that “in order to secure their unknown but particular interests from the original position, (parties) are led...to give precedence to the basic liberties.”²⁸ This is because parties “must first secure their highest-order interest and fundamental aims” (476). The Kantian conception I have presented shares Rawls’ commitment to the priority of liberty because liberty is the basic instrumental requirement necessary to fulfill the commitment to freedom of conscience, which is the philosophically highest-order interest of persons.

We prioritize the basic liberties because they are the institutional prerequisites for any individual to exercise agency. The purpose of a liberty is to allow an individual the latitude to exercise a certain capacity as they choose, provided this fits within the bounds of the conception of liberty generally. On this conception, the basic liberties are drawn broadly enough and regulated into a scheme so as to allow citizens the freedom to develop and express their own belief system. This is required by the Kantian conception because each individual is seen as having dignity in virtue of their being able to will and follow universal law. They must be allowed, out of the respect they are entitled to as ends-in-themselves to make this determination from their own free use of reason; to impose the content of universal law on them is to fail to recognize them and their capacity to reason autonomously as an end-in-itself. The priority of liberty, according to Robert S. Taylor “is an expression of our rationality,” our capacity to choose ends and the means to ends which we believe to be supported by our own

²⁸ John Rawls. A Theory of Justice. P. 475.

conception of best reasons.²⁹ This is our most fundamental interest because it is connected with our conception of ourselves as agents, individuals who can determine what to do in accordance with a conception of what to do.

When we assign priority to the basic liberties, we automatically (at least philosophically speaking) have a structure which meets our axiomatic aim of treating the individual as inviolably important. The scheme of basic liberties attempts to secure the conditions which allow the individual to develop and express his conscience in any way of his choosing, provided it is consistent with others' ability to do so. Any other fundamental starting point for regard of persons (such as welfare) would place primacy on something other than agency. The Kantian scheme of basic liberties has built in welfare prerequisites as a prior matter, but even these are provided with a view toward agency; the state only furnishes material resources to the extent necessary to meaningfully exercise agency. It doesn't provide these for individuals' comfort or happiness but solely because they are necessary in order for individuals to be able to exercise agency as protected by the basic liberties. It is anathema on the Kantian conception for the state to make broader determinations of what is beneficial to an agent's welfare; this shows a fundamental disrespect for agents as ends-in-themselves because it is tantamount to treating them as children, as people not capable of making their own rational decisions.³⁰ The state only has a legitimate concern in providing basic material goods and institutional guarantees which allow individuals to use their own judgment to pursue a conception of the good. Once this is done, the state must respect those ends and means each chooses to pursue, provided that they don't entail a practical restriction of others' fair value of basic liberties.

²⁹ Robert S. Taylor, "Rawls's Defense of the Priority of Liberty: A Kantian Reconstruction." Philosophy and Public Affairs, Vol. 31, No. 3 (Summer, 2003), pp. 246-271. P. 257.

³⁰ Furthermore, even if it were possible to provide for individuals' welfare without disrespecting their capacity for agency, it would be impossible to make welfare a fundamental principle of the state because welfare is, according to Kant "not a concept of reason but an empirical concept of an object of sensation," which differs between individuals. Critique of Practical Reason. P. 50.

This account of the guarantee of a sphere of basic liberties as necessary to hold and revise a conception of the good and the priority of liberty has been criticized by John Gray on the grounds that “the choice of some liberties as basic presupposes an evaluation of the human interests they protect” and that “People with differing conceptions of human interests, or who differ in the importance they give to the interests they agree in recognizing, will make different judgments as to which liberties are basic.”³¹ Furthermore, the idea of creating a central sphere of protection for the basic liberties “is not much more than a sleight of hand” because “vitally important liberties do not dovetail into a single, harmonious pattern” (76). Individuals, on this view, disagree about what is important all the way down to fundamental faculties and states don’t respond to clashes in rights by “‘adjusting’ or ‘regulating’ their ‘central range of application.’ They conclude that some demands of rights override or defeat others and seek reasons of public interest to decide the issue at hand” (82). Because there is no such thing as shared fundamental interests, “when a society contains a number of ways of life, a settlement of the claims of rival equalities must involve finding a compromise among several views of the good” (92).

Gray’s criticism strikes at the heart of any conception which tries to ground principles of justice in any form of rational consensus. He doesn’t deny that there may be basic shared interests, but that in real life, people will inevitably disagree on even the most basic scheme of liberties which can be drawn from this. This is a very strong criticism and requires us to concede the fact that no scheme of basic liberties can be completely laid out in the formative stage of producing principles of justice.³² When assessing claims based on basic liberties, we must be able to account for the nuances of a particular situation. Although the idea of a central range of application attempts to capture this, if the basic liberties sometimes clash to their core we can end up back at square one, having to make a decision between two equally strong but incommensurable claims. At this point,

³¹ John Gray. Two Faces of Liberalism. p. 73.

³² Similar to John Rawls’ scheme, the practical range of the basic liberties will have to be worked out in a legislature, not in the development of basic constitutional principles because we cannot know which social circumstances will become salient for the purpose of delineating the basic liberties. I mentioned earlier that the basic liberties have to have more than formal value; they exist to give institutional protection to individuals’ conscience and have to be responsive to the different forms this may take under various societal circumstances. If we attempted to fully draw the boundaries of the basic liberties in a constitution, we would favor one definition of conscience which would defeat the purpose of trying to find principles by which everyone could have freedom of conscience.

we will have to come to a pragmatic compromise between parties, based not on fundamental rights but on a forward-looking account of what will be best given the ideological and interest cleavage structure of society, while still providing protection “against injuries to human interests that make any kind of worthwhile life” (107).

Setting aside the obvious problem that Gray’s account itself tries to simultaneously hold two positions in contradiction with his value incommensurability argument (that principles should be the result of practical compromise while protecting fundamental interests), we can respond by restating one of his core holdings in question form: what are the “human interests that make any kind of worthwhile life?” Gray holds that values such as “courage,” “prudence,” and “sympathy” (9), are universally good while others such as “genocide,” “torture,” and regimes which “humiliate their citizens” are universally bad (107), without positing any basis for value. Is something valuable because people simply desire it? Can we separate types of desire into those of impulse and those which reflect personal deliberation and judgment? Gray gives no account of how something comes to have value for us. When what one side wants conflicts with fundamental interests of others, we will either have to resort to value-free compromise or the government will have to come down in favor one side on the grounds that their more interests are more fundamental, but without an explanation of how these interests are more fundamental.³³ They just ‘are’ more fundamental.

On the Kantian conception, there is value because people can will and follow universal law; people are capable of assessing a situation and acting on inherently public reasons, reasons which have normativity for all. It is in virtue of this capacity that individuals are to be treated as ends-in-themselves and on which we assert the philosophical core of any liberal political principles, freedom of conscience. The Kantian conception requires the state to respect the life plans and means people choose for themselves because it is required to respect their

³³ A better way to redeem this desire theoretically, although one which cannot be pursued in detail here, is to turn toward Jurgen Habermas’ procedural conception of democracy as a way to flesh out the details of a full conception of liberty given the contingencies of contemporary society. The virtue of proceduralism in Habermas’ theory is that it lays down rules for discourse so that all individuals can be heard and be required to respond on point to criticisms made by others. It allows us to be flexible to contingencies as they arise while allowing us to redeem the importance placed on individuals’ autonomy under the Kantian conception. See Jurgen Habermas, Between Facts and Norms, esp. ch. 3 and the Postscript.

capacity to reason autonomously as ends-in-themselves and would act paternalistically if it were to impose beliefs or actions. This requires the account of basic liberties to be sensitive to considerations of their practical value; we must recognize that as conceptions of the good differ, the instrumentality of liberties to the exercise of conscience will differ. The key point is that when there are questions about the practical range of a liberty or when claims of liberty clash, we revert to the Kantian conception of the person to fix the boundaries. It is in virtue of this conception that individuals can have fundamental interests and when claims to basic liberties collide, we decide in favor of those whose claim is a more basic requirement of agency. This solution will not be without controversy as it will require us to make judgments as to what basic agency entails and different groups will have different conceptions of basic agency. But we are not required to accept an individual's reasoning as a condition of him being an end-in-himself; we can deny his claim if it is based on faulty logic, cannot purport to publicity (if, for example it relies on religious metaphysics), or if it would impede on others' being able to exercise Kantian agency. We are simply required to meet the prerequisite conditions for basic freedom of conscience, not to provide the resources necessary for what anyone wants or even thinks necessary for their own conception of it.

A Kantian Conception of Equality

In the previous section, I focused on the basic physical prerequisites and the priority of liberty under the Kantian conception. I argued that these are the necessary prerequisites for individuals' autonomy, conceived not as their ability to choose any desired life plans and means, but as a set of plans and means which could withstand the Categorical Imperative. In this last section, I will focus on the role of equality under the Kantian conception. Kant holds that all rational agents have dignity on the grounds that they can will and follow universal law. Dignity is a worth above price and all rational agents are equal in virtue of having it. But given the complexity of contemporary political society, it is very much an open question what this means. My argument thus far makes the case that basic liberties and their physical prerequisites are the grounds for agency and as such furnish the

grounds for equality. This last section will address questions regarding what a Kantian conception of equality looks like in practice and whether further equality, and if so, what type, is desirable.

Rational agents have inviolable dignity and are owed an explanation whenever an action makes a claim on them. They must be treated in a way which recognizes them as having equal standing. This is the orientation of liberal political philosophy under the Kantian conception; someone cannot have a claim to something belonging to someone else unless they can show that they are owed that specific thing by that specific person. Failure to do so is to treat that person as a means. The prerequisite physical conditions and basic liberties are those things which liberal government, on behalf of all of its citizens, owes to each of them. The government has claims on all of its citizens to provide for these because they are necessary to give each the practical range of functionings necessary for them to fulfill their status as beings of equal worth.³⁴ When certain individuals are left without the basic physical prerequisites of moral functioning or access to adequate exercise of basic liberties, they cannot be said to be recognized as beings of equal worth in any meaningful way. If the arguments I made in the previous section are sound, these foundational assurances are necessary as background conditions in order to get everyone to a position where they can practically exercise their conscience and endow their lives with a sense of meaning. This is what is necessary for each to be able to function as a citizen and is what we all owe to each other. The purpose of political equality is to treat each with the dignity he or she is owed as a rational agent.

‘Equality’ is thus not a broad, end-state ideal; it is an expressive ideal in service of the substantive ideal of moral autonomy and is fulfilled when each receives their fair value of basic liberties such that they are able to exercise their capacity for moral autonomy in a meaningful way. The government expresses the equal moral

³⁴ This does not say however the type or extent of the claim the government has on each of its citizens to provide for these resources. Although Kant mentions that the wealthy can be required to provide for these, he does not say whether there is a special claim on the wealthy to provide a greater percentage of their income than others. I do not see, for example how the conception I have laid out could justify a system of progressive taxation unless it could be shown that some having great wealth specifically and systematically degrades the value of others’ basic liberties. That wealth can be used to buy influence doesn’t justify progressive taxation but rather a system of regulations prohibiting the free flow of money in politics. I discuss this point further below.

worth of each of its citizens when it has achieved a state where each has adequate means to develop and express their conscience. This can sometimes require that the government distribute resources unequally. Citizens who cannot meet their basic physical needs for whatever reason are entitled to government assistance whereas those who have these basic needs met are not. The Kantian Conception is not, however concerned with citizens' capacity to realize their desires or be made equal with others in wealth. There is no single metric of equality; measures such as wealth or desire-fulfillment are not necessities of agency. The overarching aim is to give each a reasonable chance, through the provision of basic material necessities and basic liberties, to develop and express conscience. This is the proper aim of equality in the Kantian conception of the person because individuals are equal in virtue of their dignity, which is grounded in their rational capacity. The state fulfills the necessary and sufficient conditions of the equal dignity of rational agents by securing physical well-being and basic liberties such that each can develop and express conscience.

Any dimension of equality is only normatively desirable if it is in service to creating a scheme of basic liberties which gives each an equal opportunity to exercise their conscience. To regard equality as normative beyond this point is to regard some as having a claim on others just because they have 'less' than them in some dimension other than ability to exercise conscience. Wealth and welfare, for example aren't proper measures of equality because neither (other than a minimum of wealth) is necessary for agency nor do they form the basis of legitimate claims on the resources of others. Insofar as welfare is connected to desire, claims to it are absolutely illegitimate on the Kantian conception because the entire purpose of securing the conditions of agency is to secure individuals' ability to revise what to do in accordance with what their best reasoning tells them. We are active, not passive carriers of desire and can, even when it is extremely difficult, revise these desires in accordance with standards which are more generally acceptable.³⁵ Furthermore, equality of welfare also ignores

³⁵ See again Scanlon, What We Owe to Each Other, ch.1. This point can be extended to stronger sources of desire, such as the desire not to be in pain. Christine Korsgaard argues that the sensation of pain, on which utilitarian accounts of moral and political philosophy are based, is not intrinsically bad, but bad "because the creatures who suffer from it object to it." Pain is not wrong "independently of consciousness and perception," but because there is no good reason for the physical

the problem of expensive tastes, giving one individual claim to greater resources than another, ignoring the basic point that one person's desire or insistence on what they 'need' doesn't give them claim on another to provide this.³⁶

Claims to equality of wealth are unwarranted because they are claims on those who have more just because they have more. That one person has greater capacity for instrumental reason than another or makes a bold move which generates substantial payoff does not give others a claim on his assets. From the perspective of the liberal state, those who lack natural intelligence or market skills do not have a moral claim on those who have them even though these distributions are morally arbitrary. This would disregard the equal moral status of the more intelligent (wealthier, more skilled, more bold, etc.) person; it would express the idea that he was not entitled to the full benefits of his use of agency because someone else couldn't exercise agency to the same level of benefit. This luck egalitarian ideal of reciprocity of natural endowments is not a condition of Kantian morality, nor a legitimate aim of a liberal state.³⁷ Moral status is solely a matter of capacity for agency and whether you are capable of exercising basic liberties, not natural capabilities vis-a-vis other rational agents. Unless it can be shown that those who have means have them at the expense of others' being able to exercise agency, it is illegitimate to take from them and give to others on the grounds of equality of wealth or welfare as ideals.

harm which causes us pain to be done to us. On the Kantian conception, things are right or wrong because we either can or can't give universal reasons for them which respect each as an end-in-themselves. There isn't an intrinsic rightness or wrongness to sensational matters like pain or desire and these can only be used as claims on others if they pass the Kantian standard of justifiability. *The Sources of Normativity*, pp. 154-5.

³⁶ See Ronald Dworkin, *Sovereign Virtue*, ch. 1 for a discussion of the problem of expensive tastes for any theory of equality of welfare.

³⁷ For a further discussion of the inadequacy of so-called 'luck egalitarian' theories as the basis of a theory of equality in a liberal, democratic society, see Elizabeth Anderson "What is the Point of Equality?" *Ethics*, Vol. 109, No. 2 (Jan., 1999), pp. 287-337. Anderson's theory of Democratic Equality shares with mine the concept of equality as an expression of "the equal moral worth of persons...that all competent adults are equally moral agents, everyone equally has the power to develop and exercise moral responsibility, to cooperate with others according to principles of justice, to shape and fulfill a conception of the good" (312).

A response to this account is that inequality of wealth *does* directly translate into inequality of social power, allowing some to exercise coercive influence over government institutions and diminishing less powerful individuals' capacity for effective agency. Because of this, we should redistribute wealth so that the wealthy can't use their excess wealth to purchase influence. This is a correct diagnosis of the problem, but the conclusion is incorrect; the specific injustice doesn't rest on inequality of wealth but the ability to turn wealth into influence. Although wealth is in many cases, such as corporate lobbying for favorable legislation and large donations to political campaigns, directly transferrable into power which generates unequal conditions of agency, the primary problem is not inequality of wealth but ineffective regulation of channels of influence. The same problem would exist if wealth was equal, but politicians systematically tended to be from a single religious background (say they were all Protestant) and always favored the preferred policies of that interest group. Wealth is just a single means by which certain individuals can develop socially coercive power; the problem is not the means by which people can garner an unequal share of influence but the fact that influence is determined by social/economic power and not ideas in dialogue and debate.

The Kantian conception would focus on efficacy of access to channels of influence. If the problem is that lobbyists can flood the system with money to gain greater access, the solution is to create laws which limit financial contributions to politicians or some kind of law which regulates the amount of time which any group can spend lobbying a particular wing of government. These types of regulations are properly tailored to the point of equality under the Kantian conception because they focus on realizing the practical conditions for each to be able to exercise agency and they recognize that no one should have greater opportunity to influence government than any other. This expresses the ideal of equality of each as rational agents by ensuring that each has an equal chance, if they choose, to persuade government officials that their ideas deserve significant consideration. Massive redistribution of wealth might solve the problem of influence as well, but it wouldn't do so in a way which respects the claims of wealthy individuals as moral agents, expressing instead the idea that "the more money you make, the more morally indebted you are to the less fortunate." On the Kantian

conception, political equality is not about wealth or ability to achieve happiness, but recognition of each as an equal rational agent, which requires the physical and political conditions necessary to realize agency and equal opportunity to influence government. We can only have claim on other moral agents to give up what they have on the condition that they can use those resources to diminish the effectiveness of other citizens' agency by denying them a chance to have their voices heard.

A different line of objection to this account is that it ignores the fact that people have different levels of capability in realizing agency. Many individuals have less intellectual capacity to realize their plans and will always lose if in competition with those of greater intellectual means. Others may be mentally acute but suffer from physical disabilities which prevent them from easily accessing public arenas where they would express their conscience. Because of this, institutional provisions for agency cannot be concerned with a basic conception of human agency but must be able to account for "significant variations in the conversion of resources and primary goods into freedoms," and not bias its list of guaranteed resources such that it ensures the effective agency of intelligent, able-bodied persons but no one else.³⁸ The Kantian conception is thus in danger of "giving priority to the means of freedom over any assessment of the extents of freedom," which not only leaves less intelligent, less physically able citizens with a lower level of practical functioning, but expresses disrespect for them by claiming that they have the necessary means for exercising agency while their actual conditions are ignored (8).

Amartya Sen's capabilities approach reemphasizes the role of physical functionings as important components of freedom. He wants to reorient the debate on equality back toward "the freedoms (citizens) actually enjoy to choose the lives that they have reason to value," which will mean having a system of distributive justice which doesn't just equalize primary goods or liberties, but looks to how these are used in

³⁸ Amartya Sen. Inequality Reexamined. P. 33.

society and attempts to equalize capacities to realize end-states seen as inherently valuable, such as the ability of handicapped individuals to have equal access to public places (81). Physical functionings such as walking or driving a car may not be matters of agency freedom, but lack of capacity to do these severely limits an individual's practical functioning in society. Many would consider immobility without accommodation to be even worse than restrictions on freedom of expression. If the government were not to provide accommodations to individuals lacking the physical functionings necessary for mobility in contemporary society, it could be accused of playing a cruel joke, leaving them able to believe whatever they want but giving them no means to participate in society.

I believe that the Kantian approach I have laid out is able to account for some of Sen's weightiest objections. A large range of physical functionings is ensured by the physical prerequisites condition of the Kantian conception. It is legitimate for the state to make demands on its citizens so that it can provide all with basic food, shelter, and health care as these are necessary physical provisions for the exercise of any mental activity, which is the most fundamental concern of the state. The state provides this 'safety net' guarantee to all of its citizens and is permitted to make claims on those with greater means to provide these goods to those without them if necessary because each human being has dignity and his/her needs for survival make an absolute claim on a government committed to the basic liberal axiom of the inviolable importance of all individuals. It is the government's responsibility to ensure that each has the capacity to exercise a minimum of agency, a concern which overrides other claims, such as the right to dispose of your income as you wish. I also believe that the Kantian conception can accommodate important physical functionings such as handicapped access to public places and provision of mobility-enhancing devices. The state is required to consider the practical value of the basic liberties, not just their formal equality. If a physical handicap leaves one person

unable to access government buildings, the practical value of their freedom of expression is less than that of another, able-bodied person.³⁹

Sen's greatest worry about approaches which focus heavily on means to freedom is that if we are concerned about equality of freedom, we have to be concerned with what citizens can do with their freedoms, not just whether they have equal access to what we think are adequate means. If a certain ideal of agency is what matters, unequal distribution of institutional 'goods' will be necessary to achieve this. The Kantian conception I have laid out is ends-focused in this way; it recognizes that not only are physical capabilities to achieve a practical value of agency in contemporary society differential, but that if freedom of conscience is permitted, individuals will have different conceptions of the good and will require different public freedoms in order to fulfill this. Institutional provisions are always focused on the realization of agency, but we recognize that certain practical functionings are required in order for individuals to have agency in a meaningful sense.

As with the basic liberties, the practical extent of these functional provisions cannot be fully determined at the Constitutional stage.⁴⁰ They have to be worked out by a legislature which can take into account how media and public places are instrumental to expression in contemporary society and where the boundaries of this freedom should lie. In the 19th century, for example expression could only occur by written word or physical

³⁹ The issue of handicap access becomes much more difficult when we consider privately-owned public places. It is not immediately apparent how access to restaurants or theaters are necessary conditions for fulfilling freedom of conscience; this may be necessary for achieving a certain standard of pleasure in contemporary society, but the Kantian conception is explicitly not concerned with the state providing each equal access to what are generally considered to be means to important social pleasures. It is also not apparent how owners could owe these accommodations to the handicapped; on the Kantian conception, as long as their property does not impede the agency of others, it is illegitimate to require them to use it in ways not of their own choosing. On the other hand, it is easy to see how this could lead to a second-class quality of life for the handicapped which is not consistent with the state's aim to express equal respect for all of its citizens. A solution to this issue would require a theory which explains more fully the interpersonal obligations of each as citizen and is, unfortunately beyond the scope of this paper.

⁴⁰ As in Rawls' theory of justice, the Kantian Conception lays out only the fundamental elements of its doctrine at the initial constitutional stage. In Rawls' theory, the original position and veil of ignorance are laid out and parties are directed by their higher-order interest in preserving the two moral powers. The two principles of justice are chosen, but these only broadly determine the shape of the laws. The laws are written by a democratic legislature. The Kantian conception would follow this same layout except that the constitution would be written to provide the basic means necessary for each to exercise their Kantian agency. For Rawls' discussion of the progression from the constitutional to the legislative stage, see A Theory of Justice, §31.

presence. Expression now occurs by means of television and internet and the Kantian conception requires that we consider how much access to these different types of communicative means is necessary to be able to adequately express one's conscience.

A further, more complicated matter is the issue of functioning as an 'equal' member not just of political, but of civil society and whether it is necessary for the government to include provisions for equal functioning in civil society in order to express the equal moral standing of citizens. There are a wide variety of potential impediments to robust participation in civil society; inaccessibility to transportation based on physical handicap, inability to access quality schooling, and power asymmetries between employer and employee. These are highly salient issues for the discussion of agency in contemporary society because they all greatly influence the range of choices each will be able to make regarding their own lives. A government which ignores civil society institutions and relationships cannot be said to express the equal moral standing of its citizens in any meaningful sense because these play as much a role in actual capacity for expression as formal protection of liberties. The government might for example require that each have equal access to quality public schools so that everyone is given a chance to develop one's own agency. Although not a strictly a basic liberty, a minimal level of education is necessary for each to be able to develop the knowledge and skills necessary to advance themselves in modern society. We need not, however prohibit the existence of elite private schools because the Kantian requirement of equality is that each be given a reasonable chance to exercise agency, not that capacities for agency be made equal.

Regulation of social power is another difficult issue regarding the expression of all as having equal moral standing. I mentioned earlier that it is legitimate for the government to regulate the ability of individuals and corporations to use wealth to disproportionately influence governmental affairs. It is legitimate for the government to regulate the bargaining advantage employers wield over employees. This unequal bargaining advantage exists because people need to work to provide sustenance for self and family and are often facing

conditions of work scarcity. Employers can bind them to harsh contracts, knowing that they will not be able to quit. In response, the government can develop laws preventing employers from subjecting employees to unreasonably long hours or hazardous working conditions because these are necessary to ensure that each can have a life outside of their role as worker where they can develop their own life plans free from the direction of their employer. This is necessary such that agency freedom is not just the freedom to formally choose something, but the freedom to choose in accordance with a conception of what you believe to be right. The ability to choose between degrading options determined wholly by another is a choice between types of pseudo-slavery, not freedom.

Equal opportunity employment and non-discrimination laws serve, at least in part, the same function; they are a way to hold employers to standards whereby social power isn't the gateway to opportunity. This can lead to "the creation of outcasts and subordinate classes...as repressive as any despotic regime."⁴¹ Although we might consider this type of restriction on employers a violation of their freedom of association, as with taxation levels necessary to ensure that everyone has the basic physical prerequisites of agency, equal opportunity and non-discrimination laws are necessary such that everyone has a chance to participate in the institutions of civil society. Failure to ensure reasonable access can lead to social stigmatization of certain groups, diminishing their practical opportunity for agency. A government which lacks these types of laws also fails to express equal standing of its citizens because it ignores the fact that when left unregulated, social/economic institutions allow certain individuals and groups to hoard power and prevent others from having access to these institutions. This type of society expresses the principle that those who have social power have the right to determine others' access to the institutions of civil society, which is unacceptable on the Kantian conception because it subordinates the essential purpose of ensuring the effective agency of each to a misperceived ideal of non-interference with freedom of association. The latter liberty, as with all basic liberties, is only an instrument to achieving the former goal. As the restriction on the lobbying of government is a legitimate restriction on the

⁴¹ "What is the Point of Equality?" p. 315.

purpose of free speech so that others can have an opportunity to influence government, non-discrimination and equal opportunity laws are legitimate restrictions on social/economic institutions so that society reflects the abilities and choices of all, not just those of a few.

Although the Kantian conception attempts to provide the all-purpose means necessary for holding any conception of the good, it recognizes that institutions and basic liberties will require fine-tuning such that they can both accommodate a variety of types of conscience and the ever-changing nature of social institutions. We cannot strictly define what is and what is not necessary for agency; this admits to different definitions under different conceptions of the good and requires an understanding of the variety and changing nature of civil society institutions. Although we lay out a list of basic liberties essential to the development and exercise of agency, we understand that no preconceived list can account for the variety of situations which will affect citizens' capacity for agency. Application of liberties will have to deal with conflicts between them as well as situations where we have to understand how relationships and institutions in civil society actually affect the practical value of citizens' agency. The Kantian conception adjusts means toward end-state achievement of agency because its ultimate purpose is to allow citizens to choose in accordance with their conception of best choice, provided that their actions allow others the opportunity to do so. This may require substantial regulation of civil society institutions, but once we have lessened the fungibility of social/economic power such as to ensure everyone a reasonable chance at effective agency, we need not aim toward any further degree of equality. Any substantive conception of equality, whether as welfare, wealth, or full means to the life plans of one's choice, misses the point of human agency, which is to critically assess options and choose in accordance with best reasons. Desires, such as envy, which cause people to demand equality of wealth or welfare or the means to pursue whatever life plans they want regardless of expense are subject to critical reflection, and the Kantian conception, which is based on the ability of individuals to subordinate desire with reason, does not sanction any conception of equality which allows these to weigh in favor of a particular policy choice. Equality must remain a broad, philosophical idea about moral status of persons and when considered as a political

principle, should only apply to formal treatment under the law and the aim of allowing each basic institutional and societal conditions to develop and express conscience. Any further substantive equality threatens either to devalue or intrude on individuals' agency.

Conclusion

The purpose of this paper was to show how what I took to be a basic axiom of liberal government, that the government should regard each individual as inviolably important could be rooted in a conception of liberalism based on Immanuel Kant's conception of practical reason and moral philosophy, which could further be used to develop basic theories of political liberty and equality. In Kant's moral philosophy, the ground of our freedom is our capacity to will universal law. Rational agents are attributed an inviolable dignity in virtue of this capacity and are all equal in this regard. This system shows how we author maxims and life plans which are truly our own. When we act in accordance with the Categorical Imperative we act independently of factors external to our judgment. The plans which we choose to author by best reasons are those which we regard as core to our sense of self-importance. This brings us to the philosophical purpose of liberalism and liberal government; to develop a sense of institutions which protect the ability of each citizen to meaningfully author their own life plans, to exercise freedom of conscience.

I argued that in order to be able to exercise freedom of conscience, citizens need to be ensured a safety net of physical prerequisites such as basic food, shelter, and health care which are necessary for exercising mental faculties. They also need to be ensured adequate exercise of basic liberties, such as speech and expression as well as given adequate security such that each can develop and express his conscience without either censure or threat of attack. Once these conditions are met, government need not further redistribute resources for the purpose of some substantive conception of equality as either wealth or welfare. This would be inconsistent with the purpose of equality in Kant's moral philosophy, which is to express equal respect for each as moral agent. The state does this by giving each the freedom to develop and express conscience. Past this

point, it has no business redistributing resources from those of greater to those of less advantage because this implies that the latter have legitimate claim to the resources of the former beyond what is necessary for them to exercise agency. This subordinates equality of each as moral agent to a misperceived ideal of material equality. If wealth leads to an imbalance in social power which has a pernicious effect on citizens' agency, the proper solution is to regulate the channels through which that power is influenced.

The ideal society under this conception is one which allows citizens to act in accordance with their conscience and ensures that no one can use social power, whether as the result of wealth or personal connections to deny them a reasonable opportunity to develop their beliefs or advance their societal position. To be sure, I have only laid out a basic sketch of some of the fundamental commitments of a liberal government. A more developed theory would flesh out how far we can go with philosophical principles laid out in a constitution and when decisions have to be left to democratic procedures. I believe, however that we are well-served by showing how liberal political principles arise from our nature as reasoning beings. If we can present a theory which does this in a compelling way, we can develop a deeper understanding of how institutions can help us realize necessary conditions of freedom of conscience for all while respecting moral boundaries.

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